

## Innovation Funding Project Report and Student Stipend Report

Pascale Fournier

**Project Title:** *Comparative Law at the Intersection of Religious and Secular Orders: The Muslim Talaq in Israel*

### **1. Project Goals**

This research project set out to analyze the interaction between the cultural, religious and secular normative systems that Israeli Muslim women encounter as they go through divorce in Israel. This project is an extension of my SSHRC-funded project on the migration of minority religious laws in Canada, the UK, Germany and France, in which I studied Jewish and Islamic law and their effects on women. A complementary phase of this project, funded by the Québec Bar Foundation, the Foundation for Legal Research, Borden Ladner Gervais law firm and the Law Foundation of Ontario, has dealt extensively with the situation of Jewish women in Israel. Specifically, my current MCRI project aimed to understand **(1)** how other jurisdictions react to religious divorce, **(2)** the strategies of religious women in divorce and the impacts of their experiences on their bargaining powers, economic well-being and identities, **(3)** how Muslim Israeli women's experiences and situation compare to that of Jewish Israeli women and **(4)** if certain lessons from abroad can help inform policy makers and legal professionals here in Canada in adopting models of interaction which are beneficial in terms of empowerment and equalizing bargaining positions between the sexes.

### **2. Researchers and Students Involved**

- Sahar Ghadhban, M.A. student, University of Ottawa.

Work: fieldwork in Israel, transcription of interviews, socio-legal research on Muslim family law in Israel, secular/civil relations in Israeli constitutional law, informal divorce customs among Israeli Muslim communities, etc; interviews and fieldwork in Israel, contacting women through religious and legal organizations.

### **3. Rationale**

This is a socio-legal study that combines a “story-telling” approach, which highlights the voices of minority religious women, with a distributional justice analysis in family law, which examines gender equality in relation to bargaining power and wealth. The methodology is qualitative, drawing on a variety of interpretive analytical strategies and classic legal research

methods, permitting a comparative analysis of the social, religious and legal rules impacting Muslim women navigating divorce. The approach also incorporates a holistic perspective, drawing on other disciplines such as women's studies, religious studies and sociology, which help enable a greater understanding of how religious women understand and move, as social agents, through secular and religious divorce.

#### **4. Methods**

This socio-legal study is based on my fieldwork within Muslim communities in Israel over the winter of 2012. It included informal discussions with practising and non-practising men and women, NGO activists, lawyers and community leaders, as well as six formal interviews with Muslim women which were conducted in the cities of Karmiel, Nazareth, Shefa-'Amr and Haifa. The women were chosen from a variety of socio-economic backgrounds. They had all been married and were religiously divorced. The interviews lasted between one and two hours and incorporated demographic, religious, secular and community profiles. They were mostly conducted in women's homes, and in cafés. While some women were found through personal contacts in Israel, most of the recruitment was done indirectly, as per the advice of the Office of Research Ethics and Integrity, through community groups, women's organizations, religious leaders and religious lawyers.

#### **5. Ethics, permissions**

REB File Number: 01-10-08

REB Project Title: "Comparative Law at the Intersection of Religious and Secular Orders"

#### **6. Summary of Activities**

Sahar Ghadhban spent two weeks in Israel doing fieldwork, while I directed and assisted her from Ottawa. We began looking for interview participants by contacting university professors and various organizations and centers established in Israel which help Arab women, financially and otherwise, in legal matter pertaining to the process of obtaining a divorce, a method which was approved by application to the Office of Research Ethics and Integrity of the University of Ottawa. The following organizations were particularly helpful, and the project could not have been a success without them: Kayane (<http://www.kayan.org.il/en/>); Arab Center for Applied Social Research (<http://www.mada-research.org/?LanguageId=1>).

Upon her return from Israel, Sahar Ghadhban then proceeded to transcribe the interviews and research the socio-legal aspects of Muslim marriage in Israel.

## 7. Provisional Findings

My fieldwork strongly refutes the pervasive discourses according to which Islamic law is experienced by Israeli Muslim women either as a form of identity to be protected from Israeli-Jewish domination, or conversely as a *mere* form of oppression of Muslim women. Upon divorce, an Israeli Muslim woman is faced with a puzzling dilemma which only highlights the complex relationship between the civil and religious spheres: under Israeli penal law, the husband cannot unilaterally divorce her husband (*talaq*), whereas under Islamic law, he may divorce her without her consent. However, the prohibition on *talaq* is often ignored by Muslim Israeli citizens and courts, for various socio-political reasons. The women may sometimes prefer to be divorced informally than to use the Israeli state law prohibiting *talaq*, depending on the economic stakes of their particular divorce. Also, the Muslim establishment in Israel does not welcome Israeli civil regulation of Muslim family law and scantily applies it. Through a series of interviews, I explored the distributive consequences of the secular/religious divide on differentially situated Muslim women in Israel. By understanding their *agency*, i.e. how different women use the law as ‘it lives’ out in the real world, I attempted to examine the ways in which Jewish and Muslim women navigate the interplay of legal systems and religious norms in various multi-dimensional contexts.

The interviews allowed me to identify the background formal and informal legal rules, social norms, and distributional practices that help produce asymmetric bargaining locations for Muslim women, both between and among themselves. As women, wives and mothers, participants have described their bargaining strategies in the religious domain as sometimes beneficial and sometimes detrimental to them, depending on various factors. In approaching the relational dynamics of religious subjects moving inside and outside the religious realm, I noticed that the participants’ invocation of religious law was often strategic, serving distributional purposes. For instance, if the woman could get benefits from the religious sphere, she would follow this advantageous path, whether through the official route of the Muslim tribunals or through informal *talaq* divorce. Such empirical knowledge helps disenchant the idea that religious law is systematically used as a punishing force that makes women worse off economically or morally inferior. It also helps us refute the idea that family law is lived as a process of identity affirmation towards Israeli-Jewish society. Rather, Muslim women have a complex, interested relationship to religious law, which is *distributive* rather than *identitary*. This echoes my findings on Israeli Jewish women and Canadian Jewish women’s situation upon divorce, although Muslim women in Israel have their own particular socio-legal context, i.e. the relationship between the Israeli Muslim community and the Jewish state.

### 8. Outputs

I will be writing a law-review article on my findings in the summer and fall of 2012.

### 9. Finances

<b>Breakdown of Expenses</b>				
<b>Student Funding*</b>				
	Amount	Name	Dates	Project
Student Stipends				
Student Assistantship	\$ 5472.45	Sahar Ghadhban	01/2012 – 04/2012	See above for description
<b>Research Funding</b>				
	Amount	Project	Dates	Specifics**
Funding for Research Costs				
Funding for Research Travel	\$ 2,478.66	Fieldwork in Israel	01/2012	Flight Ticket Hotel Per diem Transportation
Funding for Administrative/Supply Costs Related to Research				
<b>Total Expenses</b>	\$ 7951.11			