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The 'First Business of Government':
The Land Granting Administration of
Upper Canada

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Abstract

When the Loyalist refugees fleeing the American revolution in the 1780's arrived in what would become the province of Upper Canada, the colonial government faced a new and unwelcomed situation. Colonial officials in both London and Quebec abandoned their plans for the expansion of the French colony and the preservation of an extensive western Native reservation in favour of a British-style settlement, complete with a balanced constitution, common law, and free and soccage land tenure. The first business faced by this new conservative-minded, loyal government was the distribution of land.

In conducting this business the Imperial government, and its officers in Upper Canada, constructed an administration that mixed inherited continuities with innovation. Through the desire for efficiency and accountability, this administration was slowly transformed from a quasi-feudal to a modern bureaucratic system. Many of the decisions and actions of the colonial administrators proved effective and far-sighted, others were much less so. In the end, however, the government was neither corrupt nor incompetent, and, by the 1830's, they succeed in accomplishing the principal goal of land granting; the broad distribution of land to industrious settlers loyal to the British monarchy. The structures through which this was accomplished became the framework of Canada's modern bureaucracy.

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Preface

When I began graduate studies I became interested in the process of land distribution and administration during the early years of settlement in Upper Canada, a subject of great importance in shaping the social, legal and economic character of the province. The only literature for this early period, however, is limited to land policies and their relation to political development. At the same time I read the recent work of historians on the process of state formation in Canada. Much of this literature, in fact almost all of it, focuses on the crucial decades of the mid-nineteenth-century when a new generation of political elites transformed social relationships in such areas as education, policing, government finance and corporate regulation, to name but a few. As investigators of the mid-century years have pointed out, the power of the state goes far beyond the formulation of policy and its relation to the political process. The implementation of policy initiatives have a very real impact on the nature of outcomes, whether they be intended or not. Furthermore, limitations on administration having to do with technology, distance and communication, and human capacity, help define the evolution of specific policies, the direction they take, and ultimately their success or failure. It struck me that these insights might be fruitfully applied to the earlier years of colonial development.

This study, then, is an investigation of the administration of land policies in Upper Canada. It stems from the very basic question; how did Upper Canadians get land? What were the rules, structures and processes that governed distribution? Who were the

administrators and how did they perform their duties? From what follows we can see that the roots of the mid-century transformations in the state come early. This should surprise no one given the importance of land in the pioneer colony that was Upper Canada. Furthermore, if mid-century developments constituted a revolution in government such developments had lengthy antecedents. We can also see that, regardless of their political shortcomings and inadequacies, the province's administrators were neither grossly incompetent nor particularly corrupt. This is not the picture often painted of the Family Compact.

A great many people have assisted in the research and writing of this work and I would like to take the opportunity to thank them. My thesis supervisor, Dr. Michael Piva of the University of Ottawa, has provided steady guidance and rigorous examination throughout the process. I would like to thank the staff at the National Archives of Canada for their generous assistance. In particular, Patricia Kennedy of the Pre-Confederation Manuscript Division proved invaluable. I also owe a debt of gratitude to my fellow graduate students in the History Department at the University of Ottawa. Steven High, Dr. Jean Manore, and Jo-Ann McCutcheon, among many others, gave me the emotional and intellectual support necessary to not only complete this project but to make it an enjoyable experience.

The 'First Business of Government': The Land Granting Administration of Upper Canada

Introduction

For the pioneers of Upper Canada few aspects of life were more important than land. It was their means of livelihood and their source of security in a new and often uncertain world. For those who governed the emerging community of pioneers land granting proved to be, as Lord Durham later pointed out, "the first business of government".¹ In his mid-century report on the on the state of Canadian affairs, Durham argued that the process of granting land shaped the general character of society, the distribution of wealth, and the nature of political and legal systems; "Upon the manner in which this business is conducted, it may almost be said that every thing else depends". The process of land granting began with the Loyalist refugee migration in the 1780s and continued through until the

¹ "I allude to an operation of Government, which has a paramount influence over the happiness of individuals, and the progress of society...the disposal, by the Government of the lands of the new country. In old countries no such matter ever occupies public attention; in new countries... this is the object of the deepest moment of all, and the first business of the Government." *Lord Durham's Report: An Abridgement of Report on the Affairs of British North America*, Gerald Craig, ed. (Toronto: McClelland and Stewart, 1963) p.110.

adoption of the sales system and creation of the Office of the Commissioner of Crown Lands in the mid-1820's. This is the story of land granting, a process that for forty years determined the character of land holding in one of the British Empire's most remote, sparsely populated and yet potentially productive provinces.

In a broader sense, this story is also about a transition in the system of governance, from the arbitrary to the uniformly regulated and from the quasi-feudal to the modern bureaucratic. The Upper Canadian community took shape during a period of profound change in Western society.² Although the settlement process unfolded in a remote wilderness, Upper Canadians were well aware of these changes at the centre of western civilization. By many they were welcomed, but not by all. As a British colony established in the wake of the American and French revolutions those who governed Upper Canada often feared and distrusted the new liberal, democratic and commercialized society that had begun to emerge both at home in England, and, with greater force, in America. Early administrators, such as Lieutenant Governor John Graves Simcoe, quite consciously sought to influence and direct these changes, in the hope of creating a community that retained traditional elements of social, political and economic stratification, deference to authority and loyalty to Empire. To achieve these conservative ends Simcoe and his successors developed accountable and regulated administrative

² See R.R. Palmer, *The Age of the Democratic Revolution: A Political History of Europe and America, 1760-1800*, 2 vols. (Princeton, 1959, 1964), and, more specifically, Gordon S. Wood, *The Radicalism of the American Revolution* (New York: Alfred A. Knopf, 1992).

systems. These bureaucratic structures and modes of operation in turn proved to be quintessential features of modern, anti-aristocratic, governance. In a sense, the administration of Upper Canada had a foot in two worlds; born in the personalized system of aristocracy and matured in the impersonal world of bureaucracy. This dualism proved to be the source of many of its difficulties, as well as much of the later criticism levelled against it. The personal and seemingly arbitrary justice of the Lord's court could not, in the end, be reconciled with the commercial demands of a developing capitalist society and the closely supervised, hierarchical structure of modern bureaucratic government. During the early decades of settlement Upper Canada lacked the size and complexity that drove the changes taking place in Great Britain and the more established communities south of the border. While this meant that they usually lagged behind developments elsewhere, Upper Canadian administrators still reacted to these forces of change. Putting settlers on the land came first; this priority necessitated reform and adaptation.

The land business in Upper Canada drew from the larger, centuries-long process of European settlement in North America, and the policies and procedures implemented in the province had their roots in the proprietary and Royal colonies to the south. Unlike those older British colonies a clean break with the past was never made, nor seriously contemplated. During the first three decades of settlement a Burkean sense of conservatism remained strong among Upper Canada's administrators. This particularly anti-revolutionary belief in the evolutionary character of society led them to commit themselves, in historian

Sydney Wise's words, to "the preservation of arrangements deemed good." In building on precedent, however, Upper Canadians adopted both the strengths and weaknesses of the eighteenth-century system of British colonial administration. Inevitably, these were reflected in the accomplishments and failures of the Upper Canadian land granting business.

The conservative social values of the province's administrators did not prevent reform, but they did define the direction such reforms would take. Not only did they regulate and regularize the system, but concerns about accountability led to the clarification of responsibilities and jurisdictions within each level of the administrative structure. At the start of the process there existed a muddle of often confused and sometimes conflicting roles. At the end there existed a hierarchical delineation of responsibilities between junior administrators and a political policy-making head centred in a modern 'cabinet'. Much of this transformation took place as a consequence of the decisions and experiences of the early administrators. Their frustrations and failures as well as their accomplishments formed the background and established the framework for Canada's modern bureaucracy.

Land granting in Upper Canada is about more than the early Family Compact at work.³ The distribution and administration of Crown lands did not remain solely under the control of a handful of office-holders at York. As Douglas McCalla, Frederick Armstrong and many others have pointed out, the government

³ H. Pearson Gundy, "The Family Compact at Work: The Second Heir and Devisee Commission of Upper Canada, 1807-1841", *Ontario History* (1974) pp.129-46.

of Upper Canada was subject to several layers of initiative and control.⁴ Individuals at all levels of authority, from the Secretaries of State in London to the district magistrates, played a role in land granting. This complicated matters and often placed Upper Canada's executive officers between the conflicting priorities of superiors in London and settlers in the townships. Both groups demanded rapid settlement, but they disagreed on how to accomplish this end, whom to let in and whom to exclude, and most importantly, who would pay for the administration.

Land administration in Upper Canada remained, almost exclusively, the domain of the executive branch of government and its appointed administrators. The Legislative Assembly did not pass a general land act until 1837, and even then it left administrative control in the hands of the Lieutenant-Governor-in-Council.⁵ The Legislative Council exercised considerable influence over the general direction of land policies, but its members had little to do with their implementation and subsequent administration. For the settler seeking land the people that mattered were the Lieutenant-Governors and their superiors in London, the Executive Councillors, the principal office-holders and their administrative assistants, office clerks, deputy surveyors, and local officials, such as district Land

⁴ Douglas McCalla, *Planting the Province: The Economic History of Upper Canada, 1784-1870* (Toronto: University of Toronto Press, 1993) Chapter 9, "Government and the Development of Upper Canada, 1820-41", pp.162-178. F.H. Armstrong, "The Oligarchy of the Western District of Upper Canada, 1788-1841", Canadian Historical Association, *Historical Papers* (1977) pp.87-102.

⁵ 7 William IV, cap.118. The Act was passed in the first session of the thirteenth Parliament, 1837, and received Royal assent on 17 May 1838. Upper Canada House of Assembly *Journal and Appendices*, pp.25-32.

Board commissioners.

We know very little about how these people conducted the land granting business of Upper Canada. To date, the most substantial historical work done on land matters concerns policy rather than administration.⁶ This provides us with only half the story. Land policies created a general framework for the operations of the government officers, but, as both reformers in the Assembly and mid-century colonial governors pointed out, problems flowed from both specific policies and difficulties in implementation. Such problems, moreover, did not simply result from government officials breaking their own rules, although this happened on occasion. Technical limitations on administration, the state of communications, inadequacies in the supply of office materials and survey instruments, poor record keeping systems, substandard working conditions and even the length of the work day, had a very real impact on the implementation of policy. Favouritism, nepotism, and partiality were not the most important factors to bedevil land granting in Upper Canada.

The operations of the Land Granting Department remained one of the primary factors shaping the initial settlement of the province. For this reason alone it deserves study. Certain important aspects of land use in Upper Canada, however, did not come under the department's authority and these will be touched

⁶ Lillian Gates, *Land Policies of Upper Canada* (Toronto: University of Toronto Press, 1968). Gates expanded on the earlier work of Gilbert Patterson in his essay "Land Settlement in Upper Canada, 1783-1840", *Sixteenth Report* (Toronto: Dept. of Archives, Province of Ontario, 1920).

upon only lightly. In particular, the initial surrenders of land by the various Native nations are not explored. Although vitally important to settlement, the Land Granting Department did not conduct these surrenders. The Indian Department, another branch of the Royal service, purchased land from the Natives under the control and direction of the authorities in London. In Upper Canada the British government carefully maintained its role as a intermediary between Natives and settlers. Only the Crown bought Native lands in the province and only the Crown conveyed property rights to individual settlers. In addition, certain aspects of land administration, such as Colonel Thomas Talbot's reserves, the operations of the Military Settlement Department, and the Clergy reserves, remained to a degree removed from the direct control of the Land Granting Department and will be discussed only when they intersect.

There is a certain logic to the limitations of this study that have to do with the nature of the historical records themselves. From the earliest years of settlement the government conducted land business as an administrative sphere separate from state and judicial matters. The nature and organization of the archival collections held by the National Archives of Canada (RG1, L Series) and the Provincial Archives of Ontario (RG1, A Series) reflects this compartmentalization. The enormous volume of land records held by these depositories testifies not only to the importance of land in the development of provincial government, but also in the lives of every Upper Canadian.

What emerges from these records is a story of gradual, often halting, re-

organization and rationalization in response to increasing complexity and shifting priorities. Land administration in Upper Canada proved to be neither quite as bad as later critics claimed, nor quite as good as contemporary officials professed. Nevertheless, Upper Canada's administrators accomplished an enormous amount of work in a relatively short period. Over time, the deficiencies and debilities of the administration became obvious, and contentious, but the structures themselves remained sound and later generations continued to use much of what developed during the pioneer years. Administrative control and the ultimate right of sovereignty shifted to the province with responsible government and the attainment of dominion status, but the administration itself went through a longer process of evolution that mixed inherited continuities with innovation. Between the early 1780s and the late 1820s land acquisition remained the first concern of the settler, and land administration the 'first business of government'.

Chapter One

Getting Land: Policies and Procedures, 1783-1796

When American loyalist refugees began flooding into western Quebec during the summer of 1783 the Swiss-born career military officer, Governor Frederick Haldimand, and his superiors in the British colonial administration faced a series of new and unwelcome problems. Aside from the immediate concerns of finding food and shelter for thousands of often penniless migrants, this influx of British Americans threatened the peace and stability of the French Canadian preserve created by the Quebec Act of 1774.¹ Governor Haldimand in particular believed it necessary to save what land remained in Quebec for the sons of the current generation of *habitant*. If the territory surrounding the settlement on the St. Lawrence were to be granted to British Americans civil conflict would be the only result. The two communities had been antagonistic, often violently so, for more than a century and there was no reason to think that they could now live as close neighbors. In letters to Lord North, the Colonial Secretary, and Brigadier General George Townshend, the commander of British forces in America, Haldimand promoted the idea of sending the loyalists as far from the French Canadians as possible, perhaps to Cape Breton, the Gaspé Peninsula and the Bay of Chaleur

¹ Philip Lawson, *The Imperial Challenge: Quebec and Britain in the Age of the American Revolution* (Montreal and Kingston: McGill-Queen's University Press, 1989), Chapter Seven.

area, and not into the area know today as eastern and southern Ontario.² He wished to restrict those refugees already in the province to the immediate areas around Detroit and Fort Niagara. The remainder of the western territory, the vast stretches of mostly unexplored territory surrounding the upper Great Lakes, would remain as the Indian Reserve established at the conclusion of the Seven Year's War.

Events quickly overcame Haldimand's intentions, and in the spring of 1783 a considerable band of Loyalists, both civilian and military, took up residence in western districts of the province. By July 1783 Lord North had little choice but to instruct Haldimand to "admeasure and lay out such a Quantity of Land as you with the advice of our Council shall deem necessary and convenient for the Settlement of our said Loyal Subjects...". Accompanied by a set of regulations, this order-in-council began the business of land granting in the territory soon to be Upper Canada.³ It took more than a decade, however, to develop effective means of regulation and administration.

² *Documents Relating to the Constitutional History of Canada, 1759-1791* (hereafter *Constitutional Documents, 1759-1791*) Adam Shortt and Arthur G. Doughty, eds. (Ottawa: King's Printer, 1918), Haldimand to North, 24 October 1783, p.735. Gates, *Land Policies of Upper Canada*, p.12, and note 10, chapter 2.

³ *Constitutional Documents, 1759-1791*, Additional Instructions to Our Trusty and Welbeloved Frederick Haldimand, Esq, 16 July 1783, pp.730-32. The instructions on land granting were repeated practically word for word to Lord Dorchester in 1786. *Ibid.*, "Instructions to Our Right Trusty and Welbeloved Guy Lord Dorchester", clause 40, pp.829-30.

The British Crown had for many years granted land as a reward for service. At the close of the Seven Year's War the Royal Proclamation of October 1763 authorized the Governor of Quebec to grant lands to all reduced officers and private soldiers disbanded in America. The motive for doing so was to "testify our Royal sense and approbation of the conduct and bravery of our officers and soldiers of our armies, and to reward the same."⁴ The British government adopted the same policy during the American Revolutionary War. A recruiting handbill issued to a Loyalist regiment in 1777, for example, read, "Such Spirited Fellows, who are willing to engage, will be rewarded at the End of the War... with 50 acres of land, where every gallant Hero may retire and enjoy his Bottle and his Lass."⁵ The Loyalists, fleeing the wrath of their republican neighbors, remembered such promises and proved more than willing to remind the government of its obligations.

By 1783 loyalty became as important as bravery and good conduct in the distribution of Crown land. As Governor Haldimand's instructions made clear, land grants to new settlers would "testify our approbation of their loyalty to Us, &

⁴ *Constitutional Documents, 1759-1791*, Royal Proclamation of 1763, p.163. The Royal Proclamation also specified the size of the grants for military personnel:

Field Officers.....	5,000 acres
Captains.....	3,000 acres
Subalterns and Staff Officers..	2,000 acres
Non-Commissioned Officers.....	200 acres
Private men.....	50 acres

⁵ Wallace Brown and Hereward Senior, *Victorious in Defeat: The Loyalists in Canada* (Toronto: Methuen, 1984) p.60.

Obedience to our government...".⁶ This emphasis on loyalty, a direct product of the revolutionary war, became a central aspect of Upper Canadian political culture and a *modus operandi* of the Land Granting Department.⁷ Regulations required all grantees to swear oaths of allegiance to the Crown and to accept the supremacy of Parliament before the proper authorities. Those who refused could have their lands confiscated and reinvested in the Crown. All who actually fought in the late war, and who thereby demonstrated their loyalty, received special consideration in grants of land. This divided the community from the very beginning into privileged and non-privileged groups. Quite intentionally, the policy promoted the unequal distribution of property in order to create a stratified society. This division helped to fix one of the basic political and social dividing lines that would characterize Upper Canada for generations to come. The 'United Empire Loyalist' designation conveyed real economic advantages in land ownership which compounded with the general growth in property values in Upper Canada.

The instructions given to Haldimand in 1783 began by specifying that new settlements were "to be divided into distinct Seigneuries or Fiefs" under the French system of tenure. Proprietary rights attached to the seigneuries, however,

⁶ *Constitutional Documents, 1759-1791*, Additional Instructions to Our Trusty and Welbeloved Frederick Haldimand Esq, 16 July 1783, p.730.

⁷ For the impact that the idea of loyalty had on Upper Canadian political culture see, David Mills, *The Idea of Loyalty in Upper Canada, 1784-1850* (Kingston and Montreal: McGill-Queen's University Press, 1988) and S.F. Wise, "Upper Canada and the Conservative Tradition", in *Profiles of a Province: Studies in the History of Ontario*, Edith Firth, ed. (Toronto: Ontario Historical Society, 1967) pp.20-33.

remained vested in the Crown.⁸ They were not to be turned over to individual proprietors as had been previously done in Quebec. Sir Guy Carleton first suggested this practice in 1767. He believed that a suitably modified version of the seigneurial system "established Subordination, from the first to the lowest", preserved internal harmony, and "secured Obedience to the Supreme Seat of Government from a very distant Province."⁹ Such a system, however, proved repugnant to the American loyalist immigrants, and they immediately petitioned for change. In January 1784 Loyalists camped at Sorel asked the Governor to "Establish among them a Form of Government as nearly similar to that which they Enjoyed in the Province of New York".¹⁰ By this they meant the establishment of free-hold rather than seigneurial tenure, some form of local administration and English civil law.

The Loyalist Yankee lawyer William Dummer Powell, carried the first of these petitions to England in the winter of 1783-84.¹¹ At first Lord Sydney, the Colonial Secretary, hesitated to make any changes in the province's

⁸ This followed, to some extent, the unique system established in New France by the Edicts of Marly (1711) which restricted the ownership rights of the seigneurs. See Murray Greenwood, *Legacies of Fear: Law and Politics in Quebec in the Era of the French Revolution* (Toronto: University of Toronto Press, 1993) p.14.

⁹ *Constitutional Documents, 1759-1791*, Carleton to Secretary of State, the Earl of Shelburne, 24 December 1767, p.289,

¹⁰ R.A. Preston, *Kingston Before the War of 1812: A Collection of Documents* (Toronto: The Champlain Society, University of Toronto Press, 1959) p.57.

¹¹ Preston, *Kingston Before the War*, p.57.

administration.¹² Petitions and complaints, however, continued to issue from Quebec, and by 1785 Sydney became convinced that problems with the land system fuelled political unrest. He warned the British Prime Minister that "The Province of Quebec in its present situation is a dominion of very precarious tenure to Great Britain...". If they did not take immediate action, Sydney suggested, the province might not "remain ours a twelve months longer."¹³

Pressure for change continued to build within the Loyalist community. Early in 1787, Sir John Johnson, the officer charged with resettling the Loyalists, received a petition from the magistrates at Oswegatchie praying that land be granted free of any seigniorial claims "or any other incumbrances whatever".¹⁴ A petition from the magistrates at Cataraqui observed that "The object that first presents itself as of most importance is the Tenure of Lands; the Conditions... are universally disagreeable."¹⁵ Several former enlisted men, led by the Assistant Deputy Surveyor Patrick McNiff, added another dimension to the problem when they petitioned against the military officers settled around present-day Cornwall, who, they claimed, had grabbed all of the most valuable land for themselves. Suspecting the government wanted to establish the seigneurial system with the

¹² *Constitutional Documents, 1759-1791*, p.742, note 2.

¹³ Canadian Archives Report, 1890, note E. A.L. Burt, *The Old Province of Quebec*, Vol.II (Toronto: McClelland and Stewart, 1968, Carleton Library Edition) p.140.

¹⁴ Ontario Archives (OA), *Seventh Report*, Journals of the Legislative Council, Petition from the Magistrates at Oswegatchie, 18 December 1786, p.322.

¹⁵ *Ibid*, Petition from the Magistrates at Cataraqui, p.316.

officers as seigneurs, they circulated and submitted a petition calling for revisions to the terms of tenure and protesting against the officer's claims to community leadership.¹⁶ In the autumn of 1789 the Land Granting Committee asked the Lunenburg Land Board for a report on the troubles in their district, including suggestions for measure which might alleviate the situation. The chairman of the Land Board, Richard Duncan, replied that "the magistrates of the District have in their own hands the power of repelling any attempt to interrupt the public tranquillity, as well as the means of punishing the offenders." The Land Board members fired McNiff from his government post for stirring up trouble, but he promptly moved to Detroit and took up his duties again.¹⁷

While the issue of tenure remained unresolved, the government began developing land granting policies and accompanying administrative procedures. The 1783 Royal Instructions ordered Governor Haldimand to grant 100 acres to every "Master of a Family", plus an additional 50 acres for each other member. Since grants were to be a free gift from the Crown Haldimand directed the Receiver General to pay the costs of survey and registration of grants out of the

¹⁶ OA, *Seventeenth Report*, Extracts from the Minutes of the Executive Council, Quebec Land Book A, Duncan to the Land Granting Committee, 24 November 1789, p.106.

¹⁷ Brown and Senior, *Victorious in Defeat*, p.140. When McNiff left for Detroit he took the Lunenburg District township plans with him. In May of 1790 the Land Granting Committee had to issue a direct order for their return. OA, *Seventeenth Report*, Extracts from the Minutes of the Executive Council, Quebec Land Book A, p.135. John L. Ladell, *They Left Their Mark: Surveyors and Their Role in the Settlement of Ontario* (Toronto: Dundurn, 1993).

casual and territorial revenues. These were the provincial revenues under the sole control of the executive, and not of the Legislative Assembly. As a measure of economy, in all such cases the officers of the Land Granting Department would only be given "one half of the Usual and accustomed Fees of Office."¹⁸ This began the 'half fee' designation that would eventually be extended to all privileged grants made to acknowledged United Empire Loyalists, their children and military grantees.

The half-fee designation reflected the conflicting obligations of the colonial government. Colonial administrators felt it was their duty to support the defenders of the Crown with the resources of the state, but they were also being pressured by the new 'Economical Reform' advocates in Parliament to reduce the cost of the colonies in North America. The half-fee solution proved a poor compromise. When pressures on the Upper Canadian administrators to issue patents increased, the business of the Loyalists became a lower priority than that of regular settlers. The Land Department officers collected the full fee from a new settler but had to wait for the Receiver General to pay them half the amount to process the claims of an old settler. Delays in processing the claims of the Loyalists proved inevitable, which in turn increased their irritation with the Upper Canadian government. For most Loyalists, however, such delays were a small price to pay for 200 acres or more of good quality agricultural land.

¹⁸ *Constitutional Documents, 1759-1791*, Additional Instructions to Frederick Haldimand, 16 July 1783, p.731.

The 1783 Royal Instructions also began to define the spatial organization of the new settlements by ordering that the "Seigneuries and Fiefs" were to extend from two to four leagues in front, and from three to five leagues in depth, "If situated upon a navigable River, otherwise to be run square, or in such shape and in such quantities, as shall be convenient & practicable." Such latitude only created confusion and, soon, much more precise survey instructions proved necessary. Finally, the instruction stipulated that a "Docquet" of all grants be drawn up "which shall be transmitted yearly to Us thro' one of our principle Secretaries of State". Intended originally as a simple book keeping measure designed to account for the collection of fees, the 'docquet' quickly became the official record of business. These Land Books, as they came to be called, contain the minutes of the meetings and decisions of the Land Committee of the Executive Council, and orders-in-council relating to land matters. As such they are the principal records of the central land granting administration, first in Quebec, and after 1791, in Upper Canada.

The majority of the Loyalist refugees had neither the time nor the resources to travel to the capital at Quebec.¹⁹ Nevertheless, their grants required registration and orderly processing, something that could best be accomplished at the local level. In the spring of 1784, Governor Haldimand wrote to Major John Ross, the

¹⁹ The total original Loyalist immigration is estimated to be as high as 10,000. See the introduction to *Essays on Upper Canada: New Perspectives*, J.K. Johnson, ed. (Ottawa, Carleton University Press, 1989) p.viii. Also Brown and Senior, *Victorious in Defeat*, p.32. Gerald Craig puts the number at 6,152 for all of western Quebec in 1784. Gerald Craig, *Upper Canada: The Formative Years* (Toronto: McClelland and Stewart, 1963) pp.6-8.

garrison commander at Cataraqui, instructing him to record the oath-taking of settlers, to issue certificates of location and to compile a set of returns.²⁰ Haldimand's simple and straight-forward system of registration quickly proved inadequate for the task at hand. The Governor himself estimated that the loyalist refugees who moved through Sorel required at least 480,000 acres, while those at Niagara and Detroit needed another 78,000 acres.²¹ This involved thousands of individual applications, registrations, certificates, numerous return books and all the miscellaneous paraphernalia of record keeping.

By this point Deputy Surveyor General John Collins had begun the work of surveying the first fourteen townships. Laid out in two groups, the first stretched east of Cataraqui, today's Kingston. The second surrounded the Bay of Quinte. These were the 'Royal Townships' ordered by Haldimand in his instructions to Collins of 11 September 1783.²² Although surveyed according to a modified New England township format, the Crown still granted the lots themselves in seigneurial tenure. Within four years twenty-one such townships would be staked out along the St. Lawrence and the north shore of Lake Ontario.²³

²⁰ E. Rae Stuart, "Jessup's Rangers as a Factor in Loyalist Settlement", *Three History Thesis* (Toronto: Ontario Dept. of Public Records and Archives, 1961) p.63.

²¹ E.A. Cruikshank, *The Settlement of the United Empire Loyalists on the Upper St. Lawrence and Bay of Quinte in 1784* (Toronto: Ontario Historical Society, 1934) p.30.

²² OA, *Third Report*, Records of the Surveyor General's Office, Instruction to Surveyors, p.368.

²³ OA, *Fourth Report*, Proclamations, p.157. See also Louis Gentilcore, "Lines on the Land", *Ontario History* (1969) pp.57-73.

On 26 October 1786 Sir Guy Carleton, now the Baron Dorchester, landed at Quebec and took up his duties as Captain General and Governor-in-Chief of the province. Upon arriving Dorchester set about reorganizing the administration of the province to better deal with what was quickly becoming a chaotic situation. Starting at the top, the Governor ordered the Executive Council to create a standing committee on population, agriculture and settlement.²⁴ Soon called the Land Granting Committee, its members supervised record keeping, policed disbursements of valuable locations such as mill sites, and screened petitions forwarded to the Governor to insure that they conformed in language and substance with recognized conventions.²⁵ Sir John Johnson, superintendent of the Indian Department, sat as the first chair of the Committee. Other members included Surveyor General Samuel Holland, the *seigneurs* Chaussegros de Lery, Joseph de Longueuil and Rene de Boucherville, and the prominent merchant George Davidson. In April 1787 Executive Councillor Hugh Finlay replaced Sir John Johnson as chair, and Dorchester put the committee under the supervision

²⁴ *Constitutional Documents, 1759-1791*, Order-in-Council of 6 November 1786, p.870. By early 1787 the concerns of the 'western loyalists' had a significant impact on the workload of the Council. One bundle of petitions forwarded to Quebec weighed over ten pounds and cost £28.6.0 in postage. OA, *Sixteenth Report*, G.C Patterson, "Land Settlement in Upper Canada, 1783-1840", p.23.

²⁵ Greenwood, *Legacies of Fear*, p.46. Jessica Kross, "Patronage Most Ardentlly Sought: The New York Council, 1665-1775", in *Power and Status: Officeholding in Colonial America*, Bruce Daniels, ed. (Middletown, Conn.: Wesleyan University Press, 1986), p.209.

of Chief Justice William Smith.²⁶ After the partition of the province in 1791, the Chief Justice automatically sat as chair of the Land Granting Committee and usually assumed leadership both in practice and in name.

In order to gain some first-hand knowledge of the situation in the upper settlements Dorchester commissioned Deputy Surveyor General John Collins and William Dummer Powell to travel as far as Detroit and gather information from the principal residents. As well Dorchester authorized them to disburse additional grants of 200 acres to settlers of proven loyalty who were of "peaceable, decent deportment" and who "by their industry, in improving and cultivating the lands already assigned to them, [had] given cause to presume that they will be good and profitable subjects".²⁷ These grants quickly became known as 'Dorchester's bounty'. Although intended as a temporary expedient designed to quell growing unrest in the upper districts, the policy took on a life of its own and complicated land business throughout the history of Upper Canada. In 1789 the Governor-in-Council extended the disbursement of 'Dorchester's bounty', or family lands as they were officially called, to the sons and daughters of all proven Loyalists.²⁸ Despite repeated efforts by later administrators to curtail their disbursement, such grants

²⁶ OA, *Seventeenth Report*, Excerpts from the Minutes of the Executive Council, Upper Canada Land Book A and B, p.7.

²⁷ OA, *Third Report*, Introduction, Instructions to Collins and Powell, 4 June 1787, p.lxix,

²⁸ National Archives of Canada (NA), RG1, L3L, Vol.16, Upper Canada, Executive Council, Miscellaneous Records on Land Matters, Quebec Executive Council Minutes and Records, pp.6481-6484.

became an entitlement in the eyes of the Loyalists, one not to be surrendered for any reason.

At this point Lord Dorchester turned his attention to the issue of land tenure. Reporting to Lord Sydney in June 1787 Dorchester stressed the need to establish a free-hold system of land tenure similar to that of the United States.²⁹ He proposed that French forms of tenure be abandoned altogether and that grants be made in free and common soccage without the imposition of the 30d per 100 acre quit-rent provided in the 1783 Instructions.³⁰ Although this established the modern form of British land tenure, it also meant abandoning the land revenue scheme developed by Lord Shelburne before the Revolutionary War.³¹ The dilemma remained of how to finance the administration in an infant agricultural colony without the imposition of land rents. Taxes raised by acts of the Assembly remained under their control, and duties on trade proved inadequate and would remain so for many years. The Imperial government also feared that removing all obligations on land would promote a spirit of independence among the colonists. At first the colonial secretary compromised by granting a remission of quit-rents for the first ten years but, as we shall see in the next chapter, by 1791 all mention of

²⁹ *Constitutional Documents, 1759-1791*, Dorchester to Sydney, 13 June 1787, p.946.

³⁰ For a more detailed discussion of the fiscal debate on quit-rents see below, Chapter Two, pp.1-9.

³¹ Gates, *Land Policies of Upper Canada*, p.22.

the scheme had vanished.³²

As an alternative method of supporting the government, Dorchester suggested reserving five thousand acres in every township. "These reserved parcels", he argued,

will enable His Majesty to reward such of His provincial Servants as may merit the Royal favour, and will also enable the Crown to create and strengthen an Aristocracy, of which the best use may be made on this Continent, where all Governments are feeble, and the general condition of things tends to a wild Democracy.³³

Here was the genesis of the Crown and Clergy land reserve policy soon to be enshrined in the Constitutional Act of 1791.³⁴ Unlike the Clergy reserves, the Constitutional Act of 1791 did not implement the Crown reserves. As land owned by the Crown, there existed no legal need to do so. The order authorizing their creation was inclosed in the September 1791 Royal Instructions to Lord Dorchester. The reserve policy delayed the alienation of two sevenths of all land in the province and turned the government into its largest speculator. Dorchester's suggestion that the Crown reserves be used to support both provincial government officers and a local aristocracy, which in his eyes were one and the same, addressed the issue of maintaining political attachments but not the problem of

³² *Constitutional Documents, 1759-1791*, Sydney to Dorchester, 3 September 1788, p.957.

³³ *Ibid*, Dorchester to Sydney, 13 June 1787, p.946.

³⁴ *Documents Relating to the Constitutional History of Canada*, (hereafter *Constitutional Documents, 1791-1818*) Arthur G. Doughty and Duncan McArthur, eds. (Ottawa: King's Printer, 1914), p.59, note 3.

raising revenues for the support of the administration. In the end colonial officials transformed Dorchester's idea into an ill-fated scheme to create a general, long-term fund for the use of government. As such the plan was a dismal failure and rapidly developed into a contentious political issue, one only partially resolved in 1826 by the sale of the reserves to the Canada Land Company. The Clergy reserve policy shared the same fate, and remained a burning political issue well into the Union period.³⁵

While the Imperial government decided these larger issues the Governor-in-Council established a local administrative organization for the western settlements. On 27 December 1787 the Council drafted a patent creating four new districts above Montreal. By mid-May 1788 the details had been worked out, and on 24 July³⁶ the administrative and jurisdictional districts of Luneburg, Mecklenburg, Nassau and Hesse came into being.³⁷ Luneburg extended from the eastern edge of Lancaster Township, the first of the 'Royal Townships', to just below present-day Kingston, Mecklenburg from the Royal Townships to the western end of the Bay

³⁵ Alan Wilson, *The Clergy Reserves of Upper Canada: A Canadian Mortmain* (Toronto: University of Toronto, 1968). Reflecting the judgement of many writers on Upper Canada, historian J.H. Harkness referred to the Clergy reserves as "the most unfortunate and ill-advised piece of legislation ever inflicted upon a young and struggling colony, interfering with the economic development of the province for half a century and more." J.H. Harkness, *History of Stormont, Dundas and Glengarry* (Ottawa: 1946) p.60.

³⁶ *Constitutional Documents, 1759-1791*, Patent Creating New Districts, 24 July 1788, p.953. On 30 April 1788 the Executive Council passed an ordinance allowing for the introduction of this patent.

³⁷ For a brief description of the district system see, George Spragge, "The Districts of Upper Canada, 1788-1849", *Ontario History* (1947) pp.91-100.

of Quinty, Nassau from the bay to the end of Long Point on Lake Erie, and Hesse included the rest of the western area. Borders to the north remained undefined since no one knew for sure how far settlement could extend in that direction.

During the late summer and fall of 1788 Lord Dorchester toured the new districts. It quickly became obvious to him that the business of settlement had all but stalled because of a "want of authority on the spot for allotting lands."³⁸ To solve the problem he appointed a Land Board for each new district. Composed of local Justices of the Peace, the Governor gave these boards the power to take the oath of allegiance and assign each settler a single lot of 200 acres. He also directed the Boards to investigate and report on all applications for larger grants and to pass on their recommendations to the Land Committee at Quebec.³⁹ Along with the Courts of Common Pleas, the Land Boards constituted the first institutions of local administration in what would soon become Upper Canada.

Upon his return Dorchester assigned the Land Committee the task of formulating rules and regulations to govern the new District Land Boards as well as all other aspects of the Land Granting Department.⁴⁰ In January of 1789 Dorchester reorganized the Land Granting Committee to include Chief Justice

³⁸ OA, *Seventeenth Report*, Excerpts from the Minutes of the Executive Council, Upper Canada Land Books A and B, Minute of 28 December 1788, p.43-4. Burt, *The Old Province of Quebec*, Vol.II, p.111.

³⁹ OA, *Seventeenth Report*, Excerpts from the Minutes of the Executive Council, Upper Canada Land Books A and B, Minute of 28 December 1788, p.43, Minute of 26 November 1788, p.50, Minute of 22 February 1789, p.56.

⁴⁰ NA, RG1, L1, Vol.18, Upper Canada, Executive Council Minute Books on Land Matters, Quebec Land Book A, Minute of 21 January 1789, p.71-87,

William Smith as chairman, Hugh Finlay, George Pownall, William Grant and Henry Caldwell. In doing so he replaced the Committee's seigneurs with individuals both sympathetic to the British form of administration and its commercialized, individualistic orientation. On 17 February 1789 the Land Committee issued the first of four sets of "Rules and Regulations".⁴¹ Their purpose was twofold: first, to organize and regulate the administrative machinery necessary for the issuance and registration of patent rights to land and, second, to limit the discretionary powers of the local and junior officers in the Land Granting Department. The Council reinforced the second purpose by ordering that the rules and regulations be printed and distributed throughout the province and that they be posted for public viewing.⁴²

Based on the Royal Instructions of 1783 and 1786, the first set of Rules and Regulations defined both granting procedures and the relationship between applicants, local Land Board authorities and officers of the executive government. The regulations directed the District Land Boards to hold regular, advertised meetings where prospective settlers could submit petitions in either written or oral form. After examination "into their loyalty, character and pretensions", the Land Boards issued a certificate of authorization to the applicant. Technically a licence of occupation, Upper Canadians almost always referred to it as a Land Board

⁴¹ OA, *Third Report*, Introduction, p.lxxi-lxxiii.

⁴² NA, RG1, L3L, Vol.16, Upper Canada, Executive Council, Miscellaneous Records on Land Matters, Order-in-Council, n.d., p.6573.

ticket or certificate. Early "Land Board tickets" were little more than small two or three inch wide slips of paper with a simple notation spelling out the name of the grantee and the size of the grant. Later they became elaborate documents that specified names, birth places, lot locations, settlement duties, the rights of heirs and devisees, and restrictions on transfers.⁴³ In terms of content the increasing elaboration of spatial definitions, settlement conditions and transfer restrictions reflected the growing complexity of the regulatory framework supporting the private ownership of real property.

The applicant presented this licence to the local Deputy Surveyor who within two days assigned a specific and presumably adequately surveyed lot of 200 acres. The Deputy Surveyor provided the applicant with a description of location, or a "location ticket". Once settlers received their location ticket, they returned to the District Land Board to register their assignment. The regulations called for the Land Boards to transmit this information in a regular manner every three months to both the Clerk of the Executive Council and the other District Land Boards. The Land Committee reviewed the applications and returned the documents to their clerk. He transmitted them to the Attorney General who drew up the land patents. When the patent had been completed and ready to have the Great Seal attached, its status was advertised in the *Quebec Gazette*. Exactly how the grantee was to

⁴³ All manner of licences of occupation can be found in OA, RG1, Series C, Lands Branch, C-I-3, Fiats and Warrants. On 13 January 1790 the Land Granting Committee ordered that the regulation prohibiting transfers of licences of occupation and location certificates be printed on the back of the documents. OA, *Seventeenth Report*, Excerpts from the Minutes of the Executive Council, Upper Canada Land Books A and B, p.91.

receive the patent was not addressed. Presumably the settler would have to travel to Quebec to pick up the document or pay an agent to do so.

The first set of Rules and Regulations defined and limited the actions of settlers, District Land Board officers and Deputy Surveyors. Article IV required the grantee to begin cultivation of the grant within one year of occupation or risk forfeiture. This was the first settlement duty imposed on land grants in Upper Canada. No effective mechanisms existed to police the performance of these duties, and despite repeated attempts none could be established until the late 1830's. The Land Boards, meanwhile, were to examine the petitions submitted to them "in the order of their being preferred" so as to avoid favouritism. This was also a problem with the Deputy Surveyors. In June 1788 Deputy Surveyor General Collins instructed surveyor James McDonell that "You are not to promise the preference of any lot of land to any person whatever". Collins repeated the admonishment to Alexander Aitken in May 1790.⁴⁴ As with settlement duties, however, restrictions on preferential treatment proved difficult to police.

The regulations stipulated that the Land Boards defer judgement on any petition for more than 200 acres although they could submit recommendations for larger grants. The Land Committee, however, often had no means to evaluate such recommendations. The Committee ordered Deputy Surveyors to distribute certificates only for lots "as are fit for common husbandry" and to locate and

⁴⁴ OA, *Third Report*, Minutes of the Land Boards of the Districts of Hesse and Nassau, p.382.

submit reports on any lands which contained useful minerals or timber or that were suitable mill and harbour sites. The Deputy Surveyors were forbidden to make deviations in the laying out of townships unless absolutely necessary, and to conduct their operations in an accurate and detailed manner so as to avoid any "unnecessary expense" for either the government or the settler. Economy, as well as effective regulation, quickly became a primary factor in government decision-making.

The Rules and Regulations went on to define the spatial organization of the new settlements. Inland townships were to be surveyed ten miles square, while those on navigable waterways were to be nine miles in front and twelve miles deep. Town sites and glebes were to be laid out in the centre of each township, and "certain portions at the corners" were to be reserved for the use of the Crown. Such vague instructions quickly proved inadequate, and this, along with a lack of control over procedures, prompted the government to issue a second set of Rules and Regulations on 25 August 1789.⁴⁵

⁴⁵ NA, RG1, L3L, Vol.16, Upper Canada, Executive Council, Miscellaneous Records on Land Matters, pp.6476-6477.

PLAN of NINE TOWNSHIPS

*Agreeable to the Tenth Article of the Rules and Regulations
for the Conduct of the Land Office Department of 1867 1729
showing the Reservations for the Crown. A*

By Order of His Excellency The Right Honourable Lord Dorchester

29

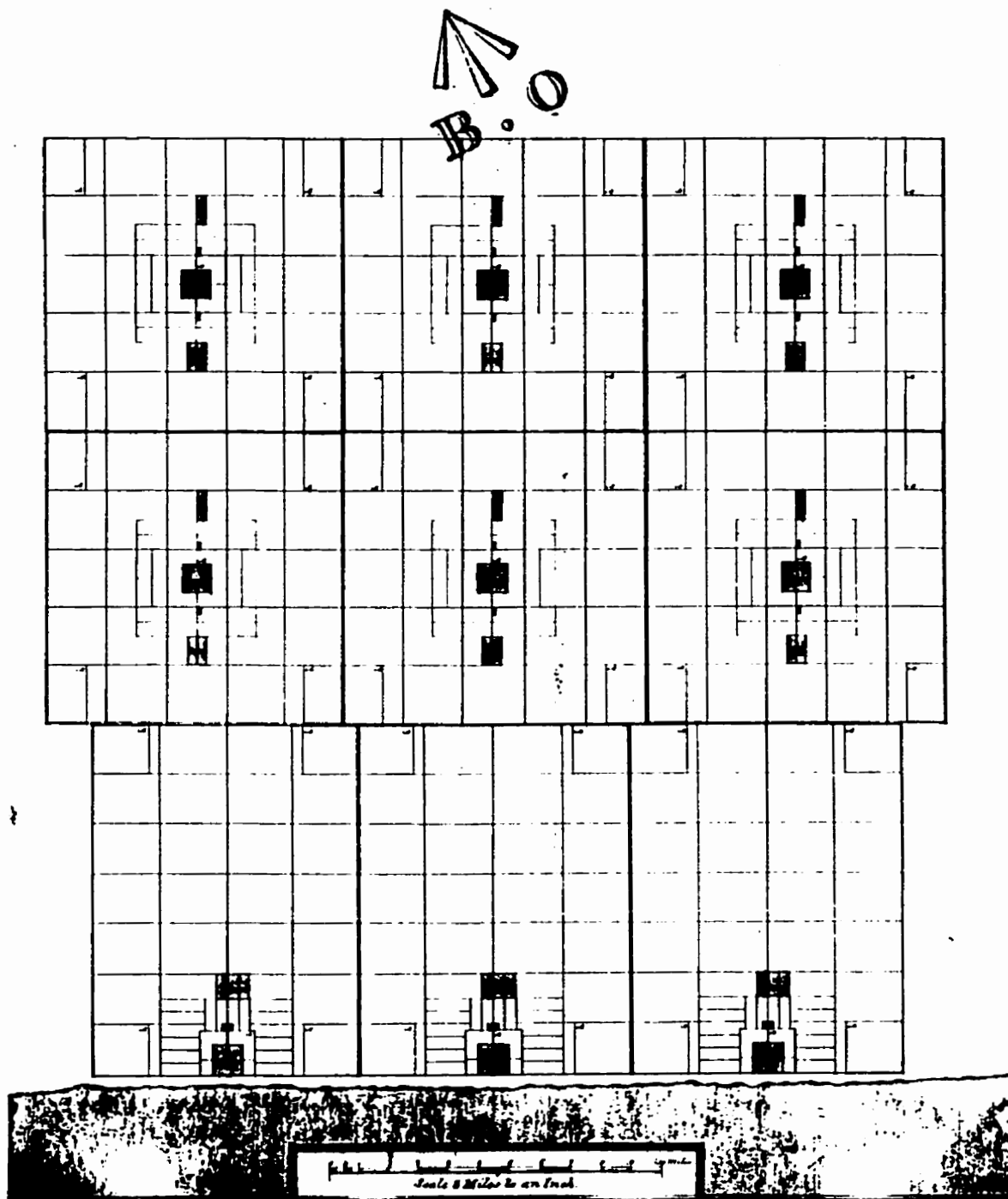


Diagram 1: "Plan of Nine Townships, (NA, NMC 278)

The first two articles of these "additional" rules dealt with a problem that proved endemic to the situation. After pointing out that settlers had not been following the prescribed mode of operation, Article I ordered Deputy Surveyors to stop giving out location certificates without written authority and to report all previous disbursements to the District Land Boards. The first Article further directed the Land Boards to "keep a vigilant eye" over both the Deputy Surveyors and settlers and to report offenders to the higher authorities. The Surveyors had obviously been giving out location tickets to individuals who had not gone before the District Boards to submit their petitions. The loyalty of such individuals had not been determined by the Land Board commissioners, and the Land Committee did not trust the surveyors to deal with such an important matter. The regulations now required Surveyors to attach their location tickets to "the foot, or on the back" of the authorization certificates disbursed by the Boards. This provided an administrative method of policing the system since one had to have a Land Board certificate before a location ticket could be attached. If both arrived before the Committee, the officers had some assurance that correct procedures had been followed.

Article III expanded upon the plan of survey. It set out the size and location of farm lots: 200 acres each measuring 19 by 105.25 chains, laid out in 25 lots to a range and 7 ranges to a township. A town site would be laid out in the centre of each township. Article III defined the size and location of the public squares, school house, court house, work house, cemetery and hospital plots, the size of

the streets and roads, and the extent and location of the reserves. It ordered all roads to intersect at right angles, all squares be left open at the corners, and a half mile wide strip around the town site be reserved for defensive works.

Recognizing the potential problems with the survey plan, the next three articles addressed deviations from standard procedures. Deputy Surveyors were forbidden to make deviations without written permission from the Land Board. The Board, meanwhile, had to report any authorized changes "with all convenient speed." Before the Board members could give their authorization regulations required them to consult the magistrates, officers of the militia, and "other intelligent planters of the vicinity." A "majority" of these individuals must consent to any changes. This placed a significant degree of influence in the hands of local elites.

The government sought to be fair with existing settlers by stipulating that the Land Boards required the occupant's consent if a township was to be laid out on their property. If the occupant lost land because of the imposition of a Crown reservation, the Land Boards would grant lands equal to those usurped, although nothing was said about compensation for any improvements made prior to eviction. Senior administrators, meanwhile, became increasingly concerned about protecting the Crown reserves. In July 1790 the Land Committee resolved that all grants of reserved lots were to be considered null and void, without compensation.⁴⁶

⁴⁶ OA, *Seventeenth Report*, Excerpts from the Minutes of the Executive Council, Upper Canada Land Books A and B, Order-in-Council of 6 July 1790, p.152.

Article VII specified a ranked order of preference for the components of a town centre. To be included were town plots for a church, a cemetery, a parsonage, a school house, town parks for the support of the clergy and the schoolmaster, a lot for a court house, a prison, a poor house, and finally a spot for a market place. The regulations thus provided physical space for the elements deemed necessary in a civilized society. Reflecting the paternalistic, conservative ethos that underlay the settlement system in Upper Canada, Church and State came first and occupied pride of place in the local community. Or, at least, such had been the plan. It seldom worked out this way, but the numerous public properties and church lots that occupy the centre of most southern Ontario towns testifies to the strength and endurance of the intent.

The next two articles dealt with the disbursement of town lots. The regulations ordered the Land Boards to refrain from granting town lots until settlement of the farm lots was "sufficiently advanced". They restricted grants to one town lot, or one town lot and one town park to each individual. As with farm lots, the grantees had to develop the property within one year or risk forfeiture. The Boards were to give preference "to such Applicants, for whose trade and occupations the respective lots, on account of their situation near the Water, or otherwise, may be best calculated." In a colony without roads settlers of all types naturally coveted lots fronting waterways and competition for them proved intense.

In an attempt to limit speculation the regulations end with an instruction to the District Land Boards to discount "frivolous applications", and not authorize any

transfers of unimproved lots because such "only tend to create a mischievous Monopoly of the ground." Council left the Boards to decide what constituted a frivolous application. For the most part all parties concerned ignored the restrictions on transfers, and local merchants in particular built up a brisk trade in Land Board tickets. That many of them sat on the Land Boards only made authorizing transfers all the more convenient. The inability to enforce this regulation led to the creation of the Heir and Devisee Commissions in 1797. These Commissioners sorted out the confusion created by unauthorized transfers.⁴⁷ Although this afforded them some influence over local land matters they were not given the broader powers of assignment and administration granted the Land Boards.

As a result of an investigation conducted by the Land Committee, on 20 January 1790 the Governor-in-Council ordered two sets of additions to the rules and regulations.⁴⁸ The new regulations directed the Boards to keep a complete journal of their proceedings, dated and signed by the members, transmitted to the Governor's secretary every three months, and keep distinct and accurate records of the names of grantees, and the size, number and location of lots granted. While this seems fairly straightforward, the end result was four different formats of

⁴⁷ Lillian Gates "The Heir and Devisee Commission of Upper Canada, 1797-1805", *Canadian Historical Review* (1957) pp.21-36. H. Pearson Gundy, "The Family Compact at Work: The Second Heir and Devisee Commission of Upper Canada, 1807-1841", *Ontario History* (1974) pp.129-146.

⁴⁸ OA, *Third Report*, Introduction, pp.lxxviii-lxxix.

records submitted by the four different Land Boards, each with a varying degree of completeness.

The second addition to the rules and regulations made in January 1790 addressed the administration of claims made by disbanded officers seeking grants equal to those promised to members of the 84th Regiment of Foot during the Revolutionary War.⁴⁹ The Governor and the Council considered this a matter of particular importance because of the large size of the grants, previously up to 5,000 acres, and the social status of the individuals involved. On 22 October 1788 Lord Dorchester had ordered that all officers regardless of regiment could apply for grants equal to those promised the officers of the 84th. The January 1790 regulations set a cut off date for applications of May 1792. They also ordered that applications be made to the District Land Boards rather than the Governor and that the Boards investigate the applications to determine if the petitioner had previously received any lands, whether he had improved these lands, and the amount of land received so that it could be deducted from any further grants. In case of competition for a specific tract, the Boards arbitrated disputes. If neither party had a better claim they resolved the issue by drawing lots. As with all unusual circumstances, the Committee ordered the Boards to make "full and distinct Reports" on conflicting claims and transmit the proceedings promptly.

⁴⁹ Royal Instructions given to Lord Dorchester, *Constitutional Documents, 1759-1791*, p.830. The size of the grants to be given to disbanded officers stipulated in the 1763 Royal Proclamation had been reduced considerably in the Instructions given to Governor Haldimand in August of 1783 with the upper limit set at 1000 acres.

At a Council meeting on 20 January 1790 the Committee happily reported that the quality of the records produced by the Land Boards was at least adequate.⁵⁰ The regulation ordering the Boards to exchange copies of their reports, however, proved unworkable because of a lack of both clerks and paper. Consequently, the Committee recommended that simple lists of grantees be drawn up and distributed. This, it was hoped, would "prevent any person from obtaining by application in different districts more land than he is entitled to." The Committee went on to blame the errors in the township plans on the Surveyor General's Office. This, they believed, could be corrected by placing the Deputy Surveyors under the direct control of the Land Boards. A month earlier the Committee recommended that the Land Boards act as reporting agencies for all the tracts of land available in their districts; the Deputy Surveyors were proving unequal to the task.⁵¹

In the minutes of Council ordering the investigation into Land Board operation, Lord Dorchester had asked specifically about the registration of oath-taking. Deputy Surveyor General John Collins, who had taken over daily operations because of Samuel Holland's failing health, was called in to report. Although the Surveyor General's Office kept the records, Collins admitted that he had "no

⁵⁰ NA, RG1, L1, Vol.18, Upper Canada, Executive Council, Minute Books on Land Matters, Quebec Land Book A, Land Committee Report of 20 January 1790, pp.113-4.

⁵¹ NA, RG1, L1, Vol.18, Upper Canada, Executive Council, Minute Books on Land Matters, Quebec Land Book A, Minute of 19 December 1789, p.111.

certain information" on the subject.⁵² The Committee in turn recommended that these duties be turned over to the Land Boards. Along with lists of those who had taken the oath, Council ordered the Land Boards to "return a list into the office of the Clerk of the Council of such as have neglected or shall refuse such compliance."⁵³ When asked if the survey plans and schedules for the new townships had been up-dated Collins could do little more than report that they "will be finished without loss of time."⁵⁴ Three months later the Land Committee asked the Surveyor General if he had completed the work but the answer proved the same. Clearly frustrated, the Committee recommended that the Surveyor General's Office be ordered to make regular monthly, rather than periodic *ad hoc*, reports to Council.⁵⁵

Throughout the spring of 1790 the Governor-in-Council followed the recommendations of the Land Granting Committee and expanded the powers of the Land Boards. This, they believed, would allow for greater "accuracy and dispatch" in the land business of the Crown. At the end of February the Committee ordered the Boards to hear petitions from all applicants regardless of their status

⁵² Collins took over control of daily operations in the Surveyor General's Office during the late 1780s. *Dictionary of Canadian Biography*, Vol.V, "Samuel Johannes Holland", by F.J. Thorpe, pp.425-28.

⁵³ OA, *Seventeenth Report*, Excerpts from the Minutes of the Executive Council, Upper Canada Land Books A and B, Order-in-Council of 12 January 1790, p.79.

⁵⁴ NA, RG1, L1, Vol.18, Upper Canada, Executive Council, Minute Books on Land Matters, Quebec Land Book A, Minute of 20 January 1790, p.160.

⁵⁵ NA, RG1, L1, Vol.18, Upper Canada, Executive Council, Minute Books on Land Matters, Quebec Land Book A, Minute of 17 May 1790, p.194.

as disbanded officers, regular soldiers, loyalists or ordinary immigrants, and arbitrate disputed land claims "in the most equitable manner".⁵⁶ Little more than a week later the Committee observed that "It is not in Quebec where errors in the plans can be corrected" and asked whether it might not be advisable to transmit the plans and schedules to the respective Land Boards. The Governor agreed.⁵⁷ The new procedures effectively turned over the bulk of the land granting administration to the Boards creating what amounted to district land offices.⁵⁸ For the next year the Land Boards continued to receive favourable reports from the Land Committee, and in May of 1791 the Governor extended their mandate until 1 June 1795.⁵⁹

Although the new Rules and Regulations went a long way towards establishing a settlement system, they dealt only with general administrative matters. By 1790 much larger political considerations had emerged in both Quebec and London. The British government, following the advice of the newly appointed Secretary of State, William Grenville, decided to divide the province along the Ottawa River creating two colonies; one predominantly French and one

⁵⁶ NA, RG1, L1, Vol.18, Upper Canada, Executive Council, Minute Books on Land Matters, Quebec Land Book A, Order-in-Council of 22 February 1790, p.171.

⁵⁷ NA, RG1, L1, Vol.18, Upper Canada, Executive Council, Minute Books on Land Matters, Quebec Land Book A, Order-in-Council of 1 March 1790, p.175.

⁵⁸ OA, *Seventeenth Report*, Excerpts from the Minutes of the Executive Council, Upper Canada Land Books A and B, Minute of 14 May 1790, p.112.

⁵⁹ NA, RG1, L1, Vol.18, Upper Canada, Executive Council, Minute Books on Land Matters, Quebec Land Book B, Report on the Mecklenburg Land Board, p.264, Order-in-Council of 1 May 1791, p.288.

overwhelmingly English. The lower province kept the seigneurial system of land holding. The upper province operated under the English system of free and common soccage.

While the Imperial government decided these constitutional matters, Lord Dorchester and his Council sought to gain greater control over provincial expenditures. In February 1791 the Land Granting Committee informed the Governor that the proposed survey work for the upcoming season would cost at least £1353.0.0..⁶⁰ Dorchester authorized the expenditure, but in July he ordered that the regular employment of all "extraordinary surveyors" cease at the end of 1791. He also ordered "that all services hereafter to be performed in the Department of the Surveyor General be previously authorized upon annual Estimates."⁶¹ This helped to establish executive control over the expenditure process and the Upper Canadian government later adopted the procedure.⁶² The decision to divide the province, and to suspend survey operations in the interim, put the business of land granting on hold during the latter half of 1791 and well into 1792.

From the surge in loyalist migration in 1783 until the partition of the province

⁶⁰ NA, RG1, L1, Vol.18, Upper Canada, Executive Council, Minute Books on Land Matters, Quebec Land Book B, Proposals for survey work for the summer of 1791, 3 February 1791, pp.250-3. The work included fixing the interior lines of existing townships, settling the district boundaries, establishing six new townships and laying out the town of Niagara.

⁶¹ NA, RG1, L1, Vol.18, Upper Canada, Executive Council, Minute Books on Land Matters, Quebec Land Book B, Order-in-Council of 23 July 1791, p.289.

⁶² NA, RG1, L4, Vol.5, Upper Canada Land Boards, Minutes and Records, p.59, 182.

in 1791 the colonial administration at Quebec struggled to develop an effective land administration system under difficult and unique conditions. Administrative measures such as the District Land Boards, the standard survey plan and the various recording procedures proved relatively effective. Council, however, became convinced that excessive discretionary powers in the hands of local officers and a lack of administrative accountability compromised their efforts. Local officials, however, remained necessary. The executive government reacted to the situation by placing prohibitions on the actions of its own servants and on settlers themselves in an attempt to establish a regulated 'chain of command', but such measures often lacked means of enforcement. In retrospect, given the distance from Quebec and the limited resources at hand, little else could be done.

When Lieutenant Governor John Graves Simcoe assumed control of Upper Canada in 1791 he sought to strengthen the regulatory regime by centralizing the administration of land granting in his trusted officers at York. Although the Lieutenant-Governor's reforms allowed for greater control and accountability, these measures often made life more inconvenient and expensive for the pioneer settlers of Upper Canada. Nevertheless, Simcoe's initiatives fixed the basic regulatory framework for a generation.

Simcoe had his own well-considered, if somewhat unrealistic, ideas about colonial development. He intended to recreate as closely as possible an idealized version of the English county complete with a centralized government, a hierarchical social structure, a squirey able to command respect, a prosperous,

industrious yeomanry, and a wealthy, established church capable of exercising moral and spiritual leadership. This he believed to be the only way of preventing a second revolution in North America. In a memorandum to Secretary of State Henry Dundas, Simcoe argued that if the colony began with the proper "Establishments, Civil and Military", it would increase in "consequence & become capable of supporting its own expences or contributing to those of the Empire". He suggested that "utmost Attention should be paid that British Customs, Manners, & Principles" be inculcated in order that the colony "assimilate" with the "parent state".⁶³ Such matters should be dealt with "instantaneously" or all would be lost. Although Simcoe's plans for the province have been characterized as excessive, grandiose, and even foolhardy, they were not without consequences, or a sense of vision.⁶⁴ If many of his projects came to nought, he none-the-less successfully re-arranged and reformed the provincial administration and the way settlers obtained land.

Simcoe first dealt with the Surveyor General's Department. While waiting at

⁶³ *The Correspondence of Lieutenant Governor John Graves Simcoe*, E.A. Cruikshank, ed. (Toronto: Ontario Historical Society, 1923) Vol.I, Simcoe to Dundas, 17 June 1792, p.27.

⁶⁴ See S.R. Mealing, "The Enthusiasms of John Graves Simcoe", Canadian Historical Association, *Annual Report*, 1958. D.C. Scott commented that "One by one his recommendations were disapproved of, gradually his troops were withdrawn, prop after prop vanished, until his schemes lay before him as confused and ineffectual as a flattened house of cards." Duncan Campbell Scott, *John Graves Simcoe*, (Toronto, 1905), p.208. The assessment of more recent historians has been no less critical. Lillian Gates stated that "To Simcoe everything depended on the success of his five-year plan, and it failed." Gates, *Land Policies of Upper Canada*, p.37.

Quebec for transport upriver he pointed out to Under-Secretary of State Evan Nepean that "There are great errors in the Surveyer [sic] General's Department, relative to the location of lands, which I hope to adjust amicably on my arrival in Upper Canada."⁶⁵ When Simcoe asked Surveyor General Samuel Holland which of his Deputies had been assigned to the new province Holland submitted a list along with the dates of their commissions. The list had to be reconstructed according to "the best of Mr. Collins and my recollection" because the registration book had been "misaid".⁶⁶ Despite Dorchester's moratorium on survey operations the Surveyor General employed three Deputy Surveyors in the spring of 1792. William Chewett assisted Collins in the as-yet-uncompleted transfer of the office to the upper province. Alexander Aitkin surveyed the town plot of Kingston, and Augustus Jones did the same at Niagara. Included on the list, but not actively employed, were five others, in addition to Patrick McNiff assigned to the Royal Engineers at Detroit.⁶⁷ As Simcoe reported to Secretary of State Henry Dundas, government surveyors received "the fixed salary of four shillings each per diem, when *not employed*, and seven and sixpence Currency when employed" [his italics]. He went on to state that this number would "not be sufficient for the

⁶⁵ *Simcoe Correspondence*, Vol.V, Simcoe to Nepean, April 1792, p.171.

⁶⁶ *Ibid*, Vol.V, Holland to Simcoe, 7 June 1792, p.13.

⁶⁷ The other surveyors were William Fortune, High McDonell, Theodore DePincier, John Stegman, and Joseph Bouchette.

immediate calls for the arrangement of the Lands about to be granted".⁶⁸

On 7 February 1792 Simcoe issued his first proclamation on "the Terms of Grant and Settlement" for all lands in the new colony.⁶⁹ As he had yet to swear his oaths of office he was reluctant to issue the proclamation, doubting its legality. Lieutenant Governor Alured Clarke and the Executive Council of Lower Canada pressed him on the issue, however, because they wanted the terms to be "made immediately and generally known" in order to alleviate discontent within the province.⁷⁰ Simcoe's proclamation proved identical to one issued in Lower Canada on the same day, both being drawn from the Royal Instructions of the previous September. Henceforth, land was to be granted only after one seventh had been reserved for "the Support of a Protestant Clergy" and another seventh "for the future disposition of the Crown". No person could receive a farm lot in excess of 200 acres, but the regulations "allowed and permitted" the Lieutenant-Governor to grant up to 1000 acres "over and above what may have been granted before" if

⁶⁸ *Simcoe Correspondence*, Vol.V, Simcoe to Dundas, 30 June 1792, p.172. From the earliest years the issue of payment for surveyors and survey crews proved a matter of difficulty. In May of 1793 Colonel Robert England, commander at Detroit, wrote to Surveyor General Smith, "In my last by the Speedwell I mentioned to you the difficulties I had in fitting out and getting Mr. McNiff to proceed on the Survey directed by you of the River Thames. Since then he has taken his departure, but not before I was obliged after repeated *promises* to make Mr. O'Brien [the post clerk] assure him by letter that the party he took with him should be paid their hire immediately on their return, and that they should have each two shillings Halifax a day. For the due execution of this covenant I rely totally on you and the bounty of the Governor." *Ibid.*, Vol.I, England to Smith, 1 May 1793, p.324.

⁶⁹ OA, *Fourth Report*, Proclamations, pp.161-2.

⁷⁰ *Simcoe Correspondence*, Vol.V, Clarke to Simcoe, 7 February 1792, p.169.

the applicant had sufficient wealth and social position. This led to the popular misconception that all worthy individuals were automatically entitled to 1200 acre grants. Each petitioner must "make it appear, that he or she is in a Condition to cultivate and improve" their grant. Applicants had to swear the usual oaths of allegiance and the supremacy of King in Parliament, "before proper persons to be for that purpose appointed". All applications were to be made by written petition, and if granted, a warrant for survey was to be issued, "returnable within Six Months with a Plot annexed", followed by a patent.

The sixth article of the proclamation specified that "all grants reserve to the Crown all Coals... and Mines of Gold, Silver, Copper, Tin, Iron, and Lead". Thus the Crown retained all mineral rights in the province, as is still the practice throughout Canada today. This is perhaps the most significant difference between the allodial form of tenure common in parts of the United States where the land owner retains all sub-soil rights, and free and common socage where only the rights to the soil itself are conveyed by law.⁷¹ Upper Canada contained few readily exploitable mineral resources, and the most significant consequences of this policy would not be felt for many decades. There was, however, some immediate impact. In May 1793 a settler named Amos Ansley asked for authorization to set up an iron bloomery using local sources of bog iron. With considerable reluctance, the Land Committee resolved that the petition was "inadmissible" because mines were

⁷¹ On the American system see Marshall D. Harris, *Origin of the Land Tenure System in the United States*, (New York: Ames Publishing, 1953).

"reserved for the King."⁷² They had no desire to restrict local development, but they were also unwilling to break the rules expressly laid down by the Crown. This decision prompted the Duc de La Rochefoucault-Liancourt to observe that

All these restrictions cannot but render a good settler very uneasy, and may, in the estimation of many people prone to emigration, far outweigh the advantages of a free grant.⁷³

The restriction, however, did not last long, and after several complaints the rules changed in 1798.⁷⁴ From this date the Upper Canadian government issued mining licences to private entrepreneurs, a practice that continues to this day.

The dense forests that blanketed almost all of Upper Canada were of more immediate importance to the Imperial government. Here there lay an obviously extensive, readily exploitable resource; the 1792 proclamation gave particular attention to the "Reservation of Timber for the Royal Navy". The mature oaks and towering white pines of Upper Canada were, in the eyes of the colonial governors, too valuable to squander on settlers' huts and pot asheries. To administer the policy Simcoe appointed a Surveyor General of Woods. He organized and coordinated Deputy Surveyors of Woods in each district to insure that each lot had been inspected and to see that each assignee received a certificate to show that

⁷² OA, *Eighteenth Report*, Excerpts from the Minutes of the Executive Council, Upper Canada Land Book A, Minute of 6 May 1793, p.32.

⁷³ OA, *Thirteenth Report*, Duc de La Rochefoucault-Liancourt, "Travels in Canada, 1795", p.36.

⁷⁴ NA, RG1, L1, Vol.22, Upper Canada, Executive Council, Minute Books on Land Matters, Land Book D, Order-in-Council of 12 February 1798, p.58. Gates, *Land Policies of Upper Canada*, p.263.

their lot contained no valuable stands of timber.⁷⁵ To be fair to the early settlers Simcoe granted an exemption to assignees who had received warrants before 1792, allowing them to take out their patents without a certificate.⁷⁶ They still, however, had to pay the fees due to the Surveyor General of Woods despite the fact that no inspection ever took place.⁷⁷

The eighth article of the 1792 proclamation stipulated that grantees were to receive their property free of all expenses except for "such fees as are or may be allowed to be demanded and received by the different Officers concerned in passing the Patent". The list of fees would be "publicly [*sic*] fixed up in the several Offices" of the Land Granting Department. This was an admirable attempt at establishing a degree of transparency in the charging of fees. Whether the officers actually complied is unknown.

In October 1792 Simcoe subdivided the District Land Boards, increasing their number from four to six, "in order to facilitate and expedite the Business of

⁷⁵ Examples of these certificates can be found in OA, RG1, Series C, Lands Branch, C-I-3, Fiats and Warrants.

⁷⁶ The Surveyor General of Woods charged an inspection fee of 1s for lots of 200 acres or less and 2s for lots of over 200 acres. NA, RG1, L1, Vol.19, Upper Canada, Executive Council Minute Books on Land Matters, Land and State Book A, Order-in-Council of 4 November 1795, p.331.

⁷⁷ On 3 November 1795 the Land Committee resolved that the Surveyors of Woods were "entitled to receive... Fees on all Grants formed on Certificate issuing since the Establishment of this Province of Upper Canada." NA, RG1, L7, Vol.73, Upper Canada, Executive Council, Standing Orders, p.7.

the several Land Granting Departments throughout the Province."⁷⁸ Within a year, however, the Upper Canadian government felt that it could no longer rely on the political sentiments of newcomers to the colony, or the determinations of the Land Boards. In fact Board commissioners seemed more concerned with turning wilderness into private property than screening settlers for unacceptable political sentiments.⁷⁹ As a result, in April 1793 the Land Committee ordered the Land Boards to make "diligent Scrutiny into the Character and conduct" of all petitioners for land. They reminded the commissioners that it was their "unquestionable duty" to dismiss all applications from persons of "known disloyal Principles".⁸⁰

On 20 May 1794 Simcoe ordered the Land Committee to hold an "extraordinary" session in order to discuss procedural changes. He also ordered the District Deputy Surveyors to draw up reports on the presence of all squatters. These they submitted directly to the Surveyor General rather than the District Land Boards. The Boards, Simcoe implied, could not be trusted to perform this duty.⁸¹

⁷⁸ NA, RG1, L1, Vol.19, Upper Canada, Executive Council Minute Books on Land Matters, Land and State Book A, Order-in-Council of 20 October 1792, p.36. *Ibid.*, Smith to Simcoe, 18 July 1793, p.48.

⁷⁹ NA, RG1, L4, Vol.7, Upper Canada, Land Boards Minutes and Records, Minutes of the Mecklenburg District Land Board, pp.6-10.

⁸⁰ NA, RG1, L1, Vol.19, Upper Canada, Executive Council Minute Books on Land Matters, Land and State Book A, Order-in-Council of 12 April 1793, p.67. NA, RG1, L4, Vol.5, Upper Canada, Land Boards Minutes and Records, Circular letter from the Lieutenant-Governor's Secretary, E.B. Littlehales, to the District Land Boards, 13 April 1793, p.149.

⁸¹ NA, RG1, L1, Vol.19, Upper Canada, Executive Council Minute Books on Land Matters, Land and State Book A, Order-in-Council, 20 May 1794, p.130.

At the extraordinary session he then transferred the power of assigning family lands from the Land Boards to the Surveyor General.⁸² Here Simcoe sought to gain some control over a process he considered to be rife with fraud and excessive generosity. For example, the Land Committee caught Heese District Land Board clerk Thomas Smith selling information to Mathew Olson when he applied for family lands for himself and five other Queen's Rangers. Smith told Olson that his petition required "a certain form of address to the Governor, which nobody had but himself, and which he would shew to nobody". Smith then charged Olson the outrageous sum of £14 for the work of drawing up the petitions.⁸³ By summer 1792 the Nassau Land Board routinely assigned family lands along with regular grants, despite the fact that the regulations clearly stated that the initial grant must be settled and improved before a grantee was entitled to the second.⁸⁴ The Mecklenburg Land Board reported it would enforce the rules on improvements, but pointed out to the Committee that many of the Loyalists "were mere boys" unable to develop their lots, and thus not eligible for extra grants. The Board asked if it could continue its current practice of giving out family lands to the youngsters in anticipation of their maturity.⁸⁵ The Committee said no.

⁸² NA, RG1, L1, Vol.19, Upper Canada, Executive Council Minute Books on Land Matters, Land and State Book A, Order-in-Council of 20 May 1794, p.135.

⁸³ OA, *Third Report*, Minutes of the Hesse District Land Board, Minute of 1 April 1791, p.160.

⁸⁴ *Ibid.*, Minutes of the Nassau District Land Board, pp.295-97.

⁸⁵ NA, RG1, L4, Vol.7, Upper Canada, Land Board Minutes and Records, Minutes and Records of the Mecklenburg District Land Board, p.40 and 153.

Aside from petty corruption and lax regulation, difficulties arose with basic record keeping. No two Boards submitted their records and reports in the same format, and all were in some manner incomplete or disorganized. As early as January 1790, Henry Motz, the Council Secretary, issued circular letters to the Boards detailing all the information expected in their reports.⁸⁶ Several months later the Land Committee implored the Mecklenburg Board to regularize its reports by adopting a uniform and alphabetized labelling system for petitions. The Committee even provided a sample entry for them to follow.⁸⁷ In August 1792 Deputy Surveyor General William Chewett reported to Council that many problems with Land Board records resulted from a lack of communication between the various administrative levels.⁸⁸ As an example he reported that in Lunenburg the Land Board clerk had not been told that, on the township plans, two names on a single plot meant that each party received half. The clerk simply listed all the names on the corresponding lot in his record book. As a result it appeared that the Board granted some 89 lots to two different individuals. Sorting out such problems caused no end of grief for the Surveyor General's Office.

On 6 November 1794 the Lieutenant-Governor-in-Council dissolved the

⁸⁶ OA, *Third Report*, Minutes of the Hesse District Land Board, Circular letter of Henry Motz, January 1790, p.35.

⁸⁷ NA, RG1, L4, Vol.7, Upper Canada, Land Board Minutes and Records, Minutes of the Mecklenburg District Land Board, p.185.

⁸⁸ NA, RG1, L1, Vol.19, Upper Canada, Executive Council Minute Books on Land Matters, Land and State Book A, Report of Deputy Surveyor General William Chewett, August 1792, p.6.

District Land Boards completely. Stripped of their reporting duties and their responsibility for dispensing family lands the Boards became "inexpedient and unnecessary".⁸⁹ Henceforth, the officers of the executive government at York examined petitions, assigned locations, and supervised operations. District magistrates still administered the oath of allegiance to the Crown and issued a certificate proving a settler had done so, but all other aspects of the land granting system remained in the hands of the Lieutenant-Governor-in-Council.⁹⁰

The centralization of land administration provided a number of practical solutions to problems faced by colonial administrators. The standardization of forms and schedules alleviated the administrative confusion of the earliest years. Records of assignments could be more accurately kept, abuses of the system more readily discovered, and opportunities for corruption at the local level reduced. Centralization, however, also created new problems for the settlers in the townships. Disbanding the local offices meant that a petitioner for land, or his agent, now had to travel to York at least twice in order to secure a patent, always a difficult and time-consuming business in pioneer Upper Canada. As a result a great many settlers simply put off taking out their patents often for years or decades. A not unusual case is that of Leana Baker. In 1807 she applied for, and

⁸⁹ NA, RG1, L1, Vol.19, Upper Canada, Executive Council Minute Books on Land Matters, Land and State Book A, Order-in-Council of 6 November 1794, p.219.

⁹⁰ Within a year the magistrates were ordered to issue certificates for family lands because the Council realized that it had no way of determining how many children a settler might have. NA, RG1, L1, Vol.19, Upper Canada, Executive Council Minute Books on Land Matters, Land and State Book A, p.302.

received, a grant of 200 acres in Elizabethtown as the daughter of Loyalist John Mattice. She never bothered to return for the patent, and it was only when her children wished to sell the lot that title was finally conveyed in April 1840!⁹¹ Despite repeated deadlines and threats of seizure the Lieutenant-Governor and Council never resolved the problem.⁹²

The demise of the District Land Boards also left the settlers without any local body to adjudicate disputes over conflicting land claims. By 1795 almost all of the letters received by the Surveyor General's Office asked to decide multiple claims or to sort out irregular transfers. Although the Surveyor General had no jurisdiction over such matters⁹³ complaints became so numerous that in 1796 the Executive Council decided to set aside special sessions during the sitting of the Assembly so that members could submit their constituent's disputes for arbitration.⁹⁴

The conflict between state control of land distribution and individual commercial enterprise can be clearly seen in the issue of township grants, the final area of the land granting business reformed by Simcoe. The Lieutenant-Governor

⁹¹ OA, RG1, Series C, Lands Branch, C-I-3, n.p., Fiats and Warrants.

⁹² NA, RG1, L1, Vol.19, Upper Canada, Executive Council Minute Books on Land Matters, Land and State Book A, Order-in-Council of 22 August 1795, p.329.

⁹³ OA, RG1, Series A, Surveyor General's Office, A-I-6, Vol.1, Sections 5 and 6, Letters to the Surveyor General.

⁹⁴ NA, RG1, L1, Vol.20, Upper Canada, Executive Council Minute Books on Land Matters, Land Book B, Order-in-Council of 7 October 1796, p.24. Only the first Upper Canada Land Book was referred to as a Land and State Book. Thereafter they were simply referred to as Land Books. State Books were kept separately.

originally intended that township grants would follow the leader and associate system used in the settlement of Connecticut, Maine and several other American colonies.⁹⁵ The idea was to promote the immigration and settlement of cohesive groups from the same community or religious sect. Leaders acted as advance parties for the group and supervisors of settlement once individual lots had been distributed. In return, they would be considered as a sort of local gentry with access to local office and the patronage of the central government. The scheme, however, did not entitle them to re-sell Crown lands for their own profit.

Familiar with the system of township planting in Connecticut, Simcoe wished to reproduce it in Upper Canada in order to draw on this "pure source of Emigration".⁹⁶ He believed that civic-minded, industrious men of capital and high social standing would lead bands of hearty pioneers into the backwoods to form prosperous townships. Such communities would then testify to the superiority of the British constitution and vindicate British Imperialism in North America.⁹⁷ All this was part of his grander design to form a connection "between the Colony of Upper Canada and Connecticut and its off-spring Vermont and the new Settlement on Lake Erie", in order to entice them back into the Imperial fold. Simcoe's confidence in this scheme had been bolstered by the encouragement of the Reverend Samuel

⁹⁵ Gates, *Land Policies of Upper Canada*, p.30.

⁹⁶ *Simcoe Correspondence*, Vol.I, Memorandum written by Simcoe, 30 June 1791, p.33.

⁹⁷ *Dictionary of Canadian Biography*, Vol.V, "John Graves Simcoe", S.R. Mealing, pp.754-59.

Peters of Connecticut, whom Simcoe wished to have consecrated Bishop of Upper Canada.⁹⁸ Peters himself had become convinced that groups of true loyalists would follow him into the province.⁹⁹

Unfortunately for Simcoe, the bishopric was not created and land speculators, not community leaders, petitioned for township grants.¹⁰⁰ Applications for grants of large tracts of land had been submitted as early as 1788, but not until October 1792 did Council take any action on the matter.¹⁰¹ Between October 1792 and July 1793 the Land Committee granted a total of 32 townships covering 1,920,000 acres of land to various groups of petitioners.¹⁰² Many of the applicants proved to be disbanded Loyalist officers, local merchants, and Justices of the Peace, who, more often than not, sat as District Land Board Commissioners. In the Eastern District every Land Board commissioner applied for one or more

⁹⁸ *Simcoe Correspondence*, Vol.I, Simcoe to Grenville, n.d., p.53.

⁹⁹ Gates, *Land Policies of Upper Canada*, p.30.

¹⁰⁰ *Ibid.*, pp.30-1.

¹⁰¹ In June of 1788 Peter Drummond, Edward Jessup, John Dulmage, and Michael Hoofnail, former Loyalist officers, along with the Reverend Gideon Bostwick, petitioned for a tract of land 40 miles by 8 miles along the south side of the Ottawa River and promised to settle 170 families in four years. OA, *Seventeenth Report*, Excerpts from the Minutes of the Executive Council, Upper Canada Land Books A and B, Minute of 13 June 1788, p.22.

¹⁰² Gates, *Land Policies of Upper Canada*, p.30. The petitions of the various applicants can be found in Upper Canada Land Books A, B, and C. Gates states that no townships were granted after July of 1793, but in fact William Berczy received a township in May of 1794. NA, RG1, L1, Vol.19, Upper Canada, Executive Council Minute Books on Land Matters, Land and State Book A, Order-in-Council of 17 May 1794, p.127.

townships.¹⁰³

Although the proclamation of July 1792 stated that qualified individuals could receive township grants, the Lieutenant-Governor-in-Council never clearly defined the terms of assignment. In particular the government never decided the matter of compensation for opening up the township, building roads, and providing for the initial needs of the settlers. This, of course, determined in large measure whether the enterprise would be profitable or not. Several grantees claimed that they were only required to settle 40 families per township within two years, and that the rest of the land would be theirs. William Berczy became convinced that he had to settle only 38 families in each township, giving each settler 1,200 acres. Ebenezer Allen claimed Simcoe told him that he could sell lots to qualified settlers as he saw fit and at a profit.¹⁰⁴ After trying to determine the exact terms of his grant, an exasperated Richard Duncan, the chairman of the Lunenburg District Land Board, complained to Council that "a system more intelligent was necessary" if the scheme was to succeed.¹⁰⁵

The fact is that the Lieutenant-Governor and the Executive Council never developed an "intelligent" system of township granting because they had no

¹⁰³ NA, RG1, L1, Vol.19, Upper Canada, Executive Council Minute Books on Land matters, Land and State Book A, Minute of 17 March 1793, p.57. At one point several Land Board commissioners and their associates applied for 30 townships in one petition, but the Committee turned down their ambitious project. *Ibid*, Minute of 16 April 1793, p.71.

¹⁰⁴ Gates, *Land Policies of Upper Canada*, p.40.

¹⁰⁵ OA, *Nineteenth Report*, Excerpts from Upper Canada Land Books B and C, p.3

intention of relinquishing control over the distribution of land to what they considered to be a group of greedy, self-interested land-jobbers. Simcoe never intended to promote commercial land enterprises or to set up individually owned proprietorships. After the Lieutenant-Governor's departure, Peter Russell proclaimed that township grantees were only entitled to the "Patronage of location for 200 acres to each Settler they should happen to bring on the lands to be set apart for them". They could not *sell* lands to anyone. In recognition of their social position the township grantees were also given the right to recommend larger grants for persons who "happened to be from Property, Abilities, or Education entitled to more consideration". This entitled them, however, to no more than 1200 acres for themselves.¹⁰⁶ Council flatly refused to convey any other proprietary rights.

By the spring of 1793 Simcoe and the Executive Council began to retreat from the township granting scheme. When Elihu Warner petitioned for 180,000 acres, sufficient for 900 settlers, the Land Committee rejected his application and noted, "it is not expedient to admit a numerous body of settlers without proof of their attachment to the principles of the British constitution and His Majesty's Government." The settlers were more than welcome to petition, and be examined, separately.¹⁰⁷ Between May and July 1793, various groups and individuals

¹⁰⁶ E.A. Cruikshank, ed., *Correspondence of the Honourable Peter Russell*, (Toronto: Ontario Historical Society, 1932-36) Vol.III, Russell to Prescott, 4 February 1799, p.95.

¹⁰⁷ NA, RG1, L1, Vol.19, Upper Canada, Executive Council Minute Books on Land Matters, Land and State Book A, Minute of 18 May 1793, p.73.

submitted 26 petitions for township grants to the Land Committee. The Committee denied ten.¹⁰⁸ By the summer of 1795 the Executive Council issued an order that all settlers in granted townships must swear the oaths of allegiance, receive their assignments and take out their patents like any other settler or be "turned off" their lots "forthwith".¹⁰⁹ On 25 May 1796 Simcoe issued a proclamation cancelling a dozen township grants because the grantees had been selling lots, charging rents, and conducting "many other sinister and illegal transactions" in violation of the government's prerogative.¹¹⁰ The proclamation went on to order that all other grantees of townships must show cause why their grants should not be cancelled before June 1797, and that all settlers who had been assigned lots must take out their patents within six months, "or such lots may be considered as vacant and given to other applicants".

Although the government officially abandoned the township granting scheme in July 1797, it did have some limited success in bringing in settlers.¹¹¹ In October 1796 Richard Duncan asked the Council why township grants were being cancelled despite the fact that he, at least, was living up to his agreement to bring

¹⁰⁸ NA, RG1, L1, Vol. 19, Upper Canada, Executive Council Minute Books on Land Matters, Land and State Book A, pp.73-116.

¹⁰⁹ NA, RG1, L1, Vol.19, Upper Canada, Executive Council Minute Books on Land Matters, Land and State Book A, Order-in-Council of 21 August 1795, p.329.

¹¹⁰ NA, RG1, L1, Vol.19, Upper Canada, Executive Council Minute Books on Land Matters, Land and State Book A, Order-in-Council of 25 May 1796, p.356.

¹¹¹ NA, RG1, L1, Vol.21, Upper Canada, Executive Council Minute Books on Land Matters, Land Book C, Order-in-Council of 3 July 1797, p.119.

in 40 families within four years. The Council replied by accusing him of uttering a "most indecent insinuation" that the government had not lived up to its word, and promptly took away the township he had been granted.¹¹² In June 1797 Asa Danforth, the future road builder, and Aaron Greely submitted a list of 172 heads of families settled in four townships, but this carried no weight with the Council. They, along with all the rest, lost their townships the next month.¹¹³ The Land Committee awarded Danforth and Greely a grant of 1200 acres each in compensation, but when they tried to file caveats with the Attorney General to stop the granting of lots previously under their control, Council had them dismissed and ordered the Attorney General not to accept any more. The Council then accused Danforth of "indecent and impropriety" in trying to use the civil courts to force their hand, and took away his 1200 acres. After apologizing for his indiscretion, Danforth got his grant back six months later. Thus ended the granting of townships in Upper Canada. As Chief Justice Osgoode observed, the township grantees could be dismissed without consequence since they were simply a gang of speculators from "New York the very Nest and Hotbed of Turbulence and Disaffection."¹¹⁴

¹¹² NA, RG1, L1, Vol.20, Upper Canada, Executive Council Minute Books on Land Matters, Land Book B, Minute of 1 October 1796, p.4. Duncan also tried to bribe Smith into helping further a scheme to secure a township using magistrate's certificates and family lands warrants. Gates, *Land Policies of Upper Canada*, p.41.

¹¹³ NA, RG1, L1, Vol.21, Upper Canada, Executive Council Minute Books on Land Matters, Land Book C, Minute of 17 June 1797, pp.77-82. *Ibid.*, Land Book D, Minute of 2 January 1799, p.240 and Minute of 16 March 1799, p.291.

¹¹⁴ William Colgate, "Letters from the Honourable Chief Justice William Osgoode," *Ontario History*, vol.46, (1954), p.98. Gates, *Land Policies of Upper Canada*, p.40.

Between 1783 and 1796 the migration of Revolutionary War refugees into the territory that became Upper Canada forced the British Imperial government to develop a system of Crown land distribution. On the one hand it sought rapid settlement and effective, accountable administration. On the other it tried to restrict access to the loyal and the industrious. This difficult balancing act led the government to maintain its monopoly over land granting and to disband the rudimentary local administrations initially established in the districts. While this allowed for the more effective administration of policy it also made life more difficult for the ordinary settler. In the new province of Upper Canada the executive government alone alienated, regulated and administered Crown land and it did so out of the new town of York.

While the Imperial government established land granting policies and regulations it also wrestled with the problem of financing the colonial administration. With the experience of the Stamp Act crisis, the Townsend duties and the loss of the thirteen colonies behind them, the British government faced a difficult situation. The Quebec Revenue Act with its taxes on trade failed to produce the funds necessary for the support of government in Quebec and to an even greater extent in distant York.¹¹⁵ The Constitutional Act of 1791 and its accompanying Royal Instructions provided the means for raising revenues from Crown lands, but as we shall see in the next chapter, the plan did not live up to expectations, nor did the expedients adopted to correct the errors.

¹¹⁵ Burt, *The Old Province of Quebec*, Vol.II, p.182-6.

Chapter Two

Financing the Administration

In the spring of 1787 sixteen leading members of the recently surveyed townships along the north shore of Lake Ontario addressed a petition to Governor Lord Dorchester. This group of Loyalist officers, newly appointed Justices of the Peace and pioneer merchants assured the Governor that,

It is the confirm'd opinion of your Petitioners from the fullest conviction, that if the blessings of the British Constitution was extended to this infant Settlement, and their Lands granted according to English Tenures, such a change wou'd produce many happy effects, among the rest to augment the happiness of the People, to strengthen the bands, as well as the Interest of Government, to give Spur to Industry, to population and Commerce and damp the hopes, and the expectations of their enemies;...¹

Four years later British Imperial authorities granted their prayers with the Constitutional Act of 1791. The ancient seigneurial system with its obligations and restrictions, and its sense of communal cohesiveness, would not be imposed on the loyal refugees huddled along the shores of Lake Ontario. Instead, a new colony was to be staked out in the vast timberlands west of the Ottawa River. In consequence, however, colonial administrators had to come to grips with the

¹ *Constitutional Documents, 1759-1791*, Petition of the Western Loyalists, 15 April 1787, p.949.

familiar, if intractable, problem of how to finance government in an infant, agricultural colony, one where land itself was the only substantial resource at hand. In the end they rejected means that had worked in the past and experimented with an untested model that ultimately proved inadequate, cumbersome and politically contentious.

The Constitutional Act of 1791 established the two most important features of the new province's social fabric; a British Imperial form of colonial government, complete with a bicameral legislature and an independent executive, and an English system of land tenure, which confirmed individual rights to the soil. Clause 43 of the Act specified that all lands to be granted within the new province of Upper Canada would be held "in Free and Common Soccage, in like Manner as Lands are now holden in Free and Common Soccage, in that Part of Great Britain called England".² Clause 44 allowed those settlers who held their grants under licence of occupation in *fief et routure* -- the technical term for land held under the seigneurial system -- to surrender them for "fresh grants" in free and common soccage. Henceforth, land ownership in Upper Canada would be based on the modern, individualistic, commodified system of free-hold that had developed in Britain and its colonies in North America.³

² *Ibid.*, Constitutional Act of 1791, p.1048. Soccage tenure became general in England during the reign of Charles II, in 1672 (12 Car. 2, Cap. 24).

³ Gordon S. Wood, *The Radicalism of the American Revolution* (New York, Alfred A. Knopf, 1992) p.269.

The land tenure system established in Upper Canada had its roots in England's distant feudal past. Like the seigneurial system, it was based on the fundamentally feudal concept of *nulle terre sans seigneur*.⁴ By the end of the eighteenth-century, however, soccage tenure, or free-hold as it came to be called, had shed its earlier feudal restrictions.⁵ It was 'free' in the sense that land remained both heritable and alienable without the imposition of restrictions or mutation fines. It was 'common' in the sense that these rights of descent and conveyance, along with others such as protection from trespass, were secured for all British subjects by statute and enforced by the power of the state. Nevertheless, grants in soccage tenure continued to require both fealty and a fixed rent. Fealty was the bond between King and subject affirmed by the oath of allegiance to the Crown. Rents, most often called quit-rents, were the symbol of the King's territorial proprietorship, although in Britain they usually involved nominal monetary considerations. In North America the quit-rent system developed into a form of land tax with annual payments ranging from a minimal 30d per 100 acres in Nova Scotia to a substantial 4s per 100 acres in Georgia.⁶ The administering and registration of oath-taking became part of the normal administrative procedures of

⁴ Beverly Bond, *The Quit-Rent System in the American Colonies* (Mass: Yale University Press, 1919). Introduction by Charles M. Andrews, pp.11-23.

⁵ For a brief overview of the various land holding systems that emerged in eighteenth century America see Marc Egnal, *Divergent Paths: How Culture and Institutions Have Shaped North American Growth*, (New York: Oxford University Press, 1996), Chapter 3, "Peasants and Freeholders".

⁶ *Ibid.*, p.32.

the Land Granting Department, and took up little more than clerk-time and docket book space. The fate of the quit-rent system, however, had far more serious consequences because it involved one of the principal means by which the land granting administration in particular, and the government in general, was to be financed.

The abandonment of quit-rents as a means of raising revenue, and the creation of the Crown and Clergy reserves instead, resulted from ignorance, neglect, and sanguine expectations of rapid development. Throughout the seventeenth and eighteenth centuries quit-rents had been collected in all British American colonies, outside of New England.⁷ As part of the British attempt to reorganize colonial finances after the Seven Years War, the Imperial government reformed the quit-rent system in a number of settlements, occasionally with considerable success. Several colonies adopted local, county-based administrative offices, established land ownership registries, and hired collection officers. Virginia and Maryland had been particularly successful in creating an effective administration. Rates proved to be moderate, collection regular, and payment almost universal. By 1775 the Virginia government received between £3500 and

⁷ In the establishment of Georgia in 1755, the last Royal administration created before the revolution, a quit-rent of 4s per 100 acres was imposed on all landholders. As late as 1780, the still loyal Georgia Assembly were willing to concede the right to the Crown as long as the revenue was appropriated for the use of the colony. The Puritans of New England were the first to outlaw quit-rents (Massachusetts Bay in 1641), and the first to develop an allodial form of tenure. As George Fenwick, a gentleman settler in Saybrook, declared, "we must all here be independent and supreme lords of our own land." Ironically, neighbouring New York was the last state to abolish quit-rents, in 1846. Bond, *The Quit-Rent System*, pp.353, 38, 284.

£4000 stg. annually. The Imperial government conceded the issue of local control of revenues, the most wide-spread objection to the system, in 1783 when Jamaica successfully passed a quit-rent act that created what amounted to a modern form of municipal property tax.⁸

Despite sharing a general repugnance of taxation common among most North American settlers⁹, leaders of the new Loyalist settlements in Upper Canada willingly accepted the imposition of quit-rents. Their numerous petitions on the land granting system show that they considered the "King's Rent" a just obligation under socage tenure.¹⁰ They opposed the foreign and much more restrictive seigneurial system. Indeed, the British government, now of like mind, proved willing to lessen the burdens associated with seigneurial encumbrances. In the early 1770's Lord Shelburne proposed a scheme for settling western lands that eliminated mutation fines and restrictions on transfers, reduced rents to 2 shillings per 100 acres, exempted payment for the first 15 years, and applied the funds raised to the "contingencies" of local government.¹¹ Quite correctly, however, Lord Shelburne considered quit-rents to be the most readily available source of public

⁸ *Ibid.*, pp.444 and 367.

⁹ During its first session in 1793 the Legislative Assembly debated a small land tax but ultimately rejected the measure. This began a decades long struggle over land taxes in the province. Craig, *Upper Canada: The Formative Years*, p.28. Gates, *Land Policies of Upper Canada*, Chapter 10.

¹⁰ *Constitutional Documents, 1759-1791*, Letters from the Magistrates at Cataraqui, and Osewagatchee, and Petition from the Western Loyalists, pp.942, 945, 949.

¹¹ Bond, *The Quit-Rent System*, p.372. After 1763 quit-rents in Quebec had been set at 50d per 100 acres. In Nova Scotia they had been reduced to 30d per 100 acres.

revenue in these new, land-locked communities of subsistence farmers.

The Royal Instructions given to Lord Dorchester in 1786 specifically directed him to establish "a proper and effectual Method of collecting, receiving and accounting for Our Quit Rents", and authorized him to draw up an enabling ordinance if he thought it necessary.¹² Dorchester, however, was reluctant to address the matter until the issue of land tenure had been resolved. In a letter to Lord Sydney the following summer, he advocated the change in tenure and recommended that no quit-rents be imposed on grants of less than 1000 acres. Quit-rents on smaller holdings, he argued, created an unnecessary source of discord between the government and the people. Dorchester also recognized, as others had before him, that quit-rents reduced speculation by, as he observed, acting "as a check on large grants to persons who never mean to cultivate or improve".¹³ This point seemed to have been lost on the ministers at Whitehall. In September 1788 Lord Sydney informed the Governor that lands would be granted in free and common soccage, and that quit-rents would be remitted for the first ten years. He mentioned no provisions for large grants. Sydney's directives followed a plan devised by William Knox, the Under Secretary of State for the Colonies during the 1780's. This scheme did not focus on generating government revenues, but rather

¹² *Constitutional Documents, 1759-1791*, Instructions to Lord Dorchester, 23 August 1786. p.832.

¹³ *Ibid.*, Dorchester to Sydney, 13 June 1787, p.947.

the reservation of a land endowment for the support of the Protestant Clergy.¹⁴ In fact, Knox's plan ignored entirely the more general problems of speculation.

Unfortunately for the future settlement of Upper Canada, Lord Dorchester also suggested that one sixth of each township be reserved in order to "enable His Majesty to reward such of His provincial Servants as may merit the Royal favour". The Governor did not elaborate on his intentions. He made no mention of whether such reserved lands could be used to supplement the remuneration of public servants in a cash-scarce frontier province or act as rewards for particular services to the Crown. He simply observed that such reserves would provide a source of patronage and "enable the Crown to create and strengthen an Aristocracy".¹⁵ Nevertheless, colonial officials in London took up the scheme rather than the quit-rent plan suggested by Shelburne.

In June 1789, Lord Grenville became Secretary of State for the Home Department and the Colonies. By this point the Pitt administration had decided to do away with quit-rents altogether. Grenville still had to face the problem of how to finance new colonial governments, a situation made all the more pressing because Lord North's Colonial Tax Repeal Act forbade the imposition of direct

¹⁴ *Ibid.*, Sydney to Dorchester, 3 September 1788, p.957. Wilson, *The Clergy Reserves of Upper Canada*, p.9. Gates, *Land Policies of Upper Canada*, p.22.

¹⁵ This followed a plan first proposed by Governor Francis Bernard of Massachusetts in 1774. Bernard wrote, "A nobility appointed by the King for life, and made independent, would probably give strength and stability to the American governments, as effectually as an hereditary nobility does to that of Great Britain." David Hackett Fischer, *Albion's Seed: Four British Folkways in America* (New York: Oxford University Press, 1989), p.826.

taxes.¹⁶ In October 1789 Lord Grenville took up Dorchester's idea of creating reserves. They were no longer to be a source of patronage for Royal favourites, he wrote to the Governor, but rather a means of creating "a certain and improving Revenue" for the use of government.¹⁷ An unsigned report, accompanying the letter, outlined the plan. The author observed that, in Pennsylvania, the Penns successfully created valuable property for themselves by reserving lots in the middle of each settlement. If the Crown did the same thing in Upper Canada, the author argued, the results would provide "the best grounds of establishing, in Canada, a form of Government well adapted to promote the prosperity of that province, & free from the errors which have prevail'd in the Constitution of the antient Colonies."¹⁸ Government revenues would be generated by the sale of such

¹⁶ The Act, 18 Geo. II, Cap.12, passed in 1778, proclaimed the supremacy of Parliament, while at the same time forbade the levying of direct taxes in the colonies.

¹⁷ *Constitutional Documents, 1759-1791*, Grenville to Dorchester, 20 October 1789. p.970.

¹⁸ *Ibid.*, Discussion of Petitions and Counter Petitions Re Change of Government in Canada, p.986. The authorship of this report remains in question. Lillian Gates, in *Land Policies of Upper Canada*, p.161, suggests that it was written by then Quebec Chief Justice William Smith. Her only evidence is that, in his Report, Lord Durham attributed the proposal to the President of the Executive Council, William Smith, but the comment was made in passing. It may have been that the paper was simply in the President's files. Gates also argued that it was in 'consonance' with Smith's ideas. It is true that Smith had no love for quit-rents -- as Chief Justice of New York he submitted an official objection against that province's 1755 Quit-Rent Act -- but Smith lived in America, while the author clearly did not. On several occasions the author uses the phrase "we here at home...". Smith was too well versed in colonial government to make many of the errors contained in the report. Alan Wilson, in *The Clergy Reserves of Upper Canada*, p.3, suggests William Knox as the author. Knox lived in England alright, but he had argued that quit-rents were necessary in a new colony. That they are not mentioned in the report is clearly inconsistent, particularly, as Wilson himself points out, the concerns of the author were 'primarily financial'.

lands and receipts would increase as the colony developed. Moreover, such revenues would not be under the control of local assemblies. The author, however, misunderstood, or ignored, several crucial points, not the least of which was the fact that Penn's reserves became a major source of discontent in pre-Revolutionary Pennsylvania. He also seemed to have been completely unaware of the revenue potential of a quit-rent system. He made no mention of the fact that it had been successful in other American colonies. More importantly, as Dorchester himself again pointed out, quit-rents were still needed on large tracts of land to prevent speculation. Such rents could also provide immediate revenue for support of the civil administration, something which the reserves could not do.¹⁹

By this time a bill to divide the province of Quebec had been prepared and presented to Parliament. Although the Constitutional Act of 1791 made no mention of quit-rents specifically, Imperial authorities decided to create a two-part reserve system for the financial support of Church and State.²⁰ Why they took this course of action remains somewhat of a mystery. At the behest of the King, Parliament created the Clergy reserves with the Constitutional Act.²¹ The Crown established

¹⁹ *Constitutional Documents, 1759-1791*, Dorchester to Grenville, 8 February 1790, p.1004.

²⁰ Quit-rents were not formally abolished in Upper Canada until 1831. Gates, *Land Policies of Upper Canada*, p.173.

²¹ *Constitutional Documents, 1759-1791*, p.1030, n.1, and p.1044, n.3.

its reserves by special instructions issued to Lord Dorchester in September 1791.²²

Lillian Gates has suggested that the reason why they were not addressed in the Act was that such a policy could not be "openly avowed" in the heated political environment of the early 1790's.²³ While this may be true, it tells us little about why the policy was adopted in the first place. Quit-rents may have been seen by some British parliamentarians as dangerous feudal relics, but whatever the reason for their rejection, administrators such as Lord Grenville and his under-secretary Charles Jenkinson became convinced that a new approach to colonial governance, and to its financing, was necessary in order to avoid a further loss of Imperial possessions.²⁴ Lord Dorchester too became convinced of the need for change. In a 1793 letter to Henry Dundas he forcefully argued that "The Policy which lost those great provinces can not preserve these scattered and broken Fragments

²² As mentioned in Chapter One the Crown reserves were not created by the Constitutional Act of 1791. All unalienated land remained the exclusive property of the Crown, to do with as it saw fit. Their creation was directed by the Instructions given to Lord Dorchester on 16 September 1791. *Constitutional Document, 1791-1818*, p.59. The Clergy reserves required legislative enactment because they were grants allotted to a specific entity, the Protestant clergy, and appropriated for a specific purpose, the financial support thereof. All grants of land, regardless to whom they were made, followed the same legal procedure. All grants were authorized by statute, in this case the Constitutional Act, and were conveyed by orders-in-council, the legal means through which the provisions of the statute were enacted. This was based on the principle of the supremacy of King in Parliament over all corporate or individual entities, including the church, and it remains one of the fundamental principles on which the Canadian state rests.

²³ Gates, *Land Policies of Upper Canada*, p.160.

²⁴ Wilson, *The Clergy Reserves of Upper Canada*, p.9.

which remain."²⁵ Nevertheless, by replacing Imperial taxes and quit-rents with the Crown and Clergy reserves one set of irritants took the place of another. Stamp taxes, internal trade duties and other direct taxes were clearly no longer viable in the American colonies, but previous experience with quit-rents in Jamaica and elsewhere had shown that they could produce increasing revenues, control speculation, and be convertible into a general property tax. Colonial officials, however, disregarded this experience and imposed the reserve scheme without any clear articulation of how it could raise revenues, particularly in the short term. It may be that Royal officials had little more in mind than heeding Lord Dorchester's advice that the "Smallest Cause of discord between the King's Government and His people" be removed in order to make settlement in the remaining British provinces as attractive as in the colonies to the south.²⁶ In other words, avoid the irritation of direct taxes and dispense cheap land without attaching bothersome obligations. Immediately this resulted in administrative confusion, growing government deficits and political acrimony. In the long term the scheme crippled the administration's ability to finance itself, made compact settlement all but impossible, and turned the government into the largest land speculator in the province.

The Crown and Clergy reserves became a significant source of political

²⁵ Dorchester to Dundas, 31 December 1793. *Constitutional Documents, 1791-1818*, p.169.

²⁶ *Constitutional Documents, 1759-1791*, Dorchester to Sydney, 13 June 1787, p.947.

discord throughout the Upper Canadian period, contributing in no small way to the unrest of the 1830's.²⁷ Aside from this, the reserve scheme also had important administrative consequences. The new policy required that the reserves be located "within the Township or Parish to which such Lands so to be granted shall appertain or be annexed, or as nearly adjacent thereto as Circumstances will admit", and that each patent specify the creation and location of reserves relative to each grant, or be considered invalid. Secretary of State Henry Dundas remained adamant on this point since it was the key to the whole scheme of creating a large pool of propertied wealth for the use of government. On 2 May 1793 he wrote to Lieutenant Governor Simcoe asking that the plan for locating the reserves be transmitted to him immediately.²⁸ As he made clear, the reserved lots must be of equal quality, and thus equal value, as the lots to be granted to settlers. This made it necessary to develop a system of distributing the reserves within each township before assigning lots. It also made it necessary to produce instruments of conveyance that included the relevant specifications. The Imperial government left provincial officials to decide how this was to be accomplished. The result was delay, confusion and, on occasion, insecurity of tenure.

When surveyors laid out the first townships along the north shore of the St. Lawrence River and Lake Ontario they set aside a number of lots as reserves,

²⁷ In particular see Gates, *Land Policies of Upper Canada*, chapters 12, 15 and 17, and Wilson, *The Clergy Reserves of Upper Canada*.

²⁸ *Simcoe Correspondence*, Vol.I, Dundas to Simcoe, 2 May 1793, p.326.

generally restricted to the corners of the townships, the rear concessions or irregularly shaped parcels along creeks or gullies, referred to as 'gores'. To pioneer farmers such irregular or vacant lots often proved useful. In March 1791 a number of settlers in Augusta and Matilda townships complained to the Land Granting Committee that grants were being made of the reserves, and that this worked "to the great detriment of the public at large".²⁹ When the Land Committee called in Deputy Surveyor General Collins to report on the matter he testified that the farmers were grazing their cattle on the reserved lots, essentially using it as a commons, and that they had no desire to give up the practice. Creating township common lands, however, was not what the government had in mind.

On 7 January 1791 the Executive Council ordered that all grants located on reserved lots were to be considered null and void without compensation, despite whether any improvements had been made and regardless of where the error had originated.³⁰ Such an order proved impossible to enforce as no fixed system of designating reserves had yet been established. In fact, some local officials took steps to avoid designating occupied lots as reserved. The Hesse District Land Board, for example, instructed their surveyor to locate the Crown reserves in the back corners of the new townships specifically to avoid conflicts. As the Board

²⁹ NA, RG1, L1, Vol.20, Upper Canada, Executive Council Minute Books on Land Matters, Quebec Land Book B, Minute of 16 March 1791, Petition of the Settlers of Augusta Township and Deputy Surveyor General's Report, p.270.

³⁰ OA, *Seventeenth Report*, Excerpts from the Minutes of the Executive Council, Upper Canada Land Books A and B, p.152.

members explained to the Land Committee, this "was the only means [they] could fall upon to prevent the ruin of Poor people."³¹

In early 1792 the Land Committee gave acting Surveyor General David W. Smith the task of devising a survey system that would meet the requirements for the reserves set out in the Constitutional Act and the Royal Instructions. His solution, the so-called chequered plan of survey, reserved seven lots in each of the fourteen concessions of a township. He staggered them in relation to one another so that there was always a grantable lot between each reserve. In addition, no lots were to be reserved along the five road allowances running from the front to the back of the township. The concession roads, those running from one side of the township to the other, had fourteen lots along their course that were not grantable. This disperses the reserve lots well enough, but it also created a number of problems. By law settlers performed statute labour in clearing the roads in front of their own lots, but the chequered plan left nearly a third of each concession road unattended. This rendered the roads all but useless. As several petitioners to Simcoe complained, the dispersal of reserve lots throughout each township blocked compact settlement as well.³²

³¹ OA, *Third Report*, Minutes of the Land Boards of the Districts of Hesse and Nassau, Hesse Land Board to the Land Committee, 8 November 1791, p.157.

³² *Simcoe Correspondence*, Vol.II, Simcoe to Grenville, n.d., p.52. OA, *Eighteenth Report*, Excerpts from Upper Canada Land and State Book A, p.28.

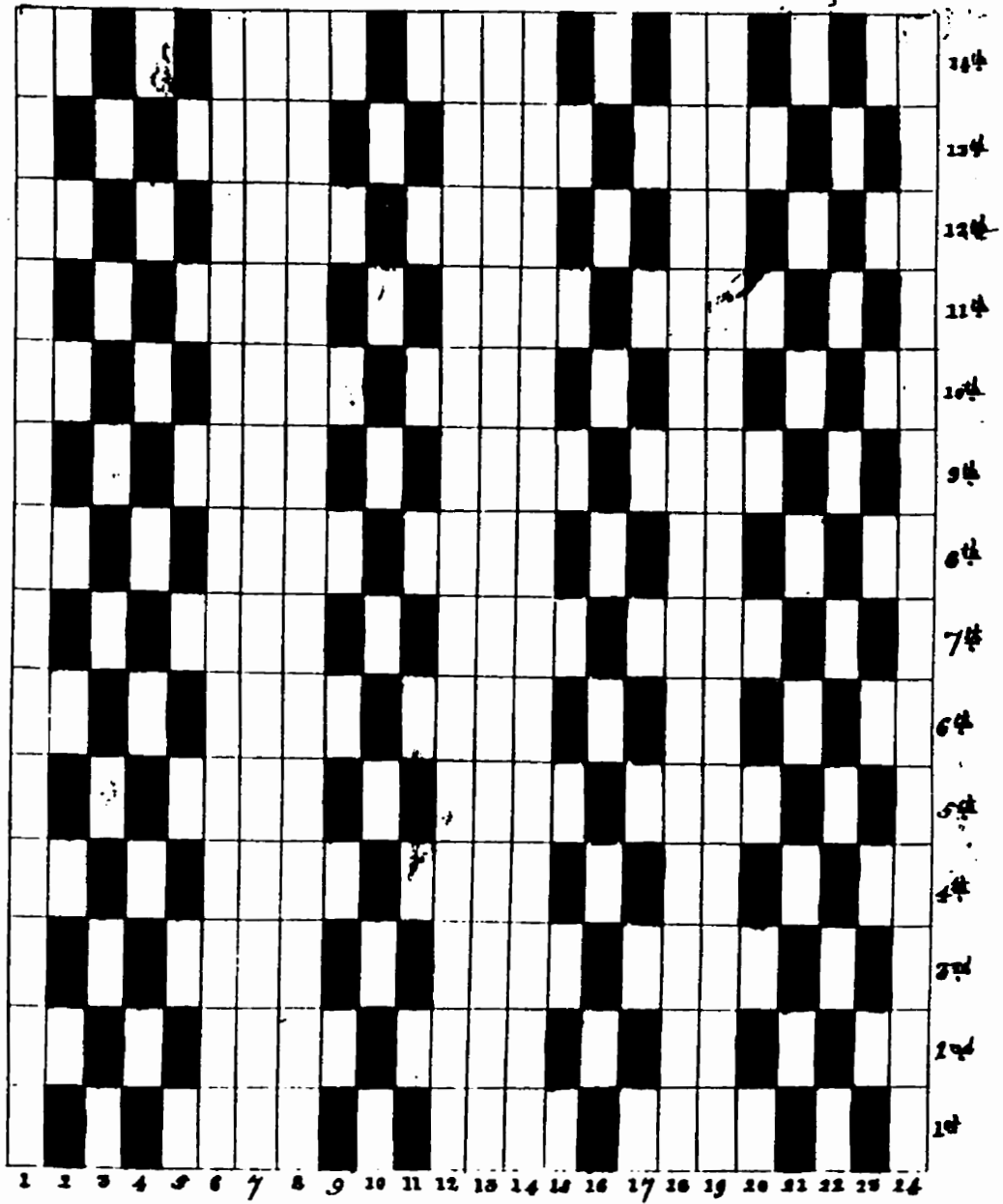


Diagram 2: "The Chequered Plan Discriminating the Reserves of the Crown from those of the Clergy",
(NA, NMC 283).

The petitioners asked that the reserves be located in the four corners of the townships, but the Land Committee denied their requests since such a scheme would not create lots of equal value as those of the township's settlers.

On 15 October 1792 Council officially adopted Smith's plan.³³ Almost immediately the District Land Board commissioners voiced their objections. In December 1792 the "Lower" Lunenburg Land Board argued that the reserve plan would prevent compact settlement. They worried that since it was not imposed on Lower Canada it would have the tendency to draw "monied men" away from the upper province.³⁴ Their counter-parts on the "Upper" Lunenburg Land Board raised the same objections and observed that the chequered plan would "damp the Spirit of Emigration from the States."³⁵ The Mecklenburg Land Board complained that undeveloped reserve lots exposed the settlers to risk of fire, harboured pests, and the uncleared trees casted shade on the farmer's fields.³⁶ The Land Committee, however, ignored their concerns.

The reserve scheme, no matter how well devised, could not generate immediate revenues. Leased government land attracted little interest when outright

³³ NA, RG1, L1, Vol.19, Upper Canada, Executive Council Minutes on Land Matters, Land and State Book A, Order-in-Council of 15 October 1792, p.25.

³⁴ NA, RG1, L4, Vol.16, Upper Canada, Land Boards Minutes and Records, Lunenburg Land Board, Lunenburg Board to the Land Committee, 17 December 1792, p.36.

³⁵ NA, RG1, L4, Vol.14, Upper Canada Land Boards, Minutes and Records, Lunenburg Land Board, Lunenburg Land Board to the Land Committee, 12 February 1793, p.33.

³⁶ NA, RG1, L4, Vol.10, Upper Canada Land Boards, Minutes and Records, Mecklenburg Land Board, Mecklenburg Land Board to the Land Committee, 12 February 1793, p.38.

grants could be easily obtained. To solve the problem the colonial government charged user-fees for the services provided by various government officers, a practice long in use in both England and colonial America. Such a system had been specifically adopted for the purposes of land granting in Nova Scotia in 1764. Simcoe in particular believed that land grants, subject only to administrative fees, would prove more attractive to pioneer settlers than the sales system adopted by the United States. Since the grant system did not raise general revenues for the use of government the cost to the settler would be lower.³⁷ Rather, the government intended that the Crown reserves, through either sale or lease, would provide general revenues, while fees provided immediate remuneration for the officers involved in passing grants through to patent.³⁸ Simcoe also intended fees to cover the operating costs of the various administrative offices. This, he hoped, would relieve the financial burden on the British treasury by reducing the amount spent on salaries.

The establishment of an authorized table of fees, however, proved to be a lengthy and contentious process, in part because some Upper Canadian

³⁷ Malcolm J. Rohrbough, *The Land Office Business: The Settlement and Administration of American Public Lands, 1789-1837* (New York: Oxford University Press, 1968) p.6.

³⁸ *Simcoe Correspondence*, Vol.III, p.265-7. In the 1788-9 fiscal year the civil administration of the province of Quebec cost the British taxpayers £18,888 stg. NA, RG1, E1, Vol.45, Lower Canada, Executive Council Minutes on State Matters, State Book F, p.117. A.L Burt estimated that, for the years 1780 to 1790, the civil government of Quebec cost the British treasury some £180,000. Burt, *The Old Province of Quebec*, Vol.II, p.192.

administrators were determined to use the fee system to augment their personal incomes as much as possible. Although most office-holders received a salary few considered it adequate compensation for their efforts or enough to maintain social respectability.³⁹ In April 1792, Simcoe himself served notice that "I shall not think myself warranted to give up any fee that may be legally allowed me..."⁴⁰

There is perhaps no more complex and confusing aspect of early Upper Canadian administrative history than the land grant fee system. In twenty-five years there were eight major changes in the fee structure, and at least six minor revisions.⁴¹ Fees charged on land grants proved to be an important source of remuneration for the officers involved in issuing patents and after 1798 an expected source of general revenues for the Crown. The amount of fees charged represented the real cost of land granted in the province. As the early Executive Councillors realized, settlers would not consider the province if fees were too high, simply because high quality land could be obtained by anyone just south of the border. Competition for settlers only increased with the development of the American land sales system in the 1790s and the creation of large commercial

³⁹ *Russell Correspondence*, Vol.III, Russell to Hugh Hood Farmer, 31 January 1799, p.71.

⁴⁰ *Simcoe Correspondence*, Vol.I, Simcoe to Dundas, 28 April 1792, p.143. Governors Dorchester and Haldimand had renounced their portion of the land fees. As Lillian Gates observed, Simcoe responded with more than a touch of asperity when asked if he would do the same. Gates, *Land Policies of Upper Canada*, p.62.

⁴¹ NA, RG1, L7, Vol.73, Upper Canada, Executive Council, Miscellaneous Records, Standing Orders.

operations in the Ohio and Genesee districts.⁴² The price of land in the United States varied considerably over time, but it generally remained more expensive than in Upper Canada. For example, the United States Land Act of 1804 set the price per acre at \$1.64 with the purchase of 160 acres. At \$5 to the £ this came to just over £52. In Upper Canada 200 acres could be had for £8.4.1. The American Federal government and private land companies, however, increasingly began to offer liberal credit arrangements which offset the Canadian advantage.

Before the introduction in 1798 of an extra charge designed to raise general revenues, the government collected fees for two purposes. One provided funds for the operations of the various offices involved in the distribution and patenting of land grants, including the purchase of materials such as stationary, printed forms, parchment and writing instruments and necessities like candles for illumination and cordwood for heating. The other supplemented the remuneration given to the principal officers of the Land Granting Department. As Lieutenant-Governor Maitland pointed out in 1826 when discussing the new sales system, the "principal difficulty" to such a change was that the officers of the department "derived considerable emoluments" from the fees on land patents, "forming in fact their chief support".⁴³ Doing away with fees significantly reduced their incomes.

⁴² Rohrbough, *The Land Office Business*, p.11. R. Douglas Hurt, *The Ohio Frontier: Crucible of the Old Northwest, 1720-1830* (Bloomington: Indiana University Press, 1996) Chapter 6.

⁴³ NA, MG11, Vol.378, Colonial Office 42: Upper Canada, Original Correspondence: Secretary of State, Maitland to Bathurst, 25 July 1826, p.15.

Unfortunately we cannot calculate the gross amount of revenue collected through fees annually by the various officers of the Land Granting Department before the War of 1812. Complete records are not extant. Nor is it possible to determine the percentage of collections spent on office operations versus what the officers themselves received. Some information for the post-war years, however, does exist. The first reliable amounts recorded are for the Surveyor General in the 1810s. The 1821 Blue Book of Statistics for Upper Canada records that over the previous five years he received £300 in salary and an average of £400 in fees each year.⁴⁴ He shared this income from fees with his Senior Surveyor and First Clerk, but not with the rest of the office staff. In the case of the Surveyor General's office, a separate fee levied on each grant covered the cost of surveys.⁴⁵

The Royal Instructions issued to Lord Dorchester in 1786 set the salaries for the principal civil officers, and they did not change substantially over the next forty years.⁴⁶ The Crown paid salaries out of funds drawn from territorial revenues, duties raised under the 1774 Quebec Revenue Act and the annual Parliamentary grant.⁴⁷ The Provincial Secretary and the Receiver General each received £400 stg. per annum, the Attorney General and Surveyor General £300 per annum, the

⁴⁴ NA, RG1, E13, Vol.1, Upper Canada, Blue Book of Statistics, 1821, pp.58-62.

⁴⁵ See Chapter 6 for details of the Surveyor General's Office.

⁴⁶ *Constitutional Documents, 1759-1791*, Instructions to Lord Dorchester, 23 August 1786, p.836.

⁴⁷ *Constitutional Documents, 1759-1791*, Quebec Revenue Act, 3 Geo. III, cap.88, pp.576-9.

Surveyor of Woods £200 and the Clerk of the Council £100. Such salaries placed the officers of the Land Granting Department well within the "respectable class" defined by historian Peter Russell.⁴⁸ As Russell points out, incomes in excess of £150 per year allowed for the keeping of a substantial household, including a number of servants. This placed government officers on a level equivalent to an established well-to-do Upper Canadian farmer. An income of over £400 placed one on the same footing as the large merchants. By English standards all the officers were well within the middle-class.⁴⁹ Inflation, however, eroded the value of the officers salaries.⁵⁰ Income from fees made up much of the loss but this source became increasingly unstable as the War of 1812 approached. The variability in the number of patents issued made the setting of fee rates all the more important to the administrators. They could not be so high as to drive away settlers but they had to be high enough to make one's post worthwhile.

In November 1792 the Upper Canadian administration received orders from Secretary of State Dundas to adopt the Nova Scotia table of fees for officers of the Land Granting Department.⁵¹ On 19 July 1793 the Land Committee considered the

⁴⁸ Peter A. Russell, *Attitudes to Social Structure and Mobility in Upper Canada, 1815-1840* (Queenston: Edwin Mellen Press, 1990) p.77.

⁴⁹ Leonore Davidoff and Catherine Hall, *Family Fortunes: Men and Women of the English Middle Class, 1780-1850* (Chicago: University of Chicago Press, 1987) p.23.

⁵⁰ David Hackett Fischer, *The Great Wave: Price Revolutions and the Rhythm of History* (New York: Oxford University Press, 1996) p.120.

⁵¹ NA, RG1, L1, Vol.19, Upper Canada, Executive Council Minute Books on Land Matters, Land and State Book A, Dundas to the Executive Council, 24 November 1792, p.46.

table. At this meeting the Committee, composed of Chief Justice William Osgoode, Receiver General Peter Russell, James Baby and Alexander Grant, resolved that the Nova Scotia fees on land grants not be adopted because they "are so high that it is apprehended they might operate as a check upon population in this distant province."⁵² The committee then asked their clerk to send for the Lower Canada table in the hope that it might prove more appropriate. The government of the lower province, however, had yet to establish a fee table for land grants made in free and common soccage.⁵³ This delayed the process for a full year and it was not until 6 July 1794 that the Lieutenant-Governor and the Executive Council considered the first detailed schedule of fees on land grants.⁵⁴

Despite orders to the contrary, the first table of fees established by Simcoe bore little relation to the Nova Scotia table. The Nova Scotia table listed four separate charges on ordinary grants of up to 500 acres: 10s for the title deed, £1 for the Provincial Secretary, 10s for the Surveyor General and 2s 6d for the Registrar for a total of £2.2.6. The first Upper Canadian table amounted to a far more complex affair.⁵⁵ It divided grants into five classes according to the number

⁵² NA, RG1, L1, Vol.19, Upper Canada, Executive Council Minutes on Land Matters, Land and State Book A, Minute of 19 July 1793, p.108.

⁵³ This had been the practice since 1783. NA, MG11, Vol.187, Colonial Office 42: Despatches, Supp. II, no.7, Additional Instructions to General Haldimand, 16 July 1783, n.p..

⁵⁴ OA, *Eighteenth Report*, Excerpts from Upper Canada Land and State Book A, Order-in-Council of 6 July 1794, p.82.

⁵⁵ OA, *Eighteenth Report*, Excerpts from Upper Canada Land and State Book A, Table of Fees, p.108-9.

of acres (200 and under, 200 to 400, 400 to 800, 800 to 1200 and over 1200). Basic fees ranged from £4 for the first class to £10.14.2 for the fifth class. The table divided fees between eight different officers of the Land Granting Department -- the Lieutenant-Governor, the Provincial Secretary, the Receiver General, the Clerk of the Council, the Surveyor General, the Attorney General, the Lieutenant-Governor's Secretary, and the Surveyor General of the Woods. This covered the officers of the Executive government; a series of additional fees provided for the local and junior officials -- 1s for the magistrate administering the oath, 1s 6d for the deputy surveyor, 1s "for the assignment" from the Provincial Secretary, and an additional 6s 6d to the Clerk of the Council for entering the petition in the Council book and issuing a licence of occupation. Full fees on a 200 acre grant totalled £4.10.0, considerably higher than the £2.2.6 ordered by the Secretary of State.⁵⁶

Simcoe sent the table of fees off to London for confirmation, only to have it rejected by Lord Portland, the new Secretary of State. In a stern reply Portland instructed the Upper Canadian government to adhere to the Nova Scotia table, a copy of which had been recently forwarded by Lord Dorchester.⁵⁷ Three days later

⁵⁶ NA, RG1, L1, Vol.19, Upper Canada, Executive Council Minutes on Land Matters, Land and State Book A, Minute of 6 November 1794, p.221.

⁵⁷ NA, RG1, L1, Vol.19, Upper Canada, Executive Council Minutes on Land Matters, Land and State Book A, Portland to Simcoe, Minute of 3 July 1795, p.254. Clearly concerned with the proceedings of establishing a fee schedule, Lord Portland wrote that the table sent to him was "not at all conformable to the Legal Table of Fees established for the Province of Nova Scotia". He ordered that it was to be this table "which you will consider as your guide in amending the [Upper Canadian] Table." NA, RG 7, Vol.73, Upper Canada, Executive Council, Miscellaneous Records, Standing Orders, p.4.

the Executive Council drew up a new table of fees that set the rate on a 200 acre grant at £2.9.2 plus an additional 15s for the licence of occupation. Council pointed out that the addition should go to the Clerk of the Council rather than the Provincial Secretary since the former actually did the work of issuing conveyances.⁵⁸ When Simcoe reviewed the new table on 21 July, he rearranged the distribution of fees and added an audit fee to be given to the Receiver General. This increased the total to £2.18.6.⁵⁹ 'Provincial' fees raised the total amount charged to £5.9.8. This table was then sent off for authorization.

On 6 January 1796 Portland's reply arrived; once again he rejected the proposed table. Simcoe reacted by placing the blame on Lord Dorchester who he claimed had sent him an erroneous Lower Canadian table.⁶⁰ Although it is impossible to judge the veracity of this charge, it is unlikely Dorchester would have advocated increased charges when he objected to the fee system altogether.⁶¹ Nevertheless, a third table of fees drawn by the Lieutenant-Governor-in-Council reduced the basic charge to £3.7.8. This schedule proved acceptable to the Colonial Secretary because, as the Land Committee explained, it confined itself

⁵⁸ NA, RG1, L1, Vol.19, Upper Canada, Executive Council Minutes on Land Matters, Land and State Book A, Order-in-Council of 6 July 1795, p.262,

⁵⁹ NA, RG1, L1, Vol.19, Upper Canada, Executive Council Minutes on Land Matters, Land and State Book A, Order-in-Council of 21 July 1795, p.271.

⁶⁰ T.D. Regehr, "Land Ownership in Upper Canada, 1783-1796: A Background to the First Table of Fees", *Ontario History* (1963) p.45.

⁶¹ *Constitutional Documents, 1791-1818*, Dorchester to Dundas, 31 December 1793, p.169.

to the "Standard of the Quantum" of the Nova Scotia table while adding to the list the additional offices included in the Lower Canada table.⁶²

The matter did not end there, however, because Portland authorized the imposition of an additional fee to cover survey costs in order that no "National expense" be incurred. Although Portland did not suggest a rate, acting Surveyor General Smith recommend a fee of £1.8.4 per 200 acre grant.⁶³ This proved acceptable to Council, and, after receiving a petition from their clerk, John Small, an additional "incidental" fee of 5s 8d was added to the total.⁶⁴ At the end of 1796 the total fees on a grant of up to 200 acres amounted to £5.1.2.

Provincial Administrator Peter Russell and the Executive Council amended the fees in July 1797 and again in February 1798. Later in October 1798 they reduced the survey fee to £1.7.6, but the overall amount increased to £5.11.0. This was the total amount distributed to the various officers involved in granting lands. It remained the same for the next two and a half decades.

⁶² NA, RG1, L1, Vol.19, Upper Canada, Executive Council Minutes on Land Matters, Land and State Book A, Minute of 27 June 1796, p.368.

⁶³ *Simcoe Correspondence*, Vol.IV, Report of a Committee of the Executive Council, 19 June 1796, p.308. This charge was padded somewhat since only a month later Smith reported to the Land Committee that it would cost 20 shillings per 200 lot to survey the township of Whitby. NA, RG1, L1, Vol.20, Upper Canada, Executive Council Minutes on Land Matters, Land Book B, p.138.

⁶⁴ NA, RG1, L1, Vol.20, Upper Canada, Executive Council Minutes on Land Matters, Land Book B, Minute of 8 October 1796, p.27. On the same day William Jarvis, the Provincial Secretary, complained to Council that his fees did not cover the cost of employing a clerk to do the copy work. Council replied that they could not increase his fees without special authorization, but appropriated £40 out of general revenues in order that he could hire an assistant. *Ibid.*, p.25.

Full fees paid on a 200 acre land grant in Upper Canada.⁶⁵

Date of Imposition	Rate of Fees
6 July 1794	£4.10.0 Hfx.
6 January 1796	£3.7.8 Hfx.
10 July 1797	£1.6.2 stg.
12 Feb. 1798 (survey)	£1.7.6 Hfx.
25 October 1798	£5.11.0 Hfx. (total)
9 January 1804	£8.4.1 Hfx.
5 January 1819	£16.17.6 stg.
1 January 1820	£30.0.0 stg.
31 January 1824	£16.17.6 stg.

The escalation of fees in 1804 reflected the government's determination to raise general revenues from land granting. The new fee levels meant that on a 200

⁶⁵ The amounts are taken from the official list of fees recorded in NA, RG1, L7, Vol.73, Upper Canada, Executive Council, Miscellaneous Records, Standing Orders, n.p.. At times fees were calculated in sterling rather than Halifax currency. Since sterling was more expensive the difference added 11% before 1820, and 21% between 1820 and 1826 to the actual cost of the grant. The amounts turned over to government officers, however, were always noted in the official records as paid in Halifax currency.

acre grant £2.13.1 Hfx. went to pay for expenditures other than those related to land granting. This effectively turned the grant system into a land-purchasing system in everything but name.⁶⁶ The share of the fees turned over to the land officers remained at the level established in 1798, a total of £5.11.0 Hfx.. These were distributed as follows:⁶⁷

Lieutenant-Governor	£1.1.0
Provincial Secretary	£0.12.6
Registrar	£0.12.6
Clerk of the Council	£0.12.6
Surveyor General	£1.7.6
Surveyor of Woods	£0.5.0
Attorney General	£0.12.6
Receiver General	£0.7.6

Loyalists and military claimants, meanwhile, remained exempt from all fees whatsoever. Aside from adding to the workload of the various officers of the Land

⁶⁶ Gates, *Land Policies of Upper Canada*, p.153.

⁶⁷ NA, RG5, A1, Vol.40, Upper Canada Sundries, Civil Secretary's Correspondence, Surveyor General Ridout's Report of 22 August 1819, p.18860.

Granting Department who had to determine the status of each applicant, this placed additional strains on province's resources. One half of the fees normally charged on each grant was paid to the officers out of the contingency accounts of the Crown revenues.⁶⁸ The government assumed that this would cover the cost of office expenses. The officers themselves, however, received nothing. The fee exemption proved necessary both because it had been a long-standing promise of the Royal government and because, as Dorchester realized, Loyalists were unlikely to maintain their loyalty without some sort of material compensation.⁶⁹ They constituted the first line of defence against the republic to the south, and their inducement for such services had to be free land, not, as Simcoe was wont to argue, the benefits of the British constitution. This largesse on the part of the Crown cost the Upper Canadian government the revenues on 3,300,000 acres of land. Historian Lillian Gate's calculates the total loss to be £75,000.⁷⁰

The Loyalists who petitioned Lord Dorchester in 1787 got the English land tenure they demanded. They correctly predicted that free and common socage would help produce a loyal community and a thriving agricultural economy. Such an economy, however, took decades to develop and for many years the

⁶⁸ NA, RG1, L7, Vol.73, Upper Canada, Executive Council, Miscellaneous Records, Standing Orders, p.3.

⁶⁹ The fee exemption was included in the Additional Royal Instructions given to Governor Haldimand, 16 July 1783. *Constitutional Documents, 1759-1791*, p.730.

⁷⁰ Gates, *Land Policies of Upper Canada*, p.20.

government raised little revenue from taxes on trade. This, along with the abandonment of quit-rents, forced colonial administrators to devise other means of generating revenues both for the support of their officers and for other Crown expenditures. This resulted in the creation of the Crown and Clergy reserves and the imposition of land grant fees. The reserves proved to be of no immediate use since their value depended on contiguous and extensive settlement. Leasing presented a foolhardy alternative in a pioneer colony where inexpensive land remained plentiful. In the end the reserves became a perfect target for Reformers determined to seize control of their own affairs and profit by the fruits of their own exertions. The Loyalists also convinced Imperial authorities to live up to their promise of free land. This compromised the provincial government's ability to finance itself through fees charged on grants since their claims, extending through the second generation, made up a large part of the land business. In the end circumstances forced the Upper Canadian government to rely on subsidies from Britain. The only options were to hand over control of revenues to the Assembly or abandon the Loyalists by rejecting their claims. The officers of the Crown in Upper Canada could do neither safely. Later, when Imperial administrators restricted the size of British subsidies, and then eliminated them altogether, the Lieutenant-Governor and his Council had no choice but to scramble for new alternatives.

Chapter Three

The Framework of Administration, 1796-1815

In late July 1796 Lieutenant Governor John Graves Simcoe left the province of Upper Canada for the last time. He had been ill for more than a year, suffering from neuralgia and gout. Although sufficient reason for an early departure, he was also a disappointed, discouraged and embittered man.¹ His ambitious plans for the rapid economic, constitutional, religious and educational development of Upper Canada had been frustrated. A practical-minded Lord Dorchester gave him neither the financial resources nor the manpower he demanded. Secretary of State Henry Dundas and the Pitt government, meanwhile, failed to sanction his plans for attracting Americans still loyal to the Crown and for creating a colonial aristocracy.² Simcoe, however, did not like to leave matters undone, particularly if they involved financial considerations. As soon as he received permission to take a leave of

¹ *Dictionary of Canadian Biography*, Vol.V, "John Graves Simcoe", S.R. Mealing, pp.754-59. Craig, *Upper Canada: The Formative Years*, p.38-9.

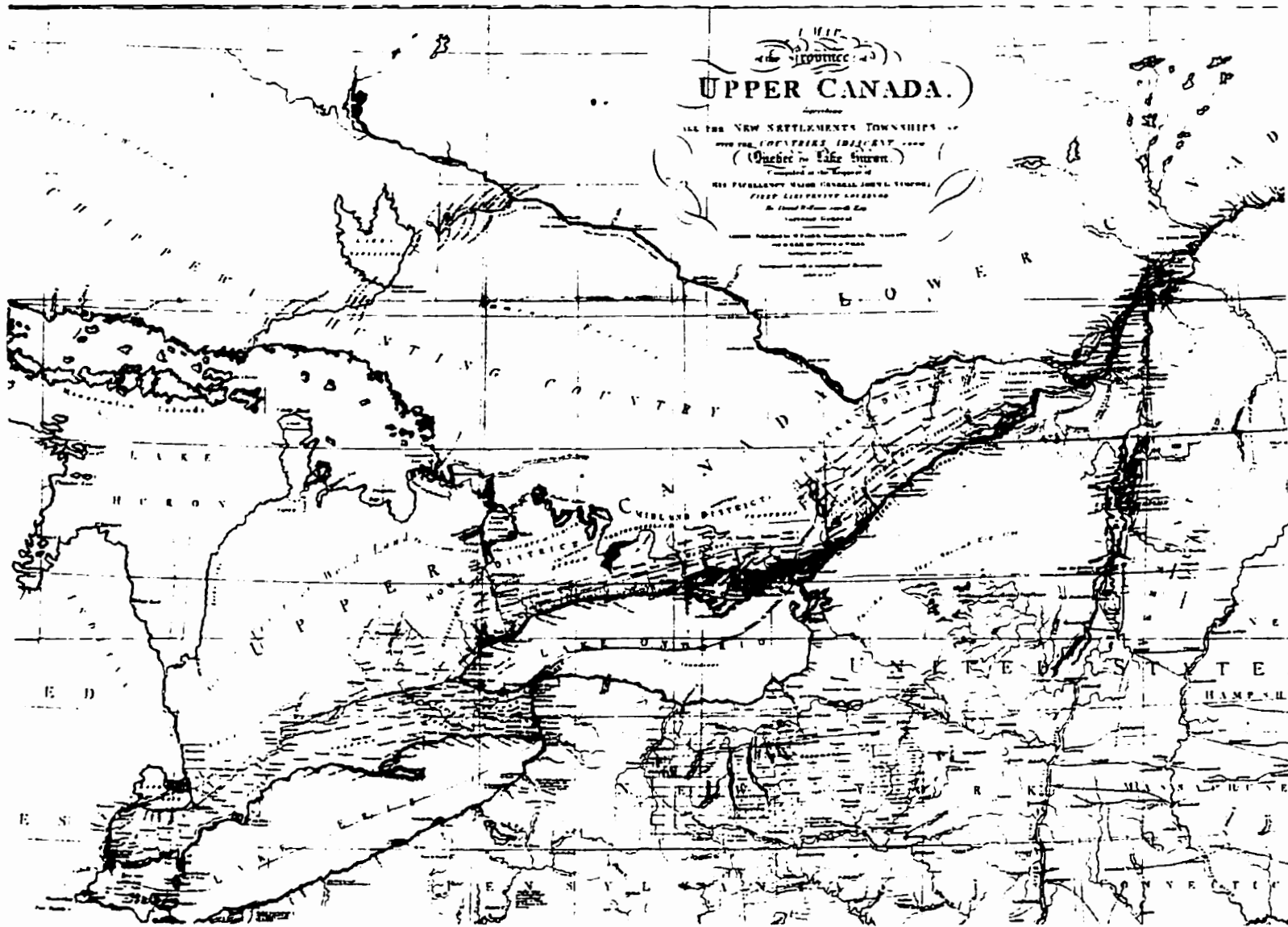
² When Simcoe informed Secretary of State Lord Portland of his intention to create municipal corporations and county lieutenants, Portland wrote back saying, "Whereas the evident tendency of both these measures is to fritter down his [the governor's] direct power, and to portion it out among Corporations and Lieutenants who, on many occasions, may be disposed to use it in obstructing the measures of Government, and, in all events, will require to be courted and managed in order to secure the right direction of the influence thus unnecessarily given them." Portland to Simcoe, 20 May 1795. Manning, *British Colonial Government After the American Revolution* (Hamden: Archon, 1966) p.110. Thus Portland sought to maintain executive control as the highest priority, a course of action first proposed by William Knox twelve years earlier.

absence, he set about clearing up the backlog in petitions for land grants.³ Over eight sessions in early July the Lieutenant-Governor and his Council approved a total of 834 applications. On his final day of attendance, 21 July 1796, 182 petitioners had their applications read and their requests granted.⁴ Not one would be rejected or deferred. This took care of the petitions piled up in the clerk's office and gave the Lieutenant-Governor £1000 in fees for his final three weeks in office.

Despite disappointment in many of his endeavors, Lieutenant Governor John Graves Simcoe successfully established the basic administrative offices and general operating procedures of the Upper Canadian Land Granting Department. This framework remained essentially intact for the next three decades. Over that period the Upper Canadian government granted or pledged some 13,000,000 acres of land to individual landholders.

³ The backlog resulted from the lack of action taken by Simcoe and the Land Committee over the previous eleven months. The Committee did not consider any petitions between 22 August 1795 and 6 April 1796. Between April and the end of June, they dealt with only three or four petitions at each sitting. NA, RG1, L1, Vol.19, Upper Canada, Executive Council Minutes on Land Matters, Land and State Book A, pp.331-37.

⁴ NA, RG1, L1, Vol.20, Upper Canada, Executive Council Minute Books on Land Matters, Land Book B, pp. 64-90. The entries for these petitions, some 1016 in total, are found under the date 8 October 1796, three months after Simcoe left the province. Why this was done is not explained in the Land Books.



Map 1 – Province of Upper Canada, 1800, from D.W. Smith's *Topographical Description of Upper Canada* (NA, NMC 98186)

In the summer of 1796, however, more immediate considerations occupied the administrators of Upper Canada. They were busy moving their families, their homes and their operations from the military base at Newark across Lake Ontario to the new capital at York. Although a more central, and more defensible, location than Newark, the sheltered bay on the north shore of the lake remained little more than a temporary native encampment and a seldom-used fur trader's portage landing. No permanent shelter existed, and aside from a small group of local Natives, no settled population occupied the district. In the summer of 1793 Simcoe selected the site for the location of the provincial arsenal and administrative capital, convening the first Council meeting there on 31 August 1793. Although the Lieutenant-Governor stayed the winter camped out in a tent purchased from Captain Cook's estate, the civil officers returned to Newark at the close of the session. Appropriately, for what would become the administrative centre of the province, Simcoe's men set about erecting the original Government Buildings, the first permanent structures at York.⁵ In November 1796, three months after Simcoe's departure, Receiver General Peter Russell, now the Provincial Administrator, moved to the new site.⁶ This was truly pioneer government.

Over the next year and a half the other members of the administration

⁵ Henry Scadding, *Toronto of Old*, (Frederick H. Armstrong, ed. Toronto: Dundurn Press, 1987) p.332.

⁶ Russell commuted between York and Niagara during 1797 because the house he was having built burned to the ground. *Russell Correspondence*, Vol.I, Russell to Simcoe, 13 September 1797, p.279.

followed, but few wished to be uprooted from the new but established town at Newark and set down in the virgin forest some 36 miles from the nearest settlement. Shortly after moving into his house on King Street, Chief Justice John Elmsley complained to D.W. Smith, "How peculiarly hard is the lot of the Civil Officers of Upper Canada, and how carefully they seem selected to be the sport of Fortune."⁷ Elmsley made the best of the situation by quickly buying up town lots to add to his other speculative land ventures in the province.⁸

Fortune eventually smiled on the officers of the Land Granting Department and their fellow administrators at York. The town site, with its superb bay and low, level waterfront, its abundant streams and gently rolling terrain, proved to be an excellent location for the provincial capital. Situated centrally along the southern boundary, fronting on the busiest of the Great Lakes, and surrounded by first-rate agricultural land, York proved to be an appropriate place for the government to set up shop and begin the daily routine functions of administration.

By 1796 the basic administrative structures of the Land Granting Department had been put in place. These would last until the establishment of the Crown Lands Office thirty years later brought a complete re-organization. The initial

⁷ Edith Firth, ed., *The Town of York, 1793-1815: A Collection of Documents of Early Toronto* (Toronto: Champlain Society, University of Toronto Press, 1962) Elmsley to Smith, 18 February 1798, p.48.

⁸ See the numerous letters between Elmsley and D.W. Smith in *Russell Correspondence*, Vol. II.

rules and regulations created a survey system that provided individual lots large enough for productive family farms and for the orderly location of towns and roadways. Local authority in the District Land Boards had been done away with, at least temporarily, and the possibility of the development of township leaders eliminated. Instead, the government firmly established a central administration operating out of the new capital. It quickly proved to be a relatively complex structure, especially compared to the American system of simple regional land offices.⁹ Unlike in the United States, however, the British colonial government expected the Land Granting Department to screen settlers for the proper political sentiments, ensure their loyalty to the Crown, examine their intentions of becoming permanent members of the community, as well as establish an orderly and accountable method of distributing land and issuing patents.

The Upper Canadian Land Granting Department bore little resemblance to its modern administrative counterparts. It lacked a single, unified structure responsible for one distinct area of public business. It was not organized under a ministerial head with a specific area of administrative jurisdiction. This is hardly surprising since the concept of modern ministerial government was just beginning to develop in Britain and the United States. During the first few decades of

⁹ The United States Land Act of 1800 established local district land offices, each with its own registrar and receiver of monies. District agents sold land at auction and the practice of issuing warrants for future location was banned. Rohrbough, *The Land Office Business*, p.23. As Leonard White points out, Land Office agents were expected to do their own writing and record-keeping, "clerks were indeed unknown". Leonard White, *The Federalists: A Study in Administrative History* (New York: Macmillan, 1959) p.369.

settlement the province had little need for a British-style Board of Agriculture or a Registrar General's office. As the American historian Leonard White reminds us "Life was rough and simple in the wilderness; so was government and administration."¹⁰ The operations and the distribution of responsibilities in the Land Granting Department reflected this reality. Except for the Surveyor General's office, all of the officers involved in the distribution and patenting of Crown lands had other areas of administrative responsibility. For them the business of land granting constituted only part of their job.

Three interconnected and hierarchically arranged administrative levels made up the Land Granting Department. At the top stood the executive, composed of the Lieutenant-Governor-in-Council. The central departmental administrators, some of whom sat on the Council, supported the executive. At the local level administrators such as the District Land Board commissioners, surveyors and the Justices of the Peace dealt directly with settlers. Each level will be discussed in detail in subsequent chapters, but given their interconnections it is useful to look at the over-all structure.

The Lieutenant-Governor functioned as the head of the provincial government and the Crown's principal representative. The over-all land granting administration in the colony remained his responsibility.¹¹ The Lieutenant-Governor

¹⁰ White, *The Federalists*, p.386.

¹¹ Lieutenant-Governors and Administrators: John Graves Simcoe (24 Aug. 1791 - 20 July 1796, left U.C.), Peter Russell (20 July 1796 - 17 Aug. 1799), Peter Hunter (10 Apr. 1799 - 21 Aug. 1805), Alexander Grant (11 Sept. 1805 - 25 Aug. 1806), Francis Gore

answered to the Secretary of State for the Home Department in London and reported on all matters of importance. The Lieutenant-Governor's land-granting duties included shaping policy, formulating rules and regulations, authorizing orders-in-council for grants, and acting as the legal signing authority for land patents. He also chaired the Land Granting Committee when in attendance. The Lieutenant-Governor sought the advice of his Executive Council, some members of which had specific responsibilities for land distribution. The Civil Secretary, his principal assistant, handled written communications between the Lieutenant-Governor and the Executive Council and kept the Great Seal, necessary to validate all patents.¹²

The Executive Council conducted the bulk of the daily administrative work involved in land granting.¹³ The King created the first Executive Council for the new

(22 Jan. 1806 - 11 June 1817), Samuel Smith (11 June 1817 - 13 Aug. 1818), Sir Peregrine Maitland (13 Aug. 1818 - 4 Nov. 1828).

¹² Civil Secretaries: Edward Littlehales (1792 - 1796), Alexander Burns (1797 - 1799), James Green (1799 - 1806), William Halton (1806 - 1811), James Brock (9 Oct. 1811 - 1812), Colley Foster (1813 - 1814), Robert Loring (1814 - 1815), Edward McMahon (1815 - 1815), William Halton (1815 - 1817), Duncan Cameron (Jan. 1817 - Oct. 1817), Samuel P. Jarvis (1817 - 1818), George Hilier (1818 - 1828).

¹³ Executive Councillors: Jacques (James) Duperron Baby (9 July 1792 - 19 Feb. 1833), Alexander Grant (9 July 1792 - May 1813), William Osgoode (9 July 1792 - July 1794), Peter Russell (9 July 1792 - 30 Sept. 1808), Aeneas Shaw (21 June 1794 - 1807), John Elmsley (1 Jan. 1796 - July 1802), John McGill (2 Mar. 1796 - 13 Aug. 1818), David William Smith (2 Mar. 1796 - July 1802), Henry Allcock (14 Oct. 1802 - Sept. 1804), Thomas Scott (8 Apr. 1805 - Aug. 1816), William Dummer Powell (8 Oct. 1808 - Sept. 1825), Prideaux Selby (8 Oct. 1808 - 9 May 1813), Samuel Smith (30 Nov. 1813 - Oct. 1825), Rev. John Strachan (31 May 1815 - Nov. 1833), William Claus (12 Feb. 1818 - Sept. 1824), George Herkimer Markland (22 Oct. 1822 - 12 Mar. 1836), Peter Robinson

colony of Quebec by his Royal Instructions given to Governor Murray in 1763. Its purpose was "to assist... in the Administration of Government", and it was to have "all the Powers, Privilege and Authority usually exercised and enjoyed by the Members of Our Councils in Our other Plantations".¹⁴ As Quebec Chief Justice William Smith explained in his history of New York, the terms of office specifically bound the governor to secure both the advice and consent of the Councillors in the granting of all patents, particularly those related to the dispensation of Crown lands.¹⁵ In this way, the Executive Council acted as a check on the largesse of the Governor and relieved him of the administrative drudgery of its dispensation.¹⁶ The issue of advice and consent did not prove contentious until Lieutenant-Governors such as Francis Bond Head began to ignore the convention in the 1830's.

Following the precedent set at Quebec, Upper Canada's Executive Council sat as the Land Granting Committee, or the Land Committee as it was frequently

(24 Dec. 1823 - 12 Mar. 1836), James Buchanan Macaulay (5 May 1825 - July 1829), Sir William Campbell (26 Oct. 1825 - Mar. 1828).

¹⁴ *Constitutional Documents, 1759-1791*, Instructions to Governor Murray, 7 December 1763, p.182.

¹⁵ William Smith, *History of the Province of New York*, Michael Kammen, ed. (Cambridge, Mass: Harvard University Press, 1972) Vol.I, p.254. In the Royal Instructions given to Governor Murray it was specifically stated that he was required to secure the "Advice and Consent" of the Council in all "requisite" matters. *Constitutional Documents, 1759-1791*, Instructions to Governor Murray, 7 December 1763, p.184.

¹⁶ In the essay "Patronage Most Ardentlly Sought: The New York Council, 1665-1775", Jessica Kross lists the traditional areas that required the Council's advice and consent: granting lands, spending money under the Governor's warrant, erecting fairs, markets and ports, summoning the assembly, and establishing and constituting the courts. In Daniels, ed., *Power and Status: Officeholding in Colonial America*, p.209.

called.¹⁷ In the absence of the Lieutenant-Governor the Chief Justice sat as chair of the Committee. All Executive Councillors had the authority to participate in its deliberations. When not operating as the Land committee, the Council sat in general session. In this way it divided its functions into matters of state and matters of land granting. The Council's minutes reflected this in separate State Books and Land Books.¹⁸ The topical division, however, seldom remained clear cut. Councillors often discussed land matters in general sessions, and dealt with issues of diplomatic, military or judicial importance while sitting as the Land Committee. The Committee, however, performed a specific administrative function. Its sessions were regular, and, as we shall see, at times operated according to a schedule. The Committee advertised its meetings separately so that petitioners could attend, and Councillors usually restricted their deliberations to matters that, at least in the first instance, involved land granting.

The Committee's principal duty was to accept and consider petitions on land matters.¹⁹ The members also arbitrated disputes over land, suggested policy changes, conducted investigations and supervised the day-to-day operations of the other officers involved in the distribution process. In essence, the Committee

¹⁷ NA, RG1, L1, Upper Canada, Executive Council Minute Books on Land Matters, Land Books A through M, Vols. 18 through 31.

¹⁸ NA, RG1, Upper Canada, Executive Council Minute Books. L1, Upper Canada Land Books for land records, and E1, Upper Canada State Books for state records. Many of the records for the administrative overlap between land and state matters can be found in NA, RG1, L3L, and L7.

¹⁹ NA, RG1, L3, Upper Canada, Executive Council, Land Committee, Petitions for Land Grants and Leases, 1790-1867.

functioned as a board of examiners and as administrative supervisors. The Clerk of the Executive Council handled the actual petitions, kept the minutes of the Land Committee, copied orders-in-council, and issued the licence of occupation to grantees. For the most part, only two persons, John Small and John Beikie, occupied the office between 1791 and 1839. This brought a remarkable degree of continuity to the operations of the Executive Council.²⁰

The central administrative officers conducted the various operations necessary for passing land grants into patent. Some, but not all, also sat on the Executive Council. Appointment was not automatic, and depended as much on an individual's political standing within the community, or lack thereof, as it did on his administrative role. This did not change until Sydenham's reforms in the 1840's and the adoption of a cabinet style arrangement of political supervision. In terms of administrative function, however, their roles became fully developed. The Attorney General examined the required certificates and documentation and signed the licence of occupation.²¹ The Auditor General of Land Patents kept account of

²⁰ NA, RG1, L2, Upper Canada: Grants, Leases and Licences of Occupation, 1791-1848. Clerks of the Executive Council: John Small (31 Dec. 1791 - 18 July 1831), Edward B. Littlehales (9 July 1792 - 16 Apr. 1793), Alexander McDonnell (June 1795 - ?), John Beikie (First Clerk, 10 June 1803 - 1832, 17 Dec. 1832 - 1839).

²¹ NA, RG1, L6, Upper Canada, Departmental Records, 1784-1862, Section A, Vols. 1 to 9, Records of the Attorney General's Office. Attorneys General: John White (31 Dec. 1791 - 3 Jan. 1800), Thomas Scott (1800 - 22 Jan. 1806), William Firth (9 Mar. 1807 - Apr. 1812), John Macdonnell (28 Sept. 1811 - 13 Oct. 1812), John Beverly Robinson (19 Nov. 1812 - 1814), D'Arcy Boulton, Sr. (31 Dec. 1814 - 12 Feb. 1818), John Beverly Robinson (19 Nov. 1817 - 13 July 1829).

the number of licences issued and the number of patents passed. The Receiver General, who until 1820 remained the same person as the Auditor of Land Patents, collected fees on patents and distributed the proceeds to the appropriate officers.²² The Provincial Secretary and Registrar compiled the documents related to each grant application and registered the completed deed.²³

The most elaborate central office was that of the Surveyor General.²⁴ Assisted by a number of clerks, the Surveyor General located specific lots for grantees, supervised survey operations, and assembled township plans, schedules, maps and related documents. Reporting to the Surveyor General, the Surveyor of the King's Woods²⁵ policed timber resources, while the District Deputy Surveyors conducted the field work of surveying.²⁶

²² NA, RG1, L6, Upper Canada, Departmental Records, 1784-1862, Section C, Vols. 1 to 3, Records of the Receiver General and Auditor General of Land Patents. Receivers General: Peter Russell (31 Dec. 1791 - 30 Sept. 1808), Prideaux Selby (8 Oct. 1808 - 9 May 1813), John McGill (acting 10 May 1813 - Nov. 1819), George Crookshank (acting 2 Dec. 1819 - Oct. 1820), John Henry Dunn (19 Oct. 1820 - 10 Feb. 1841).

²³ Provincial Secretaries and Registrars: William Jarvis (31 Dec. 1791 - 13 Aug. 1817), Duncan Cameron (1 Oct. 1817 - 9 Sept. 1838).

²⁴ OA, RG1, Series A, Surveyor General's Office, 1763-1845, Sections A-I through A-VII, and Series C, Lands Branch, Sections C-I through C-IX. Surveyors General: Samuel Holland (1764 - 1792), David William Smith (3 Sept. 1792 - May 1804, left U.C. July 1802), W. Chewett and T. Ridout (acting July 1802 - May 1804, 6 Jan. 1807-Sept 1810), Charles Burton Wyatt (May 1804 - Jan. 1807), Thomas Ridout (12 Sept. 1810 - 8 Feb. 1829), William Chewett (Senior Surveyor and Draughtsman, 1792 - 1832)

²⁵ Surveyors of the Woods: Christopher Robinson (1792), Thomas Merritt (1798), Peter Robinson (1827).

²⁶ OA, RG1, Series CB, Surveys and Mapping Branch, Section CB-I, Field Notes and Diaries. Deputy Surveyors: Ezehiel Benson, Henry Ewing, John Smith, James G. Chewett, Samuel Ryekman, Gabriel Lount, John Grossman, James Pearson, John Ryder,

Local administrative officers operated at the district level. Between 1788 and 1794 the first District Land Boards conducted many of the operations later assigned to central officers.²⁷ After 1794 the only local officials directly involved in land granting were the District Magistrates of the Quarter Sessions who issued certificates of good character, loyalty and the performance of settlement duties. This changed in 1819 when new District Land Boards began issuing licences of occupation, location tickets, and settlement duty certificates.²⁸

William Macdonald, Augustus Jones, Abraham Nelles, Alexander Aitken, William Fortune, Hugh McDonnell, Theodore DePincier, John Stegman, Joseph Bouchette, William Chewett, Patrick McNiff, James Kirkpatrick, John Smith 'the Younger', William Campbell, Daniel Hazen, Duncan Macdonald (Greenfield), William Hayes.

²⁷ NA, RG1, L4, Upper Canada, Land Boards Minutes and Records, 1765-1804. First District Land Board members:

~ District of Lunenburg: John Munro, Richard Duncan, Malcolm McMartin, Justus Sherwood, James Gray, John McDonell, Jeremiah French, Peter Drummond, Thomas Fraser, William Fraser, Ephraim Jones.

~ District of Mecklenburg: Richard Cartwright, Jr., Reverend John Stuart, Neil McLean, Captain Joseph Bunbury, Captain Richard Porter, Captain Lethbridge, Richard Cartwright, Sr., William Atkinson, Hector McLean, James McDowell, Hazleton Spencer, Peter Van Alstine, Alexander Fisher, Archibald McDonell, Joshua Booth

~ District of Nassau: Robert Hamilton, John Butler, Peter Tenbroeck, Nathaniel Pettit, Benjamin Pawling, Lt.-Col. Peter Hunter, Lt.-Col. Harris, Lt.-Col. Gordon, Robert Kerr, John Burch, John McNabb, John Warren, Gilbert Tice, Lieut. Bruyers, Lieut. Pilkington

~ District of Hesse: William Dummer Powell, Alexander Grant, William Robertson, Alexander McKee, Adhemar St. Martin, Major Patrick Murray, Major John Smith, Major Robert England, John Askin, Montigny de Louvigny, George Leith.

²⁸ Second District Land Board members:

~ Eastern District: Neil McLean, Joseph Anderson, Samuel Anderson, Guy Wood, Rev. Alexander Macdonnell, Rev. Jacob Mountain

~ Johnstown District: Solomon Jones, Adiel Sherwood, Joel Stone, Doctor Hubble, Charles Jones

~ Midland District: Allen McLean, Peter Smith, Thomas Markland, Alexander Fisher, William Mitchell, Andrew Patton, George H. Markland

~ Newcastle District: David McGregor Rogers, James Bethune, Walter Boswell, Zacheus Burnham, Charles Fothergill, Elias Jones, Henry Ruttan

In addition to local officers, the government established the Heir and Devisee Commissions on a temporary basis in 1797 and made them permanent in 1819.²⁹ Conceived by Chief Justice John Elmsley and divided into District divisions, a justice of the Court of the King's Bench while on circuit presided over these quasi-judicial bodies.³⁰ Their members sorted out problems related to the transfer of unpatented locations for land grants, gave judgements on mortgages secured by land and dealt with various other complications that bedeviled the patenting process.³¹ Many of the Heir and Devisee commissioners formerly sat as District Land Board officers. Although they spent much time sorting out problems and conflicts which they themselves helped to create, they also provided administrative continuity at the local level in the land granting business.

The structures of the Land Granting Department followed the same pattern

~ Niagara District: John Symington, William Dickson, Thomas Clark, John Warren, Abraham Nelles

- London District: Thomas Talbot, Robert Nichol, Daniel Bowen, James Mitchell, John Bostwick

~ Western District: Angus McIntosh, Francois Baby, Charles Stewart, Robert Richardson, George Jacob

²⁹ The Heir and Devisee Commission was created by an Act of the Assembly, 38 Geo. III, cap.1, 5 July 1797. In 1819 its tenure was extended indefinitely by the act 59 Geo. III, cap.18, 12 July 1819. Records are held at OA, RG1, Series A, Section A-II-5, Vols. 1 to 17, Heir and Devisee Commission Reports. NA, RG1, L5, Vols.1-5, Heir And Devisee Commission Minutes and Reports, 1797-1803.

³⁰ Paul Romney, *Mr. Attorney: The Attorney General for Ontario in Court, Cabinet and Legislature, 1791-1899* (Toronto: University of Toronto Press, 1986) pp.25-6.

³¹ Lillian Gates, "The Heir and Devisee Commission of Upper Canada, 1797-1805", *Canadian Historical Review* (1957) pp.21-36. H. Pearson Gundy, "The Family Compact at Work: The Second Heir and Devisee Commission of Upper Canada, 1807-1841." *Ontario History* (1974) pp.129-46.

until the British government created the Crown Lands Department in 1826.³² This reform placed most aspects of the management and alienation of Crown lands under the supervision of the Commissioner of Crown Lands. A decade later several significant changes came about with the passage of the first provincial Land Act. This Act signalled the Assembly's intention to assume control over land matters. Administratively, the Act created the District Land Agencies, institutional descendants of the second District Land Boards. By the mid-nineteenth-century these agencies became the principal administrative focal points for land matters.

During the 35 years prior to the creation of the Crown Lands Department, securing title to land was not a simple matter for the ordinary settler. Following the process from the petitioner's point of view elucidates the structures the settler confronted. Let us examine how a settler obtained a patent to a regular 200 acre farm lot.

When Sir Peregrine Maitland assumed the office of Lieutenant-Governor in 1818 he ordered Surveyor General Thomas Ridout to draw up a report explaining how the government granted lands and how they passed into patent.³³ Ridout's report detailed the steps required for an individual settler to receive a grant. As the Surveyor General explained, every application had to be made by written petition to the Lieutenant-Governor-in-Council "agreeing nearly with a form prescribed".

³² The creation of the Crown Lands Department will be discussed in Chapter 8.

³³ NA, RG5, A1, Vol.40, Upper Canada Sundries, Civil Secretary's Correspondence, Ridout to Maitland, 22 August 1819, pp.18859-18874.

The Clerk received the petition at the Council office and transmitted it to the office of the Lieutenant-Governor. If the Lieutenant-Governor's Civil Secretary approved the form and subject matter of the petition, he sent it to the Land Committee for investigation. If the Committee accepted the petition, it sent it through the Clerk of the Council back to the Lieutenant-Governor "for his appropriation, or otherwise." If he authorized a grant, the Land Committee issued an order-in-council. The applicant then took the order-in-council to the Receiver General to pay the necessary fees. He issued a receipt, and this, along with the order, was returned to the Clerk of the Council. The Clerk then submitted the order and the receipt to the Attorney General who examined the documents and issued a separate fiat, or warrant, allowing a location to be assigned. Once the Clerk received the fiat he issued a licence of occupation. The applicant then took the fiat and the licence to the Surveyor General who assigned a specifically located lot. As confirmation the Surveyor General issued a location certificate. The certificate, the Attorney General's fiat and the licence of occupation then went to the Secretary of the Province who drew up the patent. Before giving it to the applicant, however, the Secretary returned the patent and other documents to the Attorney General for examination. If all was in order the Provincial Secretary laid the patent before the Lieutenant-Governor for his signature. Once signed, he returned it to the Civil Secretary's office to receive the seal of the province and then took it to the Auditor of Land Patents "to be entered upon his docket". Finally, the Auditor transmitted the patent to the Provincial Registrar's office so that it could be officially inserted

in the provincial register. The patent, now complete, could be issued to the grantee.

Although not mentioned by Ridout, a settlement duty certificate and a certificate of oath-taking had to be obtained from either the District Land Board or a local Magistrate of the Quarter Sessions. After 1816 regulations required all applicants to obtain a certificate of loyalty from a magistrate, and if a militia applicant, a certificate of authorization from the Adjunct General. The Attorney General examined these documents along with the others.

All of this proved to be a lengthy and cumbersome process to say the least, but to a large degree it insured that the applicant was a serious settler, loyal to the Crown, and capable of paying the required fees. It also ensured that most patents were properly assigned and completed, that they were accounted for in the government records and that they were duly registered as private property. Some applicants experienced difficulties, but the fact that no general public outcry developed over the administrative process suggests that it was at least tolerable to most applicants. For those who had their petitions rejected, the records are silent.

By the end of 1796 the basic structures of the Upper Canadian Land Granting Department had been established, and they changed very little in their essentials for the next three decades. Operations, however, and their impact on the settlement of the province, had only just begun. During the next thirty years the

townships perched on the north shore of Lake Erie and Lake Ontario multiplied to cover much of what is today southern Ontario. The government resolved the issue of tenure with the adoption of free and common soccage. Land was to be considered the property of the individual free-holder, with rights conveyed directly from the state and protected by law. Colonial administrators created an effective procedural system for granting, locating and patenting land, and they established a means of generating revenues for the support of government operations. How the individual officers conducted the land granting business within these structures and procedures proved just as important as the forms they took.

Chapter Four

The Role of the Secretaries of State and Lieutenant-Governors in Land Granting, 1796-1815

At the head of colonial administration stood the Secretary of State in London. Subject to Royal approval and Parliamentary scrutiny, the Secretary had broad powers over all aspects of the Upper Canadian government and acted as the ministerial authority in general administrative matters. The British government expected the colonies to contribute to the wealth of the Empire and expected the Secretary of State to insure that they did. Before 1815, however, and the end of war in Europe, Secretaries of State showed little interest in the daily operations of colonial government in Upper Canada. The province remained small, undeveloped and very distant from the seat of British Imperial power. Priorities, when articulated at all, centred on practical financial matters and rapid settlement. As Helen Taft Manning pointed out, clues to their understanding of colonial affairs are best found in treasury accounts and statistics, and not in Parliamentary speeches.¹ The politics of Empire seldom entered the picture.

Immediately below the Secretary of State stood the Lieutenant-Governor, the principal agent of British colonial administration in Upper Canada. Although a

¹ Manning, *British Colonial Government*, p.9.

subordinate officer, the Lieutenant-Governor exercised wide discretionary decision-making powers. Distance and relative neglect expanded these powers even further. In the end their exercise did not always prove effective or beneficial, but neither did they become particularly harmful. As one might expect, the accomplishments and failures of Upper Canada's Lieutenant-Governors had to do with both circumstance and personality. A temporary appointment restrained Peter Russell. Military duties at Quebec distracted General Hunter, and Francis Gore simply lacked interest in the routine functions of government.

For many years administrators in Whitehall paid scant attention to conditions in distant Upper Canada. Helen Taft Manning observed in her study of British colonial government that during the Napoleonic Wars "colonial dispatches [often] went unanswered, colonial governors reported crises, complained of their wrongs, and even died, without the ministers seeming to be aware of the fact."² Despite, or perhaps because of, the distractions of war and political upheaval colonial development did not become a high priority for most Imperial administrators. As British historians Snelling and Barron point out, an understanding of the problems in colonies like Upper Canada required either local knowledge or sustained study and interest. The average aristocratic politician of the period simply could not

² Manning, *British Colonial Government*, p.475.

muster either.³ To make matters worse, between 1794 and 1812 eight different Secretaries of State held responsibly for colonial affairs.⁴ This lack of continuity contributed to a lack of direction and supervision. As a result Upper Canadian administrators were often left to their own devices; Lieutenant-Governors found only occasional interference from superiors in London who had little grasp of the character or complexity of the problems they faced. When the Secretaries of State did involve themselves in administrative affairs their measures were often frustrated by colonial officials who saw things differently and who relied on distance and lack of sustained interest to get their way.

The primary concern of the Secretaries of State was to make the civil government of the colony financially self-sustaining, something which the granting procedures implemented by Simcoe failed to do. As the Duke of Portland explained to his subordinates in the colonies, he had two immediate goals in mind. First, raise revenues by "laying an additional Fee on all future Grants of Crown lands to be applied towards defraying the Public expences of the Colony". Second, place the Crown and Clergy reserves "upon such a footing, as should best secure

³ R.C. Snelling and T.J. Barron, "The Colonial Office: Its Permanent Officials, 1801-1914", in Gillian Sutherland, ed., *Studies in the Growth of Nineteenth Century Government* (London: Routledge and Kegan Paul, 1972) p.141.

⁴ Henry Dundas, Lord Hobart, Earl Camden, Viscount Castlereagh, William Windham, Castlereagh again, and Earl Liverpool. Henry Bathurst took over the office on 11 June 1812, and his appointment lasted until 1827. Armstrong, *Upper Canadian Chronology*, p.2.

them from encroachments, and soonest render them profitable."⁵ Essentially, Portland intended to force an increase in general property values, and take advantage of this increase through the leasing or the sale of Crown and Clergy reserves. In the autumn of 1797 the Duke asked his subordinates in the Canadas what specific policies would best accomplish these ends.

In December 1797 Sir Robert Prescott, Lieutenant-Governor of Lower Canada, submitted his views to the Secretary of State.⁶ Prescott's plan involved expanding the number of persons entitled to privileged grants, raising fees in order to increase revenues, and selling large blocks of between 5,000 and 12,000 acres on a three-year term payment basis, subject to a settlement duty of clearing 5 acres per 100 within the first seven years⁷. To strengthen his case he pointed out that survey costs, the most expensive component of the process, would be reduced because only large blocks would be laid out. In order to deter speculators

⁵ NA, RG7, G1, Vol.53, part 1, Colonial Office, Miscellaneous Correspondence, Portland to Russell, 11 September 1797, pp.89a-89h. William Henry, the 3rd Duke of Portland was appointed Secretary of State for the Home Department on 11 July 1794. The Home Secretary and the Secretary of State for War shared responsibility for the colonies until 1801. Armstrong, *Upper Canadian Chronology*, p.2.

⁶ NA, RG7, G1, Vol.53, part 1, Colonial Office, Miscellaneous Correspondence, Prescott to Portland, 16 December 1797, enclosed in Portland to Russell, 8 June 1798, pp.146-60.

⁷ Portland raised the issue of increasing fees on land grants in order to raise a revenue for public purposes shortly after he took office in July of 1794. Lord Dorchester, however, seems to have ignored the matter completely, and it was only after Prescott assumed command at Quebec that the issue was revived. In his first letter on the subject of fees, Prescott suggested that they be increased to £25 per 1000 acres. NA, RG7, G1, Vol.53, part 1, Colonial Office, Miscellaneous Correspondence, Prescott to Portland 24 December 1796, pp.76-82.

and realize some immediate revenue, purchasers had to pay 1s 6d in the pound at the time of sale. The remainder could be paid in annual instalments, subject to 6 percent interest. To prevent flooding the market with cheap land, and thus lowering the value of all property, quantities would be limited to five or six hundred thousand acres per year. Sales were to be conducted at auction with an upset, or lowest acceptable price, of 6d per acre. Finally, Prescott suggested that a board of commissioners be appointed to conduct the sales, with remuneration provided on a commission basis.

Secretary of State Portland and the Executive Council of Upper Canada were not about to introduce what Prescott himself admitted to be a sales system almost identical to the one recently adopted in the United States. Nor were they willing to break the long standing promise of free land for Loyalists. Although amenable to land sales, Portland quite rightly observed that large blocks sold at public auction tended to produce collusion, fraud and speculation, the very thing Prescott professed he was trying to avoid.⁸ Accordingly, Portland ordered that land be sold in allotments of 6000 acres at most, that 2s 6d in the pound be taken as a down payment, that the upset price be increased to at least 1s per acre, and that sales be conducted exclusively by the Executive Council. He agreed with limiting the quantity of annual sales and suggested that "The best Criterion whereby your Judgement and that of the Council can be guided in this respect is, that the sales

⁸ NA, RG7, G1, Vol.53, part 1, Colonial Office, Miscellaneous Correspondence, Portland to Prescott, 8 June 1798, pp.161-70.

shall never have the effect of lowering the existing value of the Land".

The Upper Canadian Executive Council, not surprisingly, agreed to the fee increase, but initially rejected the idea of land sales to the highest bidder. They had no wish to compromise their control of land distribution, particularly their ability to deny land to undesirables. They also insisted on continuing the practise of dispensing 200 acre grants to individual petitioners, rather than 1,200 acres to groups of associates as the officials in the lower province intended. Accordingly, on 29 October 1798 Russell issued a proclamation stating that, henceforth, all ordinary grants would be subject to a fee of 6d per acre plus survey fees. Half of this amount had to be paid to the Receiver General upon receipt of the warrant and half to the Provincial Secretary upon receipt of the patent.⁹ Loyalists could still receive grants free of all expence, but the 200 acres given to each of their children would be subject to a fee of 3d per acre. Survey fees were set at £1 for lots under 100 acres and £1.7.6 for those over 100 acres.

The new arrangements satisfied the Secretary of State because it seemed that they would both increase government revenues and land values generally.¹⁰ This would, he hoped, reduce the expenditures made out of the Military Chest and increase the value of the Crown reserves. The scheme satisfied the Executive Councillors because they retained full control over the distribution process and because it increased the value of land in general, something which Chief Justice

⁹ *Russell Correspondence*, Vol.II, Proclamation of 29 October 1798, pp.292-4.

¹⁰ *Ibid.*, Vol.III, Portland to Russell, 24 January 1799, p.62.

Elmsley argued, would promote the formation of capital within the province. In his report on the fee changes he wrote, "While lands can be had as cheaply as at present that true proportion between capital and labor which is the only source of wealth in any country will never be attained in this." Cheap land, he argued, created a class of "miserable cottagers who cannot afford to cultivate their land properly".¹¹ Anticipating the arguments made by Robert Gourlay and Robert Wilmot-Horton after 1816, Elmsley pointed out that expensive land forced new immigrants to labour for established farmers before they were able to obtain land themselves. This kept labour costs down and promoted the development of productive farms. "What is capital", he concluded, "but property unequally distributed?".¹² Of course, poor petitioners did not see it quite this way.

To ordinary settlers and the officers of the Land Granting Department the new regulations proved less than satisfactory. Settlers now paid half of the patent fees and the survey fees, or £3.1.0, before being assigned their 200 acre lot. Another £2.10.0 fell due upon completion of the patent. Many settlers did not have the hard cash to pay for their warrants of survey and once again they simply piled up in the Surveyor General's Office. To address the problem Council authorized a three month grace period for payment on all existing warrants, and a one month

¹¹ NA, RG1, E1, Vol.46, Upper Canada, Executive Council Minutes on State Matters, State Book B, Report of Chief Justice Elmsley on land granting, n.d., pp.130-5.

¹² NA, RG1, E1, Vol.46, Upper Canada, Executive Council Minutes on State Matters, State Book B, p.134.

grace period on all future warrants.¹³

Under the old regulations the fees distributed to the administrative officers amounted to £2.18.8. Originally the Secretary of State intended that, under the new regulations, of the £5.11.0 charged for 200 acres, £4.8.8 would go to the Crown, and only £1.2.2 to the officers. As Russell himself pointed out, this amount did not even cover the "Value of the Paper and Wax of the Patents".¹⁴ In order to get around the problem Russell used Portland's suggestion to change the standard unit of sale to 1000 acres on which a total of £25 would be charged. Out of this £5.11.0 would go to the land officers. He then used this amount as a base for a 200 acre grant. In addition he ordered that all town lots, regardless of acreage, be subject to a fee of £5.11.0, and that the full amount be distributed among the officers. This fixed the amount of fees paid to each officer regardless of the size of the grant, a reasonable measure since it took just as much work to pass a 1000 acre grant into patent as it did a 200 acre grant. The change did nothing, however, to increase the general revenues of the province, since the vast majority of applicants sought only a 200 acre lot. This manipulation of the fee arrangement undermined the Secretary's intentions, but he could do little about it from his office in London.

Road construction presented perhaps the most pressing need for increased

¹³ NA, RG1, L1, Vol.22, Upper Canada, Executive Council Minute Books on Land Matters, Land Book D, Order-in-Council of 5 January 1799, p.252.

¹⁴ *Russell Correspondence*, Vol.II, Russell to Portland, 3 November 1798, p.298.

revenues. The only experiment in land sales conducted during the period had this goal in mind. On 9 April 1799 the Land Committee accepted a proposal by Asa Danforth to build a road from York to the mouth of the Trent River. In order to pay for its construction, Council ordered two townships be put up for sale.¹⁵ Surveyor General Smith suggested two locations for the purpose: the second row of as yet unnamed townships in Durham county, or Dereham and Norwich townships in Norfolk county. Smith preferred the latter location because of "what produce may be expected, as it is more surrounded by Settlement".¹⁶ The Council agreed with Smith and put Dereham and Norwich up for sale in blocks "not exceeding 6000 acres each after deducting the two sevenths". The scheme required purchasers to pay half in cash and the balance in two annual instalments. They also had to pay patent fees according to the pre-1798 schedule. The Land Committee conducted sales through sealed bids and by April 1800 they had disposed of some 81,000 acres in 27 blocks. This netted the government £3052, fully one-third more than would have been produced by grant under the new fees.¹⁷

Despite the intentions of the Secretary of State, this proved to be the only substantial land sale conducted before 1826. Although Lillian Gates concluded that the government discontinued the practice because the purchase price proved

¹⁵ *Ibid.*, Vol.III, Order-in-Council of 9 April 1799, p.165.

¹⁶ *Ibid.*, Vol.III, Minutes of the Executive Council, 13 April 1799, p.173.

¹⁷ NA, RG1, L1, Vol.22, Upper Canada, Executive Council Minutes on Land Matters, Land Book D, Report on the sale of the townships of Norwich and Dereham, p.478. Gates, *Land Policies of Upper Canada*, p.51.

insufficient and "the result was not considered satisfactory" by Council, there may be more to it than that.¹⁸ Although there is little direct evidence, pressure to abandon land sales may have been exerted by the officers of the government themselves. In March 1802, when the final payments came due on the Dereham and Norwich sales, Lieutenant Governor Hunter ordered that "quarter fees" only were to be charged on the blocks sold.¹⁹ Hunter provided no explanation for the order but it may have been done at the behest of purchasers such as Legislative Councillor and prominent merchant Robert Hamilton who bought some 24,000 acres.²⁰ Nevertheless, the fee reduction set a dangerous precedent for those who had every interest in protecting the government's sources of revenue. In May 1804, after the departure of Elmsley, the strongest advocate of land sales, a petitioner asked the Land Committee if sales were to continue. The Committee stated that "the Executive Government does not possess competent authority for that purpose (except as to Dereham and Norwich lands)".²¹ Portland, however, had told Russell and the Council in no uncertain terms that such ideas were wrong, "an Hypothesis,

¹⁸ Gates, *Land Policies of Upper Canada*, p.51.

¹⁹ NA, RG1, L1, Vol.22, Upper Canada, Executive Council Minute Books on Land Matters, Land Book D, Order-in-Council of 26 March 1802, p.771.

²⁰ NA, RG1, L1, Vol.22, Upper Canada, Executive Council Minute Books on Land Matters, Land Book D, Minute of 2 May 1800, pp.483-4. Hamilton was a leading member of a group of merchants and land speculators labelled the "Shopkeeper Aristocracy" by Justice Thorpe in 1806. Gates, *Land Policies of Upper Canada*, p.78. See also Bruce Wilson, *The Enterprises of Robert Hamilton: A Study of Wealth and Influence in Early Upper Canada, 1776-1812* (Ottawa: Carleton University Press, 1983) pp.48-53.

²¹ NA, RG1, L1, Vol.24, Upper Canada, Executive Council Minute Books on Land Matters, Land Book F, Minute of 18 May 1804, p.44.

that has no Existence."²² The government had both permission and authority to conduct land sales, but the Secretary could do little to force the issue and Council quietly abandoned the scheme.

Secretary of State Portland also came to realize that he could exert little control over the leasing of Crown and Clergy reserves. The policy required above all local knowledge of land values and availability. The best Portland could do was to insure that the executive operated in a responsible manner. To this end he ordered the Lieutenant-Governor and the Executive Council to act as "Conservators and Stewards of this species of Property", to examine and authorize all accounts of rents, and to submit reports on a bi-annual basis.²³ Detailed arrangements now had to be worked out. In April 1798 Russell ordered the Land Committee to establish "some permanent scheme for leasing the clergy and crown reserves". His only administrative stipulation was that the different reserves be reported on separately because the clergy reserve returns were "to be communicated to the Bishop of Quebec for His Lordship's information and opinion."²⁴

Council adopted a plan developed by Surveyor General David W. Smith, based on a 21-year lease divided into three terms and subject to periodic rent

²² *Russell Correspondence*, Vol.III, Portland to Russell, 24 January 1799, pp.64-5.

²³ NA, RG7, G1, Vol.53, part 1, Colonial Office, Miscellaneous Correspondence, Portland to Russell, 10 January 1798, pp.113-18.

²⁴ NA, RG1, L1, Vol.22, Upper Canada, Executive Council Minute Books on Land Matters, Land Book D, Order-in-Council of 16 April 1798, p.99.

increases. As required they sent it to London for approval.²⁵ Portland accepted the plan with only two alterations. Wheat or hard currency would be accepted as payment, and there would be no automatic option to renew at the end of each seven year period.²⁶ Council accepted the changes because it gave them greater flexibility in dealing with the lessees. The Councillors realized that the reserves would prove to be generally unpopular and that discontent over their presence would increase as the community developed around them. They hoped that leasing the reserves on easy terms would create a group of appreciative settlers willing to defend the system, and in turn the government that it supported. As the Land Committee explained in its report on Smith's scheme, the "mere conduct and management" of the reserves would provide the means of "erecting and maintaining that influence which experience has shown to be essential to the strength and efficacy of the best constituted government."²⁷ The Councillors hoped to create a class of dependent tenants with the government as landlord. Thus, as with most aspects of the land granting system, the leasing of Crown and Clergy

²⁵ A full explanation of the scheme, and its ultimate failure to produce significant revenues, can be found in Gates, *Land Policies of Upper Canada*, chapter 12. The rents were set at 10, 20, and 30 shillings for each of the three seven-year periods. This sort of scheme was referred to as rack rents. The lease was subject to a patent fee of £1.12.6 but the settler was charged only 2s 6d at the time of application, the remainder being deducted from the rent. The leases were also alienable without fine or restriction, so they contributed to speculation since many persons took them out only to strip the timber and wait for local land prices to increase.

²⁶ *Russell Correspondence*, Vol.II, Portland to Russell, 4 July 1798, p.179.

²⁷ NA, RG1, L1, Vol.20, Upper Canada, Executive Council Minute Books on Land Matters, Land Book B, Minute of 13 January 1797, p.147.

reserves had both financial and political dimensions.

Aside from the authorization of fee rates and reserve leasing schemes, the Secretaries of State played a limited role in the actual administration of the Upper Canadian land granting system. Their greatest impact came in the appointment of senior officeholders and in the approval of regulations. Not until the end of the war in Europe did the organization of a new Colonial Office allow British administrators to take a more active role in the actual distribution of land. During the first two decades of Upper Canada's existence the Lieutenant-Governor acted as the immediate instrument of Imperial designs. The Lieutenant-Governors, and the Provincial Administrators who took over in their absence, however, were often limited by circumstances beyond their control.

On 20 July 1796, the day before Simcoe's departure, the Crown appointed Peter Russell Administrator of Upper Canada. The son of an Irish army officer, Russell spent much of his adult life seeking lucrative appointments in order to pay off his considerable gambling debts.²⁸ Like his father, he sought and received a commission in the British army, eventually rising to captain in the 64th Regiment of Foot and assistant secretary to commander-in-chief Sir Henry Clinton during the American Revolutionary War. Reduced to half-pay after the war, Russell used his connections with Clinton and with Simcoe, whom he had befriended in America,

²⁸ *Dictionary of Canadian Biography*, Vol.V, "Peter Russell", Edith G. Firth, pp.729-32. After a short posting in Martinique with the 94th Foot during the early 1760's, Russell owed more than £1000 in gambling debts. During the mid-1770's he spent several months in the Fleet Street Prison until discharged under the Insolvent Debtors Relief Act.

to secure appointment as Receiver General of Upper Canada. When he arrived in the province in June 1792 Russell was already 59 years old. As the senior Executive Councillor in 1796 Simcoe recommended that he be given the job of Administrator.

Although considered avaricious, unimaginative, and insecure by many of his contemporaries and occasionally by later historians, Russell proved to be a conscientious administrator. He took steps to enforce the rules created by others, close the loopholes left by Simcoe, and control speculation.²⁹ While certainly eager for the fees of office, he did not allow petitions to be granted without due consideration as had occasionally been the case in Simcoe's time. Perhaps most importantly he enforced the rule that all petitions for land must be authorized directly by the Lieutenant-Governor or administrator before warrants could be issued, thus strengthening accountability within the administrative process.

Initially Russell tried to gain greater control over settlers coming into the province from the United States. The Land Committee uncovered numerous instances of fraud and speculation by these "late-Loyalists", particularly the misuse of Land Board and magistrate's certificates. In the autumn 1796 Russell ordered that all settlers must reside in the province for at least twelve months and produce a certificate of good behaviour before they could apply for land. Council authorized local Justices of the Peace to issue the certificates and ordered the Clerk of the

²⁹ Craig, *Upper Canada: the Formative Years*, p.42. Wilson, *The Clergy Reserves of Upper Canada*, p.27. Gates, *Land Policies of Upper Canada*, p.39 and Chapter Five.

Council to keep a record.³⁰ In a further attempt to control undesirable applicants, the Clerk kept a list of persons "not considered as fit objects for His Majesty's Bounty" which he transmitted to the Surveyor General's Office.³¹ The list also contained names taken from rejected petitions and Land Book records. These measures improved communications and the ability of the administrators to police regulations. The criteria for acceptability remained industry, loyalty and acceptance of the British constitution. Ethnicity and religious belief carried little weight and the Land Committee regularly granted lands to French Royalists, Highland Scots, American-born settlers, Germans, Quakers, Catholics, Methodists, and Presbyterians.

One of the most persistent problems in the land granting process had to do with orders-in-council for grants piling up in the Clerk's office. Not only did this prevent officers from receiving their share of the fees, it made it impossible to determine how much land had been granted and how much remained in the hands of the Crown. In January 1799 Russell tried to address the problem by issuing an order that fees must be paid on all existing warrants within three months, and on all future warrants within one month. If not paid, the orders-in-council "will be

³⁰ OA, *Eighteenth Report*, Excerpts from Upper Canada Land and State Book A, Minute of 4 November 1794, p.93, Minute of 14 November 1794, p.111, Minute of 27 April 1796, p.154.

³¹ NA, RG1, L7, Vol.73, Upper Canada, Executive Council, Standing Orders, 7 February 1797, n.p..

rescinded and the Petitions of the parties dismissed."³² Although well-intentioned, the regulation proved unenforceable because it was unfair to poor settlers who often had trouble finding the necessary cash.

Russell also tried to deal with the problem of road maintenance by imposing specifically defined settlement duties. These came to be known as Yonge Street conditions. In December 1798 the Land Committee ordered settlers on Yonge Street to build a house of at least 16 by 20 feet, clear and fence five acres, and clear one half of the road along the front of the lot, all within twelve months.³³ Locations would not to be confirmed until the settler satisfied the Committee that the conditions had been met. By 1806 these conditions applied to grants along all major and many minor roadways in the province.³⁴ The regulation had limited success for a number of reasons, not the least of which was the inability of the government to enforce compliance. Local Magistrates issued certificates of completion but the Land Committee no way to tell whether they were legitimate or not. A settler's lot may have been many miles from the local Justice of the Peace and thus not likely to have been closely inspected. Moreover, the Justices were often sloppy record-keepers as well as substantial property-owners themselves.

³² NA, RG1, L1, Vol.22, Upper Canada, Executive Council Minute Books on Land Matters, Land Book D, Order-in-Council of 5 January 1799, p.252.

³³ NA, RG1, L1, Vol.22, Upper Canada, Executive Council Minute Books on Land Matters, Land Book D, Order-in-Council of 29 December 1798, p.248.

³⁴ OA, *Eighteenth Report*, Excerpts form Upper Canada Land and State Book A, p.149. NA, RG1, L1, Vol.25, Upper Canada, Executive Council Minute Books on Land Matters, Land Book G, Order-in-Council of 17 June 1806, p.77.

They weren't about to chase off neighbouring settlers by enforcing onerous statute labour regulations. They failed to draw up lists of authorized and unauthorized persons, and they often distributed certificates that were little more than illegible hand written notes scribbled on scraps of paper.³⁵ To make matters worse, in 1804 an order-in-council relieved settlers of settlement duties as long as they paid their fees according to the new rates established in July of that year. This, the order stated, would help to "expedite and facilitate the issuing of deeds".³⁶ The trade-off between the speedy issuance of patents and the enforcement of settlement duties did nothing to improve road conditions in the province.

Russell may have been avaricious in his pursuit of land fees in part because he did not receive a full portion. Since Simcoe retained the commission as Lieutenant-Governor, Russell had to turn over half of the fees of office to him. This amounted to the considerable sum of slightly more than £560 stg. for the six months between July 1797 and December 1798.³⁷ Although Russell grumbled over having to share the fees, he continued to discharge his duties in a conscientious manner. Aside from his additional obligations as the head of government and Receiver General, he attended 101 of the 209 meetings of the Land Committee held during his tenure as Administrator. Only Chief Justice Elmsley, the committee

³⁵ Many of these certificates can be found in OA, RG1, Series C, Lands Branch, C-I-3, Fiats and Warrants.

³⁶ NA, RG1, L1, Vol.24, Upper Canada, Executive Council Minute Books on Land Matters, Land Book F, Order-in-Council of 27 July 1804, p.79.

³⁷ *Russell Correspondence*, Vol.II, McGill to Simcoe, 15 October 1798, p.284, and Vol.III, Russell to Simcoe, 20 May 1799, p.201.

chair, had a better record of attendance.

Russell, meanwhile, made several influential enemies during his term in office, not the least of whom proved to be Elmsley.³⁸ This did little to improve his chances of further appointments. When Simcoe finally surrendered his commission as Lieutenant-Governor in 1798, the Secretary of State passed over Russell in favour of General Peter Hunter.

A career army officer thirteen years younger than Russell, the Crown appointed Hunter both Lieutenant-Governor of Upper Canada and commander of British forces in the two Canadas.³⁹ Although a seasoned and competent military officer, Hunter had little experience with civil administration.⁴⁰ He was generally familiar with the situation in the Canadas, however, having been assigned command of the western posts headquartered at Fort Niagara during the late 1780's. Hunter proved to be an intelligent, strong-minded, autocratic soldier who sought to enforce greater order and efficiency on government operations in Upper Canada.⁴¹ In this he had considerable success, although his long absences from

³⁸ *Ibid.*, Vol.II, Elmsley to Smith, 4 March 1798, pp.109-10. Portland refused to grant Elmsley such a large portion of land, eventually allotting only 6,000 acres to each councillors.

³⁹ Hunter was appointed commander of British forces in the two Canadas because his counterpart in Lower Canada, Sir Robert Shore Milnes, was not a military officer. Greenwood, *Legacies of Fear*, pp.204-5.

⁴⁰ *Dictionary of Canadian Biography*, Vol. V, "Peter Hunter", Collaboration, pp.439-43.

⁴¹ Peter Hunter has been little noticed by Upper Canada's historians. Gerald Craig, almost in passing, referred to Hunter as a "martinet" and absentee governor who occasionally acted in an arbitrary fashion. Craig, *Upper Canada: The Formative Years*, pp.42-3.

the province necessitated by his military duties at Quebec prevented daily, active supervision.

Upon arriving in Upper Canada in August 1799, Hunter immediately ordered an audit of the Land Granting Department. Conducted by Peter Russell in his capacity as Auditor General of Land Patents, the examination revealed a number of problems in the operations of the various offices involved in making grants and issuing patents. Russell reported that there were some 494 patents stalled within the system. Of this number more than half were piled up in the Provincial Secretary's office waiting for final authorization or receipts for payment of fees. Another 215 were still in the process of assignment.⁴² This amounted to almost 400,000 acres, equal to the area of then grantable, surveyed land within the province.⁴³

As a result of the audit Hunter became convinced of the necessity for stricter regulation. To the General's military sensibilities the process of issuing patents seemed to be slow, ponderous and grossly inefficient. For example, in October of 1800 Able Stevens and 16 other settlers petitioned the Lieutenant-Governor for assistance in securing their grants. The previous January the Land Committee promised them 400 acres each for cutting a road through Leeds,

⁴² NA, RG1, L7, Vol.71, Upper Canada, Records of the Executive Council, Lists of Fees Collected, n.p..

⁴³ NA, RG1, E1, Vol.46, Upper Canada, Executive Council Minute Books on State Matters, State Book D, Report of the Auditor General of Land Patents, 20 September 1799, p.461.

Landsdown and Pittsburg Townships. The Committee told them that an inspection would be necessary, but that they must apply for warrants before 1 June 1800. Come October the inspection still had not been done, and other settlers had begun taking up the choice lots along the road. An irritated Lieutenant-Governor ordered the warrants to be issued immediately, and simply ignored the question of inspection.⁴⁴

On 9 June 1801 the General laid a series of orders before the Executive Council designed to stimulate industry and accountability among the officers.⁴⁵ All clerks were forbidden to engage in occupations other than the duties of their respective offices. Hunter ordered them to "attend to their duties in the afternoon as well as the forenoon", and he gave each clerk a quota of 18 descriptions to be completed each week. He pointedly reminded the clerks that their salaries depended upon the "diligence and correctness" with which they discharged their duties. Hunter also issued the senior officers a stiff reprimand. Henceforth, he would hold the Surveyor General and the Clerk of the Council fully responsible for the work of their clerks. The Lieutenant-Governor ordered the Receiver General to ensure that parchment, wax, and printed forms were paid for and available at all times, and he scolded the Provincial Secretary for dispensing patents without first receiving a receipt for fees. Hunter concluded by emphasizing the need for co-

⁴⁴ NA, RG1, L1, Vol.22, Upper Canada, Executive Council Minute Books on Land Matters, Land Book D, Petition of Abel Stevens, 29 October 1800, p.570.

⁴⁵ NA, RG1, L1, Vol.22, Upper Canada, Executive Council Minute Books on Land Matters, Land Book D, Order-in-Council of 9 June 1801, pp.658-9.

operation between the Surveyor General and the Provincial Secretary to ensure that report books and schedules were kept up to date.

Many of the administrative delays and difficulties originated with Provincial Secretary William Jarvis.⁴⁶ An intransigent and incompetent administrator, Jarvis too often simply refused to obey reasonable orders from his superiors. Moreover, he bickered with every other officer involved in granting land, particularly when it came to the collection and distribution of fees. Jarvis refused to move to York when the capital was transferred, delayed turning over his accounts to the Receiver General until threatened with dismissal, charged applicants unauthorized fees, pocketed the proceeds, and failed to safely store the public records in his charge.⁴⁷ For example, Jarvis set up the Public Records office in a room attached to the kitchen of his house in Newark, something which Elmsley warned was bound to cause problems. When the kitchen caught fire on 3 December 1796, the office burned to the ground. The bulk of the records were saved but as Peter Russell informed Simcoe, "a few deeds were reported to have been taken away, and several others defaced and unsealed by being trampled on in the confusion." Fed up with delays and irregularities, in January 1802 Hunter ordered Jarvis to stop issuing patents as privileged grants unless they had been authorized by the

⁴⁶ *Dictionary of Canadian Biography*, Vol.V, "William Jarvis", Robert J. Burns, pp.452-3.

⁴⁷ The details of Jarvis' difficulties are laid out in *Russell Correspondence*, Vol.I, Russell to Simcoe, 31 December 1796, p.117, 13 September 1797, p.278, Vol.II, Elmsley to Smith, 16 March 1798, p.120.

Inspector General. The Secretary had been deciding on his own who was privileged and who was not. Hunter also demanded that the Secretary keep accurate schedules of both fee-paying and privileged assignments and ensure that all applicants "be detained no longer than necessary."⁴⁸

At this point Hunter and Inspector General John McGill began revising the official list of United Empire Loyalists. Between May 1802 and November 1804 they removed some 904 names from the rolls and these persons ceased to be eligible for free grants.⁴⁹ Aside from generating widespread discontent, Hunter's attempts to control the U.E. lists, and the direct costs to government produced by them, created a number of administrative difficulties. In June 1802, McGill asked Russell, in his capacity as the Auditor General of Land Patents, to draw up a detailed report of all persons given grants for which the government paid the half-fees.⁵⁰ In his letter of reply, Russell stated that his docket books did not contain such details, but that the Provincial Secretary's records should.⁵¹ Perhaps realizing that he just admitted that his records were incomplete, Russell corrected himself

⁴⁸ NA, RG1, L6D, Vol.I, Upper Canada, Departmental Records, Inspector General's Records, Memorandum, 12 January 1802, n.p..

⁴⁹ Gates, *Land Policies of Upper Canada*, p.68.

⁵⁰ NA, RG1, L6D, Vol.I, Upper Canada, Departmental Records, Inspector General's Records, Russell to McGill, 14 June 1802, n.p.. The Receiver General normally held the office of the Auditor General of Land Patents.

⁵¹ In 1799 Secretary Jarvis was ordered to take signed receipts for all U.E. and military deeds and to produce these receipts "at every audit of the half-fee account". NA, RG1, L1, Vol.22, Upper Canada, Executive Council Minute books on Land Matters, Land Book D, Order-in-Council of 10 December 1799, p.455.

and pleaded that "it would (if I had no other business to attend to) take me a full year at least to draw out in my own Person the [separate] Schedule you require". With some justification considering his advanced age and failing health, Russell pleaded that if he undertook such a job "the long and close confinement would occasion my Death." He did, however, assure McGill that he would review the list once the Secretary drew it up. Russell's workload justified shifting the burden to the Secretary's office. The Auditor General, unlike the Provincial Secretary, did not employ clerks to assist in such book-keeping matters.⁵²

Dissatisfied with his earlier attempts to improve the operations of the Land Granting Department, in July 1802 Hunter appointed Russell and McGill as a special committee to investigate and report on "The conduct, labor and attendance given by the Principle as well as by the Clerks and in short into every possible thing which may tend to punctuality, precision and order."⁵³ A week later Hunter ordered the Land Granting Committee and its clerk to record and number each deliberation separately in its reports, rather than simply draw up lists of names of grantees. He also ordered them to provide a column in the report books for the Lieutenant-Governor's signature and remarks.⁵⁴ By this Hunter served notice that he planned to closely scrutinize both the decisions of the Land Committee in

⁵² Jarvis was assisted by one clerk at the time, William Birdseye Peters. Armstrong, *Upper Canadian Chronology*, p.22.

⁵³ NA, RG1, L1, Vol.23, Upper Canada, Executive Council Minute Books on Land Matters, Land Book E, Order-in-Council of 10 July 1802, p.50.

⁵⁴ NA, RG1, L1, Vol.23, Upper Canada, Executive Council Minute Books on Land Matters, Land Book E, Order-in-Council of 20 July 1802, p.44.

making grants and its record-keeping procedures. Although he clearly intended to take a more active role in the land granting process, the General seldom recorded any comments on the Land Committee's decisions.

Six months later Russell and McGill submitted their recommendations on how to improve the patenting process.⁵⁵ The new regulations required grantees to pay the whole of their fees within three days of receiving an order-in-council for land. To centralize collection, fees were to be paid to the Receiver General rather than the Surveyor General. The grantee then had to submit a receipt to the Clerk of the Council within four days. The Clerk would make copies of the order and receipt and send the grantee, with the originals, to the Attorney General, who would check the documents to insure that they conformed to the regulations and verify that the grantee had not been previously denied a grant. If the grantee and his documents proved acceptable, the Attorney General issued a fiat, which he carried to the Surveyor General who issued a description for a specific lot of land. The description then went to the Provincial Secretary in order that a patent could be engrossed. The entire process was to be completed within 21 days of the order-in-council being issued. Hunter approved the recommendations of the committee, and on 21 June 1803 he issued an order-in-council putting the process into effect.⁵⁶ The central collection of fees and the time limits placed on processing

⁵⁵ NA, RG1, L1, Vol.23, Upper Canada, Executive Council Minute Books on Land Matters, Land Book E, Report of the Special Committee, 30 December 1802, pp.178-81.

⁵⁶ OA, RG1, Section C, Lands Branch, C-I-3, Attorney General's Office Records, Fiats and Warrants.

applications made matters more efficient for both the government and the settler.

The following autumn Hunter ordered a second audit of the Land Granting Department. In December 1803 the Land Committee of Council reported that it had examined a total of 851 grants.⁵⁷ Of these, 273 were privileged grants with fees paid by the government. In this group, only 16 remained in the Secretary's office because they lacked the proper "marks" or signatures. A whole range of problems bedeviled the remaining 505 fee-paying grants. One had been altered by the Attorney General after completion despite the fact that he had no business doing so. One had been issued under no authority whatsoever. Forty-nine lacked descriptions of the lot granted or full names of the grantees. Five had been made out for blocks of Indian lands but no fees had been paid and no regulations existed to determine what they might be. Two had been made out to the husband rather than the wife who was the actual grantee. Four had been issued to the wrong person because of confusion over names. Eight had been issued to the wealthy merchant Samuel Street but he refused to pay the fees. Five had been eaten by mice because they had been sitting in the office for "6 or 7 years". And finally, one deed made out to John Bender had been impounded for outlawry; the committee stated that it should be returned because "the Executive Government has nothing to do with outlawry".

As a result of the second audit, Hunter ordered the officers of the Land

⁵⁷ NA, RG1, L1, Vol.23, Upper Canada, Executive Council Minute Books on Land Matter, Land Book E, Report of the Land Committee of 2 December 1803, pp.325-9.

Granting Department to repay £89.9.9 because of "improper charges made against government for Patents of Land."⁵⁸ It seems that several of the officers made "double charges" against government accounts for fees on privileged grants. Others did favours for their friends by back-dating documents in order to avoid the fee increases that came into effect in 1798. Henry Allcock, the new Chief Justice, recommended that the Surveyor General "insert at the foot of every description the date of the Attorney General's fiat" in order to stem the abuse.⁵⁹

By early 1804 the members of the Land Committee became reluctant to turn their records over to the Inspector General for what were becoming embarrassing and costly audits. In January McGill secured an order-in-council from Lieutenant Governor Hunter allowing him to remove a number of books from the Council Secretary's office in order to "examine certain accounts respecting survey money due to the Crown."⁶⁰ His fellow Committee members demanded that receipts be supplied and that the removal of the books be considered an unusual occasion and "by no means to be drawn into Precedent." They warned that "The Executive Government should always exercise its Judgement in any Individual Instance before any Book shall be removed from the office." The account books recorded how the Committee operated within the far-from-airtight regulations on land

⁵⁸ NA, RG1, L1, Vol.23, Upper Canada, Executive Council Minute Books on Land Matters, Land Book E, Order-in-Council of 4 January 1804, p.354.

⁵⁹ NA, RG1, L1, Vol.23, Upper Canada, Executive Council Minute Books on Land Matters, Land Book E, Minute of 22 November 1803, p.217.

⁶⁰ NA, RG1, L1, Vol.23, Upper Canada, Executive Council Minute Books on Land Matters, Land Book E, Minute of 28 January 1804, p.363.

granting. Clearly, they were reluctant to share information that would make them accountable for their actions. In this case, however, they need not have worried. McGill examined the books but found nothing wrong with the collection of survey fees.

During his five years in office, Lieutenant Governor Peter Hunter improved the operation of the Land Granting Department in ways that his predecessor could not. His military character and the greater authority conferred by the Lieutenant-Governorship allowed him to force recalcitrant administrators to speed up their operations and increase their workloads. Some, like Secretary William Jarvis, resented the General's reforms. Others appreciated the immediate increase in income produced by the speedy issuance of patents. Nevertheless, as Attorney General Thomas Scott lamented to Surveyor General David Smith, "You and I on sundry mornings have killed the goose that produced the golden eggs."⁶¹ Scott realized that speeding up the process of patenting Crown grants only hastened the day when there would be none left.⁶² Far better to drag matters out and profit from the seemingly inevitable fee increases.

After his death in August 1805 many people, including the self-appointed tribune of the people Justice Robert Thorpe, accused Hunter of being greedy for land grant fee.⁶³ This may have been true, but it is certainly not obvious from the

⁶¹ Toronto Public Library, Smith Papers, B8, pp.51-2. Gates, *Land Policies of Upper Canada*, p.73.

⁶² Gates, *Land Policies of Upper Canada*, p.73.

⁶³ Gates, *Land Policies of Upper Canada*, p.67.

official land records. During his term in office 7,800 patents received the provincial seal, netting the General a little over £4000 in addition to his regular salary. At the same time he refused to sign some 800 deeds because they had been carelessly drawn up.⁶⁴ A more casual approach would have increased his income considerably. Hunter also took steps to supervise the system more closely, such as examining and signing each individual entry in the Land Books.⁶⁵ This expanded his work load without adding to his income. Although the cost of obtaining a grant increased during his tenure in office, the issue of fees did not create resentment against General Hunter, but rather his efforts to improve the efficiency of the Land Granting Department and his revisions of the greedily coveted U.E. List. Many administrators disliked the strict regime he imposed and Loyalists often felt betrayed by the restrictions placed on their access to free land. While alive, the firm-minded Hunter shouldered the criticisms levelled against his administration with apparent disregard. Such was not the case with his successor, Francis Gore.⁶⁶

Born in 1769, Francis Gore came from a well-connected family of the minor English aristocracy. Like so many of his class and social background, he joined the

⁶⁴ *Ibid*, pp.72-4.

⁶⁵ NA, RG1, L1, Vol.24, Upper Canada, Executive Council Minute Books on Land Matters, Land Book F, Minute of 22 May 1804, p.47.

⁶⁶ General Peter Hunter died in office on 21 August 1805. Executive Councillor Alexander Grant assumed the office of administrator on 11 September 1805. Seventy-one years old at the time, Grant mostly left the administration of provincial affairs in the hand of his fellow Councillors. He remained in office until Gore's arrival in August of 1806. *Dictionary of Canadian Biography*, Vol.V, "Alexander Grant", Carol Whitfield, pp.363-7.

military at the age of eighteen and eventually rose to the rank of major. Although he had almost no administrative experience, Gore enjoyed the patronage of Earl Camden, one of the more influential British cabinet ministers of the period.⁶⁷ When Camden became Secretary of State for War and the Colonies in 1804 he secured an appointment for Gore as Lieutenant-Governor of Bermuda. A little more than a year later Gore moved on to Upper Canada. He swore the oath of office at York on 25 August 1806, and held his commission for the next eleven years. His term in office, however, divides into two distinct periods; in October 1811 Gore returned to England on leave and did not return until September 1815.

During his first tour of duty between 1806 and 1811, Lieutenant Governor Gore had little positive impact on the land administration of Upper Canada. During this period he attended only 3 of the 283 meetings of the Land Committee.⁶⁸ He made few innovations or improvements in either regulations or procedures, and for the most part allowed his subordinates to run their offices as they saw fit. As a result they returned to the perfunctory ways of the years before Hunter's reforms. For example, the Land Committee allowed the Clerk of the Council to record decisions on regular grants to ordinary settlers and grants to the sons and daughters of U.E. Loyalists in batches, rather than listing them separately, as

⁶⁷ *Dictionary of Canadian Biography*, Vol.VIII, "Francis Gore", S.R. Mealing, pp.336-41. Gore served as aide-de-camp to the then Lord Lieutenant Earl Camden in Ireland.

⁶⁸ During his second stay in the province, from October 1815 to June 1817, he attended 39 of 62 meetings. This reflected his much more vigorous supervision of the Department after the War of 1812.

Hunter demanded. This not only lightened the Clerk's work-load considerably, but prevented close scrutiny of the decisions of the Councillors.⁶⁹ Other officers and clerks also took advantage of Gore's lax supervision and began disregarding Hunter's regulations on the timetable for issuing descriptions and patents. The process slowed to the point that Gore ordered the Land Committee to re-issue the regulations. To avoid back-sliding, Gore published the regulations in the *York Gazette* and had three hundred copies distributed to the Districts.⁷⁰ For the first time the general public knew how long the patenting process should take, giving petitioners a standard by which to judge the efficiency of government operations. Supervision, however, did not follow regulation, and there is no indication that procedures improved.

Lieutenant Governor Gore had a mixed record when it came to dealing with his administrators on an individual level. When Provincial Secretary William Jarvis initiated a lawsuit against Chief Justice Thomas Scott for what he believed to be his fair share of patent fees, Gore persuaded him to drop the suit. The Lieutenant-Governor ordered the Land Committee to investigate the situation; they reported that there were 1040 completed patents in the Secretary's office for which "it does

⁶⁹ NA, RG1, L1, Vol.25, Upper Canada, Executive Council Minute Books on Land Matters, Land Book G, Minute of 17 June 1806, pp.74-6. On the first day that batch recording was permitted, 49 petitions were entertained by the Land Committee, 25 of which were from U.E.'s (6 sons and 18 daughters).

⁷⁰ NA, RG1, L1, Vol.25, Upper Canada, Executive Council Minute Books on Land Matters, Land Book G, Order-in-Council of 1 May 1807, Regulations on the issuing of patents, p.328.

not appear that the Secretary has received any compensation."⁷¹ As Gore pointed out to the Colonial Secretary, Scott, in his former capacity as Attorney General, was supposed to pay for parchment out of his share of the fees, but the six shilling charge per patent had been taken out of the Secretary's portion. When Gore returned to London he took up the case with the new Colonial Secretary, Earl Bathurst, and secured for Jarvis £1,000 Hfx. in compensation to be drawn on Upper Canada's accounts.⁷² Although the Provincial Secretary expressed gratitude for Gore's intercession, his family remained unsatisfied. William's son, Samuel P. Jarvis, continued to petition the authorities for the next fifteen years and eventually obtained £2,225 stg.⁷³ Neither at the time, nor later, did anyone say anything about the fact that Attorney General Scott pocketed the fee without paying for the parchment, and since the patents were all for privileged grants for which the government paid the fees, the public accounts had been charged twice for the same piece of stationery.

Although Gore ignored Scott's improprieties, Upper Canada's next Attorney General, William Firth, did not have the same luck.⁷⁴ Firth arrived in the province

⁷¹ NA, MG11, Vol.353, Colonial Office 42: Upper Canada, 1812 Dispatches, Gore to Bathurst, 6 August 1810, p.252.

⁷² NA, MG11, Vol.356, Colonial Office 42: Upper Canada, 1815 Dispatches, Gore to Bathurst, 8 May 1815, pp.96-7, and R. Lushington to H. Goulburn, 29 July 1815, p.274.

⁷³ NA, MG11, Vol.389, Colonial Office 42: Upper Canada, 1829 Dispatches, Minutes of the Executive Council of Upper Canada, enclosed in Colborne to Murray, 2 March 1830, pp.307-12.

⁷⁴ Craig, *Upper Canada: The Formative Years*, p.63. *Dictionary of Canadian Biography*, Vol.VI, "William Firth", S.R. Mealing, pp.285-6.

in March 1807 and returned to England four years later convinced that he had been "goaded by ye violence & tyranny of Mr. Gore into a voluntary relinquishment" of what he admitted to be a "lucrative situation".⁷⁵ After his departure Firth accused Gore of a range of petty misdeeds including tampering with the mail, withholding fees from land granting officers, dispensing "unwarrantable Grants of Land" to some while "unjustly" withholding those to others, manipulating the fee schedule so as to reduce the Attorney General's income, and, most importantly, denying the Attorney General's right to attend the assizes as the Crown's counsel.⁷⁶ This last function produced three quarters of his emoluments of office. The fact is that Firth's excessive greed made him unacceptable to Gore and the Executive Council.⁷⁷

In March 1811 Attorney General Firth claimed that no instruments could be legally issued by the government without his fiat being present first. This specifically applied to land patents. Gore accepted Firth's assertion and then turned it against him by ordering the Attorney General to remain in York to examine patents rather than travel the judicial circuit. He could collect the fees from one set of duties but not from both. Faced with this situation Firth fled back

⁷⁵ NA, MG11, Vol.353, Colonial Office 42: Upper Canada, 1812 Despatches, Gore to Francis Peel, 9 April 1812, p.35.

⁷⁶ NA, MG11, Vol.358, part 2, Colonial Office 42: Upper Canada, 1816 Despatches, Petition submitted to the British House of Commons, 24 June 1814, enclosed in Firth to Bathurst, 8 October 1816, pp.133-6.

⁷⁷ Romney, *Mr. Attorney*, p.48. Romney refers to Firth as "a greedy, conceited bungler, who seems on the face of it to have merited all the harassment the Executive Council and the lieutenant-governor meted out to him."

to England to defend his dual role as the Crown's representative in the King's Court and the officer responsible for examining legal instruments. The upshot of all this was that the province was left without an Attorney General for several months. More importantly in the long run, it opened the door for the ascendancy of John Beverley Robinson who quickly became the Family Compact's greatest defender, and an important influence on the land granting system of Upper Canada.

Lieutenant Governor Gore also clashed with administrators with whom he had political differences. A traditional, conventional-minded Tory, Gore refused to allow encroachments on the Royal prerogative or the administrative powers of the colonial government. In May 1804 the Colonial Secretary appointed Charles Burton Wyatt Surveyor General. Arriving in the province the following year, Wyatt immediately clashed with Gore and the Executive Council.⁷⁸ Son of the renowned architect James Wyatt, C.B Wyatt had been given a solid education and seemed well versed in the administration of surveying.⁷⁹ When he examined the work being done by his two principal assistants, William Chewett and Thomas Ridout, in laying out the recently purchased Mississauga Tract, he was less than satisfied with the results. Wyatt voiced his criticisms and relations within the Surveyor General's

⁷⁸ *Dictionary of Canadian Biography*, Vol.VII, "Charles Burton Wyatt", Elwood H. Jones, pp.929-30.

⁷⁹ NA, RG1, L1, Vol.24, Upper Canada, Executive Council Minute Books on Land Matters, Land Book F, Report of the Surveyor General, October 1805, pp.356-8. Wyatt submitted his first regular report to the Land Committee in October of 1805. In general, his reports for the following year were substantial, inclusive, and well organized.

office deteriorated to the point where Ridout complained to the Lieutenant-Governor. In December 1806 Wyatt tried to dismiss Ridout's son, Samuel Ridout. Wyatt considered the deputy surveyor to be unco-operative and incompetent, but Gore promptly reinstated him and, a month later, suspended Wyatt instead. Although the immediate issue was whether Wyatt had the right to dismiss a civil officer who received his commission from the Crown, the conflict was not so simple.

Upon arriving in the province, Wyatt associated with the cantankerous Justice Robert Thorpe. As a result Gore identified Wyatt as one of the principal malcontents in the administration. The previous spring Wyatt disregarded established protocols by submitting his accounts to an investigative committee of the Legislative Assembly without getting permission from the Lieutenant-Governor to do so. Although there existed no specific rule against this, Gore saw Wyatt's actions as little more than creeping republicanism. When the Lieutenant-Governor complained to the Surveyor General, Wyatt replied that "the House of Assembly was omnipotent, and that it was his duty to obey." As Gerald Craig noted, this was "hardly the doctrine to endear him to his associates in government."⁸⁰ Unfortunately for his own cause, Wyatt exceeded his authority in the operations of his office by granting transfers of unpatented locations without Land Committee approval, including a transfer for a lot in Niagara Township that he had

⁸⁰ Craig, *Upper Canada: the Formative Years*, p.60.

purchased.⁸¹ Although this was something done by his predecessors on a regular basis, it contravened established regulations and Gore used it as grounds for dismissal. Wyatt promptly returned to England to plead his case. The Colonial Secretary, Lord Castlereagh, considered Gore's actions to be unwarranted, but prudently ordered that the Surveyor General be given an appointment in some other colony.⁸² This, he hoped, would close the matter.

As was so often the case, Castlereagh had more important problems to deal with than the petty squabbles between distant colonial governors and their administrators. By 1811 war in Europe had begun to heat up again, and this time it threatened to draw in the Americans. Minor colonial controversies would have to wait. As a result supervision of the colonial government in Upper Canada remained solely in the hands of the Lieutenant-Governor. While Peter Russell and General Hunter took steps to reform the administration and make it more efficient in its operations and responsive to the needs of the province, little was done to follow up on their efforts. From the time of Simcoe's departure in 1796 until the War of 1812 the day-to-day administration of the Land Granting Department remained in the hands of the Land Committee of the Executive Council and the

⁸¹ NA, MG11, Vol.355, Colonial Office 42: Upper Canada, 1814 Dispatches, Wyatt to Deputy Secretary Goulburn, 29 June 1814, pp.267-74.

⁸² NA, MG11, Vol.355, Colonial Office 42: Upper Canada, 1814 Dispatches, Lord Castlereagh to Wyatt, 23 December 1808, p.275. Wyatt eventually sued Gore for libel in civil court and was awarded a £300 settlement.

senior officers of the provincial government. As Frederick Armstrong has observed, "On the whole the governors lacked the ability to control the officials who were, after all, unquestionably loyal, and were running the province along lines entirely approved by Britain."⁸³ It was these individuals who had the greatest impact on the land granting business of Upper Canada.

⁸³ Frederick Armstrong's introduction to Henry Scadding, *Toronto of Old*, p.xx.

Chapter Five

The Land Committee of the Executive Council and the Principal Officers of the Crown, 1796-1815

It would be difficult to over-estimate the importance of the Executive Council in the granting of Crown land in Upper Canada. Although Councils in pre-Revolutionary American colonies often became a "relatively withered limb"¹ of government, not so in Upper Canada. In creating the province Imperial administrators sought to strengthen the aristocratic and monarchical components of the colonial constitution to, as they saw it, bring it more in balance and make it more reflective of the British model.² The Constitutional Act, however, placed almost all administrative power and control in the hands of Crown-appointed executive officers. As a result the Upper Canadian Executive Council emerged as the most powerful, and most influential, branch of government. Land granting remained its first business. From the creation of the Council in 1791 until the establishment of the Commissioner of Crown Lands Office in 1826, it remained the principal institution through which settlers received real property. The Councillors interpreted policy, dispensed patronage, regulated land distribution, supervised

¹ Kross, "Patronage Most Ardently Sought: The New York Council, 1665-1775", in Daniels, ed., *Power and Status: Officeholding in Colonial America*, p.207.

² Mills, *The Idea of Loyalty in Upper Canada*, p.17.

administrative operations, and dealt with the seemingly endless stream of problems involved in the settlement process.

Despite its importance in the social and economic development of Upper Canada the administrative functions of the Executive Council have been generally ignored by historians.³ Most contemporary writers take their cue from the Reformers of the 1830's and '40's who regarded the Council as an anachronistic hold-over from a bye-gone era, a stumbling block to political and social progress, and a hinderance to provincial prosperity. Since the adoption of responsible government in the late 1840's it has been standard practice to assume that, because the Councillors were appointed and not elected, they must have been incompetent and corrupt. All too often it is implied that because the Councillors did not represent the people through the mechanisms of democracy they could not have had the interests of their constituents foremost in mind, that power must have been arbitrarily exercised for the benefit of the few at the expense of the many. But evidence for such an assessment is sorely lacking, and the vilification heaped on the Council by its critics tells us little about how it actually functioned, or how

³ Gerald Craig, in his general history of the province, referred to the Council as simply an "advisory body" and quite erroneously stated that "No one knew, except its oath bound members, exactly how it functioned, or what its powers were or could be in relation to the lieutenant-governor." Craig, *Upper Canada: the Formative Years*, p.202. Lillian Gates discussed the impact of the Council on land policy at length, but referred to its administrative functions only in the context of the criticisms levelled against it. Gates, *Land Policies of Upper Canada*, pp.106-9, and 124. Douglas McCalla, in his recent economic history, recognized the importance of the Council's "institutional structure", but then turned his attention elsewhere. McCalla, *Planting the Province*, p.14 and 162.

it influenced and shaped colonial development.

With the Constitutional Act of 1791 the British Parliament created the Upper Canadian Executive Council. Recommended by Secretary of State Lord Grenville and accepted by the Pitt ministry, the Imperial government saw it as the principal means of constraining democratic pressures in the new province.⁴ The Executive Council was most assuredly not the "shadowy body" of "obscure and uncertain character" often referred to by Canadian historians.⁵ Executive Councils had been an integral part of British colonial rule for over a century. The Council's duties, responsibilities and powers were defined and well known to the governing class of colonial society and to Imperial administrators in Whitehall. As was so often the case at the time, however, they felt no need to publicize their powers and duties or make their operations transparent to the public. Unfortunately, for the reputations of the Councillors, the British government carried on this approach to governing in the new province. This resulted in a continuation of what had long been seen by many as an excessively secretive, arbitrary, self-serving form of executive administration. For those who engaged in the new popular politics that

⁴ Burt, *The Old Province of Quebec*, Vol.II, p.199. Manning, *British Colonial Government After the American Revolution*, p.327. Helen Manning points out that Lord Grenville was anxious to give Upper Canada a constitution that would avoid the mistakes made in the past in America. To Grenville's mind the problem was an excess of public participation in the governance of the colony. Snelling and Barron, "The Colonial Office: Its Permanent Officials, 1801-1914", in Sutherland, *Studies in the Growth of Nineteenth Century Government*, p.147.

⁵ Craig, *Upper Canada: the Formative Years*, pp.19 and 202.

began to develop in Upper Canada too many shadows darkened the operations of the Executive Council. It does not necessarily follow, however, that they did a poor job of administering the province's affairs.

Once appointed to the Executive Council, the government expected all members to take part in the deliberations of the Land Committee. Unlike in the lower province the Lieutenant-Governor did not assign Councillors to specific committees. The Land Committee, in fact, remained the only formal standing committee of the whole to be struck before 1826. This reflects both the limited scope of general government operations in the pioneer colony and the importance of the land granting process. The Councillors were not without other duties in their lives, both public and private, but their most time-consuming official responsibility proved to be dealing with petitions for land and addressing the resulting complications.

Between 1791 and 1826 a total of seventeen individuals actively participated in the operations of the Land Committee.⁶ Of these seventeen, four -- William Claus, Peter Robinson, John B. Macaulay, and Chief Justice William Campbell -- played a limited role, but were important in the transition to the sales

⁶ Over the period a total of 25 persons were appointed to the Executive Council, but eight of these played no role in the land administration. Chief Justice William Osgoode left the province in 1794, just as the Council was taking over the duties of the District Land Boards. Bishop Jacob Mountain never attended. The four provincial administrators appointed during the War of 1812 attended only one meeting of the Land Committee each. George H. Markland was appointed as an honorary member in 1822, but was not given a seat on the Committee. See Armstrong, *Upper Canadian Chronology*, pp.13-15.

system effected in 1826. Throughout the first three decades of the province's existence, a small group of thirteen councillors conducted the bulk of the work of the Land Committee. Two of this group, Samuel Smith and the Reverend John Strachan, received appointments during or after the War of 1812, and their influence, although important, was lessened by their limited years in office and by the existence of the second District Land Boards which took over some of the functions of the Land Committee in 1819. A small and powerful group of eleven Councillors formed the core of the Land Committee: John Elmsley, Henry Allcock, Thomas Scott, William Dummer Powell, John McGill, James Baby, Alexander Grant, Aeneas Shaw, Peter Russell, David William Smith, and Prideaux Selby.

Longevity in office remained one of the most obvious characteristics of this group of administrators. The eleven Councillors each served an average of 12.3 years.⁷ Seven of the eleven occupied their seats for more than ten years, and only one -- Henry Allcock -- for less than five.⁸ James Baby held the record for longevity; he actively participated in the deliberations of the Land Committee for the 31 years between the assumption of full administration of land granting in 1794 until the duties were turned over to the Commissioner of Crown Lands in 1826. John McGill served for 22 years. Others, such as Russell, Shaw and Scott

⁷ This is comparable to the average of 11.8 years for all colonial councillors seated on the eve of the American revolution. Kross, "Patronage Most Ardentlly Sought: The New York Council, 1665-1775", in Daniels, ed., *Power and Status: Officeholding in Colonial America*, p.218.

⁸ After two years in office, Allcock followed his predecessor, John Elmsley, to the Chief Justiceship of Lower Canada.

stretched their years in office well beyond the average. Although Councillors technically held tenure at the pleasure of the Crown, in practice they held it on good behaviour.⁹ None were ever removed for malfeasance, or any other reason. Four died in office.

Land Committee members were for the most part born and raised in the United Kingdom. Of the eleven, only two were born in North America: the Loyalist Yankee lawyer William Dummer Powell who received his legal training in England, and the French Catholic gentleman James Baby whose unstinting loyalty to the British Crown proved to be one of his principal qualifications for office. Four were born in England: Chief Justices Henry Allcock and John Elmsley, David W. Smith, and Prideaux Selby. Four were born in Scotland: Chief Justice Thomas Scott, Alexander Grant, John McGill, and Aeneas Shaw. And finally, there was the Anglo-Irishman Peter Russell.

For most, appointment to the Council did not prove to be a stepping stone in a chain of lucrative preferments. Only the Chief Justices Allcock and Elmsley received significant promotions, both going on to head the legal establishment in the lower province, as had William Osgoode before them.¹⁰ With the exception of David W. Smith, the remainder lived out their careers and their lives in Upper

⁹ For examples of the wording of commissions see NA, RG5, B5, Vol.1-4, Upper Canada, Commissions and Letters Patent, 1788-1858.

¹⁰ Chief Justice Thomas Scott refused promotion to the lower province in 1806 on the grounds of advanced age. He was 60 at the time. *Dictionary of Canadian Biography*, Vol.VI, "Thomas Scott", William N.T. Wylie, p.698-9.

Canada. Several, including Powell, Baby, Shaw and McGill helped to establish some of nineteenth-century Canada's more prominent families.

At any time in Upper Canadian history qualifications for appointment to the Executive Council remained very limited, and this is certainly true with this early group. All of the Councillors, except James Baby, had a background in either the law or the military. The Chief Justices Elmsley, Allcock, Scott, and later Powell were, of course, lawyers by training. Remarkably, all four received their education in law at Lincoln's Inn during the late 1770's and early 1780's, and all had been called to the bar between 1784 and 1793. They came of age professionally during the most tumultuous years of revolutionary ferment in Europe and America and, as a result, imbued the anti-republican sentiments of conservative Georgian England.

Peter Russell, Alexander Grant, David W. Smith, and Prideaux Selby had been career military officers. They brought to office a modicum of administrative experience and undoubted loyalty to the Crown. Smith and Selby both held commissions in the 5th Regiment of Foot during the early 1780's, and all four served in America during the Revolutionary War. The same was true of John McGill and Aeneas Shaw, both of whom served with John Graves Simcoe in the Queen's Rangers. With the single exception of Alexander Grant, civil service ultimately proved more attractive than military life. Even Grant combined his duties in the provincial marine service with seats on the Executive and Legislative Councils and appointments to the first District Land Board of Hesse and the Heir

and Devisee Commission.

Sitting on the Executive Council was essentially a part-time job, and its officers usually held other positions within the government.¹¹ Of those persons appointed before 1815 only Samuel Smith did not hold an additional important administrative office in government. Smith did, however, act as Administrator of the province from June 1817 until August 1818. The Chief Justices held responsibility for the operations of the judicial system through their positions on the Court of King's Bench. Their circuit duties for the Court and their role as chair of the Land Committee constituted their two principal occupations. The colonial government appointed Peter Russell Provincial Administrator, temporary puisne judge, Receiver General and Auditor General of Land Patents. John McGill began his civil service in the province as the government's purchasing agent, and received a commission as Inspector General of Public Accounts in 1801. After the death of Prideaux Selby in 1813 McGill took over the position of Receiver General, no doubt because of his thorough knowledge of the public records. For nearly two decades he operated as the province's chief financial officer. Selby received the position of Receiver General after Russell's death in 1808, in part, because of his previous experience as Deputy Superintendent in the Indian Office. Aeneas Shaw was placed in charge of overseeing the provincial militia and eventually rose to the rank of Major General. Alexander Grant assumed responsibility for the provincial marine until the

¹¹ For details of these appointments see Armstrong, *Upper Canadian Chronology*.

eve of war in 1812. David W. Smith received his appointment as Surveyor General because of his early experience with the Hesse District Land Board. Finally, James Baby acted as the government's utility man, having been granted some 115 appointments or commissions between 1792 and 1830, ranging from county lieutenant to Heir and Devisee Commissioner to Inspector General to militia colonel to Customs Revenue Arbitrator. Baby was truly the consummate colonial officeholder.

For the most part Councillors acted as *de facto* ministers of specific government departments, although they were never referred to as such. This made them much more than simply advisors to the Lieutenant-Governor. In fact they coupled their advisory role with specific administrative duties involving the most important areas of public administration. It was not until mid-century that Lieutenant Governor Lord Sydenham formalized the relationship between Councillors and heads of departments, but in some measure the system had been in place since the formation of the province. Colonial administrators expected Councillors to have expertise in various areas of government and to assume appropriate administrative roles.

That said, it should be noted that not all department heads received appointment to the Executive Council. For example, Smith was the first and last Surveyor General to be appointed and in 1805 Thomas Scott was the last Attorney-General.¹² In reality the relationship between administrative and advisory

¹² Romney, *Mr. Attorney*, p.160.

roles at the executive level had not been clearly defined, and would not be until the 1840's. Nevertheless, before the War of 1812 and the appointment of individuals not directly involved in government operations, such as Reverend John Strachan, every Councillor played an important administrative role. The gradual abandonment of this convention during the 1820's and '30's contributed to the Council's declining reputation among Upper Canadians.

The government did not appoint prominent merchants to the Executive Council before 1826. The Crown gave local magnates such as Robert Hamilton or Richard Cartwright positions on the Legislative Council and granted them minor offices on the Land Boards and Heir and Devisee Commissions, but did not appoint them to the executive. Whether they would have accepted the commission if offered is doubtful. As Bruce Wilson has noted, wealth and economic power were important to such individuals, but these could be obtained through means other than administrative office.¹³ For the most part they sought to influence policy through such bodies as the Legislative Council rather than become involved in daily administrative operations. Also, as J.K. Johnson reminds us, royal commissions were not the only path to social prominence.¹⁴ Nevertheless, Lieutenant Governor Simcoe for one certainly had a bias against merchants. In a letter written in 1793, Simcoe commented that,

¹³ Wilson, *The Enterprises of Robert Hamilton*, p.121.

¹⁴ J.K. Johnson, *Becoming Prominent: Regional Leadership in Upper Canada, 1791-1841* (Kingston and Montreal: McGill-Queen's University Press, 1989) p.20.

I am fully persuaded that both the civil and military interests of his Majesty's Subjects in this colony can never be so well administered as by upright and disinterested Military Men; It is unreasonable to expect Disinterestedness among the Mercantile Part of the Community, nor do their habits or Education in the least entitle them to a shadow of pre-eminence...¹⁵

This followed what historian Michael Cross referred to as the "ideals of gentility" held by the ruling elites of Upper Canada.¹⁶ Proper breeding and education, social connections, landed wealth and military service, rather than commercial values, were prerequisites for appointment to the highest colonial offices. These attitudes changed as the power and prestige of the business community increased, but not before the rash of new appointments to Council in the 1830's.¹⁷

The Land Committee did not operate according to a fixed or regular schedule before Lieutenant Governor Gore's return to the province in 1815. Nevertheless, two weeks seldom passed between sessions. The only exceptions were during the move to York in 1795-96, a three month period after Simcoe's

¹⁵ *Simcoe Correspondence*, Vol.V, Simcoe to Captain Doyle, 2 June 1793, p.21. Russell shared Simcoe's prejudice against merchants and resented the fact that they were often able to accumulate wealth and social status faster than government officers. Graeme Patterson, "Early Compact Groups in the Politics of York", *Old Ontario: Essays in Honour of J.M.S. Careless* (Toronto: Dundurn Press, 1990) p.179.

¹⁶ Michael Cross, "The 'New History' Has Arrived", *Acadiensis* (1977) p.119.

¹⁷ Robert L. Fraser, *Like Eden in Her Summer Dress: Gentry, Economy and Society, 1812-1840* (Ph.D thesis, University of Toronto, 1979) pp.207-27. Fraser argues that while certainly not against economic development the 17th century Christian conception of a hierarchical society lasted among the gentry until the 1840's.

departure in July of 1796, and the war years of 1813 and 1814.¹⁸ On average the Committee held four or five sessions each month. Between 1796 and 1811 they averaged 51.3 meetings per year.¹⁹ The scheduling seems to have been *ad hoc* based on the convenience of the Councillors and the amount of business pending. Occasionally nature intervened, as on 27 December 1802 where the Land Book records that no meeting was held, "the weather being stormy".²⁰ Aside from particular instances, seasonal variations in the number of petitions submitted always influenced the Committee's schedule. In general, they met more frequently in early spring, particularly March and April, and in the late autumn months of November and December. This, of course, followed the agricultural cycles of Upper Canada's agrarian community. Petitioning for land often required a trip to York lasting perhaps a month or more; the most convenient time was before planting and after harvest.

The meetings of the Land Committee were subject to rules regarding

¹⁸ Each session of the Land Committee was recorded and dated in the Upper Canada Land Books. The gap in sessions after Simcoe's departure was, in part at least, a result of his having dealt summarily with the backlog. In 1812 the Land Committee continued to meet after the American declaration of war in June. By December, however, the minutes record that there were "no applicants". The Committee continued to hold sessions in the early spring of 1813, although they had little business to conduct. Regular sessions stopped on 6 April 1813, three weeks before the sacking of York. Only four sessions were held during 1814 and they did not resume in earnest until February of 1815.

¹⁹ Average is for the years 1796 to 1811 inclusive. The number of meetings per year ranged from 80 in 1798 to 34 in 1811.

²⁰ NA, RG1, L1, Vol.23, Upper Canada, Executive Council Minute Books on Land Matters, Land Book E, Minute of 27 December 1802, p.190.

quorum, with three qualified persons required for business to be legally conducted.²¹ The Land Committee did not abide by this rule until 17 August 1802.²² After that date they never broke it. The issue of quorum, however, did not seem to cause a great deal of difficulty. Only 29 meetings took place without three sitting members before August 1802, and only 31 out of 1020 meetings had to be cancelled because of insufficient numbers between 1802 and 1826. The Committee cancelled two consecutive meetings only twice during these 24 years.

A petitioner for land could be assured that the Land Committee would meet approximately once a week on a fairly regular basis. Whether a petitioner's prayer would be heard on the week of its submission, however, remained far less certain. Many applicants, particularly those involved in disputes, complained that the meetings of the Land Committee did not take place in a timely fashion.²³ Peter Russell tried to address the problem by ordering the Land Committee to sit daily

²¹ *Simcoe Correspondence*, Vol.I, p.263, Vol.II, p.55. As the Duke of Portland explained to Peter Russell, the rules for quorum were based on the precedent established in the swearing in of the Governor. NA, RG7, Vol.53, part 1, Colonial Office, Miscellaneous Correspondence, Portland to Russell, 10 January 1798, p.114.

²² The Executive Council debate the issue of quorum on 11 August 1797. *Russell Correspondence*, Vol.V, Minute of the Executive Council, p.244. On 17 August 1802 only Russell and McGill were present at the Land Committee meeting. The minute for that date reads "There not being members sufficient to form a board, adjourned." NA, RG1, L1, Vol.23, Upper Canada, Executive Council Minute Books on Land Matters, Land Book E, p.102.

²³ NA, RG1, L1, Vol.21, Upper Canada, Executive Council Minute Books on Land Matters, Land Book C, Minute of 10 June 1797, p.162, and Vol.22, Land Book D, Minute of 12 February 1798, p.58.

during sittings of the legislature and to hear all disputed claims at that time.²⁴ For members of the Assembly, who often represented their constituents to the Council, the new regulation made it much more likely that they would be heard. Daily sittings, however, took the Councillors away from their other executive duties, and in 1802 Lieutenant-Governor Hunter cancelled the order.²⁵ For the settlers, and particularly for the legislators who were frequently the province's most active land dealers, land matters deserved a higher priority than any other executive function; they petitioned to have the order revived. When the first session of the 4th Parliament opened in February 1805 Hunter compromised and directed the Committee to meet "every day from 10 to 1 o'clock for the purpose of taking into consideration all petitions."²⁶ Such a strict regime was not to the Councillor's liking, and Hunter's death six months later provided an opportunity to return to a more leisurely approach. By the end of the year meetings usually took place once a week and did not begin until noon regardless of whether the legislature sat in

²⁴ NA, RG1, L1, Vol.20, Upper Canada, Executive Council Minute Books on Land Matters, Land Book B, Order-in-Council of 7 October 1796, p.24.

²⁵ NA, RG1, L1, Vol.22, Upper Canada, Executive Council Minute Books on Land Matters, Land Book D, Order-in-Council of 2 June 1802, p.807.

²⁶ NA, RG1, L1, Vol. 24, Upper Canada, Executive Council Minute Books on Land Matters, Land Book F, Order-in-Council of 26 February 1805, p.242. In 1794 Lieutenant Governor Simcoe ordered the Land Committee to begin its deliberations at 10 am, but after his departure they ignored the regulation. OA, *Eighteenth Report*, Excerpts from Upper Canada Land and State Book A, p.57.

session or not.²⁷

The meetings of the Land Committee, their scheduling and regularity, and their hours of operation, reflected the social values of the administrators involved. Not for them the strict daily regimes and fixed business hours of the commercial world. While the shopkeeper's values of punctuality, regularity, consistency and precision had not yet become the over-riding component of the administrator's work ethic, this does not mean that they shirked their responsibilities or failed to perform their duties. Most Councillors took their obligations very seriously indeed. Peter Russell, for example, literally conducted Land Committee business from his death bed.²⁸

Members of the Land Committee spent much of their time dealing with the routine aspects of land granting. Basic duties fell into two general categories: hearing petitions for grants and sorting out problems related to the administrative process of patenting granted land. Petitions from Loyalist and military claimants could often be disposed of in a perfunctory manner. The minutes recording the grants simply list the individual's name, his or her status as a grantee (daughter or son of a U.E Loyalist, sergeant in the 84th foot, ect.), and the amount of land

²⁷ NA, RG1, L1, Vol.24, Upper Canada, Executive Council Minute Books on Land Matters, Land Book F, Minute of 8 January 1806, "Adjourned 'til tomorrow at 12 O'Clock", p.370.

²⁸ NA, RG1, L1, Vol.25, Upper Canada, Executive Council Minute Books on Land Matters, Land Book G, Minute of 5 January 1808, p.428. The sessions during June, July and August of 1808 were held in Russell's house at York. Russell died in September of that year.

granted. Councillors determined their status by consulting the U.E. lists or the military rolls, and fixed the size of the grant by the established regulations. A more involved process applied to non-privileged applicants. Although the extent and quality varied, each minute recording the grant contained a considerable amount of information, including a name, some indication of social status or occupation (farmer, tradesman, gentleman, ect.), where the settler came from, family status, whether married or single and the number of children, whether the applicant had connections within the community, such as being known by a military or civil officer, and the amount of land requested. To some extent, the comprehensiveness of the minutes reflected the depth of the Councillor's investigation.

The number of petitions entertained at each sitting of the Land Committee varied considerably (see Table One). During the busy years of the late 1790's when a great many Loyalists petitioned for land as many as 70 or more might be examined in a day. During the first decade of the new century this number dropped considerably to anywhere from one to twenty per session. After the war the numbers rose again; 40 to 50 petitions being not unusual.

Year	Meetings	Petitions	Year	Meetings	Petitions
1796	29	1166	1812	29	403
1797	75	2818	1813	7	72
1798	80	1324	1814	4	22
1799	66	537	1815	23	235
1800	56	501	1816	33	965
1801	53	613	1817	42	1368
1802	58	420	1818	67	1511
1803	35	306	1819	67	3304
1804	53	458	1820	49	1143
1805	38	211	1821	44	793
1806	59	797	1822	28	642
1807	50	670	1823	29	654
1808	58	702	1824	37	1423
1809	44	457	1825	44	1606
1810	33	496	1826	34	576
1811	34	584			

Table 1: Number of Meetings and Petitions Heard by the Land Committee of Council, 1796-1826. (NAC, RG1, L1, Vols.20-31, Upper Canada, Executive Council Minute Books on Land Matters, Land Books B through M).

As one might imagine, the Land Committee considered petitions on practically every aspect of land distribution. Initial grants, additional grants, transfers, exchanges, special locations, conflicting claims to special locations, requests for reserves, requests for fee exemptions, and numerous other types had to be dealt with on a regular basis. For example, during an unexceptional session on 28 June 1797 the Committee considered seventeen petitions. The minutes record,

Elias Smith. Praying for lands as a military claimant. His Honour declaring that to his knowledge the petitioner was a Captain of Artificers at New York during the late war, ordered that an appropriation of 3000 acres be made for petitioner, but no deed to issue until he is actually, and *bona fide*, settled and resident in the Province.

Charlotte Faries. Praying for lands in addition to 200 acres which she has received as a loyalist. Recommended for 800 acres as the child of a field officer including former grants.

Jacob Phillips. Praying for lands in right of his deceased father as a military claimant. Recommended that 300 acres be granted to the next of kin of Nicholas Phillips.

John Rocke. Praying for a town lot in York. Recommended for a back town lot in York.

Caleb Forsyth. Praying for lands as a settler. The petitioner having expressed a contempt for the favour shown him by the Board, no lands to be granted to him.¹

Although the Surveyor General normally assigned specific lots within a township the Committee sometimes took steps to ensure a random distribution. For example, in order to distribute the many desirable lots along Dundas Street in the Mississauga Tract, the Land Committee recommended "throwing into some covered vessel a parcel of rolled up tickets equal to the number of lots thereon, whereon shall be marked the number, Concession and Township, and let the

applicants take their chance by drawing each a single Ticket as he presents himself."²⁹ They adopted this expedient because far more settlers applied for these valuable lots than there were lots themselves. It also reduced the likelihood of favouritism on the part of the Surveyor General.

Aside from hearing ordinary requests for land the Councillors routinely dealt with a whole host of problems related to the actual functioning of the administration. The creation and distribution of precisely defined, discretely delineated, privately owned parcels of land required a degree of record-keeping precision that developed slowly within the administrative apparatus, often in response to specific situations. This was particularly true in areas that required the co-ordination of information. Early on the Land Committee recognized problems with record-keeping and took steps to alleviate their worst effects. The adoption of standardized forms for patents, warrants and receipts proved to be one of the most constructive measures. In June 1800 the Land Committee ordered that a single standard format be adopted for each official instrument. Patents had to be engrossed on parchment rather than paper. Henceforth, the Attorney General examined and signed all instruments and submitted any deviations to the Land Committee for authorization.³⁰ These measures went a long way in sorting out problems, but they also proved difficult to implement.

²⁹ NA, RG1, L1, Vol.25, Upper Canada, Executive Council Minute Books on Land Matters, Land Book G, Minute of 20 June 1806, pp.87-8.

³⁰ NA, RG1, L1, Vol.22, Upper Canada, Executive Council Minute Books on Land Matters, Land Book D, Order-in-Council of 10 June 1800, p.499.

The first versions of standardized patents contained improper wording, and they had to be re-issued on at least three different occasions. The government seldom printed and distributed settlement duty certificates in sufficient numbers, and local Justices often reverted to scribbled notes on scraps of paper.³¹ No one manufactured paper or parchment in the province until 1826 and all such material had to be imported.³² Local officials, such as deputy surveyors and county registrars, often requested that paper be supplied because, as one Mr. Burns complained, he could not "find anything of the sort for sale".³³

One of the most persistent problems in processing land grants had to do with the recording of names on the various legal instruments. When Solicitor General Robert Dey Gray temporarily assumed the Attorney General's duties in the spring of 1800, he complained to the Land Committee that he could not issue warrants on several dozen descriptions because he could not read the names on

³¹ In October of 1799 the Land Committee issued an order that all U.E and military claimants for land grants obtain a certificate from a local J.P. proving they were over 21 years of age and that they had not received any other lands. This order dramatically increased the number of forms submitted to the land granting officers. NA, RG1, L1, Vol. 22, Upper Canada, Executive Council Minute Books on Land Matters, Land Book D, Order-in-Council of 29 October 1799, p.447.

³² Firth, *York*, Vol. II, p.60. In 1826 the Assembly offered £125 for the construction of the first paper mill in the province. James Crooks of West Flamborough won the contract.

³³ OA, RG1, Series A, Surveyor General's Office, A-1-G, Vol.1, #6, Correspondence, Burns to Ridout, n.d., p.657.

the documents.³⁴ A few months later he returned to the Committee and complained that there were "daily sent to this office" certificates with more than one name per lot without any indication whether ownership was to be held jointly or the lot split evenly between the parties involved.³⁵ The Land Committee could do little except order him to send all such certificates back to the Surveyor General to sort out. Often the documents might be readable and the descriptions correct but the name remained incomplete. In 1804 Inspector General McGill submitted a list of 13 deeds where the first name of the grantee had not been included in the documents. The documents described individuals as "the Widow Sutherland, or Widow Barnhart, or Mr. Waldroff". This, he pointed out, would only cause problems in the future should the land be sold or transferred.³⁶

Most of the difficulties with nomenclature were of little long-term consequence, but occasionally they became serious because the use of names provided opportunities for fraud. Controlling fraudulent applications for land was one of the Land Committee's principal obligations and they suspected several groups of not have the King's interests foremost in mind. The Highland Scots settled in the Eastern District were one such group.

³⁴ NA, RG1, L1, Vol.22, Upper Canada, Executive Council Minute Books on Land Matters, Land Book D, Solicitor General Grey to Surveyor General's Office, included in Minute of 1 April 1800, p.476.

³⁵ NA, RG1, L1, Vol.22, Upper Canada, Executive Council Minute Books on Land Matters, Land Book D, Minute of 29 October 1800, p.575.

³⁶ NA, RG1, L1, Vol.24, Upper Canada, Executive Council Minute Books on Land Matters, Land Book F, Report of the Inspector General, 17 September 1804, p.145.

In the spring of 1806 the Reverend Alexander McDonell travelled to York to pick up a number of deeds for his local flock.³⁷ Upon his arrival, Inspector General McGill reported to the Land Committee that several of the deeds required the assignee to pay full fees even though they had been applied for, and subsequently granted, as exempt. His apprehension arose from the fact that most of the names were identical, and it was not at all clear which individuals qualified for exempt status and which did not. In a formal letter of explanation the Reverend admitted that several cases might be questionable, but he assured the Committee that the clansmen intended no deception and that the newly arrived "shall not get possession of [their deeds] until they have paid for them".³⁸ McDonell would see to it himself. He explained this was only reasonable to his charges "for they are very thankful that their deeds are come within their reach." This display of supplication would, the Reverend hoped, "suffice to convince your government that we highlanders do not wish to abuse any trust they may chuse to repose in us", but he also pointed out that "the confusion which similarity of names and other circumstances have occasioned in our Deeds can never be unrelieved but in the

³⁷ Edwin Guillet, *Pioneer Settlements*, Book One, (Toronto: The Ontario Publishing Co., 1947), p.13, notes that 84 McDonells received grants of land in Glengarry County.

³⁸ NA, RG1, L6D, Vol.1, Upper Canada, Departmental Records, Inspector General of Public Accounts, Alexander McDonell to John McGill, 11 June 1806, n.p..

Settlement itself." In the end the Committee could do little but trust the Reverend.³⁹

As the Reverend McDonell pointed out, the lack of local officers made it difficult to detect fraudulent applications. Settlers realized this and often tried to take advantage of the distance between themselves and the officials at York. For example, in May 1797 Surveyor General Smith reported to the Land Committee the case of Jacob Misner who had applied to Smith for a location certificate for a lot he had just been granted.⁴⁰ On consulting his records Smith found an individual with the same name already located in Crowland Township. Smith demanded a certificate of proof that they were not the same person and one was produced, signed by Jacob Misner, sr.. Smith reported, however, that "I could not divest myself of suspicion", and he wrote to the Misner in Crowland. When he received no reply he began to question settlers in the area. Smith quickly came to the conclusion that "he is one and the same person" because a neighbour named Peter Mathews said he had given Misner a "valuable consideration" for the lot in Crowland. Misner located one lot on his original order-in-council, sold it, and then successfully obtained a second order-in-council by posing as the original grantee's son. The Committee ordered Misner to appear before them and explain himself or his initial grant would be rescinded and the money paid to him by Mathews

³⁹ NA, RG1, L6D, Vol.1, Upper Canada, Departmental Records, Inspector General of Public Accounts, n.p.. Note under letter indicates that the deeds were issued.

⁴⁰ NA, RG1, L1, Vol. 21, Upper Canada, Executive Council Minute Books on Land Matters, Land Book C, Report of the Surveyor General, 13 May 1797, p.46.

confiscated.⁴¹ The Land Books show no indication of Misner's compliance.

After 1794 regulations required applicants for land to either travel to York in person or have an agent do so on their behalf. The Land Committee remained leery about the use of agents since it compromised their ability to examine each applicant in person. For a decade after 1795 the Councillors demanded that applicants for land appear in person if the circumstances made it seem prudent.

The Land Committee did this for a number of reasons, most importantly to determine if the applicant was likely to be a peaceful, industrious settler, loyal to the Crown. Occasionally the Committee members distrusted the agent because of past indiscretions. In June 1801, while in York for the first session of the third Parliament, Angus McDonell, the member for Glengarry, submitted a list of 46 names for grants, all "sons of Emigrants from North Britain". The Land Committee stated that it was perfectly willing to consider these petitions, but the "Petitioners must appear in person".⁴² The Committee considered the member's word insufficient. McDonell himself was already suspect in the eyes of the Councillors. In August 1797 he had complained to the Committee, rather too loudly, that the Provincial Secretary refused to deliver "his deed for a lot of land in the Township

⁴¹ NA, RG1, L1, Vol. 21, Upper Canada, Executive Council Minute Books on Land Matters, Land Book C, Report of the Surveyor General, 21 May 1797, p.47. For a similar cases see Report of the Acting Surveyor General respecting the frauds of Sergeant George Campbell, 2 May 1797, OA, *Nineteenth Report*, Excerpts from Upper Canada Land Book C, p.134, and *ibid.*, Minute on the Petition of John Gamble, 18 April 1797.

⁴² NA, RG1, L1, Vol.22, Upper Canada, Executive Council Minute Books on Land Matters, Land Book D, Minute of 30 June 1801, p.669.

of Newark until he pays fees arbitrarily imposed."⁴³ The Committee dismissed McDonell's complaint, and informed him that "When the Petitioner learns to address this Board with the respect he ought to pay to the Executive Government of the Province his Petition may be attended to." As we have seen, in 1806 Alexander McDonell, Angus' fellow representative from Glengarry, was still trying to allay the suspicions of the Committee members regarding the Scots settlers of the Eastern District.

For many settlers, particularly those in the more remote townships, attending the Council Chambers at York proved to be no easy matter. Delaying applications and the payment of fees or employing land agents presented reasonable alternatives to the long journey. The Land Committee objected to such practices, but they did little more than issue warnings. In October 1803 an unnamed agent for 32 families in the Township of Gower petitioned the Committee for land grants under the regular terms. Upon questioning the agent the Committee discovered that the settlers had been in the province for four years without applying for land. Despite branding them as squatters, the Councillors stated their willingness to make the grants if the settlers appeared in person and petitioned in the regular fashion. They then warned the agent that the settlers are "deserving of very severe censure" and in future anyone delaying their applications would be

⁴³ NA, RG1, L1, Vol.21, Upper Canada, Executive Council Minute Books on Land Matters, Land Book C, Minute of 28 August 1797, p.192.

"declared incapable of ever acquiring any title from the Crown."⁴⁴ Whether the agent communicated this to his clients is unknown, but there is no record of any petitioner being refused because of a delayed application.

Despite the Committee's general reluctance to deal with them, occasionally an agent proved himself trustworthy and had few problems obtaining grants for his clients. In October 1804 Allan McWilliam, esq., petitioned the Land Committee on behalf of 38 settlers from Scotland. The Committee accepted McWilliam's word that the applications were legitimate and gave each 200 acres. Impressed with his leadership and responsible position, the Committee also granted the agent 1200 acres, the maximum allowed by the regulations.⁴⁵ The appellation 'esquire', carefully noted in the minutes, no doubt assisted McWilliam in presenting his case. Unfortunately, the Clerk failed to record any additional justifications.

The Land Committee members also enforced the personal appearance rule in an attempt to control fraud by agents representing U.E. Loyalists. Here they faced the problem of trying to police settlement duties on grants previously made to Loyalists while at the same time trying to compel them to petition for the additional grants that they were qualified to receive. The Committee had two goals in mind: to control the distribution of additional lands to actual settlers and force applicants to complete the patenting process as quickly as possible. Simcoe

⁴⁴ NA, RG1, L1, Vol.23, Upper Canada, Executive Council Minute Books on Land Matters, Land Book E, Minute of 10 October 1803, p.29.

⁴⁵ NA, RG1, L1, Vol.23, Upper Canada, Executive Council Minute Books on Land Matters, Land Book E, Minute of 20 February 1804, p.374.

attempted to deal with the problem in April 1796 by ordering Loyalists and military claimants to submit their claims through local Justices of the Peace in Quarter Sessions. The Justices were supposed to ensure that the initial grants were cultivated and issue certificates to that effect.⁴⁶ The Council imposed a deadline for applications -- 15 November 1796 -- but it proved to be unreasonable and had to be repeatedly extended over the next few years.⁴⁷ By 1803 control over the process had all but broken down. Agents often submitted lengthy lists of claims of dubious validity without the proper documentation, and Justices illegally sold invalid certificates to unwitting settlers. In March 1797 the Committee stripped Justice Andrew Pierce of his powers to issue certificates because he told settlers who had already received grants that they could obtain a second with one of his authorizations, for which he charged \$1. The Committee discovered the fraud when a number of settlers petitioned for a second grant, believing they had the proper documentation. The Councillors informed them that they were not entitled

⁴⁶ In May of 1797 the Committee chastised Paul Averill because he had "abused the trust reposed in him" by charging settlers a dollar for certificates. NA, RG1, L1, Vol.20, Upper Canada, Executive Council Minutes on Land Matters, Land Book B, Minute of 31 March 1797, p.288.

⁴⁷ NA, RG1, E1, Vol.46, Upper Canada, Executive Council Minute Books on State Matters, State Book B, Order-in-Council of 6 April 1796, pp.113-16. The deadline was extended to 1 November 1797, then 28 July 1798. The matter became so confused that when Inspector General McGill submitted his audit reports in November of 1804 he mistakenly referred to March 1797 as the deadline. NA, RG1, L1, Vol.24, Upper Canada, Executive Council Minute Books on Land Matters, Land Book F, Report of the Inspector General, 27 November 1804, p.183.

to such largesse despite what Pierce told them.⁴⁸

In June 1803 the Land Committee ordered applicants for U.E. grants to present themselves in person to Council.⁴⁹ A year later they banned all land agents from petitioning the Land Committee, and ordered all applicants, regardless of whether they were privileged or not, to appear in person.⁵⁰

The new rules on personal appearance solved the problem of examining petitioners, but they also created administrative difficulties. All too often applicants, particularly the children of U.E. Loyalists, received grants but did not wait to have them located or to have the deed drawn up. As a result, specific lots were not being assigned, deeds were not being picked up and fees were not being paid. The Committee compromised by ordering that petitions could be received from children of U.E.s if accompanied by a power of attorney from a person at York authorizing him to locate the grant and take out the deed.⁵¹ All the attorneys in the tiny community of the capital were of course well known to the Councillors. This compromise speeded up the distribution of privileged grants, but it did little to help

⁴⁸ NA, RG1, L1, Vol.20, Upper Canada, Executive Council Minute Books on Land Matters, Land Book B, p.288.

⁴⁹ NA, RG1, L1, Vol.23, Upper Canada, Executive Council Minute Books on Land Matters, Land Book E, Order-in-Council of 2 June 1803, p.160.

⁵⁰ NA, RG1, L1, Vol.24, Upper Canada, Executive Council Minute Books on Land Matters, Land Book F, Order-in-Council of 26 June 1804, p.60. The order stated that all applicants must appear before the Committee in person in order to prevent the government from being exposed to "gross fraud".

⁵¹ NA, RG1, L1, Vol.24, Upper Canada, Executive Council Minute Books on Land Matters, Land Book F, Order-in-Council of 12 September 1804, p.139.

new settlers to the province who still had to make the trip from the townships.

The new rules dramatically reduced the number of petitions brought before the Land Committee. Regulations required personal appearance throughout 1805. In that year only 211 settlers submitted petitions, less than half the number of the previous year. In February 1806, Mathew Elliot, an influential Indian Department official, M.P. for Essex County and an active land speculator with close connections to the Baby family, attended the Committee as an agent for a group of settlers in the Western District.⁵² He requested that the rule be waived for his applicants because "the seat of Government renders it almost impossible for them to appear in person." The Committee relented and recorded in its minute book that henceforth "discretionary power to dispense with this salutary rule" will be exercised "if the agent is known".⁵³ This opened up the process considerably, and 797 petitions were presented to the Land Committee in 1806. Such regulations based on personal acquaintance proved viable in the relatively small community of early Upper Canada. As the population grew, however, they became much less so.⁵⁴

⁵² John Clarke, "The Role of Political Position and Family and Economic Linkages in Land Speculation in the Western District of Upper Canada, 1788-1815", *The Canadian Geographer* (1975) p.27.

⁵³ NA, RG1, L1, Vol.24, Upper Canada, Executive Council Minute Books on Land Matters, Land Book F, Order-in-Council of 24 February 1806, p.383.

⁵⁴ NA, RG1, L1, Vol.26, Upper Canada, Executive Council Minute Books on Land Matters, Land Book H, Order-in-Council of 10 August 1810, p.340. The new regulation allowed the Committee to direct settlement by using the waiver as an inducement. For example, in August 1810 the Committee ordered that an advertisement be published in the *Upper Canada Gazette* stating that applicants

The rules and regulations governing land granting offered a considerable degree of discretion to the members of the Land Committee. This was particularly true regarding their responsibility to examine the character and pretensions of petitioners for land grants. In exercising their discretion the Councillors naturally sought to shape the settlement of the province according to their own political, moral and economic considerations.

For example, in June 1800 a recently arrived settler named Isaac Philips petitioned the Committee for a grant of land. Philips had come up from Pennsylvania where he and his family had been living for a number of years.⁵⁵ Although not officially a Loyalist, Philips stated his willingness to profess the oaths of allegiance to the Crown. In such cases the regulations called for a standard grant of 200 acres. The Committee, however, noted in its records that Philips had brought "about £300 with him -- half in money" and that he said he had another £200 back in Pennsylvania. The Committee saw this as evidence of both substance and commitment and doubled the normal grant to 400 acres.

Applicants at the bottom of the social scale could also secure the favour of the Committee if they were known to be good subjects. For example, in January

for lots along the new western road did not have to appear before the Land Committee.

⁵⁵ NA, RG1, L1, Vol.22, Upper Canada, Executive Council Minute Books on Land Matters, Land Book D, Order-in-Council of 18 June 1800, p.509. Although the Land Book is not completely clear on the point, it seems that Philips was part of a substantial group of settlers, Quakers perhaps, who all came into the province at the same time. The 18 June entry lists 15 identical petitions. All were given the standard 200 acre grants, except for Philips.

1807 Jacob Osburn petitioned the Committee for a grant of 200 acres.⁵⁶ Although now old and infirm, and thus not likely to be a productive settler, Councillor Alexander Grant knew Osburn to be a worthy, if impoverished, member of the community. Grant "particularly" recommended that Osburn be given a lot of 200 acres. The Committee went a step further and ruled that Osburn "being an object of charity the whole of the fees thereon will be paid" by the Crown.

The Councillors did not waive fees very often. To do so would have a deleterious effect on the incomes of the administrative officers. On occasion, however, they sought to be generous in other ways. When Rebecca Markle, step-daughter of William Markle, U.E.L., applied for a privileged grant as the child of a Loyalist the Committee proved happy to comply since it had "always considered Step children of U.E. Loyalists as coming within the spirit and meaning of the Royal Instructions."⁵⁷ In a fit of economy, however, Lieutenant Governor Hunter cancelled the grant and inserted in the Land Book the order that "The Step Children of U.E. Loyalists cannot be considered as the Children of U.E.'s and

⁵⁶ NA, RG1, L1, Vol.25, Upper Canada, Executive Council Minute Books on Land Matters, Land Book G, Minute of 28 January 1807, p.223.

⁵⁷ NA, RG1, L1, Vol.23, Upper Canada, Executive Council Minute Books on Land Matters, Land Book E, Minute of 13 July 1802, p.34. The Markle family had little luck in obtaining grants from the Land Committee. In 1797 William Markle's petition asking to have his initial grant enlarged to 1200 acres was rejected, despite a promise made to him by Lieutenant Governor Simcoe. OA, *Nineteenth Report*, Excerpts from Upper Canada Land Book C, p.134.

therefore cannot be admitted as privileged."⁵⁸ On this, as on several other occasions the Committee members tried to use their decision-making functions to expand the interpretation of a rule, only to be reigned in by a higher authority.⁵⁹

Hunter's restrictive, exclusionary approach reflected a general tendency in the regulatory regime of the land granting system. The Lieutenant-Governor, however, often adopted restrictions in order to counter the ill effects of policies far too generous or those open to serious abuse. In such cases Council seldom disagreed. One of the most contentious issues involved revisions of the U.E. List and the enforcement of regulations governing the applications of the children of Loyalists.⁶⁰ As noted in the previous chapter, between May 1802 and November 1804, 904 names were struck off the list on the recommendation of John McGill acting in his capacity as Inspector General of Public Accounts.⁶¹ Members of the legislature and others accused him of arbitrarily editing the list without allowing

⁵⁸ NA, RG1, L1, Vol. 23, Upper Canada, Executive Council Minute Books on Land Matters, Land Book E, Order-in-Council on Minute of 13 July 1802, p.34. The order was copied into the Land Book below the minute on Rebecca Markle's petition.

⁵⁹ On several occasions various Lieutenant-Governors tried to limit the generosity of the Land Committee. For example, in January 1804 Hunter had inserted in the Committee's minute book a reminder that, according to the regulations, "British Soldiers only who were discharged in Canada at the Peace of 1763, were entitled to receive Lands as Military Claimants". NA, RG1, L1, Vol.23, Upper Canada, Executive Council Minute Books on Land Matters, Land Book E, Order-in-Council of 28 January 1804, p.362.

⁶⁰ Gates, *Land Policies of Upper Canada*, pp.68-9.

⁶¹ NA, RG1, L1, Vol.22, Upper Canada, Executive Council Minute Books on Land Matters, Land Book D, Report of the Inspector General, pp.794-803, and Vol.24, Land Book F, p.161.

those excluded to petition the Council in their own defense. This was not completely true. Throughout 1803 and 1804 the Land Committee entertained dozens of petitions from U.E. Loyalists, would-be Loyalists, and their offspring regarding grants or their status as applicants.

For example, in November 1804 Alexander McLean petitioned to have his name restored to the U.E. List on the grounds that he had operated as a guide for the secret service during the late war.⁶² He testified that he had brought his family into Upper Canada in 1784 and, at the time, satisfied the District Land Board Commissioners that he qualified as a U.E.L.. Signed affidavits from five Justices of the Peace in the Johnstown District accompanied his petition. Nevertheless, the Committee turned him down because he was not resident within the British lines before the Treaty of Separation in 1763, the official cut-off date set by colonial officials in London.

When Mary Arisboro, a widow from Niagara, petitioned for a grant as the daughter of John Shesler, a shoe-maker who served in the 29th Regiment during the American war, the Committee rejected her prayer because she could not prove that her father came into the province before the deadline.⁶³ A widowed shoe-maker's daughter could exert little influence over the Committee, a point they made perfectly clear in their blunt recorded decision; "It is contrary to the Principles

⁶² NA, RG1, L1, Vol.24, Upper Canada, Executive Council Minute Books on Land Matters, Land Book F, Minute of 6 November 1804, p.174-6.

⁶³ NA, RG1, L1, Vol.25, Upper Canada, Executive Council Minute Books on Land Matters, Land Book G, Minute of 22 July 1806, p.107.

established for granting the waste lands of the Crown to recommend unprivileged females for land." This reflected a growing tendency throughout British society to exclude women from land ownership.⁶⁴ In Upper Canada only daughters of Loyalists routinely received grants of land.

The Land Committee members occasionally made decisions based on their own standards of morality and that which they thought acceptable in the community. When Staats Springstein applied for family lands for his children the Committee rejected his petition because they appeared to be "illegitimate" and Springstein could not prove otherwise.⁶⁵ Unfortunately, how this information came into the hands of the Councillors is not recorded. In February of 1797 the Committee rescinded a grant given to John Milton because he had "Seduced a black servant belonging to Mr. Clarke".⁶⁶ To the Executive Councillors of Upper Canada such persons were not entitled to the generosity of the Crown.

In their decisions the Councillors often sought to further as well as protect the economic development of the province. Issues were usually of a limited parochial nature, but their cautious approach to such matters is indicative of their care for the public interest, and their suspicious view of the applicants. In September 1800 Levi Willard petitioned for a valuable waterfront lot at the mouth

⁶⁴ Davidoff and Hall, *Family Fortunes*, pp.275-9.

⁶⁵ NA, RG1, L1, Vol.21, Upper Canada, Executive Council Minute Books on Land Matters, Land Book C, Minute of 10 May 1797, p.36.

⁶⁶ OA, RG1, Series C, Lands Branch, C-I-2, Upper Canada, Orders-in-Council, 25 February 1797, n.p..

of the Humber River in order to operate a ferry. The Land Committees granted only a licence of occupation rather than full title and warned him that he was to "consider himself removable at a moments warning whenever his own misconduct or the public service render such a step necessary".⁶⁷ When Josiah Phelps petitioned for a lot on the shore of Lake Simcoe in order to set up a transport business, the Committee granted his prayer "provided he acts orderly and as a good subject to the King with respect to the Indians."⁶⁸ Any violation would result in forfeiture.

Occasionally the members of the Land Committees took advantage of their position. For example, a standing rule forbade the moving of Crown reserve lots for the convenience of individual applicants.⁶⁹ As the order-in-council made clear, to do so would entitle every settler "to [an] equal indulgence". Yet when Justice of the Peace James Smith sought to locate the 1200 acres he had been granted, he requested that the reserve lots be moved elsewhere in order that he might have contiguous lots. In this instance the Committee proved most obliging and ordered the Surveyor General not to locate any reserves on lots Smith might select.⁷⁰

⁶⁷ NA, RG1, L1, Vol.22, Upper Canada, Executive Council Minute Books on Land Matters, Land Book D, Order-in-Council of 13 September 1800, p.552.

⁶⁸ OA, *Twentieth Report*, Excerpts from Upper Canada Land Book C, p.115.

⁶⁹ NA, RG1, L1, Vol.22, Upper Canada, Executive Council Minute Books on Land Matters, Land Book D, Order-in-Council of 12 January 1799, p.257. This regulation was put into place when the Crown and Clergy reserves were created in 1791. It was intended to protect the value of the reserve lots.

⁷⁰ NA, RG1, L1, Vol.22, Upper Canada, Executive Council Minute Books on Land Matters, Land Book D, Minute of 7 June 1798, p.122.

Occasionally the Committee conveyed such favours on its own members. The policy on Crown reserves stated that no lots designated as such were to be granted under any conditions. Yet when Chief Justice Elmsley applied for a valuable reserve lot at the mouth of the Black River, his close friend and fellow Councillor Surveyor General Smith reported that the lot "is not set apart for any particular purpose". This justification simply sidestepped the whole purpose of the reserves, but the Committee accepted it and gave Elmsley the lot.⁷¹

The regulations also forbade the transfer of unpatented lots. In the case of ordinary settlers the Committee regularly enforced this rule, even in circumstances calling for latitude, but they proved less strict with themselves. For example, in 1799 Iriah Robinson asked for a transfer of two broken front lots in Hamilton. The Committee turned down his request despite the fact that Robinson submitted a signed affidavit from the original assignee stating that he was "far advanced in a state of bodily decay and consumption" and could no longer make use of the property.⁷² Yet when Chief Justice Elmsley applied for a transfer of a town lot in York Councillors Grant and Smith authorized it even though the only person who

⁷¹ NA, RG1, L1, Vol.22, Upper Canada, Executive Council Minute Books on Land Matters, Land Book D, Minute of 23 March 1799, p.294. Sitting on the Committee that day were Peter Russell, Elmsley himself, Aeneas Shaw and David W. Smith.

⁷² NA, RG1, L1, Vol.22, Upper Canada, Executive Council Minute Books on Land Matters, Land Book D, Minute of 12 August 1799, p.427.

could verify Elmsley's purchase was dead.⁷³ Such cases, however, were relatively few and of little serious consequence.

On the whole the Executive Councillors who administered land granting in Upper Canada were neither tyrannical nor particularly self-serving. They may have applied the rules and regulations to the benefit of themselves and their friends, but they did as much for most settlers regardless of their personal connections or social status. It is true that the Executive Councillors received relatively large land grants -- 6,000 acres each -- the value of which they could maximize because of their immediate access to intelligence on the best locations.⁷⁴ These grants, however, proved to be minuscule compared to those given to Executive Councillors elsewhere.⁷⁵ More importantly, the Imperial government fully intended that the leaders of the community possess landed wealth in accordance with their place in the social hierarchy. They were, after all, to be the core of a local

⁷³ NA, RG1, L1, Vol.22, Upper Canada, Executive Council Minute Books on Land Matters, Land Book D, Minute of 2 July 1799, p.404. Elmsley petitioned for a transfer of a town lot in York -- number 5 Simcoe Place -- claiming that the Reverend Thomas Raddish, who had since returned to England, donated it to him. He claimed that Benjamin Hallowell had power of attorney for Raddish and knew about the transaction, but Hallowell died before the deed could be issued.

⁷⁴ *Russell Correspondence*, Vol.II, Portland to Russell, 5 November 1798, pp.300-1. Chief Justice Elmsley lobbied for a grant of 10,000 but the Secretary of State rejected his request. Elmsley blamed then President Russell for the rejection, but Russell had also requested the larger amount be granted. The misunderstanding created a great deal of friction between the two administrators. *Russell Correspondence*, Vol.II, Elmsley to Smith, 22 February 1798, pp.109-10.

⁷⁵ In 1773 New York Executive Councillors convinced Governor Tryon to grant them 100,000 acres of land each in the New Hampshire District, despite the fact that grants in the disputed area were forbidden by the Lords of Trade. Kross, "Patronage Most Ardently Sought", in Daniels, ed., *Power and Status*, p.213.

aristocracy.

It should be remembered that the Councillors administered land granting policies which were seldom of their making and which were often contradictory and inconsistent.⁷⁶ The worst aspects of the land granting system, such as the imposition of the Crown and Clergy reserves and the distribution of family lands to Loyalists and military claimants, remained beyond the control of the Land Committee. Officials in London decided such policies, and Loyalists and clergy knew full well they could successfully appeal over the heads of local officials. They also had to deal with pioneer land speculators, many of whom did their best to circumvent the laws governing land granting and take advantage of the infant administration's attempts to enforce policies. Caught between the often conflicting interests of the colonial governors in London and the pioneers settlers in Upper Canada, the Land Committee members struggled to bring some measure of order to the inherently complex, and often chaotic, process of transferring the public domain into the hands of individuals.

For the settlers of Upper Canada, obtaining an order-in-council from the Land Committee for a grant of land was the most important stage in the patenting of land. Nevertheless, this remained just the first step in what could be a long drawn out affair. They still had to pay fees, swear oaths of loyalty and allegiance, locate their property, complete settlement duties, obtain proofs of residence and

⁷⁶ ⁷⁶ Gates, *Land Policies of Upper Canada*, p.303-4.

development, and return to York at least once more before securing ownership. For much of this time they had to deal with the junior administrators in the Surveyor General's and Provincial Secretary's offices. Like the executive branch of the provincial government, these components of the Land Granting Department settled into a pattern of operation, one that had both successes and failures in the pre-1812 War period.

Chapter Six

The Surveyor General's Office, 1796-1815

The Surveyor General's Office lay at the heart of the land granting administration in Upper Canada. Its officers explored the colony's resources, surveyed the townships and located the land grants made by the Land Committee of Council, operations vital to the settler population which required efficiency in the issuing of locations, accuracy in record-keeping and precision in surveying. The colonial government, both in London and at York, shared these interests. It also sought to limit expenditures in the operations of the Surveyor General's Office, while at the same time use the surveyors to help control the settlement process, weed out undesirables, and enforce regulations. As a result, the members of the Surveyor General's Office took on a role that went beyond being simply technical functionaries. Like other areas of the land granting business, however, this role changed with the advance of settlement and the maturation of the colonial government.

Settlers in Upper Canada often criticized the Surveyor General and his deputies. They complained about inaccurate surveys, lax administration, excessive spending and various other difficulties. Some of this criticism certainly proved valid. Many townships were poorly laid out, and the Surveyor General's Office spent

what was at the time a great deal of money, not all in the most efficient manner. Those who criticised the members of the department, however, often failed to take account of the conditions in which they operated. Demands consistently exceeded available resources and, occasionally, the abilities of its personnel. The Lieutenant-Governor sacked one competent head of the office, C.B. Wyatt, for political reasons. The administration had no choice but to rely on inadequate fees from cash-strapped settlers to finance operations. For many years surveyors performed their duties deep in the dense bush of Upper Canada, far from amenities and sometimes necessities. That the Surveyor General and his deputies did not live up to European standards or satisfy the insistent demands of Upper Canadian settlers is hardly surprising. That they did a poor job given the circumstances is less evident.

The settlement system adopted in Upper Canada drew heavily on the public purse. Throughout the 1790's and early 1800's charges against the provincial accounts amounted to as much as £4000 Hfx. per year.¹ Even after the government adopted the policy of paying surveyors in land rather than cash, annual operating costs for the office and for extraordinary surveys exceeded £1500 Hfx..² Despite the cost and the strain placed on the colony's meagre public

¹ NA, RG1, L1, Vol.19, Upper Canada, Executive Council Minute Books on Land Matters, Land Book A, Accounts for period 10 October 1794 to 10 April 1795, p.327, and Accounts for 10 April 1795 to 10 October 1795, p.340.

² NA, MG11, Vol.389, Colonial Office 42: Upper Canada, 1829 Despatches, Surveyor General's Accounts for 1827, p.116.

finances, from the earliest years the state took responsibility for precisely locating and defining real property in advance of settlement. The officers did this in order to gain some control over the often chaotic settlement process. The British government learned from long years of experience in North America that keeping surveyors ahead of settlers created fewer problems than allowing a disorganized scramble for land. But financing the administration remained a problem. Fees provided some revenue but only after much of the work of laying out lots, concessions and side roads had been done.³ The time-lag required initial capital investment by the colonial government, something it was always reluctant to do. The thousands of fee-exempt privileged grants handed out to Loyalists and military claimants only made matter worse. The lost revenue, some £75,000, could have gone a long way in correcting many of the problems in the Surveyor General's Office by providing additional funds for more complete and timely surveys.⁴ Loyalists, however, saw their free grants as entitlements earned through war-time suffering and their defense of British interests in North America. The British Imperial government saw Upper Canada as a distant, insecure colony of limited

³ The Land Committee tried to enforce the speedy payment of survey fees on numerous occasions but seldom had much success. For example in January of 1799 the Committee ordered the land granting officers to give preference to the deeds of individuals who had already paid their survey fees. This seems to have accomplished little and in October of 1800 the Committee ordered the Surveyor General to not issue any descriptions or warrants unless the survey fees were paid on the spot. NA, RG1, L1, Vol.22, Upper Canada, Executive Council Minutes on Land Matters, Land Book D, Order-in-Council of 12 January 1799, p.257, and Order-in-Council of 7 October 1800, p.567.

⁴ Gates, *Land Policies of Upper Canada*, p.20.

potential, hardly worth substantial investment. The government of Upper Canada could do little but live with both perceptions. Finance, however, proved to be only one of many factors in the development of the Surveyor General's Office.

Increasing technological capability, particularly in instrumentation, and broad social changes in the conception of land ownership helped shape the surveying component of the Upper Canadian Land Granting Department. By the late 1700's most Britons, including their colonial offspring in North America, no longer regarded land in an older, feudal sense as communal property under the sovereignty of a lord, but rather as individually owned real property the value of which was defined by its productive capacity and the price it could command in the market-place. The process of commodification of land, its ability to be bought and sold in an open market, required accurate survey techniques and precise registration of titles. Like wheat or timber it had to be measured and inventoried. The administrative procedures and surveying technologies necessary for this process had advanced considerably in England by the latter decades of the 18th century. Witness the "Great Triangulation" -- a massive project to set survey base lines for the entire British Isles -- begun by William Roy in 1784, the year of the Loyalist migration.⁵ In the early decades of settlement nothing quite so precise was possible in the largely unknown and unmeasured territory that became Upper Canada.

The dense bush and rugged terrain of the new province had little in

⁵ Ladell, *They Left Their Mark*, p.45.

common with the English countryside. Surveyors performed their duties in remote, isolated and often harsh conditions where the simplest provisions could be difficult to obtain. Distance from the centres of European science and technology meant that instruments and methods were often less advanced than those available at home. Nor could the colonies attract the most talented of practitioners and administrators. Nevertheless, during the first decades of its existence the personnel of the Surveyor General's Office performed their duties surprisingly well. Their work in laying out lines of communication and township boundaries established the physical framework within which the agricultural and urban communities of Upper Canada developed. In doing so they made a significant contribution to the creation of a modern society based on individual land ownership. The department consisted of what historian Douglas McCalla has called the "human capital of institutions and expertise" in the province.⁶

The British Imperial government established the office of the Surveyor General in Upper Canada along with the creation of the province in 1791. It operated as a separate office until 1826 when it was placed under the control of the Commissioner of Crown Lands.⁷ Throughout these 35 years as a separate department the office slowly underwent a process of bureaucratization. The role that its officers played in political decision-making and the creation of policy

⁶ McCalla, *Planting the Province*, p.243.

⁷ Ladell, *They Left Their Mark*, p.128. The Surveyor General continued to exist as part of the Crown Lands Office until 1845 when the position was abolished. It was re-established in the 1920's.

diminished as the professionalization of the staff increased.⁸ In the end the Surveyor General became the head of a technical branch responsible for the implementation of policy decisions rather than an agent in the creation of policy itself. Throughout this period the office slowly took on the characteristics of a modern apolitical civil service. It sank below the political horizon in the sense that its officers gradually disengaged from the decision-making role on the executive or in the legislature.⁹ As the province grew and the business of administering the Crown Lands expanded, technical ability and administrative expertise, rather than political affiliations and social status, became the most important qualifications for office. By the 1830's factors such as loyalty to the Crown and colony and social respectability no longer carried the weight that they had in the early years of settlement.

The colonial government arranged the Surveyor General's Office in the usual hierarchical manner. The Surveyor General, working out of the facilities at York, supervised all activities. Below him the senior clerk and the senior surveyor and draughtsman headed the administrative and technical divisions in the office. Within these two divisions junior clerks and junior draughtsmen, whose number varied with the amount of business pending, toiled on daily administrative tasks.

⁸ A similar process of professionalization took place in England roughly a decade earlier than it did in Upper Canada. Davidoff and Hall, *Family Fortunes*, p.265.

⁹ Henry Parris, *Constitutional Bureaucracy: The Development of British Central Administration Since the Eighteenth Century* (London: George Allen and Unwin, 1969) p.49.

Deputy Surveyors assigned to specific districts worked in the field. After 1818, contract surveyors supplemented the work of Deputy Surveyors.

When the newly appointed Lieutenant-Governor, John Graves Simcoe, arrived in Upper Canada he immediately set about selecting officers for the survey department. Simcoe showed particular concern for the position of Surveyor General. No one had yet been appointed, and the position had not been included on the list of salaries to be drawn from the annual Parliamentary grant. Simcoe understood the crucial role played by the Surveyor General in orderly settlement, and in a letter to Secretary of State Henry Dundas he observed that,

I conceive that there cannot be an Office of Greater Importance to the Interests of His Majesty as Lord of the Soil... -- and to execute this duty ably and uprightly so as to prevent numerous Lawsuits, that great bane of all infant Colonies, which would arise from a contrary conduct, requires great Professional abilities and equal Integrity...¹⁰

The Lieutenant-Governor explained that "many Applications" from deserving individuals had been made for this important position. Nevertheless, he would not compromise the "Superior Interests of my Obligation to my Country" by granting the appointment to someone for reasons of political patronage or to whom he owed a personal debt or obligation.¹¹ Nor was he willing to appoint what he referred to as the incompetent persons employed by the Lower Canadian Surveyor

¹⁰ *Simcoe Correspondence*, Vol.I, Simcoe to Dundas, June 1792, p.48.

¹¹ *Ibid*, Vol.I, Simcoe to Dundas, June 1792, p.48.

General.

John Collins, the Deputy Surveyor General of the lower province and the individual in charge of the initial surveys of the upper districts, was the obvious choice for the commission. Collins made it clear that he wanted the new senior Upper Canadian job, but in the end Simcoe ignored his application.¹² Although he did not name him in person, Simcoe implied that Collins had been at least partially responsible for the poor job done in surveying the first townships along the north shore of Lake Ontario. In consequence, on 28 September 1792, Simcoe appointed Lieutenant David William Smith of the 5th Regiment of Foot as acting Surveyor General for the new province of Upper Canada.

Son of Major John Smith, the commander at Detroit, Smith was 28 years old, well educated and eager to make his way in the King's service.¹³ Before his regiment had been transferred to Niagara, he had acted as clerk for the Hesse District Land Board from December 1791 until June 1792. Simcoe noted the "liberality and disinterestedness of his proceedings as Clerk and indeed as the Efficient Person of the Land Board of the [Hesse] District."¹⁴ Although a

¹² OA, *Third Report*, Instructions to Surveyors, p.326, and Hugh Finlay to Collins, 6 November 1791, p.410.

¹³ *Dictionary of Canadian Biography*, Vol.VII, "David William Smith", S.R.Mealing, pp.811-813.

¹⁴ *Simcoe Correspondence*, Vol.I, Simcoe to Dundas, 4 November 1792, p.249. The first clerk of the District Land Board, one Thomas Smith, got fired for his lack of disinterestedness. In April of 1791 Matthew Dolsen testified to the Committee that Smith charged £14 to file six petitions, when the official fee was one shilling a piece. Dolsen stated that "He was informed by Mr. Smith that the petitions would only be received by the board in a certain form of address to the Governor, which nobody had but himself,

conscientious administrator, Smith had not been trained in surveying. He knew little about the intricacies of the discipline, or the difficulties of field work. He remained, however, both unquestionably loyal and, as an officer and gentleman, of acceptably high social standing. As the Lieutenant-Governor observed, he was not the sort "who kept but one table, that is who dined in Common with their Servants."¹⁵ Although he certainly imbued the class pretensions of his time, Smith's honesty, perhaps reinforced by his now salaried position, remains beyond doubt. Not once did anyone accuse him of serious impropriety and the records suggest that he avoided the petty corruption so readily available in pioneer colonies. For example, in April 1796, Conrad Tilman asked Smith to exchange his assigned lot in Ancaster township for a much better situated reserve lot, and added "I will give you a couple of Guineas or Whatever you think proper for your trouble". On the back of the letter Smith wrote that "no encouragement is to be given this impudent fellow."¹⁶

Smith's appointment illustrates a number of characteristics of the land granting administration during the early years. Although colonial governors looked for competent administrators, they continued to place priority on the personal character and social status of the appointee. Appointment to office, particularly at

and which he would shew to nobody -- whereupon he found it necessary to employ Mr. Smith." OA, *Third Report*, Minutes of the Hesse District Land Board, p.160.

¹⁵ *Simcoe Correspondence*, Vol.I, Simcoe to Dundas, 4 November 1792, p.249.

¹⁶ OA, RG1, Series A, Surveyor General's Office, A-I-6, Vol.1, #6, Letters at the Surveyor General Office, n.p..

the senior level, remained a reward for service and loyalty to the Crown. As such it was part of the long chain of personal relationships which bound King and subject. Simcoe, moreover, understood that the Surveyor General would necessarily take an important and active role in the governance of the colony, and therefore, had to be able to command the respect of his fellow subjects. In this context it is not unreasonable that political influence and social respectability would be at least as important as experience and ability.

Smith's career as Surveyor General reflected this combination of factors. Aside from his duties as Surveyor General, Smith sat on the Executive Council from June 1796 until he left for England in 1802.¹⁷ He remained the only Surveyor General during the Upper Canadian period to take a direct, active part in the formation of land granting policies. During his six years on the Council he attended 273 of 418 (65%) meetings of the Land Granting Committee, an average record compared to his colleagues.¹⁸ Smith acted as a ministerial head of the department, and the government expected him to play an active political role. Appropriately, he followed a familiar path for Upper Canadian politicians; military service and legal training. Before to his appointment to Council, Smith found time to article in the law office of Attorney General John White and became one of the first licensed attorneys in the province. This gave him some degree of legal knowledge and a

¹⁷ Armstrong, *Upper Canadian Chronology*, p.13. NA, RG1. L1, Vols.19-23, Upper Canada, Executive Council Minutes on Land Matters, Land Books A through E.

¹⁸ NA, RG1, L1, Vols.19-23, Upper Canada, Executive Council Minutes on Land Matters, Land Books A through E.

measure of social respectability. He retained his commission until his appointment as Surveyor General had been officially confirmed in 1798. That same year the Executive Council appointed Smith lieutenant for York County and gave him command of the county militia. He sat as a Master in Chancery after 1799, and secured election to the House of Assembly for the first three parliaments where he acted as Speaker.¹⁹

Smith also became adept at obtaining the emoluments of office. In 1791, after much lobbying, he became the first District Land Board clerk to receive a salary, £52 per annum plus fees.²⁰ In 1798 he complained to Council that "the receiving of the Survey money [from settlers] is attended with trouble and risk of loss", and requested a 2½ % commission on all monies collected. Council happily obliged.²¹ Since the Secretary of State did not authorize his appointment as Surveyor General in 1792, Smith had to wait until 1798 to collect his salary for the office. Although at the time his claim for back-fees was denied, when he submitted his final accounts to the Treasury in 1803 he was paid £2,209.14s.6d stg., a tidy sum by any standards. Land regulations also allowed Smith and his family to accumulate more than 20,000 acres of land in 21 townships.

¹⁹ Johnson, *Becoming Prominent*, p.226. *The John Askin Papers*, Milo Quaife, ed. (Detroit: Detroit Library Commission, 1928-31). District J.P, local merchant and Land Board member, John Askin was a close friend of Smith's and acted as his land agent and campaign manager in the Western District.

²⁰ OA, *Third Report*, Minutes of the Hesse District Land Board, p.123.

²¹ NA, RG1, L6D, Vol.2, Upper Canada, Departmental Records, Inspector General's Records, Order-in-Council of 6 August 1798, n.p..

During the first half of his decade in office Smith lived up to historian John Ladell's characterization as an "energetic, honest and public-spirited man".²² In many ways Smith proved to be instrumental in the orderly settlement of the province. As Speaker he provided political leadership in the Assembly, but more importantly, through his role on the Executive Council he devised such policy initiatives as the "chequered plan" for the Crown and Clergy reserves. By 1798, however, this was no longer the case. In July the Land Committee ordered Smith to clear up the backlog for the Midland District. Smith reported that he had rushed the first packet of descriptions to the Attorney General and that the remainder will be sent "as fast as they can be assorted and arranged." He closed with the wish that "should there be a few mistakes in the execution of this business I hope that a consideration of its nature will be admitted in pleading my excuse."²³ In October of that year Administrator Peter Russell, reported that "poor Smith's abilities prove every day less adequate to his situation".²⁴ The language in his records had become "inelegant and often confused" and he had not submitted complete returns for more than a year. Whether Smith had been ill or simply overloaded by the press of work is impossible now to tell.

In July 1799 Smith petitioned Russell for a leave of absence, but Russell put him off because of the impending arrival of the new Lieutenant-Governor,

²² Ladell, *They Left Their Mark*, p.100.

²³ OA, *Twentieth Report*, Excerpts form Upper Canada Land Book C, D.W. Smith to Peter Russell, 11 July 1798, p.193.

²⁴ *Russell Correspondence*, Vol.II, Russell to Simcoe, 15 October 1798, p.282.

General Peter Hunter.²⁵ When Hunter arrived in the province he promptly granted Smith's request. The Surveyor General returned to Upper Canada the following year, but by 1802 he had decided to seek employment elsewhere. In July he left for England where he eventually became Sir David Smith, the estate manager for the Duke of Northumberland.

David W. Smith retired his commission as Surveyor General in 1804, after receiving his arrears in pay and securing a substantial pension of £200 per year.²⁶ In the end, Smith proved neither a corrupt nor dishonest servant of the Crown.²⁷ His numerous offices, political activities and extensive land acquisitions were an accepted part of elite behaviour, particularly for someone who gave the impression that he intended to make a permanent home in the colony.²⁸ As was common in *ancien regime* systems of government, however, he treated his position as Surveyor General as a form of personal property. No one wished to deny him his due remuneration, but the steps he took to obtain it created administrative problems. When Smith left the province in 1802 he took the original copies of all

²⁵ *Russell Correspondence*, Vol.III, Minute of the Executive Council, 11 July 1799, Memorial from D.W. Smith, p.264.

²⁶ OA, *Sixteenth Report*, Patterson, "Land Settlement in Upper Canada, 1783-1840", p.99

²⁷ See the failed attempts by Richard Duncan to bribe Smith documented in OA, RG1, Series A, Surveyor General's Office, A-I-6, Vol.1, no.7, Letters in the Surveyor General's Office, pp.793-807.

²⁸ In July of 1797 Smith asked the Land Committee to waive the settlement duties and fees on the lands that he and his family members had been granted. Convinced of Smith's "intentions of settling in this Country", President Russell was only too happy to comply. *Russell Correspondence*, Vol.I, Russell to Smith, 21 July 1797, p.224.

official letters, orders-in-council and fee vouchers with him. His assistants reported to the Executive Council that Smith "verbally declared that he considered them as his property, and to be the vouchers and authorities for his doings as Surveyor General."²⁹ Under the fee system these documents provided the evidence Smith needed to secure his arrears, but as Thomas Ridout pointed out, copies had not been made of all the originals. It took an order from the Treasury Board in 1806 to force Smith to return the documents to Upper Canada.³⁰

After Smith's departure Thomas Ridout, the senior clerk, and William Chewett, the senior surveyor and draughtsman, assumed supervision of the Surveyor General's Office.³¹ Smith left his two assistants with detailed instructions on how they were to conduct the daily business of the office.³² Although no doubt unnecessary from Ridout and Chewett's point of view, since they were both experienced administrators well versed in daily operations, these instructions provide us with a glimpse of how the office functioned on a day-to-day basis. They clearly suggest that the speedy issuance of patents and the efficient collection of fees were the office's top priorities.

²⁹ NA, RG1, E1, Vol.47, Upper Canada, Executive Council Minutes on State Matters, State Book D, Report of the acting Surveyor General, p.57.

³⁰ OA, *Sixteenth Report*, Patterson, "Land Settlement in Upper Canada, 1783-1840", p.103.

³¹ The position of Senior Surveyor and Draftsman was held by one individual throughout the Upper Canadian period.

³² OA, *Sixteenth Report*, Patterson, "Land Settlement in Upper Canada, 1783-1840", p.86.

Smith ordered his assistants to turn over all monies collected as survey fees to Receiver General McGill at the end of each month and compile detailed records of the receipt of all fees in separate account books for the half-year audit. They were to draw up six copies of these accounts and distribute them to the Secretary of State, the Treasury Board, the Lieutenant-Governor, the Receiver General, and Smith himself, with the final copy to be kept in the office. Smith ordered them to keep operating costs to a bare minimum, even to the point where "The stationery is to be used with frugality, and the covers of all letters laid aside into some niche, to serve for scrawls and calculations." Smith carefully laid out a daily regime: first all lands not already described were to be described, then certificates lodged in the office were to receive attention, next they were to issue warrants of survey, finally any new regulations were to be studied and put into effect. The assistants were to work from "at least" 10 am to 3 pm. Finally, Smith ordered that "when you are not there, the doors and windows are to be kept shut and the fire left safe."

The Surveyor General's concern for security may have had something to do with the fact that the office occupied the back room of his house at the corner of King and Ontario Streets.³³ As Chewett and Ridout reported after Smith's departure, this arrangement may have proved adequate in the past, but such was no longer the case.³⁴ The office bulged with materials, and, to make matters

³³ Ladell, *They Left Their Mark*, p.101.

³⁴ OA, *Sixteenth Report*, Patterson, "Land Settlement in Upper Canada, 1783-1840", p.87.

worse, Smith tailored the storage and filing arrangement to the room itself. They described a chaotic scene where copies of location certificates had been deposited in the "right hand walnut box", old regulations stuffed into the "Northern recess no. 2", letters received piled in the "upper black case" and on the floor a "long blue box covered with canvas" held the schedule of township plans. Instruments necessary for drawing plans and diagrams added to the jumble of letters, account books and schedules. Tracing glasses, pantographers, brass plotting scales, proportionable compasses, parallel rulers, circular protractors, plotting instruments, and a pair of magnets covered the drawing tables.³⁵ When the Executive Council received the report they ordered Chewett and Ridout to pack up the files and instruments and move the Surveyor General's office to the Parliament buildings.³⁶

Secretary of State Earl Camden appointed Smith's successor, Charles Burton Wyatt, Surveyor General in May of 1804. Wyatt remained as head of the office for slightly over two years, but he seems to have had little impact on its daily operations, aside from attempting to sack Samuel Ridout, his junior clerk and the son of Thomas Ridout.³⁷ This incident precipitated Wyatt's removal from the province and eventually from office. From the beginning Wyatt never enjoyed the

³⁵ OA, *Seventeenth Report*, Excerpts from Upper Canada Land Books A and B, Report by Deputy Surveyor John Collins, 1791, p.226. Collins estimated the cost of the equipment to be £383.

³⁶ Ladell, *They Left Their Mark*, p.110.

³⁷ The numerous correspondence regarding Wyatt's dismissal and subsequent lawsuit against Gore can be found in NA, MG11, Vol.355, Colonial Office 42: Upper Canada Despatches.

influence accorded Smith in the executive administration.³⁸ He failed to secure appointment to the Executive Council and did not sit on the Land Committee, despite the concerns of many that there were too few bodies available to do the work. This broke a long-standing tradition in British colonial government of including the Surveyor General in the highest councils.³⁹ It also weakened communications between the Land Committee and the Surveyor General's office. This separation between the executive decision-making body and the fledgling bureaucracy continued until Colonial officials placed the office under the control of the Commissioner of Crown Lands in 1826. As John Ladell points out, by then the Surveyor General had lost his pre-eminent place and political influence in the province's land administration.⁴⁰ Settlement policy no longer required the direct input of what increasingly came to be seen as a purely administrative and technical branch of government.

When Wyatt returned to England in 1807 William Chewett and Thomas Ridout again became joint acting Surveyors General. In 1810 the Secretary of State granted Ridout a permanent commission to the top job, despite being junior to Chewett both in age and experience. As a measure of compensation the

³⁸ When Wyatt applied for a 1200 acre grant for his wife in October of 1806 the Land Committee rejected his petition, claiming that it was no longer the practice to give land to spouses of executive officers. NA, RG1, L1, Vol.25, Upper Canada, Executive Council Minute Books on Land Matters, Land Book G, Minute of 28 October 1806, p.162.

³⁹ Like D.W. Smith, his predecessor, Samuel Holland, appointed Surveyor General of Quebec in 1764, was a full participant in the land granting committee of Council. Ladell, *They Left Their Mark*, p.53.

⁴⁰ *Ibid.*, p.128.

government accorded Chewett the rank and salary of senior clerk as well as senior surveyor and draughtsman. This doubled his responsibilities and his annual income. Until Ridout's death in 1829 and Chewett's retirement in 1832 these two individuals more than any others ran the survey administration in Upper Canada.

Ridout's appointment over Chewett signalled the ascendancy of administrative over technical expertise within the Surveyor General's Office. William Chewett, an engineer and surveyor by profession, graduated from the East India College in 1770 and made his way to Quebec where in 1774 he joined the Surveyor General's office as an assistant to John Collins.⁴¹ Chewett, rather than Collins, attracted favourable attention from Simcoe and the new Lieutenant-Governor appointed him acting Surveyor General of Upper Canada in April 1792, shortly before being superseded by Smith. Chewett then settled into the office as senior surveyor and draughtsman. Despite temporary elevations in 1799, 1802 and 1807, he continued in this position until retirement. Chewett served a remarkable 58 years in the King's service, and died in Toronto at the age of 95. Throughout his long career, however, he remained a mid-level functionary within the provincial establishment. Although he made substantial contributions, Chewett never obtained a leadership role in the emerging colonial society.

Thomas Ridout, on the other hand, had connections within the colonial civil

⁴¹ *Dictionary of Canadian Biography*, Vol.VI, "William Chewett", Richard J. Simpson, pp.174-6.

service and played an active role in the politics of the province.⁴² Ridout immigrated to Maryland in 1774 where, with the help of his brother, he became a merchant in the West Indies carrying trade. He successfully avoided being entangled in the revolutionary war, and, several years later, after being captured by the Shawnee while exploring the Ohio country, landed at Quebec in 1788. Here Ridout married the daughter of a Loyalist and secured appointment to the commissariat as a junior clerk. In 1792 he took his young family to the upper province and the following year Simcoe appointed him senior clerk in the Surveyor General's office. Competent, energetic and loyal, Ridout also obtained a number of minor posts, including the lucrative York County registrar and the prestigious sergeant-at-arms to the House of Assembly. In 1812 the East Riding of York and Simcoe elected him to the Assembly, and in 1825 Maitland appointed him to the Legislative Council.⁴³ Ridout did not, however, receive appointment to the Executive Council.

Thomas Ridout secured his appointment as Surveyor General over the more experienced Chewett with the help of Lieutenant Governor Gore and a lobbying

⁴² *Dictionary of Canadian Biography*. Vol.VI, "Thomas Ridout", Robert J. Burns, pp.647-8,

⁴³ Thomas Ridout fathered a large and influential Upper Canadian family. Samuel Ridout, his eldest son and assistant clerk, became sheriff of the Home District and York County Registrar in 1815. His second son, George, was a prominent York lawyer. His third son, Thomas Gibbs, served as the cashier for the Bank of Upper Canada from 1822 to 1861. His fourth son, John, was killed in a duel by Samuel P. Jarvis, the son of Provincial Secretary William Jarvis, in 1817. This sad event touched off a long-standing feud between the two families. Chris Raible, *Muddy York Mud* (Creemore: Curiosity House Publishing, 1992) pp.70-6. Firth, ed., *The Town of York*, Vol.B, p.7, 31 and 261.

trip to England. Chewett remained bitter about being passed over in 1810, and in 1829 when the job came open after Ridout's death he once again petitioned the Secretary of State for a promotion.⁴⁴ Chewett had the backing of the new Lieutenant-Governor, Sir John Colborne, who commented in forwarding his memorial that the chief assistant performed his duties with "zeal and assiduity". Chewett, however, was already 75 years old, and perhaps more importantly, he may not have been the sort of administrator the government had in mind. His expertise had always been in the technical aspects of the surveying, rather than in general administrative matters. As the Colonial Office's response to Chewett's petition suggests, they admired his many years of competent labour "but the Public Service did not admit of his Promotion".⁴⁵

In 1817 the new Colonial Secretary, Earl Bathurst, ordered Surveyor General Ridout to draw up a statement describing the nature of his appointment, his pay from salary and fees and the extent of his duties.⁴⁶ Ridout reported that he held the office under Royal commission, during pleasure, and that he performed his duties in person without the assistance of a Deputy Surveyor General. In addition to £300 stg. in salary, he collected an average of £240 stg. per year in

⁴⁴ NA, MG11, Vol. 389, Colonial Office 42: Upper Canada, 1829 Despatches, no.45, Memorial of William Chewett to Sir John Colborne, 11 November 1829, enclosed in Colborne to Murray, 15 December 1829, pp.240-3.

⁴⁵ NA, RG7, G1, Vol.65, Colonial Office, Miscellaneous Correspondence, 1829. Sir George Murray to Sir John Colborne, 15 December 1829, p.387.

⁴⁶ NA, MG11, Vol.359, part 2, Colonial Office 42: Upper Canada, 1817 Despatches, Statement by Thomas Ridout, 25 June 1817, respecting his appointment, pay and duties, enclosed in Samuel Smith to Earl Bathurst, 1 November 1817, p.231.

fees. The duties of the office included directing the execution of surveys, collecting accounts and vouchers for the surveys, reporting on all matters connected with the office to the Lieutenant-Governor-in-Council, making descriptions on all grants and leases, "clearing up difficulties" created by nominees "having withheld or lost their certificate of location", and "arranging and reporting the locations of reduced Officers and disbanded Soldiers and Emigrant Settlers." This covered Ridout himself but not the full range of duties performed by other members of the office.

The principal duties of the Surveyor General and his staff included surveying townships, town plots and roadways, drawing up township plans and maps, issuing locations to settlers, and compiling records for such work.⁴⁷ The Land Committee of Council defined their workload and provided financial resources. In August 1801 the Land Committee informed the Surveyor General that he could to "incur no contingent expenses by carrying any survey whatever into execution, without the express order of the Lt.Gov."⁴⁸ The Committee did this to limit the discretionary spending of the department and gain greater control over provincial expenditures. It also had the effect of limiting survey operations. Nevertheless, before the outbreak of war in 1812, some 137 townships had been fully or partially surveyed.⁴⁹ A half dozen town plots had been laid out, and the

⁴⁷ Warrants of survey and other related documents produced as part of the normal business of the Surveyor General's office can be found in NA, RG1, L5, Vol.65, Upper Canada, Departmental Records, Surveyor General's Office.

⁴⁸ NA, RG1, L1, Vol.22, Upper Canada, Executive Council Minute Books on Land Matters, Land Book D, Order-in-Council of 4 August 1801, p.700.

⁴⁹ Ladell, *They Left Their Mark*, p.105.

principal arterial roads -- Yonge St., Dundas St., and the Kingston Road -- had their courses set. This was a considerable achievement given the size of the Surveyor General's staff, the resources at their disposal, their additional duties, and the conditions under which they laboured.

The office of the Surveyor General divided into what a later generation would refer to as inside and outside services. In charge of all surveying operations, the Surveyor General headed the central office at York. Below him the Senior Surveyor and Draughtsman drew up township plans, maps, diagrams, and supervised and examined deputy surveyors. He received 10s per day, plus a standard ration equivalent to 1s 6d, for this work.⁵⁰ This proved to be slightly more than twice the pay commanded by a skilled labourer during the early years of settlement in Upper Canada. In February 1799 Council converted the daily wage to a fixed annual salary of £150 stg..⁵¹ The Senior Surveyor also received a share of the fees of office, amounting to £32 stg. per year on average.⁵² The Senior Clerk took care the office's records, receipts, vouchers and other miscellaneous paper work. He received the same salary and share of fees as the Senior Surveyor and the two shared rank within the administrative hierarchy.

⁵⁰ NA, RG1, L1, Vol.20, Upper Canada, Executive Council Minute Books on Land Matters, Land Book B, Authorized Staff of the Surveyor General's Office, 1 October 1796, p.2. The practice of supplying rations began when the administration was moved to York from Newark and was later converted into a money supplement.

⁵¹ NA, RG7, G1, Vol.54, part 1, Colonial Office, Miscellaneous Correspondence, Hobart to Hunter, 4 September 1802, p.64.

⁵² NA, RG1, E13, Vol.1, Upper Canada, Blue Book of Statistics, Report on the Surveyor General's office, n.d., p.58.

Council granted the Senior Clerk one assistant clerk on a permanent basis and up to three on temporary employment.⁵³ In August 1791 the Land Committee reported that the office employed three junior clerks.⁵⁴ This remained the same until the post-war boom in immigration. By 1820 there were four clerks: Samuel Ridout (Surveyor General Ridout's son), John Radenhurst (appointed acting Surveyor General in 1836), Bernard Farquand, and Joseph Spragge, who eventually rose to Senior Clerk.⁵⁵ By 1827 the number of clerks had been reduced to three, Samuel Ridout having left the office.⁵⁶ The government allowed the Senior Surveyor an assistant draughtsman, but only "when required".⁵⁷ In 1821 James G. Chewett, the son of the Senior Surveyor, secured the job.⁵⁸ The assistant's annual pay ranged from £112 stg. for the third extra clerk to £135 stg. for the first. In 1827 the pay scale ranged from £124 to £150 stg. per year. The central office also

⁵³ The first assistant clerk was none other than future Chief Justice William Dummer Powell. Samuel Ridout, Thomas' son, became second clerk in 1801, and James Chewett, William's son, became assistant draughtsman in 1821.

⁵⁴ NA, RG1, L1, Vol.20, Upper Canada, Executive Council Minute Books on Land Matters, Land Book B, Minute of 15 August 1791, p.291.

⁵⁵ NA, RG1, E13, Vol.1, Upper Canada, Blue Book of Statistics, Report on the Surveyor General's office, n.d., p.58.

⁵⁶ NA, MG11, Vol.389, Colonial Office 42: Upper Canada, 1829 Despatches, Surveyor General's Accounts for 1 January to 31 December 1827, p.114.

⁵⁷ NA, RG1, L1, Vol.20, Upper Canada, Executive Council Minute Books on Land Matters, Land Book B, Authorized Staff of the Surveyor General's Office, 1 October 1796, p.2.

⁵⁸ NA, RG1, E13, Vol.1, Upper Canada, Blue Book of Statistics, Report on the Surveyor General's Office, n.d., p.59.

employed a labourer who ran messages, swept the floor and tended the fire. Lowest in the office hierarchy, he received 1s 6d per day plus a ration.⁵⁹ In 1820 labourer William Nixon earned a fixed annual salary of £45 stg.. For reasons unknown by 1827 Jose Martinez received only £25 for the same job.

Aside from their regular responsibilities, the officers at York performed a wide range of extraordinary duties. These included inspecting local road works and town lots before house construction, drawing up building elevations for the houses of senior officials, and dealing with requests for information on fees, the availability of lots, soil quality, prospects for employment, petitioning procedures and numerous other details.⁶⁰ One of their most time-consuming tasks involved conducting title searches of township plans. Many settlers wished to know the status of specific lots or wished to correct clerical errors in the records.⁶¹ One of the most common problems involved mislabelling the two sides of a split lot. Correcting such an error required application to the Land Committee, reference to the Surveyor General's records, issuance of orders to the Attorney General, and notice sent to the Provincial Registrar and the Auditor of Land Patents, a tedious and lengthy process.

⁵⁹ NA, RG1, E13, Vol.1, Upper Canada, Blue Book of Statistics, Report on the Surveyor General's Office, n.d., p.59.

⁶⁰ Firth, ed., *York*, Vol.A, p.10. OA, RG1, Series A, Surveyor General's Office, A-I-6, Vol.1, no.1 through 8, Letters at the Surveyor General's Office. NA, RG1, L7, Vol.73, Upper Canada, Executive Council Records, Standing Orders, List of Fees Collected, n.p..

⁶¹ NA, RG1, L1, Vol.21, Upper Canada, Executive Council Minute Books on Land Matters, Land Book C, Minute of 6 July 1798, p.132.

Speculators were, of course, eager to know who had been granted lots in choice locations and whether patents had yet been issued. Requests for title searches became so numerous that in 1803 Chewett and Ridout complained they were "obliged to [draw] them up during the night, in order to keep the business of this office in proper train."⁶² In an attempt to control frivolous requests the Council levied a fee of 2s 6d on each application. The Land Committee realized that this could prove to be a significant source of revenue, but applicants naturally resented the extra fee. They did their best to avoid it by paying junior clerks a small consideration on the side for doing the work. When Lieutenant-Governor Hunter discovered the practice he ordered that no clerks were to conduct searches without first seeing a fee receipt from the Receiver General or a letter of authorization from the Attorney General. The order warned violators that they "will not only incur the Lieutenant-Governor's highest displeasure but will be attended with the most serious consequences."⁶³ This, however, remained one of only a very few instances where clerks incurred official reprimand.

Once set up and operating in Government House the central office changed very little over the next few decades. The same is true of both the clerical staff and the responsibilities they held. The most important assets of the Surveyor

⁶² NA, RG1, L7, Vol.73, Upper Canada, Executive Council Records, Standing Orders, p.36.

⁶³ NA, RG1, L7, Vol.73, Upper Canada, Executive Council Records, Standing Orders, p.36. Hunter's threat seemed to have stemmed the abuse, but so many applicants complained about the fees that they were cut in half in 1811. *Ibid*, p.85.

General's office, and the most significant contributions of its officers, were the records and accounts of its operations. These escaped destruction during the American invasion of 1813 because someone had the foresight to move them to the houses of Captains George and John Playter, a couple of miles up the Don River.⁶⁴ After the war, the officers and their records returned to increasingly run down facilities. In 1818 Samuel Smith, the Provincial Administrator after Gore's departure, took steps to insure their comfort and protection. He asked the Executive Council to investigate the cost of repairing Government House, since it was "unfit" for occupation. Council "unanimously" recommended that someone be appointed to "Report the state of dilapidation" and the cost of repairs.⁶⁵ Extensive renovations were undertaken but by 1830 the office was again in a sorry state. The *York Observer* warned of the danger of fire and commented that "If the Surveyor General's Office should be destroyed, every thing would be at a stand so far as land was concerned."⁶⁶

The Deputy Surveyors and their survey crews composed the outside service.⁶⁷ Deputy Surveyors conducted surveys, kept records and supervised their

⁶⁴ Scadding, *Toronto of Old*, p.174.

⁶⁵ NA, RG1, L1, Vol.28, Upper Canada, Executive Council Minutes on Land Matters, Land Book J, Minute of 14 April 1818, p.319.

⁶⁶ Firth, ed., *York*, Vol.B, *York Observer*, 1 March 1830, p.23.

⁶⁷ Upper Canada's original Deputy Surveyors included William Chewett, Patrick McNiff, Alexander Aitken, William Fortune, Hugh McDonell, Theodor de Pincier, John Stegman, Joseph Bouchette, and Augustus Jones. *Simcoe Correspondence*, Vol.V, Holland to Simcoe, 7 June 1792, p.14.

men. Chainbearers measured distances and helped turn angles. Axebearers cleared bush, blazed tree markers and set camp. Like the Surveyor General, Deputy Surveyors originally received their commissions on a permanent basis. They held what amounted to salaried positions "on the establishment" as the saying went, but they were paid different amounts depending on whether they were in the field or not. Chainbearers and Axebearers on the other hand were always hired as temporary labour on an *ad hoc* basis. After 1792 the Land Committee assigned Deputy Surveyors specifically defined jobs, usually one township at a time. Now they received compensation according to the number of days it took to complete each assignment. The surveyors kept detailed accounts of their operations and submitted vouchers for pay and expenses at the end of each job.⁶⁸ After June 1794 Deputy Surveyors received 10s per day plus a ration, but they were no longer paid while not in the field. From this they could expect to earn in excess of £80 per year.⁶⁹ Chainbearers were allowed 2s per day, and axebearers 1s 6d.⁷⁰

As agents of the Crown, the government wanted its Deputy Surveyors be regarded as substantial and respectable members of the community. In order to

⁶⁸ The practice of paying surveyors in land did not begin until 1818, and will be discussed in the next chapter. Until 1818 surveyors received cash, bills for which were drawn on the military chest.

⁶⁹ Ladell, *They Left Their Mark*, p.80.

⁷⁰ NA, RG1, L1, Vol.19, Upper Canada, Executive Council minute Books on Land Matters, Land Book A, Minute of 17 June 1794, p.71. Deputy Surveyors and their crews received a raise in pay to equal their counterparts in the lower province after David W. Smith petitioned on their behalf in 1796.

ensure this each received land grants of 1200 acres.⁷¹ The Land Committee, however, made it clear that these grants were not a form of payment for services rendered but rather a means of establishing the Deputies as permanent residents and landowners. As Eastern District Deputy Surveyor Hugh McDonell discovered to his disappointment, the Committee deducted the amount of his original grant as a disbanded military officer from the 1200 acres he obtained as a Deputy Surveyor.⁷²

Before 1818 the government of Upper Canada refused to pay surveyors in land even when it may have been convenient to do so. For example, in 1797 Daniel Hazen petitioned for 1000 acres in lieu of the £78 that the government owed him for surveys conducted in 1788 and 1789. After examining his case, the Land Committee expressed its sympathy, but the Councillors also made it clear that they had no intention of granting Hazen's prayer. The best that they could do was tell the unfortunate surveyor that "The accounts are to be transmitted to the Secretary of State and permission asked to pay them out of the fund appropriated for the civil expense of this Province".⁷³ There is no record in the public accounts of whether Hazen got paid or not.

⁷¹ NA, RG1, L1, Vol.19, Upper Canada, Executive Council Minutes on Land Matters, Land Book A, Order-in-Council of 19 June 1794, p.79.

⁷² NA, RG1, L1, Vol.19, Upper Canada, Executive Council Minute Books on Land Matters, Land Book A, Minute of 19 June 1794, p.80.

⁷³ OA, *Nineteenth Report*, Excerpts from Upper Canada Land Book C, Minute of the Executive Council, 15 May 1797, p.147.

Getting paid often proved a contentious matter for Deputy Surveyors.⁷⁴

Procedures called for surveyors to submit written accounts of all expenditures for food, labour, lodging and materials. The Surveyor General examined each account and then turned them over for authorization to the Land Committee. Officials at York suspected field officers operating beyond their purview of submitting false or padded accounts and as a result they often questioned their validity. Economy quickly became the watchword, particularly during Lieutenant Governor Hunter's years in office. For example, when William Hambly submitted his expenses for the survey of West and East Gwillimbury the Committee ordered him to repay £50 he had already drawn for an extra chainman. Standing on both necessity and precedent, Hambly replied to the order by stating that "it had been a usual practice to charge the pay and ration of one man to cover contingent expenses, which practice was very well known to the Surveying Department".⁷⁵ The Councillors remained unmoved, however, and the order stood.

Aside from contingent expenses, Deputy Surveyors also purchased and maintained their own instruments. As Deputy Surveyor General John Collins reported when setting up the Upper Canadian office, "There are no instruments in

⁷⁴ For additional examples see, OA, *Third Report*, Minutes of the Land Boards of the Districts of Nassau and Hesse, Collins to Alexander Aitken, 20 May 1790, p.386, Minute of the Nassau board, 31 August 1791, p.442, and Minute of the Nassau Board, 2 July 1792, p.469

⁷⁵ OA, *Sixteenth Report*, Patterson, "Land Settlement in Upper Canada, 1783-1840", p.104

the Surveyor General's office belonging to Government."⁷⁶ The purchase of instruments and equipment represented a considerable investment. In 1792 a theodolite, later referred to as a transit, cost £42, as much as half a year's wages.⁷⁷ Delicate instruments prone to misalignment, Collins considered it necessary to have two at hand. A Broughton's Improved Plain Table, used for drawing diagrams while in the field, cost £14 14s. A spirit level with double telescopic sights, required for running elevations, was £25 4s, and a set of station staves with sliding vanes, also for elevations, ran to £7.⁷⁸ Added to this surveyors required a Gunter's chain, writing instruments, stationery, and personal belongings necessary for extended periods in the bush.⁷⁹

Occasionally the Surveyor General's Office provided some of the more basic gear necessary for surveying. In his journal of the survey of Marlborough Township in 1791 Theodor de Pincier listed the materials he had drawn from the government

⁷⁶ OA, *Seventeenth Report*, Excerpts from Upper Canada Land Books A and B, Collins to the Executive Council, 4 February 1791, p.226.

⁷⁷ *Ibid.*, Collins to the Executive Council, 16 December 1791, p.226. The new models referred to by Collins (the "New Improved Circumferenters") allowed the surveyor to run both horizontal and vertical angles. Their accuracy was relatively good, if placed in trained and competent hands, and improved considerably during the first decades of the 19th century.

⁷⁸ *Ibid.*, Collins to the Executive Council, 16 December 1791, p.226.

⁷⁹ A Gunter's chain remained the standard distance measuring instrument used by surveyors. Developed by the German astronomer Edmund Gunter in 1620, it was 66 feet long and made up of 100 links. Eighty chains equalled one mile and 10² chains equalled one acre. Although foreign to us today, these terms were familiar to land owners at the time, mainly because measurements on deeds and other legal instruments were delineated in chains and links. See Ladell, *They Left Their Mark*.

stores.⁸⁰ These included: *Une marquise de cotte* (a half canvas tent), eleven pairs of snowshoes, seven axes, three tomahawks, one tarpaulin, a steelyard or hand held scale, a five-gallon barrel for carrying water, two tin cooking pots, and six bags. Surveyors considered the snowshoes a necessary precaution because the crew entered the bush in March. The crew needed axes and tomahawks for clearing trees, but they had to carve their own handles. They carried a steelyard along to weigh out rations before distribution, a necessity since the government paid for the food. De Pincier also drew a 30-gallon barrel of rum, which, of course, the crew consumed.⁸¹

From the earliest days of settlement the government required surveyors working in Upper Canada to pass an examination. Indeed, surveyors were the first civil servants required to prove their professional qualifications.⁸² Generally the government strictly enforced this rule until they started paying surveyors in land after the war. When Peter Russell discovered that one "Mr. Cockerel" conducted surveys without a licence he warned him that if he "or any other Surveyor presumes to act as a Surveyor in this Province without a Licence for so doing I shall direct the Attorney General to proceed immediately against him by

⁸⁰ *An Expedition to the Rideau Country: The Journal of Theodore de Pincier and His Survey of the Township of Marlborough*, Carman Bickerton ed. (Carleton University, unpublished manuscript), p.157.

⁸¹ *Ibid*, p.4.

⁸² J.C. Hodgetts, *Pioneer Public Service: An Administrative History of the United Canadas, 1841-1867* (Toronto: University of Toronto Press, 1955) p.44.

Information."⁸³ Surveyor General Samuel Holland and the Land Granting Committee of the old province of Quebec devised the first examinations for surveyors and the Upper Canadian government followed a similar format.⁸⁴ As Senior Surveyor, William Chewett conducted the examinations, and he administered the first one to Lewis Grant in August 1792 at the Grand River.⁸⁵ Throughout his long career Chewett continued to be the chief examiner for the Upper Canadian Surveyor General's office.

The examination involved the testing of survey, trigonometric and navigational theory and the practice of laying out lines and turning angles. It took up to three days to complete, but occasionally well qualified individuals took less time. For example, when James Anderson took the examination Chewett praised his "excellent abilities" and pointed out that he finished in only 10 hours.⁸⁶ Regulations required applicants to bring their own instruments, be of at least 21 years of age, and have some experience working in the bush.⁸⁷ If the applicant was new to surveying Chewett usually recommended that they apprentice under a licensed surveyor for at least two full seasons. All of this insured the maintenance of some

⁸³ *Russell Correspondence*, Vol.II, Russell to Smith, 10 March 1798, p.116.

⁸⁴ Burt, *The Old Province of Quebec*, p.120.

⁸⁵ Ladell, *They Left Their Mark*, p.94.

⁸⁶ OA, RG1, Series A, Surveyor General's Office, A-I-6, Vol.7, no.8, Letters at the Surveyor General's Office, Chewett to Anderson, n.d., p.6975.

⁸⁷ OA, RG1, Series A, Surveyor General's Office, A-I-6, Vol.7, Letters at the Surveyor General's Office, no.1, p.6470 and no.3, p.6622.

standards in survey operations.

In Upper Canada before the War of 1812 the government considered surveyors to be more than simply professional functionaries. There was a position of trust in both a practical and political sense, and they had to swear oaths both to the proper execution of their duties and their loyalty to the Royal government. It helped if one had connections in the Loyalist community and Chewett often examined applicants on the recommendation of trusted local elites. For example, in June of 1796 Justice of the Peace and Land Board Commissioner Ephraim Jones, U.E.L., wrote to Surveyor General Smith on his son's behalf: "I beg leave to introduce him to your notice and attention, he wishes to obtain orders to act as a Deputy Surveyor of Land in this Province, I believe qualified for that office."⁸⁸ Jones' son, Solomon, proved to be well qualified, and he became one of the most active early surveyors in the province.

In the absence of other available or reliable local authorities, the Executive Council occasionally employed surveyors as inspectors and surveillance agents. When the Land Committee began to suspect township grantees of submitting false lists of settlers, they sent Deputy Surveyor Augustus Jones to inspect the lots in question for occupancy and signs of improvement.⁸⁹ In May 1794 the Land

⁸⁸ *Russell Correspondence*, Vol.I, Russell to Smith, 22 October 1796, p.75, and Russell to Smith, 1 November 1796, p.79. OA, RG1, Series A, Surveyor General's Office, A-I-6, Vol.1, no.7, Letters at the Surveyor General's Office, p.754.

⁸⁹ *Russell Correspondence*, Vol.III, Minute of the Land Committee, 4 February 1799, p.97.

Committee issued a general order that surveyors had to report the presence of all squatters to the Surveyor General. They were also told to inform the squatters that they had to apply for a location ticket immediately "or risk forfeiture".⁹⁰ After the adoption of settlement duties along Yonge Street the Land Committee sent Jones to examine and report on the improvements of the settlers. Deputy Surveyor John Stegman repeated the mission three years later.⁹¹ Their findings and observations became part of an on-going file kept in the Surveyor General's office. When Deputy Surveyor Thomas Welch surveyed Rainham Township in 1797 he felt it to be his "Duty" to gather intelligence among the Grand River Mohawk.⁹² At the height of tensions between Joseph Brant and the Upper Canadian government, Welch reported that Brant told the Mohawk to distance themselves from the British because they may "have to join the French yet".⁹³

One Deputy Surveyor, William Fortune, proved particularly zealous in reporting disreputable characters to the Land Committee. In 1788 Fortune obtained a commission as Deputy Surveyor and secured work in the Eastern District. After

⁹⁰ NA, RG1, L1, Vol.19, Upper Canada, Executive Council Minute Books on Land Matters, Land Book A, Order-in-Council of 20 May 1794, p.130.

⁹¹ OA, RG1, Series A, Surveyor General's Office, A-I-1, Vol.36, Miscellaneous files, Report on Yonge St. Settlement Duties, n.d., n.p..

⁹² *Russell Correspondence*, Vol.I, Thomas Welch to D.W. Smith, 12 June 1797, p.187.

⁹³ Welch's report may have convinced Peter Russell to allow Brant to sell land that was part of the Grand River reserve. Surveyor General Smith was ordered to act as a trustee for the sales. OA, MS 234, Peter Russell Copy Book: Indian Correspondence, Russell to Joseph Brant, 4 October 1797.

surveying Hawksbury Township in 1798 he reported that a settler named N. H. Tredwell "is not a Christian, denying Christ and preferring the works of Tom Paine to the Holy Bible". As a result of his report the Land Committee revoked Tredwell's land title and stated that "his religious and political principles do not appear to be such as to entitle him to further favour."⁹⁴ Four years later, Fortune reported to the Land Committee that Alven Lambson and David Warren appeared to be squatting on land in Hawksbury. Worse still, Warren "has been accused of Infidelity to God and disrespectful language to the King", and he "has endeavoured to corrupt others in like manner."⁹⁵ The Land Committee ordered the Surveyor General to disregard any application either settler might make for lands. Deputy Surveyor Fortune's actions found favour with the Land Committee, but not with the locals. Sir John Johnson, Superintendent of the Indian Department, complained that the surveyor had become a "very troublesome Neighbour".⁹⁶ In an attempt to undermine the surveyor's authority, Johnson implied that Fortune took up lands to which he was not entitled. The Superintendent offered no proof however, and Fortune both kept his grant and went on to be appointed County Lieutenant in 1801.

Settlers often criticized the work of Upper Canada's surveyors for being

⁹⁴ OA, *Twentieth Report*, Excerpts from Upper Canada Land Book C, Minutes of the Land Committee, 7 July 1798, p.185.

⁹⁵ NA, RG1, L1, Vol.23, Upper Canada, Executive Council Minute Books on Land Matters, Land Book E, Fortune to the acting Surveyor General, Minute of 27 July 1802, p.72.

⁹⁶ *Russell Correspondence*, Vol.I, Johnson to Smith, 9 April 1797, p.162.

inaccurate, incomplete, and a long time in coming. In some cases this was true but in correcting the situation the government seldom proved to be arbitrary or injurious to the settlers involved. For example, in 1797 Deputy Surveyor Charles Aitken reported that the survey of Richmond township had been so poorly done that he could only suggest surveying the actual arrangement and then comparing it to the theoretical to see what adjustments might be made "without materially injuring such settlers as who were already there." To this the Land Committee readily agreed.⁹⁷ Aitkens' work itself was not without difficulties. Regarding the poor quality of the York survey Peter Russell commented to Surveyor General Smith that "It is much Lamented that Mr. Aitkins and Mr. Jones have not been more Accurate in laying off the blocks -- But the Evil is Committed, all we have to do is to remedy it in the best way we can."⁹⁸

Any evaluation of Upper Canada's surveyors must take into account the conditions under which they laboured. Often such basic necessities as edible food and potable water could not be had. For example, in 1799 while surveying up Yonge Street Augustus Jones sent a desperate note to the Surveyor General:

Sir, My provisions being exhausted, in particular Flour, which is not to be had at this place, at this season of the Year, obliges me to send to you again; Hoping by

⁹⁷ OA, *Nineteenth Report*, Excerpts from Upper Canada Land Book C, p.33. The first re-survey of township lines was ordered in May 1796 for the front concessions of the townships between Lake St. Clair and Point Pelee on Lake Erie. NA, RG1, L1, Vol.19, Upper Canada, Executive Council Minute Books on Land Matters, Land Book A, Order-in-Council of 12 May 1796, p.354.

⁹⁸ Firth, ed., *York*, Vol.A, Russell to D.W. Smith, 8 November 1796, p.37.

this time you will be able to answer my former Letters,
what I am to do.⁹⁹

Sickness and injury regularly took their toll on available manpower. As a result the Surveyor General seldom enough qualified surveyors to do the work at hand. Smith complained in 1793 that the number of crews available was "totally inadequate to execute within any reasonable time the surveys ordered."¹⁰⁰ His successors repeated the complaint on numerous occasions over the next two decades.¹⁰¹ Even in the capital it was difficult to secure labourers for the survey crews. While trying to complete the survey of the town, Chewett reported that "he cannot get hands at the price allowed by the Department", since "no labourer will work there under a Dollar, and some a Dollar and a half per day." The Land Committee responded that it will "never warrant such enormous wages" and it suspended the survey of York "until labourers can be procured on cheaper terms."¹⁰²

Conditions in which the surveyors and their crews worked improved with the advancement of settlement of course. The number of qualified surveyors

⁹⁹ *Russell Correspondence*, Vol.III, Jones to Smith, 1 February 1799, p.89.

¹⁰⁰ NA, RG1, L1, Vol.19, Upper Canada, Executive Council Minute Books on Land Matters, Land Book A, Report of the acting Surveyor General, Minute of 10 July 1793, p.121.

¹⁰¹ Six years later Smith again asked for additional surveyors, because of, as he complained "A vast deal of Field work remaining to be done in the Western District." *Russell Correspondence*, Vol.III, Smith to the Executive Council, 7 March 1799, p.134.

¹⁰² Firth, ed., *York*, Vol.A, Russell to Shaw, 27 August 1796, p.34, and Smith to Russell, 6 November 1796, p.36.

increased, labourers became more readily available, food and other supplies proved easier to obtain, and roads, however crude, made survey sites more accessible. In the early years, however, conditions remained harsh indeed. One of the most informative accounts we have of the trials faced by surveyors is the journal kept by Theodor de Pincier of his 1791 survey of Marlborough Township.¹⁰³ The Marlborough survey proved to be somewhat unusual in that it was in a relatively remote location up the Rideau River, several miles from the established townships along the St. Lawrence. Although de Pincier also admitted that he had an unusual amount of bad luck and misfortune on this trip, he and his crew faced conditions experienced by all surveyors in some measure during the first few decades of settlement.¹⁰⁴

Following the usual practice, de Pincier gathered up his gear, his crew and the necessary supplies and departed for the bush in early March.¹⁰⁵ On his fourth

¹⁰³ Large numbers of survey diaries can be found in OA, RG1, Series C, Crown Lands Department, CB-1, Survey Diaries and Field Notes, 1790-1928. Very few, however, provide elaborate details about working conditions or difficulties encountered in the field.

¹⁰⁴ *An Expedition to the Rideau Country: The Journal of Theodore de Pincier and His Survey of the Township of Marlborough*, Bickerton, ed., p.91. "Sunday 19 June -- It is rare to have so many misfortunes in a party of ten men and I am inclined to think that my bad luck which follows me everywhere has rebounded onto the people who are with me."

¹⁰⁵ In December 1791 the Lower Canadian Land Committee discussed the issue of when the survey season should begin. The Surveyor General's office had reported previously that the beginning of April was normal. The Mecklenburg District Land Board, however, reported that it was impractical to begin so early in the more remote upper province. The previous year they allowed their surveyor, Alexander Aitken, to wait until 1 June. Deputy Surveyor General Collins was then called on to appear before the Committee and he stated that surveyors could "make good progress in Field work from the beginning of March." NA, RG1, L1, Vol.20, Upper Canada, Executive Council Minute

day out from Quebec he reported that "a heavy blowing snow" held him up for four hours at Dechambault.¹⁰⁶ Before completing the work in October snow covered the ground once again. At Montreal de Pincier hired chainmen and axebearers. Securing sufficient numbers of qualified workers proved difficult and personnel problems plagued the Deputy Surveyor throughout the season. On two occasions a large part of his crew abandoned work in progress.¹⁰⁷ Several of de Pincier's assistants, such as chainmen Noel Timans and Pierre Charbonneau, proved to be tough, dependable employees, but others did not. De Pincier sacked Joseph Labelle because he was "an idler". Five men hired as replacements got so drunk before departing that de Pincier delayed negotiating the rapids above Montreal until they sobered up. The camp cook wandered off one day and got lost. De Pincier had to send "two bright lads to find him."¹⁰⁸

Personnel problems were perhaps not surprising given the working conditions. According to general practice surveyors worked seven days a week taking time off only in severe weather.¹⁰⁹ The largely Catholic crew did not appreciate working on Sundays, and at one point de Pincier suspected that

Books on Land Matters, Land Book B, Minute of 24 December 1791, p.372.

¹⁰⁶ *An Expedition to the Rideau Country: The Journal of Theodor de Pincier and His Survey of the Township of Marlborough*, Bickerton, ed., p.1.

¹⁰⁷ *Ibid.*, p.102 and 142.

¹⁰⁸ *Ibid.*, p.90, 107 and 132.

¹⁰⁹ *Ibid.*, p.39 and note on page 41. Both William Chewett and William Fortune followed the same practice of working on Sundays.

someone started a forest fire in order to avoid the burden.¹¹⁰ Provisions, limited to flour, hard biscuits, beans, and copious amounts of salt pork, had to be carried into camp in barrels strapped to a labourer's back.¹¹¹ Sickness proved to be an everyday occurrence. One man developed dysentery, another was "seized with colic".¹¹² On 25 May de Pincier reported that "mosquitoes and black flies tormented us furiously for the first time."¹¹³ Within weeks most of the crew suffered from fevers caused by the pests. By early June the weather turned hot and because of the local topography drinking water proved hard to find. As a result at least one man became incapacitated by heat stroke.¹¹⁴

Personal injury remained a constant danger and a regular occurrence while surveying. The range of injuries suffered by de Pincier and his crew gives us some idea of what could happen. Jean Baptiste Boucher had his shoulder broken by a falling tree limb in the spring; he quit the party in September after "a fall which he had taken on a sharp branch while coming from Oswegatchie, loaded with flour."¹¹⁵ Joseph Philip ruptured an old hernia felling a tree, and his companion Joseph

¹¹⁰ *Ibid.*, p.85.

¹¹¹ *Ibid.*, p.67.

¹¹² *Ibid.*, p.156.

¹¹³ *Ibid.*, p.72.

¹¹⁴ *Ibid.*, p.83.

¹¹⁵ *Ibid.*, p.59 and 136.

Denoyer sliced his hand open with his axe.¹¹⁶ One of the worst injuries occurred when the cook fell on a stump while carrying the water barrel, "Blood came out of his ears, nose and mouth. He was in danger of death all night."¹¹⁷ De Pincier himself stumbled while carrying an axe and cut his leg open above the kneecap, "deep right to the bone, and wide open."¹¹⁸

Numerous other circumstances made life difficult for de Pincier's crew. One night a poorly tended camp fire set a tree alight and nearly brought it crashing down on the sleeping men. "Its crackling", wrote de Pincier "warned us of the danger; each man saved himself by leaping out of the way, and the sick man was dragged from his bed by a strong, courageous man."¹¹⁹ Courage proved necessary on another occasion when an armed Native intent on pillaging the supply depot confronted chainman François Dubois. The Native levelled his rifle at Dubois but the "old *voyageur*", as de Pincier called him, got off the first shot with his pistol and his assailant fled.¹²⁰

Such difficulties were, of course, neither unusual nor unexpected in pioneer Upper Canada. The work was dangerous, and the Natives had not yet been dispossessed of all their land. Nevertheless, Deputy Surveyors and their crews

¹¹⁶ *Ibid.*, p.77 and 136.

¹¹⁷ *Ibid.*, p.87.

¹¹⁸ *Ibid.*, p.139. This injury occurred on 29 September, a month before the end of the season.

¹¹⁹ *Ibid.*, p.88.

¹²⁰ *Ibid.*, p.126.

more often than not did a remarkably good job of laying out the province's townships and roadways. The decision to survey townships in advance of settlement created problems for the surveyors and their crews. Supplies, provisions and personnel were difficult to obtain and a great deal of extra time was spent conducting operations. It often took several days of hard travel simply to get to the survey site. Surveying in advance of settlement, however, also alleviated the problems associated with conflicting claims and the disruption of previous improvements. As a result the settlement process proved more orderly than it would have been otherwise. More importantly, as Simcoe realized, it prevented lawsuits, that "great bane of infant colonies" as the Lieutenant-Governor called them, between individual settlers and between settlers and the government.¹²¹

The most serious challenge faced by the Surveyor General's office proved to be neither working conditions nor the lack of adequately trained personnel, but rather the reluctance of both the Imperial government and the Upper Canadian community to provide the necessary capital investment. Given the circumstances of the first couple of decades of the nineteenth-century this reluctance is understandable. War in Europe strained British finances and by its end Upper Canadians faced the consequences of reduced Imperial contributions to colonial government. Complicating matters, the King promised Loyalists in Upper Canada

¹²¹ *Simcoe Correspondence*, Vol.I, Simcoe to Dundas, June 1792, p.48. For an excellent discussion of confusion and conflict caused by poorly defined land titles see Alan Taylor, *Liberty Men and Great Proprietors: The Revolutionary Settlement on the Maine Frontier, 1760-1820* (Chapel Hill: University of North Carolina Press, 1990) p.13-14.

free grants in exchange for their adherence to the Crown and in both the Revolutionary War and the War of 1812 they lived up to their end of the bargain. This placed additional strains on the province's finances. Such a policy may have been shortsighted, but the British government could hardly do other than live up to its promise after the fact. Less defensible was the reluctance of the Assembly and Legislative Council to impose sufficient land taxes to pay for the administration of the province. Here speculators, both Loyalist and non-Loyalist alike, must accept much of the blame.¹²²

With the coming of the War of 1812 the business of the Land Granting Department all but ground to a halt. Between 1812 and 1815 only four townships had been surveyed. In 1813 the Land Committee of Council held only seven meetings, and the following year reduced the number to four. The volume of petitions submitted dwindled to a trickle. By the closing months of 1815, however, business began to pick up again. Now the government of Upper Canada had to deal with all of the difficulties associated with settlement in the face of a dramatically expanding influx of new settlers. Some of the solutions they turned to proved effective in addressing the needs of the new arrivals and the financial burdens placed on the administration. Others, much less so.

¹²² Surveyor General Smith recognized this problem and in 1793 proposed a tax of ¼d per acre on all land except the first 200 acres. The Assembly rejected Smith's proposal. Gates, *Land Policies of Upper Canada*, p.142.

Chapter Seven

Maitland's Reforms and New Structures in the Land Granting Department

In September 1815 Lieutenant Governor Francis Gore returned to Upper Canada after a long four-year absence. During his previous term he had had little involvement in the day-to-day business of land granting, having for the most part left the duties and responsibilities in the hands of the executive. In fact, Gore attended only three of the 283 Land Committee meetings held during his first term in office.¹ The war years saw very little land business conducted. Overseas travel became all but impossible, and even within the province few Upper Canadians risked a trip to York to apply for lands. The conclusion of hostilities in both Europe and North America, however, created new problems for the government. In response the Lieutenant-Governor exhibited a new sense of vigour; he now attended, for example, 39 of the 62 meetings of the Committee prior to his departure in June 1817. Unfortunately for both Gore's reputation and the settlement of the province, his increased participation seldom produced effective solutions.

Gore's successor, Lieutenant Governor Sir Peregrine Maitland, actively

¹ NA, RG1, L1, Vols.25-27, Upper Canada, Executive Council Minutes on Land Matters, Land Books G, H, and I.

participated in the deliberations of the Land Committee, at least for his first three years in office. More importantly, he made a number of modifications in the structure of the land granting administration in reaction to both changes in Imperial colonial policy and a renewed search for greater operational efficiency and effectiveness. In the end, certain of Maitland's reforms, such as the new District Land Boards, benefited the public interest. Others, such as paying surveyors in land, became little more than costly blunders.

The social and political context in which the Land Granting Department operated altered significantly with the end of the war in 1815. These changes took place in three separate but interrelated areas. First, military demobilization, post-war economic dislocation, declining living standards and a desire for a better future sent hundreds of thousands of immigrants streaming across the Atlantic to North America.² Most newcomers sought good quality agricultural land, and since the province still contained several million acres of such property, government officials, politicians and businessmen alike thought that they were well placed to take advantage of this population movement. But they did not always agree on the direction settlement policies should take. In the end, questions of loyalty and

² McCalla, *Planting the Province*, p.35. McCalla quotes Helen Cowan's figure of 129,000 immigrants coming into British North America between 1815 and 1825. As Cowan points out, however, this is most likely a conservative estimate. Helen Cowan, *British Emigration to British North America: The First Hundred Years* (Toronto: University of Toronto Press, 1961) p.288. See also Bruce Elliott, *Irish Migrants in the Canadas: A New Approach* (Kingston and Montreal: McGill-Queen's University Press, 1988).

perceived worthiness remained factors in the government's decisions in dispensing grants.³ Increased competition for settlers from the United States government and American land companies, who began to offer liberal credit arrangements for the purchase of property, made the situation more pressing.⁴ Although land in Upper Canada remained less expensive than south of the border, it was not made available to everyone on demand.

Second, the personnel of the Land Granting Department, particularly at the executive level, underwent significant changes during the years surrounding the War of 1812. Maitland replaced Gore in 1818 and remained in office for the next decade. Long gone were experienced Executive Councillors such as Peter Russell, Aeneas Shaw, and David W. Smith. Chief Justice Thomas Scott left the province early in 1816. Alexander Grant died in 1813 shortly after the war broke out. So did Receiver General Prideaux Selby. In charge not only of the provincial revenues, Selby was one of the most active members of the Land Committee; over eight and a half years in office he attended 95% of its meetings. Inspector General John McGill, also one of the most active members of the Committee, assumed Selby's duties after his death, but he resigned his Executive Council seat on 13 August 1818, the same day Maitland assumed office. By 1818, then, this first generation

³ Robert Fraser, "Like Eden in Her Summer Dress", *Gentry, Economy and Society: Upper Canada, 1812-1840*. Fraser emphasizes that the members of the gentry such as Reverend John Strachan and John Beverley Robinson were conscious promoters of economic development, as long as it was on their terms.

⁴ Hurt, *The Ohio Frontier*, p.345-6.

of Councillors had all but retired. The colonial government replaced them with the recently elevated Chief Justice, William Dummer Powell, the Anglican minister and future Bishop, Reverend John Strachan, and the former regular forces officer and militia colonel, Samuel Smith. These three men, along with the stalwart James Baby, became the new active core of the Land Committee.⁵

The post-war Executive Council had a character different from its predecessor. Powell remained the only member with both extensive experience in land administration and responsibility for an important government department. Judicial matters, however, often preoccupied his time. Strachan remained essentially a politician and cleric. He took little interest in day-to-day administration and did not have responsibility for any specific area of government operations. Although Smith held an important post in the militia he had little experience in land administration. Baby knew a great deal about Crown land distribution but he did not have responsibility for an administrative department. Two of the most important offices involved in land granting -- the Attorney General's and the Receiver General's -- did not have representatives on the Land Committee. This proved to

⁵ NA, RG1, L1, Vols.28-31, Upper Canada, Executive Council Minutes on Land Matters, Land Books J through M. Aside from the military officers appointed during the War of 1812, only four other individuals participated in the Land Committee: William Claus, appointed in February 1818, Peter Robinson, appointed in December 1823, John B. Macaulay, appointed in May 1825, and Chief Justice William Campbell, appointed in October 1825. Claus had little impact on the Committee, having attended only 10% of the meetings held during his tenure. Robinson, who was appointed the first Commissioner of Crown Lands, attended only 13% of the meetings held before the formation of the new office. Macaulay did not attend a Land Committee meeting until July 1826, six months before the new system came into effect.

be a step backward in the evolution of the Upper Canadian government as communications between the various offices deteriorated.

Two other important changes below the executive level also took place during this period. In November 1812 the Crown appointed John Beverly Robinson acting Attorney General, and he began his long career as one of the most prominent officials in the Upper Canadian government. Perhaps as important for the day-to-day administration of land matters, in 1817 the government appointed Duncan Cameron, a former North West Company fur trader, Provincial Secretary and Registrar, replacing the aged William Jarvis. Cameron held the post until 1838 and brought a good deal of business-like acumen to the office.⁶ The Jarvis family maintained its connections, however, since Samuel Peters Jarvis, William Jarvis' son, became deputy Provincial Secretary in 1817 and retained the post until 1839.

The third change had to do with transformations in Imperial administration and colonial policy. Three days after assuming office in June 1812 the Tory Prime Minister, Lord Liverpool, appointed Henry Bathurst, the third Earl Bathurst, Secretary of State for War and the Colonies. An experienced and competent aristocratic politician, Bathurst remained Secretary until 1827. At the same time Liverpool appointed Henry Goulburn permanent Under-Secretary. Goulburn held the job until 1821 when he was succeeded by the early utilitarian reformer, Robert

⁶ Armstrong, *Upper Canadian Chronology*, p.22.

Wilmot-Horton.⁷ As Snelling and Barron point out, "Bathurst may have been old-fashioned, Goulburn fastidious, but they were both adept at shaping an administrative machine and conscious promoters of a departmental *esprit de corps*."⁸ This resulted in the establishment of what soon came to be called the Colonial Office.

Through the efforts of Bathurst and Goulburn the Office began to take on the characteristics of a modern bureaucracy complete with a ministerial head responsible for political direction, a permanent under-secretary who handled administrative work above the clerical level, and a staff of junior civil officers to conduct routine functions.⁹ This allowed Imperial administrators to pay more attention to colonial affairs as they sought to both reduce colonial expenditures and expand their knowledge and understanding of their administrative enterprises. These changes also brought to the fore the divergent and often conflicting interests of colonists attempting to acquire land for settlement or speculation, the conservative-minded, fee-dependent Upper Canadian government, and the increasingly cost-conscious Imperial officials in Whitehall. In the long term, reforms in Britain's bureaucracy provided a model for the development of the Upper Canadian administration, but it was not until the 1840's that significant

⁷ D.M. Young, *The Colonial Office in the Nineteenth Century* (London: Longmans, 1961) pp.34-5.

⁸ Snelling and Barron, "The Colonial Office: Its Permanent Officials, 1801-1914", in Sutherland, *Studies in the Growth of Nineteenth-Century Government*, p.140.

⁹ Parris, *Constitutional Bureaucracy*, p.48.

change took place.

As part of the retrenchment campaign of the post-war conservative government, Imperial administrators began to demand a much closer and more complete accounting of the distribution of Crown resources in the province. In 1817 the British Parliamentary Select Committee on Finance called for a review of colonial office-holders, their salaries, and periods of appointment. Out of this came an order from the Colonial Office requiring the government of Upper Canada to compile what has come to be called the Blue Books.¹⁰ The provincial administrators drew up the first returns for the year 1821 and by the 1830's the books contained a wide range of statistical and explanatory information on governmental operations and general economic conditions.¹¹ The business of land granting quickly became a key element in the compilation of the Blue Books. Clerks gathered information on fees, commissions, lands granted, locations and amounts, revenue from leases, survey fees, use of the Great Seal on patents, and the cost of the Surveyor General's office. Prior to 1820 the government compiled very little of this information in the manner now ordered by the Colonial Office. The new regime placed greater demands on resources and personnel which in turn led to a gradual expansion of administrative operations, the standardization and elaboration of reporting techniques, and the increased use of local officials for

¹⁰ Bruce Curtis, "The Canada 'Blue Books' and the Administrative Capacity of the Canadian State, 1822-67", *Canadian Historical Review* (1993) pp.539-40.

¹¹ NA, RG1, E13, Vol.1, Upper Canada, Blue Books of Statistics, 1821.

information gathering. Although this process developed slowly, with much of it taking place after the 1830's, the importance of land granting to the government and the community led it to be one of the first enterprises to be affected by these new state activities. The first Upper Canada Blue Book, for example, lists estimates of revenues from Crown lands, expenditures and personnel of the Surveyor General's Office, and the various authorized tables of fees on land grants.

Alterations in colonial settlement policy had a more immediate impact on the government of Upper Canada. From the Imperial point of view the challenge itself remained the same; how to rapidly settle the colony with loyal subjects while ensuring that it contributed to the wealth and power of the Empire. A good start had been made but the War of 1812 had shown how precarious the situation within the province could be. By the start of hostilities the population of Upper Canada had grown to about 100,000; almost 80 per cent having been recent arrivals from the United States.¹² Although instances of outright disloyalty were few, both British administrators and the Upper Canadian Tory elite distrusted the political sentiments of the American settlers and questioned their commitment to the Crown. Governor Drummond reported to Bathurst that Upper Canada was "a Country already too much inhabited by Aliens from the United States, very many of whom are avowedly disaffected to the British Government, and as many more

¹² R.C. Harris and J. Warkentin, *Canada Before Confederation* (Toronto: Oxford University Press, 1974) pp.116-117.

of doubtful principles."¹³ Early in 1815 Lord Bathurst ordered that no land be granted to Americans and that measures be taken to prevent such persons from entering the province.¹⁴ To compensate in part for stemming the flow of American settlers the Colonial Office took steps to promote immigration from Britain. As Reverend John Strachan explained, the purpose of this policy was "to check emigration from the United States for a time" until a "foundation, or nucleus, could be formed of emigrants from the mother country in the new settlements by which they might acquire a British tone and character."¹⁵

In September 1815 Lieutenant Governor Gore adopted regulations to exclude Americans from receiving land grants. He ordered the Justices of the Peace to not administer the oath of allegiance to anyone coming from the United States without special permission from the Executive Council.¹⁶ Gore assumed that, since a certificate of oath-taking was necessary to obtain a land grant, many American-born settlers would be discouraged from entering the province. Whether he was correct or not is impossible to know, but the new regulation infuriated many land speculators who expected to profit from sales to American settlers.¹⁷ The

¹³ Craig, *Upper Canada: the Formative Years*, p.87.

¹⁴ Gates, *Land Policies of Upper Canada*, p.100. Craig, *Upper Canada: the Formative Years*, p.88.

¹⁵ G.W. Spragge, ed., *The John Strachan Letter Book, 1812-1834* (Toronto: Ontario Historical Society, 1946) Strachan to Col. John Harvey, 23 June 1818, p.166.

¹⁶ NA, RG1, E1, Vol.50, Upper Canada, Executive Council Minute Books on State Matters, State Book G, p.490.

¹⁷ Gates, *Land Policies of Upper Canada*, p.100.

other aspect of the new policy, encouraging immigration from Britain, proved to be a much more complex and difficult undertaking, one that required both initiative and financial support on the part of the administration. It also required co-ordination between the various levels of the Imperial government, something that proved troublesome under the best of conditions.

During Gore's absence the Military Settling Department, operating under the Quarter Master General, began locating and settling disbanded soldiers and state-assisted British immigrants. The Governor, Sir Gordon Drummond, wanted the newcomers to help defend exposed and previously settled areas of the province, such as the Eastern District along the route of the proposed Rideau Canal. In 1815, however, when the first large group of settlers arrived in the province, the area back of the old townships along the St. Lawrence had yet to be surveyed. With no new townships available Gore had little choice but to turn over the Crown reserves in the older settlements for location.¹⁸ This created resentment among the Loyalist settlers in the area, many of whom could not locate their family land grants because of a lack of surveyed townships. Naturally they coveted the near-by reserves, all the more so because their surrounding farms made the lots valuable.¹⁹

The Upper Canadian civil administration had no direct control over this

¹⁸ Gates, *Land Policies of Upper Canada*, pp.87-88.

¹⁹ NA, MG11, Vol.357, part 1, Colonial Office 42: Upper Canada, 1816 Despatches, Gore to Bathurst, 23 February 1816, pp.35-45.

branch of the colonial military establishment, but it remained responsible for survey operations and issuing patents. As might be expected, Gore and his Council disliked the interference of the military and the additional demands placed on government resources.²⁰ In March 1815 the Land Committee attempted to exert control over the distribution of grants by passing a resolution stating that all petitions must "be read at the Council Board... in order that the same may be discussed and the members be permitted to offer their opinions for or against."²¹ The Colonial Office and Governor Drummond, however, ignored the resolution. "Mr. Goulburn's vagabonds", as Chief Justice Powell called them, continued to receive locations without reference to the Committee.²²

To facilitate the distribution of military grants, Drummond appointed Alexander Macdonell local superintendent for the Glengarry area, and David McGregor Rogers for the Bay of Quinty area. This only increased tensions between the civil officers and the Military Settling Department, in large part

²⁰ Gates, *Land Policies of Upper Canada.*, p.87.

²¹ NA, RG1, L1, Vol.27, Upper Canada, Executive Council Minute Books on Land Matters, Land Book I, Resolution of 15 March 1815, p.248. The resolution was moved by Chief Justice William Dummer Powell.

²² When two of the grantees, a Captain Bullock and a Joseph Harvey, tried to obtain patents for their lands the Land Committee refused to recognize their grants. It took two stern letters from Lord Bathurst for the Committee to change its ways. NA, RG7, G1, Vol.58, Colonial Office, Miscellaneous Correspondence, Upper Canada, Bathurst to Gore, 13 May 1817, pp.161-5, and RG7, G2, Vol.1, Colonial Office, Miscellaneous Correspondence, Upper Canada, Bathurst to Gore, 14 April 1817, n.p..

because of Roger's long-standing opposition to government land granting policies.²³ An articulate, well-educated Loyalist and member of the Assembly since 1797, Rogers severely criticized the government for favouring the interests of British over American-born settlers and for excluding Loyalists from playing an active role in the provincial administration.²⁴ Ironically, he had now been put in charge of settling only British immigrants. For Rogers, however, rapid settlement of the province remained the highest priority. Once appointed to office, and before receiving permission, he began locating military grants on the valuable Crown reserves in the long-settled Bay of Quinte townships. He also used his new position to request more locations, and he complained about lassitude in the Surveyor General's Office.²⁵ Roger's actions, and the howls of protest they generated, prompted the Lieutenant-Governor to offer the Governor a group of as yet unsurveyed townships west of the Rideau River and north of the older settled areas. Drummond accepted and the Military Settling Department shifted its

²³ Craig, *Upper Canada: the Formative Years*, p.64. Gates, *Land Policies of Upper Canada*, p.88.

²⁴ Mills, *The Idea of Loyalty in Upper Canada*, p.24. Rogers sided with the Thorpe faction in the Assembly in 1807, and a year later accused government officials of being "upstart office-hunting hypocrites". Objections against the supplanting of Loyalists with outsiders were voiced by many. Charles Durrand, brother of four-time MPP James Durrand, complained that the government "forsake the U.E. Loyalist and raises over his head as Magistrates and office holders, mere strangers and half pay officers who insulted the old settlers of the Country with impunity." J.H. Aitchison, "The Development of Local Government in upper Canada, 1783-1850" (Ph.D thesis, University of Toronto, 1953) p.68.

²⁵ NA, RG1, E3, Upper Canada Sundries, Rogers to Surveyor General Thomas Ridout, 16 December 1816.

activities to the area around the new town of Perth.²⁶

At this point Gore attempted to remove Rogers from office for violating administrative procedures. In November 1815 the Surveyor General ordered local Deputy Surveyors to conduct the survey of the new military settlement. As usual the orders set rates of pay, the size of rations, and stipulated that all accounts and field notes were to be "signed and attested" by the surveyor before a magistrate, and in this case, the local superintendents of settlement.²⁷ When the Land Committee received the accounts the following July, Gore accused both Rogers and Macdonell of "deviating from the Established Regulations" by dispensing double rations and submitting unsigned account books.²⁸ In Gore's opinion Rogers was the "last person in... Upper Canada fit to be intrusted with such a charge as has been confided to him." When the new Governor, Sir John Sherbrooke, received Gore's report he expressed his "regret to find that any difficulty had arisen" and asked that he be furnished with details about "the particular act or acts of interference". Sherbrooke, however, then went on the point out that he had appointed Rogers "in consequence of the very high opinion entertained of his services" by the senior military officers and that he would only be dismissed for

²⁶ NA, MG11, Vol.359, part 1, Colonial Office 42: Upper Canada, 1817 Despatches, Thomas Ridout to Reuben Sherwood, 24 February 1816, pp.36-8.

²⁷ NA, MG11, Vol.359, part 1, Colonial Office 42: Upper Canada, 1817 Despatches, Surveyor General Thomas Ridout to William Graves, 2 November 1815, enclosed in Gore to Bathurst, 27 January 1817, p.34.

²⁸ NA, MG11, Vol.359, part 1, Colonial Office 42: Upper Canada, 1817 Despatches, Gore to Major General Wilson, 15 July 1816, pp.17-18.

specific instances of "misconduct".²⁹ In the end Gore could not substantiate the charges against Rogers, but he lamely argued that "He is one of those persons who render themselves Conspicuous by a long course of opposition to the Colonial Administration", and had "harassed and perplexed this administration for many years".³⁰

Rogers, meanwhile, proved to be both loyal to the Crown and a capable administrator. The fact remained that the government needed competent local officers of Rogers calibre at the district level. This Gore failed to appreciate, and he consistently interpreted legitimate criticism of administrative policies and procedures as disloyalty to the government. Gore's successor, Sir Peregrine Maitland, on the other hand, recognized the qualities of a good administrator and appointed Rogers to the chair of the Newcastle District Land Board in 1819.

Securing competent and trustworthy personnel was not the only difficulty facing the government in the immediate post-war period. Paying for the administration of settlement proved to be an equally intractable problem. Since 1791 the Imperial government supplemented Crown revenues with funds drawn from the Military Chest when it became necessary to cover deficits incurred by the Land Granting Department. The Lieutenant-Governor and his Council often requested such supplements in part because of the policy of giving grants free of

²⁹ NA, MG11, Vol.359, part 1, Colonial Office 42: Upper Canada, 1817 Despatches, Sir John Sherbrooke to Gore, 3 August 1816, pp.21-3.

³⁰ NA, MG11, Vol.359, part 1, Colonial Office 42: Upper Canada, 1817 Despatches, Gore to sherbrooke, 20 August 1816, pp.25-7.

fees to Loyalists and disbanded military settlers cut deeply into Crown revenues. At the height of war-time despondency in the spring of 1813, General Sheaffe, commander of the British forces, promised both the regular army and the provincial militia that they would be given 200 acre grants free of fees after the conclusion of hostilities.³¹ These new grants required surveys, of course, and this dramatically increased the pressure on provincial revenues as first hundreds, and then thousands of applicants began demanding locations.

To make matters worse, the military officers in charge of the Perth settlement ordered their assigned surveyors to run both concession lines and side lines and to mark each lot with a post at the four corners. In previous surveys only the township boundaries, the concession lines and the front corners of the lots had been laid out. As Surveyor General Ridout reported to Council, "The new method now pursued at the New Settlement at the Rideau... is an increase of five fold Expense."³² As a result, in July 1816 Gore informed the Governor that unless his most recent "requisition for a supply from the Military Chest is not immediately complied with, the Surveyor General will be unable to pay the surveyors whose

³¹ F.M. Quealey, "The Administration of Sir Peregrine Maitland" (Ph.D thesis, University of Toronto, 1968) p.396. Grants to "all persons of the Flank Companies of the Provincial Marine and Incorporated Militia" were officially authorized by the Prince Regent in April 1819. NA, RG1, L1, Vol.29, Upper Canada, Executive Council Minutes on Land Matters, Land Book K, p.94. The size of the grants was later reduced to 100 acres.

³² NA, MG11, Vol.359, part 1, Colonial Office 42: Upper Canada, 1817 Despatches, Report of Thomas Ridout, Surveyor General of Upper Canada, respecting problems with the survey of the Military Settlements at the Rideau and the Bay of Quinte, 19 August 1816, pp.29-33.

accounts already amount to £2500."³³ Reluctant to comply, Governor Sherbrooke referred the matter to the Colonial Secretary. After receiving a strong letter from Bathurst on the subject of "retrenchment" -- the nineteenth-century term for downsizing -- Sherbrooke informed Gore that the state of the Military Chest prevented him from making disbursements "to any thing near the amount of these expenses".³⁴ He also told Gore that there would be at least an additional sixty officers in need of surveyed lots by spring. Prevented from drawing on provincial revenues controlled by a now fractious and recalcitrant Assembly, the Lieutenant-Governor turned to his Council for advice.³⁵ In December 1816, Gore reported to the Governor that he no longer had funds available for survey operations and that he had ordered the Surveyor General "to dismiss the Surveyors employed under his direction, not only in the Rideau Townships, but in all other parts of the Province."³⁶ On receiving this news Sherbrooke retreated a little and promised Gore that survey expenses for the Rideau settlement would be paid by the Quarter

³³ NA, MG11, Vol.359, part 1, Colonial Office 42: Upper Canada, 1817 Despatches, Gore to Major General Wilson, 15 July 1816, pp.17-18.

³⁴ NA, MG11, Vol.359, part 1, Colonial Office 42: Upper Canada, 1817 Despatches, Colonel Christopher Myers to Gore, 19 November 1816, p.48.

³⁵ By the summer of 1816 many of the leading members of the Assembly, such as the large land owners William Dickson and Robert Nichol, had begun to voice their objections to government land granting policies, and in particular the exclusion of American immigrants. As Lillian Gates has argued, this discontent in the Assembly evolved into a determination to control all Crown land revenues and granting policies. Gates, *Land Policies of Upper Canada*, p.152-3.

³⁶ NA, MG11, Vol.359, part 1, Colonial Office 42: Upper Canada, 1817 Despatches, Gore to Sherbrooke, 16 December 1816, p.52.

Master General.³⁷ But as Gore informed Bathurst, this did not address the larger problem of who was to pay for the surveys required to satisfy the claims of all the disbanded military and militia in the province.³⁸

The final blow came in March 1817 when the British government informed Gore and his Council that deficits incurred by the civil administration, principally for land purchased from the Natives, the expense of surveys and the half fees on privileged grants, would no longer be covered by funds drawn on the Military Chest. Henceforth, provincial revenues, including those under the Crown's control, would only be supplemented by a fixed annual grant of £10,825.³⁹ Approximately half the amount drawn from the Military Chest during the previous year, the new restrictions placed the Lieutenant-Governor-in-Council in a very difficult position.⁴⁰ At this point Gore left Upper Canada and its settlement problems to his successor.

The Military Settling Department, meanwhile, continued to operate in the province. Shortly after arriving in London in 1817 Gore counselled the temporary Provincial Administrator, Samuel Smith, "to interfere as little as possible, with the settlement on the Rideau, -- the Civil Government are not responsible, at present, and by any interference on your part, -- the odium of failure will be thrown upon

³⁷ NA, MG11, Vol.359, part 1, Colonial Office 42: Upper Canada, 1817 Despatches, Sherbrooke to Gore, 28 December 1816, p.60.

³⁸ NA, MG11, Vol.359, part 1, Colonial Office 42: Upper Canada, 1817 Despatches, Gore to Bathurst, 27 January 1817, p.16.

³⁹ Gates, *Land Policies of Upper Canada*, p.116.

⁴⁰ Gates, *Land Policies of Upper Canada*, p.156.

you, and the council."⁴¹ Smith and the Executive Council took heed of Gore's advice and had as little as possible to do with their military counterparts. There remained, however, an overlap in jurisdiction. In the end the junior civil officers suffered as a result of the confusion. For example, in March 1819 Deputy Surveyor Samuel Ryekman petitioned the Land Committee for "remuneration for loss of time and expenses".⁴² Two years previously he had been ordered by Surveyor General Ridout to help survey the military settlement, but the officers in charge refused to provide him with chainmen. This forced Ryekman to hire and pay the men himself. The Land Committee rejected his request for compensation, and referred him to the Commander of the forces for payment. In the end Ryekman waited another two years to receive the monies owed.

Ryekman was not alone in his difficulties. In April 1818 Deputy Surveyor Duncan Macdonald complained to Samuel Smith that the Surveyor General frequently ordered him to conduct "distant surveys" for which he had to provide himself with chainbearers, axemen, provisions, and transport, and "pay for the same in advance". Worse still, such expenses were never "refunded to him until many months after his duties are discharged".⁴³ As a result he now had difficulties securing the necessary credit to continue operations. Macdonald suggested that

⁴¹ NA, RG7, G1, Vol.58, Colonial Office, Miscellaneous Correspondence, Upper Canada, Gore to Samuel Smith, 8 September 1817, p.202.

⁴² NA, RG1, L1, Vol.29, Upper Canada Executive Council Minute Books on Land Matters, Land Book K, petition of Samuel Ryekman, 2 March 1819, p.18.

⁴³ OA, RG1, Series C, Lands Branch, C-I-1, Vol.56, Macdonald to Samuel Smith, April 1818, n.p..

the government adopt the practice of Lower Canada and provide surveyors with cash advances, but they did nothing in large part because of the depleted state of the Crown revenues. In fact, the new Lieutenant-Governor contemplated much more drastic changes in survey operations.

On 13 August 1818 Major General Sir Peregrine Maitland assumed office as the new Lieutenant-Governor of Upper Canada. A distinguished veteran of the Napoleonic Wars, Maitland had married Lady Sarah Lennox, the daughter of the new Governor-in-Chief, Lord Richmond. He also counted Lord Bathurst among his close personal friends. Such connections served him well in obtaining what was increasingly regarded as an important colonial position.⁴⁴ Like his more senior benefactors, Maitland proved to be a highly conservative, aristocratic-minded administrator. He supported the British government's suspension of habeas corpus and prohibition of public meetings and political clubs in 1817 and 1819. When the Gourlay affair erupted in Upper Canada shortly after his arrival he took similar, albeit more limited, steps to restrict public debate and popular political participation. After failing to secure a large land grant, Robert Gourlay wrote a series of public letters severely criticising the executive for its settlement and land distribution policies. Many Upper Canadians sympathized with Gourlay's arguments and a number of public meetings were held to discuss the issues. Fearful of such democratic displays, the government tossed Gourlay in jail on a charge of sedition.

⁴⁴ *Dictionary of Canadian Biography*, "Sir Peregrine Maitland", Hartwell Bowsfield, Vol. VIII, pp.596-605.

In April 1819 Maitland ordered that all militia who served in the war would receive land grants except "such as may have acted as Delegates to a Convention which assembled at York in 1818."⁴⁵ Such measures did little for his popularity among the discontented in both the Assembly and the townships. Few such persons considered themselves disloyal and deserving of punishment. To his credit, however, Maitland recognized that there were many valid grievances related to government operations, and he took steps to reduce expenditures, increase administrative efficiency and help facilitate the grant application process.

A week after his arrival in the province Maitland wrote to Bathurst,

The Land Council seems to have been sleeping over an office choked with applications. I shall go to them every day and intend keeping them to it till the office shall be cleared. They were in the habit of meeting, nominally twice a week and are not perhaps as well pleased at this additional application.⁴⁶

Like Gore, Hunter and Simcoe before him, Maitland came into office full of reformist zeal, ready to tackle and solve the problems in the Land Granting Department. He faced many of the same difficulties that confronted his predecessors; limited funds independent of the Assembly's control, an Executive Council staffed by too few officials all with numerous duties, and a growing number

⁴⁵ NA, RG1, L1, Vol.29, Upper Canada, Executive Council Minutes on Land Matters, Land Book K, Order-in-Council of 30 April 1819, p.94. Bathurst approved the withholding of grants from participants in the Convention of 1818. NA, MG11, Vol.377, Colonial Office 42: Upper Canada, 1825 Despatches, Bathurst to Maitland, 8 August 1821, p.71.

⁴⁶ NA, MG11, Vol.361, part 1, Colonial Office 42: Upper Canada, 1818 Despatches, Maitland to Bathurst, 19 August 1818, p.116.

of petitioners whose claims had been dramatically expanded by war-time promises of extra grants.⁴⁷ A month after his arrival Maitland reported to Bathurst "I am happily to state that the Land Council daily exertion has brought up a very long arrears of business."⁴⁸ This took care of the Land Committee's backlog, but more concrete measures had to be taken to address the larger problems in the land granting system.

Reforms made in the Land Committee's operations were designed to tighten procedures, improve its record-keeping practices and eliminate unnecessary work. In anticipation of his successor's arrival, Gore had ordered the Clerk of the Council to draw up four copies of all vouchers for payments made on the public accounts and to have an additional copy of the half-yearly account "in readiness" at all times.⁴⁹ This allowed the new Lieutenant-Governor immediate access to the most up-to-date accounts of monies in the casual and territorial revenues, the fund out of which survey operations were paid. In January 1819, after disposing of the initial backlog of business, Maitland ordered the Land Committee to convene for at least

⁴⁷ In May of 1819 a printed form letter was distributed to disbanded officers specifying conditions on land grants in Upper Canada. Lieutenant Colonels were eligible for 1200 acres, Majors for 1000 acres, Captains for 800, and Sublaterns for 500. The letter also stated that grants were "Subject always to the conditions of actual residence and cultivation of the Land assigned to them, within a limited period." NA, RG7, G1, Vol.59, Colonial Office, Miscellaneous Correspondence, Upper Canada, 8 May 1819, p.83.

⁴⁸ NA, MG11, Vol.361, part 1, Colonial Office 42: Upper Canada, 1818 Despatches, Maitland to Bathurst, 8 September 1818, p.121. Maitland attended his first Committee meeting on 25 August 1818 and did not miss a session until 4 November 1818.

⁴⁹ NA, RG1, L7, Vol.73, Upper Canada, Standing Orders, Order-in-Council of April 1817, n.p..

a full day on every second Wednesday, and to issue public notices well in advance of the dates and times of all meetings.⁵⁰ This enforced some degree of regularity on the Committee sessions. In October 1819 Maitland ordered that "when settlers find their granted lots to be unfit for cultivation, the Surveyor General is authorized to assign them another location" without having to re-apply to the Land Committee.⁵¹ This relieved both the Committee and the settlers of a cumbersome and unnecessary procedure.

Two years later Maitland ordered that all petitions be submitted to the Lieutenant-Governor's Civil Secretary rather than the Clerk of the Council. This further controlled the number and character of petitions received by the Committee, and turned the Secretary into a sort of screening agent. As the order stipulated, only "those His Excellency shall think shall require the advice of Council shall be regularly referred for its consideration."⁵² Although a clear breach of protocol, since long-established convention required the Lieutenant-Governor to secure the Council's advice and consent on all land grants, none of the members voiced any objections in the official records. Whether they did so in private is unknown. It is perhaps no coincidence, however, that George Hillier, Maitland's Secretary for ten years, came to be harshly criticised for his arbitrary actions by

⁵⁰ NA, RG1, L1, Vol.28, Upper Canada, Executive Council Minutes on Land Matters, Land Book J, Order-in-Council of 7 January 1819, p.521.

⁵¹ NA, RG1, L1, Vol.29, Upper Canada, Executive Council Minute Books on Land Matters, Land Book K, Order-in-Council of 20 October 1819, p.293.

⁵² NA, RG1, L7, Vol.73, Upper Canada, Executive Council Records, Standing Orders, Order-in-Council of 1821, n.p..

Upper Canada's reformers.

Maitland also took steps to improve the records of the Council. In December 1825 he ordered the Land Committee to adopt a uniform format for its minute books, containing a running date on the upper margin of each page, a marginal abstract of specific decisions, and index "referring to its more material contents".⁵³ All of these measures improved the efficiency of the Land Committee, as well as making it more responsive and more accountable than in the past. They also lessened its influence in the land granting process.

The most pressing problem in the Land Granting Department had to do with survey operations, or more specifically the financing of such operations. Before the war the government treated Deputy Surveyors as regular employees hired on a permanent basis.⁵⁴ Hostilities forced the lay-off of all surveyors and put all field operations on hold. Since December 1816 no new surveys had been ordered by the Land Committee. This quickly created a pent-up demand, and in May 1818 Surveyor General Ridout pleaded with the Committee to allow his deputies to continue working because of the "numerous orders-in-council for land".⁵⁵ The Committee, however, lacked the necessary funds. Survey fees were simply inadequate, or too slow in coming to cover operating costs. Lord Bathurst made

⁵³ NA, RG1, L1, Vol.31, Upper Canada, Executive Council Minute Books on Land Matters, Land Book M, Major Hillier to the Council, 7 December 1825, p.500.

⁵⁴ See Chapter One.

⁵⁵ NA, RG1, L1, Vol.28, Upper Canada, Executive Council Minute Books on Land Matters, Land Book J, Ridout to the Land Committee, 20 May 1818, p.349.

matters worse by ordering that new settlers did not have to pay any fees until they actually received a patent, the final stage in the distribution process. Although the Colonial Secretary stated that "it was no part of my intention to deprive the colony altogether of the Funds necessary for carrying on further Surveys", the ruling did just that.⁵⁶

A little more than a year after taking office Lieutenant Governor Maitland informed Secretary Bathurst that "At the period of my arrival the tide of emigration from the United Kingdom was rapid, there was no fund to pay for surveys without calling upon the treasury of the nation. I adopted means to procure surveys without disbursements."⁵⁷ The Lieutenant-Governor-in-Council put in place a competitive system of awarding survey contracts for specific townships where the surveyor received payment in land rather than cash. Laying out townships was, of course, the largest component of survey operations. Extraordinary surveys of various sorts continued to be conducted by Deputy Surveyors who were now employed on a part-time basis, and who were paid according to the job. For example, in 1821 Deputy Surveyor Wilmot received £100 stg. to explore a route for a road between Lake Simcoe and the Ottawa River.⁵⁸ Although still commissioned civil officers, they were no longer paid on a *per diem* basis. For the survey of ordinary

⁵⁶ NA, RG7, G1, Vol.59, Colonial Office, Miscellaneous Correspondence, Upper Canada, Bathurst to Maitland, 24 May 1819, p.118.

⁵⁷ F.M. Quealy, "The Administration of Sir Peregrine Maitland", p.398, Maitland to Bathurst, 15 December 1820.

⁵⁸ NA, RG1, E1, Vol.51, Upper Canada, Executive Council Minute Books on State Matters, State Book G, Minute of 21 April 1821, p.153.

townships all surveyors, including Deputy Surveyors, received payment in land.

The Land Committee instituted the new system on 3 December 1818 and called for sealed bids expressing a "percentage on each 100 acres surveyed".⁵⁹ Contractors submitted to the Surveyor General a bonded document, signed and sealed by two witnesses, spelling out the duties to be performed, the compensation requested, and the promise of a surety of £500.⁶⁰ The documents were then submitted to the Land Committee which issued the contract to the lowest bidder. Regulations did not require contractors to perform settlement duties, nor pay the patent fees. They received locations by drawing lots randomly from the townships surveyed.⁶¹ To reduce the cost of issuing patents the Council ordered that they be drawn up so that the Crown had to pay for only one patent per township.⁶² Regulations required surveyors who received contracts to be licensed and to swear the oaths of performance, but on occasion the Land Committee ignored this rule.⁶³

⁵⁹ NA, RG1, L1, Vol.28, Upper Canada, Executive Council Minute Books on Land Matters, Land Book J, Order-in-Council of 3 December 1818, p.498.

⁶⁰ NA, RG1, L7, Vol.22, Crown Lands, Miscellaneous Records, Regulations of 1818, n.p..

⁶¹ NA, RG1, L1, Vol.28, Upper Canada, Executive Council Minutes on Land Matters, Land Book J, Order-in-Council of 13 January 1819, p.523.

⁶² NA, RG1, L1, Vol.29, Upper Canada, Executive Council Minutes on Land Matters, Land Book K, Order-in-Council of 22 April 1819, p.89.

⁶³ "I _____ do solemnly Swear, that I will well and truly discharge the duty of a Surveyor of Lands, agreeably to the Law, without favour, affection or partiality, when, and as often as may be required by any person or persons, or by the Rule or Order of any Court of Justice, and which I will faithfully and without any unnecessary delay submit

Successful bids on surveys ranged from a low of 1½ per cent, for Rorborough Township, to a high of 6 per cent, for Eldon Township.⁶⁴ Over time the bids decreased, no doubt because of competition as individuals realized how lucrative such a system could be. By 1821 the Land Committee often entertained up to seven bids per contract.⁶⁵ On average surveyors received approximately 2500 acres for each township surveyed, but the range of amounts paid varied considerably.⁶⁶ For example, James Pearson received 3800 acres for the survey of Innisfil Township, while Mahlon Burwell received only 1667 acres for Middleton.⁶⁷ The Land Committee often contracted for two or three townships at a time resulting in substantial transfers of land. For example, James G. Chewett received 7970 acres for the survey of Medonte, Oro and Vespra Townships.⁶⁸

The new system of paying surveyors attracted a good deal of attention from

to the party requiring the same, or the Court directing my duty: also a plan of survey if required. So help me God," OA, RG1, Series C, Lands Branch, C-I-1, vol.56, n.p., January 1823.

⁶⁴ NA, RG1, L1, Vol.30, Executive Council Minute Books on Land Matters, Land Book L, p.161, and vol.31, Land Book M, p.714.

⁶⁵ NA, RG1, L1, Vol.30, Upper Canada, Executive Council Minute Books on Land Matters, Land Book L, Minutes of 24 January 1821, p.12, and 19 February 1823, p.390.

⁶⁶ The standard inland township contained 64,000 acres. From this a 4% bid yielded 2560 acres.

⁶⁷ NA, RG1, L1, Vol.31, Executive Council Minute Books on Land Matters, Land Book M, Minute of 21 June 1825, p.353.

⁶⁸ Andrew F. Hunter, *A History of Simcoe County*, (2nd ed., Barrie, 1948), p.41.

individuals qualified or otherwise.⁶⁹ By 1820 eighteen surveyors had received licences from the province, and by 1827 they had laid out 3,623,657 acres of land.⁷⁰ Problems arose, however, not from the quantity of their output, but rather its quality and ultimately its cost.

The rapid expansion of survey activity that accompanied the adoption of the contract system attracted a number of persons who took advantage of the limited supervision of an understaffed and overworked Surveyor General's Office. For example, Gabriel Lount received the contract for West Gwillimbury, but his unlicensed sons, George and Samuel, actually conducted the survey. Dad signed the contract because the boys were not yet 21, and thus too young to do so.⁷¹ In 1822 surveyor John Ryder petitioned the Land Committee for a valuable 200 acre lot just south of the mill reserve on the east side of the Cataraqui River. Upon investigation the Committee reported that when Ryder surveyed the area the previous year while commissioned as a Deputy Surveyor he had reported the lot to be "non-existent", and that "only now, while in the employ of a Mr. Rarrison, did he discover it." The Committee rejected Ryder's petition. Two years later, Surveyor

⁶⁹ For the numerous applications for survey licences see OA, RG1, Series A, Office of the Surveyor General, A-I-6, Vol.6, nos. 9 and 10. One applicant named Richard Wright admitted that he had never surveyed a township and asked if it was necessary to have experience working in the bush. *Ibid*, p.6470. One John Burt applied for a licence, but the Surveyor General was warned by another applicant named Thomas Gill that Burt was both incompetent and dishonest. Gill testified that he had been unsuccessfully instructing Burt in surveying for the past two months, and that he had now taken the man to court for non-payment of fees. *Ibid.*, p.5821.

⁷⁰ Ladell, *They Left Their Mark*, p.119. Gates, *Land Policies of Upper Canada*, p.158.

⁷¹ Hunter, *A History of Simcoe County*, p.42.

General Ridout reported that an unlicensed surveyor named James Kirkpatrick had laid out Fenelon Township the previous season, despite the fact that the contract had been awarded to John Smith.⁷² Ridout had no idea what became of Smith. He had been given four townships to survey in 1820 but returns had come in for only three. Ridout reported that he had never heard of Kirkpatrick and that he had no way to judge the quality of his work. Fenelon was re-surveyed in 1860.

The Land Committee, usually composed of John Strachan, Samuel Smith, Chief Justice William Dummer Powell, and James Baby, controlled and administered the actual contracting out of surveys. Some of their decisions clearly violated the spirit, if not the letter, of their own regulations. Maitland intended that the signatory to the contract be the one to conduct the survey, but in 1825 publisher Charles Fothergill and York lawyer George S. Boulton received 3740 acres -- 5 7/8 % -- for the survey of Vaulam Township.⁷³ Neither were surveyors, licensed or otherwise. Although trade in location certificates had been specifically banned since the 1790's, in 1822 Lord Bathurst had to scold the Committee for allowing Deputy Surveyor Thomas Smith to locate purchased magistrate's certificates for grants to discharged soldiers. Smith had been engaging in this speculative activity while surveying new townships. Such behaviour was "highly objectionable particularly when practiced by a person holding the situation of

⁷² NA, RG1, L1, Vol.31, Upper Canada, Executive Council Minute Books on Land matters, Land Book M, Report of the Surveyor General, 4 September 1824, p.158.

⁷³ NA, RG1, L1, Vol.31, Upper Canada, Executive Council Minute Books on Land Matters, Land Book M, Order-in-Council of 21 June 1825, p.354.

deputy surveyor".⁷⁴ Smith, after all, remained an officer of the Crown.

The contracting of surveys also provided opportunities for the Executive Council to award its supporters in the districts. Although usually of little consequence, in one instance this had a deleterious effect on the public interest. Mahlon Burwell, a prominent Port Talbot farmer, surveyor and conservative spokesman in the Assembly received a number of survey contracts throughout the Western District.⁷⁵ Burwell managed this business poorly. For example, in 1831 he reported to the Land Committee that although he had been given the contract to survey Colchester Township on 17 April 1821, it had not yet been finished.⁷⁶ When the Committee asked acting Surveyor General Chewett to report on the situation, he informed the Council the problem was simply "the great number" of townships Burwell had been awarded. In fact, Burwell had been awarded only five townships, three of which he had been paid for in 1825.⁷⁷ Along with awarding favourites, Council used the contract system to exclude the politically unreliable. In November 1822 William Graves submitted a low bid of 1% for the survey of a town site in

⁷⁴ NA, RG7, G1, Vol.60, Colonial Office, Miscellaneous Correspondence, Upper Canada, Bathurst to Maitland, 6 December 1822, p.90.

⁷⁵ Johnson, *Becoming Prominent*, p.178. Burwell worked on, or subcontracted out work on, a number of survey projects, including the Chippewa Reserve at Sarnia, the Niagara River shoreline and the Talbot Road. For all his survey work he received a total of 24,169 acres.

⁷⁶ NA, RG1, L1, Vol.33, Upper Canada, Executive Council Minute Books on Land Matters, Land Book O, Report of the Surveyor General, 21 July 1831, p.512.

⁷⁷ OA, RG1, Series CB-1, Appendix E, Survey Diaries, Field Notes and Reports. NA, RG1, L1, Vol.31, Upper Canada, Executive Council Minute Books on Land Matters, Minute of 21 June 1825, p.353.

Fredricksburg. The Land Committee rejected the bid because of "some stigma that formerly hung upon the character of the proposer".⁷⁸ Although he had no firm evidence, Ridout reported that he thought Graves' "conduct during the late war" questionable.

Although surveyors were to draw their lots randomly after the township survey had been completed, some did their best to circumvent the regulation in order to obtain the most valuable pieces of property. After completing the re-survey of Fredericksburg, James Chewett proposed to the Land Committee that he would reduce his commission from 5 per cent to 3½ if he could select the lots rather than be assigned them at random. The Committee rejected the proposal.⁷⁹ William Macdonald took another tack by asking the Committee to increase his commission for Russell Township because it was "for the most part unfit for cultivation". The Committee refused this request as well.⁸⁰ The unnecessary surveying of agriculturally useless land continued to be a problem because the contract system provided no motivation for a surveyor to stop the survey if he discovered the land to be of poor quality. In October 1823 Surveyor General Ridout reported to the Committee that Abraham Nelles tried to draw his percentage for Burliegh Township in Emily because the former was almost all swampland. The Committee rejected

⁷⁸ NA, RG1, L1, Vol.30, Upper Canada, Executive Council Minute Books on Land Matters, Land Book L, Minute of 13 November 1822, p.346.

⁷⁹ NA, RG1, L1, Vol.30, Upper Canada, Executive Council Minute Books on Land Matters, Land Book L, Minute of 12 June 1822, p.233.

⁸⁰ NA, RG1, L1, Vol.30, Upper Canada, Executive Council Minute Books on Land Matters, Land Book L, Minute of 24 June 1822, p.244.

Nelles' locations and ordered Ridout to inform all surveyors that they were to halt the survey of any township if they found the land to be unfit.⁸¹ The Committee, however, proved inconsistent in its decisions concerning the exchange of lots drawn by surveyors. When Duncan McDonell asked to exchange four 200 acre lots that he had drawn because they were of "Impracticable quality", the Committee happily complied.⁸² Why they did this the records do not explain.

One of the last survey contracts paid in land was issued to Thomas Kelly for Nottawasaga Township. The region's first local historian, Andrew Hunter, observed that the township map bore little relation to the actual survey. Apparently, "a whiskey bottle bore a conspicuous part in the survey on this occasion". Kelly it seems proved "too much addicted to the flowing bowl to make a good job of staking out the lots."⁸³ In the end the Council had to order Charles Rankin to complete the survey in 1833.

Payment for surveys in land lasted until 1829 when the government quietly dropped the scheme. In fact, the same Charles Rankin, a surveyor who represented a newly emerging sense of professionalization, petitioned for and received the first contract at the now established rate of £2 per 1000 acres. Money payments helped eliminate the speculative practices too often engaged in by

⁸¹ NA, RG1, L1, Vol.30, Upper Canada, Executive Council Minute Books on Land Matters, Land Book L, Minute of 1 October 1823, p.467.

⁸² NA, RG1, L1, Vol.30, Upper Canada, Executive Council Minute Books on Land Matters, Land Book L, Minute of 21 April 1821, p.65. Also Vol.28, Land Book J, Minute of 13 January 1819, p.523, and Vol.30, Land Book L, Minute of 2 August 1822, p.279.

⁸³ Hunter, *A History of Simcoe County*, p.47.

surveyors and allowed them to focus their energy and talents on running lines rather than searching out the best lots to patent and cooking up exchange deals with the local settlers. This signalled a considerable, and much needed, improvement in survey operations in the province. Between 1825 and 1839 settlers representing fifty different townships petitioned the Assembly for re-surveys or completion of the original job.⁸⁴ As historian John Ladell observed, the land payment system had a disastrous effect on the accuracy of surveys in large part because it attracted persons who lacked commitment to the necessary professional standards. James Pringle, clerk of the Eastern and Ottawa District Land Board, emphasized the need for such commitment in a report to the Surveyor General. Pringle observed that township plans were generally sloppy in their presentation, and that this reflected the poor quality of the actual survey. He closed with the comment that the lots "were not altogether properly designated as a professional man would have done".⁸⁵

In the end the system of paying for surveys in land proved wasteful and inefficient. Commissioner of Crown Lands J.H. Price testified in 1850 that if the land surveyed was valued at the not unreasonable price of 4 shillings per acre, the surveys paid for in land cost twice as much as those paid for in cash.⁸⁶ More importantly in the long run, many of the surveys proved to be of such poor quality

⁸⁴ NA, General Index to the Journals of the House of Assembly, Upper Canada.

⁸⁵ OA, RG1, Series C, Lands Branch, C-I-3, Vol.135, Pringle to the Surveyor General, 26 April 1826, n.p..

⁸⁶ Gates, *Land Policies of Upper Canada*, p.158.

that in 1838 the Legislative Assembly passed an act creating the Board of Boundary Line Commissioners.⁸⁷ Appointed for each district and given broad powers of adjudication, the commissioners sorted out the conflicts created in large part by the surveys conducted between 1818 and 1829.

Surveying remained, of course, only one part of the land granting process and it was not the only area addressed by Lieutenant Governor Maitland. On 13 March 1819 the Lieutenant-Governor-in-Council directed the creation of District Land Boards throughout the colony.⁸⁸ Maitland intended that these new local agencies would deal with a number of persistent problems in land distribution, including the supervision of surveyors, the granting of land unfit for cultivation, the detection of fraudulent applications by individuals posing as military claimants, conflicting claims to specific lots, and the policing of settlement duties. The Lieutenant-Governor and his Councillors realized that the administrators at York could do about such problems because of the lack of government presence at the District level. Distances proved too great and communications too poor for the central administration to effectively supervise local operations. The creation of local authorities provided a solution.

The new District Land Boards were charged with,
the power to locate any Emigrant or other Person

⁸⁷ 1 Vic, cap.19, *An Act to Authorize the Establishment of Boards of Boundary Line Commissioners within the Several Districts of this Province*.

⁸⁸ NA, RG1, L1, Vol.29, Upper Canada, Executive Council Minute Books on Land Matters, Land Book K, Order-in-Council of 13 March 1819, p.46.

desirous to become a Settler in the respective District, on a lot of one hundred Acres within the same, under such Instructions, Restrictions, and Rules as from time to time may be made for the government of the said Boards by any Order in Council.⁸⁹

As the order-in-council stated, the executive government wished to "remedy" the, great inconvenience [which] accrues to Emigrants desirous to become Settlers in this Province from the necessity of presenting themselves at York before they can obtain a location on the Waste Lands of the Crown.

A new set of "Rules and Regulations" accompanied the order-in-council. Designed to govern Land Board operations and define their duties the regulations began by stipulating that the Boards will "assemble one day at least in each week, of which Public notice shall be given".⁹⁰ The regulations directed Board members to examine the character of every applicant and to record their "place of Birth, Age, and time of coming into the province". Council wished to know the place of birth because policy still excluded American-born settlers from receiving grants. Council also instructed the commissioners to secure a declaration from the settlers that

⁸⁹ NA, RG1, L1, Vol.29, Upper Canada, Executive Council Minute Books on Land Matters, Land Book K, Order-in-Council of 13 March 1819, p.46.

⁹⁰ NA, RG1, L1, Vol.29, Upper Canada, Executive Council Minute Books on Land Matters, Land Book K, Rules and Regulations Governing the District Land Boards of Upper Canada, 13 March 1819, pp.48-50.

they had not already received any grants of land within the province. When "satisfied as to his character and the propriety of admitting him to become a Settler", the Boards administered the oath of allegiance and assigned the individual a specific lot. The Commissioners recorded the location on township plans furnished by the Surveyor General's office and gave the settler a certificate which, when accompanied by another certifying the completion of settlement duties⁹¹, allowed the settler to "receive a Patent Grant of Land." These regulations were meant to restrict access to land to the British-born, and presumably loyal, yeomanry and other persons capable of becoming productive colonists. They were also meant to exclude fraudulent applications by land speculators out to take advantage of the Royal favour.⁹²

The regulations went on to address two persistent problems in pioneer

⁹¹ In October of 1818, Lieutenant Governor Maitland ordered that all grantees must erect a habitable dwelling and clear and fence five acres of land along the front of their lot before they could apply for a patent. Attempting to enforce this regulation, on 1 August 1819 Maitland ordered all grantees to present a certificate confirming the completion of settlement duties within one year of being assigned a lot and that application for a patent must be made within one month after that. As was the case with the first District Land Boards, however, no adequate system of surveillance was devised, and enforcement of the regulations was all but impossible. NA, RG1, L1, Vol.28, Upper Canada, Executive Council Minute Books on Land Matters, Land Book J, p.271, and Vol.29, Land Book K, p.201. NA, RG1, E1, Vol.51, Upper Canada, Executive Council Minute Books on State Matters, State Book G, p.75.

⁹² A particularly blatant case of fraud was discovered by the Council shortly before the District Land Boards were created. On 5 November 1818 one hundred acre lots were granted to Robert Sutherland, Alexander Matheson and "fifteen others". Asked by Maitland to investigate, the Land Committee discovered that there were no "others", and they ordered that "the fraudulent concealment on those petitions rendered invalid any orders thereon". NA, RG1, L1, Vol.29, Upper Canada, Executive Council Minute Books on Land Matters, Land Book K, Minute of 9 February 1820, p.358.

administrations: communication between officers and financing the system. In order to avoid confusion in the assignment of lots, Council directed the Surveyor General to refrain from recording locations on the Township Plans until "he shall have received on special reference a Certificate from the Board that no Settler is located thereon." If a lot showed evidence of prior occupation, despite being shown as vacant on the Plan, the Boards were ordered that "no location [was] to be made thereon without further Order from the Surveyor General." Finally, the Boards were instructed to appoint a clerk to record their proceedings and countersign their certificates, "upon delivering of which he may receive from the applicant the Sum of seven shillings and six pence." This was to be charged on top of the £5.11.1 stg. in fees already required for a location ticket to a 200 acre lot. Monies arising from the additional fee went to remunerate the clerk and to cover the costs of operating the office.

The government printed the enabling order-in-council, the rules and regulations, and the certificates of authorization and sent them out to the Districts along with the appointments of the new Land Board Commissioners. The list of appointees reads like a who's who of the local oligarchies in Upper Canada.⁹³

⁹³ Control over the distribution of land was, as S.J.R. Noel noted, one of the "pillars" of status for the local grand patrons. *Patrons, Clients, Brokers: Ontario Society and Politics, 1791-1896* (Toronto: University of Toronto Press, 1990) p.67. See in particular, Frederick H. Armstrong, "The Oligarchy of the Western District in Upper Canada, 1788-1841", Canadian Historical Association, *Historical Papers* (1977), Colin Read, "The London District Oligarchy in the Rebellion Era", *Ontario History* (1980), and J.E. Rea, *Bishop Alexander Macdonnell and the Politics of Upper Canada* (Toronto: Ontario Historical Society, 1974).

Of the thirty-eight men appointed to the District Land Boards, twelve at one time sat in the Legislative Council, eleven represented their constituencies in the House of Assembly, and twenty-two held commissions as Justices of the Peace. In addition, fifteen were substantial merchants and landowners.⁹⁴ Various Board members represented some of the most influential families in the province: the McLeans, the Sherwoods, two branches of the Jones, the Bethunes, the Fothergills, the Dicksons, the Clarks, the McIntoshs, and the Babys. As leading politicians, office-holders and businessmen the government at York entrusted them with the responsibility of overseeing community development through the control of land distribution. They did not, however, always share the priorities of the colonial executive or operate within the regulations. For example, despite being specifically banned from doing so, Land Board commissioners often issued location certificates to American settlers. In 1820 the Johnstown Land Board awarded 82 grants, 18 of which were to persons from Vermont, New York, Connecticut and Massachusetts.⁹⁵

The new Land Boards quickly took up their duties, but these remained somewhat ill-defined. On 15 April 1819 David MacGregor Rogers, chair of the Newcastle District Board, wrote to the Lieutenant-Governor asking for "more

⁹⁴ The information cited here was taken from Volumes IV through XI of the *Dictionary of Canadian Biography*, and Armstrong, *Upper Canadian Chronology*. Ottawa was attached to the Eastern District in 1821, and a Board was created in the new district of Bathurst in 1823. OA, RG1, Series C, Lands Branch, C-1-3, Vol.139.

⁹⁵ OA, RG1, Series C, Lands Branch, C-1-4, Vol.47, Miscellaneous Locations, Land Board Records, Johnstown District.

precise information" on Land Board operations. A week later, Secretary Hillier provided the requested elaborations in an eight point letter.⁹⁶ Hillier explained that "other persons" meant "such able settlers as resided in the District before the late War, and [who] produce due Certificates of having done their duty in its defense." Military claimants and the sons and daughters of U.E. Loyalists, because they received their "Lands gratuitously", were explicitly excluded from the Board's consideration, and "any dispensation of that sort must be approved on application to the Lieutenant Governor." Persons coming from the United States could apply to the Boards only if they possessed "due certificates of their being British born subjects". The Boards were to use only the official "form of Ticket Location [sic]", one which "specified the conditions of settlement." As far as the settlers were concerned, they "should be thoroughly instructed that in the event of his finding any improvements of the Lot... he is immediately to return with his Ticket of Location to the Board, and report the circumstances for the information of Government." Failure to do so would result in forfeiture of the assigned lot. Lastly, Hillier explained that, should a settler require assistance in finding his lot, the person employed to point it out must be remunerated, and "the Settler must be burthened with Another Fee." How much this was to be, however, Hillier failed to mention.

The new District Land Boards, then, had two principal administrative

⁹⁶ NA, RG1, L1, Vol.29, Upper Canada, Executive Council Minute Books on Land Matters, Land Book K, Rogers to Maitland, 15 April 1819 and Hillier to Rogers, 21 April 1819, pp.127-8.

functions: issuing location tickets stating the specific location and size of the land grant, and issuing settlement duty certificates. The land granting process now proved to be more convenient, although slightly more expensive and not necessarily any quicker. Upon entering the province a settler applied to the Land Board for a lot and, if accepted, the Board issued a location ticket, a copy of which they filed with their clerk. The settler then went off to complete the settlement duties on the assigned lot.⁹⁷ Once completed either an inspector visited the homestead and issued a settlement duty certificate, or the settler travelled to the Land Board office with affidavits and obtained one there. The Board sent both certificates to the Attorney General at York for examination. If properly completed and signed by the Land Board chair, the Attorney General sent the documents to the Surveyor General who entered the location on the official township plan and schedule. The documents then went to the Provincial Secretary for completion of the deed. If fees were to be charged he waited for a certificate from the Receiver General. If not, he sent the deed to the Governor's Secretary to be stamped with the Great Seal. The Secretary then sent the deed to the Auditor General of Land Patents who inspected the document and recorded it in his accounts. The deed was finally sent back to the District Land Board office to be picked up there by the

⁹⁷ In February of 1821 the Land Committee extended the time required for the completion of settlement duties from one year to two. NA, RG1, L1, Vol.30, Upper Canada, Executive Council Minute Books on Land Matters, Land Book L, Order-in-Council of 7 February 1821, p.18.

grantee.⁹⁸ For qualified settlers the new system eliminated the trip to York to secure a grant.

In order to improve record-keeping operations Surveyor General Ridout proposed that standardized, printed two-part tickets be issued. The top half recorded the location of the grant and the bottom half certified the completion of settlement duties. The new format, he argued, would "greatly facilitate the duties of this office, at this time very pressing."⁹⁹ The Land Committee accepted Ridout's proposal and they printed new forms and sent them out to the District Land Board offices.

Settlement duty inspection had long proved difficult for the administration simply because of the distances involved and the time it took to complete such an onerous task. This was particularly true in the newer, more remote areas of settlement. At first the Land Committee turned to the Deputy Surveyors, instructing them to inspect individual lots and report their findings to the District Boards.¹⁰⁰ This proved to be a slow and cumbersome process. To improve matters, the Land Boards took the initiative and appointed inspectors of settlement duties authorized to personally examine lots and issue certificates on the spot.¹⁰¹ This improved the

⁹⁸ This process can be traced through the documents in OA, RG1, Series C, Lands Branch, C-I-3, Vol.134, Land Board Fiats.

⁹⁹ NA, RG1, L1, Vol.29, Upper Canada, Executive Council Minute Books on Land Matters, Land Book K, Minute of 3 November 1819, p.306.

¹⁰⁰ NA, RG1, L1, Vol.30, Upper Canada, Executive Council Minute Books on Land Matters, Land Book L, Minute of 12 December 1821, p.160.

¹⁰¹ OA, RG1, Series C, Lands Branch, C-I-3, Vol.134, Land Board fiats.

effectiveness of Land Board operations, but, since inspectors had to be paid, it also created a strain on the Board's funds. Solomon Jones, chair of the Johnstown District Board, pointed this out to the Surveyor General and complained that his funds were so depleted he had to pay 5s 10d out of his own pocket to forward documents.¹⁰²

Once operational the District Land Boards took on a number of auxiliary functions. After receiving information that Thomas Caldwell was constantly "going wrong in his survey of Malden", Surveyor General Ridout requested that the Land Boards be given powers to supervise survey contractors working in their district.¹⁰³ To this the Land Committee agreed. In January 1820 the issue of assigning valuable mill sites came up. The Land Committee realized that the District Boards were the most appropriate agencies to dispense these locations and gave them the power to receive monies as security for their erection.¹⁰⁴

In March 1820 David Macgregor Rogers wrote to the Lieutenant-Governor again, asking if the Land Boards might be able to exchange the locations of those settlers who discovered their assigned lots to be swampland.¹⁰⁵ Also, if a location

¹⁰² OA, RG1, Series A, Office of the Surveyor General, A-I-6, Vol.6, no.9, Letters to the Surveyor General, Jones to Ridout, n.d., p.6284.

¹⁰³ NA, RG1, L1, Vol.29, Upper Canada, Executive Council Minute Books on Land Matters, Land Book K, Ridout to the Land Committee, 28 July 1819, p.218.

¹⁰⁴ NA, RG1, L1, Vol.29, Upper Canada, Executive Council Minute Books on Land Matters, Land Book K, Order-in-Council of 12 January 1820, p.349.

¹⁰⁵ NA, RG1, L1, Vol.29, Upper Canada, Executive Council Minute Books on Land Matters, Land Book K, Rogers to Hillier, 15 March 1820 and Minute of 20 March 1820, p.374.

should be exchanged, which settlement regulations applied, the old or the new? To the first question, Hillier responded that the Boards were "competent" to take on such duties, but only in "such Cases where the Parties manifest a desire for Actual Settlement within twelve Months from the date of the order for Location." To the second question Hillier provided no response. On 12 August 1820, the Reverend John Wilson petitioned Council to allow the Newcastle District Board to locate the 600-acre privileged grant he had been allotted. The Council recommended that the Boards be allowed to do so, and it was so ordered.¹⁰⁶ Two weeks later the Lieutenant-Governor-in-Council ordered the Land Boards to locate all persons with grants regardless of their status as privileged or not.¹⁰⁷ This opened the door, and the Land Boards proceeded to locate all types of applicants. Their authority was further enhanced by an order issued the following day which allowed military claimants to locate anywhere in the province and not just in the townships that they had originally been assigned.¹⁰⁸

The new Land Boards quickly proved to be effective and efficient instruments in the business of land distribution.¹⁰⁹ On 2 February 1821, Lieutenant-

¹⁰⁶ NA, RG1, L1, Vol.29, Upper Canada, Executive Council Minute Books on Land Matters, Land Book K, Wilson to Maitland, 12 August 1820, p.482.

¹⁰⁷ NA, RG1, L1, Vol.29, Upper Canada, Executive Council Minute Books on Land Matters, Land Book K, Order-in-Council of 30 August 1820, p.498.

¹⁰⁸ NA, RG1, L1, Vol.29, Upper Canada, Executive Council Minute Books on Land Matters, Land Book K, Order-in-Council of 31 August 1820, p.499.

¹⁰⁹ A good example of the records of the new Land Boards is those of the Newcastle District. OA, RG1, Series C, Lands Branch, C-I-3, Vol.139.

Governor Maitland announced to the Assembly that in the previous two years "forty townships have been surveyed and in a great measure bestowed on conditions of actual settlement."¹¹⁰ The Land Committee continued to be responsible for overseeing the issuance of patents and the operations of the various offices at York, and dealing with the petitions of those individuals who considered themselves worthy of the Lieutenant-Governor's special attention, but the new system considerably reduced their workload.¹¹¹

In addition to their administrative functions the Land Board Commissioners assumed a political role in land distribution. Council ordered them to ensure that settlers were decent, law-abiding subjects loyal to the Crown and the British constitution. For the previous twenty-five years this had been done by the Land Committee. Why the Councillors were now willing to loosen their monopoly of political control over newcomers to the province is not explicitly explained in the existing records. Certainly the post-war increase in the workload of the Committee was a significant factor. The Land Books testify to a dramatic expansion in the

¹¹⁰ OA, *Eighth Report*, Journals of the House of Assembly, Upper Canada, p.268.

¹¹¹ The Land Committee continued to make locations of specific lots after the establishment of the Land Boards and this inevitably led to confusion. In February 1820 the Johnstown Board located Nathaniel Tait on lot 1, 7th concession of Burgess Township. A few months later Tait was "obliged to give up possession" to a recent immigrant named Charles Sams. Sams had petitioned the Land Committee for lot rather than the Land Board and, unaware that the lot had already been assigned, the Councillors awarded it to him. When the Land Board complained on Tait's behalf the Committee replied that Tait would have to move, but suggested that a lot in a "favourable location" be given in compensation. NA, RG1, L1, Vol.30, Upper Canada, Executive Council Minute Books on Land Matters, Land Book L, Johnstown Board to the Land Committee, and Minute of 9 May 1821, p.76.

number of applicants for grants after 1816. In March 1819 alone the Committee considered a total of 326 in the course of six meetings. Obviously, this many petitions compromised the councillor's ability to screen the 'character' of the applicants.

Another factor may have been the alien issue which was just about to erupt on the Upper Canadian political scene. In the same week that Council created the new Land Boards it considered a report by the newly-appointed Attorney General, John Beverley Robinson, calling into question the rights of American born subjects to hold land in Upper Canada.¹¹² Although written as a legal opinion on the definition of citizenship, Robinson also implied that, in the past, too little control had been exercised over who settled the province, and that steps needed to be taken to correct the situation. The regulation that settlers coming by way of the United States must possess documentary proof of having been British-born subjects, suggests that the new Lieutenant-Governor took heed of this advice.¹¹³ Land Board commissioners, however, were not particularly interested in keeping out Americans. Their highest priority remained rapid settlement, assisted by effective administration.

¹¹² John Beverley Robinson was officially commissioned the previous February as Attorney General, though he had been acting as such since November 1817. The alien issue was the first and certainly the most significant challenge that he faced in his eleven years in this office. The report is printed in *Documents Relating to the Constitutional History of Canada, 1819-1828*, (hereafter *Constitutional Documents, 1819-1828*) Arthur Doughty and Norah Story, eds. (Ottawa: Public Archives of Canada, 1935) p.7.

¹¹³ This was an institutional manifestation of the exclusionary political culture of the Upper Canadian Tories. See Mills, *The Idea of Loyalty in Upper Canada, 1784-1850*.

This placed the executive in a difficult position. Maitland, Strachan and the rest of the Council wished to continue to exclude those whom they perceived to be disloyal and disaffected. The war, however, had tested the loyalty of the local elites and made them qualified to determine who was fit to become a member of the community. They were also in the best position to administer the increasingly complex business of land distribution. The best the government could do was to stipulate that the Land Boards record the origins and length of residence of all petitioners for grants, thus allowing the central administration to monitor the Board's operations. The Councillors reluctantly gave up operational control, but in doing so they tried to establish an administrative record-keeping system that allowed for direct political surveillance.

The Colonial Office maintained the policy of excluding Americans despite strong political pressure from Reformers in the Assembly.¹¹⁴ In this they were fully supported by the Executive Council. Reporting to the Colonial Secretary in February 1826 the Councillors argued that granting Americans open access to land would be "extremely dangerous to the peace and Security of the Province".¹¹⁵ "Such persons", however, "exhibit the same manners and features and speak the same language, with our own people, and cannot therefore be distinguished, consequently hundreds may come into the province and purchase real Estate

¹¹⁴ Gates, *Land Policies of Upper Canada*, pp.120-1.

¹¹⁵ *Constitutional Documents, 1818-1828*, Proceedings in Council, 2 February 1826, pp.303-4.

without the Knowledge of the local Government." The solution was no longer to be found in administrative regulation and the screening of applicants for land grants, but rather in restrictive naturalization and alien land-holding laws and the creation of a state-sponsored university "so that the Youth now growing up in the Province, shall have an opportunity of receiving their education under Tutors, not merely eminent for their learning, but for their attachment to the British Monarchy". In the end legal measures proved more effective than educational initiatives. Aliens could not hold land in the province until they became naturalized through seven years residence. This did not change until 1849.¹¹⁶ Although the University of Toronto received its charter in 1853, it did not have any real impact on provincial society for several decades.¹¹⁷

The District Land Boards solved many of the administrative problems facing the Upper Canadian government but they did nothing to improve its financial situation. Land could be more easily obtainable under the Land Board's administration than under the previous system, but this only exacerbated the problem. The province's increasingly valuable land resources were now being alienated at a faster rate with no substantial return to the government. The short-term expedient of paying for surveys in land reduced immediate expenditures but

¹¹⁶ Province of Canada Statute 12 Vic. cap. 197.

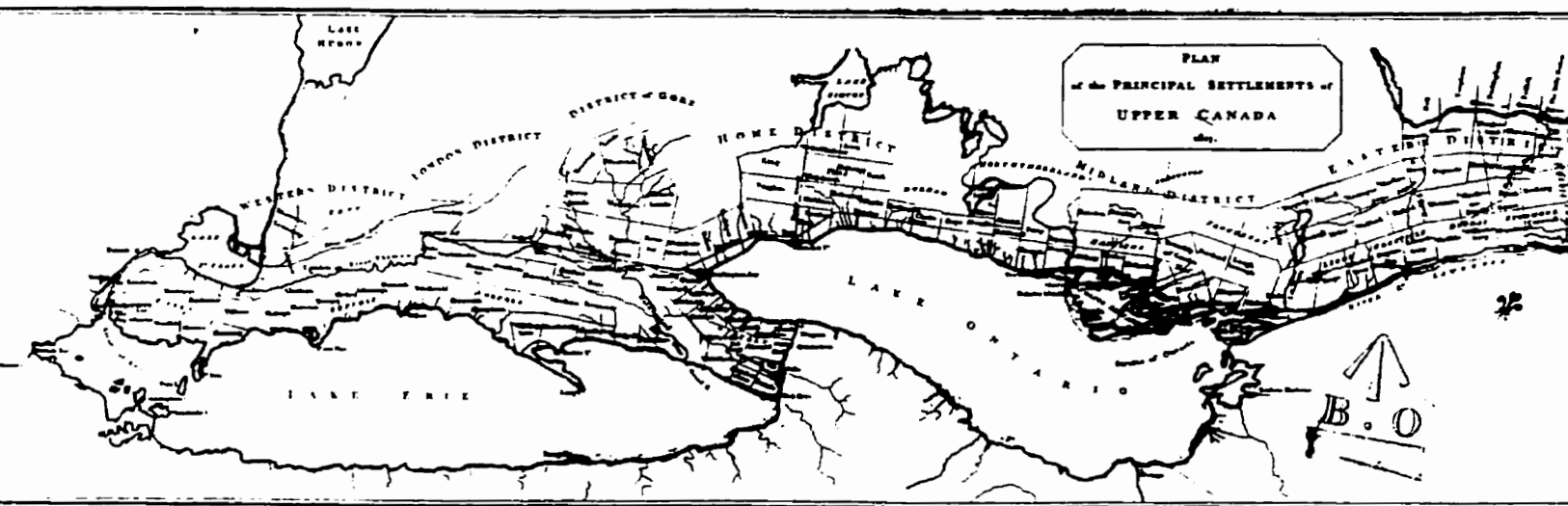
¹¹⁷ A.B. McKillop, *Matters of Mind: The University in Ontario, 1791-1951* (Toronto: University of Toronto Press, 1994) p.26.

only made matters worse in the long run.

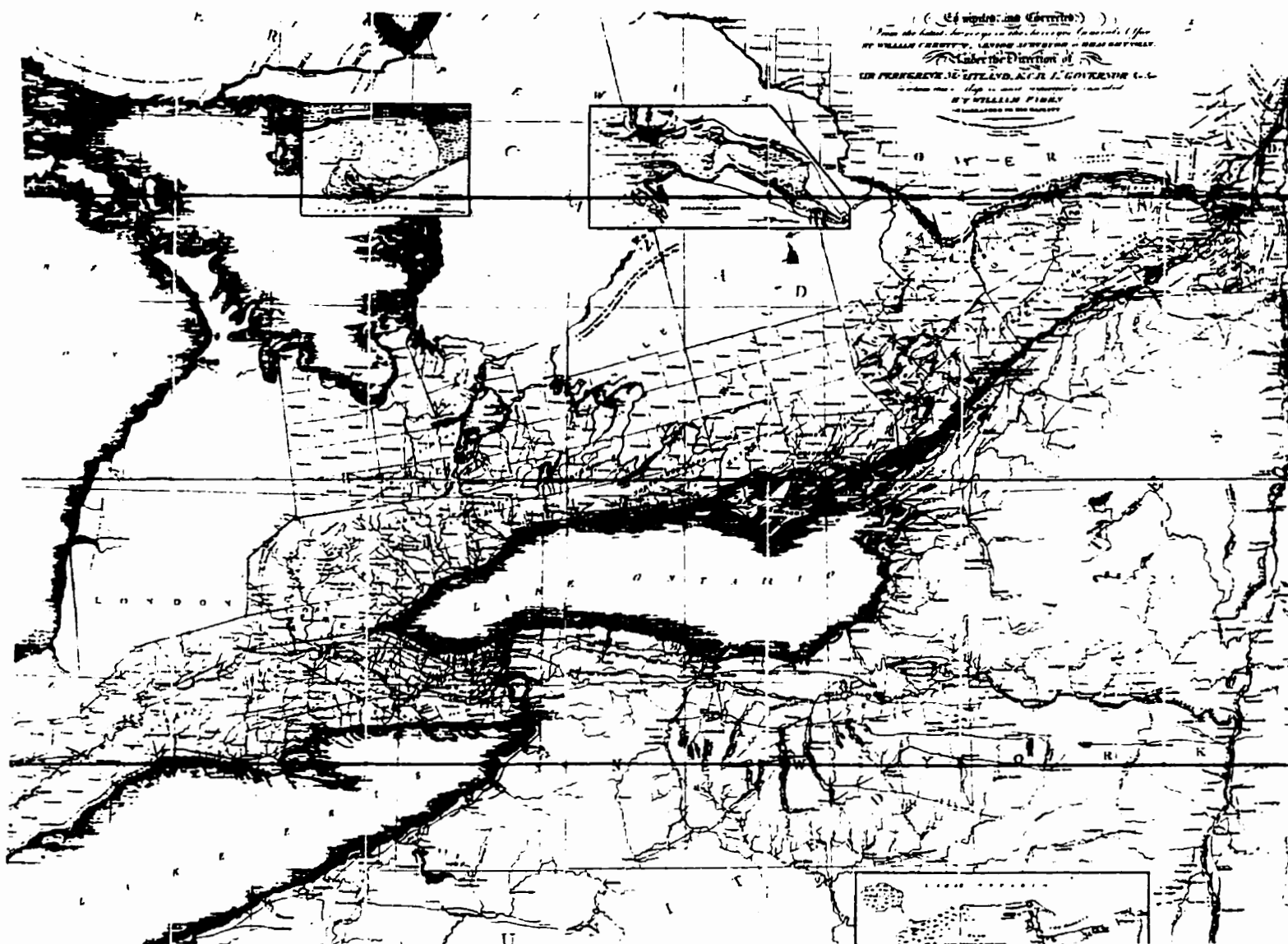
By 1820 Maitland, his Council and the principal officers of government faced a dilemma. The financial independence of the executive could not be maintained under the land granting system. Direct support of the British government could no longer be relied upon. Securing Upper Canada's share of customs revenues from Quebec had proved difficult in some years, impossible in others.¹¹⁸ In the end the amounts proved inadequate to meet the ever increasing demands placed on the government. By the early 1820's the government of Upper Canada became all but insolvent.¹¹⁹ The situation called for new measures.

¹¹⁸ Craig, *Upper Canada: The Formative Years*, p.100. No payments of Upper Canada's 20% share of duties were made in 1819, 1820 and 1821.

¹¹⁹ McCalla, *Planting the Province*, pp.40-1.



Map 2: Plan of the Principal Settlements of Upper Canada, 1817, (NA, NMC 21352).



Map 3: Map of the Located Districts in the Province of Upper Canada, 1828, (NA, NMC 119064).

Chapter Eight

The Land Sales System and the Commissioner of Crown Lands

The British government's decision to limit its financial contributions to the colonial administration of Upper Canada led Lieutenant Governor Maitland to reduce government expenditures; paying surveyors in land accomplished this goal to some degree. Retrenchment on the expenditure side of the ledger, however, could not hope to provide sufficient funds for the payment of the Civil List or for the purchase of Native lands, now made necessary by the flood of post-war grants. The problem became all the more pressing because the Crown reserve system, the cornerstone of the original design to raise government revenues, simply did not work.

By 1825 Crown reserves covered 1,564,350 acres of land. The government, however, had only been able to lease 225,944 acres.¹ Although this should have generated over £4000 per year, arrears accumulated to the point that actual annual revenues remained at just over £200 for the entire decade. Attempts at enforcing payment accomplished little. Most lessees were either too poor to make payments or else they surrendered the lots if the land did not prove readily profitable. Others simply leased lots, stripped the timber, and walked away.

¹ Gates, *Land Policies of Upper Canada*, p.164.

Meanwhile, the Colonial Office, with the full support of Maitland and his government, remained determined to establish and expand sources of revenue independent of the Assembly's control.² Obviously the Crown reserve scheme could not accomplish this end. Nevertheless, territorial revenues presented one of the few means available and in the early 1820's the government turned to the sale of Crown lands to meet its needs. Initially the Imperial government created the Crown Lands Office to administer the land sales system finally adopted in 1826. To be effective, however, the system required a more elaborate and more efficient administration than that which existed under the granting policies. Colonial officials only realized this well after the new sales policy had been adopted. The delay did little to help the province's finances. Poor choices in personnel, lax supervision and the creation of the Canada Land Company only made matters worse.

In April 1819 the Lieutenant-Governor asked the Executive Council to consider "the propriety of adopting some uniform and consistent mode of selling Portions of the Waste Lands of the Crown".³ Initially Maitland intended to create a fund for the purchase of Native lands through the occasional sale of Crown properties. Council, however, went a step further and formed a special committee to investigate both the adoption of a systematic sales scheme for all Crown lands

² Gates, *Land Policies of Upper Canada*, p.152.

³ NA, RG1, L7, Vol.73, Upper Canada, Executive Council, Standing Orders, 30 April 1819, n.p..

and changes to the granting system.⁴

The Reverend John Strachan, Surveyor General Thomas Ridout and Attorney General John Beverley Robinson sat on this special committee. Elevated to the Executive Council in 1815, Strachan knew something about colonial land matters through both his participation on the Land Granting Committee and his ultimately successful efforts in establishing the Clergy Reserves Corporation.⁵ Surveyor General Ridout, with over two decades experience working in land administration, knew perhaps better than anyone else the state of the Crown lands in Upper Canada. Attorney General Robinson, a relative new-comer to the administration, possessed a strong mind, a good education, impeccable Loyalist credentials and influential family and social connections. As we shall see, both he and his brother Peter played significant, if not always beneficial, roles in the transformation of the Crown lands administration.

In December 1819 the special committee recommended a simple scheme of selling designated portions of land at a fixed minimum price using specially appointed commissioners to conduct public auctions.⁶ This, they believed, would

⁴ F.M. Quealy, "The Administration of Sir Peregrine Maitland, Lieutenant-Governor of Upper Canada, 1818-1828" (Ph.D thesis, University of Toronto, 1968) p.399.

⁵ Appointed to the Executive Council in May 1815, Strachan took an active part in the deliberations of the Land Committee. Between May 1815 and December 1826 he attended 80% (390 of 487) of the sessions held. Strachan's role in defending the clergy reserves and establishing the Clergy Reserve Corporation is well documented in Wilson, *The Clergy Reserves of Upper Canada*, Chapter Four.

⁶ F.M. Quealy, "The Administration of Sir Peregrine Maitland, Lieutenant-Governor of Upper Canada, 1818-1828", pp.400-1.

meet the immediate needs for general revenues and allow payments to be made on recent purchases of Native lands in the Eastern District. The committee also recommended that fee-free grants of 50 acres be given to indigent settlers from Great Britain. To compensate for lost revenues, fees on regular grants could be increased. Maitland agreed with the first two recommendations but rejected the last because he had already become embroiled in a minor controversy with the Colonial Office over unauthorized increases in fees.⁷ Instead Maitland suggested that the officers of the Land Granting Department be paid fixed salaries rather than drawing a portion of their income from fees. The officers "approved enthusiastically" of Maitland's scheme. The volume of grants dispensed by the government fluctuated considerably over the previous decade, particularly during the war years. Moreover, officers received only a half share on privileged grants to Loyalists and military settlers. Collecting fees from cash-poor grantees had always proved difficult and time consuming. Fixed salaries would add a welcomed measure of income security. Maitland, meanwhile, did not explain how fixed salaries would improve government finances.

The Colonial Office authorized the first post-war land sales in February 1820. Responding to a despatch from Maitland that described a land endowment

⁷ On 1 January 1820 the Lieutenant-Governor-in-Council ordered that fees on a 200 acre grant be raised from £16.17.6 to £30 stg.. They failed, however, to secure authorization from the Colonial Office. Bathurst discovered the change after receiving a number of complaints from prospective settlers and he promptly cancelled the increase. NA, RG7, G1, Vol.60, Colonial Office, Miscellaneous Correspondence, Bathurst to Maitland, 31 January 1824, pp.200-5.

created for the hospital at York, Colonial Secretary Lord Bathurst issued "general instructions as to the future disposal of Town lots".⁸ Bathurst began by remarking that town lots "stand altogether on a different footing" than the usual 200 acre farm lots, and there existed no reason why the government should encourage settlement in towns by "conferring such lots gratuitously". Gone were previous considerations of establishing centres for tradesmen to service the local agricultural community or rewarding old soldiers unfit for farming life. Bathurst specifically directed that town lots "be in no case disposed of otherwise than by Lease or Sale unless it be for the promotion of some adequate public object." He suggested that the funds raised be used to promote "useful establishments" in the towns where the lots were sold. Such an approach, Bathurst believed, would neither retard "the advancement of cultivation" nor press upon the resources of the infant colony. While this may have been true, it also proved excessively optimistic and betrayed a misunderstanding of the state of Upper Canadian development. Town lots were not in demand precisely because Upper Canada remained a young agricultural colony. Farming was one of the few ways available of making a decent living. The government made matters worse by ruling that purchasers had to build a dwelling on their lot within two years. As District Crown Lands agent Isaac Fraser later reported, this regulation scared off both *bona fide* settlers and

⁸ NA, RG7, G1, Vol.59, Colonial Office, Miscellaneous Correspondence, Bathurst to Maitland 12 February 1820, p.220.

speculators alike.⁹ In the end no substantial funds came to the treasury through the sale of such lots.

Although nothing came of town lot sales, later in 1820 Maitland directed the Surveyor General to set aside for sale 98,000 acres of farm lots east of Lake Simcoe in order to cover the payments for Native lands purchased over the previous two years.¹⁰ The terms of sale were to be one-tenth down with the remainder secured by mortgage. As long as the purchaser met the interest payments the principal could be left out-standing. Maitland expected the plan to raise £3,500 annually, but the lots set aside were in remote locations with no roads and inadequate water communications. Few buyers came forward and the Lieutenant-Governor suspended sales while Council developed a more general and comprehensive scheme.

Town lots and remote locations did not attract Upper Canadian settlers, but school lands certainly did. In 1797 the government reserved 467,675 acres scattered among ten townships for the support of education in the province.¹¹ Council originally intended that half these lands would be sold for the support of a university, while the other half would help finance a system of district grammar

⁹ OA, RG1, Series C, Lands Branch, C-IV, Township Records, Isaac Fraser to Peter Robinson, 31 December 1832, p.43.

¹⁰ NA, MG11, Vol.365, Colonial Office 42: Upper Canada, 1820 Despatches, Maitland to Bathurst, 8 May 1820, p.76.

¹¹ McKillop, *Matters of Mind*, p.7. Gates, *Land Policies of Upper Canada*, p.277.

schools.¹² Maitland, however, had other useful projects in mind and he allowed Colonel Thomas Talbot to conduct the first sales of these lands in order to finance the building of Talbot Road East. The Colonel sold a number of lots in Yarmouth, Southwold and Houghton townships at public auction with the minimum upset price set at 10s per acre. Maitland discontinued the project in 1823, however, because little more than the upset price could be obtained and because of Talbot's lax accounting practices.¹³ That year the government established a General Board of Education with John Strachan as president. As part of its responsibilities the General Board took over the sale of all school lands in the province and applied the revenues to building schools. Accounting practices remained regrettably lax, and in 1832 the Commissioner of Crown Lands took control of school lands. Henceforth revenues went directly to the Receiver General.

While Maitland and the Council conducted these initial forays into land sales Attorney General Robinson travelled to England to fight the proposed union between Upper and Lower Canada.¹⁴ Just as important to himself and his fellow executive members, he also argued the necessity of maintaining and developing colonial revenues independent of the legislature. It was that or lose the province to what he considered to be republicans in the Assembly. Robinson suggested selling the existing Crown reserves at a fixed price of 20s per acre, investing the

¹² *Russell Correspondence*, Vol.III, Portland to Russell, 4 November 1797, p.28.

¹³ Gates, *Land Policies of Upper Canada*, p.277. OA, *Sixteenth Report*, Patterson, "Land Settlement in Upper Canada", p.138.

¹⁴ Craig, *Upper Canada: The Formative Years*, p.101.

funds raised in British securities, and using the interest generated to finance the government.¹⁵ He conceded that such a scheme would take time to develop, but he believed that the almost two million acres of reserves could eventually yield a revenue of £80,000 per annum.

With the demise of the union scheme, the Colonial Office took a closer look at Robinson's plan as well as other ideas that might be useful in raising revenues. When asked to comment on the idea of selling the Crown reserves Maitland took Robinson's scheme one step further and suggested that it be applied to all Crown land whether specifically designated a Crown reserve or not.¹⁶ Robert Gourlay made a second proposal in his recently published *Statistical Account of Upper Canada*. Gourlay suggested that the existing Crown reserves be sold to pay the war losses in the colony and that all other Crown lands be placed under the supervision of a "grand national land-board" located in England.¹⁷ Using branch offices in the provinces and operating independently of the local government, such a land board could dispose of Crown lands according to "strict business principles" and manage them "in the best possible manner for public good."¹⁸ This would create a sort of Imperial Crown corporation with obvious benefits for the British

¹⁵ Gates, *Land Policies of Upper Canada*, p.166.

¹⁶ NA, MG11, Vol.370, Colonial Office 42: Upper Canada, 1823 Despatches, Maitland to Wilmot-Horton, 30 September 1823, pp.197-221.

¹⁷ Robert Gourlay, *Statistical Account of Upper Canada*, S.R. Mealing ed. (Toronto: McClelland and Stewart, 1974) p.58.

¹⁸ *Ibid*, p.58.

taxpayer since profits could be used to replace colonial expenditures. How it would help the Upper Canadian farmers Gourlay did not say. A third proposal came from British novelist and war losses claims agent John Galt. After having been shown Robinson's plan, Galt suggested that the immediate need for revenues could be met by selling the Crown reserves to a private company, who, if possessing adequate capital, could then make annual payments large enough to support the colonial government.¹⁹

Canada Land Company historian Clarence Karr observes that by the mid-1820's, "unemployment, economic depression and fears for the future of mankind" led British government officials to transfer the free trade commercial doctrines of Adam Smith from the world of academic debate into the political arena. This is particularly true in areas such as emigration and colonial administration.²⁰ Secretary Bathurst, along with his new Under-Secretary, Robert Wilmot-Horton, took Robinson's idea for a sale scheme, added Maitland's suggestion to extend it to all Crown lands, based the operation on strict business principles, and sold the existing Crown reserves to a joint-stock company. This was a far cry from Councillors dispensing grants based on loyalty, service to the Crown and a small fee in consideration. The Crown no longer regarded its lands as the means of creating a loyal, secure community but rather as a means of making money. The

¹⁹ Gates, *Land Policies of Upper Canada*, p.168.

²⁰ Clarence Karr, *The Canada Land Company: The Early Years* (Ottawa: The Ontario Historical Society, 1974) p.4. See also Paul Knaplund, *James Stephen and the British Colonial System, 1813-1847* (Westport Conn.: Greenwood Press, 1974).

paternalistic social and political considerations that had been a fundamental premise behind land granting in Upper Canada gave way to the cold calculations of a commercial ethos.

The Imperial government modelled the regulations for the sales system after those developed for New South Wales and Van Dieman's Land.²¹ Colonial Office officials drafted the details and then referred its new plan to Attorney General Robinson for, as Bathurst informed the Land Committee, "his opinion as to the propriety of extending the system to Upper Canada".²² Maitland, meanwhile, feared that the scheme would prove a *fait accompli*; he complained that "before [Robinson's] opinion was asked upon the fitness of such a system for this Province, the principle had not only been settled, but all the details... had been reduced to form and printed".²³ Although Colonial Office officials seemed to respect Robinson's opinions, there is little evidence of his input in the specifics of the new system. The Executive Council received a copy of the regulations for the disposal of Crown lands in October 1825. Bathurst ordered that they were to be "immediately established" unless certain aspects proved "decidedly inexpedient". In such case adoption could be postponed until the Colonial Office issued new instructions.²⁴

²¹ Gates, *Land Policies of Upper Canada*, p.171.

²² NA, RG1, L1, Vol.31, Upper Canada, Executive Council Minute Books on Land Matters, Land Book M, Bathurst to the Executive Council, 28 July 1825, p.417.

²³ NA, MG11, Vol.378, Colonial Office 42: Upper Canada, 1826 Despatches, Maitland to Bathurst, 14 August 1826, p.52.

²⁴ NA, RG7, G1, Vol.61, Colonial Office, Miscellaneous Correspondence, Bathurst to Maitland, 28 July 1825, p.245.

Maitland and his Council deemed several aspects 'inexpedient', and they made significant modifications before implementing the plan. Robinson pointed out to Wilmot-Horton that the Crown remained committed to rewarding Loyalists and disbanded military men with free grants of land, an obligation that would be both dishonourable and impolitic to ignore.²⁵ Moreover, the Executive Council reported that it was anxious to maintain its policy of encouraging emigration from Britain with the lure of inexpensive agricultural land. It must be kept in mind, they argued, that "Upper Canada has been considered an asylum for the Emigrants from the Parent State, on account of its easy access, and the great and immediate advantages which it offered them".²⁶ A single general policy administered by a simple land sales office would not be capable of conducting assisted settlement programs and determining Loyalist status.

The Lieutenant-Governor-in-Council issued the new regulations for the disposal of Crown lands on 21 November 1825. They came into effect on 1 January 1826.²⁷ The regulations stated that a valuation of all land would be conducted, "and average prices will be struck for each District". Applications for purchase could be made in writing through the Surveyor General's Office, subject to a fee of 2s 6d. Purchase monies could be paid in four quarterly or five annual

²⁵ NA, RG1, L1, Vol.31, Upper Canada, Executive Council Minute Books on Land Matters, Land Book M, Robinson to Wilmot-Horton, 7 July 1825, p.420.

²⁶ NA, MG11, Vol.378, Colonial Office 42: Upper Canada, 1826 Despatches, Minutes of the Executive Council of Upper Canada, 29 October 1825, p.15.

²⁷ NA, MG11, Vol.378, Colonial Office 42: Upper Canada, 1826 Despatches, Regulations for Land Sales , enclosed in Maitland to Bathurst, 25 July 1826, pp.14-33.

instalments, with the latter carrying a 6% annual interest charge. A 10% discount was allowed for "ready money payments". Upon completion of payment a deed would be issued at the expense of the Crown, "with the usual reservations of Mines and Minerals and White Pine Timber." Council restricted purchases to 10,000 acres, but it permitted special applications for larger parcels. Grants of up to 1200 acres could still be had but the applicant had to prove to the Land Committee that he had "both the power and intention of expending in the Cultivation of lands a Capital equal to half the estimated value" at the time of application. In such cases a quit-rent of 5% per annum of the estimated value would be charged, and made redeemable within the first twenty-five years on payment of a sum equal to twenty times the amount of the annual rent. If the grantee could not prove sufficient cultivation after seven years the land "shall be forfeited". Finally, the regulations closed by reassuring "U.E. Loyalists and other persons entitled to Gratuitous Grants" that they are "not to be affected by these Rules."²⁸

While devising the sales system, the British government decided to sell all the Crown reserves laid out before 1 March 1824 to a joint-stock company based in London. Organized in July 1824, the Canada Land Company immediately

²⁸ In July 1826 the Land Committee ordered that, in the case of granted lands, the relevant clause of the order of 21 November 1825 establishing the sales system be attached to the location ticket when issued to the grantee. This reminded the grantees that they received a special dispensation from the Crown. NA, RG1, L1, Vol.31, Upper Canada, Executive Council Minute Books on Land Matters, Land Book M, Order-in-Council of 26 July 1826, p.652.

formed a committee to take evidence on the value of the lands it proposed to purchase.²⁹ As John Strachan argued in a long, rambling, thirty-one point memorandum on the issue, the Company's commissioners were far from the "impartial arbitrators" described in their instructions.³⁰ They based their assessments on a selective use of information, ignored the fact that the company bought the reserves on fifteen years credit, and used the price of land seized by sheriffs for tax delinquency and that paid to surveyors on contract as the standard for all valuations. Driving down the purchase price only proved that the Company was solely interested in profits for their stock-holders, and not for the good of the province. In the end, however, he could do little more than save his much prized and increasingly valuable Clergy reserves.³¹ Travelling to London on two occasions, he used his considerable ability and influence to convince the Colonial Office to exclude the Clergy reserves from the Canada Company deal. In exchange the Company received the 1,100,000 acre Huron Tract. The new Company and the Colonial Office finally concluded the deal on 23 May 1826. In

²⁹ The committee composed John Galt and Montreal merchant and fur trader Simon McGillivray for the Company, Francis Cockburn and Sir John Harvey for the British government and Lower Canadian Executive Councillor John Davidson. Bishop Mountain of Quebec predicted with some validity that the government's commissioners would be "as children in the hands of McGillivray and Galt." Wilson, *The Clergy Reserves of Upper Canada*, p.79.

³⁰ NA, MG11, Vol.375, Colonial Office 42: Upper Canada, 1825 Despatches, Confidential Memorandum from John Strachan to Maitland, n.d., enclosed in Maitland to Wilmot-Horton, 5 November 1825, pp.311-30.

³¹ As Alan Wilson points out, in the early 1820's Strachan took full control of the operations of the newly formed Clergy Reserves Corporation. Wilson, *The Clergy Reserves of Upper Canada*, p.65.

the end the Canada Company paid 2s 6d per acre for a total of 2,526,013 acres.³²

Why Colonial Office officials and their masters in the British cabinet sold Upper Canada's Crown reserves to a private company has not been fully explored by historians. Clarence Karr, in his examination of the Canada Company pointed out that the decision was not unusual. The Imperial government established the Australian Agricultural Company and the Van Dieman's Land Company of Tasmania at the same time.³³ The Americans had experimented with private land companies for more than a generation. The first superintendent of the Canada Company, John Galt, visited the Holland Land Company of western Pennsylvania and used it as a model of operations.³⁴ This, however, does not explain the creation of one in Upper Canada. It may have been that Colonial Office officials wished to turn over land administration to a private company because they believed that a commercial operation would be more practical and efficient, or it may have simply been a case of collusion between colonial administrators and wealthy investors. Most likely it was a little of both. Only a close examination of the records in London will answer this question.

The arrangements made with the Canada Company required that they pay sixteen annual instalments of between £15,000 and £20,000 directly to the Upper Canadian government. These payments replaced the annual Parliamentary grant

³² Karr, *The Canada Land Company*, p.13.

³³ Karr, *The Canada Land Company*, p.8.

³⁴ Gates, *Land Policies of Upper Canada*, p.169.

which the government discontinued in April 1826.³⁵ The Royal Treasury directed that the Company's annual payments be applied to those provincial expenditures formerly covered by the Parliamentary grant. These expenditures included the salaries of the officers of the Land Granting Department amounting to some £2,566 stg. per year.³⁶ The arrangements kept the territorial revenues out of the hands of the provincial Assembly, but, as Maitland observed, the principal officers of the Crown now received "their Salaries out of the Instalments of a Joint Stock Company", something that did little for the respectability of the government.³⁷ Perhaps more importantly in the long term, the payments made by the Canada Company were no more than half of what could be drawn from sales of the reserves. Robinson's estimate of £80,000 per year may have been an exaggeration, but the potential certainly exceeded what the company paid.

The Canada Company payments effectively solved the government's immediate revenue problems, but, the scheme found few supporters in York. In a bitter letter to the Colonial Office Maitland complained that the "measures of the [British] Government betray a remarkable want of knowledge, as of principle."³⁸ He

³⁵ Gates, *Land Policies of Upper Canada*, p.169.

³⁶ NA, *Report*, 1935 (Ottawa: King's Printer, 1936) p.213. *Brockville Gazette*, 13 February 1829, "A Statement of the appropriation of the annual payments of His Majesty's Government by the Canada Company, 3 February 1829.

³⁷ NA, MG11, Vol.381, Colonial Office 42: Upper Canada, 1827 Despatches, Maitland to Huskisson, 15 December 1827, p.419.

³⁸ NA, MG11, Vol.378, Colonial Office 42: Upper Canada, 1826 Despatches, Maitland to Bathurst, 14 August 1826, p.56.

observed that the Colonial Office knew full well that the "Company looks to the neighbouring republic for their most profitable customers", and then posed the question that if wealthy Americans could now buy land in Upper Canada, why turn the profits from sales over to a private company? The middle-man was both unnecessary and wasteful. Maitland pointed out that with the adoption of the Crown lands sales system the Company and the Upper Canadian government were now in direct competition with each other. This would only create a "collision" of interests. The Lieutenant-Governor closed with the sarcastic remark that "I suppose, that the Government might as well, to save trouble, merge in the Canada Company."

The new Lieutenant-Governor, Sir John Colborne, disliked the deal with the Canada Company as much as Maitland. Immediately upon assuming office in the spring of 1829 he argued that the Upper Canadian government had the administrative means to conduct land sales readily at hand, and that they could do so at a lower cost than the Company.³⁹ The Company, Colborne pointed out, "maintains an expensive establishment" costing more than £10,000 per year. Since the government had the officers of the Land Granting Department already at their disposal they could sell land "and increase the Crown revenue, without employing persons not under their immediate control." Colborne proposed that the government buy out the Canada Company and use the proceeds from future sales

³⁹ NA, MG11, Vol.388, Colonial Office 42: Upper Canada, 1828 Despatches, Colborne to R.W. Hay, 2 April 1829, p.92.

to fund a greatly expanded state-run settlement program.⁴⁰ The Colonial Office responded by sending John Richards, a former puisne judge of the British court, to investigate the entire system of land sales, including the Canada Company arrangements, but in the end nothing changed.⁴¹

While the Canada Company negotiations took place the Land Committee went about setting up its own system for establishing the value of Crown lands in the province. These included Crown reserves set apart in townships surveyed after March 1824 and all irregular parcels not previously alienated. The Land Committee quickly realized two things; unsystematic valuations of land by district was too gross a measure of real market value, and accurate estimates required control over the valuation process. On 16 December 1825 the Committee sent a circular letter to the District Land Boards ordering them to make valuations of all ungranted lands in their jurisdictions.⁴² The next day they sent a similar letter to all District Clerks of the Peace. The Committee then directed Grand Jury members and county registrars in each district to provide their opinions on land values.⁴³ In the

⁴⁰ NA, MG11, Vol.389, Colonial Office 42: Upper Canada, 1829 Despatches, Colborne to George Murray, 18 August 1829, p.56.

⁴¹ NA, RG7, G1, Vol.66, Colonial Office, Miscellaneous Correspondence, Murray to Colborne, 7 April 1830, p.122.

⁴² NA, RG1, L1, Vol.31, Upper Canada, Executive Council Minute Books on Land Matters, Land Book M, Minute of 16 December 1825, p.502. The circular letter went to all but the London District, whose chairman was Thomas Talbot. Clearly concerned that Talbot would not respond to an impersonal communication, the Land Committee sent him an individual letter asking for the same information.

⁴³ NA, RG1, L1, Vol.31, Upper Canada, Executive Council Minute Books on Land Matters, Land Book M, Minute of 17 December 1825, p.507.

spring of 1826 the Committee submitted its first report to the Colonial Secretary.

The Committee employed a system of valuation by township rather than the much larger district, since the presence of "a few settlers or a good road will increase the value of the lands one hundred per cent" in a specific area.⁴⁴ Along with frequent revisions, estimates by township which took into account local developments, provided a greater degree of accuracy and ultimately worked in the government's favour. With these considerations in mind the Committee asked district officials to submit information on six variables: the nature of the soils in each township, the advantages and disadvantages of the local situation, the price of land on credit for four or five years, the ready money price in private transactions "if there have been any such sales within six years", opinions as to the "fair average price" of all vacant land whether in the Crown's possession or not, and any miscellaneous observations. The resulting "Land Reports" represent the first efforts by the Upper Canadian state to systematically evaluate the extent and worth of Crown lands in the province. It became immediately obvious, however, that the government lacked the facilities necessary for anything close to a complete, impartial examination.

The District Land Boards offered a rudimentary institutional structure but they had been hastily and prematurely disbanded with the adoption of the sales system. County registrars knew a good deal about land transactions, since it was

⁴⁴ NA, MG11, Vol.378, Colonial Office 42: Upper Canada, 1826 Despatches, Minutes of the Executive Council respecting estimated land values, 14 March 1826, p.15.

their business to record them, but their knowledge of prices proved unreliable. Local notables knew much about land in their area, but, as Strachan pointed out, they were all too often land speculators who had every interest in manipulating the price of lands offered for sale by the government.⁴⁵ The state, after all, remained their largest competitor.

The 1826 Land Report for the Home District, the most extensively settled area in the province, is an instructive example of the state's limited capacity to compile complete and accurate information.⁴⁶ Clerks in the Surveyor General's office drew up the report in compendium tabular form on six foot long sheets of paper. They laid out in columns statistical information, average prices and observations for each township in the district, drawing data from individual reports submitted by twelve persons; nine Deputy surveyors or survey contractors, and Stephen Jarvis, the county registrar, Alexander Wood, simply listed as a resident of York, and Legislative Councillor William Allen. The most complete information, as one might expect, came from the Deputy Surveyor Samuel Ridout, who had run lines in the district for several years, and the senior clerk in the Surveyor General's office, James Grant Chewett, who was in charge of the surveyor's field notes and drawings. Ridout provided some information on every township in the district and Chewett on all but one. None of the other reports proved anywhere near complete,

⁴⁵ NA, MG11, Vol.375, Colonial Office 42: Upper Canada, 1825 Despatches, Confidential Memorandum from Strachan to Maitland, n.d..

⁴⁶ NA, RG1, L7, Vol.83, Upper Canada, Land Reports, 1826, n.p.. The 1826 Land Reports for all but the London District are contained in this volume.

and on ten townships only Chewett and Ridout provided evidence. Observations on soil quality and local advantages were all but absent throughout the report, suggesting that the average prices listed were little more than educated guesses.

The completeness of the 1826 Land Reports for the other districts reflected the degree to which settlement had advanced into new areas of the province. The clerks compiled the report for the fairly populous Gore district from submissions by eleven persons including Assembly members William Scollick and Richard Beasley, private land agent Andrew Mercer, and Clerk of the Peace George Rolph. Although they offered few observations on land quality, the final report proved fairly extensive with at least five entries for each township. At the other end of the scale the report for the recently created Bathurst District only contained information from three surveyors: John Denison, Josias Rishee and Owen Quinn.⁴⁷ They provided no observations on land quality and gave estimated values on only half of the townships listed.

In the London District, where Colonel Thomas Talbot controlled settlement in all but three townships, no one submitted reports for 1826 or for several years afterwards. Since 1817 the Land Committee had been actively pursuing Talbot for accounts of his operations, but with no success.⁴⁸ When confronted with a request

⁴⁷ The Bathurst District was created by proclamation on 13 November 1822. Armstrong, *Upper Canadian Chronology*, p.152.

⁴⁸ NA, MG11, Vol.359, part 2, Colonial Office 42: Upper Canada, 1817 Despatches, Duncan Cameron to Talbot, 20 March 1817, pp.300-1 and Report of the Executive Council respecting Thomas Talbot, pp.302-5.

for information again in 1827 the Colonel simply sidestepped the issue. He took the opportunity, however, to voice his objections to the arrangements with the Canada Company and submitted a sketch of the western portion of the province with the townships he controlled boldly outlined in red along with a request that he be allowed to continue his superintendency undisturbed.⁴⁹ Talbot got his way, and a year later he had the nerve to ask the Colonial Secretary to provide salaries for himself and his two assistants.⁵⁰ Although the new Lieutenant-Governor, Sir John Colborne, objected strenuously to Talbot's operations, the Colonial Secretary did nothing for another six years.⁵¹ As Colborne complained, Talbot had become the sole regulatory authority in twenty-four townships, covering in excess of 1.5 million acres of prime agricultural land.⁵² The Land Committee had no idea of how much had been granted, and no way of knowing the value of what remained.

The clerks completed the Land Reports for 1826 in late spring, and the Land Committee compiled the results in a condensed form. They assigned each township in the various districts an average price per acre, ranging from 4 to 10

⁴⁹ NA, MG11, Vol.387, Colonial Office 42: Upper Canada, 1828 Despatches, Talbot to Under-Secretary of State R.W. Hay, 28 April 1828, p.399.

⁵⁰ NA, MG11, Vol.390, Colonial Office 42: Upper Canada, 1829 Despatches, Talbot to R.W. Hay, 1 March 1829, p.350.

⁵¹ NA, MG11, Vol.389, Colonial Office 42: Upper Canada, 1829 Despatches, Colborne to Sir George Murray, 25 September 1829, p.162. Ladell, *They Left Their Mark*, pp.111-13. The Colonial Office discontinued Talbot's operations in 1835. Shortly thereafter he turned over his township plans and schedules of locations.

⁵² NA, MG11, Vol.389, Colonial Office 42: Upper Canada, 1829 Despatches, Colborne to Sir George Murray, 10 November 1829, p.237.

shillings (considerably higher than the 2s 6d paid by the Canada Company). The Councillors warned that the tables "afford a good deal of information, but... they are found in some instances to vary so much and without any apparent reason, and in others to fall so far short of the Known value of the Lands that the Council have felt obliged to exercise its own judgement" in setting the price.⁵³ They conceded that a lack of reliable information coming from the districts proved a serious hinderance to the operations of the sales system, but they offered no suggestions on how to improve the situation. All of this led the Colonial Office to reconsider the way local officers gathered information on land values and market conditions, and ultimately the way the administration operated as a whole.

At this distance it is impossible to know precisely whose idea it was to create the office of the Commissioner of Crown Lands in Upper Canada. Clearly it was not that of the Land Committee of the Executive Council. Throughout 1824 and 1825, while setting up the sales system, the Committee considered the Surveyor General's office as the only administrative body charged with conducting land sales operations.⁵⁴ The initial rules specifically stated that all transactions and

⁵³ NA, MG11, Vol.378, Colonial Office 42: Upper Canada, 1826 Despatches, Minutes of the Executive Council, 9 June 1826, enclosed in Maitland to Bathurst, 25 July 1826, pp.14-33.

⁵⁴ Peter Robinson was appointed to the Executive Council in December 1823 but he attended only five meetings in the winter of 1823-4 and another ten in the spring of 1826. He was absent from York most of the time dealing with his superintendency of the Irish settlement scheme.

correspondence be conducted through the Surveyor General.⁵⁵ Nevertheless, on 17 July 1827, a year and a half after the sales system came into effect, the Colonial Office appointed Peter Robinson to the new position of "Commissioner for the Sale and Management of Crown Lands in the Province of Upper Canada."⁵⁶

Historian Wendy Cameron suggests that, shortly before his resignation, Under-Secretary of State Robert Wilmot-Horton had the like-minded Robinson appointed Commissioner of Crown Lands.⁵⁷ Wilmot-Horton certainly knew Robinson well. The two had been introduced by Attorney General J.B. Robinson in 1822. The following year Wilmot-Horton employed Robinson as superintendent of an experiment in state-sponsored emigration conducted among the poor and discontented of the Blackwater River valley in County Cork, Ireland.⁵⁸ The first group travelled to Upper Canada in the spring of 1823, and would be followed by a second, larger group followed in 1825. Arriving in the Newcastle District north of Rice Lake they founded the town of Peterborough. Although a limited and rather

⁵⁵ NA, MG11, Vol.378, Colonial Office 42: Upper Canada, 1826 Despatches, Regulations for land sales issued by the Executive Council of Upper Canada, 21 November 1825, p.15. Regulation number 3 states that "All persons proposing to purchase lands must transmit a written application to the Government through the Office of the Surveyor General..."

⁵⁶ OA, RG1, Series A, Crown Lands Department, A-VII, Vol.6, Parliamentary Returns, Published Records, Land Regulations and Sales, 1789-1836, Commission to Peter Robinson, Esq., 17 July 1827, p.119.

⁵⁷ *Dictionary of Canadian Biography*, Vol.VI, "Peter Robinson", Wendy Cameron, p.754.

⁵⁸ Gates, *Land Policies of Upper Canada*, pp.95-97.

costly success, the exercise afforded opportunity for a close relationship to develop between the two enthusiastic administrators of colonial affairs.⁵⁹ In the spring of 1827 Robinson returned to England to testify in front of a select Parliamentary committee on emigration. At this point he received his appointment as Commissioner of Crown Lands.

Colonial Office officials considered the creation of the Commissioner of Crown Lands a logical and necessary step in the re-arrangement of the land business in Upper Canada. Prompted by a new business-like attitude towards rational organization and determined to make the resources of the province pay for local government they established a single office in charge of both sales and management. At the head of it they placed a member of the executive, one with administrative experience in the field of emigration and settlement and a background in commercial enterprise. In addition to being responsible for the sale and management of Crown lands, Robinson also received commissions to the resurrected and enlarged position of Surveyor General of His Majesty's Woods and Forests and supervisor of the sale of Clergy Reserves.

Robinson's commission, however, followed the traditionally personal forms of address, presentation and content. The Crown did not create the office as a separate institutional entity but assigned, or more technically, granted it to a

⁵⁹ NA, RG5, A1, Sir R.J. Wilmot-Horton Papers, pp.59-75. Robinson and Wilmot-Horton conducted a warm and self-congratulatory correspondence on the details of the Irish emigration scheme.

specific individual, "Our Trusty and Well Beloved Peter Robinson, Esq."⁶⁰ He held tenure at the "Will and pleasure" of the King and as with all such offices, it terminated with the sovereign's death. Robinson had full power and authority to conduct the duties of office, but his actions remained subject to the instructions of the Treasury officials, the Secretary of State, and the Lieutenant-Governor of Upper Canada. Whose instructions took precedence remained unclear. The Commissioner did not receive remuneration in the modern contractual sense, but rather "for the encouragement of the said Peter Robinson faithfully and diligently to execute the duties of the said office". To pay Robinson's salary the Colonial Office devised an ingenious combination of the traditional commission system with a fixed annual amount. Robinson received five-sixths of the total revenues from sales, up to £500 per year. If his share exceeded £500, he could claim only 5% of the surplus, provided that it too did not exceed £500. Thus the salary was capped at £1000, with the first half easily obtainable and the second half paid only if substantial sums flowed into the territorial revenues. As we shall see this proved not to be the case.

Robinson's instructions made it clear that he was to be the principal agent for gathering intelligence on the Crown's resources in the colony.⁶¹ He would be

⁶⁰ NA, *Brockville Gazette*, 30 January 1829, "Commission to Peter Robinson, Esq. to sell and Manage the Crown Lands of Upper Canada".

⁶¹ OA, RG1, Series A, Crown Lands Department, A-VII, Vol.6, Parliamentary Returns, Published Records, Land Regulations and Sales, 1789-1836, Instructions to Peter Robinson, Esq., 17 July 1827, p.120.

one of those new state servants, identified by historian Bruce Curtis among others, engaged in the production and packaging of information necessary for rational and effective forms of governance.⁶² Robinson's duties fell into two categories: inventory and assessment of existing resources, and the orderly management of transactions between the state and the public. The instructions begin by specifying that "as soon as possible after your arrival you do proceed to ascertain the nature and particulars of all crown property". This was followed by a series of categories requiring investigation: unsurveyed lands, surveyed but unalienated lands, designated reserves and lands leased or rented in various forms. The instruction directed Robinson to submit not only inventories but "an annual report of the progress you may have made in ascertaining these particulars". The inventories were to take the form of accounts and be submitted semi-annually, on the first of January and the first of July. They were to specify the conditions of all sales and grants, the extent of lands alienated and of lands remaining in the Crown's possession. Reflecting the Colonial Office's concern with revenues, they ordered cash accounts of monies received and expended to be submitted on a quarterly basis. Robinson retained only £30 for personal contingent expenses. The instructions authorized Robinson to hire clerks and agents and set up an office, but only "as you may find absolutely necessary" and only if sanctioned by the Lieutenant-Governor. The Colonial Office enforced economy in the administration

⁶² Bruce Curtis, "The Canada Blue Books and the Administrative Capacity of the Canadian State, 1822-67", *Canadian Historical Review* (1993) p.565.

by stipulating that expenses could not exceed one-sixth of the monies received on sales and leases, up to a limit of £500.

Robinson's instructions for his commission as Surveyor General of His Majesty's Woods and Forests, issued the same day, proved somewhat more precise in defining duties and restricting discretionary administrative actions. The position of Surveyor General of Woods and Forests was not new, but it had become moribund over the previous two decades and failed to either safeguard valuable timber for the use of the Crown or to contribute to provincial revenues. The newly reformed office addressed this problem with the same system of assessment and management applied to Crown lands. Again, the Colonial Office ordered Robinson to make a full survey of all timber resources in the province, to locate "any considerable growth of Masting or other Timber fit for the use of His Majesty's Navy", and to identify regions suitable for the issuance of cutting licences.⁶³ The instructions went on to specify annual reporting procedures, licence fee schedules, wages for district agents, limitations on contingent expenses, and the submission of accounts. As with the Crown Lands Office, the regulations restricted administrative expenses to one-sixth of monies received.

Peter Robinson held his various commissions until 1836, when a stroke left him partially paralyzed and near death. Although well-intentioned and industrious, he proved unequal to the administrative challenges he faced. Problems, in fact,

⁶³ "Instructions from the Right Honorable the Lords Commissioners of His Majesty's Treasury to Peter Robinson Esquire, the Surveyor General of His Majesty's Woods and Forests in the Province of Upper Canada", University of Ottawa Library, CIHM no.39222.

existed from the start of his tenure. In May 1829, after waiting nearly two years, Colonial Secretary Sir George Murray complained to Lieutenant Governor Colborne that "I have not received any Report from Mr. Robinson in consequence of which I am wholly ignorant of his proceedings".⁶⁴ Colborne could only offer the explanation that it took Robinson until April 1828 to set up his office.⁶⁵ In this correspondence Lieutenant-Governor also included a statement of accounts from the Crown Lands Office.⁶⁶ From 1 July 1828 to 30 June 1829 the Commissioner received a total of £4659.18.8. Hfx cy. from the sale of Crown timber, Crown lands and rents from Crown and Clergy reserves. Expenditures included £980 stg. paid to Robinson as Commissioner of Crown Lands, and another £980 stg. as Surveyor General of Woods. Operating cost for the office amounted to £770 stg.. Robinson turned over a surplus of only £1625 stg. to the Receiver General. This, of course, was not at all what the Colonial Office had in mind when it created the office.

Colonial officials promptly demanded an explanation of Robinson's salary. Robert Hay, the Under-Secretary of State, reported that his superior, Sir George Murray, "is at a loss to conceive" how Robinson could receive £980 as Commissioner of Crown Lands when "the Sale of Lands... only Amounted to £276"

⁶⁴ NA, RG7, G1, Vol.65, Colonial Office, Miscellaneous Correspondence, Murray to Colborne, 1 May 1829, p.99.

⁶⁵ NA, MG11, Vol.389, Colonial Office 42: Upper Canada, 1829 Despatches, Colborne to Murray, 10 July 1829, p.39.

⁶⁶ NA, MG11, Vol.389, Colonial Office 42: Upper Canada, 1829 Despatches, Memorandum of the Receiver General, July 1829, respecting the income and expenditure from the Crown Lands Office under the direction of Peter Robinson, for the year 1828, p.46.

[his emphasis].⁶⁷ Moreover, regulations limited Robinson's salary as Surveyor General of Woods to £500 and had no provisions for supplementary amounts dependent upon revenues generated. Office contingencies also exceeded the £500 limit set by the instructions. Hay dryly observed that such charges "do not appear to be in conformity with Mr. Robinson's commission". The Under-Secretary also noted that full reports from Robinson had not yet been received. He closed by pointing out that officers in other provinces "to whom letters were addressed at the same time" had submitted their accounts more than nine months previously.

Robinson took his time providing explanations. When he did so in December 1829 the amounts reported failed to agree with the accounts of the Receiver General. Robinson claimed that the £980 he had received as Commissioner of Crown Lands made up his salary from the date of his appointment (17 July 1827) until 30 June 1829, and not for the previous twelve months.⁶⁸ He ignored the fact that he had conducted no business for the first ten months. As far as his salary as Surveyor General of Woods was concerned, he simply disregarded the issue altogether. Robinson explained that the £770 spent on office administration included "a sum paid for me as the agent of the Government to defray the expense of building a Mill" at Peterborough. In fact he

⁶⁷ NA, RG7, G1, Vol.65, Colonial Office, Miscellaneous Correspondence, R.W. Hay to Colborne, 31 August 1829, p.283.

⁶⁸ NA, MG11, Vol.389, Colonial Office 42: Upper Canada, 1829 Despatches, Robinson to Colborne, 3 December 1829, enclosed in Colborne to Murray, 4 December 1829, pp.262-4.

had no authorization to make such an expense. Robinson closed his report by stating that his accounts were now ready for audit, and as soon as they had been examined he would transmit a copy to the Secretary of State.

By April 1830 no accounts had yet been received by the Colonial Office. Clearly frustrated with the state of affairs, Secretary of State George Murray ordered Robinson to immediately refund £145 he had appropriated from the rents of Crown and Clergy reserves and provide a full explanation of all other monies received.⁶⁹ The Secretary's efforts proved futile, however, and three years later the new Colonial Secretary, Lord Goderich, again complained to Colborne of the complete lack of reporting by the Commissioner of Crown Lands.⁷⁰ In the end Robinson never provided a complete explanation of his actions or a full set of records. By the time he closed his books in 1836 he could not account for more than £10,000.⁷¹ After his death in 1837, the sums had to be made up from the sale of his private property.⁷² Robert Baldwin Sullivan took over as Commissioner of Crown Lands on 16 July 1836 and held the position until June 1841.⁷³ Sullivan,

⁶⁹ NA, RG7, G1, Vol.66, Colonial Office, Miscellaneous Correspondence, Hay to Robinson, 2 April 1830, pp.84-5.

⁷⁰ NA, RG7, G1, Vol.70, Colonial Office, Miscellaneous Correspondence, Lord Goderich to Colborne, 1 January 1833, p.17.

⁷¹ NA, RG1, E1, Upper Canada, Executive Council Minute Books on State Matters, State Book K, Minute of 16 august 1836, p.112.

⁷² *Dictionary of Canadian Biography*, Vol.VI, "Peter Robinson", Wendy Cameron, p.755.

⁷³ Armstrong, *Upper Canadian Chronology*, p.19.

however, proved to be little improvement over Robinson. The accounts continued to be confused and unreliable and the administration incompetent if not down right dishonest.⁷⁴

Problems also existed with the Surveyor General's Office, now under the supervision of the Commissioner of Crown Lands. In 1839 Sir George Arthur appointed a special committee to investigate the conduct of the officers over the previous decade. The members discovered that for several years the Senior Clerk, John Radenhurst, regularly acted as a private land agent, located privileged claims on lands reserved for sale, issued settlement duty certificates without proof of completion, erased names from township plans, and prepared false reports which he intentionally used to mislead the Land Committee.⁷⁵ Members of the Assembly had apparently discovered the extent of Radenhurst's dealings and Sullivan's lack of supervision. This, the committee reported, as much as anything led to an alliance between Tories and Reformers over the issue of provincial control of land administration and the appropriation of revenues. In the end they collaborated to pass the Provincial Land Act of 1837 which claimed full authority over the domestic regulation of Crown lands.

Aside from the temptations of office and the resulting corruption, the creation of the Commissioner of Crown Lands office and the adoption of the sales

⁷⁴ Gates, *Land Policies of Upper Canada*, pp.228-30.

⁷⁵ N.A., *Journal of the Legislative Assembly of Upper Canada, 1839-40*, Appendix 11, pp.224-7.

system produced a number of difficult administrative problems. In May 1827 John Galt, now the supervisor of the Canada Company's operations, asked the Surveyor General for a list of all Crown reserve lots that had been laid out since the company's purchase and a list of all lots that had been granted or leased in the previous ten years.⁷⁶ Unsure of his authority, Surveyor General Ridout forwarded Galt's letter to Maitland's secretary, George Hillier. Hillier refused Galt's request for information on the grounds that the state of the reserves was none of the company's business.⁷⁷ The fact is, however, that the information could not be sent even if Hillier thought it appropriate. The valuation process undertaken over the previous two years generated a great deal of information, but it remained uncoordinated and, as the Land Committee admitted, often unreliable.

In the summer of 1827 Stephen Heward, Auditor General of Land Patents, began to compile what came to be called the Crown Reserve Books.⁷⁸ These became the first organized, systematic and relatively complete listings of all reserve lots in the province. Drawn up by clerks in the Surveyor General's office from schedules submitted by District Deputy Surveyors the Crown Reserve Books recorded each reserve by lot, concession number, township and district. Submitted to the Land Committee on an annual basis, the first few Books listed only the

⁷⁶ OA, RG1, Series A, Surveyor General's Office, A-I-6, Vol.7, Galt to Thomas Ridout, 5 May 1827, p.7086.

⁷⁷ OA, RG1, Series A, Surveyor General's Office, A-I-6, Vol.7, Hillier to Galt, 25 May 1827, p.7098.

⁷⁸ OA, RG1, Series A, Surveyor General's Office, A-IV, Vols. 37, 38, 41, 49.

location of reserved lots, the names of lessees of Crown reserves and the dates that the leases were issued.⁷⁹ After 1830 the Books also included schedules of lots where settlement duties had not been performed.⁸⁰ This had been mandated by the new settlement duty regulations put in place on 20 November 1830.⁸¹

Initially the clerks drew up the Crown Reserve Books by hand in large, bulky volumes. Such reports proved far too detailed and cumbersome for the use of the Land Committee or for transmission to the Colonial Office. As a result on 25 February 1829 Lieutenant Governor Colborne ordered the Commissioner of Crown Lands to compile concise annual reports of all vacant and grantable land left in the province, leaving out the individual identification of lots and all of the miscellaneous information contained in the Crown Lands Books.⁸² The clerks took a number of years to complete the process, and they submitted the first Annual Statement in June 1833. The Statement for that year reported that 1,795,363 acres of vacant and grantable Crown land remained in the province. John Radenhurst, the clerk in charge, admitted, however, that this did not include lands turned over to Thomas Talbot because "no returns have been acquired at this office".

Although the Crown Reserve Books went a long way in solving the information gathering problems of the government, it took several years to iron out

⁷⁹ *Ibid.*, Vols.37 and 38.

⁸⁰ *Ibid.*, Vol.49.

⁸¹ Gates, *Land Policies of Upper Canada*, p.132.

⁸² OA, RG1, Series A, Surveyor General's Office, A-II-6, Vol.8, Statements, n.p..

difficulties with regularity and precise, orderly compilation. Many of the problems arose from the fact that the Deputy Surveyors drew up the initial reports in an idiosyncratic fashion. For example, in July 1835 Deputy Surveyor Peter Carroll submitted a report on "Certain Lands in Sarnia".⁸³ Carroll listed lot numbers, concessions, number of acres in each lot, an estimated rate per acre, and an estimated price for the entire lot. He also provided "general remarks" on each reserve lot. Although he occasionally commented on matters such as soil quality, tree cover, slope inclination and lot irregularities, most of his remarks had to do with aesthetic value! A typical comment was that for lot 49 in the ninth concession; "The Plains although not good are beautiful".⁸⁴

To address problems of reporting by Deputy Surveyors, the Commissioner's office printed regularized schedule tables laid out in column format.⁸⁵ A specific category headed each column and required information on lot number, concession number, township, acreage, if located or occupied and by whom, when located and under what authority, when inspected and by whom, when put up for sale if already sold and finally "remarks". The printed schedules dramatically improved the quality of the reporting. For the most part central administrators began to receive required information without having to wade through a great deal of

⁸³ OA, RG1, Series A, Surveyor General's Office, A-VI-15, Vol.3, Inspection and Valuation Reports of Lands in the Western District.

⁸⁴ *Ibid.*, p.4.

⁸⁵ The first printed schedule tables were issued in 1837. OA, RG1, Series A, Surveyor General's Office, A-IV, Vol.53, Schedule of Crown Lands in Upper Canada, 1837.

extraneous material. But such was not always the case. In the Newcastle District Alexander McDonell continued to draw up his own schedules listing information on the occupation of the settler, usually a "Pensioner" or "soldier", country or origin and such useless information as their regimental affiliation.⁸⁶ McDonell, however, quickly became the exception rather than the rule.

The improved reporting procedures now allowed for the effective policing of settlement duties. On 4 April 1839 Commissioner R.B. Sullivan published a list of all assigned lots on which duties had not been performed.⁸⁷ He included an Order-in-Council specifying that all individuals listed were to "assert their claims", complete their settlement duties and have their property inspected, or the lot "shall be declared forfeited". The next year the Commissioner's office issued a schedule of "forfeited locations with valuations and remarks".⁸⁸ The remarks paint a picture of absolutely useless agricultural land: "very stoney, light soil, hemlock mixed with hardwood", "rocky in front, marsh and swampy on river in rear", "almost all swamp -- but in a good situation", "scraggy pine and rocky ridge". It is little wonder that settlers neglected such lots.

By 1841 the Commissioner of Crown Lands office issued returns of sales

⁸⁶ *Ibid.*, Vol.55, Alexander McDonell's Return of Settlers in the Newcastle District, 1837.

⁸⁷ *Ibid.*, Vol.57, p.2.

⁸⁸ *Ibid.*, Vol.59.

of Crown lands for all Districts.⁸⁹ The lists included names of purchasers, dates of sale, location, acreage, price per acre, amount of sale, amount of principal paid and amount remaining. These lists proved to be the first complete, centralized and systematic accounts of land sales since the system was put in place in 1826.

During the 1820's and early 1830's the Land Committee continued to hear petitions for grants and to correct problems arising from the granting process. With the creation of first the District Land Boards and then the Commissioner of Crown Lands, the Land Committee, however, no longer dealt with ordinary, straight forward transfers.⁹⁰ Instead they restricted themselves to the adjudication of disputes and applications submitted in unusual circumstances. For example, a French-Canadian named Augustin Renaud petitioned the Committee for a grant based on war-time service as a private attached to the Indian Department. Although Renaud served with neither the militia nor the regular forces, the Committee observed that "few instances occur of White men serving as Privated with the Indian Officers" and recommended that Renaud receive a 100 acre grant free of fees in consideration of his "Special Service".⁹¹ In October 1830 Susan

⁸⁹ OA, RG1, Series A, Surveyor General's Office, A-II-6, Statements, Vols. 20 and 21, Annual Statements for 1841.

⁹⁰ Expecting a reduction in business after the adoption of the sales system, the Land Committee decided to meet only on the first Wednesday of each month. A one-day session was seldom enough, however, and they often sat for four or five days in a row. NA, RG1, L1, Vol.31, Upper Canada, Executive Council Minute Books on Land Matters, Land Book M, Minute of 23 March 1826, p.612.

⁹¹ NA, RG1, L7, Vol.19, Upper Canada, Orders-in-Council, Land Grants, 1821-31, Minute of 2 May 1821, p.2.

Low, widow of John Low, U.E.L., petitioned for a grant of 200 acres. Although she, like Renaud, fell outside the regulations the Committee decided that "in order to compensate her for the support of her Daughter" who was "an Idiot" Low be given the grant free of both fees and settlement duties.⁹²

Many of the decisions of the Land Committee related to routine matters such as directing settlers to lots on the Penetanguashene Road or sorting out conflicts over lots assigned to two individuals. They also continued to keep an eye out for fraudulent applications. For example, Peter Street, son of prominent merchant Samuel Street, asked that a lot he held under lease be granted to him, or that at least the lease be renewed. Suspicious of Street's request, the Committee asked the Surveyor General to look into the matter. The Surveyor General reported that according to his books Jedediah Olmstead held the lease for lot in question. When Street returned to the Committee the commissioners ordered him to show how the lease came into his possession since they had not authorized the transfer.⁹³ Street never produced an explanation.

By 1826 the Committee became concerned about the operations of survey contractors and began to issue them specific injunctions. For example, Donald Cameron proposed to survey a road through the swamp at the back of Thorah Township and complete the survey of the good lands in the front if he could be

⁹² NA, RG1, L7, vol.19, Upper Canada, Orders-in-Council, Land Grants, 1821-31, Minute of 11 October 1830, p.711.

⁹³ NA, RG1, L7, vol.19, Upper Canada, Orders-in-Council, 1821-31, Minute of 8 August 1821, p.37.

paid the inflated rate of 10%, "taking payment out of the said Swampy lands." Reluctantly the Committee accepted the proposal on the condition that Cameron be "expressly bound to complete the Survey of the Township before he receives any compensation" and that the Surveyor General insure that only swamp land be paid.⁹⁴

The Land Committee also continued to exercise its discretion in the application of regulations. It usually did this to the benefit of petitioners, but not always. On 7 March 1829 the Committee ordered that a reserve lot, number 9 in the 9th concession of Lochiel Township, be moved to another lot so that it could be granted to Donald McLaurin. This was done because the Quarter Master General had assigned McLaurin the lot without first checking with the Surveyor General to see if it had been designated a reserve. On the same day, however, one Emmanuel Mellican was not so lucky. Despite exactly the same circumstances the Committee cancelled his location, without compensation.⁹⁵ Unfortunately, the clerk failed to record any reason for the difference in treatment. Such partiality must have done little for the reputations of the Land Committee members.

The Committee also regularly exercised its discretion in relation to the land sales system. Although they directed most ordinary petitioners to purchase land from the Crown Lands Office, the Committee often gave out free grants to

⁹⁴ NA, RG1, L7, vol.19, Upper Canada, Orders-in-Council, Land Grants, 1821-31, Minute of 13 December 1826, p.450.

⁹⁵ NA, RG1, L7, vol.19, Upper Canada, Orders-in-Council, Land Grants, 1821-31, Minute of 7 March 1829, pp.620-1.

individuals with specific skills. Such was the case with Irish blacksmith William Peters.⁹⁶ Unfortunately the Committee seldom recorded explanations for these exemptions, and it is impossible to know when the Councillors exercised sound judgement or when they indulged in favouritism. It is clear, however, that the government took good care of its own. For example, when John Beikie, the clerk of the Council, petitioned to locate four lots in the long-settled Gore of Toronto, the Committee gave him the pick of any ungranted lands in the area, whether reserved or not.⁹⁷ When Sir John Johnson of the Indian Department discovered that the location he had been given for a 200 acre grant did not in fact exist, the Committee gave him 600 acres of Crown reserves as compensation!⁹⁸

In March 1826 William Lyon Mackenzie's *Colonial Advocate* published a short explanation of the new land sales system. At the end the author summed up the changes with the following comment,

Upon the whole, the system has not been altered or amended. They profess to grant free formerly, while they sold in reality. Now they have taken off the needless mask. By the old system they granted land for value to be received if they liked the applicant; now they sell, if the petitioner who prays that he may have permission to purchase, is a man according to their

⁹⁶ NA, RG1, L7, Vol.19, Upper Canada, Orders-in-Council, Land Grants, 1821-31, Minute of 7 March 1827, p.472.

⁹⁷ NA, RG1, L7, Vol.19, Upper Canada, Orders-in-Council, Land Grants, 1821-31, Minute of 30 October 1828, p.587.

⁹⁸ NA, RG1, L7, Vol.19, Upper Canada, Orders-in-Council, Land Grants, 1821-31, Minute of 30 October 1828, p.588.

own heart.⁹⁹

Mackenzie missed the mark here. The system of land distribution had in fact been fundamentally altered. The switch from granting to selling Crown land changed the nature of the relationship between King and subject. The Crown no longer bestowed land as a reward for proven loyalty and faithful service. The reciprocal political transaction of land for loyalty that lay at the heart of the Loyalist settlement of Upper Canada had been replaced by a conception of Crown land as public assets to be used for the support of public management. Essentially, the new system expunged the political component from land acquisition. After 1826 a newcomer purchased land from the government as he or she would from a local merchant, and owed no more than the purchase price. Mackenzie's mistake, however, is understandable. The transition did not happen immediately. The Land Committee continued to grant land until it was specifically banned from doing so by the Land Act of 1837. Loyalists continued to receive land until 1841 when their claims were converted to land script. The script itself remained valid until 1862.¹⁰⁰

In the end the policy of granting land achieved its principal goal. As events in 1837 would prove, Upper Canadians had no desire to change their allegiance or be annexed by their former enemy to the south. They may have turned out far more democratic and egalitarian than a Strachan or a Robinson would have liked, but they remained firmly within the Imperial fold. Between the 1780's and the

⁹⁹ NA, *Colonial Advocate*, 2 March 1826.

¹⁰⁰ Gates, *Land Policies of Upper Canada*, p.141.

1830's a prosperous, loyal colony took shape on the north shore of the Great Lakes. The Executive Council, its Land Committee, and the others members of the Land Granting Department had much to do with this fact. By the mid-1820's, however, the priorities of both the Imperial government and the provincial assembly had shifted. Raising revenue and rational bureaucratic management became more important than filtering out the undesirable. With some reluctance and many objections, Upper Canada's administrators responded by changing the structures of government to suit the needs of a new regime.

The adoption of a lands sales policy and the creation of the office of the Commissioner of Crown Lands signalled a major transition in the public administration of Upper Canada. The Crown Lands Office eventually grew into the complex and wide-ranging bureaucracy of the Crown Lands Department, the second largest administrative branch inherited by the Dominion of Canada in 1867. Between the 1830's and the 1860's the Commissioner of Crown Land assumed an increasing number of responsibilities, including the supervision of land surveys, land distribution, timber and fishery licensing, mining inspection and Indian affairs. Only the Department of Public Works overshadowed it in size, if not in complexity.¹⁰¹

¹⁰¹ For a discussion of the development of the Commissioner of Crown Lands Office during the Union period see Hodgetts, *Pioneer Public Service*.

Conclusion

When Loyalist refugees began flooding into the old province of Quebec during the mid-1780's the British government scrambled to find solutions to this new and unwelcomed situation. Seeking land and security under the British Crown, these mostly American-born subjects had no desire to be governed under the French seigneurial system with its mutation fines, mill rights, tithes, and various other feudal burdens. Nor did they wish their own officers to become a nascent aristocracy. Vocal, articulate, and demanding that war-time promises of free land be fulfilled, the Loyalists pushed the Governor, his Council, and the Secretary of State, into action.

Lord Dorchester's arrival at Quebec signalled both the beginning of a new regime and a victory for the Loyalist cause. The government granted land under the British tenure of free and common soccage to those who settled in the western regions, established a New England-style land distribution system based on pre-surveyed townships and the 200 acre lot, and in 1791 created a separate province complete with English civil law, an assembly elected on a broad franchise qualified by land ownership, and a powerful executive with its own, independent sources of revenue.

While London went about rearranging constitutional matters, Dorchester and his Council developed the regulations and administrative apparatus necessary for

the new province of Upper Canada. Surveyors and their crews advanced into the bush to lay out townships, town plots and the crude beginnings of a road network. Local Land Boards distributed lots, registered assignments and adjudicated conflicts. Although complications arose, particularly around Kingston, Niagara and Detroit where refugees arrived before the surveyors, officials quickly ironed out difficulties without serious conflict. Newcomers took up their lands and began the arduous task of clearing the bush. The decision to push surveying and the organization of land distribution in advance of settlement proved to be both wise and cost-effective. It prevented much of the often violent squabbling over land titles that occurred in many of the more loosely regulated American States, and kept expensive lawsuits from clogging up the courts. Having learned from previous experience in the Americas, Upper Canada's governors understood that an excess of free enterprise compromised the state's ability to direct and regulate the establishment of new colonies. Having the government enter the bush along with the settlers may have dampened their entrepreneurial spirit, but it also contributed to an orderly, peaceful, well managed society.

The new administration required financing, and here the colonial government broke with past practices by experimenting with the Crown and Clergy reserves. As a substitute for quit-rents, the colonial government hoped to establish a long-term source of revenue both independent of the Assembly's control and large enough for the needs of Church and State. The scheme, however, had been poorly conceived and quickly proved a failure. Few settlers leased reserve lots

when they could easily obtain outright ownership by merely asking for a grant and paying the fees. Removing quit-rents also removed inhibitions on speculators. Land holders in the Assembly, meanwhile, were not about to impose a land tax to prevent such enterprises. As a result, many settlers claimed more land than they could occupy. This, along with the Chequered Plan of reserve location, prevented compact settlement and increased the burdens on new farmers struggling far from established populations. In the end the government turned to a complex and convoluted system of fees in order to support its own officers.

When Upper Canada's first Lieutenant-Governor, John Graves Simcoe, assumed command he sought to balance two priorities. On the one hand the province needed rapid settlement and an orderly, regulated, accountable system of land distribution. Just as important, however, the colonial government intended to restrict access to land to the loyal, not just to the industrious. Simcoe and his Executive Council did not trust local district authorities to accomplish these ends, and as a result they centralized the administration at York and maintained the executive's monopoly over land distribution. By the end of the century a fairly effective, if somewhat complex, bureaucracy had taken shape. Over the next two decades administrative roles, technical procedures and accounting processes slowly evolved as the government took up the business of land granting.

By the early 1820's the situation changed significantly, and the existing administrative structures quickly proved insufficient to meet the needs of either the government or the new wave of immigrants generated by social disruption in

Britain. At the same time the Imperial government's decision to limit its financial contributions to the provincial government further compounded administrative difficulties. This led to a number of ill-conceived expedients, such as paying surveyors with land. But it also resulted in more effective means of distribution administered by the second District Land Boards.

Sir Peregrine Maitland and his Council now faced a dilemma. The executive branch of the government required financial independence if it wished to maintain its power and influence. Crown lands remained the only available independent source of funds, yet the reserve system failed to generate the necessary revenues. The alternative to reserves proved to be a land sales system. Colonial Office officials not only agreed with this new direction, they took it a step further by creating a hierarchically arranged bureaucracy under the Commissioner of Crown Lands. Although initially the office suffered from inadequate regulation and regrettable appointments to senior positions, the new measures created administrative structures that lasted well into the Confederation period. Imperial officials, however, also undermined these initiatives by selling the existing Crown reserves to the Canada Company. The Company's payments provided a short-term solution to the executive's fiscal woes, but in the end cost the province dearly as the profits from speculation on over two million acres of good agricultural land went to stock holders in England.

In the end the land granting administration proved to be a qualified success. At the most basic level the delineation and broad distribution of land had been

accomplished. By the time of the Union almost all land suitable for permanent agricultural settlement in the province had been alienated from the Crown.¹ Some 300 surveyed townships stretched from the Lower Canadian border in the east to the St. Clair River and the shores of Lake Huron in the west. Although farms remained thin in places and a good deal of prime land remained in the hands of speculators, this had little lasting impact on the overall distribution of property. As Marvin McNinnis has shown, by 1861, 60 percent of Upper Canada's farms were between 70 and 170 acres, with very few over 300 acres.² Darroch and Soltow's examination of the 1871 census has reinforced these findings.³ Furthermore, they found that a generation after the end of the land granting system "the proportions of adult men in Ontario in 1871 owning land and homes were little short of spectacular by the international standards of the last century".⁴ Simcoe's industrious yeomanry had been created, and this, after all, had been the primary purpose of the land granting system.

Just as importantly, the path taken by the officers of the land granting administration, their experiences and decisions, accomplishments and failures, led

¹ Michael Piva, *The Borrowing Process: Public Finance In the Province of Canada, 1840-1867* (Ottawa: University of Ottawa Press, 1992) p.218.

² Marvin McNinnis, "The Size Structure of Farming, Canada West, 1861", *Research in Economic History* (1989) pp.313-29.

³ Gordon Darroch and Lee Soltow, *Property and Inequality in Victorian Ontario: Structural Patterns and Cultural Communities in the 1871 Census* (Toronto: University of Toronto Press, 1994) pp.23-32.

⁴ *Ibid.*, p.188.

to the bureaucratic model of governance that emerged at mid-century. Systems of regulation, registration, record-keeping, departmental organization, and accountability slowly developed in response to needs defined by an appointed, paternalistic conservative-minded administration. The state bureaucracies that later emerged along with the liberal principles of responsible government and commercial capitalism had their beginnings in the first years of settlement. They took shape under an administration that only slowly shed its *ancien regime* characteristics. The important changes in administrative structures and practices during the 1840's and 50's are better seen as part of an evolutionary process that stretched back to the migration of the Loyalists and beyond. The mid-century transformations in governance witnessed by Canadians built upon both the broad distribution of real property and the Upper Canadian administration that accomplished this business.

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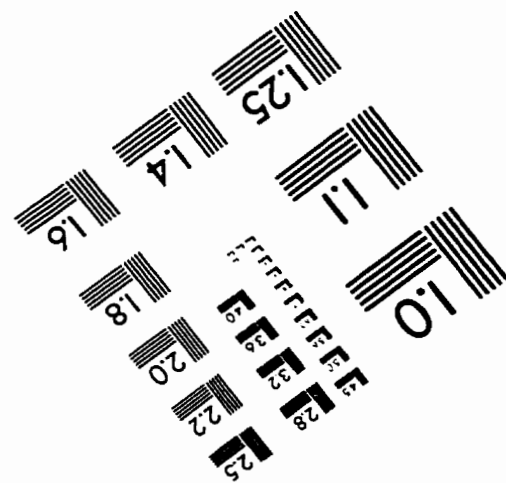
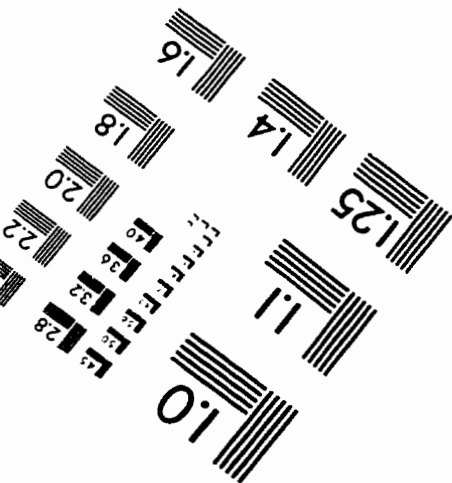
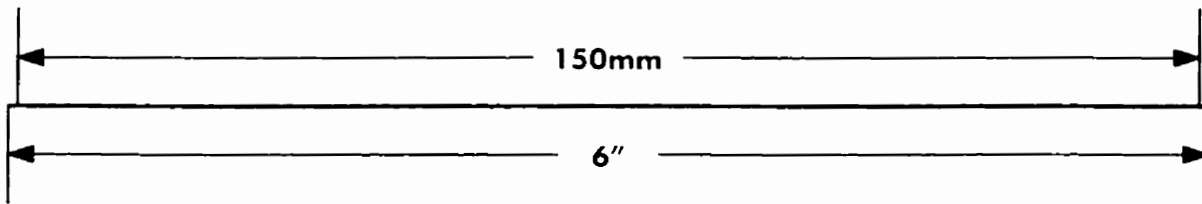
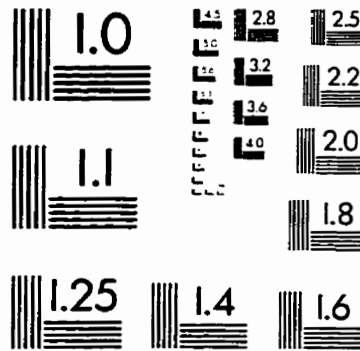
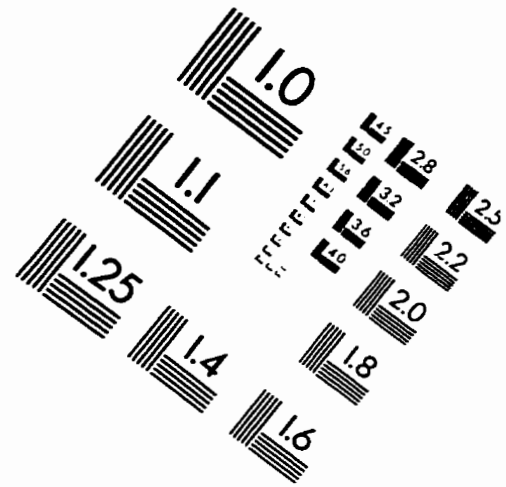
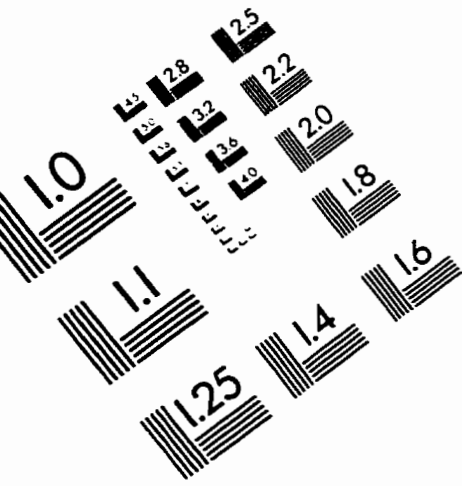
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