

Religious Fundamentalism and Freedom: Conflict or Common Cause

Sheila GRECKOL*

I.	THE EMERGING DEBATE	3
II.	THE PROBLEM OF FUNDAMENTALISM	7
III.	THE CANADIAN EXPERIENCE	16
IV.	RELIGIOUS LAW	19
V.	UNLIKELY UTOPIA	24
VI.	CONCLUSION	24

* Justice, Court of Queen's Bench of Alberta, Edmonton, Alberta, September 19, 2008. I would like to thank Kanchana Fernando for her research assistance and Amy Martin-LeBlanc for her research and editing assistance.

I. THE EMERGING DEBATE

With the advent of human rights legislation in the 1970s in Canada,¹ the proclamation of the *Canadian Charter of Rights and Freedoms*² in 1982, and the equality rights provision in 1985,³ we enjoyed two euphoric decades as equality seekers, pressing human rights complaints, and *Charter* challenges. Canadians took to heart the commitment in human rights legislation to dignity and equality without regard to sex, religion, colour, age, place of origin, and disability; and the promise of fundamental rights and freedoms enshrined in the *Charter*.

The principles that developed in human rights jurisprudence informed *Charter* interpretation. A seamless system grew to assure equality for citizens in relation to government, and between each other, forming the basis for a civil society. In that marvelous synergy between citizens' demands, and legislative and judicial response, advances were achieved in pursuit of women's reproductive rights,⁴ equality at the workplace,⁵ equality in family and matrimonial property law,⁶ equality rights for gays and lesbians,⁷ for people of colour, and for the disabled.⁸

¹ Current legislation now includes: *Human Rights Act*, R.S.N.B. 1973, c. H-11; *Saskatchewan Human Rights Code*, S.S. 1979, c. S-24.1; *Canadian Human Rights Act*, R.S.C. 1985, c. H-6; *Human Rights Code*, S.M. 1987-88, c. 45; *Human Rights Act*, R.S.P.E.I. 1988, c. H-12; *Human Rights Act*, R.S.N.S. 1989, c. 214; *Human Rights Code*, R.S.N.L. 1990, c. H-14; *Human Rights Code*, R.S.O. 1990, c. H.19; *Human Rights Code R.S.B.C.* 1996 c. 210; *Human Rights, Citizenship and Multiculturalism Act*, R.S.A. 2000, c. H-14; *Human Rights Act*, S.N.W.T. 2002, c. 18; *Human Rights Act*, R.S.Y. 2002, c. 116; *Human Rights Act*, S.Nu. 2003, c. 12; *Charter of human rights and freedoms*, R.S.Q., c. C-12 (updated to 2008).

² Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 [*Charter*].

³ *Ibid.*, s. 15.

⁴ *R. v. Morgentaler*, [1988] 1 S.C.R. 30; *Tremblay v. Daigle*, [1989] 2 S.C.R. 530.

⁵ *Janzen v. Platy Enterprises Ltd.*, [1989] 1 S.C.R. 1252; *Gosselin v. Quebec (Attorney General)*, 2002 SCC 84, [2002] 4 S.C.R. 429.

Advances were made, too, through human rights legal process, for those who wished protection for the practice of their religious convictions, including the early examples of the right to refuse work on the Sabbath,⁹ the right to for members of the Sikh community to wear a turban while working in the RCMP,¹⁰ and more recently, the right for Sikh students to carry a ceremonial dagger while attending school.¹¹ Human rights tribunals have considered whether it is religious discrimination for Sikh motor cyclists to be required to wear helmets.¹² The religious interests were found not to trump safety concerns.

Canadians have come to view ourselves as welcoming to others, tolerant, respectful of difference and prepared to accommodate, perhaps because all but First Nations people are immigrants or descendants of

⁶ *Peter v. Beblow*, [1993] 1 S.C.R. 980; *Tataryn v. Tataryn Estate*, [1994] 2 S.C.R. 807; *Miron v. Trudel*, [1995] 2 S.C.R. 418; *Young v. Young*, [1993] 4 S.C.R. 3; *M. v. H.*, [1999] 2 S.C.R. 3; *Nova Scotia (Attorney General) v. Walsh*, 2002 SCC 83, [2002] 4 S.C.R. 325; *Hartshorne v. Hartshorne*, 2004 SCC 22, [2004] 1 S.C.R. 550.

⁷ *Vriend v. Alberta*, [1998] 1 S.C.R. 493; *M. v. H.*, [1999] 2 S.C.R. 3.

⁸ *Rodriguez v. British Columbia (Attorney General)*, [1993] 3 S.C.R. 519; *Battlefords and District Co-operative Ltd. v. Gibbs*, [1996] 3 S.C.R. 566; *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624; *Eaton v. Brant County Board of Education*, [1997] 1 S.C.R. 241; *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, [1999] 3 S.C.R. 868; *Granovsky v. Canada (Minister of Employment and Immigration)*, 2000 SCC 28, [2000] 1 S.C.R. 703; *Auton (Guardian ad litem of) v. British Columbia (Attorney General)*, [2004] 3 S.C.R. 657; *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, 2007 SCC 15, [2007] 1 S.C.R. 650.

⁹ *Ont. Human Rights Comm. v. Simpsons-Sears*, [1985] 2 S.C.R. 536.

¹⁰ *Grant v. Canada (Attorney General)*, [1995] 1 F.C. 158 (T.D.), aff'd (1995), 125 D.L.R. (4th) 556 (F.C.A.). See also *Bhinder v. Canadian National Railway Co.*, [1985] 2 S.C.R. 561 (re: wearing hard hat on work site); *Singh v. Royal Canadian Legion, Jasper Place (Alta.), Branch No. 255* (1990), 11 C.H.R.R. D/357 (Alta.) (re: wearing turban at Legion's Christmas party).

¹¹ *Multani v. Commission scolaire Marguerite-Bourgeoys*, 2006 SCC 6, [2006] 1 S.C.R. 256. See also William J. Smith, "Private Beliefs and Public Safety: The Supreme Court Strikes Down a Total Ban on the Kirpan in Schools as Unreasonable" (2006) 16 Educ. & L.J. 83.

¹² *Dhillon v. British Columbia (Ministry of Transportation and Highways, Motor Vehicle Branch)*, [1999] B.C.H.R.T.D. No. 25; *British Columbia Maritime Employers Assn. v. International Longshore and Warehouse Union, Local 500 (Dhillon Grievance)*, [2006] C.L.A.D. No. 262. See also *R. v. Badesha*, 2008 ONCJ 94, 77 W.C.B. (2d) 119, in which the Ontario Court of Justice dismissed the challenge to the constitutionality of s. 104 of the *Highway Traffic Act*, R.S.O. 1990, c. H.8, s. 104(1).

immigrants. We have pursued the multicultural dream.¹³ It is as though the *Charter* values have seeped into our collective consciousness. Even the pollsters tell us that Canadians love their *Charter*,¹⁴ a view that the present government seems now to accept since criticism of the *Charter* and Courts has slowly dulled and all but disappeared.

However, the thoughts of many in the chattering classes over the last several years have turned to worry or concern that our tolerance for difference must not be permitted to threaten the very values that we seek to uphold. This question arises in the conflict between expressions of religious conviction and traditional liberal values, including equality values.¹⁵ How we manage these conflicts will be a measure of the extent to which we can lay claim to the mantle of civil society.¹⁶ This has undoubtedly been the subject of much debate in Quebec, with strong reactions to the Bouchard-Taylor commission on reasonable accommodation.¹⁷ Bloc Québécois leader Gilles Duceppe was quoted stating that, “[m]ulticulturalism as a model of integration does not work in Quebec. ... Immigrant cultures and beliefs must merge with Quebec’s culture and beliefs if the latter is to survive. They are coming to a nation with values, a culture, and history. The model developed in Quebec

¹³ Michael Adams, “Well done, Canada: Multiculturalism is working” *The Globe and Mail* (1 December 2007).

¹⁴ Nik Nanos, SES Research, “Charter Values Don’t Equal Canadian Values: Strong Support for Same-Sex and Property Rights” (February 2007) *Policy Options* 50, referring to a SES Research National Survey. See also Graeme Hamilton, “Most Canadians like Charter, even if fuzzy on details” *National Post* (8 February 2007).

¹⁵ See Sheilah Martin, “Balancing Individual Rights to Equality and Social Goals” (2001) 80 Can. Bar Rev. 299; Ayelet Shachar, “Religion, State, and the Problem of Gender: New Modes of Citizenship and Governance in Diverse Societies” (2005) McGill L.J. 51; Linda Diebel, “When rights collide with freedoms; Gender, cultural, religious: Looking for the balance in a multicultural society” *Toronto Star* (28 May 2007) A19.

¹⁶ For a discussion of the ways in which democracies have responded to the demands of national minorities and ethnic groups, see Will Kymlicka, *Multicultural Citizenship* (Oxford: Clarendon Press, 1995) at 26–33, 108–30.

¹⁷ See Québec, Consultation Commission on Accommodation Practices Related to Cultural Differences (CCAPRCD), *Building the Future: A Time for Reconciliation* (Québec: Gouvernement du Québec, 2008) (Co-chairs: Gérard Bouchard & Charles Taylor), online: <<http://www.accommodements.qc.ca/index-en.html>>. See also “Let’s move on, says Quebec accommodation commission” *CBC News* (22 May 2008); “Minority Report makes 37 recommendations on culture, religion” *CBC News* (22 May 2008); “Quebec’s culture clash” *CBC News* (23 May 2008).

reflects that reality.”¹⁸ The *International Herald Tribune* reported that Premier Jean Charest objected to the proposal to remove the crucifix from the provincial legislature as a part of an effort to be more accommodating to minorities. He stated: “We cannot erase our history. ... The crucifix is about 350 years of history in Quebec that none of us are ever going to erase, and of a very strong presence, in particular of the Catholic Church. And that’s our reality. And those who come to Quebec are joining a society where that history is now something that is part of our story.”¹⁹

I will explore some of these worries and where they lead. It is important for us to think, really think, about what views are tenable and defensible in this emerging conflict between western, liberal values and fundamentalist religious claims. The journalist Timothy Garton Ash, a self-described liberal whose notion of liberalism involves a quest for the greatest possible measure of individual human freedom compatible with the freedom of others, has written on this subject recently in *The Guardian* and in the *The Globe and Mail*. He frames the debate in this fashion:

A great debate of our time concerns how people with different religions, ethnicities and values can live together as full citizens of free societies. Here’s the common thread that runs through half a dozen news stories every day. Yesterday, for example: a school teacher arrested and charged in Sudan for allowing children to call a teddy bear Muhammad; the poor, ethnically mixed housing estates around Paris going up in smoke again; Israel-Palestine peace talks, with their implications for relations between Muslims and non-Muslims everywhere; a Jewish school in London criticised for insisting that for a child to qualify for admission the applicant’s mother had to be born Jewish; angry scenes in Oxford as a student debating society offers a platform to a Holocaust denier. A large part of this debate is about the position of Muslims in Europe, but its important to remember that the issues are much wider.²⁰

¹⁸ “Canadian-style multiculturalism doesn’t work in Quebec: Duceppe” *CBC News* (12 December 2007). For immigrants’ response to Quebec separatists, see Christopher Mason, “Immigrants reject Quebec’s separatists” *International Herald Tribune* (20 May 2007).

¹⁹ Sean Farrell, “Quebec issues report on ethnic tensions in the French-speaking province” *International Herald Tribune* (23 May 2008).

²⁰ Timothy Garton Ash, “What does a free society require of believers and non-believers alike? Religious diversity won’t work without reasserting the liberal essentials. But

II. THE PROBLEM OF FUNDAMENTALISM

Conflicts between fundamentalist religion beliefs and liberal values are not new to Canadians. It is a familiar refrain to those who were involved in the pro-choice movement and those involved in the gay and lesbian rights movement. These causes, then cast as the pursuit of human rights, moved from the streets, the universities, and the public discourse, into the Courts where the claims for freedom of choice and for human rights for gay and lesbian was based on *Charter* protections. The most vociferous and well-financed opposition came from the Christian fundamentalists. Those pursuing these equality rights would respond that religious groups were entitled to hold and express their views and conduct themselves accordingly within their own communities, but in our secular society, their religious perspective could not trump the human rights and freedoms of others. When the courts decided these two issues, it was not a question of balancing the rights of access to abortion or equality rights for gays and lesbians with the religious freedoms of others. The Christian fundamentalists were entitled to provide their perspective, and did; but the Courts engaged in an exercise of determining and proclaiming whether these human rights were entrenched in the *Charter* rather in an exercise of balancing those claims with the claims of the fundamentalists.²¹

We are now preoccupied in western societies with a different form of religious fundamentalism, Islamic fundamentalism. Recent world events that have occurred in the name of Islam fundamentalism raise questions as to how we should or must respond as a civil society built upon a foundation of religious tolerance and multiculturalism.

As a Canadian, a democrat, and an adherent to the Canadian value system, this debate raises several concerns. There is concern for the erosion of our vision of multiculturalism, built upon a tradition of tolerance and acceptance. There is a concern that world events and real apprehension of fundamentalist Islamic views has resulted in a demonization of one of the world's great religions; that whole communities who do not subscribe to the extremist views are swept into the maelstrom of fear and judgment for their differences. There is a

let's not confuse secularism with atheism." *The Guardian* (29 November 2007). See also Timothy Garton Ash, "The essentials of a free society: Does our public sphere need freedom of religion, or from it?" *The Globe and Mail* (30 November 2007) A23.

²¹ See *supra* notes 5 and 8.

concern as to what our community and government or legislative reaction to this conflict of values will be. And finally, as with many societal conflicts, there is concern with the responsibility that may ultimately fall to the judiciary when it is called upon to determine the disputes.

It is helpful to recall some of the contextual events that have both provoked and informed the debate. The attack on the World Trade Centre and the Pentagon on September 11, 2001 brought into world focus the conflict that had been simmering for many years between eastern and western values. I do not enter the debate that roiled after the attack on the World Trade Centre, the theories that abounded about root causes, about the conflict between Palestine and Israel, about the legitimacy of the American decision to go to war with Iraq, about what truly precipitated that war.

It does seem fair to observe, however, that the war was fueled by many different interests, including the politics of oil, the politics of the Middle East, and for some, the naive hope or dream that democracy could be imposed upon a people by force; and to observe that those disparate interests made common cause against one enemy. One face of that enemy has been Islamic fundamentalism.

Other world events have shaped the debate. Western media startled our consciousness with reports of the brutality of sharia law as it was practiced in Northern Africa. In March 2002, Amina Lawal of Nigeria was convicted of adultery and sentenced to be stoned to death by a Sharia Court.²² Amina had given birth to a baby girl more than nine months after divorcing her husband. Another Nigerian women, Safiya Huseini was convicted of the same crime but later won her case on appeal when the court said the original ruling was unsound.²³ Amina's conviction was eventually overturned when the Court of Appeal ruled that it was invalid.

The practice of genital mutilation, predominantly occurring in 28 North African countries, continues unabated, and has been the subject of increased western attention in recent years. Amnesty International reports

²² "Nigerian woman fights stoning" *BBC News* (8 July 2002); Jeff Koinange, "Woman sentenced to stoning freed" *CNN.com* (23 February 2004).

²³ Dan Isaacs, "Nigeria in crisis over Sharia law" *BBC News* (26 March 2002); "Sharia court frees Nigerian woman" *BBC News* (25 March 2002).

135 million girls and women have undergone genital mutilation, and that each year two million girls are at risk, approximately 6,000 per day.²⁴

On June 22, 2002, during a Mastoi tribal council meeting in a small village in the southern Punjab, Pakistan, four men, including one of the council tribal members, raped Mukhtaran Bibi, a member of the lower caste Tatla Gujjar tribe. It was a verdict of the tribal council, intended as punishment for the alleged conduct of her 14 year old brother in relation to a 21 year old woman the higher caste Mastoi tribe. After the rape, Mukhtaran was then thrown naked onto the street where her father covered her with a shawl and led her home as a large crowd gazed on. He was a poor farmer for whom it would have been impossible to challenge the powerful and politically influential tribal jury.²⁵

The incident came to light when the local Imam mentioned it in his Friday sermon, it was picked up by local media, and went on to become an international story. President Musharraf was forced by the glare of world media to remit the matter to the Courts,²⁶ and the Chief Justice of Pakistan used his power to take up the issue of great public interest, and publicly condemned the rape of Mukhtaran Bibi as a “violation of human rights and human dignity.” Eventually all four rapists and two of the tribal elders were sentenced to death. The story does not end there because it kick-started a national debate concerning the horrific abuse of Pakistani women. Ms. Bibi even had to fight a battle to travel in order to tell her story, and it took no less than the intervention of Condoleeza Rice to demand that she be free to do so.²⁷

On January 23, 2002, the American journalist, Daniel Pearl, was kidnapped by a militant group in Pakistan. He was murdered 9 days later, on February 1, 2002. Mr. Pearl’s body was not found until May 2002. A video was released in which Mr. Pearl read a statement, acknowledging his Jewish heritage and stating his captors demands. The video of Mr.

²⁴ Amnesty International USA, *A Fact Sheet on Sexual Violence: A Human Rights Violation* (25 August 2005) at 2, online: Amnesty International USA <<http://www.amnestyusa.org/women/sexualviolence.html>>.

²⁵ Sarajun Hoda Abdul Hassan, “The Mukhtar Mai story” (2005) 25:11 *Aliran Monthly*, page 19.

²⁶ Saeed Shah Islamabad, “Musharraf sweeps democracy aside” *The Globe and Mail* (5 November 2007) A1.

²⁷ Amnesty International, *Pakistan: The Tribal Justice System* (1 August 2002) at 1–3, online: Amnesty International <<http://www.amnesty.org/en/library/info/ASA33/024/2002/en>>.

Pearl's murder was also available on the internet around the world. On February 25, three Islamic militant suspects appeared in Court, and on March 22, four were charged with murder, kidnapping and terrorism in a Karachi court. All were found guilty.²⁸

On September 26, 2002, Maher Arar had a connection through New York City on his way to Montreal after a visit to his family of origin in Tunisia. Traveling with a Canadian passport, he was detained and interrogated at JFK airport. On October 7, 2002 the U.S. Immigration and Naturalization Service (INS) issued an order finding Mr. Arar to be a member of al-Qaeda and directed his removal from the United States. Mr. Arar was flown to Jordan on October 8, 2002. A short time later he was driven to Syria where he remained imprisoned for almost a year during which he underwent torture. Mr. Arar was released on October 5, 2003. Justice Dennis O'Connor led the commission of inquiry into the Maher Arar affair. He released his recommendations for mechanisms to review RCMP actions relating to national security that completely vindicated Mr. Arar. Eventually, the Canadian government apologized and paid him damages, ending a shameful series of events with a process of redemption that in the final analysis may be viewed as one of Canada's finest stories.²⁹

On November 2, 2004, a Dutch film maker, Theo Van Gogh, was murdered in Amsterdam, two months after his highly controversial film, *Submission*, was shown on national T.V. in Holland. The film concerned the stories of four Muslim women who were beaten, raped and forced into marriage and were asking for Allah's help. In the film, it becomes apparent that their chadors and gowns are transparent. Their half naked bodies are visible through their dress. On their bodies were written Koranic verses describing the permitted physical punishments for women who "misbehave." The second part of the three part series was to look at the issue from Muslim men's point of view. The film was written by Somali-born, Dutch member of parliament Ayaan Hirsi Ali, who was a

²⁸ "Pearl suspects charged with murder" *BBC News* (22 March 2002); "Timeline: Daniel Pearl kidnap" *BBC News* (15 July 2002); Jim Lehrer, "Pakistan Convicts Four Men in Pearl Murder" *OnlineNewsHour* (15 July 2002), online: PBS <http://www.pbs.org/newshour/updates/pearl_07-15-02.html>.

²⁹ Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, *Report of the Events Relating to Maher Arar: Factual Background, Vols. I and II; Analysis and Recommendations*, online: Arar Commission <<http://www.ararcommission.ca>>; "Harper's apology 'means the world': Arar" *CBC News* (26 January 2007).

strong opponent of Islam's treatment of woman and determined to expose the hidden violence against Muslim women; what she described as "savage Medieval customs." For expressing this point of view through his art, Theo Van Gogh was shot and stabbed. A five-page note was attached to his body, threatening Western governments, Jews, and Ayaan Hirsi Ali. Mr. Van Gogh's killer was a 26-year-old Dutch citizen who was a radical Islamist. He was jailed for life for the murder after confessing to the killing, claiming he acted out of religious conviction.³⁰

On July 7, 2005, four bombs exploded in London (three in underground trains; one on a bus). The bombings killed 52 commuters and 4 suicide bombers and injured 700. July 7, 2005 was the first full day of the 31st G8 Summit, and the day after London was chosen to host the 2012 Summer Olympics. On July 21, 2005, a second series of four explosions took place on the London Underground and a London bus. All the detonators exploded but none of the main explosive charges detonated and there were no casualties. The four suicide bombers were previously unknown to police and were from Leeds, England. A group associated with al-Qaeda claimed responsibility for the bombing. An innocent Brazilian man was mistakenly killed by London police on July 22, 2005, when the police mistook him for another man who had participated in the failed attack on July 21, 2005.³¹

On October 27, 2005, gangs of youth clashed with police in the suburbs of Paris. Rioting continued for 20 nights, until Tuesday, November 15, 2005. The riots were triggered by the deaths of two teenagers in Clichy-sous-Bois, a poor community in an eastern suburb of Paris. The teenagers thought they were being chased by the police and hid in a power substation. They were electrocuted. The unrest spread to other areas of Paris and to some rural areas, and eventually to other cities in France. Thousands of cars were burned, and attempts were made to firebomb mosques and burn down churches. On November 16, 2005 a state of emergency was extended for three months. The majority of

³⁰ "Gunman kills Dutch film director" *BBC News* (2 November 2004); "Life of slain Dutch film-maker" *BBC News* (2 November 2004).

³¹ "Special Reports: London Attacks" *BBC News* (8 July 2008); London Assembly, *Report of the 7 July Review Committee* (London: Greater London Authority, 2006); House of Commons, *Report of the Official Account of the Bombings in London on 7th July 2005* (London: The Stationery Office, 2006); The Rt. Hon. Paul Murphy, MP (Chairman), *Intelligence and Security Committee Report into the London Terrorist Attacks on 7 July 2005* (May 2006), online: http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/11_05_06_isc_london_attacks_report.pdf.

youths involved in the riots were Muslim and of African or North African origin, which caused the media to speculate that French society's negative perceptions of Islam and social discrimination of immigrants had alienated French Muslims and may have been a factor in the causes of the riots. The problem was complicated by the poverty and unemployment of this disenfranchised sector of the French population.³²

Prior to these events, the debate over religiosity and secularism in France led to the ban on religious symbols and apparel in public schools that took effect September 2, 2004.³³ The ban includes all overtly religious dress and signs (including Muslim head scarves, Sikh turbans, Jewish *kepah*, and large Christian crosses). But the public debate focused mainly on the banning of Muslim *hijabs*, not only in France, but also here in Canada.³⁴ The government of France expressed the need to protect its secularism, its desire to separate religion and government. However, now that President Sarkozy's honeymoon is over, he will be called upon to make good on his election commitments to address the underlying social and cultural issues in the northern Paris communities.

BBC News journalist Henri Astier explored the sense of alienation felt by many French Muslims. He mused about the causes for alarm raised by immigrant's children and grandchildren stuck in ghettos, an angry underclass that is increasingly identified through religion. He wrote:

Many countries have ethnic and religious enclaves. But in France they cause particular alarm, for three reasons.

First, they are not supposed to exist in a nation that views itself as indivisible, and able to assimilate its diverse components. Separatism, the French are told, is a plague afflicting the Anglo-Saxon multicultural model. The government bans official statistics based on ethnicity or religion. As a result, no one knows exactly how many Muslims live in the country—at least five million is the best guess.

³² "Timeline: French riots" *BBC News* (14 November 2005).

³³ "Multilingual debate: French headscarf ban" *BBC News* (2 September 2004); "France's hijab ban" *CBC News* (7 September 2004).

³⁴ "Ontario, Quebec differ over soccer head scarf ban" *CBC News* (26 February 2007); "Muslim Liberals decry Charest's stand on soccer hijab" *CBC News* (27 February 2007).

[Secondly], ghettos also threaten another tenet of French identity—secularism. As the country celebrates the centenary of the separation of Church and State, Islam is seen as the biggest challenge to the country's secular model in the past 100 years.

Thirdly, the worldwide rise of Islamic militancy strikes fear in the heart of a country that is home to Western Europe's biggest Muslim community. French police know that there is no shortage of potential jihadis in the country. The assertiveness of French Islam is seen as a threat not just to the values of the Republic, but to its very security.³⁵

On December 27, 2007, former Prime Minister of Pakistan and the woman seen by many as the future hope of Pakistan, Benizir Bhutto, was assassinated at a public rally by a gunman who later blew himself up.³⁶ The media on that day reported that a man opened fire on her as she stood through the sun roof of an armored Land Cruiser, hitting her in the throat and chest. There is as yet no conclusion as to the means or perpetrators of this event that, from a world vision perspective, is viewed as cataclysmic. We may never know what happened or who is responsible, but metaphorically and truly it is the ultimate expression of denial of free expression; of democratic ideals; of equal access to power for women; and perhaps even of hope, at least for the near future.

What has happened in the Netherlands is also a bellwether. A recent article in *The New York Times* by Kenneth T. Jackson reminds us that American religious freedom was born 350 years ago in a little known document signed by 30 citizens, called the Flushing Remonstrance penned in a Dutch settlement in what is now Manhattan. The Netherlands, he notes, had enshrined freedom of conscience in 1579, when it clearly established that “no one shall be persecuted or investigated because of his religion.” The Quaker petitioners wrote, “We desire therefore in this case not to judge lest we be judged, neither to condemn lest we be condemned, but rather to let every man stand and fall to his own master.” The document, following the lead of their country of origin,

³⁵ Henri Astier, “Ghettos shackle French Muslims” *BBC News* (31 October 2005).

³⁶ “Former PM Bhutto assassinated at Pakistan rally” *CBC News* (27 December 2007); “Benazir Bhutto killed in attack” *BBC News* (27 December 2007); “An Abhorrent Act of Terror” *National Post* (29 December 2007). See also Elisabeth Bumiller, “How Bhutto Won Washington” *The New York Times* (30 December 2007); Saeed Shah Islamabad, “The constitution has been ripped to shreds” *The Globe and Mail* (7 November 2007) A12.

articulated a fundamental freedom, as Jackson describes it, “as basic to American freedom as any we hold dear.”³⁷

It is a grim irony that Theo Van Gogh was murdered in Amsterdam because he was telling the stories of Muslim women written by Ayaan Hirsi Ali. It is her own story that has galvanized the debate both in the Netherlands and around the world. It is written in her book published last year called *Infidel*.³⁸ It is a story of a Somali woman born into a fundamentalist Muslim family. She studied the religion, adhered to the cultural values, suffered genital mutilation and was betrothed to marry a Canadian man of her community. En route to Canada, she escaped while in transit through the Netherlands. She was welcomed to that country and was given an opportunity to settle there. She is extremely intelligent and soon, was attending University. Hirsi Ali integrated into the Amsterdam community and eventually, became an activist. She was elected to government and by then, had entirely rejected her Muslim heritage and her faith. She became an atheist and a passionate spokesperson for secularism. Her actions contributed to social unrest among members of her former faith. Hirsi Ali wrote the script and worked with the film maker Theo Van Gogh to produce a film exposing what she saw as the excesses of Islam.

She, as a sitting member of Parliament, became the subject of deportation proceedings for a minor misrepresentation in the papers by which she attained immigrant status. She was deported. She did retrieve her status after a long struggle, but by then had moved to the United States where she took up employment with a conservative think tank. Hirsi Ali has lived and continues to live under armed guard. The passionate message that she leaves us with is that it is a mistake for western cultures to be too tolerant, to defer to immigrant cultures to a point that is tantamount to permitting the continuation within those communities of abuse, discrimination, and inequality for women and children. She inveighs against the diminishment of our equality values in the name of liberal values. This is a powerful message, a transcendent message that is neither left nor right, but one based on equality values.

The Hirsi Ali story, and the several companion stories, are transformative for western thinkers. For some of my male friends, her

³⁷ Kenneth T. Jackson, “A Colony With a Conscience” *The New York Times* (27 December 2007) A27.

³⁸ Ayaan Hirsi Ali, *Infidel* (New York: Free Press, 2007).

story has presented a moment of enlightenment concerning the subject of equality for women. This is the e-mail of one of them, a former *Charter* scholar:

Of course there was no freedom of speech, religion, expression or association. How could children raised in the circumstances Hirsi Ali describes have any respect for human rights? For there was no respect for the most elementary rights of women. They were the mutilated chattel of men. Young girls were required to undergo circumcision, which resulted not only in the removal of the clitoris to end sexual pleasure, but the stitching together of their lacerated labia, causing the lips to grow together and preserving their virginity until painfully broken open by their husband--some worthy older cousin selected for political reasons by the males in the family. Hirsi Ali's description of her own circumcision is heart rending. After reading of her ordeal I realized there is a hierarchy of human rights. How can the finer freedoms thrive where women, who transmit values to the next generation, are treated so despicably? Gender equality is the foundation for all the other freedoms.

Hirsi Ali wondered how many young Somali girls living in Holland underwent such operations on Dutch kitchen tables. One wonders whether misguided multiculturalism in Canada could lead to the same specter here.³⁹

As we know, the Dutch are famous for having been leaders of liberal thought in Europe and the world. Like the French, the Netherlands has taken dramatic reactive steps to adjust what some view to be a threat to their way of life. One political response has been to enact government policy that states that immigrants seeking a residency visa must pass a "civic-integration examination" before they arrive in the Netherlands.⁴⁰ Applicants must also pass a Dutch language test.⁴¹ Even those individuals

³⁹ Confidential e-mail to the author (7 February 2007) [unpublished, archived with author].

⁴⁰ Netherlands Embassy, "Civil Integration Examination," online: Netherlands Embassy <http://www.netherlandsembassydhaka.org/civic_integration.html>; Jeremy Bransten, "Netherlands leading EU trend to more stringent immigration rules" *EU Business* (6 April 2006).

⁴¹ "Dutch set immigrants culture test" *BBC News* (22 December 2005); "Netherlands introduces Dutch language test for immigrants" (21 February 2006), online: <www.workpermit.com>.

seeking to immigrate to the Netherlands as a spouse must pass both exams. Temporary foreign employees and nationals from 38 countries, mostly European Union citizens, are exempt from the pre-entry test, but will have to take courses after being admitted to the Netherlands. Exceptions also have been made for nationals of the United States, Australia, New Zealand, Canada, Japan and Switzerland.

The examination will test their compatibility with Dutch liberal values. This includes a movie featuring homosexuals kissing and a scene at a nude beach, which are used to emphasize the point that this is part of normal life in the Netherlands. Opponents of this policy state that the exam, and the movie in particular, have been deliberately made to offend and exclude Muslims. Dutch politicians argue that the biggest menace to the foundations of Dutch democracy comes from the unassimilated Muslim population.⁴²

III. THE CANADIAN EXPERIENCE

It is apparent that in Canada, too, quietly, people have begun to voice concerns over difference, over whether indeed we have been too tolerant, over whether we will face the same concerns and worries as our European friends. In a new book entitled, *Unlikely Utopia: The Surprising Triumph of Canadian Pluralism*, pollster Michael Adams considers the Canadian perspective on this debate.⁴³ Michael Adams is renowned for his work chronicling his view of emergence of a “post-modern” society in Canada, based on the rise of secularism, individual autonomy, and the decline of deference toward traditional norms and authorities.⁴⁴

While some may measure the successes of our multicultural journey in terms of jurisprudence and legal rights, Mr. Adams mines the data and marvels at the way Canadians have achieved this transformation to a functional multicultural society that is a model for the world. Canada has the highest per capita rate of immigration in the world, primarily from non-European countries.⁴⁵ Michael Adam’s book considers the question

⁴² Jeremy Bransten, “EU: Netherlands Leading Trend To More Stringent Immigration Rules” *RFE/RL Newsline* (5 April 2006).

⁴³ Michael Adams, *Unlikely Utopia: The Surprising Triumph of Canadian Pluralism* (Toronto: Viking Canada, 2007).

⁴⁴ See Michael Adams’ website, online: <<http://www.michaeladams.ca>>.

⁴⁵ *Supra* note 44 at 13–19.

of whether Canada will extend freedom and equality to these new visible minorities, or whether they will become a disadvantaged underclass alienated from the larger society. His new book reflects upon the anxieties that are renewing the debate over multiculturalism, and tests these anxieties against the evidence. Before looking at his findings, it is useful to consider some of the contextual circumstances in which this Canadian anxiety has arisen.

First, of course, it is our awareness of world events. We are not untouched by the culture of fear that has been nurtured in the United States, and the reasons for that. The lead story in the February 7, 2008 *Rolling Stone* magazine is “The Fake Domestic Terror Threat: How the FBI became a Factory of Fear.”⁴⁶ Years after 9/11, Americans are still sorting truth from fiction. We also have our own Canadian stories respecting perceived threats to security; respecting perceived threats to our values.

On June 2 and 3, 2006 police officers conducted a series of raids in Mississauga, Toronto and Pickering, arresting 18 suspects. The suspects were accused of knowingly participating in a terrorist group and either receiving or providing terrorist training. All of the suspects were either born in Canada or were long term residents, causing CSIS to call it a case of home-grown terrorism.⁴⁷

In March 2005, Rajinder Singh Atwal was convicted of second degree murder in British Columbia and sentenced to life for the murder of his 17 year old daughter, Amandeep, after he discovered she was dating a boy of whom he disapproved.⁴⁸ On December 15, 2007, Aqsa Parvez, who was found strangled to death.⁴⁹ She was described in the media by friends as a girl who embraced her Muslim faith by praying five times a day, while also adopting the “gangsta” style she admired. Her father has been charged in the murder, and it is alleged that Aqsa was a rebellious

⁴⁶ Guy Lawson, “The Fake Domestic Terror Threat: How the FBI Became a Factory of Fear” *Rolling Stone* 1045 (7 February 2008).

⁴⁷ “Homegrown extremism” *CBC News* (14 July 2006); “Indepth: Toronto Bomb Plot” *CBC News* (9 January 2008); “Timeline: Key events in the case” *CBC News* (11 June 2008).

⁴⁸ *R. v. Atwal*, 2005 BCSC 940, [2005] B.C.T.C. 940, aff’d 2006 BCCA 493, 232 B.C.A.C. 64.

⁴⁹ Chris Wattie, “Teenage girl in hospital over clothes” *National Post* (11 December 2007); “Clash between traditional values, modern culture may be behind teen’s death” *CBC News* (12 December 2007); Natasha Fatah, “Who will speak for Aqsa Parvez?” *CBC News* (14 December 2007).

teenager who did not see eye to eye with her parents' views, and refused to wear traditional dress. The *National Post* headline read "Culture, Faith at Crossroads of Debate" and went on to observe that the death of Aqsa Parvez has prompted considerable soul searching and much polarized debate about multiculturalism, how to balance religious rights versus gender rights, intergenerational dissent and culture clash."⁵⁰

We have our home-grown Canadian madmen who have taken lives in the name of misogyny, such as the shootings at the Ecole Polytechnique in Montreal in 1989,⁵¹ or the multiple murders on the Pickton farm outside of Vancouver.⁵² But crimes committed allegedly because of religious convictions or because of deeply ingrained cultural values involve a different kind of horror: they too are the aberrant acts of individuals, but part of the story involves cultural or religious values based on a systematized form of subjugation of women, values which may be seen as at odds with both our laws and our most fundamental values, and which contribute to the misogynistic behaviour itself. Because of that cultural connection, these criminal acts within our multicultural community try our tolerance, cause us to question whether we are too liberal, whether our immigration policies are too lenient, whether we are creating a country in which our peaceable ways may be threatened.

We find ourselves having doubts. Members of our community, otherwise tolerant, begin to express secret feelings of anger at the site of veiled women in our midst. We might have other families in our neighbourhoods, orthodox Jewish women who shave their heads and must cover them; or Hutterites at the market on Saturday morning who cover their heads; and are garbed in antiquated clothes that completely cover their bodies, and we think they are charming and make our city interesting. Yet, the sight of a head scarf or worse, a burka, on our streets, causes a visceral reaction. It is the insidious beginning of racist sentiment and we know it is so, because we feel guilty for our reactions, and because our reactions are indeed discriminatory: we select among people who behave in a similar fashion for the targets of our invective.

⁵⁰ Anver Emon & Amita Handa, "Culture, faith at crossroads of debate" *National Post* (15 December 2007) A17; Patrick White & Hayley Mick, "Teen death highlights cultural tensions" *The Globe and Mail* (12 December 2007) L1.

⁵¹ CBC Digital Archives, "The Montreal Massacre," online: CBC Digital Archives <http://archives.cbc.ca/society/crime_justice/topics/398/>.

⁵² CBC News, "The Pickton Trial," online: CBC News <<http://www.cbc.ca/news/background/pickton/>>.

No one disputes the inordinate amount of wife abuse and domestic homicide in the East Indian communities outside of Vancouver: indeed the Attorney General has moved to take ameliorative steps to curb the violence.⁵³ These are the individual acts of violence, but there is a cultural component to the problem of violence against women in some communities as well, and it is not racist to recognize it as such.

Islamic fundamentalism has had an undeniable impact both upon world events, and within western nations where the tenets of the religion conflict with fundamental liberal values. In Canada, those values find expression in the *Charter*, human rights legislation, family legislation such as the *Divorce Act*,⁵⁴ and family property legislation and criminal laws enacted in the name of security. What happens when religious claims conflict with Canadian law?

IV. RELIGIOUS LAW

In Ontario, religious groups, including Orthodox Jews and Ismaili Muslims, had used binding religious arbitration since 1991. That means people within those communities would be given the power to make decisions concerning disputes between citizens within those communities. The arbitral decisions had the force of law. When Muslims planned to use sharia law to settle family disputes, a community and Canadian debate ensued.⁵⁵ In February 2006, the Ontario legislature passed a law ruling out binding religious arbitration in family law matters.⁵⁶ The change

⁵³ "Stopping The Violence," online: B.C. Government <<http://www.cd.gov.bc.ca/women/stopping-violence>>.

⁵⁴ R.S.C. 1985 (2nd Supp.), c. 3.

⁵⁵ "Shariah law: FAQs" *CBC News* (26 May 2005); Lee Carter, "Protests over Canada sharia move" *BBC News* (8 September 2005); "Sharia law move quashed in Canada" *BBC News* (12 September 2005). See also Marion Boyd, *Dispute Resolution in Family Law: Protecting Choice, Promoting Inclusion, Executive Summary* (December 2004), online: Ministry of the Attorney General of Ontario <<http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/boyd/executivesummary.pdf>>. See also Steven Chase & Tavia Grant, "Sharia-bank bids trigger concerns" *The Globe and Mail* (24 September 2007). See debate in the United Kingdom: Mona Eltahawy, "Sacrificing women on the altar of tolerance" *The Globe and Mail* (18 February 2008); Noah Feldman, "Fear in the West, but what really is Shariah?" *International Herald Tribune* (15-16 March 2008) 2.

⁵⁶ *Arbitration Act, 1991*, S.O. 1991, c. 17, am. by *Family Statute Law Amendment Act*, S.O. 2006, c. 19, Sch. C, s. 1 (1); c. 1, s. 1; Ontario, Ministry of the Attorney General, News Release/Communiqué "Ontario Passes Family Statute Law Amendment

meant that religious or other types of extra legal resolutions of divorces, child custody cases, and other family matters would not be enforceable by the courts. The Attorney General said that the new law meant that when it comes to family arbitrations in that province, there is only one law, and it is the Canadian law.⁵⁷ The same result was obtained in Québec.⁵⁸

In her thoughtful consideration of this subject, local legal human rights and immigration law luminary, Shirish P. Chotalia, writes:

Canadian governments have an obligation to ensure that all persons in Canada are governed by Canadian laws and have the benefit and protection of the *Canadian Charter of Rights and Freedoms*. Both constitutional and human rights laws compel governments to meet this obligation. Requiring Canadians to resolve private disputes using Canadian laws as opposed to any form of religious law, including Muslim law, does not abridge *Charter* rights. Rather, it preserves them. Nor does such requirement undermine the arbitration process. Rather it respects it. It continues to acknowledge the needs of private parties to resolve their disputes without intrusion by governments and courts. It simply requires that private disputes are grounded in democratic and constitutional laws. In short, governments must necessarily be liable for failing to prevent systematic institutional *Charter* infringement by tribunals who act under the powers of provincial arbitration statutes. The integrity of Canada's justice system rests upon the rule of law and secularism.⁵⁹

Recently, in the 2006 Ontario Court of Appeal decision of *R. v. Humaid*,⁶⁰ Doherty J.A. upheld the accused's conviction for first-degree murder of his wife. The accused was from the United Arab Emirates, and the defence argued that the alleged admission of sexual infidelity had one of two effects on the accused. First, it amounted to a psychological blow throwing him into a disassociative state in which he did not form the intent required for murder. Alternatively, it caused him to lose control,

Act"(15 February 2006). See also Karen Kawawada, "Feeling mixed over law bringing down religious arbitration" *Kitchener-Waterloo Record* (17 February 2006).

⁵⁷ *Ibid.*

⁵⁸ "Shariah law: FAQs" *CBC News* (26 May 2005).

⁵⁹ Shirish P. Chotalia, "Arbitration Using Sharia Law in Canada: A Constitutional and Human Rights Perspective" (2006) 15:2 *Const. Forum Const.* 63 at 71.

⁶⁰ (2006), 81 O.R. (3d) 456 (C.A.), leave to appeal to S.C.C. refused, [2006] S.C.C.A. No. 232 (QL).

fly into a rage, and kill the deceased before he could regain his self-control. The defence led opinion evidence of an expert on the Islamic religion and culture. The expert testified that the Islamic culture was male-dominated and placed great significance on the concept of family honour, and that infidelity by a female family member was considered a very serious violation of the family's honour and worthy of harsh punishment by the male members of the family. Justice Doherty held that there was no air of reality to the defence of provocation.⁶¹ In his analysis, Doherty J.A. stated the following:

A provocation claim rests on the assertion that an accused in a state of extreme anger lost his ability to fully control his actions and acted while in that state. Provocation does not shield an accused who has not lost self-control, but has instead acted out of a sense of revenge or a culturally driven sense of the appropriate response to someone else's misconduct. An accused who acts out of a sense of retribution fuelled by a belief system that entitles a husband to punish his wife's perceived infidelity has not lost control, but has taken action that, according to his belief system, is a justified response to the situation.

The thrust of [the expert's] evidence is not that Muslim men will lose control and act in a rage when confronted with their wives' infidelities, but rather that their religious and cultural beliefs dictate that wives who are unfaithful deserve to suffer significant consequences. If an accused relies on religious and cultural beliefs like those described by [the expert] to support a provocation defence, the trial judge must carefully instruct the jury as to the distinction between a homicide committed by one who has lost control and a homicide committed by one whose cultural and religious beliefs lead him to believe that homicide is an appropriate response to the perceived misconduct of the victim. Only the former engages the defence of provocation. The latter provides a motive for murder.⁶²

In concluding his judgment, Justice Doherty outlined his concerns with respect to these types of situations:

The difficult problem, as I see it, is that the alleged beliefs which give the insult added gravity are premised on the notion that

⁶¹ *Ibid.* at para. 91.

⁶² *Ibid.* at paras. 85–86 [footnotes omitted].

women are inferior to men and that violence against women is in some circumstances accepted, if not encouraged. These beliefs are antithetical to fundamental Canadian values, including gender equality. It is arguable that as a matter of criminal law policy, the “ordinary person” cannot be fixed with beliefs that are irreconcilable with fundamental Canadian values. Criminal law may simply not accept that a belief system which is contrary to those fundamental values should somehow provide the basis for a partial defence to murder.⁶³

On December 14, 2007, the Supreme Court of Canada rendered a decision that touches on these issues. In *Bruker v. Marcovitz*,⁶⁴ an Orthodox Jewish couple negotiated an agreement according to which they agreed to obtain a Jewish divorce, called a “get,” immediately upon the granting of the divorce under the *Divorce Act*. Under Jewish law, a wife cannot remarry unless her husband agrees to give her a “get.” In this case, despite her requests, the husband refused to give his wife the “get” for 15 years, by which time she was 47 years of age. She sought damages for breach of the agreement and the husband argued that his agreement to give a “get” was not valid under Québec law and that he was protected by his freedom of religion from having to pay damages for its breach. The Trial Judge found his agreement was valid and binding. The Court of Appeal allowed the appeal on the basis that the obligation was religious and moral in nature and therefore unenforceable by the courts.

The Supreme Court of Canada allowed the appeal. The majority held that the fact that the dispute had a religious aspect does not make it non-justiciable. Justice Abella, for the majority, identified the questions as to whether the agreement is a valid and binding contractual obligation under Québec law, to which the answer was yes; and if so, the second question was whether the husband could rely on freedom of religion to avoid the legal consequences of failure to comply with the lawful agreement. The husband was held to his agreement. The Court held that the claim to religious freedom must be balanced and reconciled with countervailing rights, values, and harms, including the extent to which it is compatible with Canada’s fundamental values. Any impairment to the husband’s religious freedom was said to be significantly outweighed by

⁶³ *Ibid.* at para. 93.

⁶⁴ 2007 SCC 54, [2007] 3 S.C.R. 607. See Shauna Van Praagh, “Commentary: Courts wrestle with intersection of law and religion” *The Lawyers Weekly* (15 February 2008).

the harm to the wife and the public interest in protecting fundamental values such as equality rights and autonomous choice in marriage and divorce.⁶⁵

The decision of the minority of two was a spirited nod to secularism. Justice Deschamps wrote:

The question before the Court is whether the civil courts can be used not only as a shield to protect freedom of religion, but also as a weapon to sanction a religious undertaking. Many would have thought it obvious that in the 21st century, the answer is no. However, the conclusion adopted by the majority amounts to saying yes. I cannot agree with this decision.

Canada's adoption of multiculturalism and attachment to the fundamental values of freedom of conscience and religion and of the right to equality guarantee to all Canadians that the courts will remain neutral where religious precepts are concerned. This neutrality gives the courts the legitimacy they need to play their role as arbiters in relation to the cohabitation of different religions and enables them to decide how to reconcile conflicting rights. In thus protecting freedom of conscience and religion, the courts perform a task that is difficult and complex. It would be inappropriate to impose on them an additional burden of sanctioning religious precepts and undertakings.⁶⁶

This decision is a harbinger of the future where there will be clashes between asserted religious rights and secular values. As has already been seen, even amongst members of the highest court, there is not unanimity as to the best approach.

A recent example of such discord was illustrated by the mayor of Saguenay, Quebec, in his refusal to abide by a decision of the Quebec Human Rights Commission. The Commission forbade city hall from offering prayers at the beginning of its work day, holding that the Christian prayer is opposed to the city's secular and religiously "neutral" position. The mayor responded by stating that the decision was non-binding and discriminatory against those who wish to pray.⁶⁷

⁶⁵ *Ibid.* at para. 93.

⁶⁶ *Ibid.* at paras. 101–02.

⁶⁷ Hiliary White, "Human Rights Commission Bans Prayer in City Hall in Quebec's City of Saguenay" (15 May 2008), online: Life Site News

V. UNLIKELY UTOPIA

Michael Adams, in his wonderful book *Unlikely Utopia*, argues that diversity and multiculturalism are a success story in Canada.⁶⁸ The integration of immigrants into our post-modern society is going surprisingly well. Canadians have a very positive view of immigrants. Canadians are very proud of their freedom, their democracy, their multiculturalism. There is evidence of mutual acceptance among communities. Foreign-born immigrants are much more likely to be elected to Parliament in Canada than in any other country, and they are not only elected in ethnic enclaves.⁶⁹ This tells us that they believe in the integrity of our country and we believe in them. And what about our Muslim neighbours? Are they resisting integration as might be believed from the dire stories we hear? From a large-scale polling of Canadian Muslims, Adams shows that Muslims have the same level of pride in Canada as other immigrants.⁷⁰ An amazing 91% of that community believes the country is headed in the right direction as compared to 71% of the general population.⁷¹ Adams says that Muslims are no different from other immigrants to Canada, except for the stories we tell about them. While there are issues that need to be addressed—education, labor market barriers, linguistic issues—there is no tinder box here.

VI. CONCLUSION

There is a feminist perspective of the debate that is gaining ground and expression most powerfully by women of the Muslim faith. Arab-American Psychologist, Wafa Sultan, debating a Mullah on Al-Jazeera TV(Qatar) on February 21, 2006, in a voice full of the passion and fire of the subjugated, said:

<<http://www.lifesitenews.com/ldn/2008/may/08051509.html>>; Hiliary White, "Quebec Mayor Vows to Continue Prayer Despite Human Rights Commission Order" (16 May 2008), online: Life Site News <<http://www.lifesitenews.com/ldn/2008/may/08051610.html>>.

⁶⁸ *Supra* note 44 at c. 1.

⁶⁹ *Ibid.* at 69.

⁷⁰ *Ibid.* at c. 3.

⁷¹ *Ibid.* at 97.

The clash we are witnessing around the world is not a clash of religions, or a clash of civilizations, it is a clash between two opposites, between two eras. It is a clash between a mentality that belongs to the Middle Ages and another mentality that belongs to the 21st century.

It is a clash between civilization and backwardness, between civilized and the primitive, between barbarity and rationality. It is a clash between freedom and oppression, between democracy and dictatorship. It is a clash between human rights, on the one hand, and the violation of these rights, on the other hand. It is a clash between those who treat women like beasts, and those who treat them like human beings.

What we see today is not a clash of civilizations. Civilizations do not clash, but compete.⁷²

I would not cast the debate in these pejorative terms. It is better said by Hirsi Ali and her Muslim sisters who are now at the forefront of the charge. But, as we would say to our children, we must use our words. What we can do as citizens is consider whether we want to continue to build a secularized, multicultural community built upon our entrenched rights and freedoms, where we respect the differences of others, but within our constitutional and human rights framework.

The exercise of our freedoms must be responsible. Is it a responsible exercise of freedom of expression to be disrespectful, provocative, to poke a stick in the eye of the Muslim community by reproducing the offensive cartoons of the prophet for purely gratuitous purposes? Is it responsible for the media, or interested media, to take it upon itself to disproportionately herald the failings of Islamic fundamentalism as though it is a triumph in a cultural and political war? The countervailing argument is that it is not illegal, and though some may chafe at such excess as itself nurturing stereotypical thinking and hatred, rights theorists will argue that one may deplore the message but defend to the death the right to say it.

This debate has recently been aired in Alberta. In February 2006, Calgary Muslim leader Syed Soharwardy launched a complaint with the Alberta Human Rights Commission against Ezra Levant after the *Western Standard* and the *Jewish Free Press* reprinted the cartoons from the

⁷² "Clash of Civilizations" (26 February 2006), online: Freedom for Some <<http://www.freedomforsome.com/weblog/archives/8-Clash-of-Civilizations.html>>.

Danish newspaper that many in the Muslim world felt insulted the prophet Muhammad.⁷³ In February 2008, the Muslim leader withdrew his complaint with a very gracious message that he understood that “most Canadians see this as an issue of freedom of speech, that that principle is sacred and holy in our society.”⁷⁴ Mr. Levant responded that he did not believe him, and vowed to sue him for the costs he incurred.⁷⁵

It may be that, as Timothy Garton Ash has written, among the liberal essentials is freedom of expression, freedom of religion, and equality before the law, including equal rights for men and women; and that to secure these freedoms, we need a secular public sphere.

I will address my closing remarks to the young people here today, for it is your generation that will be called upon to address the conflicts that present themselves between religious claims and secular values, the first among them being equality values, and the first among those being equality among men and women, the two groups of which we are all a part, regardless of colour, religion, family of origin, race, or orientation.

The personal right to freedom of religion and conscience runs at one with personhood, in equality rights vernacular, and the right to personal religious expression is protected by law. Whether women wear traditional Muslim attire, or shave their heads and wear wigs are deeply personal choices.⁷⁶ The question of whether girls may wear the *hijab* on the soccer field may have a safety aspect to it, and without deciding the point, as a soccer mother, I have yet to see girls playing soccer that rip at each others’ hair; and I have yet to see a *hijab* worn in many years of

⁷³ “Conservative who published Prophet cartoons faces rights commission” *Calgary Herald* (10 January 2008), online: canada.com <<http://www.canada.com/topics/news/story.html?id=6edbee05-bec3-46c0-aa22-f16cf3f0acb1>>. See also the reaction to British teacher permitting student to give a teddy bear the prophet’s name: Mohamed Osman Khartoum, “Thousands call for teacher’s execution” *The Globe and Mail* (1 December 2007) A24.

⁷⁴ Graeme Morton, “Calgary Muslim leader drops complaint over cartoons” *Edmonton Journal* (13 February 2008) B4.

⁷⁵ “Former publisher to sue Muslim leader who filed human rights complaint” *CBC News* (13 February 2008).

⁷⁶ See also the debate with respect to Muslim women wearing a *hijab* under their helmet for tae kwon do: Rene Bruemmer, “Hijab to remain banned from tae kwon do” *National Post* (30 April 2007); Rene Bruemmer, “Hijab ban continues: tae kwon do officials; Back to world body. Local club’s proposal for special sports headscarf can’t sway Quebec board” *The Gazette (Montreal)* (30 April 2007) A5; “Offensive hijab ban” *Toronto Star* (16 May 2007) A22; Joe Paraskevas, “National body to look at hijab issue” *Winnipeg Free Press* (10 December 2007) B2.

watching high level girls' soccer. In other words, we must guard against creating issues where none exist, because to do so will be deeply discouraging to our neighbours who are affected, and may serve to marginalize them, so that, in this example, young Muslim girls choose not to play soccer at all.

Last fall, the Québec Council on the Status of Women proposed to bar public employees from wearing religious symbols at work, and has also proposed an amendment to the Quebec Charter that gives gender equality precedence over other rights, specifically religious rights.⁷⁷ Both these initiatives have been criticized. An editorial in the *Ottawa Citizen* stated that it reflects fear and ignorance, not good judgement, the confusion of religion and culture, fueled by worries about ultra-Conservative Muslim practices.⁷⁸ The newspaper said that in Canada, as in Iran, the state should not be in the business of deciding what women should wear. Further, Harsha Walia, author of West Coast LEAF Report entitled *Women's Equality and Religious Freedom Project*, cautions us about the following:

We must avoid a culturally imperialist feminism that seeks to impose Western notions of gender equality and 'sameness' onto other women. This does not imply that we become culturally relativist and begin to support any unjust practice. Cultural diversity or freedom of religion should not serve as a shield to scrutinize against gender-oppressive practices.

Walking this line requires us to pay attention to specific contexts, to listen to those women whose rights we purport to stand for, and to understand that we occupy different relationships of power and privilege. All oppressed women equally deplore sexism and misogyny, but women's liberation movements must be culturally sensitive and relevant so as to oppose patriarchal elements without

⁷⁷ "Gender equality will rule Quebec charter: Charest" *CBC News* (10 October 2007); "Quebec still plans to amend charter" *The Gazette (Montreal)* (13 November 2007); Jeff Heinrich, "Quebec Union Wants a Charter to Ban Religious Garb" *CanWest News Service* (11 December 2007); "Quebec charter change to enshrine gender equality" *CBC News* (12 December 2007).

⁷⁸ Raheel Raza & Tarek Fatah, "Reasonably accommodated; It should be a simple matter for Muslim immigrants to settle in to Canadian society" *Ottawa Citizen* (29 October 2007) A11.

attacking or destroying non-white cultures, religions, or identities.⁷⁹

Conversely, Annie Lessard, a Montreal human rights activist, notes that it is not the Council that should be denounced, but rather “the rhetoric of cultural relativism that sees in the primacy of general equality an attack against the culture or religious beliefs of minorities.”⁸⁰ Ms. Lessard reminds us that s. 28 of the *Charter* was included “at the insistence of women’s groups who were concerned that the new constitutional provisions on the promotion of our multicultural heritage should not be used as a legal justification for the unequal treatment of women.”⁸¹ She goes on to write:

The reality is that a State which promotes gender equality must be consistent in its practices and representations. The veiled teacher promoting the values of equality between women and men poses, both at a symbolic and educational level, a conflict of representations. The underlying message, hidden under the Islamic headscarf, is that of women seen as vile and polluted beings taking moral responsibility for keeping men’s purity in check. We cannot, under the guise of respect for cultural differences and religious beliefs, legitimize inequality and endorse, at the symbolic level, archaic representations of women. For our institutions to accommodate, in the name of multiculturalism, the paradigm of subordination of girls and women or archetypal representations of women as seductive temptresses is tantamount to State-endorsed racism.

Our human rights laws are solidly in the corner of accommodating religious freedom unless it clashes with other Canadian values. As the *Toronto Star* said in September 2007 when the furor over veiled women voting erupted,⁸² the “veil brouhaha has little or nothing to do with the

⁷⁹ Anna Carastathis, “Gender, Race, and Religious Freedom” *The Dominion* (28 December 2007); West Coast LEAF, *Women’s Equality and Religious Freedom Project*, Advisory Committee Report, Prepared by Harsha Walia (November 2006), online: West Coast LEAF <<http://www.westcoastleaf.org/userfiles/file/Multi-faithReport2006.pdf>>.

⁸⁰ Annie Lessard, “Opinion – Gender equality: Hierarchy of rights or separating state and faith?” *The Suburban* (17 October 2007).

⁸¹ *Ibid.*

⁸² “Muslim women wearing niqabs should be identified to vote: Charest” *CBC News* (22 March 2007); “Quebec politicians, Muslims slam new election rules on veils” *CBC News* (7 September 2007).

integrity of the electoral process. If it were, those fretting over a few veiled voters would've been in a tizzy over the 80,000 people who voted by mail in the last federal election without showing their face. ... Contemporary Canada, unlike Europe or the United States, has not been fertile ground for anti-immigrant policy.”⁸³

People must be free to express themselves in their private domain as they and their religion see fit. Or when community values collide, mediated solutions can be found, such as the glazing of the windows at the YMCA in Montreal so that Orthodox Hasidic Jewish pupils will not be tempted.⁸⁴ However, journalist Larry Zolf pointedly notes that the synagogue should have tinted their own school windows.⁸⁵ Upon whom is the onus placed to initiate such measures of accommodation? Our laws require us to treat people equally despite difference. Our values, the seeping into our consciousness of *Charter* and human rights values, require that we not only accommodate difference, but that we respect difference, and even embrace it. As Mr. Zolf notes, “Quebec must be more than a homeland for its francophone majority, language and culture. The province must also be a home to all who dwell in it, be they unilingual Muslims, Jews or Westmount anglophones.”⁸⁶

But when the claim to religious freedom intersects with the public interest, the issues will become both political, for decision making through the democratic process, and legal, for decision making through the courts. The bigger issues an emerging force among us.

Should religious schools be permitted where children may grow up at the margins of our Canadian value system? John Tory at the head of the Conservative party in Ontario was soundly defeated in the last election for his support for publicly-funded religious schools, viewed by the

⁸³ Haroon Siddiqui, “One law for one and all, consistently applied” *Toronto Star* (13 September 2007). See also “Quebec’s toxic identity debate” *Toronto Star* (3 November 2007) AA06. See further controversy regarding recent immigration policies in the small rural Québec town of Hérouxville: “Muslim groups to launch complaint over town’s immigrant code” *CBC News* (5 February 2007); “Hérouxville drops some rules from controversial code” *CBC News* (13 February 2007).

⁸⁴ Lysiane Gagnon, “Quebec: Why so intolerant?” *The Globe and Mail* (10 March 2008).

⁸⁵ Larry Zolf, “Quebec leaders replay ethnic values game” *CBC News* (12 March 2007).

⁸⁶ *Ibid.* See also Christopher Mason, “Immigrants reject Quebec’s separatists” *International Herald Tribune* (20 May 2007); “More French lessons for Quebec immigrants” *CBC News* (17 March 2008).

populace as an attack on secularism.⁸⁷ Even the Afro-centric school in Toronto that sought public support recently fought for its existence despite its promise, an initiative that would have been lauded a decade ago for its targeted and purposive approach to a disadvantaged community.⁸⁸

Should we permit resolution of family disputes by private, religious based arbitration; and should such arbitral decisions have the force of law? Or should we conclude, as Ontario and Québec have, that we are all entitled to the benefit of the *Charter*, the *Divorce Act*, and family property legislation that is based on equality values and faith-based tribunal decisions may collide with those laws and our values?

Should our society be looking at immigration controls so that people who seek to live in our country must give some commitment to its values, as has been done in the Netherlands?

Should we permit security laws and authorities to impinge on our precious civil liberties and privacy rights in the name of public safety, and if so, to what extent?

Though many answers will be political and will face *Charter* scrutiny in the courts, all decisions are informed by public debate and by the prevailing winds of opinion, or the *Zeitgeist*, as it is called; the magical synergy between the public, the democratic decision making, and the courts in a constitutional democracy where fundamental rights and freedoms grow and change as the flowering tree.

It is the obligation of citizenship to be part of the informed discussion, to resist the temptation to close our minds to our heritage of pluralism because of the horrific acts of individuals within communities we do not understand, and to never give quarter with respect to the equalitarian society that our laws promise.

⁸⁷ “Tory vows to study public funding for Ont. faith-based schools” *CBC News* (23 July 2007); “Ontario Conservative party suspends maverick caucus member” *CBC News* (12 September 2008); “McGuinty only leader not facing leadership questions” *CBC News* (10 October 2007).

⁸⁸ “Trustees approve Afrocentric school for Toronto” *CTV News* (29 January 2008); Gideon Strauss, “Don’t fight racism with racism” *The Globe and Mail* (1 February 2008).