

Introduction: Honour Crimes and the Law — Public Policy in an Age of Globalization

*Pascale Fournier, Guest Editor**

The Shafia trial and the issue of honour crimes may well have changed the face of Canadian criminal law. The finding of the lifeless bodies of sisters Zainab Shafia, 19, Sahar Shafia, 17, and Geeti Shafia, 13, along with that of one of their polygamous father's wives, Rona Amir Mohammed, 50, shocked large sectors of Canadian society. Mohammad Shafia, his wife Tooba Mohammad Yahya, and their son Hamed Mohammad Shafia, 20, were each found guilty on four counts of first-degree murder. The alleged motive of the murder, restoring the family honour supposedly compromised by two Shafia girls having boyfriends and a third being “rebellious,” played a key role in the prosecution's evidence of the intention and forethought behind the murder. This adducing of honour crimes evidence by the Crown is novel, as this had mostly been used by defendants raising the provocation defence.¹ The defendants have all indicated they will appeal the verdict in the Court of Appeal, on the ground that the hearsay evidence of the Shafia children's declarations to their boyfriends and various front-line workers should not have been admitted. The Shafias are also contesting the admissibility of the testimony of expert Shahrzad Mojab, who I have the pleasure to feature in this special issue. Without pronouncing on the ongoing appeal, it is possible to draw some conclusions from the Shafia case. The post-Shafia era is upon us and we can no longer turn a blind eye on honour crimes. This type of violence exists, and the Shafia case stands as a brutal reminder of the reality of this phenomenon. But why had many of us not heard of this phenomenon before the intervention of criminal law became necessary? What sense can be made of this “cultural” form of gendered violence? Is it peculiar to Islam, or Eastern countries generally? How should policy-makers, law-enforcement officials, and front-line workers address this phenomenon?

This special issue aims to provide lawyers, judges, prosecutors, academics, and the greater public with information on the social and cultural background required to better understand honour crimes. Its main goal is thus to provide education material to legal actors. However, its starting point is also that criminal law

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¹ See for instance *R. v. Nahar*, 2004 BCCA 77, 2004 CarswellBC 299, 181 C.C.C. (3d) 449, 20 C.R. (6th) 30 and *R. v. Humaid*, 2006 CarswellOnt 2278, 208 C.C.C. (3d) 43 (Ont. C.A.); leave to appeal refused 2006 CarswellOnt 7132, 2006 CarswellOnt 7133 (S.C.C.) in which the defendants rested their provocation defence on the “cultural” importance of honour. For a discussion and definition of the provocation defence in Canadian criminal law, see the article I contributed to this issue, along with Pascal McDougall and Anna R. Dekker.

does not suffice when addressing the systemic issues raised by honour crimes. As in many social contexts, the doctrines of criminal responsibility are lonely and insufficient, and must be assisted by empirical studies and their insights into the social phenomena of honour crimes and gendered violence. Thus, it is no mere accident that this special issue has such a multidisciplinary approach, bringing together as it does sociologists, public service lawyers, education specialists, religious studies scholars, and legal scholars. This issue is intended to foster public policy-oriented dialogue between legal actors, academics, and front-line workers with the aim of presenting suggestions for policy responses informed by a deeper understanding of honour crimes and gendered violence, geared towards not only short-term punishment but also long-term efficiency and prevention.

This special issue features Shahrzad Mojab, expert witness in the *Shafia* and *Sadiqi*² trials and Professor at the Department of Adult Education and Counseling Psychology at the University of Toronto; Anna Korteweg, Associate Professor, Department of Sociology, University of Toronto and acting director of the Centre for European, Russian, and Eurasian Studies at the Munk School of Global Affairs, Toronto; Valérie Amiraux, Canada Research Chair for the Study of Religious Pluralism and Ethnicity and Associate Professor at the Department of Sociology, University of Montreal; Samuel Blouin, student in Sociology at the University of Montreal, Benjamin Prud'homme, LL.M. candidate at the University of Montreal's Centre de recherche en droit public (CRDP); Pascal McDougall, graduate from the Licence en droit program at the University of Ottawa; Anna R. Dekker, counsel, Judicial Affairs, Courts and Tribunal Policy, Department of Justice Canada; Lori G. Beaman, Canada Research Chair in the Contextualization of Religion in a Diverse Canada, Full Professor in the Department of Classics and Religious Studies, University of Ottawa, and myself.

Participants to this project exchanged ideas and insights through various forums. Among these was the *Religion and Diversity Project*,³ directed by Lori G. Beaman and participated in by myself and Valérie Amiraux. This special issue's focus on building new ways of conceiving the relationship between cul-

² *R. v. Sadiqi*, 2009 CarswellOnt 4140, 68 C.R. (6th) 346 (Ont. S.C.J.). Hasib Sadiqi was charged with first degree murder in the deaths of his sister, Khatera, and her fiancé, Feroz Mangal. Khatera and Feroz's families were of Afghan origin, although from different tribal ancestry. Before getting engaged, Khatera approached her mother rather than her father for approval. Feroz's family made overtures to Khatera's mother, who responded with a gift intended to symbolize approval. Khatera later moved into Feroz's family's home. Hasib Sadiqi was outraged by this turn of events and admitted to killing the two, although he raised the defence of provocation, arguing that the engagement and the manner in which it had been entered into cast dishonour on the Sadiqi family. A jury convicted Hasib Sadiqi of first degree murder, and Justice Rutherford of the Ontario Superior Court of Justice pronounced the mandatory sentence of life imprisonment with no chance of parole for 25 years. Prof. Shahrzad Mojab testified on "the concept of 'honour killings' and its reality in Afghanistan and elsewhere in the world." (*Sadiqi*, at para 29).

³ The *Religion and Diversity Project* is a collective research grant of \$2.5 million awarded by the Social Sciences and Humanities Research Council of Canada (SSHRC) to 36 Canadian scholars. (See <<http://www.religionanddiversity.ca/>>).

tural/religious minority groups, women and vulnerable members of such groups and the State resonated with the *Religion and Diversity* project's objective to move "beyond tolerance and recognition." In conceiving the relationship between gender, identity, and the criminal law in a dynamic, contextual manner, this special issue indeed seeks to go beyond static visions of culture which have led us in the policy *impasse* we now know. Furthermore, the debate on how to name and categorize crimes of honour and their consequences in terms of public policies fits beautifully within the concerns of *Religion and Diversity* members, who share a commitment to reframing debates on cultural diversity in a way that fosters gender justice. This special issue was also born of Anna Korteweg, myself, and Justice Patrick Healy's fruitful discussions following the March 2011 National Judicial Institute's Criminal Law Seminar in Vancouver, at which a workshop on "Sentencing Challenges of So-Called Honour Crimes" was given by myself and Prof. Korteweg. The workshop participants discussed the legal treatment of honour crimes and outlined the need for education work amongst judges and other legal actors. Intervention by the State to protect vulnerable members of a minority being an unfortunate necessity, workshop participants initiated discussion on what would become one of the impetuses of this special issue: the development and dissemination of practical know-how with regards to legal intervention among cultural minorities.

When discussing policy approaches to honour crimes, one of the first issues that is usually discussed is the introduction of specific criminal law provisions relating to honour crimes. Currently, honour crimes do not form a separate provision in the *Criminal Code*.⁴ Hence, perpetrators of honour crimes are simply charged under the homicide or assault provisions. Also, upon conviction, there are no specific sentencing guidelines that take into account the nature of such crimes. However, the legal tools currently available allow for efficient prosecution of honour crimes. Murder and related provisions in the *Criminal Code* carry some of the harshest penalties in Canadian criminal law. They allow for the adducing of honour crimes evidence with regards to the motive of the crime, which is not part of the Crown's burden of proof but is always relevant to establish forethought or intention.⁵ Since the homicide provisions leave very little room for judicial discretion,⁶

⁴ The Government of Canada has repeatedly indicated there are no plans for the introduction of new criminal provision aimed specifically at honour crimes. See Kris Sims, "Feds say no 'honour killing' law planned", *CNews* (December 5 2011) online: <<http://cnews.canoe.ca/CNEWS/Politics/2011/12/05/19071436.html>>; The Canadian Press, "Justice Minister: No 'honour crime' *Criminal Code* change", *CTV News* (8 August 2010) online: <<http://www.ctv.ca/CTVNews/Canada/20100808/canada-honour-killings-law-100808/>>; Laura-Julie Perreault, "L'horreur pour sauver l'honneur", *La Presse* (March 7 2011) A2.

⁵ See *R. v. Lewis*, 1979 CarswellBC 520, 1979 CarswellBC 531, [1979] 2 S.C.R. 821, 12 C.R. (3d) 315 (Fr.), 47 C.C.C. (2d) 24, 10 C.R. (3d) 299 (Eng.).

⁶ Section 235(1) of the *Criminal Code* indeed imposes a mandatory term of life imprisonment for both first and second-degree murder. Furthermore, first-degree murder generally carries a mandatory period of parole ineligibility of 25 years as per s. 745(a) of the *Code*. For second degree murder, the period of parole ineligibility is set by the trial judge for a period of between 10 and 25 years, as per s. 745(c) By contrast, except when a firearm is used, s. 236 of the *Code* imposes no minimum punishment for man-

the adoption of sentencing guidelines to specifically address honour crimes seems unnecessary. Furthermore, when there is room for judicial discretion, i.e. to determine the period of parole ineligibility for second-degree murder or to determine the sentence for cases of manslaughter, the *Criminal Code*'s current sentencing guidelines take into account several important aggravating factors that are hallmarks of honour crimes. First, perpetrators almost invariably "abuse a position of trust or authority in relation to the victim,"⁷ generally women who are either daughters, sisters, or wives of the perpetrators; second, because of the nature of these crimes, evidence is often presented that the offender abused his or her spouse or child in the time leading up to the killing.⁸ Thus, there does not seem to be a need for specific law reform with regards to honour crimes.

Nevertheless, participants found it striking that the Department of Justice has not issued any policy statements or guidance on the phenomenon of honour crimes. In fact, one of the only mentions of honour crimes by the Canadian government is a new immigration guidebook's warning to immigrants and new Canadians that "Canada's openness and generosity do not extend to *barbaric* cultural practices that tolerate spousal abuse, 'honour killings,' female genital mutilation, forced marriage or other gender-based violence."⁹ Apart from that, honour crimes are not afforded specific social policies, despite the fact that the Shafia case does raise the complex question of State intervention which inevitably precedes the criminal justice system. One can think of many institutions, from school teachers and social workers, who play an important role in integrating minority citizens, to youth protection services and police bodies, which can effectively protect minority children and women. This special issue is thus premised upon the idea that the development of a policy approach to honour crimes is a pressing imperative.

One of the common starting points of the articles presented here is the rejection of "culturalist"¹⁰ explanations of honour crimes. Anna Korteweg argues in her contribution that discourse surrounding honour crimes often acts as a line-drawing mechanism through which a sense of "us" is constructed by opposition to the barbaric "other," which embodies cultural irrationality, something "we" are thought to

slaughter. Upon conviction for manslaughter, the judge must use his or her discretion, in accordance with the guidelines provided in the *Criminal Code*, to formulate a sentence that is commensurate with the crime.

⁷ Section 718.2(a)(iii) of the *Criminal Code*.

⁸ Sections 718.2(a)(ii) and (ii.1) of the *Criminal Code*.

⁹ *Study Guide — Discover Canada: The Rights and Responsibilities of Citizenship*, emphasis added, online: Citizenship and Immigration Canada <<http://www.cic.gc.ca/english/resources/publications/discover/section-04.asp>>. See Bryn Weese, "Honour killings term angers Trudeau", *The Toronto Sun* (14 March 2011) online: The Toronto Sun <<http://www.torontosun.com/news/Canada/2011/03/14/17610021.html>>.

¹⁰ Culturalism has been summed up as "a 'my culture made me do it' approach to action and subjectivity" (Wendy Brown, *Regulating Aversion: Tolerance in the Age of Identity and Empire* (Princeton, NJ: Princeton University Press, 2006) at 212, note 18).

be lacking.¹¹ However, as I argue, along with Pascal McDougall and Anna R. Dekker, the roots of honour crimes legislation in Eastern countries can be traced back to complex processes of legal transplantation and post-colonial hybridity.¹² The existence of statutory excuses for honour crimes in Western European countries and southern American states attests to the partly Western nature of honour. So do case-studies of Jordan and Pakistan, which illustrate that honour crimes legislation in the East was crafted through Western legal influences. In our contribution, we further present an analysis of passion crimes in Canada, arguing that the application of the provocation defence sometimes amounts to the introduction in Canadian law of some form of individual male honour, a (distant) relative of the collective chastity imposed by honour violence. We thus lay out an argument shared by all participants to this special issue: culturalist explanations of honour crimes are historically and empirically mistaken. We further argue that negating the pervasiveness of honour in all forms of gender violence impairs “our” conception of ourselves, marginalizing the importance of Western gendered violence and the many common traits it shares with honour crimes, an idea Lori G. Beaman impressively develops in her conclusion.

Shahrzad Mojab adds a brick to this edifice by analyzing how her role as the Crown attorney’s “Oriental” expert witness shapes the court’s gaze on the phenomenon of honour crimes. The Crown prosecutor’s interest in casting this Iranian-Kurdish scholar as an expert of all things “Oriental,” including the behavior of Afghan men, invites essentialism. Moreover, as Mojab argues, the defence lawyers’ strategy of casting her as an Iranian who knows nothing about “Afghan culture” performed the complementary stigmatizing work in that it negates the Canadianness of all involved, including Mojab herself, who has been living in Canada for almost 30 years. These processes, Mojab argues, lead to “outright racism.”

Mojab’s analysis echoes the European perspectives presented by Valérie Amiroux, Samuel Blouin, and Benjamin Prud’homme, who trace the genealogy of culturalist explanations of honour crimes in a German trend of expert witness intervention in the 1980s which emphasized the exteriority of honour violence as an “empirical” reality courts should consider. Amiroux, Blouin, and Prud’homme subsequently present a thorough analysis of media coverage of honour crimes, outlining phenomena of romanticization of the daily lives of the victims (“longing for freedom”), an orientalist fascination with the exotic themes raised by honour crimes and, finally, a “racialization” which casts honour crimes as outside of the West, and is a direct continuation of public discourse surrounding the “crisis of

¹¹ On this empirical finding, also see Korteweg’s past work on this issue: Anna Korteweg & Gökçe Yurdakul, “Islam, Gender, and Immigrant Integration: Boundary Drawing in Discourses on Honour Killing in the Netherlands and Germany” (2009) 32: 2 *Ethnic and Racial Studies* 218.

¹² Our contribution builds on my past work on the legal transplantation of minority legal rules unto Western legal systems. See Pascale Fournier, *Muslim Marriage in Western Courts: Lost in Transplantation* (Burlington, VT: Ashgate, 2010); Pascale Fournier, “Calculating Claims: Jewish and Muslim Women Navigating Religion, Economics and Law in Canada” (2012) 8:1 *International Journal of Law in Context* 47.

multiculturalism".¹³ Amiraux, Blouin, and Prud'homme further note a gap between this media coverage of honour crimes and the legal discourse surrounding honour crimes, dramatically embodied by the case of France, where no single case containing the words "honour crimes" could be found. While this gap can be attributable to the French minimalistic, positivistic approach to judicial reasons, the total absence of honour crimes in legal discourse is notable. So is the Canadian absence of a social policy surrounding honour crimes. Could this legal blindness to honour be shown to stem from the ethnocentric "casting out" of gendered violence as foreign?

Korteweg's contribution offers a potential explanation to this gap. She convincingly argues that the sociological othering of honour in fact impairs our policy approach to honour crimes, by reifying culture and generating a deceitful feeling of resignation. If honour is so utterly foreign, why should we design specific policies, legal or otherwise, to address this form of violence? Would it not suffice to better affirm "Canadian values" in the immigration context? Failing that, should we not focus our hopes on the criminal justice system, which has done its job in the Shafia case? Can we not, along with the Crown prosecutor in the Shafia case, Gerard Laarhuis, agree that the criminal prosecution of honour killers amounts to an upholding of "Canadian values"?¹⁴ Rather than celebrating *a posteriori* criminal retribution, participants to this issue think the focus should be on how to avoid and prevent such gendered violence. Korteweg argues that culturalist explanations of honour crimes preclude us from elaborating sensitive, contextual policies and can in fact lead to inaction. This echoes the analysis of Jordanian journalist and activist Rana Hussein, who states:

The countries making up the European community have undertaken extensive work and have offered professional protection and services for victims of domestic violence; unfortunately, many have chosen to overlook the issue when it concerns ethnic minorities and migrant communities, with some governments viewing HRV [honour-related violence] as a culturally-based phenomenon separate from Western value systems and therefore a private matter.¹⁵

Given participants' consensus that culturalist explanations lead us nowhere in terms of public policy, many put forth alternative explanations of honour crimes.

¹³ Amiraux, Blouin and Prud'homme's text adds to Amiraux comprehensive work on the sociological dynamics of (mis)integration of Muslim minorities in the West. See Valérie Amiraux, "Racialization and the challenge of Muslim integration in the European Union" in Shahram Akbarzadeh, ed, *Handbook of Political Islam*, (Routledge, forthcoming in 2012); Valérie Amiraux & Patrick Simon, "There are no Minorities Here. Cultures of scholarship and Public Debate on Immigrants and Integration in France" (2006) 47: 3 *International Journal of Comparative Sociology* 191.

¹⁴ Melinda Dalton, "Shafia Jury Finds all Guilty of 1st-Degree Murder" *CBC News* (29 January 2012) online: <<http://www.cbc.ca/news/canada/montreal/story/2012/01/29/shafia-sunday.html>>.

¹⁵ Rana Hussein, "A Comparative Study of the Reform Work Conducted in Asia and Europe to Combat Violence and So-Called Honour Murders" in Mohammad Mazher Idriss & Tahir Abbas, eds, *Honour Violence, Women and Islam* (New York: Routledge, 2010) 154 at 160.

Shahrzad Mojab, building on her decades-long experience and work on the topic,¹⁶ analyzes honour killing as one of the manifestations of universal gender violence, which is combatted by women and activists in every “culture.” This attention to minority women’s relational realities can be likened to what Anna Korteweg elsewhere called “agency embedded in religion,”¹⁷ a concept which allows us to better understand how minority women can empower themselves within their community and cultural realities. This also ties in to the approach to fighting honour crimes promoted by Radhika Coomaraswamy, former United Nations Special Rapporteur on violence against women from 1994 to 2003:

The tension between the universality of human rights and cultural relativism is particularly complex, as women’s identities are so integrally linked to their culture and community; women are thus wary of the arrogant gaze of critical outsiders. As Special Rapporteur I sought to develop the argument that women’s rights must be asserted in a manner which allows women to be full participants in the communities of their choosing. There is a need to support women working with their communities at all levels, particularly women who are at the forefront of efforts to combat violence against women and struggle for women’s rights — any other strategy risks creating a backlash. Where international attention and leverage are rooted in culturally sensitive strategies and locally supported, they can give strong underpinning to our situation-specific approaches and interventions on the ground.¹⁸

The rejection of a culturalist explanation of honour crimes and the longing for a contextual approach to women’s empowerment in immigrant communities are thus common to all contributors to this special issue. However, there are also significant divergences as to what may be considered the central question raised by honour crimes: should they be named as such or not? Many well-known scholars and activists have argued against the adoption of a separate label for honour crimes. For instance, Concordia University professors Yasmin Jiwani and Homa Hoodfar have argued that this label “serves only to frame ‘honour killing’ as peculiar, when in reality it is part of a larger pattern of violence against women.”¹⁹ Jiwani and Hoodfar argued for the use of the term “femicide” instead of honour violence. The Canadian Council of Muslim Women has likewise issued a similar position in Jan-

¹⁶ See, among others, Shahrzad Mojab, “The Particularity of ‘Honour’ and the universality of ‘Killing’: From early warning signs to feminist pedagogy,” in S. Mojab and N. Abdo, eds, *Violence in the Name of Honour: Theoretical and Political Challenges* (Istanbul: Bilgi University Press, 2004) 15; Shahrzad Mojab, “Conflicting Loyalties: Nationalism and gender relations in Kurdistan,” in H. Bannerji, S. Mojab and J. Whitehead, eds, *Of Property and Propriety: The Role of Gender and Class in Imperialism and Nationalism* (Toronto: University of Toronto Press, 2001) 116.

¹⁷ Anna C. Korteweg, *The Sharia Debate in Ontario: Gender, Islam, and Representations of Muslim Women’s Agency*, (2008) 22 *Gender & Society* 434.

¹⁸ Radhika Coomaraswamy, “Preface: Violence Against Women and ‘Crimes of Honour’,” in Sara Hossain and Lynn Welchman, eds, *‘Honour’: Crimes, Paradigms and Violence Against Women* (London: Zed Books, 2005) xi at xiii.

¹⁹ “Should we call it ‘honour killing’? No!”, *The Gazette* (30 January 2012) online: <http://www.montrealgazette.com/story_print.html?id=6074266&sponsor=>

uary 2012, denouncing the honour crimes label as “both divisive and dangerous.”²⁰

Shahzad Mojab directly addresses this argument by making it one of the key points of her contribution. Mojab argues that honour crimes cannot be equated with domestic violence and passion crimes, first because honour crimes are more often premeditated, which is to say that they are carefully planned so as to be publicly known and to properly “cleanse honour.” This contrasts with passion crimes, which are usually intimate and spontaneous. Second, Mojab argues that the collective nature of honour crimes serves to distinguish them from the passion crimes of husbands. Mojab outlines that members of an immigrant family may organize the crime from their various countries of residence. She also indicates that young males of the family often play key roles in honour crimes, something the Shafia case attests to. Mojab thus argues that honour crimes cannot be wholly equated with domestic violence or intimate femicides.

In our contribution, Pascal McDougall, Anna R. Dekker and I bring several qualifiers to this position. In striving to provide a descriptive basis for normative talk on honour crimes, we map the common ground between some acts of violence which seem to mix honour-related motives and more classical domestic violence motives of intimate “passion.” However, we explicitly recognize that honour and passion crimes differ, *when taken in their purest form*. One of our article’s main contributions to the debate on the labeling of honour violence is thus to remind us that honour and passion are ideal-types. No single act can be taken to embody one or the other, as bruised honour often involves passionate anger and vice-versa. That being said, we do not oppose the use of the honour crimes label, given that it represents a tangible social reality.

Anna Korteweg pushes this argument further, linking the absence of honour crimes policies in Canada with the “culture-blind” approach of portraying honour-related violence as conventional domestic violence. This latter approach might have “left a vacuum for those intent on stigmatizing immigrant communities,” thus paving the way for culturalist explanations of honour crimes and the correlative political and legal *laissez-faire*. In putting forth this argument, Korteweg is building on the significant fieldwork she and Gökçe Yurdakul carried out in their preparation of the United Nations Research Institute for Social Development’s Gender and Development Programme Paper Number 12.²¹ Korteweg and Yurdakul note that Canadian NGOs, in refusing to use the concept of crimes of honour, have not been able to influence Canadian policy-making, unlike their Dutch and British counterparts.²² This informs Korteweg and Yurdakul’s suggestions for a “contextually specific” policy approach:

[H]onour-related violence needs to be understood not as a ‘cultural’ or ‘re-

²⁰ Canadian Council of Muslim Women (CCMW), “CCMW Position on Customary Killing (honour killing)”, *CCMW* (January 2012), online: <http://www.ccmw.com/resources/res_Position_Papers.html>.

²¹ Anna C. Korteweg and Gökçe Yurdakul, “Religion, Culture and the Politicization of Honour-Related Violence: A Critical Analysis of Media and Policy Debates in Western Europe and North America,” *Gender and Development Programme Paper Number 12* (Geneva: United Nations Research Institute for Social Development, 2010).

²² *Ibid.* at 28.

ligious' problem that afflicts particular immigrant communities (in this case, often those perceived and represented as Muslim), but as a specific manifestation of the larger problem of violence against women (which concerns all communities, whether immigrant or not) that in the case of immigrant communities is shaped and informed by the immigration experience.²³

Renowned legal scholar and honour crimes expert Lama Abu-Odeh likewise stresses that it is important to understand the sociological differences between conventional ("passionate") femicides and honour crimes in order to correctly address this social problem.²⁴

Lori G. Beaman closes this special issue with an important critique of the use of the honour crimes label, building on her considerable experience as a front-line activist and lawyer with battered women and as a scholar who devoted much attention to violence against women. Beaman analyzes many important cases of (Western) gendered violence which outline the similarities in the rationales behind gendered violence and the role of the community in shoring up all forms of violence against women. Coming from an experienced scholar, lawyer, and activist, this contribution beautifully closes this special issue with a call to caution and scepticism.

There is no consensus on how to approach honour crimes. There seemed to be two trends among participants to this special issue: one which worries about the symbolic effects of the honour crimes label and its obscuring of the universal nature of gendered violence, and a second trend which sees the honour crimes label as a helpful category which, if correctly used, can assist those working on the front-line in preventing and combating this particular form of gendered violence. Most of us are somewhere between these two poles, navigating the particulars and the universals of violence against women and children and constantly re-evaluating our strategies and conceptual tools.

1. THE LESSONS OF SHAFIA: QUÉBEC YOUTH PROTECTION SERVICES AS A CASE STUDY

Let us take one example to illustrate some of the policy changes needed, one that was heavily implicated in the Shafia trial: Québec youth protection services. Prior to the murder of the Shafia girls, the police, youth protection services, and a women's shelter had all refrained from intervening following one of the Shafia family's many crises. A few months before the incidents, Zainab had fled to a women's shelter and Sahar and Geeti had called the police, saying they feared the violent outbursts of their father and brother. Sahar had confided to her school teacher that her father and brother beat her, and the teacher had witnessed scissor cuts on Sahar's hands. This led to enquiries by Québec child protection services. However, in early May 2009, files were closed with all public agencies and the police. On June 30, 2009, the four victims were found dead in the Kingston canal. Many have thus publicly called for serious reconsideration of child services' approach to gendered violence.

²³ Anna C Korteweg and Gökçe Yurdakul, *supra* note at 21.

²⁴ Lama Abu-Odeh, "Honor Killings and the Construction of Gender in Arab Societies" (2010) 58 Am J Comp L 911 at 922.

Interestingly, in May 2011, a few months before the Shafia trial began, Québec's Commission des droits de la personne et des droits de la jeunesse (CDPDJ) issued a scathing call for better access to services and more cautious intervention among "racialized"²⁵ minorities on the part of front-line workers. This 123 pages-long report was issued following two years of empirical research, 150 interviews with racialized youth, two public hearings, and 54 written submissions. It concluded that racial profiling and insensitive intervention policies pervade the police and governmental actors in the education system and the youth protection system. The Shafia case thus seems to be but a symptom of deeper flaws in our approach to gender violence and intervention among minorities.

Analyzing the empirical data available on Youth Services intervention among racialized clientele, the CDPDJ referred to data which points out that "compared to other children, young Blacks are nearly twice as likely to be reported [while "Caucasian" youth] were under-reported to the DYP, given their weight in the population, as were those of racialized minorities other than Black."²⁶ The CDPDJ also noted a certain wariness to intervene among cultural minorities:

It was noted on a number of occasions that healthcare, education and social service professionals too often tend to believe that, in order to intervene with racialized clientele, they have to master the "code" or the "DNA" of the communities concerned, which is perceived as being homogenous entities for whom it will be enough to learn their distinctive traits in order to understand their essence.²⁷

The CDPDJ's conclusions, if they are accurate, are disturbing. It seems that patterns of racism and exclusion, if they sometimes lead to excessive, paternalistic intervention amongst minorities, can also lead to under-intervention and lack of protection for vulnerable members of such minority groups. While there is danger in calling for more State intervention among minority groups, given risks or over-intervention and worsening patterns of disenfranchisement, abandoning vulnerable members to gender violence does not constitute an attractive option either. Participants to this special issue thus attempt to explore the uncharted middle-ground between ethnocentric abdication and paternalistic over-intervention.

Interestingly, in the week following the Shafia verdict, the DYP has announced new measures to ensure cultural training of front-line workers and more

²⁵ The commission thus explains its use of this term: "In this report, the Commission prefers to use the term 'racialized group' instead of 'racial group'. The reason for this choice is to emphasize that, far from corresponding to an objective reality, the concept of 'race' refers to an essentializing and stigmatizing category applied by the majority group to minorities that were formerly colonized or subject to slavery." (Commission des droits de la personne et des droits de la jeunesse (CDPDJ), *Racial Profiling and Systemic Discrimination of Racialized Youth*, at 9 note 4, online: CDPDJ <http://www2.cdpcj.qc.ca/en/publications/Documents/Profiling_final_EN.pdf> [CDPDJ report]). This term had also been used by the Commission on Systemic Racism in the Ontario Criminal Justice System in its *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System* (Toronto: Ontario Queen's Printer, 1995) at 56.

²⁶ CDPDJ report, *ibid.* at 83.

²⁷ *Ibid.* at 85.

systematic recourse to cultural consultants.²⁸ A province-wide registry of reported cases had also been put in place shortly after the death of the Shafias, allowing for cross-checking of reports across the province. These changes to the DYP's functioning seem like a step in the right direction. However, they could turn out to be insufficient given the challenges at hand. In putting this special issue together, I had the feeling that a deeper reflection on the role of State agencies and the legal system in situations of cultural diversity was needed. The Shafia trial should not lead to mere bureaucratic changes, but to a much-needed reflection on the foundations of the public policies that deal with minority communities. Many have pointed to examples from abroad which Canada could follow. For instance, Korteweg and Yurdakul point to the policy response in the Netherlands, which was instigated initially by the media and NGOs but gradually taken on by the Ministry of Justice in collaboration with "various service providers, immigrant groups and the police."²⁹ This inclusive approach helps to compensate historical disenfranchisement from the criminal justice system³⁰ and takes into account the concrete impacts of policies on women in their communities. The administration of most criminal justice affairs and social services being of provincial jurisdiction, such policies would have to be designed at the provincial level, perhaps in cooperation with the federal Department of Justice, which is in charge of the criminal justice policy. The academic community can play a key role in the implementation of such a policy, as was seen in the UK. English policy discussions on honour crimes were initiated by academics in forums such as the Honour Crimes Project, a joint endeavour by the CIMEL (Centre for Islamic and Middle-Eastern Laws) at the University of London, SOAS and INTERIGHTS, the International Centre for the Legal Protection of Human Rights.³¹ Community outreach, policy networking, public events, and the production of literature on the subject of honour crimes³² have been some of the Centre's impressive achievements. The changes announced by Québec's DYP, while much welcome, are far from the kind of large-scale, grass-roots cooperation policy which the Netherlands, and Britain to a lesser degree, have undertaken.

It is my hope that this special issue can spark some interest and discussion on the socio-legal expertise and social policies from abroad which could inspire a new Canadian approach to honour crimes, and more broadly to the State's relationship

²⁸ Katherine Wilton, "Agency to up Cultural Awareness in Wake of Shafia Convictions" *The Gazette* (30 January 2012), online: <<http://www.montrealgazette.com/news/montreal/Agency+cultural+awareness+wake+Shafia+convictions/6074817/story.html?id=6074817>>.

²⁹ Anna C Korteweg and Gökçe Yurdakul, *supra* at 7.

³⁰ On the empirical study of minorities' lack of access to justice, see Roderick A Macdonald, "Access to Civil Justice" in P Cane & H Kritzer, eds, *Oxford Handbook of Empirical Legal Research* (Oxford: Oxford University Press, 2010) 492 at 512. On the challenges this entails, see Elizabeth Sheehy, "Advancing Social Inclusion: The Implications for Criminal Law and Policy" (2004) 46: 1 *Can J Criminology & Crim J* 73 at 77.

³¹ See the Project's web page: <<http://www.soas.ac.uk/honourcrimes/project/>>

³² For instance, the project members have produced an impressive annotated bibliography on honour crimes: <<http://www.iwhc.org/storage/iwhc/docUploads/HonorCrimesBiblio.PDF>>

to vulnerable citizens. This special issue's main ambition is to show that, in addressing honour crimes and gendered violence, as former South African Constitutional Court justice and anti-apartheid activist Albie Sachs wrote, "the most pertinent description and the most meaningful evaluations of the phenomenon under question result from putting together all these layers of truth, different experiences, and variety of voices."³³

³³ Albie Sachs, *The Strange Alchemy of Life and Law* (Oxford: Oxford University Press, 2009) at 82.