

# Canadian Sharia

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## Abstract

The main purpose of this project is to attain an ethnographic understanding of a Sharia court in Toronto, Canada that adjudicates marital disputes. The project had two main phases. The first concerned an analysis of marital dispute cases from the Sharia court with the aim of finding overarching themes and trends based on ethnographic material. The second concerned library research on Canadian law as it pertains to said themes and trends found during the first phase, in order to understand the legal background within which the parties in the cases act and the ways their decisions are informed and affected by it.

## Background

In Ontario, since 1991, religious arbitration for private disputes had been allowed under the Arbitration Act, and had been used by numerous groups, notably in Rabbinical courts. However, in 2003, the Islamic Institute of Civil Justice announced that it would institute Sharia courts in Ontario and a long controversy ensued. For a period of two years there were multiple debates and a "moral panic." On the one hand, some believed that Islamic law was inherently irreconcilable with Canadian law at best, barbaric and patriarchal at its worst. On the other hand, some advocated for the institution of these courts albeit with certain amendments to the Arbitration Act in order to provide safeguards for its users. Nevertheless, in 2005, the Premier of Ontario announced that his government would ban private arbitration completely under the idea of "one family law for all Ontarians." In practice, however, the amendments to the Arbitration Act did not in fact prohibit religious arbitration. Therefore Sharia courts, such as the one in this study, continue to be used by Muslims to settle marital disputes.

The main type of dispute settled by parties at the Sharia court in Toronto is Islamic divorce, of which three main variants exist:

1. *Faskh*: initiated by the wife, and she is entitled to keep the *mahr* (dower)
2. *Khula*: initiated by the wife, and she usually gives up the *mahr* (dower)
3. *Talaq*: initiated by the husband, and the wife is entitled to keep the *mahr* (dower)

Notably, the Sharia court in Toronto requires that litigants are not involved in any ongoing court cases and recognizes that its decisions are religious but not legally enforceable.

## Methodology

The aim of the first phase of the project consisted in finding a way in which to meaningfully and succinctly compare the ethnographic material provided by professor Lemons from her fieldwork at the Sharia court in Toronto. To this end, the first task was to read and summarize the data from ten representative cases, which ranged from testimonies, to letters from the applicant parties to the court and to each other, and notes from the Qazis (magistrates) regarding the procedures and decisions taken by the court. Then, based on these summaries, the next task was to create a table to facilitate the subsequent macro analysis by adding a quantitative lens that complemented the qualitative data collected by Professor Lemons.

Furthermore, another important task was to create a table based on the record book of the sharia court, which contained 175 cases in total. Based on the information in this book, the main aim was to discern trends of migration, claims and outcomes.

The two main themes that emerged from the analysis of the material were immigration and family law. Guided by the ethnographic evidence, the next step consisted in researching the legal background that informed and affected the way in which the marital dispute cases developed and were handled by the Sharia court. This included, for example, research on spousal sponsorship and Ontario's Arbitration Act.

The last task was to compile a summary of findings and create an annotated bibliography, which together with the tables and graphs, would help Professor Lemons compare and contrast the Sharia court in Toronto, Canada with another Sharia court in Patna, India for her larger project, "Travelling for Justice".

## Results

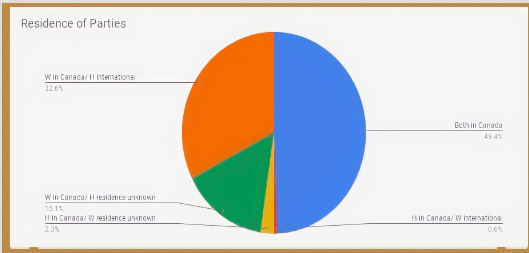
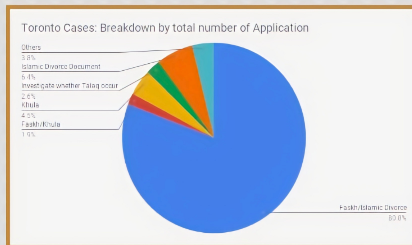
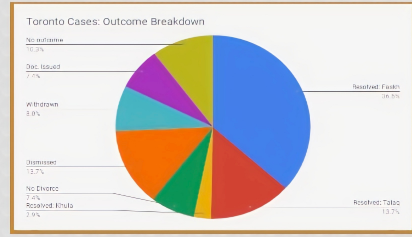
Based on the data from the record book, the most common requests to the Sharia court are Faskh divorces (80%), followed by requests for Islamic Divorce documents (6%). The type of outcomes, however, are more diverse: Faskh (36%), Talaq (13%) and Dismissed (13%). Of the last category, most were dismissed because the applicants were still involved in ongoing court cases. On the other hand, in terms of residence of parties, in 49% of cases both parties are in Canada, while in 32% of cases the wife is in Canada and the husband resides elsewhere. In 15% of the cases the wife is in Canada while the address of the husband is unknown. This indicates the important role of international migration for the cases adjudicated at the Sharia court.

Based on the ethnographic data from the ten representative cases, migration is confirmed to be an important facet for a large number of them. In one case, for example, the applicant (wife) demanded divorce on the grounds that the defendant had entered into the marriage for the sole purpose of immigrating to Canada and had no interest in fulfilling his marital duties. Subsequent legal research indicated the ways in which perceived cultural tropes work to advance or undermine the chances of successful spousal sponsorship applications. For example, if a marriage was not done according to tradition, Immigration and Refugee Board officers were more likely to believe that the marriage was fraudulent.

It is also apparent that for applicants, religious divorce carries more weight and importance than legal divorce at the state's court. For example, in many cases, as soon as the parties had been divorced legally, the applicant party immediately turned to the Sharia court. In their testimonies, they constantly expressed their concern to be properly Islamically divorced.

## Acknowledgements

Thank you to Professor Lemons for her guidance and support and Mr. Harry Samuels for funding my ARIA award.



Administrative Year: 2008 CE/ 1427 AH																		
Case #	Application (Applicant)	Resolved: Faskh	Resolved: Talaq	Resolved: Khula	No Divorce	Dismissed	Withdrawn	Doc. Issued	Notes	Both in Canada	Same City (Cad)	Different City (Cad)	Res. Elsewhere	Canadian City	International City	Residence N/A	Party in Canada	Notes: Party N/A
	Conditional Divorce (H)																	
	Faskh (W)			1							1	Toronto, ON		1	Toronto, ON (W)	Wah Cantt, Pakistan (H)		
	Issue Islamic Divorce (H)		1						Divorce was issued					1	Toronto, ON (W)	Amman, Jordan (H)		
	Declaration of Divorce (H)							1	Declaration was given					1	Toronto, ON (H)	Zamboanga, Philippines (W)		
<b>Total</b>	<b>4</b>	<b>3 (H) / 1 (W)</b>	<b>1 (H)</b>	<b>1</b>				<b>1</b>			<b>1</b>			<b>3</b>	<b>2 (W) / 1 (H)</b>	<b>2 (H) / 1 (W)</b>		