

**PREPARED STATEMENT TO THE STANDING COMMITTEE ON CANADIAN HERITAGE**  
***Re Study of Systemic Racism and Religious Discrimination, M-103***

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180 Wellington, Room 315  
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## **Introduction**

I want to thank the committee for inviting me to speak to you today. I also want to take a moment to thank the MP for my riding, Mr. Virani, for his tireless work in his riding. I am here in my capacity as a Professor and Canada Research Chair at the University of Toronto Faculty of Law, where I specialize in Islamic legal studies. Part of my research concerns how the categories of Islam and Muslim have featured in public debates about Islam, Muslims, tolerance and diversity in settings ranging from Europe, North America, the Middle East and Southeast Asia. I have had the privilege to bring that expertise to consultations for Global Affairs Canada and Justice Canada in previous years, and I'm honoured to have the chance to address you today. I aim to demonstrate today that Islamophobia is already immersed in the everyday business of governing in Canada. To illustrate this systemic dynamic, I will examine three examples of government activity to show that the very business of governing Canada is already saturated with biases against Islam and Muslims.

Before doing so, I want to address the heated debate about the word "Islamophobia". We've been witness to a semantic game that is perhaps appropriate for the editorial board of the Oxford English Dictionary. I'd like us to recall that M103 speaks in Parliament's unified, unitary, institutional voice. The Supreme Court of Canada has stated repeatedly that Parliament's words are to be construed in their ordinary and grammatical meaning and in relation to the context in which those words occur. In M103, the word Islamophobia occurs in section B, for instance, which situates the word within the broader framework of "all forms of systemic racism and religious discrimination". The Latin legal maxim "*Omne majus continet in se minus*", which means "the greater includes the lesser", requires us to view Islamophobia as part of a broader systemic enterprise in which ordinary government practices, for instance, normalize certain views of Islam and Muslims so as to make them obvious, natural, and thereby invisible to the uncritical eye. I will now show how that systemic bias has already served various governmental projects.

### **Example 1: British Columbia's Polygamy Reference**

My first example is the 2011 Polygamy Reference in British Columbia. This case arose out of a criminal investigation of polygamous behavior by the leaders of the FLDS

community in Bountiful, BC. The facts of the case are widely known. Since the 1990s investigations and prosecutions stalled on the constitutional validity of the criminal code prohibition of polygamy. Ultimately, this led to the Reference, in which the BC government asked the court the following question: “Is [section 293](#) of the *Criminal Code of Canada* consistent with the *Canadian Charter of Rights and Freedoms*?” In a general, neutral, factually unspecific way, this question asks about polygamy without any context-based qualifications. In doing so, the Reference released the court and government lawyers from the factual shackles of the racially White, economically affluent, religiously Christian community of Bountiful, BC, creating space to discuss an “Islamic”, and therefore “alien”, practice of polygamy. The BC AG hired my colleague Mohammad Fadel, while the court appointed amicus hired me to provide an affidavit on polygamy in Islamic law. The court reviewed our affidavits, both of which addressed the historical, textual and black letter law on polygamy as found in Islamic legal texts and as regulated in Muslim majority states. Importantly, the court recognized the absence of any empirical data on what Muslims actually do in Canada. In the reference, an over-determined idea of “Islam” was deployed to characterize polygamy as foreign and unCanadian. The reference raises two questions relevant our inquiry about Islamophobia as a systemic enterprise

- Question 1: In the absence of any meaningful data on Muslim practices in Canada, how was my affidavit relevant to a question about Charter rights that pertain to individuals? Fundamentally, two unstated assumptions were operative:
  - A. that if a religious text states something, Muslims adhere to it, care about it, or somehow follow it. This assumption illustrates why simply using “anti-Muslim hate” ignores the workings of Islamophobia as systemic.
  - B. that Muslims of course slavishly adhere to their texts on polygamy, given longstanding European images of harems in Islamic lands and the over-sexed Muslim male, which inform the majoritarian settler culture of Canada.
- Question 2: How is Islamophobia linked to systemic racism? The Bountiful, BC defendants were White, affluent, and adherents to a Christian denomination. They were racially marked as part of the majoritarian image of the settler Canadian state. The Reference was able to re-characterize the Bountiful BC community as foreign and dangerous by associating it with Islam, despite the fact that Muslim marital practices in Canada were factually irrelevant to the proceedings.

To be clear, I am not criticizing the final legal determination of the reference. Rather I use this example to show how a whole host of ordinary, bureaucratic, discretionary and most importantly, symbolically rich decisions made in the course of daily governmental business enable the systemic enterprise of Islamophobia. Moreover, it is plain that in this context, I too inadvertently participated in the systemic enterprise of Islamophobia. This is exactly how systemic bias works, it co-opts all of us.

**Example 2: SC 2015, Chapter 29: An Act to amend the Immigration and Refugee Protection Act, the Civil Marriage Act and the Criminal Code and to make consequential amendments to other Acts.**

My second example concerns the 2015 Statute of Canada best known by its short title, the Zero Tolerance for Barbaric Cultural Practices Act. The Act targets certain marital practices such as forced marriage and polygamy, both of which are associated with certain communities of color and religious practice, in particular the Muslim community. I focus here on the title, which is the product, again, of discretionary governmental decisions that are pregnant with symbolic power and meaning.

In the short title, the term of interest to me is the word “barbaric”. “Barbaric” and its related terms have long been applied to Islam and Muslims; it also informed the 19<sup>th</sup> imperial ideal of the White Man’s Burden. Pope Urban II used the term “barbaric” in his 1095 speech inaugurating the First Crusade against the Muslims of Jerusalem, and “barbaric” lays in the backdrop of Rudyard Kipling’s 1899 poem entitled “White Man’s Burden,” when he writes of “sullen peoples, half-devil and half-child.” It hardly needs to be explained that those who invoke the term “barbarity” against others implicitly consider themselves its opposite, superior and civilized. Barbarity for Pope Urban II lay in the fact that, among other things, Muslims had no law, or at the very least no good law. Fast forward to 2015 and the Zero-Tolerance of Barbaric Cultural Practices Act. The use of “barbaric” and the provisions on polygamy make it hard to miss how this Act targets an imagined racialized Muslim community that is full of bad law and culture, all of which run contrary to the law of a civilized Canada.

**Example 3: Canada Center for Community Engagement and Prevention of Violence.**

My third example focuses on the newly formed Canada Center for Canadian Engagement and the Prevention of Violence which aims to address radicalization, violence and extremism. Its executive director, Ms. Ritu Banerjee, addressed this committee on its first day of hearings. Programs like this, generally called Countering Violent Extremism or CVE for short, were created in the aftermath of the World Trade Center attacks of September 11, 2001. The myth is that these programs do not exclusively target Muslims; and it is true they often invoke the spectre of right wing militia groups. Indeed, in her submission, Ms. Bannerjee made no reference to Islamic extremism or terrorism, and only made specific reference to right wing extremism. But she nonetheless spoke volumes about the systemic ways in which Islamophobia operates within the everyday operations of government. For instance, she supportively referenced Project Someone. Project Someone’s website contains various social media projects that deal with grand ideas like empathy and critical thinking. There is one project, however, that deals exclusively with Islam and Muslims, and it is entirely composed of critical analyses of ISIS videos. Project Someone thereby perpetuates the all-too-common idea that links Islam and terrorism for the purpose of combatting radicalization. But that is not at all surprising. The Brennan Center for Justice at New York University School of Law has surveyed analogous programs in the US and Europe and come to similar conclusions.

CVE government programs and their sponsored projects fundamentally rely on the Muslim extremist as an analytic paradigm for potentially extending analysis to any other group, whether right wing militant or indigenous protestor. It is disappointing that in a hearing concerning systemic racism, religious discrimination, and Islamophobia, there was no public acknowledgment or accountability for how this program would not exist but for the assumed national security paradigm of the Muslim as terrorist extremist. But it is hardly surprising because, again, that is how systemic racism, bigotry and bias work.

In these three examples, I not only situate myself in the systemic enterprise of Islamophobia, but also criticize projects led by different parties in government. I do this to suggest that combatting Islamophobia cannot be a partisan issue, however tempting it may be in order to achieve future electoral gains. The opportunity this committee presents is to open ourselves up, however unpleasant, to show what accountable leadership looks like and model it for all of Canada.

As for recommendations, I have four specific ones, but I'm aware my time is coming to a close. But in my last 30 seconds, I want to suggest that the three examples I examine may provide useful case studies for an internal assessment of how systemic racism and religious discrimination, including Islamophobia operate at a systemic level. Including such a study in your final report about how those decisions were made, what sorts of arguments were put forth, and why decision makers did not consider the symbolic impact their decisions would model what a systemic approach can look like. But most importantly, it will model for Canadians what responsible and accountable leadership looks like.