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OttawaWatch111: Two intriguing court challenges

By Lloyd Mackey

It is always interesting to review the advocacy on social issues brought to the courts during the early Harper years – as well as to take note of the coalitions formed to bring these actions forward. With regard to the B'ai Brith action relating to Iran, the case represent matters continuing to simmer both below and above the international relations surface – some prompted by former US President Donald Trump's Iranian stance and the Iranian downing of an aircraft with dozens of Canadian citizens on board, in Tehran, in January, 2020.

Two faith-related organizations launched actions this week which could ultimately end up respectively in the Supreme Court of Canada and the International Criminal Court/International Court of Justice.

The action involving the Supreme Court has been launched by the Alliance for Marriage and Family (AMF). It applies for leave to appeal the recent Court of Appeal of Ontario decision to recognize that a recently-born child has three parents – two women involved in a lesbian relationship, one of them the biological mother, and a man who is the biological father of the child through artificial insemination.

The other action has been launched by B'nai Brith (BB), a Jewish human rights group. It calls for Canada to take a lead position in getting Iranian President Mahmoud Ahmadinejad indicted for inciting genocide.

The commonality of the two actions rests in the faith-based perspectives that underlie the reasons for appealing to the courts for hearing on the issues involved.

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AMF – not to be confused with the Institute for Marriage and the Family Canada, an Ottawa-based research organization and think tank parented by Focus on the Family Canada – is a coalition involving the Evangelical Fellowship of Canada, Catholic Civil Rights League, Focus on the Family Canada, REAL Women Canada and Christian Legal Fellowship.

AMF had intervenor status on what is now popularly-described as the “three parent case” last September when it was heard by the Ontario appeal court. The court ended up reversing a Superior Court of Justice decision based on the premise that recognizing three parents was, in effect, changing long-established legislation.

In the appeal leave application, the Alliance notes that the issues raised in this case are “novel” on several grounds:

- This case is the first of its kind in Canada. The (Supreme Court) has not considered whether the court's *parens patriae* jurisdiction can be used to alter parental relationships or to expand the definition of the modern family.
- It raises novel issues related to the definition of the modern family and norms regarding familial and parental relationships, many of them arising due to advances in modern reproductive technology and changes in social attitudes ... One of the applicants was related to both of her lesbian co-parents: one co-parent was the child's birth mother and the other co-parent was the child's biological mother.
- It also has an effect on heterosexual families, where parents might be divorced and remarried or where relatives are a child's primary guardians.
- Notwithstanding the ability of modern families to take different shapes, there has been very little judicial (or legislative) commentary on the effect that such changes will have on public policy, including custody and access issues or authorization rights. In a three-parent family, how do all three parents decide where a child should be educated ... (or) make decisions with respect to medical authorizations ... (or) if there is a dispute or acrimony between two or three of the child's parents, how are issues of custody and access resolved?

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In the case involving a potential inciting-to-genocide charge against the Iranian president, B'nai Brith's strategy is to ask Canada to take the lead in an international charge against Ahmadinejad. His attacks against Israel, since assuming the Iranian presidency two years ago, together with his tangles with the international community over his nation's nuclear program, are well-documented. In particular, the BB accusations against him relate to Holocaust denial and public statements that Israel "must be wiped off the map." And, of course, there is the inherent and seemingly well-founded fear that Iranians might some day, given the capability, engage in nuclear warfare against Israel.

The Jewish organization's case was outlined today (March 6) at a Parliament Hill press conference whose chief spokesperson was BB lawyer David Matis.

Asked why the organization was urging Canada to take a lead in initiating international court action, rather than appealing to Israel itself, Matis suggested that "to leave it to Israel alone ... mischaracterizes the nature of the crime, which is not just a crime against Israel or ... the Jewish people, but a crime against all humanity."

Matis also admitted that the chances of Ahmadinejad being jailed for inciting genocide, might be rather slim. But he suggested that if the international community was insistent on taking action, it might stop the Iranian president from using rhetoric that could be seen as inciting to genocide.

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While much of the attention on The Hill, these days, involves speculation as to whether there will be an election later this year, the fact is that a fair amount continues to percolate with respect to issues that have nothing to do with elections.

These two are excellent examples of such issues. And they both have long term implications for faith-based human rights, on both the domestic and international level.

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