



Muslims divided over whether shariah belongs in Ontario arbitration law

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TORONTO (CP) -- A Canadian Islamic group is trying to prevent the word shariah from being included in Ontario's Arbitration Act on the grounds it creates a "slippery slope" that blurs dangerously the lines between family and criminal law.

Currently, the law provides for voluntary faith-based arbitration, which allows Muslims, Jews and members of other faiths to use the guiding principles of their religion in settling private disputes such as divorce, custody issues and inheritances outside the court system.

But the Council on American-Islamic Relations Canada is worried that including the word shariah in the legislation would enshrine in law so-called shariah tribunals, which they say are a violation of the Charter of Rights and Freedoms.

Critics of shariah tribunals say they permit Islamic jurisprudence to swell beyond the scope of family law, potentially exposing vulnerable groups, particularly women, to unjust treatment in the eyes of the Charter.

"They say women will be coerced and pressured and will be oppressed," said CAIR-CAN director Riad Saloojee. "The differential treatment under Islamic law in certain circumstances will basically affect equality rights."

In addition to the Qur'an, shariah is based on the Hadith, a complementary collection of sayings, and the Sunnah, which are practices of Islam's founder, the Prophet Muhammad.

The scope of a traditional shariah tribunal is extensive and includes a canon of criminal law which, for the most part, is incompatible with the Charter, Saloojee said. The debate has polarized Canada's Muslim community, he added.

"There is enough by way of controversy in the Muslim house to make it interesting."

While CAIR-CAN supports faith-based arbitration as an alternative to litigation, Saloojee and others say safeguards are necessary to ensure that vulnerable groups, especially women, are not "coerced" into using the practice.

Ontario's Arbitration Act is mainly used for commercial arbitrations, where the parties are typically represented by lawyers who can protect their rights. Those who want to take advantage of faith-based arbitration are typically less sophisticated and don't enjoy the same protection, Saloojee said.

"Many people feel very comfortable resolving their issues on faith-based principles," he said.

"If you were to give many (Muslims) a choice of resolving them in the legal system or resolving them quietly, quickly and according to faith-based principles they already believe in, and tend to expedite the process, they will do that."

Moderate Muslim cleric Ahmad Kutty, one of two Canadian imams who made headlines a year ago when

they were kicked out of the U.S. on suspicions of terrorism, said he supports leaving shariah out of the act.

"Shariah is a loaded word; it includes all of the civil, criminal and other institutions associated with the Islamic legal system," Kutty said. "No one in his right mind would propose implementing this system of laws in Canada."

But Kutty said he still supports the concept of faith-based arbitration, so long as "sufficient safeguards and checks and balances" are in place to protect the rights of `` those who are often vulnerable to exploitation."

Saloojee said the use of faith-based arbitration is on the rise for Canada's burgeoning Muslim community.

Islam is Canada's fastest growing religion, with 579,640 Muslims enumerated in the 2001 census, more than twice the number in 1991. Some 61 per cent, or 352,500, live in Ontario.

As a result, the province has asked former attorney general Marion Boyd to conduct a review of the province's arbitration processes.

She is expected to deliver her recommendations in September, but said she has yet to decide whether to recommend using the word shariah to describe faith-based arbitration for Muslims.

"I haven't made up my mind yet," Boyd said. "I can tell you that CAIR-CAN is not the only group that has suggested that it is inappropriate to call this shariah."

Other groups, like the Institute of Islamic Law in Canada, have expressed support for the term shariah, Boyd said. The institute could not be reached for comment.

Tarek Fatah, co-founder of the Muslim Canadian Congress and host of TV's Muslim Chronicle, said Ontario should trash the entire process for fear it will only "ghettoize" Muslims regardless of what it's called.

"In some ways this is the racism of lower expectations," said Fatah, who plans to meet with Boyd next week.

"Under the guise of empowering us and under some false notion of multiculturalism, the mainstream community is saying, 'Well, it doesn't affect us . . . we will have the public judicial system and the Muslims can hire their own private judges and if it affects someone negatively, it will not be one of us.'"

Fatah said he fears a two-tiered judicial system within the community that would see vulnerable, low-income groups "suckered" into faith-based arbitration because they can't afford lawyers.

"We also believe the Islamic fundamentalists in the community are utilising this, trying to bring their right-wing, social-conservatism to dominate the Muslim narrative in Canada," Fatah added.

"It's shariah by stealth, actually."

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