

A Legal History of Adoption in Ontario, 1921-2015, by Lori Chambers

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Book Review



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Abstract

During the period of the Great War—when the rest of the world had its eyes turned towards Europe—the province of Ontario found itself in the midst of a domestic crisis. Only two decades earlier, the provincial government had enacted legislation giving the newly-founded Children’s Aid Society (CAS) the authority to identify and protect neglected and maltreated children. This legislation emerged out of a concern over juvenile delinquency, but its range was limited: services for children were given little financial backing, and CAS workers were only locally regulated. By the end of the Great War, then, concerns about rising rates of illegitimacy in Ontario and frustrations about the lack of institutionalized support led CAS workers to become increasingly persuaded that the only path forward for child protection was through legalized adoption.

Book Review

***A Legal History of Adoption in Ontario, 1921-2015*, by Lori Chambers¹**ADAM GIANCOLA²

DURING THE PERIOD OF THE GREAT WAR—when the rest of the world had its eyes turned towards Europe—the province of Ontario found itself in the midst of a domestic crisis. Only two decades earlier, the provincial government had enacted legislation giving the newly-founded Children’s Aid Society (CAS) the authority to identify and protect neglected and maltreated children. This legislation emerged out of a concern over juvenile delinquency, but its range was limited: services for children were given little financial backing, and CAS workers were only locally regulated.³ By the end of the Great War, then, concerns about rising rates of illegitimacy in Ontario and frustrations about the lack of institutionalized support led CAS workers to become increasingly persuaded that the only path forward for child protection was through legalized adoption.

It is out of this context that Ontario’s first ever *Adoption Act* emerged in 1921;⁴ and it is here where we arrive at the point of departure in Lori Chambers’ massive new undertaking, *A Legal History of Adoption in Ontario, 1921-2015*. Starting from Ontario’s first *Adoption Act*, Chambers traces a comprehensive historical study of the law of adoption in Ontario up until the present day. Weaving together legislation, court records, parliamentary debates, popular commentaries, and other extra-legal sources, Chambers embarks on the formidable task of canvassing Ontario’s century-old adoption regime, while also highlighting its underlying

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1. (Toronto: University of Toronto Press, 2016).
 2. JD Candidate 2017, Osgoode Hall Law School.
 3. *Supra* note 1 at 17.
 4. SO 1921, c 55.

problems. In this regard, Chambers' book is a true work of legal history: she provides a detailed account of the textual developments of the law over the course of several decades, but also gives space to describe episodes and realities that challenge our notions about what was happening beneath the written law.⁵ The format of the book reflects this approach: each chapter tackles a specific adoption-related issue, and traces the historical development of that issue up until the present day.

To be sure, the narrative that Chambers presents is one defined by programmatic policies and rights-based conflicts. At the same time, it is a story shaped by changing attitudes about who *ought* to adopt and be adopted, and the kinds of legal protections afforded to groups seeking, on the one hand, greater openness and accessibility, and on the other hand, privacy and special considerations for disadvantaged communities. Across her case study, Chambers identifies five overarching themes: (1) the stigmatization and coercion of poor and unwed mothers to relinquish their children; (2) the persistent patriarchal notion of blood kinship; (3) the growing conflict between ideas of social parenting and biology; (4) the challenge of giving recognition to different types of family formations; and (5) the pervasive problem of race hierarchies in adoption matters.⁶

The thrust of Chambers' argument is that developments in adoption law over the last several decades "had their origins in multiple, overlapping, and contradictory social movements of the early twentieth century."⁷ In particular, she suggests that industrialization, urbanization, and immigration were part of a package of changes that challenged traditional notions of family life and became the impetus for reform.⁸ For this reason, Chambers begins her study at the close of the nineteenth century. This decision is an important one because, following historians like Veronica Stroag-Boag,⁹ Chambers shows how much of the child welfare legislation enacted at the start of the twentieth century was influenced by developments taking shape in the decades before.¹⁰ For example, by showcasing the province's underlying preoccupations with protecting children—those suffering from neglect, and those of unwed mothers—Chambers is able, later on, to point to patterns in the historical narrative that reflect similar tendencies.

5. This approach to legal history has been advocated for by historians like Hendrik Hartog. See e.g. Hendrik Hartog, "Pigs and Positivism" (1985) 1985:4 Wis L Rev 899.

6. *Supra* note 1 at 153.

7. *Ibid* at 5.

8. *Ibid*.

9. *Finding Families, Finding Ourselves: English Canada Encounters Adoption from the 19th Century to the 1990s* (Oxford: Oxford University Press, 2006) ch 2.

10. *Supra* note 1 at 14-21.

Using case files under the *Children of Unmarried Parents Act*,¹¹ Chambers demonstrates how, up until the 1970s, a large volume of adoptions came from unmarried mothers deemed unfit to raise children alone. On one hand, relinquishment was often socially coerced, in that mothers were often “intimidated and harassed” in ways that went unnoticed before the courts.¹² On the other hand, amendments to the *Adoption Act* in 1937 made it clear that a judge could dispense with the consent of a child’s parents if satisfied that, among other reasons, “the person whose consent is to be dispensed with ... is a person whose consent ought, in the opinion of the court and in all the circumstances of the case, to be dispensed with.”¹³ Chambers shows that this discretion given to the court, combined with critical attitudes of unwed mothers and fairly unregulated CAS activities, contributed to overwhelming rates of adoption of children born to unmarried women.¹⁴

The book also explores the rights of putative fathers and step-parents in the adoption regime. As concerns over maternal rights grew in the middle of the twentieth century, courts concomitantly began giving recognition to unwed fathers of children.¹⁵ However, the book reveals how recent court decisions have seen a re-emphasis of the rights of biological parents.¹⁶ This shift in gear is also reflected in the rights of step-parents. While step-parent rights have been expanded to accommodate new notions of “social parenting,” these reforms have been hindered by equally strong pressures to give deference to a child’s biological parents.¹⁷ In both cases, Chambers showcases a growing tension in Ontario between giving deference to the rights of biological parents, and granting recognition to social parenting formations.

This tension between biological and social parenting was also a facet of developments involving open adoption. Chambers shows how the path towards open adoption—in which contact and communication is arranged between adoptive and birth families¹⁸—was arduous in Ontario. At the *Adoption Act*’s enactment in 1921, all legal rights of birth parents over their child were divested on adoption.¹⁹ It was not until the 1980s that cases began to challenge Ontario’s

11. *An Act for the Protection of the Children of Unmarried Parents*, SO 1921, c 54.

12. *Supra* note 1 at 26.

13. *Adoption Act*, RSO 1937, c 218, s 3(3).

14. *Supra* note 1 at 26-34.

15. *Ibid* at 42-47.

16. *Ibid* at 47-48.

17. *Ibid* at 98.

18. *Ibid* at 78.

19. *Ibid* at 23.

closed adoption regime, paving the way for the province's 2008 *Access to Adoption Records Act*.²⁰ Open adoption, however, remains incompletely realized.²¹ At the same time, Chambers observes that case law has also pointed in the opposite direction of protecting privacy rights in the adoption process.²²

The book also touches on increasing efforts to challenge normative views of the nuclear family. The expansion of adoption rights for same-sex couples in the 1990s,²³ the push for reforms to parentage rights in the 2000s,²⁴ and the prospect of multi-family arrangements through assisted reproduction²⁵ have informed a large part of Ontario's recent history with adoption legislation. Another recent area of development in the law has involved the adoption of Indigenous children. In her research, Chambers identifies overwhelming rates of apprehension and adoption of Indigenous children since the 1960s.²⁶ Recent legislation and case law has called for special considerations to be implemented for assessing the best interests of Indigenous children.²⁷

Towards the end of the book, Chambers discusses Ontario and Canada's experience with international adoption, which arose in the context of the refugee crisis following the Second World War.²⁸ After initial resistance,²⁹ Canada's policies towards international adoption expanded participation from the mid-1970s onwards. At the same time, concerns about international trafficking of children became highly publicized. When Canada ratified the United Nations *Convention on the Rights of the Child* in 1991, and when Ontario passed legislation that provincially ratified the convention in 2000, each jurisdiction agreed to ensure that birth parents had given "an informed, counseled, and written consent conforming to local law, and that consent was not induced by payment or other compensation."³⁰ Nonetheless, Chambers concludes with the note that parental consent is contingent upon international regulation, and Ontario courts have tended to acknowledge the validity of international adoptions by default.³¹

20. SO 2008, c 5.

21. *Supra* note 1 at 90.

22. *Ibid* at 74-77.

23. *Ibid* at 105-107.

24. *Ibid* at 109-114.

25. *Ibid* at 114-15.

26. *Ibid* at 116.

27. *Ibid* at 126.

28. *Ibid* at 135.

29. *Ibid* at 137-39.

30. *Ibid* at 141-42.

31. *Ibid* at 151-52.

There can be no doubt that Chambers' book fills a noticeable gap in the literature. Previous research on adoption law has tended to be either partial or cross-jurisdictional; never before has the history of a single province's adoption regime been outlined so extensively. Moreover, previous historians have considered only certain aspects of Ontario's adoption regime—such as issues surrounding international adoption³² and the vulnerability of birth mothers³³—without addressing domestic legislation on adoption in any great detail. As Chambers herself points out, the benefit of focusing on a single jurisdiction—especially one as important as Ontario—is that it allows one to enter into a comprehensive overview of the domestic legal regime.³⁴ At the same time, legal sources detailing Ontario's adoption laws have tended to miss out on some of the underlying socio-economic concerns with the legislation, instead restricting their scope to issues concerning legal remedies and rights.³⁵

Beyond the sheer coverage of research on display, the book's strongest feature is perhaps the way in which it interlaces material from both legal and non-legal sources. In her discussion of the origins of the 1921 *Adoption Act*, for example, Chambers argues that the legislation was “part of a wider child-welfare package,” which made its reforms “immediately popular with the public.”³⁶ To support this claim, Chambers references not only the positive response to the law in the press, but also the statistical increase in adoption cases following the law's enactment.³⁷ In some ways, Chambers' use of both popular and legal sources reflects a theme that lingers throughout the book: that Ontario's adoption laws were continually being amended, reformed, and tinkered with in response to new expectations and grievances voiced in the public sphere.

While the book is comprehensive, it does leave room for further analysis. Chambers dedicates entire chapters to the respective rights of mothers, fathers, and step-parents, but more could be said about the rights of children in Ontario's adoption law regime. The book describes the expanded rights of children

32. Karen Dubinsky, *Babies without Borders: Adoption and Migration across the Americas* (Toronto: University of Toronto Press, 2010) at 3; Karen Balcom, *The Traffic in Babies: Cross-Border Adoption and Baby-Selling between the United States and Canada, 1930-1972* (Toronto: University of Toronto Press, 2011) at 4.

33. *Supra* note 9.

34. *Supra* note 1 at 5.

35. See e.g. Ontario Law Reform Commission, *Report on the Status of Adopted Children* (Toronto: Carswell, 1969). This report deals only with the specific issue of some adopted children not being contemplated under a provision of *The Child Welfare Act*. See *The Child Welfare Act*, SO 1965, c 14, s 82(3).

36. *Supra* note 1 at 6.

37. *Ibid.*

in accessing information about their birth parents,³⁸ as well as the liberties guaranteed under the 1989 Convention on the Rights of the Child.³⁹ However, it does not delve much into the issue of the consent required for adoption by children themselves. For example, all Canadian provinces except Ontario require that children from the age of twelve consent to the adoption.⁴⁰ In Ontario the required age is seven or older.⁴¹ Why Ontario adopted a lower age of consent is a question worth further inquiry.

The book also does not give coverage to all of the institutional features of the adoption regime in Ontario. For example, the Office of the Children's Lawyer (formerly known as the Office the Official Guardian) has played an important role in acting as legal representation for children in the province who were the subject of child protection, custody and access, and adoption proceedings.⁴² To date, the Children's Lawyer remains one-of-a-kind across the rest of Canada.

Lori Chambers' *A Legal History of Adoption in Ontario, 1921-2015* is not only a significant contribution to the existing literature on adoption; it is also enormously timely. With recent Ontario legislation⁴³ affecting parentage rights in the province, a look back at the history of parenting and adoption gives occasion for useful reflection. What are the merits of adoption? For whose interests is adoption legislation in place? Are there legal means outside of the current adoption regime by which to secure similar interests? These are all questions that may not at present be entirely answerable, but which are given new substance in light of Chambers' prodigious study.

Indeed, one of the important takeaways from Chambers' work is that the fight for adoption laws in Ontario has involved the persistent oscillation of rights claims—between mothers, fathers, Children's Aid, step-parents, and beyond. As with so many other domains of the law, striking the right balance is delicate and further reform is needed. But Chambers also reminds us that, first and foremost, adoption “provides a model for family formation that foregrounds

38. *Ibid* at 68-74.

39. *Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS 3, Can TS 1992 No 3 (entered into force 2 September 1990), online: <<http://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>>.

40. CED 8th (online), *Adoption* “An Overview Of The Law — Adoption.”

41. *Child and Family Services Act*, RSO 1990, c C-11, s 137(6).

42. Ontario Ministry of the Attorney General, “Office of the Children's Lawyer,” online: <https://www.attorneygeneral.jus.gov.on.ca/english/about/artcl/fjsd_ocl.php>.

43. Bill 28, *All Families Are Equal Act (Parentage and Related Registrations Statute Law Amendment)*, 2016, SO 2016 C-23.

love.”⁴⁴ If we focus too much on shifting rights and lose sight of what adoption is actually about—giving a child a new home—we end up discovering at the end of our efforts “that our commitment to children is hollow.”⁴⁵

44. *Supra* note 1 at 153.

45. *Ibid.*

