

WHAT IS ISLAMOPHOBIA?

Reem Bahdi & Azeezah Kanji¹

“the whole engine of collective social meaning was effectively geared to keeping these obscured experiences out of sight.”²

I. Introduction

Popularized in 1985 by Edward Said, the term Islamophobia has become part of Canada’s political, legal, and popular lexicons.³ The “I” word, though controversial, appears frequently in public spaces and debates.⁴ National newspapers have condemned Islamophobia.⁵ Legislatures have committed to fighting Islamophobia.⁶ Scholars write about the prevalence of Islamophobia in our post 9/11 world.⁷ Petitions and Charters signed by scores of people have urged more action against Islamophobia.⁸ Non-governmental organizations have developed campaigns to document and reverse Islamophobia.⁹ Increased references to Islamophobia in popular

¹ Reem Bahdi is an Associate Professor at the University of Windsor, Faculty of Law. She appeared as the expert witness for the Commission des droits de la personne et des droits de la jeunesse before the Quebec Tribunal in *Quebec (Commission des droits de la personne et des droits de la jeunesse) c Bombardier inc (Bombardier Aerospace Training Center)* 2010 QCTDP 16, [2011] RJQ 225 [Bombardier, Tribunal, cited to neutral citation]. Azeezah Kanji is a legal academic and writer; she currently serves as the Director of Programming at the Noor Cultural Centre.

² Miranda Fricker, *Epistemic Injustice: Knowledge and the Ethics of Knowing* (New York: Oxford University Press, 2007) at 153.

³ See Edward W Said, “Orientalism Reconsidered” (1985) 27:2 *Race & Class* 1.

⁴ “Globe Editorial: While Quebec Muslims Mourn, Politicians Plays Word Games”, *The Globe and Mail* (10 January 2018), online: <<https://www.theglobeandmail.com/opinion/editorials/globe-editorial-while-quebec-muslims-mourn-politicians-play-word-games/article37567598/>>.

⁵ *Ibid.*

⁶ See e.g. below at “No Accepted Legal Definition”, referring to Ontario’s *Anti-Racism Act, 2017*, SO 2017, c 15 [*Anti-Racism Act*].

⁷ See e.g. Aniceto Masferrer, ed, *Post 9/11 and the State of Permanent Legal Emergency: Security and Human Rights in Countering Terrorism* (Dordrecht: Springer, 2012).

⁸ See e.g. below at “No Accepted Legal Definition”, referring to Petition e-411 and the National Council for Canadian Muslims’ “Charter for Inclusive Communities”.

⁹ See e.g. “Coalition of Agencies Launches Ad Campaign to Challenge Islamophobia & Racism”, *Cision* (23 January 2017), online: <<https://www.newswire.ca/news-releases/coalition-of-agencies-launches-ad-campaign-to-challenge-islamophobia--racism-611526405.html>>; Harmmeet Singh, “New PSA Campaign Tackles Growing Islamophobia”, *Strategy* (24 January 2017), online: <strategyonline.ca/2017/01/24/new-psa-campaign-tackles-growing-islamophobia/>; “Anti-Islamophobia”, online: Ontario Council of Agencies Serving Immigrants <www.ocasi.org/campaigns/anti-islamophobia/>; Emily Cury, “How Muslim Americans are Fighting Islamophobia and Securing their Civil Rights”, *The Conversation* (4 September

and official sources create the impression that Canadian anti-terrorism laws, policies, and practices both recognize and respect human rights.

But, Khaled Beydoun's analysis of Islamophobia suggests a different reality. Beydoun critiques the tendency to define Islamophobia as an "irrational fear" of Muslims because it privatizes this form of racism and moves attention away from the systemic targeting of and discrimination against Muslims by the state.¹⁰ Though focused on developments in the United States, Beydoun's observations apply equally well to Canada. Canadian approaches to Islamophobia also emphasize private forms of anti-Muslim conduct while marginalizing the state's role in perpetrating Islamophobia. Inspired by his groundbreaking work, we build on Beydoun's analysis to propose a definition of Islamophobia for the Canadian context. We begin with a brief overview of the prevailing approaches to defining this form of racialization. We then propose seven criteria to guide the development of a definition in Canada. Islamophobia: is perpetuated by private actors; is motivated; is historically rooted in Orientalism; draws on and perpetuates stereotypes about a Muslim propensity for violence; draws on and perpetuates gendered stereotypes about roles and the nature of Muslim women; is state-driven; and, persists through a dialectical process of private and state action.

Canada's variant of state-driven Islamophobia, unlike its American counterpart, particularly during the Trump era, operates subtly and can be difficult to identify. Nonetheless, its impacts prove profound. We thus end our analysis by proposing a framework for analyzing subtle forms of state-driven Islamophobia. The framework includes five facets: i) coding or the targeting of Muslims without explicitly naming them; ii) permission or the tacit license to engage in harmful race-based practices; iii) denial or the failure to name Islamophobic tropes that underlie an impugned act or decision; iv) individualization or the presentation of Islamophobia as a manifestation of extreme and aberrant private conduct, rather than broader social practices; and, v) minimization or the diminishment of Islamophobia, partially by creating confusion or controversy about its meaning or ignoring its impacts. Ultimately, we argue that government institutions have helped obscure our understanding of Islamophobia through various silencing techniques which combine to sustain the powerful narrative of Canada as a country that balances human rights and national security. A comprehensive definition of Islamophobia that takes this context into account can assist advocates, policy-makers, and educators to develop fulsome and more effective, strategic responses to Islamophobia in all its manifestations.

2017), online: <<https://theconversation.com/how-muslim-americans-are-fighting-islamophobia-and-securing-their-civil-rights-82235>>.

¹⁰ Khaled Beydoun, *American Islamophobia: Understanding the Roots and Rise of Fear* (Oakland: University of California Press, 2018) at 20 [Beydoun, "American Islamophobia"].

II. Current Canadian Approaches

A. No Accepted Legal Definition

No commonly accepted meaning of Islamophobia exists in Canadian law or policy. Some policy-makers and commentators even resist use of the word. For example, in February 2017, Conservative Member of Parliament David Anderson introduced a motion against intolerance that deliberately excluded the word Islamophobia. Anderson moved that the House of Commons “recognize that Canadian society is not immune to the climate of hate and fear exemplified by the recent and senseless violent acts at a Quebec City mosque” and that it “condemn all forms of systemic racism, religious intolerance, and discrimination of Muslims, Jews, Christians, Sikhs, Hindus, and other religious communities”¹¹ Critics argue that the term Islamophobia lacks precise definition,¹² unduly restrict freedom of speech, and risks deterring legitimate criticism of Islam or Muslims.¹³

Nonetheless, Ontario’s new *Anti-Racism Act, 2017* (the “Act”) does use the word.¹⁴ The Act requires the government to maintain an anti-racism strategy and “consult with members and representatives of communities that are most adversely impacted by racism, including Indigenous, Black and Jewish communities and communities that are adversely impacted by Islamophobia.”¹⁵ The Act also recognizes that “systemic racism is experienced in different ways by different racialized groups. For example, anti-Indigenous racism, anti-Black racism, antisemitism and Islamophobia reflect histories of systemic exclusion, displacement and marginalization.”¹⁶ But, the term Islamophobia is not defined. Similarly, the case law does not contain a precise definition of Islamophobia. Surprisingly, only 14 reported cases from across Canada mention the word Islamophobia.¹⁷ The adjudicators who

¹¹ Canada, House of Commons, *Hansard*, 42nd Parl, 1st Sess, No 142 (16 February 2017), online: <www.ourcommons.ca/DocumentViewer/en/42-1/house/sitting-142/hansard> at 9012 (David Anderson).

¹² See e.g. John Bowen, “Commentary on Bunzi” (2005) 32:4 *American Ethnologist* 524; Erik Bleich, “Defining and Researching Islamophobia” (2012) 46:2 *Review of Middle East Studies* 180 (for a discussion of the definitional difficulties).

¹³ Canada, Standing Committee on Canadian Heritage, *Evidence*, 42nd Parl, 1st Sess, No 078 (18 October 2017) at 2 (Michael Mostyn): In its oral presentation to the Standing Committee on Canadian Heritage, representatives of B’nai Brith urged members to “exercise great care in any definition of Islamophobia, if indeed any is attempted... we must ensure that no one can hide behind the idea that any criticism of Islam represents Islamophobia”.

¹⁴ *Anti-Racism Act*, *supra* note 6, ss 2(4), 4(3), 4(5), 6(2).

¹⁵ Bill 114, *An Act to Provide for Anti-Racism Measures*, 2nd Sess, 41st Leg, Ontario, 2017, explanatory note (assented to 1 June 2017), SO 2017, c 15.

¹⁶ *Anti-Racism Act*, *supra* note 6, preamble.

¹⁷ A word search of the Quicklaw and CanLII databases using the term Islamophobia resulted in 14 cases: *R v Hersi*, 2014 ONSC 1273, [2014] OJ No 3579 (QL); *Quebec (Commission des droits de la personne et des droits de la jeunesse) c Bombardier inc (Bombardier Aerospace Training Center)*, 2009 QCTDP 17, EYB 2009-169631; *Mumir v Ontario (Ministry of Health and Long-Term Care)*, 2017 HRTO 616, [2017] OHRTD No 618 (QL); *Yousufi v Toronto Police Services Board*, 2009 HRTO 20, [2009] OHRTD No 19 (QL) [*Yousufi*, 2009, cited to neutral citation]; *Baku v Canada (Minister of Citizenship and Immigration)*,

decided these cases either adopt different definitions of Islamophobia or avoid defining the word altogether, preferring instead to discuss Islamophobia's main features or consequences. Human rights policy documents, legislative debates, and websites of civil society organizations mandated with combating Islamophobia do, however, define the term.¹⁸ Yet, even there a commonly accepted definition does not exist.

B. Emotion-Based Definitions

Where definitions are offered in Canadian law and policy or civil society reports, the prevailing approach emphasizes the emotional state of perpetrators. For example, some focus on fear as Islamophobia's essential feature. The Report of the Canadian Parliament's Standing Committee on Canadian Heritage, *Taking Action Against Systemic Racism and Religious Discrimination Including Islamophobia*, highlighted several proposed definitions of Islamophobia which included "an irrational fear or hatred of Muslims or Islam that leads to discrimination" or simply, "the irrational fear or hatred of Muslims".¹⁹ Similarly, when controversy over the meaning of Islamophobia arose during a debate in the Canadian Parliament, Anthony Housefather, Federal Liberal Member of Parliament, proposed that the words "an irrational hatred or fear of Muslims, known as Islamophobia" be added to an opposition motion to ensure clarity of definition.²⁰ The Ontario Human Rights Commission's *Policy and Guidelines on Racism and Racial Discrimination* identifies Islamophobia as an "emerging form of racism" against Muslims based on stereotypes and fear.²¹ In the same vein, some community based or civil society organizations also take up the fear motif. The Canadian Race Relations Foundation, for example, offers the following definition: "expressions of fear and negative stereotypes, bias or acts of hostility

2010 FC 1163, 195 ACWS (3d) 800; *Bin Slama v Certified Management Accountants of Ontario*, 2012 HRT0 1027, <canlii.ca/t/fsr14> (CanLII); *Aganeh v Aganeh*, 2017 ONSC 6386, [2017] OJ No 5511 (QL); *R v Hersi*, 2014 ONSC 1286, [2014] OJ No 3587(QL); *R v Hersi*, 2014 ONSC 1303, [2014] OJ No 3580 (QL); *Saadi v Audmax*, 2009 HRT0 1627, 68 CHRR D/442 [*Saadi* cited to neutral citation]; *Elmasry and Habib v Roger's Publishing and MacQueen (No 4)*, 2008 BCHRT 378, 64 CHRR D/509 [*Elmasry* cited to neutral citation]; *Aganeh v Aganeh*, 2017 ONSC 5733, [2017] OJ No 4966 (QL); *R v Hersi*, 2014 ONSC 1368, [2014] OJ No 3584; *R v Sher*, 2014 ONSC 4790, [2014] OJ No 4372 (QL).

¹⁸ See e.g. Part 2 below discussing Ontario Human Rights Commission, "Policy and Guidelines on Racism and Racial Discrimination", (Toronto: OHRC, 2005), online: <www.ohrc.on.ca/sites/default/files/attachments/Policy_and_guidelines_on_racism_and_racial_discrimination.pdf> and the definition adopted by the Canadian Race Relations Foundation and the definition adopted by the Canadian Race Relations Foundation as seen in the "Islamophobia" (14 July 2015), online: Canadian Race Relations Foundation <www.crrf-fcr.ca/en/resources/glossary-a-terms-en-gb-1/item/22850-islamophobia>.

¹⁹ House of Commons, Standing Committee on Canadian Heritage, *Taking Action Against Systemic Racism and Religious Discrimination Including Islamophobia* (February 2018) at 22–23 (Chair: Hon Hedy Fry), online: <www.ourcommons.ca/Content/Committee/421/CHPC/Reports/RP9315686/chpcrp10/chpcrp10-e.pdf> [footnotes omitted].

²⁰ Canada, House of Commons, *supra* note 11 at 9014.

²¹ Ontario Human Rights Commission, *supra* note 18 at 10. The rest of the definition emphasizes, stereotypes, bias, acts of hostility by private actors and governments in viewing Muslims as a security threat.

towards the religion of Islam and individual Muslims.”²² A 2012 paper published in Diversity Magazine and made available on the website of the Ontario Human Rights Commission cites the 1997 influential British Runnymede report, *Islamophobia: A Challenge for Us All*, which defines Islamophobia as “the dread, hatred, [and] hostility towards Islam and Muslims perpetrated by a series of closed views that imply and attribute negative and derogatory stereotypes and beliefs to Muslims.”²³ “Dread” appears to be synonymous with “fear” in this definition.

Sometimes fear is presented as the cause of Islamophobia and sometimes it is presented as the product of a process intended to generate Islamophobia. For example, in *Elmasry*, a British Columbia Human Rights Tribunal highlighted the evidence of expert witnesses who emphasized that Islamophobia was deliberately and strategically deployed to generate fear.²⁴ This case involved a complaint against Maclean’s Magazine after it published an article claiming that Islam had imperialistic ambitions to take over and make over the West, including Canada, through immigration.²⁵ The tribunal considered the claim that the article’s author was trying to generate animus against Muslim communities.

At different points in their evidence, each of the witnesses referred to the term “Islamophobia”. The term was not formally defined before us but, in general, is understood to refer to the targeting of Muslims and Islam, drawing on common stereotypes about their association with terrorism and violence, *in order to generate fear*.²⁶

In other words, fear is not simply a by-product of specific events like 9/11; it is deliberately manufactured by motivated individuals and institutions.

None of these definitions purports to describe Islamophobia as the product of fear alone. Each definition gives depth to the meaning of fear or expands upon its contents and significance in a slightly different way. Anthony Housefather equates “fear” with “hatred”; the Ontario Human Rights Commission links fear to “stereotypes”; the Canadian Race Relations Foundation links fear to “negative stereotypes, bias or acts of hostility”; and, *Islamophobia: A Challenge For Us All* associates “dread” with “hatred” and “hostility”. Despite the nuances, “fear” remains the core and common feature of each definition.

²² “Islamophobia”, *supra* note 18.

²³ Uzma Jamil, “Discrimination Experiences by Muslims in Ontario”, *Diversity Magazine* 9:3 (2012), at “Islamophobia”, online: <www.ohrc.on.ca/en/creed-freedom-religion-and-human-rights-special-issue-diversity-magazine-volume-93-summer-2012/discrimination-experienced-muslims-ontario> citing Ibrahim Kalin and John L Esposito, *Islamophobia: The Challenge of Pluralism in the 21st Century* (New York: Oxford University Press, 2011) at 8.

²⁴ *Elmasry*, *supra* note 17 paras 109–137.

²⁵ *Ibid* at para 135.

²⁶ *Ibid* at para 89 [emphasis added].

C. Impact Based Definitions

Another approach to defining Islamophobia evident in case law, policy documents, and civil society reports focuses on the impact of discrimination on individuals and communities; this approach avoids describing the problem in terms of the emotional state of the perpetrator. It is an impact-based approach which stresses that Islamophobia develops out of the dichotomization of Muslims from the rest of Canadian society. Islamophobia, in short, is a form of “othering”. Fear may still be presented as part of the definition, but the overriding definitional characteristic is the presentation of Islam as a set of beliefs that proves inherently inassimilable with Northern American values, or the marking of Muslims as people who may live in North America but who are never part of the social fabric. Often, the impact-based approach does not explicitly offer a definition that takes the form of “Islamophobia is...” but instead provides commentary on the effects of Islamophobia which substitutes for an explicit definition.

The National Council of Canadian Muslims’ (NCCM) campaign to end Islamophobia illustrates the impact-based approach. On June 29, 2016, NCCM launched its “Charter For Inclusive Communities” (“the NCCM Charter”). The NCCM Charter does not explicitly define Islamophobia but focuses on its impacts. Commenting that “Muslim women are attacked in the streets”, mosques have been vandalized, and that Muslims face prejudice at work and school, the NCCM Charter reminds readers that “Islamophobia ...tells Canadian Muslims that they do not belong by isolating them and their communities through stigmatization and casting them as outsiders and the ‘other’.”²⁷

Experts in Islamophobia have also adopted the impact-based approach when defining Islamophobia in the context of legal proceedings. An expert witness in *Elmasry* identified Islamophobia as “the way in which Islam is presented as an unchanging single entity, ‘other’ than Euro-American society, and characterized by barbarism, sexism and violence.”²⁸ Though the definition advanced included recognition that the homogenization of Muslim creates “a sense of fear”, the impact on Muslim communities remained the essential features of the definition.²⁹ *Saadi*, a human rights complaint heard by a tribunal member in Ontario who has particular expertise in Islamophobia, also introduced the impact-based approach as a lens through which to understand Islamophobia. *Saadi* raised the question of whether a Muslim woman had been subject to inordinate surveillance in her work place. In considering the claim, adjudicator Faisal Bhabha referenced the Ontario Human Rights Commission’s definition, which recognizes Islamophobia as an “emergent form of racism” linked to fear, but he also expounded on the concept.³⁰ Consistent

²⁷ “Charter for Inclusive Communities” (29 June 2016), online: National Council of Canadian Muslims <<https://www.nccm.ca/wp-content/uploads/2016/06/FINAL-NEW-CHARTER.pdf>>.

²⁸ *Elmasry*, *supra* note 17 at para 117.

²⁹ *Ibid.*

³⁰ *Saadi*, *supra* note 17 at para 83.

with basic human rights principles, he turned his analysis to the impact of Islamophobia on the claimant who, as a member of a Muslim community, was being singled out for different treatment. In this context, the adjudicator noted that “a discriminatory association was being implied between Muslims, ‘otherness’ and national security.”³¹

III. Khaled’s Beydoun’s Definition

While they have helped advance campaigns against Islamophobia in important respects, both the emotion-based and the impact-based approach prove too narrow to ultimately address Islamophobia in all its social, political, and legal manifestations. The limits of the prevailing Canadian approaches to defining Islamophobia are brought to the forefront when examined against Khaled Beydoun’s analysis of prevailing American approaches. Beydoun observes that prevailing American definitions equate Islamophobia with an “irrational fear” of Islam and Muslims.³² This approach, according to Beydoun, provides a limited framework through which to understand and ultimately advocate against Islamophobia because the emphasis on fear directs attention towards private acts and lends credence to the claim that these acts are the manifestation of private conduct that is both aberrant and irrational.³³ The fear motif thus fails to connect the private conduct to the set of state laws, policies, and practices that embolden and enable it.³⁴

In response, Beydoun proposes a definition of Islamophobia that emphasizes its durability and complexity. He defines Islamophobia as:

the presumption that Islam is inherently violent, alien, and inassimilable. Combined with this is the belief that expressions of Muslim identity are correlative with a propensity for terrorism. It argues that Islamophobia is rooted in understandings of Islam as civilization’s antithesis and perpetuated by government structures and private citizens. Finally, this Piece asserts that Islamophobia is also a process—namely, the dialectic by which state policies targeting Muslims endorse prevailing stereotypes and, in turn, embolden private animus toward Muslim subjects.³⁵

Beydoun proposes his definition of Islamophobia in large part to emphasize that state action falls within its scope and, more pointedly, that the state has enabled and emboldened private acts of hate. The frightening rise of private Islamophobia

³¹ *Ibid* at para 33 (linking Islamophobia to otherness). See also *Ibid* at para 83 (citing the Commission’s definition).

³² Beydoun, “American Islamophobia”, *supra* note 10 at 20.

³³ *Ibid* at 29.

³⁴ *Ibid*.

³⁵ Khaled Beydoun, “Islamophobia: Toward a Legal Definition and Framework” (2016) 116:7 Colum L Rev 108 at 111 [Beydoun, “Toward a Legal Definition”].

forms an important part of Beydoun's analysis of the American landscape.³⁶ He explains, however, that these private forms of Islamophobia have received too much scholarly and public attention relative to government laws, policies, and programs – such as those that form countering violent extremism initiatives – that have a devastating impact on Muslim communities and that enable further private Islamophobia. He also argues that Islamophobic laws, policies, and practices are rooted in Orientalist tropes that pre-date 9/11 and that have historically been harnessed to reject Muslims as the inassimilable and undesirable anti-thesis of Western civilization.³⁷

Beydoun's observations – that the definition of Islamophobia must be able to account for the structures that sustain it, and that it must also highlight how Islamophobia impacts people's lives – motivate our analysis. His reminders prove particularly cogent: Islamophobia constitutes a dialect between private and government conduct, and those writing about and seeking to eliminate Islamophobia must attend to the ways in which private and public Islamophobia intersect and reinforce each other. Inspired by his analysis, we propose seven criteria to guide the development of a definition of Islamophobia. We also propose a new definition of Islamophobia to help guide an analysis of existing laws, programs, and practices which should ultimately help to frame future legislation, policy, and debates. In the following section, we identify seven features that a definition of Islamophobia must meet to account for its causes and impacts. Some of these features are borrowed from Beydoun's definition. Others are derived from canvassing reports and other forms of documentation pertaining to the lived experiences of Muslim communities in Canada.

IV. Seven Definitional Criteria For The Canadian Context

A. Private Conduct

First, the definition must be able to account for the fact that Muslims face significant discrimination in society perpetuated by individuals and other private actors, including employers and the media. This is the *private* aspect of the definition as recognized by Beydoun. A 2018 report by Noor Cultural Center, summarizing recent surveys and other studies, stressed the negative attitudes that some Canadians harbor against Muslims in Canada:

46% of Canadians have an unfavourable view of Islam – more than for any other religious tradition; fewer than half of Canadians would find it “acceptable” for one of their children to marry a Muslim – lower than for any other religious group; 56% of Canadians believe that Islam suppresses women's rights; more than half of people living in Ontario feel mainstream Muslim doctrines promote violence; 52% of Canadians feel that Muslims can only be trusted “a little” or “not at all”; 42% of Canadians think discrimination against Muslims is “mainly their fault”; 47% of Canadians

³⁶ *Ibid* at 111–14.

³⁷ *Ibid* at 115.

support banning headscarves in public (compared with 30% of Americans); 51% support government surveillance of mosques (as compared to 46% of Americans); 31% of Canadians approve of American President Donald Trump's restrictions on [travelers] from Muslim-majority countries.³⁸

Evidence points to discrimination by private actors against Muslims. Reported hate crimes against Muslim communities have risen significantly.³⁹ Muslims experience unfair and unequal treatment in workplaces,⁴⁰ educational institutions,⁴¹ stores, and service counters.⁴² Crimes against Muslims included the January 2017 murder of 6 Muslim men at a Quebec City mosque. Alexandre Bissonnette shot Azzeddine

³⁸ Azeezah Kanji, "Islamophobia in Canada" (10 November 2017) at 3, online: <www.noorculturalcentre.ca/?p=16629> [footnotes omitted].

³⁹ Statistics Canada, "Police-Reported Hate Crime in Canada, 2015", by Ben Leber, Catalogue No 85-002-X (Ottawa: Statistics Canada, 13 June 2017) at 3, online: <www.statcan.gc.ca/pub/85-002-x/2017001/article/14832-eng.htm>.

⁴⁰ See Andrew Jackson, "Canadian-Born Visible Minority Youth Face an Unfair Job Future" (3 June 2014), *The Broadbent Blog* (blog), online: <<http://www.broadbentinstitute.ca/en/blog/canadian-born-visible-minority-youth-face-unfair-job-future>>; see also generally: Gada Mahrouse, "'Reasonable Accommodation' in Québec: The Limits of Participation and Dialogue" (2010) 52:1 *Race Class* 85. For an interesting discussion of the events giving rise to the Commission, see Tim Nieguth & Aurélie Lacassagne, "Contesting the Nation: Reasonable Accommodation in Rural Quebec" (2009) 3:1 *Can Poli Sci Rev* 1 at 13 concluding that the events must be read as part of the larger anxiety about nation and belonging in Quebec; Alessandro Acquisti & Christina M Fong, "An Experiment in Hiring Discrimination Via Online Social Networks" (17 July 2012), online: SSRN <papers.ssrn.com/sol3/papers.cfm?abstract_id=2031979>; Cathy Lynn Grossman, "Identifying as Muslim On Resumes May Lead To Fewer Job Opportunities, Survey Says" *Huffington Post* (16 June 2014), online: <https://www.huffingtonpost.com/2014/06/16/muslim-resume-jobs-discrimination_n_5501605.html>; Yosie Saint-Cyr, "Applicants Excluded From Hiring Process When Name Identified With a Racialized Group" *Slaw* (7 June 2012), online: <www.slaw.ca/2012/06/07/applicants-excluded-from-hiring-process-when-name-identified-with-a-racialized-group/>. See also Diane Dechief & Philip Oreopoulos, "Why Do Some Employers Prefer to Interview Matthew but not Samir? New evidence from Toronto, Montreal and Vancouver" (2012) *Canadian Labour Market and Skills Researcher Network Working Paper No 95*; Ontario Human Rights Commission, *Paying The Price: The Human Cost of Racial Profiling* (Toronto: OHRC, December 2003), online: <www.ohrc.on.ca/en/paying-price-human-cost-racial-profiling>. See also Ontario, Commission on Systemic Racism in the Ontario Criminal Justice System, *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System* (Toronto: Queen's Printer for Ontario, December 1995) at 40–41.

⁴¹ See e.g. Jasmin Zine, "Muslim Youth in Canadian Schools: Education and the Politics of Religious Identity" (2001) 32:4 *Anth Educ Q* 399; Mehrunnisa Ahmad Ali, "Representation of Muslim Characters Living in the West in Ontario's Language Textbooks" (2013) 24:5 *Intercultural Educ* 417; The Knowledge Center, *Arabs in Canada: Proudly Canadian and Marginalized* (Toronto: Canadian Arab Foundation, 2002) at 18; David Bateman, "High school Teacher Fired After Investigation into 'Racist' Tweets: Richmond Green Teacher Michael Marshall has been Dismissed Following Student Allegations of Anti-Muslim Posts Online" *Toronto Star* (9 September 2015), online: <<https://www.thestar.com/yourtoronto/education/2015/09/09/high-school-teacher-fired-after-investigation-into-racist-tweets.html>>.

⁴² Nova Scotia Human Rights Commission, *Working Together to Better Serve all Nova Scotians: A Report on Consumer Racial Profiling in Nova Scotia*, (Halifax: NSHRC, May 2013) at 29, 79, 81, online: <<https://humanrights.novascotia.ca/sites/default/files/crp-report.pdf>>; Ontario Human Rights Commission, *Under Suspicion: Research and Consultation Report on Racial Profiling in Ontario*, (Toronto: OHRC, 2017) at 69, online: <ohrc.on.ca/en/under-suspicion-research-and-consultation-report-racial-profiling-ontario> [OHRC, *Under Suspicion*]; "Survey of Muslims in Canada 2016" (April 2016), online: The Environics Institute for Survey Research <https://www.environicsinstitute.org/docs/default-source/project-documents/survey-of-muslims-in-canada-2016/final-report.pdf?sfvrsn=fbb85533_2>.

Soufiane, Abdelkrim (Karim) Hassane, Khaled Belkacemi, Aboubaker Thabti, Mamadou Tanou Barry, and Ibrahima Barry while they were attending evening prayers at the Centre Culturel Islamique de Quebec. Bissonnette also attempted to murder 40 others.⁴³ A few months earlier, a pig's head was left on the steps of the same mosque.⁴⁴ The same community continues to be terrorized; in August 2017, the car of Mohamed Labidi, the president of Quebec's Islamic Cultural Center was set on fire, and someone had flung excrement at the mosque's doors.⁴⁵

B. "Motivated Representations"

bell hooks coined the term "motivated representations" to point to media manipulation of popular culture through plots, characters, scripts, and imagery to achieve a certain result.⁴⁶ As such, in addition to highlighting the rise of private Islamophobia, including but not limited to hate crimes, the definition of Islamophobia must recognize the motivated element of this form of racism in Canada. A motivated element points to the ways in which Muslims are represented in public discourse, particularly, but not exclusively, by the media.⁴⁷ It highlights that discrimination against Muslims communities can be deliberately invoked to bolster particular legal, political, and military exercises of power that rely on representations of a Muslim "other".⁴⁸ "[E]ven objective events are subjectively framed, deliberately or through familiarity and habit of representation, to further in a subtle way hegemonic interests and cultural dominance."⁴⁹

Steuter and Wills' study of the Canadian news media's representation and analysis of the wars in Afghanistan and Iraq reveals a pattern of dehumanizing

⁴³ Les Perreux, "Quebec mosque shooting suspect Alexandre Bissonnette pleads guilty", *The Globe and Mail* (28 March 2018), online: <https://www.theglobeandmail.com/canada/article-bissonnette-pleads-guilty-to-first-degree-murder-in-quebec-shootings/>.

⁴⁴ "Quebec City mosque attack victims shot in the back as they prayed", *National Post* (30 January 2017), online: nationalpost.com/news/canada/shooting-at-centre-culturel-islamique-de-quebec >.

⁴⁵ "Head of Quebec City mosque latest target in apparent string of hate crimes", *Montreal Gazette* (30 August 2017), online: montrealgazette.com/news/local-news/torched-car-belongs-to-president-of-islamic-cultural-centre-of-quebec >.

⁴⁶ Interview of bell hooks, Distinguished Professor of English at City College of New York (1997) titled Cultural Criticism and Transformation by the Media Education Foundation at 5, online: www.mediaed.org/transcripts/Bell-Hooks-Transcript.pdf >.

⁴⁷ See below the discussion of state-driven Islamophobia and the example of RCMP training materials on radicalization for an illustration of motivated representations used by the state.

⁴⁸ See, for example, Junaid Rana, "The Racial Infrastructure of the Terror-Industrial Complex" (2016) 34:4 Social Text 111; Arun Kundnani, "Islamophobia: lay ideology of US-led empire" (2016) [unpublished], online: www.kundnani.org/wp-content/uploads/Kundnani-Islamophobia-as-lay-ideology-of-US-empire.pdf; Deepa Kumar, *Islamophobia and the Politics of Empire* (Chicago, Illinois: Haymarket Books, 2012).

⁴⁹ Erin Steuter & Deborah Wills "Discourses of Dehumanization: Enemy Construction and Canadian Media Complicity in the Framing of the War on Terror" (2009) 2:2 Global Media Journal Canadian Edition 7 at 13.

metaphors that consistently describe Arab and Muslim citizens in animalistic terms. Steuter and Wills note that “the repeated use of animal metaphors by monopoly media institutions constitute motivated representations that have ideological importance”⁵⁰ because they prime readers to accept Muslims as homogenous, dangerous, unpredictable, and unworthy of humane treatment.⁵¹

Motivated representations are also deployed in depictions of Canadian Muslims that invoke images of barbaric Muslim hordes that represent an existential threat to Canada and Canadian values. Macleans Magazine’s, “The New World Order” argued that the Muslim immigrants bear no allegiance to their adopted home countries in Europe, but rather share a common bond over their dedication to “violence or armed struggle”.⁵² The article also warned about Canadian immigration and the threat posed by growing Muslim populations. It described “the...forces at play in the developed world that have left Europe too enfeebled to resist its remorseless transformation into Eurabia and that call into question the future of much of the rest of the world”⁵³ and argued that “Muslims, adherents of the religion of Islam, have serious global ambitions for world religious domination” by “demographically outnumbering the populations in traditional Western cultures” and in their general capacity as Muslims “if necessary, by the use of violence.”⁵⁴

C. Orientalist Roots

Third, a definition must appreciate that Islamophobia preceded 9/11 and has deep roots in the Canadian social, political, and legal fabric. This is the Orientalist aspect of Islamophobia that is stressed in Beydoun’s definition. For the purposes of developing a Canadian definition, this element recognizes that: 9/11 magnified, rather than created, fear or hostility towards Muslims; stereotypes that exist today predated 9/11;⁵⁵ and, Canadian identity has been formed through a rejection of non-White identity to which Muslims were seen to belong.⁵⁶

⁵⁰ *Ibid* at 7.

⁵¹ See also Scott Poynting and Barbara Perry, “Climates of Hate: Media and State Inspired Victimisation of Muslims in Canada and Australia since 9/11” (2007) 19:2 *Current Issues Crim Just* 151.

⁵² *Elmasry*, *supra* note 17 at para 19.

⁵³ *Ibid* at Appendix.

⁵⁴ *Ibid* at para 2.

⁵⁵ Beydoun, “American Islamophobia”, *supra* note 10 at 6–7.

⁵⁶ See *An Act Respecting Immigration*, SC 1 Elizabeth II 1952, c 42 and the commentary accompany the legislation provided by The Canadian Museum of Canadian Immigration at Pier 21. “The Immigration Act, 1952”, online: Canadian Museum of Immigration at Pier 21 <<https://pier21.ca/research/immigration-history/immigration-act-1952>>: “The primary effect of the new act was to reinforce the authority of the governor-in-council (i.e. federal cabinet) and invest the minister of citizenship and immigration with wide-ranging powers. As in previous legislation, the governor-in-council was authorized to make regulations prohibiting immigrants based on their nationality, ethnicity, occupation, peculiar customs, unsuitability to the Canadian climate and probable inability to assimilate.”

Edward Said developed his Orientalism thesis to explain West's view of the "Oriental" other who is geographically situated outside its own boundaries. Western or Occidental identity, he argued, is constructed in opposition to the perceived identity of the Oriental other who is understood to be irrational, retrograde, and possessing a propensity for fanatical violence.⁵⁷ Hayden White called this form of identity construction "ostensive self-definition by negation."⁵⁸

Said's Orientalism thesis requires some recasting and reframing for the post 9/11 world. In its modern Canadian manifestations, neo-Orientalism constructs Canadian national identity in opposition to the Muslim other without limiting national self-definition to the negation of extra-territorial identities. The perceived threat now also emanates from within state borders rather than exclusively from distant lands. The same negative tropes and associations that once attached to the extra-territorial Muslim now attach to Muslims inside Canada. As Shelina Kassam has noted, the descriptors are never absolute or complete. Instead, some elements of Muslimness are deemed acceptable; the "moderate Muslim" sets the standards against which all Muslims must adhere to be considered acceptable, reinforcing the racialized nature of the state, and serving as reminder that the acceptable label can be taken away.⁵⁹ Beneath every acceptable Muslim lurks fear of the Muslim other. As Sherene Razack has argued, Muslim otherness produces a literal and symbolic "casting out".⁶⁰

D. Stereotyped as Violent

Fourth, any definition of Islamophobia must be broad enough to include references to the stereotyping of Muslims as violent across a range of sites or contexts, including but not limited to national security. Islamophobia is often linked to the stereotyping of Muslims as terrorists and potential terrorists. This reflects the element of violence, as contained within Beydoun's definition. Canadians have, of course, seen the influence of Muslim stereotypes on institutional behavior in the national security context where national security agents made conclusions that were clearly influenced by stereotypes. As we know from the involvement of Canadian officials in the torture of Maher Arar, Abdullah Al Malki, and others, the assumption that Arabs and Muslims have a propensity for violence, that they are inherently untrustworthy, that they do not merit the same rights protections as other Canadians, and that they represent an existential

⁵⁷ Said, *supra* note 3.

⁵⁸ Hayden White, "The Forms of Wildness: Archaeology of an Idea" in Edward Dudley & Maximilian E Novak, eds, *The Wild Man Within* (Pittsburg: The University of Pittsburgh Press, 1972) 3 at 5.

⁵⁹ Shelina Kassam, "'Settling' the multicultural nation-state: Little Mosque on the Prairie, and the figure of the 'moderate Muslim'" (2015) 21:6 *Social Identities* 606 at 607.

⁶⁰ See generally Sherene H Razack, *Casting Out: The Eviction of Muslims from Western Law and Politics* (Toronto: University of Toronto Press, 2008) [Razack, "Casting Out"].

threat to Canada has underlined decision-making by national security agencies to disastrous results.⁶¹

Policy documents tend to recognize the Muslim terrorist stereotype. For example, The Ontario Human Rights Commission's *Policy on Preventing Discrimination Based on Creed* ("The Creed Policy"). The offers a definition of Islamophobia that links fear and hostility towards Muslims and Islam with perceptions of terrorism. The Creed Policy notes that Islamophobia:

includes racism, stereotypes, prejudice, fear or acts of hostility directed towards individual Muslims or followers of Islam in general. In addition to individual acts of intolerance and racial profiling...Islamophobia can lead to viewing and treating Muslims as a *greater security threat* on an institutional, systemic and societal level.⁶²

Though Iqra Khalid's private member's motion, number M103, "Systemic Racism and Religious Discrimination", does not explicitly link Islamophobia to stereotypes about terrorism, it does "take note of House of Commons' petition e-411 and the issues raised by it".⁶³ Petition e-411, in turn, notes that "an infinitesimally small number of extremist individuals have conducted terrorist activities while claiming to speak for the religion of Islam. Their actions have been used as a pretext for a notable rise of anti-Muslim sentiments in Canada".⁶⁴

E. Gendered

Given the extent to which national security programs are marshalled to regulate and criminalize Muslim communities, a definition of Islamophobia must recognize the import of national security laws, policies, and practices which are deeply implicated in the promulgation of stereotypical representations of terroristic Muslim masculinity. The definition, however, must also highlight the full host of gendered tropes that Islamophobia can implicate, including the ways in which Muslim women's bodies serve as a site and justification for discriminatory regulation. Sherene Razack identifies the "eternal triangle of the imperiled Muslim woman, the dangerous Muslim man and the civilized European"⁶⁵ as a mainstay of Islamophobic discourse. This

⁶¹ Nazim Baksh & Terence McKenna, "Federal Government Reaches Settlement With 3 Canadian Men Tortured in Syria and Egypt", *CBC* (17 March 2017), online: <www.cbc.ca/news/canada/goodale-freeland-settlement-apology-1.4016572>.

⁶² Ontario Human Rights Commission, *Policy on Preventing Discrimination Based on Creed* (Toronto: OHRC, 2015) at 16 [emphasis added].

⁶³ Canada, House of Commons, *Hansard*, 42nd Parl, 1st Sess, Vol 148, No 141 (15 February 2017) at 8996 (Iqra Khalid).

⁶⁴ "Petition to the House of Commons: E-411 (Islam) 42nd Parl, initiated by Samer Majzoub (Canada: 8 June 2016), online: <<https://petitions.ourcommons.ca/en/Petition/Details?Petition=e-411>>.

⁶⁵ Sherene H Razack, "The 'Sharia Law Debate' in Ontario: The Modernity/Premodernity Distinction in Legal Efforts to Protect Women from Culture" (2007) 15 *Feminist Legal Studies* 3 at 5.

gendered element of the definition of Islamophobia is not explicitly recognized by Beydoun's definition. The relative lack of attention to gender constitutes a gap in the discourse surrounding Islamophobia that needs to be filled by the experiences of Muslim communities and scholarly writings about intersectionality and Orientalism.

Muslim women's experiences with Islamophobia differ than the experiences of those who claim different gender identities. The Canadian Council of Muslim Women have long claimed that Muslim women face a "triple jeopardy" because they experience bias on the basis of religion, race, and gender.⁶⁶ Like other Muslim tropes, particularly the Muslim terrorist trope, gendered Islamophobia has deep Orientalist roots; Muslim women have historically been understood as hapless and homogenous victims waiting for the liberal West to free them from misogyny. Somewhat paradoxically, however, veiled Muslim women have simultaneously been portrayed as powerful threats – whether physical (as participants in "terrorist" activities) or cultural (as vectors for Muslim beliefs and practices deemed foreign and retrograde)⁶⁷ – requiring surveillance and securitization. CSIS's 2018 research report, "Mobilization to Violence (Terrorism) Research", for instance, notes that "the Service's analysis found that female mobilizers [to violence] constitute 20% of mobilizers, a proportion which is growing over time...Women mobilized for a full range of extremist intentions, not just to support male fighters."⁶⁸ Jack Shaheen's analysis of Hollywood imagery of Arabs and Muslims demonstrates the extent to which various stereotypes, including the terrorist stereotype and stereotypes of the Muslim woman in need of saving, pervaded the North American consciousness; similarly, Edward Said's Orientalism theory reinforces that Muslims have long been regarded as the inassimilable other for many reasons, including the association of Islam with violence and the patronizing characterization of women as eternal victims.⁶⁹

Jasmine Zine has succinctly observed that gendered tropes mark "the borders between the binary spaces of the West (read: progress, modernity) and the East (read: illiberal, pre-modern) as irreconcilable halves".⁷⁰ Critics have pointed to the ways in which the need to "[save] Brown women from Brown men" has helped rationalize foreign wars, such as the "wars on terror" in Afghanistan and Iraq.⁷¹ In its domestic

⁶⁶ Daoud Hamdani, "Triple Jeopardy: Muslim Women's Experiences of Discrimination" (March 2005) at 9, online: Canadian Council of Muslim Women Toronto <archive.ccmw.com/publications/triple_jeopardy.pdf>.

⁶⁷ See e.g.: Gholam Khiabany & Milly Williamson, "Veiled Bodies – Naked Racism: Culture, Politics and Race in the Sun" (2008) 50:2 *Race & Class* 69; Neil Macmaster & Toni Lewis, "Orientalism: From Unveiling to Hyperveiling" (1998) 28:1 *Journal of European Studies* 121.

⁶⁸ Canadian Security Intelligence Service, "Mobilization to Violence (Terrorism) Research", (Ottawa: CSIS, 5 February 2018) at 8.

⁶⁹ See generally Jack G Shaheen, "Reel Bad Arabs: How Hollywood Vilifies a People" (2003) 588:1 *Annals American Academy Political & Social Science* 171; Said, *supra* note 3 at 12.

⁷⁰ Jasmin Zine, "Unveiled Sentiments: Gendered Islamophobia and Experiences of Veiling among Muslim Girls in a Canadian Islamic School" (2006) 39:3 *Equity & Excellence in Education* 239 at 240.

⁷¹ Razack, "Casting Out", *supra* note 60 at 17, 20.

variant, gendered Islamophobia points to the ways in which women and their bodies are recruited, invoked, and regulated to define the parameters of the nation, demarcating those who belong from those who should be excluded. Simultaneously, gendered Islamophobia denies voice and agency to those deemed not to belong while it confidently insists that the exclusions are made for their benefit. In its modern manifestation, saving Muslim women both from themselves and from Muslim men has thus become synonymous with saving the nation. The affirmation of the need to save Muslim women from Muslim men, moreover, reinforces the coding of Muslim men as inherently violent and undesirable.

F. State-Driven

In addition to accounting for gendered Islamophobia, a cogent Canadian definition must emphasize that the state also perpetuates Islamophobia. This is the state-driven element of Islamophobia emphasized by Beydoun. State-driven Islamophobia in Canada can be difficult to identify because it often operates subtly; it is not always directly stated but progresses through “minute...techniques” that reveal “‘a new microphysics’ of power.”⁷² In Part III below, we offer a typology of state-driven Islamophobia. At this point, it is sufficient to note that successful Access to Information requests (“ATIs”) have produced some rare glimpses into Islamophobic Canadian state practices. For example, materials produced by the RCMP for police training on radicalization, obtained by Monaghan and Molnar through ATIs, betray an overtly Muslim-centric focus, even though “Canada is at far greater risk of right-wing political violence.”⁷³ Introductory powerpoint presentations that form part of the RCMP training modules on Islam, “are not intended to demonstrate a nuanced understanding of Islam, but instead represent menacing and threatening aspects of Islam as a violent enemy of the West”, according to Monaghan and Molnar.⁷⁴ One slide in a workshop presentation, titled “the future of terrorism?”, contains nothing but an image of a young girl dressed in what appears to be a hijab, with no explanatory text.⁷⁵

Such explicit state targeting of Muslims, to the extent that it exists, often remains hidden from public sight. In Canada, as we note below, the difficulties of obtaining information about potentially Islamophobic state practices bring to high relief the urgency of refocusing scrutiny on the state, even as its modern methods and invocation of state secrecy privileges have made it all the more difficult to scrutinize.

⁷² Michel Foucault, *Discipline and Punish: The Birth of the Prison*, translated by Alan Sheridan (New York: Vintage Books, 1977) at 139 speaking about disciplinary institutions.

⁷³ Jeffrey Monaghan & Adam Molnar, “Radicalisation Theories, Policing Practices, and ‘The Future of Terrorism?’” (2016) 9:3 *Critical Studies on Terrorism* 393 at 402, 404.

⁷⁴ *Ibid* at 403.

⁷⁵ *Ibid* at 408.

G. Dialectical

Finally, a cogent definition of Islamophobia must account for the ways in which private conduct and government action intertwine and reinforce each other. This is the dialectic element of Islamophobia proposed by Beydoun.⁷⁶ The dialectic highlights that individual and state-driven Islamophobia are not parallel problems but consist of intersecting and mutually enforcing attitudes and actions. The dialectical relationship between private and state-driven Islamophobia takes several forms. For example, individuals who hold office can harbour racist attitudes and use their power to give effect to these views. This dialectic relationship was evident in a human rights complaint filed by a Muslim civilian member of the Toronto Police Services. The complainant, Abi Yousufi, was the subject of a professed joke. On September 12, 2001, one day after the downing of the Twin Towers in New York, Detective Keith Bradshaw left a phone message for another detective in an accented voice:

I have a tip for Abi Yousufi taking secret airline pilot lessons at Buttonville Airport to fly 767's and 757's for knockdown twin towers. You will search his locker immediately for Arabic flight manual and he must be interned like the Japanese do during the Second World War. He must be interned. He is evil, evil Islamic militant goodbye.⁷⁷

Reminiscent of a time when women were told that sexual harassment constituted flirting or innocent behavior,⁷⁸ Detective Bradshaw and some of his colleagues expected the complainant to endure comments about terrorism because they were presented in the form of a joke. As news of Bradshaw's message spread, the complainant's co-workers began taunting him about being a 9/11 terrorist suspect. Yousufi's co-workers repeatedly played the Bradshaw message to each other in the workplace and Yousufi became the subject of workplace gossip. A supervisor testified that he referred to the complainant as the "Persian Prince of Passion," again as a joke.⁷⁹

Racism espoused by those who hold public office can cascade and become so pervasive that it begins to define institutional culture. A recent lawsuit filed against CSIS by five intelligence officers and analysts illustrates this type of dialectic or the mutually reinforcing relationship between individuals and government decision-making. In this case, individual CSIS officers are alleged to hold stereotypical and racist views of Muslims. The lawsuit depicts a culture of institutionalized Islamophobia and discrimination, alleging that "racist, sexist, homophobic and discriminatory behaviour has become the accepted culture and norm" at the agency.⁸⁰

⁷⁶ Beydoun, "Towards a Legal Definition", *supra* note 35 at 111.

⁷⁷ *Yousufi v Toronto Police Services Board*, 2009 HRTO 351 at para 17, 67 CHRR D/96 [*Yousufi* cited to neutral citation].

⁷⁸ See e.g. Miranda Fricker, "Powerlessness and Social Interpretation" (2006) 3:1 J Social Epistemology 96 at 98.

⁷⁹ *Yousufi*, *supra* note 77 at para 57.

⁸⁰ *John Doe et al v Her Majesty the Queen in Right of Canada*, [2017] (Plaintiff's Statement of Claim) at para 10, online: <https://www.scribd.com/document/353767258/CSIS-harassment-lawsuit-statement-of-claim#fullscreen&from_embed>.

For instance, a gay employee received an email from a manager warning he should be “careful your Muslim in-laws don’t behead you in your sleep for being homo”⁸¹, and was told repeatedly that “[all] Muslims are terrorists”.⁸² A Muslim analyst was regularly called names like “Muslim Brotherhood” and “Imam” by management, and told to “complain to Allah”.⁸³ A Muslim intelligence officer was subjected to polygraph examination about her religious practices and clothing, restricted from associating with Muslim community organizations under threat of revocation of her security clearance, and told by a supervisor that “Muslim women are inferior”.⁸⁴ A poster displayed in the office depicted the burning World Trade Centre towers, with the words “Ninety-Nine Names of Allah”.⁸⁵

Government action can also enable private conduct, including hate crimes. Immediately after September 11, government officials suggested that racial profiling constituted an effective law enforcement strategy, and public support for profiling rose. Navid Bakli argues that political parties in Quebec cultivated popularity by framing Muslims as the existential Other and proposing policies to regulate Muslim identities and limit Muslim participation. This occurred in the “Reasonable Accommodation Debate” as well as debates over Bill 60, popularly known as The Quebec Charter.⁸⁶ Exclusionary politics also motivated Hérouxville, a small Quebec town, to adopt its 2007 declaration of norms for immigrants. The town proclaimed,

- (1) At Christmas, children sing Christmas songs.
- (2) No stoning women.
- (3) No burning women with acid.
- (4) No ceremonial daggers in school even if you’re a Sikh.
- (5) Boys and girls can swim in the same pool whether Muslims like it or not.
- (6) Men can drink alcohol whether Muslims like it or not.
- (7) No walking around with your face hidden except on Halloween.
- (8) Female police can arrest male suspects even if it troubles their egos.
- (9) Women are allowed to dance.
- (10) Women are allowed to drive.
- (11) Women are even allowed to make decisions on their own.⁸⁷

Assumptions embedded in exclusionary state messaging can motivate and embolden private actors. For example, a day before he opened fire at The Quebec City Mosque,

⁸¹ *Ibid* at para 15(m).

⁸² *Ibid* at para 21.

⁸³ *Ibid* at paras 99(a), 119.

⁸⁴ *Ibid* at paras 64, 69, 86.

⁸⁵ *Ibid* at 99(b).

⁸⁶ Naved Bakali, “Contextualising the Quebec Charter of Values: how the Muslim ‘Other’ is conceptualised in Quebec, Culture and Religion” (2015) 16:4 Culture and Religion 412 at 412.

⁸⁷ *Ibid* at 420.

Alexandre Bissonnette reportedly messaged a Facebook friend, telling him that “in the long run, this non-white, non-European immigration may perhaps lead to the marginalization of whites.”⁸⁸

V. Current Canadian Approaches in Light of the 7 Definitional Criteria

Emotion-based and impact-based definitions of Islamophobia cannot account for Islamophobia’s causes and consequences. Most definitions prevalent in Canadian discourse account for private forms of Islamophobia. Many link Islamophobia with perceptions of Muslims as violent and associated with terrorism. Some definitions point to the long-standing antipathy and multi-faceted misunderstanding that have marked Western understandings of Islam well before 9/11. Others, however, do not.⁸⁹ Further, none of the definitions we examined explicitly recognized the dialectic relationship between private and state-driven Islamophobia even when both private and state forms of racism are acknowledged. Moreover, the question of whether Islamophobia is motivated did not frequently arise on the definitions we examined, and few definitions explicitly recognized Islamophobia’s gendered dimensions.

Significantly, as Beydoun has identified in the American context, too much of the policy discussion that takes place in Ontario centres around the Islamophobia on non-state actors. For example, the Ontario Anti-Racism Directorate’s report, “A Better Way Forward: Ontario’s 3-Year Anti-Racism Strategic Plan” (“The Strategic Plan”), describes itself as taking “proactive steps to fight and prevent systemic racism in government decision-making, programs and services.”⁹⁰ Despite The Strategic Plan’s commitment to examining government conduct, the remedies identified focus on combating Islamophobia manifest in private conduct. The Strategic Plan emphasizes public education as well as research, and high school outreach to prevent hate crimes; it also recommends the compilation of data from police sources about Islamophobic incidents.⁹¹ The message conveyed is that government’s task is to harness resources to combat Islamophobia that exists outside of its own structures and policies.

⁸⁸ Jonathan Montpetit, “Whites Risk Marginalization, Mosque Shooting Suspect Told Friend a Day Before Attack”, *CBC* (3 February 2017), online: <www.cbc.ca/news/canada/montreal/alexandre-bissonnette-trump-travel-ban-quebec-mosque-shooting-1.3966687>.

⁸⁹ OHRC, *supra* note 18 at 10: The Ontario Human Rights Commission’s Policy on Racism and Racial Discrimination, for example, emphasizes “Islamophobia” as a modern or “emerging form of racism”. Others, by contrast, point to fear’s deeper roots; 9/11 is presented as having amplified but not created the fear of Islam. See Jamil, *supra* note 23 at “Introduction” [footnotes omitted]: A special issue of *Diversity Magazine*, by contrast, links present fear with past associations. Citing Razack, the paper notes “[t]he fear evoked by the attacks re-ignited existing perceptions of Muslims as “different” and reinforced their perceived connection to violence and terrorism”.

⁹⁰ Ontario, Anti-Racism Directorate, “A Better Way Forward: Ontario’s 3-Year Anti-Racism Strategic Plan” (Toronto: Queen’s Printer for Ontario, 2017), online: <<https://www.ontario.ca/page/better-way-forward-ontarios-3-year-anti-racism-strategic-plan>>.

⁹¹ *Ibid* at 32.

Similarly, the Ontario Legislative Assembly has condemned Islamophobia several times while emphasizing individual acts of hatred and “encouraging people to stand up in their neighbourhoods and their schools against hate and discrimination.”⁹² Jagmeet Singh, while an MPP for the New Democratic Party in Ontario, also presented a view of Islamophobia as private conduct,⁹³ as did ARD Minister Michael Coteau.⁹⁴ A provincial Liberal convention resolution from 2016 condemned “all forms of Islamophobia,” but only listed private acts of violence; the body of the resolution refers to “harassment, violent attacks, murders, arson, graffiti, property damage and death threats against Muslims.”⁹⁵ Along the same lines, an online project jointly created by the Ontario Council of Agencies Serving Immigrants, The Canadian Arab Institute, The National Council of Canadian Muslims, and the Ontario Human Rights Commission asks individuals to pledge: “I will reject Islamophobia and racism in all its forms, and pledge to help take a stand wherever and whenever I encounter it.”⁹⁶ Even the NCCM Charter does not sufficiently highlight the role of the state in perpetuating Islamophobia. While the NCCM Charter notes that “all levels of government, civil society, communities, and public officials have a duty to work together in developing policies, programs and initiatives to reduce and eliminate Islamophobia in all of its forms”,⁹⁷ the examples it provides are focused on private acts of Islamophobia. The examples include public acts of violence against women, vandalization of mosques, discrimination at work and school, and other forms of hate crimes.⁹⁸ The point of these observations is not to criticize the value of education and solidarity building initiatives aimed at individuals. Rather, it is to observe that such strategies do not offer a

⁹² Ontario, Legislative Assembly, *Hansard*, 41st Parl, 2nd Sess, No 104 (16 October 2017) at 5618 (Hon Laura Albanese).

⁹³ Ontario, Legislative Assembly, *Hansard*, 41st Parl, 2nd Sess, No 72 (26 April 2017) at 3810 (Jagmeet Singh): “The Peel school board saw some really horrible racism as well, and it was targeted against the Muslim community. That Islamophobia was just disgusting to see. It was very divisive, but there was also a shining example of hope when other communities came together to support their Muslim brothers and sisters. That is something that we need to see more of, the idea that we need to work together.”

⁹⁴ Ontario, Legislative Assembly, *Hansard*, 41st Parl, 2nd Sess, No 69 (13 April 2017) at 3665 (Hon Michael Coteau). The debates do not explicitly point to government as a source of Islamophobia but instead direct attention towards acts committed by individuals:

I would like to thank the member from Etobicoke North for the question, and I'd like to thank the imam and our other guests for joining us here in the Legislature. It is a true privilege to have you here today from Quebec.

Mr. Speaker, the tragedy that took place in Quebec reminds us all that Islamophobia is real here in the province of Ontario and it's a problem right across this country.

Ontario is home to 61% of all Muslims in Canada and we are home to 90% of Muslims who are racialized. Here in the city of Toronto, 5% of our population is Muslim. This is the largest population in all of Canada, and including the United States.

⁹⁵ “Condemning All Forms of Islamophobia”, resolution P-07 moved by the Liberal Party of Canada, online: <<https://winnipeg2016.liberal.ca/policy/condemning-all-forms-of-islamophobia/>>.

⁹⁶ “Racism Stops When We Break the Behaviour”, online: <www.breakthebehaviour.ca/>.

⁹⁷ “Charter for Inclusive Communities”, *supra* note 27 at 1.

⁹⁸ *Ibid.*

complete response to Islamophobia, and they risk masking systematic forms and manifestations of Islamophobia.

Of course, one cannot explain the privileging of private Islamophobic acts in policy discussions and remedial responses simply by the fact that current approaches to defining Islamophobia do not pay sufficient attention to the role of the state and government actors.

A definition can only do so much to shape and define discussions. Indeed, at least some of the definitions that have been advanced, particularly if read purposefully, do not exclude the state from their ambit. There is nothing logically inconsistent with recognizing that fear is a feature of Islamophobia and that the state is a peddler of fear. Indeed, the two may be inextricably linked. As Mark Rifkin has argued in relation to the settler colonial state, the unexamined “structures of feeling” of those who hold settler power help stabilize the state’s racial formations and drive exclusionary national building narratives.⁹⁹ Nonetheless, the fear motif may lend itself to analyses that emphasize individual acts of discrimination and violence, perhaps because fear is an emotion. Emotions, even where they might define a particular social psychology, are often understood as manifesting in individual behavior. More generally, emotion-based definitions of Islamophobia, including those that emphasize individualized hate or hostility, deflect attention away from the ways in which national self-identification is entangled with and even, at times, collapses into the rejection of Islam. Put simply, emotion-based analyses of Islamophobia do not adequately account for the ways in which Islamophobia has become part of the discourse and apparatus of Canadian nation-building.

Similarly, definitions that stress Islamophobia as the product of an “othering process” prove incomplete. They cannot explain this complex form of racism in all its manifestations and dimensions. While moving away from privatized emotions as the foundations for Islamophobia, the othering thesis, as presented in the policy documents and case law we examined, has also failed to direct attention towards the state’s role in othering Muslims and has not encouraged fulsome analysis of the ways in which private and state-driven Islamophobia combine and coalesce. A broad definition of Islamophobia that contains the seven features that we discuss above – individual, state-driven, motivated, violent, gendered, Orientalist, and dialectic – can serve as a corrective reminder, guiding the way for future policy-making, highlighting the need for attention to the dialectic relationship between state and individual, and supporting assessments advanced by those who refuse to narrow discussions to private actions.

⁹⁹ See generally Mark Rifkin, “Settler States of Feeling: National Belonging and the Erasure of Native American Presence” in Caroline Field Levander & Robert S Levine, eds, *A Companion to American Literary Studies* (Malden, Massachusetts: John Wiley & Sons, 2011) 342.

VI. A Definition For The Canadian Context

Beydoun's definition offers a useful starting point for constructing a definition of Islamophobia appropriate for the Canadian context; it includes the private, Orientalist, violence, state-driven and dialectic elements of Islamophobia. We propose, however, to modify Beydoun's definition in three ways to make it more relevant to Canada and Canadians, while still being relevant to the American context as well. First, we avoid the term "citizen" in favour of wording that emphasizes that corporations and institutions also perpetuate Islamophobia, and that it is not only in the realm of "private citizens.;" Beydoun makes this point throughout his work.¹⁰⁰ However, we propose incorporating it directly in the definition. Second, we propose emphasizing other forms of Islamophobia that arise outside of the national security context, particularly those targeting Muslim women. In brief, we add a gendered element of Islamophobia. Third, we have modified Beydoun's definition to emphasize that state-driven Islamophobia in Canada does not always take explicit forms (such as Trump's ban on entry into the United States of individuals from predominantly Muslim countries), but also proceeds through more implicit modes of targeting and discrimination.

Adopting the benefits of current definitions advanced in the Canadian context and taking inspiration from Khaled Beydoun's analysis, but seeking to fill the gaps presented by both sources, we propose the following definition of Islamophobia:

Perpetrated by private actors and the state for the purposes or with the effect of creating fear and hostility towards Muslim communities, Islamophobia is the belief that Muslims are different from the rest of Canadian society, and that Canada needs to be protected from Muslims because they are inherently violent, patriarchal, alien, and inassimilable. Islamophobia includes the explicit and motivated targeting of Muslims, as well as legislative, policy, and adjudicative silences that implicitly perpetuate long-standing, negative stereotypes of Muslims. Private and public forms of Islamophobia exist in a mutually reinforcing dialectic relationship.

This definition explicitly includes *private* Islamophobia within its scope. By positing that Islamophobia can be deployed "for the purposes...of creating fear and hostility", the definition also recognizes that Islamophobia plays on negative emotions while the opening phrase, which emphasizes "private actors and the state", highlights that these emotions are harnessed by a range of actors, including individuals, corporations, and the state. The influence of Orientalism and neo-Orientalism on the definition is evident in the emphasis on Muslim differences, the reference to presumed negative Muslim characteristics as well as by the phrase "long-standing, negative stereotypes" and the use of the words "alien" and "inassimilable", as inspired by Beydoun. The national security implications of the definition are highlighted in the descriptor "violent" and the gendered dimensions are highlighted in the descriptor "patriarchal". In addition to the reminder that the state is a source of Islamophobia in the opening sentence, the later sentence points to legislation, policy, and courts or tribunals as the sites in which Islamophobia can be implicitly perpetuated. The words "legislative, policy, and

¹⁰⁰ See e.g. Beydoun, "American Islamophobia", *supra* note 10.

adjudicative silences” indicate that this form of racism is perpetuated by governments in a myriad of ways and not simply through government actions that directly target Muslims and Muslim communities. The words “explicit”, “motivated”, and “implicit” point to the various forms that Islamophobia can take. Finally, the dialectic relationship between individual and state-driven Islamophobia, as emphasized by Beydoun, is suggested by the positioning of “individuals and the state” together as perpetrators of Islamophobia. The dialect elements are then explicitly drawn in the final sentence.

A broad definition of Islamophobia that contains the seven features that we propose (individual, state-driven, motivated, violent, gendered, Orientalist, and dialectic) more accurately reflects the ways in which Islamophobia manifests and affects people’s lives, guiding the way for future policy-making, highlighting the need for attention to the dialectic relationship between state and individual, and supporting assessments advanced by those who refuse to narrow discussions to private actions. A definition that explicitly directs attention to the role of the state and the dialectic relationship between the state and private actors also encourages greater attention on the ways in which the state can itself peddle fear and other Muslims. But, Canadian multiculturalism helps mask the ways in which the state peddles fear and creates social cleavages by building fear.¹⁰¹ Our definition points to the role of the Canadian state in creating social cleavages. Our definition also encourages a broader analysis of the ways in which Islamophobia might serve state interests and further particular political ideologies.

VII. State-driven Islamophobias

A. Direct Targeting

Canadian Islamophobic practices are often shielded from view by legal and political screens – including state secrecy privileges connected with national security, and the failure to collect and publicize data that might reveal racial profiling in operation. Hameed and Monaghan have chronicled the difficulties of employing the *Access To Information Act* to gather data from agencies involved in national security work.¹⁰² Citing Gary Marx, they remind us that power resists the revelation of dirty data and that researchers, taking the path of least resistance, study in the places where they are tolerated, often “at the bidding (or at least with the resources) of the very elites who sit atop mountains of dirty data.”¹⁰³ The lack of access to information about government programs and practices thus complicates efforts to document and analyze

¹⁰¹ See e.g. Kassam, *supra* note 59, at 614.

¹⁰² Yavar Hameed & Jeffrey Monahan, “Accessing Dirty Data: Methodological Strategies for Social Problems Researchers” in Mike Larson & Kevin Walby, eds, *Brokering Access: Politics, Power, and Freedom of Information Process in Canada* (Vancouver: UBC Press, 2012) 142.

¹⁰³ Gary T Marx, “Notes On The Discovery, Collection, And Assessment Of Hidden And Dirty Data” in Joseph Schneider & John Kitsuse, eds, *Studies in the Sociology of Social Problems* (Norwood, NJ: Ablex Pub Corp, 1984) 78 at 81, cited in Hameed & Monahan, *supra* note 102 at 142.

state-driven Islamophobia. Moreover, national security justifies secrecy, and accountability is limited.¹⁰⁴ National security exacerbates the transparency problem where secrecy is the norm. National security agencies have refused to heed the Canadian Human Rights Commission's call to collect and analyze race-disaggregated data on their operations, prompting the Commission to observe that "[n]ot only is there no accountability framework in place, national security organizations are not required to collect and report data on human rights performance in practice."¹⁰⁵ With limited access to information, the terrain of state-driven Islamophobia in Canada proves difficult to map comprehensively.

Nonetheless, we know that Canadian governments sometimes explicitly and directly target Muslims. For example, Operational Bulletin 359, issued by Jason Kenney when he was Minister of Justice and Immigration under Stephen Harper's Conservative government, directly targeted Muslim women who wear the niqab. Operational Bulletin 359 directed immigration officials and citizenship judges to require oath takers to remove their face covering while taking the oath.¹⁰⁶ Internal Ministry correspondence revealed that the Minister would not leave the administration of the oath to the discretion of officials or judges. In an email dated December 13th, 2011, an immigration official wrote:

Under the new directive [Operational Bulletin 359] ...all candidates for citizenship must be seen taking the oath of citizenship at a citizenship ceremony. For candidates wearing full or partial face coverings, face coverings must be removed at the oath taking portion of the ceremony in order for CIC officials and the presiding official (Citizenship Judge) to ensure that the candidate has in fact taken the Oath of Citizenship. Under this new directive there are no options for private oath taking or oath taking with a female official as all candidates for citizenship are to repeat the oath together with the presiding official.¹⁰⁷

Considering a constitutional challenge to the requirement to remove face coverings in public for the purpose of taking the citizenship oath, the Federal Court observed that the Minister had Muslim women in mind when he issued the directive. The Court noted:

The Minister at the time said during an interview with the CBC on December 12, 2011, that the Policy was adopted after one of his colleagues

¹⁰⁴ See the collection of papers in *Brokering Access: Politics, Power, and Freedom of Information Process in Canada*, supra note 102.

¹⁰⁵ Canadian Human Rights Commission, "Human Rights Accountability in National Security Practices: A Special Report to Parliament", Catalogue No HR4-13/2011, (Ottawa: CHRC, November 2011) at 2, online: <<http://www.chrc-ccdp.gc.ca/sites/default/files/chrc-specialreport-28112011.pdf>>.

¹⁰⁶ "CIC Bans People from Wearing the Veil During Citizenship Oaths" *Steven Meurrens Canadian Immigration Lawyer* (blog), online: <<https://meurrensonimmigration.com/cic-bans-people-from-wearing-the-veil-during-citizenship-oaths/>>. Note, however, that the ban was deemed unlawful and was overturned: *Ishaq v Canada (Citizenship and Immigration)*, 2015 FC 156 at paras 68-70, [2015] 4 FCR.

¹⁰⁷ *Ishaq v Canada (Citizenship and Immigration)*, supra note 106 at para 47 [emphasis in original].

told him about a citizenship ceremony where four women had been wearing *niqabs*. The Minister stated in this interview that taking the citizenship oath “is a public act of testimony in front of your fellow citizens, it’s a legal requirement, and it’s ridiculous that you should be doing so with your face covered”; and also that: “[y]ou’re standing up in front of your fellow citizens making a solemn commitment to respect Canada’s laws, to be loyal to the country, and I just think it’s not possible to do that with your face covered.”¹⁰⁸

Though they preceded President Donald Trump’s travel bans, Minister Kenney’s directive was just as clearly aimed at Muslim communities.

B. Silent Islamophobias

As Islamophobia in the United States becomes increasingly direct and explicit, Canadians risk becoming fixated on direct targeting by the state as the quintessential form of Islamophobia, even as we broaden our understanding of Islamophobia to extend beyond acts perpetrated by private individuals. But, state-driven Islamophobia is not always so transparent, and it does not always take obvious forms. Sometimes, difficulties in documenting and analyzing state-driven Islamophobia arise from the fact that Islamophobia in Canada proceeds quietly and indirectly. It proliferates through the power of the unsaid and proves difficult to document, even if it carried out relatively openly. We call this “Silent Islamophobia”.

Adopting the strategy of “reading silences”, the next section identifies five discrete but overlapping forms of silences that perpetuate Islamophobia in Canada and offers examples of each form as illustrations. These five forms are: i) the coding or targeting of Muslims without naming them; ii) permission or the tacit license to engage in harmful race-based practices; iii) denial of or the failure to name Islamophobic tropes that underlie an impugned act or decision; iv) individualization or the presentation of Islamophobia as emanating from extreme and aberrant conduct; and, v) diminishment or the minimization of Islamophobia, partially by creating confusion or controversy about its meaning and impacts.

By “silent,” we do not mean that the Islamophobia is not heard – Muslim audiences hear it clearly – or that it is not violent. We mean simply that the Islamophobia of this nature is not declared openly by government actors, but rather operates through inactions and/or a lack of words. Silent Islamophobia aims at a state of “endarkenment”, making it difficult to name, blame, or claim equal rights and equal social citizenship.

¹⁰⁸ *Ibid* at para 49.

1. Coding

Coding,¹⁰⁹ the first form of silent Islamophobia, refers to the process whereby laws and policies target and implicate Muslims while remaining facially neutral vis-à-vis Muslim identity.¹¹⁰ The association of Muslim with terrorist in and through the law proves a cogent example. Laws criminalizing terrorism do not name Muslims as their targets: “terrorism” is defined in Canadian law, in post-9/11 amendments to the *Criminal Code*, as serious violence to people or property “that is committed in whole or in part for a political, religious or ideological purpose...with the intention of intimidating the public, or a segment of the public, with regard to its security...or compelling a person, a government or a domestic or an international organization to do or refrain from doing any act.”¹¹¹ In their application, however, the terrorist provisions of the *Criminal Code* do not simply sort out terrorists from the rest of society, but instead serve as sites where “terrorism” is racialized through its association with or coding as Muslim.

In *White by Law*, Haney Lopez demonstrated that law is an important site where race is made. Law does not simply reflect racial formations as they already exist, but actively participates in the production of race. According to Haney Lopez, the legal construction of racial difference now usually occurs by use of “[l]egal terms that do not refer explicitly to race [but] nevertheless come to serve as racial synonyms.”¹¹² Like “Whiteness,” which was the particular focus of Haney Lopez’s analysis, “terrorism” is characterized by a fundamental instability in meaning; scholars largely concur that there is no internationally agreed-upon definition of “terrorism”, and domestic codes diverge on basic definitional aspects.¹¹³ The radical textual instability of the term “terrorism” is resolved by its sub-textual racialization.

¹⁰⁹ The term “coding” is borrowed from Martin Gilens, “Race Coding and Opposition to Welfare” (1996) 90:3 *The American Political Science Review* 593. Gilens helped popularize the word in legal discourse. See also Constance Backhouse, *Colour-Coded: A Legal History of Racism in Canada, 1900-1950* (Toronto: University of Toronto Press, Scholarly Publishing Division, 1999) for an example of the concept of coding applied to racialization and the law in Canada.

¹¹⁰ The examples used to illustrate coding are excerpted from Azeezah Kanji, “Muslim by Law: The Legal Construction of the Racialized ‘Terrorist’ in Canada” (Paper delivered at the 4th Annual Paris Islamophobia Conference, *Contending Epistemologies: Euro-Centrism, Knowledge Production and Islamophobia*, 9 December 2016) [unpublished].

¹¹¹ *Criminal Code*, RSC 1985, c C-46, s 83.01(1)(b)(i).

¹¹² Ian Haney-López, *White by Law: The Legal Construction of Race* (New York University Press, 2006) at 90.

¹¹³ See e.g. Ben Golder & George Williams, “What is ‘Terrorism’? Problems of Legal Definition” (2004) 27:2 *University of New South Wales Law Journal* 270; Sami Zeidan, “Desperately Seeking Definition: The International Community’s Quest for Identifying the Specter of Terrorism” (2004) 36:3 *Cornell International Law Journal* 491; Ben Saul, “Civilising the Exception: Universally Defining Terrorism” in Aniceto Masferrer, ed, *Post 9/11 and the State of Permanent Legal Emergency: Security and Human Rights in Countering Terrorism* (Dordrecht: Springer, 2012). Conor Gearty, *Can Human Rights Survive?* (Cambridge: Cambridge University Press, 2006) at 109–110: As Conor Gearty wryly observes, “the whole point of the subject of terrorism [is] that there [is] no definition. The importance of the subject, its utility to those who mattered, relied upon the impossibility of it ever being tied down.”

In *Disciplining Terror: How Experts Invented 'Terrorism'*, Lisa Stampnitzky charted a shift that has occurred in the way the term “terrorism” is deployed: while originally conceptualized as a *tactic* or a *tool* used by a wide variety of political actors, “as the problem of terrorism took shape over the course of the 1970s, 1980s, and 1990s, it came to be understood as rooted to a terrorist identity, rather than as a tactic that any group might adopt.”¹¹⁴ This “terrorist” identity is deeply racialized in the age of the “global war on terror”. In Canadian government policy documents as well as in media reports, the term “terrorism” now largely serves as a “seemingly neutral synonym”¹¹⁵ for violence (or the threat of violence) emanating from Muslims.¹¹⁶ Indeed, the assumption of a Muslim male monopoly on terrorism is so hegemonic that it is virtually taken as common sense. For example, the Royal Canadian Mounted Police's publication “*Radicalization: A Guide for the Perplexed*” perplexingly and inaccurately insisted that “virtually all of the planned or actual terrorist attacks in Western Europe and North America since 9/11 have been carried out by young Muslims” without citing a single supporting source or statistic.¹¹⁷

Canada law and policy thus largely confine “terrorism” to “Muslim”. By 2016, there had been 26 completed “terrorism” prosecutions under the post-9/11 Canadian anti-terrorism laws – with a 95-percent conviction rate for cases brought to trial – and all but one case have involved Muslims or individuals linked to Muslim groups.¹¹⁸ The almost-exclusively Muslim focus of “terrorism” prosecutions does not reflect the spectrum of political/ideological violence in Canada, in which right-wing and White-supremacist violence features far more regularly and harmfully.¹¹⁹ And yet, Canadian law marks the Muslim “terrorist” in Canada as a different, more radically dangerous species than the perpetrators of other types of violent crime. This difference is articulated in judicial decisions through several intertwined themes, all underpinned by the construction of the “terrorist” as a Muslim other. In *R v Khalid*, for instance, Justice Durno of the Ontario Superior Court stated that terrorist offences are the “most vile form of criminal conduct...They attack the very fabric of Canada's democratic ideals...Their motivation is unique and fundamentally at odds with the rule of law.”¹²⁰

¹¹⁴ Lisa Stampnitzky, *Disciplining Terror: How Experts Invented 'Terrorism'* (New York: Cambridge University Press, 2013) at 18.

¹¹⁵ Haney-Lopez, *supra* note 112 at 91.

¹¹⁶ See Public Safety Canada, “2017 Public Report on the Terrorist Threat to Canada”, (Ottawa: Her Majesty the Queen in Right of Canada, 2017), online: <<https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/pblc-rprt-trrst-thrt-cnd-2017/pblc-rprt-trrst-thrt-cnd-2017-en.pdf>>.

¹¹⁷ Royal Canadian Mounted Police, “*Radicalization: A Guide for the Perplexed*” by the National Security Criminal Investigations (Ottawa: RCMP, 2009) at 3.

¹¹⁸ Craig Forcese, “Informal Tabulation of Completed Terrorism Prosecutions in Canada Involving Incidents Occurring After the Enactment of the 2001 *Anti-Terrorism Act*” (14 September 2016), online: <static1.1.sqspcdn.com/static/f/842287/27246552/1473886808017/Terrorism+Prosecutions+Table.pdf?to=ken=io6%2BS4T7t2EYBV3Wpki%2FcX%2BpQx4%3D>.

¹¹⁹ Catherine Solyom, “The Trump Effect and the Normalization of Hate in Quebec”, *Montreal Gazette* (15 November 2016), online: <montrealgazette.com/news/quebec/the-trump-effect-and-the-normalization-of-hate>.

¹²⁰ *R v Khalid*, 2009 CarswellOnt 9874, 2009 OJ 6414 at 108 (QL) (Sup Ct J).

In *R v Gaya*, Justice Hill of the same court proclaimed that the “evil of terrorism” is anathema in “civilized societies committed to the rule of law, [where] it is freedom of expression and democratic processes which advance public debate relating to political, religious, economic and social issues.”¹²¹ Muslim violence is uniquely projected as something external to Canadian values and society, obscuring Canada’s own foundational structures of colonial violence.

The racialization of terrorism is also manifest in tests applied to demarcate the terrorist from other criminals. The metrics normally used to assess risk of recidivism and potential for rehabilitation are deemed inapplicable to Muslim “terrorists” – because “terrorists”, unlike other offenders, are said to engage in violence not because of some personal psychopathy but because they are infected by “radical” religious ideology. In *R v Ahmed*, for example, a special “Assessment and Treatment of Radicalization Scale”, was administered to determine the risk of reoffending posed by the accused. Despite the superficially race- and religion-neutral name of the scale, its Muslim-specific formulation is evident from the six dimensions measured, which reflect common tropes in the Orientalist canon: “Negative Attitudes Towards Israel”, “political views that are advocated by Middle Eastern extremists such as opposing secular laws and governments, and advocating the implementation of Sharia Law”, “Attitudes Toward Women”, “Negative Attitudes Towards Western Culture”, “Religiosity,” and “Condoning Fighting, [which] measures views that...promote acts of violence as a means for the revival of religion with the goal of destroying infidels and achieving one world under the Islamic religion.”¹²²

The work that racial logic does in “terrorism” cases is highlighted by way of contrast with non-“terrorism” cases involving White defendants charged with acts of violence that would likely be called “terrorism” if performed by a Muslim. Justin Bourque, for example, pled guilty to killing three RCMP officers and wounding two in a targeted shooting spree in 2014, and was sentenced to life in prison for murder and attempted murder.¹²³ In his sentencing, the judge described Bourque as the perpetrator of “one of the worst [crimes] in Canadian history,” but never as a “terrorist” (although he did “terrorize” the community).¹²⁴ While Bourque’s own lawyer characterized him as “immersed in right wing, gun nut culture”,¹²⁵ his ideology received minimal attention. His actions were decried as “horrific” and “heinous”,¹²⁶ but not as fundamentally antithetical to “the very fabric of Canadian democratic ideals” or existentially threatening to “the very foundations of Canadian society”.

¹²¹ *R v Gaya*, [2008] OJ No 2066, 2008 CanLII 24539 at para 161 (Sup Ct J).

¹²² *R v Ahmed*, 2014 ONSC 6153 at para 30, 122 OR (3d) 675.

¹²³ *R v Bourque*, 2014 NBBR 237, 2014 NBQB 237 [*Bourque* cited to neutral citation].

¹²⁴ *Ibid* at paras 38, 15.

¹²⁵ “Justin Bourque’s Lawyer Slams Gun Laws”, *CBC* (31 October 2014), online: <www.cbc.ca/news/canada/new-brunswick/justin-bourque-s-lawyer-slams-gun-laws-1.2820233>.

¹²⁶ *Bourque*, *supra* note 123 at paras 48–49.

Bourque was not painted as an enemy outsider, but as an insider gone horribly astray – in stark contrast to the law’s phantasm of the “radical Muslim terrorist”.

While prosecutions under the *Anti-Terrorism Act* exemplify the coded targeting of Muslim men as “terrorists”, the *Zero Tolerance for Barbaric Cultural Practices Act* (“*Barbaric Cultural Practices Act*”) demonstrates the inscription of stereotypes of Muslim woman victimhood into law.¹²⁷ Introduced by then-Minister of Citizenship and Immigration Chris Alexander in 2014, the *Barbaric Cultural Practices Act* is intended to “demonstrate that Canada’s openness and generosity does not extend to early and forced marriage, polygamy or other types of barbaric cultural practices”¹²⁸ – closely echoing the language of the Conservative government’s earlier revisions to the citizenship test study guide.¹²⁹ The government website posting which heralded the *Barbaric Cultural Practices Act* proclaimed that “Canada will not tolerate any type of violence against women or girls, including spousal abuse, violence in the name of so-called ‘honour,’ or other, mostly gender-based violence.”¹³⁰ The *Barbaric Cultural Practices Act* introduced amendments to several pieces of legislation – the *Immigration and Refugee Protection Act*, the *Civil Marriage Act*, and the *Criminal Code* – the effects of which include: the creation of a new immigration inadmissibility provision for polygamy, so that temporary and permanent residents who practice polygamy in Canada may be subject to removal;¹³¹ the establishment of a new national minimum age for marriage (at sixteen years old);¹³² the criminalization of active and knowing participation in a forced marriage ceremony, including by parents or other family members;¹³³ and, the restriction of the provocation defence, so that lawful conduct by the victim can no longer qualify as provocation¹³⁴ – this this is to “address concerns that the defence...has been raised in several so-called ‘honour’ killing cases in Canada.”¹³⁵

Like terrorism, the forms of gendered violence marked out for special excoriation as “barbaric cultural practices” (like “honour violence”, polygamy, and forced marriage) are paradigmatic examples of kinds of violence virtually defined as practices associated with particular culturally- and racially-marked communities. This

¹²⁷ *Zero Tolerance for Barbaric Cultural Practices Act*, SC 2015, c 29 [*Barbaric Cultural Practices Act*].

¹²⁸ Government of Canada, “Zero Tolerance for Barbaric Cultural Practices Act: An Overview” (2014), online: <<https://www.canada.ca/en/news/archive/2014/11/zero-tolerance-barbaric-cultural-practices-act-overview.html>>.

¹²⁹ Citizenship and Immigration Canada, “Discover Canada: The Rights and Responsibilities of Citizenship” (Ottawa: Citizenship and Immigration Canada, 2012) at 9, online: <<https://www.canada.ca/content/dam/ircc/migration/ircc/english/pdf/pub/discover.pdf>>.

¹³⁰ Government of Canada, *supra* note 128.

¹³¹ *Barbaric Cultural Practices Act*, *supra* note 127 at Part 1.

¹³² *Ibid* at Part 2.

¹³³ *Ibid* at Part 3.

¹³⁴ *Ibid*.

¹³⁵ Government of Canada, *supra* note 128.

remains true even as racialization is disavowed by government representatives, who emphatically denied that the *Barbaric Cultural Practices Act* targets any particular cultural community (ostensibly being concerned instead with “cultural practices” that transcend community boundaries).¹³⁶ Lila Abu-Lughod remarks, for example, that honour crimes are:

marked as a culturally specific form of violence, distinct from other widespread forms of domestic or intimate partner violence, including the more familiar passion crime. Neither values of honor nor their enforcement through violence is ever *said* to be restricted to Muslim communities, nor are honor crimes condoned in Islamic law or by religious authorities. Yet somehow their constant association with stories and reports from the Middle East and South Asia, or immigrant communities originating in these regions, has given them a special association with Islam.¹³⁷

The identification of “honour killings,” polygamy, *et cetera* with certain communities stigmatizes the “dangerous Muslim men” who are thought to commit such “barbaric” acts of violence and, by extension, the “cultures” responsible for producing them – while Muslim women are abjectified as imperilled subjects, victims of “death by culture”.¹³⁸ The use of broad culturalist explanations for certain forms of violence against women tars entire communities with the same indiscriminate and essentializing brush. Conversely, the portrayal of “mainstream” gendered violence as an individual – as opposed to cultural – problem bars recognition and scrutiny of Canada’s own “tolerated residuum”¹³⁹ of gendered violence. As Leti Volpp argues, the “culturalization” of violence against women enables the “[e]xtraterritorializing of problematic behaviour by projecting it beyond the borders of ‘American [or Canadian] values’”; this “has the effect both of equating racialized immigrant culture with sex-subordination, and denying the reality of gendered subordination prevalent in

¹³⁶ See e.g. Canada, House of Commons Debates, 41st Parl, 2nd Sess, No 232 (16th June 2015) at 15129 (Hon John McCallum).

¹³⁷ Lila Abu-Lughod, *Do Muslim Women Need Saving?* (Cambridge, Mass: Harvard University Press, 2013) at 114. Uma Chakravarti likewise argues that “the violence becomes associated with the uniqueness of Asian cultures, with irrational communities and aberrant and archaic patriarchal practices refusing to modernise.” Uma Chakravarti, “From Fathers to Husbands: Of Love, Death and Marriage in North India” in Lynn Welchman & Sara Hossain, eds, *“Honour”: Crimes, Paradigms and Violence Against Women* (London, UK: Zed Books, 2005) 308 at 309.

¹³⁸ Uma Narayan, “Cross-Cultural Connections, Border Crossings, and ‘Death by Culture’: Thinking About Dowry-Murders in India and Domestic-Violence Murders in the United States” in *Dislocating Cultures: Identities, Traditions and Third-World Feminisms* (London, UK: Taylor and Francis, 1997) 81 at 84–85. For a similar critique based on, see Professor Anver Emon’s analysis of the inclusion of Muslim polygamy practices in the 2011 polygamy reference in British Columbia (*Reference Re: Section 293 of the Criminal Code of Canada*, 2011 BCSC 1588, 279 CCC (3d) 1) “despite the fact that Muslim marital practices in Canada were factually irrelevant to the proceedings.” Canada, House of Commons, *Evidence*, 42nd Parl, 1st Sess, No 076 (4 October 2017) at 1 (Dr. Anver Emon).

¹³⁹ “In North America, despite laws against rape, intimate partner violence, and sexual harassment, society collectively tolerates a startlingly high level of ongoing abuse. This is the ‘tolerated residuum’”. Jennifer Nedelsky, *Law’s Relations: A Relational Theory of Self, Autonomy, and Law* (New York: Oxford University Press, 2011) at 325.

mainstream white America.”¹⁴⁰ The Canadian government’s proclamation that the *Barbaric Cultural Practices Act* is necessary to prevent application of the provocation defence in cases of “honour killing” exemplifies this dynamic of projection-and-denial. The provocation defence has never been successfully invoked by a defendant claiming he or she murdered for the sake of “honour”.¹⁴¹ On the contrary, as a recent study conducted by Pascale Fournier, Pascal McDougall, and Anna Dekker reveals, the defence disproportionately operates to partially excuse White men charged with intimate femicide: their analysis of fifty-four Canadian cases found that twenty-five percent of accused White men successfully pled the defence, versus eleven percent of men of “other”(ed) ethnicities.¹⁴²

2. Permission

Permission constitutes the second form of Silent Islamophobia. It refers to legislative and regulatory silences that allow forms of Islamophobia to proceed unchecked by government officials in carrying out their statutory duties. Islamophobia is thus given license to proliferate by the failure of governments to act. Racial profiling practices by law enforcement represent a good example. Released on September 18, 2006, the report by the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar (“the Arar Commission”) confirmed the suspicions of many. Canadian officials engage in racial profiling when they investigated Maher Arar through the lens of race-based and religious stereotypes.¹⁴³ The RCMP, for example, profiled Arar and his family by labelling them “Islamic extremist[s]” without basis, and subsequently passed that information on to American officials.¹⁴⁴ As a result, the Americans detained Arar and sent him to Syria to be tortured in the name of national security. After more than 120 days of testimony at a cost of \$15 million by the time the main phase of the Arar Inquiry was concluded in September 2005, Canadians learned the extent to which racial profiling plagues national security investigations in Canada. While politicians, scholars, and police all condemn profiling, Arab and Muslim communities continue to maintain that profiling takes place in various contexts, including policing and national security.¹⁴⁵ In her testimony before the

¹⁴⁰ Leti Volpp, “Blaming Culture for Bad Behaviour” (2000) 12:1 *Yale JL & Human* 89 at 115; see also generally Leti Volpp, “Feminism Versus Multiculturalism” (2001) 101:5 *Colum L Rev* 1181; Dana M Olwan, “Gendered Violence, Cultural Otherness, and Honour Crimes in Canadian National Logics” (2013) 38:4 *Canadian J Sociology* 533.

¹⁴¹ Canadian courts rejected the defence in *R v Nahar*, 2004 BCCA 77 at para 50, 23 BCLR (4th) 269, and *R v Humaid* (2006), 81 OR (3d) 456 at 479, 208 CCC (3d) 43.

¹⁴² Pascale Fournier, Pascal McDougall & Anna R Dekker, “Dishonour, Provocation and Culture: Through the Beholder’s Eye?” (2012) 16:2 *Can Crim L Rev* 161 at 184.

¹⁴³ Canada, Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, *Report of the Events Relating to Maher Arar*, vol 1 (Ottawa: Gilmore Print Group, 2006) [Arar Report Factual Background].

¹⁴⁴ *Ibid* at 114.

¹⁴⁵ Jim Rankin, “Race Matters: Blacks documented by police at high rate” *Toronto Star* (6 February 2010), online:

Standing Committee on Canadian Heritage in October 2017, Professor Jasmine Zine reported:

Racial and religious profiling has targeted Canadian Muslims. The youth I interviewed internalized this surveillance and carefully monitor their actions to make sure they're not mistaken as terrorists if they go up north to play paintball or are seen playing violent video games. My younger son received a call from CSIS the day after he was elected president of the Muslim Students' Association of his university, as have other MSA presidents.¹⁴⁶

Yet, Canadian law does not explicitly prohibit racial profiling. As some scholars have argued, the failure to legislate against profiling leaves open the possibility that the practice will proliferate through “on the ground” decision-making and the discretion exercised by statutory decision-makers:

The statutory silence on profiling, both in Canada’s legislative response to September 11, as well as in pre-September 11 legislation, means that profiling would be achieved through exercises of statutory discretion, outside the glare of public scrutiny as democratic debate.¹⁴⁷

Further, “[a]lthough foreseeable because of the unfettered discretion provided in the legislation, Charter violations would be attributed to aberrational official conduct and not to the systemic flaws of the discretionary legislative scheme.”¹⁴⁸

The Arar Commission’s observation that “there is an advantage to clearly spelling out what constitutes racial, religious and ethnic profiling and affirming that it is prohibited” remains compelling particularly since racial profiling has new technology at its disposal.¹⁴⁹ Some scholars have pointed to the proliferation of profiling technologies, including biometrics that adversely impact groups on the basis

<https://www.thestar.com/news/crime/raceandcrime/2010/02/06/race_matters_blacks_documented_by_police_at_high_rate.html>: “In each of the city’s 74 police patrol zones, the *Star* analysis shows that blacks were documented at significantly higher rates than their overall census population by zone, and that in many zones, the same holds true for ‘brown’ people — mainly people of South Asian, Arab and West Asian backgrounds.” OHRC, *Under Suspicion*, *supra* note 43 at 58: “respondents described being stopped, followed by air marshals, placed on ‘no fly’ lists, having their names flagged or their identification questioned and not believed, without justification”; *Report of the Independent Expert on Minority Issues, Addendum*, UNGAOR, 13th Sess., Agenda Item 3, UN Doc A/HRC/13/23/Add.2 (2010) 1 at 2.

¹⁴⁶ Canada, House of Commons, *supra* note 136 at 3 (Dr. Jasmine Zine).

¹⁴⁷ Sujit Choudhry & Kent Roach, “Racial and Ethnic Profiling: Statutory Discretion, Constitutional Remedies, and Democratic Accountability” (2003) 41:1 *Osgoode Hall LJ* 1 at 34. This would be analogous to the Supreme Court of Canada’s treatment of sexual profiling in *Little Sisters Book and Art Emporium v Canada (Minister of Justice)* if the majority attributed the disproportionate targeting of gay and lesbian literature as “obscene” by customs officials to the discriminatory exercise of discretion by individual officials, rather than the customs legislation that created space for such discrimination to operate. *Little Sisters Book and Art Emporium v Canada (Minister of Justice)*, 2000 SCC 69, [2000] 2 SCR 1120.

¹⁴⁸ *Ibid* at 11.

¹⁴⁹ Canada, Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, *Analysis and Recommendations* (Ottawa: Gilmore Print Group, 2006) at 356 [Arar Report Recommendations].

of race, religion, and other social markers.¹⁵⁰ The ways in which technologies function, however, and the impacts of these technologies upon marginalized groups remain largely hidden behind the complexities of science, the popularity of programs that promise travel efficiencies through technology,¹⁵¹ and the adoption of community consultations as a primary mode of knowledge production about profiling. A recent Ontario Human Rights Commission report about racial profiling in Ontario, for example, relied on community information and analysis to condemn the practice, but it did not examine the role of biometrics or technology in the advancement of profiling.¹⁵² Community consultations, though indispensable, help maintain ignorance about the practice's scope and modalities because communities do not always have the capacity to investigate and analyze new trends or developments in profiling practices. It is difficult for community members to identify the operation of systemic racial profiling on the basis of individual experiences. Institutions with funds and mandates have a responsibility to inform the community, not the other way around.

3. Denial

Denial, the third form of silent, state-sponsored Islamophobia, connotes the failure of courts, tribunals, and commissions of inquiry to recognize the full reality of bias against Muslims. Stereotyping represents a good example. Even though social scientists have long documented the ways in which Arabs and Muslims are stereotyped in Canada, Canadian courts, tribunals, and commissions of inquiry have proven relatively reluctant to acknowledge this reality. For example, the Arar Commission generally preferred the term "labeling" over "stereotyping" in critiquing how the RCMP falsely and without justification linked Maher Arar, Amhad El Maati, and Abdullah Almalki with terrorism.¹⁵³ The RCMP issued a border look-out to monitor travel across the Canadian and US border against Arar and his wife, Monia Mazigh, which they justified by stereotyping Arar and his family as "a group of Islamic Extremist individuals suspected of being linked to the Al Qaeda terrorist movement."¹⁵⁴ But, neither Arar Commission report offered a sustained analysis of the prevailing stereotypes of Muslims in Canada.

Perhaps more significantly, the Supreme Court of Canada, which has been criticized recently for narrowing equality analyses by focusing too much on stereotypes and stereotyping, has demonstrated a marked reluctance to name and condemn Muslim stereotypes.¹⁵⁵ Captain Javed Latif claimed that he had been racially

¹⁵¹ Canada Border Services Agency's Primary Inspection Kiosk (PIK) program is one example.

¹⁵² See OHRC, *Under Suspicion*, *supra* note 42 at 10; The report notes: "advances in technology make it easier for institutions that assess risk to collect, analyze, store and share people's information." But, it does not address the ways in which, where, or how technologies are used to facilitate profiling.

¹⁵³ See generally Arar Report Recommendations, *supra* note 149.

¹⁵⁴ Arar Report Factual Background, *supra* note 143 at 59.

¹⁵⁵ The following analysis of the Supreme Court's decision is re-produced in Reem Bahdi, "Narrating Dignity: Racial Profiling, National Security and a Muslim Pilot Before The Supreme Court of Canada" (2017) 55:1 OHLJ, online: SSRN <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3054143>

profiled, first, by American national security agencies when he was denied clearance to pursue refresher pilot training in Dallas Texas, and, second, by Bombardier Aerospace Training Center when Bombardier officials refused him training in Canada.¹⁵⁶ Bombardier had denied Captain Javed Latif the opportunity to refresh his pilot's license at its training facility in Montreal. Latif needed the training certificate to secure employment contracts as a commercial pilot. Bombardier made that decision after American officials refused Latif training in Texas for undisclosed security reasons. Eventually, the Americans reversed their decision.

Latif sought remedy for the discrimination that he had suffered at the hands of Bombardier. The Quebec Human Rights Commission took his case before a tribunal, arguing that he had been unfairly profiled by Bombardier because Bombardier's decision-makers harboured stereotypical assumptions that Latif, as a Muslim, was inclined to terrorism. The tribunal also faulted Bombardier for giving effect to discriminatory American profiling practices in Canada. On November 29, 2010, after seven days of hearing, eight witnesses, and two expert reports, a Quebec Human Rights Tribunal had found that Bombardier had discriminated against Mr. Latif.¹⁵⁷ In a decision that spanned 120 pages, the Tribunal ordered CAN \$25,000 in moral damages, US \$309,798.72 for material prejudice less CAN \$66,639, and CAN \$50,000 in punitive damages; the Tribunal also issued an order requiring Bombardier to "cease applying or considering the standards and decisions of the US authorities in 'national security' matters when dealing with applications for the training of pilots under Canadian pilot's licenses".¹⁵⁸ The Tribunal's decision set a precedent in many respects.¹⁵⁹ Latif became one of the first successful, high-profile Muslim human rights claimants. His story was carried by national papers¹⁶⁰ and signaled that Canada continued to care about injustices perpetrated in the name of national security.

Any optimism generated by Captain Latif's story, however, proved short lived. The Quebec Court of Appeal overturned the Tribunals' findings in 2013.¹⁶¹ Then, in 2015, the Supreme Court upheld the Court of Appeal's decision, finding that

[forthcoming]. *Quebec (Commission des droits de la personne et des droits de la jeunesse) v Bombardier Inc (Bombardier Aerospace Training Center)*, 2015 SCC 39, [2015] 2 SCR 789 [Bombardier, SCC, cited to neutral citation].

¹⁵⁶ *Bombardier*, SCC, *supra* note 155 at paras 17–18.

¹⁵⁷ In addition to a report by Reem Bahdi, the Tribunal considered a report by Mr. Bernard Siskin who testified on behalf of Bombardier. *Bombardier*, Tribunal, *supra* note 1 at paras 209–16.

¹⁵⁸ *Ibid* at paras 406, 415, 442, 446.

¹⁵⁹ The Tribunal awarded Latif the largest punitive damage award in its history.

¹⁶⁰ "Bombardier Fined for Discrimination: Company to Pay Highest Punitive Penalty Ever Awarded by Quebec Tribunal", *CBC News* (8 December 2010), online: <www.cbc.ca/news/business/bombardier-fined-for-discrimination-1.932063>; Ari Altstedter, "Blacklisted Pilot Wins Rights Case Against Bombardier", *The Globe and Mail* (8 December 2010), online: <www.theglobeandmail.com/news/national/blacklisted-pilot-wins-rights-case-against-bombardier/article1318877/>.

¹⁶¹ *Québec (Commission des droits de la personne et des droits de la jeunesse) c Bombardier inc (Bombardier Aerospace Training Center)*, 2013 QCCA 1650 at para 161, [2013] RJQ 1541.

the Quebec Tribunal had little or no evidence of discrimination.¹⁶² Nowhere in its analysis did the Supreme Court observe that Muslims are stereotyped as terrorists. Not only did the Court fail to name and recognize the efficacy of Muslim stereotypes, its judicial review of a decision by a Quebec Human Rights Tribunal constituted a puzzling re-writing of the facts and issues that arose in the case. A reading of the silences in the Supreme Court's *Bombardier* decision reveals the extent to which the Court edited out key findings of fact and failed to engage with key arguments advanced by the Tribunal. For example, much of the Tribunal's decision rested on a finding that Bombardier's Head of Standards & Regulatory Compliance in Montreal, Mr. Steven Gignac, held stereotypical views of Captain Latif that were rooted in a preconception that Muslims are prone to violence and terrorism.¹⁶³ But, the Supreme Court effectively ignored Gignac's role in Latif's story.¹⁶⁴

Denial of Islamophobia or the reluctance of Courts, tribunals, and commissions of inquiry to recognize the full reality of bias against Muslims extends beyond stereotypes. Denial includes approaching Islamophobia as though its characteristics, manifestations, and dynamics are self-evident, requiring no specialized understanding or analysis as a distinct form of racism. An Ontario human rights adjudicator, for example, found that she did not require expert testimony about Islamophobia to provide context to the facts before her in *Yousufi* because "aspects and examples of anti-Muslim sentiment post-9/11" as well as "basic concepts and dynamics of racism" were within her own area of expertise.¹⁶⁵ That case involved a number of allegations of discrimination and harassment by members of the Toronto Police Services against Abi Yousufi. Among the discriminatory and harassing behaviour, Yousufi alleged that a photo of him hanging in the hallways of the Toronto Police Service was turned upside down and superimposed with a picture of a goat on at least one occasion.

Jack Shaheen has demonstrated that Hollywood frequently associate Arabs and Muslims with animals, particularly dogs and goats.¹⁶⁶ In this particular case, the morphing of goat and man sends a clear message: Yousufi is regarded as abnormal, different, unwanted, and alien. By superimposing a picture of a goat on Yousufi's picture, the perpetrator(s) conveyed their attitude about Yousufi's claims to belonging and also linked themselves, likely unknowingly, with a long history of dehumanizing Arabs and Muslims by associating them with animals. Social psychologists call this

¹⁶² *Bombardier*, SCC, *supra* note 154 at para 98.

¹⁶³ *Bombardier*, Tribunal, *supra* note 1 at paras 301–305.

¹⁶⁴ See Bahdi, *supra* note 155.

¹⁶⁵ *Yousufi*, 2009, *supra* note 17 at para 15: "I find that Professor Zine intends to testify with respect to aspects and examples of anti-Muslim sentiment post-9/11. Moreover, she proposes to testify with respect to basic concepts and dynamics of racism which can be found in case law, legal articles or literature or the Commission's own Policy and Guidelines on Racism and Racial Discrimination. All this is within my own sphere of knowledge and is not evidence which is necessary to me as the trier of fact."

¹⁶⁶ Shaheen, *supra* note 69 at 177.

form of dehumanization “monstrification”¹⁶⁷ or dehumanization through animalistic associations.¹⁶⁸ Yousufi’s monstrification was achieved when his picture was made into a monster of man and goat. Superimposing a goat on Yousufi’s picture also constitutes a form of othering, and it is a statement about Yousufi’s belonging, because, as Joanne Landes has observed, “whatever a monster is, it is not one of us.”¹⁶⁹ But, the adjudicator did not remark on or appear to recognize the full significance of the acts to which Yousufi was subjected.¹⁷⁰

4. Individualization

Individualization, the fourth mode of Silent Islamophobia, connotes the representation of larger societal trends as aberrant attitudes held by isolated individuals. The Supreme Court of Canada engaged in individualization in deciding *Bou Malhab v Diffusion Metromedia*.¹⁷¹ In that case, a popular Montreal talk show host, Andre Arthur, offered a series of racist remarks directed at Arabs and Haitians in Montreal. He made his remarks in the context of a call-in show and invited others to participate in the racism. The Supreme Court was presented with Arthur’s comments. For example, Arthur, stated:

[TRANSLATION] Why is it that there are so many incompetent people and that the language of work is Creole or Arabic in a city that’s French and English? . . . I’m not very good at speaking “nigger”. . . . [T]axis have really become the Third World of public transportation in Montreal. . . . [M]y suspicion is that the exams, well, they can be bought. You can’t have such incompetent people driving taxis, people who know so little about the city, and think that they took actual exams. . . . Taxi drivers in Montreal are really arrogant, especially the Arabs. They’re often rude, you can’t be sure at all that they’re competent and their cars don’t look well maintained.¹⁷²

The question before the Court was whether group defamation constitutes a cause of action. The Court answered in the negative. The Court’s logic and analysis, rather than the ultimate disposition of the case, proves most interesting for an understanding of the Court’s role in addressing Islamophobia. Writing for the majority, Justice Deschamps opined that an ordinary person would not take Arthur’s comments seriously:

¹⁶⁷ See e.g. Safwat Marzouk, *Egypt as Monster in the Book of Ezekiel* (Tübingen: Mohr Siebeck, 2015) at 45–59; see also Sophia Rose Arjana, *Muslims in the Western Imagination* (New York: Oxford University Press, 2015).

¹⁶⁸ Nick Haslam, “Dehumanization: An Integrative Review” (2006) 10:3 *Personality Social Psychology Rev* 252 at 258.

¹⁶⁹ Joan Landes, “Revolutionary Anatomies” in Laura Lunger Knoppers & Joan B Landes, eds, *Monstrous Bodies / Political Monstrosities: In Early Modern Europe* (Ithaca, New York: Cornell University Press, 2004) 148 at 154.

¹⁷⁰ *Yousufi*, *supra* note 77 at para 65.

¹⁷¹ *Bou Malhab v Diffusion Metromedia CMR inc*, 2011 SCC 9, [2011] 1 SCR 214 [cited to neutral citation].

¹⁷² *Ibid* at para 3.

Mr. Arthur's allegations were undoubtedly serious and infuriating, but an ordinary person would nonetheless have recognized that they were an excessive generalization on the part of the host, based on an unpleasant personal experience. An ordinary person would not have believed the offensive allegations and would not have thought that Mr. Arthur was vouching for the validity of his racist and contemptuous insults. An ordinary person certainly would not have associated the allegations of ignorance, incompetence, uncleanliness, arrogance and corruption with each taxi driver whose mother tongue is Arabic or Creole personally.¹⁷³

The Court offers no basis to justify the conclusion that the comments would not impact listeners except for the observation that the comments were too extreme to be taken seriously. Instead, the Court individualized and privatized the problem of bias against Arabs and Muslims, even though Arthur's comments clearly invoke popular stereotypes including the image of Arabs as incompetent ("why are there so many incompetent people..."), untrustworthy ("suspicion is that the exams, well, they can be bought..."), barbarians ("really arrogant, especially the Arabs. They're often rude..."), and the suggestion that Arabs represent an existential threat to Canadian life and values ("Taxis have really become the Third World of public transportation in Montreal...").

Without a doubt, Arthur's comments were extreme; that said, they were not random. It is no coincidence that the popular talk show host harnessed popular stereotypes that attach to Arabs and Muslims, often because perpetrators assume that Arabs are Muslims and Muslims are Arabs. Prevailing stereotypes include the conviction that Muslims have an in-bred or culturally ordained propensity towards violence; the suggestion that Muslims are foreigners who threaten Western values; and, the notion that Muslims are dishonest.¹⁷⁴ Stereotypes – whether conscious or unconscious, direct or subtle – drive perceptions of another's morality and competence.¹⁷⁵ These images can be frequently found in non-fictional political commentary such as books, magazines, newspapers, the internet, television news, and talk radio to discuss Islam or Arabs.¹⁷⁶ One would therefore expect that in a case involving a series of racist slurs, the analysis would include a discussion of stereotyping in social contexts, particularly when one of the main issues under consideration is whether the slurs, uttered by a high profile personality, might have

¹⁷³ *Ibid* at para 90.

¹⁷⁴ Michael W Suleiman, "Stereotypes, Public Opinion and Foreign Policy: The Impact on American-Arab Relations" in *The Arabs in the Mind of America* (Beltsville: Amana Books, 1988) 145 at 148.

¹⁷⁵ See e.g. Jaihyun Park, Karla Felix & Grace Lee, "Implicit Attitudes Toward Arab-Muslims and the Moderating Effects of Social Information" (2007) 29:1 *Basic & Applied Social Psychology* 35. See also Sheryll Cashin, "To Be Muslim or 'Muslim-Looking' in America: Comparative Exploration of Racial and Religious Prejudice in the 21st Century" (2010) 2:1 *Duke F L & Soc Change* 125. Morality and competence assessments need not track each other; for example, an individual can be regarded as honest and incompetent. On this point, see Karen Phalet & Edwin Poppe, "Competence and Morality Dimensions of National and Ethnic Stereotypes: A Study in Six Eastern-European Countries" (1997) 27:6 *European J Social Psychology* 703.

¹⁷⁶ See generally Peter Gottschalk & Gabriel Greenberg, *Islamophobia: Making Muslims the Enemy* (Lanham: Rowman & Littlefield Publishers, 2007) at 1–2.

some impact upon the general public. But, neither the majority nor the dissent offered by Justice Abella recognized the stereotypes at play in the case, and neither noted their popular currency notwithstanding the fact that previous Supreme Court decisions acknowledged the probative value of social context analysis and social science literature to understanding biases, including implicit biases, that socialize individuals to adopt biased views of a particular group.¹⁷⁷

5. Minimization

Minimization, the final form of Silent Islamophobia that we identify, connotes the process whereby state institutions diminish or downplay the existence or significance of Islamophobia or Islamophobic acts. For example, Canadian security agencies have virtually ignored Alexandre Bissonnette's 2017 shooting at the Centre Culturel Islamique de Quebec in their public analyses of terrorism in Canada, even though at the time that it occurred it represented the most fatal act of ideology-inspired violence in Canada since 1989. CSIS has produced two reports on terrorism in Canada since the attack, neither of which mentions the Quebec mosque shooting. Public Safety Canada's 2017 *Public Report on the Terrorist Threat to Canada*, published eleven months after the mosque shooting, includes only two paragraphs on right-wing and White-supremacist violence. It insists that Muslims constitute "the principal terrorist threat to Canada," while claiming that the activities of the extreme right are merely "sporadic" and "predominantly [conducted] online"¹⁷⁸ – even as anti-immigrant and anti-Muslim groups like PEGIDA, the III%, and Soldiers of Odin brazenly commit regular real-world acts of aggression like border patrols, mosque stake-outs, paramilitary training exercise, and rallies against immigration and Islam. A recent investigation by Global News, based on government documents obtained through the *Access to Information Act*, found that CSIS strongly resisted the inclusion of right-wing extremism as a terrorist threat in Public Safety analyses: "CSIS...took issue with calling right-wing extremism 'a growing concern in Canada,' saying that this was a 'subjective statement' and asking, 'What is your facting for this?'"¹⁷⁹

In February 2018, of the Canadian Parliament's Standing Committee on Canadian Heritage released its report, *Taking Action Against Systemic Racism and Religious Discrimination Including Islamophobia*, the product of several months of community consultations. Though it arose out of M103, which, in turn, was the product of a petition to Parliament asking that it address Islamophobia, most of the views highlighted in the report were offered by individuals who do not belong to Muslim communities or who represent only a partial view of those communities. The violently hostile reaction to M103, evident in the fact that the Member of Parliament who introduced it was subjected to a barrage of death threats, was itself proof of the

¹⁷⁷ See e.g. *R v Williams*, [1998] 1 SCR 1128 at 1139, 52 CRR (2d) 189; See also *R v Parks* (1993), 15 OR (3d) 324 at para 63 (Ont CA), leave to appeal to SCC refused, [1994] 1 SCR x.

¹⁷⁸ Public Safety Canada, *supra* note 116 at 7.

¹⁷⁹ Stewart Bell, "Documents reveal internal debate over threat of Canadian right wing extremism" *Global News* (7 May 2018), online: <<https://globalnews.ca/news/4188139/far-right-extremely-small-csis/>>.

depth and extent of Islamophobia in Canada.¹⁸⁰ Instead of providing a thorough analysis of the phenomenon, however, the Standing Committee largely avoided the issue. The report devoted the greater part of its meagre consideration of Islamophobia to debating the appropriateness of the term, and raising concerns that state condemnation of Islamophobia might impair the freedom of expression of critics of Islam.¹⁸¹ While the Standing Committee's report highlighted testimony that cautioned against privileging Islamophobia at the expense of other forms of racism, it failed to acknowledge that Muslim women are uniquely targeted by government officials, public policy, and legislation. Indeed, the report only mentions Muslim women to illustrate the importance of intersectionality even though the report does not adopt an intersectional lens.¹⁸² Ultimately, only one of the Standing Committee's thirty recommendations deals specifically with Islamophobia. Recommendation 30 suggests that January 29th, the day of the Quebec Mosque shooting, be recognized as a National Day of Remembrance and Action on Islamophobia, "and other forms of religious discrimination."¹⁸³ This symbolic measure fails to address the systemic entrenchment of Islamophobia in state laws, policies, and practices.

VIII. Conclusion

Discussion of Islamophobia in Canadian law and policy has accompanied the startling rise of Islamophobia in Canada. Nonetheless, Canadian law currently has no accepted definition of Islamophobia. In the absence of a definition, a trend has emerged in Canada that parallels a trend identified by Khaled Beydoun in the United States: policy-makers, advocates, and commentators are increasingly focused on Islamophobic acts perpetrated by private individuals.

At the same time, government contributions to Islamophobia's entrenchment have not received sufficient scrutiny.

Khaled Beydoun reminds us that Islamophobia persists through a dialectical process in which state-driven Islamophobia and private Islamophobia mutually reinforce each other. We have not paid sufficient attention to this dialectic in Canada. This paper has sought to recast the current debate around Islamophobia in Canada by suggesting the need for a definition of Islamophobia that renders visible the multiple, complex, and overlapping ways in which this form of racism plays itself out in people's lives. The proposed definition draws upon and expands the definition of Islamophobia proposed by Khaled Beydoun's for the American context.

¹⁸⁰ Kathleen Harris, "'Kill her and be done with it': MP behind anti-Islamophobia motion reads out hate mail" *CBC News* (16 February 2017), online: <<https://www.cbc.ca/news/politics/threats-hate-islamophobia-khalid-1.3986563>>.

¹⁸¹ House of Commons, Standing Committee on Canadian Heritage, *supra* note 19 at 22–24.

¹⁸² *Ibid* at 24.

¹⁸³ *Ibid* at 5.

Canadian Muslims are targeted and discriminated against by both governments and private actors. The role of the Canadian state, however, in perpetuating Islamophobia remains under-explored in part because state-driven Islamophobia in Canada, unlike its American variant, particularly during the Trump era, proceeds largely through legislative, judicial, and other forms of state silences rather than through laws that explicitly target Muslim communities. Accordingly, this paper proposes a typography of state-driven Islamophobia that aims to reveal how the Canadian state adopts “techniques” that create spaces in which anti-Muslim sentiments, tropes and, ultimately, actions, flourish. These techniques, as Foucault has suggested, are important because they constitute “a ‘new microphysics’ of power” and represent “small acts of cunning endowed with a great power of diffusion”.¹⁸⁴ Our goal has been to make plain the techniques of state-driven Islamophobia and to point to some of their consequences so that people in Canada can better respond to Islamophobia in all of its manifestations.

¹⁸⁴ Foucault, *supra* note 72 at 139.