

A Pluralistic Perspective to Dispute Resolution: An Ethical and Holistic Approach

Any differences must be resolved through tolerance, through understanding, through compassion, through dialogue, through forgiveness, through generosity, all of which represent the ethics of Islam.

(His Highness the Aga Khan, Syria, November 2001)²

In daily life and in any community, there will inevitably be disputes, including matrimonial disputes, commercial or business disputes, estate disputes or other disputes. In the Ismaili community, we do not deny the existence of disputes. Rather, we recognize and embrace differences, and work through the process of trying to resolve conflicts in a non-adversarial, culturally sensitive, equitable and ethical manner, consistent with both Canadian legal principles and the humanistic ethics and principles of fairness. The reality is that disputes between people can result in acrimony and emotional damage which can impact individuals, families and communities. For that reason, an ethical and holistic approach is required in order to repair the wounds of conflict in order to preserve and improve the quality of life of the disputants.³

Who are the Ismailis?⁴

The Shia Imami Ismaili Muslims, generally known as the Ismailis, belong to the Shia interpretation of Islam. We are highly diverse in our ethnicity, language, culture, and geography, and today we live in over 25 countries in Central and South Asia, Africa, the Middle East, Europe, North America, and Australia.

The Ismailis affirm that after the death of Prophet Muhammad (peace be upon him), his cousin and son-in-law, Ali became the first Imam (spiritual leader). Ismailis believe that this spiritual leadership, known as the Imamate, continues in the hereditary line descending from Imam Ali and his wife Fatima (the Prophet's daughter). Ismailis are united by a common allegiance to the living hereditary Imam of the time. His Highness the Aga Khan is the 49th Imam of the Ismailis and is a direct descendant of the Prophet.

In 1986, His Highness the Aga Khan established a well-defined global institutional framework for the Ismaili community through which to address, among other things, the health, education, economic and social welfare aspects, as well as the religious aspects, of the daily lives of Ismailis. This institutional framework includes a dispute resolution system in the form of Conciliation and Arbitration Boards, formalizing and updating

an age-old Ismaili tradition of amicable dispute resolution.

Why was Conciliation and Arbitration Board (CAB) created?

Ismailis have, throughout their fourteen centuries of history, maintained a tradition of resolving individual disputes and differences through an entirely voluntary process of mediation, conciliation and arbitration within the community. It is from that long tradition that the present CAB system has emerged.

His Highness the Aga Khan was concerned about the enormous and often needless costs of litigation being incurred by members of the Ismaili community in various parts of the world. He desired that Ismailis not only resolve disputes amicably within the ethics of their faith – which promote a non-adversarial approach to dispute resolution in keeping with the principles of negotiated settlement, compliance with agreed settlements, and the 'bandaging of wounds' – but also that they should act pre-emptively to prevent disputes. The courts, being unfamiliar with Ismaili traditions and cultures, were not always able to comprehend the inter-generational attitudinal issues involved in disputes, nor their underlying cultural nuances and sensitivities, let alone being able to always resolve them. The Aga Khan viewed amicable dispute resolution, without recourse to courts, yet operating within local laws and honoring the ethics of the faith, as an important aspect of the improvement of the quality of life for Ismailis globally.⁵

Building on the community's existing tradition of settling disputes amicably,⁶ the Aga Khan established a formal dispute resolution system whereby Conciliation and Arbitration Boards would operate at both the national and international levels. The system currently operates in 19 jurisdictions

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around the world. In some countries, CABs have been recognized by the government as having primary jurisdiction over matters of matrimonial law and personal law within the community and their decisions have been recognized and endorsed by law.

In Canada, there is a National CAB and five Regional CABs, one for each of the regions in which Ismailis live: (1) British Columbia; (2) Edmonton; (3) The Prairies (extending beyond the Edmonton territory); (4) Ontario; and (5) Quebec and The Maritime Provinces. There is also an International Conciliation and Arbitration Board (ICAB), which coordinates mediation training, establishes policies and rules, oversees the global CAB system, and deals with international cases. Canada has made significant contributions globally, both in terms of sharing Canadian best practices which are utilized by ICAB in other jurisdictions and sharing Canadian volunteers for many global initiatives. Thus, the contribution of the CABs in Canada extends far beyond jurisdictional boundaries of Canada.

What are the areas of CAB's work?

All disputes between parties residing in the same region are handled by the regional board. Where the parties reside in different regions of Canada, the relevant regional boards cooperate in seeking a resolution.

Cases involving disputes between parties residing in different countries are dealt with either by the International Board or by the National Boards of each country in cooperation with each other and with the assistance of the relevant regional boards in that country.

The primary objective of the CAB system is to assist disputants (where at least one party is an Ismaili) to resolve their dispute in an equitable, speedy, confidential, cost effective, amicable, ethical and constructive manner and in an environment that is culturally sensitive.

Membership and Training

Members of the CAB are appointed by the Aga Khan to serve a three-year term and reflect the geographic, demographic, linguistic, and cultural diversity of the Ismaili community in that region, with an eye to equal gender representation.

Members come from a variety of disciplines and diverse backgrounds: lawyers, social workers, accountants, entrepreneurs and other professionals. This pluralism is invaluable in promoting effective mediation.

All members in the CAB system are volunteers and no remuneration is accepted in relation to any of the services provided as part of the CAB system.

All members receive extensive mediation skills training from certified mediation trainers who provide them with the necessary skills and knowledge to ensure their compe-

tence and fairness in resolving disputes.⁷ This includes 40 hours of general mediation training, as well as at least 20 hours of continued professional development training. In Canada, members also complete training on domestic violence screening. Many of the CAB members are also accredited with various alternative dispute resolution institutions.

Past appointed members who have been trained continue to assist as alumni both in mediations and the work of the CAB.

Conciliation and Mediation

The CAB's approach to mediation is guided by the following principles:

- Before mediating on any dispute, the CAB must first be satisfied that the parties to the dispute have come to the CAB voluntarily and of their own free will and desire to have their dispute resolved through the system;
- The mediation processes are conducted by CAB members who have received professional and customized training to ensure their competent and equitable handling of the matter;
- The processes are conducted in accordance with rules that are intended to assist in assuring the appropriate standard of operation, and which request an ethical buy-in from the participants;
- The duty of confidentiality to the parties to the dispute must be respected in all cases unless and otherwise required by local laws (e.g. child abuse cases);
- Parties are encouraged to obtain independent legal advice to obtain a full understanding of their legal position to have a proper appreciation of their options; and
- The CAB system is available at no cost and is therefore highly accessible, including by those of limited means.

The high incidence of mediation and conciliation in the community is a strong indication that members of the community have confidence that their rights will not be compromised and that a fair, ethical, and equitable resolution of their dispute will be achieved through mediation or conciliation by the CAB. Much of this confidence rests on the fact that:

- the CAB System is constitutionally established by the Imam of the time, and thus embedded in the social fabric of the community; and
- the CAB members and those whom they assist share an abiding commitment to the ethical principles of kinship, fairness, and justice to guide the amicable resolution of disputes.

In terms of performance and experience, the following is a summary of the number of cases handled by the CAB System in Canada for the period 1998 to 2003 and for the period 2012 to 2018, the nature of those cases, and the suc-

cess rate (being the resolution of the case resulting in a verbal or written agreement).

TABLE 1:

CASES HANDLED BY THE CAB SYSTEM IN CANADA

	1998-2003	2012-2018
NUMBER OF CASES (TOTAL)	769	847
Number of region-specific cases	661	708
Number of inter-regional and international cases	108	139
NATURE OF CASES		
Matrimonial	63%	67%
Commercial	29%	21%
Other (including inheritance cases)	8%	12%
SUCCESS RATE		
	69%	70%

In Canada, the regional CABs have mediated collectively close to 850 cases over the past seven-year period. With a 70% success rate (which has not significantly changed from 20 years ago), the community has realized considerable savings in time and money and diverted many cases from the judicial system.

Bandaging the Wounds and Continuous Improvement

Even in the poorest and most isolated communities, we have found that decades, if not centuries, of angry conflict can be turned around by giving people reasons to work together toward a better future — in other words, by giving them reasons to hope. And when hope takes root, then a new level of tolerance is possible, though it may have been unknown for years, and years, and years.

(His Highness the Aga Khan, Tutzing, Germany, May 2006)⁸

The community dimension of the CAB system, and its focus on healing relationships amicably, equitably, and ethically, enables it to provide some further valuable contributions in addition to pure dispute resolution. The CAB process seeks to help parties “bandage their wounds,” i.e. help parties move past the conflict with a positive outlook and in a way that fosters communal harmony.

The CAB conducts a survey within six months after completion of a case to determine the parties’ level of satisfaction with CAB services and to assess the durability of their settlement agreement. Post-mediation surveys also provide an opportunity to canvass whether other communal support would be valuable to any of the parties, to assist with emo-

tional, financial or any other issues they may be facing as a result of the dispute.

For example, parties who need additional support or counselling for mental health issues or who seek to improve their skills, can, with their consent, access resources from other Ismaili institutions. Support from other (non-Ismaili) institutions may also be sought where necessary and appropriate to assist with the resolution of a dispute. In order for parties to heal and move beyond their dispute, it is important for them to be able to have seamless access to other services, such as health, social and educational support.

The CAB also surveys its mediators to assess level of satisfaction, with a view to continuously improving processes and quality of services, as well as provide support to mediators.

Dispute Prevention

The CAB system collects and analyzes the root causes of disputes and shares those root causes with other Ismaili institutions responsible for the well-being of the community so that they may take appropriate dispute prevention measures.⁹

This holistic approach to the effective resolution of disputes is by collaborating with other Ismaili institutions to encourage the implementation of dispute prevention measures.

- a. **Marital:** The Aga Khan Social Welfare Board for

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Canada has developed a pre-marital toolkit and program to assist newly engaged couples to improve their communications skills.

- b. **Family:** The CAB members encourage families to prepare wills to prevent potential disputes upon death of a family member.
- c. **Business:** Similarly, the Aga Khan Economic Planning Board for Canada provides seminars to Ismaili entrepreneurs highlighting the importance of documenting business deals and exit strategies.

Why is CAB concerned with a holistic approach?

As I look to the future of the Ismaili Community worldwide, living in many parts of Central Asia, and in more than 25 different countries, ..., and as I look at the Ummah, I conclude that every, and all those peoples, if they wish to achieve a better life for themselves in the generations ahead, must absolutely achieve peace within their societies, and because we are Muslim, conflict must be replaced by a peace which is predicated on the ethics of our faith. We must not kill to resolve our differences, whatever they may be. They must be resolved, as I have said, within the ethic of our faith, through dialogue, through compassion, through tolerance, through generosity, through forgiveness and through kindness. These are the pillars on which to build a strong society in modern times - not through weapons".


(His Highness the Aga Khan, Tajikistan 1995)¹⁰

Both the teaching and practice of tradition encourage the need for voluntary and peaceful resolution of disputes. The Holy Qur'an places a strong emphasis on the responsibility for all human beings to seek to resolve their disputes amicably, ethically, equitably, and, to strive for reconciliation and communal harmony.

The Ismaili tradition fosters an ethos for amicable dispute resolution that is non-adversarial. The emphasis is on finding creative solutions through a collaborative process of fair dialogue in search of the common good, and on healing relationships beyond the outward "issues" presented.

For the Ismaili community, the resolution of the dispute is not only important for the involved parties alone, but also for the community as a whole. The community is a stakeholder in the amicable resolution of the dispute. Where the parties are Ismailis, their continued constructive participation in the community post dispute is important. The parties, for example, may both be volunteers in relation to one of the Ismaili community's projects or programmes. Also, there may be others within the community who may be affected by the dispute or have a stake in its resolution, particularly in the case of family matters. Hence, it is critical to strive for an amicable resolution which minimizes any potential repercussions both on the parties themselves and on others, and to allow the parties and others affected to continue to be able to deal amicably with each other and to participate fully and constructively in the wider communities where they live.

Conclusion

While the Ismailis' dispute resolution system is rooted in our traditional values, its modern infrastructure interfaces comfortably with the domiciliary legal systems within which it functions. It is grounded in the ethics of the faith and complies with the laws of the various jurisdictions in which the Ismaili communities reside. The CAB system addresses needs that extend beyond traditional dispute resolution, addressing also dispute prevention, post settlement assistance, the possibility of wider support for parties to a dispute, and the "bandaging of wounds" to help them move past their conflict. Disputes can be resolved in a community context in a confidential and non-public manner to find resolutions that accord with the parties' needs and that help parties improve their quality of life. 

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- 2 "Aga Khan speaks of Islam and Syria's contemporary challenges", online: <https://www.akdn.org/press-release/aga-khan-speaks-islam-and-syrias-contemporary-challenges>
- 3 See also Celina Charania Shariff and Karim Sunderji, "A Holistic Approach to Dispute Resolution," ACResolution Magazine, September 2016, pp. 13-15, online: http://www.acresolution-digital.org/acresolutionmag/september_2016?pg=13#pg13
- 4 The Ismaili Community, online: <http://theismaili.org/community>
- 5 *Jivraj v Hashwani* [2010] 1 All ER 302, [2009] EWHC 1364 (Comm) at para. 43.
- 6 This concept of reconciliation and harmony is also found in the traditions (sunnah) of Prophet Muhammad whose life is filled with examples of mediated solutions to human problems. There is a well-documented incident that during the reconstruction of the Ka'ba, the building in Mecca to which Muslims go for pilgrimage, a dispute arose over the placing of the Black Stone (Hajr al-Aswad) into the building. Each of the four tribes of the Quraysh wanted to have the honour of placing the stone, to the exclusion of the others. An impasse arose and the matter was referred to the Prophet. He asked each of the contesting tribes to choose a leader. He then spread a full sheet of cloth on the floor and placed

- the stone in the centre, asking all four leaders to each hold it at one end and raise it together. Thus, a serious conflict was averted by the Prophet's prudent action in giving all four leaders an equal honour of placing the stone. Source: Dr. Mohamed M. Keshavjee, "Family Mediation in the Shia Imami Ismaili Muslim Community – Institutional Structures, Training and Practice", The Institute of Ismaili Studies: <https://iis.ac.uk/family-mediation-shia-imami-ismaili-muslim-community-institutional-structures-training-and-practice>
- 7 Mohamed M. Keshavjee and Tony Whatling, "Reflective Learnings from the Training Programmes of the Ismaili Muslim Conciliation and Arbitration Boards, Globally," online: <https://iis.ac.uk/reflective-learnings-training-programmes-ismaili-muslim-conciliation-and-arbitration-boards-globally>
- 8 Online: <https://www.akdn.org/speech/his-highness-aga-khan/upon-receiving-tolerance-award-tutzing-evangelical-academy>
- 9 Teresa F. Frisbie, "A modern, worldwide dispute resolution system inspired by Islam," Chicago Daily Law Bulletin, April 6, 2016, Volume 172, No. 67, online: <https://www.luc.edu/media/lucedu/law/centers/advocacy/adr/19409%20LB%20reprint%20Loyola%20Apr06-2016-B.pdf>
- 10 Dr. Mohamed M. Keshavjee, "Family Mediation in the Shia Imami Ismaili Muslim Community – Institutional Structures, Training and Practice", The Institute of Ismaili Studies: <https://iis.ac.uk/family-mediation-shia-imami-ismaili-muslim-community-institutional-structures-training-and-practice>