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Administration in Adversity: The Deputy Surveyors and Control of the New Brunswick Crown Forest before 1844

Management of the Crown domain is a central issue in the historiography of New Brunswick. The extensive area of the province that remained in title of the Crown through the pre-Confederation years was a key element in the development of the colony. In the labour, and fluid capital, scarce province, it was a major resource, offering land for farms, timber for export and revenue from its alienation or exploitation. Land policies influenced the course of settlement; the struggle for control of the Crown domain dominated provincial politics in the 1830s; and New Brunswick's major natural resource industry of the nineteenth century, the timber trade, was profoundly affected by the pattern and effectiveness of Crown forest administration.[1] A frequently changing mesh of regulations governed access to New Brunswick's Crown domain, but before Confederation there was no clear and comprehensive design for its control. Local and international circumstances, and a complex interplay of individual aims and animosities affected the evolution of an administrative structure which, once established, proved remarkably resilient. Characteristically, regulations were refined and adapted to changing conditions in the colony through *ad hoc* amendments rather than by wholesale revision. The consequences were considerable. Authority lagged behind circumstances, and although the terms of access to land inevitably influenced administration of the forests, policies governing these resources often developed independently. Incongruities in the regulations were exploited, and the difficulties of enforcing control over the Crown domain were increased.

Nowhere were these difficulties more evident than in the administration of the New Brunswick forest before 1844. Originally protected as a source of naval timber, the forest became the province's most important staple export in the early nineteenth century. Exploitation increased rapidly. Provincial authority replaced imperial jurisdiction over the forest and administrative

1 See for example W. S. MacNutt, *New Brunswick, A History: 1784-1867* (Toronto, 1963), pp. 70-72, 120-23, 204-8, 229-41; W. S. MacNutt, "The Politics of the Timber Trade in Colonial New Brunswick, 1825-40", *Canadian Historical Review*, 30 (1949), pp. 47-65; and Graeme Wynn, "The Assault on the New Brunswick Forest, 1780-1850" (unpublished Ph.D. thesis, University of Toronto, 1974), pp. 122-79.

concern shifted from reserving naval stores to realizing a revenue from the resource. While a succession of regulations marked the attempt to establish effective control, for the most part they followed the fundamental framework created to protect the forest for the British navy. Surveillance of lumbering in the forest was essential to the enforcement of these regulations, and the small group of Deputy Surveyors who formed the field arm of the forest administration were vitally important to the implementation of the Crown's authority. It was largely through their efforts in taxing circumstances that many of the difficulties of enforcing control were overcome. At least in part, the survival of Crown forest ownership in the province is attributable to the effectiveness with which these most important members of the colonial civil service carried out their commissions.

Crown title to the New Brunswick forest was established in the eighteenth century. Imperial statutes of 1722 and 1729 reserved the forest for the British navy by extending the "Broad Arrow" system northeastwards from New England to Nova Scotia. Thereafter, the felling of pine trees without an approved contract and lease was prohibited. Even the removal of those pines that were "unfit for His Majesty's service" was restricted.[2] Strictly interpreted, the regulations prohibited the cutting of pine without prior survey and the approval of the Surveyor-General of Woods or his deputy; when permission was obtained, exploitation was limited to specified trees and tracts. Initially, enforcement was sporadic. Settlement in the New Brunswick area was sparse, New England remained the major source of naval supplies, and infringements on the forest were small. These circumstances were drastically changed by the influx of Loyalists and others into the area after 1780. Although the Crown's right to timber suitable for naval purposes was specifically reserved in land titles issued between 1783 and 1807, settlers anxious to establish homes and farms paid little heed to the "vast invisible 'broad arrow'" protecting all pine trees in the colony.[3]

Control of the forest was further undermined by the temporary cessation of land-granting during the 1790s, which produced a more lenient attitude

2 The "Broad Arrow" was the insignia of Crown property; the mark was sometimes cut on pine trees on granted land as a sign of their reservation for the Crown. J. J. Malone, *Pine Trees and Politics, the naval stores and forest policy in colonial New England* (Seattle, 1964) provides a useful summary of the "Broad Arrow" system in New England. See also W. O. Raymond, *The River St. John* (2nd ed., Sackville, N.B., 1950), p. 236, from whence the quotation is taken. The relevant Acts establishing Crown authority were 8 Geo I, c. 12 (1722) and 2 Geo II, c. 35 (1729).

3 See "Additional Instructions to John Parr", 10 June 1783, Royal Instructions to Nova Scotia Governors, No. 33, Provincial Archives of Nova Scotia [PANS], vol. 349; and Sir John Wentworth to Judge Edward Winslow, 19 September 1810, in W. O. Raymond, ed., *Winslow Papers, A.D. 1776-1826* (St. John, 1901), p. 655.

to squatters on Crown land, and by the Additional Instructions on land granting in 1807, which made no explicit mention of the Crown's right to pine timber on granted land.[4] Despite Surveyor-General John Wentworth's efforts to protect the forest by establishing reserves, proclaiming the regulations and undertaking arduous tours of inspection, trespass was widespread.[5] In New Brunswick, as elsewhere on the Eastern seaboard of North America, it was enormously difficult to confine exploitation to stipulated limits, and to ensure that Crown ownership of the forest was respected. In the vastness of North America, the "Broad Arrow" system developed to protect the circumscribed Royal woodlands of Britain foundered upon the extensiveness of the forests, the difficulties of traversing them, the scarcity of Crown officials and, above all, the pressing demands of settlement.

Early in the nineteenth century, the ineffectiveness of Imperial control was made ever more obvious by the rising demand for forest products. European wars cut off Britain's traditional sources of wood products in the Baltic countries, and the North American colonies rapidly became major suppliers of pine timber for metropolitan demands. With the rise in timber exports from New Brunswick the plundering of the provincial forests quickened. In 1809 the "very great waste . . . made of the Pines in many ways for the last 12 months" was reported to the Legislature.[6] Two years later came notice that "the most wanton depredations [had] been formerly committed on the Reserves at Oromocto . . . ."[7] Persons applied for land as settlers with the sole intention of removing the timber, and colonial officials admitted that the practice was tolerated because of Britain's need for wood.[8] By the second decade of the century, however, both the Surveyor-General of Woods and New Brunswick authorities were urging revision of the system of forest control.[9] Earlier, unheeded, suggestions to improve the unsatisfactory situation were reiterated in January 1816, when the President of the Council argued the need for reorganization, and in October of that year administration of the forest was transferred from Imperial to Provincial jurisdiction.[10]

4 Wynn, *op. cit.*, pp. 129-30, 132-3.

5 John Wentworth to Commissioners of the Navy, 8 October 1784, Governor Wentworth's Letterbooks, vol. 4, PANS; "Diary of Travel performed by John Wentworth . . . upon naval service", Papers relating to surveys in North America, Manuscript Group [MG] 12, PRO Admiralty 49, vol. 8, Accountant-General, Miscellaneous, Public Archives of Canada [PAC].

6 [R.] Anderson, "Memorandum respecting Pines and Pine Timber, & c", 6 May, 1809, Legislative Assembly Papers, RLE/808E/zz, Provincial Archives of New Brunswick [PANB].

7 Judge Edward Winslow to Sir John Wentworth, January 1811, in Raymond, *op. cit.*, p. 661.

8 General Martin Hunter to Earl of Liverpool, 3 November 1810, NBA Series, State Papers relating to New Brunswick, vol. 19, PAC.

9 Wentworth to Winslow, 19 September 1810, *op. cit.*, and Hunter to Earl of Liverpool, *op. cit.*

10 G. S. Smyth to Earl Bathurst, 31 January 1816, New Brunswick Correspondence, CO 188/22, PAC.

Provincial authority was soon established. By the fall of 1817 lumbermen were required to obtain licences to cut timber from Crown land.[11] These licences were normally valid for one year and allowed only the quantity of timber specified in advance to be taken from defined tracts. In effect, the new regulations attempted to control the onslaught on the forest by prohibiting exploitation without prior approval, and by bounding the extent and area of each individual's cut. In these basic provisions they echoed the earlier regulations. No licences were to be issued for Crown Reserve lands, or for land earlier applied for settlement. Initially, no fees for timber licences were specified, but in November 1817 an additional clause was added to the regulations requiring payment of 25/-, the usual fees of office. Four months later the Lieutenant-Governor and Council imposed a *tonnage fee* on all licences.[12] This rate of 1/- per ton was to include the fees of office and survey, but until British assent to the tax was received, bonds were taken for amounts in excess of the former office and survey fees. Not until 1822, when payment of the tonnage money to the Receiver-General was required on application for a licence, was the duty collected in advance. Two years later, licence applicants were obliged to register log-marks, thus providing a means for the official identification of each lumberer's cut.[13] In seven years the four broad clauses of the 1817 regulations had expanded into a set of twenty-one stipulations; revision and reformulation of the original tentative efforts to establish control had yielded a more complete but still far from comprehensive design for administration of the Crown forest.

Control of the forest passed from the Provincial Council to the newly appointed Commissioner of Crown Lands and Forests in 1824. Thomas Baillie, the brash Irishman who came to the province as the first commissioner, was soon a centre of controversy.[14] His steadfast attempts to protect and advance the true interests of the Crown as he perceived them brought him

11 The following paragraph is a precis of a welter of regulations, details of which can be found in Wynn, *op cit*, pp. 134-44. MacNutt, *New Brunswick*, pp. 181-5 oversimplifies the evolution of regulations between 1817 and 1824.

12 In the early nineteenth century, ton-[square-] timber and lumber (sawn planks, boards, deals, etc.) were produced in New Brunswick. Strictly, tonnage duties were the levy for ton-timber production, but here the term *tonnage duty* is used broadly to describe the charge to cut ton-timber or saw logs under licence. Especially before 1830, the distinction between ton-timber and lumber is unimportant, as the trade was dominated by ton-timber production. It should be noted that the duties charged on saw logs were distinct and ranged from 2/6 to 3/6 per 1000 feet. Charges also varied for Red and White pine, but the details are not important here.

13 New Brunswick Executive Council Minutes, vol. III, 11 May 1822, 25 February 1824, PANB.

14 See MacNutt, *New Brunswick*, pp. 195-7, 203-8, 222-3, 229-48, 263-4, 318-9 for an outline of Baillie's career in New Brunswick, and Baillie to Viscount Goderich, 25 October 1831, CO 188/42, Misc., PAC, for Baillie's conception of his duty as Commissioner of Crown Lands.

into conflict with those lumbermen and land speculators whose interests lay in relatively unrestricted access to the Crown domain. Criticism and deprecation surrounded the man and his subordinates. Yet there is no denying Baillie's achievement in bringing order and efficiency to an office whose records, inherited from the insane Surveyor-General Anthony Lockwood, were in a state of "great mutilation and disorder" that was "in some cases remidiless".[15] Soon after his arrival in the province, Baillie criticized the existing structure of forest control for its ineffectiveness, and in the years that followed he sought means of increasing the Crown's revenue from its estate. To this end he defended the land sales system — introduced on instructions from England in 1827 — against the accusation that lumberers were posing as settlers to acquire land for its timber, and encouraged "capitalists" to purchase large tracts for their timber in the 1830s. To Baillie's mind, "bogus settlement" and the alienation of large areas of timber land were of little concern if they brought more for well-timbered land than *bona fide* settlers would pay.[16] Yet Baillie also saw advantages in the licence system which allowed him to maintain control over the large unsold area of the Crown domain. In essence, the system of forest control set up before Baillie's arrival remained unchanged for twenty years. Numerous modifications of the 1824 regulations were proposed. Amendments raised the levy on squared timber to 2/- per ton by 1835; licences with a five-year term were made available; a short-lived policy of allowing large private reserves in return for the investment of capital was introduced; and the disposal of timber licences by public auction was implemented.[17] But through all of these changes the tonnage system remained the basis of New Brunswick forest regulation. Only in 1844, when timber berths were licenced for 10/- per square mile and a specific duty was levied on wood products exported from the province, was the administrative format adopted in 1817 abandoned, and then the basic principle of Crown control was maintained.[18]

Enforcement of the regulations before 1844 required close surveillance of lumbering operations. The areal and quantitative restrictions of the licences were easily ignored by lumberers who regarded payment of tonnage fees as a "clear loss" and admitted that they "would endeavour to get clear of as much duty . . . as possible".[19] Infringements were common. To prevent such

15 Ward Chipman to Wilmot Horton, 27 November 1823, CO 188/29, PAC.

16 Thomas Baillie to Sir Howard Douglas, 10 July 1827, Crown Lands Office Letterbook B, RNA/C/3/2/1, PANB.

17 Wynn, *op. cit.*, pp. 149-59.

18 Again the details of the new regulations and their implementation are complex and are summarized in *ibid.*, pp. 168-72.

19 Evidence of Samuel Traviss, minutes of an enquiry into charges against Deputy Matthew Carruthers, evidence for the accusation, p. 26, PANB (unclassified).

evasion, Deputy Surveyors (or Seizing Officers) were appointed to survey timber berths and to check the extent of exploitation. British regulations allowed for the appointment of these officials and Wentworth had empowered a handful of Deputies in New Brunswick by the beginning of the nineteenth century. Initially the Provincial administration relied upon these individuals and others drawn from the population of the provincial regions to exercise control. As the onslaught on the forest continued, however, the difficulty of enforcing the regulations became ever more apparent, and the nature of the Deputy force changed. During the 1820s the loosely organized group of twenty-two appointees gave way to a more tightly controlled force of Crown Land Office employees. This force fluctuated in size as additional Deputies were hired for short periods in some winters, but in general perhaps a dozen to a score of men formed the field arm of the New Brunswick Crown Forest Administration in the two decades before (1844).[20]

Until 1817, the Deputies were virtually autonomous. Under the Imperial administration, control was indirect, and especially in the nineteenth century, superior authority in the person of John Wentworth was remote. Similar circumstances persisted after the implementation of provincial control. So long as protection of the forest was dependent upon unsalaried appointees and the costs of acquiring a licence were unspecified, the way was open for fraudulent exactions. In addition, the integrity of the Deputies could be compromised by their dependence on the lumberer's payments for surveys. The fact that Deputies were responsible for forwarding licence applications to the Council for approval opened another avenue for deception.[21] In short, there was ample opportunity for an individual to abuse the authority of his position and there were few means of ensuring proper enforcement of the regulations. Even when the Deputy's fee was set at 20/- per licence in November 1817, the failure to specify the office fees left open the possibility of misappropriation.[22] The lack of funds to employ Provincial forest inspectors hindered rectification of this situation, and the tonnage levy imposed in 1818 was

20 Intractable data make it difficult to establish the number of deputies, and their names, with consistency through the period considered here. These figures, which should be regarded as working estimates, are derived from my examination of disparate sources and particularly the following: *The New Brunswick Royal Gazette* (Fredericton), 18 April 1820; a note on the inspection of timber berths in the Crown Lands Office papers, RNA/C/3/8/1, p. 56. PANB: and material in the Executive Council Records, especially REX/Pa, Surveyor-General 32, 1843, Statistics, PANB.

21 See for example the petition of John Carrick to Major General G. S. Smyth in 1819, Crown Land Office Petitions (Timber) 1819, RNA/C Series, PANB.

22 *The New Brunswick Royal Gazette*, 25 November 1817.

intended to provide the necessary revenue.[23] While bonds were taken against this duty, it remained impossible to appoint salaried Deputies.

Not until 1822 were the officers placed in a more secure financial position when they were granted one third of the proceeds from the illegally cut timber they impounded. Two years later the duties of the Seizing Officers were more clearly defined. They were to retain the licences to cut until berths were marked out as applied for; they were to ensure that cutting had not commenced prior to survey; and they were to inspect all timber berths and brows during the spring. The tonnage duties accumulated since 1822 were used to provide the Deputies with the remuneration necessary to avoid their independence on payments from the lumberers, and they were required to place a £1000 bond with two sureties for their good conduct. Seizing Officers were allowed 30/- for surveying berths for 200 tons of timber or less: this sum increased pro rata to 80/- on licences for 900 to 1000 tons. In addition the Officers received 25/- per day while inspecting the berths and brows before the spring drive downstream. [24] These rates of payment were amended during the 1830s, when the Deputies were allowed 20/- per day while "actually employed" and there were some changes in the requirements of survey, but for twenty years the basic duties of the Seizing Officers remained much as defined by the regulations of 1824.[25] During this period the effectiveness of the Deputies was far greater than in the earlier years of the century. After Thomas Baillie's appointment, the Deputies were under constant scrutiny from above. In a steady stream of correspondence, the Commissioner appraised his field officers of reported infringements in their districts, notified them of alterations in the letter and the interpretation of the regulations, advised them how to act in particular circumstances, and urged them to unceasing vigilance.[26]

Nevertheless, the "police force" of Deputy Surveyors was always less effective than senior Crown officials intended. Realizing this, Wentworth pressed for a strengthening of his authority in 1810. "Notwithstanding the arrangements which have been made", complained Lieutenant-Governor Smyth in 1819, "trespasses . . . are daringly committed and daily increasing

23 New Brunswick Executive Council Minutes, II, 27 March 1817, PANB; G. S. Smyth to Lord Bathurst (March 1818), Letterbook, 1817-1825, PANB (unclassified).

24 *The New Brunswick Royal Gazette,* 2 April 1822, 30 March 1824.

25 "Regulations for preventing Trespasses on Crown Lands: Approved in Council 3 February, 1838", RNA/C/3/2/4, pp. 2-3, PANB; "Order in Council, October 12, 1837, re expenses in surveys", Crown Land Office, Misc. Regulations and Orders in Council [1837-], RNA/C Series, PANB.

26 The Letterbooks of the Commissioner in the RNA/C/3 Series contain many examples: see T. Baillie to J. Allan, 23 January 1843, and Baillie to Colebrook, 22 May 1843, RNA/C/3/2/8, p. 13 and p. 335, PANB.

upon the Crown Lands".[27] Thomas Baillie's correspondence contains many letters chastising the Seizing Officers for their inadequacies. After twenty years of exhortation and criticism of his staff, he scathingly informed Deputy Alexander McNeil: "I exceedingly regret the necessity [of] continually correcting the errors of my Deputies in matters in which it seems almost incredible that they should err . . . ."[28] Yet the Deputies were frustrated by the very nature of their commission. They were charged with the duty of preventing unlicenced exploitation of Crown Timber, but there were many opportunities for evasion, and lumberers resorted to deception, subterfuge, outright defiance and occasional violence to avoid payment of the licence fees. Unfortunately for the authorities, few were as artless as the Miramichi lumberer who boasted so openly of his deception that word of it reached the Crown Lands Office in Fredericton.[29] Even the most diligent Deputy faced a Herculean task, and it was unlikely that any individual could have prevented all abuse of the regulations in his district.

In the best of circumstances, trespass was difficult to prove.[30] Once it was piled in the river-side brows, timber taken illegally from the Crown Lands was indistinguishable from the legal cut off a licenced tract or the lot of a settler. Unless the Deputy apprehended trespassers in action, he had only the circumstantial evidence of stumps and logging roads to guide him in his efforts to determine the origins of a lumberer's timber. Similarly, it was difficult to establish the excess cut on particular tracts, especially when individuals held a number of licences in close proximity. The extensiveness of the deputies districts made their task doubly arduous. Normally one or two officers were responsible for an entire county. Insofar as the county boundaries corresponded approximately to the main drainage divides of the province, this was a sensible means of establishing administrative districts for a trade that relied so heavily upon the rivers for transport. But in the northeast of the province, vast, sparsely populated hinterlands became the responsibility of Deputies based in the coastal towns. In 1843, for example, almost the entire territory draining into the Gulf of St. Lawrence, from the Restigouche River in the north to Shediac Bay in the south, was administered by four men,

27 Sir John Wentworth to Judge Edward Winslow, 19 September 1810, *op. cit.*, and G. S. Smyth to Sir John Wentworth, 13 April 1819, Letterbook, 1817-25, PANB (unclassified).

28 T. Baillie to Deputy McNeil, 14 August 1844, Crown Land Office Letterbook, RNA/C/3/2/9, p. 164, PANB.

29 Evidence of H. B. Allison, minutes of an Inquiry into charges against Deputy Matthew Carruthers, evidence for the defence, pp. 39-43 PANB (unclassified); and T. Baillie to L. B. Rainsford, 21 July 1835, Crown Land Office Letterbook, RNA/C/3/2/2, p. 287, PANB.

30 For one comment on some of the difficulties see James Albee to T. Baillie, 20 April 1843, Executive Council Records, REX/Pa, Surveyor General 31, 1843, to CLO Staff, PANB.

Deputies Joseph Hunter, Alexander McNeil, Charles J. Peters and W. J. Layton.[31] During the following winter perhaps 10% of the ton-timber and 30% of the sawlogs cut in the province came from the Northwest and Southwest branches of the Miramichi River and their tributaries alone; *possibly* as many as two hundred different lumbering operations were scattered on the Crown Lands drained by those rivers that winter.[32] In these circumstances the difficulties of a thorough spring inspection of all berths and brows were immense.

The short and hectic nature of the spring drive further complicated the Deputies' work. On the break-up of the frozen rivers and streams, the winter's cut of ton-timber and sawlogs was floated downstream. Frequently the drive began in all parts of a Deputy's district at about the same time. Different lumbermen ran their cut together down the smaller streams. At the main rivers it was sorted into rafts. Consignments were then delivered to different destinations. Shippers in the seaports, sawmills along the rivers, and general merchants who took timber in payment for goods advanced during the winter, received their quota of the winter's work. The early drive was a period of frenzied activity and lumbermen might always hope to avoid the Deputy's scrutiny during its few short and crowded days. After the drive had waned, cunning sometimes replaced opportunism in the attempt to avoid duties. On the Miramichi, lumberers tried to run rafts of timber past the inspecting officer at night. Given a favourable wind and tide, timber that was a considerable distance upriver at dusk could be alongside a vessel ready for loading at dawn. On the St. John River, the Reversing Falls increased the difficulty of such bold evasion, and encouraged the lumberers to avoid the duties by more devious means. Some sold their timber immediately upstream from the Falls (and the inspecting officer in the port) and left the buyer to dispute the provenance of his purchase. Others swore that timber taken illegally from the territory in dispute with Maine came from granted land on the lower St. John River.[33]

Knowledge of the individual lumberers, familiarity with the forests and the trade, and intuition and luck were essential to the performance of the Surveyors' duties. There is no better summary of the difficulties they faced than the report of Charles J. Peters, one of the more vigilant Deputies, who wrote from the Miramichi in 1843:

31 Executive Council Records, REX/Pa, Surveyor General 32, 1843, Statistics, PANB.

32 These are broad estimates derived by extrapolation from data in Wynn, *op. cit.*, pp. 100-115, 237-43.

33 Charles J. Peters to Thomas Baillie, 29 April 1843, REX/Pa, Surveyor General 32, 1843, Statistics, PANB; J. Allan to J. S. Saunders, 21 February 1840, REX/Pa, Surveyor General 22, 1840, to D. S. Allan, PANB; Statement of P. Moran and J. McGillivray before J. Allan, 9 July 1842, REX/Pa, Surveyor General 28, 1842, from D. S. Allan, PANB.

> in my District the only way I can possible get anything like a correct account is in the first place to get a list of persons supplied from the Merchants and others having parties working under them and in the spring to go round and examine as many of the Lots as possible that are in situation, you know you can [not] see the whole for if you go on many of the small streams there might be several hundred tons and m[an]y thousands of Lumber under the Ice and you would know nothing about it. To take an account of what you see and the markes on the same and when the river opens to go up and take an account of any raft you meat with which while running in the rapids is some times a dificult thing and puting a number on it and entering the quantity in your book . . . and also whoo it is going to as many parties have from one to thirty Joints or small rafts some gowing to one merchant and some to another . . . and it is doubtful wether you can see the owner untill it is all down and sometimes shiped after the run is over it is then necessary [to] see all the parties to get a Settlement and if I find the quantity they show to agree nearly with my book . . . I am satisfied . . . .[34]

By approving the divergence of field practice and written regulation, Thomas Baillie further complicated the task of forest administration. A year after his appointment, he ordered "indulgence" extended "to those who trespass[ed] through ignorance", because the boundaries of berths were rarely demarcated, and because the lumberers' working estimates of the quantities felled were often inaccurate.[35] Thereafter, many lumberers tried to excuse their infringements by contrite pleas of innocence.[36] Later, the Commissioner allowed lumberers until the end of the season on 1 May to take out additional licences for timber.[37] Those who cut more than their original licences allowed then claimed that they had applied for additional permits or that they intended to do so. This left the Deputies powerless to act before the season's end, and lumberers intent on evasion were able to make off with their illegal cut. Even the more cautious might leave illegally cut timber in the forest to be brought out the following season, when they tried the

34 Charles J. Peters to Thomas Baillie, 29 April 1843, *op. cit.*

35 Thomas Baillie to H. Munro, 26 April 1825, Letterbook (of Surveyor General and Commissioner of Crown Lands) 1825-29, MG46, University of New Brunswick Archives [UNBA]; and "Circular to the Deputies" from T. Baillie, 9 April 1836, Letterbook of Surveyor General and Commissioner of Crown Lands, May 1836-May 1838, RNA/C/3/2/3, p. 4, PANB.

36 See, for example, the comment of Andrew Inches, 29 May 1841, on a petition from Messrs. Williston: "they state that the trespasses were made in ignorance of the correct bounds of their licences and were therefore altogether accidental", RNA/C/3/2/4, p. 432, PANB.

37 For example, T. Baillie to Joseph Hunter, 3 April 1838, RNA/C/3/2/4, p. 21, PANB.

Deputies' credulity and tested the accuracy of their bookkeeping by insisting that the old timber was part of the previous year's licenced cut.[38] Baillie also allowed lumberers to balance the total quantity they cut against the aggregate entitlement of all their licences. In the strictest sense this practice ran counter to the very basis of the tonnage system by permitting the excess cut from one berth to be covered by the licence for another. More importantly, it prevented action against excess cutting until the quantities taken from all a lumberer's berths were known. In effect it made the Deputies more dependent upon surveys during the drive, and, as Charles Peters' account reveals, this compounded the problems of preventing trespass. In such circumstances, many lumberers had few qualms at attempting to deceive the officers.[39]

The Deputies' one advantage lay in their authority to seize timber on suspicion of trespass; once this was done the onus was with the lumberman to prove the legality of his operations.[40] Again, however, implementation was more difficult in practice than it appeared in law. By an Act of 1735, cases of trespass in the King's Woods could be heard in Vice-Admiralty Court, but before 1825 this was rarely done in New Brunswick.[41] In the eighteenth century, trespassers were arraigned before judges of the Supreme Court, but lobbying and influence sometimes led to their acquittal or to the abandonment of proceedings.[42] In the early nineteenth century many apprehended trespasses were settled on a compromise basis out of court.[43] Although Imperial regulations stipulated heavy fines for the destruction or illegal cutting of pine timber, there is no evidence that these were collected in New Brunswick. Before 1816 it seems that most apprehended trespassers suffered no more than the loss of their timber and the labour they had expended on it. After the establishment of Provincial forest control in 1816, cases were brought against trespassers in the New Brunswick Exchequer Court, but in one of these, shortly after Thomas Baillie's arrival in the province, a partisan jury found against the Crown. The decision was widely agreed to be unjustified and thereafter actions against trespass in the courts were largely re-

38 T. Baillie to Sir Howard Douglas, 12 November 1825, Letterbook (of Surveyor General and Commissioner of Crown Lands) 1825-9, pp. 23-4, UNBA.

39 T. Baillie to Joseph Hunter, 3 April 1838, *op. cit.*, and Evidence of Samuel Traviss, *op. cit.*

40 T. Baillie to B. R. Jowett, 7 November 1834, RNA/C/3/2/2, p. 174, PANB; and J. A. Beckwith to W. Harper, 6 July 1830, RNA/C/3/2/1, PANB.

41 The Act was 8 Geo I, c. 12, sect. 5; for a summary see L. H. Gipson, *American Loyalist: Jared Ingersoll* (New Haven, 1970), p. 80.

42 The New Brunswick Court Records are an unsorted and intractable source, but one example is outlined in the Minutes of the Supreme Court of New Brunswick, 21 July 1792, PANB.

43 For example see John Wentworth to Robert Pagan, 15 February 1804, vol. 49, PANS.

placed by less rigorous forms of proceeding.[44] As a result, it is difficult to generalize about the way trespassers were dealt with in New Brunswick after 1825. In some instances, bonds were taken against the payment of duties and the lumberer was allowed to take his cut to market; in others, timber was released immediately on payment of the duties; and in certain cases the removal of the timber was forbidden until permission for its release was obtained by petition.[45] Generally, the aim was to secure payment for timber taken by trespass with as little expense and inconvenience as possible. Provided that the trespasser was prepared to pay, or give bond for, duties which were usually double (but occasionally treble) the normal tonnage, Baillie apparently had no objection to releasing the timber. This was generally satisfactory to both the Crown and the lumberer, for recompense was exacted, the trespasser retained his timber, and the expense and delay of a court action were avoided.

Occasionally lumberers ignored the Seizing Officer's instructions or refused to pay the duties demanded, and then formal seizure of their timber often followed. Officially, the seizure of timber involved marking it with the "Broad Arrow", numbering each piece, recording the quantity seized and placing it in secure custody until the case was heard.[46] But individuals unwilling to pay the duties demanded in the first instance were generally reluctant to lose their timber by seizure and risk conviction in court. At times deputies intent on seizing timber were forcibly driven off.[47] If a seizure were made the timber was sometimes removed.[48] Even when watchmen were employed to guard seized timber, booms were broken open to set it adrift from the coves and ponds in which it was located. Trespass was difficult to prove if the timber could not be produced as evidence and, time and again, Deputies complained about the impossibility of keeping seized timber safe.[49] Indeed, the contempt for authority of a few lumbermen made the seizure and safe-

44 "Forest Trees of New Brunswick", by "W", Letter No. 7, *The Gleaner and Northumberland Schediasma* (Chatham), 18 October 1831.

45 The Crown Land Office Letterbooks (RNA/C/3 Series) and Executive Council Records (REX/Pa, Surveyor General) in PANB provide an indication of the variety of practices. For specific examples see J. A. Beckwith to B. R. Jowett, 2 September 1835, RNA/C/3/2/2, p. 296, and "Instructions to Deputy Akerley, 16 May 1837", RNA/C/3/2/3, p. 160, PANB.

46 J. A. Beckwith to B. R. Jowett, 2 September 1835, *op. cit.*

47 T. Baillie to Colebrooke, 27 May 1844, RNA/C/3/2/9, p. 101, PANB.

48 Deputy Mahood to R. Gowan, 30 July 1840, REX/Pa, Surveyor General 22, 1840, to Crown Land Office Staff and J. Allan to Surveyor General, 31 December 1841, REX/Pa, Surveyor General 25, 1841, from D. S. Allan, PANB.

49 Additional examples include Alexander McNeil to T. Baillie, 2 December 1844, REX/Pa Surveyor General 35, 1844, to CLO Staff; C. McCardy to J. A. Beckwith, 23 November 1832, REX/Pa, Surveyor General 13, 1832, to CLO Staff, PANB.

keeping of timber so troublesome in the 1830s that Thomas Baillie despaired of implementing effective control without a military guard at his disposal.[50] The difficulties are effectively illustrated by one incident. In 1838, during an inspection on the eastern limits of his district, Charlotte County, Deputy Mahood discovered that a number of logs had been cut illegally, sawed into deals and shipped away from Lepreau.[51] After spending a day unsuccessfully attempting to obtain a bond for double duties from the lumberer (Pendleton) and the sawmiller (Huntington), the Deputy went on to Saint John, some thirty miles away, "to try to find some of Pendleton's lumber". Three cargoes of Lepreau deals found on a wharf in Portland were seized and marked with the "Broad Arrow". Further enquiries revealed that other Saint John merchants had also purchased deals from Huntington, but searches of the wharves were unrewarding. Mahood then placed the Saint John Deputy, Jacob Allan, in charge of the deals in Portland, and returned to Lepreau to seize more logs, deals and boards. Yet, when he visited Lepreau a month later, Mahood discovered a schooner loading the seized items. The Deputy therefore seized all the sawn lumber at the mill, a total of 150,000 feet, but as before he had no means of ensuring compliance with his orders in this relatively remote location.

Even when evidence was obtained against trespassers who refused to pay additional duties, it was extremely difficult to bring them to trial and to secure a conviction. In an attempt to prevent such miscarriages of justice as had occurred in the Exchequer Court, cases of trespass brought after 1826 seem to have been heard in the Court of Vice-Admiralty. There are few records of this court's operation in New Brunswick — indeed, the Admiralty denied its existence — but the summaries of approximately a dozen cases heard late in 1838 do illustrate something of its activities.[52] In general, the quantity of timber involved was small, expenses were high, and delays were long. In two extreme cases, costs of over £15 were incurred in hearings involving fewer than twenty pieces of timber. One seizure of more than three hundred logs yielded a net profit of £5.10.0; in another, the seized timber was worthless after lying on the river bank during the protracted court pro-

50 T. Baillie to J. Harvey, 13 June 1839, Crown Land Office Letterbook, Letters to the Lieutenant Governor, MG H48, Repository, UNBA.

51 The details of this incident are in Deputy Mahood's Field Journal, No. 10, New Brunswick Museum. There is no record of the final outcome of the incident.

52 Captain Hamilton, R. N. to J. Stephen, 10 July 1846 denied the Court's existence (CO 188/97, Admiralty (Misc.), PAC), but the *New Brunswick Almanack*, 1832 (Alex. McLeod Publisher, n.p.) noted its operation in Saint John. See also T. Baillie to John Harvey, 29 October 1839, Crown Land Office Letterbook, Letters to the Lieutenant Governor, MG H48, Repository, UNBA. The relevant cases are among unsorted, unclassified Crown Land Records (RNA Series) in PANB.

ceedings, and it could not be sold. The impression from sparse evidence is that the Vice-Admiralty Court was an expensive and inefficient means of enforcing control of the Crown Forests. Moreover, the court derived its authority in this sphere from Imperial Acts referring to *pine* timber. As a result, it was "worse than useless" to bring proceedings against those who cut spruce or other trees without licence from the Crown Lands.[53] Again the law lagged behind the circumstances with which it had to deal, and, in the final analysis, the inadequacies of the Vice-Admiralty Court left the Deputies without the muscle of effective superior authority they needed to deal with trespassers who refused to pay the required duties on illegally cut timber.

Hard data by which to measure the effectiveness of New Brunswick's forest administration before 1844 are scarce and intractable, and no more than the most general estimates of the extent of detected and undetected trespass can be made. Perhaps the most comprehensive information relates to the late 1830s. During the winter of 1834-36, Seizing Officers reported the discovery of almost 42,000 tons of square-timber cut without payment of duties, but of this total some 3,500 tons were later shown to have come from licenced or granted lands. In the following year, 45,750 tons were recorded as the illegal cut, but there is no indication of how much of this proved to be from granted land or licenced tracts.[54] In any event, detected trespasses in both years were approximately 42,000 tons. As licences were taken out for some 92,000 tons of timber in the winter of 1836-37, detected trespasses perhaps amounted, on average, to 45% of the licenced cut of ton-timber in any one year.[55] Further, between 1836 and 1838, annual ton-timber exports from the colony ranged from about 220,000 to 275,000 tons.[56] In the absence of more detailed information about the total cut from the forest, these broad figures must serve as a measure of its exploitation. Insofar as the figures for licenced cut and detected trespasses on the one hand, and exports on the other, are comparable (and it should be remembered that winter logging

53 R. Power to Mr. W. Mahood, 11 September 1838, RNA/C/3/2/6, p. 18, PANB; also W. J. Layton to J. A. Beckwith, 20 November 1833, RNA/C/3/2/2, p. 3, PANB.

54 "Return of Timber and Lumber Reported by the Deputies as cut without payment of Duties in the years ending . . . 1 May 1836, 1837 and 1838 respectively", *Journals of the Legislative Assembly of New Brunswick,* Appendix, 1840. There are some inconsistencies in these data but they do allow broad estimates. It should be noted that reported trespasses and total timber exports were considerably lower in the economically less buoyant years of the early 1840s. See Returns of Timber and Lumber cut upon Crown Lands in the year ending 1 May 1841 from Deputies Allan, Garden, Hunter, McNeil, Peters, Carruthers, Layton and Mahood, REX/Pa, Surveyor General 25 and 26, 1841 and 1842, PANB.

55 Wynn, *op. cit.*, p. 99.

56 *Ibid.*, p. 89.

seasons and calendar years are being roughly equated), it may be suggested in broad terms that one third to one half of the ton timber shipped from the province each year was obtained from the Crown Lands under licence. Detected trespasses accounted for approximately 17% of the total "cut". If 10% of the ton-timber exports came from granted lands, it is not unreasonable to conclude that duties were paid on some two-thirds of the ton-timber taken from the New Brunswick Crown domain in this period. The situation in regard to sawlogs is less clear. A much larger proportion of the total cut probably came from granted lands, but detected trespasses in 1837-38 (approximately 12,000,000 feet) equalled the quantity licensed, and together these quantities accounted for a mere 20 - 25% of the exports. In all probability, the traditional emphasis on preventing trespass in the manufacture of pine ton-timber, the rapid expansion of sawn lumber output in the 1830s, and the exploitation of spruce this entailed, resulted in duties being levied on something less than half of the sawlogs cut from Crown Land at the end of the 1830s.

Yet it is remarkable that trespass and evasion were not more successful. Conditions favoured the lumbermen, and there is no doubt that some Deputy Surveyors were careless and inefficient. In fact, charges of corruption were levelled at Deputies more than once during the early nineteenth century. Before Provincial control was established, the Deputy, the magistrates, and other prominent citizens of Charlotte County were said to be so involved in illegal exploitation of the forest that they turned a blind eye to contravention of the regulations.[57] Nearly thirty years later, Deputy Matthew Carruthers was accused of "culpable negligence or of wilful and corrupt partiality" in the execution of his duty on the Miramichi; and, at intervals between, complaints against the Deputies were lodged by the public and by their superiors.[58] Day in day out across the years, however, diligent attention to duty was more typical of the Deputies' actions than was negligence. Especially after 1824, the dogged persistence and constant vigilance epitomised by Deputy Mahood at Lepreau and Deputy Peters on the Miramichi were characteristic of the Seizing Officers. Even Thomas Baillie's generally caustic pen found regular reason to commend the work of his subordinates.[59] By

57 MacNutt, *New Brunswick*, pp. 152-3; New Brunswick Executive Council Minutes II, 14 November 1817, PANB; J. Wentworth to J. Henderson, 4 May 1807, MG9 A1, vol. 21, f. 3, pp. 2153-4, PAC.

58 Investigation into Actions of Deputy Carruthers, Evidence and Report of Commissioners, 18 March 1844, Joseph Gaynor, J. R. Robertson, Asa Coy (Commissioners) to Matthew Carruthers, 13 January 1844, PANB (unclassified). John Carrick to Major General G. S. Smyth, (1819), *op. cit.;* T. Baillie to Deputy McNeil, 3 June 1844, RNA/C/3/2/9, p. 107, PANB.

59 For example T. Baillie to Deputy Arnold, 20 December 1843, RNA/C/3/2/9, p. 10, PANB.

and large the Deputy Surveyors were formidable and surprisingly effective adversaries of those who infringed upon the Crown's title to timber in New Brunswick.

In the years before 1844, the difficulties of controlling exploitation of New Brunswick's Crown Forests were manifest. Most basically, they were a product of the attempt to restrict the extent and quantity of resource use in an extensive, underdeveloped colonial environment. The demands of settlement, the need to develop social capital in the form of roads and farms and dwellings, and the importance of the forest resource as a staple export, compounded those shortcomings of the "Broad Arrow" system in North America that were already apparent by the time it was extended to the New Brunswick area. Yet when control was transferred to the province, the new regulations drew heavily on traditional modes of forest administration, and the framework they created was retained for almost three decades. With time, amendments adapted traditional principles more closely to colonial conditions, but the salient characteristic of forest control during this period was the manner in which the relatively small force of Deputy Surveyors achieved remarkable success in implementing authority on the ground. Through their efforts, cumbersome regulations were adapted with striking flexibility to exacting circumstances. Despite the great difficulties of their task, the Deputies were effective field campaigners in the struggle to control exploitation of the forest, and they ensured that the lumberer's "disposition . . . to pay as little duty as possible" did not become an easy habit.[60]

The Deputies' success in controlling the Crown domain was one reason for the survival of public forest ownership in the Province. The inherent conservatism of the Provincial population was also important. The Crown and its institutions were accepted by the most influential political and social figures in the Province as a necessary and vital part of colonial society, structuring and giving direction to its development. The anti-monarchical, "land for the people" rhetoric so common in the states to the south was virtually unknown in early nineteenth-century New Brunswick, and there was little impetus to alienate the Crown domain on this account. In addition the character of the New Brunswick resource base and the circumstances of the ordinary settler were influential in shaping attitudes toward the Crown domain. In a generally unpromising agricultural environment, lumbering offered the common man an opportunity to earn a living or to diversify his economic base, and there was a considerable lobby in favour of maintaining easy individual access to the forest. To a degree, the licence system did this,

60 Investigation into Actions of Deputy Carruthers . . . . Copy of Gilmour, Rankin and Company's letter to John Wilkinson, 26 May 1843, *op. cit.*

for even when tonnage payments were required in advance, a farmer and his sons might venture a winter's work in the forest on payment of perhaps £5, in the expectation of recouping that and more from the sale of their timber in the spring. In fact, a good deal of the opposition to strict control of the forest in the 1820s and 1830s reflects a concern that the opportunities of independent lumbering were being closed to persons with little capital. Thomas Baillie's declared interest in attracting the investment of large "capitalists" into the timber trade only increased that concern, and the opposition to his office. In a sense, and especially before 1825, opportunity for every man was identified with the maintenance of Crown title to the forest; the acquisitive individualism of agrarian liberalism that characterized the extension of the fee-simple empire in the United States was muted in New Brunswick by the greater harshness of the local environment.

Nonetheless, in the end, the fact that the Deputies rendered Crown forest control functional in difficult circumstances cannot be discounted. At a time when the United States had provided a lead in the rapid transferral of the public domain to private ownership, when success in the administration of the forest was measured by the revenues derived from it, and when Thomas Baillie was prepared to alienate large tracts of the Crown domain to lumberers, the Deputies' success in implementing Crown control of the forest lessened the incentive to change that might have come from official discontent at the ineffectiveness of the Crown's administration. Together, therefore, ideological, material and pragmatic considerations combined to preserve the pattern of Crown forest ownership in the province. In New Brunswick, as in Ontario, complex circumstances "sanctioned a set of resource laws that preserved the germ of an earlier collectivist, conservative conception of the state" in an environment in which many of the laws' original characteristics were inappropriate.[61]

61 H. V. Nelles, *The Politics of Development* (Toronto, 1974), p. 47.