

## David William Smith Surveyor as State-Builder

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Résumé de l'article

*David William Smith, le premier arpenteur général du Haut-Canada, le deuxième plus grand propriétaire foncier à Pickering, et, à un moment donné, le plus grand propriétaire de terrains qui constituent aujourd'hui Ajax, était l'administrateur le plus constant du lieutenant-gouverneur John Graves Simcoe. Il était également l'architecte principal du nouveau système provincial d'attributions de terres. Toutefois, ses nombreuses réalisations sont souvent négligées. Dans cet article, nous chercherons à redonner à Smith la place qui lui revient de droit en tant qu'acteur clé dans l'histoire du développement du Haut-Canada.*

# David William Smith:

## Surveyor as State-Builder

By Christopher Alexander

Over ten years, David William Smith oversaw surveys of nearly one quarter of Southern Ontario's pre-Confederation townships. He was speaker of parliament; one of Upper Canada's first lawyers and judges; trustee of the Six Nations and friend of Joseph Brant; original planner of the Town of York; and a provincial militia founder. The surveyor general's office he built up became the professional core of Upper Canada's new administration. Without the surge in immigration to Upper Canada in the 1790s galvanized by his work, the new province might not have withstood the challenge of invasion in 1812.

### 'Whither Fate Calls': Soldier from the West Country

David William Smith was born in the cathedral city of Salisbury, Wiltshire, on 4 September 1764 – not twenty months after the Treaty of Paris ceded

Canada to Britain.<sup>1</sup> His father John Smith, an officer in the 5<sup>th</sup> Regiment of Foot from St Thomas' parish in Salisbury, had married Anne Waylen, fourth daughter of William Waylen of Rowde Hill and Devizes, about 25 miles north-east of Salisbury, on 21 January 1760 at the Church of St Mary the Virgin in Devizes. David William Smith was their only child.

John Smith was a veteran of two major wars. He began the Seven Years' War in 1756 as an ensign, fighting with the 5<sup>th</sup> in Germany, France, Ireland and the West Indies.<sup>2</sup> During the American War, he served as a captain in Massachusetts, New York and New Jersey, including at the bloody Battle of Bunker Hill on 17 June 1775, where the 5<sup>th</sup> lost two dozen killed. The 5<sup>th</sup>'s commanding officer at this battle was Colonel Hugh Percy, son of the Duke of Northumberland, a wealthy peer who had famously patronized Canaletto. Percy, who had led the

<sup>1</sup> S.R. Mealing, "Smith (Smyth), Sir David William" in *DCB*, Volume VII (1836-1850).

<sup>2</sup> Toronto and Region Conservation, *Carruthers Creek State of the Watershed Report*, p 12.

## *Abstract*

*David William Smith, the first Surveyor General of Upper Canada, the second largest landowner ever in Pickering Township, and, at one time, the owner of most of the land that is now Ajax, was Lieutenant Governor John Graves Simcoe's most consistent administrator and the principal architect and implementer of the province's new and complex land-granting system. However, his many accomplishments have been largely overlooked. This article seeks to return Smith to his rightful place as a key shaper in early Upper Canada's fortunes.*

**Résumé:** *David William Smith, le premier arpenteur général du Haut-Canada, le deuxième plus grand propriétaire foncier à Pickering, et, à un moment donné, le plus grand propriétaire de terrains qui constituent aujourd'hui Ajax, était l'administrateur le plus constant du lieutenant-gouverneur John Graves Simcoe. Il était également l'architecte principal du nouveau système provincial d'attributions de terres. Toutefois, ses nombreuses réalisations sont souvent négligées. Dans cet article, nous chercherons à redonner à Smith la place qui lui revient de droit en tant qu'acteur clé dans l'histoire du développement du Haut-Canada.*

relief column at Lexington and Concord, was absent at Bunker Hill, but later commanded a division at the Battle of Long Island on 27 August 1776.

John Graves Simcoe arrived in Boston two days after the battle; he probably met Captain John Smith at this time. At Boston, Northumberland developed a lifelong bond with *Thayendanegea*, the Mohawk war chief and statesman Joseph Brant, who stayed with the Duke at Syon House later that year. In 1779 Brant obtained a British commission and in 1780 became 'Captain of the Northern Indians.' On behalf of the Mohawks, he dubbed Percy *Thorighwegeri*, or 'Ever-

green Brake,' in honour of his aristocratic house which 'would never die'. When he arrived in Newark, capital of the new Upper Canada, on 26 July 1792, Simcoe brought Brant the gift of a brace of pistols and a letter of introduction from Percy, now the 2<sup>nd</sup> Duke of Northumberland.<sup>3</sup>

Educated by military tutors, David William Smith was commissioned an ensign in the 5<sup>th</sup> in 1779, just after his fifteenth birthday, just as the regiment began a long sojourn in Ireland. In 1782, the "Fighting Fifth", whose motto was *Quo fata vocant* ("whither fate calls"), became the "5<sup>th</sup> (Northumberland) Regiment of Foot" in the Duke's honour.<sup>4</sup> Northum-

<sup>3</sup> Tyendinaga Township was established in Hastings County in 1820. The Mohawk alliance with the British through the American Revolution led to the Mohawks of the Bay of Quinte settlement at Tyendinaga and the Six Nations of the Grand River settlement.

<sup>4</sup> John Smith was commissioned an ensign (1 September 1756), a lieutenant (28 September 1757), a captain-lieutenant and captain (13 April 1768), a major (5 February 1787) and finally lieutenant-colonel while commanding at Niagara, on 16 July 1794. His son, David William Smith, was commissioned an ensign in the 5<sup>th</sup> on 8 September 1779, a lieutenant in 1790 and a captain on 2 September 1795. John Smith's predecessor as commander of the "Old and Bold," as the regiment was subsequently known, was Thomas Carleton, the younger brother of Sir Guy Carleton (later Lord Dorchester), who became

Figure 1: Regimental colours of the 5<sup>th</sup> regiment of foot, showing motto.

berland remained a confidant and patron to both father and son. In a letter to John Smith of 11 December 1784, the Duke, then about to leave command of the 5<sup>th</sup>, confirmed he did “not however find that they are yet determined, who is to have the Fifth” and conveys his “very best respects to Mrs Smith, x Comp’ts to David x the rest of my friends.”<sup>5</sup>

David William Smith was too young to take part in the Revolutionary War. But he went to Ireland with the 5<sup>th</sup> in 1780, marrying on 3 November 1788 Anne O’Reilly, the daughter of John O’Reilly of Ballykilchrist (or Anneville) in County Longford. They would have eight children.<sup>6</sup> When the 5th was assigned to Canada in 1788, John Smith became the British commander at Detroit, then later Niagara, just as the impact of the Loyalist influx into Quebec’s western districts was creating a rationale for the *Canada Act*.



### ‘Judicious Conduct’: Detroit and Niagara

When Smith rejoined his regiment in 1790, following his marriage, the “Shiners” (so named for their scarlet uniforms with dull green ‘gosling’ facings) were at Fort Detroit under the command of his father, now a major. A sizeable contingent of the 5<sup>th</sup>—about ten companies in all—would remain in Canada continuously from 1787 to 1797, after which the regiment would distinguish

lieutenant-colonel in the 5th Regiment of Foot on 26 September 1788. Thomas Carleton assumed office as Lieutenant Governor of New Brunswick in 1786, overseeing the foundation of loyalist settlements there. He remained in office until 1817, serving after 1803 from England. Cf. *A Short Narrative of the 5th Regiment of Northumberland Fusiliers with a Chronological Table and Succession List of the Officers from 1st January, 1754, to 1st May, 1873, by One Who Has Spent Many Happy Years in the Regiment*. London: Howard, Jones & Parkes, 1873, pp 30 to 57 *passim*. Also cf *DCB* volume V entry on «Thomas Carleton» by W.G. Godfrey.

<sup>5</sup> Letter in David William Smith papers at the Toronto Reference Library (TRL). The Duke signs his letter, “my Dear Smith, your most sincere friend, Percy”.

<sup>6</sup> See John Burke and John Bernard Burke, *A Genealogical and Heraldic Dictionary of the Landed Gentry of Great Britain & Ireland*, Volume II (M to Z), London: Henry Colburn, 1847, p. 969.

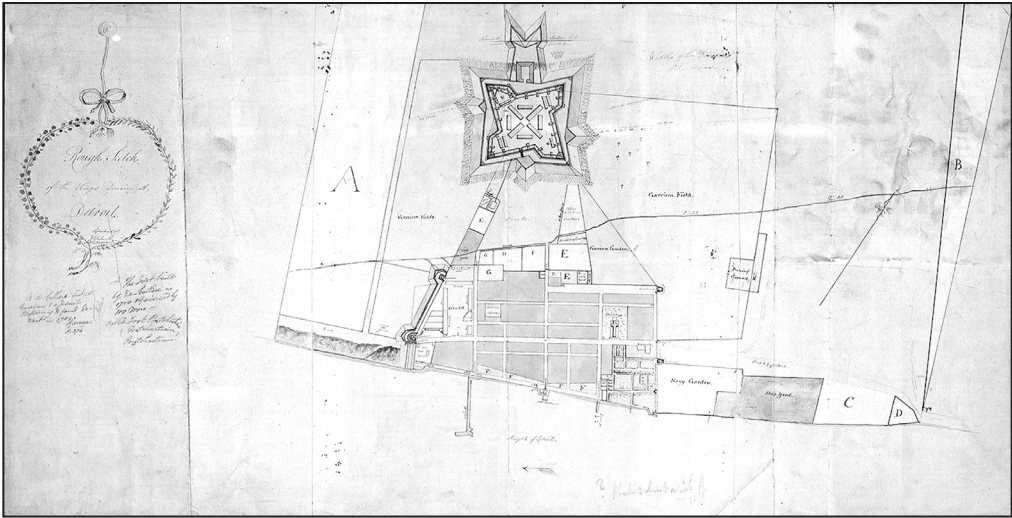


Figure 2: David William Smith's "Rough Sketch of the King's Domain at Detroit," dated September, 1790.

itself in the Peninsular War. David William Smith, by now a lieutenant, quickly became assistant quartermaster general, producing a handsome map of Detroit in 1790. Tension and skirmishing along the frontier were continuous. In July 1790 John Smith earned the commendation of Lord Dorchester for "judicious conduct" in showing "humane and friendly treatment" before releasing thirteen prisoners taken by "Saganeé Indians".<sup>7</sup>

As garrison commander at Detroit from 1790 to 1792, Major John Smith presided over the Hesse District Land Board. Given his talent for drafting and map-making, Lieutenant David William Smith was the obvious choice for clerk, serving in this capacity from 26 December 1791 until 7 June 1792, with respon-

sibility for surveys and land grants on the American side of the Detroit River, as well as most of what is today southwestern Ontario. The land board met across the river in Sandwich, today's Windsor, where Smith met land board member John Askin, a prominent merchant, fur trader and justice of the peace resident at Detroit since at least 1781.<sup>8</sup>

When the 5<sup>th</sup> was transferred to Fort Niagara, David William Smith became deputy quartermaster general of the garrison. His father became commander at Niagara, the post established under Louis XIV in 1678 by Rene-Robert Cavelier, *sieur de la Salle*, opposite an Indian village belonging to the Neutral Nation. By 1792, Fort Niagara stood opposite a new Loyalist settlement on what is now

<sup>7</sup> Major Smith's report on this incident was dated 26 July 1790. The response from Quebec dated 30 August 1790 is part of the David William Smith papers at TRL.

<sup>8</sup> David R. Farrell, "Askin, John" in *DCB*, Volume V (1801-1820).

the Canadian side of the Niagara River established by members of Butler's Rangers and other regiments raised during the American War. Newark, as the new town was re-named by Lieutenant-Governor Simcoe, was to be the new provincial capital, with a new parliament and administration, backed by a local garrison, indigenous allies and a strong Loyalist presence. As David William Smith arrived in the new settlement, he was intent on two things: expanding his role as a surveyor and running for parliament.

### 'Lord of the Soil': Surveyor General

Simcoe saw land policy as crucial to Upper Canada's success. The Royal Proclamation of 1763 had confirmed all land grants must take place only on the basis of treaties with First Nations. Land would be owned and alienable as freehold property—a key goal of the 1791 *Canada Act*. Finally, surveys, fees and patents should be drawn up efficiently, professionally and honestly on the basis of competitive rates. To this end, Simcoe stressed in a long letter written to the Home Secretary on 12 August 1791 that the new Surveyor General would be his personal choice:

The Office of the Surveyor General is of the utmost Importance. There have been made many Applications to me for Recommendation to this Appointment, and by People whom I should feel it a Duty to oblige in any Point, where the Superior Interests of my Obligation to my Country did not interfere.

Unless some Person of acknowledged Capacity shall be offered to the Notice of His Majesty's Ministers I should hope that this Post might be of those, which should be left to my mature Consideration & Disposal after I shall arrive in Canada.<sup>9</sup>

Simcoe was determined to ensure his new province outshone its American rivals. Writing from Montreal on 21 June 1792, Simcoe again raised the Surveyor General issue with Dundas:

In the list of Offices voted by Parliament as transmitted to me by your last Dispatch, Sir, I observe that of Surveyor General is marked as without a Salary—I conceive that there cannot be an Office of Greater Importance to the Interests of His Majesty as Lord of the Soil, and to the several Inhabitants to whom He shall be pleased to grant respective Allotments—and to execute this duty ably and uprightly so as to prevent numberless lawsuits, that great bane of all infant Colonies, which would arise from a contrary conduct, requires great Professional abilities and equal Integrity. It was on the conviction of the important Qualities necessary for this office, that I did not venture to recommend to you any of the numerous persons who applied to me for my offering them for this Employment—and I greatly fear thro' the incompetence of the persons whom Major Holland, that able servant of the Crown, has been formerly obliged to employ in Upper Canada, I shall have considerable difficulty, if I may judge from the documents before me, in the preventing the most mischievous litigations.

There are at present in Upper Canada three assistant Surveyors' at the fixed salary of four shillings each per diem, when not employed, and seven and sixpence Currency when

<sup>9</sup> *Simcoe Papers*, No 48.

employed, and it is apprehended they will not be sufficient for the immediate calls for the arrangement of the Lands about to be granted—to Super-intend a Department so extensive and Important. It is necessary there should be a person of great ability, and of course he must be tempted by an adequate and honourable Salary to undertake so laborious an Office—as I have no Person of sufficient Capacity to propose to you for this employment I shall at present direct the respective assistant Surveyors to continue their duties till I receive your further orders and Decision on this material Point.<sup>10</sup>

In other words, Simcoe saw a competent surveyor general, independent of party or speculative bias, as essential to his enterprise. He was being pressed hard on all sides by job-seekers and their patrons. Dorchester and his protégé Samuel Holland, Surveyor General for Quebec since 1764, wished to continue their role in the so-called ‘western townships,’ which they had laid out in 1783-84 to accommodate Loyalist refugees and demobilizing regiments.

But Simcoe was not impressed by the quality of those on offer; in his journey westward from Montreal, he heard of the controversies already unleashed by shoddy survey work and knew well the danger of exacerbating local rivalries. Yet his plea to be able to chart an independent course was frustrated. On 15 August 1792, the penny-pinching Dundas replied in the negative to Simcoe’s proposal for a dedicated Surveyor General for Upper Canada:

It is proposed that the Surveyor General of Lower Canada shall likewise fill the same situation in Upper Canada, but without additional Salary. The attention of the Surveyor General may certainly be bestowed at proper Seasons on both Provinces, and at other times I see no reason to doubt but Persons properly qualified may be found to perform the Duties of the Office as Deputy Surveyors at the Salaries you mentioned.<sup>11</sup>

But it was too late: Simcoe, who took the oath as lieutenant governor at Kingston on 24 June 1792, had already engaged Smith to be his Surveyor General. The twenty-seven-year-old had begun work as Acting Surveyor General of Upper Canada at Newark on 1 July 1792—more than three weeks before Simcoe arrived in the new capital.

Simcoe and Dundas were facing a deeper rift. In a letter dated 12 July 1792, Dundas cautioned against an overly aggressive immigration (or “Emigrations,” as Dundas termed them). Making the attraction of newcomers “a professed and avowed object of Our Government” would antagonize the United States, Dundas feared, urging Simcoe instead to make “the Situation of Settlers under your Government comfortable and happy.” The best drawing card for the new province would be its reputation, drawing settlers “of their own accord, without going out of your way to entice or allure them.” Dundas wanted to avoid numbers that outran the capacity of the province to achieve “regularity and stability,” arguing for the “regulations, laws, usages, and

<sup>10</sup> *Simcoe Papers*, No 171.

<sup>11</sup> *Simcoe Papers*, No 197.

customs, which grow up and go hand in hand with a progressive and regular Population.” Dundas was skeptical that population growth should be an end in itself: “Population is often the effect, but never I believe was, or will be, the cause of the prosperity of any Country.”<sup>12</sup>

Rather than allow himself to be reined in by Dundas, Simcoe used the tactic of *fait accompli*. He knew Major John Smith from the American War and may have heard of David William Smith’s commendable work for the Hesse Land Board, including as a map-maker. Moreover, the ‘Fighting Fifth’ was the best-run regiment in Canada at the time. To ensure land policy was the centrepiece of his term in Upper Canada, Simcoe would ask forgiveness for this appointment rather than obtaining permission. On 28 September 1792, six weeks after Dundas had written to deny his proposal, Simcoe confirmed Smith in the job, three months after he had effectively started work—facts he reported to Askin on 2 October 1792.

Flaws in earlier surveys disqualified some candidates. The Land Committee at Quebec had ordered John Collins, acting in the place of the ailing Holland, to produce a record of oaths administered, as well as plans and schedules for new townships, in the first half of 1790; when this work was still incomplete

three months later, Collins was ordered to make monthly reports.<sup>13</sup> As Moorman notes, “When Simcoe asked Surveyor General Samuel Holland which of his Deputies had been assigned to the new province Holland submitted a list along with the dates of their commissions. The list had to be reconstructed according to ‘the best of Mr. Collins and my recollection’ because the registration book had been ‘misaid’.”<sup>14</sup>

A more practical obstacle was that Samuel Holland’s deputies John Collins, Alexander Aitken and Augustus Jones resided at Quebec, Kingston and Burlington Beach respectively. William Chewett, James and Hugh McDonnell lived even further east. Patrick McNiff, the controversial deputy surveyor for the Western District, had settled at Detroit.<sup>15</sup>

As early as 28 April 1792, writing to Evan Nepean of the Home Department, Simcoe had expressed his doubts about the surveying team he was being urged to inherit from Quebec,

There are great errors in the Surveyor General’s Department, relative to the location of lands, which I hope to adjust amicably on my arrival in Upper Canada. Poor Holland, that good and faithful servant of the Crown, is worn out in body, tho’ in full possession of his intellect. His Deputy, Collins, possesses neither strength nor intellect. I hope Mr Inman has accepted that employment which requires essential ability and integrity,

<sup>12</sup> *Simcoe Papers*, No. 178.

<sup>13</sup> David T. Moorman, *The ‘First Business of Government’: The Land Granting Administration of Upper Canada* (Ottawa: National Library of Canada, 1997), 36.

<sup>14</sup> *Ibid.*, 41.

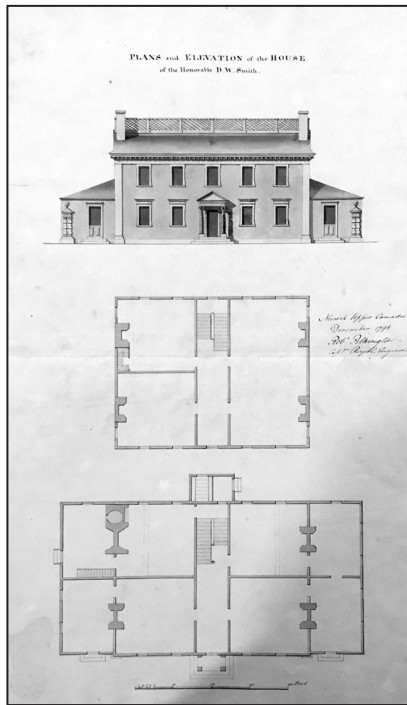
<sup>15</sup> In his biography of “McNiff, Patrick,” *DCB*, Volume V (1801-1820), Ron Edwards describes McNiff, a surveyor for the province of Quebec since 1784, as “over-confident, stubborn, tactless, argumentative, and opinionated”. But apparently his surveys were almost all accurate.



and which I hope to place on a very proper system, and infinitely less expensive to Government than it has hitherto been.<sup>16</sup>

William Chewett had the drafting and mapping skills to do the job. But his marriage in 1791 to Isabella McDonell, a daughter of Major Archibald McDonell of Long Sault near Johnstown (later Cornwall), may have disqualified him. His father was John McDonell of Leek, one of three Highland gentlemen, all brothers, who had been officers in the Jacobite army at Culloden and joined Loyalist regiments in 1775; Allan McDonell of Cullachie and Alexander McDonell of Aberchalder (father of Speaker John McDonell) also had sons who were assistant surveyors under Holland. All three were linked to Sir John Johnson, the runner-up for Simcoe's job.

Smith was the opposite of Collins and McNiff: he was scrupulous and tactful, efficient and honest, with intellect and energy. He was an outsider, without enduring ties to the patronage networks already forming across the new province. He was also an officer with social stand-



*Figures 3: John Smith's house at Newark, which also served as the Surveyor General's Department.*

ing, qualities Simcoe admired. Smith also had experience, having handled 300 petitions and issued 100 certificates over nearly two years as clerk to the Hesse land board.<sup>17</sup> Within days of his arrival in Newark, he was taking over responsibility for surveys across the province.

### 'Assembly Man': Essex & Suffolk; Lincoln; Norfolk, Oxford & Middlesex

On 26 July 1792, the day John Graves Simcoe arrived at Newark, an ill David William Smith was writing Askin to suggest that if Essex & Suffolk did not work out, he would stand for Kent, which then included Detroit. Polling days were 20 and 28 August. Smith was keen "to be returned without an undue election, or the appearance of party or bribery." He asked Askin that an "ox be roasted whole on the common, and a barrel of rum to be given to the mob, to wash down the beef. You will draw on me for the amount. I shall have great pleasure in helping to frame laws for lands which I have had so much pleasure in laying out."

<sup>16</sup> *Simcoe Papers*, No. 146.

<sup>17</sup> Upper Canada Land Petition from D.W. Smith dated 25 May 1792 (microfilm C-2832, pp. 520+).



Figure 4: David William Smith portrait from the collection of the House of Commons, Canada.

Writs were issued on 26 July “returnable the 12<sup>th</sup> September.” Smith expected his Land Board work to play favourably: “My having done the Settlers’ business without emolument from any quarter, should be some inducement to them, on the score of gratitude, to return me.”<sup>18</sup>

On 6 August, Smith wrote Askin again, hoping the influential Baby family would not field a rival candidate. On 8 August, Smith confided to Askin that “the Governor wishes very much that I should succeed.” He warned against “Cabals” who might arbitrarily prevent

electors from casting ballots and was adamant that “the Indians within the Reserves in Essex have just as much right to vote as the people of Maisonville’s and Monforton’s Companys.” Despite his illness, Smith’s duties at Newark (“the Metropolis,” as he jokingly termed it) were already pressing.<sup>19</sup> “The Governor sends for me constantly & employs me on many occasions—what with crossing the water—& half a dozen Masters to serve, exclusive of God & Mammon—ill health & altogether I am completely fagged.”<sup>20</sup>

On August 14<sup>th</sup>, he wrote Askin again. His requests reveal some local colour:

The French people can easily walk to the hustings, but my gentry will require some conveyance; if boats are necessary, you can hire them, and they must not want beef or rum—let them have plenty—and in case of success I leave it to you which you think will be best to give my friends a public dinner, and the ladies a dance, either now, or when I go up, if you think the moment the best time, you will throw open Forsyth’s Tavern, and call for the best he can supply. I trust you will feel very young on the occasion, in the dance, and I wish that Leith and you should push about the bottle to the promotion of

<sup>18</sup> *Simcoe Papers*, No. 183.

<sup>19</sup> *Simcoe Papers*, No. 195.

<sup>20</sup> *Simcoe Papers*, Nos 188 (6 August 1792) & 190 (8 August 1792).

the Settlements on the Detroit. The more broken heads and bloody noses there is, the more election-like—and in case of success, (damn that “if”) let the white ribbon favours be plentifully distributed to the old, the young, the gay, the lame, the crippled and the blind—half a score cords of wood piled hollow, with a tar barrel in the middle, on the commons, some powder *pour tirer*, and plenty of rum. I am sure you will preside over and do everything that is needful, as far as my circumstances will admit. There must be no want, and I am sure you will have everything handsome and plentiful. Elliott I am sure will give you a large red flag to be hoisted on a pole near the bonfire, and some blue coloured tape may be sewed on in large letters “ESSEX”.<sup>21</sup>

In the end, Upper Canada’s first election attracted heavy turnout. Smith topped the poll in Essex and Suffolk, dispensing £233 to treat his electors. Thanks to Askin’s influence, he was unopposed. There were neither voters’ lists nor secret ballots. Local support made the difference, with Indian agents McKee and Elliott in support alongside merchants such as George Leith and fellow soldiers, active and retired.

During re-election bids in 3<sup>rd</sup> Lincoln in 1796 and in Norfolk, Oxford & Middlesex in 1800, Smith had a tougher run, but was successful on each occasion. In 1792 he was one of seventeen new members of the new House of Assembly—the lower house of Upper Canada’s first parliament—whose representation was weighted

towards the demographic centre of gravity in the re-named Eastern District. Eleven of the nineteen counties enacted in 1792 were east of Belleville, accounting for ten of the new MPs, including John McDonnell, the new speaker from Glengarry, a veteran of the Royal Highland Emigrants and Butler’s Rangers, and his brother Hugh McDonnell, another Loyalist veteran who was also an assistant surveyor.

The majority of the assembly’s new members were soldiers: “in the first parliament, nine out of seventeen members were on half pay from Loyalist regiments.”<sup>22</sup> Out of sixteen members sworn in by summer 1793 (one Quaker refused the oath and was replaced), all but four had served in the British army; one more was the son of a Loyalist. For this high military quotient, the new assembly was quickly dubbed a “lair of warriors.” Their units included the King’s Royal Regiment of New York, the Loyal Highland Emigrants, Jessup’s Rangers, Colonel Cuyler’s Loyalist Refugees and Butler’s Rangers—all provincial corps raised to fight ‘American rebels’. The others, including Attorney General John White, were civilians. David William Smith was the only elected member to have served in a regular British army regiment.

Even before parliament opened on 17 September 1792, Upper Canada had a royal visit.<sup>23</sup>

Prince Edward’s military assignment

<sup>21</sup> *Simcoe Papers*, No. 195.

<sup>22</sup> J.K. Johnson, *Becoming Prominent: Regional Leadership in Upper Canada 1791-1841* (Kingston and Montreal: McGill University Press, 1989), 124.

<sup>23</sup> Nathan Tidridge, *Prince Edward, Duke of Kent: Father of the Canadian Crown* (Hamilton, Dundurn Publishing, 2013), 102-113.

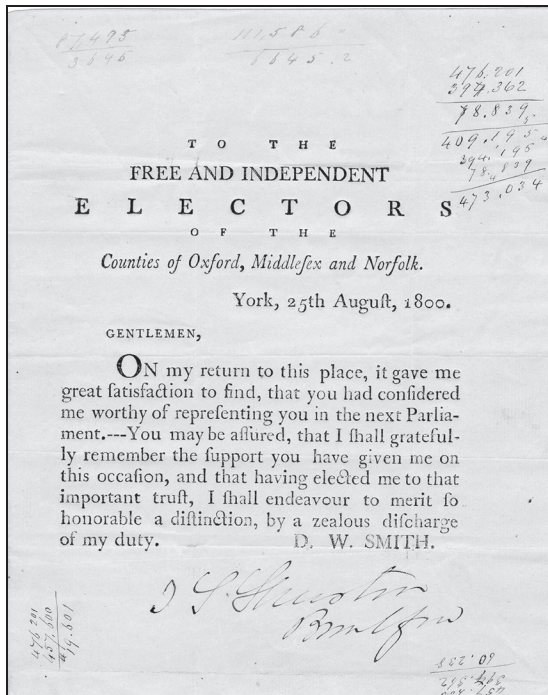


Figure 5: Notice expressing gratitude to the electors of Oxford, Middlesex and Norfolk from 1800, by D.W. Smith.

and his visit to Upper Canada were partly calculated to deter aggression from south of the border. On 16 July Simcoe gave the peninsula enclosing the Bay of Quinte the name 'Prince Edward County'. On 20 August, the Prince arrived in Newark, where he was greeted by John Graves and Elizabeth Simcoe, Chief Justice Osgoode, Attorney General White, Receiver General Russell and others, including Smith and his wife.<sup>24</sup>

Prince Edward went on to inspect Navy Hall, a base for British shipping on Lake Ontario that was to be home of

the future assembly, look in on Government House (consisting of three marquees from Captain Cook's third Pacific expedition) and dine at an establishment known as the Harmonious Coach House.<sup>25</sup> He also visited Fort Niagara across the river, where Major John Smith was his host, and Lieut. David William Smith was introduced.

The need for legislation was becoming urgent. In his opening address Simcoe sounded the note of idealism that had been sweeping England ever since the French revolution had turned violent: "this province is signally blessed, not with a mutilated Constitution, but with a Constitution which has stood the test of experience, and is the very image and transcript of that of Great Britain, by which she has long established and secured to her subjects as much freedom and happiness as is possible to be enjoyed under the subordination necessary to civilized society."<sup>26</sup>

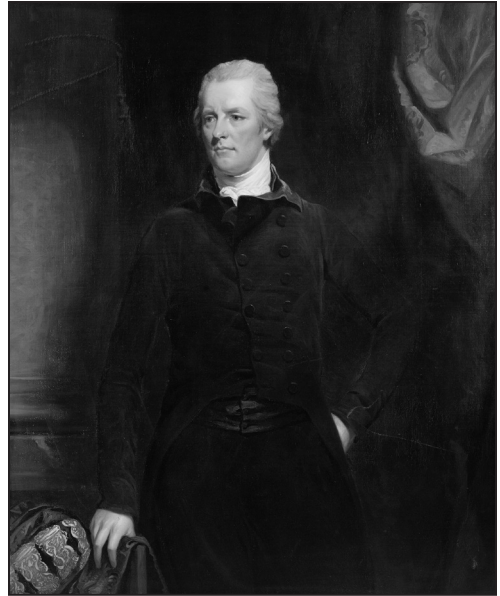
Eleven days later Smith was already expressing impatience. From the start, he took the position of ordinary settlers, decrying the self-interest of the "Court party":

We have done little as yet. Our Grand Bill for the General Settlement of the Law of the Land, will, I expect, pass; & we have passed a Jury bill in general terms thro' our house with some difficulty—a bill to enable

<sup>24</sup> *Ibid.*, 109.

<sup>25</sup> *Ibid.*, 110. The pub was later burned in the War of 1812 before being rebuilt as the Olde Angle Inn, which is still operating at Niagara-on-the-Lake.

<sup>26</sup> Cited in Egerton Ryerson, *The Loyalists of America & Their Times*, (1880), 310



Figures 6 & 7: Prince Edward Augustus, King George III's 4<sup>th</sup> son and future father of Queen Victoria, commander-in-chief, British North America, 1791-1801, and William Pitt the Younger.

2 Justices to try for 40/, without appeal, is in great forwardness—Ways & means seem the great difficulty—one or two Committees for that purpose have proved nearly abortive I proposed that every Landholder should pay one farthing P. acre P. annum for all Lands above 200 Acres, which I conceived would not burden the Settler, but the Court party & the popular party were both against me & I stood alone in the House—however, I am still of opinion that a Land tax, whether it goes by the name or not, must eventually take place—I act from principle altho' I value the world's opinion somewhat—I cannot conceive that one farthing raised by the House of Assembly can be deemed onerous, when the Magistrates in Quarter Sessions will probably have power to raise much greater sums.<sup>27</sup>

Smith took quickly to the work of legislator. At a time when 'responsi-

ble government' had not been formally granted, Smith remained accountable to his electors for over a decade while pursuing the government's agenda by enacting the first laws establishing British law, courts and trial by jury; regulating mills; reforming the militia; fixing weights and measures; and encouraging the destruction of wolves and bears.

Simcoe had been a parliamentary supporter of Wilberforce at Westminster. Smith was among those supporting John White's bill to eliminate slavery in Upper Canada. It was the first such measure anywhere in the English-speaking world, reflecting the legacy of Black Loyalists who had settled in Nova Scotia and Canada as refugees from the Ameri-

<sup>27</sup> *Simcoe Papers*, No 218

can colonies, as well as the personal commitment of Pitt, Simcoe and others to ending the scourge of slavery. The Hesse District land board, with John Smith as president and David as clerk, granted two hundred acres to Edward Smith, “a free Negro” who had come to Canada in 1781 after being “redeemed” from Cherokee custody.<sup>28</sup> But this emancipation remained incomplete. Slaves continued to flee Upper Canada, including the Kent and Essex region, throughout the 1790s, with a significant, if declining, number of persons in a legal position of slavery in the province until 1820.<sup>29</sup>

On 2 October 1792 Smith confirmed to Askin that he had taken up his new duties as Surveyor General. In the same letter he summarizes his political creed:

from the knowledge I have of the Dy. Sur. Dept, the Govr. has thrust another troublesome task on my shoulders, for which I have neither salary nor fees—altho’ he has given me a Commission to act as Surveyor General till the King’s pleasure is known—The Democratical party seems to think [this] will lead me to think as the Government wishes, but I hope I am above bias—& I do not feel it at all incompatible to discharge my duty to my Constituents & at the same time have regard to the general interests of the Unity of the Empire—Our House of Assembly for the most part have violent levelling principles which are totally different from the ideas I

have been educated with—The neighbouring States are to[o] often brought in as patterns & models, which I neither approve or Countenance—I think modesty should be the Characteristic of our first Assembly—I conceive it political, prudent, and grateful, & I am confident the contrary behaviour won’t succeed to do the Country any good—whatever may be the future prospects of designing Men; we cannot at present exist without the assistance of Great Britain, she has ever shewn herself a foster Mother to her Colonies & any procedure which I conceive tends to divide the Interests of the Parent Kingdom & all her Colonies I will oppose with all my might—on this principle I have voted against an addtl duty on Rum—first because I conceive it a Regulation of Commerce& that the Parliament has reserved the right of imposing such duty to themselves (...)<sup>30</sup>

David William Smith was a career British officer who had never lived in the United States. Yet his father and other British veterans of the revolutionary war (including Simcoe) had influenced Smith to be a firm advocate of the superiority of British institutions and the constitution on which they were based. Whatever the larger truth behind these judgements, Smith had a strong motivation to show it that such institutions could deliver in practice.

Far from being one (with John White) of “two government placemen” in the new assembly, Smith saw himself as a tribune of the public interest, aiming “to serve the

<sup>28</sup> See the petition of ‘Ned Smith’ dated 12 May 1798 at Sandwich (microform C-2808, pp 187+). Smith was granted lot 12 in the second concession south of the River de la Tranche (later the Thames), in the second township.

<sup>29</sup> There are several passing references to David William Smith in various secondary sources being a slave owner, but I have been unable to identify evidence of this.

<sup>30</sup> *Simcoe Papers*, No. 232

people.” He became speaker of the assembly in the second and third parliaments, serving from 1796 to 1802—longer than any other speaker in Upper Canada’s history.<sup>31</sup> Together with fellow members of the assembly White and Christopher Robinson, who also held government offices, Smith was among the pioneers in Upper Canada of an executive accountable to an elected assembly—‘responsible government’ *ante litteram*, ‘before the letter,’ and certainly long before the debates of the 1830s that are conventionally taken as defining this issue.<sup>32</sup>

### ‘The Success of His Undertaking’: Laying Out a Province

Smith threw himself into his new role. Opening an office in his father’s house in Newark, he set a rapid pace at work. Out of dozens of surveyors active in the province prior to his appointment, he selected the experienced Chewett as his deputy, as well as senior surveyor and draughtsman; Thomas Ridout was added as senior clerk in 1793.<sup>33</sup> Chewett and Ridout would form the core of his grow-

ing offices at Newark and later at York. They were fixtures at the centre of land granting policy and the laying out of hundreds of townships over four decades, with Ridout serving as Surveyor General (1810-29) for even longer than Smith and Chewett as Acting Surveyor General (1829-32) after Ridout’s death.

Smith also sought to add legal expertise to his growing experience with land grants, surveying and map-making. In 1792, he articulated with Attorney General John White and was among the first persons in Upper Canada called to the bar in 1793, appearing on the first list of licensed attorneys in the province on 7 July 1794. This made him eligible to be a judge.

Smith’s first challenge was to implement the provisions of the ‘*Canada Act*’ with regard to crown and clergy reserves. By spreading the two-sevenths of land reserved for crown and clergy over entire townships, Smith ensured that both the spirit and the letter of the Act were met. His ‘chequered plan’ for distributing this land evenly throughout each township, adopted on 15 October 1792, ensured all parts of each township would be settled.

<sup>31</sup> Smith served as speaker over six years. Allan McLean, who represented Frontenac County in the 6th and 7th parliaments of Upper Canada, was speaker from 1813 until 1820. Charles Clarke served as speaker of the Legislative Assembly of Ontario from 1880 to 1887 while representing Wellington Centre and Wellington East. In Lower Canada, Smith’s seven-year term as speaker was surpassed both by Michel-Eustache-Gaspard-Alain Chartier de Lotbinière (1794-1814) and Louis-Joseph Papineau (1815-1822 and 1825-1841). In Canada’s House of Commons, five members have been speaker for seven or more years.

<sup>32</sup> Christopher Robinson, who had served under Simcoe in the Queen’s Rangers in 1781, became surveyor general of woods and forests for Upper Canada in 1792. His son, John Beverley Robinson, was later attorney general and chief justice of the province.

<sup>33</sup> Chewett was deeply disappointed that Smith had been preferred to him, despite almost a decade’s experience in the office of Deputy Surveyor General John Collins at Quebec. Despite this appointment in Upper Canada Chewett continued to live with his family at Williamsburg until 1796, when he moved to York. See Richard J. Simpson, “Chewett, William” in *DCB*, Volume VII (1836-1850).

Historian Lillian Gates writes: “in Upper Canada the chequered plan was not deviated from except for those townships, principally on the Niagara and Detroit frontiers, the St. Lawrence and the lower Thames, which were fully or partially located before 1791.”<sup>34</sup> By 1797, the chequered plan had been declared suitable for use in both Upper and Lower Canada.<sup>35</sup>

The chequered plan resolved a thorny problem by ensuring reserve lots did not block settlement roads, which generally ran north from large bodies of water. Settlers under an obligation to clear the concessions in front of their lots had been unsure how to proceed when the concessions continued through undeveloped reserves. To resolve these shortcomings, Smith continued to draft plans for leasing and selling crown reserves, including the leasing scheme enacted in 1797.

But progress was glacial. As late as 1828, less than one-third of a single township (i.e. 22,000 acres) of crown land was being sold annually in Upper Canada. By 1854 a peak was reached, with nearly one million acres—the equivalent of fourteen townships—sold in a single year. In 1844 and even more so after 1850, the sale of crown lands became a principal source of funding for grammar and common schools.<sup>36</sup>

Another major challenge was the practice of granting large townships to individual petitioners, including Loyalist

leaders and office holders, particularly in areas where settlement had been lagging. This practice had precedents in British and Canadian history. Large land grants had been made in several American colonies, as well as during Sir William Alexander’s effort to establish a Nova Scotia baronetcy in the 17<sup>th</sup> century. The seigneurial system in Quebec had also established a system of centralized land ownership. As recently as 1767, the province of St John’s Island (re-named Prince Edward Island in 1798) had been parcelled into sixty-seven 20,000 acre lots granted by lottery to wealthy landowners. Pitt, Grenville and Simcoe shared this aspiration to establish a landed provincial aristocracy in Upper Canada as a bulwark against the dangers of revolution that had transformed both America and France. But it was a goal that Smith and others on the ground with experience in Canada knew to be impracticable.

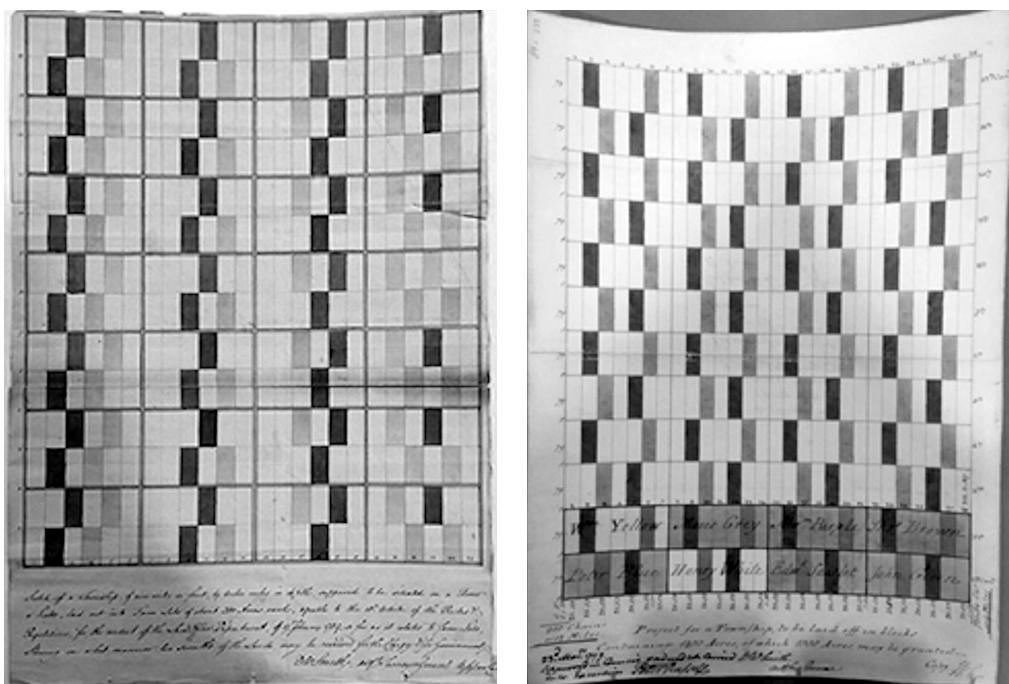
From 1788 to 1791, twenty-six township grants had been made in districts that were now part of Upper Canada. In the Home District centred on York, three quarters of the land had been granted in parcels of 500 acres or larger. With the legislature operating and the issue of crown lands resolved, “Simcoe turned his attention to the hearing of petitions for townships. Between 6 October 1792 and 24 July 1793, some 32 townships were ‘granted,’ that is, assigned for settlement to the petitioners—the ‘nominees.’”<sup>37</sup>

<sup>34</sup> Lillian F. Gates, *Land Policies of Upper Canada* (Toronto: University of Toronto Press, 1968) 51.

<sup>35</sup> Portland to Prescott, 13 July 1797, cited in note 82 in *Ibid.*, 320.

<sup>36</sup> *Ibid.*, “Appendix”, 309-10.





Figures 8 & 9: Two versions of the 'chequered plan', Smith's elegant solution to the crown & clergy reserve conundrum: the original, dated 1792; and a modified version, dated 1800, with parcels for re-granting.

These grants were doomed to fail. When Smith examined these 32 grants three to four years later, in 1795-96, he found only six had many actual settlers. Both Smith and Receiver-General Peter Russell had seen the problem coming.<sup>37</sup> Associations of land petitioners were often in fact speculators, frequently with links to those operating in the Ohio Country.

In one case involving the Berczy settlement in Markham township, the financial backers included New York Senator Aaron Burr, who would become the 3<sup>rd</sup> Vice President of the United States, as well as the assassin in a duel of Treasury

Secretary Alexander Hamilton.

In almost every case, there was no real intention to recruit settlers. In Lower Canada, where 173 warrants for the survey of townships were issued in 1792-93, overwhelmingly to Americans, the problem was even worse. Chief Justice Smith, who had championed the scheme, died on 3 December 1793 but assistant surveyor general Samuel Gale, who had been brought to Quebec by Smith, continued to advocate for township grants until 1799.<sup>39</sup>

Smith's immediate response to the problem of dormancy was to impose set-

<sup>37</sup> *Ibid.*, 30.

<sup>38</sup> Toronto Public Library, Russell Papers, Letter Book, D.W. Smith to Russell, 25<sup>th</sup> August, 1796. Cited in Gates, *Land Policies*, note 60, p. 317.

tlement conditions. Starting in 1793, he proposed a number of tough formulas for ensuring land was improved within a reasonable timeframe. But ultimately Smith was obliged by the Executive Council to settle for the “Yonge Street conditions,” gazetted on 15 July 1794, that applied only to Yonge and Dundas Streets, and required only occupation and the erection of a house on every lot within a year of its location in a survey. In June 1798, this requirement was increased to five acres cleared and fenced, a measure extended by November 1802 to most surveyed lands.

Smith was a consistent advocate of clear rules to deter speculators. His insistence on township forfeitures, begun in May 1796, made him unpopular with large landowners. In his report aimed at resolving a boundary dispute at Nathaniel Hazard Treadwell’s Pointe-a-L’Original settlement on the Ottawa river in 1797, Smith treads a fine line. Obviously suspicious of the American settler’s motives, Smith nevertheless focuses on the matter at hand: the question of boundary lines with the neighbouring seigneurie of Longueuil. He includes a favourable testimonial from Patrick Murray, seigneur of Argenteuil and a relative of former Quebec Governor James Murray. He also notes Treadwell’s investment in public goods: “He has cut it is said, a road from the Glengarry settlement, to

the Ottawa river.”<sup>40</sup> But Smith fought virtually alone. Governor Peter Hunter reversed these settlement conditions on 30 December 1802, shortly after Smith’s departure, leaving only an unenforceable three-year residency requirement.

Starting in 1796 Smith established the “U.E. list” of Loyalists. The designation had originally been made by Lord Dorchester, by proclamation, on 9 November 1789. It was a “Mark of Honour on those families who had adhered to the Unity of Empire, and joined the Royal Standard in America” before 1783. It provided for a registry of Loyalists “to the End of their Posterity” to be kept in parishes and militia rolls. It granted 200 acres to Loyalists, as well as to their sons and daughters “as they arrive to Full Age... or on their marriage.” It was an immense commitment, with hundreds of thousands of acres granted to the Loyalists and their posterity according to their military rank and the size of their family. After considerable confusion, the U.E. list and rules for grants to Loyalists and their children, including an expiry dates for the arrangement in 1798, were finally approved by the imperial government on 15 December, 1798, in accordance with Smith’s proposals.<sup>41</sup>

The land granting system was subject to the whims of officials. William Jarvis, the provincial secretary responsible for

<sup>39</sup> See LFS Upton, “Smith, William” in *DCB*, Volume IV (1771-1800) and J.I. Little, “Gale, Samuel” in *DCB*, Volume VI (1821-1835).

<sup>40</sup> Surveyor General’s report, 17 November 1797. Upper Canada Land Petitions, microfilm C-2807, pp 999+.

<sup>41</sup> See “Lord Dorchester’s Proclamation at the Council Chamber at Quebec” and Mealing, “Smith.” For details of the U.E. list and grants, see Gates, *Land Policies*, 64-5.

issuing title deeds, had a reputation for inefficiency. Many settlers accepted their land, but postponed seeking patents or title to avoid onerous fees. In the intervening period, grant certificates often went missing, turning up with great frequency in the accounts of merchant houses. Finally, a significant portion of those granted land simply did not occupy them. All of these factors were complicated by shifting responsibility for the grants themselves from district land boards, which were increased from four to six in October 1792, to local magistrates when the land boards were dissolved on 6 December 1794, and finally to the Executive Council on 2 March 1796, after Simcoe's departure.

Smith made three key improvements that facilitated settlement from 1792-1802. First, he kept in place a relatively low fee system for land grants in preference to proposals to sell land. Second, he championed exemptions from fees for Loyalists, soldiers and office holders, while promoting clear rules for the improvement of land and settlement of townships. Third, he surveyed townships rapidly and in quantity. The combined effect of these measures was to retain existing settlers, which other colonies failed to do, while branding Upper Canada as a safe bet.

From October 1792 to July 1793, Smith oversaw surveys of 32 townships encompassing 1.92 million acres. Over his decade as Surveyor General, nearly

three times this number of townships were surveyed. As S.R. Mealing concedes in his short biography of Smith, "the township surveys, conducted by 17 different deputies, were of varying quality, but they were systematically conceived and regularly executed."<sup>42</sup>

Over Simcoe's four years in office, more than three million acres were surveyed—at over fifteen per year, by far the highest sustained pace of township surveys in Ontario history. Over Smith's time as Surveyor General in Upper Canada, a total of 95 townships were surveyed—fully one quarter of the 381 townships surveyed in Upper Canada/Canada West between 1782 and 1860, when work in the Muskoka, Haliburton, Parry Sound and Nipissing Districts began.

In the decade prior to 1792, 51 townships had been surveyed in the districts of western Quebec that would become Upper Canada. By comparison, in the twelve years after Smith's departure (1803-1815), only thirteen townships were surveyed.<sup>43</sup> By laying out nearly one hundred townships in a single decade, many of them in areas that became strongholds of agriculture and large population centres, Smith's achievement was unique.

With a declining fur trade, scant agriculture and a timber industry that had yet to burgeon, the grant of relatively inexpensive land to American settlers willing to "swear oaths of allegiance to the crown and

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<sup>42</sup> Mealing, "Smith."

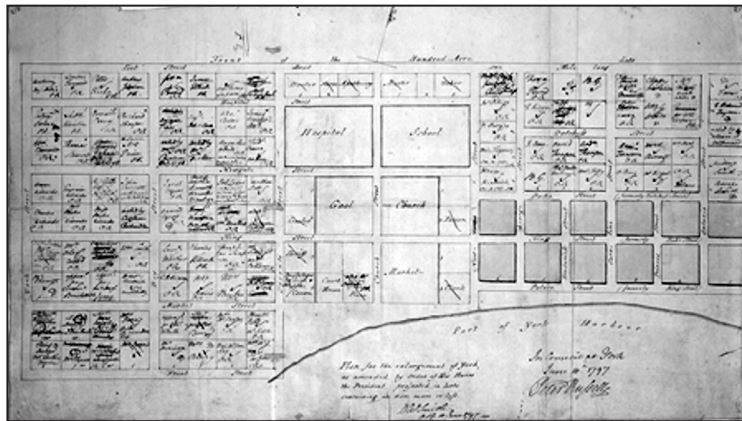
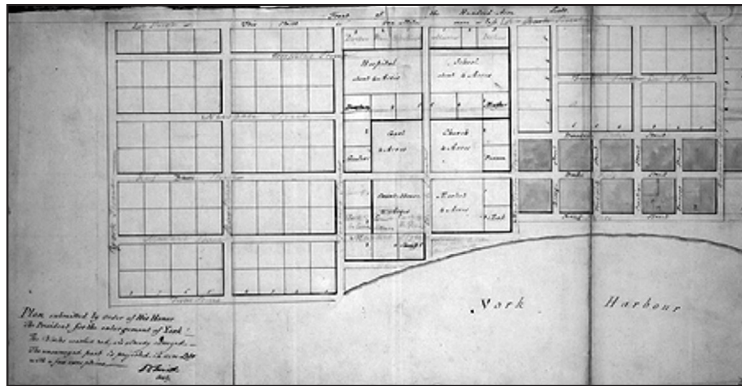
<sup>43</sup> See Armstrong, *Handbook*, chapter on 'Townships,' pp. 141-48 as well as <<http://www.uppercanadagenalogy.com/townshipsS.html#A>>.

Figures 10 & 11: Two plans for York dated 1797, signed by David William Smith.

accept the supremacy of parliament before the proper authorities” was the leading spur to settlement, agriculture and the growth of the province.<sup>44</sup> While the fee system changed four times during Smith’s period in office, it was consistently low when compared to the purchase price of land in Ohio and elsewhere in North America.

In the end, only Smith ensured the success of Simcoe’s project. By resolving the crown and clergy reserve issue, he ensured even settlement across townships. By drawing up the U.E. Lost, he prevented potential conflicts with Loyalist descendants. By imposing conditions on settlers, he dampened speculation. By requiring forfeiture of unsettled townships, he withdrew surveyed land from speculative limbo. By completing scores of township surveys, he ensured Upper Canada was seen as a province of welcome and opportunity.

With each of these moves, Smith showed a commitment to ensuring popu-



lar support for settlement policy by curbing speculation and mercantile excess, while delivering new land efficiently. He was sympathetic to the French-speaking and indigenous populations. Most of all, he matched Simcoe’s pomp-filled vision with increasing agricultural prosperity.

### ‘Kept in Good Order’: Life, Property & Two Capitals

Anne Smith was popular at Newark. In the diary of Elizabeth Posthuma Simcoe, who was fascinated by her two domestic raccoons, Anne Smith is the most frequently mentioned dinner guest and

<sup>44</sup> Moorman, *First Business of Government*, 12.

Figures 11: David William Smith's Maryville estate at York, where the Surveyor General's office was based.

companion. The Smiths lived in a large house built for his father John by William Chewett; it also served as the Surveyor General's office. De la Rochefoucauld saw it as "distinguished from the rest" and "constructed, embellished and painted in the best style," with a large garden, which "has the appearance of a French kitchen-garden, kept in good order."<sup>45</sup>

Yet the civility of peacetime never quite arrived in Upper Canada while Smith was there. Britain was at war with France again starting in 1793; news of Jay's Treaty, concluded with the United States in November 1794, did not arrive at Newark until well into 1795, the year Lieutenant-Colonel John Smith—father of the Acting Surveyor General—died while still in command of the 5<sup>th</sup> Regiment of Foot at Fort Niagara.

Smith's name is on one of the first maps of Yonge Street, carved northward out of the forest starting in 1793 by the Queen's Rangers. He accompanied Simcoe on his journey westward to the future site of London, Ontario. In 1796, he produced the 'York Plan' in response to the Executive Council's request, drafting the first plans for the new capital's expansion the next year, when parliament met there for the first time.<sup>46</sup>

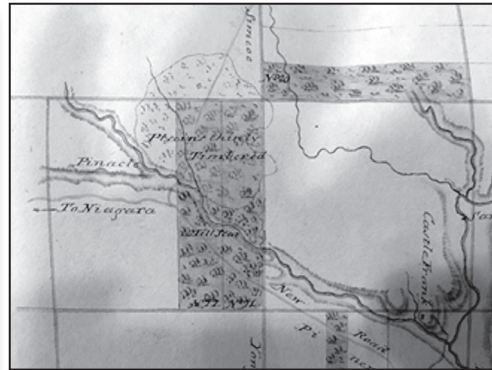
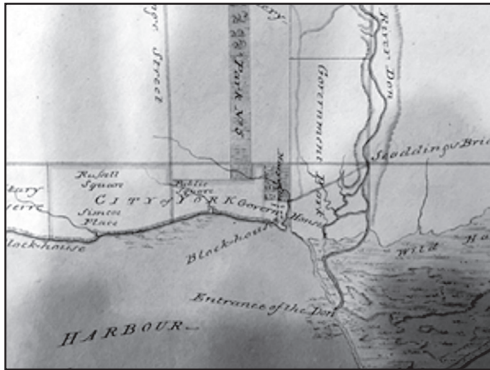
Anne and David William Smith



moved to York soon after the seat of government was officially transferred. Their 'Maryville' residence, also built by Chewett, was at the northeast corner of King & Ontario streets. It also housed the new Surveyor General's office, where Smith, Chewett and Ridout assigned work to local surveyors, drew up maps and plans, prepared submissions to the Executive Council, located land grants in vast ledgers, among other tasks. Just south of Maryville was Government House, where parliament met with Smith himself as "Speaker of the House of Commons" from 1796 to 1802. To the north Smith had two lots. A park lot north of Queen Street was sold by an

<sup>45</sup> Francois-Alexandre-Frederic, duc de la Rochefoucauld-Liancourt (1747-1827), *Travels Through the United States of North America, the Country of the Iroquois and Upper Canada in the Years 1795, 1796 and 1797, with an Authentic Account of Lower Canada*, Volume 1 (London: R. Phillips, 1799), 452-53.

<sup>46</sup> See Diana Park & Jane MacNamara, eds., "Simcoe's Gentry" and "The York Report" at <<http://torontofamilyhistory.org/simcoesgentry/>> (viewed 4 October 2016).



Figures 12 (left): Smith's land holdings at York, showing Maryville and the park lot. Figure 13 (right): Smith's lot with "Plains thinly timbered" and "Mill Seat" west of today's Yonge Street, north of Bloor and south of St. Clair. The mill site would have been near today's Russell Hill Road and Polar Plains Avenue.

intermediary to William Allan in 1831, becoming the site of Moss Park Armoury (named for Allan's later estate) and Allan Gardens in Toronto. The second lot, north of Bloor, south of St. Clair and east of Yonge, became the site of several estates.

After Simcoe's departure, Smith became an Executive Councillor on 2 March 1796. Simcoe expected Smith and John McGill to continue to defend his vision by standing firm in the face of self-interested merchants and status-driven officers of state, especially after unlocated land grants reverted to that body on 20 July. During Upper Canada's first decade, Smith was the only elected member of the lower house to be made an Executive Councillor.

De la Rochefoucauld had predicted the demise of Simcoe's dream, particularly because of the lieutenant governor's

lack of longevity in the job.<sup>47</sup> Haunted perhaps by melancholy recollections of French sovereignty over the lakes, rivers and forests that now comprised Upper Canada, the French duke expected 'late Loyalists' to prove fractious. But the reality was that wheat was displacing fur. A decade later timber would outstrip both. As a result, settlement was happening in Upper Canada in the 1790s on a scale unmatched elsewhere in the British Empire.

Smith was only confirmed as Surveyor General of Upper Canada on 1 January 1798. His back pay to 1 July 1792 amounted to £2,209 14s. 6d. Russell was giving Smith grief for spending many hours tending to his ailing wife; Anne Smith died on 5 November 1798, aged only 28.

Smith returned to England in 1799, where he brought out "a Short Topographical Description of His Majesty's

<sup>47</sup> "The Natural order of things at this moment, and the universal disposition of nations, announce the separation of Canada from Great Britain as an event, which cannot fail to take place. I know nothing, that can prevent it." De la Rochefoucauld, *Travels*, p. 481.

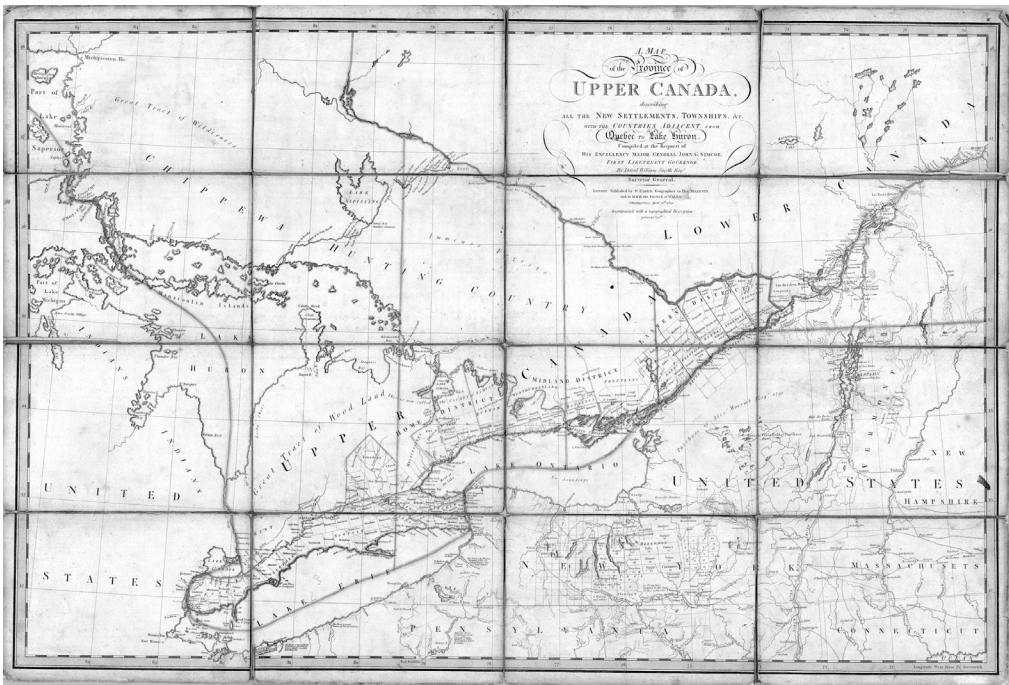


Figure 14: Smith's map of Upper Canada, 1800.

Province of Upper Canada, in North America, to which is annexed a Provincial Gazetteer.<sup>48</sup> Smith also annotated for private distribution an English version of de la Rochefoucauld's *Voyage*, and published the impressive map above.

As a regular army subaltern, executive councillor and only child of a father who reached field officer rank, Smith received significant grants of land—both for himself and family members. He accumulated over 20,000 acres in twenty-

one townships, including 7,800 acres granted mostly to his father and wife on the east side of Duffins Creek in Pickering township.

In 1797 he was planning to establish a mill on Duffins Creek, though there is no evidence that it was built during his time in Canada. By 1801 he had also sold and leased property in Pickering township to new settlers, including Cornelius Hoff, who had purchased lot four in the second concession.<sup>49</sup> By 1806

<sup>48</sup> London: published by W. Faden, Geographer to His Majesty and to His Royal Highness the Prince of Wales, Charing Cross, 1799. Printed by W. Bulmer & Co., Russell Court, Cleveland Row, St. James'.

<sup>49</sup> See Cornelius Hoff petition to lease neighbouring lot 3 in the same concession of Pickering Township in Upper Canada Land Petitions on the Library and Archives Canada website, microform C-2105, pp. 949+. A 1796 petition from William Gainfort. Formerly a lieutenant in the 60<sup>th</sup> regiment of foot, is on microfilm C-2028, pp. 173+.

William Peecke (also Peek and Peak), a veteran of Butler's Rangers and of Dutch descent, who had previously settled at York and Port Hope, owned lot fourteen in the first concession of Pickering and was seeking to lease lot fifteen. Peak is remembered as one of Pickering's first settlers, but probably arrived after David William Smith had left Canada.<sup>50</sup>

In the 1790s, farm lots east of the Don river were slow to be settled due to the absence of any mill in Scarborough, Pickering, Whitby or Darlington townships. The Don and Rouge rivers were also serious barriers to land communications with the town of York. As a result, major landowners in Pickering township such as David William Smith, Samuel Smith (commanding officer of the Queen's Rangers from 1799), William Gainfort (a retired lieutenant of the 60<sup>th</sup> Regiment of Foot) and William Holmes (a former surgeon in the 5<sup>th</sup> regiment of foot who moved to Montreal to be surgeon of forces in Lower Canada, after acquiring Gainfort's land in Pickering) had every incentive to maintain their holdings until values increased. There is an astonishing congruence between Smith's holdings and the current boundaries of Ajax (which became an Improvement District in 1950, later incorporated as a town in 1955), with Smith owning (due to the grant to his father) most of what is today the town south of Rossland Avenue – and up to one quarter of the area to the north.

## ‘Consequences Highly Beneficial’: Colonel, Commissioner, Judge & Trustee

Smith's story was deeply entwined with early Upper Canada's institutional development. He was colonel of the Lincoln militia from 7 January 1797; the first commander of the militia of York from 1 June 1798; and lord lieutenant of the county from 3 December 1798. In the summer of 1798, Smith tabulated the strength of all units showing a militia total for all Upper Canada of just over 5,200 men and boys (figure 15). Having qualified as a lawyer in 1793, he was Deputy Judge Advocate and Judge of the Court of Requests.

Smith was also “Trustee for the Six Nations Indians,” forming a lasting partnership with Joseph Brant, who differed with Simcoe and Russell over the right to sell or lease property they had been granted. Smith insisted land grants only take place in territories surrendered to the crown by treaties negotiated with First Nations by the Indian Department (still based in Montreal), as his correspondence and map of lands ceded on the north shore of Lake Ontario by 1787 make clear. Smith remained “Speaker of the House of Commons” through all but one session of the second and third parliaments. Auldjo & Maitland, the trading firm that handled Smith's accounts, was

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<sup>50</sup> William Peek petition, 11 February 1806, York (Upper Canada Land Petitions, microfilm C-2738, pp 402+).



one of the five London-based founders of the Bank of Montreal in 1817.

Smith had flaws. Johnson alleges he fathered an illegitimate child with a servant. Smith's mention of an adulterous relationship led to a duel on 4 January 1800 in which his friend John White, attorney general since 1792 and founder of the Law Society of Upper Canada in 1797, was shot and killed

by John Small, secretary to the Executive Council. Smith has been criticized for taking his papers back to England in 1802, returning them only in 1806. Moorman makes the case for a relatively

County	Men	Total
Albany	30	7-376
Hamilton	20	7-513
Quebec	11	7-209
Montreal	20	7-350
Lake	20	10-073
Frontenac	10	5-180
Adelphi	10	8-241
Hastings	5	5-103
Parishland	10	5-260
Lancaster	20	8-253
York	10	5-220
Leicester	10	7-100
Perth	15	3-235
York	15	8-008
Lake	10	5-170
<b>Total</b>	<b>338</b>	<b>120-073</b>

Figures 15: Summary of militia rolls for fifteen counties (1798).

slower, uneven performance after 1798, when the absenteeism of Lieutenant Governor Peter Hunter began to widen gulfs in York society.<sup>51</sup>

Following Lord Selkirk, who smeared Smith on a visit to Upper Canada in 1803, several historians have continued to argue that he acquired properties by subterfuge. There is absolutely no evidence to support this. On the contrary,

Smith's property transactions are transparent from start to finish. Given that he inherited the property of his father and wife, his holdings were far from unusual for his longevity, office, rank and time.<sup>52</sup>

<sup>51</sup> Moorman, *First Business of Government*, 191.

<sup>52</sup> "Selkirk's remark is quoted in *Lord Selkirk's Diary, 1803-1804: A Journal of His Travels in British North America and the Northeastern United States*, edited by Patrick C.T. White, volume 35 (Publications of the Champlain Society, 2013). It has been regularly cited, without further context, as prima facie evidence of Smith's venality by S.R. Mealing in his DCM biography of Smith, by Richard D. Merritt in *On Common Ground: The Ongoing Story of the Commons in Niagara-on-the-Lake* (Toronto: Dundurn, 2012), p. 107 and elsewhere. But it conceals a genuine irony: Thomas Douglas, 5th Earl of Selkirk, was just the sort of absentee landlord Smith had been at pains to remove from the land-granting process in Upper Canada: in fact, he had been so successful in reducing such speculative ventures up to his departure in 1802 that Selkirk's 1803-04 initiative was an exception that proved the rule. In the end, Selkirk himself was granted 14,150 acres—1,200 in his own right and the rest in the name of his indentured tenants [A.E.D. Mackenzie, *Balloon: Lord Selkirk's Settlement in Upper Canada*, (Phelps Publishing Company: Petrolia, Ontario, 1978), pp 34-35]. While Selkirk had criticized the practices of tacksman in the Scottish Highlands for their poor agricultural practices, he immediately hired as his farm manager Alexander McDonell of Collachie, the son of just such a tacksman, who had settled in the province after serving as a Loyalist officer in Butler's Rangers, becoming a friend and ally of Simcoe's, sheriff of the Home District and a long-serving MP <[http://www.biographi.ca/en/bio/mcdonnell\\_alexander\\_7E.html](http://www.biographi.ca/en/bio/mcdonnell_alexander_7E.html)>. In the end, Selkirk's Balloon settlement was an abject failure; Smith's vision of smaller grants to resident settlers stood the test of time. Even if he had lacked integrity, Smith was not in a position to engage in self-dealing: the rules governing land grants to demobilized officers, NCOs, soldiers and their families had been set by



Figures 16 & 17: Smith's armorial monogram & initials, & bookplate with crest. A new registration of arms for David William Smith in Canada was completed in 2012.<sup>53</sup>

Without the stabilizing influence of Simcoe, the government of Upper Canada subsided after 1796 into factions, with a merchant interest favouring speculation in land, while officials such as Small and Jarvis were concerned primarily to maximize their own fees. With his emphasis on low fees, exacting settlement conditions and steady probity, Smith re-

mained effective but became isolated. As the land grant system became subject to heir & devisee commissions, land patent backlogs and more expensive land sales, the pace of settlement slowed.

Smith's relationship with Russell was further complicated by the large land holdings in Whitby township of the latter's his cousin, William Willcocks.

Dorchester and other imperial authorities years before either Smith or Selkirk arrived in Upper Canada. The lands granted to Smith in Pickering township were arguably among the least attractive because of the absence of any road or mill east of the Don and Rouge Rivers until the early years of the nineteenth century—after Smith had left the province. Moreover, these lands had been granted to his father Major John Smith before David William Smith became Surveyor General in 1792.

<sup>53</sup>See <<http://reg.gg.ca/heraldry/pub-reg/project-pic.asp?lang=e&ProjectID=2241&ProjectElementID=7840>>

Smith differed with Chief Justice Elmsley over the move to York, which the latter had resisted. The Acting Surveyor General also feared that Hunter, by accelerating patent issuance after Simcoe's departure, was relaxing rules of settlement, thereby risking that those who acquired land would neither clear nor farm it.

In the end, Smith was unable to forge new alliances to replace the one he had lost with Simcoe's departure. As land granting became more complex, costly and contested—especially by merchants anxious to influence decision-making for commercial benefit—Smith found himself constrained in his efforts to enact the reforms required to promote settlement.

Smith had awkward relations with acting administrator Peter Russell until 1799 but more productive ones with Peter Hunter, his permanent successor. But the damage had been done. Chief Justice Elmsley, siding with Richard Cartwright among other merchants, advised against Smith's appointment to the Legislative Council to fill a vacancy. For Smith, who had been tempted by the London he saw in 1799 and again in 1800 and who planned on re-marrying in Devizes, this was the final straw. He departed in July 1802.

In England Smith found himself without patrons in Whitehall. After extended correspondence with Simcoe, he obtained the position of commissioner, or manager, of the estates of the Duke of Northumberland at Alnwick Castle. He was popular in this role, filling a myriad

of local offices and writing a book on archaeological curiosities entitled, *Sir David Smith's Camps & Castles*, still read at Alnwick to this day. For the Commissioner's House at Alnwick, Smith obtained "a pair of George II carved mahogany serpentine Commodes" recently auctioned at Bonhams for over £110,000.<sup>54</sup> One of Smith's sons was killed fighting at Quiberon Bay in 1811. On 30 August 1821, he was created a Baronet as Sir David William Smith, of Pickering in Upper Canada, and of Preston, county Northumberland.

### 'Chearfullness, Alacrity & Credit': Draughtsman of a Province

Canada's early history is filled with eminent geographers and cartographers, putting David William Smith in good company. His work joins that of Champlain, Bourdon, Franquelin, Deshayes, de Catalogne and others—the great map-makers of New France. It is also directly connected to the work of Captain Charles Morris, first Surveyor General of Nova Scotia in 1749, Samuel Holland, Surveyor General of Quebec and North America starting in 1764, Joseph Des Barres, author of *The Atlantic Neptune*, and Captains Cook and Vancouver, George Sproule in New Brunswick as well as the Wright family surveying dynasty in Prince Edward Island. Joseph Bouchette, surveyor general of Lower Canada after 1801 in succession to Hol-

<sup>54</sup> See <<https://www.bonhams.com/auctions/14221/lot/50/>>

land, even outdid Smith in achieving recognition in official circles at home and in London.

But early Upper Canada was different. When new surveys began in Lower Canada after 1791, the once-eminent Holland was past his peak. The Maritime provinces had relatively limited numbers of counties and townships to open. Smith, by contrast, had a vast reservoir of land to measure and grant. With Simcoe, he had a leader of vision and purpose. Smith himself rose to the occasion, building on his experience as a soldier to become lawyer, judge, First Nations trustee, author, member of parliament, speaker, privy councillor, colonel of militia, lieutenant of York, and one of the administrators of the province acting in the governor's absence.

Land granting in early Upper Canada was chaotic, as many observers attest. It was a new province, with fragile, nascent institutions. Commentators nevertheless single Smith out for special praise. Simcoe himself said Smith "took infinite trouble and showed much zeal to put the Settlement on as good a footing as the other settlements." Lieutenant Governor Peter Hunter called Smith's departure an "almost irreparable loss," confessing that "six months of your labour is of greater benefit to the province than years of many others."

Smith is generally described as honest, conscientious and smart. In Moorman's view, his probity was beyond doubt.<sup>55</sup> John Ladell called him an "energetic, honest and public-spirited man."<sup>56</sup> For a modern Surveyor General of Ontario Smith was "an upright, meticulous individual with a reputation for hard work and concern for the public interest... one of the most distinguished and respected men of his time."<sup>57</sup>

Smith is virtually alone in receiving such tributes. His office clearly flourished while other institutions struggled. In the *Dictionary of Canadian Biography* entry for Simcoe, S.R. Mealing names Smith among "the most consistently able of his [Simcoe's] subordinate officials."<sup>58</sup> He was recognized for the quality of its work, the meticulousness of its records and the abilities of its leader as well as the associates he recruited, notably Chewett and Ridout.

The same could not be said of Smith's peers. John McGill was able, but denied the office he sought. Osgoode left early. Small and Jarvis were regularly cited as incompetent. Peter Russell was motivated by the well-being of merchant friends. White was killed in a duel, partly triggered by Smith's inability to be untruthful. Christopher Robinson had little to do, dying in 1800. Jacques and Francois Baby, Richard Cartwright, Robert Ham-

<sup>55</sup> Moorman, *First Business of Government*, 192

<sup>56</sup> John Ladell, *They Left Their Mark: Surveyors and Their Role in the Settlement of Ontario*. Toronto/Hamilton: Dundurn, 1993, 100.

<sup>57</sup> In P.L. Finos, "The Surveyors General in Ontario" an address presented to the 99th Annual General Meeting on 6 March, 1991, in *The Ontario Land Surveyor* (Spring 1991), 32

<sup>58</sup> S.R. Mealing, "Simcoe, John Graves" in *DCB*, Volume V (1801-1820)



Figure 18: Canaletto's painting of Alnwick Castle, seat of the Dukes of Northumberland, where Smith was 'commissioner' (estate manager) from 1803 to 1837.

ilton, John and Hugh McDonell, Samuel Street and others remained focused on farming, military service or business, in addition to their official duties in the civil administration. Only Smith served Simcoe at a high level throughout his time in Upper Canada, continuing to implement his plan after Simcoe's departure. With White, Smith was the first *de facto* government leader in the House of Assembly; unlike White, he served three terms.

Simcoe and Smith aimed to lure Americans north with affordable land and good, honest government. They knew farmland in fee simple and a reli-

able constitution were what most English-speaking people knew and trusted. With grants made rapidly and fees kept low, settlers came north, especially as nascent American institutions showed their unruly side.

The numbers speak for themselves. In 1791 Lower Canada had a population of over 170,000, Nova Scotia 30,000. Even Newfoundland was larger than Upper Canada, with only 10,000 inhabitants. By 1806-07, the population of Upper Canada was 70,718—larger than Nova Scotia (65,000, which included 2,513 for the then separate Colony of Cape Breton Island); twice the size of New Brunswick

(35,000); much larger than Newfoundland (26,000) and Prince Edward Island (9,676). Over these fifteen years (1791-1806), Upper Canada grew three times faster than New York State; fourteen times faster than Lower Canada.<sup>59</sup>

In fact, Upper Canada grew faster over the 1790s than any inland US state.<sup>60</sup> It was virtually the only British colony with high levels of immigration in this period. The population grew; agricultural output and trade flourished. With the *Canada Act*, the cause of Loyalist refugees from America was rewarded, land grants in free and common socage were easily available and better lives under functioning institutions were available.

Those who came were neither land-hungry jobbers nor desperate, penniless asylum seekers. They were the Comte de Puisaye, with a group of French notables who had fled the revolution, finding new homes in Markham.<sup>61</sup> They were the followers of Benjamin Summer, who signed their own names to a petition in 1800, or the many Vermont farmers who stipulated the details of their request in the same year.<sup>62</sup> David Morden and his family left New Jersey to settle in Flamborough township in 1793; John Smith came to

Upper Canada from the Mohawk river valley in 1799.<sup>63</sup> They were not 'late Loyalists'—free-riders piggy-backing on the goodwill shown to 'Tories'. They were industrious immigrants, seeking a better opportunity, enticed and coaxed into Upper Canada by stories of cheap land and decent laws.

Simcoe and Smith knew the risk of American aggression was real. By 1813, Upper Canada's capitals had been occupied and burned. The Niagara peninsula was a war zone. What would have happened without an aggressive settlement policy in Upper Canada after 1791?

Under Smith from 1792 to 1803, then under others trained by him and his deputies from 1820 to 1850, land issues were managed with creativity and initiative. As Mealing writes, "Simcoe's settlement policy determined the course of Upper Canadian development for the next generation," but David William Smith was the real engine. Without his exceptional contribution as Surveyor General of Upper Canada from 1792 to 1803, the province might not have had the population base necessary to withstand the War of 1812.

Chewett himself played a key role

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<sup>59</sup> See Roger Hall Krueger, Norman Nicholson, David Bercuson, William Lewis Morton, "Canada: The Influence of the American Revolution" in *Encyclopedia Britannica* <<https://www.britannica.com/place/Canada/The-influence-of-the-American-Revolution>>. Upper Canada was also the only colony in the British Empire to experience such strong growth in this period. By comparison, Australia's population grew from 2,873 in December 1791 to 8,910 in December 1806. (ChartsBin statistics collector team 2010, *Historical Population of Australia, 1788 to Future*, ChartsBin.com, viewed 27 September 2016, <<http://chartsbin.com/view/eoo>>)

<sup>60</sup> See <[https://en.wikipedia.org/wiki/List\\_of\\_U.S.\\_states\\_by\\_historical\\_population](https://en.wikipedia.org/wiki/List_of_U.S._states_by_historical_population)>

<sup>61</sup> Upper Canada Land Petition, microfilm C-2808, pp 241+.

<sup>62</sup> For Vermont, see C-2028, pp. 98+; for Benjamin Summer, see C-2808, pp 800+.

<sup>63</sup> David Morden C-2190, pp 800+; John Smith C-2808, pp 1209+.

leading the 3<sup>rd</sup> York Militia at Queenston in 1812 and later the Battle of the Windmill. Thomas Ridout, too old to take part in the fighting, was a director of the Loyal & Patriotic Society of Upper Canada, founded to support injured veterans and bereaved families, remaining Surveyor General from 1810 until his death in 1829.

Chewett and Ridout trained deputies such as Charles Rankin one of whose apprentices was John Stoughton Dennis, the most influential surveyor in the history of Canada's western provinces. In the decades after Smith's departure, Canada would produce surveyors of rare calibre—from David Thompson and Sanford Fleming to John Palliser and Vilhjalmur Stefansson. The Surveyor General's Office of Upper Canada would become Ontario's Crown Lands Department, with provincial legislation to back it starting in 1837.

Peter Robinson, son of Christopher and brother of Attorney General and Chief Justice John Beverly Robinson, was Upper Canada's first Commissioner of Crown Lands—a position that would give Sir John A. Macdonald his first taste of government office in 1847-48. In fact, it is fair to say that many of Canada's institutional foundations were laid in the offices of surveyors general, which evolved into departments for forestry, agriculture, mining, energy, transport, immigration, employment, municipal affairs and even education.

David William Smith's accomplishments have been obscured by Upper Canada's Lilliputian demographic scale,

Simcoe's panache, and Smith's return in disappointment to England in 1802.

If Upper Canada was a success in its first decade of existence, Smith had a large hand in it.

Disappointed by the new governor and opposed by local merchants, Smith, who had married Mary Tyler in his mother's hometown of Devizes on 11 April 1803, decided to remain in England. He gave notice that he was resigning all his Canadian positions on 12 May 1804. But the office he had founded prospered. Prior to his departure for England in both 1799 and 1802, Smith left nine pages of detailed instructions for Chewett and Ridout, whom he entrusted jointly with running the office, covering opening hours, service standards, conduct and other minutiae: "first, all lands not already described were to be described, then certificates lodged in the office were to receive attention, next they were to issue warrants of survey, finally, any new regulations were to be studied and put into effect."

The assistants were to work from "at least" 10 am to 3 pm. There were lists of ledgers, map cases, surveys, districts, townships and town plans, each lodged in a corner of the Maryville office. He asked them to divide fees equally before presuming to

Trust that there will be such a Cooperation of Goodwill.... on the part of each Gentleman towards the other that will be the means of forwarding the business of the office with cheerfulness, alacrity & credit –

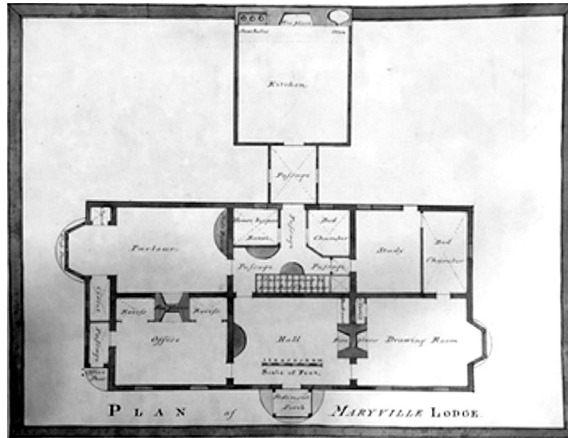
DW Smith

Sur Gen<sup>l</sup>

Upper Canada

Figure 19: Smith's Maryville estate at York, home of the Surveyor General's Department from 1796 to 1804. Smith's successor Charles Burton Wyatt declined to purchase the property. Note the "office" at lower left.

By overseeing land distribution with skill and integrity, Smith became the key official driving Upper Canada's population upwards in the 1790s and into the 1800s. In doing so, he was building on a Canadian tradition—"the imperialism of small numbers and large spaces"—first practiced in New France, where a *proces-verbal d'arpentage* became the basis of individual land-holding to an extent unparalleled in other early North American colonies. As Allan Greer points out in *Property and Dispossession: Natives, Empires and Land in Early Modern North America*, Smith was building on a



distinctive Canadian legacy:

From the beginning of colonization here, surveying was an integral part of property formation. Unlike other colonies, and in striking contrast with *Ancien régime* France itself, almost all settler properties were laid out with measurements on the ground; markers indicated boundaries; and there was a standardized written record.<sup>64</sup>

<sup>64</sup> Allan Greer, *Property and Dispossession* (Cambridge: Cambridge University Press, 2018). 'Imperialism of small numbers...' is mentioned on page 145. The longer quote is from page 335.