The Experiences of the Aga Khan Ismaili Conciliation and Arbitration Board in Canada

Canadian Institute for the Administration of Justice (CIAJ)
October 2017

Fareen L. Jamal
Agenda

• Who are the Ismailis?
• The Conciliation and Arbitration Board (CAB)
• Focus Areas
• Interprovincial and international cases
• Questions and Answers
The Ismailis

- Shia branch of Islam
- His Highness the Aga Khan as spiritual leader
- Ismaili Muslims number about 15 million spread out in 30+ countries
- Diversity of peoples and cultures
- About 100,000 live in Canada
Islam: Shia Branches of Islam

Shi’i Islam: Ismaili and Twelver Branches

Prophet Muhammad (d. 632)

Sunni Islam:
- Political Authority: Caliphate
- Religious Authority: Legal Scholars
- Spiritual Authority: Sufi Shaykhs

Shi’i Islam: Imamat:
- Imam ‘Ali b. Abi Talib (d. 661)
- Imam al-Husayn b. ‘Ali (d. 680)
- Imam ‘Ali b. al-Husayn (d. 713)
- Imam Muhammad al-Baqir (d. 743)
- Imam Ja’far al-Sadiq (d. 765)

Ismaili Shi’ism:
- 6. Imam Isma’il ibn Ja’far
- 7. Imam Muhammad b. Isma’il
  (10 hereditary Imams: 3 Imams + 7 Fatimid Imam-Caliphs)
- 18. Imam al-Mustansir billah
  (8th Fatimid-Imam Caliph, d. 1094)
- [30 generations of hereditary Imams]

Twelver Shi’ism:
- 7. Imam Musa al-Kazim (d. 799)
- 12. Imam Muhammad al-Mahdi
  (The Awaited 12th Imam in Occultation, 874+)
- [4 generations of hereditary Imams]

Nizari Ismailis:
- 49. Present (Hujjat) Imam:
  Mawlana Shah Karim al-
  Husayni Aga Khan IV (b. 1936)

Dawoodi Bohras:
- 53. Present Da’i Mutlaq:
  Syedna Mufaddal Saifuddin (b. 1946)
  (Represents a concealed Imam)

Grand Ayatullahs:
Represent the Hidden Imam &
are source of emulation (naplid)
The Ismailis

• Well-defined social governance institutions in countries where Ismailis live

• The Aga Khan has opened several new institutions in Canada:
  – Global Centre for Pluralism, Ottawa
  – Aga Khan Museum, Toronto
Aga Khan Addresses Parliament of Canada

- http://bcove.me/s13v2670 (11:45-16:52)
- February 27, 2014
CAB’s Holistic Model

- Learning & Sharing with others
- Mandate of Dispute Resolution
- Bandaging Wounds
- Training, Capacity Building & Leadership Development
- Enabling Structure With International Reach
- Quality of Life
- Post Settlement
- Dispute Prevention & Inter Institutional Collaboration
- Learning & Sharing with others
- Mandate of Dispute Resolution
- Bandaging Wounds
- Training, Capacity Building & Leadership Development
- Enabling Structure With International Reach
- Quality of Life
- Post Settlement
- Dispute Prevention & Inter Institutional Collaboration
Dispute Resolution

- Design Foundations
- Constitutional Mandate
- Rules of Procedure
Dispute Resolution

- Dispute resolution is an Islamic tradition that goes back 1,400 years
- CAB was established in 1986
- Rules of Procedure that apply the laws of the land
- Grounded in the ethics of brotherhood, unity, respect and tolerance
Distinct features of CAB

- Network of national and international CABs
- National CABs in 18 countries
- 5 RCABs in Canada (11 members in Ontario)
- A long tradition of volunteerism
  - All members are volunteers
  - Maximum of two terms (each of 3 years) in a position
  - Canada: NCAB and 5 RCABs, 46 members;
  - at least one lawyer on each board, Gender balance, cultural diversity and sensitivity is a key element
- Strategic Planning – Board takes a Long-term View of Mandate
Training, Capacity Building & Leadership Development
Training the volunteer mediator

• Training
  – >80 hours of training every 3 years
  – Training in domestic violence screening and mental health issue identification
  – Specific modules on power of apology, ethos of service, leadership, co-mediation, mediator resiliency/burnout and legal foundation

• Ongoing
  – Mediator assessment
  – Accreditation
  – Joint Sessions between national jurisdictions
Why the community comes to CAB?

✓ Trained members, with experience
✓ Culturally sensitive
✓ Confidential, Cost effective
✓ Voluntary process
✓ Faster and less acrimonious than the legal court process
✓ Post-settlement assistance
✓ Apply the laws of the land
Cross cultural perspectives

- Cultural Fluency – an ability to see others the way they see themselves
- Diversity
  - Language
  - Geography
  - Cultural
  - Generational
  - Canadian Challenges
    - Newly immigrated
    - Quebec
- Pluralism – the responsibility to embrace, nurture, protect, and strengthen differences
CAB Canada

• 435 cases from July 2012 to July 2015
• 72% success rate
Dispute Prevention
Building a Culture of Dispute Prevention

CAB MEDIATORS COLLECT ROOT CAUSES & CAB DOES A “PLAYBACK” WITH SISTER INSTITUTIONS

PREVENTION AT STRATEGIC AND PROGRAM LEVEL
Dispute Prevention - root cause identification

Cases that come to CAB

67%
matrimonial

22%
commercial

11%
Family/Other

WHY?
77% due to:
• Incompatibility
• In-laws/extended family

WHY?
75% due to:
• Poor documentation
• Misrepresentation

WHY?
74% due to:
• Inheritance/estate issues
• Health & elder care decisions
Bandaging Wounds & Post-Settlement
Bandaging the Wounds

- Holistic Approach to dispute resolution, prevention and healing
- Referrals, with consent, for those in need
- Therapeutic services for clients and extended family
- Leveraging inter-organizational synergy and expertise
Enabling Structure With an International Reach
Our experience in interprovincial and international cases

• Bringing the potentially reluctant respondent to the table without recourse to costly inter-jurisdictional legal proceedings

• 20% of our cases are interprovincial and international (Afghanistan, Great Britain, India, Kenya, Pakistan, Tanzania, Uganda and USA)
Our experience in interprovincial and international cases

<table>
<thead>
<tr>
<th>METRIC 2012-2015</th>
<th>INTERPROVINCIAL</th>
<th>INTERNATIONAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>TYPE OF CASE</td>
<td>80% MATRIMONIAL</td>
<td>53% MATRIMONIAL AND 30% COMMERCIAL</td>
</tr>
<tr>
<td>GENDER OF APPLICANT</td>
<td>64% FEMALE</td>
<td>50% FEMALE</td>
</tr>
<tr>
<td>AVERAGE DURATION</td>
<td>Less than 6 months</td>
<td>8 to 12 months</td>
</tr>
<tr>
<td>SUCCESS RATE</td>
<td>86%</td>
<td>69%</td>
</tr>
</tbody>
</table>
Best Practices

- Bring the respondent to the table
- Understanding the laws of each region
- Always asking for ILA
- Use of technology
- Mediators planning and debriefing
- Each party communicates with both mediators
- Include and test settlement clauses for durability, implementation and appeal
Challenges

• Determining which jurisdiction to use
• Language and cultural barriers
• Communications between parties, and between mediators
  – access to technology
  – time zone differences
  – Original document exchange
• Secure access to mediation facilities in foreign jurisdiction
What is next in international mediation cases?

• How does CAB work with authorities of Hague Convention signatories?
• How does CAB deal with abduction situations? Or where children may be at risk of harm?
• Mobility cases - is it the best interest of child? Or of parents?
• Legal aspects... scope of CAB?
• What if cases are migration specific?
Inter Institutional Support & Collaboration
STRUCTURAL SUPPORTS

• Training/ Competency
• Co-mediation Model
• Alumni Wisdom and Expertise – utilize Alumni for case work and special projects
• Support Network
• Mediator Resiliency Focus
• Members
  – Benefit from significant personal and professional development
  – Enhanced understanding of the community and the issues it faces
Honorable Marion Boyd on CAB in 2004

• “The Ismailis have developed a model of conciliation and arbitration that is the most sophisticated and organized structure in the Muslim community to date”
• “CABs save time and money, not only for the participants, but also for the court system”
• “Ismaili CAB system serves the Ismaili community well and has demonstrated its value and effectiveness as an ADR system”
• “Rooted in tradition, grounded in the ethics of the faith and complies with the laws of the land”
THANK YOU!

• Questions and Answers
• You can also visit the following websites:
  – www.cabcanada.org
  – www.theismaili.org
  – www.akdn.org
Fareen L. Jamal

Jamal Family Law Professional Corporation
Tel: 905.901.3746
Fax: 905.901.3743
Email: fjamal@jamalfamilylaw.com