

First Peoples Child & Family Review

An Interdisciplinary Journal Honouring the Voices, Perspectives, and Knowledges of First Peoples through Research, Critical Analyses, Stories, Standpoints and Media Reviews

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Volume 12, numéro 1, 2017

URI : <https://id.erudit.org/iderudit/1082440ar>

DOI : <https://doi.org/10.7202/1082440ar>

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Éditeur(s)

First Nations Child and Family Caring Society of Canada

ISSN

1708-489X (imprimé)

2293-6610 (numérique)

[Découvrir la revue](#)

Citer cet article

Gehl, L. (2017). Ontario's history of tampering and re-tampering with birth registration documents. *First Peoples Child & Family Review*, 12(1), 24–33. <https://doi.org/10.7202/1082440ar>

Résumé de l'article

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Ontario's history of tampering and re-tampering with birth registration documents

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Abstract

This article opens a discussion on the matter of Ontario administrators', hospital and government employees' history of tampering with long form birth registration documents in situations where birth mothers were unmarried or separated. Relying on Indigenous methods, such as listening to personal stories, and experts, the author explores how the practice of tampering with birth documents places Indigenous mothers and children in double jeopardy of not only being denied the information of who their biological father is or was, but also potentially being denied Indian status registration. Mothers and their children are deserving of more. This article ends with arguing additional research and funding are needed for a comprehensive understanding of the issue.

Keywords: Vital Statistics Act, birth certificate, birth registration, proof-of-paternity

Introduction

The rituals and practices associated with the celebration of motherhood and childbirth must be preserved as sacred because fundamentally they serve to shape and guide who the child is and where their life journey will take them, and they also serve the special relationship between mother and child. In the context of imposed secularism the process of registering a child's birth through registration documents has taken on enormous meaning for both mother and child. When state officials interfere with the process of recording a child's birth, through standard operational procedures of administration, policy, and legislation, ways that deny dignity to a mother and her child, this is unfortunate. The health and well-being of mothers and children are crucially important to a healthy society; as such they must be at the forefront of all cultural practices, foremost during the process of recording the miracle of birth.

I have written in abundance about Indigenous and Northern Affairs Canada's ("INAC") Proof of Paternity ("POP") policy.² Succinctly, INAC's POP policy applies a negative presumption of paternity

² In April, 2017, through *Gehl v Attorney General of Canada*, the Ontario Court of Appeal struck down INAC's POP policy arguing it was unreasonable in its sex-discrimination. Subsequently, through Bill S-3, An Act to amend the Indian Act (elimination of sex-based inequities in registration), two remedial clauses were added whereby INAC can no longer assume

when the father's information is not recorded on the long form birth document.³ What I mean by this is that INAC's POP policy assumes all unrecorded fathers are non-Indian as defined by the *Indian Act*. The result of this POP policy is that it denies Indian status to a child whose mother is registered under section 6(2) of the *Indian Act* (Gehl 2013a, 2013b, 2012) and assigns a lesser form of Indian status when the mother is registered under section 6(1). This INAC policy was suspiciously created in 1985 after Canada removed the protective provisions that once existed in law in the *Indian Act* regarding children born of unknown and unstated paternity. As I have explained elsewhere, this POP policy also applies in situations of sexual violence such as rape and sexual slavery. Further, it applies in situations where the mother is Indigenous or non-Indigenous. The creation of this policy was a step backwards in that the stated intention of the 1985 amendment to the *Indian Act* was to remove sex discrimination. Without a doubt **sex discrimination is inherent in INAC's POP policy in that it is a policy that affects mothers more than fathers** because more often than not it is fathers who are unknown and unstated. It is in this way that **INAC's POP policy is contrary to the Canadian Charter of Rights and Freedoms**, in particular section 15 which states:

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

I could go through a lengthy process of summarizing everything previously offered about the topic of INAC's POP policy, but my preference in this article is to remain focused on a new yet related topic that requires discussion all its own. It is for this reason that this article will remain with offering an important **aspect of INAC's POP policy and the *Indian Act*** that I have not yet addressed: Administrators in the province of Ontario have tampered with birth registration documents. It is my thought that all practices that harm mothers and their children, or harms the relationship between mother and child, are immoral or questionable at best.

Goal and methods

It is important for me to stress at the onset that this article is an entry into understanding a topic not yet addressed in the literature. It is not a comprehensive analysis. Indeed more research is required on this topic.

A person's methods are always important to reflect on when reviewing any or all knowledge productions as they serve to shape and guide the research and analysis. The methods of obtaining this knowledge and giving it back to the broader community consist of listening to first person accounts of the birth stories; a review of a sample of birth registration records; thinking critically; community responsibility in terms of listening to and giving back meaningful knowledge; interviewing an expert; and

unknown and unstated fathers are non-Indians. At the time of writing this paper, Bill S-3 is moving through parliament where as such these clauses were not yet law and they may not be for some time. Further, although these clauses are slated to become law at this point there is little understanding of how INAC will administrate situations of unknown and unstated paternity.

³ It is important to qualify here that "father" may not be the best way to refer to a man who impregnated a woman through sexual violence.

the process of writing this article in an accessible form. It is also important that I qualify here that I do not offer an analysis of *Vital Statistics Acts*; rather I rely on a secondary source for this knowledge (see Henderson 2012; see Mann 2009). This article also represents a collaborative effort in the sense that after it was complete I asked stakeholders such as Karen Lynn as well as a person whose identity is protected if they would read the article, and offer their ideas, thoughts, and comments. It is important to note here that aspects of the personal stories have been changed as a mechanism to respect people's privacy.

The Ontario Vital Statistics Act

In Ontario the *Vital Statistics Act* came into being in 1869. Despite this early date of inception it was not until more recently, in 1986, when the birth registration process changed from a one name informant or parent signature requirement to a two parent signature requirement. Confirming this, and extending the knowledge more broadly, Michelle Mann (2009, pg. 35) offers, today “where parents are unmarried, Vital Statistics in most jurisdictions require the father’s signature on the birth form.” In this way, while birth registration forms before this time asked for the signature of an informant or parent, in its latest incarnation the form requires the signature of both mother and father.

Most people are familiar with wallet sized birth certificates. These consist of a shortened form extraction of the information recorded on original long form birth registration records. They contain the **person’s name, date of birth, the certificate number, birthplace, and sex**. The information of the parents is not recorded on this version.

A long form birth certificate is referred to as a *certified copy* of the original birth registration record and it contains the **person’s name**, both their surname and given name(s), date of birth, birthplace, sex, location of birth, as well as important details about the parents such as the parents’ names and their dates of birth and birthplaces.

Prior to 1986, when the *Vital Statistics Act* only required one informant or parent signature, in many instances where the mother was either not married or separated, she was actively prevented from **recording the father’s information** – his name, age, place of birth, and citizenship – **on her child’s birth registration form**. Cathy Henderson (2012) has written on the topic of tampered documents and submitted a report to the United Nations. Henderson argues in the province of Ontario, from 1960 through 1980, “**unwed father’s names were illegally deleted from original birth registrations. During these decades provincial law stated that the Registrar General did not have the legal authority to alter information on these documents.**”

While the *Vital Statistics Act in the past has stated*, “the birth of a child of an unmarried woman shall be registered showing the surname of the mother as the surname of the child, and no particulars of the father shall be given,” Henderson argues that in fact there were additional provisions that further guided the process of birth registrations.

Henderson cites sections of the 1960 *Vital Statistics Act*:

3.(2) Where it is found upon examination that any registration received from a division registrar is incomplete as to the required signatures, the Registrar General shall cause the registration to be returned by registered mail to the proper division registrar in order that the signatures may be obtained.

32.(1) If, while the registration of any birth, death or still-birth is in the possession of a division registrar, it is reported to him that an error has been made in the registration, he shall inquire into the facts and, if he is satisfied that an error has been made in the registration, he may correct the error according to the facts by a notation on the registration without any alteration being made in the registration.

32.(3) If, after a registration has been received or made by the Registrar General, it is reported to him that an error has been made, the Registrar General shall inquire into the facts and, upon evidence satisfactory to him, supplemented by statutory declaration in the prescribed form, he may correct the error by a notation on the registration without any alteration being made in the registration.

Henderson argues these clauses directed the Registrar General's responsibility to ensure birth registrations were as complete as possible, such as obtaining the required signatures of unwed fathers. Further, she argues, as per the *Vital Statistics Act*, in the event that an error was made the Registrar General only had the authority to add a notation on the birth registration, nothing more. The deletion of fathers' names was not allowed; clearly this was not the jurisdiction of the Registrar General.

Standard procedure prevented mothers from recording fathers' information

Genealogical research, family history research, the examination of certified original birth records, and the oral tradition has informed me that in some instances where an unmarried mother attempted to **record the father's information** on birth registration records, hospital personnel such as nurses, social workers, adoption personnel, and medical doctors actively prevented the information from being recorded. These measures consisted of orally chastising mothers and sometimes tearing up or destroying the registration document, forcing mothers to complete another form. When all else failed and the mother **did record the father's information**, another tactic relied on was a process of marking over the information to mask it. In short, the documents were tampered with. Surely this practice of interference was not in the best interest of the mother or child. Rather, it was in the interests of the patriarchal order that continues to seek control of women and their reproductive roles and responsibilities.

Tampered documents

In the work I do regarding INAC's POP policy I have listened to many personal and private stories about this system of denial and disenfranchisement. People have shared with me their stories of ordering their certified copy of birth registration records, again also known as their long form birth certificates. **One person stated their father's information was not on their birth record because their** mother recorded herself as "single." Another person explained to me that they filled out the application form, sending it away to The Office of the Registrar General located in Thunder Bay, Ontario, adding the \$45 cheque (this amount has changed over time) where weeks later the document finally arrived in the mail. Upon its arrival they eagerly opened the envelope **only to learn that their father's information was missing** from their certified copy. In this latter particular incident **this person's** mother recorded herself as "separated."

There is more. Upon close inspection of three birth records that I personally have come across there was something that seemed odd or unusual in that the lines and the section numbers on the forms

were misaligned, where parts of the lines were also inconsistently masked or created. Intuitively one person knew that this was not right in that her own reasoning informed her that official forms would never be this poorly and messily constructed. In the work I have completed assisting several people gain Indian status, I have had the responsibility and privilege of looking at several certified copies of birth registration records. I too noticed a similar pattern of sloppiness when the mothers are recorded as unmarried or for that matter separated (see figure 1 below).

Figure 1, 1960 tampered birth record

One individual proceeded to tell me more of their story which stands as a case study of what other people may be experiencing and going through. Suspicious at what they were looking at when they received their certified copy of their birth certificate, and desiring to know who their father was, they contacted the Office of the Registrar General insisting that they see their original birth registration record, rather than the certified original copy that they paid for. This person wanted to hold their birth record in their own hands and look at it with their own eyes as a means to get answers to what was done to their original birth document. **In their own words they were determined to, “get to the bottom of things.”**

After several weeks passed, sometime in 2002 the Office of the Registrar General set up an appointment where this impassioned person travelled to the Toronto office. They were “summoned to a room, told to put on white gloves, and I was handed a file folder that contained my original birth registration record.” **Upon opening the file, and to their shock, they discovered that their original birth record had a *blank* piece of white paper glued on top of the section dedicated to their father’s information,**

thereby masking the very information their mother inscribed and the very knowledge they sought. This realization once again horrified the individual.

As I listened to this person's story and reflected, eventually I realized that in actual fact their birth registration record was tampered with two times: first, when an administrator took the time and glued a blank piece of white paper on top of the **father's** information her mother put on the record; second, when the Office of the Registrar General took the time and cut out a blank version of the father section of a form and placed it on top of the first white piece of paper that masked the original information. While the first time the document was tampered with was at the time of birth, the Office of the Registrar General tampered with it a second time some time later when a copy of the certified original was requested. Based on my work and observation this practice of tampering with documents a second time appears to be ongoing and current.

At first I was inclined to think this tampering process occurred to all birth registration records where the informant or parent who signed them was not the father, married or not married. But this is not so. From the several birth registration records that I have seen, it appears that from the early 1930s through the 1960s it was the marital status of the mother that was the determining factor of whether the **father's information remained intact**. For example, I do know of a situation in 1967 where a married woman was the signatory and the father's information remained untouched. In sum, from what I understand if the mother was married, the **father's** information remained; if she was single, separated, and possibly in situations of divorce, the information would be removed.

Reflections of the President of the Canadian Council of Natural Mothers

Not surprisingly, this past **practice of removing the father's information has huge implications for** many children, especially children of adoption. In June, 2009, when the province of Ontario opened 250,000 adoption records, adoptees were eager to learn who their biological parents were. Many mothers and fathers were also eager, yet anxious, to find their children. The problem, though, is that less than 10% of adoptees' birth registration records had the father's information inscribed (Baute 2009). It appears that in many cases the information was removed due to an inadequate interpretation and understanding of the rights of parents and subsequent hospital and social work administration practices that forbid mothers from recording who they knew the father of their babies were.

In 2015, I interviewed Karen Lynn, president of the Canadian Council of Natural Mothers (K. Lynn, personal communication, 2015). She is very much familiar with this issue of tampered birth documents and argues this practice of removing information has caused much heartache and anguish to both the children of adoption and the mothers and fathers who surrendered their children for adoption so the children could have better lives. Lynn argues it stands to reason that **the information on a person's** original registration of birth has huge emotional significance. This is especially true for adopted people as it is the beginning of discovering their personal histories. Lynn explains, many people of adoption are devastated to find their fathers' names missing, where they then turn to and blame their birth mothers, not authorities, who they would much rather build a loving relationship of trust with. Further, mothers too are outraged when they learn that this important document that they filled out and signed in good faith was altered without their permission or notification. **Lynn argues, "This was a betrayal to both**

mother and child that manifests in a harmful way in what should be the beginning of a good relationship.”

Lynn continues, “**There** was no reason for this to happen. Issues around the financial responsibility of potential fathers could be resolved through some other process, such as mothers swearing an oath of truth or fathers offering contrary evidence.” She adds, “**Today, the process is not much better.**” She continues, “**While it may be true that the birth registration process changed in 1986, the father’s information is still not preserved when his signature is not on the record.**” Furthermore, “when a father does not sign, the Registrar will not accept the document as the mother recorded the information, and the mother is instructed to issue a new record.”

Lynn then asks, “One has to wonder what do they do today with the original? Do they throw them in the trash can?” She adds, “**There** is no reason that the record, and the information contained, cannot be accepted as is,” in that today “matters related to child support payments and estates can be addressed through genetic testing or some external structure such as the court system.” Drawing on her experience with mothers and children who have experienced adoption, Lynn speculates that many of the children harmed by these laws and the practices are probably Indigenous. Many do not know who they are and they are also denied their treaty rights. This places Indigenous children in double jeopardy and this is a form of cultural genocide, she argues.

How does this relate to Status registration?

It is indeed a tragedy that Ontario has denied children the right to know who their father is by tampering with their birth registration records. **INAC’s POP policy, that is relied on when administrating** Indian status registration, is another blow to Indigenous children and nations. This policy assumes all unknown, unstated, and unrecognized fathers are non-Indian and it applies in cases where the child is born through sexual violence.

Children born to status Indian mothers registered under section 6(1) of the *Indian Act*, and whose father is not on their birth record, are assigned section 6(2) status at birth which is a lesser form of status. As a result, these children will be prevented from passing on status to their children in their own right. And children born to status Indian mothers registered under 6(2), and whose father is not on their birth record, will not be assigned Indian status at all.

Stewart Clatworthy (2003) reported that between 1985 and 1999 as many as 37,300 children were born to status Indian mothers registered under section 6(1) of the *Indian Act* with unrecorded fathers. During this same time period, as many as 13,000 children were born to status Indian mothers registered under 6(2) with unrecorded fathers. As stated above, through **INAC’s POP policy** that assumes all unknown and unstated fathers are non-Indian as defined by the *Indian Act*, these latter 13,000 children were denied Indian status registration and their treaty rights.

As we consider Clatworthy’s numbers, we need to value that they are not representative of the births prior to 1985. INAC’s POP policy is being applied retroactively to all new applications for Indian status registration. Of course, the number of children and grandchildren born prior to 1985 and denied through this POP policy will increase the number of people impacted.

In thinking further, one has to wonder, as I do, how many Indigenous children have been denied

their identity and treaty rights because of an inadequate understanding of Ontario's *Vital Statistics Act* and subsequent practices that prevented mothers from recording the father's names? More research and funding dollars are required.

International conventions and declaration violated

It should come as no surprise to learn that this process of tampering with birth registration records, and for that matter the process of re-tampering which continues today, violates several international conventions and declarations, some particular to Indigenous people. I offer a numbered list here:

1. The *Universal Declaration of Human Rights*, adopted by the United Nations 1948

Article 12(2): "Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection."

2. The *Convention on the Rights of the Child*, adopted by the United Nations 1989

Article 8(1): "States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference."

Article 8(2): "Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity."

Article 30: "In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language."

3. The Declaration on the Rights of Indigenous Peoples, adopted by the United Nations 2007

Article 33(1): "Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of Indigenous individuals to obtain citizenship of **the States in which they live.**"

Article 22(2): "Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures."

4. The *Convention on the Prevention and the Punishment of the Crime of Genocide*, adopted by the United Nations 1948 includes in its definition of genocide:

Article 2(e): "forcibly transferring children of the group to another group."

Summary conclusion

Based on my work I have identified that at the level of practice, unmarried and separated mothers **were actively prevented from recording the information about their child's father on birth registration** records. Experts have informed me that hospital personnel and administrators incorrectly instructed mothers to leave the information off the record. As I have argued in this article, in one situation the birth registration record was tampered with, where a piece of paper was glued on top of the knowledge. In this same situation, The Office of the Registrar General tampered with a birth registration record a second time as a way of disguising the first process of tampering when a certified copy was ordered.

It stands to reason that the process of preventing mothers from recording the father's information occurred more with children who were placed up for adoption. This includes Indigenous children. While certainly it is a violation to deny children the knowledge of who their father is, Indigenous children face a double jeopardy when Indigenous and Northern Affairs Canada assumes that in all situations where a **father's signature is missing, the father is a non-Indian** whereby many are potentially denied their treaty rights.

In terms of future direction, additional research and funding dollars are required to determine the prevalence of the practice of birth document tampering. Many questions remain: did this happen to mothers who were divorced and widowed, does the Office of the Registrar General continue to tamper and re-tamper documents today, and are the children who request to see their original birth registration records treated with respect and dignity? In addition, how many of the children denied Indian status registration are the result of **a practice that denied mothers the right to record the father's information?**

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