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**INTERNATIONAL CONFLICT
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A Holistic Approach to Dispute Resolution: The Experiences of the Shia Ismaili Muslim Conciliation and Arbitration Boards in North America

by
Celina Charania
Shariff
and Karim Sunderji

A holistic approach to dispute resolution is not often the goal of dispute resolution processes. Typically the primary goal is to answer, in a just way, a question posed by two conflicting parties. Some dispute resolution approaches have a different, though not necessarily inconsistent goal, such as to help the parties achieve a mutually acceptable or beneficial resolution—an attempt at a win-win situation. The latter approach comes closer to the ideals of a holistic approach to dispute resolution, but it does not, alone, go far enough.

To design a holistic approach to dispute resolution, one needs to consider much more than just how and with what objective a legal question should be answered. One needs to consider the non-legal elements of the dispute, including the factors that cause disputes and how disputes can be prevented, and the socio-economic and emotional consequences a dispute has on the parties.

The Conciliation and Arbitration Boards (CABs) of the Shia Imami Ismaili Muslims have aspired to design a holistic approach to dispute resolution. The CAB system has been described by Marion Boyd, former Attorney General of Ontario, as “a model of conciliation and arbitration that is the most sophisticated and organized structure in the Muslim community” and an example for other community-based dispute resolution systems.

This article seeks to share the CABs' experience. We begin with some context—providing relevant background on the Ismaili Community and the CAB system. We then delve into the key areas of the CABs' work.

THE ISMAILI COMMUNITY AND HIS HIGHNESS THE AGA KHAN

The Shia Imami Ismaili Muslims, generally known as the Ismailis, belong to the Shia interpretation of Islam. Ismailis are highly diverse in their ethnicity, language, culture and geography. Today, Ismailis live in over 25 countries in Central and South Asia, Africa, the Middle East, Europe, North America and Australia. Like all Muslims, Ismailis affirm Allah as the sole deity and Prophet Muhammad (peace be upon him) as His last and final messenger. Spiritual leadership of the Ismaili community continues through a hereditary Imam, which is a supra-national entity. The current Imam, the 49th Imam and a direct descendent of the Prophet, is His Highness the Aga Khan. Since succeeding to the Imam in 1957, His Highness the Aga Khan has explained Islam as a

thinking, spiritual faith that teaches compassion, tolerance and service to humanity.

Since succeeding his grandfather Sir Sultan Mahomed Shah Aga Khan as Imam in 1957, His Highness has placed great emphasis on health, education and economic development. As Imam, he has also emphasized the value of ethics in daily life, stressing that Islam, in addition to being a faith, is also a way of life that espouses values such as tolerance, compassion and care for the marginalized in society.

Under the leadership and guidance of the Imam, the Ismailis have established a well-defined transnational institutional framework to build capacity and improve the quality of life within the communities in which they live. These institutions place a particular emphasis on the quality of life of the citizen in the educational, health, housing and economic spheres. They function in concert with the broader efforts of the Aga Khan Development Network—a group of civil society institutions headed by His Highness the Aga Khan—that include establishing schools, hospitals, health centers, housing societies and a variety of social and economic development institutions for the common good of all citizens, regardless of their race or religion.

AN OVERVIEW OF THE CONCILIATION AND ARBITRATION BOARDS

The global Conciliation and Arbitration Board system provides community-based dispute resolution at regional, national and international levels. Currently, the CABs operate in 18 countries in Central and South Asia, Africa, the Middle East, Europe, North America and Australia, providing dispute resolution services to Ismailis in the areas of commercial, business and civil liability matters as well as matrimonial and family matters, including issues relating to children, matrimonial property and testate and intestate succession.

Inspired by the Qu'ranic principle of *sulh*, or negotiated settlement, which advocates dispute resolution outside of an adversarial context, the CAB system is defined by two fundamental principles: first, it is anchored in Islamic values of unity, brotherhood, justice, equity, fairness, compassion, tolerance, reconciliation, peace, and goodwill; and, second, it duly prioritizes and complies with the applicable law of the land. The primary objective of the CAB system worldwide is to resolve disputes in an accessible, equitable, speedy, confidential, cost effective and

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constructive manner and via a process that is culturally sensitive and considers the interests of all parties.

The CAB system consists of highly-structured bodies, generally on three levels, and is comprised of volunteer members each of whom is appointed by His Highness the Aga Khan for a three-year term, with possible reappointment for one additional three-year term. An international board (ICAB) oversees a national CAB (NCAB) in each country, as well as reviewing appeals, coordinating international training programs and promoting best practices across the NCABs. The NCABs in Canada and the United States set policy, coordinate training for their members, lead dispute prevention and inter-institutional collaboration efforts, conduct awareness-building activities within and outside the community, and monitor performance indicators across the country. The NCABs in North America oversee regional CABs (RCABs) who are chosen to reflect the geographic, demographic, linguistic and cultural diversity of the Ismaili community in that region and who serve as mediators in the cases that are initiated in their regions. In Canada, for example, there are five RCABs, for British Columbia, Edmonton, the Prairies, Ontario and for Quebec and the Maritime Provinces. In North America and elsewhere, most CAB members are non-lawyers, a deliberate composition that recognizes the complex nature of mediation cases and the utility of analyzing issues from diverse perspectives.

CAB mediators receive extensive, initial and ongoing, state of the art, cross-cultural training in ADR techniques. This training is specifically designed to heed the competing individualistic and collectivist tensions in the cases that come to the CABs. Examples of topics covered include the ethos of service, ethics in mediation, the voice of the child in mediation and the importance of confidentiality. Training topics are evaluated on an ongoing basis to ensure they are up-to-date and reflective of best practices. Meticulous care is taken to ensure that alternative justice does not degenerate into inferior justice due to lack of proficiency or appropriate training.

KEY AREAS OF THE CAB'S WORK

The ethos underpinning the work of the CABs globally is a desire and responsibility to foster harmony within the community, including maintaining harmony between disputing parties and their families. This desire to foster harmony informs not only the manner in which disputes are resolved, but also the scope of the CAB's responsibilities. The CAB focuses its efforts on dispute resolution, but those efforts go beyond dispute resolution to include instilling a culture of dispute prevention, helping to heal the emotional wounds of parties in dispute, post-settlement evaluation, and training and structural support for its membership. Here, we focus primarily on the non-binding dispute resolution services offered by the CAB. These services constitute the vast majority of CAB work worldwide.

Mediation

Recognizing that the manner in which disputes are resolved has a profound impact on an individual's quality of life, the CAB's approach to mediation is guided by the following principles:

- Before mediating any dispute, the CAB must first satisfy itself that the parties to the dispute have come to the CAB voluntarily and out of their own

free will, and desire to have their disputes resolved through the CAB system;

- The mediation is conducted by CAB members—both men and women—who have received appropriate training to ensure competent and equitable handling of the matter;
- The mediation is conducted in accordance with rules that are intended to assist in assuring the appropriate standard of operation; and
- The duty of confidentiality to the parties must be absolutely respected.

The CAB process is designed to operate in an equitable manner (equity being an important Islamic ethical value) and thus is entirely consistent with fundamental principles of natural justice and the applicable law of the land. The CAB generally uses the term "conciliation" for a process of mediation in which a neutral person assists the parties in reaching their own settlement. The neutral person does not have authority to impose a binding decision on the parties. The process is voluntary and the parties may withdraw at any time.

Globally, CAB mediation is offered at no cost to the parties. In Canada and the United States, a party's initial and primary interaction is with the applicable RCAB chair. The RCAB Chair assists in assessing incoming matters to ensure that the RCAB can assist with each matter and that it falls within its jurisdiction. Before commencing mediation, both parties are required to sign a submission form indicating their *voluntary* participation in and consent to the mediation process. Parties are encouraged to seek independent legal advice during the process. The RCAB Chair assigns each matter to one or more mediators, who are expected to declare promptly if they have or likely may have any conflict of interest or perceptible bias that could comprise the RCAB's handling of the case, and to abstain immediately from any dealings with the dispute.

The volunteer mediator or co-mediators help the parties reach their own settlement and have no authority to make binding decisions or to give legal advice to the parties. CAB mediators apply an interest-based approach. If a settlement is reached, it is typically documented by a settlement agreement, and the parties are advised once more to seek independent legal advice before signing this legally-binding agreement. Ultimately, enforcement depends on the legal enforceability of a settlement agreement.

Post-Mediation Evaluation and Assistance

To determine the parties' level of satisfaction with CAB services and the durability of their settlement agreement, the CAB conducts a survey within six months after completion of a case. If further assistance may be required, upon the consent of all parties to the dispute, the settlement may be tweaked to ensure that the agreement is optimal and implemented.

The CAB process seeks to help parties "bandage their wounds" or heal, so as to overcome emotional wounds and resentment towards the other party(ies), both of which detract from moving forward in life with a positive outlook and fostering harmony in the community. Post-mediation surveys also provide an opportunity to canvass

whether other supports within the community would be valuable to any of the parties, to assist with emotional, financial or any other issues parties may be facing as a result of the dispute. Here again, community services work in very close synergy with the CABs, while maintaining the confidentiality and dignity of the parties.

Inter-Institutional Support

The CABs around the globe leverage other community institutions to support their mediation practices in two significant ways. First, mediators refer parties requiring support and services beyond the CAB's competencies to sister institutions within the Ismaili community such as its Social Welfare Board or its Economic Planning Board, if required and with consent. These referrals can be made both during the mediation and after a resolution has been reached. Second, the CAB partners with its sister institutions to provide CAB mediators training in particular subjects relevant to the CAB's work. Training topics have included the power of forgiveness, mediator and service provider resiliency, understanding youth developmental assets, and addressing mental illness.

Dispute Prevention

In keeping with a holistic view of dispute resolution and prevention, the ICAB and NCABs analyze the underlying causes of the disputes that come before the system in order to identify preventative measures. This root-cause analysis, provided only in aggregate form without any identifiable information, is of great value to the CAB's sister institutions, which seek to gain a better understanding of the underlying sources of disputes, so that they may offer appropriate dispute prevention programming for community members at large. For example, where business disputes are caused by a lack of initial documentation, the various national Ismaili Economic Planning Boards may consider programming for members of the community entering into business ventures to put in place proper documentation at the outset. Further, potential business partners are encouraged to include clauses for mediation in their agreements in the case of a conflict.

Training

His Highness the Aga Khan has sought to establish "state-of-the-art" training in contemporary alternative dispute resolution for the CAB system. The first training program was held in London in 2000 and was conducted by professionals from The Institute of Ismaili Studies in London, the School of Oriental and African Studies of the University of London, and two leading United Kingdom training organizations: National Family Mediation and the Centre for Effective Dispute Resolution (CEDR). It led to the development of a comprehensive international training program in partnership with

CEDR that all CAB members globally are required to undergo at the outset of their service terms.

The training program is rigorous and professional, with a view to upgrading the skills of the many volunteers comprising the CABs and thus strengthening the global CAB system. Over the course of over 15 years since the first training was held in 2000, the CAB system has developed best practices in training, including:

- experiential role play scenarios from the field,
- implementing a daily evaluation and feedback program so participants can improve each day, and
- involving both lawyers and non-lawyers, thereby ensuring that a variety of approaches to dispute resolution are considered.

The trainers employ a number of teaching and learning methods including lecture, demonstration, videos, group exercises and role play. The training includes an emphasis on the need to develop cross-cultural sensibilities and an understanding of individualist versus community-oriented cultures and their representative communication styles. This emphasis is particularly important for CAB mediators in North America because of the diversity of the Ismaili community residing here. An individualistic approach to a problem may not work in societies where individuals are more closely woven into a web of community relationships. Therefore, participants are trained to understand different models of communication and problem solving, as well as to identify the other people affected by a dispute, along with their interests and needs.

A key learning arising from the international training program and participant feedback is that ongoing training is better than one-time training, since learning and applying skills is an iterative process. In North America, the NCAB and RCABs supplement the above-mentioned training with their own training and mentoring programs to reinforce ADR skills and educate on ancillary topics. Topics of interest for additional trainings include strategies for screening for domestic violence, actual or apprehended danger to children, managing high conflict, emotion and expectations of full disclosure in addressing finance and property issues.

CONCLUSION

The CAB is a unique, volunteer-driven institution. It is rooted in tradition, yet its modern infrastructure interfaces comfortably with the legal system of the lands within which it functions. The CAB process exemplifies the ethic of promoting harmony, through a holistic approach, which focuses not only on dispute resolution but also on prevention and healing. ■

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