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Negotiating Apostasy: Applying to “Leave Islam” in Malaysia

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In Malaysia, freedom of religion has clear limitations, especially regarding Muslims wishing to leave Islam, who may currently find it difficult to secure legal acceptance. However, such applications are received under a Sharia legal provision in Negeri Sembilan – the only state in Malaysia that allows a Muslim to change his religion for reasonable cause. The application is made at the Sharia High Court, and is then forwarded to the Mufti’s Department, which in turn arranges a consultation for the applicant to reconsider his decision. This article critically reviews this process of application to leave Islam and also provides a clear mapping of principal court decisions and an analysis of the legal rationale for accepting some applications and refusing others. The paper is critical of the disproportionate discretion afforded to Muslim bureaucrats in the Mufti’s Department with regard to determining an individual’s religious rights and argues that, in Malaysia, the power to legally determine or classify religion should be confined to the Sharia Court. Finally, the article evaluates how “applications to leave Islam” are reconciled with and distinguished from the Islamic prohibition of “apostasy” and so is relevant to Islamic countries beyond Malaysia.

Keywords: apostasy; Sharia Court; Malaysian Islamic law

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Introduction

Applications to leave Islam within the conservative Muslim community in Malaysia are highly controversial. Individuals who wish to change their religion from Islam to another often face difficulties in doing so, including having to go through a poorly defined legal process and facing social stigma and prejudice. After Malaysia introduced the policy of Islamization in the nation’s administrative system in the early 1980’s (Roff 1998), the grip and control of Islam became clearly visible in numerous procedures and government policies enforced by Muslim bureaucrats in Islamic institutions such as the Sharia Court and the State Islamic Religious Departments (Mohammad 2010; Mohammad 2011; Lee 2010). The enforcement of such policies has made it exceedingly difficult to change one’s religion from Islam to another via a legal process. Indeed, the jurisprudential history of apostasy (*ridda*) in Islam is one where a punitive consensus has been constructed, despite evidence of disagreement over its definition and the penalty required during the three centuries following the birth of Islam (Alalwani 2011).

In the landmark case of *Lina Joy v. Majlis Agama Islam Wilayah Persekutuan dan Lain-lain* ([2007] 4 MLJ 585), the appellant was born a Muslim but had renounced Islam and embraced Christianity. The appellant applied to have her Muslim name in her Malaysian National Registration Identity Card (NRIC) changed to *Lina Joy*. The appellant then applied

to have “Islam” deleted from her NRIC as her religious status. She stated to the court that she had never professed Islam, had embraced Christianity and intended to marry a Christian. The Federal Court decided that civil courts did not have jurisdiction to try cases of application to leave Islam, otherwise known as apostasy, and that such applications could only be made in the Sharia Court (Shuaib 2008). This is in line with the provision of Article 121(1A) of the Federal Constitution, which determines that the Sharia Court has jurisdiction over personal status matters pertaining to Muslims.

As a consequence of the decision in *Lina Joy*, no civil court may entertain applications to leave Islam because they do not have the jurisdiction to do so. The *Lina Joy* case had a considerable impact on individuals who wished to leave Islam, as they could no longer go to the civil courts and had to apply instead to the Sharia Court, thus exposing themselves to the risk of legal action.

Legal provisions relating to Islam come under the jurisdiction of the state government, and this includes legal provisions governing matters of converting to or leaving Islam. On the issue of religious status, most states in Malaysia do not have a set process and procedure for leaving Islam. On the contrary, if a Muslim endeavours to leave Islam, some states impose a sentence of up to 180 days detention for the purpose of rehabilitation, following legislation for an offence called “attempted apostasy,” which is found in provisions such as Section 66 Sharia Offences Enactment (Malacca) 1991.

Take for example the case of an Indian Muslim woman named Rivathi. She had been raised by her Hindu grandmother and applied to leave Islam at the Sharia High Court in the state of Malacca in 2007, but she was immediately detained for rehabilitation at an Aqidah Rehabilitation Center (AlJazeeraEnglish, 2007). This was in spite of the Federal Court’s decision in *Lina Joy*, which determined that all cases of application to leave Islam were to be filed in the Sharia Court. This paradox has raised dire complications for individuals who are convinced that they are no longer Muslims because they neither believe in nor practise Islam. This situation also gives rise to numerous legal implications for the applicant. For example, maintaining their status as Muslims will effectively prevent them from a range of civil rights, such as marrying a non-Muslim or being buried with non-Islamic funeral rites.

Following recent developments, there is one state that represents an exception to the general rule that Muslims may not “leave Islam.” The state in question is Negeri Sembilan, which has introduced certain legal provisions that may allow some Muslims to leave Islam without committing the offence of apostasy. These provisions clearly allow and enable some individuals to apply to leave Islam in a Sharia court of law, in line with the aforementioned case of *Lina Joy*. The practices in the state of Negeri Sembilan illustrate the conditions for applicants, the processes followed, the agencies involved and powers they exercise in determining who may formally “leave Islam”.

This article will also look at the extent to which Islamic legislation in Negeri Sembilan clarifies the legal process, and will review documented cases in the Mufti’s Department, the agency appointed to facilitate the process. To date, there is no literature that discusses this latest development or the role of the Mufti’s Department as a non-judicial body in applications to leave Islam in Malaysia.

Post *Lina Joy*

Freedom of religion is guaranteed in Malaysia by Article 3 of the Federal Constitution, which states: “Islam is the religion of the Federation; but other religions may be practised in peace and harmony in any part of the Federation.” This legislative provision reflects Q 2.256: “No compulsion is there in religion” (Arberry 1982, 37). This guarantee is further upheld by another provision in Article 11(1), which states: “Every person has the right to profess and

practise his religion, and, subject to Clause (4), to propagate it.” Clause (4), however, prohibits the propagation of any religion among Muslims other than Islam. This provision is often a point of argument in the civil courts when determining a person’s religion and in allowing an individual, whether alive or deceased, to leave Islam. These provisions are also the most controversial in the history of Malaysian legislation because they touch upon the sensitive issue of religion in a multi-faith society.

The Assistant Bishop of West Malaysia, Moses Ponniah, states that the constitutional guarantee and the government’s commitment to uphold the principles of religious freedom have gradually been undermined by officials and by departmental encroachments upon the rights of believers in non-Islamic religions. There is a significant trend towards intolerance of Christians. (Ponniah 2000, 32)

The concern regarding freedom of religion does not only exist amongst the Christian minority as depicted by Ponniah; people of other faiths have also felt that the Muslim authorities have been increasingly reinforcing legal mechanisms to maintain the sanctity of Islam in Malaysia (Lee 2010).

Many kinds of cases and legal issues relate to the determination of religion in Malaysia. These cases do not always involve applications to leave Islam; a number of them involve determining the religion of deceased individuals so that the nature of their funeral arrangements can be decided, and legal matters arising from the event of the person’s death, such as their pension and the division of their property, can be resolved. The determination of an individual’s religion is also the cause of legal conflict in matrimonial cases, such as cases of spousal conversion to Islam without the other spouse’s knowledge, which affects their children’s religious status (Kusrin 2006; Kusrin and Muda 2009).

The decision in *Lina Joy* is one of utmost importance for the debate on freedom of religion in Malaysia, specifically the issue of determining one’s own religion. After the verdict in *Lina Joy* was passed, the applicant continued to apply to the civil court to leave Islam. It is possible that the applicant and others like her wished to test whether the issue of their right to freedom of religion could be heard in a civil court, or perhaps they simply did not believe that they would be fairly heard in the Sharia Court.

In the case of *James v. Government of Malaysia* ([2009] 1 LNS 1791), just two years after *Lina Joy*, James made an application to leave Islam in the civil court. James, who was born to a Muslim family and given the name Mohamed Rasul bin Mohamed Hussain at birth, claimed that he had converted to Catholicism while in secondary school. The issue of jurisdiction was raised early on in the trial, when the counsel appointed by the Wilayah Persekutuan Islamic Religion Department argued that the civil court had no jurisdiction to try cases involving Muslim apostates, and that jurisdiction belonged to the Sharia Court. The High Court decided that the civil courts were obliged to follow the binding decision in *Lina Joy*.

From the above it is clear that the Sharia Court has jurisdiction to try cases of apostasy. However, in 2007 a case from the East Malaysian state of Sabah decided otherwise. In the case of *Roslinda Mohd Rafi v. Head of Muallaf Registry, Sabah* ([2009] 1 CLJ (SYA) 485), the applicant applied to leave Islam at the Sharia High Court in Sabah, giving two reasons. The first was to enable her to marry a non-Muslim by removing her Muslim NRIC status; the second was to prevent disapproval from society for leading a non-Muslim way of life when she was legally registered as a Muslim. The Sharia Court rejected her application, citing several reasons:

- (1) Under Article 11(1) of the Federal Constitution, an individual cannot be coerced to follow any religion. However, Article 11(1) does not bestow any form of jurisdiction to the Sharia Court to allow a Muslim to become an apostate or leave Islam. The

primary source concerning the jurisdiction of the Sharia Court is found in the provision of section 11(3)(b) of the Sabah Sharia Court Enactment 2004.

- (2) The Sharia Court does not have jurisdiction to issue any orders that allow a Muslim to leave Islam. This is because the issue of apostasy is an individual right in accordance with Article 11(1) of the Federal Constitution.
- (3) The Sharia Court will only decide if a person's actions have caused them to detach themselves from the Islamic creed or become apostates or otherwise if there is a complaint or an allegation. In other words, the court only has jurisdiction if the application is to determine the Islamic status of the applicant based on an action he has committed. In this case, there was no evidence that the applicant had performed an act that went against the Islamic creed so that she could be declared an apostate.

This decision showed that the Sharia Court used legal technicalities to avoid allowing the application, despite having the jurisdiction to try her case.

In Malaysia, many cases have involved individuals who had converted to Islam without informing their families, so that their conversion only came to light upon their deaths. In the case of *Nagamuthu Punnusamy & 3 Others v. Director General of the Ministry of Health, Malaysia & 5 Others* ([2009] 1 LNS 740), the High Court (Civil) in Shah Alam received a claim from the applicant regarding her son's body; the applicant wished for her son, Mohan Singh, to be buried according to the family's Hindu religious rites. The hospital, however, refused to hand over Mohan Singh's body because the fifth defendant, i.e. the Selangor Islamic Religion Council, stated that Mohan Singh had converted to Islam in 1992. The High Court decided that the determination of one's religion, Muslim or otherwise, should be made in the Sharia Court because the civil court did not have jurisdiction. The determination of the deceased's religion at the time of his death had to be discussed in a Sharia Court because the state's legislation clearly outlined its jurisdiction in section 61(3)(b)(xi) of the Islamic Religion Administration Enactment (State of Selangor) 2003. In addition, documentary proof of Mohan's conversion to Islam was accepted by the court as evidence of his Muslim status, despite its being denied by the applicant and her family. The Sharia Court determined that he was a Muslim at the time of his death, based on documents registering him as a Muslim and the absence of records to show that he had ever applied to leave Islam (Utusan Melayu 2009). After the case was decided, the deceased was finally buried according to Muslim funeral rites by the fifth defendant.

It appears from the cases outlined above that the misgivings voiced by Abdullah (2007), Kirby (2008) and Joseph (2009) concerning the civil court's tendency to discuss matters of jurisdiction rather than the more pertinent issue of basic rights to freedom of religion continue to go unheard. The most probable outcome is that, since there are no clear provisions for an individual to leave Islam in any state legislation except in Negeri Sembilan, many future applications will continue to be made in civil courts. It is thus very necessary to study the extent to which the legal provisions in Negeri Sembilan provide an avenue for applicants seeking to leave Islam, and the process within agencies other than the Sharia Court (such as the Mufti's Department) that are directly involved in the application's outcome.

Legal provisions for applications to leave Islam in Negeri Sembilan

Negeri Sembilan is a relatively small state in Malaysia, and more than half of its inhabitants are Muslim Malays, the rest being comprised of members of other faiths who are ethnic Chinese and Indians (Department of Statistics, Malaysia, 2014). In 2003, the state's legislative body produced the Islamic Religious Administration Enactment (2003), which repealed a previous provision by introducing some new modifications in Islamic

administration. One of these developments was a specific provision concerning the procedure for leaving Islam; a bold step to take considering the position in other Malaysian states.

Before discussing the procedure for leaving Islam, it must be made clear that each state enactment on Islamic administration in Malaysia provides a standard procedure for registering converts to Islam. These provisions cover the bases for conversion to Islam, including the procedure for the recitation of the *shahadah* (Islamic creed or declaration of faith) and its significance, the duties, obligations and registration of a *muallaf* (a term for a newly-converted Muslim in Islam) and warning individuals about the offence of providing false information regarding their status as a Muslim.

Although all states have provisions for registering converts to Islam, none of them have parallel provisions for leaving Islam, except for Negeri Sembilan. In stark contrast, the state of Malacca has made applications to leave Islam a criminal offence under Sharia law. Section 66 of the Sharia Offences Enactment (State of Malacca) 1991 defines the offence of “attempted apostasy” as follows:

- (1) When a Muslim purposely declares his intention to leave the religion of Islam or testifies to be a non-Muslim, through his actions or verbally or by any way whatsoever, the court must, if it is satisfied that that person has committed an act that may be construed as an attempt to change his creed and beliefs according to Islam either by way of his own admission or actions, order that person to be detained at an Islamic Guidance Center for a period of not more than six months for the purpose of educating him, and he will be requested to repent according to Islamic law.

Any individual in Malacca wishing to leave Islam for another religion will therefore face much difficulty. First, his application will in any case be rejected by the Sharia Court because there are no Sharia laws or legal provisions that allow him to take this action. Second, he may be arrested at the Sharia Court and charged with the offence of “attempted apostasy” and subsequently be detained in an *Aqidah* Rehabilitation Centre for not more than six months.

Conversely, in Negeri Sembilan, the amendment to the provisions relating to leaving Islam was introduced in 2003 via section 119 of the Islamic Religious Administration Enactment (State of Negeri Sembilan). Section 119 is a lengthy and detailed provision that explains the process for applying to leave Islam. This section stresses that a declaration to leave Islam must be made *ex parte* in a Sharia High Court of law before an individual can be classified as no longer a Muslim. The applicant must produce an affidavit explaining the facts and reasons as to why he or she intends to leave Islam. After the court has received the application to leave Islam, the Sharia High Court Judge hearing the application is to then:

- (a) Advise the applicant to repent, and if the Judge is satisfied that the individual has repented according to Islamic law, he must record his repentance; or
- (b) If the individual refuses to repent, before giving any orders towards him, the Judge must postpone the hearing of the application for 90 days, and at the same time require the applicant to undergo consultative guidance sessions for the purpose of advising the applicant to reconsider returning to Islam. These consultative sessions are run by the Negeri Sembilan Mufti Department.

The Mufti’s Department must open a file for every case it receives from the court. The Mufti’s Department will then consider whether the applicant has fulfilled the conditions set out in section 119 (2A). The next step is that an Officer of the Mufti’s Department will conduct a consultative guidance session with the applicant. The purpose of this session is to obtain more detailed information from the applicant regarding his background, work history, his involvement in the study of Islam, his practice of Islam and his family’s religious background. All this information will be noted briefly in his file.

According to Section 119 (4)(b), the Officer must advise the applicant to reconsider his application and deliberate on the question of accepting Islam as his religion. The wording of the provision specifically enables the Officer to proceed with *da'wah* (preaching), or in this case a process more closely resembling indoctrination, for the benefit of the applicant. The Officer is responsible for conducting investigations to prove that the applicant was or is a Muslim, if the applicant claims otherwise. The Officer will seek information from the applicant's family and/or school records as proof of the applicant's religious practices. The Officer will also conduct an investigation to assess whether the reasons for wanting to leave Islam given in the affidavit are sound and verifiable.

The number of times that this consultative guidance session should be conducted is not specified, but it must take place within a 90-day period, which is the time granted by the court before a report on progress in the case must be submitted. All the consultative guidance sessions are conducted by the Officer; the Mufti's Department may also invite Muslim preachers to counsel the applicants in group sessions. Applicants have to attend all the sessions and compare the teachings of other religions with that of Islam from a Muslim perspective.

If any applicants choose to repent or retract their application within this initial 90-day time-frame, the Officer will immediately prepare a report and bring the applicant to the Sharia Court so that his repentance may be formally recorded. If the judge is satisfied that the applicant's repentance is in accordance with Islamic law, the judge must then record that individual's repentance. If the 90-day period has expired and the applicant still refuses to repent and wishes to remain in a religion other than Islam, the Officer of the Mufti's Department must prepare a report and bring the individual before the Sharia High Court. If, upon receiving the report, the Court opines that the applicant may yet repent, the Court may postpone the hearing of the application and order him to undergo further consultative guidance sessions for a period exceeding not more than a year. If the applicant repents and returns to Islam within that year, the Officer must bring the applicant before the court for his repentance to be documented.

If, after the expiration of that one-year period, the applicant still refuses to repent, the Officer must prepare a report and bring the applicant before the Sharia High Court, where the court may then decide to declare that the applicant has left Islam. The Officer's report at this stage is of utmost importance because it will ultimately influence the court in its evaluation of the applicant's seriousness in his desire to leave Islam. In addition to declaring that the applicant has left Islam, the court must also issue orders relating to the dissolution of his/her marriage, the division of matrimonial property, his/her *wali's* (marriage guardian) rights, rights of inheritance, and custody rights.

After this legislation had been in force for almost five years, a highly significant amendment was made in 2009 with the addition of four sub-sections under section 119. These sub-sections determine who may apply to leave Islam and create a new post of "Aqidah Consultation Officer" at the Mufti's Department with responsibilities for managing applicants who wish to leave Islam. Further powers enabled the court to reject applications if the applicant did not attend any of the consultative guidance sessions at the Mufti's Department. The biggest influence of this amendment on the process for leaving Islam is on the question of who can apply. The amended Section 119 (2A) states that an application to leave Islam may only be made by two categories of applicants:

- (i) Individuals who were born as Muslims, and were born and domiciled in Negeri Sembilan; or
- (ii) individuals who are *muallafs* and must have embraced Islam in the state of Negeri Sembilan, and were registered according to the provisions of section 111 and domiciled in Negeri Sembilan.

The first restriction means that, if a Muslim born outside of Negeri Sembilan, even if he was resident in that state, were to try to leave Islam, his application could not be considered by the court. The regulation regarding *muallafs*, however, does not stipulate that the applicant must have been born in Negeri Sembilan.

Second, and more importantly, the provision *does* allow individuals who were born Muslims to apply to leave Islam. This provision is undoubtedly a brave one, considering the conservative Muslim character of Malaysian society. However, the real question is, to what extent is this legal provision really made use of by any given Malay Muslim deemed to be a traditional adherent of Islam by birthright and inheritance, or does it really only benefit members the second generation of the families of *muallafs*? The following analysis of prominent legal cases will provide the answer.

Another significant subsection is 119 (8A), which gives the Sharia Court absolute authority to reject any application where the applicant fails or refuses to attend any of the consultative guidance sessions. This section states:

(8A) The Court may at any time cancel any application for declaration to leave Islam if the applicant fails or refuses to attend any of the consultative guidance sessions after being ordered to do so by the Court.

Several implications arise from this. First, individuals who wish to leave Islam are legally forced to go through all the consultative guidance sessions ordered by the Court, despite the fact that the applicant may have already ceased to believe in Islam, its teachings and practices. This means that the applicant may undergo something more akin to indoctrination or mild coercion to remain Muslim. Second, the court will only entertain applications from individuals who genuinely without doubt want to leave Islam, supported by clear, unambiguous reasons. Third, this provision gives considerable authority to the officers at the Mufti's Department, as they are the key people in ensuring the success of the consultative guidance sessions.

However, perhaps the most pertinent question is, how can the Officer of the Mufti's Department remain impartial in processing these applications, when the purpose of the consultative guidance sessions is to ensure that the applicant repents and returns to Islam? A further question may be raised about the real objective behind the provision of section 119 and the amendments to its subsections. Was the provision intended to ensure that no cases of apostasy would occur, or was it meant to provide a legal platform on which it would be easier for applicants to seek relief?

One interpretation of this provision is that it does not fundamentally facilitate the process for individuals to leave Islam. It may even be surmised that a core aim of the provision is to actually prevent individuals from leaving Islam with ease. First, section 119 dictates the court shall advise the applicant to retain his status as a Muslim, and if he repents or returns to Islam after receiving this advice, the court is to keep a record of it. This shows that the court wants the individual to stay in Islam, and the applicant's determination to remain in his new religion is considered to be a rejection that may cause his case to be postponed so he can be processed out-of-court. Second, Section 119 clearly indicates the real purpose of the consultative guidance sessions, which is to "advise the applicant to reconsider accepting the Religion of Islam as his own religion." All of these processes demonstrate the real motive of the legislative body in formulating this law: to ensure that only individuals with reasonable justification and who cannot be rehabilitated to accept Islam are allowed to apply for apostasy. The cases discussed in this article will further illustrate the centrality of this *retention* principle.

Even though Sharia criminal legislation in Negeri Sembilan does not provide that leaving Islam is a criminal act, the provision of Section 119 appears to label applicants as offenders against Sharia law. This is evidenced by the language used by the law-makers, such

as the phrase “applicants who refuse to repent.” The term “repent” itself in Islam is synonymous with regret for committing certain acts or acknowledged sins. If the applicant who initially desired to leave Islam is on record in the courts as having repented, the fact of the matter is that he has indeed sinned in Islam; even though he or she has not been sentenced to any sort of punishment by the court. On the other hand, the law-makers did not use the term “application for apostasy” but rather “application to leave Islam.” This indicates that the purpose of this legal provision really is to make room for freedom of religion rather than merely to punish the applicant for an offence.

Statistic of applications to leave Islam at the Negeri Sembilan Mufti’s Department

The Negeri Sembilan State Government Mufti’s Department is one of the religious agencies formed according to Chapter Six of the Negeri Sembilan State Legislation. One of its responsibilities is to manage cases of applications to leave Islam. Before 1998, applications to leave Islam were handled informally, without the backing of any clear legal provision, by the *Dakwah* Centre in Paroi, a unit under the State Islamic Religious Department. After 2003, via the Islamic Religious Administrative Enactment (Negeri Sembilan) 2003 provisions, this Department was given responsibility for conducting consultative guidance sessions and provide rehabilitation for applicants applying to leave Islam. Since then, the Mufti’s Department has filed and recorded all applications submitted by the Sharia High Court. From 2009, the Mufti’s Department has had officers specifically appointed to handle applications to leave Islam, called *Aqidah* (Islamic creed) Consultative Officers.

The Negeri Sembilan Mufti’s Department has been recording and filing applications to leave Islam since 1998, the most recent being filed in December 2011³ Despite the Mufti’s Department having only been entrusted with handling cases of application to leave Islam in 2003 after the updated Enactment 10 (2003) came into force, the Department has kept all files dating back to 1998, when these cases were managed by the Paroi *Dakwah* Centre under the Negeri Sembilan Islamic Religion Department. A statistical analysis shows that applications to leave Islam have been submitted by applicants covered by Section 119 (2A) (i) and (ii) , i.e. born Muslim and newly-converted Muslims, or *muallafs* as they are known in Malaysia. This includes applicants who were born as Muslims to *muallaf* parents (second-generation *muallafs*). In Malaysia, where the overwhelming majority of the Muslim population is Muslim by virtue of birth and tradition, converts to Islam bear the title of *muallaf* until their death, and their offspring are categorized as *muallaf* despite being born as Muslims (Ma 2005).

Table 1. Applications to leave Islam in Negeri Sembilan, Malaysia (1998–2013)

Year	Application Category			
	New applications	Case approved	Cases rejected	Successful rehabilitation
1998	12	-	-	-
1999	11	3	1	-
2000	14	-	-	-
2001	13	2	-	-
2002	10	5	1	-
2003	14	2	1	-
2004	12	-	1	1
2005	13	7	1	5
2006	28	4	-	3
2007	17	-	-	4
2008	19	3	3	1
2009	23	-	-	2
2010	9	2	3	1
2011	12	9	1	2
2012	8	-	-	-
2013	4	-	1	3
Total	219	37	13	22

Source: Negeri Sembilan State Government Mufti's Department 2013

Table 1 shows that 219 applications to leave Islam made by born and newly converted Muslims were recorded from 1998 to 2013, including 60 cases filed before Islamic Religious Administration Enactment (2003) came into force. Of these, 37 cases were approved: three in 1999, two in 2001, five in 2002, two in 2003, seven in 2005, four in 2006, three in 2008, two in 2010, and nine in 2011. As at the end of 2013, 72 cases had been decided, with decisions ranging from approval to rejection to rehabilitation, while the remaining 147 cases were still in the process of consultative guidance run by the Negeri Sembilan Mufti's Department.

Figures for the ethnic composition of the applicants (illustrated in Table 2) show the highest number of applications (177) were from individuals of Indian ethnicity, followed by individuals of Chinese ethnicity (24). There was also one application from a British national, who was categorized under 'Other'. Of these applications, 106 were made by men and 113 by women. In 2006, 2008 and 2009, the number of applications from both genders increased compared with other years.

Table 2. Applications to leave Islam by ethnicity and gender (1998-2013)

Year	Ethnicity				Gender	
	Malay	Chinese	Indian	Other	Male	Female
1998	3	1	8	-	5	7
1999	-	1	10	-	6	5
2000	5	3	6	-	6	8
2001	-	-	12	1	7	6
2002	-	-	8	2	5	5
2003	-	4	9	1	5	9
2004	-	-	12	-	4	8
2005	1	1	11	-	8	5
2006	-	2	25	1	10	18
2007	-	2	15	-	9	8
2008	-	2	16	1	13	6
2009	-	6	16	1	13	10
2010	1	-	8	-	6	3
2011	-	1	10	1	6	6
2012	-	1	7	-	2	6
2013	-	-	4	-	1	2
Total	10	24	177	8	106	113

Source: Negeri Sembilan State Government Mufti's Department 2013

Applications to leave Islam: case outcomes

The study showed that the outcomes in cases of application to leave Islam based on the decisions of the Negeri Sembilan Sharia High Court can be classified under three headings: i) rejection, ii) approval, and iii) successful rehabilitation of the applicant. Cases taken from the Mufti's Department's files are presented below; names and court case registration numbers have been concealed. These case files state in brief the applicants' personal background, the issues relating to Islam that were causing doubt to the applicants, their problems, their previous Islamic practices and exposure to Islamic teachings (if any), and finally the reports of the consultative guidance sessions they attended. The files do not, however, include detailed demographic information, and some of the case-notes were only made epigrammatically. All cases were purposively selected because they have similar characters. This approach is applied in order to get better understanding on how the cases reached decisions.

Rejected applications

Case 1:

The applicant in this case was a man born in 1953, who worked as a contract labourer and lived in the district of Seremban. His father was Ceylonese and his mother was a Tamil

Indian who had long converted to Islam. The applicant filed an application to leave Islam on January 11, 2007, after which the Sharia High Court ordered his case to be referred to the Mufti's Department for consultative sessions and counselling. The reason for his application was that he was uncomfortable with Islam and preferred to socialize with Hindus. Eleven investigation and counselling sessions were conducted but the applicant nevertheless still wished to continue with his application. After almost two years, the case was re-submitted to the court together with the *Aqidah* Consultative Officers' report. The court rejected the application on August 2, 2010, because they did not find any clear reason for the applicant to leave Islam, and the reason he gave was insufficient for his application to be approved. In the case file, it was also stated that the court had directed that religious agencies such as the Negeri Sembilan Islamic Religion Council/Department were to guide and monitor the applicant's creed.

Case 2:

The applicant in this case was a female of Indian ethnicity, who was 28 years old at the time of her application. Her application to leave Islam was made on November 3, 2004. Prior to that, the Sharia High Court had convened on January 29, 2004, and decided to postpone the hearing for 90 days to refer the applicant to the Negeri Sembilan Mufti's Department for counselling. In her affidavit, the applicant presented the reason that she had been raised a Hindu and had been practising that religion, despite her birth certificate declaring her a Muslim.

After the applicant had attended the consultative guidance sessions, her case was resubmitted to the Sharia High Court for resolution. However, the applicant did not fully attend court during her trial and no reasons for this were given, causing her case to be thrown out by the court on December 2, 2011. The court's action was based on Section 121 (A) of the Sharia Court Criminal Procedure Enactment 2003, which allows the court to throw out a case if the plaintiff is absent without reason.

Case 3:

The applicant was a female of Indian ethnicity who was 27 years of age at the time of her application and resided in Port Dickson. Her case was referred to the Mufti's Department, and 10 consultative guidance sessions were conducted. The applicant argued in her affidavit that she was Muslim only in name and had never practised Islam, and that she had actually been worshipping at the Hindu temple. The applicant had also produced a letter from a Hindu temple stating that she was a Hindu. During questioning, the *Aqidah* Consultative Officer received a letter from the applicant's parents requesting assistance to rehabilitate their daughter so that she would accept Islam again. The *Aqidah* Consultative Officer also found out that the applicant had practised Islam in school as she had attended an Islamic studies course known as a "worship camp."

In addition, the Officer discovered that the application was made because the applicant was being pressed by a Hindu man who wanted to marry her, but who would not convert to Islam in order to do so. After the case was resubmitted to the court with the report, the court found on the basis of the statements made by her mother and family that there were reasonable doubts with regard to the applicant's testimony. The court finally rejected the application on July 22, 2010.

Case 4:

The applicant was a 53 year-old man at the time of his application, working as a labourer. His father was Ceylonese and his mother was Indian. All his siblings were Muslims. In his affidavit in court, the applicant claimed that he had never been a Muslim, and that he had, on

the contrary, been a practising Hindu since he was a child, despite his birth certificate stating he was Muslim. The case was referred to the Mufti's Department for consultative guidance sessions. In the session held on February 14, 2007, conducted by the *Aqidah* Consultative Officer, the applicant claimed that his "father" was not his biological father, and that he had been abandoned by his family as a child. During the case, the court focused on the main issue of whether or not the applicant had been Muslim from birth. According to the *Aqidah* Consultative Officer's report, the court was informed that the applicant left home when he was 18 years old. The court accepted this as evidence to reject the applicant's claim that he was born a Hindu and had never received Islamic teachings in his life. The court found that the applicant's reason for wanting to leave Islam was shaky and not supported by clear evidence. His application was therefore rejected.

Conclusion

Based on the aforementioned cases, it is clear all the applicants were from one categories, i.e. individuals who were born as Muslims but they are children of *muallaf* parents. As mentioned before, the Mufti's Department had a slightly different approach in categorization. The applicants in the aforementioned cases all came from *muallaf* families; their parents had converted to Islam and they themselves were born as Muslims. Consequently, these applications were categorized by the court and the Mufti's Department as being from *muallaf* applicants. The question of *why* this approach in categorization was taken is subject to speculation. Then, it is possible that Section 119 (2A) (i) should only be taken to refer to individuals of Malay ethnicity who are traditionally Muslim.

Approved applications

Case 1:

The applicant in this case was a man of Chinese ethnicity, aged 34, who was living in the district of Seremban in Negeri Sembilan. However, the applicant was born in the northern state of Kedah Darul Aman to a Buddhist family; his father was a Buddhist and his mother a Hindu. The applicant converted to Islam in 2000 and married a Malay Muslim woman; the marriage ended in divorce in 2005. The reasons for his application given in his affidavit were as follows:

- a) His conversion to Islam had severed ties to his family, namely his mother and two sisters. As a result, the applicant felt a marked emptiness in his life.
- b) The applicant had married a Malay woman and divorced her in 2005. The applicant felt ostracized after the divorce because his family could not accept him as a Muslim.
- c) His conversion to Islam had robbed him of his rights as the sole male heir in the family to bury his father and mother upon their passing.
- d) The abovementioned circumstances caused the applicant to question his decision to embrace Islam in the first place, and this meant he was unable to live his everyday life as a Muslim with faith and belief in Allah. The applicant was determined to leave Islam so that he could return to his family and resume his responsibilities as a son and a brother.

After attending four consultative sessions beginning from the date of his application in 2009 at the Mufti's Department, his application to leave Islam was finally approved by the court on February 22, 2011. The court was in due course satisfied with the applicant's arguments and the supporting evidence in the Mufti's Department's report.

Case 2:

The applicant in this case was a male of Indian ethnicity, aged 61 years at the time of application. The applicant had been raised by his Christian aunt since he was 18 after the

death of his parents. In his affidavit, dated April 4, 2006, the applicant claimed that he had made a deed poll at the civil court to change his Muslim name to a non-Muslim one. The applicant had filed his application in court on May 22, 2006. He continued to assert in his affidavit that he had never practised Islam. The applicant was, in fact, a staunch Christian. He attended a consultative session at the Mufti's Department on July 17, 2007 and attended 10 counselling sessions from December 19, 2006, to October 28, 2008. The applicant had also been present at group counselling sessions under the supervision of a Muslim expert on Christianity. After the case was resubmitted to court, a judicial order was issued on August 5, 2011, declaring that the applicant had left Islam in accord with Section 119 of the Negeri Sembilan Islamic Religion Administration Enactment.

Case 3:

The applicant in this case was a male of Indian ethnicity, originally of the Hindu faith and aged 52 at the time of his application. His parents were also Indian and practising Hindus. He converted to Islam in 1992 at the Paroi *Dakwah* Centre in Negeri Sembilan. The case was heard on December 11, 2006, at the Sharia High Court. Through a consultative session on February 15, 2007, the officer at the Mufti's Department discovered that the applicant had married in 1990, and a child was born in 1991. Unfortunately, the child was kidnapped when it was five days old. In 1992, the applicant converted to Islam to seek inner peace. The applicant was deeply affected by his family's accusations regarding the loss of his child. Prior to his conversion to Islam, the applicant had also been a Christian. Aside from attending individual counselling sessions, the applicant had also attended group counselling sessions held in March and July 2007. Finally, on June 23, 2008, the Negeri Sembilan Sharia High Court declared that the applicant had officially left Islam and returned to Christianity.

Case 4:

The applicant in this case was a 37-year-old female who worked as a rubber tapper. She filed an application to leave Islam at the Sharia High Court on September 17, 2007. Through the consultative sessions conducted by the Mufti's Department, the applicant was found to have been married for 16 years; however, the marriage, which was performed according to Hindu rites, was not registered with the National Registration Department. The applicant also had three children, whose birth certificates stated their religion as "Islam." The applicant's Muslim parents had given her away to a Hindu Indian family when she was 11 years old, and she had no idea whether her parents were still alive. In the meantime, her foster parents and family had moved and could not be contacted.

In her affidavit, the applicant maintained that she had always lived as a Hindu, and that she wished to continue living as a Hindu and have a Hindu funeral upon her passing. The applicant also wanted her children to be raised as Hindus. After the initial consultative session, the applicant attended a series of counselling sessions from January 17, 2008, to November 2009. During these sessions, the applicant stated that she was extremely confused. The applicant also felt deep resentment towards Islam because her parents had never provided education on Islam. Moreover, the applicant could not accept Islam after bearing three children with a loving Hindu husband. The applicant had also obtained a letter of support from a temple confirming that she had long since been a practitioner and follower of the Hindu religion and traditions. Finally, on June 25, 2010, the court approved her application to leave Islam.

Conclusion

From the aforementioned cases, it is clear that the strongest reason for allowing applications to leave Islam was the total absence of teachings and practice of Islam from a young age in the applicant's lives. Their registration as Muslims was thus a technicality due to their

parents' being converts to Islam at the time of their birth. The *Aqidah* Consultative Officer would therefore have been unable to conduct the consultative and counselling sessions with optimum effectiveness, as the applicant would have had no pre-existing knowledge or idea of what Islam is about. To propose that applicants should return to Islam is not a practical option, when applicants have never been Muslim from their childhood except, perhaps, in name and on paper. When the *Aqidah* Consultative Officer's report explains this to the court, the court will be inclined to allowing the applicant's application to leave Islam. These cases also prove that the Sharia Court may declare an individual to be an apostate without having to sentence them.

Cases of applicants remaining Muslims

In addition to the outcomes of rejection and approval, there is another: the continuance of the applicant's status as a Muslim. This occurs when the applicant withdraws his or her application. As a result, the court will end any further discussion of the application and close the case. Withdrawals of applications are considered to be a victory on the part of the *Aqidah* Consultative Officer at the Mufti's Department for managing to successfully guide the applicant back to the way of Islam, as is expressly intended in the provision of section 119 Enactment 10 (2003).

Case 1:

The applicant in this case was a Chinese man, born in 1961 in Seremban. The applicant worked as a steelworker and converted to Islam in 2002. After several years of living as a Muslim, the applicant made an application to leave Islam at the Sharia High Court. In his affidavit, the applicant cited the reason for his application and wish to leave Islam as having family and work-related problems and to strengthen his financial position via some help from business associates. After attending six counselling sessions from 2005 to 2007, the applicant agreed to withdraw his application. During that process, he received sum of RM1500 as cash assistance and RM10000 for business start-up from the Mufti Department. On June 19, 2007, he pronounced the *Shahadah* (Islamic declaration of faith) and his case was closed before the Seremban Sharia High Court registrar.

Case 2:

The applicant was a male of Indian ethnicity who was born in 1984 in the neighbouring state of Malacca (outside of Negeri Sembilan), and converted to Islam in 2005. The applicant stated that he had been coerced into conversion to Islam by his fiancée's family, and that he would have been physically harmed if he had not converted. These circumstances disturbed the applicant, so in 2006 he filed an application to leave Islam at the Sharia High Court. After attending a consultative session at the Mufti's Department and two counselling sessions, the applicant decided to return to Islam, repent and recite the *shahadah* on August 14, 2007.

Case 3:

In this case, the applicant was a male of Indian ethnicity aged 29 years at the time of his application. The applicant was single and was working as a contract labourer. The applicant stated in an affidavit dated August 4, 2003, that he wished to leave Islam because he was raised by his Hindu aunt after the death of his father when he was seven. He also stated that he had never been to a mosque and knew nothing of Islam, having always been a Hindu. The applicant attended consultative sessions and counselling at the Mufti's Department on December 7, 2005, and discovered that all his siblings were (still) Muslims. The applicant was also invited to attend a group counselling programme in May and August, 2006. Finally,

on January 9, 2007, the applicant agreed to withdraw his application to leave Islam via an affidavit. The Mufti's Department held a *shahadah* event on January 17, 2007, and provided him with financial aid amounting to RM2000 to help him start his new life.

Case 4:

In this case the applicant was a 28-year-old female of Indian ethnicity. The court had heard her application on July 25, 2006, and referred her case for consultative sessions and counselling at the Mufti's Department. In the consultative session held on November 29, 2006, the applicant said that her family could not accept her intention to marry her Hindu boyfriend. After attending two counselling sessions on December 19, 2006, and January 25, 2007, the applicant agreed to repent, recited the *shahadah* on August 14, 2007 and withdrew her application to leave Islam.

What do these cases tell us?

The above cases indicate that the law has provided a clear avenue for an individual to leave Islam by furnishing acceptable "facts which substantiate the reason." However, the definition of "facts which substantiate the reason" is far too vague and there are no guidelines to define what they might be. What, then, are facts that will be accepted by the court and the Mufti's Department? As far as the previously discussed cases go, there is a tendency in the Sharia Court and the Mufti's Department to narrow the definition. Permission to leave Islam has thus only been given in cases where:

- a. The applicant embraced Islam without preparing himself for the rules and laws that would bind him as a Muslim, or without prior knowledge of the religion, or involuntarily.
- b. The applicant had never practised Islam due to his being raised in a non-Muslim family, despite his birth certificate declaring him to be a Muslim, following the religion of his birth parents.

Therefore, it is clear that the Sharia Court and Mufti's Department have only approved applications when there was a technical issue with regard to the applicants' status as Muslims. Significantly, applicants who desire to leave Islam for a religion other than that of their parents cannot do so. This simultaneously proves that permission to leave Islam is still very limited because not all applications will be approved. In fact, the real objective behind Section 119 Enactment 10 (2003) is to bring the applicant back to Islam through consultative sessions and counselling. This corresponds to the findings of Mohamad (2010; 2011) who posits that Muslim bureaucrats are increasingly authoritarian in managing the affairs of Muslims, and that this attitude shows in their drafting of Sharia legislation.

These Muslim bureaucrats, especially the *Aqidah* Consultative Officers, wield significant power in determining an applicant's religion, the focus of their duty being to persuade the applicant to return to Islam. The *Aqidah* Consultative Officers "filter" applications that are valid for court approval and, consequently, applicants without solid factual evidence may be seen as having potential to return to Islam by the *Aqidah* Consultative Officers in the Mufti's Department. As indicated in the findings of Zainal Ariff (2012), religious officers who perform the duty of *dakwah* at Islamic institutions in Malaysia want individuals to embrace Islam whole-heartedly and with full submission to prevent cases of apostasy in the future. It may therefore be said that all consultative sessions are conducted for the benefit of Islam, and not in the interest of the individual.

Furthermore, the counselling process itself is not free from elements of indoctrination or proselytizing, as there is a pre-existing tendency to criticize the teachings of the applicant's preferred religion and "re-teach" the ways of Islam, which may be quite problematic for him

or her. The Mufti's Department's involvement of external counsellors who are said to be "experts on comparative religion" to provide counselling is also in itself a form of indoctrination, and it is not known to what extent the counsellor will follow counselling ethics and respect the choice of religion made by the applicant. This is the challenge faced in Malaysia as discussed by Hunt (2009), as long as the Malay Muslim society is still far from the accepting religious pluralism in the country and the concept of inter-faith dialogue.

From the perspective of the applicant, this study has found that the majority of applicants come from the more marginalized communities in Malaysia, particularly the Indian community, who have poorer socio-economic backgrounds. As Chuah (2011, 222) puts it, "They face discrimination in job opportunities, in trade and commerce, and their children do not enjoy the same privileges extended to Malay *bumiputra* [Muslim] children with regard to selection to public universities, and financial assistance." The question is, do members of this community wish to leave Islam as a result of experiencing various pressures as members of a marginalized minority in society? Is the whole process of leaving Islam an effort their cry for help to attract the attention of the Islamic religious authorities, especially since some applicants retract their applications soon after they receive aid, fiscal or otherwise? Finally, the question of how Muslim bureaucrats treat these individuals in any given Islamic institution in Malaysia remains unanswered.

There have been claims that Islamic institutions have offered material rewards to "encourage" individuals to convert to Islam as argued by Ma (2005, 102). Furthermore, Nobuta (2007) and AlJazeeraEnglish (2010) have reported that efforts have been made by religious officers in Islamic institutions in Malaysia to offer material aid to marginalized communities such as the *Orang Asli* (indigenous people) if they agree to embrace Islam, and that those who did not would be excluded from receiving such aid.

Conclusion

This article has presented a critical debate on applications to leave Islam in Negeri Sembilan, Malaysia which provides a clear legal process and does not punish the applicant for the offence of apostasy. The discussion has also touched upon trends in recent court decisions subsequent to *Lina Joy*, the procedure and process for applications to leave Islam and selected cases to illustrate the three categories of court decision.

Furthermore, the actions of the Sharia Court in using various strategies to retain an individual's status as a Muslim, despite his or her being completely uninterested in practising Islam, will catalyse an endless stream of legal battles. It is therefore unwise to retain an individual's religious status as a "Muslim" when he himself cannot, or is unwilling to, make any form of "religious contribution" to the Muslim community in Malaysia. There is also the question of how civil liberties on issues of freedom of conscience and religion are marginalized by this process, given Malaysia's obligation to adhere to international human rights law.

The research evaluated in this article clearly illustrates that disproportionate influence has been allowed to Muslim bureaucrats in the guise of the Mufti's Department when determining the fundamental civil liberty of deciding upon one's faith. The influence of the Mufti's Department on the Sharia Court in determining outcomes for applications to leave Islam demonstrates a largely unchallenged erosion of the autonomy traditionally exercised by the judiciary. This analysis also provides another example of the increase in the power of Muslim bureaucrats to strengthen the sanctity of Islam in Malaysia. Such power has the potential to become authoritarian and increasingly determined by following reductionist rather than holistic interpretations of Islamic law.

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