Dishonour, Provocation and Culture: Through the Beholder's Eye?

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In Canada, as throughout most of the geopolitical West, honour crimes have recently been the object of growing hostility from politicians and media pundits. In many ways, the projection of a "civilized" Canada simultaneously reifies the notion of Islamic and/or "Eastern" law as inherently contrary, even antithetical, to Canadian law. Yet honour is no foreign notion to Western law, including Canadian law. In this article, we outline how socio-legal hybridity manifests itself in the notion of honour in law, and sketch a definition and history of honour crimes, a category which existed in the West and often travelled to the East. Then, we explore the (Western) "provocation defence," an institution which is historically rooted in male honour and whose concrete operation in Canada has sometimes been to uphold homicidal schemes that are no stranger to notions of bruised honour. We aim to outline that honour is found intertwined with many other emotions in violent crimes in both the "East" and the "West."

Au Canada, tout comme dans plusieurs pays occidentaux, les crimes d'honneur ont récemment fait l'objet d'une hostilité croissante de la part des classes politiques et médiatiques. Au cœur de ces discours se trouve souvent l'idée d'un

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Occident civilisé qui répond à une conception figée des droits musulmans et/ou orientaux. Or, la violence au nom de l'honneur n'est pas étrangère aux systèmes juridiques occidentaux, dont le droit canadien. Dans cet article, nous tentons de retracer les manifestations juridiques de l'honneur dans divers pays et la migration de ce concept de l'Occident à l'Orient et vice-versa. Ensuite, nous nous attardons à la défense de provocation, une institution juridique occidentale qui fait parfois resurgir l'honneur comme motif d'homicide, à l'occasion de crimes dits passionnels. Cela nous permet de conclure que l'honneur se retrouve sous différentes formes tant en Orient qu'en Occident et de dresser plusieurs pistes de réflexion essentielles à quiconque s'intéresse à l'élimination de la violence faite aux femmes.

> Rather than a dividing line separating them, "East" and "West" seem to meet in a circular movement where one becomes the other. The "honor" of nineteenth-century America is the very "passion" incorporated in the Arab Codes to diffuse and decenter the other legal sensibility lurking in the structure of the Codes — Arab "honor." . . . The twain East and West, when it comes to violence against women, meet.
>
> Lama Abu-Odeh[1]

1. INTRODUCTION

In recent years, honour crimes have undeniably struck the imagination of many citizens, politicians, and media pundits in Europe and North America. Public discourse on the subject is often framed in ideological terms which establish boundaries between "foreign" honour crimes and the "West."[2] A recent public policy report thus underlined that honour crimes are "proliferating without regards to Canada's criminal code or Canadians' *deep cultural revulsion* from the very concept."[3] Likewise, an editorial from a major Canadian newspaper stressed that honour crimes are "anathema to Western culture."[4] Professor Shahrzad Mojab, expert witness in the Shafia trial, wrote in an article on the independent news website *The Mark News* that she feels her testimony before the Ontario Superior Court of Justice was misinterpreted by the media, who wrongfully attributed to her a quote that the crown prosecutor asked her to read to the jury. The quote was to the effect that honour crimes take root in Arab culture and popular sayings. Prof. Mojab wrote that it is "regrettable that our mainstream media do not hesitate to identify 'honour'

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1 "Comparatively Speaking: The 'Honor' of the 'East' and the 'Passion' of the 'West'" (1997) 2 Utah L Rev 287 at 305 ["Comparatively Speaking"]. We are indebted to Lama Abu-Odeh for her brilliant analysis of the tensions between passion and honour in Eastern and Western legal systems.

2 See 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.

3 Aruna Papp, *Culturally Driven Violence Against Women: A Growing Problem in Canada's Immigrant Communities* (Winnipeg, MB: Frontier Centre for Public Policy, 2010) at 10 [emphasis added].

4 Barbara Kay, "Communities Must Speak Out Against Brutal Traditions", *National Post* (26 January 2011).

killing with 'Arabness,' Arab culture, and — through another misidentification — Islam."[5] Despite this aggressive political and media campaigning, there has been remarkably little domestic policy guidance on honour crimes in Canada.[6] Furthermore, notwithstanding talks of incorporating in the *Criminal Code* a distinct "honour crime" offence,[7] such crimes are, rightly or wrongly, still managed through the conventional legal tools related to the general offences of homicide[8] such as the partial defence of provocation, which applies only to murder and is often invoked in cases of "honour crimes."

This article will analyze how Canadian courts translate honour crimes within the framework of existing legal tools, with special reference to the provocation defence, as it intersects with honour violence. Drawing inspiration from Lila Abu-Lughod's ground-breaking work on honour crimes, the analysis will attempt to uncover the "work of the [honour crimes] category in distinct projects and scales of power, and to untangle its effects in different spheres and locales."[9] We will endeavour to trace some forgotten Western origins of honour crimes and compare Western passion crimes and Eastern honour crimes in order to critically engage media coverage and judicial treatment of honour crimes.

Part II will sketch a definition and history of honour crimes, focusing on two case studies which have been extensively debated: Jordan and Pakistan. By presenting a panorama of worldwide honour crimes legislation and practices, this part aims to understand the historical roots of honour crimes, with a special emphasis on their legal regulation. Uncovering the partly Western origins of this phenomenon will help us set aside the conception of honour violence as a fixed, culturally-determined practice. Instead, it will outline that gender violence has travelled through inter-cultural encounters and that cultural boundaries are, in this regard, porous. After having traced the (Western) provocation defence's genesis in honour-based medieval British law, Part III will expose some of the defence's concrete implica-

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5 Shahrzad Mojab, "Honour Killings and the Myth of 'Arabness'", *The Mark News* (29 December 2011) online: <http://www.themarknews.com/articles/7884-honour-killings-and-the-myth-of-arabness>.

6 Tellingly, one of the only mentions of this phenomenon was in a new study guide for immigrants, which mentions 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." *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>.

7 See Kris Sims, "Feds say no 'honour killing' law planned", *CNews* (5 December 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.

8 *Criminal Code*, RSC 1985, c C-46, ss. 222–240.

9 Lila Abu-Lughod, "Seductions of the Honor Crime" (2011) 22: 1 Differences: A Journal of Feminist Cultural Studies 17 at 52.

tions for honour as a discursive practice. We will outline how femicides[10] committed by both Westerners and Non-Westerners have been processed through the channel of the provocation defence. We will argue that the provocation defence is historically rooted in male honour, and that its concrete operation in Canada, notably in domestic femicide cases committed by Canadians, has been to uphold some machistic schemes that are no stranger to notions of bruised honour. We aim to outline that passion and honour, while often presented as polar opposites, are found intertwined in violent crimes in *both* the East and the West. However, our use of the concepts of "East" and "West" should not be taken to suggest that there is anything tangible about such a distinction. Rather, we invoke this often used category[11] to map the socio-legal implications and the "constitutive effects"[12] of the East/West binary on Canadians' conception of themselves as *individuals*, as a *nation* and/or as a part of *Western civilization*. Finally, Part IV will present a quantitative analysis of Canadian cases involving the provocation defence in contexts of intimate femicides, classifying them according to the "ethnicity" of the defendants. We will present the success rate of both categories and elaborate hypotheses as to why defendants identifiable as non-Western seem to have less success in raising the provocation defence. In so doing, we hope to shed some light on the ways in which "the practices of legal reasoning, textualism, and decision making assemble the world, both retrospectively and for future use."[13] We will argue that courts' translation of honour violence through the language of the provocation defence has the effect of negating the similarity between Western and Eastern legal institutions, thus considerably impairing our understanding of gendered violence, obscuring the

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10 This article uses the term "femicide" to broadly refer to the "killing of women, regardless of motive or perpetrator status" (Jacquelyn Campbell & Carol W. Runyan, "Femicide: Guest Editors' Introduction" (1998) 2: 4 Homicide Studies 347 at 348). Though many feminist scholars have linked this term to a specific discriminatory intent, the killing of a woman *because she is a woman*, we propose to suspend this otherwise important discussion to examine the continuum of gendered homicides and the variety of cultural motives it can accommodate.

11 One can think of the famous call by Samuel P. Huntington, former counter-insurrection expert for the Lyndon Johnson administration during the Vietnam war, to distinguish the "West and the Rest" on the basis of their "values" ("The Clash of Civilizations?" (1993) 72: 3 Foreign Affairs 23). For a similar, if slightly more sophisticated, argument on the peculiar cultural and political "inventions" of the liberal West which are called upon to justify its political and economic dominance, see Niall Ferguson, *Civilization: The West and the Rest* (London: Penguin Books, 2011).

12 For a succinct presentation of the "constitutive theory" from which we take our cue, see Patricia Ewick, "Penetration of Law" in David Scott Clark, ed., *Encyclopedia of Law and Society: American and Global Perspectives* (Thousand Oaks, CA: SAGE, 2007) 1102 at 1103. This article also draws inspiration from a strand of socio-legal studies which attempts to combine an "instrumental" and a "constitutive" look on law: see Austin Sarat & Thomas R Kearns, "Beyond the Great Divide: Forms of Legal Scholarship and Everyday Life" in Austin Sarat & Thomas R Kearns, eds, *Law in Everyday Life* (Ann Arbor: University of Michigan Press, 1993) 21 at 27.

13 Ron Levi & Mariana Valverde, "Studying Law by Association: Bruno Latour Goes to the Conseil d'État" (2008) 33 Law & Social Inquiry 805 at 816.

internal flaws of Western law, and hampering pressing law reform projects.

2. GENEALOGIES OF HONOUR

(a) Definition and Overview of Worldwide Occurrences

This section aims to sketch out the genesis of the legal concept of honour crimes as it lives and exists in various countries of the East, which are now associated with honour crimes in Western media and parliamentary debates. After presenting a definition of honour crimes, we will assess the cases of Jordan and Pakistan. Because of the immensely complex evolution of the legislative regimes surrounding honour crimes, we will limit ourselves to sketching out a handful of interesting facts on the origins and evolution of the concept. We can only hope to spark interest for further research that traces the historical roots of honour crimes on a case-by-case basis, and that takes into account the complexities the globalization of legal systems has brought upon us.

It is difficult to define what an honour crime entails, its scope, and its limits. It has been defined by one scholar as "a murder carried out in order to restore honor, not just for a single person but a collective, [which] presupposes the approval of a supportive audience, ready to reward murder with honor."[14] Furthermore, certain significant hallmarks of honour crimes can be identified: a woman is murdered by members of her birth family (usually not her family by marriage);[15] the killer is a father, brother, cousin, paternal uncle or husband; and other women are often involved in either the planning or cover-up of the crime.[16] The UN special Rapporteur on violence against women, giving insight as to what can be considered an infringement on collective honour, wrote in a 1999 report:

> Honour is defined in terms of women's assigned sexual and familial roles as dictated by traditional family ideology. Thus, adultery, premarital relationships (which may or may not include sexual relations), rape and falling in love with an "inappropriate" person may constitute violations of family honour.[17]

Nowadays, honour crimes are committed in a wide array of countries of the East, in war-torn, "failed states" like Afghanistan[18] but also in secular, democratic

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14 Rochelle L Terman, "To Specify or Single Out: Should We Use the Term 'Honour Killing'?" (2010) 7: 1 Muslim World Journal of Human Rights 1 at 8-9.

15 Though women are most generally the victims, men are sometimes targeted: Katherine Ewing, *Stolen Honor: Stigmatizing Muslim Men in Berlin* (Palo Alto, CA: Stanford University Press, 2008).

16 Terman, *supra* note 14 at 9.

17 Special Rapporteur on violence against women, its causes and consequences, *Report*, UN Doc. E/CN.4/1999/68 (10 March 1999) at para 18, online: <http://www2.ohchr.org/english/issues/women/rapporteur/annual.htm>.

18 See IRIN: humanitarian news and analysis, a service of the UN Office for Coordination of Humanitarian Affairs, "Afghanistan: honour killings on the rise", <http://www.irinnews.org/report.aspx?reportid=61698>; Palwasha Kakar, "Tribal Law of Pashtunwali and Women's Legislative Authority", paper sponsored by the Afghan

states like Turkey.[19] Statutory honour defences and their correlative cultural attitudes have also been reported as widespread occurrences in countries as diverse as contemporary Brazil[20] and parts of Russia, notably Chechnya.[21]

The notion of lawful killing to restore honour goes back to the codes of Hammurabi, Nessilim, and Assura.[22] Honour crimes were also frequent in ancient Rome, the cradle of "Western civilization," and Roman law penalized men who abstained from killing their adulterous sisters or wives.[23] Furthermore, there are significant contemporary instances of Western legal provisions that encouraged honour crimes. The *Italian Penal Code* allowed for greatly reduced sentences for men who murdered their adulterous "wives, daughters or sisters"[24] until the provision in question was repealed, as late as 1981.[25] Likewise, the penal codes of Spain, Portugal and France have long contained provisions excusing honour crimes.[26] These legislations seem to have been grounded in cultural realities, as

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Legal History Project, Islamic Legal Studies Program, Harvard Law School at 1. Available <http://www.law.harvard.edu/programs/ilsp/research/kakar.pdf>.

19 In Turkey, despite some political leadership being shown on the issue of honour crimes, women's rights activist Leylâ Pervizat reports that policy responses have been reluctant and insufficient: "Men's Violence and Women's Reponsibility: Mothers' Stories About Honour Violence" in Mazher Idriss & Tahir Abbas, *Honour Violence, Women and Islam* (New York: Routledge, 2010) 142 at 152.

20 See M Nazzari, "An Urgent Need to Conceal" in LL Johnson & S Lipsett Rivera, eds, *The Faces of Honor: Sex, Shame, and Violence in Colonial Latin America* (Albuquerque: University of New Mexico Press, 1998) 103; Silvia Pimentel, Valéria Pandjiarjian & Juliana Belloque, "The 'legitimate defence of honour', or murder with impunity? A critical study of legislation and case law in Latin America" in Sara Hossain & Lynn Welchman, eds, *'Honour': Crimes, Paradigms and Violence Against Women* (London: Zed Books, 2005) 245 at 251.

21 "President Kadyrov defends honour killings" (1 March 2009) *Belfast Telegraph* online: <http://www.belfasttelegraph.co.uk/breaking-news/world/europe/president-kadyrov-defends-honour-killings-14208919.html>. One women's rights activist stated: "No records are kept, but human rights activists estimate that dozens of women are killed every year.": Lynn Berry, "Chechen President Kadyrov Defends Honor Killings" *The St. Petersburg Times* 3 March 2009, <http://www.sptimes.ru/index.php?story_id=28409&action_id=2>.

22 Matthew A Goldstein, "The Biological Roots of Heat-of-Passion Crimes and Honor Killings" (2002) 21: 2 Politics and the Life Sciences 28 at 29.

23 Jane F Gardner, *Women in Roman Law and Society* (Bloomington: Indiana University press, 1986) at 130, cited in Goldstein, *ibid*. at 29.

24 Maria Gabriella Bettiga-Boukerbout, "Crimes of honour in the *Italian Penal Code*: an analysis of history and reform" in Hossain & Welchman, eds, *supra* note 20, 230 at 234.

25 *Ibid.* at 237.

26 See Lama Abu-Odeh, "Honor Killings and the Construction of Gender in Arab Societies" (2010) 58 Am J Comp L 911 at 914 [Abu-Odeh, "Construction of Gender"]; Valerie Plant, "Honor Killing and the Asylum Gender Gap" (2005) 15: 1 J Transnat'l L & Pol'y 109 at 114.

honour is an important trait of many Euro-Mediterranean societies.[27] As put by anthropologist Mojca Ramšak:

> Certain similarities in the notion of honour are found in various societies that border on the Mediterranean. The people of southern Europe, especially the rural peoples, more resemble in some ways to those in the Near East and North Africa than they do those of northern Europe.[28]

Finally, in the United States, "until the 1960's and 1970's, statutes in four states [Georgia, New Mexico, Texas and Utah] made it justifiable for the husband to kill his wife's lover."[29] These all-American examples were paradigmatic of honour crimes since they did not depend on spur-of-the-moment passion and could be carried out to *prevent* adultery.[30] Here again, the law was informed by cultural constructions of male honour. In their empirical study of contemporary Southern Anglo-American perceptions of femicide, Vandello and Cohen report that the idea of resorting to domestic violence in order to restore honour in the face of female infidelity had deep cultural resonance, leading to widespread perceptions according to which adulterous women should endure domestic violence and stay in abusive relationships to redeem family "honour."[31]

The multiple instances of Western sanctioning of honour crimes serve to outline that this concept also inhabits "Western culture." Moreover, in most Oriental countries where honour crimes are openly perpetrated, they are a part of the social mores of multiple religious communities beyond Islam, Sikhism, Hinduism, and other religions traditionally associated with this practice. The example of Lebanon is revealing. Article 562 of the *Lebanese Penal Code* remained for decades an exculpatory excuse for murder of adulterous female relatives, before being amended into a commutation of sentences following pressures from human rights activists.[32] Despite Lebanon being a multi-confessional state with denominational personal sta-

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27 See Amedeo Cottino, "Honor as Property" (1993) 33 J Legal Pluralism & Unofficial L 33 at 40; Jane Schneider, "Of Vigilance and Virgins" (1971) 10: 1 Ethnology 1 at 2; Stanley H Brandes, *Metaphors of Masculinity: Sex and Status in Andalusian Folklore* (Philadelphia: Philadelphia University Press, 1980) at 76.

28 Mojca Ramšak, "On Tragic Contemporary Honour Cultures" in Christopher Hamilton et al, eds, *Facing Tragedies* (Berlin: Lit Verlag, 2009) 89 at 100.

29 Laurie J Taylor, "Provoked Reasons in Men and Women: Heat-of-Passion Manslaughter and Imperfect Self-Defense" (1985-1986) 33 UCLA L Rev 1679 at 1694. See also D Cohen, JA Vandello & AK Rantilla, "The Sacred and the Social: Cultures of Honor and Violence" in P Gilbert and B Andrews, eds, *Shame: Interpersonal Behaviour, Psychopathology and Culture* (New York: Oxford University Press, 1998) 261 at 269; Abu-Odeh, "Comparatively Speaking" *supra* note 1 at 298.

30 Taylor, *ibid.* at 1695, n 87.

31 JA Vandello & D Cohen "Male Honor and Female Fidelity: Implicit Cultural Scripts That Perpetuate Domestic Violence" (2003) 84: 5 Journal of Personality and Social Psychology 997 at 1008. See also RE Nisbett and D Cohen, *Culture of Honor: The Psychology of Violence in the South* (Boulder, CO: Westview Press, 1996) at 2.

32 Jessy Chahine, "Laws in Arab world remain lenient on honor crimes", *The Daily Star* (9 September 2009) online: <http://www.dailystar.com.lb/News/Local-News/Sep/09/Laws-in-Arab-world-remain-lenient-on-honor-crimes.ashx#ixzz1OEvumAG0>.

tus law,[33] criminal law with regards to honour crimes and courts of criminal jurisdiction are common to the country's eighteen different Christian, Jewish, Druze, and Muslim communities.[34] The honour crime excuse thus exists among many religious communties and was notably applied by the Christian Maronite community, historically considered a Middle-Eastern counterpart and ally of the West.[35]

(b) Perspectives from the East: Jordan and Pakistan

This section presents perspectives on the practices of two countries of the East: Jordan and Pakistan. Rather than exhaustive descriptions of the positive law applicable to honour crimes, our evocation of these two countries is intended to serve as an introduction to the complex issues raised by honour's travel through these two polities' postcolonial legalities. The case of Jordan will serve to outline that some honour crimes legislations of the East have been directly transplanted from the West as part of colonial codification processes. The case of Pakistan will subsequently serve to outline some more subtle forms of legal transplantation which have shaped Eastern honour crimes through the colonial relationship.

Jordan is a most relevant case study, seeing as it has, according to some accounts, the highest rate of honour crimes per capita in the world.[36] Article 340 of the *Jordanian Penal Code* reads:

> 1. He who surprises his wife or one of his [female] *marhams* ('unlawfuls') in the act of committing unlawful sexual intercourse with somebody and kills, wounds or injures one or both of them, shall benefit from the exonerating/exempting excuse (*'udhr muhill*);
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> 2. He who surprises his wife or one of his ascendants or descendants or siblings with another in an unlawful bed, and kills or wounds or injures one or both of them, shall benefit from the mitigating excuse (*'udhr mukhaffat*).[37]

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33 See Sherifa Zuhur, "Empowering Women or Dislodging Sectarianism: Civil Marriage in Lebanon" (2002) 14 Yale JL & Feminism 177; Lamia Rustum Shehadeh, "The Legal Status of Married Women in Lebanon" (1998) 30: 4 International Journal of Middle-East Studies 501 at 503.

34 Nisrine Abiad, *Sharia, Muslim States and International Rights Treaty Obligations: A Comparative Study* (London: British Institute of International and Comparative Law, 2008) at 142.

35 Elaine C Hagopian, "Maronite Hegemony to Maronite Militancy: The Creation and Disintegration of Lebanon" (1989) 11: 4 Third World Quarterly 101 at 101; Halim Barakat, "Social and Political Integration in Lebanon: A Case of Social Mosaic" (1973) 27: 3 Middle East Journal 301 at 314; Hanna E. Kassis, "Religious Ethnicity in the World of Islam: The Case of Lebanon" (1985) 6: 2 International Political Science Review 216 at 222.

36 Kathryn Christine Arnold, "Are the Perpetrators of Honor Killings Getting Away with Murder? Article 340 of the *Jordanian Penal Code* Analyzed under the Convention on the Elimination of All Forms of Discrimination Against Women" (2001) 16: 5 Am U Int'l L Rev 1343 at 1347.

37 Cited and translated in Reem Abu-Hassan & Lynn Welchman, "Changing the rules? Developments on 'crimes of honour' in Jordan" in Hossain & Welchman, eds, *supra* note 20, 199 at 201.

This provision has caused great worldwide concern and has been decried by Human Rights Watch researcher Nada Khalife as "nothing less than an endorsement for murdering women and girls."[38] A bill was introduced in 2001 to eliminate the possibility of exoneration for honour crimes,[39] but it was subsequently rejected by Parliament and article 340 remained as is.[40] There is strong scholarly consensus that this legislation was directly inspired by the *French Penal Code of 1810*.[41] As put by Janin & Kahlmeyer, this provision "springs from French, i.e., Napoleonic, penal law, not from Islamic law itself."[42] Article 340 of the *Jordanian Penal Code* received the influence of French Napoleonic law through various channels, notably through the regional influence of French Lebanese and Syrian penal codes' honour crime excuses, from which article 340 "derived most of its language."[43] French law also greatly influenced the codification processes in the Ottoman Empire between 1869 and 1877, which have contributed to spreading the transplantation of the French honour crime excuse in the Middle-East generally.[44] As a result, the similarities between French honour crimes law and the Jordanian provision were glaring. Article 324 of the *French Penal Code of 1810*, a provision which was repealed only in 1975,[45] read:

> Whoever catches his spouse, female ascendant, descendant or his sister red-handed in the act of adultery or in an illegitimate sexual encounter with another person and commits homicide or causes injury can benefit from an

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38 "Jordan: Tribunals No Substitute for Reforms on 'Honor Killings'" (8 September 2009), online: Human Rights Watch <http://www.hrw.org/en/news/2009/09/01/jordan-tribunals-no-substitute-reforms-honor-killings>.

39 Abu-Hassan & Welchman, *supra* note 37 at 203. This followed large-scale grass-roots activism: see Stefanie Eileen Nanes, "Fighting Honour Crimes: Evidence of Civil Society in Jordan" (2003) 57: 1 Middle East Journal 112.

40 "'Honour killings' law blocked" (8 September 2008), online: BBC News <http://news.bbc.co.uk/2/hi/ middle_east/3088828.stm>.

41 Abu-Odeh, "Construction of Gender", *supra* note 26 at 914; Fadia Faqir, "Intrafamily Femicide in Defence of Honour: The Case of Jordan" (2001) 22: 1 Third World Quarterly 65 at 73; Anahid Devartanian Kulwicki, "The Practice of Honor Crimes: A Glimpse of Domestic Violence in the Arab World" (2002) 23: 1 Issues in Mental Health Nursing 77 at 83. The Lebanese honour crimes provision also comes from the *French Penal Code*: Women Living Under Muslim Laws, *Knowing Our Rights: Women, Family, Laws and Customs in the Muslim World* (Nottingham, UK: The Russell Press, 2006) at 17.

42 Hunt Janin & André Khalmeyer, *Islamic Law: The Sharia from Muhammad's Time to Present* (Jefferson, NC: McFarland, 2007) at 146.

43 Ferris K. Nesheiwat, "Honor Crimes in Jordan: Their Treatment under Islamic and Jordanian Criminal Laws" (2004) 23: 2 Penn St Int'l L Rev 251 at 274.

44 See Catherine Warrick, *Law in the Service of Legitimacy: Gender and Politics in Jordan* (Burlington, VT: Ashgate, 2009) at 82; Nathan J Brown, *The rule of law in the Arab world: Courts in Egypt and the Gulf* (New York, Cambridge University Press, 2006) at 2.

45 Danielle Hoyek, Rafif Rida Sidawi & Amira Abou Mrad, "Murders of Women in Lebanon: 'crimes of honour' between reality and the law" in Hossain & Welchman, eds, *supra* note 20, 111 at 115; Abu-Odeh, "Construction of Gender", *supra* note 26 at 915.

> excuse of exemption. The author of the homicide or injury can benefit from an excuse of reduction if he catches red-handed his spouse, female ascendant, descendant, or his sister in an 'attitude equivoque.'[46]

This direct transfer of one legal institution from the West to the East can be analyzed as a form of "legal transplant,"[47] one which has contributed to the "globalizations of law and legal thought" described by Duncan Kennedy.[48] The importance of legal transplantation in the shaping of colonial legal systems cannot be underscored,[49] and this influence is especially striking in the case of honour crimes.

Finally, the Jordanian law also contains elements of "crimes of passion," such as article 98 of the *Jordanian Penal Code*, which excuses murders committed in a "fit of fury."[50] This provision is said to have been "much more useful"[51] to honour killers than article 340, though it has attracted less media attention than the latter provision. Jordanian courts often apply article 98 of the *Penal Code* to honour crimes, effectively treating them as a form of "crime of passion."[52] Thus, Jordan, "the country most intensely under the international spotlight when issues of 'honour' are discussed, perhaps along with Pakistan,"[53] appears to have crafted its honour crimes legislation at the confluence of Western and Oriental traditions.

We now briefly turn to the case of Pakistan, which presents a more complicated case of legal transplantation. Substantively, there is no denying that Pakistani honour crimes are rooted in indigenous "tribal codes,"[54] as modified and shaped by the evolution of Pakistani criminal law. We leave to others the detailed analysis of important indigenous legal processes such as the "Qisas and Diyat Ordinance" of 1990, its subsequent reforms, and Pakistani judicial attitudes towards honour

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46 Émile Garçon, *Code pénal annoté* (Paris: Librairie du Recueil Sirey, 1951) at 151, cited and translated in Abu-Odeh, *ibid.* at 914.

47 The term "legal transplant" was first proposed by Alan Watson in the 1970s to describe what he saw as the migration of legal rules or practices "from one country to another, or from one people to another.": Alan Watson, *Legal Transplants*, 2d ed (Atlanta: University of Georgia Press, 1993) at 21.

48 Duncan Kennedy, "Two Globalizations of Law and Legal Thought: 1850–1869" (2003) 36: 3 Suffolk UL Rev 631.

49 On the case of Egypt see Lama Abu-Odeh, "Modernizing Muslim Family Law: the Case of Egypt" (2004) 37 Vand J Transnat'l L 1043 at 1092.

50 Rana Lehr-Lehnardt, "Treat your Women Well: Comparisons and Lessons from an Imperfect Example Across the Waters" (2002) 26 S Ill U LJ 403 at 420.

51 Catherine Warrick, "The Vanishing Victim: Criminal Law and Gender in Jordan" (2005) 39: 2 Law & Soc'y Rev 315 at 337. See also Lehr-Lehnardt, *ibid.* at 420.

52 Christina Madek, "Killing Dishonor: Effective Eradication of Honor Killing" 29: 1 Suffolk Transnat'l L Rev 53 at 62. See our discussion of Western "crimes of passion", *infra* part II.

53 Abu-Hassan & Welchman, *supra* note 37 at 199.

54 Sohail Akbar Warraich, "'Honour Killings' and the Law in Pakistan" in Hossain & Welchman, eds, *supra* note 20, 78 at 80. See Kenneth Lasson, "Bloodstains on a Code of Honor: The Murderous Marginalization of Women in the Islamic World" (2009) 30: 3 Women's Rts L Rep 407 at 414.

crimes,[55] all of which have undeniably conditioned the development of honour crimes in Pakistan. Instead, we present a study of the interaction between British colonial law and the Pakistani legal system, which reveals some underground influences at play. Despite the absence of a direct "cut-and-paste" transplantation of honour crimes legislation such as in Jordan, a more subtle form of inter-legal dialogue between British and Pakistani traditions of honour emerges.[56] As put by David Westbrook, "the diffusion of law cannot be separated from those social processes discussed under the rubric of globalization."[57] Among these processes was the nineteenth-century wave of legal codifications in Pakistan, then part of the "British Indian Empire." Numerous reforms were implemented in various legal sectors, to the exception of personal status law, which was seen as too "interconnected with religious feelings"[58] and tied to South Asian spirituality and identity. In matters of public law and criminal law, however, the codifiers have "transplant[ed] law from Europe, and conveniently shunt aside God's law."[59]

The processes have had significant influence on the social realities surrounding crimes of honour. For instance, just as was the case in Jordan, Pakistani honour crimes have often been treated through the channel of "grave and sudden provocation,"[60] a (Western) principle introduced by the *Pakistan Criminal Code of 1860*.[61] Moreover, the codification processes have had deep cultural repercussions. Let us

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55 For excellent analyses, see Rachel A Ruane, "Murder in the Name of Honor: Violence against Women in Jordan and Pakistan" (2000) 14: 3 Emory Int'l L Rev 1523 at 1538; Moeen H Cheema, "Judicial Patronage of Honor Killings in Pakistan: The Supreme Court's Persistent Adherence to the Doctrine of Grave and Sudden Provocation" (2008) 14 Buff HRL Rev 51 at 55; Evan Gottesman, "The Reemergence of Qisas and Diyat in Pakistan" (1992) 23: 2 Colum HRL Rev 433; Yasmeen Hassan, *The Heaven Becomes Hell: A Study of Domestic Violence in Pakistan* (Lahore, Pakistan: Women Living Under Muslim Laws, 1995).

56 In this regard, we agree with James Clifford that transplantation does not present an empirically observable "linear path" ("Notes on Travel and Theory" (1989) 5 Inscriptions 177 at 184). On the "travelling" of ideas see Edward W Said, "Travelling Theory" in *The World, the Text and the Critic* (Cambridge, MA: Harvard University Press, 1983) 226; Edward W Said, "Travelling theory reconsidered" in *Reflection on Exile and Other Essays* (Cambridge, MA: Harvard University Press, 2000) 436.

57 David Westbrook, "Keynote Address — Theorizing the Diffusion of Law: Conceptual Difficulties, Unstable Imaginations, and the Effort To Think Gracefully Nonetheless" (2006) 47 Harv Int'l LJ 490 at 490.

58 David Pearl & Werner Menski, *Muslim Family Law*, 3d ed (London, UK: Sweet & Maxwell, 1998) at 38. Some legal scholars have noted that so-called non-intervention often meant the shaping of colonial legality and religiosity through more insidious means: Bernard S. Cohn, "Law and the Colonial State in India" in June Starr and Jane Collier, eds, *History and Power in the Study of Law* (Ithaca: Cornell University Press, 1989) 131.

59 Haider Ala Hamoudi, "The Death of Islamic Law" (2010) 38: 2 Ga J Int'l & Comp L 293 at 307.

60 See Cheema, *supra* note 55.

61 Niaz A. Shah Kakakhel, "Honour Killings: Islamic and Human Rights Perspectives" (2004) 55: 1 N Ir Legal Q 78 at 84.

consider for instance one of the social beliefs that underpin honour crimes, according to which "women serve their male guardians and families as vessels of honor [and] do not possess any honor of their own."[62] This legal discourse was strengthened and enshrined in colonial British law. Warraich writes that:

> The *1860 British Penal Code* introduced the notion of 'modesty', and related concepts of 'chastity', 'enticement' and 'abduction', as part of a framework of collective 'honour'. Rather than safeguarding the rights of the affected individual woman, the law upheld the rights of third parties, be it the state, community or immediate family members. Effectively, in matters of legal adjudication, women became passive objects whose sexuality was to be controlled. [. . .] Women were not considered individuals — each crime in the *Penal Code* was classified in relation to the lawful protector or guardian.[63]

Likewise, the British common law rules which applied until the Hudood Ordinance's "Islamization" of Pakistani law in 1979 treated rape as "a crime punishable against men, to be lodged by the husband of the woman raped against the man who violated her."[64] These legal institutions transplanted themselves to ancient Pakistani "tribal codes," in turn shaping new hybrid social mores. This led some scholars to argue that the roots of honour crimes "may be found in the parallel justice system made up of the criminal law inherited from the British and the *Sharia* law that exists in Pakistan."[65] This "uneven marriage"[66] between the common law and Islamic law left by the British in 1947 continues to shape various Pakistani legal institutions in myriad ways. Thus, in analyzing Pakistan, one must not put excessive emphasis on the contemporary "Islamization" of Pakistan and its aftermath.[67] Islamic "revolutions" have not worked on a *tabula rasa*, and they have often been conditioned by the unique ways in which the past colonial laws and tribal customs had interacted for centuries to produce hybrid legal institutions.[68]

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62 Stephanie Palo, "A Charade of Change: Qisas and Diyat Ordinance Allows Honor Killings to Go Unpunished in Pakistan" (2008) 15: 1 UC Davis J Int'l L & Pol'y 93 at 98.

63 Warraich, *supra* note 54 at 81.

64 Asifa Quraishi, "Her Honor: An Islamic Critique of the Rape Laws of Pakistan from a Woman-Sensitive Perspective" (1997) 18: 2 Mich J Int'l L 287 at 298.

65 Anushree Tripathi & Supriya Yadav, "For the Sake of Honour: But Whose Honour — Honour Crimes against Women" (2004) 5: 2 Asia Pac J HR & L 63 at 71.

66 David S Pearl, "Family Law in Pakistan" (1969) 9 J Fam L 165 at 165.

67 As argued by Izzud-Din Pal, "Women and Islam in Pakistan" (1990) 26: 4 Middle Eastern Studies 449 at 460; Charles Kennedy, "Islamization and legal reform in Pakistan 1979–1989" (1990) 63: 1 Pacific Affairs 62 at 71.

68 Indeed, postcolonial legal systems are inextricably bound to Western law: Donald L. Horowitz, "The Qur'an and the Common Law Islamic Law Reform and the Theory of Legal Change" (1994) 42: 2 Am J Comp L 233 at 234. See also Rajeev Dhavan "Borrowed Ideas: On the Impact of American Scholarship on Indian Law" (1985) 33: 3 Am J Comp L 505. For a brilliant study of the complexities of the legal system's Islamization and the importance of inherited British law, see Ronald J Daniels, Michael J Trebilcock & Lindsey D Carson, "The Legacy of Empire: The Common Law Inheritance and Commitments to Legality in Former British Colonies" (2011) 59: 1 Am J Comp L 111. On the complexities of colonial hybrid legal systems generally, see Amr

Various scholars have also emphasized the role that local tribal practices and "traditional justice" play in shaping the phenomenon of honour crimes, sometimes in total independence from State law.[69] Accordingly, immigration expert Rachel Ruane stressed that honour crimes are carried out very differently depending on the Pakistani province concerned. In some cases, instead of husbands, fathers, and brothers spilling the blood, "tribal councils or jirgas decide that the woman should be killed and send out men to do the deed,"[70] often with the approval of mothers. Thus, Pakistani honour crimes appear as more of an informal customary practice than a clear statutory creation. In addition, while the central British colonial State had carried out a "replacement of local criminal justice systems by British law,"[71] Pakistani "local legal structures remained strong"[72] up to today. This may be attributable to the English approach to colonialism, a form of "decentralized despotism"[73] which empowered local adjudicators and which can be traced back at least to the East India Company's loose-but-effective rule over South Asia.[74] These socio-legal processes, having contributed to reinforcing local parallel justice systems and substantive patriarchal notions, outline that honour crimes are not peculiar to Oriental legal systems, but rather originate in complex multi-centennial globalization processes magnified by the colonial experience and its aftermath.

3. PROVOKING ANGLO-CANADIAN DISHONOUR

This section takes us back to the West and explores the Canadian homicide doctrines applicable to honour crimes committed in Canada. Part (a) outlines the legal framework relating to homicide and part (b) sheds light on the gendered kill-

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Shalakany, "The origins of comparative law in the Arab world, or how sometimes losing your *asalah* can be good for you" in Annelise Riles, ed, *Rethinking the Masters of Comparative Law* (Oxford: Hart Publishing, 2001) 152.

69 Mazna Hussain, "Take My Riches, Give me Justice: A Contextual Analysis of Pakistan's Honor Crimes Legislation" (2006) 29: 1 Harv JL & Gender 223 at 233; Tina R Karkera, "The Gang-Rape of Mukhtar Mai and Pakistan's Opportunity to Regain Its Lost Honour" (2006) 14: 1 Am U J Gender Soc Pol'y & L 163 at 173. Are Knudsen, "Traditional (In)Justice: Honour Killings in Pakistan" (2003) Hum Rts Dev YB 105 at 119; John Alan Cohan, "Honor Killings and the Cultural Defense" (2010) 40: 2 Cal W Int'l LJ 177 at 211; Shaheen Sardar Ali & Kamran Arif, "Parallel Judicial System in Pakistan and Consequences for Human Rights" in Farida Shaheed et al, eds, *Shaping Women's Lives: Laws, Practices and Strategies in Pakistan* (Lahore, Pakistan: Shirkat Gah, 1998) 29.

70 Ruane, *supra* note 55 at 1533.

71 Amina Jamal, "Gender, Citizenship, and the Nation-State in Pakistan: Willful Daughters of Free Citizens?" (2006) 31: 2 Signs 283 at 292.

72 Ihsan Yilmaz, *Muslim Laws, Politics and Society in Modern Nation States: Dynamic Legal Pluralisms in England, Turkey and Pakistan* (Burlington, VT: Ashgate, 2005) at 127.

73 Expression taken from Mahmood Mamdani, *Citizen and Subject: Decentralized Despotism and the Legacy of Late Colonialism* (Princeton, NJ: Princenton University Press, 1996).

74 See Pearl & Menski, *supra* note 58 at 37.

ings committed in the West. The defence of provocation will be the focus of our enquiry into Western law, providing us with insights as to the ways in which honour resurfaces in Western violence against women.

(a) The Defence of Provocation in Canadian Law

A defendant indicted on murder charges may raise the defence of provocation, which is defined in section 232 of the *Criminal Code*. This partial defence is only applicable to a charge of murder and has the effect of reducing the conviction to manslaughter.[75] Subsection 232(1) outlines the availability of the defence of provocation, stating that "Culpable homicide that otherwise would be murder may be reduced to manslaughter if the person who committed it did so in the heat of passion caused by sudden provocation." While provocation chiefly concerns verdict mitigation, it also has significant repercussions on sentencing. For instance, the Supreme Court has confirmed in *R. v. Stone* that provocation may be used as a sentencing mitigating factor in addition to having served to reduce the verdict.[76] Moreover, reduction of the verdict from murder to manslaughter carries in itself significant consequences for sentencing, as it allows the defendant to escape the strict sentencing rules imposed to defendants convicted of murder. The *Criminal Code* indeed imposes a mandatory term of life imprisonment for both first- and second-degree murder.[77] Furthermore, first-degree murder generally carries a mandatory period of parole ineligibility of 25 years.[78] For second-degree murder, the period of parole ineligibility is set by the trial judge (with a recommendation from the jury, where applicable) for a period ranging from 10 to 25 years.[79] By contrast, except when a firearm is used, the *Code* imposes no minimum punishment for manslaughter.[80] 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, ranging from a suspended sentence to life imprisonment.

The defence of provocation is a British legal institution which can be traced back at least to the 17th century,[81] and whose pre-modern articulation was grounded in honour-tainted value codes. The defence was applied in pre-determined sets of circumstances, such as the defendant having suffered the humiliating gesture of "filliping on the forehead."[82] More paradigmatically, the defence was also invoked when the defendant, having been a witness to his wife's adultery, killed her par-

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75 Except where a firearm was used, in which case a minimum four-year sentence is required as per s. 236 of the *Criminal Code*, RSC 1985, c C-46 [*Criminal Code*].

76 1999 CarswellBC 1064, 1999 CarswellBC 1065, [1999] 2 S.C.R. 290, 134 C.C.C. (3d) 353 at para. 237.

77 *Criminal Code*, s 235(1).

78 *Ibid.* s. 745(a).

79 *Ibid.* s. 745(c).

80 *Ibid.* s. 236.

81 UK, Law Commission, *Partial Defences to Murder* (Consultation Paper No 173) (London: Her Majesty's Stationery Office, 2003) at 6.

82 *R. v. Mawgridge* (1706), Kel. J. 119, 84 E.R. 1107 at 1114 (Eng. K.B.).

amour. The rationale behind the defence was thus worded in 1707 by the Chief Justice of the King's Bench, Lord Holt: "jealousy is the rage of a man, and adultery is the highest invasion of property."[83] As put by British criminal law scholar G. R. Sullivan, early provocation defence amounted to a "hot-blooded yet controlled vindication of one's honour rather than spontaneous, uncontrolled fury."[84] Thus, the very foundations of this legal institution seem tainted with notions of male honour upheld by violence.

However, the contemporary forms of the defence of provocation have been presented as possessing a wholly different normative foundation. The defence was defined by the Supreme Court of Canada as driven by compassion towards "human frailties which sometimes lead people to act irrationally and impulsively."[85] Likewise, the British Royal Commission on Capital Punishment once linked the provocation defence to compassion to "natural human weakness."[86] The defence's contemporary *raison d'être* is thus said to have completely shifted from upholding a machistic Western honour code to accounting for the universal human weakness of momentary "irrationality."[87] This reasoning is still adopted by many scholars in the common law world as a valid justification for the maintenance of the partial defence today.[88] In keeping with this universal, individualistic rationale, Canada's *Criminal Code* outlines that murder may be reduced to manslaughter "if the person who committed it did so in the heat of passion caused by sudden provocation."[89] The *Code* further establishes that "[a] wrongful act or an insult that is of such a nature as to be sufficient to deprive an ordinary person of the power of self-control is provocation for the purposes of this section if the accused acted on it on the sudden and before there was time for his passion to cool."[90] Courts have established a two-part subjective and objective test to ascertain whether the defendant had in fact "lost control" and whether an "ordinary person" would have done the

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83 *Ibid.* at 1115.

84 GR Sullivan, "Anger and Excuse: Reassessing Provocation" (1993) 13 Oxford J Legal Stud 421 at 422; see also Bernard J Brown, "The Demise of Chance Medley and the Recognition of Provocation as a Defence to Murder in English Law" (1963) 7: 4 Am J Legal Hist 310 at 312.

85 *R. v. Thibert*, 1996 CarswellAlta 368F, 1996 CarswellAlta 518, [1996] 1 S.C.R. 37, 45 C.R. (4th) 1, 104 C.C.C. (3d) 1 at para. 4.

86 Royal Commission on Capital Punishment, *Report*, 1953, Cmnd 8932, at para 144, cited in Timothy Macklem, "Provocation and the Ordinary Person" (1987) 11 Dal LJ 126 at 135.

87 Joshua Dressler, "Rethinking Heat of Passion: A Defense in Search of a Rationale" (1982) 73: 2 J Crim L & Criminology 421 at 459; Graeme Coss, "'God is a righteous judge, strong and patient: and God is provoked every day.' A Brief History of the Doctrine of Provocation in England" (1991) 13: 4 Sydney L Rev 570 at 604.

88 Wayne N Renke, "Calm Like a Bomb: An assessment of the Partial Defence of Provocation" (2010) 47: 3 Alb L Rev 729; Jeremy Horder, "Reshaping the Subjective Element in the Provocation Defence" (2005) 25: 1 Oxford J Legal Stud 123 at 126-127; Richard Holton & Stephen Shute, "Self-Control in the Modern Provocation Defence" (2007) 27: 1 Oxford J Legal Stud 49.

89 *Criminal Code*, s. 232(1).

90 *Ibid.* s. 232(2).

same.[91] Let us now inquire into how this test plays out in cases of homicide.

(b) What Passion? Some Canadian Cases

This part outlines some Canadian jurisprudential extensions of the provocation defence which are particularly concerning. In the 1996 case *R. v. Thibert*,[92] the Supreme Court ordered a new trial on the basis of the provocation defence for a defendant who had killed his ex-wife's new partner. The defendant had been following his ex-wife at her place of work with a loaded rifle in his car, trying to convince her to go "some place private to talk."[93] The new partner interfered with the defendant, who had "told Mrs. Thibert that he had a high powered rifle in his car [and] suggested that he would have to go into Mrs. Thibert's workplace and use the gun."[94] Over the course of the ensuing argument, the victim began to shout at the defendant to "go ahead and shoot me," at which point Mr. Thibert did shoot him. According to the majority on the bench, "the deceased was mocking him [Mr. Thibert] and preventing him from his having the private conversation with his wife which was so vitally important to him."[95] This led the Court to order a new trial for the provocation defence to be evaluated by a jury, because there was an "air of reality" to the claim.

Similarly, in a series of other cases, Canadian defendants have successfully raised the defence of provocation in situations where their sexual ascendance over their wives was called into question. In *R. v. Stone*,[96] the Supreme Court did not question the leaving of the provocation defence to the jury for defendant Bert Thomas Stone who had stabbed his wife 47 times and stored her body in a toolbox. To provoke this reaction, she had insulted his virility, questioned the paternity of his children, and announced she wanted to divorce him.[97] In *R. v. Kimpe*,[98] the Ontario Superior Court of Justice accepted the defence of provocation for a defendant who had choked his common-law partner to death "for about five minutes"[99] and set the house and her dead body on fire. While they were having an argument, the victim had "taunted him about his poor sexual performance[,] declared that she was going to bring home another man who could satisfy her sexual needs [and] suggested that the appellant could listen to them having sex."[100] The trial judge accepted the defence of provocation, stating that the victim's words "went beyond a

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91 See *R. v. Hill*, 1986 CarswellOnt 3312, 1986 CarswellOnt 1005, [1986] 1 S.C.R. 313, 51 C.R. (3d) 97, 25 C.C.C. (3d) 322 at 324 [S.C.R.]

92 *Supra* note 85.

93 *Ibid.* at para. 46.

94 *Ibid.* at para. 47.

95 *Ibid.* at para. 23 [our emphasis].

96 1999 CarswellBC 1064, 1999 CarswellBC 1065, [1999] 2 S.C.R. 290, 24 C.R. (5th) 1, 134 C.C.C. (3d) 353.

97 *Ibid.* at paras. 107-108.

98 2010 ONCA 812, 2010 CarswellOnt 8960.

99 *Ibid.* at para. 6.

100 *Ibid.* at para. 5.

repudiation of their relationship."[101] In *R. v. Cairns*,[102] the British Columbia Court of Appeal found that there was "evidentiary foundation"[103] to warrant presenting the defence of provocation to the jury. In that case, the defendant beat his wife on the head with a hammer and strangled her with a bathrobe tie after a sour dispute pertaining to their respective gambling problems, over the course of which the victim told Mr. Cairns that she would refuse sexual intercourse unless he paid her a sum of money.[104] In *R. v. Moïse*,[105] the defendant attempted to burn his wife alive after she told him, over the course of a stormy argument over eventual divorce procedures, that he was impotent and declared that she had another lover.[106] The Québec Court of Appeal held that there was evidence that rendered the provocation defence plausible.[107] In *R. v. Archibald*,[108] a defendant murdered his wife with a kitchen knife after she mentioned her new boyfriend would be visiting her and told the defendant to go away from their residence. The defendant was said to be prone to alcohol abuse and had previously found the victim in bed with another man, at a time when the relationship was said to be under "severe stress." The Supreme Court of British Columbia allowed the defence of provocation.

Cases like these have been harshly criticized for their regressive impact on gender equality. Some noted scholars deplored the "widening concept of sexual provocation in 'the West'"[109] and its repercussions on women. Caroline Forell has argued that the Canadian law of provocation "has remained distinctly traditional and masculine"[110] and denounces its "disproportionate impact . . . on men and women."[111] Other scholars have denounced the defence as being built upon "a stereotype that is profoundly male"[112] and which makes a woman "*responsible* for her husband's murderous outbursts."[113] The Government of Canada has also recognized the flaws of the provocation defence in a 1998 consultation paper which con-

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101 Quoted in *ibid.* at para. 10.

102 2004 BCCA 219, 2004 CarswellBC 828.

103 *Ibid.* at para. 62.

104 *Ibid.* at para. 9.

105 1999 CarswellQue 2102 (Que. C.A.).

106 *Ibid.* at para. 42.

107 *Ibid.* at para. 53.

108 1992 CarswellBC 1030 (B.C. C.A.).

109 Lynn Welchmann & Sara Hossain, "'Honour', Rights and Wrongs" in Hossain & Welchman, eds, *supra* note 20, 1 at 11.

110 Caroline Forell, "Gender Equality, Social Values and Provocation Law in the United States, Canada and Australia" (2006) 14 Am U J Gender Soc Pol'y & L 27 at 46.

111 *Ibid.* at 49.

112 Tim Quigley, "Battered Women and the Defence of Provocation" (1991) 55 Sask L Rev 223 at 241. See also Adrian Howe, "More Folk Provoke their Own Demise (Homophobic Violence and Sexed Excuses — Rejoining the Provocation Law Debate, Courtesy of the Homosexual Advance Defence)" (1997) 19: 3 Syd L Rev 336 at 362.

113 Sue Bandalli, "Provocation — A Cautionnary Note" (1995) 22 JL & Soc'y 398 at 405 [emphasis in original]. Also see Andrée Côté, "Violence conjugale, excuses patriarcales et défense de provocation" (1996) 29: 2 Criminologie 89.

templated its abolition or amendment.[114] But what exactly is so troubling about the defence of provocation? Do the ways in which the defence plays out sometimes amount to the reintroduction of some unstated intimate honour code? Are "provoked" Western femicides themselves hybrid mixes of honour and passion? One could argue that honour and passion are two different concepts; while the latter focuses on private relationships and emotions, the former involves a public, collective framework of repression. Here, the typology exposed by Abu-Odeh comes to mind:

> The idea of passion, in its pure form, involves a private relationship between a man and a woman, as opposed to a collective one that involves several men related to the woman deeply engaged in defending the public image of their masculinity. In the model of passion, female sexuality is not fetishized as the locus of reputation, but seen more as a libidinal goal and the locus of complicated human emotions. Passion reduces the relationship to two people who are sexually involved with each other (especially man and wife), for whom the sexual misbehavior of one is an assault on the other's feelings, not his public reputation.[115]

Indeed, the existence in Canada of a collective framework of honour such as that found in many countries of the East is hard to fathom, as the sociological organization of gender violence within the family is based on different foundations. For the period from 1978–1998 in Canada, 66% of family femicides were perpetrated by the woman's partner, while 26% were perpetrated by parents, siblings, and other relatives.[116] There does not seem to be a dominant trend of collective femicides as there is in certain countries of the East. Nevertheless, scholars like Nancy V. Baker, Peter R. Gregware, and Margery A. Cassidy note that "in the English-speaking West, including the United States, the locus of honor has shifted from the traditional extended family to the individual man."[117] What form does this

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114 Department of Justice, *Reforming Criminal Code Defences: Provocation, Self-defence and Defence of Property* (A Consultation Paper) (Ottawa: Department of Justice, 1998). Likewise, the UK Law Commission has recommended a significant narrowing of the scope of the defence: UK, Law Commission, *Partial Defences to Murder* (Law Com No 290) (London: Her Majesty's Stationery Office, 2004) at 70-71. In other common law jurisdictions such as New Zealand and the Australian state of Victoria, the defence's complete abolition was carried through: see *Crimes (Abolition of Defence of Provocation) Amendment Bill 2009* (NZ), Bills Digest No 1702; *Crimes (Homicide) Bill 2005* (Vic), online: Victorian Legislation and Parliamentary Documents. <http://www.parliament.vic.gov.au/static/www.legislation.vic.gov.au-bills-archive.html>.

115 Abu-Odeh, "Construction of Gender" *supra* note 26 at 922.

116 Statistics Canada, *Family Violence in Canada: A Statistical Profile*, Daisy Locke & Valerie Pottie Bunge, eds, (Canadian Center for Justice Statistics) (Ottawa: Minister of Industry, 2000) at 39, online: <http://www.statcan.gc.ca/pub/85-224-x/85-224-x2000000-eng.pdf>.

117 NV Baker, PR Gregware & MA Cassidy, "Family Killing Fields: Honour Rationales in the Murder of Women", (1999) 5: 2 Violence Against Women 164 at 166. See generally Sharon K Araji, *Crimes of Honor and Shame: Violence against Women in Non-Western and Western Societies* (Anchorage: University of Alaska, 2000).

private honour take? Do "provoked" passion crimes constitute a form of sanctioning similarly based on (cultural) assumptions of honour, severely regulating and punishing the sexual behaviour of women? For the concept of "honour," which is deeply rooted in many Western cultures, it would be a fitting resurgence, well-tailored to the sociology of gender violence in contemporary Western countries. In this context, "honour" may well be based on the immediate couple and their individual obligations to each other, upon break-up for example. As put by Jeremy Horder:

> [P]rovoked anger is understood in law to involve the desire for retaliatory suffering by the victim inflicted by the wronged person. This conception of anger involves an important and hitherto taken-for-granted assumption which must now be examined. Why does anger take the form of a desire for retaliatory suffering? . . . The infliction of retaliatory suffering is understood to negate a threat, inherent in the provocation, to the self-worth of the wronged person, to the values central to his self-conception.[118]

Thus, violent retaliation, rather than a mere retributive senseless gesture, can thus be lived by some as a *restorative* social process, as further described by Donna Coker:

> By turning his humiliation into rage, the attacker is able to transcend his feelings of humiliation. He can then transform rage into violence by viewing himself as a defender of "the [social] Good" (e.g., his role as husband, father, competent lover). Through the violent act, the attacker is able, at least for a moment, to recapture his social sense of self, a self that he believed to be threatened or annihilated by the humiliating event.[119] [references omitted]

Once passion's "natural" aspirations are dismantled, how do we analyze the murderous outbursts of defendants such as Thibert and Stone? What are the "values" central to their conceptions of themselves? What "threat" was posed to their self-worth? What lies behind their claims to have "lost control"? Thibert was refused a conversation in a (public) parking lot with his wife, who sought the help of her new boyfriend. Stone and others were subject to disparaging comments by their wives on sexual satisfaction and fidelity. How can we deny that these examples are (at least partly) tied to conceptions of male honour? As put by social anthropologist Julian Pitt-Rivers:

> Honour is the value of a person in his own eyes, but also in the eyes of his society. It is his estimation of his own worth, his *claim* to pride, but it is also the acknowledgement of that claim, his excellence recognised by society, his *right* to pride.[120]

Thus, the ability to be reasonable, to "work things out" with one's estranged wife, may be considered part of the post-modern figure of the honourable man and

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118 Jeremy Horder, *Provocation and Responsibility* (New York, Oxford University Press, 1992) at 192.

119 Donna K. Coker, "Heat of Passion and Wife Killing: Men Who Batter/Men Who Kill" (1992) 2 S Cal Rev L & Women's Stud 71 at 107-108.

120 Julian Pitt-Rivers, *The Fate of Shechem or The Politics of Sex: Essays in the Anthropology of the Mediterranean* (New York: Cambridge University Press, 1977) at 1.

husband.[121] And perhaps it was this marital honour that Thibert sought to reclaim with a gun. Likewise, the cases outlined above all deal with "provocative" claims of sexual dissatisfaction or female adultery. Are these libidinal passions signs that "sexual prowess and assertiveness are often central to the male role in [honour] cultures"?[122] While this individual figure of the sexually potent husband needs to be distinguished from the chaste collective entity concerned by honour crimes, it is interesting to note that in both instances, "honour is the desire to control women's sexuality,"[123] as the Crown attorney had Professor Shahrzad Mojab testify in the Shafia trial. In all the above-mentioned Canadian cases, what seemed to be at play is nothing less than "the right to be treated as a full or equal member of the honour group,"[124] a defining characteristic of honour crimes.

In addition to the figure of the sexually potent and reasonable, collected husband, there are other layers of male honour worth exploring. For instance, Victoria Nourse, in a description of the provocation defence as a "partial defence of honour," links provoked anger with a vision of the family as male property:

> To maintain a legal defence of reasonable passion in these circumstances [where a woman was murdered while trying to end her relationship], the criminal law supports, even if only in a partial way, the killer's sense of entitlement to maintain a connection she has severed. What has passion become but an odd yet resilient version of an older regime of marital unity?[125]

The provocation claims put forward by defendants like Thibert thus emerge as cultural claims tied to male dominion of the family. No-fault divorce being a fairly recent legal innovation in Canada,[126] family life has been profoundly shaped by the cultural figure of the male dominator, long fostered by restrictive divorce laws[127] and the influence of the marital unity doctrine, which essentially entailed for wo-

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121 See Helen Reece, *Divorcing Responsibly* (Portland, OR: Hart, 2003) at 215.

122 Vandello & Cohen, *supra* note 31 at 998.

123 Christie Blackford, "'Honour is men's need to control women's sexuality,' expert tells Shafia murder trial", *National Post* (5 December 2011) online: <http://fullcomment.nationalpost.com/2011/12/05/christie-blatchford-in-some-honour-killings-fathers-see-the-attack-as-part-of-the-continuum-of-love-shafia-trial-hears/>.

124 Mojca Ramšak, "On Tragic Contemporary Honour Cultures" in Christopher Hamilton et al, eds, *Facing Tragedies* (Berlin: Lit Verlag, 2009) 89 at 100.

125 Victoria F. Nourse, "Law's Constitution: A Relational Critique" (2002) 17: 1 Wisconsin Women's LJ 23 at 43.

126 In1968, the *Divorce Act*, RSC 1970 c D-8 replaced the "patchwork of regimes that included received colonial law and the declaration in the *Civil Code of Lower Canada* of 1866 that marriage was dissolved only by death.": Robert Leckey, "What Is Left of *Pelech*?" in Jamie Cameron, ed., *Reflections on the Legacy of Justice Bertha Wilson* (Markham: LexisNexis Canada, 2008) 103 at 104.

127 Melinda Mills, "Stability and Change: The Structuration of Partnership Histories in Canada, the Netherlands, and the Russian Federation" (2004) 20: 2 European Journal of Population 141 at 149.

men the loss of most property and civil rights upon marriage.[128] Thus, the bruised honour which lurks behind the provocation defence may be the resurgence of a long-prevailing cultural vision of the family as property of the husband.[129] These claims to property over the wife and the family "allow men to dictate which of their wives' actions are and are not acceptable."[130] This may entail differentiated attitudes towards male and female infidelity, which may portray the latter as a greater affront to the proprietary view of the family.[131] This is dramatically illustrated by the figure of Mr. Samson, the estranged (Canadian) husband kicking the door open in a women's shelter with a gun in one hand and a gas tank in the other, demanding to be told where his wife is.[132]

Undoubtedly, passion exists not in the abstract but is conditioned by the culturally situated and socially constructed "loyalties created by intimacy."[133] Given the West's historically patriarchal vision of the family, it is not surprising that provocation has often been found in "trivial acts or insults or when women tell men they are leaving a relationship."[134] Thus, there is strong evidence that courts, in applying the defence of provocation, have at times sanctioned deeply cultural notions of marital unity and (individual) male honour.[135] Furthermore, they have sometimes "elevated jealous husbands to a class or group with *special characteristics* that must be considered when determining if murder was a reasonable response to a deceased's words."[136] This seems to belie the claim that "honor values are *exclusive* and *particularist* and stand in sharp contrast to the *universal* and *inclusive* val-

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128 Constance Backhouse, "Married Women's Property Law in Nineteenth-Century Canada" (1988) 6: 2 LHR 211 at 212. See also Scott Coltrane, *Gender and Families* (Oxford: AltaMira Press, 2000) at 144.

129 Nancy F Scott, "Marriage and Women's Citizenship in the United States, 1830–1934" (1998) 103: 5 The American Historical Review 1440 at 1451. This had economic implications, on unpaid domestic labor for instance: Linda Thompson and Alexis J. Walker, "Gender in Families: Women and Men in Marriage, Work and Parenthood" (1989) 51: 4 Journal of Marriage and Family 845 at 850.

130 Melissa Spatz, "A Lesser Crime: A Comparative Study of Legal Defenses for Men Who Kill Their Wives" (1991) 24 Colum JL & Soc Probs 597 at 631-2.

131 Cynthia Lee, *Murder and the Reasonable Man: Passion and Fear in the Criminal Courtroom* (New York: New York University Press, 2003) at 31.

132 *R. v. Samson*, 2005 QCCA 1151, 2005 CarswellQue 10764 at para. 18.

133 Victoria Nourse, "Passion's Progress: Modern Law Reform and the Provocation Defense" (1997) 106: 5 Yale LJ 1331 at 1382.

134 Kent Roach, *Criminal Law*, 4th ed (Toronto: Irwin Law, 2009) at 359.

135 The defence has also been exposed as promoting homophobic violence, a critique which we are not able to fully address here. See Robert B Mison, "Homophobia in Manslaughter: The Homosexual Advance as Insufficient Provocation" (1992) 80: 1 Cal L Rev 133; Kathleen Banks, "The 'Homosexual Panic' Defence in Canadian Criminal Law" (1997) 1: 5 Criminal Reports 371. This underlines the defence's permeability to notions of heterosexual male honour.

136 Wayne Gorman, "Provocation: The Jealous Husband Defence" 42 Crim LQ 478 at 499 [emphasis added].

ues of the West."[137] As we have argued, the defence may promote the *particularist* claims of honour, which are rooted in cultural notions of male dominion over the family. Viewed in this light, the objective "ordinary person" component of the defence is nothing but an "anthropomorphic expression of the standard of conduct that our society expects of its members."[138] The "ordinary person" test highlights courts' role as a "cultural apparatus,"[139] in that it forces them to give context to their legal conception of "ordinary." Moreover, it is "social and cultural norms [that] determine the acceptances of violence in certain situations."[140] It should not come as a surprise, then, that cultural notions of male honour should resurface in the adjudication of femicides. This led some authors to describe the provocation defence as an "Anglo-American cultural defense"[141] and as a "dominant cultural defence."[142]

Admittedly, the forms that femicides take in different parts of the globe cannot be perfectly equated. For instance, the discursive functions of "honour" vary greatly across cultures and may be more explicitly tied to women's sexual conduct in certain cultures and languages.[143] Moreover, most honour crimes defences applied throughout the generally non-Western world are exculpatory justifications and not mere excuses that serve to substitute manslaughter for murder.[144] Their legitimization of violence is thus certainly more effective. Nonetheless, the private forms that honour takes and the violence that is sometimes unleashed under the guise of universalistic passion must not be eluded. These phenomena are also concerned with *some* form of honour, however ignored and pushed to the "private" sphere. Intimate passion crimes are thus a particularly important locus of public policy and gender equality concerns. After all, the often denounced subjectivization

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137 Halvor Moxnes, "Honor and Shame" in Richard Rohrbaugh, ed, *The Social Sciences and New Testament Interpretation* (Peabody, MA: Hendrickson Publishers, 1996) 19 at 28.

138 Macklem, *supra* note 86 at 130, n 22.

139 John L Caughey, "The Anthropologist as Expert Witness: The Case of a Murder in Maine" in Marie Claire Foblets & Alison Dundes Renteln, *Multicultural Jurisprudence: Comparative Perspectives on the Cultural Defence* (Oxford: Hart Publishing, 2009) 321 at 323.

140 Rachel J Littman, "Adequate Provocation, Individual Responsibility, and the Deconstruction of Free Will" (1997) 60 Alb L Rev 1127 at 1159.

141 Emily L Miller, "(Wo)manslaughter: Voluntary Manslaughter, Gender, and the Model Penal Code" (2001) 50: 2 Emory LJ 665 at 670.

142 James J Sing, "Culture as Sameness: Towards a Synthetic View of Provocation and Culture in the Criminal Law" (1999) 108 Yale LJ 1845 at 1870. Also see S De Pasquale, "Provocation and the Homosexual Advance Defence: the Deployment of Culture as a Defence Strategy" (2002) 26 Melbourne University Law Review 110.

143 Such seems to be the case in Turkey, where the discursive figure of honour is rooted in complex linguistic schemes: Aysan Sev'er & Gökçeçiçek Yurdakul, "Culture of Honour, Culture of Change: A Feminist Analysis of Honour Killings in Rural Turkey" (2001) 7: 9 Violence against Women 964 at 973.

144 Goldstein, *supra* note 22 at 31.

of the defence in cases like *R. v. Thibert*[145] arguably offers women no more protection than the honour codes of the British medieval provocation defence.[146] Furthermore, Western "crimes of passion" may sometimes be even more dangerous than traditional Oriental honour crimes, based as they are on unstated private honour codes, which are not mediated by the "community" and whose requirements are not openly stated.[147] If it is true that honour and passion are two different realities, it is only by acknowledging the West's own cultural demons that we will be able to begin to understand the ways in which both passion and honour have been mixed and articulated in myriad ways across the East/West divide.

4. ADJUDICATING PASSION AND HONOUR IN CANADA

This section assesses the reception and legal treatment of honour crimes and femicide in Canada. We have collected and analyzed a series of Canadian cases of intimate femicide in which the male defendants (the victim's spouse,[148] brother, or father) raised the provocation defence.[149] We have classified 56 cases, whose citations are included in Appendix A, according to the ethnic background of the defendants and the success or failure of the defence.[150] In so doing, we hoped to test out whether Canadian courts generally register and take into account the hybridity of honour outlined in this article, and whether the media emphasis on the otherness of honour translated into differential treatment of defendants based on their ethnic background.

Our sample spans the period from January 1990 to January 2010, and includes only the cases which have been appealed to provincial courts of appeal or to the Supreme Court of Canada, which are more widely reported and less numerous than uncontested trial decisions.[151] With regards to the criterion of ethnicity, we considered as "other"(ed) defendants of Asian, Middle-Eastern, and Aboriginal back-

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145 See Rajvinder Sahni, "Crossing the Line: R. v. Thibert and The Defence of Provocation" (1997) 55: 1 UT Fac L Rev 143 at 143.

146 As argued by Abu-Odeh, "Comparatively Speaking"*supra* note 1 at 305.

147 As argued by Baker, Gregware & Cassidy, *supra* note 117 at 179.

148 We adopted a large definition of "spouse", including men who killed not only their wives but also their common law partners and even their girlfriends. We did not include the many cases in which an angry/dishonoured man kills his paramour, or any other man for that matter. However, this was neither due to lack of interest nor of relevance to the ideas of honour and passion. As mentioned above, the phenomenon of men killing other men over the body of a woman was at the core of Canadian provocation law, most notably in the seminal *Thibert* case. A study that incorporates these killings, while falling outside the ambit of this article, is necessary.

149 Cases were researched using Quicklaw, Westlaw Canada and CanLII databases.

150 We did not include cases where the accused raised not the provocation defence but only the *anger defence*. The latter was accepted by courts to negate the criminal intent for murder until the Supreme Court rejected it in 2001's *R. v. Parent*, 1 SCR 761. See Gary T Trotter, "Anger, Provocation, and the Intent for Murder: A Comment on R. v. Parent" (2002) 47 McGill LJ 669.

151 As argued by Cynthia Lee, "'Murder and the Reasonable Man' Revisited: A Response to Victoria Nourse" (2005) 3: 1 Ohio St J Crim L 301 at 303, n 10.

ground. Perhaps more debatable is our inclusion in this category of defendants of Slovakian, Hungarian and (southern) Italian background, who may be neighbouring the constructed border between East and West but nevertheless reflect a tangible pattern of social marginalization. Relying on the names of the parties and the information given on them, we classified those who presented no "foreign" element by default in the "Western"/Canadian category.[152] As far as the outcome of the raising of the defence, given that we dealt with cases that have been appealed, we relied on the appellate court's decision on whether the defence should have been submitted to the jury (and thus of whether there was an "air of reality" to it). When the appeal concerned other aspects of the case, we relied on the trial court's untouched original decision on the merits of the provocation claim.

Ethnic Background	Number of Cases	Defence Allowed	Defence Dismissed	Success Rate of Defence
"Western"	36	9	27	*25%*
"Other"(ed)	18	2	16	*11%*
Total	54	11	43	*20%*

The data seems to confirm Isabel Grant's empirical finding that "judges following that decision [*R. v. Thibert*] have applied the defence cautiously, and juries do not often accept the defence."[153] This is reflected in our low success rates for both Western and Other(ed) defendants. Our global success rate of 20% mirrors the 19% Grant has found in her study of 37 provocation cases spanning approximately the period of 1990–2010.[154] However, and most importantly, our success rate is differentiated and significantly higher for defendants identifiable as Western. This study thus concurs with Côté, Sheehy & Majury that there seems to be among Canadian courts "a pattern of withholding 'compassion' for a certain category of accused."[155] This disparity of treatment is of particular concern in Canada, where as

152 Ethnic background has been analyzed from the information contained in the judicial reasons, and further researched through internet newspaper databases and media coverage of the cases. Websites dedicated to publicizing the situation of missing/murdered women in Canada were also useful to gather further information on some of the cases.

153 Isabel Grant, "Intimate Femicide: A Study of Sentencing Trends for Men who Kill their Intimate Partners" (2010) 47: 3 Alb L Rev 779 at 783.

154 *Ibid.* at 809.

155 Andrée Côté, Elizabeth Sheehy & Diana Majury, *Stop Excusing Violence Against Women* at 16, online: National Association of Women and the Law <http://www.nawl.ca/ns/en/documents/Pub_Report_Provoc00_en.pdf>.

in some other Western countries "racialized minorities" have particular access to justice issues which pertain to insufficient "internaliz[ation of] the social structure of that society."[156] Furthermore, members of racialized communities have been found to be overrepresented in the criminal justice system in part because of racial profiling.[157] This differentiation should be a great cause of concern, especially since there is some evidence that "immigrants" are statistically less prone to crime than "nationals."[158]

For a number of reasons, caution is required when interpreting this data. For one, our pool of cases is quite small, and the decision to focus on appeals may favour dismissals of the defence because of the relatively wide appeal rights defendants have that the Crown lacks. Furthermore, the multiple re-trials that go unreported and shifting case-law on diverse uses of the provocation defence as a sentencing principle and as an autonomous "anger" defence can influence the results. That being said, these caveats apply equally to both categories of defendants. Thus, they do not have the potential to significantly alter the *relative* success and failure rates we have. Moreover, the correlation between ethnicity and success rate is most likely to actually be stronger than what we have found. Indeed, by default, cases where no mention was made of a particular "other" ethnic origin, and about which we could not find media coverage, were included in the "Western" category. The mere names of the parties often have no "foreign" connotation yet their ethnic background might draw "othering" stigma. Therefore, some might pick up our research where we left it and further dissect the cases in order to test out this correlation. This article is intended as a contribution to the empirical study of the legal phenomena of passion and honour. If we have indeed only touched the tip of the iceberg, the results we bring nevertheless underline the existence of a pressing problem for further study.[159] Our conclusion for the time being is that, probably because of the discourse denying the persistence of honour-tainted gender violence in the West, the defence of provocation has been applied differentially on Canadians and "foreigners," reinforcing the portrayal of East and West as mutually exclusive entities.

Let us now take as a case-study one of the cases of our sample, the Court of Appeal for Ontario's ruling in *R. v. Humaid*.[160] This much-commented case will

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156 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.

157 On the persistence of this phenomenon in Québec, see the May 2011 report of the Commission des droits de la personne et des droits de la jeunesse (CDPDJ): *Racial Profiling and Systemic Discrimination of Racialized Youth*, at 35-36, online: *CDPDJ* <http://www2.cdpdj.qc.ca/en/publications/Documents/Profiling_final_EN.pdf>.

158 See John Hagan, Ron Levi & Ronit Dinovitzer, "The Symbolic Violence of the Crime-Immigrant Nexus: Migrant Mythologies in the Americas" (2008) 7 Criminology & Public Policy 95.

159 For instance, the lower success rate of non-Western defendants may be in part due to other factors unrelated to judges' predispositions, such as comparatively poorer legal representation.

160 2006 CarswellOnt 2278, 37 C.R. (6th) 347, 208 C.C.C. (3d) 43 (Ont. C.A.); leave to appeal refused 2006 CarswellOnt 7132, 2006 CarswellOnt 7133 (S.C.C.).

allow us to outline how Canadian courts deal with honour crimes. Abdel Humaid was convicted by a jury of first-degree murder in the stabbing death of his wife, Aysar Abbas. Both lived in the United Arab Emirates, but were visiting Canada at the time of the murder. A business woman, Aysar traveled frequently for her work. Knowing that Aysar would be in Ottawa on business and also to visit their son, who was attending the University of Ottawa, Abdel Humaid planned a trip to Ottawa without telling anyone. According to the evidence put before the court, Mr. Humaid suspected that his wife had an intimate relationship with a male business associate in Ottawa, and the prosecution maintained that Mr. Humaid traveled to Ottawa unannounced with the specific intention of committing the murder. Mr. Humaid claimed that he made the last-minute decision to take the trip when he learned that his son was using marijuana, and that he lied to friends and relatives in the UAE because he did not want the word about his son's drug use to spread.

Mr. Humaid and Ms. Abbas went for a drive together to run some errands and eventually ended up on a deserted country road. Mr. Humaid claimed that they got lost. A witness called the police after he saw the two along the road, first with Ms. Abbas running away from Mr. Humaid, and then with Mr. Humaid sitting astride her prone body. Mr. Humaid stabbed her at least 19 times. He was arrested when he attempted to return the rental car on his way to the airport. He unsuccessfully raised the defence of provocation with marked "cultural" overtones, and assigned Dr. Ayoub, "an expert on the Islamic religion and culture,"[161] to support his provocation claim. Dr Ayoub "testified that the Islamic culture was male dominated and placed great significance on the concept of family honour"[162] and that this contributed to provoking Mr. Humaid's violent outburst. The Court of Appeal found that there was no air of reality to the defence and maintained the verdict of murder, refusing to grant consideration to Mr. Humaid's "beliefs" to reduce the verdict to manslaughter. As put by Doherty J.A.:

> The difficult problem, as I see it, is that the alleged beliefs which give the insult added gravity are premised on the notion that women are inferior to men and that violence against women is in some circumstances accepted, if not encouraged. These beliefs are antithetical to fundamental Canadian values, including gender equality.[163]

Although it is too early to say with certainty, this pronouncement from an appellate court sounds much like the decisive closing of the door on the possibility of raising a successful defence of provocation in cases of honour crimes.[164] Mr.

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161 *Ibid.* at para. 67.

162 *Ibid.*

163 *Ibid.* at para. 93.

164 There is more and more evidence that such a defence will not succeed. For instance, the defence was not accepted in in *R. v. Sadiqi*, 2009 CarswellOnt 4140, 68 C.R. (6th) 346 (Ont. S.C.J.), in which the defendant was charged with first degree murder in the deaths of his sister, Khatera, and her fiancé, Feroz Mangal, who had been engaged in a way that violated Mr. Sadiqi's conception of family honour. Similarly, in *R. v. Nahar*, upon convicting the defendant guilty of second degree murder of his wife because she spoke to men, smoked, and consumed alcohol, Justice Fraser stated that it was "not clear to me what kind of familiar insult offered up one last time might provoke the

Humaid was sentenced to life imprisonment with no eligibility for parole for 25 years, as required by the *Criminal Code*. While we wholeheartedly agree with the Court of Appeal on the outcome of the case and unequivocally condemn such oppressive gendered violence, we are concerned about the reasoning behind the judgement, in contrast with other cases such as *R. v. Thibert* and *R. v. Stone*. As argued by Isabel Grant:

> The Court of Appeal in Humaid is recognizing the importance of gender equality in attributing qualities and characteristics to the ordinary person. One would be hard pressed to argue that the kind of stereotypical misogyny, depicted in Humaid's evidence as ordinary in his culture, should be incorporated into an objective test in order to excuse spousal murder. What is not mentioned, however, is how courts assume the ordinariness of the values demonstrated in cases like Thibert and Stone. Thibert did not need to argue that his proprietary view of his wife was consistent with typical Canadian cultural beliefs or with gender equality. Stone's reaction, losing his control, and stabbing his wife over 40 times after verbal provocation regarding the paternity of his children, is never examined in light of whether such a defence is consistent with gender equality in Canada.[165]

This selective insistence on gender equality is problematic in that, as argued by Anna Korteweg in this special issue, it has the potential to considerably impair our ability to advance this very notion, by harvesting the idea that the solution lies merely in better affirmation of "Canadian values" through immigration law and criminal law, instead of large-sale, grassroots policies of women empowerment. Thus, as argued by Boaventura De Sousa Santos, we should be attentive not only to what a given discourse reveals but, most importantly, to what it conceals and displaces.[166] Moreover, the recurrent phenomenon of immigrants bringing expert witnesses to court to explain their behaviour is puzzling, in light of the fact that white Canadians generally succeed without such evidence.[167] For instance, in *Sadiqi*, the trial judge admitted expert evidence from Prof. Shahrzad Mojab, who testified on "the concept of 'honour killings' and its reality in Afghanistan and elsewhere in the world."[168] Justice Rutherford stated that "the understanding of why the killing was done may render this kind of expert evidence very important"[169] and characterized

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ordinary person, but what Mr. Nahar described does not measure up to it." (2002 BCSC 928, 2002 CarswellBC 1459 at para. 33) The Court of Appeal unanimously affirmed the decision (2004 BCCA 77, 2004 CarswellBC 299, 181 C.C.C. (3d) 449, 20 C.R. (6th) 30). On the state of the provocation defence in Canadian law, see our discussion of *R. v. Tran*, *infra* note 187 and accompanying text.

165 Grant, *supra* note 153 at 813.

166 Boaventura De Sousa Santos, "Beyond Abyssal Thinking: From Global Lines to Ecologies of Knowledge" (2007) 30: 1 Review 45.

167 Rosemary Cairns Way, "Culture, Religion and the Ordinary Person: An Essay on R. v. Humaid" (2009-2010) 41: 1 Ottawa L Rev 1 at 16 [Cairns Way, "Ordinary Person"]. See Jane Maree Maher, Marie Segrave, Sharon Pickering & Jude McCulloch, "Honouring White Masculinity: Culture, Terror, Provocation and the Law" (2005) 23 Austl Fem LJ 147.

168 *Sadiqi*, *supra* note 164 at para 29.

169 *Ibid.* at para. 43.

Prof. Mojab's evidence as "relevant social context knowledge."[170] While this is undoubtedly the case, why is it that almost none of the provocation claims by white Canadians presented in Appendix A benefitted from the testimony of experts on femicide and homicidal violence? Perhaps this negation of the cultural nature of Western homicides can be tied to Leti Volpp's critique of the idea of "pathological cultures,"[171] which implies that some cultures are somehow more prone to violence than others. Furthermore, Sonia Lawrence's analysis reveals that cultural information is often "considered only against the unarticulated, unexamined norm of North American mainstream culture."[172] As we have seen, however right the harsh punishment of honour crimes may be, this has the potential to conceal Western femicidal behaviour, an unintended consequence we should be wary of.

Our argument should not be mistaken to advocate a so-called "cultural defence" in criminal trials.[173] Resorting to such a defence in the context of honour violence would not only promote essentialist views of the barbarism supposedly inherent to "other" cultures,[174] but it would also amount to condoning repulsing acts of gendered violence. We have also purposely abstained from contributing to the debate on whether the provocation defence should be applied in consideration

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170 *Ibid.* at para. 47.

171 Leti Volpp, "Disappearing Acts: On Gendered Violence, Pathological Cultures, and Civil Society" (2006) 121 Publications of the Modern Language Association (PMLA) 1631 at 1636. This echoes Wendy Brown's scathing critique of the idea that "we have a culture while they are a culture": *Regulating Aversion: Tolerance in the Age of Identity and Empire* (Princeton: Princeton University Press, 2006) at 151. See also Kumaralingam Amirthalingam, "Culture, Crime and Culpability: Perspectives on the Defence of Provocation" in Marie Claire Foblets & Alison Dundes Renteln, eds, *Multicultural Jurisprudence: Comparative Perspectives on the Cultural Defence* (Oxford: Hart, 2009) 35 at 36.

172 Sonia N Lawrence, "Cultural (in)Sensitivity: The Dangers of a Simplistic Approach to Culture in the Courtroom" (2001) 13 CJWL 107 at 108.

173 This option, whereby a person could take advantage of this defence if he or she could prove the act was committed because it was necessary according to their cultural or religious practices or beliefs, was once considered by Canadian policy makers: see Canada, Department of Justice, *Proposals to Amend the Criminal Code (General Principles)* (Ottawa: Department of Justice, 1993); Parliamentary Sub-Committee on Recodification of the General Part of the *Criminal Code*, *First Principles: Recodifying the General Part of the Criminal Code of Canada* (Ottawa, 1993); Canada, Department of Justice, *Reforming the General Part of the Criminal Code: A Consultation Paper* (Ottawa: Department of Justice Canada, 1994) at 23-4. Fortunately, Parliament did not accept this oft-suggested reform: Charmaine M Wong, "Good Intentions, Troublesome Applications: The Cultural Defence and Other Uses of Cultural Evidence in Canada" (1999) 42 Crim LQ 367 at 368.

174 For a still accurate if perhaps slightly dated argument on the essentialism promoted by this defence, see Pascale Fournier, "The Ghettoization of Difference in Canada: 'Rape by Culture' or the Danger of a Cultural Defence in Criminal Law Trials" (2002) 29 Man LJ 81. See also Daina Chiu, "The Cultural Defence: Beyond Exclusion, Assimilation, and Guilty Liberalism" (1995) 82 Cal L Rev 1053.

of the defendant's cultural background as part of the objective standard test.[175] Instead of the characteristics courts are *said* to consciously consider, we have attempted to shed light on the unstated assumptions that sometimes guide judicial reasoning, following what the Supreme Court of Canada called the "sage common law adage that it is wise to look at what the courts do as distinguished from what they say."[176] We are inspired by Brenda Cossman's endeavour of "turning the gaze back on itself" to grasp the intertwinement of cultures and identities, all the while acknowledging the profoundly condemnable nature of honour crimes. Like Cossman, we aim to position ourselves "somewhere in between un-self critical ethnocentrism and hyper-self critical cultural relativism."[177] This stance led us to disbelief and awe towards some politicians and columnists' aggressive campaigning against honour violence. If the hypotheses we have explored in this article are even remotely accurate, then we should examine more closely, in addition to the horrifying honour practices which our legal concepts have shed light on, the equally horrifying practices which our "ordinary person" seems to accommodate. This critique of law's constitutive effects on the West's perception of itself must go hand-in-hand with any policy work towards the prevention and elimination of femicides, honour crimes, and violence against women.

5. CONCLUSION

Crimes of honour may well be a decisive issue in the encounter between East and West. This phenomenon critically engages our ability to grasp the ways in which legal discourse on honour crimes has functioned as "a site for contestations that succeed in *displacing* the place of violence in such spaces of law."[178] This displacement of violence from the West to the East seems to have taken hold in *some* parts of the Canadian judiciary. In this context, we agree that the assumption of a "monoculturalism of transcendent values with a 'we' or 'us' at an unwavering center of rationality [is] historically inaccurate, relying upon distortions and marginalizations for its narrative coherence."[179] We have attempted to uncover the latent manifestations of honour in *universal* norms of rational behaviour, elements which have been to some degree downplayed by Canadian courts. This is of concern to us, not only because it impairs our understanding of pressing social problems, but also for the practical reason that it could diminish the credibility of

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175 See David M Paciocco, "Subjective and Objective Standards of Fault for Offences and Defences" (1995) 59: 2 Sask L Rev 271 at 300; Renke, *supra* note 88 at 747; Peter Westen, "Individualizing the Reasonable Person in Criminal Law" (2008) 2: 2 Crim L & Philosophy 137.

176 *Canada Western Bank v. Alberta*, 2007 SCC 22, 2007 CarswellAlta 702, [2007] 2 S.C.R. 3 at para. 52.

177 Brenda Cossman, "Turning the Gaze Back on Itself: Comparative Law, Feminist Legal Studies, and the Postcolonial" (1997) Utah L Rev 525.

178 Pratiksha Baxi, Shirin M Rai & Shaheeh Sardar Ali, "Legacies of Common Law: 'Crimes of Honour' in India and Pakistan" (2006) 27: 7 Third World Quarterly 1239 at 1249.

179 Leti Volpp, "Blaming Culture for Bad Behaviour" (2000) 12 Yale JL & Human 89 at 112.

the all-important global campaign against honour crimes and gender violence.[180] Thus, instead of artificial binaries, there seems to be a "passion/honour continuum"[181] in need of uncovering. However, acknowledging this continuum does not mean that we can spare ourselves the sociological ideal-typing of honour crimes. As Korteweg and Yurdakul argue, crimes of honour present unique sociological characteristics which must be acknowledged for tailored, efficient prevention policies to be established.[182] Nevertheless, taking into account the sociological distinctness of Eastern honour violence "need not mean belittling other forms of abuse against women, including those taking place in the West."[183]

In our discussion, we have not examined the possibility of abolishing the provocation defence, a topic which lies beyond the scope of this article. We note in passing that the costs and benefits of this move would have to be examined closely.[184] Such an enquiry would have to take into account the possibility that the problems raised by the defence could also be found in other legal institutions which have recourse to an objective "reasonable person" standard, such as negligence and tort law.[185] This defence may turn out to be symptomatic of deeper contradictions which cannot be abolished and must be explored, acknowledged, and met with the "contextual analysis of the quality of the normative choice that particular interactions reveal."[186] We also note that the recent Supreme Court decision *R. v. Tran*[187] may well lead us towards a further reduced role for the provocation defence. After a recap of the Supreme Court case-law pertaining to the defence of provocation, Madame Justice Charron established with the unanimous agreement of the Court a newfound stringency for the objective part of the provocation test:

> [The] criminal law is concerned with setting standards of human behaviour.

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180 This campaign is sometimes denounced as lacking "cultural sensitivity" (Yolanda Asamoah-Wade, "Women's Human Rights and 'Honor Killings' in Islamic Cultures" (1999-2000) 8 Buff Women's LJ 21 at 22).

181 Welchman & Hossain, *supra* note 109 at 12.

182 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" (2010) Gender and Development Programme Paper Number 12, United Nations Research Institute for Social Development at 28, online: <http://korteweg.files.wordpress.com/2010/12/kortewegyurdakul-2010-hrv-unrisd1.pdf>.

183 Mikael Kurkiala, "Interpreting Honour Killings: The Story of Fadime Sahindal (1975–2002) in the Swedish Press" (2003) 19: 1 Anthropology Today 6.

184 For an interesting synthesis of the two sides of the debate, see Mison, *supra* note 135; Joshua Dressler "When 'Heterosexual' Men Kill 'Homosexual' Men: Reflections on Provocation Law, Sexual Advances, and the 'Reasonable Man' Standard" (1995) 85 Crim L & Criminology 726.

185 See Mayo Moran's analysis of the cultural implications of the "reasonable person" objective standard in private law: *Rethinking the Reasonable Person: An Egalitarian Reconstruction of the Objective Standard* (New York: Oxford University Press, 2003).

186 *Ibid.* at 316.

187 2010 SCC 58, 2010 CarswellAlta 2281, 2010 CarswellAlta 2282, [2010] 3 S.C.R. 350, 261 C.C.C. (3d) 435, 80 C.R. (6th) 1.

> . . . It follows that the ordinary person standard must be informed by contemporary norms of behaviour, including fundamental values such as the commitment to equality provided for in the *Canadian Charter of Rights and Freedoms*. . . . [T]here can be no place in this objective standard for antiquated beliefs such as "adultery is the highest invasion of property", nor indeed for any form of killing based on such inappropriate conceptualizations of "honour."[188]

This development does not indicate a bright future for the provocation defence. Hopefully, this judgement echoes the paradigmatic shift of incorporating equality in the law of criminal responsibility advocated by scholars such as Rosemary Cairns Way.[189] On a deeper level, perhaps it can also help us come to terms with the dark sides of "Western culture." The role of the expert witness of revealing "the premises which underlay the behavior of the persons whose actions are being explored in the course of the proceedings"[190] could be useful in this regard, both in Western and foreign contexts. Recently, the Court of Appeal for Ontario issued an interesting ruling on the admissibility of expert evidence to understand the honour badges and practices of the (Canadian) biker culture of the criminal underworld.[191] Such attempts to better understand violent social contexts in Canada are certainly to be welcome. Let us hope that this trend will be reinforced by the *Tran* ruling, allowing Canadian courts to "turn the gaze back on itself" and to grasp the far-reaching implications of globalization, colonialism, and socio-legal *métissage* for the Western Self and its many "Others."

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188 *Ibid.* at para. 34 [references omitted].

189 Cairns Way, "Ordinary Person", *supra* note 167 at 20. See also Rosemary Cairns Way, "Incorporating Equality into the Substantive Criminal Law: Inevitable or Impossible?" (2005) 4 JL & Equality 203.

190 Roger Ballard, "Honour Killing? Or just plain homicide?" in Livia Holden, ed, *Cultural Expertise and Litigation: Patterns, Conflict, Narratives*, (London: Routledge, 2011) 123 at 147.

191 *R. v. Abbey*, 2009 ONCA 624, 2009 CarswellOnt 5008, 68 C.R. (6th) 201, 246 C.C.C. (3d) 301; leave to appeal refused 2010 CarswellOnt 4827, 2010 CarswellOnt 4828 (S.C.C.).

Appendix A: — Cases Involving Femicide and the Provocation Defence

A. Successful Claims by Defendants of "Western" backgrounds

R. v. Archibald, 1992 CarswellBC 1030 (B.C. C.A.); *R. v. Carpenter*, 1993 CarswellOnt 1178, 83 C.C.C. (3d) 193 (Ont. C.A.); *R. v. Montgomery*, 1997 CarswellAlta 745 (Alta. C.A.); *R. v. Stone*, 1999 CarswellBC 1064, 1999 CarswellBC 1065, [1999] 2 S.C.R. 290, 24 C.R. (5th) 1, 134 C.C.C. (3d) 353; *R. c. Moïse*, 1999 CarswellQue 2102 (Que. C.A.); *R. v. Edgar*, 2000 CarswellOnt 120, 142 C.C.C. (3d) 401 (Ont. C.A.); *R. v. Cairns*, 2004 BCCA 219, 2004 CarswellBC 828; leave to appeal refused 2005 CarswellBC 469, 2005 CarswellBC 470 (S.C.C.); *R. v. Kent*, 2005 BCCA 238, 2005 CarswellBC 954, 29 C.R. (6th) 33; *R. v. Kimpe*, 2010 ONCA 812, 2010 CarswellOnt 8960.

Total: 9 cases

Success Rate: 25%

B. Unsuccessful Claims by Defendants of "Western" backgrounds

R. v. Wallen, 1990 CarswellAlta 36, 1990 CarswellAlta 652, [1990] 1 S.C.R. 827, 75 C.R. (3d) 328, 54 C.C.C. (3d) 383; *R. v. Sychuk*, 1990 CarswellAlta 688 (Alta. C.A.); *R. v. Bair*, 1990 CarswellAlta 376 (Alta. C.A.); *R. v. Brown*, 1993 CarswellOnt 1049 (Ont. C.A.); *R. v. Young*, 1993 CarswellNS 139 (N.S. C.A.); *R. v. Hanna*, 1993 CarswellBC 1138 (B.C. C.A.); leave to appeal refused 91 C.C.C. (3d) vi (S.C.C.); *R. v. Allegretti*, 1994 CarswellOnt 2438 (Ont. C.A.); leave to appeal refused 77 O.A.C. 319 (note) (S.C.C.); *R. v. Laporte*, 1994 CarswellMan 231, 89 C.C.C. (3d) 486 (Man. C.A.); affirmed 1995 CarswellMan 316, 1995 CarswellMan 316F, 94 C.C.C. (3d) 480 (S.C.C.); *R. v. Swereda* (November 1, 1995), Doc. 9403-0431-A4, [1995] A.J. No. 1227 (Alta. C.A.); *R. v. Muir*, 1995 CarswellOnt 1765 (Ont. C.A.); *R. v. Munroe*, 1995 CarswellOnt 19, 38 C.R. (4th) 68, 96 C.C.C. (3d) 431 (Ont. C.A.); affirmed 1995 CarswellOnt 989, 1995 CarswellOnt 1183, [1995] 4 S.C.R. 53, 43 C.R. (4th) 366, 102 C.C.C. (3d) 383; *R. v. Marc*, 1995 CarswellNB 481 (N.B. C.A.); affirmed 1995 CarswellNB 191, 1995 CarswellNB 192; *R. v. Stewner*, 1996 CarswellMan 426 (Man. C.A.); *R. v. Klassen*, 1997 CarswellYukon 11 (Y.T. S.C.); *R. v. MacRae*, 2000 BCCA 149, 2000 CarswellBC 762; *R. v. F. (J.G.)*, 2000 BCCA 140, 2000 CarswellBC 461, 143 C.C.C. (3d) 341; *R. c. Senez*, 2001 CarswellQue 27 (Que. C.A.); *R. v. Lees*, 2001 BCCA 94, 2001 CarswellBC 442, 156 C.C.C. (3d) 421, 44 C.R. (5th) 190; leave to appeal refused 2001 CarswellBC 1696, 2001 CarswellBC 1697 (S.C.C.); *R. c. Parent*, 2001 SCC 30, 2001 CarswellQue 851, 2001 CarswellQue 852, [2001] 1 S.C.R. 761, 154 C.C.C. (3d) 1, 41 C.R. (5th) 199; new trial ordered (November 23, 2001), Doc. 200-01-019736-960, [2001] J.Q. No. 6833 (Q.C. C.S.); affirmed (November 1, 2002), Doc. 200-10-001290-019, [2001] J.Q. No. 8294 (Que. C.A.); *R. v. Thomas*, 2002 BCCA 612, 2002 CarswellBC 2888; *R. v. Ackland*, 2003 BCCA 343, 2003 CarswellBC 1391, 176 C.C.C. (3d) 408; *R. c. Bilodeau*, 2003 CarswellQue 1401 (Que. C.A.); leave to appeal refused 2004 CarswellQue 4, 2004 CarswellQue 5 (S.C.C.); *R. v. McDonald*, 2007 BCCA 224, 2007 CarswellBC 1750; *R. c. Tremblay*, 2007 QCCA 696, 2007 CarswellQue 4173, 50 C.R. (6th) 349; *R. c. Daigle*, 2007 QCCA 1344, 2007 CarswellQue 9161, 229 C.C.C. (3d) 540; *R. c. Gosselin*,

2007 QCCA 101, 2007 CarswellQue 466; *R. c. Ouellet*, 2008 QCCA 599, 2008 CarswellQue 2528.

Total: 27 cases

C. Successful Claims by "Other"(ed) Defendants

R. c. Chouaiby (August 15, 1994), Doc. 200-10-000008-917, [1994] J.Q. No. 641 (Que. C.A.) (Moroccan); *R. v. Li*, 2007 ONCA 136, 2007 CarswellOnt 1158 (Asian).

Total: 2 cases

Success Rate: 11%

D. Unsuccessful Claims by "Other"(ed) Defendants

R. v. Tan, 1995 CarswellBC 530 (B.C. C.A.) (Asian); *R. v. Simpson*, 1999 BCCA 310, 1999 CarswellBC 1016 (Aboriginal); *R. v. Peepeetch*, 2003 SKCA 76, 2003 CarswellSask 571, 177 C.C.C. (3d) 37, 14 C.R. (6th) 373; leave to appeal refused 2004 CarswellSask 32, 2004 CarswellSask 33 (S.C.C.) (Aboriginal); *R. v. Czibulka*, 2004 CarswellOnt 3721, 24 C.R. (6th) 152, 189 C.C.C. (3d) 199 (Ont. C.A.); leave to appeal refused 2005 CarswellOnt 2041, 2005 CarswellOnt 2042 (S.C.C.) (Hungarian); *R. v. Ansary*, 2004 BCCA 109, 2004 CarswellBC 405, 184 C.C.C. (3d) 185 (Afghan); *R. v. Calder*, 2004 BCCA 163, 2004 CarswellBC 605, 184 C.C.C. (3d) 2 (Aboriginal); *R. v. Plaha*, 2004 CarswellOnt 3424, 188 C.C.C. (3d) 289, 24 C.R. (6th) 360 (Ont. C.A.) (Indian/Sikh); *R. v. Nahar*, 2004 BCCA 77, 2004 CarswellBC 299, 181 C.C.C. (3d) 449, 20 C.R. (6th) 30 (B.C. C.A.) (Indian/Sikh); *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.) (Emirati); *R. v. Oigg*, 2007 MBCA 34, 2007 CarswellMan 90; leave to appeal refused 2007 CarswellMan 356, 2007 CarswellMan 357 (S.C.C.) (Aboriginal); *R. c. Di Iorio*, 2007 QCCA 100, 2007 CarswellQue 5386, 2007 CarswellQue 467; leave to appeal refused 2007 CarswellQue 4921, 2007 CarswellQue 4922 (S.C.C.) (Italian); *R. v. Pasqualino*, 2008 ONCA 554, 2008 CarswellOnt 4057, 233 C.C.C. (3d) 319 (Italian); *R. v. Cudjoe*, 2009 ONCA 543, 2009 CarswellOnt 3726, 68 C.R. (6th) 86 ("Caribbean"); *R. v. Neumann*, 2009 BCCA 296, 2009 CarswellBC 1669 (South African/Slovakian); *R. c. Gallese*, 2009 QCCA 1071, 2009 CarswellQue 5367 (Italian); *R. v. Tran*, 2010 SCC 58, 2010 CarswellAlta 2281, 2010 CarswellAlta 2282, [2010] 3 SCR 350, 261 C.C.C. (3d) 435, 80 C.R. (6th) 1 (Asian).

Total: 16 cases