

**ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

BETWEEN:

HALPERN *et al*

Applicants

and

CANADA (A.G.) *et al*

Respondents

AND BETWEEN:

MCCT

Applicant

and

CANADA (A.G.) *et al*

Respondents

**SUPPLEMENTARY AFFIDAVIT
OF BETTINA BRADBURY**

I, Bettina Bradbury, of the City of Toronto in the Province of Ontario, MAKE OATH AND SAY:

1. I have filed an affidavit in these proceedings in support of the Applicants Halpern et al., sworn December 18, 2000. I have read the Affidavit of Edward Shorter, sworn March 13, 2001 and the Supplementary Affidavit of Edward Shorter, sworn April 12, 2001. I make this affidavit in reply to those affidavits.

2. In my first affidavit, I describe how marriage and the family in Canada have undergone major transformations in history. My affidavit describes how, over time, marriage in Canada has evolved from being a highly hierarchical institution, rooted in the segregated sex roles of husband and wife and entered into for economic and pragmatic reasons in which the individuals involved had only a minor say, into a much more equal institution, freely chosen by both partners because of their love for and commitment to each other.

3. In his Supplementary Affidavit, Professor Shorter oversimplifies and mischaracterizes my analysis, claiming that I argue that families have been in "continual upheaval". That is not my position. What I described was a lengthy process of change in which the nature and function of marriage, and ideas about marriage, have changed unevenly with evolving social, cultural and economic conditions.

4. Professor Shorter, on the other hand, acknowledges that "the family" has gone through a "dramatic evolution" over the centuries, but maintains that this evolution occurred in three stages: the "Traditional family", the "Modern family", and the "Postmodern family". Each of these stages, according to Professor Shorter, was marked by "vast plateaus of stability" until they were "interrupted by periods of sharp discontinuity" caused by a fundamental change in some idea or circumstance.¹ These claims are made more starkly in his affidavit than in his 1975 book, *The Making of the Modern Family*, his main work in the field of family history.

5. Based on my extensive reading, teaching and research in the area of family history over the past two decades, it is my opinion that very few family historians have accepted

¹ Professor Shorter's Affidavit, paragraphs 39 to 71; Professor Shorter's Supplementary Affidavit, paragraph 4; Edward Shorter, *The Making of the Modern Family* (New York, Basic Books, 1975), pp. 255-268

Professor Shorter's characterization of these family types or his view that the family has evolved in three distinctive stages.²

6. Professor Shorter honestly admits that his 1975 book was "somewhat controversial." However, he dismisses his critics as "feminist reviewers" who did not like the fact that he painted the "Modern family" in a "sympathetic light".³ In fact, Professor Shorter's book was widely criticized on several grounds by nonfeminist historians as well as by feminist historians. While reviewers generally acknowledged that the book made a considerable contribution to what was then the new field of family history, some grave concerns were also expressed about Professor Shorter's research methodology and conclusions.⁴

7. Professor Shorter's selective use of evidence in his Affidavits is combined with a tendency to oversimplify the causes of change in families. For instance, he describes the main reasons for the change from the "Traditional" to the "Modern Family" as the growing belief in romantic love, the importance of the bond between mothers and children, and the desire for privacy within the family. The Canadian "evidence" from which he draws these conclusions comprises a series of quotations from as far apart as 1849 and 1921 in which

² More recent histories of families are more likely to distinguish between the characteristics of families based on the ways they make their living than to propose an evolution of types. See, for example, Anna Clark, *The Struggle for the Breeches: Gender and the Making of the British Working Class* (Berkeley and Los Angeles: University of California Press, 1995); Leonore Davidoff and Catherine Hall, *Family Fortunes: Men and Women of the English Middle Class, 1780-1850* (University of Chicago Press, 1987).

³ Professor Shorter's Affidavit, paragraph 19

⁴ Michael Anderson, *Approaches to the History of the Western Family, 1500-1914* (The Economic History Society, Macmillan Press, 1980), p.41 and pp.62-63; Michael Anderson, Review of The Making of the Modern Family, *Social History*, 3, 1 (January 1978), p.98; Richard T. Vann, Review of The Making of the Modern Family, *Journal of Family History*, 1, 1 (1976), pp.106, 109 and 113; Vern L. Bullough, Review of The Making of the Modern Family, *Journal of Marriage and the Family*, 38, 3 (November 1976), p.795; Robert V. Wells, Review of The Making of the Modern Family in the *Journal of Social History*, 10, 3 (March 1977), pp.361-2.; J. Scott, L. Tilly and M. Cohen, "Women's Work and European Fertility Patterns", *Journal of Interdisciplinary History* VI, 3 (Winter 1976), 447-476; John R. Gillis, *For Better, For Worse: British Marriages 1600 to the Present* (New York, Oxford University Press, 1985), p.3.

people were describing what **should** happen in families. Historians have long warned against reading such prescriptive literature as describing how people actually lived.⁵ The

⁵ To illustrate the problem that occurs when historians (mis)read prescriptive literature as factual descriptions of how people actually lived, it is helpful to take one of the key elements of Professor Shorter's characterization of the transition from the "Traditional family" to the "Modern family". He asserts that the practice of indenturing young children so they could learn a trade "came to an abrupt end in the nineteenth century...at the time when Modern family values started to replace traditional norms". The old tradition of indenturing out, he claims, was "replaced by a consensus regarding the importance of mother-centered families that would then remain a constant for the next hundred years" (Professor Shorter's Supplementary Affidavit, paragraph 4). The three main problems with this argument are worth explaining because they illustrate the ways in which Professor Shorter tends to extrapolate rather too quickly from "evidence" to explanation.

First, there is no evidence that indenturing children was ever as widespread in Canada as it was in the European areas that Professor Shorter studied. The British colonies that eventually became Canada did not have the system of guilds and apprenticeships that were part of the system in Europe, though there certainly were some children who served apprenticeships. Children's labour was too important on most Canadian farms, for example, to send them away.

Second, even in Europe, the demise of indenturing had more to do with other changes than with the new emphasis placed by certain elites on the importance of the mother-child bond. These included: the decline of apprenticeship as a system; the decline in parental death rates that limited the numbers of orphans or semi-orphans for whom kin or charities were seeking a placement; and, most importantly, the closely related rise of new possibilities of wage labour for children and youth. In Canada, as in much of Europe, working-class parents increasingly sought to keep their children at home living with them because all members of families needed to pool their wages to survive. Family reliance on the wages of youths continued into the twentieth century: Bettina Bradbury, *Working Families. Age, Gender and Daily Survival in Industrializing Montreal*, (Canadian Social History Series, McClelland and Stewart, 1993) (Republished 1996 by Oxford University Press); Peter Baskerville and Eric W. Sager, *Unwilling Idlers: The Urban Unemployed and Their Families in Late Victorian Canada* (Toronto, University of Toronto Press, 1998).

Third, while there was a decline in the numbers of youths living in other peoples' homes (as opposed to being indentured out) over the 19th century in Canada, this practise did not, as Professor Shorter claims, "come to an abrupt end in the nineteenth century." The latest analyses of the 1901 census demonstrate that, as of that date, some 5% of youngsters aged 10 to 14 and over 14% of those aged 15 to 19 were living with someone other than their two parents: Gordon Darroch, "Home and Away: Patterns of Residence, Schooling, and Work among Children and Never Married Adults, Canada, 1871 and 1901," *Journal of Family History*, 26, 2 (April 2000); Bettina Bradbury, "The Children of Single Parents a Hundred Years Ago. Patterns and Problems," Paper presented at "A Conference on the History of Families in Canada," hosted by the Canadian Families History Project," April 2001.

authors cited by Professor Shorter were writing in magazines and in government literature that promoted particular forms of middle-class family life. Of course, ideas are important in changing people's behaviour, and middle class reformers and bureaucrats did try to change how mothers dealt with their children. But changes in the roles of family members, or in the relationships between families and the broader society cannot be explained without also taking into account the ways different members of families negotiated the economic, political, social and legal contexts of their times.⁶

8. In responding to my affidavit dated December 13, 2000, Professor Shorter has oversimplified and misrepresented the information and opinions set out therein. In particular, with respect to Professor Shorter's disagreement with the evidence I have given regarding the diversity of families in the past, it appears that Professor Shorter did not read my affidavit very carefully. He is simply wrong to assert that I portray the nuclear family as "something of an anomaly",⁷ that I have disingenuously confounded divorce and death,⁸ and that I have painted a "picture of 19th century Canadian family life as including an array of alternate families consisting of divorced women and mothers, unwed mothers, and single women".⁹

9. I made it quite clear in my affidavit that divorce was "unlikely, expensive and complicated" prior to 1968 and, contrary to Professor Shorter's claim, my affidavit does not mention unwed mothers at all. It is true that most families comprised two parents and

⁶ As Richard Vann points out, Professor Shorter has no evidence to "support his idea that there was no romantic love in traditional society," but he does not "mind letting his literary sources contradict him." Richard T. Vann, Review, *Journal of Family History*, *supra* note 5, p. 113. Similarly, scholars drawing carefully on folklore have contested Professor Shorter's claim regarding the absence of affection in what he calls the "Traditional family": see Adele C. Friedman, "Love, Sex, and Marriage in Traditional French Society: The Documentary Evidence of Folksongs," *Proceedings of the Annual Meeting of the Western Society for French History*, 5 (1977), 146-54.

⁷ Professor Shorter's Supplementary Affidavit, paragraph 5

⁸ Professor Shorter's Supplementary Affidavit, paragraph 6

⁹ Professor Shorter's Supplementary Affidavit, paragraph 15

children when censuses were taken, but they frequently included other kin or boarders at particular moments in time. My point was that the nuclear family was never the only family form and that families in the past were configured differently over their life cycles. Families were often broken by death and desertion so that many children experienced the situation of living with one parent only, or with grand-parents or strangers in their home at some point before they reached adulthood.¹⁰

10. With respect to Professor Shorter's claim that I confound statistics on death and divorce, I never suggested that "the nuclear family has always been unstable as a result of death and divorce".¹¹ It is Professor Shorter, not I, who believes that the nuclear family is "unstable". My point was simply that a significant percentage of families have been broken in the past by death, desertion and separation, and that children in those families faced similar problems of poverty to those in families with one parent today. Thus, single parent families are not new historically, though the major reason for their existence has shifted from death to divorce. Like Professor Shorter, I am an historian and not a psychologist or psychiatrist and therefore (unlike Professor Shorter) I will not speculate as to whether children feel abandoned or simply grief stricken after the death of a parent or as to the psychological effect on children of stringent versus liberal divorce laws. Nor will I speculate as to whether the psychological effects of death or divorce on children are the same now as they might have been at other points in history.

11. Professor Shorter suggests I attribute too much importance to changes in the definition of family used by Canadian census takers. He claims that census definitions of "family" do not reflect changing social norms or "normative reflections of the nation's

¹⁰ Indeed, many historians explicitly reject the idea of the dominance of one type of family in the past by referring to the history of "families" rather than "the family". For example, see the latest book by the influential family historian, Tamara K. Hareven: *Families, history, and social change: life course and cross-cultural perspectives* (Boulder, Colorado: Westview Press, 2000). Also note the title of the SSHRC funded Major Research Initiative: "Canadian Families Project", of which I was a member.

¹¹ Professor Shorter's Supplementary Affidavit, paragraph 7

values.” His position is inconsistent with the literature on the ways questions have been determined at the times of census-taking, or on the changing questions that have been asked over recent years.¹² The addition in the most recent census of questions on common-law unions was surely not simply a “practical instrument for studying the nation’s political economy”.¹³ On the contrary, it was indeed a “normative reflection” of new understandings of the different ways couples were being formed. Similarly, in the current census, same-sex couples may specify that they are two people of “the same sex who live together as a couple but who are not legally married” precisely because behaviour and norms have changed. Again, one cannot seriously claim that the purpose of including gay and lesbian couples in the current census is to provide a practical instrument to study the nation’s political economy.

12. Professor Shorter’s primary criticism of my affidavit appears to be my refusal to acknowledge the “intrinsic” instability of the “Postmodern family”. In my opinion, the characteristics Professor Shorter ascribes to the “Postmodern family” capture what family life is like for only some Canadians. Many - perhaps most - Canadians today would not recognize their own experiences of child-raising, sexual activity, marriage and community in his description of a family that is so fragile and unstable that virtually any change in the law could threaten its very existence. It seems apparent that Professor Shorter’s portrayal of contemporary families, like his portrayal of “Traditional” and “Modern” families, is based on selective bits of information, bolstered by bold speculation.

¹² For instance, Bruce Curtis demonstrates in his recently published *The Politics of Population. State Formation, Statistics, and the Census of Canada, 1840-1875* (Toronto, University of Toronto Press, 2001) how political the taking of the census was, and how the categories included were the subject of intensive debate. Another interesting insight into the ways officials did not want the census to reveal divergent family types is clear from Annalee Lepp’s study of divorced Canadians in 1901. Her research shows that the officials compiling the official counts of Canadians’ marital status in Canada deliberately changed many people who had listed themselves as divorced to married when they did the tallies. Annalee Lepp, “Disentangling ‘Divorce’ in the 1901 Canadian Census,” Paper presented at “A Conference on the History on Families in Canada”, April 2001.

¹³ Professor Shorter’s Supplementary Affidavit, paragraph 17

13. Furthermore, Professor Shorter's claim that the "Postmodern family" could collapse at the introduction of any legislative reform appears to contradict his argument about "constancy in the meaning" of marriage or family, and minimizes the significance of successful marriages and families that function well today.

14. In addition, Professor Shorter's ominous warning that changing one law could threaten the "Postmodern family's" very existence is not new. As I observed in my first affidavit, proposals for any change to existing legal arrangements governing marriage have historically been accompanied by claims by some that the destruction of marriage and the family is imminent. I find it quite curious that doomsayers like Professor Shorter never imagine that the consequences of change might, in fact, be positive. Recognizing same-sex marriage could, for example, strengthen families and the institution of marriage.

15. Finally, I find it odd that Professor Shorter has asserted in his affidavit that increased divorce rates were an unintended consequence of the change in Canada's divorce law.¹⁴ Increased divorce rates were surely not an unanticipated result of liberalized divorce laws. Indeed, Professor Shorter himself has elsewhere dismissed the argument that more liberal divorce laws were the main reason for increased marital breakdown: "The upthrust has simply been too powerful and universal to be dismissed as a result of more liberal divorce laws".¹⁵

16. As an historian who studies Canadian family history, I found nothing in Professor Shorter's affidavit or supplementary affidavit to support the notion that the recognition of same-sex marriage would cause a break that could "further unsettle the bonds of marriage, making the institution even less durable".¹⁶ This claim appears to be based on Professor

¹⁴ Professor Shorter's Affidavit, paragraphs 115 to 117

¹⁵ *The Making of the Modern Family*, *supra*, p. 278.

¹⁶ Professor Shorter's Affidavit, paragraph 3

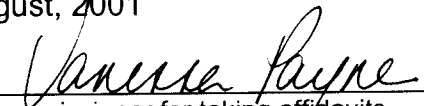
Shorter's view that a single idea or event can precipitate a "period of sharp discontinuity", leading to fundamental change.


17. If no single idea brings about changes in how families operate and what is recognized as a family, what does bring about change? There is no simple answer. People reshape their lives in reaction to the economic realities and dominant ideas of the times they live in, and in accordance with personal preference and circumstance. Men, women and youth draw upon and react against the ways of previous generations. Families vary with the religious and ethnic cultures of their members. They are shaped too by the ways family members make their living. Continuity and change thus characterize families in most generations. Just as expectations about work, sex and satisfaction have changed over time, so have the laws about who can marry, about the rights of spouses and about divorce.

18. In contrast to Professor Shorter's pessimistic view about the unstable state of current families and the danger of further change, my study of families in Canada's past has led me to believe that change is what has kept families viable historically as key institutions in our society.

19. I swear this affidavit in support of the within Applications and for no other or improper purpose.

SWORN BEFORE ME AT)
the City of Toronto in the Province)
of Ontario, this 17th day of)
August, 2001)


A Commissioner for taking affidavits


BETTINA BRADBURY