

Book Note: The Court Of Appeal For Ontario: Defining The Right Of Appeal, 1792-2013, by Christopher Moore

Heather Fisher

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Abstract

“Opportunities to redress miscarriages of justice or errors in law or procedure are now fundamental to the rule of law, and it is easy to assume the origins of the right of appeal must go right back to the medieval beginnings of the English legal tradition. But in the 1790s, the right of appeal was far from... fundamental.”² IN 2007 CHIEF JUSTICE OF ONTARIO Warren Winkler realized there was no comprehensive history of the Court of Appeal for Ontario, prompting the commission of *The Court of Appeal for Ontario: Defining the Right of Appeal, 1792-2013*. This book serves as a source of institutional history and as a biographical history of the people who moulded the court.³ Notable historical changes include: the entrenchment of a separate judiciary and executive;⁴ the opening of the right of appeal to include criminal law;⁵ and the consideration of human rights and equity in jurisprudence as a result of World War II,⁶ the Bill of Rights,⁷ and the Charter.⁸ Moore tracks the rise of the right of appeal and eventual development of a dedicated appeals court, characterizing its changing culture vis-à-vis its most prominent figure—the Chief Justice. Additionally, each chapter discusses major jurisdictional and structural changes to the court, demographics of the judges and bar of the period, and major cases and procedures. Chapter one focuses on the reformers of 1849, elected on a platform of responsible government, and Hume Blake’s Administration of Justice (Canada West) Bill.⁹ The right of appeal in Ontario began with Blake’s belief that Canada’s courts needed “to be adapted to Canadian circumstances.”¹⁰ Chapter two focuses on Oliver Mowat’s court from 1874-1912, which saw the merging of law and equity¹¹ and the criminal right of appeal in provincial courts.¹²

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***The Court Of Appeal For Ontario: Defining
The Right Of Appeal, 1792-2013*, by
Christopher Moore¹**

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1. (Osgoode Society for Canadian Legal History, 2014) 325 pages.
 2. *Ibid* at 6.
 3. *Ibid*.
 4. *Ibid* at 11.
 5. *Ibid* at 50-54, 82-84, 118-19.

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Chapter three follows the Meredith, Mulock, and Rowell courts of 1913, characterized by a period of multiple court restructurings. While this period was a time of “black-letter precedents”, the Robertson, Pickup, and Porter courts of 1938-67 in Chapter four adopted a broader human rights-based approach.¹³

Chapters five and six describe “the strongest appellate court in Canada,”¹⁴ focusing on the Gale, Estey, and Howland courts of 1967-90, and the Dubin and McMurtry courts of 1990-2007, respectively. Both periods saw increases in the courts administrative capacity, an increased public presence, and “living tree” jurisprudence. The final chapter explores Winkler’s court from 2007-13, looking forward to challenges of access to justice and the “vanishing appellate bar.”¹⁵

6. *Ibid* at 112-15.

7. *Ibid* at 113.

8. *Ibid* at 178. A broader cultural change was occurring in Canada in the years preceding the *Charter*, influencing how human rights and equity were interpreted in the courts. Two main factors contributing to the positive reception of the *Charter* were the well-received “living tree” interpretation of rights and the emergence of “legal modernism.” *Ibid* at 145-50.

9. *Ibid* at 9.

10. *Ibid* at 16. Blake made three main critiques of the system of appeal: first, because appeal courts were appointed by the executive, no independent judiciary existed; second, the right of appeal to the Judicial Committee of the Privy Council was too expensive, and too far removed from Canadian citizens, preventing public scrutiny by individuals most affected by the decisions; and third, as a result of a flaw in the *Judicature Act*, it was impossible to appeal decisions from the Queen’s Bench.

11. *Ibid* at 45-48.

12. *Ibid* at 50-54.

13. *Ibid* at 113.

14. *Ibid* at 123.

15. *Ibid* at 194-99.

Blake's vision for a court of appeal was one of justice. He wrote, "Give us the Court of Appeal... and you do more to liberalize the people [than can] be conceived."¹⁶ His vision remains, and today's court still exists "to correct error, to state what the law is, and to uphold as a guiding principle of the rule of law in Canada the right to appeal."¹⁷ This book stands as a record of that right in Ontario courts.

16. *Ibid* at 11.

17. *Ibid* at 199.