

Walking the Talk? The relationship between legislative practice and discourse on religious diversity in the Ontario Legislature

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I. Introduction

Ontario is home to one of the most diverse populations in Canada, if not the world. As the Muslim population of Ontario continues to grow, the management of religious diversity will become an increasingly pressing political challenge. This paper will examine the treatment of religious diversity, in particular, the discourse surrounding Muslims in the Ontario Legislature. The analysis will seek to illuminate the relationship between discourse and legislative action within the current approach.

While religious diversity in Ontario is indeed expansive, the primary focus for this study will be on the Muslim population of the province. The rationale behind this decision is twofold: first, a demographic consideration and second, a sociological one. Along with Hindus and Sikhs, the Muslim population is growing faster than any other religious denomination on Canada.¹ At the same time, this population faces significant challenges of discrimination in society. Racial profiling and hate crimes against Muslims, as well as Sikhs and Hindus who were mistaken for Muslims, were troublingly prevalent in the wake of the terrorist attacks of September 11.² Even today, nearly ten years after the attacks, what Charles Taylor identifies as “a wave of Islamophobia which is rippling through the Western world, and which has already made deep inroads south of the border,” will present serious challenges to the future of the Canadian multicultural model.³

I am motivated in my examination of the treatment of religious diversity in the Ontario Legislature by an Ontario Court of Appeal decision made in October of 2010 pertaining to the rights of Muslim women to wear a face-covering niqab in court and the subsequent silence on this topic in the Ontario Legislature that followed that decision.⁴ This legislative silence was especially curious given the ongoing and often boisterous debate in Quebec over Bill 94, and the various controversies that have arisen from it. Bill 94 is a piece of government legislation that seeks to establish the guidelines according to which religious difference can be accommodated within public institutions in Quebec.⁵ Despite being home to a larger, more diverse population than Quebec, there have been no attempts in Ontario to nail down an official state response to minority religious practices. However, this does not mean that there has been complete silence in the Ontario Legislature when it comes to addressing issues pertaining to Muslims in this province. I will seek to show through this paper that there is much to be learned from the discourse surrounding religious diversity, not only about the role of the legislature in promoting inclusion, but also about the legislative strategy toward controversial issues. Through an analysis of the tenor of the discussion and of the content of the issues pertaining to religious minorities that are dealt with in the Ontario Legislative Assembly, I will argue that there is a disconnect between the story MPPs are telling themselves about their approach to religious diversity and the legislative actions that are in fact taken on this topic.

¹ A. Bélanger et al. “Population projections of visible minority groups, Canada, provinces and regions, 2001-2017,” (Ottawa: Statistics Canada Demography Division, 2005), 19.

² Paul Nesbitt-Larking, “Canadian Muslims: Political Discourses in Tension.” *British Journal of Canadian Studies*, 20.1 (2007), 8.

³ Charles Taylor, “10 Leaders on how to Change Multiculturalism,” *The Globe and Mail*, November 17, 2010.

⁴ R. v. N.S., [2010] ONCA 670 (CanLII) 2010-10-13

⁵ Quebec, *Bill 94, An Act to establish guidelines governing accommodation requests within the Administration and certain institutions*, 2010.

The aim of this paper is to provide an initial exploratory investigation into the discourse pertaining to Muslims in the Ontario Legislature. It consists of two main research components. First is a review and analysis of the verbatim proceedings of the Legislative Assembly of Ontario over a twenty-year period from 1990 to the end of December 2010. This time period allows for a longer term view of the way in which Muslims were treated in the approximately ten years prior to and since the events of September 11, 2001. These events had a significant impact on the way in which Muslims are perceived in the West and therefore it serves as a useful point of reference from which to examine the tone of debate on the issue of religious diversity in Ontario. The Legislative Assembly's online advanced Hansard search utility was used to identify instances in which Muslims or Islam were mentioned during legislative proceedings. Each mention was then recorded and its relevance established (that is, whether there was a substantive, directed engagement with issues pertaining to Muslims, or if they were simply mentioned in passing). This catalogue of statements forms the basis of the analysis presented below.

The second research component is a series of interviews with current Members of Provincial Parliament. So far, eight interviews have been completed with MPPs from the government and opposition parties with responsibility for Citizenship and Immigration and Attorney General portfolios, since for the most part issues that have been concerned with minority religious practices and perspectives have been dealt with under the purview of those ministries. In addition, I conducted interviews with three Muslim MPPs.⁶ Notes from these interviews are used throughout the paper to provide additional richness and contour to my own analysis. They also give insight into the approach of MPPs towards these issues and, more broadly, into their interpretations of how these issues are being handled in the Ontario Legislature.

After laying out some theoretical background on the Canadian model of multiculturalism, I will review the instances in which Muslims are discussed in the Ontario Legislature, providing a critical analysis of the overarching discursive approach demonstrated through statements and speeches in the House. I will then provide a more detailed exploration of the debate that occurred over the use of Islamic principles in family law arbitration in Ontario. This was the one instance during the period reviewed in which there was government legislation pertaining to diverse religious practices that responded directly to a broader public debate over the limits of religious accommodation for Muslims in Ontario. A third and final section will draw attention to some inconsistencies between discourse and practice and will provide some reflections on why this inconsistency might exist. Ultimately, I hope to show that despite the discourse lauding the success of the multicultural project in Ontario, legislation on this matter is rare, and when it does arise, is not necessarily informed by the discourse that prevails in the legislature. In this way, the province faces challenges when it comes to the accommodation of religious minorities and the place of Muslims in society that are not being addressed legislatively. While it is reassuring that there have not been attempts in this province to limit the rights of diverse religious groups, there exists in Ontario a problematic complacency when it comes to taking substantive action to ensure the continued success of multiculturalism in this province.

⁶ For a complete list of interviews, please see Appendix 1.

II. Background

The Canadian (and Ontarian) response to cultural and religious diversity is informed by the policy of multiculturalism, which is a central part of the Canadian identity both intellectually and at the level of public policy. First introduced in the Canadian House of Commons by Prime Minister Pierre Trudeau in 1971, the idea of a multicultural Canada emerged in response to the Royal Commission on Bilingualism and Biculturalism. The Commission found that in addition to being a country founded by two language groups and a significant number of aboriginal nations, Canada had also benefited greatly from the cultural diversity created through immigration. Canadian political theorists such as Will Kymlicka and Charles Taylor have defended the intellectual foundation of the Canadian multicultural model.

Kymlicka's argument for the legal recognition of minorities through differentiated group rights within the framework of liberal principles, seeks to protect cultural particularity as a precondition for the possibility of liberal freedom. He argues for a system of minority polyethnic rights, which exist in order to "root out discrimination and prejudice," support cultural practices and secure "exemptions from laws and regulations that disadvantage [ethnic groups] given their religious practices."⁷ The model of multiculturalism for which Kymlicka provides a theoretical defence seeks to recognize difference while ensuring equality and protecting individual rights and freedoms. Similarly, Charles Taylor's influential theory of the politics of recognition, argues that the recognition of cultural particularity is seen as a vital human need, the denial of which could inflict real damage on those who are denied it. On this understanding, the recognition of difference is a necessary precondition for the successful functioning of a political community and must be ensured either in the form of cultural protection or through political acknowledgement of the worth of minority cultures.⁸ On this approach, there is a sense in which the denial of recognition has the capacity to engender resentment among those to whom it is denied and create social conflict. These principles are very much at play in the official Canadian policy of multiculturalism.

Despite having strong intellectual defenders, the Canadian approach to diversity is not without its critics. Authors such as Neil Bissoondath have argued that by supporting the preservation of cultural particularity and emphasizing cultural difference, the Canadian multicultural model fails to integrate immigrants into society and instead creates self-contained ethnic ghettos among newcomers.⁹ Ultimately, proponents on both sides of this issue see the inclusion and successful integration of people from diverse cultural backgrounds as an important aim. At issue is the question of the best way of achieving this end. On the one hand, an openness to diverse cultures and religions through the legal protection of diverse practices and the political recognition of difference is seen as necessary to the possibility of integration and inclusion. On the other hand, integration and inclusion are understood to be possible only through the promotion of unity and cohesion, grounded either in shared identity or agreement on political values. This tension between unity and difference and the lack of consensus among theorists

⁷ Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Oxford University Press, 1995), 31.

⁸ See Charles Taylor, "The Politics of Recognition," in *Multiculturalism and the Politics of Recognition*, ed. Amy Gutmann (Princeton, New Jersey: Princeton University Press, 1994).

⁹ See Neil Bissoondath, *Selling Illusions: The Cult of Multiculturalism in Canada*, (Toronto: Penguin Books, 1994).

about the best way to ensure the inclusion of diverse cultural and religious groups while respecting difference is manifested at the level of political practice.

The issue of the way in which states ought to approach cultural and religious diversity has featured especially prominently in the public interest in recent months. In October 2010 and February 2011 Angela Merkel and David Cameron each declared state multiculturalism to have failed in Germany and Britain, respectively. In both cases, these rather grim conclusions made explicit reference to the challenges faced by Muslims in those countries, and the failure of the host governments to ensure the successful integration of Muslims into mainstream society. In April 2011, a ban preventing Muslim women from wearing the burqa in public spaces came into effect in France, seven years after the hijab was banned from public institutions in that country. In Canada, there has been controversy around the niqab in Quebec since the spring of 2010, and more recently there was debate over whether the Sikh kirpan should be allowed in the Quebec National Assembly – an issue that was then raised in the Federal Parliament. All of these occurrences seem to indicate that there exists an uneasiness around questions of integration and minority religious practices (those of Muslims in particular), that should motivate us to look more closely at the approach here in Ontario.

III. Review of Hansard

In the more than twenty years of Hansard transcripts that were searched, issues pertaining to Muslims did not come up especially frequently. When Muslims were mentioned, Members tended for the most part to speak of them in a positive light, as an important part of Ontario society. With very few exceptions,¹⁰ they were not referred to in the context of controversy relating directly to minority religious groups. This section will briefly outline some of the instances in which Muslims were dealt with substantively in legislative proceedings, before going on to provide an interpretation and evaluation of the discursive approach to the treatment of religious diversity in the legislature.

Member's Statements

Sustained and direct mention of Muslims in the transcripts of legislative proceedings occurred frequently in the form of member's statements recognizing celebrations, festivals and holidays such as Eid and Ramadan. Member's statements also recognized the activities and contributions of Muslim community organizations and leaders. From the early 1990s to the present, there was a noticeable increase in the number of member's statements recognizing minority religious holidays. This expansion occurred most dramatically from the 35th Parliament (1990-1995) to the 36th Parliament (1995-1999), when there was a fourfold increase in the number of member's statements recognizing minority religious holidays and community organizations.

Statements presented a positive image of the groups being recognized, celebrating their contributions to the diverse cultural fabric of the province. In most cases, statements provided an

¹⁰ See, for example, Progressive Conservative MPP Lisa McLeod's question and member's statement about an imam in her riding who was accused of performing polygamous marriages (Legislative Assembly of Ontario, *Debates*, May 27, 2008 and June 2, 2008).

overview of the history and purpose of the holiday or festival and expressed best wishes to all those in Ontario who celebrate it. In some instances, Members also used these statements as an opportunity to recognize and celebrate the multicultural character of Ontario. For example, in one of his statements recognizing Ramadan and Eid, Liberal MPP Shafiq Qaadri explained the holiday:

Muslims in Ontario joined with those worldwide, Speaker, as you know, to engage in the month of the fast, in which people not only abstain from food and drink from dawn to dusk but also curb various appetites and strong emotions. It is a time for prayer, for reflection, for giving thanks, for personal sacrifice and acts of charity. This is a special time when Muslims renew their faith with family and community, and commemorate the various bonds between man, God, family, nature, history and society.¹¹

Later on in the statement, he went on to praise the diverse and inclusive character of Ontario society:

I also find it incredibly heartening that our schools take time to teach children about this and many other religious celebrations that make up the mosaic of Ontario. This, of course, helps to impart the virtues of harmony, understanding and peaceful coexistence in Ontario's wonderful multicultural society.¹²

This tendency to praise the successes of multiculturalism in Ontario was, understandably, exhibited primarily by members of the governing party, but has been noticeably more prevalent under the last two Liberal governments. It is worth noting, however, that without expressing praise with quite as much vigour, Members of previous governing parties as well as opposition MPPs were also positive in their celebration of the diversity of their ridings and of the province.

Through interviews with MPPs, it became evident that Members tend to interpret the value of these statements in two ways, sometimes simultaneously. On the one hand, they are seen as an important symbolic gesture that recognizes diverse groups and enables them to feel as though they are an important part of the cultural fabric of the province. To the extent that they convey genuine recognition, statements send a message that Ontario is a place of religious diversity and inclusion. On this understanding, member's statements recognizing the cultural and religious diversity of the province perform an important role in establishing a discourse of openness and inclusion within the province's institutions of power. As one interviewee noted, however, much of the motivation behind these statements recognizing diverse religious holidays is highly political, pointing out that the Members who make statements recognizing Ramadan or Eid, for example, tend to be those who represent ridings with significant Muslim populations.¹³ While no MPPs explicitly articulated it, the tendency to curry favour and win votes with a particular community through member's statements is clearly at play when dealing with diverse religious and cultural groups. There was a strong sense from some Members that in many cases, these statements are made in order to please constituents and communities.

¹¹ Legislative Assembly of Ontario, *Debates*, September 16, 2009.

¹² *Ibid.*

¹³ Khalil Ramal (Liberal MPP for London-Fanshawe, Chair of Multicultural Caucus), Personal Interview, April 6, 2011.

Private Member's Public Business

The South Asian Heritage Act, introduced by Progressive Conservative MPP Raminder Gill in the Fall of 2001, sought to acknowledge the contributions of South Asians in Ontario. The bill spoke indirectly to the place of Muslims, as well as Hindus and Sikhs in the province. Statements made by Members from all three parties on this bill were generally positive; Members who spoke to the bill were supportive in their statements, not only toward the group being recognized, but also about the broader successes of the multicultural experiment in Ontario. NDP MPP Rosario Marchese, however, was emphatic in his insistence that bills such as this are insufficient to ensure inclusiveness and to prevent discrimination in the province. In his statement, he was clear that while the bill acknowledged members of the South Asian community, more needed to be done. He insisted that “governments have to lead, not just through measures with this bill, which are good enough for me to support but insufficient and inadequate to deal with the larger problems that many of you [South Asians in Ontario] are facing.”¹⁴

Similar to member's statements, the recognition afforded through legislation such as this can be seen as a first step toward ensuring an inclusive society. In practical terms though, the legislation does not require anything at the level of policy to provide any concrete direction when it comes to promoting inclusion or taking action against discrimination. Like most 'Heritage Month Acts' these bills are more about the symbolic gesture of recognition than about anything substantive.

Terrorism and Hate Crimes

The terrorist attacks of September 11, 2001 and the arrest of 17 Toronto-area Muslims suspected of involvement in terrorist plans sparked discussion inside the legislature about the place of Muslims in Ontario society. It is troubling that outside events pertaining Muslims that attracted such a great deal of attention inside the assembly were inextricably linked to terrorist activities, to the extent that it reinforces a problematic link in the public perception between Islam and terrorism. It is reassuring, however, that the response on the part of MPPs was one that encouraged understanding and tolerance and condemned the acts of hatred perpetrated against Muslim groups in the aftermath of both of these events.

On September 24, 2001 – the first sitting day of the legislature after September 11 – a motion was passed in response to the events of September 11. The motion condemned the attacks, responded to the hate crimes against Muslims and other visible minorities that followed, committed resource support to the United States for dealing with the aftermath of the events, pledged a commitment to ensuring that justice is served in response to the acts, pledged to work against terrorism in Ontario, and reaffirmed the province's commitment to tolerance and respect for diversity.^{15 16}

Of the eighty-one Members who spoke on this motion, approximately one third mentioned Muslims or Islam, all in a positive and supportive way. Members spoke in support of

¹⁴ Legislative Assembly of Ontario, *Debates*, November 22, 2001.

¹⁵ Legislative Assembly of Ontario, *Debates*, September 24, 2001.

¹⁶ For the full text of the motion, please see Appendix 2.

Muslims in Ontario and called for all Ontarians to reach out to them in solidarity and friendship. For example, Solicitor General David Turnbull stated that

this government and the police will not tolerate acts of hatred against Muslims in Ontario. Muslims across the province have joined in the condemnation of this attack on the United States. I urge all members of the Legislature to reach out to the Muslim community at this time with a message of friendship and understanding.¹⁷

NDP Leader, Howard Hampton expressed a similar sentiment, insisting that

We must reiterate our firm commitment, our firm opposition to attempt to associate terrorist attacks with any religious or national community. We stand in full solidarity with any and all religious and ethnic communities that have been unjustly associated with these attacks.¹⁸

Members expressed sadness, outrage and dismay at the hate crimes and discrimination that followed the attacks. Liberal MPP for Ottawa Centre, Richard Patten, for example, condemned the retaliatory hate crimes and reaffirmed the need for inclusion in Ontario:

As most of us know, Canadians who practise the Islamic faith make up a key part of our multicultural fabric. Most of us, myself included, have many Muslim friends and colleagues, and they have created a great deal and made a great contribution to our community. As one who knows this community well, [...] I am dismayed that some Canadians have chosen to attack Muslim Canadians in their place of worship. The Islam that I know is a faith based on peace not just to humankind, but to all living things.¹⁹

There was also an articulation of the need for Ontarians from all religious and cultural backgrounds to come together and rise above these acts. Brad Clark, MPP for Stoney Creek insisted that

This is a great province and a great county, and it is great because we embrace our cultural differences and share the same values of respect, dignity and human worth. Despite our anger and emotion, we must draw on the strengths of our diverse cultures and faiths.²⁰

Finally, Members were careful to distinguish between terrorism and Islam. As Liberal MPP Dwight Duncan put it, “We must remind ourselves that this is not a war against Islam, but a war against terrorism.”²¹ Similarly, Progressive Conservative MPP Ted Arnott insisted, “The terrorist leaders may claim to be Muslims, but their evil acts betray the fact that their beliefs are a perversion of Islam.”²²

While on a much smaller scale, the response in the legislature to the arrest of an alleged Toronto-area terrorist cell and the subsequent vandalism of a mosque in Rexdale, was similar in tone to the response to the September 11 attacks. The Minister for Community Safety and Correctional Services made a statement outlining the arrests and responding to the attacks on the Rexdale mosque by condemning intolerance and hatred and calling on Ontarians not to judge one

¹⁷ Legislative Assembly of Ontario, *Debates*, September 24, 2001.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Ibid.*

another on the basis of race or religion. Members from all parties reaffirmed the view that Ontario is a strong and diverse province that must uphold its commitment to tolerance and acceptance. As John Tory put it, “we have to reach a hand of friendship out to the Muslim community and understand these are our fellow citizens. They are people who are working alongside us to build a strong Ontario.”²³ Members implicitly distinguished between those who were accused of involvement in terrorist plans and the vast majority of the Muslim population in Ontario.

In responding to the arrest of the alleged Toronto terrorist cell, Members tended to avoid much discussion of the development of religious extremism in Ontario, with the exception of two NDP MPPs. In addition to condemning acts of violence and hatred against the Muslim community, both NDP leader Andrea Horwath and NDP MPP Peter Tabuns suggested that Ontario host an international conference on domestic terrorism “where we could learn and share experience from all over the world as to how to prevent and push back extremism” as a way of responding to concerns both from within the Muslim community and the broader public.²⁴ The response from other Members chose instead to focus on the need to work toward building a diverse and inclusive society that can be a model for the world. This approach is indeed admirable in that it encourages openness and understanding, and refuses to fall into the trap of painting all Muslims with the same brush in response to isolated disconcerting events. At the same time, however, it is somewhat naïve insofar as it fails to address the causes and implications of the emergence of religious extremism in Ontario.

On the whole, the response in the legislature to incidents of terrorism and retaliatory hate crimes against Muslims and other visible minorities was heartening. The focus of debate was consistently on the need to protect and defend the principles of openness, tolerance and inclusion that underpin Ontario’s multicultural society by condemning acts of violence and hatred toward Muslims and other diverse groups. Although there was often a troubling refusal to deal with some of the more difficult issues related to these events, Members sought to ensure that the conflation between Islam and terrorism was not perpetuated.

Prayers

In 2008, Premier Dalton McGuinty proposed an all-party committee to examine the use of the Lord’s Prayer at the beginning of each sessional day, in order to reflect the diversity of the province. While this issue was not exclusively or directly concerned with the Muslim population of Ontario, it was a notable instance in which an attempt was made by the legislature to reflect the diverse cultural and religious traditions of the province.²⁵

Ultimately, the Speaker’s Panel on Prayer in the Legislative Assembly, comprised of MPPs Bas Balkissoon, Cheri DiNovo and Garfield Dunlop, unanimously recommended that in addition to the Lord’s Prayer, an additional rotational prayer or moment of silent reflection should be added to the opening exercises at the beginning of each day in order to reflect the

²³ Legislative Assembly of Ontario, *Debates*, June 5, 2006.

²⁴ Legislative Assembly of Ontario, *Debates*, June 5, 2006 (Ms. Andrea Horwath) and June 17, 2006 (Mr. Peter Tabuns).

²⁵ For an extensive analysis of the events and circumstances surrounding the Speaker’s Panel on Prayer in the Legislature, see Fizet 2010.

diverse faith groups in the province. This solution sought to remedy the potentially exclusionary effect of reading only the Lord's Prayer without rejecting the history of the legislature altogether.

Statements made by Members in the legislature expressed unanimous support for the recommendations of the all-party panel. The recommendations were seen as a fair, reasonable, and appropriate long-term solution, given the diverse composition of Ontario's population. Several of the Members interviewed saw this as an appropriate solution that reflects a significant but healthy change in the life of the legislature. Moreover, the decision to expand the range of faith groups represented in the legislature through prayer, rather than eliminate all expressions of faith in the legislature, was indicative of the legislature's approach of openness and inclusion of diversity. In this way, the decision was consistent with the broader discursive approach to religious diversity in the legislature, whereby a conscious effort was made to ensure recognition and inclusion of diverse groups including Muslims.

Interpretation and Evaluation

As the examples noted above have shown, the discourse in the legislature tends to be one of inclusion, tolerance and anti-hate. Paul Nesbitt-Larking identifies two parallel and sometimes conflicting discourses of anti-hate and of anti-terrorism in the federal parliament.²⁶ In the Ontario Legislature, this secondary strain did not feature as prominently, although concerns about terrorism and public safety were raised.²⁷ Given that sentiments towards Muslims in other Western democratic states have recently taken on a more combative character, this more positive discourse of inclusion and understanding is rather anomalous, although not without its own shortcomings.

Broadly speaking, when Members spoke about Muslims in the Ontario legislature it was within a framework of openness and inclusion, celebrating diversity and praising the contributions of these groups to the rich cultural fabric of the province. In many cases, there tended also to be a component of self-congratulation among Members when discussing the cultural and religious diversity of the province. This tone of self-congratulation, which often pervaded statements about Muslims and diversity, seemed to be informed by a rather superficial and uncritical conception of Ontario as a uniquely successful multicultural society. While this conception is not entirely inaccurate, it has the potential to shut down the capacity for critical thought about questions of diversity and inclusion. It is problematic to the extent that it skews the ability of MPPs to arrive at an accurate understanding of Ontario's real and practical successes with regard to these issues. As long as they continue to tell themselves a story about how good this province is at including newcomers from diverse cultural and religious backgrounds, it diminishes their ability to recognize the our own shortcomings in responding to those challenges.

Together with this tendency toward self-congratulation, there was a parallel discourse of anti-hate. Members consistently spoke out against acts of violence that were perpetrated against Muslims when they arose, condemning racism and intolerance and insisting upon the need for friendship, understanding and openness.

²⁶ Nesbitt-Larking, "Canadian Muslims."

²⁷ See for example, the opposition day motion calling for the establishment of an Ontario security fund (Legislative Assembly of Ontario, *Debates*, October 30, 2001).

Both the tendency toward self-congratulation and the discourse of anti-hate and anti-racism are informed by an understanding of Ontario as a tolerant and inclusive society that is built on principles of respect for diversity. The discourse of self-congratulation assumes that this society has already successfully been established, whereas the discourse of anti-hate insists, in response to significant and undeniable shortcomings that the ideal must be lived up to. The very need for a discourse of anti-hate, however, points to the fact that the discourse of self-congratulation is unwarranted given that there are clear and demonstrable failings in the supposedly inclusive character of Ontario. In this way, the anti-hate discourse seems to be at odds with the image of an inclusive society created through the tendency toward self-congratulation.

In addition to these two discourses, there was also a tendency in the statements made in legislative proceedings for Members to conceive of and refer to diverse cultural and religious groups as closed, monolithic entities. This tendency presents an unrealistic understanding of identity that fails to account for the possibility of transformation, and assumes a degree of insularity and homogeneity within cultural communities. While politically convenient, this way of conceiving of diverse cultural and religious groups in fact acts as an impediment to the realization of the successful multicultural society that is presumed by the discourse of self-congratulation.

IV. Sharia debate in Ontario

The debate in Ontario over the use of Islamic principles in matters of family law and the 2006 Family Statute Law Amendment Act that responded to this broader public debate does not fit neatly within the broader discursive approach outlined in the section above. This was a case that challenged popular assumptions about the appropriate limits of religious accommodation within a multicultural framework. In doing so, it shed light on a fundamental tension between two possible approaches to managing religious diversity in a way that is not as immediately evident in the discourse outlined in the previous section. This debate forced a clear choice between allowing some principles of Islamic law in the Ontario arbitration system and insisting on an approach in which Ontario and Canadian law must always prevail. As such, it allowed a very different, more critical tone to emerge within the overall discourse pertaining to Muslims in Ontario, one that was motivated in large part by fear and that painted Islamic principles in a more negative light.

The issue of applying Islamic principles in family law arbitration arose in Ontario in 2003 when the Islamic Institute of Civil Justice (IICJ) announced that it intended to establish a sharia court in Ontario that would offer arbitration of family law matters.²⁸ The IICJ planned to establish this court in accordance with the requirements of the 1991 Arbitration Act, which allowed for the use of religious law when settling family disputes through private arbitration.²⁹ The announcement by the IICJ prompted an immediate backlash in the province of Ontario from

²⁸ Marion Boyd, "Religion-Based Alternative Dispute Resolution: A Challenge to Multiculturalism," *Belonging? Diversity, Recognition and Shared Citizenship*, (Montreal: Institute for Research in Public Policy, 2007), 466.

²⁹Sheema Khan, "The Ontario Sharia Debate: Transformational Accommodation, Multiculturalism and Muslim Identity," *Belonging? Diversity, Recognition and Shared Citizenship*, (Montreal: Institute for Research in Public Policy, 2007), 476.

opponents within the Muslim community and Ontario society more broadly. In response to the public uproar, in June of 2004 the Government of Ontario commissioned former Attorney General, Marion Boyd to “conduct a review of the use of arbitration in family and inheritances cases and to examine the impact that the use of arbitration has on vulnerable people, including women, persons with disabilities and elderly persons.”³⁰ In response to this commission, feminist organizations, newcomers who had come to Canada to escape states in which Islamic law prevailed, “secular humanists, believing in the complete separation of church and state,” as well as groups opposed to policies of multiculturalism all spoke out against the use of Islamic law in family arbitration in Ontario.³¹ Those who adopted a stance of “noninterventional accommodation” and supported the rights of religious minorities to retain jurisdiction over family law matters even if religious laws conflicted with the laws of the state were in the minority supported the continued use of private religious arbitration, but were in the minority.³²

Ultimately, the Liberal government introduced legislation in November of 2005 that would “ensure all family law arbitrations are conducted exclusively under Ontario and Canadian law.”³³ In effect, the amendments enacted by the Family Statute Law Amendment Act stripped all religious groups from the right to conduct legally binding arbitration; however, they retained the right to provide “informal, community based counselling [...] similar to ‘good advice,’ which individuals may accept or reject.”³⁴ In this way, the government chose to introduce legislation that reaffirmed a commitment to the rights of all individuals equally rather than protecting the religious rights of particular groups.

This legislation deviated from the recommendations of the Boyd report, which did not call for the elimination of religion based family law arbitration. The report did not find any evidence to suggest that women were being systematically discriminated against within the arbitration system. Moreover, Boyd argued that “secular state laws do not treat everyone equally because people’s individual backgrounds lead to differences in the impact of these laws” and suggested that as long as people have access to laws and processes that are available to everyone, there would be no need to do away with arbitration in family law matters.³⁵

The possibility of a parallel religion-based arbitration system in Ontario brought to the fore a variety of tensions that exist in a multicultural society. It highlighted the need to find balance between protecting the rights of religious minorities and protecting the rights of potentially vulnerable individuals who are members of these groups, the challenge of balancing religious identity with democratic participation, as well as the tension between ensuring respect for difference on the one hand and promoting social cohesion on the other.

For the most part, those who came together to oppose the possible establishment of sharia courts in Ontario were women, and the issue came to be framed as a question of women’s

³⁰ Marion Boyd “Dispute Resolution in Family Law: Protecting Choice, Promoting Inclusion – Executive Summary,” (Toronto: Government of Ontario, 2004), 2.

³¹ Boyd, “Religion-Based Alternative Dispute Resolution,” 468-9.

³² *Ibid.*, 468.

³³ Legislative Assembly of Ontario, *Debates*, November 15, 2005 (Mr. Michael Bryant).

³⁴ Alia Hogben, “Arbitration and Family Laws: Muslim Women Campaign to Eliminate the Use of Religious Laws in Legally-Binding Arbitration,” *Canadian Woman Studies* 25 (2006), 136.

³⁵ Boyd “Dispute Resolution in Family Law,” 3.

rights.³⁶ The establishment of sharia courts in Ontario was seen as an affront on the hard-won rights of women, since the principles of Islamic law were seen as being inherently disadvantageous to women in cases dealing with divorce, custody, and inheritance. While this concern was not wholly unfounded, its expression fed into problematic assumptions about the inequality of the practices of the Muslim community, as against the fundamentally egalitarian values of mainstream Canadian society. In this way, the debate was “exemplary of multiculturalism’s flaws,” in that it “privatizes the sexism of minority communities and covers up the racism of the mainstream communities.”³⁷

Debate on this issue in the broader public was contentious and drawn out. From the outset, it suffered from misinformation and mistaken understanding of what was in fact permitted under the 1991 Arbitration Act, and what actions the Ontario government was intending to take with regard to modifications to this legislation. As Avigail Eisenberg notes, popular debate on this issue “relied on implicit assessments of Muslim identity which entered the debate as unreasonable suppositions about Muslim identity, largely based on misinformation and Western stereotypes of Islam rather than reliable information about shari’a, its character and role in Islam and its impact on Muslim women.”³⁸ Sheema Khan points to a similar phenomenon, noting that “Ignorance and fear of Sharia were prevalent in much of the media coverage of this issue. The word ‘Sharia’ conjured up images of the Taliban in the minds of many who knew nothing of the subject, whereas for many Muslims, the Taliban were antithetical to Sharia.”³⁹ Moreover, from the time of the announcement by the IICJ in October 2003, through public consultations and the release Marion Boyd’s report, to the premier’s September 2005 announcement that he would ban religious courts in the province, there was a period of nearly two years in which debate and controversy persisted in the broader public sphere. These factors combined to create circumstances in which the popular discourse surrounding Muslims in Ontario was one fuelled by fear, negativity, resentment and confusion.

Popular misunderstanding and misinterpretation of what was at stake was exacerbated by the fact that the IICJ did nothing to respond to the concerns about Islamic family law arbitration that were raised publicly, “thereby failing to provide any reassurance about potential conflicts. Its silence only heightened concerns about the viability of such a project.”⁴⁰ In the opinion of some, “the IICJ had created a mess, failed to take responsibility for publicly defending its policy.”⁴¹ The prevalence of a discourse motivated by fear and misinformation on this issue highlighted latent tensions that existed within Ontario society relative to the Muslim community, which was already facing new challenges after September 11.

The confusion that prevailed in the broader public and in the media seemed not to infiltrate the debate in the legislature on the Family Statute Law Amendment Act. As MPP Khalil Ramal pointed out, there were many public misconceptions with regard to existing provisions within the arbitration system; by contrast, Members had a much better sense of what

³⁶ Khan, “The Ontario Sharia Debate,” and Boyd “Religion-Based Alternative Dispute Resolution.”

³⁷ Avigail Eisenberg, “Religious Arbitration and the Demise of Multiculturalism,” Paper Presented at the Annual Conference of the Canadian Political Science Association, Toronto, ON, June 1-3, 2006: 2.

³⁸ *Ibid.*

³⁹ Khan, “The Ontario Sharia Debate,” 481.

⁴⁰ *Ibid.*, 481-2.

⁴¹ *Ibid.*, 479.

was really at stake.⁴² When speaking about Muslims during debate on the Family Statute Law Amendment Act, Members for the most part spoke about them in their capacity as stakeholders who had expressed genuine concerns about sharia law along with other groups, religious or otherwise. Some Members took the debate as an opportunity to speak to the broader issue of negotiating religious belief with adherence to public institutions, or to speak positively about the Muslim communities in their ridings. Several Members pointed to the unique multicultural mosaic that exists in Ontario, and the need to build institutions that can be a place of common ground for all the diverse cultural and religious traditions of that mosaic.⁴³ NDP MPP Michael Prue took the opportunity to speak extensively about the Muslim faith and to try to correct misconceptions that see sharia as “some monolithic set of laws that degrades women and treats children badly;” doing so, he insisted, does “a disservice to that faith and all of those who are practitioners of that faith.”⁴⁴ While debate in the legislature on this issue seemed generally to be calmer and better informed than the discussions that went on in the broader public sphere, the approach that prevailed inside the legislature failed to influence the debate that occurred outside Queen’s Park. There was a failure on the part of legislators to successfully communicate to the public what was really at stake throughout the discussion about religion-based family law arbitration.

Opposition parties criticised the government for allowing the public debate to go on for so long without taking any action on the matter. In his response to the Attorney General’s ministerial statement announcing the introduction of amendments to the 1991 Arbitration Act, the Progressive Conservative critic, Bob Runciman made the following comments:

The question of allowing Sharia law to be utilized in domestic disputes through private arbitration, is a casebook example of the incompetence of this McGuinty Liberal government. Sadly, the Attorney General allowed this issue to fester for month after month, turning it into a them-against-us controversy.⁴⁵

Later in his statement, he went on to add:

The question should have been resolved in a timely manner, not letting people twist in the wind and deepen societal divisions. It should have involved extensive consultation. Instead, we get a back door, clandestine Sunday afternoon announcement by the Premier, with the Attorney General, in a very rare occurrence indeed, hidden from public view.⁴⁶

While these statements are of course highly political, they nonetheless point to the government’s failure to respond promptly with legislation to the broader public debate that had become controversial and polarizing.

When legislation was introduced, opposition Members expressed concerns about the haste with which the decision was made. As MPP David Zimmer pointed out in an interview, however, the government was not anticipating the response from the broader public to be quite as thunderous as it was, and were not prepared to take immediate action; it was only when the

⁴² Ramal, Personal Interview, April 6, 2011.

⁴³ Legislative Assembly of Ontario, *Debates*, November 23, 2005 (Mr. David Zimmer) and November 28, 2005 (Mr. John Milloy).

⁴⁴ Legislative Assembly of Ontario, *Debates*, November 28, 2005.

⁴⁵ Legislative Assembly of Ontario, *Debates*, November 15, 2005.

⁴⁶ *Ibid.*

public debate became exceedingly divisive that the government came forward with a legislative solution.⁴⁷ In this way, the legislation can be seen as an attempt at quelling a controversy that had spun out of control.

Debate over the use of Islamic principles in family law arbitration drew attention to the fact that while for the most part, the discourse surrounding Muslims and Islam in Ontario is largely positive, there are nonetheless latent fears and concerns within the broader public about the place of Muslims in Ontario society. The public uproar that erupted in response to the use of Islamic principles in family law arbitration undercuts the self-congratulatory discourse of inclusion that prevails in the legislature. There are, therefore, significant challenges that remain when it comes to ending discrimination and prejudice in this province. These challenges exist on both sides of the equation. As Sheema Khan puts it, “there is a challenge for Muslims to negotiate identity with citizenship,” but there is also “a reciprocal challenge for their fellow citizens to confront the ignorance and prejudice that surround them.”⁴⁸

V. Relationship between discourse and practice

As the foregoing exploration has indicated, there exists a generally positive discourse surrounding Muslims in the Ontario legislature, whereby MPPs speak in favour of inclusion and openness and condemn any actions that fail to meet with that ideal. As the tenor of the public debate over sharia courts in Ontario showed, however, the apparent tendency toward fear, confusion and prejudice that exists within the broader public does not match up with the predominant story being told inside the legislature. Moreover, this public uproar influenced the way in which legislative action is taken. As Attorney General Chris Bentley put it, the legislative response to the issue of religion-based family law arbitration represents a reaffirmation of the foundation in Ontario and Canadian law that underpins the multicultural model that exists in this province.⁴⁹ The legislation, however, can also be seen as a rushed attempt at quelling a controversy that had spiralled out of control and required firm and decisive action in order to contain the broader public sentiment that had come out against Muslims and Islam.

In this way, it is clear that the discourse of inclusion, openness and accommodation does not necessarily inform the legislative actions that are taken in the Ontario Legislature – at least in the context of hard cases which pit the collective rights of religious minorities against the values of the broader society, as was the case with sharia law. In this instance, the legislative response was not one that encouraged openness and inclusion in order to allow for further expression of diversity, as was the case with the issue of prayer in the legislature. Instead, the legislation that responded to the debate over the use of Islamic law principles in arbitration closed down the range of options available to all religious groups by removing their right to provide religion-based arbitration. This decision was informed not by the approach to diversity expressed through the discourse of inclusion and anti-hate, but by the need to shut down a controversy that had erupted in response to the possible establishment of a system of arbitration based on Islamic

⁴⁷ David Zimmer (Liberal MPP for Willowdale, Parliamentary Assistant to the Attorney General [Oct. 2003 to present]), Personal Interview, April 4, 2011.

⁴⁸ Khan, “The Ontario Sharia Debate,” 482.

⁴⁹ Hon. Christopher Bentley, (Liberal MPP for London West, Attorney General [Oct. 2007 to present]), Personal Interview, April 12, 2011.

principles and popular concerns about the compatibility of these principles with liberal democratic rights and values.

The failure in this instance, to act in a way that was consistent with the ideals generally expressed in the legislature points to a larger uncertainty about how, in practice, the ideals expressed by the discourse of inclusion ought to be put into practice through legislation or policy decisions. There seems to exist a firmly held belief about the importance of inclusion and integration, but in practice when dealing with issues pertaining to Muslims, there are clearly concerns about articulating a position in the House or taking legislative action that would be politically unpopular. There is a disconnect between how we are talking about these issues and the way in which they can actually be dealt with, due to the political constraints created by popular concerns and perceptions about Islam.

To a certain extent, there is a tendency to avoid dealing with issues pertaining to the larger issue of religious diversity in the legislature because the legislature is not generally perceived as the primary venue in which the challenges of accommodation that Ontario faces as a diverse society ought to be sorted out. As Minister Bentley noted, the legislature is indeed an essential forum in which issues pertaining to diversity can and ought to be discussed, however, it is by no means the only venue in which these conversations ought to occur.⁵⁰ In Ontario, there has tended not to be legislative action pertaining to the practices of Muslims or other religious minorities. Moreover, most MPPs suggested that there is neither a need nor an appetite in Ontario for this kind of legislation. This was generally perceived as a good thing by the MPPs who were interviewed. In keeping with the discourse of self-congratulation, Members saw the absence of debate on these issues as a testament to the success of multiculturalism in Ontario, whereby everyone is free to pursue their own faith without having it become an issue that needs to be brought up in the legislature.

Most of the members interviewed were of the opinion that debate or legislation on diverse religious practices is only required when particular issues requiring attention or action arise, and there have not been any pressing issues requiring legislative attention in Ontario. As Liberal MPP, Yasir Naqvi noted, legislation on the accommodation of religious minorities is unnecessary; when it comes to dealing with these issues, we simply need to act according to principles of respect and common sense.⁵¹ Progressive Conservative Attorney General Critic Ted Chudleigh expressed a similar sentiment, suggesting that there typically is no need for legislation to permit practices that are currently occurring and are not prohibited by law; legislation would only be required to ban practices. Beyond that, people simply need to negotiate with one another in good faith.⁵²

At the same time, however, avoidance of issues pertaining to diverse religious groups and practices is often motivated by the knowledge that dealing with these issues has the potential to be politically explosive. As several interviewees noted, sometimes politicians duck the hard questions, particularly those pertaining to religious diversity, because they do not want to offend or alienate voters. As the few experiences of dealing with religious diversity in the legislature have shown, these are especially sensitive issues that require a great deal of care and

⁵⁰ Bentley, Personal Interview, April 12, 2011.

⁵¹ Yasir Naqvi (Liberal MPP for Ottawa Centre), Personal Interview, April 5, 2011.

⁵² Ted Chudleigh (Progressive Conservative MPP for Halton, Critic for Attorney General [Jul. 2009 to present]), Personal Interview, April 6, 2011.

thoughtfulness when being dealt with by legislators. While the tendency to avoid these issues for political reasons could be interpreted as squeamishness on the part of MPPs, NDP MPP Cheri DiNovo provided an alternate interpretation. She suggested that the need for sensitivity and to understand the background on issues by listening carefully before taking legislative action goes beyond political concerns about votes; it is a question of basic respect for diversity.⁵³

While the legislature is seen as having the capacity to play an important role in promoting inclusion, in many ways it is ill-equipped to deal with the challenges of accommodation in a religiously diverse society with the delicacy and tact that these issues require. As DiNovo put it, debate on the floor of the legislature is a blunt instrument, particularly when partisanship comes into play.⁵⁴ These are sensitive issues; to deal with them in a way that allowed debate to be coloured by partisan loyalties could have troubling consequences. Moreover, as Yasir Naqvi pointed out, legislation tends to be corrective, responding to controversies that have already erupted. In this way, debate and legislation lack the capacity to be forward thinking – typically, the development of a vision for the future of diversity in the province occurs in government ministries.⁵⁵

There are unique challenges that come with legislating and developing policy in a plural society, and as several Members noted in interviews, there are a variety of forums in which MPPs can discuss and debate these issues. However, the full range of available tools has not been used to address issues pertaining to diverse religious practices. Members pointed to the potential strengths of an all-party select committee as a venue in which some of these issues might be thought through and discussed in a neutral, non-partisan way. This model would give legislators the opportunity to think through issues of core values and would allow them to engage with potentially explosive issues before they had the chance to become explosive. After extensive consultation, the committee could prepare a de facto paper on diversity, which would provide the backdrop against which these issues would be considered as they arose.⁵⁶ Using an all-party select committee in this way would allow Members to put down some finite terms of reference that could guide future decision-making. Such an approach would take seriously the importance of open discussion and dialogue, promoting cross-cultural understanding by allowing a diversity of voices to be heard.

Conclusions and suggestions for further research

Ontario's legislators do recognize that there are legislative tools available to them that would allow a more measured and rational way of dealing with issues than the problematic instrument of debate on the floor of the House. Moreover, they acknowledge that Ontario's diverse society is special and requires constant work and attention in order to maintain the success of the multicultural model that exists here.⁵⁷ Despite this, however, the question of how the state ought to respond to religious diversity is not being dealt with legislatively. It is reassuring that there have been no attempts to limit the rights of diverse religious groups by banning practices

⁵³ Cheri DiNovo, (NDP MPP for Parkdale-High Park, Critic for Citizenship and Immigration [Apr. 2009 to present]), Personal Interview, April 5, 2011.

⁵⁴ *Ibid.*

⁵⁵ Naqvi, Personal Interview, April 5, 2011.

⁵⁶ DiNovo, Personal Interview, April 5, 2011.

⁵⁷ Bentley, Personal Interview, April 12, 2011.

such as the wearing of the niqab in public institutions as we have seen in other jurisdictions. At the same time, however, there has been no attempt in Ontario to take positive action to deal with the hard cases in a meaningful way or to establish a framework according to which these issues can and ought to be dealt with, despite the apparent commitment to the protection of diversity expressed by the discourse in the legislature.

This paper has sought to demonstrate this disconnect between discourse and practice by providing an overview of the discourse that prevails in the Ontario legislature when dealing with issues pertaining to Muslims in this province. I have suggested that the tendency among Members to speak in a self-congratulatory manner about the success of the multicultural project in Ontario is at odds with the need for the parallel discourse condemning acts of hatred against the Muslim community. The very need for a discourse of anti-hate undercuts the self-congratulatory discourse of inclusion that prevails in the legislature. An examination of the sharia debate in Ontario showed that in the rare instance in which an issue pertaining to Muslims was in fact dealt with legislatively, the government response was motivated less by a fundamental commitment to respect for plurality, and more by the need to quell a controversy that had spun out of control. Moreover, the very fact that the public response to this issue revealed some latent anti-Islamic sentiments reinforces even more strongly the need for legislators to address these issues in a calm and meaningful way if the multicultural project in Ontario is to continue to succeed. When examining the relationship between discourse and practice, it became evident that there are indeed political challenges that stand as a deterrent to taking action on this front, since these can be polarizing issues that incite vocal and emotional responses from the public. There are, however, alternative approaches that could be adopted, such as an all-party select committee, that are not being used at present. Because Ontario is not facing a crisis as some other diverse jurisdictions throughout the world seem to be, legislators may feel that action is not necessary since ignoring the issue seems to have worked relatively well thus far. By keeping their heads in the proverbial sand and not using the tools available to them though, legislators are not doing their part to ensure that a crisis does not arise.

Given that the legislature is not the only venue in which diversity and inclusion can and ought to be promoted, further research on this topic could examine the approach and actions taken within provincial government ministries to ensure that Ontario can continue as a successful multicultural society. Similarly, extensive interviews with community leaders and organizations would allow for a more accurate sense of the real and practical challenges faced by Muslims in Ontario and could provide insight into an alternative interpretation of the successes and failures of the multicultural project in this province. Engaging with these two additional sources would allow for a more complete understanding of the broader issue that was explored through this study.

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Appendix 1: Complete List of Interviews

Hon. Christopher Bentley (Liberal MPP for London West, Attorney General [Oct. 2007 to present]), Personal Interview, April 12, 2011.

Ted Chudleigh (Progressive Conservative MPP for Halton, Critic for Attorney General [Jul. 2009 to present]), Personal Interview, April 6, 2011.

Steve Clark (Progressive Conservative MPP for Leeds-Grenville, Critic for Citizenship and Immigration [Oct. 2010 to present]), Personal Interview, April 14, 2011.

Cheri DiNovo (NDP MPP for Parkdale-High Park, Critic for Citizenship and Immigration [Apr. 2009 to present]), Personal Interview, April 5, 2011.

Yasir Naqvi (Liberal MPP for Ottawa Centre), Personal Interview, April 5, 2011.

Shafiq Qaadri (Liberal MPP for Etobicoke North), Personal Interview, April 5, 2011.

Khalil Ramal (Liberal MPP for London Fanshawe, Chair of Multicultural Caucus), Personal Interview, April 6, 2011.

David Zimmer (Liberal MPP for Willowdale, Parliamentary Assistant to the Attorney General [Oct. 2003 to present]), Personal Interview, April 4, 2011.

Appendix 2: Motion in response to the September 11 Attacks

The Speaker: Mr Harris moves, seconded by Mr McGuinty and Mr Hampton, that to respond to the events of September 11, 2001, in which thousands of innocent men and women, including Canadian citizens, were attacked and murdered by terrorists;

To acknowledge that these acts were evil, immoral and an affront to humanity;

To respond as well to recent and unfortunate incidents, in Ontario and elsewhere, of intolerance directed to Muslims and members of other visible minority communities;

To join with all peaceful, law-abiding people who want compassion to be shown to the victims and justice to be served;

The Legislative Assembly of the province of Ontario, on behalf of the people of Ontario:

Unanimously joins Parliaments and governments around the world in condemning both these attacks and those responsible for them;

Commits the resources of Ontario to assist the people of the United States in dealing with the aftermath of these terrible tragedies;

Declares that Ontario stands ready to help bring to justice all those responsible for these heinous acts;

Pledges to do everything within its power to ensure that there is no place in Ontario for agents or supporters of terrorism;

Condemns all hate crimes and reaffirms the commitment of all legislators to uphold our province's proud traditions of tolerance and respect for diversity and to do everything in our power to ensure that all Ontario residents continue to treat one another -- regardless of race, religion, background or ethnic origin -- with generosity, compassion, dignity and respect.