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Volume 98, numéro 2, fall 2006

URI : <https://id.erudit.org/iderudit/1065824ar>

DOI : <https://doi.org/10.7202/1065824ar>

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Éditeur(s)

The Ontario Historical Society

ISSN

0030-2953 (imprimé)

2371-4654 (numérique)

[Découvrir la revue](#)

Citer cet article

Chambers, L. (2006). Adoption, unwed mothers and the powers of the Children's Aid Society in Ontario, 1921-1969. *Ontario History*, 98(2), 161-182. <https://doi.org/10.7202/1065824ar>

Résumé de l'article

La question de l'adoption et celle des règles et des procédures suivies, sont des questions qui n'ont pas été véritablement explorées par les historiens canadiens. Si la grande majorité des enfants donnés pour être adoptés sont des enfants conçus hors mariage, comment la loi, par exemple, détermine-t-elle les relations entre la mère et l'état comme entre la mère et l'enfant que celle-ci donne pour être adopté ? Et en donnant son enfant pour adoption, dans quelle mesure le choix de la mère est-il véritablement libre ? En essayant de répondre à ces questions, nous avons été conduit à conclure qu'en fait la loi limitait, sinon déniait, aux mères non mariées la liberté de choix. Différents facteurs – les contraintes financières auxquelles devaient faire face la SPA, le mandat qu'on lui demandait de remplir, les convictions et les engagements idéologiques, comme la demande croissante d'enfants (blancs et en bonne santé) à adopter –, créaient un contexte dans lequel les mères non mariées étaient en fait le sujet de fortes pressions pour donner leur enfant pour adoption. Ces conclusions s'appuient sur l'analyse de 563 dossiers d'adoption.



*Adoption, unwed mothers and
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by Lori Chambers

Popular perceptions of adoption rest on the assumption that it “is a statutory invention created to enable society to cope with children who are unwanted [or] neglected.”¹ Canadian historians, however, have not explored the means by which babies were acquired for adoption placement.² The majority of children relinquished for adoption have historically been born to unwed mothers. How did the law frame the unwed mother’s relationship with the state and to her child? To what degree did the unwed mother exercise free

and unfettered choice in relinquishing an infant for adoption? This article explores these questions. It is argued that law denied unwed mothers choice; in a context of financial constraints at the CAS, ideological commitment to the adoption mandate, and a demand for healthy, white babies, unwed mothers were subjected to coercive pressure to relinquish their babies.

The Case Files

Adoption was, and often remains, shrouded in secrecy; statistics on adop-

¹ Debra Poulin, “The Open Adoption Records Movement: Constitutional Cases and Legislative Compromise,” *Journal of Family Law* 26 (1987-88), 395.

² Wayne Carp goes so far as to assert that “there are [no] histories of adoption”: Wayne Carp, *Family Matters: Secrecy and Disclosure in the History of Adoption* (Cambridge: Harvard University Press, 1998), ix. For the limited information available on the history of adoption and unwed motherhood in America, see: Julie Berebitsky, *Like Our Very Own: Adoption and the Changing Culture of Motherhood, 1851-1950* (Lawrence, Kansas: University of Kansas Press, 2000); Regina Kunzel, *Fallen Women, Problem Girls: Unmarried Mothers and the Professionalization of Social Work, 1890-1945* (New Haven: Yale University Press, 1993); Rickie Solinger, *Wake Up Little Susie: Single Pregnancy and Race Before Roe v. Wade* (New York: Routledge, 1992), chapters 3, 4 and 5; and Rickie Solinger, *Beggars and Choosers: How the Politics of Choice Shapes Abortion, Adoption and Welfare in the United States* (New York: Hill and Wang, 2001). The literature on adoption and unwed motherhood in Canada is even more limited. See: Karen Balcom, “Scandal and Social Policy: The Ideal Maternity Home and the Evolution of Social Policy in Nova Scotia, 1940-1951” *Acadiensis* XXXI (2) (Spring 2002); Karen Bridget Murray, “Governing Unwed Mothers in Toronto at the Turn of the Twentieth Century,” *Canadian Historical Review* 85:2 (June 2004), 253-76; and Veronica Strong-Boag, “Interrupted Relations: The Adoption of Children in Twentieth-Century British Columbia,” *BC Studies* 144 (Winter 2004-2005), 5-30.

Abstract

Canadian historians have not explored the means by which babies were acquired for adoption placement. The majority of children relinquished for adoption have historically been born to unwed mothers. How did the law frame the unwed mother's relationship with the state and to her child? To what degree did the unwed mother exercise free and unfettered choice in relinquishing an infant for adoption? This article explores these questions. It is argued that the law denied unwed mothers choice; in a context of financial constraints at the CAS, ideological commitment to the adoption mandate, and a demand for (healthy white) babies, unwed mothers were subjected to coercive pressure to relinquish their babies. This article uses 563 adoption case files to illustrate these themes.

Résumé: La question de l'adoption et celle des règles et des procédures suivies, sont des questions qui n'ont pas été véritablement explorées par les historiens canadiens. Si la grande majorité des enfants donnés pour être adoptés sont des enfants conçus hors mariage, comment la loi, par exemple, détermine-t-elle les relations entre la mère et l'état comme entre la mère et l'enfant que celle-ci donne pour être adopté? Et en donnant son enfant pour adoption, dans quelle mesure le choix de la mère est-il véritablement libre? En essayant de répondre à ces questions, nous avons été conduit à conclure qu'en fait la loi limitait, sinon déniait, aux mères non mariées la liberté de choix. Différents facteurs - les contraintes financières auxquelles devaient faire face la SPA, le mandat qu'on lui demandait de remplir, les convictions et les engagements idéologiques, comme la demande croissante d'enfants (blancs et en bonne santé) à adopter -, créaient un contexte dans lequel les mères non mariées étaient en fait le sujet de fortes pressions pour donner leur enfant pour adoption. Ces conclusions s'appuient sur l'analyse de 563 dossiers d'adoption.

tion are scant; and the source material for a history of adoption is scattered and incomplete. A unique source of information about adoption decisions is the case files generated under the *Children*

of *Unmarried Parents Act*. Ironically, these case files originated when women approached the CAS seeking help in obtaining child support from the putative fathers of their children.³ This article summarizes the extant data from 563 cases in which young women changed their minds about their plans for their children. Since adoption legislation was passed in 1921, this study starts in that year. The end date of 1969 requires further explanation. Affiliation proceedings were abolished on 31 March 1978 and the designation 'illegitimate' was formally removed from Ontario law in 1980. Despite these later formal changes, in many ways 1969 marked the end of an era. The decriminalization of birth control allowed at least some women to prevent unwanted conception. The partial decriminalization of abortion made it possible, under some circumstances, to terminate unwanted pregnancies and opened new debates about women's right to reproductive freedom. The expansion of welfare benefits

under the Canada Assistance Plan of 1966 and the *Ontario Family Benefits Act* of 1967 also expanded women's options. For the first time, in 1965 the provincial government assumed the

³ An exhaustive search at the Archives of Ontario allowed me to unearth 4023 extant case files produced under the *Children of Unmarried Parents Act*. Of the 4023 extant cases, 2031 women had cohabited with the fathers of their children and 1992 had not. Women who had cohabited with the fathers of their children were unlikely to release their children for adoption by strangers; of 2031 cohabiting women, only one mother relinquished a baby for adoption. Of the 1992 non-cohabiting women, however, 562 ultimately consented to relinquishment.

full costs of child welfare measures regulated through the CAS. Most importantly, a 1969 Supreme Court of Canada decision, *Re Mugford*,⁴ rendered many of the practices of the Children's Aid Society that are described in this article illegal.

These cases represent a cross-section of the province geographically, with records available from Algoma, Bruce, Frontenac, Grey, Huron, Kent, Waterloo, Wentworth and York counties, but with the preponderance of evidence drawn, not surprisingly, from the city of Toronto. The cases span not only the geographic regions of the province, but the entire period from 1921 to 1969. The number of extant cases in which women were convinced to relinquish their children increased slowly but steadily over time. For the 1920s, 99 such cases are extant; for the 1930s, 107; for the 1940s, 118; for the 1950s, 129; and for the 1960s, 110, all but 8 of which occurred before 1966. This suggests that pressure to release children for adoption may have increased over time. By the late 1960s the case files on which this research is based were becoming less common. The case files for these later years also decline dramatically in detail. This transformation, however, appears to have been abrupt.

Despite the economic and social modernization that swept the province between 1921 and 1969, very little change was evident in the treatment meted out to unwed mothers by the CAS and the court until the late 1960s. In part, this reflected the fact that popular attitudes towards unwed mothers remained punitive. In part, it reflected the particular conservatism of social workers and the courts. CAS workers and magistrates often served long terms and reappeared in cases across decades. Most importantly, the legal framework itself remained constant.

Child-Saving and Adoption Law Reform

Adoption was but one part of a larger program of child-saving that led to new (and intrusive) government intervention in family life.⁵ Child-saving emerged in the nineteenth century as a response to the urban, industrial environment and the 'neglected', orphaned and dependent children who were visible on city streets. The expansion of asylums and orphanages, the creation of the Children's Aid Society (CAS), and the establishment of new systems of juvenile justice, date from this period.⁶ In the twentieth century, in the context of the loss of life on the battlefields of

⁴ *Re Mugford* [1970] 1 O.R. 601-611 at 601.

⁵ For further information on children in Canadian society, see: Joy Parr, *Labouring Children: British Immigrant Apprentices to Canada, 1869-1924* (Toronto, 1980, 1994); Joy Parr, (ed), *Childhood and Family in Canadian History* (Toronto, 1982); Neil Sutherland, *Children in English-Canadian Society: Framing the Twentieth-Century Consensus* (Toronto, 1976); and Neil Sutherland, *Growing Up: Childhood in English Canada from the Great War to the Age of Television* (Toronto, 1997).

⁶ For further information on the CAS, see: John Bullen, "J.J. Kelso and the 'New' Child-Savers: The Genesis of the Children's Aid Society Movement in Ontario," in Russell Smandych, Gordon

the Great War, concerns about infant mortality exacerbated these pre-existing fears about the waste of child life.⁷

The rhetoric of child welfare also criticized, judged and categorized parents, particularly mothers. The editor of *Social Welfare* opined in 1918 that ignorance, not poverty, killed babies.

Lack of the proper knowledge accounts for possibly the largest number of infant deaths – lack of hygienic and eugenic knowledge; ignorance of the penalties of immorality; of the trouble enacted by defiance of sanitation and toleration of filth; of the fatal results of carelessness and malnutrition; and of the realization of the social and economic value of the child's life.⁸

In this context, reformers articulated their right – and obligation – to educate poor, immigrant and single mothers and to remove children from homes in which such education was deemed impossible. J.J. Kelso, the founder of the CAS, asserted that children, “if taken hold of at the right time,”⁹ could be saved from leading lives of worthlessness, poverty and vice and thereby also from ‘polluting’ other children. But where would children from “unfit” homes be placed? Institutional care was increasingly believed to be antithetical to the promotion of family life.¹⁰ Not only was institutional care undesirable for the child, but it was also expensive

Dodds and Alvin Esua, (eds), *Dimensions of Childhood* (Winnipeg: Legal Research Institute, 1991), 135-58. For information regarding juvenile justice, see: Dorothy Chunn, *From Punishment to Doing Good: Family Courts and Socialized Justice in Ontario, 1880-1940* (Toronto: University of Toronto Press, 1992); and Dorothy Chunn, “Boys Will Be Men, Girls Will Be Mothers: The Legal Regulation of Childhood in Toronto and Vancouver,” *Sociological Studies of Child Development* 3 (1990), 87-110; Dorothy Chunn, “Regulating the Poor in Ontario: From Police Courts to Family Courts,” *Canadian Journal of Family Law* 6 (1987), 85-102; and Tamara Myers, “The Voluntary Delinquent: Parents, Daughters and the Montreal Juvenile Delinquents’ Court in 1918,” *Canadian Historical Review* 80:2 (1999), 242-68..

⁷ As early as 1910, Dr. Helen MacMurchy prepared reports on infant mortality and child welfare for the Ontario provincial government in which she documented that 6,932 of 52,629 infants born in 1909 had died within the first year after birth: Helen MacMurchy, *Infant Mortality* (1910), 30. For a detailed discussion of the contradictions in MacMurchy’s thought and an assessment of her achievements and influence see: Katherine Arnup, *Education for Motherhood: Advice for Mothers in Twentieth Century Canada* (Toronto, 1994); Cynthia Comacchio, *Nations are Built of Babies: Saving Ontario’s Mothers and Children, 1900-1940* (Montreal and Kingston, 1993); Dianne Dodd, “Helen MacMurchy, MD: Gender and Professional Conflict in the Medical Inspection of Toronto Schools, 1910-1911,” *Ontario History* 93:2 (Autumn 2001), 127-49; Diane Dodd, “Advice to Parents: The Blue Books, Helen MacMurchy MD, and the Federal Department of Health, 1920-1934,” *Canadian Bulletin of Medical History* 8 (1991), 203-30; Kathleen McConnachie, “Methodology in the Study of Women in History: A Case History of Helen MacMurchy, MD,” *Ontario History* 75 (March 1983); and Angus McLaren, *Our Own Master Race: Eugenics in Canada, 1885-1945* (Toronto, 1990).

⁸ Editorial, “These Little Ones,” *Social Welfare* 1 (1918), 53.

⁹ J.J. Kelso, *Ontario Educational Association Yearbook* 1900, 353.

¹⁰ Helen MacMurchy, for example, went so far as to assert that “institutions for infants are not the best solution to the problem of infant mortality among the poor, deserted and unfortunate. They have been established by the best and kindest people, and with the best intentions; but when they take the baby away from the mother, they sign the baby’s death warrant”: Helen MacMurchy, *Infant Mortal-*

for the state. Adoption provided a solution to this conundrum.

Until 1921 adoption was possible in Ontario only through private members' bills in the provincial legislature. After 1921, "subject to approval by the CAS, a child could be put in a home in a matter of a few days and at a cost of three or four dollars"¹¹ through proceedings in the county court system. Adoption facilitated the permanent placement of formerly institutionalized children within the foster system.¹² It is striking, however, that the child welfare package of 1921 also targeted illegitimate children for potential adoption. This is illustrated by the fact that two other pieces of legislation were passed simultaneously with the *Adoption Act*. The *Legitimation Act* allowed for the subsequent legitimation of children, born outside of lawful wedlock, whose bio-

logical parents later married.¹³ The *Children of Unmarried Parents Act* provided a mechanism by which unwed mothers could obtain financial support from the putative fathers of their children.¹⁴ The state, not the mother, had the primary right to claim child support from the putative father.¹⁵ CAS workers had enormous discretionary power in determining which mothers did, and did not, have adequate corroboration of their stories of paternity to warrant court proceedings.¹⁶ CAS workers were the gatekeepers for paternal support. Simultaneously, the *Adoption Act* delegated enormous power to CAS workers to "plan and facilitate legal adoptions."¹⁷ These powers placed the CAS in a conflict of interest in meeting the needs of unwed mothers. But it was a conflict of interest that reflected popular misconceptions about the inability of unwed

ity (1910), 15-16. However, she did not advocate leaving vulnerable children with mothers who would not raise them well and by definition unwed mothers fit this category. Babies should be nourished with their mothers' milk for the first 6-9 months of life and then they should be, in her estimation, released for adoption. The biological mother was only necessary in this equation because "mother's milk is the only really safe food for baby": Helen MacMurchy, *Infant Mortality* (1910), 5.

¹¹ Joseph Schull, *Ontario Since 1867* (Toronto, 1978), 239.

¹² In 1924 the last baby left the Toronto Infants' Home. Children were now to be placed through a boarding system, but no formal provisions for the regulation of fostering were established: MTA, Box 46592-1, Series 100, File 352, "Child Care – Private Organizations: Children's Aid Society, 1931-1946," Infants' Home and Infirmary, Toronto, 2. See Murray, "Governing Unwed Mothers," 253-76.

¹³ *An Act respecting the Legitimation of Children by the Subsequent Inter-marriage of Their Parents*, S.O. (1921) c. 53.

¹⁴ *An Act for the Protection of the Children of Unmarried Parents*, S.O. (1921) c.54, s. 10.

¹⁵ *Children of Unmarried Parents Act*, S.O. (1921), c. 54, s. 18. The mother, or "any person who has custody of a child born out of wedlock," could also apply for support from the putative father of the child, but such applicants had to bear the cost of the proceedings themselves. For poor single mothers the cost of affiliation hearings was a disincentive to independent application.

¹⁶ If, however, social workers determined that the woman was untruthful, no further action would be taken on the case. In 526 of 4,023 cases (13.1%) no further action was taken after the initial intake. For further information see: Lori Chambers, *Misconceptions* (forthcoming).

¹⁷ Murray, "Governing 'Unwed Mothers,'" 272.

mothers to be proper parents. As J.J. Kelso put it,

the experience of ages has proved conclusively that no unmarried mother can successfully bring up her child and save it from disgrace and obloquy. [But] the child, if adopted young by respectable, childless people, will grow up creditably, and without any painful reminders of its origins.¹⁸

It is not surprising that the new regime explicitly endorsed adoption placement methods that reinforced the authority of CAS workers at the expense of the autonomy of the unwed mother.

Under the *Adoption Act* of 1921, for a child to be eligible for adoption, the child's former guardians or lawful parents had to have signed consent to adoption forms. In cases of illegitimacy, only the consent of the mother was required. Parental refusal to consent to adoption could be overruled by the judge if parents were deemed unfit to give consent, if the parents were imprisoned, or if the child were deemed neglected by the CAS.¹⁹ Under the *Children's Protection Act*, in the case of a legitimate child, a home study had to be

conducted before a child could be declared to be neglected.²⁰ With regard to illegitimate children, the judge or magistrate was granted more extensive powers under the legislation of 1921. Any unwed mother who "through lack of means [was] unable, or through misconduct [was] unfit to have the care of the child" could be denied custody and her child deemed "a 'neglected child'."²¹

An adoption order, once approved by the court, divested "the natural parent, guardian or person in whose custody the child has been of all legal rights in respect of such child."²² The child had "the same right to any claim for nurture, maintenance and education upon his adopting parents as he would have were they his natural parents."²³ The child would be known by the surname of the adopting parents²⁴ and had, with respect to his or her adoptive parents, equal rights of inheritance, by will and intestate, to children born in lawful wedlock.²⁵ The relinquishing parent had no right to information about the child post-adoption. All original birth records were sealed. In effect, as Katrysha Brac-

¹⁸ As quoted in A. E. Jones and L. Rutman, *In the Children's Aid: J.J. Kelso and Child Welfare in Ontario* (Toronto: University of Toronto Press, 1981), 156.

¹⁹ *Adoption Act*, (1921) c. 55, s. 5.

²⁰ Any ward of the CAS could be released for adoption without the consent of the parents, who were divested of all parental rights: *An Act for the Protection and Reformation of Neglected Children*, Statutes of Ontario, 1908, ch.59. *Adoption Act*, 1921, Ch. 55, s.5(a), (b), (c), and (d).

²¹ *Children of Unmarried Parents Act*, S.O. (1921), c. 54, s. 11.

²² *Adoption Act*, (1921) c. 55, s. 10 (1) (a).

²³ *Adoption Act*, (1921) c. 55, s. 10 (1) (c).

²⁴ *Adoption Act*, (1921) c. 55, s. 11 (2).

²⁵ *Adoption Act*, (1921) c. 55, s. 11 (1) and 11 (2). Until 1970, however, with regard to wider kin the child had no legal status. By the *Child Welfare Act, 1970*, this was amended and adopted children were made equal with natural born children unless a contrary intention was expressed in the will of wider kin.

co argues, the new adoption regime introduced into Ontario law the “statutory death of the biological parents and the rebirth of the adoptee.”²⁶ In making orders of adoption, judges relied heavily upon the recommendations of front-line workers, the social workers at the CAS, and it is to records generated by the CAS that we now turn.

The Intake Process

It is important to remember that all of the women in these case files initially approached the CAS seeking child support. Social workers at the CAS began the process of decision-making for the future of the baby by interviewing the unwed mother. Basic demographic information – detailing age, employment status, place of residence, religious affiliation and sometimes ethnicity – was collected through a questionnaire.²⁷ The questionnaire also solicited information about smoking, drinking and attendance at dance halls and moving picture

houses.²⁸ Women had to describe in detail the circumstances under which they had become pregnant, naming the putative fathers of their children and outlining any previous sexual history.²⁹ The interrogation replicated what Foucault and others have described as “the ritual of the confessional.”³⁰ Based on the stories that women told, social workers determined not only whether or not there was adequate proof of paternity to warrant court proceedings, but also made judgments regarding the potential fitness of women as mothers. When possible, they also interviewed putative fathers to explore the possibility of corroborative evidence of paternity and to obtain social histories for adoption. All these proceedings were informal and the determinations of social workers were difficult to challenge.

The files produced at client intake – which include full court transcripts in cases that advanced to litigation – are rich in detail.³¹ Case files are, however, a problematic source for historical inquiry.

²⁶ Katrysha Bracco, “Patriarchy and the Law of Adoption: Beneath the Best Interests of the Child,” *Alberta Law Review* 35:4 (1997), 1041.

²⁷ Strikingly, data on race was not consistently obtained, perhaps because it was believed that race was physically obvious to the social worker. Race was at times evident in the informal commentary provided by social workers in the case files.

²⁸ For comparison with the use of such evidence in the courts of Montreal, see: Tamara Myers, “The Voluntary Delinquent: Parents, Daughters and the Montreal Juvenile Delinquents’ Court in 1918,” *Canadian Historical Review* 80:2 (1999), 256.

²⁹ The questionnaire was used in all jurisdictions for which cases are extant.

³⁰ Michel Foucault, *The History of Sexuality: An Introduction*, Vol. 1, trans. Robert Hurley (New York, 1980), 45.

³¹ Ironically, by complying with legislation and bringing her pregnancy to the attention of the state and the unwed mother subjected herself to potential punishment. Under the *Female Refugees Act*, first passed in 1897, updated in 1919 and not repealed until 1958, any woman under the age of thirty-five could be incarcerated on a complaint regarding her immorality and incorrigibility. No appeal was possible until 1942: RSO, 1987, c.311, *An Act Respecting Houses of Refuge for Females*; RSO 1919, c.84, *An Act Respecting Industrial Refuges for Females (The Female Refugees Act)*; RSO, 1927, c.347, secs 15, 16, 17; On-

As Joel Braslow asserts with regard to patients and medical transcripts, “even verbatim” records were not “pristine ‘true’ accounts,” for the presence of the social worker, “not to mention their often interrogating, adversarial style, colored their patients’ responses.”³² While this creates challenges in understanding the experiences of unwed mothers themselves, it simultaneously ensures that the files are a particularly important source for understanding the attitudes of social workers and the dynamic these attitudes imposed upon the client-worker relationship. The files amassed by social workers were not intended for public consumption. Social workers did not censure their judgments and employed blunt language and colorful shorthand in transcribing interviews with mothers and in documenting their opinions about the best options for mothers and their children. Social workers were also constrained by the financial problems of the CAS.

Financial Constraints at the CAS

There is little doubt, as one critic of child welfare law put it in the 1970s,

that “behind the belief that adoption is a good solution is money. Adoption is the cheapest solution.”³³ Cheap solutions were definitely required. Until 1965 the provincial government contributed only a limited portion of the costs involved in placing and caring for children. The rest of the money required by the CAS had to be raised through charitable donations and alternative fund-raising.³⁴ Adoption made it unlikely that a child would be in the care of the state beyond a few weeks immediately after birth. When mothers kept their children, however, they were often impoverished and might use CAS facilities on a temporary or on-going basis for care of their children, an expensive proposition for the CAS. Social workers associated with child-placement agencies repeatedly lamented that “again and again public and private agencies are obliged to take over the care of illegitimate children whose mothers have maintained custody of them.”³⁵ Such cases were cited as evidence that illegitimate children should always be released for adoption immediately after birth: “all too often the child later becomes dependent. A number of these children might have

tario, Legislative Assembly Debates (March 1958), 742. As evidence amassed by Joan Sangster amply demonstrates, unwed pregnancy often precipitated incarceration: Joan Sangster, “Incarcerating Bad Girls: The Regulation of Sexuality through the Female Refugees Act in Ontario, 1920-1945,” *Journal of the History of Sexuality* 7:2 (1996).

³² Joel Braslow, *Mental Ills and Bodily Cures: Psychiatric Treatment in the First Half of the Twentieth Century* (Berkeley: University of California Press, 1997), 9.

³³ Brown, “Rootedness,” 8.

³⁴ *Child Welfare Act*, S.O. 1965, c. 14, s. 12. See also: H. Philips Hepsworth, *Foster Care and Adoption in Canada* (Canadian Council on Social Development, 1980); and N. Trocme, “Child Welfare Services,” in R. Barhorst and L. Johnson, (eds), *The State of the Child in Ontario* (Toronto: Oxford University Press, 1991).

³⁵ Florence Clothier, “Problems of Illegitimacy as they Concern the Worker in the Field of Adop-

been suitable for adoption.”³⁶ In some cases CAS workers used the power of ‘child protection’ to remove illegitimate children from the custody of mothers who could simply not afford to support them. For example, one mother was described by the CAS as “a girl of slightly sub-normal intelligence who is employed as a waitress and earns on average \$9.50.” The mother had contributed what she could to the support of her child, who was placed by the CAS in a foster home. The young woman’s own mother was dead and she had “no family home to which she can take him.” After three years, during which the mother consistently visited and attempted to pay for her child, the CAS sought ward action.³⁷

Collecting the costs incurred for adoption placement was easier than collecting on-going child support. Social workers knew from experience that while many men would refuse to pay any child support that might be ordered by the court, most could be convinced to pay the finite costs associated with adoption. The possibility of adoption was always discussed with the putative father, irrespective of the wishes of the mother. When men entered into such agreements, the CAS was relentless about collection of monies owed to the

agency.³⁸ In 51 of 563 adoption cases men paid their debts in full without recourse to court proceedings. In 511 cases the CAS resorted to court proceedings to force recalcitrant men to pay up, and they were overwhelmingly successful. In 438 cases payment was ultimately made in full. In thirty-seven cases partial payment was received. In three cases fathers died before payment could be completed. In twenty-two cases payment was suspended due to the inability of the father to pay. Only in eleven cases did men flee the jurisdiction. The summons process, with its ultimate threat of prison terms, was effective. Each time a summons was issued, a man had to appear in court and pay a small sum towards his debt to the CAS. The quantum of the debt did not increase over time, and eventually the debt would be eradicated through small and partial payment. Many putative fathers realized it was simpler to pay debts voluntarily than to go to court repeatedly. The CAS, then, was unlikely to incur debts from adoption placement, an important consideration in a context of chronic under-funding.

Social workers may also have been motivated by the possibility that some wealthy couples might complete the process of adoption with a significant

tion,” *Mental Hygiene* 25 (October 1941), 579.

³⁶ Clothier, “Problems of Illegitimacy,” 579.

³⁷ AO, Box 411-1-3-11, Case 509, York, 1940. It was explicitly stated in this case file that the probability of adoption was very low, since the child was chronically ill with bronchial infections.

³⁸ This was ironic and hypocritical since when money was owed to mothers, the policy of the court was to allow large arrears to accrue before court action would be taken; in fact, no action would be taken until arrears reached at least \$100.

'charitable' donation to the agency. The Hamilton CAS, for example, actively solicited a donation from one set of prospective, and very wealthy, adoptive parents in 1944, writing to them that "a gift from them in such an amount as they choose will be gratefully received."³⁹ By contrast, court proceedings for paternity declarations and child support were very expensive and, as social workers knew, were often unsuccessful. Some contemporary social workers admitted that financial constraints undermined their work.

This is where the dollar first rears its ugly head. Children's Aid Societies are entirely dependent for their adoption money either on community fund raising, gifts, or contributions from the municipalities. This lack of funds has meant a shortage of staff. Principles, too, have a way of getting tangled with the budget.⁴⁰

Case files make it clear, however, that the attitudes of social workers themselves also reinforced the adoption mandate.

Ideological Commitment to Adoption

Social workers clearly believed that most unwed mothers were incapable of providing an appropriate environment in which to raise their children.

They used diagnostic labels and "the language of clinical blaming" as a "socially acceptable way to speak pejoratively" about unwed mothers and their so-called pathologies.⁴¹ Stereotypical terms were used repeatedly in these case files to describe clients as "delinquent," "immature," "neurotic," "unstable," and/or "promiscuous." Interestingly, the percentage of women described as "delinquent" declined steadily after World War II, while the use of the terms "neurotic" and "unstable" increased, reflecting the changing social work paradigm of the etiology of unwed pregnancy.

Charlotte Whitten, one of the principal authors of the legislation under study, clearly articulated the beliefs about unwed pregnancy that dominated social work thinking until World War II. She asserted that most unwed mothers were "delinquents" of "low mentality."⁴² Under eugenic beliefs it was held that "unmarried mothers are mostly young, they come from the economically inferior strata of the population, they are of inferior mentality and they have previously been delinquent or immoral."⁴³ Delinquency was widely understood – but loosely defined – as behavior that threatened to undermine the expectation that young women would be sexually innocent and passive.⁴⁴ The

³⁹ AO, Box 24-2-3-3, Case 43, Wentworth, 1944.

⁴⁰ Ruth Honderich Spielberg, "Dollars and Adoption," *Maclean's Magazine* (29 November 1952), 48.

⁴¹ L. Hoffman, "Constructing Realities: An Art of Lens," *Family Process* 29, 1-12.

⁴² Whitten, "Unmarried Parenthood and the Social Order," 184-87 and 222-23.

⁴³ Henry Schumacher, "The Unmarried Mother: A Socio-Psychiatric Viewpoint," *Mental Hygiene* 11 (October 1927), 775.

⁴⁴ For definitions of delinquency and information regarding the treatment of delinquent girls,

codification of sexual misbehavior as delinquency for girls led to extensive incarceration. Sociological studies of delinquency were based on evidence from incarcerated populations and these studies confounded correlation with causation.⁴⁵ Because all women pregnant out-of-wedlock were assumed to be sexual delinquents and sexual delinquents were believed to be indiscriminating and promiscuous, experts asserted that unwed mothers had had “short and meaningless relationships”⁴⁶ with the fathers of their children. Early theorists posited that delinquency was linked to organic intellectual deficiency.⁴⁷ It was also widely believed that immigrant women, and those of non-Anglo-Saxon

descent, were more likely to be delinquent and to lack sexual control.

The language of judgment of the unwed mother was transformed in the post-World War II period. In the psychiatric, sociological and social work literature, women pregnant out-of-wedlock were no longer described primarily as delinquents or as organically flawed. Instead, under the growing influence of Freudian analysis,⁴⁸ social workers described unwed mothers as very young, overly sexual, and psychologically disturbed. Myriad social factors, including home conditions, family life and education were now constructed as causative in the etiology of unwed pregnancy. Leontine Young, in her widely read book

see: Ruth Alexander, *The Girl Problem: Female Sexual Delinquency in New York, 1900-1930* (Ithaca: Cornell University Press, 1995); Meda Chesney-Lind, *Girls, Delinquency and Juvenile Justice* (Belmont: Brooks Cole Pub. Co., 1992); Linda Mahood, *Policing Gender, Class and Family: Britain 1850-1940* (London: UCL Press, 1995); Joanne Meyerowitz, *Women Adrift: Independent Wage Earners in Chicago, 1880-1920* (Chicago: University of Chicago Press, 1988); Tamara Myers, “Qui t’a debauché?,” in Lori Chambers and Edgar-Andre Montigny, eds., *Family Matters: Papers in Post-Confederation Canadian Family History* (Toronto, 1999); Mary Odem, *Delinquent Daughters: Protecting and Policing Adolescent Female Sexuality in the United States, 1885-1920* (Chapel Hill: University of North Carolina University Press, 1995); Joan Sangster, *Girl Trouble: Female Delinquency in English Canada* (Toronto, 2002); Carolyn Strange, *Toronto’s Girl Problem: The Perils and Pleasures of the City, 1880-1930* (Toronto: University of Toronto Press, 1995); and Marianna Valverde, “Building Anti-Delinquent Communities: Morality, Gender and Generation in the City,” in Joy Parr, ed., *A Diversity of Women* (Toronto: University of Toronto Press, 1995).

⁴⁵ Lucy Brooking, “A Study of the Delinquent Girl,” *Social Welfare* (April 1921). See also, Charlotte Lowe, “The Intelligence and Social Background of the Unmarried Mother,” *Mental Hygiene* 4 (October 1927), 783-94. Few articles on female delinquency were published in *Social Welfare*, the most prominent social work journal in Canada, between 1920 and 1960 and, as Joan Sangster asserts, “Canadians relied heavily on influential U.S. studies of girl delinquents. Many of these studies started from the premise that girls’ delinquency involved rejection of their gender roles relating to sexuality, domesticity and motherhood”: Sangster, *Girl Trouble*, 33.

⁴⁶ Virginia Wimperis, *The Unmarried Mother and Her Child* (London: George Allen and Unwin, 1960), 55.

⁴⁷ See: Elizabeth Lunbeck, *The Psychiatric Persuasion: Knowledge, Gender and Power in Modern America* (Princeton: Princeton University Press, 1994); and Theresa Richardson, *The Century of the Child: The Mental Hygiene Movement and Social Policy in the United States and Canada* (Albany: State University of New York Press, 1989).

⁴⁸ For a detailed description of the importance of Freudian ideas in Canadian psychological thinking, see: Gleason, *Normalizing the Ideal*.

on unwed pregnancy, *Out of Wedlock*, diagnosed out-of-wedlock conception as a symptom of deeper emotional pathology; the unmarried mother was “an unhappy neurotic girl.”⁴⁹ Echoing these sentiments, Canadian social worker, Betty Isserman, asserted that “unmarried mothers are usually emotionally immature, they come from families that have given them little affection and security, often there is neurosis.”⁵⁰ These ideas had considerable longevity; two prominent Harvard-based psychiatrists argued as late as 1965 that “every unmarried mother is to some degree a psychiatric problem...the victim of mild, moderate, or severe emotional or mental disturbance.”⁵¹

Social workers acknowledged that many unwed mothers expressed a desire to keep their babies, but they claimed that this was itself a symptom of sickness. It was widely believed that “the more healthy, normal unmarried mother has usually faced her situation realistically, has a plan in mind, usually adoption, and will stay with her decision. She can see her child as a human being, with needs, growing and devel-

oping, and she is willing to make the best plan for him.”⁵² The social worker had to be prepared to face considerable opposition from the unwed mother, but it was necessary that such opposition to relinquishment be overcome. As Florence Clothier asserted,

social workers, like physicians, must be prepared to reach a decision as to what will be best both for the baby and for the mother, and then to work actively toward the carrying out of that program. The physician decides what medical procedure will be best for his patient and does everything in his power to carry it out, even though the operation or the medication may involve suffering for the patient. It behooves the worker to formulate a tentative plan for the separation and to get in as much as possible of the preliminary work of carrying out this plan before the baby is born. This preliminary work, of course, will include case-work treatment aimed at making it socially and psychologically possible for the mother to give up her baby.⁵³

As one social worker admitted, “in helping the mother with her decision regarding plans for her baby, our case-work is generally geared to relinquishment. Where this is not achieved...we

⁴⁹ Young, *Out of Wedlock*, 65.

⁵⁰ Betty Isserman, “The Casework Relationship,” *Social Worker* 17:1, (1948).

⁵¹ Philip Solomon, M.D. and Morris Ward Kilgore, M.D., “The Psychiatric Case Conference in a Maternity Home Setting,” American Protestant Hospital Association Conference, Salvation Army Session Papers, 1965, Accession No 82-1, Salvation Army Archives, as quoted in Solinger, 158. See also, James P. Cattell, “Psychodynamic and Clinical Observations in a Group of Unmarried Mothers,” *American Journal of Psychiatry* 111 (November 1954), 337-42; Edmund Pollock, “An Investigation into Certain Personality Characteristics of Unmarried Mothers,” Ph.D. Dissertation, New York University, 1957; Stephen Fleck, “Pregnancy as a Symptom of Adolescent Maladjustment,” *International Journal of Social Psychiatry* 2 (Autumn 1956), 120-21.

⁵² Mary Speers, “Case Work and Adoption,” *The Social Worker* 16:3 (February 1948), 18.

⁵³ Clothier, “Problems of Illegitimacy,” 584.

feel we have failed in adequately helping the mother.”⁵⁴ Case files frequently revealed social workers admitting that women were “reluctant”⁵⁵ to embrace adoption, or even “opposed, and needing much help in decision making.”⁵⁶

One Canadian voice offered open critique of this hegemonic discourse. Svanhuit Josie, a child welfare worker from Ottawa, lamented that “casework with the unmarried mother has come to mean the process of convincing her that it is impossible if not absolutely immoral for her to plan to keep her own child. She must be made to face the ‘reality’ of the situation, which means to give it up for adoption.”⁵⁷ Josie argued that

social workers do not admit that they encourage the mothers, and they emphasize that they only want the best for the mother and child. But I see encouragement in telling the girl how many good and loving families are willing to take her child and that most of these families are rather wealthy and can give the child everything, even the best education.⁵⁸

Her critique, however, prompted a

harsh, immediate rebuttal from the supervisor of the Unmarried Parents Department of the Toronto CAS, who asserted that most mothers keeping their children “were emotionally sick people” and that the social worker therefore “trie(d) to be of assistance in helping her assess the realities of her situation.”⁵⁹ Josie was certainly correct, however, that many families were “willing to take her child.”⁶⁰

The Demand for Babies

Demand for babies helped to fuel the adoption mandate. Despite popular eugenic fears, social workers had little difficulty finding homes for healthy, white infants and over time the demand for babies only grew. Eugenic beliefs suggested that parents might be vary, since the sins and weaknesses of the biological parents could, according to these theories, be transmitted to offspring. As Ada Elliott Sheffed, director of Boston’s Bureau of Illegitimacy argued in 1920, “children of unmarried parents, who doubtless make up a large

⁵⁴ Levitt, “Repeated Out-of-Wedlock Pregnancies,” 8.

⁵⁵ AO, Box 24-2-3-3, Case 41, Wentworth, 1943.

⁵⁶ AO, Box 411-1-3-9, Case 399, York, 1954.

⁵⁷ Svanhuit Josie, “The American Caricature of the Unmarried Mother,” *Canadian Welfare* 29 (12) (December 1955), 249. See also: Svanhuit Josie, “The Unwed Mother...Her Right to Her Child,” *Saturday Night* (15 August 1950), 26-27. The most prominent American critic of the adoption mandate was Clark Vincent. See: Clark Vincent, “The Adoption Market and the Unwed Mother’s Baby,” *Marriage and Family Living* 18 (May 1956), 124-27; Clark Vincent, “Unmarried Mothers: Society’s Dilemma,” *Sexology* 28 (1962), 451-55; and Clark Vincent, “Illegitimacy in the Next Decade: Trends and Implications,” *Child Welfare* 43 (December 1964), 513-20.

⁵⁸ Josie, “The American Caricature,” 248.

⁵⁹ Kathleen Sutherland, “Another View,” *Canadian Welfare* 31:5 (December 1955). See also, Francis Coffino, “Helping a Mother Surrender Her Child for Adoption,” *Child Welfare* 39 (February 1960), 25-28.

⁶⁰ Josie, “The American Caricature,” 248.

number of adoptions, may turn out to show an undue proportion of abnormal mentality.”⁶¹ Canadian reformer Charlotte Whitton echoed this sentiment, asserting that unmarried mothers were usually of low intelligence and weak morality.⁶² However, these problems, child welfare professionals believed, would be overcome through careful social work practice. Much effort would be put into matching an infant, on the basis of extensive psychological and intelligence testing,⁶³ with his or her adoptive parents. It was in this context that it was argued in 1935, in an article in the popular *Parents’ Magazine*, “that the danger of adoption has been largely obviated by scientific advance.”⁶⁴ Even in the early 1920s, however, social workers in the *Ontario Children of Unmarried Parents Act* cases noted that there was “little difficulty in finding a placement”⁶⁵ and that there were “many families who would want this child.”⁶⁶

While adoption was already popular in the 1920s and 1930s, demand for babies increased further in the immediate post-World War II and Cold War period. As Wayne Carp argues in the American context, “parenthood during the Cold War became a patriotic necessity. The media romanticized babies, glorified motherhood, and identified fatherhood with masculinity and good citizenship.”⁶⁷ As Mona Gleason illustrates, the family was a central symbol of ‘normalcy’ in post-war Canada as well.⁶⁸ Childless couples “sought adoption in record numbers as one solution to their shame of infertility.”⁶⁹ The infants available for adoption were “by and large, those born to unmarried mothers.”⁷⁰

It was explicitly babies, not older children, who were in demand. This made the children of unwed mothers desirable, as orphans usually acquired this status sometime after infancy. Under the influence of popular psycholo-

⁶¹ Ada Elliot Sheffield, “Program of the Committee on Illegitimacy – Committee Report,” *Proceedings of the National Conference of Social Work*, (Chicago, 1921), 78. See also: Harley Dickinson, “Scientific Parenthood: The Mental Hygiene Movement and the Reform of Canadian Families, 1925-1950,” *Journal of Comparative Family Studies* 24 (Autumn 1993), 387-402.

⁶² Charlotte Whitton, “Unmarried Parents and the Social Order” Parts I and II, *Social Welfare* (April/May 1920), 187.

⁶³ The Stanford revision of the Binet-Simon intelligence test was particularly popular: Sophie van Senden Theis, *How Foster Children Turn Out* (New York, 1924); James W. Trent, *Inventing the Feeble-Minded: A History of Mental Retardation in the United States* (Berkeley, 1994).

⁶⁴ Helen D. Sargent, “Is It Safe to Adopt a Child?” *Parents’ Magazine* 10 (October 1935), 26.

⁶⁵ AO, Box 512-2-3-4, Case 1034, Algoma, 1923.

⁶⁶ AO, Box 411-1-3-9, Case 387, York, 1925.

⁶⁷ Carp, *Family Matters*, 29.

⁶⁸ Mona Gleason, *Normalizing the Ideal: Psychology, Schooling and the Family in Post War Canada* (Toronto: University of Toronto Press, 1999).

⁶⁹ Carp, *Family Matters*, 29.

⁷⁰ Katherine Bain and Martha Eliot, “Adoption as a National Problem,” *Pediatrics* 20 (1957), 367.

gy, in particular the work of John Bowlby in the 1950s, parents sought custody of babies as early as possible. Bowlby asserted that “on psychiatric and social grounds...the baby should be adopted as early in his life as possible...the first two months should become the rule.”⁷¹ Parents also wanted to maintain the fiction of the biological family to the wider world (and at times even with adopted children themselves) and this was facilitated by adoption of the infant as early in his/her life as possible.

The majority of adoptive parents – because of biases in the selection process – were white and at least financially comfortable;⁷² to maintain the fiction of the biological family the babies they sought also had to be white and healthy. It is clear that “babies who [came] from mixed racial backgrounds or whose parents belong[ed] to a minority group” were not considered suitable for adoption, as “traditionally people like to adopt babies who look enough like themselves so that the child can at least appear to

be blood related.”⁷³ Only one of the 563 children placed for adoption in the cases under study was non-white. In this case the social worker asserted that

there may be some delay in finding a family who will accept the part Negro background. This child is not Negroid in appearance. He is quite attractive with a full little face, small regular features, ovile [sic] complexion, very dark brown eyes, medium brown hair that may curl. He is small but sturdily built. Therefore we feel he has a good chance of achieving adoption.

Had he been more “Negroid looking,” it is suggested that adoption would have been unlikely.⁷⁴

It is clear, however, that both social workers and adoptive parents were less concerned about the ethnic background of children. Despite eugenic fears in the 1920s and 1930s about genetically inherited inferiority, the assumed cultural inferiority of non-Anglo-Saxon groups could be overcome, it was repeatedly asserted, through assimilation. Adoption offered the most complete

⁷¹John Bowlby, *Maternal Care and Mental Health* World Health Organization Monograph Series, no. 2 (Geneva: World Health Organization, 1951), 101 and 103.

⁷²Not only have white parents historically, in a context in which adoption was secretive, sought babies who looked like themselves, but also the costs of adoption have precluded recourse to the courts by poorer segments of the community. As the rates of relinquishment amongst white unwed mothers have declined, and the color bar has become less important in adoption, it remains well-to-do white couples who are most likely to adopt. “The laws of supply and demand (along with their frequent companions, greed and graft) are largely responsible for the escalating costs of adoption; they are also among the key reasons so many Americans have come to rely on other nations to complete their families”: Adam Pertman, *Adoption Nation: How the Adoption Revolution is Transforming America* (New York: Basic Books, 2000), 22.

⁷³Ruth Pierce, *Single and Pregnant* (Boston: Beacon Press, 1970), 133.

⁷⁴AO, Box 411-1-3-9, Case 407, York, 1951. Handicapped children were also considered undesirable for adoption. Three children of the 1,992 born to women who had not cohabited were handicapped at birth and in all cases the children were placed in specialized institutions. Their mothers did not have adequate resources to provide the care required by the babies, and adoption was not considered possible.

and irrevocable form of assimilation possible. It is disturbing, but perhaps not surprising, that women who were not Anglo-Saxon, particularly those who were first generation immigrants, were very vulnerable to pressures to release their children for adoption. Not only would cultural assumptions in the CAS have ensured harsh judgment of the women's morality and mothering potential, but also the financial situation of recent immigrants was likely to be more precarious than that of other unwed pregnant women. Often, these women did not have extended family in Canada to whom they could turn for help, and their communications with the CAS were fraught with difficulty if they did not speak English. Of 1,741 English and Anglo-Saxon white, never-married women, 379 or 21.8%, released their children for adoption. By contrast, 173 of 251, or 68.9%, of non-Anglo-Saxon or non-English speaking women relinquished their children.

The demand for healthy, white babies was enormous and invited abuse. Evidence from the United States, particularly during the 1950s, illustrates the existence of a widespread and profitable underground market in white babies.⁷⁵ Workers in child care agencies asserted that "many abuses have been reported

around a mother's relinquishment of her child."⁷⁶ Ironically, however, evidence from the United States makes it clear that some of the worst cases of abuse of power involved child welfare agencies themselves. It is possible that some welfare workers in Ontario were also corrupt.⁷⁷ Several young mothers in these cases hinted that the CAS was profiteering in the baby racket, asserting that "babies had been sold to the United States without the consent of their mothers."⁷⁸

The vast majority of child welfare professionals, however, were not involved in such practices and they expressed deep concern about illegal adoption. Child welfare workers asserted that all adoptions should be regulated through children's agencies in order to prevent undue exploitation. However, they simultaneously admitted that "agency policy is to have mothers of illegitimate children consent to having those children made Crown wards so that adoption may be facilitated and the process speeded up."⁷⁹ They did not recognize that control over both adoption and affiliation proceedings placed child welfare workers themselves in a position of conflict of interest. The circumstances under which young women agreed to relinquishment were not always those of unfettered choice.

⁷⁵ See: Solinger, *Wake Up Little Susie*. For a disturbing account of the illegal seizure and sale of the babies of unwed mothers in Nova Scotia during this period, see: Bette Cahill, *Butterbox Babies* (Toronto: Seal Books, 1992).

⁷⁶ Margaret Thornhill, "Unprotected Adoptions," *Children* 2:5 (September-October, 1955), 183.

⁷⁷ Certainly, baby selling from maternity homes happened in other provinces. For a detailed description of the corruption in one Nova Scotia home, see: Cahill, *Butterbox Babies*.

⁷⁸ AO, Box 27-9-1-1, Case 295, Middlesex, 1945.

⁷⁹ Lemby, *Family Law*, 158.

Convincing the Unwed Mother

Young women were under considerable pressure to conform to the adoption mandate. This did not go unnoticed by unwed mothers themselves. One distraught mother asserted that “all social agencies are anxious that all unmarried mothers give up their children.”⁸⁰ Another mother, under interrogation in the court, echoed such sentiments:⁸¹

Q: What are your intentions with regard to the child?

A: I am going to keep her and bring her up to the best of my ability.

Q: Has anyone ever explained to you that in the best interest of the child it would be better to give it up?

A: Too many people have told me that.

As this exchange attests, unwed mothers did not always give social workers their unfettered cooperation. But they were vulnerable. As other authors have also recognized, “she had to seek help and was then dependent on virtually the same bodies who acted as agents for adoption. This proximity was not always unrelated to the decision to relinquish a child.”⁸²

CAS workers had a responsibility to ensure that mothers were aware of the financial difficulties that they would inevitably confront raising children alone, but lurid descriptions of abject poverty were used to dissuade mothers from keeping their infants. The Canadian Welfare Council advised social workers that

the mother should know that if she keeps her child she may be beset by many difficulties of which she can hardly be aware before experiencing them. She may be censured by relatives and neighbors; she will have, in all probability, acute difficulty in supporting herself and her child; she may jeopardize her opportunity for a marriage later on.⁸³

During interviews with the CAS, women were routinely warned that “single mothers just can’t hope to escape want”⁸⁴, that “men don’t want used goods”⁸⁵ and that “society would not be very accepting”⁸⁶ of the mother who kept her child. The Welfare Council asserted that such dire warnings did “not disregard the unmarried mother’s right of choice.” Instead it was believed that “with more understanding of the complications of the problem, the caseworker is able to approach the situation more objectively and help the unmarried mother arrive at a realistic decision.”⁸⁷

⁸⁰ AO, Box 411-1-3-11, Case 498, York, 1947.

⁸¹ AO, Box 411-1-4-5, Case 2316, York, 1960.

⁸² Kate Inglis, *Living Mistakes: Mothers Who Consented to Adoption* (London: George, Allen and Unwin, 1984), 5.

⁸³ Anne Petrie, *Gone to an Aunt’s: Remembering Canada’s Homes for Unwed Mothers* (Toronto: McClelland and Stewart, 1998), 147.

⁸⁴ AO, Box 24-2-3-3, Case 49, Hamilton, 1959.

⁸⁵ AO, Box 411-1-3-11, Case 503, York, 1947.

⁸⁶ AO, Box 27-9-1-1, Case 301, Middlesex, 1942.

⁸⁷ Petrie, *Gone to an Aunt’s*, 147.

The unsavory tactics CAS workers could use to convince women to place children for adoption are made very clear in a case that came before the court in Toronto in 1959. Although this case may have been extreme, it reveals the potential for abuse inherent in the allocation of a myriad of powers to a single, unregulated, agency. In this case the putative father had agreed to pay \$700.00 costs on the assumption that the child would be placed for adoption immediately after birth. After delivery, however, the mother decided to keep the child, and tried to enlist the support of the CAS. The CAS refused to help her in the absence of a formal admission of paternity from the putative father and the case advanced to court only when the mother obtained financial aid from her parents and sought legal counsel.

Evidence heard in court suggests that the father in this case had much greater financial resources than did the mother. He worked at Mount Sinai and was a foreign student doing post-graduate work in medicine; she was a secretary. He manipulated the informal proceedings with the CAS to his own advantage. While he admitted intercourse and an on-going relationship with the mother, he refused to admit paternity and threatened not to “pay a cent” if she kept the child, but to return to his homeland to avoid any such responsibility. She was angry because he was relatively well off and had gone on holidays in Europe during her pregnancy, yet he had refused to give her any financial assistance. She was heart-bro-

ken that he had been so uncaring when “he could afford to help me out and I needed some moral support, kindness or something.”

She also she asserted that she had been under unrelenting pressure to release the baby for adoption:

Q: You stated that you had – in answer to your own counsel’s questions – been pressed to put your child up for adoption.

A: That’s right.

Q: By whom?

A: Mrs. M., the representative of the CAS... Both before and after the birth, and even after the 26 May when Judge B gave me custody of the child, and she still tried to tell me that it was the best thing to give the child up for adoption...The CAS said that this money – I should accept it – otherwise Dr. M. might go away and I wouldn’t get anything.

Called to the witness stand, Mr. B, a second CAS worker, inadvertently revealed the methods of influence that could be used to encourage women to place their children for adoption:

It was made clear to me by Dr. M. that if there was a possibility of effecting a settlement for a fixed amount of money there was a possibility of this settlement being negotiated, if there was no possibility of effecting a settlement of a fixed amount then he was not interested in a settlement or an agreement of a continuing nature. Now this was made quite clear to Miss R. It was made clear to Miss R. the alternatives that there is a provision under the Child Welfare Act whereby an application can be made for an affiliation order. It was made quite clear to Miss R. that this was a service made available to her by the agency should she choose to avail herself of the service. We discussed the possibility of

corroborative evidence, and in my considered opinion there was no evidence.

CAS workers had emphasized to the mother that she would live in poverty should she raise her child alone and that, therefore, the ‘reasonable’ approach to the problem was to release the child for adoption. When this tactic failed, they threatened that they disbelieved her story of paternity, asserting that if she insisted on pursuing her lover in court she would not only lose, but also would be humiliated in the process:

Q: You discussed with her whether or not there was adequate corroboration. You felt that there was no adequate corroboration.

A: I saw Miss R. had yet to provide corroboration. There was no intention at this point at all that Miss R. was desirous of taking this thing to court.

Q: Well the question of corroboration I suggest is a legal matter, whether or not there is corroboration – you discussed with Miss R. that in your opinion there was no corroboration, is that right?

A: That is correct.

Q: So you were advising her legally about the fact that there was no corroboration?

A: Well, let’s say that I was.

Q: Well, then is it not true that in the CAS’s handling of these cases that they usually handle the cases in which the applicant doesn’t have a lawyer and the Children’s Aid Society takes them under their wing and looks after them, isn’t that right, and the CAS doesn’t like a private lawyer. I suggest that Mrs. M implied to you that she hoped the child would be adopted...and that she would be able to get Miss R. to agree to the said adoption.

A: Yes.

Miss R. had obtained no legal advice at the time of the agreement and had

expressed her desire to keep the child. CAS workers knew, as her lawyer put it, that “if the mother intends to keep the child then the agreement is not adequate.” The mother was subjected to a constant barrage of pressure to place her child for adoption since a “suitable family had been found for the child.” She was forced to get a court order confirming her custody of the child, at considerable expense, despite the fact that she had never signed consent papers for adoption. She was threatened that support would not be forthcoming and that it would be difficult, if not impossible, to raise the child herself, and was informed, without legal counsel, that she had inadequate evidence to take her ex-boyfriend to court. Clearly, CAS workers assumed that they were free to behave in an aggressive manner, forcing their solution to the problem on the unwilling mother, because they thought it unlikely that “she was desirous of taking this thing to court.”

It is also significant that the CAS workers, in their initial interaction with the mother and in their determination not to go to court on her behalf, were arbitrary in their assessment of what constituted corroborative evidence. Miss R. had several friends who were willing to attest to the long-standing and exclusive nature of the relationship between the parties. CAS workers admitted that the putative father had given a social history for adoption and that “they would not normally accept such information if they did not believe the putative father to be the actual father of

the child.” If they believed him to be the father of the child, why were they unwilling to go to court on Miss R’s behalf? The answer seems to lie in two facts: court proceedings were expensive and this white baby, born of educated parents, was exceedingly desirable for adoption.

They also used information obtained during initial intake against the mother. They taunted the young woman with evidence of her previous sexual indiscretions. They asserted that promiscuous women were not believed in court, despite the fact that no evidence existed that the woman had been sexually active with anyone other than the putative father of the child at the time material to conception. The trump card with which they threatened Miss R. was the fact that she had previously given birth out of wedlock in 1949.:

Q: When I inquired if you had a child previous to the one in question, you said yes and also that you had given up the child. To whom?

A: I don’t know. When these people came to me I was quite young. I didn’t even see the baby. They said the best thing was for the child to be adopted.

Q: Who are the people?

A: I don’t know, but all this happened in the hospital, through the Children’s Aid Society.

Q: Did you on that occasion sign any papers?

A: I signed. A lady came in and I signed my name to a paper. That’s all. Nothing was read to me. I didn’t see the child or anything and that’s the reason I want to keep my child. I feel I have a right to keep my child.

It is ironic that Miss R. had the fortitude to challenge the CAS because of her previous experience, yet this experience was used against her in court. CAS workers asserted that a woman who had previously given a child up for adoption understood the consequences of the agreement that she had signed in this case. The court concurred. The presiding judge softened the blow by asserting that his “sympathies [were] with the mother.” He nonetheless determined that there had not “been any undue influence on the mother at the time she agreed to accept this amount, and no unfair advantage seems to have been taken of her.”⁸⁸ He did not define what would, in his estimation, constitute undue influence or unfair advantage. The evidence in the CAS files suggests that this case reflects standard practice and that what was unusual was that the mother challenged the powers of the CAS.

The conflict of interest inherent in adoption proceedings was recognized by the Supreme Court of Canada in 1970. Sylvia Elaine Mugford sought an order for “production and delivery of

⁸⁸ AO, Box 411-1-2-9, Case 976, York, 1959. This court procedure must have been unbearably painful for the young woman in question. She had been seventeen years of age when her first illegitimate child was born, and had fled her home town and given birth, and released the child, in Toronto. Her parents had not known about this pregnancy. When she decided to keep her second child, however, not only did she have to reveal the facts of this pregnancy to her family, but court proceedings forced her to admit her earlier pregnancy to family members as well.

the infant David John Mugford” born to her out-of-wedlock.⁸⁹ The child had placed for adoption, but the final adoption order had not yet been granted by the court. Her application was dismissed by the Juvenile and Family Court of Carleton County, but her right to custody was ultimately confirmed by the Supreme Court of Canada. The young woman, on learning that she was pregnant, had moved to live with a married sister in Ottawa. She consulted the CAS with regard to the future of her child. In court, social workers affirmed that the mother had been “tense and upset,” “depressed,” and “in a state of indecision as to what should be done about the child.”⁹⁰ She was nineteen years old and her parents did not know that she was pregnant. She signed consent to adoption papers, but shortly thereafter informed her parents of her predicament and sought their help in regaining custody of her child. The child had been placed in an adoptive home for only a few weeks. The CAS, despite the fact that the Supreme Court, in 1950, had affirmed the right of a mother to reclaim her child during the probationary period to adoption,⁹¹ refused to deliver the child to her. They informed the mother that

David has adjusted well to his new environment and we cannot disturb this arrangement. However, you can feel assured

that he is receiving plenty of loving care, and he will be given every opportunity to grow into a healthy and happy adult...I hope you will be able to adjust and make a new life for yourself.

The Supreme Court overturned this refusal, asserting that the right to reclaim a child could only be abrogated on evidence “that the mother had deserted or abandoned the child” or that she was “unmindful of her parental duties.”⁹² Such evidence did not exist in this case. Instead, it was found that:⁹³

While she at length consented to making the order whereby her child became a ward of the Crown, she was motivated solely by a sincere desire to do what she thought was then in the best interests of her child despite an almost overpowering desire on her part to keep him and be a mother to him. It was virtually an act of self-denial and required a strong effort on her part to suppress her innermost feelings towards the little human being to which she had just given birth. This becomes evident not only upon a consideration of her testimony given at the hearing but upon perusal of her letters. Her vacillation, upon which such undue emphasis was placed by the learned Juvenile and Family Court Judge, can surely be understood by anyone who takes a penetrating look into this woman’s sorry and helpless plight, she being most desirous of keeping her baby yet not wanting to expose him to a life of penury and misery. Any doubts as to her true motives must surely be dispelled by the immediate

⁸⁹ *Re Mugford* [1970] 1 O.R. 601-611 at 601.

⁹⁰ *Re Mugford* [1970] 1 O.R. 601-611 at 603.

⁹¹ *Re: Baby Duffell* [1950] S.C.R., 737.

⁹² *Re Mugford* [1970] 1 O.R. 601-611 at 606.

⁹³ *Re Mugford* [1970] 1 O.R. 601-611 at 605.

and positive steps taken by her to recover custody when the kind and sympathetic understanding of her parents prompted them to come to her aid.

This case confirms the widespread acceptance in the CAS of adoption placement methods that disempowered unwed mothers. The law delegated myriad powers to the CAS that could be used – and abused – in convincing recalcitrant women that relinquishment was desirable. Cases in which women challenged the powers of the CAS were rare. Few unwed mothers in the

cases heard under the auspices of the *Children of Unmarried Parents Act* would have had the resources available to Sylvia Mugford. It is important to recognize that the history of adoption is not simply a history of child-saving. It is also a history of coercion and denial of choice. The rhetoric of children's rights, ironically, undermined the rights of mothers themselves.⁹⁴ In a context in which the citizenship rights of children are a powerful political tool, this fact has important implications for the present.

⁹⁴ For an insightful examination of the rhetoric of child-saving, see: Xiaobei Chen, *Tending the Gardens of Citizenship: Child Saving in Toronto, 1880s-1920s* (Toronto: University of Toronto Press, 2005).