

Government Approaches to Child Neglect and Mistreatment in Nineteenth-century Ontario

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In 1893 Ontario introduced its first comprehensive child protection system. The concept of neglect and the assumption of societal and governmental responsibility for disadvantaged children was not new, however; it had evolved during Ontario's first century. By 1874 legislation provided a detailed and sophisticated description of children in need of protection and of deficient parents; a process for removing children from their parents and the authority to refuse their return; a new type of institution to care for these children; systematic government grants for children's homes and their accountability to the state; and simpler incorporation by which charitable institutions could assume the authority they needed over children in their care. Ontario's child protection system was thus built on a firm foundation.

En 1893, l'Ontario a mis sur pied son premier système complet de protection de l'enfance. La notion de négligence et la présomption de responsabilité sociale et gouvernementale à l'endroit des enfants défavorisés n'étaient toutefois pas nouvelles, ayant évolué durant le premier siècle d'existence de l'Ontario. En 1874, la législation donnait une description claire et précise de ce qu'était un enfant ayant besoin de protection et un parent déficient et prévoyait : un processus permettant de soustraire les enfants à leurs parents et l'autorité de refuser de les leur rendre; un nouveau type d'établissements pour s'occuper de ces enfants; des subventions gouvernementales systématiques pour les foyers pour enfants et l'obligation de ces maisons de rendre des comptes à l'État; et un processus de constitution en personne morale plus simple permettant aux œuvres de bienfaisance d'exercer sur les enfants à leur charge l'autorité dont elles avaient besoin. On ancrerait ainsi le système de protection de l'enfance de l'Ontario à de solides assises.

THE ONTARIO *Children's Protection Act* of 1893 introduced the first comprehensive child protection system in Canada.¹ It was premised on

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1 "An Act for the Prevention of Cruelty to and better Protection of Children," Ontario, *Statutes*, 1893, 56 Vict., ch. 45. Six provinces enacted legislation modelled on the Ontario *Act* shortly after visits by

public responsibility for child protection and provided legal mechanisms to identify children neglected or mistreated by their parents (the child's character or behaviour being relevant only as proof of this) and to remove them from their parents' homes for placement in foster homes. Also, anyone could be charged with a summary offence who, "having the care, custody, control or charge of a child ... wilfully ill-treats, neglects, abandons, or exposes such child, or causes or procures such child to be ill-treated, neglected, abandoned, or exposed, in a manner likely to cause such child unnecessary suffering or serious injury to its health" (s. 2). Children who could be removed from their parents' custody and control were children of those charged under s. 2 (s. 6); children ill-treated or neglected as specified in s. 2, whether or not any charges were laid (s. 7); and "neglected" children found begging or thieving, wandering about or sleeping in the open air at night, associating with thieves, drunkards, or vagrants, found in a "house of ill-fame," or who "by reason of the neglect or drunkenness or other vices of the parents [are] suffered to be growing up without salutary parental control and education, or in circumstances exposing such child[ren] to an idle and dissolute life" or were orphans or destitute with a parent in prison (s. 13). Care of and control over the children thus taken from their parents were assigned to Children's Aid Societies, which were local charitable organizations (ss. 1, 6, 9, 10, 13, 15, 17).

By the late nineteenth century, Ontario had grown substantially from its modest beginnings as a British colony of about 10,000 people 100 years previously. By 1891 the total population consisted of 2,114,321 inhabitants. Urban centres had expanded markedly in the latter part of the century: Toronto and Ottawa had increased six times in size since mid-century, Hamilton and London four times, although Kingston had less than doubled. These five centres now housed more than 15 per cent of the population, and nearly one-quarter of the population lived in urban centres of 5,000 or more.²

Kelso to Manitoba and British Columbia in the spring of 1898, Halifax in 1905, Saskatchewan and Alberta in 1909, and New Brunswick in 1913: "Sixth Report of Work under the Children's Protection Act" for 1898, Ontario, *Sessional Papers*, 1899, no. 17, pp. 19–20; Andrew Jones and Leonard Rutman, *In the Children's Aid: J. J. Kelso and Child Welfare in Ontario* (Toronto: University of Toronto Press, 1981), pp. 89–90, 140–144; Manitoba, *Statutes*, 1898, ch. 6; *Infants' Act*, British Columbia, *Statutes*, 1901, ch. 9; *The Children's Protection Act*, Nova Scotia, *Statutes*, 1906, ch. 54; *The Children's Protection Act*, Saskatchewan, *Statutes*, 1908, ch. 31; *The Children's Protection Act*, Alberta, *Statutes*, 1909, ch. 12; *The Children's Protection Act*, New Brunswick, *Statutes*, 1913, ch. 27; also *The Children's Protection Act*, PEI, *Statutes*, 1910, ch. 15.

² Canada, Department of Agriculture, *Census of Canada 1870–7*, vol. iv, *Censuses of Canada 1665 to 1871* (Ottawa: I. B. Taylor, 1876); vol. v, *Censuses of Canada, 1608 to 1871* (Ottawa: MacLean, Roger, 1878), Table E: Population of Cities and Towns having over 5,000 inhabitants compared, pp. 32–33; *Census of Canada, 1890–91*, vol. 1 (Ottawa: S. E. Dawson, 1893), Table VII: Population of Cities and

The challenges of this rapid growth and urbanization were compounded by the industrialization occurring across the Western world and by rising standards in the provision of social services, including those for children such as education, facilities for juvenile offenders, and child welfare. Thus the Upper Canadian and Ontario governments had not only to build the basic structures of their new society while growing quickly, but also keep up with rapid socio-economic changes and related legal changes occurring in both England and the neighbouring American states. English legal institutions and common law formed the foundation of the legal structure of the colony.³ Nevertheless, this law was adapted in practice and through legislation to the radically different colonial conditions, as were new initiatives inspired by models across the Western world, particularly in England and the United States.

Such was the case for the evolving child welfare law and policy that culminated in the 1893 *Children's Protection Act*. In any society, the law normally provides for children without parents, whether orphaned or abandoned, but there would have been few such children to deal with in Upper Canada in the 1790s and very limited administrative structures through which to provide aid. The first law in 1799 reflected these conditions while recognizing the need for some provision to be made for homeless children.

Rapid population increases during the first half of the nineteenth century, resulting from the mass immigration of poor and displaced British and Irish peasants, presented major challenges that were exacerbated by deadly cholera and typhus epidemics, yet the colony was still small, as were the communities that received these immigrants. Officials had little time or resources to develop long-term policy to deal with the associated health and social issues, but rather had to focus on emergency aid. However, by mid-century, the colony was nearing the one million mark and maturing.⁴ This growth was reflected in responses to

Towns having over 5,000 inhabitants compared, p. 370; Canada, Board of Registration and Statistics, *First report of the secretary of the Board of Registration and Statistics on the census of the Canadas for 1851–52* (Quebec: J. Lovell, 1853), pp. xv–xvii, town and city statistics for 1848 & 1851–1852; F. H. Leacy, ed., *Historical Statistics of Canada* [online publication] <http://www.statcan.ca/english/freepub/11-516-XIE/sectiona/toc.htm> (accessed May 22, 2007); Frederick H. Armstrong, *Handbook of Upper Canadian Chronology*, rev. ed. (Hamilton: Dundurn Press, 1985), pp. 265, 275.

3 “An Act Introducing the English Civil Law into Upper Canada,” Upper Canada, *Statutes*, 1792, 32 Geo. III, ch. 1.

4 Jane Errington describes the urbanization and maturation after the War of 1812: “Symbolic of this newly emerging maturity was the transformation of York from a small village isolated in the backwater of the colony to a bustling town whose influence came to permeate all aspects of provincial life.” See *The Lion, the Eagle, and Upper Canada: A Developing Colonial Ideology* (Kingston and Montreal: McGill-Queen's University Press, 1987), pp. 90–91. See also Gerald M. Craig, *Upper Canada: The Formative Years 1784–1841* (Toronto: McClelland & Stewart, 1963); J. M. S. Careless, *The Union of the Canadas: The Growth of Canadian Institutions 1841–1857* (Toronto: McClelland & Stewart, 1967).

disadvantaged children as the middle classes, looking beyond immediate emergencies, recognized a group of children whose plight might be deemed to be the result of parental neglect and mistreatment. Throughout the century such children were assisted largely through private charity, but, as the population grew, especially in the cities, the government increasingly facilitated, funded, and regulated private voluntary organizations providing direct help to disadvantaged children and began exploring ways in which society could respond more proactively to help such children.

The starting point for discussion of this evolving child protection law and policy is the English common law concerning patriarchal authority as reflected in custody law, as it was a significant impediment to the development of government services directed at enhancing the welfare of children and limiting or removing parental authority. The weakening of its influence in custody law in favour of the welfare or best interests of the child over the course of the nineteenth century paralleled and perhaps facilitated government measures explicitly intruding on the autonomy of the family, beginning with compulsory education.

The next section considers legislation directed at disadvantaged children, starting with the pauper apprenticeship legislation of 1799 that provided only for orphaned and deserted children. Later apprenticeship legislation broadened the categories of children who could be placed out by public authorities. The first legislation authorizing intrusion in the family in the interests of protecting the welfare of children was the compulsory education legislation of 1871 and the *Industrial Schools Act* of 1874. These statutes, as well as the policy discussions and numerous draft bills leading up to them, beginning in the late 1840s, were of particular importance in the development of sophisticated definitions of children in need of help and of deficient parents.

The final section considers government policy concerning and involvement in the actual delivery of care to disadvantaged children throughout the nineteenth century. Neither provincial nor local governments normally provided services directly to children. Instead, when asked, they helped fund charitable work by voluntary organizations and provided the legal authority these organizations required, including incorporation to facilitate their day-to-day operations and to give them authority over the children in their care, that is, the right to apprentice children and, in some cases, the explicit power of a parent. In the 1870s this authority was strengthened through provisions designed to enhance the legal right of homes to resist parents who attempted to remove their children from apprenticeships. In the 1870s the government became more intrusive by linking funding with annual inspections by a senior government official.

J. J. Kelso, first Superintendent of Neglected Children and a vigorous promoter of child protection legislation, presented the 1893 *Children's Protection Act* as a major innovation, marking both the acceptance of societal responsibility for dependent children and the rejection of

institutional care as the primary means of providing for them.⁵ Rather than acknowledging the domestic background for the legislation, he emphasized foreign models for the core features of the system, including Children's Aid Societies, foster care, and volunteer visiting committees.⁶ Historians of Ontario's child protection system have tended to accept his views and to downplay the domestic precursors to the legislation.⁷ For

5 Kelso argued that, to reduce crime, emphasis should be "on the children of the poor" to whom, prior to 1893, "very little thought has been given. . . . They have been neglected by parents, neglected by law-makers, neglected by school boards, and only thought of by the faithful mission worker." See "First Report of Work under the Children's Protection Act, 1893," Ontario, *Sessional Papers*, 1894, 57 Vict., no. 47, p. 41. Kelso also presented foster care as an innovative replacement for institutional care (p. 7). The *Act* set out a plan to provide "homeless children with a place in the family circle rather than consigning them to an institution" ("Third Report of Work under the Children's Protection Act Ontario" for 1895, Ontario, *Sessional Papers*, 1896, no. 17, p. 27). "We have done nothing in the way of getting our own children on farms or in places where they may find comfortable homes," Kelso stated ("Report of the Commissioners Appointed to enquire into the Prison and Reformatory System of Ontario, 1891," testimony of J. J. Kelso, Ontario, *Sessional Papers*, 1891, 54 Vict., no. 18, p. 726). Yet, even in terms of the number of children placed, societal responses in the course of the nineteenth century had been at least as effective as the child protection system would be in its early years. See Charlotte Neff, "Pauper Apprenticeship in Pre-Confederation Ontario," *Journal of Family History*, vol. 21 no. 2 (April 1996), p. 160. Kelso must have been well aware of the hyperbole in his statement, as his first report, for example, refers to the children placed out by orphanages ("First Report of Work under the Children's Protection Act," p. 21).

6 In his first report, Kelso noted both Australian and American influences ("First Report of Work under the Children's Protection Act," pp. 20, 43, 45); J. J. Kelso, *Early History of the Humane and Children's Aid Movement in Ontario 1886-1893* (Toronto: L. K. Cameron, 1911), p. 20 (attendance at American Humane Association meeting 1887); John Bullen, "J. J. Kelso and the 'New' Child-savers: The Genesis of the Children's Aid Movement in Ontario," *Ontario History*, vol. 82 (1990), pp. 112-114.

7 Richard Splane accepted Kelso's view that "in this province we have been very negligent in the matter of children" (Kelso's testimony to the Prison Commission, 1891, p. 729). While acknowledging the use of home placements by children's homes, Splane argues they came to be used only for children 12 or older, with institutional care becoming the primary function of the homes. See *Social Welfare in Ontario 1791-1893* (Toronto: University of Toronto Press, 1965), pp. 214, 259. A shift by institutions from apprenticing to long-term care is also argued by Jones and Rutman, *In the Children's Aid*, p. 27. They also note that Kelso's "strong views on the need to save neglected children from crime and immorality were now shared, at least in part, by the provincial government and many community leaders" (p. 65). After 1893 the primary function of children's homes may have become long-term care, the Children's Aid Societies having usurped their placement functions. See Neil Sutherland, *Children in English-Canadian Society* (Toronto: University of Toronto Press, 1976), pp. 95, 114-115. However, detailed analysis of the records of children in these homes does not support the use of long-term care as the norm prior to 1893, nor a shift from apprenticing to long-term care. Formal policies of most homes always limited apprenticeships to children 12 or older, but a detailed study of records of children admitted to six Protestant children's homes in Toronto, Hamilton, Kingston, and Ottawa reveals that children were commonly apprenticed at younger ages, very young children being said to be adopted. The notable exceptions were often children with significant disabilities, a class of child for whom even Kelso accepted institutional care as appropriate ("Third Report of Work under the Children's Protection Act," pp. 6, 27). For example, of 26 children indentured by the Kingston Orphans' Home from 1877 to 1882, 12 were aged ten or under, the youngest being three, while of 32 indentured from

example, Xiaobei Chen acknowledges that “the charitable institutions for children that had emerged in Ontario in the 1830s . . . dominated as the major way to provide for dependent children for most of the nineteenth century,” but sees their work as restricted to orphans and not as child protection. Instead, she portrays child protection as emerging “in the midst of social and moral reform in urban English-speaking Canada at the turn of the twentieth century” when “[f]or the first time, parents’ cruelty and neglect were considered as major societal issues to be addressed in legislation and through organized intervention.”⁸

Kelso promoted and implemented the *Act* with dynamic energy and enthusiasm, giving the new system a high profile,⁹ while earlier efforts had been more fragmented and their combined effect championed by no one. However, this study of nineteenth-century legislation and government policy suggests that, while the 1893 *Children’s Protection Act* introduced a new administrative structure for delivering services to disadvantaged children that proved effective under Kelso’s enthusiastic administration and sought to give greater emphasis to care in private homes rather than in institutions, many aspects of the new system had evolved or were borrowed directly from earlier legislation and government policies. These included definitions of children in need of protection (“neglect” being explicitly referred to in draft legislation in 1862 and in enacted legislation in the early 1870s), the legal protection of home placements (apprenticeship being replaced with foster care, although apprenticeship indentures were often still used by Children’s Aid Societies in the early years), a reliance on voluntarism (the charitable organizations running children’s homes being replaced by Children’s Aid Societies), and support for the efforts of these charitable organizations in provincial government legislation, funding, policies, and practices.

Parental Authority, Childhood, Best Interests of Children¹⁰

The English family law adopted in 1792 in Upper Canada with the English common law was patriarchal, the father having virtually absolute parental

1887 to 1892, 15 were aged ten or under (Queen’s University Archives [hereafter QUA], coll. 2330.I., 102 apprenticeship indentures, 1877 to 1894). See also Neff, “Pauper Apprenticeship” and “The Use of Apprenticeship and Adoption by the Toronto Protestant Orphans’ Home, 1853–1869,” *Histoire sociale/Social History*, vol. 30, no. 60 (November 1997), pp. 334–385.

8 Xiaobei Chen, *Tending the Gardens of Citizenship: Child Saving in Toronto, 1880s–1920s* (Toronto: University of Toronto Press, 2005), pp. 82, 3, 19.

9 Kelso’s annual reports document an ambitious travelling and speaking schedule and writing campaign to encourage towns and cities across the province to implement the *Children’s Protection Act*. As a result, within three years there were 29 Children’s Aid Societies, the organizations central to the implementation of the *Act* (“Third Report of Work under the Children’s Protection Act,” p. 1).

10 Constance Backhouse, “Shifting Patterns in Nineteenth-Century Canadian Custody Law,” in David H. Flaherty, ed., *Essays in the History of Canadian Law*, vol. 1 (Toronto: University of Toronto Press,

rights. Barring gross misconduct by the father, a mother would be justified in neither leaving her husband nor taking their children. Furthermore, even if a court acknowledged that the children should not be with their father, the mother could not have custody, nor could she be appointed guardian if the father died.¹¹

Nevertheless, an unmarried mother could normally resist a father's claim to custody unless he established that she was unfit, as the child was deemed to have no legal guardian.¹² Some judges suggested that this applied only to children of "tender years" (under seven), and in any case the mother lost all rights if she entrusted care of the child to another, including the father.¹³ Also, as the mother was legally only a care-giver, she could not designate a guardian for her child in the event of her death, at which time the father could claim the child.¹⁴

Had patriarchal authority remained unchallenged, child protection law could not have developed. However, following trends in other common law jurisdictions, most explicitly England,¹⁵ patriarchal authority was slowly eroded as custody law gradually gave custodial and guardianship rights to mothers, first in legislation, then more gradually in court decisions. Furthermore, these changes were not the result of the influence of women's rights, which could have resulted in the substitution of the

1981), pp. 212–248; Susan B. Boyd, *Child Custody Law and Women's Work* (Don Mills, ON: Oxford University Press, 2003), chap. 2 "Paternal Rights: From Absolute to Presumptive Power in the Nineteenth Century," pp. 20–40.

11 *In re Allen* (1871), 31 U.C. Q.B. 458; "An Act respecting the appointment of Guardians," Upper Canada, *Statutes*, 1827, 8 Geo. IV, ch. VI.

12 *Re C* (1911), 25 O.L.R. 218 (Ontario High Court of Justice).

13 *In re Edney Jane Holeshed* [1870], O.J. No. 402; 5 P.R. 251 (Upper Canada Practice Court, Gwynne J.).

14 *In re The Queen v. Armstrong* [1849], O.J. No. 136, 1 P.R. 6 (Upper Canada Court of Common Pleas); *In re Brandon* [1878], O.J. No. 324, 7 P.R. 347 (Ontario Practice Court, Common Law Chambers); *O'Rourke v. Campbell* [1887], O.J. No. 257, 13 O.R. 563 (Ontario High Court of Justice, Common Pleas Division); *In re Smith, an Infant* [1879], O.J. No. 324, 8 P.R. 23 (Ontario Practice Court, Common Law Chambers, discussed below).

15 English legislation in 1839 gave judges discretion to grant custody of children under seven to their mothers, extended in 1857 to include children whose fathers were guilty of adultery plus another marital offence. This discretion was further extended in 1873 and 1886 with the interests of the children becoming important, but fathers' rights continued to dominate. See Mary Lyndon Shanley, *Feminism, Marriage and the Law in Victorian England* (Princeton: Princeton University Press, 1989), chap. 5. Michael Grossberg, in *Governing the Hearth: Law and the Family in Nineteenth-Century America* (Chapel Hill: University of North Carolina Press, 1985), attributes earlier changes in the United States in part to republican influences dictating a shift away from a hierarchical society (p. 5). After the Revolution, "led by middle class households, families began to shed their public, multifunctional forms and stand apart in an increasingly segregated, private realm of society" (p. 6); while "male authority remained supreme throughout the nineteenth century ... egalitarianism encouraged the decline of deference to all social superiors, even patriarchs" (p. 7). Thus paternal custody rights declined dramatically as early as the 1820s, and the best interests of the child became the primary determinant of custody (pp. 234–243).

father's absolute parental authority with that of the mother and thus not have removed this impediment to development of child protection law, but were rather the consequence of an increasing focus on the needs of the child, translated in law as the welfare or best interests of the child, a concept central to child protection law.¹⁶

Legislation in 1855 thus permitted judges to grant mothers custody of children under 12, but it did not specify any grounds for such orders, and many judges remained reluctant to override paternal rights.¹⁷ Nevertheless, as early as 1846, courts began to base custody decisions on the interests of the children,¹⁸ a step that contributed to more mothers getting custody,¹⁹ although the *prima facie* right to custody remained with the father well into the twentieth century.²⁰ In 1877 courts were authorized to appoint mothers as guardians of their minor children when the father died.²¹ Then, in 1887, all age restrictions on custody orders in favour of mothers were removed; mothers were designated as, at least, joint guardians if the father died, and judges were mandated to have

16 The concept of the best interest of the child was arguably related to an increasing focus on childhood as a stage of life and on children as "precious." Mothers gained rights as children came to be seen as needing a mother's nurturing. See Tannis Peikoff and Stephen Brickey, "Creating Precious Children and Glorified Mothers," in Russell Smandych *et al.*, eds., *Dimensions of Childhood* (Winnipeg: Legal Research Institute of the University of Manitoba, 1991), pp. 29–61. See also, for example, Sutherland, "Part I – Attitudes," *Children in English-Canadian Society*, pp. 3–36; and the seminal work of Philippe Ariès, *Centuries of Childhood: A Social History of Family Life* (New York: Random House, 1962). These changing perceptions of childhood have been seen as occurring across the Western world and as linked with industrialization and urbanization (Boyd, *Child Custody*, pp. 30–34). However, the argument that childhood is a modern "invention" has also been criticized. For a review of the literature and theories on the subject and suggestions for a far more nuanced approach to the history of childhood, see Bruce Bellingham, "The History of Childhood Since the 'Invention of Childhood': Some Issues in the Eighties," *Journal of Family History*, vol. 13, no. 2 (1988), pp. 347–358. Also, there is evidence for child-centered attitudes early in Upper Canada's history; see Elizabeth Jane Errington, "'A Fountain of Life to her Children': Mothering in Upper Canada," *Wives and Mothers, School Mistresses and Scullery Maids* (Montreal and Kingston: McGill-Queen's University Press, 1995), chap. 3, pp. 53–79.

17 "An Act to amend the Law relating to the Custody of Infants," Canada, *Statutes*, 1855, 18 Vict., ch. 126; *In the matter of Sophia Louisa Leigh* [1871], O.J. No. 371, 5 P.R. 402 (Upper Canada Practice Court); *In re Allen* (1871), 31 U.C. Q.B. 458; *In re Carswell* [1875], O.J. No. 256, 6 P.R. 240 (Ontario Practice Court Common Law Chambers); *In re Agar-Ellis* (1878), 10 Ch. D. 49; *Mathieu (Re)* [1898], O.J. No. 135, 29 O.R. 546 (Ontario High Court of Justice, Queen's Bench Division, Divisional Court).

18 *R. v. Baxter, R. v. Snooks* (1846), 2 U.C.Q.B. 370 (C.A.); *In the matter of Mary Therese Kinne* [1870], O.J. No. 383, 5 P.R. 184 (Upper Canada Practice Court); *Re Scott* (1879), 8 P.R. 58; *Re Murdoch* (1882), 9 P.R. 132; *Re Dickson* (1888), 12 P.R. 659; *Smart v. Smart* [1892], A.C. 425.

19 *Davis (Re)* [1871], O.J. No. 307, 3 Chy.Chrs. 277 (Upper Canada Court of Chancery); *In the Matter of Ethel Davis* (1894), 25 O.R. 579; *Re Young* (1898), 29 O.R. 665. Backhouse notes that Ontario was relatively progressive in this respect ("Shifting Patterns," p. 239).

20 *Re Scarth* (1916), 35 O.L.R. 312, 26 D.L.R. 428 (Ont. C.A.); *Re Garwood* (1923), 55 O.L.R. 43; *Re McGlynn* (1926), 31 O.W.N. 115.

21 "Amendments to the Law," Ontario, *Statutes*, 1877, 40 Vict., ch. 8, s. 31.

“regard to the welfare of the infant, and to the conduct of the parents, and to the wishes as well of the mother as of the father.”²²

Under English common law, society had no more right to interfere with a father’s authority than did the mother. This authority included the right and obligation to discipline and physically punish his children, making criminal assault by a father almost impossible to prove. While corporal punishment had to be reasonable and administered for educational purposes,²³ the small number of cases reported in the nineteenth century involved charges against teachers and masters, not fathers.²⁴ Fathers were also given special status in legislation passed in 1869 that made it an offence for them to fail to provide necessities of life to dependents and to “unlawfully or maliciously” do or cause “to be done, any bodily harm to any ... apprentice or servant.” Causing bodily harm to one’s own child was not mentioned.²⁵

While legal limits on a father’s right to physically punish his child were not severely tested in the nineteenth century, the weakening of patriarchal authority in favour of the welfare of the child in custody disputes and a consequent expansion of the right of mothers to custody were paralleled by an increasing acceptance of direct government intervention in families in the interests of children, culminating in the 1870s in compulsory education legislation and the *Industrial Schools Act*. These important pieces of legislation were not, however, the first to deal directly with the welfare of disadvantaged children.

Legislative Provision for Disadvantaged Children ***Pauper Apprenticeship Legislation 1799–1874***

The first laws in Upper Canada providing explicitly for disadvantaged children applied to homeless children to whom the restrictions of patriarchal authority did not apply because their fathers were dead or had deserted them. Even before 1791, public authorities assumed some responsibility for destitute homeless children by apprenticing them under indentures adapted from English precedents,²⁶ a practice also adopted in legislation

22 “An Act respecting the Guardianship of Minors,” Ontario, *Statutes*, 1887, 50 Vict., ch. 21.

23 *Blackstone’s Commentaries*, 452 & 453, cited in *R. v. Robinson* (1899), 7 C.C.C. 52 at 53 (N.S.); *Ogg-Moss v. The Queen* [1984], 2 S.C.R. 173, p. 194.

24 *Canadian Abridgement*, Criminal Law, vol. 14.a, cites three cases, none involving parents: *R. v. Robinson* (schoolteacher); *Brisson v. Lafontaine* (1864), 8 L.C. Jur. 173 (schoolteacher); *Mitchell v. Defries* (1846), 2 U.C.Q.B. 430 (assault on a servant).

25 “An Act respecting Offences against the Person,” *Statutes of Canada*, 1869, 32–33 Vict., ch. 20, s. 25.

26 *Minutes of the Court of Quarter Sessions of the District of Mecklenburg – Town of Kingston*, October 12, 1789, reproduced in Adam Shortt, ed., *Early Records of Ontario* (Kingston, 1900), pp. 9–10 (three children apprenticed by church wardens, indentures cancelled at request of mother as the parents had not consented and the masters were not required to educate the children); W. C. Keele, *The Provincial Justice or Magistrate’s Manual* (Toronto: Upper Canada Gazette Office, 1835), pp. 19–31, 338 (forms of indenture). The earliest indenture found to date was

in a number of American states beginning with Massachusetts in 1735, several statutes being passed between 1790 and 1825.²⁷ Although in 1792 Upper Canada rejected the English Poor Law from which this pauper apprenticeship was derived,²⁸ legislators nevertheless assumed some responsibility for the poor, fashioning, as Russell Smandych argues, “their own legal instruments, public and private, for what remains an intractable social problem.”²⁹ These legal instruments included, as of 1799, explicit legislative provision for pauper apprenticeship.³⁰

The 1799 *Act* provided that, if both parents were dead or had deserted their children, the children could be apprenticed by town wardens; if only the father had died or abandoned the children, then the mother could apprentice them. In both cases the indenture had to be countersigned by two justices of the peace. No one was given either the authority or the obligation to take a child from his or her parents, to intervene on behalf of children mistreated or improperly cared for by their parents, to seek out children to be dealt with under the *Act*, or to provide homes for children in need. Nor was there any provision for following up on children placed or ensuring they were paid in accordance with the terms of the indenture. It was up to the children themselves to enforce the terms of the agreement. However, there likely was at least informal monitoring of children so placed, and in 1817 the London Court of Quarter Sessions made formal provision for monitoring, directing that town wardens, when requested by any magistrate, visit and report on apprentices.³¹

In 1846 the City of Toronto authorized the mayor and aldermen to apprentice “any minor, who shall be an orphan, or who shall have been deserted by his or her parents, and who shall have no lawful guardian or natural protector,” as well as “any minor, with the full consent of such minor, who shall have been committed as a vagrant or juvenile

between Mary Aulthouse and John Ham, February 6, 1802, Lennox and Addington County Museum Small Collections, 32312–32313 (Neff, “Pauper Apprenticeship,” pp. 144–171).

27 Homer Folks, “The Care of Destitute, Neglected, and Delinquent Children,” *The Charities Review*, 1900 (reprinted New York: Arno Press, 1971), pp. 96–97.

28 “An Act Introducing the English Civil Law into Upper Canada”; Russell C. Smandych, “William Osgoode, John Graves Simcoe, and the Exclusion of the English Poor Law from Upper Canada,” in L. A. Knafla and S. W. S. Binnie, eds., *Law, Society, and the State: Essays in Modern Legal History* (Toronto: University of Toronto Press, 1995), pp. 99–129.

29 Russell Smandych, “Colonial Welfare Laws and Practices: Coping without an English Poor Law in Upper Canada, 1792–1837,” *Manitoba Law Journal*, vol. 23 (1995), p. 246.

30 “An Act to provide for the Education and Support of Orphan Children,” Upper Canada, *Statutes*, 1799, 39 Geo. III, ch. III. Splane thus notes that “the origin of separate child welfare measures in the province is ... another important consequence of the rejection of the poor law” (*Social Welfare in Ontario*, p. 216).

31 *Minutes of the Court of General Quarter Sessions of the District of London*, October 16, 1817, reproduced in Alexander Fraser, “Twenty-Second Report of the Department of Public Records and Archives of Ontario,” 1933, Ontario, *Sessional Papers*, no. 16, 1934.

offender; and any minor, as aforesaid, who shall be the child of any parent who shall have been committed to gaol as a vagrant or disorderly character.”³² This legislation thus allowed apprenticeship of a broader group of children than did the 1799 *Act*, and it allowed, but did not require, officials to apprehend and apprentice certain children without parental consent. Homelessness, however, remained the chief concern.

The Toronto legislation may have been passed in part because the only officials authorized to apprentice children under the 1799 *Act* were town wardens, who did not exist after the city was incorporated in 1834.³³ The Midland District Court of Quarter Sessions had the same problem in 1843 when it sought to apprentice the children of three women sent to penitentiary, but found that the relevant township had not appointed any town wardens.³⁴ This may have happened often, as the township appears to have been of little administrative importance.³⁵ This difficulty was remedied in 1851 in comprehensive provincial legislation that superseded the 1799 *Act* as well as the Toronto legislation.³⁶ The officials authorized to apprentice children were, in cities and incorporated towns, the mayor, recorder, or police magistrate; in any county or union of counties, such authorization fell to “the Chairman of and at any Court of General Quarter Sessions” (s. II). The definition of those who could be apprenticed did not include vagrants and juvenile offenders, as had been the case under the Toronto *Act*, but was rather limited to the parentless, expanded from the 1799 *Act* to include “any Minor who may be an orphan, or who may be deserted by his or her parents or guardian, or whose parents or guardian may for the time be committed to any common gaol or house of correction, or any Minor who may be dependant upon any public charity for support” (s. II). Such public charities included the Toronto and Kingston Houses of Industry and two children’s homes that opened in 1845 and 1848,³⁷ although

32 “An Act to authorize the Apprenticeship of Minors, in certain cases, and to regulate the duties of Master and Apprentices,” December 7, 1846; *Toronto Globe*, December 23 and 26, 1846.

33 Upper Canada, *Statutes*, 4 Wm. IV, ch. 23.

34 *Minutes of General Quarter Sessions, Midland District*, March 1, 1843.

35 George Betts, “Municipal Government and Politics, 1800–1850,” in Gerald Tulchinsky, ed., *To Preserve & Defend: Essays on Kingston in the Nineteenth Century* (Montreal and Kingston: McGill-Queen’s University Press, 1976), p. 225; David R. Murray “The Cold Hand of Charity: The Court of Quarter Sessions and Poor Relief in the Niagara District, 1828–1841,” in W. W. Pue and B. Wright, eds., *Canadian Perspectives on Law and Society: Issues in Legal History* (Ottawa: Carleton University Press, 1988), p. 180.

36 “An Act to amend the Law relating to Apprentices and Minors,” Upper Canada, *Statutes*, 1851, 14 & 15 Vict., ch. XI (*Apprenticeship Act*, 1851).

37 The first orphanage opened in the Catholic Hôtel Dieu Hospital in Kingston in 1845; see Sister Mary Coderre, “Hôtel Dieu of Kingston: Past, Present and Future,” *Historic Kingston*, vol. 35 (1987), p. 9. The first Protestant Home in Hamilton opened in 1848; see Carmen Nielson Varty, “The City and the Ladies: Politics, Religion and Female Benevolence in Mid-Nineteenth-Century Hamilton, Canada West,” *Journal of Canadian Studies*, vol. 38 (2004), pp. 151–171. See also Table 1.

there is no evidence that such institutions apprenticed children other than under the authority of their own incorporation statutes (see below).

Evidence of pauper apprenticeship by public authorities is sporadic, as the 1799 *Act* did not require court authorization for, or any public record of, specific apprenticeships, nor did the 1851 *Act* for apprenticeships arranged by municipal officials, although rural apprenticeships should thereafter have been recorded in Quarter Session Minutes, as they were to be authorized by the chairman “of and at” any court sessions. However, most deserted and orphaned children would have gone or been taken to one of the many incorporated towns or cities and thus have been apprenticed off the record by town or city officials. The limited number of indentures surviving in the records of homes that clearly did formally apprentice children also suggests that these documents were not normally kept, at least not until later in the century.

However, a handful of indentures executed by public officials under these statutes has survived,³⁸ as have a few references to apprenticeship in court records. For example, the London Courts of General Quarter Sessions in 1817 and 1818 ordered the apprenticeship of four siblings, the binding of one also being recorded, as were the detailed terms of apprenticeship of another six-year-old boy.³⁹ In 1837 the Midland District Court of Quarter Sessions directed “that a Communication be

38 Surviving indentures executed in accordance with the terms of the 1799 or 1851 *Act* include: Indenture of Apprenticeship between Mary Aulthouse and John Ham, February 6, 1802, Lennox and Addington County Museum Small Collections, 32312–32313 [signed by mother, two justices of the peace]; Indenture of Apprenticeship of Ann Thayer between Lawrence Lawrason and Peter Gordon, justices of the peace, and Andrew Templeton, farmer, March 5, 1803, Archives of Ontario, F 493–1, microfilm MS 7294, Jean Baptiste Rousseau family personal and business correspondence [signed by town wardens, two justices of the peace, orphan girl]; Indenture of Apprenticeship between Leonard Lewis and Richard Arnold Esq, March 21, 1807, Archives of Ontario, F–775, Miscellaneous Collection #3, MV 2101 [signed by mother, two justices of the peace]; Indenture of Apprenticeship between James Clark and Noah Fairchild, March 14, 1809, Eva Brook Donly Museum, Simcoe, Ontario, Fairchild Papers [signed by grandfather, uncle, two justices of the peace]; Indenture of Apprenticeship of Eli Brackenridge between Jean Baptiste Rousseau and John Jackson, justices of the peace, and Elijah Secord, March 3, 1810, Archives of Ontario, F 493–1, microfilm MS 7294, Jean Baptiste Rousseau family personal and business correspondence [town wardens, two justices of the peace, boy an orphan negro]; Apprenticeship Indenture re: Sarah Mae Clauerty, October 2, 1832, County of Prince Edward Archives [town warden, two justices of the peace, 1799 *Act* referenced]; Apprenticeship of Edward Davis, an abandoned child, by the Town Wardens of Waterloo to Christian Schwartentruber, June 1, 1839, *Waterloo Historical Society Annual*, vol. 57 (1969), p. 80 [town warden, two justices of the peace]; Indenture of Apprenticeship between John Crawford, John Pearson, Henry Moad and William Hayes Jackson, 1855, [Indenture under Ch. 10 1851], Archives of Ontario, F–2040 F. J. French Papers, MV 1109 #14 [draft unsigned]; *Commonwealth v. Hamilton*, 6 Mass. Reports 273 (1810) (concerning girl apprenticed in Upper Canada), reproduced in Robert H. Bremner, ed., *Children and Youth in America: A Documentary History*, vol. I: 1600–1865 (Cambridge: Harvard University Press, 1970), p. 159.

39 *Minutes of the Court of General Quarter Sessions of the District of London*, in Fraser, “Twenty-Second Report of the Department of Public Records and Archives of Ontario,” May 3 and 10, 1817; May 16, 1818; October 16, 1817.

made to the township Commissioners, directing them to place Mary Ann Dempsey, as an apprentice, in some suitable family,” although this did not happen as the District Accounts show her board being paid by the District.⁴⁰ In 1843 the Midland District Court stated that the children of three women sent to penitentiary should be apprenticed, although their prison sentences were only for six months, suggesting that the Court thought that local authorities did have some proactive power to protect children from their parents. However, there being no town wardens, no one had the authority to apprentice the children, and thus it was “decided that for the present the children be provided for as heretofore until some arrangement can be made and that the Clerk of the Peace be authorized to procure suitable clothing for the children that are here.” Subsequent accounts show a sum paid for “clothing for orphans” and sums paid for their support.⁴¹

Such direct support for homeless children was less common than support for destitute and insane adults, both being provided through the colony’s rudimentary local government, functioning primarily through justices of the peace (magistrates) sitting in Courts of Quarter Sessions, although not consistently across the province or even over time within the same district.⁴² Support

40 Archives of Ontario, MS 694, Microfilm Reel 1, Series RG 22–54, Minutes, 1800–1849, *Minutes of General Quarter Sessions, Midland District*, October 16, 1837; “Treasurer’s Account, Midland District,” *Appendix to Journal of the House of Assembly of Upper Canada . . . session 1839–40* (Toronto: W. L. Mackenzie, 1840), pp. 549, 550, 552.

41 *Minutes of General Quarter Sessions, Midland District*, March 1, 1843, Accounts (although the amounts paid in July could be for the orphans taken over from St. George’s Church, see below); *Kingston Chronicle and Gazette*, March 1, 1843, re: Midland District Municipal Council, February Session, Tuesday 14th, 1843, “a letter from the Clerk of the Peace, relating to Orphan Children” read.

42 Smandych, “Colonial Welfare Laws.” In 1792 the Midland District appointed “overseers of the poor” as under the Poor Law (p. 220). See also Murray, “The Cold Hand of Charity,” pp. 179–206. There are regular, although not frequent, references to support and medical bills paid for or to destitute adults in the Accounts of Courts of Quarter Sessions and in District Treasurers’ Accounts, although those supported, mainly women, were commonly identified as insane and often housed in the District jails. Unidentified accounts approved as filed may have included other such payments, while the cost of those kept in jail may not always have been explicitly accounted for. See, for example, *Appendix to Journal of Assembly*, 1831–1832, 2 Wm. IV, A–232, District of Gore, paid to the Town Warden £6 “for maintenance of pauper” plus £3 15s “for board and funeral of a Pauper” and £12 10s to doctor “for attendance on a Pauper” (January 16, 1829); Home District Accounts, *Upper Canada Gazette*, December 27, 1832, £74 17s 1¼ d paid to “sundry person . . . on ac’t. of insane persons for 1831” (May 14, 1832); Home District Accounts, *Upper Canada Gazette*, September 12, 1833, £138 8s 7½ d paid to “sundry persons for the services [sic] of insane persons” (March 13, 1833); “Midland District Accounts,” *Kingston Chronicle and Gazette*, June 29, 1833, £2 per month paid to various people for maintenance of Mary Buchanan, a lunatic (October 1832 to February 1833) and March 26, 1836 (Supplement), £2 per month to William Kilbourn for support of Mary Buchanan; *Appendix to the Journals of the House of Assembly of Upper Canada from the 8th day of November, 1836 to the 4th day of March 1837*, 7Wm. IV, pp. 11–12, Midland District, £2 per month paid to Mary Buchanan (April 1835–April 1836); p. 11, Johnstown District, £3 15s paid to an individual for keeping “an insane woman” plus

was nevertheless sometimes paid for children who had not been apprenticed, often because they were disabled or insane and thus unable to contribute normally to a household as expected of an apprentice.⁴³ Public responsibility was

maybe £3 18s paid to the same individual; pp. 19–20, Home District, £37 4s plus £37 19s 6d plus about half of £53 13s 6.5d paid to Home District Gaoler “for maintenance of the destitute insane” (May 1835 to July 1836); *Appendix to Journal of the House of Assembly of Upper Canada ... third session of the thirteenth provincial Parliament*, 1838, 1 Vict., p. 369, Midland District, £2 paid to Mary Buchanan (May 1836. Mary was thus apparently supported for 3.5 years); p. 374 & 376, paid Home District Gaoler for insane (November 1836 to June 1837); *Appendix to Journal of the House of Assembly of Upper Canada ... being the fourth session of the thirteenth provincial Parliament*, 1839, 2 Vict., p. 392, paid Home District Gaoler for insane, £79 7s 2d (January 1 to June 30, 1838); *Appendix to Journal of the House of Assembly of Upper Canada, from the third day of December, 1839 to the tenth day of February...* session 1839–40, 3 Vict., p. 555, paid Home District Gaoler for insane for one quarter to 30th September 1838 £29 2s 11d; p. 557, for quarter to 31st December 1838 £24 1s 2d; p. 559, for quarter to March 31, 1839 £41 15s 8d, for quarter to June 30, 1839 £52 7s 9d; *Appendix to the second volume of the journals of the Legislative Assembly of the province of Canada: session 1842*, 6 Vict., numerous references to support of lunatics in jails and with private individuals in the accounts of Prince Edward, Newcastle, Home, Niagara, and London Districts; *The Perth Courier*, April 3, 1835, “Bathurst District Accounts 1834,” £2 15s for “clothing for Crazy Mary” and £5 2s for “Erecting a house” for Crazy Mary; *The St. Thomas Liberal*, November 8, 1832, London District Accounts, paid July 1831 “for maintenance and board of John Stiffens [?], a sick person and distressed” £1 10s; *Minutes of General Quarter Sessions, Midland District*, references possibly to payments for poor: April 28, 1803, paid Town Warden Marysburgh for support of Lovel £14 12s 6d, Town Warden Kingston for support of Cain £5 16s 5d; April 24, 1811, paid Town Warden Hallowel for John Cole £13 12s 8d, Town Warden Ernest Town £13 15s; October 26, 1837, “The Committee would also recommend that ten shillings per week should be allowed for the support of Margaret Bradley an Insane woman”; July 10, 1838, “Resolved that Mr. Pringle & Dr. Baker and Dr. Sampson be a sub-committee to make such arrangements respecting the lunatics as they may find proper & necessary”; Archives of Ontario, RG 22–29, vol. 1, 2, 3, 4, 1802–1831, *Minutes of Quarter Sessions, Newcastle District*, various amounts for sick and destitute, including payments to doctors and for funeral, April 14, 1818, July 16, 1819, April 10, 1822, July 8, 1823, October 16, 1823, January 12, 1826, January 9, 1828, Accounts for 1827, dated January 1, 1828, July 10, 1828, October 14, 1828, January 15, 1829; Accounts for 1828 dated January 1, 1829; Accounts for 1830 dated January 12, 1831.

43 **Bathurst District:** *The Perth Courier*, April 3, 1835, “Bathurst District Accounts 1834,” £10 for Mr. Duncan’s children; May 6, 1836, “Treasurer’s Account, Bathurst District, 1835,” September Sessions paid J. McIlquham for insane child £7 10s, December Sessions paid £12 10s for Mrs. Duncan’s insane child; April 21, 1837, “Treasurer’s Accounts, Bathurst District, for 1836,” September Sessions paid Trustees for widow Duncan’s insane child, £7 11s, December Sessions paid John Lee 2 orphan children £3; “Treasurer’s Accounts, Bathurst District,” *Appendix to Journal of the House of Assembly of Upper Canada...*, 1838, 1 Vict., p. 359, September 1836, £7 11s “Paid Widow Duncan’s Insane Child”; December 1836, £3 “Paid John Lee, care of two orphan children”; *Appendix to Journal of the House of Assembly of Upper Canada...*, 1839, 2 Vict., p. 384, 1837, “Paid Mrs. Voss, on acc’t. of an insane Girl” £9 13s; *Appendix to Journal of the House of Assembly of Upper Canada...*, 1839–1840, 3 Vict., pp. 540, 541, 1837–1838, “Paid Mrs. Horax, for an insane girl” £7 plus £10 10s; p. 541, “Paid Mrs. Voss, on account of an insane girl” £13 13s 9d. **Midland District:** *Minutes of General Quarter Sessions, Midland District*, July 12, 1837 (£6 17d 6p to Ann Hunter, maintenance of an Orphan). **London District:** *Appendix to the second volume [of the journals of the Legislative Assembly of the province of Canada 1842*, 6

explicitly presumed with respect to four children who St. George's Church in Kingston declared in 1843 should be supported by District funds and not from the church's charity funds that were intended for "the aged, sick and infirm members of the Communion."⁴⁴ Apprenticeship would have been, from the public viewpoint, more desirable than such direct public support, as it transferred financial obligations to the masters. It was also better for the children, as it gave them status and some sense of permanence that being supported on the public rates could not, and at least nominally provided for education and training suitable to their station in life. In turn, the master benefited from the child's labour. While such apprenticeship can be criticized as exploitive, the child's work often was little more than what would have been required of a child of the household, and the payment, received at the end of the term to assist apprenticed children in establishing themselves in life, similar to that given to children leaving home. Paying for the care of the child might have avoided the appearance of exploitation, but, as was found in early Nova Scotia,⁴⁵ it did not assure proper care or a stable home.

Thus, by mid-century, children for whom public authorities were empowered to make provision were still limited to those who effectively had no parents or home. Although it was not required, when such children were brought to the attention of the authorities, it seems to have been assumed that authorities had some obligation to find them a home and to pay board if necessary. However, poverty, denial of basic amenities of life (apart from a home), a poor home environment, or ill treatment did not yet justify public authorities actively intervening on behalf of a child living with his or her parents. This was to begin to change in the 1870s with compulsory education legislation⁴⁶ and the *Industrial Schools Act*.⁴⁷

Compulsory Education Legislation 1871 and the Industrial Schools Act 1874

The 1874 *Industrial Schools Act* was a milestone in the evolution of the concept of parental neglect and of societal responsibility for children

Vict., October 1840 paid £2 6s 5p "for boarding &c. a destitute child." **Niagara District:** From 1828 to 1840 there were 28 petitions for relief to the Niagara Court of Quarter Sessions from individuals supporting orphan children (Murray, "The Cold Hand of Charity," pp. 193–194).

44 *Minutes of General Quarter Sessions Midland District*, July 7, 1843, text of letter dated June 26, 1843 from the church, endorsement July 7, 1843 of J. S. Cartwright, Chairman of Sessions, approving temporary relief until the next Sessions; Accounts for October Sessions 1843, January Sessions 1844, April Sessions 1844, winter/spring Sessions 1845 show payments for the support of four children, one blind, presumably these four.

45 Paul M. Gouett, "The Halifax Orphan House 1752–87," *Nova Scotia Historical Quarterly*, vol. 6, no. 3 (1976), p. 282.

46 "An Act to Improve the Common and Grammar Schools of the Province of Ontario," Ontario, *Statutes*, 1870–1871, 34 Vict., ch. 33.

47 "An Act respecting Industrial Schools," Ontario, *Statutes*, 1874, 37 Vict., ch. 29.

suffering from parental neglect and failure. It was an offshoot of compulsory education, which itself represented a major intrusion into the family and a limitation on parental authority in the interests of rescuing children from “pauperism, and its natural companions, misery and crime” and promoting “industry and virtue, comfort and happiness,” although societal interests in reducing crime and building an educated work force were strong.⁴⁸

Before taking up his duties as Chief Superintendent of Education in 1846, Egerton Ryerson toured the United States and Western Europe to study their systems of education.⁴⁹ Building on what he had learned, he lobbied for compulsory education, but was blocked by defenders of patriarchal authority. Thus in 1854 a draft bill did not pass, “as the Government was not prepared to sanction what was regarded as an interference with parental rights,”⁵⁰ and in 1862 Ryerson himself suggested that compulsory education was impracticable as he had “found an utter unwillingness on the part of public men of different parties to do what seemed to entrench upon individual and parental rights.”⁵¹

Another major concern was that many of those not going to school were seriously disadvantaged children who were not welcome in public schools, and thus Ryerson was forced to suggest ways of dealing with them both to make compulsory education palatable and to ensure that all children benefited. Thus, having temporarily given up on compulsory education, in 1862 he produced a draft bill “to provide for the Education of Vagrant and Neglected children . . . the most needy and neglected” in charitable and

48 Egerton Ryerson, “Report on a System of Public Elementary Instruction for Upper Canada, 1846,” in J. George Hodgins, chap. 7, “Foundation of the Present System of Public Instruction in Upper Canada,” *Documentary History of Education in Upper Canada* (Toronto, 1891–1910), vol. 6 (1846), pp. 143–146; “Annual Report of the Normal, Model, Grammar, and Common Schools, in Upper Canada” for 1857, *Journals of the Legislative Assembly of the Province of Canada*, 1858, 21 & 22 Vict., appendix 43, Part I, XXI, paras. 6, 8 (n.p.). See also Harvey J. Graff, “The Reality Behind the Rhetoric: The Social and Economic Meanings of Literacy in the Mid-Nineteenth Century: The Example of Literacy and Criminality,” in Neil McDonald and Alf Chaiton, eds., *Egerton Ryerson and his Times* (Toronto: Macmillan of Canada, 1978), pp. 187–220; Susan Houston, “The Impetus to Reform: Urban Crime, Poverty, and Ignorance in Ontario, 1850–1875” (PhD thesis, University of Toronto, 1974), pp. 331–333, and “Politics, Schools, and Social Change in Upper Canada,” in Michael B. Katz and Paul H. Mattingly, ed., *Education and Social Change: Themes from Ontario's Past* (New York: New York University Press, 1975), pp. 30–35; Peter N. Ross, “The Free School Controversy in Toronto, 1848–1852,” in Katz and Mattingly, eds., *Education and Social Change*, pp. 69–70.

49 Hodgins, *Documentary History*, vol. 6 (1846), pp. 138–139.

50 J. George Hodgins, ed., *Historical and Other Papers and Documents Illustrative of the Educational System of Ontario* (Toronto, 1911), vol. 3 (1853–1868), p. 29; Hodgins, *Documentary History*, vol. 17 (1861–1863), p. 175; “Annual Report of the Model, Grammar and Common Schools in Upper Canada” for 1857, Part I, XXI, para. 13, p. 33.

51 Egerton Ryerson, “Memorandum on the Draft of Bill . . . in Regard to Vagrant and Neglected Children,” in Hodgins, *Documentary History*, vol. 17 (1861–1863), p. 178.

religious schools, an approach that was not well received. In 1866 he proposed authorizing municipalities to provide education for “poor and destitute children” and to enforce education of children “living in idleness, vagrancy, or by begging,” although not those convicted of serious crimes. In 1868 he introduced two bills, one making education compulsory for children from age seven to twelve, the other providing for Industrial Schools to which children could be committed by a police magistrate on the petition of any person. The definition of children who could be so committed still focused on their circumstances (begging, vagrancy, homelessness, criminal conviction), there being no reference to parental deficiencies or neglect in either the 1866 or 1868 bill.⁵²

Compulsory education was finally approved in 1871. Education for four months per year was made a right for children aged seven to twelve, and parents who failed to provide such education could be penalized (s. 3). Public School Boards were authorized to establish Industrial Schools “for otherwise neglected children” (s. 42). The term “neglected child” was not defined, it instead being provided “that any pupil who shall be adjudged so refractory by the trustees (or a majority of them) and the teacher, that his presence in the school is deemed injurious to the other pupils, may be dismissed from such school, and, where practicable, removed to an Industrial school” (s. 3). Thus it was the behaviour of the children that justified admission to industrial schools, while reference to failures of the parents was limited to their failure to educate their children.

In 1874 *An Act respecting Industrial Schools* provided in detail for residential industrial schools within the publicly financed school system, although the *Act* envisaged provincial operating grants and parental and municipal contributions towards the children’s maintenance. Children under 14 could be admitted and kept until 16 upon the order of a police magistrate (s. 4). Anyone could bring a child before the magistrate, including the child’s parents, if the child fell into one of the following categories:

- (1) Who is found begging or receiving alms, or being in any street or public place for the purpose of begging or receiving alms;
- (2) Who is found wandering, and not having any home or settled place of abode or proper guardianship, or not having any lawful occupations or business, or visible means of subsistence;
- (3) Who is found destitute, either being an orphan or having a surviving parent who is undergoing penal servitude or imprisonment;

⁵² For texts of and commentaries on the draft bills, see *Journal of Education of Upper Canada*, vol. 15, no. 7 (July 1862) and no. 12 (December 1862); Hodgins, *Documentary History*, vol. 15 (1860), pp. 4–5; vol. 17 (1861–1863), pp. 175–192; vol. 19 (1865–1867), pp. 229–236; vol. 22 (1869–1871), pp. 17–32; *Globe*, June 19, July 2 and 28, 1862; December 8, 9, and 17, 1868.

- (4) Whose parent, step-parent or guardian represents to the police magistrate that he is unable to control the child, and that he desires the child to be sent to an industrial school under this Act;
- (5) Who, by reason of the neglect, drunkenness or other vices of parents, is suffered to be growing up without salutary parental control and education, or in circumstances exposing him to lead an idle and dissolute life. (s. 4)

The last category for the first time identified parental deficiencies as justifying societal intervention in the family. Furthermore, if they wished their children discharged to them, parents had to prove that they had “reformed and [were] leading orderly and industrious lives, and [were] in a condition to exercise salutary parental control over their children, and to provide them with proper education, and employment” (s. 23).

Both the compulsory education and industrial schools statutes were explicitly modelled on foreign legislation.⁵³ The 1868 *Industrial Schools Bill*, the *Globe* newspaper noted, “was copied almost exactly from a British act.”⁵⁴ The 1874 *Act* still closely resembled the British statute, but the

53 In 1868 Ryerson prepared an extensive “Special Report on Popular Education in Europe and the United States” (Ontario, *Journals of the Legislative Assembly*, December 27, 1867 to March 4, 1868, pp. 247–417). Excerpts appear in Hodgins, *Documentary History*, vol. 21 (1868–1869), pp. 52–136, and *Historical and Other Papers*, vol. 4 (1858–1876), pp. 85–91. In discussing the 1871 *Act*, Ryerson commented extensively on “Educational Progress in Other Countries” (“Annual Report of the . . . Schools of Ontario” for 1870, Ontario, *Sessional Papers*, 1871–1872, 35 Vict., no. 3). Other officials likewise made reference to British, European, and American models for industrial schools: W. B. McMurrich (a Toronto school trustee), “Industrial Schools,” *The Canadian Monthly*, vol. 2 (1872), pp. 424–428; Hodgins, *Documentary History*, vol. 23, p. 275; “Homes or Houses of Refuge for Destitute and Neglected Children,” “Separate Report of Mr. E.A. Meredith, Second Annual Report of the Board of Inspectors of Asylums, Prisons, &c., 1861,” Canada, *Sessional Papers*, 1862, 25 Vict., no. 19, n.p.; “Vagrancy,” in the “Separate Report of Mr. Terence J. O’Neill, Annual Report of the Board of Inspectors . . . for 1864,” Canada, *Sessional Papers*, 1865, 29 Vict., no. 14, n.p.; “Fifth Annual Report of the Board of Inspectors . . . 1865,” Canada, *Sessional Papers*, 1866, 29 Vict., no. 6, pp. 88–89. Before deciding how to implement the 1871 *Act*, a Toronto School Board committee visited schools in the United States and read the report of the Inspector of similar British schools (Hodgins, *Documentary History*, vol. 3, pp. 275–285). The Toronto *Globe* also cited British models: “The Arabs of the Street,” January 4, 1866; “City Arabs,” February 27, 1868; “Industrial Schools,” December 17, 1868; “Industrial Schools,” January 8, 1872. Johnson argues that initially the Ontario school system was influenced by British models, but American models became increasingly influential; see F. Henry Johnson, *A Brief History of Canadian Education* (Toronto: McGraw-Hill, 1968), pp. 3–4.

54 Proceedings of the Legislature of Ontario, *Globe*, December 9, 1868. The sections defining the children who could be admitted to an Industrial School under the British *Act* were as follows:

“Sec. 14. Any person may bring before two justices or (in Scotland) a magistrate any child apparently under the age of fourteen years that comes within the following description, namely:

“That is found begging or receiving alms (whether actually or under pretext of selling or offering for sale anything), or being in any street or public place for the purpose of so begging or receiving alms.

wording of the new s. 4(5) providing for the admission of neglected children was almost identical to a Massachusetts statute of 1866.⁵⁵

No institutions were established by school boards under the 1874 *Act*. It was amended in 1883 to allow school boards to delegate the authority to establish industrial schools to philanthropic societies, and in 1884 to add a sixth class of child who could be ordered sent to an industrial school, that is, one “found guilty of petty crime.”⁵⁶ While industrial schools were thereafter established, they became effectively reformatories focusing on the wrongdoing of children rather than that of their parents, and thus were of peripheral interest in the development of the concept of protecting children from parents.⁵⁷

Nevertheless, major innovations in the 1874 *Act* helped pave the way for the 1893 *Children’s Protection Act*, including the concept of the neglected child in s. 4(5) and the acceptance of public responsibility to provide for the care of neglected children. The wording of s. 4(5) was carried forward in the 1888 *Act for the Protection and Reformation of Neglected Children*, Kelso’s first attempt to improve provision for neglected children, and from there to the 1893 *Act*.⁵⁸ The 1888 *Act* was in effect an extension of the *Industrial Schools Act*, providing for committal of children not only to industrial schools but also to any other refuge or institution for children. However, while it accepted public responsibility for such children by providing that municipalities pay for their upkeep, unlike the 1874 and 1893 *Acts* it provided no administrative structure for its implementation and designated no one as being responsible for initiating proceedings. It consequently had little practical effect, but it was a significant link between the 1893 *Act* and what had gone before and illustrates that Kelso was in fact influenced by the domestic legislative background, not only by foreign models.

“That is found wandering and not having any home or settled place of abode, or proper guardianship, or visible means of subsistence.

“That is found destitute, either being an orphan or having a surviving parent who is undergoing penal servitude or imprisonment.

“That frequents the company of reputed thieves.

“Sec. 16. Where the parent, or step-parent, or guardian of a child, apparently under the age of fourteen years, represents to two justices or a magistrate that he is unable to control the child and that he desires that the child be sent to an Industrial School, under this Act the justices or magistrate, if satisfied on enquiry that it is expedient to deal with the child under this Act, may order him to be sent to a certified Industrial School.” (*Statutes of Britain* 1866, 29 & 30 Vict., c. 118, ss. 14, 16, cited in 1891 Prison Reform Commission, pp. 56–57.)

55 *Ibid.*; “Proceedings of the Legislative Assembly,” *Globe*, March 7, 1874; Folks, “The Care of Destitute, Neglected, and Delinquent Children,” p. 97.

56 Ontario, *Statutes*, 1882–1883, 46 Vict., ch. 29; Ontario, *Statutes*, 1884, 47 Vict., ch. 46.

57 Charlotte Neff, “The Ontario Industrial Schools Act of 1874,” *Canadian Journal of Family Law*, vol. 12, no. 1 (March 1994), pp. 171–208.

58 Ontario, *Statutes*, 1888, 51 Vict., ch. 40; Jones and Rutman, *In the Children’s Aid*, pp. 29–30.

Facilitating Charitable Work with Children

In addition to passing legislation providing directly for disadvantaged children, government increasingly through the nineteenth century facilitated charitable efforts to help children in need.

Immigrant Relief

During the 1830s and 1840s the colonial government incurred substantial public expenditure on immigrant relief and public works providing jobs to destitute immigrants, justified from the Canadian perspective as promoting the colony's growth and prosperity.⁵⁹ With immigration, however, came serious health challenges that resulted in government assuming significant responsibility for health care for the poor, particularly during the cholera epidemics of 1832 and 1834 and the typhus epidemic of 1847.⁶⁰ Thus, in addition to £1,600 spent by the government to deal with cholera, of the £7,350 in charitable grants approved by the legislative assembly of Upper Canada between 1830 and 1840, most went to health care in Kingston and York/Toronto, through which most immigrants entered Upper Canada: £250 to the Kingston Female Benevolent Society for its hospital, £1,600 to the Hospital at York, £3,500 to the Kingston Hospital, and £50 to the Lunatic Asylum, while £500 was paid for destitute immigrants and £1,150 for the Toronto House of Industry (including £250 in 1837 said to be for the Toronto poor). By 1852 government grants for Canada West included \$30,000 for the Lunatic Asylum, \$6,800 for hospitals, and \$4,000 for the Toronto and Kingston Houses of Industry (the Indigent Sick in Kingston). No children's homes were yet in receipt of government aid.⁶¹

59 From 1831 to 1834 the government spent £29,874 and from 1835 to February 1840 £16,378 (currency) on emigration out of "Casual and Territorial Revenue." Canada, *Appendix to the Sixth Volume of the Journals of the Legislative Assembly of the Province of Canada*, 1847, 11 Vict., Appendix K.K.K., "Annual Revenue and Expenditure of Upper Canada," 1821–1840. See also Robert D. Wolfe, "The Myth of the Poor Man's Country: Upper Canadian Attitudes to Immigration, 1830–37" (MA thesis, Carleton University, 1976), pp. 89–91, 233–234. From 1834 to 1838 about £697,314 was spent on the authority of the Legislative Assembly on "Provincial Works" (Canada, *Appendix to the Sixth Volume of the Journals*, 1847, Appendix K.K.K.). With respect to public works being in part poor relief, see Rainer Baehre, "Paupers and Poor Relief in Upper Canada," *Canadian Historical Association: Historical Papers* (1981), p. 62.

60 In 1832, 51,746 British emigrants arrived at Quebec; 2,350 died of cholera after arrival, 850 returned to the United Kingdom, "principally Widows and Orphans, about 100 Pensioners, and a few lazy characters," and 25,000 went to York where about 400 died, leaving about 90 widows, 60 orphans, and 400 fatherless children. In 1847, 89,738 people emigrated from Britain, of whom one-third were admitted to hospital and 17% died; 1,135 children were orphaned, and 38,781 destitute immigrants went to Upper Canada, mainly Kingston and Toronto. *British Parliamentary Papers*, Irish University Press Series, Colonies, Canada [hereafter BPP], vol. 19, "Emigration," 1832, p. 195; Edith Firth, *The Town of York, 1815–1834* (Toronto: Champlain Society, 1866), p. 253; *Toronto Patriot*, June 2, 1848.

61 Canada, *Appendix to the Sixth Volume of the Journals*, 1847, Appendix K.K.K. (summary of expenses 1821–1840, including charitable grants, cholera expenses, and emigration expenses, in

For the first half of the nineteenth century, government relief thus focused first on colonial development through immigration and secondly on health issues associated with immigration, but none of it was yet specifically directed to children. Furthermore, while funding was now being provided for institutions for the needy, particularly for hospital buildings, these still served primarily newly arrived sick and destitute immigrants, as did any direct relief to individuals. Immigrants still in need after reaching their destination were the responsibility of local charitable organizations and exhausted most of their resources, as the number of sick and destitute immigrants dwarfed the needs of the settled population, with orphans and half-orphans and their mothers being considered the most deserving. These organizations relied primarily on private donations, although public officials encouraged their operations through both official endorsement and personal involvement and donations, and sometimes official government grants.

In York one of the most prominent charities was the Strangers' Friend Society, founded in 1817 and active until well into the 1830s. It never received a government grant, although public buildings were sometimes made available as temporary immigrant shelters, and many prominent public officials were directly involved in and donated personally to its operation.⁶² Orphan children were placed in private homes where they

pounds currency). Expenditures for specific institutions are from Report of the Committee of Finance (1830), Report on Public Accounts, and Abstracts of Warrants in the Appendices to the Journals of the House of Assembly of Upper Canada, 1830 to 1840.

62 Lieutenant Governor Maitland subscribed £10 per year (his private secretary £2), as did Chief Justice Powell until he stepped down as C.J. Powell's successor, Chief Justice Campbell, gave £5, having subscribed £2 10d before becoming C.J. This suggests they paid substantial subscriptions because of their public positions; typical subscriptions were £1 to £2 10d (\$10). City of Toronto Reference Library, Baldwin Room [hereafter BR], William Allan Papers, "Account Book for the Strangers' Friend Society 1822–28." For Management Committee lists, see *Upper Canada Gazette*, October 23 and December 4, 1817; November 30, 1818; December 2 and 9, 1819. Concerning the status of these committee members, see Armstrong, *Handbook of Upper Canadian Chronology; Dictionary of Canadian Biography Online*, <http://www.biographi.ca/EN/index.html> (accessed September 19, 2007). Concerning Lieutenant Governor John Colborne's role and the immigrant shelter established through his efforts, see *Colonial Advocate*, December 11, 1828; S. P. Jarvis to W. D. Powell, December 14, 1828, in Firth, *Town of York, 1815–1834*, pp. 232–233; Archives of Ontario, Strachan to Mudge, December 19, 1829, *John Strachan Letter Book, 1827–1834*, p. 78 (cited in Firth, *Town of York*, p. lxxv); Library and Archives Canada [hereafter LAC], Colborne Papers, MG24 A40, vol. 29, file 8591, pp. 8734–8738, undated report, probably December 1829 after the AGM (*Colonial Advocate*, December 3, 1829) proposing the SFS establish an asylum, resulting in "report of a Committee appointed at a meeting on the 15th of June to recommend constitutional changes to allow for the establishment of an Asylum for Emigrants" (likely Tuesday, June 15, 1830, as meetings were commonly on Tuesdays) (LAC, Colborne Papers, p. 8392); Archives of Ontario, F775 (formerly MU 2105), 1831, item 7, Envelope, "Emigrants admitted into temporary houses at York" [register of temporary emigrant asylum, concerning

would be expected to work if old enough, likely normally being apprenticed.⁶³

In Kingston the Compassionate Society was likewise established in 1817 by a group of prominent men to provide relief to newly arrived immigrants, including the sick and “helpless women and children.” Like the Strangers’ Friend Society, it was personally supported by the Lieutenant Governor, while the military provided an empty blockhouse for a hospital, but no government funding was forthcoming. In 1820 a group of women established the Female Benevolent Society as an offshoot of the Compassionate Society. They operated the blockhouse hospital until it burned down in 1835, and from 1833 to 1835 they also ran a school in the hospital, but government grants in 1830 and 1834 were for their work with the “destitute sick,” there being no special mention of children. After the fire in 1835, the Female Benevolent Society was dormant until 1841, when it resumed hospital work, which ended with the opening of the Kingston General Hospital in 1844 and the Hotel Dieu Hospital in 1845.⁶⁴

While charitable organizations helping sick and destitute immigrants thus existed in Upper Canada, not until the 1832 cholera epidemic left many immigrant children orphaned were children given special attention.⁶⁵ In August 1832 a “Committee appointed to dispense relief for distress

which see Baehre, “Paupers and Poor Relief”]. The last major reference to the Society is LAC, Colborne Papers, pp. 8464–8466, *Report of Meeting, Strangers’ Friend Society*, December 14, 1833.

63 Baehre, “Paupers and Poor Relief,” p. 69; LAC, Colborne Papers, MG24 A40, vol. 29, file 8591, pp. 8734–8738. The register of the Temporary Emigrant Asylum, 1831–1832, includes no parentless children, except a family of four supported in a private home (Archives of Ontario, “Emigrants admitted into temporary houses at York”).

64 *Upper Canada Gazette*, December 18 and 23, 1817 (founding); January 27, 1820 (Annual Meeting); February 1, 1821 (Annual Meeting); *Kingston Chronicle and Gazette*, November 7, 1835 (15th Annual Meeting); December 23, 1835 (fire); May 21, 1836 (16th Annual Meeting); “An Act granting one hundred pounds in aid of the funds of the Female Benevolent Society of Kingston,” 1830, 11 Geo. IV, ch. 32. 1834, 4 Wm. IV, ch. 46 (£150 grant); Patricia Malcolmson, “The Poor in Kingston, 1815–1850,” in Tulchinsky, *To Preserve & Defend*, pp. 292–293; Margaret Angus, “Health, Emigration and Welfare in Kingston 1820–1840,” in Donald Swainson, ed., *Oliver Mowat’s Ontario* (Toronto: Macmillan of Canada, 1972), pp. 126–127, 131–132; Margaret Angus, *Kingston General Hospital* (Montreal and Kingston: McGill-Queen’s University Press, 1973), pp. 3–4, 6, 10, 12, 15, 18, 19, 21–26; Margaret Angus, “A Gentlewoman in Early Kingston,” *Historic Kingston*, no. 25 (1975), pp. 73–85; James Roy, *Kingston: The King’s Town* (Toronto: McClelland & Stewart, 1952), pp. 151–152, 194, 234–238; Nancy McMahon, “Les Religieuses Hospitalières de Saint Joseph and the Typhus Epidemic, Kingston, 1847–1848,” *CCHA Historical Studies*, vol. 58 (1991), p. 43; QUA, coll. 2198, Box 4, Kingston Orphans’ Home, *Annual Report* for 1882–1883 and *Minutes*, April 10 and 16, 1860.

65 The immigration and epidemics of the 1830s also led to the establishment of ethnic and religious charitable societies, including, in Kingston, the St. George’s Society (*Kingston Chronicle and Gazette*, March 26, April 9, 13, and 16, 1836; April 5, 1837; April 4, 1838) and St. Patrick’s Benevolent Society (*Kingston Chronicle and Gazette*, January 29 and March 16, 1836), and in Toronto St. George’s, St. Andrew’s, and St. Patrick’s Societies (Baehre, “Paupers and Poor Relief,” p. 66).

caused by the cholera” or “the Society (or Institution) for the Relief of the Orphan, Widow, and Fatherless” (hereafter, the 1832 Committee) assumed responsibility for finding work and homes for needy widows and children in York, mainly new immigrants; 535 children were provided for from August 1832 to August 1834, many being indentured. The 1832 Committee also operated an “orphan house” to provide temporary care, its functions apparently being assumed by the House of Industry in 1837.⁶⁶ There was no official involvement in the establishment or funding of the 1832 Committee, but the Chief Emigration Agent for Canada endorsed its approach as superior to returning widows and orphans to the United Kingdom, noting that the “plan of apprenticing the children out to farmers and tradesmen has been adopted with considerable success.”⁶⁷ In August 1834 a similar Ladies Committee established in Kingston to provide for the widows and orphans left by cholera invited “those persons desirous of procuring Orphan children” to apply to the clergymen of the town “from whom every information may be obtained.”⁶⁸

The response to the typhus epidemic of 1847 was similar, with a Committee of the Widows and Orphans’ Asylum being established in Toronto to provide relief to the immigrants of 1847. The Hon. William Allan, a Legislative Council member who had been involved with the Strangers’ Friend Society from its founding in 1817, was briefly its chairman, and through him the Executive Government paid a grant of £100 (\$400), about 10 per cent of the total expenditures of the asylum. By the time it closed on May 15, 1848, the asylum had accommodated 627 orphans, young women, and widows and their children, including 197 children placed in private homes, most being apprenticed.⁶⁹ In Kingston the response in 1847 was to open a permanent House of Industry.

66 *Report of Meeting, Strangers’ Friend Society*, December 14, 1833; *Christian Guardian*, January 30, 1833 and September 17, 1834; *Patriot*, December 13, 1833; County of Prince Edward Archives, Sarah Mae Clauerty, Apprenticeship Indenture, October 2, 1832, signed by John Fenton, York town warden, witnessed by two justices of the peace; City of Toronto Archives [hereafter CTA], SC 35 A, Box 1, vol. II, Toronto House of Industry papers, *Minutes*, September 3 and 6, October 22, 1838 (boy placed out from the orphan house on October 1, 1834, no written indenture, returned to the House of Industry). Bishop Strachan paid the House of Industry funds remaining from the 1832 Committee (£50, *Minutes*, August 12 and October 6, 1846 and December 29, 1849; £161 9s 10d, CTA, SC 35 A, Box 1, *Report of the Trustees of the House of Industry for the year 1856*); Toronto Public Library Digital Collections, *Toronto City Directory 1837*, p. 44, 1832 (Committee listed); *The Perth Courier*, October 28, 1836, reported a child dying in a barn fire in Toronto township caused by “A child he [the dead child’s father] has from the orphan house.”

67 Report of A. C. Buchanan, Quebec, December 12, 1832, *BPP*, vol. 19, “Emigration,” 1832, p. 192 (8).

68 *Kingston Chronicle and Gazette*, August 23 and 30, September 6 and 13, 1834, ad for orphans carried through October 1834; November 8, 1834, meeting called for November 11, perhaps to disband the Committee (meeting not reported).

69 Metropolitan Toronto Library, Canadian History Department, “Report of the Managing Committee of the Widows and Orphans’ Asylum, 1848” (lists the children placed); *Globe*, August 21, 1847 (appeal for support, statement of objects); *Patriot*, September 14 and 28, 1847; *Globe*, December

Houses of Industry in Toronto and Kingston

The first permanent institution in Upper Canada serving the needs of children was the Toronto House of Industry, which opened in 1837 as a private, charitable institution. The impetus for its establishment came from a group of prominent Tories who urged Toronto City Council to convene a meeting “to devise ways and means [to relieve the poor] during the severity of the present winter,” children not being mentioned. In its first resolution this public meeting called attention to the Christian duty “to make provision for the wants of the poor, the widow, and the fatherless,” but the rhetoric at these organizational meetings generally focused on the poor.⁷⁰ Nor were children specifically mentioned at the initial meeting of the Committee established by this public meeting, reference being made instead to the establishment of a “House or Houses of Industry, where the poor of both sexes who are able to work may be provided with employment, to enable them to provide for their own support, and that of their families.” However, a few days later it was resolved, “That a temporary House of Refuge be established for destitute female children [*sic* — “females and children” intended?], and others who may be in a state of destitution, from sickness or want of employment, that they may be sheltered during the inclement season, and supplied with food, and, if possible, provided with employment.”⁷¹

The first rules, adopted February 13, 1837, made no special provision for children (apart from their food rations), but later policies did, and more than half of those helped were children. Thus, during the first three weeks of operation, 138 families (550 individuals) received relief, including 54 widows and 360 children, while the number resident after three weeks included ten widows, two deserted females, and 19 children.⁷² On May 1, 1837 the Committee “resolved that hereafter no person shall receive relief from this establishment except destitute widows and orphans, and

1 and 8, 1847 (availability of women, boys, and girls as servants and apprentices); *Globe* May 6, 1848 and *Patriot*, February to June 1848 (to be closed); *BPP*, vol. 17 “Canada,” p. 402; *Appendix to the ninth volume of the Journals of the Legislative Assembly of the Province of Canada*, 1850, 14 Vict., Appendix B.B., Table G (£100 grant).

70 Toronto *Correspondent and Advocate*, December 28, 1836. This meeting degenerated into sectarian political disputes, and three of the organizers and others left the meeting. Nevertheless, the main resolutions passed, and an organizing committee was struck and met. Concerning the political background to the support for and opposition to the establishment of a House of Industry, see Russell Smandych, “Rethinking ‘The Master Principle of Administering Relief’ in Upper Canada: A Response to Allan Irving,” *Canadian Review of Social Policy*, no. 27 (1991), pp. 83–84; Smandych, “Colonial Welfare Laws,” pp. 239–246.

71 Toronto House of Industry, *Minutes*, vol. I, December 26, 1836 to November 27, 1837; *Christian Guardian*, January 11, 1837.

72 Toronto Public Library, *Report of the Committee for the Relief of the Poor and Destitute of the City of Toronto: and Rules and Regulations of the House of Refuge and Industry*, February 13, 1837.

others who are infirm and unable to work.”⁷³ Later rules gave preference to “Orphans or the young children of Persons who have either deserted them or have been sent to Prison, or who from poverty or sickness are unable to support them.”⁷⁴ In January 1840, of 56 inmates, 34 were children under twelve, while of the 307 out-pensioners, 232 were children.⁷⁵ However, the intent of the institution was not to provide a permanent home, but rather to place the children in private homes. In this it distinguished itself from the English workhouses infamously immortalized in Charles Dickens’s *Oliver Twist* (serialized in the late 1830s) that provided publicly funded long-term care for large numbers of homeless children.⁷⁶

The Committee therefore resolved on June 12, 1837 to apply to the Legislature for the power to apprentice “orphan children or children whose parents from dissipation or otherwise will not support them.” On July 24, it resolved further that “no parent shall receive relief from this Institution, who will refuse allowing their children to be indentured.”⁷⁷ Although children were not formally indentured until the institution finally incorporated in 1851,⁷⁸ 265 were placed prior to incorporation — 54 during the first two years, when the average number of children in the House was 24, and between 10 and 28 per year (average 18) from 1839 to 1862, when the average number of children in the House was 23.⁷⁹

In November 1837, at a public meeting at City Hall, it was resolved to ask both the province and the city for support. The province responded with annual grants, £250 currency (\$1,000) being paid for 1837, rising to £350 in 1838, £500 in 1847, £700 (\$2,800) in 1857, and \$3,000 in 1861, then dropping to \$2,400 in 1863.⁸⁰ The city also responded immediately,

73 Toronto House of Industry, *Minutes*, vol. I.

74 *Ibid.*, vol. III (April 25, 1848 to December 21, 1858), front: “Rules...”

75 “Report of Select Committee in Favour of House of Industry,” January 22, 1840, *Appendix to Journal of the House of Assembly of Upper Canada*, 1840, 3 Vict., pp. 27–29.

76 Ivy Pinchbeck and Margaret Hewitt, *Children in English Society* (London: Routledge & Kegan Paul, 1973), vol. 2, chap. 17, p. 500 (for the earlier history of workhouse children, see vol. 1, pp. 146–199); Norman Longmate, *The Workhouse* (London: Temple Smith, 1974), especially chap. 14 and 15.

77 Toronto House of Industry, *Minutes*, vol. I.

78 *Ibid.*, vol. III, May 30 and July 25, 1850; February 12, March 27, May 29, and July 31, 1851; “An Act to Incorporate The House of Industry of Toronto,” Canada, *Statutes*, 1851, 14 & 15 Vict., ch. XXXV, s. IV.

79 CTA, SC 35A, Box 1, Toronto House of Industry, *Annual Report*, 1870, p. 2. See also “Report of Select Committee,” January 22, 1840; CTA, SC 35 D, Box 2, File 2, Toronto House of Industry, *Register of Applications for Children [to be placed] 1853–1859*. Rooke and Schnell note that the House of Industry began to emphasize placement of children in 1853, apparently presuming, incorrectly, that there were no placements before the House began using indentures. See Patricia T. Rooke and R. L. Schnell, “Childhood and Charity in Nineteenth-Century British North America,” *Histoire sociale/Social History*, vol. 15, no. 29 (May 1982), p. 164.

80 “Public Accounts,” *Appendix to the Journal of the Legislative Assembly of the Province of Canada*, 1837–1838, 1 Vict., p. 17; 1839, 2 Vict., vol. II, p. 14; 1839–1840, 3 Vict., p. 16; 1841, 4–5 Vict., Appendix (B); 1842, 6 Vict., Appendix K (B), no. 9; 1843, 7 Vict., Appendix (A) B.9; 1844, 8 Vict., Appendix A, no.

voting £100 on November 16 and paying a total of £190 by August 1839. However, although the mayors of Toronto took a direct and active interest in the House, regular city grants did not start until the late 1850s, the secretary noting, in a request in 1848 for modest assistance towards a new building, “that the charity has not desired one shilling from the City Funds for three years.” The city responded in 1849 with a contribution of £400 (\$1,600). In 1856 it paid a grant of £250, and in 1858 two grants of £500 each. Thereafter \$4,000 was paid annually, and thus the city assumed greater responsibility for the House of Industry than did the provincial government.⁸¹

From shortly after the opening of the Toronto House of Industry, these provincial and city grants normally made up more than 40 per cent of its income, and by 1860 the proportion had risen to two-thirds. However, although the majority of those assisted were children, it was not concern for homeless children but rather the plight of respectable, unemployed working-class men, many of them recent immigrants, that was the impetus for the first annual grant from the city in 1858, the winter of 1857–1858 being particularly bad economically.⁸² There is similarly little evidence that the provincial authorities focused to any significant extent on the number of orphaned and destitute children being helped or on the causes of their dependence.

The Kingston House of Industry opened in 1847, ten years after its Toronto counterpart. Following the passage of the *Houses of Industry Act* in March 1837,⁸³ Chairman John S. Cartwright urged the Grand Jury at the April sessions of the Midland District Court of Quarter Sessions

19; 1846, 9 Vict., Appendix C, no. 19 (for 1844 and 1845); 1847, 10 Vict., Appendix A, no. 18; 1848–1849, 12 Vict., Appendix A, no. 36; 1849, 12 Vict., no. 31; 1850, 13 Vict., Appendix C, no. 26; 1851, 14 Vict., Appendix B, no. 25; 1852, 16 Vict., Appendix B, no. 20; 1853, 16 Vict., Appendix B, no. 12; 1854, 17 Vict., Appendix D, no. 12; 1855, 18 Vict., Appendix D, no. 12; 1856, 19 Vict., Appendix 30, no. 12; 1857, 20 Vict., Appendix 4, no. 12; 1858, 21 Vict., Appendix 4, no. 12; 1859, 22 Vict., Appendix no. 5; Canada, *Sessional Papers*, 1860, 23 Vict., no. 1; 1861, 24 Vict., no. 3; 1862, 25 Vict., no. 4; 1863, 26 Vict., no. 10; 1864, 27 Vict., no. 2; 1865, 29 Vict., no. 38; 1867, 30 Vict. (1st session 1st Parliament, Dominion of Canada), no. 2. See also “Summary of Resolutions of Supply from 1852 to 1866–7” in *General Index to the Journals of the Legislative Assembly of Canada: In the 4th, 5th, 6th, 7th and 8th Parliaments, 1852–1866*, Table IV, pp. 868–869; “Sums Paid to each of the Hospitals and Charities in the Province in each year since Confederation [1868–1880],” Ontario, *Sessional Papers*, 1882, 45 Vict., no. 45 pp. 2–3. Until 1858 accounts were sometimes in pounds currency (\$4), sometimes pounds sterling (\$5). (The grant of £315 sterling in 1843 became £350 currency in 1844; £700 currency in 1857 was \$2,800 in 1858.)

81 *Christian Guardian*, January 11, 1837; *Patriot*, November 14 and 21, 1837; House of Industry, *Annual Reports*, CTA, SC 35 A, Box 1 (report for 1849 inserted in Minute Book, vol. 3) and 35 H, Box 2 (scrapbooks including some Annual Reports), and BR (1852 onward); *The Toronto British Colonist*, December 5, 1843; *Toronto Globe*, February 23, 1850, January 26, 1855, March 1 and 2, 1858; Treasurers’ Returns, City of Toronto, *Appendix to Journal of the House of Assembly of Upper Canada 1839–40*, pp. 560, 575, 577, 578, 586.

82 *Globe*, March 1 and 2, 1858.

83 Upper Canada. *Statutes*, 1837, 7 William IV, ch. 24. No institutions were opened under the terms of the Act.

to recommend in its presentment the establishment of a House of Industry pursuant to the terms of the *Act*. He appealed primarily to the need to rescue the children of parents “leading dissolute and improper lives” from ruin and to teach them “habits of industry.” The *Kingston Chronicle and Gazette*, noting that “the really poor and distressed would be relieved from hunger and want, the idle and dissolute removed from our streets, and the rising generation relieved from the contamination of their evil example,” applauded the proposal, as did a “Friend to the Poor” who argued in part that “children of common street beggars” would thereby be reclaimed. While a reader who signed himself “A Conservative” argued strongly against it, suggesting instead an asylum for widows and orphans, he also cited the interests of children as a primary concern.⁸⁴ The Grand Jury duly called for the establishment of a District House of Industry at three successive Sessions, but nothing happened until 1843, when the Court of General Quarter Sessions appointed five “inspectors of the proposed House of Industry” as required by the *Act*.⁸⁵ However, a committee of the whole of the Municipal Council of the Midland District was less enthusiastic, stating

that the committee are fully sensible of the importance of establishing a place of refuge for the destitute poor of the District, but they recommend to the Council to suspend the erection of a House of Industry for the present, and in order that the poor may not suffer in the mean time, the committee advise another appeal to be made to the Magistrates for the establishment of a temporary asylum for their relief and support, and that the sum of £200 be placed at their disposal for that purpose, for a year . . . and that . . . all present charges on the District funds for that purpose be discontinued, and the persons supported by the District be transferred to the asylum as a public charge thereon.⁸⁶

The following May, the Midland District council elaborated on its objections to a District House of Industry, arguing that the need arose from the location of the town of Kingston⁸⁷ that resulted in large numbers of “itinerant poor” (new immigrants) passing through and that the cost should not be borne by the rural population of the District or even by one district, but rather by all the districts

84 *Kingston Chronicle and Gazette*, April 26, 1837; October 14 and 28, 1837; November 4, 1837.

85 Archives of Ontario, MS 694, Microfilm Reel 1, Series RG 22–54, *Minutes of General Quarter Sessions, Midland District*, 1800–1849, April 25, 1837; July 12, 1837 (“to put a stop to the evils of street begging and idle pauperism”); July 13, 1842 (appointment of four inspectors of the proposed House of Industry); *Kingston Chronicle & Gazette*, October 14, 1837 (reference to Grand Jury “presentment in favor of establishing a House of Industry,” not in Quarter Session Minutes).

86 *Kingston Chronicle and Gazette*, August 16, 1843.

87 Kingston was incorporated as a town in 1838 and as a city in 1846. Betts, “Municipal Government and Politics, 1800–1850,” pp. 230, 236–237.

of Upper Canada. They also objected to the housing of poor orphans with “the leud, the dissolute, and the vagrant,” noted that the *Act* made provision for the poor subject to the whim of local authorities, and called for a law making poor relief “independent of anything so variable as the presentment of a Grand Jury; a law not bearing appropriately [*sic*] on one District or on one class of people more than on another.” The Midland District council also complained that it had not received all its tax revenue from the town council (which wished to keep tax revenues for its own needs⁸⁸), and noted that the magistrates had not used the £200 provided by the council, “but have left it on this Council to be the almoners of the poor in the distribution of this amount.”⁸⁹ However, the quarterly accounts for the Midland District Quarter Sessions for January 1844 recorded a payment of £11 12s 6d to “Irwin Winter, House of Industry,”⁹⁰ suggesting that a House of Industry operated briefly. Nevertheless, at the next session of the Court of Quarter Sessions, the Grand Jury expressed “their regret that the establishment of an Institution so long and loudly called for, must now of necessity be delayed until such time as the subject may receive the further consideration of the Legislature.”⁹¹

There was thus public interest in the establishment of a publicly funded and operated House of Industry serving children’s needs, but there was also significant opposition, one objection being the housing of children with adults of dubious character. In addition, the establishment of District Councils in the early 1840s split local authority and tax revenue between Town Councils, District Councils, and District Quarter Sessions and raised questions concerning responsibility for particular initiatives. Furthermore, as argued by Smandych with respect to the establishment of the Toronto House of Industry and the failure to establish any institutions under the *Houses of Industry Act*, political conflicts played a significant role. Specifically, Reformers opposed the Tory policy of encouraging pauper immigration, poor relief being one of the unjustified costs of this policy. While this conflict peaked in 1837, the reformist viewpoint still appears to have carried considerable weight ten years later.⁹²

Consequently, a public House of Industry under the terms of the *Act* was never established. Instead, in December 1847, partly in response to the problems created by the influx of poor Irish immigrants combined with a severe typhus epidemic, what was to become the permanent Kingston House of Industry was established on a very similar basis to that in Toronto, through the combined efforts of the Female Benevolent Society and Kingston city

88 *Ibid.*, p. 236.

89 *Kingston Chronicle and Gazette*, May 22, 1844; see also March 6, 1844.

90 “Report of Committee upon Accounts January Sessions 1844,” *Minutes of General Quarter Sessions, Midland District*.

91 *Kingston Chronicle and Gazette*, May 29, 1844.

92 Smandych, “Rethinking ‘The Master Principle of Administering Relief’ in Upper Canada” and “Colonial Welfare Laws”; Murray, “The Cold Hand of Charity,” pp. 200–201.

authorities, with a management committee consisting of the mayor, Members of the Corporation, and eight citizens. While its stated focus was on relief for the destitute, as in Toronto many children were sheltered and placed on farms as soon as possible. The Society contributed by providing activities for the inmates, including a school established in 1852.⁹³

The annual provincial grants paid to the Toronto House of Industry were from 1841 matched by grants to the mayor for the “Relief of Sick and Indigent Persons at Kingston,” apparently intended for the Kingston House of Industry after 1847, although it was not the stated recipient until 1864.⁹⁴ While the grants for the two institutions were always the same, the grants almost covered Kingston’s substantially lower operating costs.⁹⁵ The city appears not to have paid any grants. Dependence on the government grant forced the House to close temporarily on August 1, 1848, pending payment of the “usual” parliamentary grant.⁹⁶

While neither House of Industry was a public institution as envisaged by the 1837 *Act*, the extent of provincial and local government funding and administrative support makes it difficult to characterize them as private charities. In modern terms, they could be called quangos. Through them the government was *de facto* providing direct support for orphaned and destitute children, although this may not have been fully recognized or acknowledged by public authorities. Such support for homeless children was soon to become explicit with the opening of the first children’s homes in mid-century.

Funding and Inspection of Children’s Homes

By the mid-nineteenth century there was a growing societal concern that more should be done for homeless, neglected, and mistreated children whose parents could not or would not provide for them. The response was the establishment of institutions for orphaned and destitute homeless

93 QUA, Fonds 2262, House of Industry Papers, *Register* from 1847; Malcolmson, “The Poor in Kingston,” pp. 292–293; QUA, coll. 2198, Box 4, “Sketch of the History of the [Kingston] Orphans’ Home,” *Annual Report for 1882*, p. 7; McMahon, “Les Religieuses Hospitalières de Saint Joseph,” pp. 51–52; Brian S. Osborne and Donald Swainson, *Kingston: Building on the Past* (Westport: Butternut Press Inc., 1988), p. 141; Judith Fingard, “The Winter’s Tale: The Seasonal Contours of Pre-industrial Poverty in British North America, 1815–1860,” *Canadian Historical Association Historical Papers* 1974, p. 82.

94 Public Accounts show payments to the mayors, although not so identified. For a list of mayors, see Edwin E. Horsey, *Kingston a Century Ago* (Kingston: Kingston Historical Society, 1938), last page (np).

95 For example, in 1863 expenses were \$2,758, while the grant was \$2,400. “Statement of Affairs of Asylums and Miscellaneous Charitable Institutions receiving aid from the Province,” *Canada, Sessional Papers*, 1865, 28 Vict., no. 24, Table XI; 1866, 29 Vict., no. 10, Table X, pp. 31–33; 1867, 30 Vict., no. 7, Table X.

96 *Globe*, July 26, 1848. It reopened December 1, £500 being paid for 1848. QUA, Fonds 2262, House of Industry, *Register; Appendix to the eighth volume of the journals of the Legislative Assembly of the Province of Canada*, 1849, 12 Vict., Appendix A, no. 31.

children by private charitable organizations run by middle- and upper-middle-class Protestant women and by Roman Catholic nuns, sometimes assisted by women's committees.⁹⁷ This model for caring for poor but respectable homeless children was well established in both England and the United States. In England, homeless, vagrant, and illegitimate children of the poorer classes were commonly housed in publicly funded work-houses, sometimes in accommodation separate from adults, in which they normally worked for their keep until they were old enough to be apprenticed,⁹⁸ but from early in the eighteenth century churches and societies of working men began establishing private asylums for the orphans of their members, while some accepted any respectable children fallen on hard times.⁹⁹ The first orphan asylum in the United States was opened in 1729 by the Ursuline nuns; by 1830 there were 33. These were primarily private institutions, although some government funding and regulation developed later, and in a few cases (although rarely before 1871) they were publicly managed.¹⁰⁰ In the British North American colonies there was a publicly operated Orphan House in Halifax from 1752 to 1787,¹⁰¹ but Canadian models cited by the organizers of the Toronto Protestant Orphans' Home were run by private charities: the Protestant Orphan Asylum in Montreal, opened in 1822, and the Protestant Female Orphan Asylum in Quebec City, opened in 1828. In addition, the Quebec Protestant Male Orphan Asylum and the Montreal Catholic Orphanage were both founded in 1832 in response to the

97 The children's homes receiving government grants by 1880 are listed in Table 1. Concerning women's charitable work in the nineteenth century, see Armen Nielson Varty, "'A Career in Christian Charity': Women's Benevolence and the Public Sphere in a Mid-nineteenth-century Canadian City," *Women's History Review*, vol. 14, no. 2 (2005), pp. 243–264, and her numerous references, especially note 3; Patricia T. Rooke and R. L. Schnell, "The Rise and Decline of British North American Protestant Orphans' Homes as Woman's Domain, 1850–1930," *Atlantis*, vol. 7, no. 2 (Spring 1982), pp. 21–35. It might be suggested that Kelso denigrated children's institutions because they were run by women. However, he apparently welcomed women, as many were listed in his annual reports as officials of Children's Aid Societies. The *Act* required half the members of visiting committees to be women; when these committees did not work out, he had a woman appointed as the provincial "Children's Visitor" ("Fourth Annual Report," Ontario, *Sessional Papers*, 1897, 60 Vict., no. 16, p. xiv). He also extolled the promotional work of two women who in 1887 were the first to volunteer to help with the establishment of the Toronto Humane Society, precursor to the Children's Aid Society (Kelso, *Early History*, pp. 15–16).

98 Pinchbeck and Hewitt, *Children in English Society*, vol. 1, pp. 146–99; vol. 2, pp. 496–516.

99 David Owen, *English Philanthropy 1660–1960* (Cambridge, MA: Harvard University Press, 1965), pp. 157–162.

100 Timothy A. Hasci, *Second Home: Orphan Asylums and Poor Families in America* (Cambridge, MA: Harvard University Press, 1997), pp. 17, 18, 49, 52. See also Folks, "The Care of Destitute, Neglected, and Delinquent Children," pp. 9–11, 30–36. The number of homes increased dramatically between 1830 and 1890.

101 Gouett, "The Halifax Orphan House 1752–87."

cholera epidemic and were still receiving government grants at the time of Confederation.¹⁰²

One of the early homes in the province was a direct offshoot of the Kingston House of Industry, as the Female Benevolent Society soon concluded that it was an “unfit home” for children and that, apart from the school, no care or supervision was being provided. Furthermore, the Society wanted greater control over and supervision of children placed on farms, who they feared were used as drudges and given no education. In 1857 the renamed Widows’ and Orphans’ Friend Society opened the Kingston Protestant Orphan’s Home as a permanent, year-round home for the children entrusted to their care.¹⁰³

Such homes were to be, for nearly half a century, the primary agencies providing for children in need. The stated policy of most Protestant homes was to keep the children at least one year to ensure they received some basic education and socialization and to the age of about twelve, and thus by design they provided longer-term primary care for many of the children admitted, unlike the Houses of Industry, which routinely kept children for only days or weeks. However, such rules were only sporadically enforced. About half of the children admitted returned to parents or family after the family crisis precipitating their admission had passed, usually within a few weeks or months. Furthermore, for the remaining children, the objective, at least at the Protestant homes, was always to find a private home. Many were apprenticed before they were twelve after a short stay in the institution, while younger children were often informally adopted or said to be adopted under indentures, and infants were usually placed immediately with wet nurses.¹⁰⁴

The establishment of Protestant children’s homes allowed governments to continue to assume that dependent children should be provided for primarily by charitable organizations. Nevertheless, through grants, inspection tied to such grants, and legislation facilitating the homes’ establishment and operation, the provincial government gradually shifted from supporting private efforts to assuming a significant degree of public responsibility for homeless, neglected, and mistreated children, marking “the beginnings of a bureaucratic civil service designed to bring charities under public scrutiny.”¹⁰⁵

102 Toronto POH *Prospectus*, June 9, 1851, front of vol. I, *Minutes*, BR L30; LAC, National Council of Women of Canada, *Women of Canada: Their Life and Work* (circa 1900), pp. 325, 326, 328; Canada, *Continuation of the appendix to the XLVth volume of the Journals of the House of Assembly of the province of Lower Canada, 2nd session of the 15th provincial Parliament* (Quebec: John Neilson, 1836), pp. 36–38; Canada, *Sessional Papers*, 1866, 29 Vict., no. 10, pp. 26–29.

103 Kingston Orphans’ Home, *Annual Report for 1882–1883* (brief history). See also Malcolmson, “The Poor in Kingston,” p. 293; Roy, *Kingston*, p. 238.

104 Neff, “Pauper Apprenticeship” and “The Use of Apprenticeship and Adoption by the Toronto Protestant Orphans’ Home.”

105 Paula Maurutto, *Governing Charities: Church and State in Toronto’s Catholic Archdiocese, 1850–1950* (Montreal and Kingston: McGill-Queen’s University Press, 2003), p. 31.

Direct government involvement began with grants paid on request, the first in 1853 to the Hamilton Orphan Asylum. Protestant institutions normally requested and received grants as soon as or even before they opened, while many Catholic institutions did not receive grants until some years after opening (see Table 1). Thus by 1867 direct government help for children was becoming more significant, although it remained a small part of the budget for charitable institutions — the two Lunatic Asylums received \$85,000, hospitals \$28,000, and the two Houses of Industry \$4,800, while grants to six children's homes totalled only \$3,520.¹⁰⁶

These grants covered only a portion of the costs of the children's homes, about one-third in the early years and much less later, as the homes got bigger and the number of institutions being supported rose, and the proportion of costs covered varied significantly. Until the mid-1870s and the implementation of a formula for calculating grants, there were three categories, based on an institution's size when a grant was first paid.

Table 1: Children's Homes in Receipt of Government Grants and Reported on by the Inspector of Asylums, Prisons and Public Charities by 1880

Name of institution	Opened	Inc. ¹	First grant	Residents (Sept. 30, 1879)	Grant (\$) 1880
Hamilton IS (later Girls' Home) ²	1862	1864	1876	61	440.32
Hamilton OA	1848	1852	1853	28	167.98
Hamilton Boys' Home	1870	1873	1876	85	509.58
Hamilton St. Mary's (RC)	1852 ³	1880	1854	104	778.40
Kingston OH	1857	1862	1857	53	367.60
Kingston Hôtel Dieu OA	1845 ⁴	1868	1878	38	329.46
Kingston House of Providence OA	1861 ⁵		1876 ⁶	46	368.62
London PH	1874		1876	62	428.24
London RC OA (St. Joseph's)	1868	1871	1872	95	629.54
Ottawa St. Joseph's OA	1865 ⁷		1870	66	501.86
Ottawa St. Patrick's OA	1865 ⁸	1866	1870	41	330.72
Ottawa, The Protestant OH	1865	1865	1870	33	275.72
St. Agatha OA (RC)	1858 ⁹		1876	28	179.04
St. Catharine's PH			1878	20	157.70
Toronto RC OA	1852	1855	1855	256	1,762.52
Toronto Boys' Home	1860	1861	1870	76	624.98
Toronto Girls' Home	1857	1863	1857	115	847.82

(Continued)

106 "Summary of Resolutions of Supply from 1852 to 1866-7." The Kingston House of Industry grant is listed as such from 1864-1865, before that under Indigent Sick, District of Kingston.

Table 1: (Continued)

Toronto OH & Female Aid Society	1853	1851	1854	100	761.02
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- ¹ See above for statutes.
- ² "Annual Report of the Inspector," 1879, p. 242.
- ³ Canada, *Sessional Papers*, 1866, 29 Vict., no. 10, p. 33.
- ⁴ The Religious Hospitallers of Saint Joseph opened the Hôtel Dieu hospital in September 1845 with two rooms for children of patients and orphans of those who had died. Coderre, "Hôtel Dieu of Kingston," p. 9; Leopold Lamontagne, "Petticoats and Coifs in Old Kingston," *Historic Kingston*, vol. 9 (1960), p. 27. It was first inspected in 1869–1870 as part of the report on the hospital (Ontario, *Sessional Papers*, 1870–1871, 34 Vict., no. 6, p. 74). By 1877, although it was still part of the hospital, the inspector's report describes it as an orphanage taking mainly girls, while the House of Providence Orphan Asylum attached to the Roman Catholic refuge took mainly boys (Ontario, *Sessional Papers*, 1878, 41 Vict., no. 4, pp. 231–232; 1879, 42 Vict., no. 8, p. 246; 1880, 43 Vict., no. 8, pp. 281–282).
- ⁵ Four Sisters of Providence arrived in Kingston on December 12, 1861, moved into a three-storey house the Bishop provided for them, and within two weeks had taken in ten orphans. Lamontagne, "Petticoats and Coifs," p. 29.
- ⁶ The first report on the orphanage appears in 1876, pertaining to the orphanage alone and as part of the House of Providence refuge branch, as the finances were combined (Ontario, *Sessional Papers*, 1877, 40 Vict., no. 2, pp. 160–166, 190–191, 197).
- ⁷ This was a Roman Catholic orphanage for French-speaking orphans. Before the establishment of it and its companion St. Patrick's, the Sisters of Charity (Grey Nuns) had been caring for orphans in the mother house, a total of 193 being cared for between their arrival in Ottawa in 1845 and 1865 (Sœur Paul-Émile, *Mère Elisabeth Bruyère*, pp. 72–74, 275–295). Their 1849 incorporation statute noted the establishment of a hospital for the sick and for orphans but made no other provision for the orphans (Canada, *Statutes*, 1849, 12 Vict., ch. 108).
- ⁸ This was a companion orphanage to St. Joseph's for English-speaking Roman Catholic, primarily Irish, orphans, previously cared for by the Sisters of Charity with the French-speaking orphans and by la Société Saint-Vincent de Paul (Sœur Paul-Émile, *Mère Elisabeth Bruyère*, pp. 295–300).
- ⁹ This Roman Catholic orphanage was established by Father Eugene Funcken in 1858 to receive a family of nine orphaned children. In 1871 he persuaded the Sisters of Notre Dame to take it over. "St. Agatha: Our Pioneer Mission," *The Resurrection Bulletin*, vol. 7, no. 2 (July 1965), pp. 2–3; Camilla C. Coumans, "St. Agatha Orphanage," *Waterloo Historical Society*, vol. 54 (1966), pp. 31–32; Rev. Theobald Spetz, *The Catholic Church in Waterloo County, Book 1* (The Catholic Register and Extension, 1916), pp. 31–33.
- Sources:* In addition to those noted for individual homes, see "Twelfth Annual Report of the Inspector of Asylums, Prisons, &c.," Ontario, *Sessional Papers*, 1880, 43 Vict., no. 8; "Statement of Affairs of Asylums and Miscellaneous Charitable Institutions," 1863–1866; "Summary of Resolutions of Supply from 1852 to 1866–7"; "Sums Paid to each of the Hospitals and Charities [1868–1880]."

Thus in 1859 the Toronto Protestant Orphans' Home and the Kingston Orphans' Home received grants of \$800 each, while the Toronto Girls' Home received \$400, their operating expenses (excluding capital items and investments) being \$1,642, \$1,028, and \$975 respectively. In 1863 these grants dropped to \$640 for the first two and \$320 for the latter,

operating budgets being \$1,809, about \$1,490, and \$1,063 respectively. By 1872 their relative sizes had changed significantly, with operating budgets rising to \$3,672, \$1,505, and \$4,817, but the grants were unchanged, while the Ottawa Protestant Orphans' Home, with an operating budget of \$2,111, had a grant of \$480, first paid in 1870.¹⁰⁷

While hospitals were also established through private and local efforts, the provincial government assumed a much higher level of responsibility for them, as grants ranged from 22 to 93 per cent of revenue, compared with 15 to 40 per cent of revenue for children's homes, with Catholic institutions receiving less as a percentage of revenue and per inmate than did Protestant and public institutions.¹⁰⁸

Until 1874 these government grants only very roughly reflected the relative needs of the institutions, and Catholics argued that they were based in part on partisan preference.¹⁰⁹ However, in 1874, as recommended by the Inspector of Asylums,¹¹⁰ "An Act to regulate public aid to Charitable Institutions"¹¹¹ provided for grants based on the number of people served, a change resisted by Protestant lobby groups but welcomed by Roman Catholics.¹¹² It also regularized accountability to the government and encouraged municipal and private contributions by linking a portion of the grants to the revenue from other sources. Grants were to be based on a *per diem* rate: hospitals 20 cents per day per patient; refuges, including the two Houses of Industry, 5 cents per day per inmate; and institutions receiving "orphan or neglected and abandoned child[ren]" 1.5 cents per child per day, plus an additional 10 cents per day for hospitals, 2 cents per day for refuges, and half a cent per day for children's homes, to a maximum of 25 per cent of receipts from other sources. These formulas were implemented the following year for institutions entitled to larger grants, but grants were not reduced until 1880 for institutions whose grants dropped under the formula.¹¹³

107 BR, L30, Toronto Protestant Orphans' Home, *Annual Reports* (1854–); QUA, coll. 2198, Box 4, Kingston Orphans' Home, *Annual Reports* (1857–), 1857–1858, 1860, 1871–1918; BR, L30, Toronto Girls' Home, *Annual Reports* (1857–); LAC, RG 28 I 37, Ottawa Protestant Orphans' Home, *Annual Reports* (1866–); "Summary of Resolutions of Supply from 1852 to 1866–7"; "Sums Paid to each of the Hospitals and Charities ... [1868–1880]"; "Statement of Affairs of Asylums and Miscellaneous Charitable Institutions," 1863–1866.

108 Canada, *Sessional Papers*, 1866, 29 Vict., no. 10, Tables VIII and X; 1867, 30 Vict., no. 7, Tables VIII and X. Maurutto notes that Catholic institutions housed 45% of the inmates of Toronto institutions but received only 25% of the grants (*Governing Charities*, pp. 34–35).

109 Maurutto, *Governing Charities*, p. 34.

110 "Fifth Annual Report of the Inspector of Asylums, Prisons, &c.," Ontario, *Sessional Papers*, 1872–1873, 36 Vict., no. 2, pp. 69, 71, 72.

111 "An Act to regulate public aid to Charitable Institutions" (*The Charity Aid Act*), Ontario *Statutes*, 1874, 37 Vict., ch. 33.

112 Maurutto, *Governing Charities*, p. 35.

113 Ontario, *Sessional Papers*, 1882, 45 Vict., no. 45.

The higher grants to hospitals were justified by their much higher costs, *per diem* expenditures per patient in 1880 ranging from 37.5 to 64.33 cents per day for hospitals compared with a range of 9.89 to 19 cents per day for care in children's homes (excluding the infants' home, homes for working boys, and homes including a refuge). However, the percentage of their costs covered was also much higher; grants for hospitals covered 28 to 58 per cent of revenue (average 38 per cent), and for children's homes 10 to 32 per cent of revenue (average 14 per cent). The provincial government was thus still not assuming primary responsibility for the care of homeless children.¹¹⁴ Nevertheless, through inspections associated with these grants, the government by 1875 had assumed significant responsibility for the nature and quality of care provided.

A Board of Inspectors had been inspecting publicly funded jails, penitentiaries, reformatories, and lunatic asylums since 1860, and this work was continued in Ontario after Confederation under an Inspector whose mandate by 1869 included all the hospitals and the two Houses of Industry. In 1872 he also reported on the ten Orphan Asylums in receipt of grants as a group and recommended a formula for calculating grants. He strongly supported grants to children's institutions, as the "1,200 orphans, and neglected and abandoned children" served by them during the year would be reclaimed and deterred from criminal activity, and thus the province would save the cost of housing them in jails as adult offenders. The interests of humanity (that is, of the children) would also be served, but were secondary to this societal interest!¹¹⁵

The 1874 *Act* regularized and extended accountability, requiring funded institutions to submit regular returns in a prescribed form and obtain government approval of bylaws governing management and admissions. The Inspector was to inspect all funded institutions, making "all proper enquiries as to the maintenance, management, and affairs thereof" and examining the registers to ensure accurate reporting (s. 12). While no standards or rules for their operation were stated, the Inspector took his job seriously and through these inspections may have positively influenced the quality of care provided.

A primary concern was to ensure complete and accurate information for the calculation of grants, and thus standardized registers were prescribed and examined.¹¹⁶ However, the Inspector also sought to ensure that the

114 "Thirteenth Annual Report of the Inspector of Asylums," Ontario, *Sessional Papers*, 1881, 44 Vict., no. 8, pp. 200, 201, 209, 210.

115 Ontario *Sessional Papers*, 1872–1873, 36 Vict., no. 2, p. 72.

116 The Government Register exists for the Toronto Protestant Orphans' Home from 1876 (BR, L30, *Register*, vol. 4), the Hamilton Orphans' Asylum from 1874 (Hamilton Public Library, Special Collections, Microfilm reel #453, pp. 590–704), and the Kingston Orphans' Home from 1878 (QUA, coll. 2329, Box 1, File 1).

children were being well cared for and their welfare protected. He therefore tried to see all the children and would comment on their appearance. He inspected and commented upon the physical accommodation, including the suitability of the building in use¹¹⁷ and the adequacy of items like beds and bedding. He also commented on the sufficiency of the education provided, whether in-house or otherwise, visited any school on the premises, and promoted school board funding of in-house schools.¹¹⁸ Any deficiencies were pointed out. For example, in 1874 he noted of the Ottawa Orphans' Home, "The dormitories for the children are in the attic, and are not well ventilated, while the best rooms are used by the officers. The House itself was not found in a very well-kept state."¹¹⁹ The managers normally addressed his concerns, and the Inspector would follow up on them at his next visit, as he did in this case:

I found a very great improvement had taken place in the appearance of the House since my last visit. The walls were well lime washed, and the various rooms sweet and well aired. The close, badly-ventilated garret which I complained of, in my last report, as being used for the boys' dormitories, is no longer used for that purpose, and the boys now occupy a well-lighted and cheerful room on the first flat. Altogether, the Asylum was found in as good order as the defects of the House will admit. I was informed that a new house, to be especially adapted for the purposes of the Charity, is to be commenced very soon.¹²⁰

The following year the Inspector likewise noted a major improvement in the accommodation at the Toronto Protestant Orphans' Home in response to his criticisms of the previous year:

In my last Report I found it necessary to reflect with some severity upon the condition of this Home, but I have now pleasure in recording my satisfaction with the order and cleanliness that prevailed at this visit. The partitions, which rendered some of the dormitories dark and cheerless, had been removed, and the woodwork had been painted throughout the entire building, whilst the walls had been well limewashed. The basement had also been improved in appearance.¹²¹

117 For example, on one occasion he questioned housing the Kingston Hôtel Dieu Orphan Asylum and Hospital together (*Ontario Sessional Papers*, 1879, 42 Vict., no. 8, p. 246).

118 *Ontario Sessional Papers*, 1876, 40 Vict., no. 2, pp. 195–196; Charlotte Neff, "The Education of Destitute Homeless Children in Nineteenth-Century Ontario," *Journal of Family History*, vol. 20 (2004), pp. 1–44.

119 *Ontario, Sessional Papers*, 1874, 38 Vict., no. 2, p. 148.

120 *Ontario, Sessional Papers*, 1875, 39 Vict., no. 4, p. 183.

121 *Ontario, Sessional Papers*, 1876, 40 Vict., no. 2, pp. 194–195.

Paula Maurutto argues that the government used the statistics to give the appearance of basing policy on objective, non-partisan criteria while in fact using the standardized information “to monitor, shape and control private institutions.”¹²² However, these subjective, qualitative comments on the operation of these institutions were probably far more effective in asserting government influence.

Regulation and Funding of Institutions and Private Homes for Infants

Another type of institution for children that appeared in the last quarter of the century was the infant home. Most homeless newborns were illegitimate and, being tainted by the sins of their parents, were considered by many as undeserving of charity. Thus children’s homes sometimes refused to take newborns on moral grounds, but there were also practical reasons. They could afford only a small staff, and expected the children to be able to attend to their own personal care. Also, the mortality rate of institutionalized infants was high, in part because many were on admission “enfeebled through privations and neglect . . . and by constitutional ailments.”¹²³ Formulas for artificial feeding had also not yet been developed, and if a baby could not be breast-fed its chances of survival were low. In addition, large numbers of infants in one place were vulnerable to epidemics of diseases like measles and diphtheria, which were often fatal for babies. As specialized homes for infants opened and government undertook their funding and regulation, these types of concerns had to be addressed.

The Toronto Girls’ Home began as a public nursery with the objective of helping mothers to work, and it continued for many years to take young children. The mothers nursed their own children and sometimes two or three other babies.¹²⁴ However, the first home providing care only for babies was the Toronto Infants’ Home, which opened in 1875 and received its first government grant and report from the Inspector in 1876. The next to appear in the Orphanages category of the Inspector’s reports was Bethlehem for the Friendless in Ottawa (run by the Sisters of Charity, or Grey Nuns), which opened in 1879 and still existed in 1900; it was reported on and received grants for 1880, 1881, 1882, and 1883, then disappeared without comment from the Inspector’s reports.¹²⁵ In 1881

122 Maurutto, *Governing Charities*, pp. 32–33.

123 *Globe*, November 18, 1881 (Annual Meeting and Report of the Infants’ Home and Infirmary).

124 BR, L30, Protestant Children’s Homes, Girls’ Home, Toronto Public Nursery, “1st Annual Report for 1857” and successive Annual Reports; Catherine Breton, “Nineteenth Century Child Rescue and the Development of the Toronto Girls’ Home, 1860–1900,” in Allan Irving, ed., *Social Welfare in Toronto: Two Historical Papers* (Toronto: Faculty of Social Work, University of Toronto, 1991), pp. 1–2.

125 *Seur Paul-Émile, Mère Elisabeth Bruyère et son œuvre, v. 1 : les Sœurs Grises de la Croix, Mouvement général, 1845–1876* (Ottawa: Maison-Mère des Sœurs Grises de la Croix, 1945),

infant homes were funded in London and Hamilton as Magdalene Asylums, perhaps even earlier as refuges under slightly different names; in 1887 they were moved to the orphanages category.¹²⁶

The Toronto Infants' Home and Ottawa Bethlehem for the Friendless took very different approaches to infant care, resulting in a wide difference in mortality rates that may have accounted for Bethlehem for the Friendless losing its funding. The Inspector explained this difference in 1881. Of the 209 deaths in all the funded children's homes that year, 152 were in the Bethlehem, which cared for a total of 202 children, while 25 were in the Toronto Infants' Home, which cared for 172:

[These two homes], unlike any of the others, exist for the one purpose of caring for infants alone. . . . In the Infants' Home, Toronto, the rate of mortality is not so large, because, wherever possible, the mother of the child is brought into the institution to nurse the child, and, if able, others as well; while at the Ottawa Home the opposite plan is pursued. There the mothers are never admitted; children from the Lying-in Hospital are taken to the Home as soon as born, and put upon the bottle or other artificial food. The result of the two systems is shewn in a mortality of 22 per cent. in one, and 68 per cent. in the other.¹²⁷

Although the Toronto Home sometimes suffered epidemics that raised its mortality rate, this extreme difference continued through the four years that the Bethlehem was funded, its death rate in the last year (1883) being 79 per cent compared with 35 per cent at the Toronto Home.

While of great benefit to the infants, the system at the Toronto Home was expensive, as both mothers and babies had to be supported, an arrangement that the government acknowledged by funding both at 2 cents per day each, the normal funding for children's homes. However, the Home argued that the mothers should be funded at the same level as those in the House of Industry, at 7 cents per day, which the government agreed to in 1882 because of the benefit to the infants. Funding increased to 10 cents for "mother nurses" in 1885, although for 1887 and thereafter there were two categories of mothers, 7 cents being paid for some (perhaps mothers nursing only their own child), 10 cents for others (perhaps those nursing more than one infant).¹²⁸ Beginning in

pp. 72–74, 275–295; *Women of Canada: Their Life and Work*, p. 336. The Grey Nuns cared for orphans, including infants, from their arrival in Ottawa in 1845; see Jeanne d'Arc Lortie, *Lettres d'Élisabeth Bruyère*, vol. 1 (Montreal: Éditions Paulines, 1989), for example, letters 26, 30, 47, 54.

126 "Annual Report of the Inspector of Prisons & Public Charities" for 1881, Ontario, *Sessional Papers*, 1882, 45 Vict., no. 8; for 1884 and 1885, 48 Vict., no. 40, pp. 63–72; for 1887 and 1888, 51 Vict., no. 40, pp. 56–57, 66–67.

127 "Annual Report of the Inspector" for 1881, pp. 287–288.

128 *Ibid.*, pp. 296–299; "Annual Report of the Inspector" for 1884, pp. 45–47; for 1886, Ontario, *Sessional Papers*, 1887, 50 Vict., no. 21, pp. 38, 47.

1884 the Toronto home also received additional funding for those receiving medical care in a segregated infirmary that helped reduce mortality during epidemics.¹²⁹ In 1888 the London Women's Refuge and Infants' Home and the Hamilton Home for the Friendless began receiving the additional funding for mothers at 10 cents and 7 cents per day. By 1887 the rules of the London Women's Refuge and Infants' Home required that the mother stay to nurse the infant, and both homes had a very low death rate, much lower than at the Toronto Home.¹³⁰

Thus, as for older children, the government still was not taking the initiative to provide care for illegitimate and abandoned babies, but was prepared to provide enhanced funding for charities that did so to help ensure that infants received the best care realistically available. The government's readiness to help provide for these children likely reflected a shift in public attitudes towards considering illegitimate children as deserving of a decent life, although Martha Bailey argues that, from at least as early as 1842, attitudes towards unmarried mothers in Upper Canada had been more enlightened than in England.¹³¹ Some children's homes did refuse to admit illegitimate children and thus foundlings, as they feared being accused of supporting immorality,¹³² the Toronto Protestant Orphans' Home (POH) being particularly strict.¹³³ On the other hand, the Hamilton Orphan Asylum regularly received foundlings,¹³⁴ and the Kingston Orphans' Home, while it did not take infants, cooperated with the city to arrange for their care in private homes and admitted them when they were old enough; the Kingston Home also sometimes admitted older illegitimate

129 *Toronto World*, October 2, 1881; *Globe*, November 18, 1881 (Annual Meeting and Report of the Infants' Home and Infirmary); "Annual Report of the Inspector" for 1883 and 1884, 47 *Vict.*, no. 32, p. 45; for 1887, p. 49; for 1888 and 1889, 52 *Vict.*, no. 11, pp. 63–65.

130 "Annual Report of the Inspector" for 1887, pp. 48–49, 56–57, 66–67. At the Toronto home the infant death rate was 28%. The Hamilton home had three of 73 inmates die, the London home seven of 67 (or maybe 10 of 55 children); in these homes the statistics included both infants and mothers, but the death rate was clearly very low.

131 Martha J. Bailey, "Servant Girls and Masters: The Tort of Seduction and the Support of Bastards," *Canadian Journal of Family Law*, vol. 10 (1991), pp. 152–154.

132 Rooke and Schnell, "The Rise and Decline of British North American Protestant Orphans' Homes," p. 28.

133 Toronto POH, *Minutes*, June 28, 1853, February 28 and March 25, 1854; *Visitors' Book*, February 16, 1861 (foundlings); December 29, 1868 (parents unmarried); September 26, 1871 (foundling left at the Home to be advertised for adoption).

134 Hamilton OA *Register*, #151, p. 356, August 29, 1854; #152, p. 356, September 25, 1854; #201, p. 372, January 23, 1856; #203, p. 372, February 8, 1856; #225, p. 380, November 28, 1856; #242, p. 386, March 1857; #262, 263, and 264, p. 390, September 28, 1857; #266, p. 390; #285, p. 398, August 20, 1859; #312, p. 410, April 11, 1862; #320 and 321, p. 412, July 6, 1862; #350, p. 420, June 1864; #360, p. 424, May 1865; #520, p. 448, February 1869; #549, p. 458, December 1871; #555, p. 462, December 1871; #605, p. 486, October 1877.

children.¹³⁵ Roman Catholic institutions may also have been open to helping the illegitimate as their mission was to save souls, and they also did not want to risk losing any of their flock to the Protestants.¹³⁶ For example, there is a story that in 1848 one of the Grey Nuns of Ottawa hid a foundling from the police in a basket of laundry so that the child would not be given to non-Catholics.¹³⁷

In 1879 the Toronto POH was criticized for its policy of not taking illegitimate children,¹³⁸ and by the 1880s some public newspapers were openly sympathetic to foundlings, as illustrated by the following account in the *Toronto World* from 1881:

Baby on the Doorstep

There is something heartlessly mean in child desertion, more especially when the little creature is left at random on any doorstep at such a season of the year as this [February]. Last night some one, yet unknown, left an infant in a basket on the doorstep of 91 Terauley street. The police at No 2 station were notified and a constable sent after the infant. He found the tender creature still on the step exposed to the cruel cold, as the inmates of the house had refused to entertain it for a moment. The baby was taken to the station, and was thence taken to the infants' home.¹³⁹

At the same time, increasing concern was being publicly expressed about so-called baby farms, that is, private homes caring for infants. The placing of babies of working mothers, and even of middle-class women not wishing to nurse their babies, with wet nurses was a long-standing and respectable practice. However, attention began to focus on abuses, the public image being that large numbers of infants were being provided with very little care, certainly without enough (or any) wet nurses to provide proper nutrition, resulting in a very high mortality rate. An account of a trial in 1884 of a woman who kept such a house provides an image of desperate unwed mothers finding

135 Kingston OH, *Minutes*, Infants: May 12, October 13, November 10, December 8, 1857; February 9, 1858; November 8, 1859; December 11, 1860; June 11, October 14 and November 11, 1862; June 13, July 11, and August 8, 1865; March 12 and May 14, 1872; September 14 and November 9, 1875. Older children: July 8 and August 12, 1862; July 14 and August 11, 1863; April 12, 1868; February 13, 1872. The Kingston home also sometimes refused admission, but perhaps for other reasons, for example, that a grandparent could support a child: March 8, 1859; March 13, May 8, and June 12, 1866.

136 Maurutto, *Governing Charities*, pp. 28–29.

137 Jules Tremblay, *L'Hôpital public d'Ottawa (rue Water)* (Ottawa: Syndicat des œuvres sociales, 1921), pp. 15–16. Tremblay provides no source for the story.

138 Toronto POH, *Annual Report for 1879*. The Home lost the support of the District Orange Lodge of Barrie, “owing, it is supposed, to the unwillingness of the managers to break one of their most stringent rules, the non-reception of any children but those of married parents.”

139 *Toronto World*, February 22, 1881. See also “A Bouncing Baby Boy,” *Toronto World*, April 9, 1884; “Hush a Bye, Baby,” *Toronto World*, September 26, 1884.

homes for their babies (for which they paid) so that they could continue to work. The woman in this case cared for three to ten infants at a time alone. During the first two months that the home was open, seven infants were known to have died, but she was acquitted by the jury of a charge of manslaughter for the death of one baby. The mix of applause and hissing in response to the verdict reflected both traditional attitudes and more recent empathy for babies of unwed mothers.¹⁴⁰

In 1887 the Ontario government responded to such concerns with an *Act for the Protection of Infant Children* providing for regulation of private homes for children under the age of one. It mandated both annual inspection and regulation of homes caring for more than one infant or, in the case of twins, more than two (excluding provincially funded and inspected homes). However, the province did not assume direct responsibility, placing administrative and financial responsibility for implementation of the *Act* on municipalities, which were required, before registering a home, to establish that it was “suitable” and that the person applying was “of good character” and “able to maintain such infants.” Municipal authorities were to inspect all such homes from time to time and deregister any home found unfit. The person running a home had to keep a register and report any deaths.¹⁴¹

Incorporation of Charitable Institutions

Between 1851 and 1880, ten children’s institutions were incorporated by private acts of the Ontario Legislature, as were the Toronto House of Industry and five Roman Catholic communities of nuns said to operate orphanages, while the incorporation articles of one home were amended by private act. A primary benefit of incorporation was that the managers could be given the power to apprentice children instead of having to request apprenticeship by public officials under the 1799 or the 1851 *Acts*, which no home appears ever to have done.¹⁴² Indeed, while it

140 Toronto *World*, July 17, 1884; August 4 and 9, 1884; October 30 and 31, 1884; *Globe*, October 30 and 31, 1884.

141 Ontario, *Statutes*, “An Act for the Protection of Infant Children,” 1887, 50 Vict., ch. 36, revised to include Maternity Boarding Houses in “An Act to regulate Maternity Boarding Houses and for the Protection of Infant Children,” 1897, 60 Vict., ch. 52.

142 The section noted states the power to apprentice: “An Act to incorporate *The Orphans’ Home and Female Aid Society, Toronto*” Canada, *Statutes*, 1851, 14 & 15 Vict., ch. 34; amended 1852, 16 Vict., ch. 71 (adding power to apprentice) and Ontario, *Statutes*, 1873, 36 Vict., ch. 151; “An Act to incorporate the Trustees of The Hamilton Orphan Asylum,” Canada, *Statutes*, 1852, 16 Vict., ch. 67, s. 9; “An Act to incorporate ‘The Boys’ Home’ of the City of Toronto,” 1861, 24 Vict., ch. 114, s. 4; “An Act to incorporate ‘The Orphan’s Home and Widows’ Friend Society’ of Kingston,” 1862, 25 Vict., ch. 97, s. 5; “An Act to incorporate the Toronto Female Industrial School,” Canada, *Statutes*, 1862, 25 Vict., ch. 79, s. 4 (this Roman Catholic home never received a grant and may have existed for only a short time); “An Act to incorporate the Boys’ Industrial School of the Gore of Toronto,” 1862, 25 Vict., ch. 82, s. 4 (no other evidence has been found

placed many children prior to incorporation in 1851, the Toronto House of Industry did not formally apprentice any of them until after incorporation, when this practice became routine (see above). In eight cases the acts of incorporation also granted to the managers the powers of a parent or guardian over the children in their care.¹⁴³ In 1850 private administrative incorporation replaced legislative incorporation for one group of charitable associations, and in 1874 such administrative incorporation was authorized for any society with a “benevolent or provident purpose,” making acts of incorporation for children’s homes unnecessary. In 1877 the Toronto Infants’ Home incorporated pursuant to this *Act*.¹⁴⁴

for the existence of this Roman Catholic home); “An Act to Incorporate The Girls’ Home and Public Nursery of the City of Toronto,” 1863, 26 Vict., ch. 63, s. 4; “An Act to incorporate the Children’s Industrial School of the City of Hamilton,” 1864, 27 & 28 Vict., ch. 145, s. 3 (became the Girls’ Home Hamilton); “An Act to incorporate The Orphans’ Home of the City of Ottawa,” 1865, 28 Vict., ch. 62, s. 4; “An Act to incorporate the St. Patrick’s Asylum of Ottawa,” 1866, 29–30 Vict., ch. 147, s. 4; “An Act to incorporate *The Boys’ Home of the City of Hamilton*,” 1873, 36 Vict., ch. 152, s. 4; “An Act to incorporate The House of Industry of Toronto,” Canada, *Statutes*, 1851, 14 & 15 Vict., ch. 35, s. 4; “An Act to Incorporate the Sisters of St. Joseph for the Diocese of Toronto, in Upper Canada,” Canada, *Statutes*, 1855, 18 Vict., ch. 225 (the Sisters had “formed an institution for the reception and instruction of orphans, and the relief of the poor, the sick and other necessitous”; there was no provision for apprenticing but s. v empowered the corporation to appoint and pay teachers, presumably for the orphanage); “An Act to incorporate the Sisters of St. Joseph of Guelph,” Canada *Statutes*, 1862, 25 Vict. ch. 92, s. 5 (the Sisters had “formed an Institution for the reception and instruction of Orphans, and have opened an Asylum for the relief of the poor, the sick, the aged and infirm” and, while orphans were received, there was no distinct orphanage; the House of Providence refuge in Guelph received grants from 1876, but no orphanage did: see Debra L. Nash-Chambers, “In the Palm of God’s Hand? The Irish Catholic Experience in Mid-Nineteenth Century Guelph,” *CCHA Historical Studies*, vol. 51 [1984], pp. 67–88); “An Act to Incorporate the Sisters of L’Hotel Dieu for the Diocese of Kingston in the Province of Ontario,” Ontario, *Statutes*, 1868, 31 Vict., ch. 60 (no apprenticeship provision; the preamble stated the Sisters had “formed an institution for the reception and instruction of Orphans, and the relief of the Poor, the Sick, and other necessitous”); “An Act to incorporate the Sisters of St. Joseph of the Diocese of London, in Ontario,” Ontario, *Statutes*, 1871, 34 Vict. ch. 92, s. 6 (the Association had “formed an institution for the reception and instruction of Orphans, and the relief of the poor, the sick and other necessitous”); “An Act respecting the Sisters of Saint Joseph of the Roman Catholic Diocese of Hamilton,” Ontario *Statutes*, 1880, 43 Vict. ch. 82, s. 2 (this institution had been incorporated pursuant to ch. 167 R.S.O., that is, Ontario, *Statutes*, 1874, 37 Vict., ch. 34 referred to below, but required statutory authorization for the purchase of land, and at the same time added the standard clause authorizing apprenticeship).

143 Toronto Girls’ Home, s. 5; Hamilton Industrial School, s. 4; Boys’ Home Hamilton, s. 5; Female Industrial School Toronto, s. 4; Boy’s Industrial School of the Gore of Toronto, s. 4; Sisters of St. Joseph of Guelph, s. 5; Sisters of St. Joseph of the Diocese of London, s. 6; Sisters of Saint Joseph of the Roman Catholic Diocese of Hamilton, s. 2.

144 “An Act for incorporating certain charitable, philanthropic and provident associations, and for the effectual protection from fraud and misappropriation of the funds of the same,” Canada, *Statutes*, 1850, 13–14 Vict., ch. 32; “An Act respecting Benevolent, Provident and other Societies,” Ontario, *Statutes*, 1874, 37 Vict., ch. 34; City of Toronto Archives, Fonds 1001, Series 537, File 1, Children’s

Right of Children's Homes to Resist Parental Claims to Children in their Care

A major concern of children's homes was the extent of their power to act as parents or guardians, whether specified in the act of incorporation or not. It does not seem to have been disputed that they could make all decisions on behalf of the children while they remained in the institution. However, most homes also wished to be able to place children in private homes without interference from parents and to refuse discharge of children to parents considered inadequate.

To achieve this, children's homes normally relied on pauper apprenticeship. While the homes could have sought publicly authorized apprenticeships under the 1799 and later apprenticeship legislation, they did not. Instead, they relied on the authority of their acts of incorporation, which also made unnecessary the provision in the 1851 *Apprenticeship Act* authorizing them to apprentice boys at age 14 and girls at age 12, with their consent, to trade apprenticeships (s. 1). Under the revised *Apprenticeship Act* of 1874, a home could also request an Order-in-Council granting it all powers under the *Act*, including the appointment of guardians, pauper apprenticeship of children of any age, and trade apprenticeship of youths,¹⁴⁵ although it is unclear why any of the incorporated homes would need such powers since an apprenticeship indenture could be worded to define any of these relationships. The Kingston Protestant Orphans' Home received such an Order-in-Council in 1880, but the indentures cited only the Home's incorporation statute as source of the managers' authority to apprentice.¹⁴⁶ However, by 1888 the Ottawa POH was by indenture appointing adoptive parents as guardians, citing its powers under the 1874 *Act*.¹⁴⁷

Adoption, although briefly provided for in the *Children's Protection Act* of 1893,¹⁴⁸ did not exist as we know it in Ontario until 1921.¹⁴⁹ Thus, where legal protection of an adoption was sought, indentures were used; these

Aid Society of Toronto, historical records, "Declaration of Incorporation of Infants' Home and Infirmary of Toronto – April 14, 1877."

145 "An Act respecting Apprentices and Minors," Ontario, *Statutes*, 1874, 38 Vict., ch. 19, s. 30.

146 QUA, coll. 2329, Box 1, Kingston Orphans' Home, *Minutes*, May 22, 1880; coll. 2330.I, 102 apprenticeship indentures, 1877 to 1894. Of 26 children indentured from 1877 to 1882, 12 were aged ten or under, the youngest being three, while of 32 indentured from 1887 to 1892, 15 were aged ten or under, the youngest being five.

147 Ottawa City Archives, MG7-8-141, MG7-8-142, MG7-8-143.

148 Under s. 28 a magistrate could, in lieu of convicting a child under 14, entrust him or her to a children's home or Children's Aid Society, which could in turn "permit its adoption by a suitable person" or apprentice the child: "The parents of such child shall have no right to remove or interfere with the said child so adopted or apprenticed except by the express permission in writing of the minister." The legal effect of adoption was not otherwise specified.

149 "The Adoption Act," Ontario, *Statutes*, 1921, c. 54.

were normally identical to or simplified apprenticeship indentures, but sometimes, as at the Ottawa home, they appointed the adoptive parents as guardians of the child.¹⁵⁰ Enforcing such an indenture against the child's parents was problematic; even if the parents had consented to the agreement (a common procedure) or had actually signed it, the common law rights of fathers discussed above were a major impediment. Nevertheless, the law gradually, through the apprenticeship and guardianship legislation already discussed and in the courts, provided more support for the efforts of homes seeking to protect children from their parents.

Such support was linked with the increasing focus on the welfare and best interests of the child in custody disputes, which in turn resulted in changes to traditional views of the enforceability of agreements under which fathers gave up the care of their children. Thus in 1881 a court refused to take a child from its maternal grandmother and return it to its invalid father based on the best interests of the child, noting that the "the father may so modify [his guardianship] by agreement or conduct [including personal incapacity] that the Court will not assist him in recovering possession of his child, and will even interfere against him."¹⁵¹

In 1882 a judge noted, "The general rule is indisputable, that any agreement by which a father relinquishes the custody of his child, and renounces the rights and duties which, as a parent, the law casts upon him, is illegal and contrary to public policy." Nevertheless, he acknowledged that such agreements might be enforceable if, in the interests of the child,

in certain exceptional cases, in which the control of the father may be injurious to the child, or where it is for the advantage of the child that the parental superintendence should not exist . . . the Court is bound to regard all the circumstances, and if it be found that the particular contract had really for its object not a violation of public policy by taking away the parental duties, but the enforcement of public policy by preventing the demoralization of the children by their own father, then such a contract will be upheld as valid. . . . In cases where the father has consented to the child being

150 In 1866 the managers of the Toronto Protestant Orphans' Home resolved to have indentures for adoption printed, but only one such form, a much simplified apprenticeship indenture from 1879, has survived (found between the pages of the *Visitors' Book* for 1853–1874, BR, L30). The form of indenture used for all children placed by the Kingston POH from 1877 onward referred to the person to whom the child was going as performing the part of a parent, but also provided for annual payments in trust after the child turned 12, as was usual with apprenticeship (QUA, Coll. 2330.1, Series IIIB); see also *Kingston Orphans' Home Minutes*, December 11, 1876 and March 13, 1877. The Toronto Girls' Home likewise chose in 1887, when adopting more rigorous legal protection of placements, not to provide for adoption and to require all "guardians" to make payments (*Annual Report* for 1887). By 1888 the Ottawa Orphans' Home was appointing adoptive parents the guardians of the children by indenture pursuant to the home's powers under the 1874 *Act* noted above (Ottawa City Archives MG7–8–141, MG7–8–142, MG7–8–143).

151 *Re Ferguson* (1881), 8 P.R. 556 (Ontario Practice Court).

maintained by another, and a fund has been set apart for that purpose, and there has been a continuance of the new relations resulting in advantages to the child in the way of education and training, the Court will not allow the father to interfere with the expectations of the child, founded upon his consent, and the altered condition of circumstances thereafter. In such a case he cannot capriciously interfere in what is clearly for the child's benefit.¹⁵²

These developments in the common law were enhanced by amendments to the *Apprenticeship Act* passed in 1872 that provided children's homes with considerable legal authority to resist the return of children to inadequate parents. The *Act* now required parents to obtain a court order for the removal from an institution or placement of any child "abandoned by his or her parent or guardian, or who is dependent upon charity for support," while a judge could refuse an order unless "he shall be satisfied that such removal will tend to the benefit and advantage of such minor."¹⁵³ The 1874 *Act* balanced this power with a provision allowing a parent or child to apply to cancel an apprenticeship indenture or the appointment of a guardian. The court had to be "satisfied that the same was injudiciously or improperly entered into" and "that the parent is a fit and proper person to take charge of the child" before returning the child to the parent (s. 16).¹⁵⁴ Thus by 1874 courts could consider both the interests of the children and the fitness of parents in deciding whether the parents could regain custody of children given into the care of a children's home.

Despite these legal developments, as late as 1909 the Ontario High Court permitted parents to take back a child given up for adoption by interpreting narrowly a similar provision of the 1893 *Children's Protection Act*:

When a parent has

- (a) Abandoned or deserted his child; or
- (b) Allowed his child to be brought up by another person at that person's expense, or by any children's aid society, for such time and under such circumstances as to satisfy the court that the parent was unmindful of his parental duties;

152 *Roberts v. Hall*, [1882], O.J. No. 140; 1 O.R. 388 (Ontario High Court of Justice, Chancery Division).

153 "An Act to amend the Act respecting Apprentices and Minors," Ontario, *Statutes*, 1871–1872, 35 Vict., ch. 17; "An Act respecting Apprentices and Minors," Ontario, *Statutes*, 1874, 38 Vict., ch. 19, s. 7.

154 See also "Apprentices and Minors Act," R.S.O 1897, ch. 161, ss. 4, 8, 17.

the court shall not make an order for the delivery of the child to the parent unless the parent has satisfied the court that having regard to the welfare of the child he is a fit person to have the custody of the child¹⁵⁵.

The court found that “‘abandon’ and ‘desert’ must, in this legislation, involve a wilful omission to take charge of the child, or some mode of dealing with it calculated to leave it without proper care” and that the mere act of giving a child into the care of others should be considered neither desertion nor evidence of unfitness as a parent.¹⁵⁶ However, if there had been other evidence of desertion or unfitness, the parents would not have succeeded. Furthermore, the provision in the *Apprenticeship Act* also applied to children dependent on public charity, not only abandoned or deserted children. That this might have been interpreted more favourably to the homes is suggested by the 1881 case in which the judge, in refusing to allow a father to take his child from its maternal grandmother, noted in passing:

An outcome of this supervising power [of the state over those who cannot care for themselves] in such cases is seen in the statutes cited in the argument, wherein it is provided that no minor who is dependent on charity for support, shall be removed from the custody or control of any private person who is charitably taking care of the minor by the father, against the will of such private person, without an order for such removal from a Judge of one of the Superior Courts; and the Judge may refuse to grant an order unless satisfied that the removal will tend to the advantage and benefit of the minor. (R.S.O. c 135, sec. 4, p. 1199.) This, in truth, seems to be the legislative recognition of doctrines previously enunciated by some of the Judges . . . abandonment of their wards by guardians to want, or the charitable care of others, has been held a reason for refusing to deliver the infants to them at their caprice, and for restraining them from interfering with their custody by those who support them.¹⁵⁷

These legal developments seem in the course of the 1870s to have encouraged the homes and their legal counsel to become bolder in resisting the return of children to undesirable parents, culminating in two court cases involving the Toronto Boys’ Home and the Toronto Girls’ Home.

That the Toronto Boys’ Home initially thought it had little power against parents is suggested by an incident in 1866, when a boy was taken by a mother “determined to have her own way,” although the managers

155 Ontario, *Statutes*, 1893, 56 Vict., ch. 45, s. 18(3).

156 *Davis (Re)*.

157 *Re Ferguson*.

thought his “removal is much to be regretted.”¹⁵⁸ However, by 1877, probably taking into account the new statutory provisions, the Home’s lawyers encouraged the managers to resist giving up a child who did not want to go and whose father could not provide a good home, at least until the parent brought legal action (which never happened).¹⁵⁹ This advice may six months later have encouraged the managers to refuse to discharge a boy to his mother, judging her plan for his care not “a desirable change.”¹⁶⁰ Shortly thereafter, another claim went to court concerning a boy put into the Home by people caring for him while his mother was in hospital. She died, and the Roman Catholic House of Providence sought to take him based on a request she allegedly had made when dying; his grandmother also asked for him, apparently to give him to the House of Providence. Having obtained a favourable legal opinion, the managers resolved unanimously to resist giving the boy up; the matter went to court on an application by the grandmother, and the Boys’ Home won based on the Court’s interpretation of the rights of unmarried mothers. The Court acknowledged her right to the child while alive, but declared she had no right to designate a guardian in the event of her death. Thus those to whom she had entrusted the boy while alive, the Boys’ Home managers, had lawful custody.¹⁶¹

Managers of the Toronto Girls’ Home also lamented the lack of legal power to keep from their parents girls “rescued from ruin,” of whom there had been “several instances” since the Home opened. In the *Annual Report* for 1865, they called for “the passage of a law, for preventing worthless parents from removing their children from those who can and will provide for them.” However, despite the lack of such a law, in their report for 1868 the managers clearly signalled that they felt they could keep girls from “parents who, by their utter degradation, have forfeited any claim upon their children.” They cited as an example a child whose mother forcibly removed her from an adoptive home and

158 Archives of Ontario, Toronto Boys’ Home Papers F831, Series E, MU 4928 to MU 4933, Toronto Boys’ Home, *Minutes*, 1866, vol. 1, June 25.

159 Toronto Boys’ Home *Minutes*, 1873, vol. 2, June 30; 1877, vol. 3, February 26, April 30, and November 19; 1879, vol. 4, May 26. In the last case, a father wanted to take a boy age 15, who resisted as he had bad memories of life with his father; the majority of the managers felt he had to be given up as they had no legal claim, but one strongly objected, arguing that, on moral grounds, they should do everything possible to keep the boy from his father. Their lawyers advised them to keep the boy until the father took legal action. The managers told the father the boy was to be kept “until the father had some settled home and means of providing for his child” and brought the police to remove the father from the Home.

160 Toronto Boys’ Home *Minutes*, 1878, vol. 8, May 13; 1878, vol. 4, May 20 and June 3.

161 Toronto Boys’ Home, *Minutes*, 1878, vol. 4, September 30; 1879, vol. 4, January 27; 1879, vol. 8, February 10; 1879, vol. 4, February 17; 1879, vol. 4, February 24; 1879, vol. 4, March 3; 1879, vol. 4, April 21; 1879, vol. 4, April 28; *In re Smith, an Infant*, [1879], O.J. No. 324; 8 P.R. 23 (Ontario Practice Court, Common Law Chambers Hagarty C.J. April 25, 1879).

“dragged her back to her former wretched way of living”; the managers, “on hearing of this were enabled to find the child and again take her under their protection.” The child had been placed in the Home by the police magistrate when the mother had appeared in police court, having been “picked off the streets in a helpless state of intoxication” and “recognized as an unfortunate who had too often appeared in our Police Court.”¹⁶² In 1877 the Home assumed the right not to tell a mother the whereabouts of her two children, who had been put into the Home by the mayor when the mother went to jail.¹⁶³ In the *Annual Report* for 1873, the managers implied that unworthy parents might also be declined visiting privileges: “We remember years ago a little waif who was brought in to be clothed, fed and cared for. A worthless mother begged leave to see her occasionally, but eventually lost all interest.” The child was adopted and was reported doing well.¹⁶⁴

The only record of a legal test of the authority of the Girls' Home came in 1896. Alice (Tiny), placed in the Home in 1883 “with the consent of the mother and without any dissent from the father,” was in 1892 at the age of 11 or 12 apprenticed to Mrs. Pieper. Her mother had made “some small payments” towards her support while in the Home. Three years later Alice's mother wrote to her, making her discontented. Mrs. Pieper wrote to the Home saying Alice had become disobedient, and she was willing to give Alice to her mother, but the managers wrote to the girl, suggesting she reform her behaviour to ensure she did not lose the apprenticeship money held for her. A few months later Mr. Kelso (presumably J. J. Kelso), wrote to Mrs. Pieper asking her to give the girl to the mother and he would assume responsibility, perhaps because he disapproved of orphanages. The managers decided to make this a test case, whereupon the mother filed a claim for the return of the girl, arguing that she had not consented to the apprenticeship. However, neither the trial judge nor three judges on appeal in the Divisional Court had any difficulty deciding that, as Alice had been placed under the protection of the Home, under the terms of the Home's act of incorporation, the mother had no right to challenge the indenture. Curiously, although the Court noted that the girl had been indentured for six years under the authority of the act of incorporation, the lady managers were uncertain that they had a case as “no paper had been signed.” Perhaps the court concluded that oral apprenticeship agreements were enforceable.¹⁶⁵

162 See also Toronto Girls' Home, *Register*, vol. 9, pp. 32 and 111; vol. 11, pp. 406 and 407.

163 *Ibid.*, vol. 11, p. 213, vol. 10, p. 54 (1877).

164 Likely a girl aged seven admitted in 1866, placed for adoption the next year (*Ibid.*, vol. 9, p. 102).

165 Only days after the appeal decision, Mrs. Pieper advised the managers that the family was moving to Germany without Alice. Alice was transferred to another mistress, but one year later was taken by her mother. *Re Robinson* [1896], O.J. No. 173; 27 O.R. 585 (Ontario High Court of Justice, Chancery Division, Divisional Court). See also *Globe*, November 12, 1895 and April 11, 1896;

Conclusions

As John Bullen notes, there was both “change and continuity in the structure and ideology of child welfare in nineteenth-century Ontario.” However, he emphasizes continuity in negative aspects: the imposition of middle-class values, the minimizing of costs,¹⁶⁶ the promotion of a work ethic, the lack of interest in social mobility for these children, and the focus on societal interests (crime reduction) rather than on the interests of the children. On the other hand, one of the changes he notes is not supported by the details of government law and policy discussed here: there was no significant shift in public policy to promoting foster homes rather than institutional care, as the government had never focused its support exclusively or even primarily on institutional care.¹⁶⁷ While governments did provide grants to children’s institutions that helped pay for institutional care, they also supported the efforts of these same institutions to place children in private homes, in particular through apprenticeship legislation and through measures intended to strengthen the claims of the institutions and of the people with whom children were placed to resist return of the children to their parents. None of this suggests that the government accepted or promoted institutional care as the best way to care for disadvantaged children in the long term, nor did it challenge the concept that a family home was best. Instead, the government’s stance can be seen as premised on acceptance of institutional care as clearly superior to a child having no home or to living with parents in vice and misery.

Positive examples of continuity in the 1893 *Children’s Protection Act* not emphasized by Bullen include the acceptance of societal and government responsibility for helping children disadvantaged by the character of their parents. In the course of the nineteenth century, colonial, provincial, and municipal governments assumed greater legal responsibility for such children by supporting and regulating charitable institutions providing for them, including institutional efforts to keep some children from deficient parents. The classes of children deemed to need help had also been largely defined in earlier legislation, with only one new element being added in 1893: mistreatment resulting in a child experiencing “unnecessary

Toronto Girls’ Home, *Register*, vol. 10, p. 71; *Minutes*, April 2, October 22 and 29, November 12 and 19, 1895; April 14 and May 5, 1896.

166 The only cost under the *Act* was the Superintendent’s salary. All others responsible for implementing the *Act* were to be volunteers, including foster parents (s. 11). Although there was provision for them to be paid where necessary by municipalities, which could reclaim the cost from parents (s. 12), it was more common to ask that the foster parents make annual payments in trust for the child (“Second Report of Work under the Children’s Protection Act” for 1894, Ontario, *Sessional Papers*, 1895, 58 Vict., No. 29, p. 3). Thus it is possible that some voted for the provision to save the cost of institutional care.

167 Bullen, “J. J. Kelso and the ‘New’ Child-savers,” pp. 136–138.

suffering, or serious injury to its health” (s. 2). Even the foster care system introduced by the *Act*, while new in name, continued a long tradition of home placements under pauper apprenticeship indentures developed by common law and the English Poor Law, endorsed by legislation in 1799, used by public officials as a primary means of providing for homeless children from the earliest days of Upper Canada and extensively used by children’s institutions with government approval under their incorporation statutes.

Indeed, legislative developments in 1874, including the *Industrial Schools Act*, *The Charity Aid Act*, and amendments to the *Apprenticeship Act*, were arguably of greater significance than the 1893 *Act* in establishing the parameters of government involvement in child protection. Specifically, these statutes asserted the right of society to take and keep certain children from their parents, provided a sophisticated description of children in need of protection and of deficient parents that included the concept of neglect, established legal processes for taking and keeping children from deficient parents, and mandated legal and financial support for and accountability of charitable organizations delivering care to children.

As the architect of Ontario’s child protection system J. J. Kelso thus had a very firm foundation on which to build and was not, as he and some historians have claimed, breaking new ground. Many of the details of the system he designed were new to Ontario, but they fit well with what had gone before. The definition of a child in need of protection had been evolving in legislation for at least a quarter century, arguably since the 1799 *Act*, while for more than half a century the government had assumed some financial responsibility for disadvantaged children through grants to institutions caring for them. Furthermore, while the creation of the position of Superintendent of Neglected Children, whose salary was to be paid by the provincial government, signalled a new supervisory role for the government in caring for disadvantaged children, for nearly a quarter century the government had, through the annual inspections and reports of the Inspector of Asylums, Prisons &c., whose salary was likewise paid by the government, exercised a degree of quality control over children’s care as a condition of institutional funding. In addition, primary responsibility for local implementation of the 1893 *Children’s Protection Act* was entrusted to private, charitable organizations — local Children’s Aid Societies — and to volunteer workers, perpetuating a local volunteerism that had been presumed and encouraged by governments and the law throughout the century. Finally, the foster care system adopted under the 1893 *Children’s Protection Act* perpetuated the use of home placement of children as encouraged and endorsed by the government throughout the century in apprenticeship legislation and in its support of organizations providing for such placements.