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“All Arabs Are Liars”: Arab and Muslim Stereotypes in Canadian Human Rights Law

REEM BAHDI*

Les stéréotypes excluent et stigmatisent les Arabes et les Musulman.e.s au Canada, et pèsent sur leurs épaules. Cet article examine trois stéréotypes arabes et musulmans dominants : la certitude que les Arabes et les Musulman.e.s sont culturellement prédisposés à être violents; la croyance que, peu importe leur statut d’immigration, les Arabes et les Musulman.e.s demeurent des étranger.ère.s qui menacent les valeurs de l’Ouest; et l’idée que les Arabes et les Musulman.e.s sont malhonnêtes. L’analyse se base sur les conclusions de fait et les décisions relatives à neuf demandes déposées par des requérant.e.s devant les tribunaux des droits de la personne de la Colombie-Britannique, de l’Ontario, du Québec et du Canada. Les décisions de ces tribunaux révèlent que, pour que le profil terroriste entre en jeu, les deux autres profils doivent aussi être présents. Par ailleurs, le motif de la personne qui ment ou qui n’est pas digne de confiance, et le motif du caractère non canadien ou qui présente une menace existentielle, fonctionnent aussi de manière indépendante de celui du profil terroriste. Ces cas démontrent aussi que le genre, la racialisation et la religion changent la façon d’invoquer ces différents stéréotypes et que les Arabes et les Musulman.e.s sont perçus de manière stéréotypée dans différents contextes tels les milieux de travail, les écoles et les institutions étatiques. Ces cas illustrent aussi que les stéréotypes ont un impact profond sur la santé financière, émotionnelle, physique et sociale des requérant.e.s mais que les régimes des droits de la personne étudiés ne reconnaissent pas toujours les stéréotypes qui ressortent des faits auxquels ils sont confrontés.

Stereotypes exclude, stigmatize, and burden Arabs and Muslims in Canada. This article examines three prevailing Arab and Muslim stereotypes: the conviction that Arabs and Muslims have a culturally ordained propensity towards violence; the belief that, regardless of their citizenship status, Arabs and Muslims remain foreigners who threaten Western values and; the notion that Arabs and Muslims are dishonest. The analysis rests on the facts found and conclusions reached in nine claims filed by Arab or Muslim applicants before the British Columbia, Ontario, Quebec or Canadian human rights tribunals. The tribunal decisions reveal that the terrorist profile requires the other two profiles for its efficacy, but the liar/untrustworthy motif and the un-Canadian/existential threat motif also operate independently of the terrorist motif. The cases also suggest that gender, racialization, and religion mediate the way in which the different stereotypes are invoked, and that Arabs and Muslims are stereotyped in diverse contexts including workplaces, schools, and state institutions. The cases also illuminate how stereotyping has profoundly impacted the financial, emotional, physical, and social health of the complainants but the human rights regimes examined do not always recognize the stereotypes that arise on the facts before them.

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A FEW MONTHS AGO, I ATTENDED an Ontario government service counter to replace my lost driver's licence. Dutifully waiting in line, I held my completed application along with several pieces of mail to confirm my home address and residency in Ontario. I also brought my passport as evidence of my identity. When my turn at the counter arrived, I stepped up and handed my documents to the man behind the counter, exchanging pleasant small talk while he examined my application. His face and demeanour changed as he flipped through my passport. "How long have you been out?" he curtly asked me. I did not understand. "How long have you been out of Canada?" he crisply repeated himself. "You have stamps in your passport!" Most of the stamps in my passport included Arabic script.

I explained that all of the stamps represented visitor visas and that I had made several brief trips to the Middle East over the last five years. Each trip had lasted about a week. The man behind the counter indicated that he would not give me a licence without proof of Canadian residency. I protested that though I was born overseas, I had lived in Ontario for about fifty years and the address on the mail I had presented to him had been my permanent address for a decade. He refused to believe me, insisting that the stamps in my passport, which he had not bothered to read, suggested that I had been "out" for a good part of my life.

He advised me that he had the discretion to refuse my application because of insufficient documentation and that I needed to come back with better documentation. However, he could not explain what I might present that would improve upon the documents he already had in his possession. Without using the words, the man behind the counter had labelled me a liar and indicated that there was something un-Canadian about me. His bias was shielded by the seemingly neutral contention that I had simply come to the counter with insufficient documentation.

My mind wandered. Did this man behind the counter know that he was invoking common stereotypes of Arabs? Was my experience unique or was it another example of the biases that other racialized people faced? Would a human rights adjudicator, if presented with these facts, recognize that stereotypes might be at play? This experience at a Service Ontario spurred my desire to better understand some of the stereotypes that attach to Arabs and Muslims in Canada. It also made me want to better understand whether Canadian human rights law has acknowledged that Arab and Muslim communities face stereotypes in Canada.

I. INTRODUCTION

Shortly after 9/11, scholars and human rights advocates warned that racial profiling and other policies and practices introduced to police Arab and Muslim communities after the attacks on the United States would normalize existing Arab and Muslim stereotypes in Canada.¹ Fifteen years later, scholars have documented the spread and impact of stereotyping on Arabs and Muslims and have questioned law's role in shaping Islamophobia and anti-Arab animus.² Arabs and Muslims increasingly face discrimination in national security surveillance practices³ at border sites,⁴ in

¹See e.g. Wesley Pue, "The War on Terror: Constitutional Governance in a State of Permanent Warfare?" (2003) 41:2/3 Osgoode Hall LJ 267; Reem Bahdi, "No Exit: Racial Profiling and Canada's War against Terrorism" (2003) 41:2/3 Osgoode Hall LJ 293 [Bahdi, "No Exit"].

²See TY Ismael & John Measor, "Racism and the North American Media Following 11 September: The Canadian Setting" (2003) 25:1/2 Arab Studies Quarterly 101; Denise Helly, "Are Muslims Discriminated Against in Canada Since September 2001?" (2004) 36:1 Canadian Ethnic Studies Journal 24; Concluding Observations of the Committee on the Elimination of Racial Discrimination in Relation to Canada, CERD/C/CAN/CO/18 (May 25, 2007), at para 14, online: <2.ohchr.org/english/bodies/cerd/docs/CERD.C.CAN.CO.18.doc> [perma.cc/SMN6-FEEM]; Chedly Belkhdja & Chantal Richard, "The Events of September 11 in the French-Canadian Press" (2006) 38:3 Canadian Ethnic Studies Journal; Helen McClure, "Terrorist or Just a Piece of the Mosaic? Canada's Discourse on Arabs" (Paper presented at the annual meeting of the International Studies Association Annual Conference, Hilton Hawaiian Village, Honolulu, Hawaii, March 2005), online:

<citation.allacademic.com/meta/p_mla_apa_research_citation/0/6/9/4/1/pages69415/p69415-1.php>

[perma.cc/AED4-BEYD]; Alnoor Gova & Rahat Kurd, "The Impact of Racial Profiling: A MARU Society / UBC Law Faculty Study" Working paper delivered at the Centre of Excellence for Research on Immigration and Diversity, Metropolis British Columbia, 2008, online: <mbc.metropolis.net/assets/uploads/files/wp/2008/WP08-14.pdf> [perma.cc/7P7X-EJRV]; Daood Hamdani, "Triple Jeopardy: Muslim Women's Experiences of Discrimination" (Toronto: Canadian Council of Muslim Women, 2005), online:

<archive.ccmw.com/publications/triple_jeopardy.pdf> [perma.cc/LTZ2-FSWV]; Carenlee Barkdull et al, "Experiences of Muslims in Four Western Countries Post—9/11" (2011) 26:2 Affilia 139; Peter Gottschalk & Gabriel Greenberg, "From Muhammad to Obama: Caricatures, Cartoons, and Stereotypes of Muslims" in John L Esposito & Ibrahim Kalin, eds, *Islamophobia: The Challenge of Pluralism in the 21st Century* (New York: Oxford University Press, 2011) at 192.

³ *John Doe #1 et al v Canada (Canadian Security Intelligence Service)* (13 July 2017), Toronto T-1032-17 (Fed Ct) at para 10, online: <scribd.com/document/353767258/CSIS-harassment-lawsuit-statement-of-claim#from_embed> [perma.cc/MX38-W59J]. See Faisal Kutty, "Goodale Must Investigate Racism Allegations Against CSIS" *Toronto Star* (30 July 2017), online: <thestar.com/opinion/commentary/2017/07/30/goodale-must-investigate-racism-allegations-against-csi.html> [perma.cc/BAS6-LV5P].

⁴ Ontario Human Rights Commission, *Under Suspicion: Research and consultation report on racial profiling in Ontario* (Toronto: Ontario Human Rights Commission, 2017) at 58, online: <ohrc.on.ca/en/under-suspicion-research-and-consultation-report-racial-profiling-ontario> [perma.cc/6ECA-68EE] [OHRC, *Under Suspicion*]; *Report of the Independent Expert on Minority Issues, Addendum*, UNGAOR, 13th Sess, UN Doc A/HRC/13/23/Add.2 (2010) at 1, online: <digitallibrary.un.org/record/688996/files/A_HRC_13_23-EN.pdf> [perma.cc/B6EM-4T37]; Baljit Nagra & Paula Maurutto, "Crossing Borders and Managing Racialized Identities: Experiences of Security and Surveillance Among Young Canadian Muslims" (2016) 41:2 Canadian Journal of Sociology 16.

policing,⁵ public spaces,⁶ workplaces,⁷ educational institutions,⁸ stores and service counters.⁹ Even places of worship have become sites for the expression of hatred and exclusion.¹⁰ Additionally, as

⁵ “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.” Jim Rankin, “Race Matters: Blacks documented by police at high rate” *Toronto Star* (6 February 2010), online:

<thestar.com/news/crime/raceandcrime/2010/02/06/race_matters_blacks_documented_by_police_at_high_rate.html> [perma.cc/D98U-6U3V].

⁶ Statistics Canada, “Police-reported hate crime in Canada, 2015,” online: <statcan.gc.ca/pub/85-002-x/2017001/article/14832-eng.htm> [perma.cc/B4QR-BCJV]; “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> [perma.cc/4L8H-AZXG].

⁷ See Andrew Jackson, “Canadian-born visible minority youth face an unfair job future” (3 June 2014), online (blog): *The Broadbent Blog* <hbroadbentinstitute.ca/en/blog/canadian-born-visible-minority-youth-face-unfair-job-future> [perma.cc/7E2S-TVXA]; 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 *Canadian Political Science Review* 1 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” (2012), online: <papers.ssrn.com/sol3/papers.cfm?abstract_id=2031979>; Neha Sahgal, “Study: Muslim job candidates may face discrimination in Republican states,” *Pew Research Center Facttank* (26 December 2013), online: <pewresearch.org/fact-tank/2013/11/26/study-muslim-job-candidates-may-face-discrimination-in-republican-states/> [perma.cc/43N4-VUJ3]; Cathy Lynn Grossman, “Identifying as Muslim On Resumes May Lead To Fewer Job Opportunities, Survey Says,” *Huffington Post* (16 June 2014), online: <huffpost.com/entry/muslim-resume-jobs-discrimination_n_5501605> [perma.cc/FH4A-NKCW]; Yosie Saint-Cyr, “Applicants Excluded From Hiring Process When Name Identified With a Racialized Group,” *Slaw* (7 June 2012), online: <slaw.ca/2012/06/07/applicants-excluded-from-hiring-process-when-name-identified-with-a-racialized-group/> [perma.cc/D22U-MTQW]. 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*; Helly, *supra* note 2; Ontario Human Rights Commission, “*Paying The Price: The Human Cost of Racial Profiling*” (December 2003), online: <ohrc.on.ca/sites/default/files/attachments/Paying_the_price%3A_The_human_cost_of_racial_profiling.pdf> [perma.cc/2GVZ-QZL4]. See also *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System* (Toronto: Queen’s Printer for Ontario, 1995) at 40-41, online <ontla.on.ca/library/repository/mon/25005/185733.pdf> [perma.cc/8BT8-F79K].

⁸ See e.g. Jasmin Zine, “Muslim Youth in Canadian Schools: Education and the Politics of Religious Identity” (2001) 32:4 *Anthropology & Education Quarterly* 399; Mehrunnisa Ahmad Ali, “Representation of Muslim characters living in the West in Ontario’s language textbooks” (2013) 24:5 *Intercultural Education* 417; Lisa Zagumny & Amanda B Richey, “Textbook Orientalism: Critical Visuality and Representations of Southwest Asia and North Africa” in Heather Hickman & Brad J Porfilio, eds, *The New Politics of the Textbook: Problematizing the Portrayal of Marginalized Groups in Textbooks* (Boston: Sense Publishers, 2012) 195; Canadian Arab Federation, *Arabs in Canada: Proudly Canadian and Marginalized* (Toronto: The Knowledge Centre, 2002) at 18; David Bateman, “High school teacher fired after investigation into ‘racist’ tweets” *Toronto Star* (9 September 2015), online: <thestar.com/yourtoronto/education/2015/09/09/high-school-teacher-fired-after-investigation-into-racist-tweets.html> [perma.cc/56PE-7U5W].

⁹ Nova Scotia Human Rights Commission, *Working Together to Better Serve all Nova Scotians: A Report on Consumer Racial Profiling in Nova Scotia*, (Nova Scotia: Nova Scotia Human Rights Commission, 2013) at 29, 79, 81 and 85, online: Nova Scotia Human Rights Commission <humanrights.novascotia.ca/sites/default/files/crp-report.pdf> [perma.cc/N67V-E8XR]; OHRC, *Under Suspicion*, *supra* note 4; The Environics Institute, *Survey of Muslims in Canada 2016*, (Toronto: Environics Institute, 2016), online: <environicsinstitute.org/docs/default-source/project-documents/survey-of-muslims-in-canada-2016/final-report.pdf?sfvrsn=fb85533_2> [perma.cc/LFB7-Y56S]; Michael Adams, *Unlikely Utopia: The Surprising Triumph of Canadian Pluralism* (Toronto: Viking Canada, 2007); Helly, *supra* note 2.

some scholars argue, elected officials and policymakers legitimize the differential treatment of Arabs and Muslims.¹¹

These discriminatory experiences can often be rooted in stereotypes. This article aims to contribute to an understanding of how stereotypes exclude, stigmatize, and burden Arabs and Muslims in Canada. It examines three prevailing Arab and Muslim stereotypes: the conviction that Arabs and Muslims have a culturally ordained propensity towards violence (the "terrorist/inevitable violence theme"); the belief, regardless of their citizenship status, that Arabs and Muslims remain foreigners who threaten Western values (the "un-Canadian/existential threat theme"); and the notion that Arabs and Muslims are dishonest (the "liar/untrustworthy theme").¹² The analysis rests on the facts found and conclusions reached in nine claims filed by Arab or Muslim applicants before the British Columbia, Ontario, Quebec, or Canadian human rights tribunals. Collectively, the tribunal decisions provide insight into the dynamics of Arab and Muslim stereotyping in Canada. They reveal that the terrorist profile requires the other two profiles for its efficacy, but the liar/untrustworthy motif and the un-Canadian/existential threat motif also operate independently of the terrorist motif. The cases also suggest that gender, racialization, and religion mediate the way in which the different stereotypes are invoked. Moreover, the cases confirm that the stereotypes levied against Arabs and Muslims arise in diverse contexts including work places, schools, and state institutions and that these tropes profoundly impact the financial, emotional, physical, and social health of Arab and Muslim communities and their members. This study also reveals that Canadian human rights adjudicators do not always recognize or engage with the Arab or Muslim stereotypes that arise on the facts of the case before them.

While law explicitly discriminates against Arab and Muslim communities in the United States, discrimination against these communities in Canada often proceeds through the failure of courts and other legal bodies to name and remedy this inequality.¹³ Accordingly, this study reads adjudicative silences or what adjudicators fail to say. It does not offer doctrinal analysis. This examination of the "unsaid" in select Canadian human rights cases constitutes part of a wider study about anti-Arab animus and Islamophobia, which identifies adjudicative silences as one form of contemporary discrimination against Arab and Muslim communities in Canada.¹⁴ The qualitative analysis offered points to the need for a better understanding of Arab and Muslim stereotypes within human rights law, and the need for more research about the stereotyping of Arab and

¹⁰ "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> [perma.cc/4DG7-WES3].

¹¹ Rachad Antonius, "Un racisme 'respectable'" in Jean Renaud, Linda Pietrantonio & Guy Bourgeault, eds, *Les Relations Ethnique en Question: Ce qui change depuis le 11 septembre 2001* (Montréal: Les Presses de l'Université de Montréal, 2002) 253. See also Reem Bahdi, "Before the Law: Creeping Lawlessness in Canadian National Security" in Vida Bajc & Willem de Lint, eds, *Security and Everyday Life* (New York: Routledge, 2011); *Abdelrazik v Canada (Minister of Foreign Affairs)*, [2010] 1 FCR 267; Bahdi, "No Exit," *supra* note 1; David M Tanovich, *The Colour of Justice: Policing Race in Canada* (Toronto: Irwin Law, 2006) at 19-20; See e.g. British Columbia Civil Liberties Association, "Complaint Pursuant to a Section 41 of the Canadian Security Intelligence Service Act to the Security Intelligence Review Committee (SIRC) from the BC Civil Liberties Association" (2 April 2009), online: <bccla.org/wp-content/uploads/2012/03/2009-BCCLA-Complaint-CSIS-torture.pdf> [perma.cc/HA4B-EV9G].

¹² 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; John Sides & Kimberly Gross, "Stereotypes of Muslims and Support For The War on Terror" (2013) 75:3 *Journal of Politics* at 583.

¹³ *Ibid.*

¹⁴ See Reem Bahdi & Azeezah Kanji, "What is Islamophobia?" (2018) UNBLJ 322; Reem Bahdi "Narrating Dignity: Islamophobia, Racial Profiling, and National Security Before The Supreme Court of Canada" (2018) 55:2 *Osgoode Hall L J* 557.

Muslim communities, the influence of intersecting identities on discrimination experiences, and Canadian human rights law's abilities to address Islamophobia and anti-Arab animus. Canada's Arab and Muslim populations are growing at the same time that discrimination against these communities also appears to be rising. Better understanding of Arab and Muslim stereotypes and their dynamics might lead to better results in individual cases, heighten confidence in the human rights system, contribute to public education about the corrosive effect of stereotypes, and, ideally, reduce stereotyping against communities that have been increasingly stigmatized since the tragic events of 9/11.

II. METHODOLOGY: SELECTION OF CASES AND STEREOTYPES

A. WHICH CASES?¹⁵

People turn to the human rights system when they have experienced a particularly injurious event. Since human rights adjudication involves a deliberate fact-finding process and adjudicators offer reasons for their conclusions, tribunal decisions can give insights into the dynamics of stereotyping that may not be available through social science tools such as surveys or interviews. Nine human rights claimants were identified from Ontario, Quebec, British Columbia, and Canadian human rights tribunals decisions between 2002 and 2017 by ordering results derived from a search using the terms "Arab" or "Muslim" by citation count and eliminating decisions that involved a preliminary or procedural matter, as well as decisions involving requests for accommodation. Once the preliminary matters and accommodations cases were eliminated, the cases were examined in order of citation count to identify the top two cases from British Columbia, Quebec, and the federal tribunal and the top three cases from Ontario, which involved a set of facts that raised the specter of one of the three stereotypes under consideration. The sample was motivated in the sense that those cases which included facts that raised the spectre of stereotyping were included. But, the decisions made by the adjudicators did not factor into the selection of cases. Citation count was used to prioritize the results because this metric suggested that the cases examined would be the most read and circulated by adjudicators and perhaps even other legal professionals. Since every reading of a case represents an opportunity to educate about stereotypes, citation count constitutes a proxy, albeit an imperfect one, for the system's potential to fulfill its educational function.

British Columbia and Ontario were included because they generated the most cases. However, the vast majority of these cases were dismissed by the tribunal as showing no reasonable prospect of success. Ontario represents the largest human rights jurisdiction, with a quickly growing Arab population, so an additional case was added from the province.¹⁶ Quebec was included because *Bombardier*, the only human rights tribunal case considered by the Supreme Court of Canada, came from that jurisdiction. Canada's federal jurisdiction was chosen because it

¹⁵The cases that form the basis of this study are also examined in another article, Reem Bahdi, "Arabs, Muslims, Human Rights, Access to Justice and Institutional Trustworthiness: Insights From Thirteen Legal Narratives" (2018) *Can Bar Rev* 72 [Bahdi, "Arabs, Muslims"]. Some of the facts presented and the description of the facts presented are reproduced from this previous publication.

¹⁶ According to census data, Arabs were the fastest growing groups between 2011 and 2016 (+39%). Ontario Ministry of Finance, "2016 Census Highlights: Factsheet 9," online: <<https://www.fin.gov.on.ca/en/economy/demographics/census/cenhi16-9.html>> [<https://perma.cc/UY6-K7ZE>].

covers institutions with national security mandates such as the RCMP and CBSA. Choosing two cases from three jurisdictions and three cases from Ontario helped deepen the analysis and allowed for observations across jurisdictions while leaving space to examine the facts of each case in relative detail. While nine represents an arbitrary number in many respects, the sample size was sufficiently large to justify conclusions about the need for further research about the system's ability to understand Arab and Muslim stereotypes. The nine cases identified by jurisdiction, are:

British Columbia: *Elmasry (No. 4)*,¹⁷ *Asad*¹⁸

Canada: *Caza*,¹⁹ *Tahmourpour*²⁰

Ontario: *Abdallah*,²¹ *Yousufi*,²² *Saadi*²³

Quebec: *Bombardier*,²⁴ *Rezko*.²⁵

These nine cases were then noted-up and related decisions, including those made on judicial review, were added to the study. The resulting set of cases related to each complainant is referred to as a "legal narrative." Each legal narrative was examined to identify presuppositions, assumptions, or character assessments, whether implicit or explicit, made about a complainant by one of the parties, a tribunal member, or a judge on judicial review. In total, thirty-five cases, all of which were related to the nine legal narratives, formed the basis of this study. Each case was studied to determine if the adjudicator recognized the stereotype and, if so, whether the stereotype factored into the adjudicator's analysis or legal reasoning.

B. WHICH STEREOTYPES?

The violent, existential threat, and liar tropes were chosen for this study for several overlapping reasons. First, focusing on these particular stereotypes allowed for a qualified intersectional analysis. An intersectional analysis is needed because Arabs and Muslims are often conflated notwithstanding the diversity within and between their communities.²⁶ An intersectional approach allows for a better understanding of discrimination's dynamics and impact, and rejects the "'Muslimification' of Arabs" and the "'Arabification' of Muslims."²⁷ Paradoxically, the fact that the same stereotypes attach to both Arabs and Muslims facilitated an intersectional examination of the ways in which religion and gender informed stereotyping. A broader approach to intersectionality would have encompassed other aspects of identity beyond religion and gender. However, these were the two attributes that were presented on the facts of the selected cases. As Khaled Beydoun's work has demonstrated in the United States, this area of inquiry calls out for

¹⁷ *Elmasry and Habib v Roger's Publishing and MacQueen (No.4)*, 2008 BCHRT 378.

¹⁸ *Asad v Kinexus Bioinformatics*, 2008 BCHRT 293 [*Asad*].

¹⁹ *Caza v Télé-Métropole Inc* (2002), 43 CHRR 336 [*Caza*].

²⁰ *Tahmourpour v Royal Canadian Mounted Police*, 2008 CHRT 10 [*Tahmourpour*].

²¹ *Abdallah v Thames Valley District School Board*, 2008 HRTO 230 [*Abdallah*].

²² *Yousufi v Toronto Police Services Board*, 2009 HRTO 351 [*Yousufi*].

²³ *Saadi v Audmax*, 2009 HRTO 1627 [*Saadi*].

²⁴ *Québec (Commission des droits de la personne et des droits de la jeunesse) v Bombardier Inc. (Bombardier Aerospace Training Center)*, 2010 QCTDP 16 [*Québec v Bombardier QCTDP*].

²⁵ *Commission des droits de la personne et des droits de la jeunesse (Rezko) v Montréal (Service de police de la ville de) (SPVM)*, 2012 QCTDP 5 [*Rezko*].

²⁶ *Gottschalk & Greenberg*, *supra* note 2 at 78.

²⁷ Bahdi "No Exit," *supra* note 1.

broader and better intersectional inquiry.²⁸ A broader sampling of cases might create an opportunity to extend the analysis beyond religion and gender. This awaits further research.

Second, the violent, existential threat, and liar were chosen as the basis for this study because of their enduring nature; 9/11 amplified but did not create these prevailing, negative characterizations of Arabs and Muslims.²⁹ Images of “reel bad Arabs,” to quote Jack Shaheen, have long been evident in the entertainment industry. Shaheen reviewed over eleven hundred movies and found that the vast majority depicted Arabs in a negative light: they are foreign, uncivilized, untrustworthy, and violent. Disney’s *Aladdin*, for example, opens with a song that connects Arabs with violence and positions them as the antithesis of Western civilization: “Oh, I come from a land, from a faraway place, Where the caravan camels roam, Where they cut off your ear If they don’t like your face, It’s barbaric, but hey, it’s home.”³⁰ The negative characterizations were so pervasive across Hollywood that Shaheen’s study of Hollywood movies took almost twenty years to complete. Non-fictional sources such as books, magazines, newspapers, the Internet, television news, and talk radio have also frequently depicted Islam and Arabs in a negative light, often conflating the two.³¹ Edward Said’s *Orientalism* demonstrated that Western thinkers and policy-makers often posit the Middle East as the ontological and epistemological anti-thesis of the West.³² Asa McErcher’s study of Canadian diplomacy during the “Golden Age” shows that Canadian officials have also understood Arabs and Muslims through distorting stereotypes that position them as the negation of Western ideals.³³ Other enduring stereotypes such as the helpless or oppressed Muslim woman were not examined in part because they are specifically gendered. This study prioritized stereotypes that could be applied to all genders to be able to draw conclusions about how the stereotypes applied across genders.

Finally, and perhaps most poignantly, this article focuses on the violent, existential threat, and liar stereotypes because they have long been applied to demonize and disenfranchise other marginalized groups including Jews, Blacks, Chinese, Indigenous groups, and others racialized peoples. Jews, for example, have been described as untrustworthy while Blacks have been characterized as violent. Indigenous peoples have been constructed as threat to Canada and Chinese communities have been demonized as “the yellow peril.” The Canadian legal system has not stamped out these stereotypes. But it has acknowledged them to some extent. For example, Canadian adjudicators have noted the stereotyping of Jews as untrustworthy,³⁴ noted the “well-accepted facts concerning anti-black racism and the stereotyping of black men in relation to acts

²⁸ Khaled A Beydoun, “Between Muslim and White: The Legal Construction of Arab American Identity” (2013) 69 *Ann Surv Am L* 29; Khaled Beydoun, “Antebellum Islam” (2014) 58:1 *How LJ* 141; Khaled Beydoun, “Trouble in God’s Country: Rural America and War on Terror Geography” [forthcoming].

²⁹ Jack G Sheehan, *Reel Bad Arabs: How Hollywood Vilifies a People* (New York: Olive Branch Press, 2001); Baha Abu-Laban & Faith T Zeadey, eds, *Arabs in America: Myths and Realities* (Shah Alam: Medina University Press International, 1975); Mehrunnisa Ahmad Ali et al, “The Reduction of Islam and Muslims in Ontario’s Social Studies Textbooks” (2011) 3:1 *Journal of Educational Media, Memory & Society* 25; Jack G Shaheen, “The Arab Stereotype on Television” (1980) 13:2 *The Link* 1; Mary Ann Weston, “Post 9/11 Arab American Coverage Avoids Stereotypes” (2003) 24:1 *Newspaper Research Journal* 92.

³⁰ *Walt Disney Pictures Presents Aladdin*, VHS (Burbank, Cal: Walt Disney Pictures, 1992).

³¹ See generally Peter Gottschalk & Gabriel Greenberg, *Islamophobia: Making Muslims the Enemy* (Lanham, Maryland: Rowman & Littlefield Publishers, 2007) at 1-2.

³² Edward W Said, *Orientalism* (London: Routledge & Keegan Paul, 1978).

³³ Asa McErcher, “Orientalism in the Golden Age of Canadian Diplomacy” [Draft Paper on file with author].

³⁴ *Abrams v North Shore News and Collins*, 1999 BCHRT 7 para 59.

of violence,"³⁵ and disapproved of the stereotyping of Chinese men as criminals.³⁶ By advancing an understanding of the violent, existential threat, and liar stereotypes, this article hopes to contribute to comparative racialization research which explores, in part, how patterns of discrimination repeat themselves across groups. Often, however, these pan group experiences are studied and regulated as though they share little in common beyond some general differential treatment.

C. SCOPE AND SIGNIFICANCE OF STUDY

This analysis does not address the depth or extent of the stereotyping experiences faced by Arab or Muslim communities, nor does it purport to offer a representative overview of their experiences before human rights tribunals. Further research might show that human rights tribunals are doing a good, if imperfect, job of identifying and addressing Arab and Muslim stereotypes. This article does not refute that claim. The key question that motivates this article is whether the human rights system can do a better job identifying and addressing Arab and Muslim stereotypes. The nine legal narratives suggest that the system can do better. There are good reasons to do better: stereotyping results in negative outcomes for individuals and entire communities.

All human rights systems recognize stereotyping as a form of discrimination and an affront to equality.³⁷ Indeed, the Supreme Court has noted that stereotyping violates human dignity.³⁸ Scholars emphasize that stereotypes constitute acts of control and domination.³⁹ Stereotypes have historically justified systemic discrimination against targeted groups. For example, the stereotype of Indigenous inferiority justified residential schools. Stereotypes also deny the very premise on which liberal democracies build their justice systems, namely that individuals should be judged on the basis of their own acts and intentions. Rather than inviting judgment of an individual's conduct to be based on proven facts, stereotypes invite judgment on the basis of perceived characteristics and popular myths. Individuals are stereotyped when their character, abilities, motives, or actions are pre-judged and presumed to reflect traits that are deemed characteristic of the particular group to which they are perceived to belong. Whether conscious or unconscious, direct or subtle, stereotypes shape perceptions of a person's morality and competence and define how others interact with them.⁴⁰

³⁵ *Knoll North America Corp v Adams*, 2010 ONSC 3005 para 29.

³⁶ *R v Koh* (1998), 42 OR (3d) 668 (ONCA).

³⁷ The Ontario Human Rights Commission, for example, includes "making stereotypical assumptions based on a person's presumed traits" in its definition of discrimination. The Ontario Human Rights Commission, "What Is 'discrimination'?", online: Ontario Human Rights Commission <ohrc.on.ca/en/iii-principles-and-concepts/2-what-discrimination> [perma.cc/VE3T-CLLQ].

³⁸ *Law v Canada (Minister of Employment and Immigration)*, [1999] 1 SCR 497 at 4.

³⁹ Susan T Fiske, "Controlling Other People: The Impact of Power on Stereotyping" (1993) 48:6 *American Psychologist* 621.

⁴⁰ 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: A Comparative Exploration of Racial and Religious Prejudice in the 21st Century" (2010) 2 *Duke Forum for Law and Social 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 *European Journal of Social Psychology* 703.

Ultimately, stereotypes create entrench and express power relations⁴¹ and inequality; deny individuality; burden individuals with unfair expectations; generate tunnel vision;⁴² fracture relationships; produce suspicion, hostility, confusion, distance, and exclusion; deny opportunity and potential; result in biased decisions; and limit the ways in which individuals are expected to behave.⁴³ Stereotyped groups tend to experience social, political, and economic exclusion and stereotyping as a form of discrimination, which has been linked to negative health outcomes.⁴⁴

D. OVERVIEW OF STEREOTYPES IN THE CASES EXAMINED

The nine legal narratives confirmed the conclusions that social scientists have long advanced in Canada: Arabs and Muslims are stereotyped across a variety of sites, including schools, public institutions, and service providers. The cases studied show that the exclusionary and humiliating experiences that Arabs and Muslims face can be linked to stereotypes about a propensity for violence, an un-Canadian disposition, or a lack of trustworthiness. Sometimes Arabs and Muslims are overtly stereotyped. At other times, the tropes appear indirectly or subtly. Of course, both constitute forms of discrimination.⁴⁵

The chart below summarizes the incidents of terrorist, un-Canadian, and liar stereotypes as they appeared in the cases examined. The identity of the complainants is also summarized and cross-referenced with each stereotype. The stereotyping is characterized as “direct” or “indirect.” These terms are used differently than one would use them in speaking of discrimination as direct or resulting from an adverse impact. “Direct” or “indirect” are used more as synonyms for “obvious” and “subtle.” Sometimes the facts scream out “stereotype” to the reader. At other times, the facts must be explored and contexts examined before the stereotype emerges.

Consistent with human rights principles, directness does not require intention to invoke a stereotype or even awareness that the words or deeds raise the spectre of stereotyping. Asking an Arab Canadian woman, “were you a friend of Osamah Bin Laden,” for example, directly raises the spectre of the terrorist stereotype even if the person inquiring legitimately thinks that the question is appropriate. Where stereotyping manifests more subtly on the facts of a given case, it is identified as “indirect.” “Indirect” means that the stereotype was invoked through actions or words that required some interpretation, analysis, or inference. “Are you a friend of Osamah Bin Laden?,” not only suggests support for terrorism but also implies that one is anti-Canadian to the extent that Osamah Bin Laden was an enemy of Canada. Association with Bin Laden therefore raises suspicion about one’s national fidelity. Thus, in this example, the terrorist stereotype is invoked directly but the un-Canadian/existential threat stereotype is invoked indirectly. The line between “direct” and “indirect” was sometimes difficult to draw and a judgment call had to be made. In such cases, reasons are offered in the article to justify the naming of the stereotype.

⁴¹Fiske, *supra* note 39 at 621.

⁴² For an example of an analysis of how implicit bias and social context can affect behaviour and decision-making, see *Abbott v Toronto Police Services Board*, 2009 HRTO 1909.

⁴³ Fiske, *supra* note 39 at 623 - 624.

⁴⁴ Joshua Aronson, Diana Burgess, Sean M Phelan & Lindsay Juarez, “Unhealthy Interactions: The Role of Stereotype Threat in Health Disparities” (2013) 103:1 Am J Public Health 50.

⁴⁵ See *e.g. R v Find*, 2001 SCC 32.

Complainants	Violent	Un-Canadian	Liar	Arab/Muslim stereotypes recognized by tribunal?	Number of decisions related to complaint
Elmasry (BC)- Muslim community members	directly	directly	Directly	partially	4
Assad (BC)- Arab, Muslim man	directly	directly	indirectly	partially	2 (including judicial review)
Caza (Can)- Egyptian Arab woman, Muslim and Christian	directly	indirectly	indirectly	no	4 (including judicial review)
Tahmourpour (Can)- Muslim man	N/A	directly	indirectly	no	15 (including judicial review)
Abdallah (On)- Arab, Muslim man	N/A	directly	Directly	no	1
Yousufi (On)- Afghani, Muslim man	directly	directly	indirectly	partially	3
Saadi (On)- Bengali, Muslim woman	N/A	indirectly	Directly	yes but overturned on judicial review	3
Bombardier (Que)- Pakistani, Muslim man	directly	directly	indirectly	yes but overturned on judicial review	2 (including SCC decision)
Rezko (Que)- Arab, Christian man	N/A	indirectly	Directly	partially (though treatment is denounced)	1

The stereotypes manifested across provincial and federal jurisdictions, notwithstanding differences in the political and legal landscapes. Arguably, the Quebec Human Rights Tribunal decisions best appreciated the dynamics and impact of stereotyping. The Tribunal's decision in *Bombardier*, for example, turned on an assessment of stereotyping and social context analysis.⁴⁶ Given the limited sample size, it is not possible to generalize about the quality of decision-making based on jurisdiction. Moreover, it is important to note that the cases studied do not include

⁴⁶ Bahdi "Narrating Dignity," *supra* note 14.

accommodation cases which can generate a different assessment of the decisions emanating from each jurisdiction.⁴⁷ A comparative jurisdictional analysis must also await further research. Collectively, the nine legal narratives suggest that the violent Arab and Muslim tropes are not an artifact of the months or years immediately following 9/11 as some commentators and legal decision-makers have suggested. Discrimination against Arabs and Muslims has not withered away with the passage of time.⁴⁸ Instead, it has become systemically entrenched in some institutional cultures.⁴⁹

II. THE STEREOTYPES

A. PROPENSITY FOR VIOLENCE⁵⁰

A growing social science literature has documented the ways in which Arabs and Muslims are portrayed as violent people. Studies show that media images of Arabs and Muslims are both declarative and constitutive of this trope. Men from these communities are depicted as driven to conflict with the West, terrorists, dictatorial and violent fathers and husbands, and, occasionally, rapists of White women. Hollywood almost always portrays characters from the Middle East and North Africa in the context of terrorism. Jiwani and others have demonstrated that Muslim women can be depicted as breeders who give birth to and nurture terrorists.⁵¹

A Fathers' Day cartoon published by the *Globe and Mail* on 14 June 2003 exemplifies the stereotyping of Arabs and Muslims.⁵² The cartoon depicts an Arab man with exaggerated features and dress gleefully receiving a Fathers' Day gift. A child gazes, mesmerized, at the father who is proudly modeling his Father's Day gift: sticks of explosives lashed together in a belt. The capital letters D-A-D-D-Y appear on several of the sticks of explosives worn by the want-to-be suicide bomber father. A card reading "Happy Father's Day" is on the floor.

Reminiscent of Paul Huntington's *Clash of Civilizations* thesis, the cartoon posits Arabs as inherently inimical to Western values. The explosive belt gifted from child to father is a perversion of Father's Day in Canada which is intended to celebrate love and gratitude. The Arabs in this cartoon pass on a different set of values: their families are formed to breed violence and hate. The

⁴⁷ My ongoing but preliminary review of accommodation cases suggests that Ontario's approach to accommodation is more robust than that of Quebec. Compare, for example, *Commission des droits de la personne et des droits de la jeunesse c. Centre à la petite enfance Gros Bec*, 2008 QCTDP 14 with *Islam v Big Inc.*, 2013 HRTO 2009.

⁴⁸ For the argument that time has healed any discrimination or prejudice against Arab and Muslim communities since 9/11, see *Kayhan v Greve* (2008), 92 OR (3d) 139 (ON SCDC).

⁴⁹ Ontario Human Rights Commission, "Racism and Racial Discrimination: Systemic Discrimination (Fact Sheet)", online: Ontario Human Rights Commission <ohrc.on.ca/en/racism-and-racial-discrimination-systemic-discrimination-fact-sheet> [perma.cc/VHA3-W5AJ]; Faisal Bhabha, "The Spies Who Hate Us: Official Misdeeds and Sowing Distrust in Canadian National Security" (2018) UNBLJ 160.

⁵⁰ Some parts of this section are reproduced from Bahdi, "Arabs, Muslims," *supra* note 15.

⁵¹ Yasmin Jiwani "The Great White North Encounters September 11: Race, Gender, and Nation in Canada's National Daily, 'The Globe and Mail'" (2005) 32:4 *Social Justice* 50; Siobhan Byrne, "Framing Post-9/11 Security: Tales of State Securitization and of the Experiences of Muslim Communities" in Bruno Charbonneau & Wayne S Cox, eds, *Locating Global Order: American Power and Canadian Security after 9/11* (Vancouver: UBC Press, 2010) 167 at 176.

⁵² *The Globe and Mail* (14 June 2003) A20.

English script and the Fathers' Day theme suggest that whatever evil the family plans to propagate, they will do so in Canada. The child is happily showing his own propensity for violence at a very early age and conveys the impression that he is thoughtlessly destined to follow in the footsteps of his immoral father. The father's eyes are wild, suggesting his untethered delight at receiving (and giving) the gift of violence. The child's eyes are blank, suggesting an inability to think independently. Female family members are absent, suggesting that they are simultaneously irrelevant and enabling of the violence.

Legal scholars have also documented the rise of the terrorist profile in Canada, especially after 9/11. Most of the analysis has focused on how public officials, particularly national security agencies, have adopted the terrorist profile to surveil Muslim communities. Less attention has been paid to how the terrorist profile pervades decision-making by private individuals. Human rights law regulates private conduct, revealing that private actors, particularly in the workplace, also drive the stereotyping of Arabs and Muslims as terrorists. This affirms that Islamophobia and anti-Arab animus involves a dialectical process in which public and private actors reinforce and give effect to entrenched stereotypes.⁵³

Average Canadians have treated their Arab and Muslim co-workers with fear and suspicion. Captain Javed Latif's experiences at Bombardier are illustrative.⁵⁴ Possessing over twenty-five years' experience, Captain Latif was licensed to fly jumbo jets in both Canada and the United States.⁵⁵ However, industry standards required him to successfully complete refresher training as a condition of accepting employment contracts. He needed security clearance to enroll in training programs. In 2004, American officials wrongly labelled Latif a threat to national security and refused him clearance to train. Though surprised, Captain Latif was not overly concerned. He had, after all, submitted an application for training in Canada at Bombardier Aerospace's training facility in Montreal under his Canadian licence. American officials had no jurisdiction over his request to obtain training in Canada under his Canadian licence.⁵⁶ Latif was soon to be disappointed. Bombardier refused to train him under his Canadian licence in Canada.⁵⁷ Neither Canadian nor American laws required them to refuse Captain Latif's request. Bombardier's sole reason for refusing to train Latif in Canada was that American officials had refused Latif a security clearance in the United States.⁵⁸ In refusing Latif training under his Canadian licence in Canada, Bombardier did not seek guidance from Canadian national security officials.⁵⁹ Stephen Gignac, Bombardier's Head of Standards & Regulatory Compliance in Montreal, and its key decision-maker vis-à-vis Latif, admitted to the Quebec Human Rights Tribunal that he did not seek out advice or further information about Latif because he already concluded that Latif was a potential terrorist.

⁵³ Khaled Beydoun emphasizes the dialectic nature of Islamophobia in Khaled A Beydoun "Islamophobia: Toward a Legal Definition and Framework" (2016) 116 Colum L Rev 108 at 111 and 119; Azeezah Kanji and I have adopted Beydoun's definition to the Canadian context.

t in "What Is Islamophobia?"; Bahdi & Kanji, *supra* note 14 at 328.

⁵⁴ The following description of Latif's case are reproduced from Bahdi "Narrating Dignity," *supra* note 14 at 561 to 564.

⁵⁵ *Québec v Bombardier QCTDP*, *supra* note 24 at 7.

⁵⁶ *Ibid* at para 85.

⁵⁷ *Ibid* at paras 83-87.

⁵⁸ *Ibid* at para 287.

⁵⁹ *Ibid* at para 336.

By 2008, American officials had changed their minds about Latif.⁶⁰ He was never a threat to American or Canadian national security. Although they provided no explanation for Latif's listing, Latif himself speculated that American officials may have mistaken him for someone with a similar name. Both "Javed" and "Latif" are exceptionally common names. But he never knew the reason for his listing or de-listing. At that point, Latif had lost years of income, his reputation, and as he testified before the Tribunal, his dignity.

Latif's experiences of being falsely labelled a terrorist broadly parallel those of other Muslim men who found themselves at the receiving end of workplace suspicion. In Ontario, a tribunal heard a complaint by a civilian member of the Toronto Police who had been labelled a terrorist by a police detective, reportedly as a joke. In *Yousufi v Toronto Police Services Board*, a human rights tribunal found that the Toronto Police Services (TPS) failed to take steps to quell speculations that the complainant might be a terrorist. The complainant, a Muslim, civilian employee of the TPS was the subject of a professed joke by a TPS Detective. On 12 September 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.⁶¹

Yousufi's complaint shed light on some unsettling behaviour within the Toronto Police Service: a police detective deemed it appropriate to plot a practical joke in the hours following 9/11 while much of the world was still reeling from the attacks. Reminiscent of a time when women were told that sexual harassment constituted flirting or innocent behaviour,⁶² Detective Bradshaw and some of his colleagues expected Yousufi to endure comments about terrorism because they were presented in the form of a joke.

Detective Bradshaw's decision-making belies an inability to appreciate the impact that a joke would have on his colleague's relationship with other members of the police force. Following this incident, 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" as a joke.⁶³ Other evidence indicated that the complainant's photo hanging in the hallway was often turned upside down and superimposed with a picture of a goat on at least one occasion.

In British Columbia, another Muslim man also found himself the subject of workplace speculation about his links to terrorism in the wake of 9/11. The facts are nothing short of bizarre. The complainant, Ghassan Asad, complained that he was discriminated in employment because of his race, ethnicity, place of origin, and creed/religion. Assad worked as a biochemist for the respondent company, Kinexus Bioinformatics. The good working relationship he had cultivated

⁶⁰ *Ibid* at para 126.

⁶¹ *Yousufi*, *supra* note 22 at para 17.

⁶² See *e.g.* Miranda Fricker, "Powerlessness and Social Interpretation" (2006) 3:1/2 *Episteme: A Journal of Social Epistemology* 96.

⁶³ *Yousufi*, *supra* note 22 at para 57.

with his colleagues changed dramatically after 9/11. One of his co-workers identified him as a potential terrorist based on the fact that he was a single, young Palestinian, Muslim man who had lived in Saudi Arabia, criticized American foreign policy, openly expressed views on politics in the Middle East, sympathized with Palestinians, had taken a trip to Washington DC in the summer weeks before 9/11, and spoke to his family on the phone in Arabic. The adjudicator found that the co-worker turned virtually every experience with Mr. Asad into evidence of suspicious behaviour. His decision to stop eating candy became a "fast" to purify himself for September 11; his overseas conversations with family were deemed sinister because they were conducted in Arabic; the relocation of his roommate to another apartment was defined as "the strange disappearance of a 'secretive' roommate"; his passion for the Middle East was turned into hatred for North America; and his willingness to work weekends was translated into a suspicions about his access to the company computer system.⁶⁴ As a result of the allegations, Asad suffered health impacts and his relationship with his co-workers and employer deteriorated.

Soon enough, one of Asad's co-worker who disagreed with his views on Palestine in particular reported him as a 9/11 suspect to the RCMP. The agency took those allegations about Asad's connections to terrorism seriously. RCMP officers arrived at Asad's workplace and interviewed him on more than one occasion about his associations, his political opinions, especially his views on Palestine, and his religious views. Eventually, the officers warned him not to be so open with his opinions, especially his criticism of American foreign policy.

The officers advised Mr. Asad that someone had complained about him, so they had to investigate. When Mr. Asad asked who had complained, the officers said that they did not know but that they had been instructed to interview him. At the end of the interview, one of the officers assured Mr. Asad that: "This is a free country." However, he advised Mr. Asad that, in the present circumstances, he could not express his opinions about Americans. Mr. Asad says that his reaction was: "He's a police officer." He had a feeling of *déjà vu*, that he had seen this in Saudi Arabia, and that he had come to Canada for a very different environment. However, he did not say anything more as argument would not lead anywhere.

Mr. Asad says that the officers possessed a lot of information about conversations he had had with people at Kinexus, including comments he had made about the Israeli/Palestinian conflict in conversations with Ms. Stoute, both before and after September 11. He recalls the officers asking him why he criticized American foreign policy in that context.⁶⁵

This interview fueled the conviction amongst other employees that Asad should be viewed with suspicion. Other co-workers made hurtful comments about Asad's Arab identity and his Muslim faith. The employer dismissed Asad's complaints with the observation that he looked like the September 11 terrorists so it made sense that someone would report him.⁶⁶ In short, "Asad was transformed from a popular, competent, valued and respected employee into an object of suspicion, speculation and mistrust."⁶⁷ Asad was eventually dismissed from his employment.

⁶⁴ *Asad*, *supra* note 18 at paras 19, 414, 509, 512, 554, 849.

⁶⁵ *Ibid* at paras 117-118

⁶⁶ *Ibid* at para 31.

⁶⁷ *Ibid* at paras 27.

While the male complainants were directly labelled as terrorists, the women who filed some of the studied complaints were connected to terrorism indirectly. In *Elmasry and Habib v Roger's Publishing and MacQueen (No. 4)*, a BC tribunal considered an article published by Maclean's Magazine entitled "*The New World Order*" by Mark Steyn. The article argued that "adherents of the religion of Islam, have serious global ambitions for world religious domination, which they will be assisted in achieving by demographically outnumbering the populations in traditional Western cultures and, if necessary, by the use of violence."⁶⁸ Women's reproductive capacities are transformed into an instrument of terror because women give birth to terrorists, and potential terrorists and demography is "the most basic root of all. A people that won't multiply can't go forth or go anywhere. Those who do will shape the age we live in."⁶⁹

In *Caza v Télé-Métropole Inc.*,⁷⁰ Nadia Caza was linked to terrorism because of her identity as an Arab woman. At the tribunal hearing, Caza was asked to answer the question whether someone might jokingly or innocently ask her if she had links to Osamah Bin Laden. The comment connecting her to Bin Laden was not made by the respondent but by the tribunal chair. In trying to understand why the complainant felt that a co-worker was biased towards Arabs and Muslims, the tribunal chair had himself interfered in the complainant's cross-examination 294 times. He also suggested to her that if someone randomly but jokingly connected her to Bin Laden, that she need not feel insulted or concerned about the association since it was offered in jest.

Q. Madam, I can say to you this afternoon with a smile on my face that, given that you are a Muslim, of Muslim origin, ... I can nevertheless have a joke at your expense by asking you if you have an affinity with Bin Laden.⁷¹

Caza had an Egyptian Muslim father and Egyptian Christian mother. She identified as Christian and unlike Latif, Asad and the El Masri complainants, was not directly accused of being a potential terrorist. Instead, she was linked with terrorism by association because the tribunal chair appeared insistent on focusing on her Muslim background. Though the association was made with a smile and in the context of a hypothetical scenario, it nonetheless gratuitously drew a link between Caza and a known terrorist. As the Commission lawyer pointed out, the link drawn between Caza and Bin Laden, though subtle, was troubling because it suggested "that there is a distraction on the part of the decision-maker who hears a case involving an Arab and has in mind the fact that Bin Laden is an individual who belongs to the Arab world."⁷²

B. "NON-CITIZENING":⁷³ UN-CANADIAN/EXISTENTIAL THREAT

When Muslims are accused of violence or terrorism (*e.g. Assad, Elmasry, Yousufi, Saadi and Bombardier*) they are simultaneously accused of having no loyalty to Canada. In *Elmasry*, for example, the MacLean's article argued that the Muslim immigrants bear no allegiance to their

⁶⁸ Elmasry, *supra* note 17 at para 2.

⁶⁹ *Ibid* at para 15.

⁷⁰ *Caza v Télé-Métropole Inc.*, 2003 FC 811 [*Caza FC*].

⁷¹ *Ibid* at para 18.

⁷² *Caza*, *supra* note 19 at para 39.

⁷³ I call this self-delegated authority to exclude Arabs and Muslims from the protection of the law "non-citizenizing," deliberately invoke the Arabic language convention of turning a noun into a verb to describe this process of excluding Arabs and Muslims and, by using Arabic conventions in coin a term in English, to complicate the them/us, inside/outside categories.

adopted home countries but rather share a transnational dedication to "violence or armed struggle."⁷⁴ The article warned about Canadian immigration and the threat posed by growing Muslim populations to Canada and Canadian values. It described "the larger 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."⁷⁵ The article posited, wrongly, that "'Islamic' identity ... transcends borders" to create the impression of a Muslim horde and reinforce its theory of a Muslim conspiracy to take over the West.⁷⁶ As the complainants stressed in their arguments before the tribunal, the article targeted all Muslims as persons to be feared by the West.⁷⁷ The Muslim to be feared is the person you consider a friendly neighbour or co-worker.

Despite their formal citizenship status, complainants are treated as people who cannot be Canadian and Arab or Muslim at the same time and are often put in a position of trying to prove that they are worthy of kinship by proving their fidelity to Canada, Canadian values, and Canadians. Even Sherene Razack's analysis of the ways in which 9/11 has furthered our understanding of the Muslim/Arab as enemy within does not fully contemplate the extent to which the "casting out" dynamic expresses itself in the every day.⁷⁸ Offices, workplaces, and government counters constitute racialized social spaces that cement borders between those deemed insiders and those deemed foreigners. Just as surely as immigration laws divide those who hold formal citizens from those who do not, social spaces sort individuals into good Canadians whose character, values, and motives are presumed to enrich the national fabric and those whose character, values, and motives are presumed to undermine Canadian identity.

After he was wrongly accused of participating in the 9/11 attacks in New York by his co-workers, Ghassan Asad expended significant energy explaining that his Canadian and Arab identities were not mutually exclusive. In an article that he wrote for the company's newsletter, Asad explained the hardships that he had endured and simultaneously affirmed his Canadian identity. His article is worthy of full reproduction because it best conveys Asad's emotional stress and his desire for belonging.

At 4:45 pm Monday, September 17, 2001, two RCMP officers came to the Kinexus to ask me some questions regarding my recent trip to New York and Washington, D.C. Apparently, someone thought that this trip (the one I had planned in advance and told everyone about) combined with my Arabic background, (that I am proud of as well as being proud of being Canadian) could be related to the September 11th incident in N.Y. and called the RCMP to report it. After spending approximately 1 hour with the RCMP answering some questions, I went home. The next day, the RCMP called to see me again, to ask me some more questions about my trip, my culture, my background, etc. for another 2 hours. At the end of the session they said "*we won't be calling you back again.*" And they didn't. Following this, I took the next week off to recover and readjust from this traumatic incident. Now I have put it behind me and am going forward. If anyone has any questions, please feel free to talk to me about it

⁷⁴ *Elmasry (No. 4)*, *supra* note 17 at para 19.

⁷⁵ *Ibid* at Appendix.

⁷⁶ *Ibid* at para 121.

⁷⁷ *Ibid* at para 108.

⁷⁸ Sherene Razack, *Casting Out: The Eviction of Muslims From Western Law and Politics* (Toronto: University of Toronto Press, 2008).

(absolutely!). Also I would like to thank everyone who called me at home to offer their support during this difficult time.⁷⁹

Unfortunately, Asad was wrong. After the article appeared, the RCMP visited him several more times, again asking him questions about his trip and inquiring about other Arabs. When Assad complained that they should either end the interrogations or arrest him, an RCMP officer explained that Asad's "background and trip to New York were 'big red flags', so he should not blame the officers who conducted the investigation."⁸⁰ Asad's Arab and Muslim backgrounds factored into the RCMP assessment.

The officers asked him questions about his background, his religion, and how religious he was... They asked if he knew any of the terrorists and if he had met with anyone from al-Qaeda, and about his views of Americans.⁸¹

Two commissions of inquiry and several scholarly studies have demonstrated that national security officials, including the RCMP, can irrationally treat Arab, Muslim men with exaggerated national security suspicion partially on the theory that they have little to no allegiance to Canada and Canadians.⁸²

Abdallah's negative interactions with his ESL teacher included an exchange in which she explicitly challenged his belonging because of his immigration status. While the respondent and complainant version of events vary slight, both agree that the respondent had insisted on her superiority by affirming her place of birth over that of the complainant. Calling him an immigrant, the respondent insisted, "I **am** Canadian [emphasis in original]."⁸³ When the complainant pointed out "I am Canadian too," the personal respondent replied, "But I was born here."⁸⁴ The complainant found the remarks demeaned his race and ethnicity. They troubled him partially because the respondent was his ESL instructor. As he explained,

... I must question how it is possible for someone to be in the position of teaching newcomers and have such a discriminatory attitude toward them. After all we who do come to Canada are making a genuine effort to learn the English language and that is why we turn to places that offer ESL courses. We do not expect that those who instruct us are also those oppose us being in Canada in the first place.⁸⁵

Ali Tahmourpour's interactions with the RCMP can also be read as a contest over being and belonging. The RCMP terminated Ali Tahmourpour, a trainee or cadet at the RCMP Training Academy in Regina in 1999 prior to completion of the training program. Corporal Dan Boyer taunted Tahmourpour. He screamed "into his [Tahmourpour's] ear that he was a 'loser', a 'coward', 'fucking useless', and 'incompetent'."⁸⁶ Corporal Boyer specifically set out to embarrass Tahmourpour based on his religious and ethnic identity. At one point, for example, he questioned

⁷⁹ Asad, *supra* note 18 at para 144.

⁸⁰ *Ibid* at para 149.

⁸¹ *Ibid* at para 116.

⁸² For an excellent overview, see Bhabha, *supra* note 49.

⁸³ Abdallah, *supra* note 21 at para 42.

⁸⁴ *Ibid*

⁸⁵ *Ibid* para 43.

⁸⁶ Tahmourpour, *supra* note 20 at para 29.

Tahmourpour about the manner in which he signed his signature, asking "What kind of fucking language is that, or is it something that you've made up?"⁸⁷ Tahmourpour signed from right to left, invoking the conventions of the Persian language. The constant allegations of incompetence and the exoticizing of Tahmourpour's habits aimed to separate him from other trainees by deeming him foreign and unworthy of belonging.

Similarly, the interactions between Montreal police officer Dominique Chartrand, and Milad Rezko, a Syrian Christian man who had lived in Quebec for most of his life, also illustrated how Arabs and Muslims are constructed as non-citizens in the everyday. A Montreal police officer issued a ticket to Milad Rezko for failing to wear a seat belt. Using this pretext, Chartrand questioned Milad Rezko without reasonable grounds, investigated Rezko and his brother for criminal records without justification, and issued a ticket to Rezko. Rezko, who worked in the building in front of the driver's parking spot, did not have his identification with him. He was sitting in the passenger seat of the vehicle and had only come down to pick up deliveries from the driver, a Muslim man. Officer Chartrand concluded that Rezko was being evasive, in part because Rezko expressed his birthdate in numbers but could not recall whether the Canadian convention required him to give months or days first. In response to Chartrand's expressions of disbelief, Rezko swore that he was telling the truth and, as is conventional for devout Arab Christians when swearing to the truth, he crossed himself as he spoke. Officer Chartrand retorted, "I couldn't care less all Arabs are liars."⁸⁸ Dominique Chartrand's conduct and comments un-citizenized Rezko by casting him as someone who, because of his Arab identity, would never live up to the virtues expected of desirable citizens. Evidently, it was Rezko's ethnicity and not his religion that gave rise to Chartrand's ire.

Sometimes the respondent directly suggests that the complainant is foreign and inadequate. At other times, the foreigner/outsider motif presents itself subtly. For example, under cross-examination, Nadia Caza faced condescending and insulting treatment by the respondent's lawyer. The lawyer appeared to go out of his way to suggest to Ms. Caza that she did not understand or behave as a Canadian should think or act and that she operated on foreign values and assumptions. The comments occurred during the lawyer's questioning about whether it is true or not that Arabs do not like to help others. The respondent was purported to have uttered those words. The complainant appeared confused about whether the lawyer was asking her if the respondent had uttered those words or whether he wanted to know if the words reflected a true statement. The Chair's intervention did not address the source of the confusion. Instead, he presumed that the complainant was resistant to answering or simply did not understand a simple question: are Arabs culturally predisposed to not helping others?

Mr. DI IORIO:

Q. So, there is: "It is not in her culture to help others." She made this comment?

A. Yes.

Q. In your opinion that comment is incorrect, is it not?

A. Right.

⁸⁷ *Ibid* at para 32.

⁸⁸ *Rezko, supra* note 25 at para 223.

Q. It is not in someone's culture whether you help or do not help others. Is that what you are saying?

A. Yes, it depends on the person.

Q. In your view, that statement is incorrect, is it not?

A. You want me to speak about what Manon said?

Q. I want you to speak about your complaint, Ms. Caza. Right? Here in Canada, if someone is accused of something, it has to be proven.

A. Well, she said it and I was a witness, what more do you want? You want me to analyze her words, but I am not qualified.

Q. I am not asking you to analyze, I am asking you whether you agree or disagree. Do you agree that "It is not in her culture to help others", do you agree with that statement?

A. I don't understand.

BY THE CHAIRPERSON:

Q. Madam.

A. I do not understand what he means whether I agree...

Q. I will put the question to you myself.

A. O.K.

Q. Just a moment. If I say to you, madam, because you are an Arab - you are an Arab, we are agreed on that?

A. Yes.

Q. I say you are an Arab and it is not in your culture to help others. I say that to you: is that correct?

A. No, it is not correct.

Q. But that is the question he is asking you.

A. I'm sorry.

Q. That's all it is. Is this correct or not correct?

A. It is not correct that people are not accustomed to help others in my culture.

Q. In your culture, it is not correct that you do not help others?

A. That's it.

Q. Or that you are not willing to help others?

A. No, that is not true.

Q. Right.

Mr. DI IORIO:

Q. So this statement is wrong, it is not correct to say, you cannot say that about Arab culture?

A. No, but I am not the one who said it.

Q. It cannot be said about Arab culture that it does not involve helping others.

A. O.K.

BY THE CHAIRPERSON: You cannot say that, madam.

Mr. DI IORIO: This statement is wrong.

BY THE CHAIRPERSON:

Q. Can that be said?

A. No, you cannot say that.

Q. It is not true?

A. No, it is not true.

Q. That is all he is asking you.

A. But I already told him it is not true.⁸⁹

These discussions about "Arab culture" and the comment "here in Canada" suggest that Caza is the perpetual foreigner who hails from a less civilized land that did not value fairness or the rule of law. Curiously, the questioning shifts from whether comments about Arab culture had been directed at Caza, to whether it is true or not that Arabs are, because of their culture, uninclined to help others. Shelina Kassam has demonstrated that culture has overtaken race as the main lens

⁸⁹ *Caza FC, supra* note 70 at para 23.

through which discriminatory attitudes towards Arabs and Muslim are expressed. “[C]ultural racism creates intolerable subjects, those whose cultural choices mark them as too different from mainstream norms; such racism shifts the burden of responsibility to the Other to prove that she remains within the boundaries of acceptability.”⁹⁰ The “here in Canada” comment, though difficult to justify in the best of circumstances, appears all the more gratuitous given that Ms. Caza was not a recent immigrant to Canada. She had been employed by the corporate respondent for six years prior to the hearing date. Like Rezko, moreover, Caza appears to have been singled out as un-Canadian because of her Arab ethnicity and/or perceived Muslim identity. The gratuitous focus of the questioning by both the lawyer and the adjudicator about whether it is true or not that Arabs are culturally inclined to not help others suggests that the complainant, as an Arab, is different from others around her. The comment also reinforces that she does not fully belong to Canadian culture which is implicitly presented as the antithesis of Arab culture. The transcript shows Caza’s attempt to bring the issue back to the question of whether the respondent had made such comments to her and whether these comments constituted or contributed to a hostile work environment and discrimination while the lawyer and adjudicator appear to join forces to frustrate Caza’s efforts. Though they have complicated and shifted the line of questioning, they appear to regard Caza as uncooperative or irrational and express some level of frustration with her (“That is all he is asking you.”).

Seema Saadi found herself defined as a foreigner through her employer’s inordinate surveillance of her in the workplace and its enforcement of vague workplace policies that excluded her cultural and religious preferences and defined her as an outsider. The complainant alleged that she was subject to arbitrary restrictions and requirements about her food and dress along with unnecessary surveillance at her workplace and that she had been terminated because of her Muslim identity. The respondent, for example, introduced new procedures for accessing files and went through Saadi’s computer when she left the office.

Several complainants found themselves pitted against a respondent that has delegated to itself the authority and responsibility to protect Canada and Canadian values. In *Bombardier*, Steve Gignac acknowledged that he lacked legal authority to deny Captain Latif’s training in Canada under his Canadian licence. He nonetheless made the decision to exclude Latif from the benefits of training and hence from earning a livelihood. When asked to point to a policy or some legal authority to justify denying Captain Latif training since neither American nor Canadian law authorized his actions, Bombardier’s Stephen Gignac said “I’m the policy.”⁹¹ Perhaps Gignac felt himself emboldened by his employment at Bombardier, a company which proudly defines itself as “A Canadian Industrial Leader.”⁹² In any event, he made clear that he was taking on the role of a private national security advisor and enforcer to protect Canada and Canadians from individuals like Latif. In Gignac’s eyes, protecting Canada meant giving effect to American national security decisions without legal authority and without consulting Canadian national security agencies.

⁹⁰ Shelina Kassam, *Standing on Guard For Thee: The Acceptable Muslim and Boundaries of Racialized Inclusion in Canada* (PhD Dissertation, University of Toronto, 2018), online:

<https://tspace.library.utoronto.ca/bitstream/1807/89768/3/Kassam_Shelina_201806_PhD_thesis.pdf> [http://hdl.handle.net/1807/89768] at 53.

⁹¹ This line is repeated four times in the Tribunal decision. *Québec v Bombardier* QCTDP, *supra* note 24 at para 132, 286, 330 & 438.

⁹² Bombardier, “Bombardier: A Canadian Industrial Leader,” online:

<bombardier.com/content/dam/Websites/bombardiercom/countries/supporting-documents/Bombardier-Canadian-industrial-leader-en.pdf> [perma.cc/J38F-HKZZ].

Protecting Canada meant policing Latif without regard for his interests or any duties that might be owed to him.

C. LIAR/UNTRUSTWORTHY

Whereas the un-Canadian motif tended to arise on the cases directly, the liar motif surfaced more subtly but it is perhaps the most corrosive presumption or negative trait associated with Arab or Muslim complainants in the cases examined. The most forceful and direct articulation of the stereotype involved Milad Rezko, the sole Christian man in the nine narratives examined. Rezko's attempts to convince Officer Chartrand that his version of events was true were met with a blatantly racist retort, "all Arabs are liars."⁹³ Dominique Chartrand explained to the human rights tribunal that he harbours no animosity towards members of Arab communities in Canada. Officer Chartrand tried desperately to demonstrate that he valued and trusted members of the Arab community in Quebec. In support of his contention that he respected the equal dignity and worth of Arab Canadians, Officer Chartrand explained that,

he plays soccer, a multicultural sport, works for the SPVM [Montreal police], which is multicultural, and entered the SPVM after studies in accounting with people of different ethnic origins. His veterinarian is an Arab and he trusts him completely.⁹⁴

Chartrand's logic that he was not biased against Rezko because he had studied with racialized people, played on racially diverse sports teams, and hired an Arab veterinarian suggests that he tolerates racialized people and is willing to entrust them with his pets. However, it does not counter the conclusion that Chartrand harbours biases against Arabs and that his biases led him to abuse the power granted to him under the law.

Consistent with the liar trope, other respondents also rushed to judgment about Arab or Muslim complainants. In Saudi, the respondents attempted to explain their over-surveillance of Seema Saudi by alleging that Saudi was "unscrupulous, untrustworthy, unethical and unprofessional."⁹⁵ The respondents alleged that the complainant had taken files, was making secretive phone calls, acting suspiciously, and going into other people's desks. However, they did not provide particulars, nor did they produce any documents or witnesses in support of their allegations.⁹⁶

The respondents in Abdallah also alleged that the complainant had been acting suspiciously. Abdallah, a highly educated Egyptian engineer and scholar who had published numerous articles in English, was accused of cheating on an English as a Second Language assignment and lying about it. Abdallah had repeatedly closed the computer terminal on which he was completing an English comprehension assignment and provided his mark to his instructor instead of allowing her to read it off the screen. The instructor found this and other behaviour suspicious. Abdallah was given a mark of zero on his exam which he needed to further his professional qualifications. When Abdallah protested that he was being treated unfairly, the

⁹³ Rezko, *supra* note 25 at para 223.

⁹⁴ *Ibid* at para 113.

⁹⁵ Saadi, *supra* note 23 at para 81.

⁹⁶ *Ibid* at para 82.

personal respondent, ESL teacher Joanne Thomas, declared “I am sick and tired of immigrants crying discrimination” when challenged.⁹⁷

The liar stereotype also wove itself throughout Jived Latif’s legal journey. Stephen Gignac noted that he knew Captain Latif “like a brother” but unquestioningly accepted the conclusion that Latif posed a threat to national security.⁹⁸ In other words, Gignac accepted the likelihood that his entire relationship with Latif had been built on a lie of Latif’s making. Similarly, some of Hassan Assad’s co-workers convinced themselves that his Arab and Muslim identities rendered him untrustworthy. Some harboured suspicions that he had sabotaged the company’s computer system because he was connected to the 9/11 terrorists. They concluded that he had lied about the purpose of his trip to New York: he had claimed that he had gone as a tourist when he had gone to aid in the 9/11 attacks. Similarly, the Tahmourpour tribunal found that RCMP trainers consistently refused to believe his narrative of events and repeatedly maintained Mr. Tahmourpour was incompetent and lacking in credibility.

III. DID ADJUDICATORS RECOGNIZE THE STEREOTYPES?

A. THE IMPORTANCE OF ADJUDICATIVE RECOGNITION

In the human rights context, adjudicators are appointed because they “have experience, knowledge and training in human rights law and issues.”⁹⁹ For this reason, human rights adjudicators have determined that expert evidence about racism, including racism against Muslim communities post 9/11, trenches on their areas of expertise.¹⁰⁰ Adjudicators thus have a special responsibility to identify and address stereotypes. Special responsibility does not equate to sole responsibility. Systemic failures can arise. Writing in the context of sexual assault law, Elaine Craig has meticulously explained how a failure to recognize an operative stereotype can hinder and implicate multiple legal actors. Craig notes that a “[s]ystemic failure occurs when the errors of the individual components of the system alone do not fully explain the miscarriage.”¹⁰¹ Unacknowledged stereotypes in human rights cases may indicate systemic failures as well. It may be that a complainant’s lawyer and/or the Human Rights Commission, as the case may be, failed to identify a stereotype in making submissions about discrimination before the tribunal. Or, in some jurisdictions, the complainant may be self-represented and may not have the experience or resources to make an argument about stereotyping and its significance on the facts. Another possibility is that submissions about stereotyping may have been made but minimized or ignored by the adjudicators. Alternatively, an adjudicator may have heard submissions or independently considered the impact of a stereotype and decided that it was not relevant. A detailed analysis of submissions and transcripts and, ideally, interviews with the actors involved in each of the nine legal narratives would be needed to determine if the adjudicative silences signal systemic failure. Each case would have to be assessed on its own

⁹⁷ Abdallah, *supra* note 21 at 53.

⁹⁸ *Québec v Bombardier QCTDP*, *supra* note 24 at para 140.

⁹⁹ Human Rights Tribunal of Ontario, “What We Do”, online: Tribunals Ontario <sjto.gov.on.ca/hrto/what-we-do/> [perma.cc/NAK7-LA57].

¹⁰⁰ See for example *Yousufi v. Toronto Police Services Board*, 2009 HRTO 20 and *Yousufi v. Toronto Police Services Board*, 2009 HRTO 1587.

¹⁰¹ Elaine Craig, “Judging Sexual Assault Trials: Systemic Failure in the Case of Regina v Bassam Al-Rawi”, (2017) 97 Can Bar Rev 180 at 182.

merits in light of the particular procedures governing each jurisdiction to identify the locus of the knowledge or performance gaps. Such an analysis is beyond the scope of this article, which concerns itself with whether adjudicators named the stereotype at play without offering an assessment of whether the adjudicative silence represented a larger systemic failure.

Even in the absence of systemic failures, however, human rights adjudicators shoulder a special responsibility to name and address a stereotype. Canadian law denounces stereotyping in no uncertain terms. Unless a stereotype is acknowledged and addressed, its impact on justice cannot be known. The stereotype cannot be dismissed as the cause of a discriminatory act, its impact on the complainant cannot be assessed, and damages may not be properly calculated in the absence of naming the stereotype. Naming the stereotype also has educational benefits for communities, independent of the outcome of a given case. It can empower some individuals within those communities to at least name and share their own experiences. Stereotyping represents, in Miranda Fricker's terminology, a "hermeneutic injustice" or "the injustice of having some significant area of one's social experience obscured from collective understanding owing to a persistent and wide-ranging hermeneutical marginalization."¹⁰² Drawing on the evolving treatment of sexual harassment in the workplace as an example, Fricker observes that while women have historically "struggled in isolation to make proper sense of their various experiences of harassment, the whole engine of collective social meaning was effectively geared to keeping these obscured experiences out of sight."¹⁰³ Social and legal systems did not simply ignore the behaviour that harmed women, but instead gave them labels that made injurious experiences all the more difficult to detect.¹⁰⁴ This inability to communicate and detect the harm makes the naming in "naming, blaming and claiming" impossible. Fricker emphasizes that an individual's inability to name is often not the function of a lack of information but is instead limited by law's horizons. Law simply did not give meaning to their experiences. "No wonder" observes Fricker, "that moments of its revelation can come as a life-changing flash of enlightenment."¹⁰⁵ When human rights adjudicators name a stereotype, they affirm that human rights law can give meaning to Arab and Muslim experiences.

Human rights decisions represent a form of demosprudence.¹⁰⁶ While jurisprudence, as an analysis and application of legal rules and doctrine, focuses on the legal profession, demosprudence concerns itself with the way in which legal decisions speak to the demos or populace more broadly. Adjudicators, whether they are conscious of it or not, write to society at large and not simply their colleagues or the litigants before them. Their decisions are read by community members within the legal profession, these decisions may become the subject of broader community interest because of the media attention, or they may be shared informally through community channels. Various scholars define "demosprudence" differently; this article uses the term to highlight that all legal decision-making speaks to non-legal audiences even if the

¹⁰² Fricker, *supra* note 62 at 100.

¹⁰³ *Ibid* at 99.

¹⁰⁴ *Ibid* at 100.

¹⁰⁵ *Ibid* at 98.

¹⁰⁶ The term "demosprudence" is attributed to Lani Guinier and Gerald Torres who have used it in various contexts to describe, for example, the relationship between law and social movements or the role of dissent and changes in the law. On the former, see Lani Guinier & Gerald Torres, "Changing the Wind: Notes Toward a Demosprudence of Law and Social Movements" (2014) Yale LJ 123:8 2740. On the latter see Lani Guinier, "Demosprudence Through Dissent" (2008) 122 Harvard Law Rev 4. In using the term here, I am not focused on the relationship between legal decision-making and social movements per se but like Guinier and Torres, I am invoking law's ability to "spark a deliberative process;" Guinier at 14.

language used, doctrine discussed, and conventions invoked are directed at legal professionals. In the context of this study, writing demosprudentially means writing at, though not necessarily for, the effected community. Writing demosprudentially does not require a particular outcome in any given case. Rather, it takes seriously the need to demonstrate through explicit reasons that decision-makers are aware of differential social positions and responsive to the equality needs of stigmatized groups. Naming a stereotype serves a signaling function; it signals to communities that human rights regimes understand the social context against which their discriminatory experiences are operating. Ultimately, human rights regimes that fail to recognize or address stereotypes when they are presented in the facts before them do so at the risk of undermining their own credibility and trustworthiness with effected communities.¹⁰⁷

B. VIOLENT/TERRORISTS

Adjudicators involved in the nine legal narratives named the terrorist stereotype when it attached itself to men. When Javed Latif sought recognition and remedy for the harm done to him by filing a complaint with the Commission des droits de la personne et des droits de la jeunesse (hereinafter the “Commission”), the Commission took his case before a tribunal to protect the public interest. Quebec’s Human Rights Tribunal understood Captain Latif’s case as an opportunity to recognize Islamophobia in Canada and to affirm that Canadian law, unlike its American counterpart, should not further national security exceptionalism.

On 29 November 2010, after seven days of hearings, eight witnesses and two expert reports, the Tribunal found that Bombardier had discriminated against Mr. Latif.¹⁰⁸ In a decision that spanned 120 pages, the Tribunal ordered \$25,000 in moral damages and US \$309,798.72 (less \$66,639 in Canadian dollars) for material prejudice. The Tribunal also ordered \$50,000 in punitive damages and 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 licences.”¹⁰⁹ The Quebec Tribunal acknowledged that Muslims are stereotyped as terrorists in the United States and that stereotyping is evident in both the public and private spheres and colours decision-making. Citing Supreme Court of Canada jurisprudence, the Tribunal emphasized that “[r]acial prejudice and its effects are as invasive and elusive as they are corrosive” and that “one must not ‘underestimate the insidious nature of racial prejudice and the stereotyping that underlies it.’”¹¹⁰ The Tribunal found that the terrorist profile influenced decision-making within Bombardier itself and was not contained to American decision-making.

Much of the Tribunal’s decision also 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. The tribunal noted, for example, that Gignac failed to inquire about Latif with Canadian officials even though he had easy and regular contact with Canadian national security officials. Gignac failed to consult because he had already concluded that Latif was a terrorist and his Muslim identity

¹⁰⁷See Bahdi, “Arabs, Muslims,” *supra* note 15 for a discussion of institutional trustworthiness and Arab/Muslim human rights claims. For a discussion in a different context, see Elaine Craig, *supra* at note 101.

¹⁰⁸ In addition to my own report, the Tribunal considered a report by Mr. Bernard Siskin who testified on behalf of Bombardier. See *Bombardier QCTDP*, *supra* note 24 at paras 209-216.

¹⁰⁹ *Ibid* at para 395-426.

¹¹⁰ *Ibid* at para 247.

factored into that assessment. The Supreme Court, however, rejected the tribunal's finding without addressing much of the adjudicator's analysis of stereotyping.¹¹¹

In British Columbia, the *Elmasry* Tribunal also accepted that Muslims are commonly stereotyped as terrorists.¹¹² It recognized Islamophobia as "the targeting of Muslims and Islam, drawing on common stereotypes about their association with terrorism and violence, in order to generate fear."¹¹³ Similarly, the *Asad* Tribunal clearly and directly condemned the actions of Asad's co-worker who worked to sow the seeds of suspicion against him as stereotyping, though the tribunal prefers the term "racial profiling."

Ms. Stoute clearly engaged in discriminatory racial profiling. In her eyes, Mr. Asad fit the profile of a terrorist. He was a single, young Arab Muslim male who had lived in Saudi Arabia and whom she identified as Palestinian. In addition, shortly before 9/11, he had travelled to New York City and Washington, D.C. Ms. Stoute then embellished that basic profile with exaggerations, assumptions, and creations of her imagination.¹¹⁴

The adjudicator observed that Asad's co-workers "added two plus two and came up with ten."¹¹⁵ Though it condemned the stereotypes directed at Asad, the tribunal attributed Assad's termination to non-discriminatory reasons. It did not provide much explanation for how the non-discriminatory reasons might have been disentangled from the discriminatory ones on the facts.¹¹⁶

In Ontario, the *Yousufi* tribunal noted that the complainant had been subjected to "ugly stereotypes" at the hands of Detective Bradshaw but did not elaborate any further about the nature, dynamic, significance, or effect of the particular stereotype. In the end, it is not clear if the "ugly stereotype" mentioned by the Tribunal relates to the use of broken English, the content of the message which linked Yousufi to the 9/11 terrorists, or both. Yousufi eventually settled his claim. He suggested to the media that he had settled because he was exhausted and wanted to get on with his life.¹¹⁷

While they recognized the terrorist profile in relation to men, adjudicators appeared to have more trouble naming or giving weight to the terrorist stereotype when it was connected to women. The Chair in *Caza* defended linking Nadia Caza to Osama Bin Laden on the basis that "a reasonable person well versed in the adjudicative process" would not conclude that the comments raised a reasonable apprehension of bias. His decision was upheld on judicial review and Caza eventually withdrew her complaint. Similarly, the gender analysis in *Elmasry* focuses on the invocation of the burka "as a common image to depict Muslims as foreign and ... it was common to show women and children as markers of the oppression of Islam."¹¹⁸ The decision does not recognize that women's reproductive capacities are themselves deemed instruments of terror, and that Arab and Muslim women are stereotyped as enablers of terrorism and not simply as victims of oppression.

¹¹¹ See Bahdi, "Narrating Dignity," *supra* note 24.

¹¹² *Elmasry* (No. 4), *supra* note 17 at paras 133, 142.

¹¹³ *Ibid* at para 89.

¹¹⁴ *Asad*, *supra* note 18 at para 849.

¹¹⁵ *Ibid* at para 20.

¹¹⁶ See Bahdi, "Arabs, Muslims, Human Rights," *supra* note 13 at 109.

¹¹⁷ *Ibid*.

¹¹⁸ *Elmasry*, *supra* note 17 para 142.

C. UN-CANADIAN/EXISTENTIAL THREAT

As with the violent/terrorist profile, human rights adjudicators in the cases examined were troubled by suggestions that the complainant was not really Canadian. The Quebec tribunals proved most aware of conduct which questioned, directly or indirectly, the complainant's place or belonging in society. Both decisions that were examined from Quebec recognized that the complainant had been treated as though they did not belong in Canada. Though they did not recognize the respondent's conduct as rooted in specific Arab and Muslims stereotypes, they did view it as a violation of the complainant's human rights and fashioned a remedy on that basis. *Rezko* offers a good illustration. The tribunal highlighted the relationship between discrimination and national belonging by naming stereotyping as a form of othering; a Quebec human rights tribunal recognized the officer's conduct as an attack on Rezko's dignity, and linked the officer's treatment of Rezko to prejudice against the larger Arab community. The Tribunal ruled that Chartrand harboured prejudice "toward the whole of the Arab community" when he dismissed the explanations and protests of Rezko and his brother with the phrase "all Arabs are liars."¹¹⁹ It also reinforces that Chartrand wanted to send a message to Rezko that he did not belong in Quebec.

The Tribunal finds it hard to imagine that, in using such a generalization in the tense atmosphere between the people concerned, Officer Chartrand was not trying to hurt Milad Rezko in his dignity, being also in a position to foresee the effect his scornful words would have on him. What is more, in referring as he did to Milad Rezko's ethnic origin, Dominique Chartrand planted a seed of doubt in his mind as to whether he truly belonged in Québec society, in which he has lived for some 20 years.¹²⁰

The tribunal ordered the respondents to pay Rezko \$18,000 in recognition of the discrimination they directed at him.

In the same vein, the Bombardier tribunal found itself troubled by Bombardier's treatment of Captain Latif, a Canadian citizen, and Bombardier's disregard for Canadian laws and institutions in favour of the American "absolute security" approach. The tribunal disapproved of Bombardier's failure to give weight to Canadian human rights values, and Bombardier's failure to seek the advice of Canadian national security agencies in determining the best approach to Captain Latif's training requests. Through its finding of discrimination, the Tribunal affirmed the boundaries between Canada and the United States, while signalling its disapproval of Bombardier's erasure of Canada's legal border and Latif's place within it.

Outside of Quebec, only Saadi drew a link between the discrimination alleged and national belonging or Canadian identity. The *Saadi* tribunal recognized the relationship among the respondent's surveillance practices, the complainant's personal identity, and the respondent's perceptions of her national belonging.

She felt the watchful eye of the employer intensify its gaze and believed that no matter how well she performed in her job, she would be perceived as a fifth column simply because she, like the two employees who had resigned, was Muslim.¹²¹

¹¹⁹ *Rezko*, *supra* note 25 at para 280, 223.

¹²⁰ *Ibid* at para 281.

¹²¹ *Saadi*, *supra* note 21 at para 17.

The adjudicator affirmed that surveillance is not simply surveillance but a statement about differentiated citizenship and unequal belonging though he determined that insufficient facts had been presented to conclude that Saadi had been subject to inordinate surveillance because of her Muslim identity.¹²²

Still, the *Saadi* tribunal recognized the un-Canadian/existential threat theme in the respondent's microwave policy. Offering careful and insightful analysis about the relationship between food and identity, the Tribunal explained that a work place microwave policy which prohibited foods based on a "[y]ou don't know until you smell" practice invites arbitrary distinctions that exclude individuals from full workplace participation.¹²³ The cultural preferences of those who set and administer workplace policies define acceptable smells.¹²⁴ The adjudicator's sophisticated and subtle analysis reflected the findings of scholars who note that the prohibition on certain foods in the workplace simultaneously represents a powerful statement on being and belonging as much as it represents a practical problem for those who bring food from home to work for health, comfort, or financial reasons. Scholars have demonstrated that attitudes towards food mediate power hierarchies.¹²⁵ Accordingly, the exclusion of food and food odour in the workplace can operate as a means of "othering," a vehicle for being "unhomed"¹²⁶ and separating those who gain full acceptance in the workplace from those who are merely tolerated and remain on the margins of social inclusion. Indeed, Annie S Hauk-Lawson has coined the term "food voice" to reference the ways in which food forms "a quiet but persistent language" for immigrants who find comfort and identity in their cultural foods.¹²⁷

Adjudicators, however, did not always recognize the un-Canadian/existential threat motif. In *Yousufi*, the complainant's co-workers expressed to him that he did not belong in Canada by perpetrating or tolerating "jokes" about him. Additionally, the co-workers appeared to tolerate the fact that the picture of him hanging in the police hallway was superimposed with a picture of a goat. The adjudicator recognized that "[o]nly the complainant's photo was ever covered with a picture of an animal" but did not discuss the significance of such behaviour, undertaken by someone who, it appears, had taken care not to leave fingerprints behind.¹²⁸ The morphing of goat and man sends a clear message: Yousufi is regarded as abnormal and different. His picture is made into a monster and, as Joan Landes has observed, "whatever a monster is, it is not one of us."¹²⁹ 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

¹²² *Ibid* at para 83. "*The Policy on Racism and Racial Discrimination* describes Islamophobia as an emergent form of racism against Muslims based on stereotypes and fear. The applicant also correctly argued that discrimination, especially racial discrimination, is rarely overt. It must be inferred from circumstantial evidence."

¹²³ *Ibid* at para 47.

¹²⁴ *Ibid* at para 48.

¹²⁵ Martin F Manalansan IV, "The Empire of Food: Place, Memory and Asian 'Ethnic Cuisines'" in Annie Hauck-Lawson & Jonathan Deutsch, eds, *Gastropolis: Food and New York City* (New York: Columbia University Press, 2008) at 93.

¹²⁶ Lois Tyson, *Critical Theory Today: A User-Friendly Guide*, 2nd ed (New York City: Routledge, 2006) at 421. "Being 'unhomed' is not the same as being homeless. To be unhomed is to feel not at home even in your own home because you are not at home in yourself: your cultural identity crisis has made you a psychological refugee, so to speak."

¹²⁷ Annie S Hauk-Lawson, "When Food is the Voice: A Case Study of a Polish-American Woman" (1998) 2:1 *Journal for the Study of Food and Society* 21 at 21.

¹²⁸ *Yousufi*, *supra* note 22 at para 65.

¹²⁹ Joan B Landes, "Revolutionary Anatomies" in Laura Lunger Knoppers & Joan B Landes, eds, *Monstrous Bodies/Political Monstrosities: In Early Modern Europe* (Ithaca: Cornell University Press, 2004) at 154.

a long history of “monstrification”¹³⁰ or dehumanization of others through animalistic associations.¹³¹ The adjudicator, however, did not explore the meaning of this defilement but determined the it as one that did not rise to the level of a poisoned work environment.

There was corroborating evidence the complainant’s photo and other photos were sometimes turned upside down. Some witnesses perceived that this happened to the complainant’s photo more than other employees. Only the complainant’s photo was ever covered with a picture of an animal. The complainant reported the matter to Wisniewski who offered to do a fingerprint check on the picture. No prints could be found. I accept Wisniewski’s evidence that the complainant did not report any further incidents of this kind. I find that this conduct, even when taken together with the unspecified derogatory comments occurring at the time, did not rise to the level of poisoning the complainant’s work environment.¹³²

The *Abdallah* Tribunal found that Joanne Thomas, Abdallah’s ESL teacher and the personal respondent, had made comments regarding immigrants which amounted to coded language about citizenship and belonging and were discriminatory. However, the Tribunal did not link the implications of the comments to the complainant’s Arab and Muslim identity even though Abdallah, a self-represented litigant, pointed to those connections.

The complainant explained that he was disturbed because the remarks demeaned him on the basis of his personal characteristics, such as his race and ethnicity, which he has no control over. He testified to being particularly troubled because the remarks were made by an ESL instructor and stated that he no longer felt comfortable attending the personal respondent’s class. In his email correspondence notifying the Board about his concerns regarding the personal respondent’s remarks, the complainant declared:

...I must question how it is possible for someone to be in the position of teaching newcomers and have such a discriminatory attitude toward them. After all we who do come to Canada are making a genuine effort to learn the English language and that is why we turn to places that offer ESL courses. We do not expect that those who instruct us are also those oppose us being in Canada in the first place.¹³³

The respondent’s strong animus towards Arabs and Muslims would later surface when evidence, not available at the human rights proceedings initiated by Abdallah, was put before an arbitrator at Joanne Thomas’s termination hearing. Over a decade later, the extent of Thomas’ prejudice against Arabs and Muslims was revealed. The evidence established, for example, that Thomas had sent an e-mail to colleagues in 2010 that identified Allah (“Allah” being the Arabic word for “God” which is used by both Arab Christians and Muslims) as “the Moon God of Arabia” and went on to proclaim that Muslims cannot be good Canadians.

¹³⁰ See *e.g.* Safwat Marzouk, *Egypt as Monster in the Book of Ezekiel* (Tübingen: Mohr Siebeck, 2015).

¹³¹ Nick Haslam, “Dehumanization: An Integrative Review” (2006) 10:3 *Personality and Social Psychology Review* 252.

¹³² Yousufi *supra* note 22 at para 65.

¹³³ *Abdallah*, *supra* note 21.

Can a Muslim be a good Canadian?

...

Geographically – no. . . Because his allegiance is to Mecca, to which he turns in prayer five times a day.

...

Intellectually – no. . . Because he cannot accept the Canadian Constitution since it is based on Biblical principles and he believes the Bible to be corrupt.

...

perhaps we should be very suspicious of ALL MUSLIMS in this country. - - - They obviously cannot be both 'good' Muslims and good Canadians.

...

*Footnote: The Muslims have said they will destroy us from within.¹³⁴

Thomas was terminated over three years after sending the e-mail though the evidence demonstrated that she had a long and persistent pattern of vilifying Arabs and Muslims.

The Abdallah decision reinforces the need for careful scrutiny of stereotypes. An examination of Abdallah's experiences through the lens of his racialized status (Arab) or animus towards his religion (Muslim), as opposed to his immigration status, might have led to a different line of questioning that might have revealed Thomas' deep animus towards Arabs and Muslims that she had shared widely in her workplace. She implicated herself, according to the human rights adjudicator, when she testified about her attitude towards immigrants. With further questioning focused on Arab and Muslim stereotypes, Joanne Thomas' attitudes towards Arabs and Muslims might have been revealed at the human rights hearing, Abdallah might have been fully vindicated and the adjudicator may have ordered a more robust remedy. All of these possibilities remain speculative of course; yet, they nonetheless point to the need for scrutiny of specific stereotypes, especially when the facts of the case call out for such scrutiny.

D. LIAR/UNTRUSTWORTHY

While adjudicators recognized, to varying degrees, the violent/terrorist and the un-Canadian/existential threat as a negative and undesirable characteristic that wrongly tarnished the complainant, they missed the liar/untrustworthy motif altogether. Even the *Rezko* tribunal, which denounced the "all Arabs are liars" slur directed at Rezko and his community by Officer Chartrand, did not consider whether the complainant's experience might represent a broader stereotype. Similarly, the *Latif* tribunal disapproved of Stephen Gignac's willingness to categorically accept that Latif was a potential terrorist. They also disapproved of Gignac's failure to consider Latif's interests and his failure to give Latif some benefit of the doubt by at least consulting with Canadian national security agencies. However, it did not connect any of these findings to the trope that Arabs and Muslims are untrustworthy liars.

The *Abdallah* tribunal, as noted above, though confronted with allegations that a Muslim man had lied, linked the discrimination Abdallah had experienced to his immigration status, not his religion or ethnicity. The adjudicator does not recognize the liar trope as a common stereotype of Arabs and did not specifically consider whether the respondent's words and allegations that

¹³⁴ *Thames Valley District School Board v Ontario Secondary School Teachers' Federation, District 11*, (2016) CanLII 31772 (ON).

Abdallah had cheated might reflect the respondent's animus towards Arabs and Muslims. Similarly, Tahmourpour's Muslim identity barely factors into the Canadian human rights decision made against the RCMP. The Tribunal remarked on the RCMP's consistent refusal to believe Tahmourpour's version of events. But the Tribunal did not link the decision that Tahmourpour was not trustworthy with his Muslim identity. Indeed, Tahmourpour's Muslim-ness barely factored into the decision; Tahmourpour's Muslim identity was noted only twice in the forty-two page decision. The adjudicator found discrimination on the basis of "race, religion and/or ethnic or national origin," having acknowledged in the opening sentence of the decision that "Ali Tahmourpour is a Muslim Canadian who was born in Iran." Yet, the adjudicator never linked Tahmourpour's treatment to his specific identity and did not offer analysis of the specific Muslim stereotypes. The Tribunal stressed that the RCMP's conduct towards Tahmourpour fit a pattern of resentment expressed by Caucasian male members of the RCMP towards women, Indigenous, and racialized colleagues. However, the Tribunal did not consider whether Tahmourpour's particular Muslim identity affected the RCMP's response.¹³⁵

IV. CONCLUSION

Overall, the nine legal narratives that form the basis of this study demonstrate the need for greater awareness and education among legal professionals of the three common Arab and Muslim stereotypes, so that they can better recognize and analyze stereotyping experiences. The social science literature and reports by community organizations conclusively demonstrate that Arabs and Muslims face stereotyping post-9/11, despite Canada's commitment to equality. An examination of the legal narratives of nine human rights claimants from four Canadian jurisdictions between 2002 and 2017 indicates that the Canadian human rights system has fallen short of recognizing and remedying the stereotyping of Arabs and Muslims. The work of addressing the system's inadequacies does not fall on the shoulders of the adjudicators alone. Lawyers who argue cases for their clients, human rights commissions, legal support centers, and reviewing courts, including the Supreme Court of Canada, can all help advance stereotype literacy. While this study focused on nine legal narratives and does not purport to be representative of all Arab and Muslim experiences, the research also demonstrates that the human rights system can do a better job in helping to educate and eradicate some long-standing and pernicious stereotypes that continue to plague racialized groups in Canada, including Arabs and Muslims.

For my part, I did not file a human rights complaint after my encounter at the Service Ontario desk. Among other things, my research into Arab and Muslim human rights claims post 9/11 brought home a point made by community-based access to justice scholars: sometimes members of marginalized communities avoid the legal system because they know too much, not too little, about the system's ability and willingness to hear and understand them.¹³⁶

¹³⁵ *Tahmourpour*, *supra* note 20 at para 56.

¹³⁶ See *e.g.* Janet Mosher, "Lessons in Access to Justice: Racialized Youths in Ontario's Safe Schools" (2008) 46:4 *Osgoode Hall LJ* 807; Rebecca L Sandefur, "Bridging the Gap: Rethinking Outreach for Greater Access to Justice" (2015) 37:4 *U Ark Little Rock L Rev* 721.