

Have We Really Come That Far?

Child Welfare Legislation in Ontario

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(Published in the OACAS Journal, 51(4), Summer 2007)

Lero & Kyle (1991) describe three key developments in child welfare policy in Ontario, each of which is reflected in the following paper: 1) early child welfare was administered on a voluntary basis by churches, social agencies, and women's groups (1870's to 1945); 2) 1946 to 1964 saw the beginning of modern child welfare and government services for same, accompanied by an increase in responsibility and accountability by and for Children's Aid Societies; and 3) recognition of the care and safety of children as an essential service, with concomitant legislation directing how such services are to be delivered (1985 to present).

Peck (1991) points out (albeit in a different context): "...changes in social policy are much more likely to reflect changes in public attitudes, attention by the mass media, legislative priorities, and funding constraints than to be determined by findings of empirical science" (p. 248 in Peled & Kurtz, 1994). Peled & Kurtz (1994) go on to say that "(A)vailable data are often overlooked when they do not match the prevailing political or cultural mood" (p. 253). Child welfare policy and legislation in Ontario has also tended to follow the pattern of legislation being enacted in response to the public "mood", as history has demonstrated.

Historically Speaking

Until about 1884, there was no organized relief, which addressed orphaned, deserted, or otherwise destitute children in the Province of Ontario (King et al, 2003). The Orphan's Act of 1799, up to and including the Apprentices and Minors Act of 1851, provided only for apprenticed children (Children's Aid Society of Brant website, 2007) --- children who could not

be looked after by their own families for a variety of reasons (such as being orphaned and/or poverty of the family) were forced into labour to “earn their keep”. The business-owner could feel he was offering a charitable service by feeding and clothing a destitute child in exchange for that child’s free labour. Labour for such children often consisted of extremely long days (sometimes 14 to 16 hours) and dangerous, unhealthy conditions (such as working in mines and factories). Such conditions prevailed in large part due to “...the prevailing emphasis on the work ethic and laissez-faire philosophy” (OACAS, 2007) which dominated the government and public opinion of the time.

The Municipal Act of 1849 was enacted to create local governments and this Act also determined that municipalities were deemed responsible for relief provided within their areas (OACAS, 2007). Up until this time, extended families, churches and other religious bodies were the only source of aid to which adults could apply for assistance. The assistance provided by religious groups was generally given “in kind” (e.g. firewood or food) as it was generally held that personal failings or divine decisions placed individuals into their “places” in society, and that obviously the mismanagement of money was one of these personal failings (Guest, 1997). Assistance was given grudgingly (if at all) and in a residual, often humiliating manner. Therefore, it was not considered appropriate to provide cash to those seeking assistance. In the same vein, the public and religious groups felt that the appropriate place for destitute or orphaned children was within their extended families, given that their immediate families were failing to appropriately provide for them. If these families could not look after their children, then again this was some kind of judgment from God and these children should be put to work to earn their living. It was held that the people who put them to work, whether via apprenticeship or adoption (many destitute children were shipped to farms to work, and were adopted in the process) were logically of superior mettle, and that such people could provide a role model which might inspire

orphans and poor or abandoned children to better their lot in life or at least to accept their place in it (Guest, 1997).

Peled & Kurtz (1994) describe North American public opinion of the day: “Puritan values, based on the notion that human nature was instinctively bad, supported the idea that all children were in need of severe discipline and that parents were responsible for their children’s moral character and behavior (Barnett et al, 1993)” (p. 249). Therefore, “bad” parents could and should be usurped by “good” parents who would thus take over the job of bringing up their children. Corporal punishment, in even its severest form, was not considered child abuse at the time, but rather child maltreatment was defined by extreme poverty, the absence of harsh guidance, and a lack of morally acceptable behavior by the parents or by the child (which was ostensibly considered to be with the parents’ tacit approval) (Barnett et al, 1993).

Over the next 25 years, leading up to the enactment of the Charity Aid Act of 1874 and the Industrial Schools Act of 1874, increasing recognition was being paid to the living and working conditions of apprentices, and to alternatives such as adoption. The Charity Aid Act of 1874 permitted the supervision of institutions by government, “provided a legal justification for the prevention of severe abuse of children in apprenticeship positions” (King et al 2003, p. 4) and this Act also “regulated public aid to charitable organizations” (OACAS, 2007). The Industrial Schools Act of 1874 permitted local school trustees to establish residential training schools for children under 14, which were to be run by “any incorporated philanthropic society” (OACAS, 2007). Children could be admitted to these schools under a number of conditions, some of which were neglect, drunkenness (or other vices of parents), “growing up without salutary parental control and education, or in circumstances exposing them to lead an idle and dissolute life” (King et al, 2003). These Acts marked the beginning of the shared characteristic of responsibility between the public and private organizations and individuals --- this characteristic became a feature of Ontario Children’s Aid Societies in the future.

Following on such legislation above and that which follows, the Children's Protection Act of 1888 established public responsibility for children by requiring that local governments "assume the maintenance cost of wards" (OACAS website, 2007). At this time, courts were also permitted to make children wards of charitable organizations or institutions until the age of eighteen (King et al, 2003), and municipalities were required to pay for such wardships (i.e. food, clothing, shelter, and education of destitute children). The Children's Protection Act (1888) also facilitated the use of foster homes as alternatives to institutions, and, as public opinion at the time deemed that a child's environment determined their future (along with a growing middle class concern with the nurturance of children) (King et al, 2003), acted as justification for removing children from homes that were deemed unsatisfactory and as justification for placing children into homes which were considered superior to their own (OACAS, 2007). The Children's Protection Act (1888) also for the first time legislated the treatment of juvenile offenders as being different from that of adult offenders (King et al 2003), which change came as a marked relief to child welfare reformer J.J. Kelso, who remarked: "... little fellows eight or nine years old standing in the dock with old reprobates, and when the Clerk of the Court reads out the charge and asks the child to plead guilty or not guilty the whole proceedings are quite unintelligible to him" (Jones & Rutman, 1981).

In 1887, as a result of a series of articles written by Joseph J. Kelso for the Toronto Globe newspaper on the plight of abused and homeless animals in the City of Toronto who were being treated cruelly, the Toronto Humane Society was founded. At the same time, J.J. Kelso wrote about neglected, abused, and delinquent children in Toronto, and the Humane Society undertook to assist such children as well. However, it soon became apparent that the Humane Society could not act on behalf of children without the legal authority to do so and without the funding necessary. J.J. Kelso and the Toronto Humane Society obtained both of these necessary factors by petitioning the Ontario provincial legislature to pass an Act addressing the Protection and

Reformation of Neglected Children in 1888 (Guest, 1997). As appears to have always been the case, “(P)ublic policies concerning children’s issues are frequently decided and acted upon in a heated political atmosphere” (Peled & Kurtz, 1994, p. 258).

The Toronto Children’s Aid Society, the first in the Province, was founded in 1891 by J.J. Kelso. Through the efforts of this Society, the Children’s Protection Act of 1893 was passed. Via this legislation, the Children’s Aid Society (CAS) became “a semi-public agency with a legal mandate and a private Board of Directors” (OACAS, 2007). The CAS was given wide-ranging powers, which included the removal of children, the supervision of children in municipal shelters, and the status of legal guardians (OACAS, 2007). With these powers went the management of such children and the prerogatives of their upbringing normally reserved for family members. The Children’s Protection Act of 1893 also, for the first time, provided legislation, which stipulated the punishment of parents found guilty of severe neglect (King et al, 2003). Parents could be fined up to \$100 and/or be put in prison for up to three months. Interestingly, the specific issue of child sexual abuse was such a taboo that even with a report out of the U.S. in 1969 which indicated a substantial number of cases, this form of child maltreatment was not even given legislative attention until a decade later (DeFrancis, 1987).

During this time, the “child saving movement” gathered strength and “embodied those at the time who championed the cause of children’s rights and protection” (King et al, p. 5). However, child welfare policy support was still a careful and oftentimes difficult “balancing act between recognition of the family as the preferred and strongest social unit and the right of children to be protected from intolerable circumstances” (King et al, p. 5).

Between 1894 and 1925, the CAS resisted provincial input and with it, operating money, with the exception of small grants from time to time to defray the mounting costs associated with the wards in their charge. The Board of Directors feared government involvement (and its

concomitant regulations) and also feared that public monies would deter private donations (OACAS website, 2007).

By 1907, “more than 60 CAS’s were operating in Ontario and others had also been founded in Winnipeg, Vancouver, and Victoria” (OACAS, 2007; King et al, 2003). Alberta also founded its child welfare legislation on Ontario’s, and in 1908 passed Alberta’s Industrial Schools Act to provide for the treatment of juvenile delinquents (Blake & Keshen, 1995).

In 1912, an organization known as the Associated Children’s Aid Societies of Ontario was formed (and later became the present-day Ontario Association of Children’s Aid Societies -- OACAS), for the purpose of coordinating the work of all of the Ontario Children’s Aid Societies, and the OACAS requested and was granted the benefit of reviewing all child welfare legislation before it is introduced to the legislature (Jones & Rutman, 1981; OACAS, 2007).

During this time, urban reform and social welfare movements were gaining public approval. Following a particularly bad bout of unemployment in 1913 and 1914, and a tremendous increase in public expenditures throughout the previous five years, the mayor of Toronto stated that he saw “a new spirit in municipal government that involved a growing public responsibility for a variety of human services and regulatory agencies” (Guest, 1997, p. 32). In that city, public health nurses were employed to combat the infant mortality rate, food supplies and processors became regularly inspected, and dental clinics were established for poor children. A minimum wage was established for civic employees, and the unemployment problem was addressed with a number of programs. The mayor of Toronto went on to say that, municipal government could no longer avoid the human factor in its constituencies and merely address roads, sidewalks, and sewers. The Mayor, H.C. Hocken, said, “the problems we have to deal with now are problems affecting human welfare, problems of prevention, the problems looking to the betterment of the people of cities” (Guest, 1997, p. 33).

Until about 1920, the Board of Directors of the Toronto CAS operated as an autonomous organization, and was responsible only to itself. The Board was heavily involved in fund-raising and direct service to clients. Accountability to the community was raised in 1916, when public criticism was leveled at the quality of care children were receiving from the Toronto CAS. A provincial Grand Jury investigation was launched, and the Grand Jury of the time ultimately absolved the CAS from wrongdoing, praised its work, and recommended increased public funding (OACAS, 2007).

In 1919, a group of citizens representing the public, who were still questioning the quality of care children were receiving from the CAS, organized to vote out the Board of Directors. Having done so, the following years saw a number of individuals with expertise and formal training related to children join the Board of Directors of the Toronto Children's Aid Society. In 1923, the first Director of the Toronto CAS (with direct responsibility for operations within the organization itself) was appointed, that being R.E. Mills. Over the course of the 1920's and 1930's, significant changes to the structure and fiscal management of CASs across Ontario took place, as the province increased its funding contributions to foster care and institutions which looked after dependent children (King et al, 2003). With increased public funding, came increased public scrutiny and provincial involvement in how CASs were operated.

The Child Welfare Act of 1954 guaranteed governmental support for child protection mandates, primarily with the province assuming responsibility for the accountability of Ontario CASs, and Ontario provincial fiscal responsibilities for wards increased at this time from 25% to 40% (King et al, 2003). By doing so, the Child Welfare Act of 1954 strengthened public responsibility for children in care and established funding for the work being done with children in their own homes (OACAS, 2007). This was also the beginning of public recognition of the importance of preventative measures taken to reduce the circumstances which require the necessity of removing children (termed "apprehension") from their homes and placing them in

provincial (or “state”) care. “Accountability thus became incorporated into law as public monies became a larger part of CAS budgets due to increasing demands for services. over the years, responsibility for child welfare evolved from the private realm through municipal involvement to provincial legislation and authority” (OACAS, 2007).

The Child Welfare Act (1965) “promoted the prevention of child abuse, which gained recognition as an important function of CASs, however, few prevention programs were offered” (King et al, 2003). This Act saw the continued increase in provincial fiscal responsibility, with 70% of CAS costs being paid for by the province, and the remaining 30% left to the municipalities and counties (King et al, 2003). The OACAS (2007) states that by 1970, voluntary donations toward Ontario CAS budgets had dropped to a low of 10%, and that by this time the funding scheme had changed to 80% provincial responsibility and 20% municipal.

The Child and Family Services Act of 1984 (1985, according to the OACAS website) focused on evidence of harm or risk of harm to a child. In defining the need for protection, neither the terms abuse nor neglect were used. This Act legislated the use of less-intrusive measures, and indeed stipulated that the “intervening agency demonstrate that a less restrictive course of action was attempted” (Trocme & McPhee, 1995). During the years between 1984 and 1990, a drop in children in care, an increase in home-based services, and a decrease in intrusive court procedures was evident (Trocme & McPhee, 1995). Interestingly, Trocme and McPhee (1995) found that in comparison with similar communities in the United States, child welfare services in Ontario received half the number of referrals (other statistics, such as substantiation of allegations at approximately 30% were almost exactly parallel), but twice the number of people identified themselves than those making referrals in the U.S. (who preferred to remain anonymous) and the reason for this may be that community support for child welfare services in Ontario is greater than those communities in the U.S. (alternatively, children in Ontario may be

at lower risk of maltreatment). Public concern for this particular social welfare category appears to be strong.

The OACAS (2007) states that “the proclamation of The Child and Family Services Act, November, 1985, with the complementary regulation service standards and administrative policies have radically increased Child Welfare Boards’ responsibility and their accountability to the Minister”. King et al (2003) point out that The Garber Report on Child Abuse (Garber, 1970) and The Judicial Inquiry Report (1976) were very influential documents culminating in the Child and Family Services Act of 1985. Most notable in these reports were the recommendations emphasizing the need to define conditions of abuse and the evidence required to prove it, and community responsibility for reporting child abuse concerns to a Children’s Aid Society (Allen, 1982).

Currently

From 1996 to 1998, the child welfare system in Ontario underwent tremendous scrutiny and a task force was set up to review several areas. The Ontario Child Mortality Task Force and the Office of the Chief Coroner reviewed over 100 deaths of children who were known to their local CAS, and as a result three other areas were reviewed by independent panels of experts: the Ontario Ministry of Community and Social Services, individual CASs for compliance with Ministry rules and regulations (over 3,000 randomly selected child protection files from across the province were examined), and the Child and Family Services Act (1985) itself was reviewed to determine whether adequate legal provisions were present to protect children from neglect and/or abuse (King et al 2003). At the same time that the results of these reviews were being considered, two more reports were released: The Child Welfare Accountability Review and the report of the panel, which reviewed the CFSA, entitled *Protecting Vulnerable Children*. The result of all of these reviews and reports was massive restructuring in child welfare by the

Ontario government, including: “a new funding framework for child protection which is volume-sensitive and includes benchmarks for service, introduction of a mandatory risk assessment system, mandatory training for child protection workers and the development of an interactive network database for the improved sharing of information among societies” (King et al, 2003). The OACAS (2007) goes on to state that during this reform, 100% of the costs of funding for CASs was assumed by the province, and more emphasis was placed on accountability and client outcomes. In addition and perhaps most importantly, a series of amendments to the CFSA were proposed regarding the critical elements in the protection and care of children (King et al, 2003).

In 1998, Bill 73 was passed which enacted the above amendments to the Child and Family Services Act of 1985, and received royal assent in 1999 (becoming Bill 6 in the provincial legislature) (King et al, 2003; Ontario Human Rights Commission, 2001). Eight major areas were affected:

“the purpose of the CFSA; grounds for determining whether a child is in need of protection; the inclusion of evidence of past parenting in child welfare proceedings; clarification of the duty to report abuse and neglect; improvement of CAS access to information; revisions to the maximum time for society wardship; access by parents to children in care; and the guarantee of a regular review of the act” (King et al, 2003).

A broad overview of the primary changes to the Child and Family Services Act of 1985 follows:

- a) the purpose of the Child and Family Services Act (1985) was changed to stipulate paramountcy of the interests and protection of the child. Previously, the Act was unclear in this goal, and child safety often competed with the importance of the family and the preference for the least restrictive alternative (Ministry of Children and Family Development, 2005; King et al, 2003).
- b) the CFSA became more child-centered, rather than family-focused, in terms of the primacy of safety rather than the interests of the parents. Greater priority was given to permanency planning for the child, in that a limited amount of time was given to

- families to demonstrate that they could care appropriately for the child --- the “revolving door” was eliminated, replaced by a specific length of time that a child could be in the care of a CAS without application to court for Crown wardship --- 12 months total (not consecutive) for a child under 6, and 24 months (not consecutive) for a child over age 6 (Ministry of Children and Family Development, 2005; King et al, 2003).
- c) the definition of a child in need of protection underwent substantial change, with the lowering of the tolerance for risk. Neglect and emotional abuse were included, and the term “substantial risk” was replaced with simple “risk”. These changes allowed CASs the opportunity to intervene earlier, preferably prior to the child being hurt or injured (Ministry of Children and Family Development, 2005; King et al, 2003).
 - d) clarity and detail were added to the requirements for reporting suspected child abuse, and it was made clear that the onus on reporting was on everyone in the community, not just professionals who come into contact with the child. The requirement to report was also broadened to “suspicion of abuse”, thus removing the doubt towards responsibility of the common citizen. In addition, legal penalties were instituted for failure to report by the professional or official (Ministry of Children and Family Development, 2005; King et al, 2003).

One significant aspect of the implemented changes was the “development of a structured and standardized approach to case decision-making through the introduction of the Ontario Risk Assessment Model” (Ontario Human Rights Commission, 2001). This Model consists of several areas of risk which are graded on a Likert-type scale of 0 to 4, and which include a narrative component for the description by front-line workers of areas pertaining to each child and to each parent. The amount of high numbers in these areas determines the amount of risk the child is exposed to.

Impact of Change

As indicated above, 1997 and 1998 saw a dramatic reform in how Ontario Children's Aids went about the business of protecting children. As a result of a number of child deaths, which were highly publicized and which criticized the involvement of the CAS as not having been diligent enough, the Ontario Child Mortality Task Force, and the Child Welfare Accountability Review resulted in rules and regulations which had the effect of placing extensive pressures on agencies to investigate, record, and report to the Ministry every facet of the work done in attempting to aid local families and their children (OACAS, 2007). This had the unanticipated result of extremely high workloads involving mostly paperwork and very high staff turnover. The resulting service to families and children suffered as workers struggled to keep up with the paperwork expectations and watched their actual time with individuals and families decrease to such an extent that it became almost impossible to do the work for which they became social workers in child welfare in the first place. King et al (2003) points out that child-focused legislation in both British Columbia and Ontario have resulted in dramatic increases in child welfare admissions to care.

Cameron and Freymond (2003) conducted a survey of both service providers and receivers, and discovered that "...it was quite common for service providers to indicate that they were the third or even the fourth person assigned to the case since it had been open" (p. 19). In addition,

"...69% to 71% of direct service workers in three Children's Aid Societies estimated that they spend less than 35% of their time working with families. Indeed, in two of these agencies, 40% to 50% of direct service workers believed that they spent less than 20% of their time contacting families. Most spent the majority of their time satisfying the legal and procedural recording requirements of their job" (Cameron & Freymond, 2003, p. 19).

Maresca (1995) found the same results earlier, in terms of workers spending much of their time and energy in preparation of legal cases rather than in dealing with the problems, which confront the family, when investigating the role of mediation in child welfare cases.

Cameron and Freymond (2003) conclude their research with this to say: "...for many mothers, involvement with Ontario's child welfare is an unwelcome, frightening, and, ultimately, only a marginally useful experience. For direct service workers, Children's Aid Societies' mandate create a tension between the perceived importance of their work and their capacity to do the work as they believe it should be done" (p. 40).

Rivers, et al (2002) concur that demands on direct service workers have become unmanageable, however they point out that since about the mid-1990's, referrals, investigations, substantiations, and children admitted to care have almost doubled (see also King et al, 2003). The Ministry of Children and Youth Services (2005) report that in actuality these numbers have nearly tripled. This has created the need for CAS agencies in Ontario to increase staff exponentially, and therefore increase their operating costs by large margins (both for overhead and for caring for children in care). Most Ontario CAS's (50 of 52) have run a deficit in each budgetary period over the past ten years (Cameron & Freymond, 2003; Liston in King et al, 2003).

A Reshuffling of Priorities – Everything Old is New Again

Following the flurry of activity in the area of child welfare in Ontario above, between 1998 and 2000 further examination and changes were implemented. The province has embarked on a "transformation agenda" in child welfare, which has been building steam up to now (2007). Some changes have only recently come into effect, while still others are in the offing. The main areas of reform include: "moving child welfare services to the new Ministry of Children and Youth Services, completing a system-wide Child Welfare Program Evaluation, and establishing a Child Welfare Secretariat to address the findings and recommendations of the program evaluation" (Ministry of Children and Youth Services, 2005; Bill 210).

Following several years of evaluation, a number of areas were highlighted for stronger assessment and implementation: “the need for a stronger emphasis on outcomes, an investment in research, and the development of a common information system” (Ministry of Children and Youth Services, 2005). In addition, implementation of the Looking After Children research and assessment approach has been endorsed by the Ministry and has been begun by several Ontario CASs (full implementation is expected by the year 2008) (Arnold, 2007). These changes have come about with the enactment of Bill 210, which further amends the CFSA of 1985.

In 2004, the Child Welfare Secretariat was formed to oversee and evaluate key aspects of the transformation agenda of the Ministry of Children and Youth Services, in particular the Child Welfare Program Evaluation, which is expected to monitor and evaluate child welfare services in the 52 CASs on an ongoing basis (Ministry of Children and Youth Services, 2005). The Secretariat’s work is supported by a provincial advisory committee, which includes representatives from the Ministry, several Children’s Aid Societies, the Ontario Association of Children’s Aid Societies, and the Association of Native Child and Family Service Agencies of Ontario (Ministry of Children and Youth Services, 2005).

These initiatives at the Ministerial level have resulted in some expanded intervention options within the direct-service delivery system. These consist of: “a) a more flexible intake and assessment model; b) a court processes strategy to reduce delays and encourage alternatives to court; and c) a broader range of placement options to support more effective permanency planning” (Ministry of Children and Youth Services, 2005).

The Ministry of Children and Youth Services (2005), in its strategic planning, indicates that the reforms underway have been informed by a review of current and innovative practices across North America, the United Kingdom, and Australia. The notion behind this is that this kind of collaboration will allow the sharing of information and research across nations, and that

this will ultimately lead to the dissemination of knowledge regarding the best practices to achieve positive outcomes for children.

Cameron and Freymond (2003) point out that “Ontario Child Welfare is entering territory where other countries have gone before” (p. 4). They argue that other countries have already implemented reforms similar to that which Ontario is currently undergoing with regard to its child welfare system, some having done it 10 years ago, and have encountered “comparable difficulties, creating high levels of dissatisfaction among service users and service providers” (p. 4).

The pendulum appears to have swung in the other direction again in Ontario --- prior to 1993, the emphasis was on prevention. Following a number of child deaths, and the public outcry regarding the need to “fix” the Ontario child welfare system, the pendulum swung heavily toward investigation, evidence, and legal proceedings. Currently, prevention has once more received emphasis in legislation and practice, largely due to public opinion and demands for child welfare reform. As the “transformation agenda” has only recently been implemented, and is still in it’s beginning stages, it remains to be seen if this will be the reform (to legislation and practice) that will finally satisfy all aspects of prevention, early detection, and ultimately child safety. In the search for a foolproof method of assuring that all children are safe, legislators, the public, and practitioners will continue to alternate having the “floor” in the child welfare debate.

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