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Socialist Voice #66, October 9, 2005

McGuinty's Ban on Faith-Based Arbitration: No Victory for Women's Rights

By Richard Fidler

Editors' Note—On Sunday October 2, about 300 Toronto-area Muslims and supporters rallied at Queen's Park demanding that Muslims have equal access to the Arbitration Act in Ontario and opposing Liberal Premier Dalton McGuinty's decision to ban faith-based arbitration.

Protesters carried signs declaring, "End racism, stop Islamophobia," "Islam guarantees all my freedoms," "Implement the Boyd report," and "I'm educated and able to choose—don't impose on me someone else's views."

Speakers stressed that Christian and Jewish denominations had utilized faith-based arbitration for more than a decade, without a word of protest. Then the request of Muslims to utilize this provision had aroused an uproar—proof of religious discrimination. Speakers denounced McGuinty for giving way in the face of a noisy minority opposed to Islamic rights, without giving the Muslim community a hearing. Participants pledged to continue the campaign against McGuinty's proposed ban.

The Islamic community needs the alternative of faith-based arbitration, one speaker explained, because "the Canadian court system lacks the healing touch. The courts are lawyer-driven. The system is adversarial. Court proceedings are meant to draw blood, to accentuate the negative. The entire process is prolonged and costly and leaves everyone embittered."

Another speaker noted that informal faith-based arbitration had been going on in the Muslim community for decades, with no frictions. "We welcomed the government's faith-based arbitration initiative because we thought it would be good for our arbitrators to be government-trained, so they would be expert not only in Islamic principles but in Canadian law. We wanted our arbitration procedures to be transparent and monitored. We felt this would assure good practice."

Richard Fidler's discussion of this controversy, which follows, is reprinted with permission from the September 24 issue of Socialist Worker. —Roger Annis and John Riddell

The Ontario government decision to ban faith-based arbitration in private family disputes is not a victory for women's rights. It is a capitulation to a campaign involving more than a hint of anti-immigrant and racist prejudice that tragically was spearheaded by many feminist organizations, the labour movement and the left as well as a few Canadian Muslim women.

As a result of this decision many women of religious persuasion, primarily women in immigrant communities, will be forced to resort to either costly court proceedings or private arrangements that will lack the legal protections proposed by a government-sponsored study in order to resolve disputes arising out of marriage breakdown.

Most organized religions have long had provision for deciding family issues involving such things as inheritance and custody through adjudication by authorities trained in the particular precepts of the religious belief. In Ontario, a number of religions began using the Arbitration Act in recent years to make such decisions enforceable by the courts.

The use of the Act by some Jews and adherents of other religions, including Christians, attracted little or no public criticism.

But the controversy over "sharia law" arose a couple of years ago when some Muslims proposed to likewise put their longstanding faith-based system of private religion-based mediation and arbitration under the Arbitration Act.

The proposal immediately came under fierce public attack. Many of the critics raised the spectre of "sharia" tribunals controlled by fundamentalist mullahs that would expose women to the laws of countries that condone stonings, beheadings, rules of evidence that give a woman's testimony only half the weight of a man's, etc.

There was a clear anti-Muslim edge to most of the attacks, which (among other things) failed to note the variations in the laws and customs of predominantly Islamic countries; "sharia" law was equated with Muslim fundamentalism, which was now, we were told, to be "imposed" on women of the Muslim faith.

The Ontario government reacted to these hyperbolic attacks by commissioning a review by Marion Boyd, a prominent feminist and former attorney-general and minister for women's affairs in the province's social-democratic NDP government of the early 1990s.

Boyd heard from close to 50 groups and conducted numerous interviews. Her [200-page report](#), released in December 2004, comprehensively canvassed the issues and proposed a number of amendments to the Act that would in her opinion enhance the quality of decision-making and ensure that parties to private arbitration of family law disputes (especially vulnerable women) would be apprised of their rights under Canadian law.

Here are some of her findings:

- There is no evidence to suggest that women are being systematically discriminated against as a result of arbitration of family law issues.
- Under arbitration, the parties choose their own law. But it may not be contrary to Ontario law.

- Arbitration is subject to legal limits (it cannot address issues of criminal law or divorce law, nor the status of marriage or recognition of parenthood) and procedural limits (for example, the parties cannot opt out of judicial review on issues of jurisdiction, fraud, etc.).
- Canadian Muslims already have a highly sophisticated and organized system of conciliation and arbitration that is available to practicing Muslims at their individual option.
- Virtually all of those favouring religion-based mediation and arbitration advocated additional safeguards to prevent the kind of discrimination and inequity feared by opponents.

Boyd acknowledged that support obligations on Muslim men are “extremely limited in comparison to what is required by Canadian and Ontario law.” She framed recommendations to “ensure that arbitration decisions based on religious law do not disentitle spouses and children from the support provisions they are accorded under Canadian and Ontario law....”

In all, she came up with 46 recommendations. One was to add mediation agreements and arbitration agreements to the definition of “domestic contracts” already recognized in family law. These agreements, in writing, signed by the parties and witnessed, could be set aside by the courts on the same grounds as other domestic contracts, that is, if they did not reflect the best interests of children; a party did not have or waive independent legal advice; or no written decision with reasons was provided.

A number of proposals, if implemented, would have ensured that parties were adequately informed of their legal rights, including the right to independent legal advice.

Few of the critics of Boyd’s report addressed these specific recommendations. Instead, the underlying thrust of the attacks was to treat all Muslim customs and laws as primitive, barbaric, and misogynist. The critics were insistent that resort to religious precepts (especially Muslim!) must be prohibited in Canadian family law.

The Islamic community is one of many racially oppressed minority communities in Canada—an imperialist country. In such circumstances, religious precepts often serve as a powerful means of self-identification and self-determination as an oppressed people, a key precondition to being able to combat their oppression. In this regard, it is analogous with the national question.

Most imperialist countries have developed definitions of citizenship based on homogenizing cultural concepts that deliberately exclude and discriminate against the immigrants and cultural minorities who make up an increasing share of their populations. England, once the colonial power par excellence, has categorically refused Muslim demands for a separate Sharia system for family law, but Muslims in the U.K. have developed an informal process that leaves them without the protection of British laws. Germany, with its blood basis of citizenship, excludes all of non-German origin other than children born in Germany.

France, with an assimilationist model of citizenship, allows no law other than secular state law to apply to its citizens. However, only one million of France’s four million Muslims are French

citizens. So what family law applies to these non-citizen residents of France? The laws of the foreign resident's country of origin or citizenship — as interpreted by French judges! German judges do likewise.

Is it any wonder that in those countries many immigrants would want to evade the jurisdiction of the courts and rely simply on private adjudication of family law disputes?

For a variety of reasons that I need not go into here, Ontario seemed recently to be moving in a different direction, one that would make room for the beliefs of some minority communities while providing the more vulnerable members of those communities with greater recourse to the legal rights enjoyed by both citizens and non-citizens. As Boyd notes, a proposal by some Muslims to bring their faith-based private arbitration system under the Ontario arbitration legislation could be interpreted as “a desire [by the minority community] to engage with the broader community”. They were simply asking that their religion be accorded the same rights already enjoyed by others.

That open door has now been slammed shut by the Ontario government. In fact, the government put up no defence of the report it had commissioned. There was no debate in the legislature; the Conservatives and the NDP, like most Liberals, opposed Boyd's recommendations.

I think those of us who want to build a new left that will encompass the most oppressed in this society need to rethink the lessons of this sorry episode. We need to be actively looking for ways to relate to these minority communities, many of them refugees from imperialist war and exploitation — to express our solidarity with their campaigns against repression and to overlook religious differences that for many define their existence and are key to their own cultural or national self-determination.

You cannot combat religion by effectively outlawing it. The society we want to build is one in which human solidarity — not repression and exclusion — replaces the need for religion. Until that is achieved, we must accept that religion will for many continue to be a primary means of finding solace in a soul-less world.

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Canada And The New World Order: The Case of Haiti

Yves Engler and Anthony Fenton.

Canada in Haiti: Waging War on the Poor Majority.

(Fernwood Publishing, 2005) 120 pages, \$14.95

Reviewed by Roger Annis

Two leading activists for the right of the Haitian people to sovereignty have just published an account of the Canadian government's sordid role in the overthrow of democracy in that island country. *Canada in Haiti: Waging War on the Poor Majority* tells the story of the foreign invasion and violent coup that overthrew the constitution and elected government of Haiti in February 2004. It places the Canadian government squarely at the center of the coup plot and its aftermath.

Haiti's elected president, Jean-Bertrand Aristide, was kidnapped and forcibly removed from the country by U.S. military forces on February 29, 2004. He now lives in exile in South Africa. Members of his government, including Prime Minister Yvon Neptune and Interior Minister Jocelerme Privert, have been in jail for more than one year. Much of the infrastructure of national and local government, social services, and local economy has been disbanded or left in disarray.

The government's overthrow was carried out by troops from the United States, Canada and France, and a small but well-armed and financed paramilitary force drawn from the disbanded army and police forces of the dictatorships that ruled Haiti prior to its first election in modern times, in 1990. "Since the toppling of Haiti's democratically-elected government," write Engler and Fenton, "a human rights disaster has unfolded."

A terrible repression has reigned for the past 20 months at the hands of the national police of the coup regime and a UN-sanctioned foreign military/political occupation force. (The latter numbers 7,500 troops from more than a dozen countries.) Several thousand Haitians have died, hundreds sit in prison—most without charges—and untold numbers have taken refuge in internal exile or fled the country. The repression has targeted, above all, the popular base of Aristide's Lavalas party.

The book sketches the history of Haiti and the events since the coup. It zeros in on Canada's role, and much of the information contained is a result of extensive travel, research, and interviews.

One of the strengths of the book is the detailed information it provides on the destabilization campaign that was waged against democracy in Haiti by the governments and pro-imperialist think tanks in Washington and Ottawa. When Aristide was elected president for a second time in 2000, this time by 92 per cent of voters, the would-be colonizers of Haiti threw up their hands at the prospect of using the electoral process to create a viable and pliant alternative to Aristide and his movement. Plans were set in motion to undo the results of the election and rid the country of Aristide.

Many readers of the book will be surprised to learn of the central and decisive role played by the Canadian government and its agencies in the destabilization effort. Aid and loans to the Haitian government were sharply curtailed after 2000. Funding of so-called non-governmental organizations in Haiti was directed exclusively at those opposing the government and the Lavalas movement. A propaganda war was unleashed, portraying Aristide's government as violent and repressive.

Another important revelation in this book concerns the role of Canadian non-governmental organizations in the destabilization campaign and subsequent justification of the coup. It cites, among others, the role of the Centre international de solidarité ouvrière, an organization based among the major trade unions in Quebec; the Ottawa-based Rights and Democracy, originally founded by, among others, Ed Broadbent; and the Quebec umbrella organization l'Association québécoise des organismes de coopération internationale. These and other NGOs present in Haiti are funded by the Canadian International Development Agency.

The book takes a searing look at the mainstream media in Canada, slamming it for its silence or misrepresentation on Haiti. "Canadian media may be willing to criticize U.S. foreign policy, but if Haiti is any indication, they are much less interested in criticizing their own state's adventures abroad."

The three countries that invaded Haiti continue to play the decisive role in the running of the country. They appointed a puppet governing council. Canadian government officials, including from Elections Canada, are playing the key role in organizing a fraudulent and unconstitutional round of national elections this fall or winter. (Election dates have twice been postponed, the latest postponement being a projected November 20 "election" for a new president). Canadian police agencies, including the RCMP, are training the Haitian National Police (HNP), a repressive force responsible for countless deaths in the poor neighborhoods of Port-au-Prince.

The Lavalas party is, for all intents and purposes, banned from running in the election. A party suffering immense violence and pressure, sections of it are fracturing and joining the electoral process. The popular choice of the party, Catholic priest Father Gerard Jean-Juste, has been in prison since July 21 of this year and is therefore disqualified from running.

Massive violations of human rights in Haiti by the HNP, the judicial system, and the United Nations occupation force have been documented by a series of reputable institutions and studies, including Amnesty International. Indeed, the latest report decrying human rights violations comes from the UN itself—on October 14, the UN official responsible for human rights in Haiti described the situation there as "catastrophic"!

Yet Canada's Minister of Foreign Affairs, Pierre Pettigrew, has dismissed the earlier human rights reports as "propaganda". Meanwhile, Prime Minister Paul Martin and Quebec Premier Jean Charest made the first visits ever to Haiti by their offices, in November 2004 and June 2005 resp., in efforts to bolster the coup regime. While there, Martin declared there are no political prisoners in Haiti.

Other governments beg to differ. The coup regime in Haiti is not recognized by Venezuela, Cuba, South Africa, and most Caribbean island governments. The 15-country Caribbean

association CARICOM suspended Haiti's membership following the coup and has rebuffed recent pressure and threats from Canada to lift the suspension.

Canada justifies its action in Haiti by a new doctrine called "Responsibility to Protect." It is pressing the United Nations to legitimize the doctrine. According to the doctrine, the great powers of the world may be free to invade or otherwise violate the sovereignty of countries as they choose. In Paul Martin's words to the United Nations General Assembly on September 16, "Clearly, we need expanded guidelines for Security Council action to make clear our responsibility to act decisively to prevent humanity's attack on humanity. The 'Responsibility to Protect' is one such guideline."

The facts presented by *Canada in Haiti* are very compelling. The Canadian government stands accused of the forcible overthrow of the constitution and elected government in Haiti. It backs a post-coup regime accused of violations of human rights of massive proportion.

Despite the disaster that has since unfolded, the people of Haiti, miraculously it would seem, have found the means to protest in their thousands and tens of thousands for the return of their constitution and duly-elected government. The authors of *Canada in Haiti* argue that we have a duty to speak out and organize in that people's defense.

For information on solidarity with Haiti in Canada, go to the website of the Canada Haiti Action Network.

Socialist Voice #68, October 31, 2005

Western Canada Labor Battles Show Need for Solidarity

By Roger Annis

VANCOUVER, BC — On October 23, thirty-eight thousand public school teachers in British Columbia voted 77% to end a sixteen-day strike that brought the province to the brink of a general strike. Their strike and two others in western Canada that parallel it carry important lessons for those in Canada looking to resist the ruling class attacks on living standards, social services, and democratic rights.

The teachers, members of the BC Teachers Federation (BCTF), walked off the job on October 6. Bargaining for a new collective agreement was going nowhere. They were demanding a 15 percent pay raise over three years and the right to negotiate their conditions of work and the quality of the education services they provide. They want the provincial government to restore education funding at least to the levels prevailing in 2002, and, in particular, they want to restore the right to negotiate over classroom sizes, which are steadily rising as a result of cuts to education funding.

From the get-go, the Liberal Party government of Premier Gordon Campbell told teachers that they would receive zero percent salary increases over the next two years. Cutbacks to education spending would continue unabated. Within 24 hours of the strike beginning, it passed a special law, Bill 12, that imposed a new collective agreement containing the government's harsh terms.

On October 10, a judge of the provincial court declared the strike to be in violation of Bill 12. Three days later, she issued a draconian ruling reminiscent of the British government's moves to cripple the National Union of Mineworkers during the historic coal miners' strike of 1984/85. The judge prohibited the union from using its funds to pay strike pay or fund other strike-related activity. She also ruled that neither the union nor its members could receive financial aid from other unions or individuals. Several days after that, she fined the union \$500,000.

The vote to end the strike was held under the threat of further moves by the court, including outright seizure of the union's financial assets and prosecution of its leaders for criminal contempt of court.

The strike generated wide support from students, parents, and other union members. Public opinion polls showed rising support for the strike the longer teachers held out. Twenty five thousand school support workers, most of whom are members of the Canadian Union of Public Employees (CUPE), respected picket lines. Students held rallies in support of their teachers. Parents and other union members joined picket lines and brought food and other gestures of support with them.

By the second week of the strike, other unions in the province began to weigh into the battle with rotating regional strikes and protest rallies coordinated by the BC Federation of Labor. Workers at most public services across Vancouver Island went on strike on Monday, October 17 and held a rally of twenty thousand in front of the provincial legislature in Victoria. Walkouts and rallies

took place in smaller centers that week. CUPE members and teachers were the main driving force in these, but some industrial unions joined the walkout in the Kootenay (southeast) region of the province.

Public sector workers in Vancouver were poised to walk off the job in a vast display of solidarity on Friday, October 21, but the day before, a government-appointed mediator hastily announced a proposal to end the strike. He recommended that the government discuss the issue of class sizes with teachers and that the wage freeze would stay in place. Forty million dollars would be allocated to salary improvements for the lowest-paid teachers.

Leaders of the BC Federation of Labor immediately announced their support to the proposal and urged teachers to accept it. Solidarity actions planned for Vancouver were called off.

A day of solidarity went ahead nonetheless in the Vancouver region, under the auspices of CUPE. Municipal governments, universities and colleges, and other government services were closed that day, and two rallies drew 10,000 workers. The leaders of the BC Fed were nowhere to be seen.

Teachers debate the return to work

An intense discussion and debate surrounded the vote by teachers. Leading up to mass meetings of the union, many teachers voiced opposition to the agreement because of the long track record of the Liberal government in breaking promises. They cited the record of the government in tearing up the existing collective agreements of most unions in the public sector following its first election in 2001, followed by radical cuts to social spending.

BCTF leaders argued that the unity of teachers and the widespread support they had received had created conditions in which the government will seriously address concerns over class sizes and other consequences of cuts to education spending.

“We made advances. We have broken the zero (wage freeze) mandate and forced the government to admit there are problems,” BCTF president Jinny Sims said. “We will hold their feet to the fire”

Sims received a standing ovation from thousands of teachers gathered in Vancouver on October 23 to vote on the return to work.

Only the latest round of struggle

The teachers strike brought to a head, once again, the simmering anger by working people in BC at deep cuts over the past 12 years to education, health care and other social services.

The federal government has been the architect of these cuts through its control of taxation and the funding of social programs. A sharp deepening of these cuts date from the return to power in Ottawa of the Liberal Party in 1993. It has ruled in Ottawa ever since.

Provincial governments decide how federal social funds are spent. Since 1993 or earlier, every Canadian province has seen broad-based protest movements of unions, students, and other social rights advocates. In British Columbia, deep cuts to social programs were initiated by governments of the labor-based New Democratic Party in the 1990s and then deepened by the

provincial Liberals after 2001. Since 1990, the average annual salary increase for teachers has been less than one percent. Since 2001, the Liberals have closed 120 public schools, cut several thousand teaching positions, and reduced many special education services as well as library and physical education programs. Average class sizes have increased.

The government's cuts to health care sparked a movement by health care workers as sharp as that of the teachers and their supporters. In April/May 2004, forty thousand health care workers waged a nine-day strike against cuts to health services and deterioration of their jobs and conditions of work. That strike, too, was made "illegal" by the government and courts. When it was all over, the Hospital Employees Union was fined \$150,000.

Only a few months before that, the 4,500 workers who operate the province's vital coastal ferry system struck and — you guessed it — the courts ruled their action "illegal" too.

Both of these strikes won widespread support and active solidarity from other union members. That solidarity was deepened during the teachers strike. All three unions, and the broader labor movement, emerged stronger out of these experiences. But big challenges still remain because the government has not fundamentally altered its attacks.

Telecommunication workers reject deal to end strike

Fourteen thousand telecommunication workers at Telus Corporation in Alberta and British Columbia have been on strike since July and have just voted narrowly to reject a proposal to end their strike.

The company is driving for deep cuts to jobs through shifting work to low-wage sub-contractors and reductions in paid benefits. It wants to gut seniority rights, grievance procedures, and other rights in order to seriously weaken, if not destroy, the place of the union in the workplace.

The workers, members of the Telecommunications Workers Union (TWU), have fought a tough picket line battle, facing down the violence and intimidation of union-busting "security" companies. Mobile picketing and active solidarity from other unions is causing major headaches for Telus as it struggles to maintain production.

So it came as a shock to many strikers when leaders of the union urged a yes vote on a deal that conceded all the main issues of the strike to the company. (Negotiations that led to the deal included the participation of Buzz Hargrove, national president of the Canadian Autoworkers union.)

At a mass meeting in Vancouver on October 24, some 4,000 workers gave a standing ovation to the report of the one member of the union bargaining committee who opposes the deal. Another standing ovation was given to a member who told the meeting, "We should stand up like the teachers."

The narrow margin in the rejection vote (50.3% to 49.7%) suggests that a large percentage of B.C. TWU members voted No, but their votes were offset in Alberta, where support for the strike was much weaker.

Pitched battle by meatpackers

In Brooks, Alberta, 2,400 meatpacking workers, members of the United Food and Commercial Workers union, went on strike October 12 at Lakeside Packers, owned by U.S.-owned Tyson Foods, the largest meatpacking conglomerate in the world. They have waged a militant picket line battle to resist violent efforts by the company to continue production with scab labor.

The workforce at Lakeside is composed of many first-generation immigrants to Canada. Wages are very low and there are frequent injuries on the job. Striking worker Iyob Meles told the Globe and Mail that workers are not allowed to go the washroom during work hours. "This is modern day slavery for me."

The company has used violence and court injunctions to limit the effectiveness of pickets. Two company managers are facing criminal charges for attempting to run the union president off the road while he was driving on the highway. Tyson says that hundreds of workers and new-hires are eager to cross picket lines.

But workers have responded with a militant stand. "If they kill us, they can go in," Meles told the Globe on the picket line as he stared down a vehicle filled with scabs.

Production at the facility has been sporadic. It stopped altogether as of October 25 when federal government meat inspectors refused to cross picket lines.

Broader solidarity needed

These three strikes are proof of the willingness and capacity of workers to resist the offensive of the employers and their governments. So how can we advance further and faster along such a path?

- **Broader strike solidarity is vital.** The actions in solidarity with BC teachers were a solid example of what is required. The BC Federation of Labor should have continued the motion toward a general strike that began in Victoria, and in particular, it should have organized participation from the industrial unions. This would have strengthened not only the teachers' strike, but also that of school support workers and municipal workers, members of CUPE. They are headed into tough negotiations in 2006 — the government says its wage freeze for public sector wages remains in place.
- **Strikebreaking must be fought head on.** The bosses and governments are increasingly turning to violence, intimidation and legal emasculation of the unions to advance their class interests. Workers at Telus and meatpackers at Lakeside Packers need more active and effective solidarity than what they have been getting.
- **Appeals by unions to courts are less and less effective** as the courts increasingly reveal they are not neutral arbiters but the agencies of the capitalist class. Such appeals should not substitute for active mobilization and solidarity, for, ultimately, this is the only force that can win class battles. We must also vigorously combat the increasing attacks by courts on the unions, such as the fine imposed on the BCTF.
- **The unions and the broader working class movement need a strategy to challenge the political rule of the capitalist class.** The power to change and improve society

ultimately lies in wielding governmental power. The election of NDP governments does not solve this problem because that party is dedicated to a politics of compromise and appeasement. It does not campaign for genuine reforms, leave alone for a fundamental change in society.

The unions need a strategy of political action that is independent of the capitalist class. Yes, we must challenge the NDP to act in workers interests. That is why the election of NDP governments can advance the struggle — because it allows a stronger challenge to their claim of representing workers' interests. But we must also challenge every capitalist government to protect workers who come under attack. And demonstrate how we would do so if, and when, the capitalist governments fail to do so.

Such measures will help us take forward the positive fighting spirit so evident in the current battles.