RESUMO
Despite unprecedented social and legal recognition of LGBTQ families in Canada, close to half the population continues to believe that we should be denied the right to parent. These tensions underlie the experience of LGBTQ families as we continue to bring children into our lives in increasing numbers. This talk will review some key historic moments in the history of LGBTQ parenting in Canada, and explore the impact of this history on the lives of LGBTQ parents and their children.

HISTORICAL TENSIONS
The last thirty years in Canada has been marked by staggering social, legal and political change in relation to LGBTQ families. The social and political climate has shifted from one that forced queer people to deny huge parts of themselves in order to keep their children, to one where we can increasingly claim our sexual and gender identities and our right to parent. And yet, our experiences in most institutions, including daycares, schools, health care facilities, and fertility clinics continue to be informed by profound hetero- and cis-normativity (the assumptions that heterosexuality is “normal” and that biological sex always matches gender identity.). As recently as 2004, a Gallup poll found that only 52% of Canadians supported adoption rights for same-sex couples. (Rayside, 2008: 47)

Despite unprecedented legal and social recognition, many LGBTQ parents still fear that their children will be taken away from them, struggle with questions about their own legitimacy as parents, and find that current family law does not adequately recognize or protect their families. These tensions underlie the lives of queer parents in Canada — the tensions between our history and current realities, between the enormous gains we have achieved and the ways our right to parent continues to be undermined.

---

1 This paper is the publication of the talk of Rachel Epstein in the First Congress of Parenthood of the Porto Institute of Psychology and Neuropsychology (1º Congresso Internacional de Parentalidade do IPNP Instituto de Psicologia e Neuropsicologia do Porto, http://ciparentalidade.webnode.pt/).
THE 1970S: CUSTODY DENIED

Thirty years ago queer and trans parents were, for the most part, invisible. It was in the 1970s that lesbian mothers, a previously unrecognizable category, gained a degree of visibility. Women who had become parents in heterosexual relationships and then “came out” were in the courts fighting for custody of their children. Many, understanding the legal climate of the time, chose to relinquish custody in favour of liberal access (Rayside, 2008). In Canada, the climate was disheartening, with courts distinguishing between “good” and “bad” lesbian mothers (and gay fathers); the good ones being those who were not visible, militant, or sexual (Arnup, 1995). In 1977, Francie Wyland wrote, “Only once in Canada, and fewer than a dozen times in the United States, has a known lesbian mother been granted unconditional custody of her children” (cited in Mackay, 1982: 16). Small, virtually unfunded groups such as the Lesbian Mothers’ Defence Fund, based in Vancouver and Toronto, provided financial, emotional and legal support to lesbian and gay parents fighting for custody of their children.

In these court battles, which involved enormous loss and heartbreak, lesbian and gay parents were pushed to present themselves and their children as “just the same as” and “just as good as” an ideologically based notion of the heterosexual nuclear family — itself an artificial construction that never in reality looked or worked like it was supposed to. Court decisions that denied lesbians and gay men custody of their children were based on a series of arguments that found lesbians and gay men to be “unfit parents” (Pollack, 1990). These arguments, originating in the custody battles of the 1970s/80s, have demonized lesbian/gay parents in popular culture and are now deeply embedded in mainstream consciousness. LGBTQ parents and their allies have spent decades rebutting them. They include assumptions that: lesbian/gay sexuality is immoral and that lesbians/gay men are promiscuous, sexually maladjusted and likely to sexually harm children; children raised in lesbian/gay homes will develop inappropriate gender identities and gender role concepts and behaviours, and may themselves develop a homosexual orientation; healthy child development requires the presence and availability of biological fathers as “male role models” (or in the case of gay fathers, “female role models”); and children raised in lesbian/gay homes will be socially stigmatized and subjected to ridicule, teasing, and hostility from their peers.

When lesbian and gay parents (and their lawyers) were in court rebutting these arguments, they had to respond within the given framework. They had to prove that they were “fit” to be parents — that their kids would be “just like” kids growing up in heterosexual families. The research carried out during this period helped to bolster these arguments. (For a summary of this research, see Patterson, 2005.) Much as we would like to leave behind this framework that puts us on the defensive by requiring that we prove both our “fitness to parent” and our likeness to a non-existent heterosexual norm, the political and social context within which we parent does not fully allow us to do so.
POSTER FAMILIES, POSTER CHILDREN

Despite massive social change and the creation of new possibilities, queer parents and their children continue to feel pressured to conform in order to be accepted and to present as “poster families” and as “poster children.” The sanitized version of their families they feel pressured to present does not include parents’ struggling with depression, alcoholism, or domestic abuse, or those times when the kids don’t like their parents, or feel ambivalent about their parents’ sexual orientation, or long for a parent of the other gender. In this version, “Nobody is in trouble at school. Nobody throws tantrums or threatens to run away. Nobody is experimenting with drugs. Ever. Did I mention that the kids think their parents are the coolest?” (Garner, 2004: 22). There is a dearth of spaces where queer parents and their children can converse honestly about the full breadth of their realities.


The 1980s were hardly a stellar time for queer parents, but the decade did nourish the seeds of what came to be known as the “lesbian baby boom.” As part of a growing lesbian and gay activism, with links to feminism, the women’s health movement, and other progressive social movements of the time, lesbians began to seek ways to bring children into their lives. But there were no places to go for information, no organized groups or programs. Those early days of lesbian conception were characterized by a feminist, self-help, empowerment model of women’s health. The women’s health care movement was premised on women taking control of their bodies and their reproductive lives; lesbians desiring children set out to do so. Many got pregnant at home, relying on knowledge of cervical mucous, known sperm donors or donors known to third parties, and syringes (not typically the mythical turkey baster, though it remains iconic). Small groups of women (eg. the Lavender Conception Conspiracy in Vancouver) began to meet to share information, knowledge and support. Women helped each other find men willing to be sperm donors, carried sperm for each other, shared knowledge about fertility and insemination, and supported each other through the roller coaster of conception, including the disappointments and heart break of miscarriages and infertility.

The medical establishment, at this time, was not forthcoming in its support of other-than-heterosexual parenting. Some fertility clinics flatly refused to provide insemination service to lesbians, others acted as gatekeepers. A doctor in Toronto routinely required lesbians to write a “letter to the doctor” to convince him to provide access to services; others required lesbians to undergo psychiatric assessments before making decisions regarding service provision. In Quebec, clinics refused to give unmarried or lesbian couples access to donor insemination (Nicol, 2009).

And, while biological mothers who had children from heterosexual unions were fighting their male ex-partners for custody of their children, the female partners of women giving birth to children in the context of same-sex relationships had no legal rights to their children — non-biological parents were courageously committing themselves to children with no guarantees that they would
be protected in their parenting roles. Gay fathers, in some instances, were choosing to stay in heterosexual marriages for fear of societal homophobia and the loss of their families. Those who were visible were struggling with disclosing their sexual orientation to children and spouses, with the consequences of a homophobic legal system, and with their own identities. Trans and bisexual parents were virtually invisible — and where trans people were visible as parents, they were subject to excruciating discrimination. The 1980s were marked by much discrimination and many barriers to parenting for queer and trans people, but also sowed the seeds for the significant and far-reaching changes to come.

THE 1990S: TURNING POINTS

The 1990s were marked by turning points for LGBTQ parents, including significant and hard-won gains in both visibility and recognition. In 1995 an Ontario family court judge granted non-biological parents the right to adopt their children, a historic decision which, for the first time, recognized LGBTQ parents as “fit” to be parents and recognized non-biological parents as equally deserving of the title. While this decision changed the landscape for LGBTQ parents in Canada, the judge hearing the case had to recognize the couples as “spouses” before he could declare the people involved “parents. So while the right to second parent adoption provided much-needed recognition and protection for non-biological parents, it also established that, at that moment in our history, the only legitimate legal way to parent was within a two-person spousal relationship. Also, second parent adoption, unless you are prepared to do hours of preparation and meticulous paper work, requires a lawyer. Issues of class and access to financial resources become key when costly legal procedures are required in order to secure parenting status (Bogis, 2001). And, is it still a choice to not pursue state-sanctioned legal protections? For example, some lawyers have suggested that if a non-biological parent chooses to not pursue a second-parent adoption, courts might interpret this as a lack of commitment to the child (Dalton, 2001). Each legal gain brings with it new questions and complexities.

The decade also saw a shift from a self-help model of reproduction and family-building in LGBTQ communities to an approach that increasing included the consumer-based, profit-oriented, highly-medicalized world of assisted reproduction. The existence of HIV/AIDS and fears about the medical and legal risks of involving known sperm donors, led to what Mamo (2007: 129) refers to as the use of “hybrid technology” in lesbian reproductive practices – the coexistence of the feminist health ideals of the 1970s and 1980s with biomedical expertise and services. (Mamo: 53)

While queer family recognition in most provinces came about largely due to individual legal challenges and court decisions, parenting rights in Quebec were won through grassroots organizing, coalition building and legislative change. The Lesbian Mothers Association of Quebec, founded in 1998 in the living room of Mona Greenbaum and Nicole Pacquette, launched a focused and highly-organized campaign for recognition of lesbian and gay-led families. In coalition with
organized labour and the women’s movement, the LMAQ’s campaign so influenced public opinion and the minds of legislators, that in June, 2002, Bill C-84, a bill that revised the filiation provisions of the Civil Code of Quebec to extend equal parenting rights and recognition to same-sex couples, passed unanimously and without abstentions in the legislature. (Nicol, 2009) Perhaps the grassroots approach assumed by activists in Quebec, and their insistence on the visibility of their families in their campaign for family recognition, is linked to the fact that Quebec is the only Canadian province that protects the integrity of lesbian primary parents, even when a known sperm donor is involved.

THE 2000S: QUEERING THE FAMILY TREE

The new millennium brought with it continued and expanded legal and social recognition for LGBTQ families, as well as increasing visibility and access to parenthood for gay, bi and trans people, and more social programs for parents across the LGBTQ spectrum and across the country. As well, and significantly, Canadian queer parenting activists have had the luxury of remaining removed from the struggle for same-sex marriage because in Canada, unlike many parts of the United States, parenting rights are not linked to marriage. (For a U.S.–Canada comparison, see Rayside, 2009). However, daycares, schools and other institutions continue to be characterized by profound hetero- and cis-normativity, homophobia and transphobia, and the law continues to lag significantly behind the structures of our families. Many of our families are still not adequately recognized or protected.

Legal and policy changes in the new millennium include adoption reforms that allow “out” same-sex couples access to public adoption in all Canadian provinces. Children’s Aid Societies in most major Canadian cities are opening their doors to LGBTQ communities as prospective adoptive parents. Many have done internal educational work to make lesbian/gay adoption more possible, and are regularly placing children with same-sex couples. Some are also taking steps to process applications by transgender prospective adoptive parents.

While second parent adoption granted historic rights to co-parenting lesbian couples, many were frustrated by a system that required them to spend time and money in order to adopt the children they had been parenting since birth. Parents (and interested lawyers) started to seek other ways to gain parental recognition. A 2001 B.C. Human Rights Tribunal case (Gill v. Murray) was the first successful Canadian challenge to the exclusion of same-sex couples under vital statistics regimes. This was followed by a similar complaint in New Brunswick in 2004, and an Ontario Charter challenge in 2006 (Rutherford v. Ontario, 2006 CarswellOnt 3463, 81 O.R. (3d) 81, 270 D.L.R. (4th) 90, 30 R.F.L. (6th) 25 (S.C.J.) which resulted in the striking down of the Ontario Vital Statistics Act as it was found to discriminate against same-sex couples in its birth registration procedures. This case eliminated the need for second parent adoption for those same-sex couples in Ontario who conceived via anonymous sperm donor — provided there was no sexual intercourse involved in
conception. It is now possible for lesbian couples to enter both women’s names on a birth registration in B.C., Alberta, Saskatchewan, Manitoba, Ontario, Quebec and New Brunswick, conferring what is known as “presumptive proof of parentage.” Birth registration reforms, however, continue to assume the two-parent family, and do not adequately address or recognize the more-than-two-parent family, a configuration not uncommon in LGBTQ communities.

2007 saw a significant challenge to the conventional two-parent family model. In an Ontario case popularly referred to as AA/BB/CC the courts, on appeal, recognized three people – a lesbian couple and the man they are parenting with – as a child’s parents. (A.A. v B.B.,(2007) 83 O.R.(3d) 561 (C.A.) [A.A. v B.B.]) This was particularly significant in that the courts did not require “spousal” status in order to recognize parental status, i.e. people outside of conjugal relationships were recognized as parenting the same child – a step forward from the 1995 decision which required that spousal status precede parental status. In another Ontario case, a single gay man who became a father through a surrogacy arrangement with an egg donor and a gestational carrier, successfully appealed to the courts to be the only parent named on the birth registration (Gulliver, 2006).

While each of these victories was hard-won and relied on passion, commitment and untold hours of pro bono work from the lawyers who fought them, LGBTQ families in Canada continue to face much uncertainty within family law systems, particularly with regards to legal recognition of non-biological parents (at birth and post-separation), multiple parent families, and families created through assisted conception and third party donors. The complexities of our families are, for the most part, not adequately reflected in the law.

SHIFTING LANDSCAPES

As we achieve more visibility and social recognition, the framework which has had us defending ourselves against a non-existent heterosexual norm, proving how “normal” and “the same” we are, is shifting. Queer parents, and researchers of queer parenting, are starting to address some of the complexities of our lives, including the ways that LGBTQ families may differ in interesting (and, perhaps, not so interesting) ways from mainstream heterosexual experience. Stacey and Biblarz in their landmark 2001 article “(How) Does the Sexual Orientation of Parents Matter?” refuse the “we are the same” conversation and insist on exploring differences, drawing on fifteen years of research on children with lesbian moms. The differences they highlight in children growing up with lesbian/gay parents include less traditional gender-typing; higher self-esteem and better mental health; more egalitarian, shared parenting; more closeness and communication between parents and children; and increased awareness and empathy in children towards social diversity. The most recently released study (Gartrell, Bos, Goldberg, 2010) found that adolescents reared in lesbian families are less likely than their peers to be abused by a parent or caregiver, and that daughters of lesbian mothers are more likely to engage in same-sex behaviour and to identify as bisexual – a finding that will likely be used by some to promote the idea that LGBTQ parents “recruit” their
children. While the differences both these studies point out are fascinating, the most exciting contribution they make is the shift from a limiting framework of defensiveness to one of exploration, curiosity, and possibility. This shift is made possible by the social and legal recognition and security queer parents, in some places, have achieved.

REFERENCES


