

The Impact of Cholera on the Design and Implementation of Toronto's First Municipal By-laws, 1834

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Article abstract

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It might be anticipated that, when the City turned its attention to passing its first set of by-laws in the late spring of 1834, the contest over the right organization of government would dominate the thinking of City councillors. However, a review of those by-laws and the issues that gave rise to them reveals that environmental concerns, including the threat of a repeat of the dangerous cholera epidemic of 1832, had as much to do with the ultimate design of those by-laws as did political orientation. In fact, the environmental pressures felt at the time allowed for the transcendence of political differences for the sake of the defence of public health, a result quite inconsistent with dominant interpretations of the role of law and legal institutions in the Upper Canadian experience.

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Résumé

La ville de Toronto s'est incorporée en 1834 au milieu de beaucoup d'animosité et d'agitation politique. La tension entre les promoteurs de réforme et la direction municipale, épaulée par les membres du parti conservateur, a poussé les questions politiques vers un carrefour crucial. Ce débat entre l'autorité centrale et la direction municipale dans le Haut Canada était incompatible avec la loi par laquelle la ville a été créée, une loi qui a donné pour ainsi dire la pleine autorité législative au gouvernement local. Mais la première élection municipale a remis en place une majorité de réformistes au conseil de la ville de Toronto. Et l'intransigent William Lyon Mackenzie est devenu le premier maire de la ville et il a contribué à accroître les difficultés entre l'autorité centrale et la direction locale.

Lorsque la ville de Toronto s'est efforcée de passer ses premières lois à la fin du printemps de l'an 1834, il est fort probable que le débat au sujet de l'organisation propice du gouvernement a dominé l'esprit des conseils municipaux. Cependant, une révision de ces lois et les problèmes qui leur ont donné naissance révèle que les soucis environnementaux incluant la menace du retour de l'épidémie du choléra de l'an 1832 ont eu autant d'effet sur la conception ultime de ces lois que

l'orientation politique. De fait, les pressions environnementales ont permis le dépassement des différences politiques pour défendre la santé publique, un résultat qui diffère de l'interprétation dominante du rôle de la loi et des institutions légales du Haut Canada.

A. Introduction

The City of Toronto was created by Act of the Legislature of Upper Canada passed on 6 March 1834.¹ The first municipal elections were held on 27 March, and the citizens of the new city returned a council dominated by politicians sympathetic to the cause of political reform. Included in this number were the notorious William Lyon Mackenzie and the moderate reformer, Dr John Rolph. At the council's first meeting, Mackenzie was elected mayor from among the successful candidates, and Rolph, unhappy that he had been passed over by council, refused to be sworn in as alderman for St. Patrick's Ward. His position on council was ultimately filled in a by-election on 24 April.²

The political dissension (even among apparent allies) that affected the deliberations of Toronto's first council was not uncommon for the time. In fact, the provincial legislative session out of which the *City of Toronto Act* emerged was one of the most tumultuous ever, and it in turn had followed a succession of highly charged, acrimonious sittings of the provincial body. Since at least 1831, Mackenzie's presence in the Legislative Assembly as a representative for York County had caused what seemed to be an interminable number of disruptions and expulsions. The histories of this period in the development of Upper Canada have been consumed by these political tensions, reducing the story of Upper Canada to a contest between the cause of reform and the entrenchment of the ruling élite. Aileen Dunham, for example, in an early study of Upper Canada still widely referred to today, said that the period from 1831 to 1834 was "the most discreditable chapter in the history of the Upper Canadian legislature."³ Of Mackenzie's agitations, G. M. Craig wrote that Toronto's first mayor

exerted a powerful and at times decisive influence on the course of events. . . . [H]e more than anyone else contributed toward making the times abnormal and contradictory, as well as exciting. . . .⁴

There is no doubting the importance of the issues in Upper Canadian political history that gave rise to the divisions between reformers and the establishment. The issue of the non-accountability of the Legislative Council, the exasperation of reformers with the continued exploitation of "place" by members of the Executive Council, disputes over the nature of judicial tenure – these and many other political and legal problems gave impetus to the movement toward the Rebellion of 1837 that perhaps functions as the defining moment in Upper Canadian history. But it is dangerous to reduce the historical discussion of the early 1830's to a review of the contest between agitators and reactionaries. In that event, the tendency would be to ignore a variety of other influences, events, and pressures that could contribute to

a wider, more complete understanding of the development of old Ontario. These other influences had a great deal to do with the way in which the institutions of Upper Canadian society developed. Among those institutions are the City of Toronto itself, and the legal framework that both gave rise to the city's existence and functioned as the first expression of its almost complete jurisdictional autonomy. In fact, some issues outside of mere political contest allowed central figures in Toronto's first year to transcend the predictable controversies so popular among many historians of Upper Canada. Central among these extra-political pressures was the continuous threat posed by epidemic cholera from early 1832 to the end of 1834.

During the summer of 1832, the Town of York (destined to become the City of Toronto in 1834) was terrorized by a public health crisis of unprecedented severity in local experience. For perhaps the previous 15 years, cholera had been moving west from India, through Asia, and into Europe, finally appearing in England in late 1831.⁵ It was only a matter of time before the disease was imported into the British North American colonies, and the fears of Upper Canadians in this respect were realized with the official announcement of cholera in Prescott, toward the eastern boundary of Upper Canada with Lower Canada, in mid-June 1832.⁶ Waves of immigrants and ships' crews arrived daily at river- and lakeside during the summer of 1832, making the municipal response to the disease an enormously difficult challenge. Despite the valiant efforts of many local officials to combat the disease, and despite the attempts of local Boards of Health to install measures to prevent cholera from coming ashore, the disease took a terrible toll in Upper Canada during the summer of 1832. Reliable rates of mortality are notoriously difficult to establish, especially given the standards of contemporary record-keeping. It is evident, however, that the people of York suffered a mortality rate of about four per cent during the outbreak of 1832, with at least 200 deaths in a resident population of little more than 5000.⁷ This is an alarming death rate by any standards, and York may have suffered even more than many of the large cities of Europe.⁸

Cholera did not re-appear during 1833, but the threat of its return heightened during the spring of 1834. When the newly elected council of the City of Toronto focussed its attention on its legislative mandate, the question of protection of public health was foremost in its deliberations. In fact, I want to suggest that the threat of cholera had as much, if not more, to do with the content of Toronto's first by-laws than did any political controversy emerging from the repeated confrontations between reform and establishment. This alternative explanation contradicts the historians' preoccupation with political struggles in an attempt to understand the development of Upper Canadian law and legal institutions. It substitutes environmental pressures for political intrigue as the central motivating factor in municipal law at least.

To explore this alternative explanation for the development of Upper Canadian law, I will review aspects of the *City of Toronto Act* in Section B below. It will be seen that the *Act* functioned as a virtually complete delegation of legislative authority from the provincial Legislative Assembly to the City Council. This alone is

remarkable when one considers that the Legislative Assembly was composed of a majority of members sympathetic to a strong central authority and the continued domination of the ruling élite. The wholesale transfer of law-making powers to a locally elected body was a move inconsistent with the character of the political contest between establishment and reformer, in which the central authority was widely criticized for hoarding power to its own use at the expense of the ordinary public. As well, it was inconsistent with other municipal statutes of the day, in which the transfer of power to locally elected bodies was very limited indeed.⁹

In this context, it must be remembered that, in the 1830's, the development of law to protect public health was in its infancy in Upper Canada. In fact, by the time of the arrival of the cholera epidemic in 1832, the provincial legislature had made only occasional attempts to involve itself in questions of public health. Most prominent in those efforts were statutes intended to control the practice of medicine, with the persistent problem of "quackery" motivating much legislative reform in this area. Regulation of the medical profession in Upper Canada began in August 1795 with the passage of 35 Geo. III c. 1 (U.C.), designed to alleviate the harm done by unskilled and unlicensed practitioners wandering through Upper Canadian villages selling unproven remedies and administering questionable treatments. This statute was modified off and on through 1827, at which time the final amendments to the regulatory regime around the practice of medicine were implemented before the arrival of cholera in 1832. Otherwise, the legislature's involvement in public health was limited to the occasional provision for the relief of insane destitute persons, as in the statute 11 Geo. IV c. 20 (U.C.), and to the establishment of the first hospitals in Upper Canada – in York and Kingston – in the early 1830's. The Boards of Health that emerged from the cholera epidemics, and the delegation to the City of Toronto of virtually complete legislative autonomy in matters of public health, functioned as the first more or less comprehensive excursion of law-making authorities into an arena that, until that time, had been addressed only sporadically.

The responsibility for public health protection vested in local Boards of Health, and, for our purposes, in the first City Council of Toronto, was remarkable, given contemporary disagreements over the manner by which disease was contracted and spread. The debate resolved itself into a contest between contagionists and anti-contagionists, and an allegiance to one perspective or the other radically altered the way in which one understood the law as a valuable regulatory force. Contagionists believed that disease was passed from person to person through more or less direct contact, and this view underlay the argument in favour of quarantine, the encirclement of towns, the isolation of the sick, and other standard regulatory measures that had been employed in an *ad hoc* way in the great cities of Europe for some centuries. Anti-contagionists, however, argued that disease was simply "in the air," insisting that the standard legal response to contagion could have no positive impact on controlling the disease. This perspective instead argued in favour of eliminating the conditions thought most conducive to the generation of miasma, perhaps removing garbage, eliminating

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standing water, and thoroughly cleaning the streets and basements of the cities to prevent the fumes of rotting animal and vegetable matter from contaminating the air. Anti-contagionism was a relatively new approach to the municipal control of epidemic disease in the early 19th century, but was gaining momentum among medical experts. The transfer of some regulatory authority to local Boards of Health and virtually complete power in matters of public health to the City Council of Toronto by the Upper Canadian legislature in the early 1830's meant that local bodies were vested with the responsibility of satisfying these competing perspectives through their law-making. This responsibility intensified in 1834, as the threat of a return of cholera became imminent.¹⁰

The City of Toronto began consideration of its first by-laws in late spring 1834, and in Section C, I will review portions of three of the initial nine by-laws passed by the newly elected City Council. It will be seen that the legislative responsibility for public health delegated to the city by the provincial legislature was taken very seriously by the municipal council. By the third week of June 1834, a comprehensive set of by-laws was in place to allow the people of Toronto to meet the emergence of epidemic cholera with the most sophisticated official response possible. Then, in Section D, I will review a selection of the administrative difficulties accompanying the return of cholera to Toronto in late summer, 1834. This review will illustrate the ways in which the environmental threat allowed many municipal leaders and influential provincial actors to transcend the political differences that are so dominant in historical treatments of the period.

B. The City of Toronto Act

The *City of Toronto Act* was intended to address the question of the expanding population of the Town of York, and to provide a more efficient system of government and policing for the community. The new city was divided into five wards, and the council was made up of two aldermen and two councillors from each ward. Many of the early responsibilities of the first council were met through the enactment of a series of by-laws during the initial three months of the council's mandate. The *City of Toronto Act* contained the statutory framework under which these by-laws were passed and under which the attempt to enforce them was conducted.

Council's general law-making powers were contained in Section XXII of the statute. As is typical with statutes by which law-making authority is delegated from one legislative body to another, Section XXII is long and detailed, specifying the power to make laws in connection with virtually anything imaginable that might affect the lives of the citizens of the city. The provincial legislature provided a general power as well, vesting in the municipal council the authority

to make all laws as may be necessary and proper for carrying into execution the powers hereby vested or hereafter to be vested in the said Corporation, or in any department or office thereof, for the peace, welfare, safety and good government, of the said City and the Liberties thereof, as they may

from time to time deem expedient, such laws not being repugnant to this Act or the general laws of the Province.

The powers of the council were therefore both comprehensive and independent of supervision by any other legislative body.

There were a number of specific powers granted by Section XXII that had direct implications for the cause of public health. These specific powers gave the municipal council the mandate to protect the people of Toronto from a variety of threats and, given the contemporary confusion surrounding the causes and means of transmission of disease, they were required to be as inclusive as possible. Provided to the council was the power to make by-laws relative to the making, repairing, and cleaning of streets and sewers, thereby addressing issues that had posed many problems for municipal leaders during the cholera crisis of 1832. Related to the power to build and maintain sewers was the power to provide "good and wholesome water to the . . . City" and to "prevent the waste of water." Council therefore had complete control over the central public health issue inside the municipality, that is, the supply of clean water and the disposal of waste. Control over livestock was given to the council, too, and this had direct implications for the state of cleanliness of the city. There was also a general power in the city "to abate and cause to be removed any nuisances" within the city. Through this power the city would be entitled to enforce by-laws prohibiting the accumulation of refuse on private lands, for example, and respecting general conditions relevant to the city's health. To supplement these specific powers was the more comprehensive power "to provide for the health of the . . . City and the Liberties thereof," in effect vesting complete responsibility for the public health of the citizens of Toronto in the municipal council.

The provisions of Section XXII also had implications for the various health care professions, and for monitoring the effects of disease among the population. Allowance was made in the Section for the imposition of a responsibility on physicians and others to prepare and return bills of mortality. The bills themselves would be in a form required by the municipal council, and the council was empowered to impose penalties for the failure to comply with preparation and filing requirements. Related to this responsibility was the power in the council to regulate the burial of the dead, an issue that had caused some consternation during the height of the epidemic of 1832. The obligation to police the city was vested in the council too, and the police authority would ultimately assume the duty to see to the enforcement of many of the by-laws related to public health.

The other section of the City of Toronto Act with relevance for our purposes is Section LXXI, respecting the appointment of a Board of Health. It is clear from this Section that a Board of Health appointed by the council was to be made up of members of council, without outside representation. This meant that, conceivably, the Board of Health could be composed completely of aldermen and councillors without medical training. It was assumed by this Section that the mayor would be ultimately responsible for the enforcement of by-laws relative to the public health; the mandate of the Board of Health was first and fore-

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most directed toward supporting the mayor in this respect. In addition, the board was to assist the mayor in preventing "the introduction and spreading of infectious and pestilential diseases" in the city.

Section LXXI functioned as a delegation to the municipal council of the Lieutenant Governor's power to appoint Boards of Health pursuant to the general statute of the provincial legislature related to Boards of Health.¹¹ But the delegation was limited to the powers of appointment; the powers and authority of the board itself, on one reading at least, were limited to those contained in the general provincial statute on Boards of Health. Those powers and authorities were severely limited, meaning it is not at all clear that the Board of Health to be appointed for the new City of Toronto would have any powers other than those contained in Section II of the provincial Boards of Health statute. That latter provision vested powers of inspection in local Boards of Health, the power to order the abatement of nuisances, the power to enlist the services of constables to assist in enforcement, and nothing further. This reading of Section LXXI, however, seems to contradict the initial suggestion in the Section that the Board of Health appointed by the council for the city was to assist the Mayor in enforcing the by-laws of the city relating to protection of the public health. We have already seen that council's powers in this respect extended to everything from cattle to sewers to the burial of the dead. This would be a mandate for the city's Board of Health that would be much more sweeping than that vested in Boards of Health pursuant to the general provisions in the provincial Boards of Health statute. If this latter reading is correct, then it is not at all clear why the additional provision in Section LXXI of the *City of Toronto Act*, referring to the powers of appointees under the provincial Boards of Health statute, was included at all. On this second reading, it appears to be superfluous.

This was the statutory framework, then, under which the first council of the City of Toronto assumed responsibility for protection of the public health of the city in the spring of 1834. The memory of the cholera epidemic of 1832 was still very fresh, and as we shall see, the council moved virtually immediately to put by-laws in place to meet its responsibilities.

C. *Toronto's First Municipal By-Laws*

Among the initial nine by-laws passed by the city's first council, three were directly related to matters of public health, a testament to the impact that the cholera crisis had made on local decision makers. All were specifically authorized by either Section XXII or Section LXXI of the *City of Toronto Act*. Momentum in matters of public health was maintained through articles in the local newspapers that continued to point out the dangerous progression of cholera in the United States and overseas. In *The Advocate*, for example, we find the following:

The Courier notices several cases of that terrible complaint the Cholera as having lately occurred at or near New Orleans and on the Ohio. In several places in Ireland it is also committing great havoc [sic]. An efficient board of health, a careful health officer, and great attention to the cleanliness

of the city during the summer on the part of the citizens and of the municipal authorities may do much to prevent the importation and spread of contagious diseases. The proposed ordinance for a board of health ought to receive an early consideration.¹²

By-law #4, *An Act Concerning Nuisances and the Good Government of the City*, was passed by City Council on 30 May 1834.¹³ There is nothing in the minutes of the council meetings to suggest any debate or controversy. Prior to its passage, By-law #4 was widely published in Toronto newspapers, the intention being to give citizens a chance to comment on its provisions. The *Canadian Correspondent* reported as follows:

We insert, in this Number the contemplated bill concerning Nuisances. . . . They have not as yet passed the City Council, but we conceive it due to our fellow citizens, that they should be afforded an opportunity to pronounce their judgment upon them, and petition against them, if considered necessary before they pass into a law.¹⁴

It is not clear from these comments whether the paper considered the proposed by-law to be ill-advised, or whether it was simply fulfilling a perceived civic duty to alert its readers to legal developments at City Council. Otherwise, By-law #4 was passed into law without debate in the public arena, and the official version appeared in the *Upper Canada Gazette* on 12 June.¹⁵

By-law #4 was essentially penal in nature. The entire Section I of the By-law, containing twenty specific sets of prohibited activities, was framed in terms of quasi-criminal behaviour, establishing "guilt" and imposing penalties for specified acts, and enlisting the support of the constabulary in enforcement. Many of these prohibitions were directed at protecting the public health. For example, in Clause 3 of Section I we find a penalty of ten shillings for throwing or depositing "dung, manure or filth of any description whatsoever, in the front of the city upon the sand, beach, or in the water in the harbour." In Clause 5, the council addressed the continuing problem of huts or shanties along the lakefront, an issue that had caused some consternation in 1833, and that would arise again during the early months of this first council's mandate.¹⁶ In Clauses 6 and 10 of Section I, council established regulations on the dumping of offensive materials. The former established a penalty of five shillings for depositing anything on vacant lots or in the streets, and the latter imposed the significant fine of one pound, five shillings for allowing the accumulation of "any garbage of fish or any other offensive, putrid or unwholesome substance," whether in public places or on the private lot, house or outbuildings of the offender. In Section III we find the attempt to control swine in the city, followed in Section IV by procedures for the disposal of swine seized under the provisions of Section III.

In all of these provisions, we find the city using its powers as established under the *City of Toronto Act* to impose regulations in service of an enhanced public health. The common good, it must be assumed, took precedence in the minds of the deci-

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sion makers over the private rights and freedoms of citizens that, because of these by-laws, were relegated to secondary importance. Included here were the freedom to enjoy one's property in the manner of one's own choosing, and the right to privacy that might be invaded by constables in the employ of the city. These rights were to be sacrificed, in part at least, should conditions prevail that suggested a threat to the welfare of the community as a whole.

There are two additional provisions in By-law #4 that deserve mention. The first is contained in Clause 7 of Section I, in which physicians inoculating against smallpox were made subject to the very significant penalty of five pounds for each inoculation completed. A penalty of two pounds, ten shillings was provided for every "person suffering himself, his wife, child, apprentice or servant to be inoculated." On the surface, this prohibition is surprising, given the very positive support given to a programme of vaccination by charitable organizations and the *Canadian Freeman* as late as May of 1831. There is nothing in the minutes of council meetings, nor in local newspapers, to explain the rationale for this provision. However, it may be that council was concerned with the dangers inherent in the older programme of inoculation using the smallpox virus itself, while charities and others supported the safer programme of vaccination with cowpox virus.¹⁷

The second difficulty in By-law #4 is in Clause 13 of Section I. There, the council purported to prohibit the loading and unloading of cargo from vessels in the harbour on the Sabbath. Because Section III of the general provincial statute respecting Boards of Health specifically reserved the power to the Lieutenant Governor to regulate the "landing or receiving . . . Cargoes on board" boats "at the different Ports or other places within this Province," and because the *City of Toronto Act* did not specifically delegate this power to the City Council, it is likely that Section I, Clause 13 of By-law #4 was *ultra vires* the city.

By-law #8 was entitled *An Act to Establish a Board of Health*. Notice of Motion of its introduction was first given by Alderman Thomas Carfrae on 26 May 1834,¹⁸ the intention being to introduce the bill in draft form the next day. However, the minutes of 27 May are silent on the matter. Alderman Carfrae next raised the question of a Board of Health during the meeting of 29 May, in which he moved for the appointment of a five-member board, including the mayor.¹⁹ The motion was obviously premature; the bill itself had not yet been introduced for debate. Eventually, the bill was introduced at the council meeting of Saturday, 31 May, at which time council went into committee to consider its provisions in detail. The committee reported back to council that the bill was satisfactory without the necessity of amendments, and it was resolved to read the bill a third time "tomorrow" (a Sunday).²⁰ The bill is not mentioned further in the City Council minutes until Friday 6 June, at which time the bill was put to the question, but did not pass. Instead, the council resolved to send the bill back to committee. The committee met immediately to consider the bill, and reported back to the council, suggesting some amendments. The bill, with the amendments, was then passed by council at its meeting of 9 June 1834.²¹ There is nothing in either the council minutes or the newspaper accounts of

the passage of By-law #8 to explain any of the initial delay in its introduction, the premature attempt to appoint members to the board, and the difficulties in securing final approval of the council. We can assume some controversy around the bill, but the details of that controversy have been lost. By-law #8 was published in the *Upper Canada Gazette* on 12 June 1834.²²

There are a number of important provisions contained in By-law #8. The most significant were those respecting the establishment and powers of the Board of Health. The Board was to be appointed annually, composed of four members of council and the mayor. Generally, it was to have powers to enforce the laws of the City Council and the province "providing against infectious and pestilential diseases." More specifically, under Section II the board was required to make "diligent inquiry with respect to all nuisances . . . which they may deem obnoxious to the Health and lives of its Inhabitants," and to impose penalties of between five shillings and five pounds for breach of relevant regulations. It is not clear how the penalties to be imposed by the board pursuant to this provision relate to the penalties to be imposed for the same offences under By-law #4; the penalty under By-law #8 would appear to be a duplication.

Perhaps most important for our purposes are the provisions of Sections III and IV. Here, we find the City Council vesting in the Board of Health the power to establish a system of domestic quarantine not unlike that allowed for in England pursuant to the various statutes in place there since the early 17th century.²³ Read together, Sections III and IV allow the Board of Health to establish lazarettos, employ physicians and other attendants, purchase medicines and prescribe treatment. The board was also given wide discretion to make such rules and regulations relative to the operation of quarantine as it deemed fit, in any situation where an "epidemical" disease had established itself in the city, or "upon a probable approach" of such a disease. In addition, the board could order the forcible removal of any person or thing within the city that was determined to be "infected or tainted" with "pestilential matter." The places to which such persons or things might be removed were to be determined by the board, consistent with the best interests of the city as a whole. Again, these provisions were penal in their nature, allowing for penalties of up to two pounds, ten shillings for each breach of the board's orders, and imposing the duty of enforcement on the high bailiff and the city inspector. In effect, through these provisions in By-law #8, the City Council overcame the failure of the Legislature to provide for the establishment of domestic quarantine through the efforts of local Boards of Health under the general provincial statute related to Boards of Health. At the same time, however, in reading these parts of By-law #8, it must be remembered that there was nothing in the *City of Toronto Act*, nor was there anything in the By-law itself, to ensure that expert medical personnel would be part of the board. This means that, potentially at least, ultimate responsibility for the operation of domestic quarantine and the establishment of regulations respecting treatment and the general response to epidemic disease fell to lay members of City Council.

Additional powers were vested in the Board of Health, too, some of which seem to duplicate provisions in By-law #4. For exam-

ple, keepers of boarding houses, hotels and other places of public lodging were required to make morbidity reports, and physicians were directed to file mortality and morbidity reports in the manner prescribed by the board. The board was also given the power to enter and examine any premises within the city, and to order the improvement of those buildings, the removal of all nuisances and the elimination of all stagnant waters. These powers are not dissimilar to those contained in By-law #4. In addition, the By-law provided a variety of additional prohibitions and penalties related, for example, to the manner of dealing with human corpses, animal carcasses, and the waste products of butchering operations. By these it was intended, it is assumed, to give the Board of Health the widest possible mandate to act in accordance with the public's best interest in matters of health.

On 19 June, council passed By-law #9, entitled *An Act for Regulating, Paving, Cleaning, and Repairing the Streets and Roads, and for Constructing Common Sewers*.²⁴ According to *The Advocate* of 29 May 1834, a "Report on Roads, Streets, Sewers, Drains, etc." was tabled at a "recent Council meeting," but there is nothing in either the council minutes or its background papers to confirm *The Advocate's* report.²⁵ The bill was originally introduced at the meeting of 6 June, and council immediately went into committee to consider its provisions, but there is no explanation in the minutes of subsequent meetings to explain why another two weeks passed before the By-law was finally passed. It was published in the *Upper Canada Gazette* on 26 June.²⁶

Much of By-law #9 is taken up with establishing the office of street surveyor, outlining the duties of that office, and regulating the use of public roads within the city. Actually, the By-law is inaccurately named, since it does not contain provisions for the construction of sewers at all. There are important clauses, however, regulating the freedom of the owners of buildings to connect to the common sewers, and here we see the City Council making some attempt to control the way in which waste material was to be disposed of in the city. Connections to the common sewer could only be done with the permission of the street surveyor, on the penalty of two pounds, ten shillings. The type of construction of drains leading into the common sewers was specified too, and these provisions generally provided for stable, reliable drains of brick or stone, with iron or copper grates across their outlets. The By-law even prescribed the maximum distance between the bars of those grates, and gave power to the street surveyor to make further regulations respecting details on connection to the common sewers. By Section XXI, it was made clear that any connection to the common sewer was to be for the purpose of the disposal of ordinary waste water only; there was a specific prohibition against connection for the purpose of disposing of the contents of "any privy or Water Closet."

The street surveyor was responsible for the performance of a number of other duties that had implications for public health. For example, in Section XXX cartmen were to be employed to remove all "manure, rubbish and dirt" from public areas in the city. By virtue of Section XXXII, the cartmen were to visit every street at least once each day during the months of May, June, July, August and September, and to receive "all vegetables,

ashes, offal, or garbage which shall be delivered at such cart." The penalty for breach of this latter provision was stated to be "five shillings for every neglect or refusal." However, it is not clear whether that fine applied to a breach by the street surveyor of the obligation to see to the performance by the cartmen of their rounds, to a neglect by the cartmen to complete their rounds, or to the refusal of householders to deliver their garbage to the cartmen as they passed by.

From a review of these early Toronto by-laws, it seems certain that the first council took its public health responsibilities very seriously indeed. While there are occasional anomalies in the by-laws, for the most part they are comprehensive and clearly written, indicating a sincere commitment to the mandate imposed on the council by virtue of the *City of Toronto Act*. Ordinary provisions for the control of nuisances were likely appropriate in any event, given the constant complaints in the presses about the deplorable condition of the city. In the meantime, should an "epidemical" disease appear or threaten to appear, then the Board of Health had the power to respond with domestic quarantine, and the council would support their decision through the assistance of the constabulary in enforcement of the board's orders. Finally, the city began the process of establishing a means for the control of waste water that would ultimately lead to the institution of a municipal sewer system. The stage was then set for the city to respond to cholera as it again threatened the population during the late summer and early fall of 1834.

D. Administrative Challenges

Rumours that cholera had returned to Toronto began to appear in late July 1834, and newspaper reports on the state of the city's health continued throughout August and September. The first alarm was raised by the *Canadian Correspondent*. It reassured its readers that there was "no prevailing sickness, and the general health of the city is good," despite the fact that the city's weekly bill of mortality showed the number of deaths in the previous week to be "unusually great."²⁷ The first confirmation of the return of the disease was published by *The Advocate*, and it included a plea for calm, a reminder about the necessity of increased attendance to "keeping all premises sweet," and praise for humanitarian efforts in treating the ill.²⁸ On 2 August, the *Canadian Correspondent*, in a tone somewhat apologetic for having to report the extent of the disease, related that

Cholera has again made its appearance in this City, and . . . many valuable lives have already fallen victim to its malignity. If we could anticipate any possible good from concealment, we should not be among the first to make this announcement.²⁹

Estimates of the severity of the epidemic of 1834 in Toronto vary. Geoffrey Bilson, for example, relied on the *Canadian Courier* to conclude that there were 158 deaths from cholera in the city during the period 3 August to 7 September.³⁰ *The Advocate*, however, reported the extent of the disease as follows:

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We announced last week that the burials in this City during the week ending 10th August were 125; on the seven days ending with last Sunday they were 147. Previous to these returns 70 deaths had occurred commencing with the 30th of July, of which 40 had been reported to the Board of Health as of Cholera – giving 342 deaths in 19 days out of a population of 6000 persons; for it may be fairly estimated that at least 4000 persons have left the city.³¹

There are several difficulties with *The Advocate's* reporting here. First, in citing the number of burials, the writer does not discriminate between cholera deaths and deaths from other causes. For the week ending 10 August, for example, the *Canadian Courant* recorded a mere five deaths from cholera according to Bilson's summary, rather than 125. For the week ending 17 August, the *Canadian Courant* reported 29 deaths, *The Advocate* 147. Secondly, according to Bilson the *Canadian Courant* did not report any deaths from cholera prior to 3 August, while *The Advocate* reports 40. Thirdly, *The Advocate* may have had political motivation in overstating the extent of the disease, taking the opportunity to criticize those who had the means to flee the city. According to Charles M. Godfrey, a larger number of people had left the city as the disease approached than had done so in 1832, and as a consequence the relief effort was hampered by a lack of personnel.³² *The Advocate* ridiculed this behaviour, saying

so far as our recollection goes, not one of the officers of the government died of cholera either in 1832 or 1834; their superior means, the ease and comfort in which they live, the little connexion they have with the citizens, tend to keep them secure from contagion.³³

Despite the problems in reconciling the various reports of the extent of the epidemic, it is clear that cholera presented a serious threat to the citizens of Toronto as August and September progressed. In *A History of the Toronto General Hospital*, published by C. K. Clarke in 1913, the author stated that "every twentieth inhabitant was swept away by this visitation."³⁴ This would be a five-per-cent mortality rate, comparable in severity to the worst experiences of the epidemic of 1832. Clarke's conclusion would tend to support the statistics related by *The Advocate*, based on the remaining population of 6000, as opposed to the ordinary population of 10,000. In any event, however, by 4 September *The Advocate* could report that "cholera has all but left the city," although the writer complained about the inaccuracy of bills of mortality due to the failure of the sexton at the general burying ground to file his returns on time.³⁵

Immediately prior to and during the epidemic of 1834, the new City Council experienced two significant administrative problems that underscored the difficulties inherent in implementing its statutory mandate. Both related directly to jurisdictional questions arising out of the *City of Toronto Act* and the by-laws passed by the council pursuant to that Act, and both had direct implications for matters of public health. First, the council continued to struggle with the presence of huts along the lakefront.

Secondly, the squabbling that generated so much difficulty for the Board of Health in the Town of York during 1832 re-surfaced during 1834, despite the board's apparently clear authority under the *City of Toronto Act* and By-law #8.

The problems with construction of temporary lodgings along the lakefront had arisen first in 1833, when some members of York's élite complained about the interference the huts created in the enjoyment of the beach and walkways by the citizens, and the danger they posed to the general health of the community. The complainants included both Archdeacon John Strachan (one of the most ardent supporters of the central administration) and former Chief Justice William Dummer Powell.³⁶ Both of these figures were either current or former members of Upper Canada's governing class, and both, one would expect, were firmly behind the policy of the executive government in encouraging continued high levels of immigration that necessitated the construction of temporary, often unsightly, lodgings along the lakefront. However, much contemporary medical opinion connected the spread of cholera and other dangerous diseases with the immigration programme, such that the stage was set for the argument to destroy the lakefront shanties out of a concern for the public health. During 1833, Strachan and Powell pushed this argument in the office of the Lieutenant Governor, to no avail.³⁷

It is relatively certain that, either by virtue of the specific law-making powers granted to the city under Section XXII of the *City of Toronto Act*, or through the general powers contained in that Section, council had the authority to regulate the construction of buildings on the beach. At the beginning of the Section, regulatory power is given in relation to the wharves, docks, slips, and shores of the city, although this power does not specifically provide for the control of construction in that respect. Later, Section XXII allows for regulation to prevent encumbrances of the public wharves, docks, and slips, although the shores are not mentioned here. As well, this latter power appears to be limited to the prevention of encumbrances by "wheel-barrows, carts, carriages, lumber, stone, or other materials whatsoever," meaning that it is not certain that a hut or shanty would constitute an encumbrance for this purpose. Still later in the Section, a more general power is given to regulate wharves and quays, which is followed by the authority "to prevent all obstructions in the bay, harbour or river, near or opposite to any dock, wharf or slip." Relevant as well is the wide power to abate and remove nuisances, and to provide for the health of the city generally. Finally, City Council was given discretion to regulate "for the peace, welfare, safety and good government" of the city, although the law-making powers created by Section XXII could only be exercised in a manner "not being repugnant to . . . the general laws of the Province." Therefore, while the various specific law-making powers established by Section XXII may be a bit ambiguous about the authority of the city to control construction on the beach, the general powers appear to be wide enough to allow for such regulation, so long as there was no interference with the general law.

The difficulty with huts along the lakefront attracted the attention of council almost immediately upon its taking office. Early in

May, correspondence on the matter exchanged between the mayor and the civil secretary in the Lieutenant Governor's Office, and the civil secretary finally wrote to Mackenzie on 8 May. In that letter, it was suggested that the power of the council to deal with the issue depended on the title under which those claiming ownership of the huts had acted. The matter might be a simple one of permissions or licences, or it might be more complicated.³⁸ This letter was followed by the opinion of Attorney General Robert S. Jameson, who admitted that the huts were occupied for "immoral purposes." Despite this, however, Jameson considered that the city had no power to "abate this evil," whatever the tenure of the squatters might be. Instead, the city could only proceed "by the general course which the law has furnished." Jameson gave no suggestion as to what that "general course" might be.³⁹

The Lieutenant Governor's Office became involved again on 16 May, writing to the mayor to request that the municipal police officers prepare a report describing the huts and shanties such that the commissioner of crown lands and the trustees of the public grounds "may be requested to take measures for their immediate removal."⁴⁰ This letter was followed almost immediately by a further opinion of Attorney General Jameson, in which Jameson outlined that the trustees ought to proceed against the squatters in ejectment if the huts were on trustees' land, and that proceedings ought to be commenced in the King's name if crown lands were involved.⁴¹ There is no evidence in either the records of the City Council or in copies of correspondence maintained by the civil secretary that either of these communications was ever answered.

Despite the challenge to the city's jurisdiction in the matter of construction along the beachfront, the council wasted no time in confronting the issue in By-law #4, passed in final form on 30 May 1834. Clause 5 of Section I of the By-law imposed the duty on the high bailiff to prevent the erection of huts and shanties on the beach and public grounds adjoining the beach, and to cause the immediate removal of existing structures. There is no evidence in the records of the City Council to suggest that the high bailiff actually acted on this mandate, but neither is there evidence that proceedings were ever commenced in accordance with the attorney general's opinion. In any case, the city ignored the advice of the civil secretary and the attorney general on the question of jurisdiction, and in By-law #4 it asserted the authority it felt it possessed pursuant to Section XXII of the City of Toronto Act.

The tension manifested in this dispute between City Council and the office of the Lieutenant Governor is predictable to a certain degree. The council was decidedly reform in its outlook on provincial politics, and Mackenzie had caused a great deal of difficulty for the administration during the legislative session of 1833-34.⁴² As well, it cannot be forgotten that the shanties along the lakefront were erected primarily to house the swelling immigrant population on a temporary basis. Despite Jameson's comment that "immoral purposes" were behind the construction of the huts, it was typical of the Lieutenant Governor to deflect criticism away from the unwanted side effects of his immigration policy. This he had consistently done when the question of the

connection between immigration and disease had been broached, and it was evident as well in the failure of the Lieutenant Governor's office to deal with the problem of immigrant huts when it was raised by Archdeacon Strachan and former Chief Justice Powell in 1833. Nevertheless, we have the spectacle here of a City Council led by the province's most vocal critic of the administration, supporting the complaints of Archdeacon Strachan who, on virtually every other issue, supported the administration in its denunciations of Mackenzie's reform initiatives. The threat to the public health posed by the lakefront shanties, at a period of high public anxiety about the possible return of cholera, had the potential, therefore, to allow the principal antagonists in Upper Canadian municipal and provincial matters to transcend the political differences that had alienated them so markedly in the past.

Perhaps of greater urgency, however, was the second problem City Council faced in its early attempts to establish its authority and enforce its by-laws. As has been seen, by 9 June 1834 the council had By-law #8 in place, respecting the appointment and duties of the Board of Health, and the first board was appointed by council virtually immediately. From the minutes of the council meeting of 26 June, it is evident that the board had already begun carrying out its duty to inspect premises in the city; the composition of the "visiting committee" of the board was reviewed at that time, and additional members added.⁴³ The board's authority in matters of the health of the city was at least obliquely confirmed through correspondence issued by the Lieutenant Governor in late July.⁴⁴ In this letter, Colborne indicated that the building constructed in 1832 as a cholera hospital was to be transferred to the Board of Health from the crown, a recognition, it would appear, of the board's jurisdiction.

But, when cholera presented itself as a problem to the Board at the end of July, the chronic shortage of funds in such matters again posed a threat. The chair of the Board of Health petitioned the Lieutenant Governor, asking for help in meeting extraordinary expenses to be incurred in fighting the disease and in preparing a cholera hospital in the building to the rear of the structure currently used for the reception of immigrants. Dr Morrison advised that twelve fatal cases had occurred within the last few days, and that the victims were "mainly emigrants."⁴⁵ If the board were to accept its jurisdiction based on the city's statutory mandate, independent of executive or legislative supervision, then it was likely that connecting the board's shortage of funds to the immigration question was the only way to invoke the province's responsibility. By virtue of the *City of Toronto Act*, as we have seen, matters of public health were specifically delegated to the city by virtue of Sections XXII and LXXI. To meet the resulting responsibilities, Section XXII specifically provided powers for the raising of revenues, as follows:

... to impose and provide for the raising, levying and collecting, annually, by a tax on the real and personal property in the said City and the Liberties thereof, in addition to the rates and assessments payable to the general funds of the Home district, a sum of money, the better to enable them to carry fully into effect the powers hereby vested in them.

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In other words, consistent with the independent jurisdiction vested in the city under the City of Toronto Act, the council ought to have exercised its taxing power to raise funds sufficient to allow the Board of Health to carry out its mandate properly. Instead, however, the chair of the board approached the executive authority, complaining that the extraordinary requirement for funds stemmed from the demands of the immigrant population, and responsibility for immigrants continued to lie with the province.

The civil secretary's response was immediate, and did accommodate the board's request to some extent. A small sum was provided, together with a warning that no further funds were available to help in meeting the board's responsibilities. The civil secretary also gave advice on how the board ought to proceed, encroaching to some small extent on the board's independence.

Having laid before the Lt. Governor your report of this date, I am directed to acquaint you that from your statement it appears incumbent on the mayor and Corporation to take immediate measures for preparing the Building which has been given over to the Board of Health for Cholera Patients and for providing for them from the funds at their disposal.

I am also to mention that His Excellency will authorize £50 to be placed at the disposal of the Board of Health on account of the expense which may be incurred in providing for the reception of Emigrants' but that His Excellency has no funds under his control from which he can render the Board further assistance.⁴⁶

This letter functions as a reminder, therefore, that the city had its own means of raising revenue, that the province had already made a significant contribution by transferring control of the cholera hospital, and that the corporation ought to live up to its responsibilities by taking steps to receive and treat cholera victims. But for the grant of £50, then, Morrison's approach to Colborne was rebuffed.

Over the next few days, concern about the competence of Toronto's Board of Health increased in the office of the Lieutenant Governor, although it is not perfectly clear from the historical record as to the source of this concern. Initially, the civil secretary indicated that complaints were coming from senior personnel at the cholera hospital.

I am also to state that the Surgeon of the Cholera Hospital has reported, that he has in vain applied for many articles of comfort which are necessary for the patients under his charge, His Excellency wishes to be informed whether the Board of Health can supply them or not, in order that a course may be adopted to render the Hospital fit in every respect for the reception of Patients.⁴⁷

As might be expected, municipal authorities did not react favourably to this correspondence. A number of letters were exchanged between Alderman James Lesslie (who had assumed duties as chair of the Board of Health following Dr Morrison's earlier resignation) and the office of the Lieutenant Governor. In

the first of these, Lesslie reported that the cholera hospital was being managed appropriately, and that all necessary supplies were on hand to treat the sick. In addition, he advised Colborne that the tax assessment of the inhabitants of the city had been doubled since passage of the *City of Toronto Act*, and that the council felt that an additional assessment would place too great a burden on the poorer classes in the City. Besides, argued Lesslie, the provincially appointed district magistrates, on relinquishing control of the municipal taxing power when the *City of Toronto Act* took effect, left as much as £400 in unpaid arrears. Lesslie outlined a number of additional difficulties in enforcement of the city's taxing power, and closed his letter by asking the Lieutenant Governor for an additional grant of £500 to meet the crisis of cholera. He assured Colborne that the board would be scrupulous in its accounting for the funds, and that all necessary reports would be made to the Legislature so as to ensure Colborne's ultimate reimbursement.⁴⁸

The Lieutenant Governor's response to this letter was remarkable. The civil secretary confirmed that the Lieutenant Governor would agree to become responsible for all the expenses of the cholera hospital, on the condition that the operation of the facility be placed under the control of four physicians of Colborne's choosing.⁴⁹ In effect, this was an attempt by the executive of the province to usurp the statutory authority of the City of Toronto and the Board of Health appointed pursuant to Section LXXI of the City of Toronto Act and By-law #8. This letter was immediately leaked to the press, and the editor of the *Canadian Correspondent* complained of the Lieutenant Governor's stance as follows:

We have just received information from a source which may be relied on, that Sir John Colborne's offer of monies to the Board of Health for the relief of destitute Cholera patients was conceived in such terms as to render it impossible for the members thereof to accept of it without submitting to what they collectively and individually conceived to be an uncalled-for and unmerited indignity. Thus has his Excellency's benevolence evaporated into downright humbug.⁵⁰

The indignity would be the acknowledgment that the reform council's appointed Board of Health was not competent to perform its prescribed duties during the first major test of its abilities. This would reflect badly, of course, on both the members of the board and on council as a whole. It will be remembered that the board was entirely composed of city councillors and aldermen, plus the mayor, such that there was very little distinction to be drawn between the efforts of the Board of Health and the general efforts of the council.

Lesslie immediately prepared a response, and it is worth quoting in its entirety.

It is the duty of this board to fulfill the trust reposed in it by the Act of the Legislature and by the citizens in watching over the Public health and in supervising the expenditure of any public money in the custody of the Government which it may be found necessary to apply for, more especially under such an extraordinary visitation as the present.

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If it be intended by your letter to convey the imputation that this board is unfit and unworthy to exercise the trust reposed in it by the City, and it may be so construed, I cannot allow a moment to elapse without denying the charge. As the Surgeon of the Hospital has stated that he is not the author of the aspersion on the Board conveyed by your letter of the 7th instant, I beg you [to] inform me who the busy person was that carried the tale to His Excellency on that occasion. On a former application to His Excellency for aid the reply was that he had not the means at his disposal, now however it is admitted by your letter that he has the means at his disposal, but implied (apparently) that unless the board shall trust its own inefficiency and consent that a part of the public Revenue should be placed under the control of another board not of the people's but of His Excellency's nomination he will not assist the Citizens.

If this is not the true meaning of your ambiguous communication of this day the members of the board are unable to understand it.

By the Resolution of the Board, this day conveyed to His Excellency, the Medical control of the Hospital – not the funds – is ordered to be placed under the four Doctors named by His Excellency ... for such a period as the Board shall think fit. And I am requested to ask ... whether His Excellency will agree to or refuse its proposition for aid without any condition save that of rendering a full and satisfactory account of the expenditure.

If embarrassed by provisions conveying a personal reflection on the character of its members, the Board will with its diminished means continue nevertheless to fulfill to the best of its ability the important trust reposed in it by the Citizens, leaving the public to judge how far His Excellency has shown a reasonable desire to cooperate with the municipal authorities for the general good in a time of great public calamity.⁵¹

Much of the tension between the executive and municipal levels of government is captured by this vehement denunciation of Colborne's attitude toward the efforts of the council and, by extension, his disrespect for the inhabitants of the city. Every aspect of Colborne's involvement in the difficulties attendant on addressing the cholera problem, not the least of which was the question of the division of jurisdiction between the province on the one hand and the city on the other, is challenged by Lesslie. The letter is a total rejection of Colborne's "benevolence."

The situation in Toronto was obviously at a critical point. Deaths from cholera were increasing, and as reviewed above, many influential people were leaving the city to take refuge in the country, away from what were thought to be the sources of disease. Possibly because of the increasing crisis, the Lieutenant Governor proposed a solution to the impasse in his letter to Lesslie of 11 August 1834. In this correspondence, Colborne explained that the surgeon in charge at the cholera hospital, one Dr Sheward, had complained to both Archdeacon Strachan and the Lieutenant Governor that he was unable to purchase necessities for the treatment of his patients. He had also complained, ac-

cording to Colborne, that the nurses on staff at the hospital were incapable of performing their duties. As a result, Colborne had recommended the appointment of four physicians to supervise medical operations at the hospital, "without the interference of any Civil Authority." The letter concluded by revealing that the Lieutenant Governor would place at the disposal of the supervising medical personnel, or the Board of Health, the sum of £250 or such other sums as the physicians might require.⁵²

Lesslie continued to investigate the source of the Lieutenant Governor's lack of confidence in the abilities of the board, and was finally able to determine to his satisfaction that the information on which Colborne had originally relied could not have issued from the hospital's surgeon. Dr Sheward, on being confronted by Lesslie, denied having provided damning information to the Lieutenant Governor. In his reply to the civil secretary's letter of 11 August, Lesslie wrote:

It is true that the Arrangements were then imperfect, as they necessarily must have been, under the Circumstances in which they were made; but no charge of neglect, or of the absence of an anxious desire to meet the Wishes of the Gentlemen in attendance upon the sick, could, with any truth have been designed to be conveyed to His Excellency through Archdeacon Strachan.

But in the end, Lesslie accepted Colborne's proposed compromise,⁵³ and the president of the Bank of Upper Canada was advised to make the sum of £250 available for maintenance of the cholera hospital.⁵⁴

Geoffrey Bilson's interpretation of the relationship between Toronto's Board of Health and the Lieutenant Governor during the cholera crisis of 1834 is highly critical of the board's efforts, suggesting that the board was more interested in political manoeuvrings than it was in attending to the needs of the sick. In the end, Bilson credits Colborne for whatever success was enjoyed in Toronto in the fight against the disease.⁵⁵ It is true that Colborne finally assisted the board with a grant of funds, and did propose the compromise that allowed the board to escape the embarrassment of having the Lieutenant Governor's nominees take responsibility for medical matters at the hospital. But this interpretation is insensitive to the jurisdictional question that emerges from the legal framework in which the board was established. In addition, it neglects the argument that Colborne was perhaps more interested in seeing to the accomplishment of his immigration policy than the reform members of City Council were in their own political goals. Many of Colborne's decisions during the epidemic of 1832 were likely driven by his commitment to the success of his immigration programme, and this commitment had a great deal to do with the way in which the law developed and was applied. It is at least arguable that the question of immigration was motivating Colborne's decisions during the summer of 1834, too. The uncertainty over the lake-front shanties, both during 1833 and 1834, is consistent with Colborne's repeated deflection of criticism away from the unwanted social consequences of high levels of immigration. As well, the problem with the operation of the cholera hospital was first

raised by Dr Morrison as a problem of immigration, and it would be in keeping with Colborne's response to criticism in this respect that he would generate a different source of concern to capture the public's attention. Besides, the evidence on which he relied to challenge the board's competence was at best suspect, and was denied by Dr Sheward within a matter of days. In the end, however, political differences were overcome, even by the mortal enemies sitting in the Lieutenant Governor's office and the chambers of Toronto's first elected council. The threat and reality of epidemic cholera, and the shared commitment to the public health, allowed Colborne and Mackenzie's council to compromise.

E. Conclusion

It cannot be denied, of course, that political tensions were high in both municipal and provincial politics during 1833 and 1834, but it is unlikely that Toronto's response to the cholera epidemic of 1834 can be reduced to a question of simple factionalism. The difficulties experienced are as easily explained by the city's attempt to assert its statutory mandate, expressed through the by-laws reviewed above and the tribunals and officers appointed to carry that mandate into effect. While the difficulties with implementing By-law #8 may have had something to do with political animosity between the council and the executive level of the provincial government, there is no denying that the city was expressing the law-making authority delegated to it by virtue of a statute passed by the legislature. This was the same legislature that had caused so much trouble for Mackenzie during the 1833–34 session, and that had suffered so much embarrassment at his hands, but had yet seen fit to create the City of Toronto with the sweeping law-making powers contained in Sections XXII and LXXI of the *City of Toronto Act*. The suggestion that the struggles between Colborne and the City Council over the operation of the cholera hospital emerged primarily from Colborne's resistance to the political designs of members of council leads to the unlikely conclusion that Colborne was actually undermining the operation of a statute passed by his own Legislative Council only months before. The alternate conclusion is that the Lieutenant Governor was attempting to demonstrate the weakness of high profile members of the reform movement in Toronto, hoping for a more loyal council in the next elections. But if Geoffrey Bilson is correct in underscoring Colborne's devotion to the cholera relief effort in Toronto, then this alternative, too, is unconvincing. Both conclusions are probably untenable, for they ignore the legal and institutional framework in which those struggles took place.

It is not surprising that the council would so jealously protect its independence, as much out of a sense of responsibility to the fulfilment of its statutory mandate to protect the public health as from a commitment to a partisan position. This is especially likely during the cholera epidemic, the first real test of the council's competence, and particularly poignant evidence of this position is contained in Alderman Lesslie's letters to the Lieutenant Governor at the height of the crisis. When this situation is combined with Colborne's continued refusal to accept criticism of his immigration programme, then it appears even less likely that

the tensions in Toronto during August 1834 were simply partisan politics at play.

In the provisions of the *City of Toronto Act*, we find a surprisingly comprehensive delegation of law-making authority from a body composed primarily of men doggedly supportive of a strong central government and already guarded in their transfer of powers to smaller municipalities. Included in this delegation of authority was a sweeping mandate for protection of the public health, a mandate that Toronto's first City Council acted on quickly and, by the standards of the day, exhaustively. Disease and the threat of epidemic compelled the council to put in place a set of by-laws that, for the most part, seized the responsibility for public health and allowed council members to overcome what were invariably political antagonisms. This we see in the support of Toronto's reform council for the representations of John Strachan and William Dummer Powell on the hazard presented by lakefront shanties, support totally out of character for both Mayor Mackenzie and other council members unless some issue larger than political contest were at stake. And in the crisis around funding the municipal Board of Health and Toronto's cholera hospital, we find council insisting on the survival of its statutory mandate, despite the attempts of the Lieutenant Governor to usurp council's authority by wresting administrative responsibility away from those ultimately responsible at law. In the end, the legal framework in place respecting the protection of the public health strengthened the resistance of the council to this attempted usurpation, and forced the Lieutenant Governor to compromise. It seems relatively clear that such a compromise would have been far less likely to have occurred had the threat of cholera and the potential for environmental catastrophe not compelled bitter rivals to suspend their political fight for the sake of the public health.

If we are to interpret the historical development of law and legal institutions (specifically municipal law and institutions) through a perspective that privileges political tensions and intrigue, then it is likely that municipal history will be narrowly construed, and preoccupied with events of high political drama. The result is history that is necessarily incomplete. This is so, because the subordination of law to politics in the writing of municipal history tends to disguise the fact that law, including municipal by-laws, results from the influence of a multitude of historical forces, including, but not limited to, politics. The threat of cholera in the early 1830s, combined with the delegation of law-making authority from the province to the City of Toronto (an essentially "legal" as opposed to "political" event), allows us an opening to explore the relationship between law and municipal life in a venue that appears to have transcended the political differences that, in many interpretations, defined the period in Upper Canadian history generally, and the early relationship between municipal institutions and the province. The frontline, local attempt to employ law in protecting the community from cholera (a very dangerous and largely misunderstood enemy), introduces the idea of environmental threat as an additional motivating factor in the development of municipal law, operating together with, perhaps even in spite of, the more predictable political machinations of local leaders. This, in turn, ought to encourage us to cast about

for yet additional historical influences in the development of municipal law and institutions.

Notes

1. An Act to extend the limits of the Town of York; to erect the said Town into a City; and to incorporate it under the name of the City of Toronto, 4 Wm. IV c. 23 (U.C.) (hereafter *City of Toronto Act*).
2. "Journal of the Common Council of the City of Toronto," City Council Minutes 1834, City of Toronto Archives (hereafter "CTA"), City Hall, Toronto. Many books and articles chronicle the early administration of the City of Toronto, including the tension between Mackenzie and Rolph that had been building for some time climaxing with Mackenzie's success in being elected the first mayor. See, for example, F.H. Armstrong, "William Lyon Mackenzie, First Mayor of Toronto: A Study of a Critic in Power" (1967), 48 *Canadian Historical Review* 309; John Muggeridge, "John Rolph – A Reluctant Rebel" (1959), 51 *Ontario History* 217; Paul Romney, "William Lyon Mackenzie as Mayor of Toronto" (1975), 56 *Canadian Historical Review* 416; Romney, "A Struggle for Authority: Toronto Society and Politics in 1834," in Victor L. Russell (ed.) *Forging a Consensus: Historical Essays on Toronto* (Toronto: University of Toronto Press for the Toronto Sesquicentennial Board, 1984) 9; and W.D. LeSueur, *William Lyon Mackenzie: A Reinterpretation* (Toronto: The Macmillan Company of Canada Limited, 1979), especially Chapter Thirteen, "The Combat Deepens: Mackenzie, First Mayor of Toronto." There are many additional treatments of this period in Toronto's history.
3. Aileen Dunham, *Political Unrest in Upper Canada, 1815–1836* (Toronto: McClelland and Stewart Limited, 1963) 135. First published 1927.
4. Gerald M. Craig, *Upper Canada: The Formative Years, 1784–1841* (Toronto: McClelland & Stewart Inc., 1993) 210. See also the various works referred to at *supra*, note 2.
5. The story of the emergence and spread of cholera in the first three decades of the 19th century is told in a number of historical accounts. See in particular R.J. Morris, *Cholera 1832: The Social Response to an Epidemic* (London: Croom Helm, 1976), especially 11–15.
6. The appearance of cholera in Upper Canada in 1832 is chronicled by Geoffrey Bilson, *A Darkened House: Cholera in Nineteenth-Century Canada* (Toronto: University of Toronto Press, 1980), and Charles M. Godfrey, *The Cholera Epidemics in Upper Canada, 1832–1866* (Toronto: Seccombe House, 1968).
7. The extent to which immigrants and transients made up the numbers of those suffering and dying from the disease is not clear, and this difficulty may tend to distort the mortality rates for permanent residents. In addition, the mortality and morbidity reports of the various Boards of Health were notorious for being incomplete and inaccurate, and as a result it is virtually impossible to come to any firm conclusion on the impact of the disease in Upper Canada, relative to other jurisdictions at least. See Bilson, *ibid.*, 180 for a consolidated mortality table relative to the epidemic of 1832 in Upper Canada. The mortality and morbidity reports of the Boards of Health in Upper Canada (other than those filed by the York Board of Health) for the period 26 June to 10 September 1832 are found together at Reports of the Boards of Health in Upper Canada, 10 September 1832, National Archives of Canada (hereafter "NAC"), Civil Secretary's Correspondence, Upper Canada Sundries, September 1832, RG5, A1, Vol. 121, 67000–67193. Reports from the York Board of Health for the months of June, July, August and September 1832 are found at Reports of the York Board of Health, 17 September 1832, NAC, September 1832, RG5, A1, Vol. 121, 67258–67333.
8. For purposes of comparison, during the epidemic of 1832 Glasgow suffered a mortality rate of one and one-half percent, and Paris less than two and one-half percent. The statistics on Glasgow are found in Morris, *Cholera 1832: The Social Response to an Epidemic*, *supra* note 5 at 82. For Paris, see François Delaporte, *Disease and Civilization: The Cholera in Paris, 1832*, trans. Arthur Goldhammer (Cambridge, MA.: The MIT Press, 1986) 5.
9. See, for example, *An Act to Establish a Police in the Town of Brockville, in the District of Johnstown*, 2 Wm. IV c. 17 (U.C.), in which the Legislative Assembly of 1831–32 delegated a very narrow set of responsibilities to the Board of Police of Brockville. This was the first of a series of statutes establishing limited municipal government in Upper Canada.
10. There is a great deal of secondary literature available that chronicles the debates between contagionists and anti-contagionists, and that describes both the conventional and innovative 19th century regulatory approaches to the control of epidemic disease and the protection of public health generally. See, for example, the following: Edwin H. Ackerknecht, "Anticontagionism Between 1821 and 1867," (1948) 22 *Bulletin of the History of Medicine* 562; Nelson M. Blake, *Water in the Cities: A History of the Urban Water Supply Problem in the United States* (Syracuse: Syracuse University Press, 1956); François Delaporte, *Disease and Civilization: The Cholera in Paris, 1832*, *supra* note 8; Bill Luckin, *Pollution and Control: A Social History of the Thames in the Nineteenth Century* (Bristol: Adam Hilger, 1986); J. C. McDONALD, "The History of Quarantine in Britain During the 19th Century," (1951) 25 *Bulletin of the History of Medicine* 22; R. J. Morris, *Cholera 1832: The Social Response to an Epidemic*, *supra* note 5; Charles F. Mullett, "A Century of English Quarantine (1709–1825)," (1949) 23 *Bulletin of the History of Medicine* 527; and Margaret Pelling, *Cholera, Fever and English Medicine, 1825–1865* (Oxford: Oxford University Press, 1978).
11. *An Act to establish Boards of Health, and to guard against the introduction of Malignant, Contagious and Infectious Diseases, in this Province*, 3 Wm. IV c. 47 (U.C.), passed by the Legislature on 13 Feb. 1833.
12. *The Advocate*, 22 May 1834, National Library of Canada (hereafter "NLC").
13. "Journal of the Common Council of the City of Toronto," City Council Minutes 30 May 1834, CTA.
14. *Canadian Correspondent*, 17 May 1834, NLC.
15. *Upper Canada Gazette*, 12 June 1834, NLC.
16. See below, Section D.
17. In an article titled "Vaccination" appearing in *Canadian Freeman*, 26 May 1831, NLC, the editor commented on the promise of a smallpox vaccine as follows:

Vaccination – We are requested to state that a medical gentleman will attend daily at the Hospital in this town, to vaccinate gratis the children of the poor, and that a quantity of matter for that purpose is now on hand. We advise them to embrace this favourable opportunity lest the arrival of emigrant families introduces so terrible a malady, and spread sickness and death amongst their children.

My thanks go to one of the anonymous reviewers of this paper for providing the explanation for this apparent inconsistency between the By-law's prohibition and the support for vaccination appearing in the *Canadian Freeman*.
18. "Journal of the Common Council of the City of Toronto," City Council Minutes 26 May 1834, CTA.
19. "Journal of the Common Council of the City of Toronto," City Council Minutes 29 May 1834, CTA.
20. "Journal of the Common Council of the City of Toronto," City Council Minutes 31 May 1834, CTA.
21. "Journal of the Common Council of the City of Toronto," City Council Minutes 6 June and 9 June 1834, CTA.
22. *Upper Canada Gazette*, 12 June 1834, NLC.
23. The law by which the sick could be forcibly separated from the well, and removed to isolated locations, had remained virtually unchanged in England since the statute 1 Jac. I c. 31 (Eng.), passed in 1603. The law of quarantine respecting the movement of people and goods between jurisdictions was first established in England by 9 Ann. c. 2 (U.K.), passed in 1711. This latter statute was modified off and on over the course of the eighteenth century.
24. "Journal of the Common Council of the City of Toronto," City Council Minutes 19 June 1834, CTA. The date of passage of By-law #9 was erroneously reported as 13 June 1834 by *The Advocate*, 26 June 1834, NLC.
25. *The Advocate*, 29 May 1834, NLC. Minutes of some of the very early sessions of City Council, including those for the meetings of 16, 17 and 18 April 1834, have been lost, and that may explain the difficulty in substantiating

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- The Advocate's* report. See "Journal of the Common Council of the City of Toronto," City Council Minutes, April and May 1834, CTA. However, there is nothing of relevance in City Council background papers, either. See CTA, RG1 B1, City Council Background Papers, Box 1 (April 1834–April 1835).
26. *Upper Canada Gazette*, 26 June 1834, NLC.
 27. *Canadian Correspondent*, 26 July 1834, NLC.
 28. *The Advocate*, 31 July 1834, NLC.
 29. *Canadian Correspondent*, 2 Aug. 1834, NLC.
 30. Bilson, *A Darkened House: Cholera in Nineteenth-Century Canada*, *supra* note 6, Table 3, 181.
 31. *The Advocate*, 21 Aug. 1834, NLC.
 32. Charles M. Godfrey, *The Cholera Epidemics in Upper Canada, 1832–1866*, *supra* note 6, 44.
 33. *The Advocate*, 21 Aug. 1834, NLC.
 34. Quoted in Godfrey, *The Cholera Epidemics in Upper Canada, 1832–1866*, *supra* note 6, 44.
 35. *The Advocate*, 4 Sept. 1834, NLC.
 36. Powell died in 1834, having been succeeded as Chief Justice by William Campbell in October 1825. See S. R. Mealing, "William Dummer Powell," in R. L. Fraser (ed.), *Provincial Justice: Upper Canadian Legal Portraits from the 'Dictionary of Canadian Biography'* (Toronto: University of Toronto Press for the Osgoode Society, 1992) 135. Although a very influential member of the administration, Powell was compelled to resign from the Executive Council in 1825, and his status in local affairs deteriorated markedly, according to Mealing, until his death in 1834.
 37. Strachan and Powell wrote to the Civil Secretary in May 1833, in the following terms:

We have the honor to state for the information of His Excellency the Lieutenant Governor that the houses built under the Bank, in front of the Archdeacons and the Honorable Chief Justice Powells, are become a great nuisance to all the neighbourhood. They are receptacles for drunkenness and vice, and surrounded with every kind of filth. We have further to state that more houses of a similar description are now building, and if no impediment is thrown in the way the whole space under the Bank will be covered with the meanest sort of buildings, and render it impossible for decent people to walk in front of that part of the Town.

We therefore beg leave most respectfully to request that His Excellency will have the goodness to direct that these buildings may be removed immediately, a measure no less necessary for the convenience than the health of the Town of York.

Strachan and Powell to Civil Secretary, 24 May 1833, NAC, May 1833, RG5, A1, Vol. 129, 71380–71382.
 38. Civil Secretary to Mackenzie, 8 May 1834, CTA, RG1 B1, City Council Background Papers, Box 1 (April 1834–April 1835).
 39. Jameson to Civil Secretary, 14 May 1834, NAC, May 1834, RG5, A1, Vol. 141, 77057–77058. This opinion is also recorded under date of 14 May 1834 at CTA, RG1 B1, City Council Background Papers, Box 1 (April 1834–April 1835). In this latter record, however, the Attorney General is quoted as saying that the City can only proceed "by the general causes which the law has prescribed," rather than "by the general course which the law has furnished." There is no obvious reason for the discrepancy.
 40. Civil Secretary to Mackenzie, 16 May 1834, CTA, RG1 B1, City Council Background Papers, Box 1 (April 1834–April 1835).
 41. Opinion of Attorney General Robert S. Jameson, 27 May 1834, CTA, RG1 B1, City Council Background Papers, Box 1 (April 1834–April 1835).
 42. Mackenzie's difficulties with taking his seat in the House of Assembly during this session of the Legislature have been chronicled by many historians. See, for example, LeSueur, *William Lyon Mackenzie: A Reinterpretation*, *supra* note 2, 216 *et seq.* See also Dunham, *Political Unrest in Upper Canada, 1815–1836*, *supra* note 3 at 135, where Dunham argues that the tension between Mackenzie and the administration during the 1833–34 legislative session was typical of "the most discreditable chapter in the history of the Upper Canadian legislature."
 43. CTA, "Journal of the Common Council of the City of Toronto," City Council Minutes 26 June 1834.
 44. Civil Secretary to Dr Widmer, 24 July 1834, NAC, Governor General's Office, Civil Secretary's Letterbooks, 1799–1841, RG7, G16C, Vol. 31.
 45. Morrison to Civil Secretary, 29 July 1834, NAC, July 1834, RG5, A1, Vol. 143, 78377–78382.
 46. Civil Secretary to Morrison, 29 July 1834, NAC, RG7, G16C, Vol. 31. It should be noted that a correspondent to *The Advocate* misrepresented the Lieutenant Governor's reply, in the following terms: "The Lieut. Governor would not advance one farthing towards meeting the unavoidable costs although the legislature readily guaranteed all the monies he had advanced for any purpose heretofore." "Communicate," *The Advocate*, 31 July 1834, NLC.
 47. Civil Secretary to Morrison, 7 Aug. 1834, NAC, RG7, G16C, Vol. 31.
 48. Alderman James Lesslie to Civil Secretary, 9 Aug. 1834, NAC, August 1834, RG5, A1, Vol. 144, 78596–78599.
 49. Civil Secretary to Lesslie, 9 Aug. 1834, NAC, RG7, G16C, Vol. 31.
 50. *Canadian Correspondent*, 9 Aug. 1834, NLC.
 51. Lesslie to Civil Secretary, 9 Aug. 1834, NAC, August 1834, RG5, A1, Vol. 144, 78570–78574.
 52. Civil Secretary to Lesslie, 11 Aug. 1834, NAC, RG7, G16C, Vol. 31.
 53. Lesslie to Civil Secretary, 11 Aug. 1834, NAC, August 1834, RG5, A1, Vol. 144, 78606–78611.
 54. Civil Secretary to President, Bank of Upper Canada, 12 Aug. 1834, NAC, RG7, G16C, Vol. 31.
 55. Bilson, *A Darkened House: Cholera in Nineteenth-Century Canada*, *supra* note 6, 85–89. At 89 Bilson says "What was done to help the city was largely done by Sir John Colborne."