

# Sharia Law in Libya

MEMBER OF PARLIAMENT



PETER GOLDRING

The question of Sharia Law being incorporated into national law is being discussed in Libya and Egypt. The issue was brought before the Standing Committee on Foreign Affairs and International Development on October 25, 2011.

Mr. Goldring, noted that when any constitution, let alone Egypt's constitution, is opened to allow amendments it risks many other interventions and alternatives. The specific change intended in Egypt was to shorten the presidential term, to create a two-term limit and to restrict the authority to declare and renew a state of emergency. Opening the door to amend a country's constitution opens the door for broader discussion and ushers in the prospect for a completely new constitution to be drafted with many inherent risks following Parliamentary elections.

Unfortunately, in the intervening constitutional vacuum, it also gives encouragement for

other agendas to now be considered for inclusion in its new constitution, interests for those supporting the inclusion of more radical interpretation of Sharia Law who are publically agitating, even participating in several outbreaks of violence between the Egyptian security forces and Coptic Christians. Twenty-seven people, mostly Coptic Christians were killed and more than 300 injured in one of the most troubling and violent incidents since the fall of the former regime.

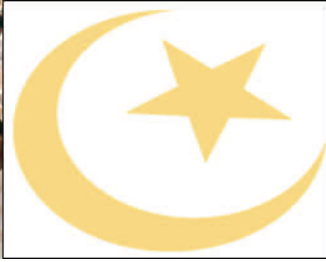
These supporters of Sharia Law, Libyan, Egyptian or otherwise, are adamant and insistent on incorporating their particular interpretation of the Koran (Qur'an) into their new Constitutions. There is considerable concern that if this takes place an excessive, draconian interpretation will be instituted, as has been the case in more brutal Islamic regimes.

A new Constitution for Libya and Egypt incorporating such pre-

viously rejected cruel excesses of interpreted Sharia Law would effectively risk making their constitutional laws incompatible with the



**A typical mosque found in many areas around the world. All mosques face towards Mecca, a city of vital importance to the world's Muslim community.**



world's standard: the Universal Declaration of Human Rights, which was passed by the United Nations General Assembly in 1948. Consequently there is great concern in Canada for the democratic evolution of the new governments in Egypt, Libya and Tunisia (where recent elections saw the election of a "moderate" Islamist party). High on Canada's list of democratic priorities should be to put all effort into encouraging participation in the re-writing and constitutional development in countries of concern, to help keep them from sliding back into turmoil and tyranny.

Certainly Canada did not participate in the liberation of Libya in order to see any one group suffer oppression, particularly women.

There are a number of aspects of Sharia Law interpretations that are disturbing to non Muslims (and indeed to some Muslims also). Those aspects include the death penalty for apostasy (the changing of religion, or abandoning Islam for Christianity) stoning for adultery or amputation of hands for convicted thieves. While some countries have modified, more moderate versions of Sharia Law, there are many examples of the harsher penalties still being imposed. For example in Saudi Arabia a Sudanese man was beheaded on September 19, 2011, after being found guilty of practicing witchcraft and sorcery. Possibly the most fa-

mous application of Sharia Law is the death sentenced pronounced on author Salman Rushdie in absentia over the content of his novel *The Satanic Verses*.

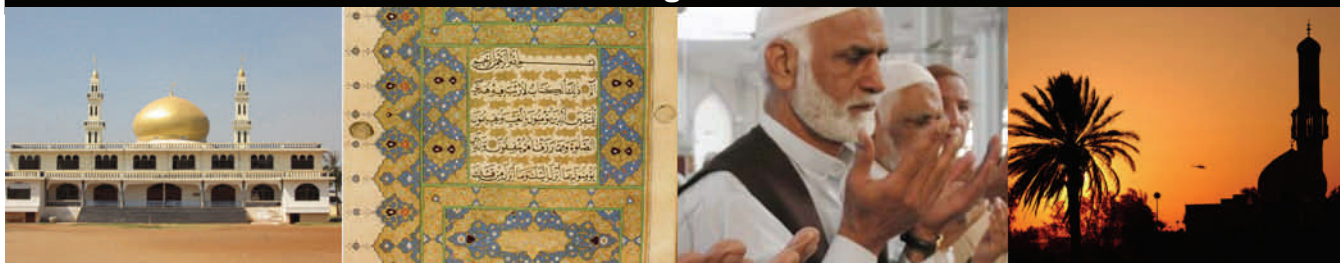
Of course the final outcome of laws to be instituted in Libya and Egypt could look quite different than what the fundamentalist's conception of Sharia Law is. We certainly will offer all assistance to help shape these laws.



**A set of Islamic legal texts and Korans (Qur'ans). Islam has an extensive legal tradition, dating back well over one thousand years.**

Supporters of the introduction of Sharia Law in Canada have suggested it be considered as a matter of administrative expediency in arbitrations and, through encouraging arbitrations, governments are thereby hoping to ease the burdens on the courts. Supporters of these initiatives cite multiculturalism and religious freedom as justifications.

It is important to note that much of the impact of the use of Sharia Law in arbitrations would initially be at the provincial level, since the provinces have constitutional jurisdiction in matters relating to property and civil rights within a province. For example, property and custody issues prior to the commencement of divorce proceedings are governed by provincial law. The problem for many is that it is believed that any introduction of Sharia law at the provincial levels will ultimately have federal ramifications. This makes sense when one



considers that divorce settlements - a matter of federal jurisdiction - most frequently incorporate pre-divorce settlements that the parties have made under provincial jurisdiction.

The interest in Sharia is based on an Ontario proposal in the recent past which would have led to legislative recognition of religious-based arbitrations. At present, these arbitrations are limited. Some people believe that, to be consistent, legislative recognition should be given to any religious-based arbitration, and that Sharia law should be legislatively referenced accordingly. Basically, if you include one religion, you should include them all. The initial problem arises when legislation makes specific reference to religious-based settlements of civil matters. Many believe that in so doing, the formal separation of church and state that forms the basis of our democracy is thereby eroded. We do not live in a Christian state, even though the history of Canada involves significant Christian influences. Many who come to Canada from Islamic states do so because they do not want to live under a regime where religion usurps individual freedoms and democratic rights. These are people who believe that individual rights - particularly minority rights - must be preserved in the face of majority views, particularly majority-held religious views.

Many religions involve elements of intolerance towards other religions and those who within a particular religion do not strictly adhere to the doctrines of that religion. It is also the case that the conservative elements within some religions are male-dominated. We see this in the Roman Catholic church, where only male priests are permitted to conduct religious services. We see this in some Christian faiths, where the most conservative believe that women are blessed through being subservient to men. And we see this in Sharia Law, where the dominant interpretations of such laws are by males and favour males.



**Muslims, at least once in their lifetime strive to travel from all corners of the world to participate in the *Hajj*, or traditional pilgrimage to Mecca.**

One of the problems with legislatively referencing religion in arbitrations is that it will be easy for some adherents to accuse others of not being good Christians, good Jews, good Muslims or good Sikhs, if they don't go along with a religious-based arbitration, or if they later challenge the arbitration on the grounds that it is contrary to general provincial law. Already, informal arbitrations take place, and will continue to take place, without being legislatively mandated. Roman Catholics who wish to religiously terminate their marriages must do so by way of a judgment of a religious court. However, such action has no legal effect whatsoever - the legal effect is completely separate from the religious views

which absolutely deny the existence of divorce.

Sharia Law is for many, all-encompassing, whereby all aspects of life are to be governed according to the Koran (Qur'an). Inevitably, in such circumstances, there will be conflicts between non-religious civil values and what the Koran (Qur'an) might say. One area that has been frequently cited is that of the custody of children in a marriage breakdown. Canadian law does not automatically require that custody of children be granted to the mother or the father, or both. The issue is to be decided based on the best interest of the children, after a review of all of the facts. Traditionally it is understood that the Koran (Qur'an) mandates

that the children are to be in the custody of the father, in such circumstances. Clearly, no mother in Canada would be required to agree to such an arrangement, without recourse to the courts to determine what the best interest of the children might be.

In conclusion: Keep all religions out of legislation affecting civil rights. What people agree to do privately, in accordance with religious precepts, may or may not result in an enforceable arrangement according to the law. But it will ultimately be our laws, and not our religions, that will determine our rights in society.

**Update:** The hope of the Arab Spring at the beginning of 2011 has changed to more cautious optimism that the people of Libya, Egypt and other Arab countries will be allowed to opt for legal systems that do not depend upon strict interpretations of Sharia Law.

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*This brochure series is intended to highlight special issues that Member of Parliament, Peter Goldring, has been involved in. If you wish to comment, please take a moment to fill out the survey below, write or call to the address above.*

**Your Opinion Matters...**

**Question 1** Do you agree that religious law should not apply in parallel to civil law?

Yes

No

**Question 2** Should Sharia Law share an accepted legitimacy in areas of family law?

Yes

No

Comments: \_\_\_\_\_  
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