THE BAR OF PRINCE EDWARD ISLAND 1769 - 1852

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In 1812, Ann Callbeck, widow of the first lawyer and attorney general of Prince Edward Island, gave some unsolicited advice to the Colonial Office with regard to the qualities necessary for a chief justice and for an attorney general. "We do not," she wrote, "require talents so much as honesty."[1] Her perception of the legal profession in the colony reflects the widely-held attitudes of the time and her comment could apply equally well to the bar as to the bench. Complaints about the quality of legal personnel on Prince Edward Island are numerous in the early history of the colony, and it is remarkable that in a small community the even smaller professional group should be responsible for so much turmoil. Some of the problems stemmed from the struggle to maintain the full panoply of a legal system in a colony whose population numbered only 10,000 as late as 1810. Other difficulties arose from the training, background and character of the individuals within the legal system.[2] It is these latter areas that this paper examines.

The period of study is from the founding of the colony in 1769 to the appointment of the first native-born chief justice in 1852, during which seventy-five men were called to the bar of the Supreme Court or the Court of Chancery as attorneys, barristers or solicitors.[3]

While the colonial bar in all colonies was seen as being a lesser establishment and offshoot of the courts of England, it would be a mistake to regard it as identical from colony to colony. Remarkable differences existed between the bar

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[1]Callback to Bathurst (12 October 1812): MG23 F1 vol.14, N.A.C. at 2885. Copy at the Prince Edward Island Public Archives and Records Office [hereinafter P.A.R.O.].

[2]This paper is based on information contained in a reconstituted Roll of Barristers. The roll was created from information contained in the earliest surviving Roll (beginning in 1836), Minutes of the Supreme Court, Minutes of the Chancery Court, Prothonotary's Account Books, Writ Books, Case Papers, newspaper reports and almanacs. Unfortunately these sources are generally limited to litigation, and a lawyer carrying on a conveyancing practice would not appear.

[3]Of those on the list, seventy-three were admitted to the Supreme Court and thirty-eight to the Court of Chancery. All but two solicitors in Chancery were also attorneys or barristers. In most cases, admission to Chancery followed within a few months of the call to the bar. There appears to be little differentiation in the documents examined with regard to the use of the term attorney or barrister. Until the late 1830s, there was no separate note made of admission as a barrister in the records, and the term appears to have been used to generally describe a senior or well-educated lawyer. I have used the terms somewhat loosely to describe any properly admitted legal professional.

of Prince Edward Island and those of neighbouring jurisdictions.[4] Until a relatively late date, few Island legal practitioners were native-born or trained. Prince Edward Island also offered few opportunities for professional advancement as judicial appointments were the excluusive patronage of British officials. As a result, the development of a professionalized group of lawyers was long delayed and a remarkable number of severe disciplinary actions were instituted from the bench.

Whether these factors which distinguished the Island legal culture from that of the neighbouring colonies resulted in substantially different approaches being taken to the role of law and lawyers within the society is difficult to ascertain, but it does appear that there was little consciousness of a developing legal profession in the period before 1850. The first professional organization, the Law Society of Prince Edward Island, was not established until 1876, more than fifty years after similar organizations were set up in New Brunswick and Nova Scotia and about eighty years after the creation of the Law Society of Upper Canada.[5] Many of the worst excesses of the early period can be blamed not on the bar but on the bench. For some periods there were no paid judges, and unpaid assistant judges with minimal knowledge and experience sat on the bench.[6] Some of the six who held the office of chief justice between 1769 and 1828 had no legal training and were under the influence and control of local lawyers from whom they received advice.[7] The open and partisan involvement of the judiciary in political activities was a notorious fact of life in the colony.[8] Such unexemplary behaviour often rendered judges open to censure, and correspondence between the Island and the Colonial Office was filled with complaints regarding behaviour of those on the bench. It was not until 1828, with the appointment to the bench of Edward James Jarvis, formerly of New Brunswick, that lawyers had a better behaviourial model or were

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[4]Many of these differences have become evident only because of a number of research projects recently undertaken in the region. See B. Cahill, "The Origin and Evolution of the Attorney and Solicitor in the Legal Profession of Nova Scotia" (1991) 14 Dalhousie L.J. 227, and D.G. Bell "Statistical View of Admission and Growth Patterns in the 19th-Century New Brunswick Legal Profession" (Atlantic Law and History Workshop, Fredericton, 1989) [unpublished].

[5]For details surrounding the circumstances in which the New Brunswick society was created, see D.G. Bell, "The Transformation of the New Brunswick Bar 1785-1830: From Family Connexion to Peer Control" in *Papers Presented at the 1987 Canadian Law in History Conference* (Ottawa: Carleton University, 1987) 240.

[6]For the most part the assistant judges were well respected. Chief Justice Cochran noted in 1803 that while they were not lawyers, "they are as well chosen and as sensible men as the country can furnish": Cochran to Sullivan (undated, 1803) CO226/19/217, P.R.O.

[7]The pattern of appointing individuals to the bench who possessed minimal professional training was not restricted to the colony of Prince Edward Island. See C. Greco, "The Superior Court Judiciary of Nova Scotia, 1754-1900: A Collective Biography" in P. Girard and J. Phillips, eds., *Essays in the History of Canadian Law* vol.3 (Toronto: The Osgoode Society, 1990) 42.

[8]*Ibid.* at 42-79.

subject to discipline which was not motivated by political infighting.

A detailed examination of the Prince Edward Island bar reveals factors which underline substantial differences between that colony and Nova Scotia and New Brunswick.[9] A first and major difference between the colonies is the number of men called to the bar, owing to the different population levels of the colonies. The total number of lawyers in practice during the period can be misleading for there is a substantial change in the availability of legal talent over eighty years. Figure 1 shows the relationship between the number of practising lawyers and the population in early 19th century Prince Edward Island.

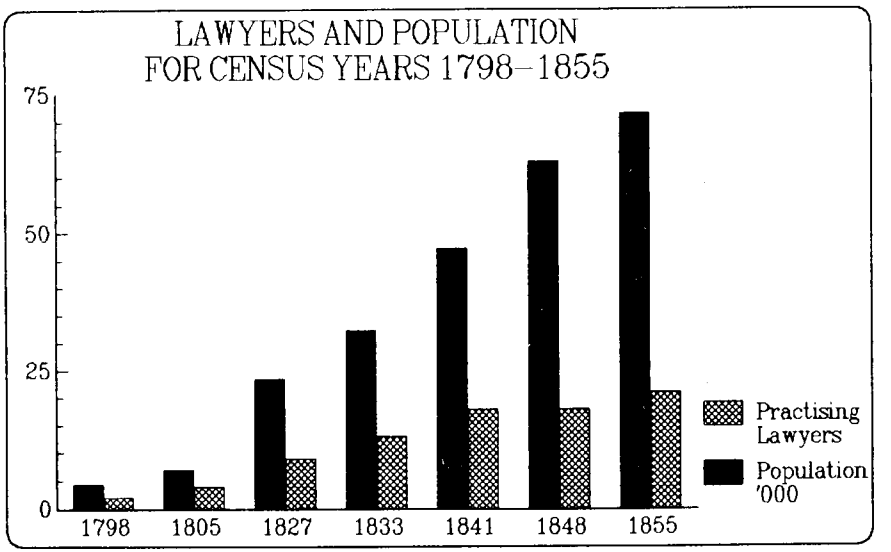

FIGURE 1

It is clear that in Prince Edward Island the number of lawyers practising in the courts did not keep pace with the increase in population. This situation was not the same as in the neighbouring colonies. In New Brunswick from the establishment of the bar, and in Nova Scotia from at least the early 19th century, there was an oversupply of lawyers. This led, at least in New Brunswick, to a large number of lawyers leaving the province or the bar when faced with what David Bell has

[9]To some extent this group has already received a good deal of study on an individual basis. At least thirty-five of the lawyers admitted to practise before the P.E.I. courts have received biographies in the *Dictionary of Canadian Biography* (Toronto: University of Toronto Press, 1981). These biographies, however, usually concentrate on political involvement and indicate little of the lawyers' professional activities.

termed a "decline from genteel poverty to contemptible penury."[10]

The ratio shown in figure 2 indicates a significant decline in the relative population of lawyers between the years 1798 and 1855. To place the data in context, the present relationship between these two figures is approximately one lawyer to every 1,000 of population. Comparable figures for New Brunswick have been computed by D.G. Bell.[11] Studies of other areas are still needed.

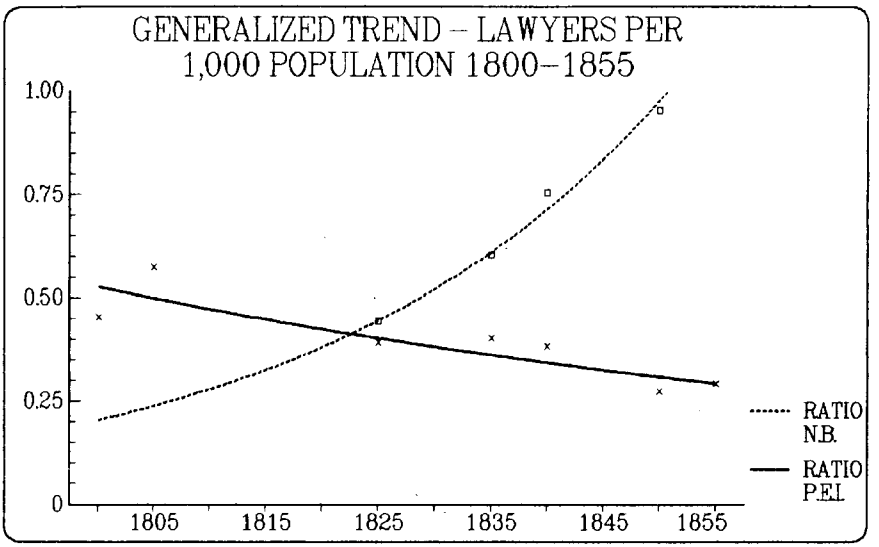

FIGURE 2

This "snapshot" approach in census years fails to indicate that during the first forty years of the colony the legal profession, in spite of its relatively high lawyer/client ratio, was unable to provide effective service. For long periods, the Island was left with only one practitioner and even when the rolls contained more than one, the prolonged absence of attorneys pursuing legal or personal business off the Island meant that actions had to be halted until their return. There are many petitions for adjournments similar to the following:

> That your petitioner and a great number of people living at a great distance to the Eastward have been sued by Collector Townshend and many of them came in this stormy weather a great part of the way in order to apply for putting off until a Lawyer should come to the Island, while some others were under much difficulty and were unable to come. They then came to this end of St. Peter's Bay but some

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[10]*Supra*, note 5 at 243. See also D.G. Bell, "Paths to the Law in the Maritimes 1810-1825: The Bliss Brothers and their Circle" (1988) 8(6) Nova Scotia Historical Review 28.

[11]Lawyers per 1,000 population: 1824 – .44, 1834 – .60, 1840 – .75, 1851 – .95: D.G. Bell, *supra*, note 3 at 6-7 (see table).

being frostbitten and hearing that the ice and snow in the River was impassable and dangerous, your petitioner agreed to endeavour walking and in the name of himself and all the rest to pray the Honourable Court to put off all the causes until the next term for the want of any Lawyer in the Island but the Plaintiff's.[12]

A further distinction must be made between the number of admissions to the bar and the number of practising lawyers in the colony. Owing to the proximity of the Island to its neighbours and the early establishment of reasonable communication links by packet it was not difficult for lawyers from other jurisdictions to cross to the Island. Admission to the bar appears to have been recognized in the colony as a courtesy to be extended to fellow members of the profession. All legislation regarding the qualification for legal practice provided for easy admission for the members of the bar of other jurisdictions, although by the 1840s some restrictions were beginning to appear. Consequently, the roll of barristers and attorneys for Prince Edward Island contains an extremely large number of lawyers who had been called to the bar of New Brunswick or Nova Scotia and who were subsequently admitted to the Island bar during the course of a visit to the colony. While there were some from other colonies who were engaged to handle cases on the Island, in general their appearance in the courts was rare. More frequently there is no appearance in court save for the ritual of taking one's seat on admission. It is difficult to establish if there was a pool of clients unsatisfied with the abilities of local attorneys, but few cases handled by off-Island lawyers proceeded to the stage of documentation. The prothonotary's account books and Supreme Court Case Papers, which have been used as the basis for establishing the activity of the practising bar, rarely record the issuance of writs or appearances naming out-of-colony lawyers. The list of barristers and attorneys appearing in the annual almanacs never includes non-resident attorneys. The practice was not necessarily reciprocal, for very few Island lawyers appear on the Nova Scotia rolls and no record has been found of a resident Island lawyer who was called to the bar of New Brunswick.[13]

Non-resident admissions appeared first in 1819 and were especially popular during the 1830s. Of the twenty-six lawyers admitted to the bar during that decade over forty per cent were non-resident. In one day in the summer of 1836 four men were called to the bar. Of these, two were leading lawyers from Halifax, one was from the Miramichi and the fourth was admitted as having been previously a "Writer to the Sygnet of Scotland." Of these, only the last established a practice in the colony. Lawyers in Pictou also seem to have operated to a limited extent

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[12]Supreme Court undated case papers: RG6, P.A.R.O.

[13]There appear to be only two instances before 1850 where a lawyer was admitted to the Prince Edward Island bar and later to the Nova Scotia bar. William Roubel was admitted in PEI in 1808 and in Nova Scotia later the same year. Henry Aubrey Grantham is the only Island trained-lawyer whose name appears on the Nova Scotia roll, having been called in PEI in 1833 and in Nova Scotia the following year. See PANS RG39, Series M, Vol 24a.

on Prince Edward Island.[14] For example Jotham Blanchard, a Pictou attorney, was admitted in P.E.I. in 1830 and appeared for Island clients on an occasional basis during several later years. Of the seventy-five lawyers called to the bar between 1789 and 1852, as many as twenty-two may fall into this distinguished visitor category. This group includes well-known individuals such as William Young, James William Johnston, John William Ritchie, Adams G. Archibald and Laurence O'Connor Doyle of the Nova Scotia bar. New Brunswick attorneys admitted in P.E.I. tended to hail from the Miramichi. This group includes William Carman, John A.S. Street and Moses H. Perley. The sole Newfoundland attorney on the list, George James Hogsett, was admitted *in absentia* in 1846 as he had to leave the Island following his petition, but before being able to take his seat at the bar in order to respond to a report that his office, and indeed much of St. John's, had burned to the ground. He apparently never returned to P.E.I.

In addition to those on the roll from other colonies, there are also men listed who were resident on Prince Edward Island but who did not practise law in the colony after their admission. Some, such as John Woodman, appear to have joined the bar after a practice in England and may have retired to Prince Edward Island. Others, such as Henry Aubry Grantham, articled on the Island and then left for other jurisdictions following their call.

Qualifications for the bar changed considerably during the eighty years under consideration. Initially no real criteria existed. Until 1808 only one locally-trained lawyer had been admitted and he had studied for a number of years under the first attorney general. With only one other exception, the eleven lawyers called to the bar before that date were trained and had been admitted in other jurisdictions before coming to Prince Edward Island. In 1788 Walter Patterson, recently dismissed as governor, petitioned the Court (temporarily without a single judge with legal training) to be admitted. His petition stressed his direct knowledge of the constitutional law of the colony:

> That the petitioner from the inevitable consequences of his situation for near twenty years past has been necessitated very much to contemplate the Laws and Constitution of his Country and still wishing the public should recap some advantage from the fruits of his study he is desirious of being admitted to practise as an Attorney in your Court and if your Honors shall see fit to grant his request ... .[15]

The three untrained judges were happy to comply and duly recorded his admission

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[14]The practice may have been reciprocal. Pictou was the closest port to the Island, and some of the Island attorneys may well have had clients and appeared in the courts there. For example, James Bardin Palmer was accused of having the lieutenant governor arrange sessions of the Island's Chancery Court to allow Palmer time to visit clients in Nova Scotia.

[15]Petition of Walter Patterson: Supreme Court Admission Papers (22 February 1788): RG6, P.A.R.O.

on the basis of his great knowledge of the intricacies of the Island's past and his quarrels with the colonial administration.[16] There is no indication that Patterson ever practised and the whole effort may simply have been an attempt to recover some semblance of his former prestige.

The lack of specific qualifications for professional entry became a problem in 1807. Owing to the absence from the colony of Chief Justice Colclough, the Supreme Court was left in the hands of two unpaid and untrained Assistant Judges, Robert Gray and James Curtis. At the time there were only three attorneys in the colony, one of whom was serving as the Attorney-General and another as Clerk of the Court. The Lieutenant Governor, J.F.W. DesBarres, "wanted to throw open the bar, that all inclined might try their skill and merit have its reward as those who were unequal to the task would of course go without business."[17] His method of assuring this degree of free enterprise in the law was to issue licences to practise to three individuals who had no legal training.[18] McGowan, the Attorney-General, and Stewart, the Clerk of the Court, argued for two days in court against the petition for admission of one of the licensees, but their position was somewhat undermined by the fact that the third member of the bar, James Bardin Palmer, (who had been issued a licence in 1802) had moved for the admission of the applicant holding the Governor's licence. Judge Gray made it clear that he was not about to cross the governor from whom his position and patronage flowed and suggested that, even if the three were admitted, when Chief Justice Colclough returned he could easily disbar those not suitable. The dilemma was resolved by the refusal of the other Assistant Judge to agree with Gray.[19] Following the return of Colclough, in Michaelmas term 1808, a rule of Court dealing with the admission of lawyers was handed down by the chief justice.[20] The rule required the applicant for admission to be twenty-one years of age, recommended to be of "good morals and fair character," to have attended as a student for four years and recommended to the court as qualified.[21]

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[16]Supreme Court Minutes (22 February 1788): RG6, P.A.R.O.

[17]McGowan to Stewart (15 April 1807): Accession 4082, P.A.R.O.

[18]Four licences to practise law had in fact been issued between 1787 and 1802, but only two of the licensees appear to have been called to the bar: Colonial Secretary's License Book vol.1: RG7, P.A.R.O.

[19]McGowan to Stewart (15 April 1807): Accession 4082, P.A.R.O.

[20]The Rule of Court of 1808 was used as the basis of admission in at least one case after the passage of legislation: Admission of Theophilus Stewart, Supreme Court Minute Book (29 June 1825): MG53 229, N.A.C. See also Theophilus Stewart, Admission Papers: RG6, P.A.R.O. (contains a copy of the Rule of Court).

[21]The 1812 rules of the Chancery Court generally followed the rules of the High Court of Chancery at Westminster with some additions to suit the circumstances of P.E.I. Rule fifteen called for the master of the Chancery Court to exercise particularity in examining those applying to be solicitors of the court: 2810/154, P.A.R.O.

The first legislation concerning legal qualifications, passed in 1817, recited that it was of importance that lawyers "should be regularly educated and property qualified." Admission to the courts required four years of articles with an Island barrister, attorney or solicitor or evidence of having been called or qualified to be called to the bar in Great Britain or Ireland or the colonies or having been called or qualified to be called as an attorney or solicitor of the courts of Great Britain or Ireland or the colonies. Every candidate was also required to be twenty-one years of age and to undergo examination before the court.[22] In 1832, Chief Justice Jarvis added to the requirements of this legislation by enacting a general rule of court that no person could be admitted without first having produced a certificate of good moral character. The legislation was overhauled in 1836, when the articling period was extended to five years and Jarvis' requirement for good character included in the act.[23] An 1842 amendment provided for the "more speedy admission to the Bar of Graduates of Colleges" by reducing the articling period in such cases to four years. This option was available only to those who were natives of the colony or who had resided there for at least two years.[24] Legislation in 1848 spelled out for the first time the required areas of knowledge on examination.[25] To become an attorney, a student had to master the "elementary principles of the law of Real and Personal Property, Forms of Action, Pleading, Evidence and Practice." This legislation also restricted the admission of non-resident practitioners to counsel from other colonies who could show not less than five years standing as a barrister in one of the colonial courts or one of the courts at Westminster.[26]

The legal training available on Prince Edward Island for most of the period

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[22]The legislation may have forced some to offer legal services outside the courts. Charles Stewart advertised in 1819 that he had opened a "General Conveyancing Office" and that "all matters relating to that Branch of the legal Profession would be executed with precision and dispatch": *P.E.I. Gazette* (6 November 1819).

[23]*An Act to amend the Law relating to the Admission of Barristers, Attorneys and Solicitors; and to regulate the Admission of Advocates and Proctors in the Courts of Vice Admiralty and Court of Probate of this Island*, 6th William IV. 1836, cap.13.

[24]*An Act to amend an Act passed in the sixth year of the reign of His Late Majesty King William the Fourth entitled "An Act to amend the Law relating to the Admission of Barristers, Attorneys and Solicitors; and to regulate the Admission of Advocates in the Courts of Vice Admiralty and Court of Probate of this Island"*, 5th Victoria. 1842, cap.21.

[25]*An Act to repeal the Acts for the Admission of Barristers, Attorneys, and Solicitors, and to make other provisions in lieu thereof*, 11th Victoria. 1848, cap.31.

[26]Several pieces of legislation created special situations to meet the needs of individuals. The 1836 Act stated that any prothonotary or person who had clerked to the prothonotary may be admitted. Only Charles Desbrisay met these qualifications and he was admitted shortly after the passage of the legislation. The 1848 legislation had a clause allowing for the admission of any person who had clerked for two years and then attended for six months as a student of a special pleader or barrister in London. This was hardly the usual route for students in the Colony.

under consideration was extremely limited. It appears that few of the gentlemen of the law actually took articled clerks until the 1820s and the quality of legal education was suspect. Governor DesBarres wrote in 1810 that, "A colonial education, and particularly in this infant place, can afford but little knowledge in theory and still less in practise."[27] Part of the problem was, as DesBarres noted in the same letter, that "The Profits of the Profession of Law will not maintain a Gentleman."

The slow increase in the size of the bar was largely the result of the arrival of legal personnel trained in Great Britain or in other colonies. The background of lawyers who immigrated to the colony is extremely diverse and contains individuals from the Irish and Scots bars as well as those whose prior experience and training had been in Westminster. Figure 3 shows that the number of those trained from within the profession of the colony did not equal those who had come already trained until after the mid-1830s. As late as 1850, one quarter of the practising bar had received their training elsewhere. Of the lawyers admitted between 1769 and 1852 who were active in practice for at least one year in the colony, over 45 per cent were trained off the Island. If we examine this group for only the period before 1835, the number rises to 60 per cent. With great diversity of background and training, and drawing on the Scots, Irish, English and colonial bars it is not surprising that the emergence of a legal culture on Prince Edward Island was delayed.

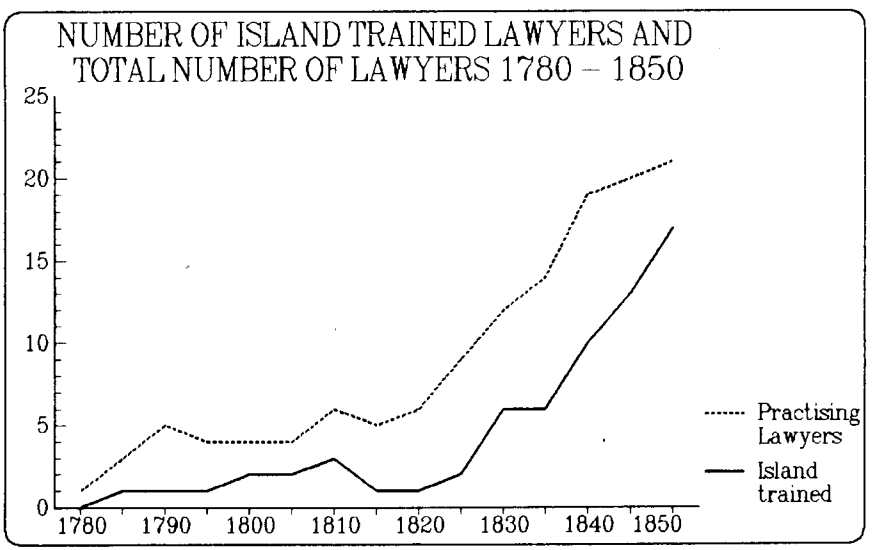

FIGURE 3

[27]DesBarres to Liverpool (5 July 1810): CO226/25/11, P.R.O.

This situation contrasts sharply with that of New Brunswick. In that colony, additions to the practising bar were almost entirely from within. The first generation of lawyers, all of whom were Loyalists, operated in a relatively closed society. Admissions to the bar were characterized by local training and most of the candidates were connected to the existing elite of the colony. Far from being a temporary situation, this pattern continued throughout the history of the colony and the appearance of a lawyer who had not been raised and trained in the colony was unusual. Succession to legal offices was internal and, although appointments to both the bench and offices such as that of attorney general were bitterly contested, the Colonial Office rarely departed from the principle of appointing and promoting those whose talents were locally recognized.

In Prince Edward Island, the local bar was much later in developing as a source for legal talent for higher offices. It was not until 1852 that the first chief justice to come from within the legal establishment of the colony took his place on the bench. The first professional assistant judge had been named only four years earlier and, although the post went to a resident member of the bar, J.H. Peters, he was by no means a senior barrister, having come to the colony only in 1838 after having been admitted to the bars of Nova Scotia and his native New Brunswick. Nor was the position of attorney general considerably different. With the exception of Charles Stewart (who served from 1810 to 1813) and a few short-term acting appointments, the five attorneys general appointed during the sixty years from 1769 to 1829, had received their legal training and their initial call to the bar in other jurisdictions. Several took up residence only after their appointment. The offices remaining for the local bar were of considerably lesser importance: clerk of the Supreme Court, prothonotary, coroner, registrar of the Court of Chancery, and solicitor general.

While a judgeship was clearly an unrealistic expectation for the members of the bar, by the second decade of the 19th century the possibility of appointment as attorney-general was creating deep rivalries within the Island legal community. The infighting was especially bitter following the admission to the bar of William Johnson in 1812. James Bardin Palmer, an Irish attorney who had come to the colony in 1802, held the post briefly under Governor DesBarres. He protested that the Scottish training of Johnson did not provide the necessary qualifications and objected to his being admitted as an attorney. The following year Johnson was appointed Attorney General, precipitating a life-long hatred and rivalry between the two.

As in New Brunswick, a high proportion of the early members of the bar soon left the colony. Some moved on when it became apparent that their expectations would not be met. John Wentworth, for example, was a member of the prominent Loyalist family from New Hampshire which achieved prominence in Nova Scotia. His legal qualifications were unquestioned, and in 1799 he was appointed Attorney-General of Prince Edward Island. Delay in his arrival had resulted in

the appointment of Peter MacGowan, acting Attorney-General, to the permanent position as it had been assumed that Wentworth's non-arrival was owing to a disinclination to take up the post. Wentworth left the Island the following year and made his way back to the United States. Others left as a result of involvement in the labyrinthine political manoeuverings in the Island's tiny administration. Joseph Aplin was particularly vehement in his departure, as his letter of resignation as Attorney-General shows:

> If the want of bread does not overrule my inclination I shall never see the Island again. Contention and strife whenever or wherever I have happened to meet them have been sore enemies of my peace of mind. I have even considered them as the deadly poison of Social Enjoyment. Although I have never been able to discern anything on the Island worth quarrelling about yet I have seen more implacable Enmities in it than I have ever met with in the Whole Course of my life. My wish is to get rid of the Island and all its quarrels.[28]

Other lawyers disappear from the records after a few years of practice but show up elsewhere in the region. Robert Hatton appears in the court records for three years between 1811 and 1813, but at the time of his death he was practising in Pictou.[29] John Lobban practised for at least nine years in the early part of the 19th century and then removed to the Miramachi. John and Philip F. Little both moved to Newfoundland in the mid-1840s after a few years before the courts of Prince Edward Island. William Waller left the Island in the mid-1820s, but ten years later was secretary of the Prince Edward Island Association in London. Until full law lists are established for other jurisdictions it is difficult to know the extent of legal migration between colonies. Even more difficult to track are those who left the profession entirely. Edward Buxton, for example, was one of a party of Islanders who left for the California gold fields in 1849 and appears never to have returned.

The record also shows a remarkable number of times when the lawyers had no choice with regard to their leaving the bar. Being struck from the roll was a harsh punishment, often leaving a lawyer with no means of livelihood. It is surprising that the number of disbarments on Prince Edward Island is as high as it is, as it was a rare occurrence in New Brunswick and Nova Scotia during the same period.[30] While the number in itself is not high – only four cases – the circumstances in each case reveal much of the state of the colonial profession.

Daniel Grandin first appears in the court records of the colony in 1785. He

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[28]Executive Council Minutes (6 February 1798): RG2, P.A.R.O.

[29]He does not, however, appear on the Nova Scotia roll of barristers or of attorneys.

[30]In Nova Scotia, in spite of a much larger number of lawyers, only one incident of disbarment is recorded in the first century of the bar. The "judges affair" which began in 1787 is summarized in Cahill, *supra*, note 4.

was only the fourth lawyer to practise in the colony and at the time of his call to the bar the profession consisted only of himself, Attorney-General Phillips Callbeck and Charles Stewart, son of the chief justice. Grandin was charged with assault in 1785.[31] In 1788, he was charged with assault on the high sheriff and was fined five pounds following a guilty plea.[32] In 1790, he faced two more assault charges and later that year was charged with being "a common Barrator." It was alleged that he created:

> ... diverse Quarrels, Strifes, Suites, and Controversies among the honest and quiet liege Subjects of our lord the King, then and there did move, procure, stir up, and excite to the evil example of all others in the like case offending and against the peace of our said Lord the King... .[33]

He was found not guilty following a Supreme Court trial in July, 1790.

The following year the Attorney-General, Joseph Aplin, brought a complaint before the court alleging Grandin was guilty of "gross misbehaviour by insulting and abusing the officers of the court... ." He had spoken contemptuously of the justices of the court at a meeting with the attorney-general and others. Grandin professed to have no recollection of the insults. The court ruled that:

> ... having taken into consideration the repeated misbehaviour of the said Danl. Grandin on many former occasions and even during the present examination, in having often used very unbecoming, indecent and insolent language at the Bar, as well as having been convicted in this Court on several Indictments for Breaches of the Peace, are unanimously of opinion that he, the said Daniel Grandin is a very improper person to continue a member of this Court, and therefore order his name to be struck out of the list of Attorneys thereof... .[34]

In addition, he was committed to jail until he could raise a recognizance of fifty pounds and he was bound to keep the peace, especially towards Joseph Aplin. Grandin appears to have left the Island shortly thereafter and by 1793 was reported to be living in New Jersey.

William Roubel had been admitted as an attorney of the King's Bench in 1801, but his practice did not flourish.[35] He answered a request from merchant John Hill to come to Prince Edward Island and, following his admission to the bar in 1808, became involved in the political life of the colony. He was one of the unsuccessful applicants for the post of attorney-general when it became available in 1810. In the bitter partisan politics revolving around the administration,

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[31]Supreme Court Case Papers (1785): RG6, P.A.R.O.

[32]Supreme Court Minute Book (1785): RG6, P.A.R.O.

[33]Supreme Court Case Papers (1790): RG6, P.A.R.O.

[34]Supreme Court Minutes (1791): RG6, P.A.R.O.

[35]"William Roubel", *supra*, note 8 at 622.

including Chief Justice Caesar Colclough, Roubel was an outspoken critic. In an affidavit prepared for the lieutenant-governor justifying the activities of a political group called the Loyal Electors, Roubel complained that the judges of the Supreme Court were involved in party politics to a high degree and that one of the unpaid assistant judges, James Curtis, had interfered with elections.

The chief justice obtained copies of this and other affidavits and the attorney-general filed them in court in October, 1811. Roubel refused to apologize and the court ordered that he be struck off the roll for contempt. Although he apparently continued as a solicitor in the Court of Chancery, he soon left the colony. For several years he tried to interest the Colonial Office in the defects in the administration of justice in the colony and to be restored to the roll.[36] The colonial secretary refused to allow the charges made against the colony's administration to be taken to the Privy Council or to interfere with the decision to have Roubel disbarred.

James Bardin Palmer was a former Irish attorney who had fallen on hard times before coming to Prince Edward Island.[37] In the course of the petty political machinations in the colony Palmer was identified by the Lieutenant Governor, Charles Douglas Smith, as a leading member of the Loyal Electors, whom Smith blamed for much of the discontent in the colony. While in England in 1813, Palmer was contacted by creditors of John Hill, Roubel's initial patron, concerning fraudulent concealment of assets during Hill's bankruptcy in 1807. When Palmer took steps to prove these charges, Hill combined with Attorney General William Johnson to bring eight charges of professional misconduct against Palmer, some of which went back almost ten years. Johnson was no friend of Palmer as the latter had questioned the suitability of Johnson's Scottish training in his efforts to gain the post of attorney-general. The charges were brought in the Court of Chancery, where Lieutenant Governor Smith presided as chancellor, rather than in the Supreme Court. Palmer was given no time to prepare a defence and in November, 1816 was struck off the roll of solicitors. A compliant chief justice then followed the lead of the governor and Palmer was struck off as a barrister of the supreme court shortly thereafter. The governor, not surprisingly, refused his request for an appeal to the King-in-Council and, within two months Palmer left the colony to seek to have the decision overturned. For more than two years he pressed his case and, at the same time, managed to undermine Johnson's credibility by charging that the attorney-general had not accounted for

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[36]As late as 1839, twenty-eight years after the incident, Roubel was still trying to be reinstated: Roubel to Normandy (6 July 1839): CO226/59/257, P.R.O.

[37]Palmer practised for more than thirty years in the colony and was actively involved in partisan politics for the entire period. He was, however, a capable lawyer and was responsible for some of the improvements made in the legal system during the time. See "James Bardin Palmer," *supra*, note 8 at 565.

funds for a large estate for which he was agent. Finally, in January, 1819, Palmer was ordered reinstated on the roll of barristers. The Colonial Office law officer who had reviewed the case indicated that while Palmer was not beyond reproach, he was not guilty of any action which warranted disbarment.

In 1831, William Charles Monckton came to Prince Edward Island with fine credentials. He was "late of Lincoln's Inn" and had been admitted as an attorney of the Court of King's Bench in London.[38] With the exception of a matter concerning his alleged non-support of an illegitimate child[39] he appears to have practised without incident until 1835, when he was found guilty of assault.[40] At the same time he found himself in financial difficulties, and in September he was arrested for debt. He chose to invoke his privilege as a barrister and solicitor of the court and moved for discharge on the filing of bail. Chief Justice Jarvis allowed the motion.[41]

In November, Monckton was again arrested on a debt and spent the night in gaol. The following morning the solicitor general appeared on Monckton's behalf and again asked for his privilege as an attorney on the grounds that his obligation to his clients would be compromised. This the chief justice ordered and he was released on common bail. The following day, however, Jarvis made an *ex parte* order suspending him from practice, reciting that:

> ... whereas satisfactory proof is adduced before me that there exist (and for some time past have existed) only one or two causes in which the said William Charles Monckton pretends to act as an attorney, and that he suffers his name to remain as such merely for the purpose of taking an undue advantage of his professional character, to protect himself against the just claims of his creditors, and not for the benefit of his clients, which conduct I deem highly derogatory to the profession of an attorney, unjust and fraudulent.[42]

This order effectively barred Monckton from practice in any of the colonies, for a general requirement at the time was a certificate of good character and good conduct, which Jarvis would scarcely have granted under the circumstances.

Monckton appealed to the King-in-Council as the order of the court was not the subject of a writ of error. Lord Wynford held that Jarvis had acted improperly and that if any grounds existed which would suggest that Monckton was not a *bona fide* practising attorney he should not have been protected from arrest. However,

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[38]Supreme Court Minutes (25 October 1831): RG6, P.A.R.O.

[39]See the affidavit of Anne Dogherty, Supreme Court Case Papers (2 July 1834): RG6, P.A.R.O.

[40]Supreme Court Minutes (6 July, 10 July 1835): RG6, P.A.R.O.

[41]Supreme Court Minutes (15 September 1835): RG6, P.A.R.O.

[42]*In Re Monckton* (1837), 1 Moore 454.

to suspend him was excessive. It was therefore ordered that the suspension order be rescinded.

When Jarvis was informed of the decision his concern was not that his decision had been overturned, but that his authority to improve the general character of the bar had been weakened.[43] In transmitting Jarvis' letter of concern, Lieutenant Governor Fitzroy agreed with the chief justice's account of the facts and stated that "instances have come under my own observation fully justifying the general complaint he makes of the disgraceful intemperance which notoriously characterizes many of the members of the Bar in this Island... ."[44] This concern with the general character of the bar had manifested itself earlier in Jarvis' rule of court that any petitioner for admittance have a certificate of good character and his concern that on his arrival on the Island he had found that members of the bar were "much given to habits of intemperance." Jarvis had for nine years been improving conditions and had dealt with many attorneys in a severe manner, but Monckton was the first with whom he had had to deal in court.[45] Monckton returned to the Island and took up a much diminished practice, but appears to have left the colony by 1840.

The suspension or striking off the roll of an attorney happened so seldom that it is impossible to generalize with regard to the discipline maintained by judges within their courts. No doubt there were, as Jarvis suggests, instances when a verbal warning or comment from the judge would have served as an indication that improper behaviour would not be tolerated. The cases of Grandin and Roubel are clearly grounded in contempt, although Grandin was also guilty of more generalized behaviour unbecoming an attorney. The case against Palmer is somewhat more blatantly political although based on a case of defrauding a client. Monckton used his professional position to avoid legal process and his suspension can more clearly be seen as an example to the profession of an elevated standard of behaviour. Comparative studies must be undertaken of professional discipline before more can be said with regard to this aspect of the study of the Island profession, but even at this early stage it can be seen that there are significant differences between the colonies of Prince Edward Island and New Brunswick with regard to the evolution of the legal profession.

By mid-century the bar of Prince Edward Island was becoming more like the bars of the larger neighbouring colonies. The bench was to a great extent depoliticized after the appointment of Chief Justice Jarvis, at least to the extent that judges made some pretence of abandoning party politics after appointment.

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[43]Jarvis to Fitzroy (27 September 1837): CO226/54/238, P.R.O.

[44]Fitzroy to Glenelg (1 October 1837): CO226/54/238, P.R.O.

[45]Jarvis to Fitzroy (27 September 1837): CO226/54/238, P.R.O.

Training and education of candidates for the bar was taking conventional paths and most of the names of articling law students would be recognizable in the community. With the growth of a native-born bar, the colony became less of a place of opportunity for those dissatisfied with practice elsewhere. While self control of the profession through a law society was still twenty-five years in the future, cases of judicial discipline of lawyers fell off dramatically. By the middle of the century the bar of Prince Edward Island was coming of age.