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William H. Laurence\*

“No Sinecure”: William Young as  
Attorney General of Nova Scotia,  
1854–1857

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*Focusing on the tenure (1854–1857) of William Young, this article examines the legal work of nineteenth-century Nova Scotian attorneys general. Although he served without the benefit of an established justice department, Young fulfilled a wide range of duties and completed an impressive volume of work, which required knowledge of both public and private law, and which demanded advocacy, advisory, solicitorial, and legislative drafting skills. This article argues that though Young's performance as a Crown prosecutor received the most public attention, his accomplishments outside the criminal courtroom, especially those relating to the administration of justice and legislative development, had the most significant and enduring effects upon the province, given their connection to the development of communications and transportation, as well as to the maintenance of public order.*

*Cet article traite du travail des procureurs généraux néo-écossais du dix-neuvième siècle et examine tout particulièrement le mandat de William Young (1854–1857). Même s'il a rempli ses fonctions sans pouvoir bénéficier d'un ministère de la Justice bien établi, William Young s'est acquitté d'un large éventail de tâches et a abattu une somme considérable de travail, ce qui exigeait une connaissance du droit public et du droit privé ainsi que de grandes qualités de plaideur, de conseiller, de représentation et de rédaction de textes législatifs. L'auteur avance que même si c'est le travail de William Young en tant que procureur de la Couronne qui a le plus retenu l'attention du public, ses réalisations ailleurs que devant les tribunaux criminels, en particulier pour ce qui est de l'administration de la justice et des changements d'ordre législatif, ont eu les effets les plus durables sur la province, étant donné leurs liens avec le développement des moyens de communication et de transport, ainsi que sur le maintien de l'ordre public.*

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\* Solicitor, Nova Scotia Department of Justice. I am grateful to the *Journal's* anonymous reviewers, as well as to my Justice colleagues, Alex Cameron and Martin Hubley, for their helpful comments about an earlier version of this paper. Opinions expressed herein are solely those of the author.

*Introduction*

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*Introduction*

On 3 April 1854, William Young, a Scottish-born lawyer who had enjoyed a highly successful Halifax practice since joining the bar in 1826, became the tenth attorney general of Nova Scotia.<sup>1</sup> Consistent with a trend that prevailed for much of the nineteenth century, not only in Nova Scotia, but elsewhere in British North America,<sup>2</sup> Young served concurrently as attorney general and premier.<sup>3</sup> He remained the province's principal law officer until 19 February 1857, when the fall of his Liberal government forced his resignation.<sup>4</sup>

The historical literature has largely overlooked the work of the attorney general in nineteenth-century Nova Scotia. Those scholars who have explored this topic have emphasized the political role of the attorney generalship. Where mentioned at all, descriptions of the attorney general's

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1. Nova Scotia Archives [NSA], MG 2, vol 775, F2/3, Appointment of William Young as Attorney General, 3 April 1854. All archival materials cited in this paper are located at NSA.

2. Paul Romney, *Mr. Attorney: The Attorney General for Ontario in Court, Cabinet, and Legislature, 1791-1899* (Toronto: The Osgoode Society, 1986) at 160.

3. During his second term as premier, from February to August 1860, Young did not claim the attorney generalship. At that time, appointees to salaried posts in the provincial cabinet had to confirm their seats through a by-election. Having secured a seat in Cumberland County with some difficulty, Young did not wish to repeat that contest. In addition to the premiership, he chose the unpaid post of president of the executive council: John Doull, *Sketches of Attorney Generals of Nova Scotia, 1750-1926* (Halifax: [s.n.], 1964) at 59.

4. Nova Scotia, *Journal and Proceedings of the House of Assembly* (1857) at 242, 246-47 [JHA].

legal functions and duties have for the most part been summary.<sup>5</sup> More specifically, Young's tenure as attorney general has been almost ignored.<sup>6</sup> Indeed, the historiography tends either to overlook or slight his legal career, despite his near omnipresence in Nova Scotian law and legal culture, for much of the nineteenth century, as a prominent lawyer, law reformer, attorney general, chief justice (1860–1881), and promoter of Dalhousie Law School.<sup>7</sup>

The lack of surviving records involving the office of attorney general in nineteenth-century Nova Scotia has likely discouraged scholarship. Fortunately, however, the William Young fonds at the Nova Scotia Archives is a rich, wide-ranging source which supports the re-creation, in often considerable detail, of significant aspects of his legal career, including his tenure as attorney general.

Using Young as its focus, this study provides greater scope and detail than was hitherto known about the legal work of nineteenth-century Nova Scotian attorneys general. More specifically, it examines what attorney general Young did in his legal capacity, how he accomplished those tasks, and with whom he interacted. The approach in Nova Scotia is compared in a number of respects to that elsewhere in British North America, especially Upper Canada,<sup>8</sup> as well as in England and Ireland. This paper argues that for the most part, Young showed dedication and ability in addressing the many demands of his multifaceted position, one which he admitted, within weeks of assuming it, was “no sinecure.”<sup>9</sup> Political and social issues of the day likely hindered contemporaries from fully appreciating the range, volume, and significance of Young's work, accomplished without the

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5. See Peter B Waite, “An Attorney General of Nova Scotia: Aspects of Law and Society in the Regime of John S. D. Thompson, 1878-1882” in John A Yogis, ed, *Law in a Colonial Society: The Nova Scotia Experience* (Toronto: Carswell, 1984) 165 at 172, 177; James Murray Beck, “The Rise and Fall of the Attorney General in Nova Scotia” in Yogis, 125 at 126-130; PB Waite, *The Man from Halifax* (Toronto: University of Toronto Press, 1985) at 89, 92; and generally Brian Cuthbertson, *The Old Attorney General* (Halifax: Nimbus Publishing, 1980). The focus on political, rather than legal, responsibilities of the colonial attorney general is not confined to writers on Nova Scotian history. See Romney, *supra* note 2 at xi-xii. Romney's book itself is, however, a significant exception to the trend.

6. Despite its title, Doull's *Sketches of Attorney Generals of Nova Scotia*, *supra* note 3, in the chapter on Young (52-62), provides almost no information on what Young, or any others, did as attorney general.

7. See for example J Murray Beck, “Sir William Young,” online: *Dictionary of Canadian Biography* <<http://biographi.ca>> [DCB], which, based on a few disparate references, suggests that Young lacked legal knowledge. In contrast, for a study of Young's entire career in the law and his influence on the legal culture of nineteenth-century Nova Scotia, and in particular, Young's career-long devotion to readings in the law, see William H Laurence, ‘A Literary Man & a Merchant’: *The Legal Career of Sir William Young* (JSD thesis, Dalhousie Law School, 2009) [unpublished].

8. This paper uses Upper Canada for pre-1867 references to Ontario.

9. MG 2, vol 733, #394, William Young to AG Archibald, 25 April 1854.

assistance of a discrete justice department. His performance as a Crown prosecutor received the greatest public attention, but his attorney general duties outside the criminal courtroom, as an advocate, legal advisor, solicitor, and legislative drafter, had the most important and enduring effects upon the province.

### I. *General nature of the position*

On 20 May 1854, when letters patent for his appointment as attorney general were issued, Young received “all the rights privileges and advantages which to the said office do or may lawfully appertain.”<sup>10</sup> The specifics of the position were not, however, mentioned. A few incidental references excepted, no statute identified for Young the nature of his work as attorney general. Indeed, throughout pre-1867 British North America, legislation tended not to define the office’s functions and responsibilities.<sup>11</sup> Commissions of appointment provided some direction, but their language was general.<sup>12</sup> Rather, for the most part, an incumbent seeking to understand what the attorney generalship entailed had to look for guidance in colonial practice and, if available, in case law. For the most part, colonial attorneys general were considered to enjoy the same roles entrusted to their counterparts in England, unless statute had modified aspects of the colonial position.<sup>13</sup> Fortunately for Young, by the time he assumed the attorney generalship in 1854, he had practised law for nearly thirty years and had served in the House of Assembly for close to twenty, including ten years as speaker and one year as member without portfolio of the executive council.<sup>14</sup> As a consequence, he had enjoyed many opportunities to observe how preceding attorneys general performed their functions.

After the achievement of responsible government, in Nova Scotia (1848), and elsewhere in British North America, the attorney general had both executive functions, as a cabinet member, and administrative duties, as provincial justice minister. In the first of those roles, the attorney general

10. MG 2, vol 775, F2/4, Letters patent, appointing William Young as Attorney General, 20 May 1854.

11. Waite, “Attorney”, *supra* note 5 at 165. Nova Scotia only identified the attorney general’s main functions in statutory form in 1900: John L I J Edwards, *Walking the Tightrope of Justice: An Examination of the Office of the Attorney General in Canada* ([Halifax]: Royal Commission on the Donald Marshall, Jr, Prosecution, [1989]) at 124. In 1885, Manitoba became the first Canadian province to itemize the functions and duties of its attorney general: *Constitutional and Historical Position of the Provincial Attorney General in Canada Prior to and After Confederation*, (Toronto: Inter-provincial Conference of Attorneys General, 1974) at 13.

12. A similar approach prevailed in Upper Canada: Romney, *supra* note 2 at 16-17.

13. Waite, “Attorney”, *supra* note 5 at 166.

14. Shirley B Elliott, ed, *The Legislative Assembly of Nova Scotia 1758-1983: A Biographical Directory* (np: Province of Nova Scotia, 1984) at 239.

in theory provided apolitical legal advice to cabinet. The attorney general's ability to do so rested on the idea that law was apolitical, as it involved the pursuit of idealized justice.<sup>15</sup> At the same time, however, the attorney general was not precluded from voting on the political decisions which flowed from his advice. As Jonathan Swainger points out, the attorney general's role within cabinet therefore depended on a fiction: "That the attorney general, as the apolitical legal counsel, and the minister of justice, as the political law officer in the cabinet, were to be the same person, required a particularly generous suspension of disbelief."<sup>16</sup> By contrast, the attorney general in nineteenth-century England was not a member of cabinet.<sup>17</sup> It is not known how Young perceived the potential conflict inherent within the dual nature of his office.

Young's appointment was not one for life. Prior to the advent of responsible government, similar to many other Crown appointments, the attorney generalship had been perceived as a form of property. In essence, the office holder enjoyed a monopoly on the performance of certain services. With responsible government established, the attorney general became the member of provincial cabinet responsible for the administration of justice. One retained the position only so long as one enjoyed the support of one's cabinet colleagues, who in turn required majority support in the legislature.

## II. *Specific roles*

### 1. *Criminal prosecutions & public security*

The historical literature agrees that the responsibility for conducting criminal prosecutions constituted the most significant function of British North American attorneys general.<sup>18</sup> The opportunity to conduct a criminal prosecution could arise following a perceived offence against the state,

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15. Jonathan Swainger, *The Canadian Department of Justice and the Completion of Confederation, 1867-78* (Vancouver: University of British Columbia Press, 2000) at 19-20.

16. *Ibid* at 22. See also Romney, *supra* note 2 at 11.

17. Romney, *ibid* at 14, 15. Romney attributes the attorney general's cabinet status in British North America to the lack of a landed aristocracy, independently wealthy and politically sophisticated, and the preeminence of lawyers, enjoying professional independence, in public life. Those lawyers supported the inclusion within cabinet of a post suited to their training and experience: *ibid* at 169.

18. *Ibid* at 198; Beck, "Rise and Fall", *supra* note 5 at 126; Patrick Brode, *Sir John Beverley Robinson: Bone and Sinew of the Compact* (Toronto: The Osgoode Society, 1984) at 105-106; Waite, "Attorney", *supra* note 5 at 177; *The Development of the Prosecutorial Role of the Attorney-General of British Columbia*, (Toronto: Inter-provincial Conference of Attorneys General, 1974) at 59-60; and *Constitutional and Historical Position*, *supra* note 11 at 6-8. The last source suggests, without providing any details in support, that "politicization" of the Nova Scotia attorney general's office during the 1830s and 1840s tended to reduce the incumbent's direct participation in the prosecutorial role, and that Young's activities as attorney general were "primarily political."

an information taken by a magistrate, a grand jury indictment, or a complaint from an injured person.<sup>19</sup> Young personally conducted criminal prosecutions in the Nova Scotia Supreme Court (NSSC). In 1854, for example, he acted for the Crown in a Halifax murder trial. The lifeless body of the victim, Alexander Allan, a sailor on HMS *Cumberland*, had been found outside Halifax's Waterloo Tavern in September 1853.<sup>20</sup> Accused of murder were Thomas Murphy, the tavern operator, and John Gordon, a carpenter and boarder at the Waterloo. Allan's killing strained relations between the British military and Halifax residents. The murder also caused concern about disreputable areas of the city.<sup>21</sup> Clearly, the government had to convey a reassuring message that the criminal law would be upheld.

The Crown's case rested on the testimony of two prostitutes. As part of his opening remarks, Young conceded that the witnesses' character "may not be all we could wish."<sup>22</sup> Nonetheless, he added, "I do not think it will be urged that they are incompetent witnesses and entirely to be discredited."<sup>23</sup> After three days of trial, the presiding judge, Thomas C Haliburton, interrupted the proceedings. Out of the jury's hearing, he consulted with fellow justices Bliss, Halliburton, and Stewart, who were attending as spectator judges,<sup>24</sup> as well as with Young. Following that discussion, in light of what he perceived as the conflicting nature of testimony provided by Crown and defence witnesses, Haliburton announced, "I am sure no jury would feel themselves justified in convicting the prisoners."<sup>25</sup> He asked Young in open court if it would be "prudent" for the Crown to continue with its case, especially keeping in mind the inconvenience to jurors. Haliburton pointed out that the jurors had been detained for four days and would perhaps be confined for two more, though "the same result must of necessity ensue."<sup>26</sup> This placed Young in a difficult position. Adding to the weight of Haliburton's intervention was the fact that he had consulted beforehand with the spectator judges, two of whom concurred aloud with his concern. For instance, Chief Justice Brenton Halliburton (not to be confused with Haliburton the presiding judge) suggested that as a capital

19. Romney, *ibid* at 132.

20. For a summary of the Allan case, see Dean Jobb, *Crime Wave* (Porters Lake, NS: Pottersfield Press, 1991) at 92-102.

21. *Ibid* at 96.

22. *Halifax Daily Sun* (25 April 1854) [2].

23. *Ibid*.

24. It is not known how frequently judges sat as spectators in the NSSC, nor whether this practice incurred any public opposition. In 1856, after fifteen years' service on the NSSC, Haliburton, creator of the literary character Sam Slick of Slickville, left Nova Scotia for England, where he was elected to Parliament: Elliott, *supra* 14 note at 87.

25. *Halifax Daily Sun* (28 April 1854) [2].

26. *Ibid*.

case was involved, with “contradictory and conflicting” testimony, “no jury could feel themselves at liberty, and no Judge would be authorised under such circumstances in instructing them to convict, much less would any government feel themselves at liberty to carry sentence of death into execution.”<sup>27</sup> Faced with the justices’ manifest doubt, Young chose to stop the presentation of the Crown’s case, which he agreed had been “clouded with suspicion” because of reliance on dubious characters who had provided evidence contradicted by others.<sup>28</sup> Haliburton then directed a verdict of not guilty, with which the jury complied.

Once the accused were acquitted, Haliburton proceeded to castigate them, in a way which strongly suggested that they had been fortunate to escape convictions. He berated Murphy for having “degraded [himself] below the dignity of manhood to engage in the occupation, almost of a beast.”<sup>29</sup> Perhaps seeking to provide Halifax citizens with the comfort that the trial would lead to some good, Haliburton then turned his ire to City officials. “[I]t is a disgrace to this City,” Haliburton thundered, “that Licenses should be granted for the sale of Liquors in houses of such a character; collecting a revenue off the prostitution of the unfortunate female inmates of these dens.”<sup>30</sup>

The *Halifax Daily Sun* provided extensive trial coverage, which, following a request from Haliburton, it only printed after the trial had concluded. In an editorial that accompanied its final issue devoted to the trial, the *Sun* suggested that there had been no justifiable reason to halt the proceedings. Rather than accepting that a breakdown of the prosecution had occurred, the *Sun* accused Haliburton of having usurped the jury’s role as decider of fact. The judge’s conduct, the *Sun* suggested, could have severe and negative consequences for criminal justice: “If this practice be tolerated society will resolve itself into its first elements, and Lynch Law provide a sort of substitute for substantial justice.”<sup>31</sup>

Neither the NSSC justices nor the *Sun* reproached Young for his handling of the prosecution. Chief Justice Halliburton stated aloud that Young had “conducted this case in a manner highly creditable.”<sup>32</sup> More specifically, Halliburton suggested, one could impute to Young “neither relaxing that stringent investigation which every case such as this should

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27. *Ibid.*

28. *Ibid.*

29. *Ibid.*

30. *Ibid.*

31. *Ibid.*

32. *Ibid.*

receive; nor pushing it beyond due bounds.”<sup>33</sup> The *Sun*’s reporter also mentioned Young’s “able and lucid exposition of the case.”<sup>34</sup> One is left to wonder, though, whether some members of the public thought that Young did not try his best to secure a conviction. During his opening remarks, in addition to acknowledging the questionable character of the main Crown witnesses, Young conceded that there would be conflicting testimony. By acquiescing to the presiding judge’s suggestion, Young may have appeared weak in some eyes. Some Nova Scotians may not have fully appreciated the non-partisan role Young set out for himself at the trial’s beginning. “My object gentlemen,” he had stated, “is not the conviction of these prisoners; nay, I should rejoice in their acquittal—if it appear to be consistent with the rules of law and evidence and the duty we owe to society.”<sup>35</sup> The *Sun*’s reporter depicted a courtroom full of spectators unhappy with the trial’s result. In some instances, the “silent, sullen indications of dissent and disapprobation manifested by the dense crowd of citizens, of every rank in society, present, at the abrupt, unaccountable termination of case,”<sup>36</sup> may have been directed towards the Crown’s representative.

In 1856, Young took the lead in another widely-publicized prosecution, one which took place in a context of religious and ethnic conflict. Religious antagonisms between Roman Catholics, frequently Irish, and Protestants divided Nova Scotia in the 1850s. The majority Protestants often depicted themselves as defending British ideals and institutions against encroachments by aggressive and intolerant foreign elements. By contrast, Catholics saw themselves as victims, denied equal status and opportunities in Nova Scotia. More particularly, given Ireland’s troubled history, Irish members of the province’s Catholic community did not share an affinity for things British. Instead, their past made them sensitive to perceived oppression and injustice. This quarrel produced ferocious exchanges in the province’s newspapers, as well as brutal acts of violence. The most infamous violent incident took place among railway labourers at a private residence, known as Gourlay’s Shanty. Some 100 Catholics, ostensibly angered by slights directed toward their religion, used pick handles to attack a greatly outnumbered group of Protestants. An NSSC judge later described the result as a “Slaughter House.”<sup>37</sup> For many Protestants, the attack at Gourlay’s Shanty was an outrage, which required a severe sanction. From the perspective of some Catholics, the violence could be

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33. *Ibid.*

34. *Supra* note 22.

35. *Ibid.*

36. *Supra* note 25.

37. Joseph Howe, Letter to the Editor, *The Morning Chronicle* (27 December 1856) [2].

justified, as the response of a downtrodden minority having been goaded over something cherished, the nature of its religious faith.<sup>38</sup>

Trials of nine accused rioters began on 8 December 1856, with Young conducting the prosecution. The Charitable Irish Society financed both bail and experienced legal counsel, including James William Johnston, leader of the Conservative party, on behalf of the accused. This was not the first instance in which a trial with political undercurrents pitted Young against Johnston. In 1843, Young and his brother George Renny, also a lawyer, had represented Richard Nugent, a newspaper editor with liberal views, in a number of politically-motivated libel actions, with then-Attorney General Johnston serving as the plaintiffs' co-counsel.<sup>39</sup>

One accused, James O'Brien, was tried alone, as the only alleged rioter in relation to whom there was evidence of having used a weapon during the affray. Young chose not to challenge any jurors for potential bias. The jury divided evenly, and O'Brien escaped a conviction. Young's decision was criticized, not as the product of inexperience or inadvertence, but as a deliberate attempt to placate a "certain class" in the community.<sup>40</sup> Although Young was a self-described "Presbyterian by birth and education,"<sup>41</sup> his good relations with Catholics were well known,<sup>42</sup> and the survival of his government depended on maintaining the support of Catholic members of the House of Assembly (MHAs).<sup>43</sup> The *Presbyterian*

38. For discussion of the religious-based conflict, see Graeme Wynn, "Ideology, Society, and State in the Maritime Colonies of British North America, 1840–1860" in Allan Greer & Ian Radforth, eds, *Colonial Leviathan* (Toronto: University of Toronto Press, 1992) 284 at 312; J Murray Beck, *Joseph Howe, Volume II: The Briton Becomes a Canadian, 1848–1873* (Kingston & Montreal: McGill-Queen's University Press, 1983) at 144-146; *Politics of Nova Scotia, Volume One: Nicholson - Fielding, 1710-1896* (Tantallon, NS: Four East Publications, 1985) at 109-111, 115-116; David Sutherland, "'Father' Chiniquy Comes to Halifax: Sectarian Conflict in 1870s Nova Scotia" (2007) 10 J of Royal NS Hist Soc 72 at 76; and Ian Ross Robertson, "The 1850s: Maturity and Reform" in Phillip A Buckner and John G Reid, eds, *The Atlantic Region to Confederation: A History* (Toronto: University of Toronto Press, 1994) 333 at 341-42. Much of the rancour pitted Joseph Howe against members of the Irish community in Nova Scotia. Although in earlier years, Howe had strongly defended Irish interests, he was angered by the Irish community's interference with, and criticism of, a clandestine trip he made to the United States, in order to enlist volunteers for British forces in the Crimean War.

39. Beck, "Rise and Fall," *supra* note 5 at 130-131; J Murray Beck, "Richard Nugent" in *DCB, supra* note 7.

40. *Presbyterian Witness* (13 December 1856) 189.

41. MG 1, vol 3362, #12, William Young to Lord Grey, 2 September 1847.

42. Young did legal work for the Catholic Church, he was friendly with Archbishop William Walsh of Halifax, he supported St Mary's College in Halifax, he represented Inverness County, a largely Catholic constituency, in the Assembly, and was married to Anne Tobin, a member of a prominent Irish Catholic family. See Young to Grey, *ibid*; MG 2, vol 758, William Young Ledger Book (1829–1834) at 105; MG 1, vol 3362, #12, William Walsh to William Young, 6 July 1847; and J Murray Beck, *Joseph Howe, Volume I: Conservative Reformer, 1804–1848* (Kingston & Montreal: McGill-Queen's University Press, 1982) at 249.

43. When Young lost that support, his government fell: Beck, *Politics, supra* note 38 at 145.

*Witness* predicted (correctly, as it turned out) that the charges against the other alleged rioters would yield no convictions: “If the same course be followed in the remaining cases we will venture to predict that they will end in moonshine, and the perpetrators of this brutal outrage will, without exception, escape the punishment due to their crime.”<sup>44</sup>

In trials of the other eight rioters, jury members refused to convict. It was later revealed that with the exception of one Protestant juror in the O’Brien trial, all jurors had voted in accordance with their respective religions, with Catholics holding out for acquittal and Protestants supporting convictions.<sup>45</sup> In an editorial which expressed displeasure with the outcome of the railway rioters’ trials, the *Acadian Recorder* suggested that religious prejudice also made the jury system dysfunctional in its civil context:

If the parties in the suit are Roman Catholic and Protestant, there are sure to be two parties in the Jury, one altogether Roman Catholic and the other wholly Protestant, and these two are sure to take diametrically opposite views of every question submitted to them and can never possibly agree. Therefore the members of these two different bodies must have entirely different mental constitutions, or else there must be some desperate villany somewhere.<sup>46</sup>

Young had more success in 1857, when he secured a verdict of manslaughter against one George Izatt.<sup>47</sup> Once again, railway labourers were implicated in violent acts. The accused had organized a raffle at his home, where dancing and considerable drinking also occurred. There was no indication that religion had led to tension among the participants, though conflict between Irish and non-Irish may have been a contributing factor. Disagreement arose over payment for a fiddler, the dispute degenerated into violence, and Izatt ejected the visitors. When it appeared that some of the crowd were attempting to break in his door, Izatt, fearing for the safety of himself and his family, discharged a gun, killing one Daniel McKeon.

44. *Presbyterian Witness*, *supra* note 40. Without specifying names or omissions, the *Acadian Recorder* (20 December 1856) [2] suggested that the government “with their characteristic laziness and blundering, and cowardice” had allowed the guilty parties to escape.

45. Beck, *Howe*, *supra* note 38 at 114.

46. *Acadian Recorder*, *supra* note 44. For details about another 1850s prosecution (*The Queen v Kennedy and Gallagher*), not conducted by Young, but which also took place in an atmosphere of Catholic-Protestant tension, see R Blake Brown, *A Trying Question: The Jury in Nineteenth-Century Canada* (Toronto: University of Toronto Press for the Osgoode Society for Canadian Legal History, 2009) at 112 and Dean Jobb, *Shades of Justice* (Halifax: Nimbus Publishing, 1988) at 13.

47. Details about the Izatt case are derived from the *Acadian Recorder* (24 January 1857) [2], the *Halifax Daily Sun* (20 January 1857) [2], *The British Colonist* (22 & 24 January 1857) [2]; the *Morning Journal* (21 January 1857) [2]; and RG 7, vol 36, #111, Notice of Hue and Cry, 7 October 1856.

Izatt, a former railway constable with a good reputation, was charged with murder. His trial began on 19 January 1857. At the conclusion of the Crown's case, Young agreed that there was not enough evidence to sustain a murder conviction. He argued instead for a manslaughter conviction. Izatt was convicted of the lesser offence and sentenced to a lenient term of twelve months in the county jail.

Although Young was not criticized in court for the manner in which he conducted the Izatt prosecution, he may have been associated in some minds as the agent of a heavy-handed state. Izatt certainly engendered sympathy among the jurors, who, after three hours of deliberations, strongly recommended mercy when they announced their verdict. Moreover, at Izatt's sentencing, according to *The British Colonist*, "The unfortunate man was addressed at great length and with considerable feeling by the Judge (DesBarres), and appeared much affected."<sup>48</sup>

In fulfilling his prosecutorial role, Young did not venture far from Halifax. In his favour, one should note the suggestion, from later on in the nineteenth century, that it would be a physical impossibility for an attorney general to conduct more than 25% of the prosecutions in Halifax County alone.<sup>49</sup> Nonetheless, a quarter-century after Young's tenure, Attorney General John SD Thompson was willing to travel outside the provincial capital in order to conduct prosecutions in prominent cases. In 1880, he was part of a four-man prosecution team that obtained a conviction at an Annapolis Royal trial of a murderer whose gruesome crime had shocked the province.<sup>50</sup> Thompson, however, enjoyed the opportunity of one-day rail service to Annapolis, which would not have been available to Young.<sup>51</sup>

For prosecutions outside Halifax and environs, Young relied a great deal on William A Henry, Solicitor General from 1854–1856, and Henry's successor, Adams G Archibald.<sup>52</sup> Young was not the first to so delegate his duties. Richard J Uniacke, who served as attorney general from 1797 to 1830, also depended on his solicitor general, especially for prosecutions on circuit.<sup>53</sup>

48. *The British Colonist* (24 January 1857) [2].

49. Waite, *Man from Halifax*, *supra* note 5 at 92.

50. Waite, *ibid* at 92-95; "Attorney", *supra* note 5 at 178-179.

51. Railway lines between Halifax and Windsor, as well as between Halifax and Truro, were completed in 1858, after Young had ended his tenure as attorney general. In 1869, Windsor and Annapolis were connected by rail: Shirley E Woods, *Cinders & Saltwater: The Story of Atlantic Canada's Railways* (Halifax: Nimbus Publishing Ltd, 1992) at 51-52, 74, 78.

52. Henry and Archibald both enjoyed highly successful legal and political careers, which included service as attorney general (Henry between 1864–1867 and Archibald between 1860–1863): Elliott, *supra* note 14 at 93-94.

53. Cuthbertson, *supra* note 5 at 64, 104, 124-125.

Based in Antigonish, Henry went as far afield as Cape Breton in his prosecutorial capacity. For example, in 1854 he conducted the prosecution of Nicholas Martin, a 60-year-old justice of the peace (JP), farmer, and former postmaster, for the murder of Archibald O Dodd, a lawyer and son of NSSC Justice Edmund Dodd.<sup>54</sup> Archibald Dodd had refused to marry Catherine Martin, Nicholas's pregnant daughter, who alleged that the younger Dodd had raped her. Enraged by Archibald Dodd's indifference, Nicholas Martin fatally shot him in a Sydney store.

Martin's trial began on 10 August 1854. Young absented himself because of an impending trip to Europe.<sup>55</sup> Although valid at that time, Young's excuse may not have been as convincing in relation to the original June trial date, which had to be changed because of illness on Henry's part.<sup>56</sup> Martin I Wilkins, a Pictou-based lawyer, represented the accused. On 18 August 1854, Martin was acquitted, seemingly on the ground of insanity. The verdict led to cheers in the courtroom for Martin, one of Sydney's most popular citizens.<sup>57</sup> There was, however, some confusion over the basis for the acquittal, which, as discussed later in this paper, would lead to difficulties for Young after his return to Nova Scotia.

When neither Young nor his deputy was available to conduct a prosecution, the Nova Scotian practice was for the presiding judge to appoint as prosecutor the most senior Queen's Counsel (QC) present in court.<sup>58</sup> Legislation, first enacted in 1828, formalized this arrangement by prescribing a maximum fee of £5 per prosecution conducted.<sup>59</sup> As a QC designation could be awarded as a political favour, this system was criticized for not necessarily entrusting prosecutions to the most competent of counsel. Moreover, it did not allow *ad hoc* prosecutors much time in which to prepare.<sup>60</sup> In 1850s Nova Scotia, the deployment of QCs per se

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54. The Martin case is discussed in Dean Jobb, *Bluenose Justice* (Porters Lake, NS: Pottersfield Press, 1993) at 36-64.

55. MG 2, vol 733, #483, William Young to William A Henry, 17 June 1854.

56. MG 2, vol 733 #476, William A Henry to William Young, 13 June 1854.

57. Jobb, *Bluenose Justice*, *supra* note 54 at 42.

58. Beck, "Rise and Fall", *supra* note 5 at 128. By the late 1870s, delegation had become so common that attorneys general tended to confine their prosecutorial involvement to some 10% of the cases in Halifax County. PB Waite attributes to that trend a loss in prestige of the office of attorney general in the post-Confederation period. John SD Thompson, attorney general from 1878 to 1882, tried to reverse the trend by taking a more active role in prosecutions. For example, in November 1879, he handled 20 out of 21 indictments endorsed by the grand jury, with the one exception resulting from a conflict of interest: Waite, *Man from Halifax*, *supra* note 5 at 89, 92.

59. SNS 1828, c 13. At the time of Young's tenure as attorney general, the provision was found in RSNS 1851, c 168, s 53. In 1887, it became a duty of the attorney general to appoint in writing a QC or other competent barrister to represent the Crown at criminal sittings of the Supreme Court in each county. If no such delegate appeared, the court could make the appointment: SNS 1887, c 6, ss 2,4.

60. Waite, *Man from Halifax*, *supra* note 5 at 92.

does not seem, however, to have engendered the degree of controversy it produced in Upper Canada, where in addition to concerns about the lack of preparation by part-time prosecutors, critics questioned why public accounts had to sustain salaries for the attorney general and solicitor general, as well as payments for those acting in their stead.<sup>61</sup> In Upper Canada, by 1850 the attorney general had stopped attending the assizes (superior-level courts on circuit) for either criminal or civil proceedings.<sup>62</sup> The lack of court appearances by the Upper Canadian attorney general, acting on behalf of the public, may have fostered skepticism about what work he was doing to justify his salary.

By the second third of the nineteenth-century in Nova Scotia, however, complaints about the use of QCs as ad hoc Crown prosecutors entered the public discourse. In 1869, MHA Amos JG Purdy complained in the Assembly, “The country paid a large salary for [the Attorney General’s] services, and should not have to pay a lawyer to do his work in consequence of his being pre-occupied.” “Large sums of money,” he claimed, were spent on substitutes for the attorney general. Martin I Wilkins, the subject of Purdy’s criticism, reportedly replied, “Whenever the Court was sitting and the Legislature was not sitting he had prosecuted in person.”<sup>63</sup> A decade later, in 1880, decriing the tendency of judges to appoint the most senior QC to conduct prosecutions in the attorney general’s absence, the *Morning Herald* commented, “Unfortunately the silk gown in this Province has been known to clothe the grossest ignorance of law and the most glaring inability....”<sup>64</sup>

When he delegated criminal prosecutions, Young had to provide written instructions for those acting on his behalf. In October 1854, for example, writing from Parrsboro, lawyer RB Dickson looked to Young for guidance following the breaking of a bond or recognizance to preserve the peace.<sup>65</sup> Specifically, Dickson asked whether Young would enforce the recognizance as attorney general or provide Dickson with the authority to do so. Similarly, in September 1856, lawyer Jonathan Creighton wrote to Young from Lunenburg, seeking guidance about whether to prosecute on a bail and recognizance in a robbery matter.<sup>66</sup>

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61. Romney, *supra* note 2 at 181-182, 184-185, and 217.

62. *Ibid* at 169.

63. *Debates and Proceedings of the House of Assembly during the Second Session of the Twenty-Fourth Parliament* (Halifax, 1869) at 123-124.

64. *Morning Herald* (1 November 1880) [2].

65. MG 2, vol 733, #584, RB Dickson to William Young, 26 October 1854.

66. MG 2, vol 734, #1051, Jonathan Creighton to William Young, 1 September 1856.

In addition to conducting or delegating prosecutions, Young's work as attorney general included a more general supervision of the prosecutorial process, which took a number of forms. As part of gathering necessary information, he required depositions from witnesses. On 8 September 1856, for example, Young wrote to lawyer Hiram Blanchard to provide instructions relating to the investigation of serious assaults at Mount Uniacke, where railway construction was underway.<sup>67</sup> Two men, John Tracy and James Donhoe, had been "beaten in a savage manner" by a crowd of men, six of whom could be identified.<sup>68</sup> William Walsh, Roman Catholic Archbishop of Halifax, had already contacted Young to express concern over the incident. The Archbishop's intervention suggested that the incident was another example of the religious-based violence which plagued Nova Scotia in the 1850s. Young took little chance and entrusted the taking of depositions to Blanchard, his long-time friend, fellow Assembly colleague, and an experienced lawyer. Young cautioned, "This is a serious case therefore & requires to be well looked into and properly handled."<sup>69</sup> Young's excuse for not undertaking the task on his own was that the alleged assaults had occurred outside Halifax County.<sup>70</sup>

With the initiation of a prosecution, Young might have to deal with procedural requests from defence counsel. In April 1854, Provincial Secretary Lewis M Wilkins relayed a request from his brother Martin, a fellow lawyer and counsel for Nicholas Martin. Martin I Wilkins wished that Young, on behalf of the Crown, would consent to have a deposition taken at Pictou from an elderly and infirm witness unable to travel to the Sydney trial. Young considered the situation and consulted with the province's chief justice. Having found no precedent, Young concluded that

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67. MG 2, vol 734, #1063, William Young to Hiram Blanchard, 8 September 1856.

68. *Ibid.*

69. *Ibid.* Blanchard's career is summarized in William B Hamilton, "Hiram Blanchard" in *DCB*, *supra* note 7. In 1867, Blanchard also became both premier and attorney general, though he served in those roles for only a few months before he had to resign, following the defeat of his government in an election fought on the issue of Confederation, which he supported.

70. When required in order to compel a witness to appear in court, the drafting of subpoenas and arranging for their service also formed part of Young's duties, as did arranging for the payment of witness fees: MG 2, vol 733, #371, William Young to Joseph Allison, 10 April 1854; RG 10, A,7, William Young to Andrew Barclay, 1 November 1855.

he had no power in a capital case to order the deposition and refused the request.<sup>71</sup>

As shown by his reaction to the request from Martin I Wilkins, Young on an as-needed basis corresponded with judges about criminal law matters. On another occasion, in November 1854, he wrote to NSSC Justice William F DesBarres, requesting the minutes from a number of cases which DesBarres had recently decided.<sup>72</sup> Young also sought confirmation in relation to a matter of criminal procedure. DesBarres had presided at Nicholas Martin's murder trial. Young wished to know whether the ground of Martin's acquittal had been entered on the jury panel. This was a matter of some controversy. Defence counsel Martin I Wilkins maintained that the basis for the jury's acquittal verdict should not have been specified, and in any event, without a provincial statute to govern the criminally insane, he argued, there was no justification to keep his client imprisoned.<sup>73</sup> In a letter to Young, DesBarres recollected having asked the jury whether its members acquitted on the ground of insanity, to which they answered affirmatively. At that point, DesBarres recalled, "I directed the officer of the Court so to record their verdict which I presume he did."<sup>74</sup>

Young's active involvement in a variety of tasks relating to criminal prosecutions differed from the approach in England, which preferred for the most part to leave criminal prosecutions to private individuals or to the police.<sup>75</sup> The English attorney general tended to become involved only in serious cases against the state, such as treason or sedition, or matters with constitutional implications.<sup>76</sup> The Nova Scotian system more closely resembled that in nineteenth-century Ireland. The Irish attorney general assumed an overall, supervisory role in relation to criminal prosecutions.

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71. MG 2, vol 733, #391, Lewis M Wilkins to William Young, 24 April 1854; MG 2, vol 733, #412, Young to Wilkins, 3 May 1854. Young's consultation with the chief justice would not have been considered improper in 1850s Nova Scotia. Since the 1830s, the province had taken a number of significant steps towards achieving a better separation of powers among the executive, legislative, and judicial branches of government. In 1837, the executive and legislative councils became separate bodies. Judges had also been excluded from the legislative council, and the governor in council no longer had a role in practice in hearing appeals or divorce cases. Nonetheless, until the 1860s, there would be no demand for a complete distinction between the judicial and executive roles. See Philip Girard, "The Rise and Fall of Urban Justice in Halifax, 1815-1886" (1988) 8:2 *Nova Scotia Historical Review* 57 at 63, 68-69; J Murray Beck, *The Government of Nova Scotia* (Toronto: University of Toronto Press, 1957) at 129, 131-132.

72. MG 2, vol 733, #608, William Young to Judge DesBarres, 9 November 1854.

73. Jobb, *Bluenose Justice*, *supra* note 54 at 58.

74. MG 2, vol 733, #612, Judge DesBarres to William Young, 13 November 1854.

75. J L J Edwards, *The Law Officers of the Crown* (London: Sweet & Maxwell, 1964) at 335-338.

76. *Ibid* at 306; James Casey, *The Irish Law Officers: Roles and Responsibilities of the Attorney General and the Director of Public Prosecutions* (Dublin: Round Hall Sweet & Maxwell, 1996) at 27; Romney, *supra* note 2 at 15.

He inspected and approved informations prepared for use at the assizes. He also received reports on the progress of prosecutions.<sup>77</sup> He was assisted in the counties by a number of local lawyers.<sup>78</sup> Unlike Nova Scotia, however, most of those local lawyers enjoyed salaried positions. Each Irish county had a local Crown solicitor, a salaried official who conducted quarter sessions (magistrates' court) prosecutions under the attorney general's direction. For each of Ireland's six circuits, a salaried Crown solicitor prosecuted at the assizes. In addition, the attorney general appointed two Crown counsel on each circuit and three supernumerary counsel for each county. These additional counsel, paid by fees, acted if regular counsel were unavailable or if assistance was required because of a larger than anticipated workload.<sup>79</sup>

Closer to Nova Scotia, in 1857 Upper Canada adopted an innovation, the county attorney, for prosecutorial assistance at the local level. An appointee at pleasure, who received fees for his services, the county attorney oversaw, began, and conducted quarter sessions prosecutions. At the assizes, he assisted the Crown counsel, unless the lack of outside counsel required the crown attorney to conduct a prosecution in person.<sup>80</sup> Nova Scotia did not adopt either the Irish or Upper Canadian approaches to local prosecutions. In light of Nova Scotia's smaller population and land area,<sup>81</sup> a system relying on ad hoc appointments of QCs may have been preferred as a more cost effective measure.

Likely as an adjunct to his supervision of criminal prosecutions, Young oversaw certain matters of public security. For instance, in December 1855, Joseph Allison, High Sheriff of Hants County, informed Young in writing about the escape of two prisoners from the county jail at Windsor. During a storm, William Le Rosignol and William Webster had used an auger to make a hole in the jail's wooden wall.<sup>82</sup> As a matter of inter-jurisdictional cooperation, Young maintained contact with attorneys

77. Casey, *ibid* at 28-29.

78. *Ibid* at 28.

79. (1844) 31 *The Law Magazine* 241 at 258.

80. Romney, *supra* note 2 at 221-222.

81. In 1851, Nova Scotia had a population of 276,000 and an area of 55,000 square kilometers (21,236 square miles): Wynn, *supra* note 38 at 284. Upper Canada had an 1850 population of 952,000 and an area of a little more than 313,388 square km (121,000 square miles): JL Finlay and DN Sprague, *The Structure of Canadian History*, 2d ed (Scarborough, Ont: Prentice-Hall Canada, 1984) at 157; *Appendix to the Sixteenth Volume of the Journals of the Legislative Assembly of the Province of Canada* (1858), Appendix 52, No 3. In 1851, Ireland had 6,552,386 people within 70,282 square km (27,136 square miles): Ruth Dudley Edwards, *An Atlas of Irish History*, 2d ed (London: Methuen, 1981) at 20, 232.

82. Joseph Allison to William Young, 3 December 1855 (with enclosed letter, Allison to Richard A McHeffrey, 3 December 1855).

general elsewhere in British North America.<sup>83</sup> One can also characterize as a matter of public security the proceedings which followed Nicholas Martin's criminal trial.<sup>84</sup> In 1854, Nova Scotia had no legislation to govern the criminally insane. By order of the lieutenant governor, Martin was kept in custody at Sydney. Young insisted that a court order would be required to obtain Martin's release.<sup>85</sup>

The Martin case did not fade from public attention. In addition to the popular support he enjoyed, Martin attracted the attention of the Conservative opposition, which saw an opportunity to damage the Liberal government's reputation. Martin I Wilkins, who had defended Martin at trial, was also a Conservative MHA. Wilkins enlisted the assistance of Samuel P Fairbanks, QC, a fellow Conservative, lawyer, and one of Young's former articling principals.<sup>86</sup> Fairbanks sought a writ of *habeas corpus*. On 26 November 1854, however, the NSSC upheld Young's position, with Chief Justice Brenton Halliburton concluding, "The Crown as the *parens patriae* is entitled, by its inherent prerogative, to the custody of all insane persons, for the purpose of protecting the community."<sup>87</sup>

On 7 February 1855 Wilkins raised the Martin case in the Assembly. Wilkins argued, "My client is an injured man, wrongfully deprived of his liberty and it is therefore the duty of this legislature to rescue him from his captivity." He continued, "if in the discharge of my duty I am compelled to remark on the conduct of judges and others it is both my misfortune and theirs."<sup>88</sup> Young disputed some of Wilkins's allegations, such as the claim that Martin was kept in a filthy cell. Young also pointed out that Judge DesBarres had expressed a fear for his life should Martin be released. Nonetheless, Young also spoke sympathetically, suggesting that he would be pleased "if anything can be done to relieve [Martin] from incarceration with propriety and safety...."<sup>89</sup> Despite this, Young thought that emotion had to defer to the law, which bound the Government and placed Martin in limbo:

What is the law of the land? The Common Law, resting on the eternal principles of justice, which can never die! There is no principle clearer

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83. MG 2, vol 734, #887, PF Little (Attorney General of Newfoundland) to William Young, 28 May 1856.

84. The proceedings are described in Jobb, *Bluenose Justice*, *supra* note 54 at 58-63.

85. *The Queen v Martin* (1854), 2 NSR 322 at 323.

86. Three decades earlier, Young's legal articles with the Fairbanks brothers, Samuel P and Charles R, had not ended happily. See William Laurence, "Learning the Law: the Legal Apprenticeship of William Young in Nineteenth-Century Halifax" (2011) 14 J of the Royal NS Hist Soc 91 at 104-108.

87. *Supra* note 85 at 324.

88. *Novascotian* (12 March 1855) 4.

89. *Ibid* at 5.

than this: that if a man has taken the life of another when in a state of insanity—and it is so reported to the Government—then the law steps in and directs the Government to hold him.<sup>90</sup>

Pressure from the Conservatives, however, worked in Martin's favour. The government agreed to appoint a commission to rule on Martin's sanity. The commission and a twelve-member grand jury met on 15 March 1855. Young, who presented the government's case, mentioned plans to adopt an imperial statute, which permitted the detention of the criminally insane. He indicated that the government had no intention to subject Martin to another criminal trial. Nonetheless, for the government, Martin's state of mind was still in issue. On the other side, Martin I Wilkins argued that the basis for the jury's acquittal should not have been specified, and that in any event, keeping Martin imprisoned on the ground of insanity was not justifiable. When the jury found Martin to be sane, the government ordered his release.<sup>91</sup>

## 2. *Legal advisor to the Crown and government*

Providing legal advice to the Crown and government was another major function for Young the attorney general. It helped to ensure that the administration of government was conducted in accordance with the law.<sup>92</sup> This role was also synonymous with the attorney general office elsewhere in British North America and in England.

Whether as a result of requests made directly or through the provincial secretary as intermediary, Young advised the lieutenant governor on legal matters. In relation to capital crimes, Young was consulted for his views as to clemency. For example, on 12 January 1855, Lewis M Wilkins, the provincial secretary, wrote to Young on behalf of the lieutenant governor, following the conviction of William Sime, of the Royal Engineers, for murder.<sup>93</sup> Sime was scheduled for execution in ten days. The lieutenant governor had previously communicated with Chief Justice Brenton Halliburton, the trial judge, who thought that the execution should proceed. Having received a memorial from the twelve jurors at Sime's trial, the

90. *Ibid.*

91. *Supra* note 85 at 325-326.

92. Waite, "Attorney", *supra* note 5 at 172.

93. RG 10, A, 7, Lewis M Wilkins to William Young, 12 January 1855.

lieutenant governor wished to know whether he could take that document into account, and if so, what weight to accord to it.<sup>94</sup>

As with certain criminal prosecutions, Young was not averse to delegating requests for advice from the lieutenant governor. In 1856, the lieutenant governor sought Young's views on mitigating the five year prison term which one Gideon Eaton had received. During Kentville celebrations over the fall of Sebastopol in the Crimea, Eaton had killed another man by recklessly discharging a firearm. Young in turn sought the advice of Adams G Archibald, the solicitor general. Taking into account both facts and law, Archibald recommended that time served (about a year to date) and banishment for the remainder of the five year term would be adequate.<sup>95</sup>

Young was also consulted in relation to non-criminal matters. Maritime transport was vital to Nova Scotia's economy and security, an importance reflected in ship ownership in the province. In the 1850s, Nova Scotia had more than twice as many ships as New Brunswick and Prince Edward Island combined, with far more total tonnage than those two other provinces.<sup>96</sup> The imperial *Merchant Shipping Act, 1854* required the registration of vessels of a certain tonnage. For the purposes of the *Act*, the lieutenant governor was treated as the provincial Registrar of Shipping.<sup>97</sup> Attorney General Young frequently provided legal opinions about whether new ship registrations should be approved. For instance, in June 1854, he recommended registration of the schooner *Effort*, as long as the ship owner made available the original certificate of registry and provided the

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94. Although the nature of Young's opinion is not known, Sime's execution was commuted. Sime arrived at the provincial penitentiary on 7 February 1855. On 27 May 1861 he was committed to the Hospital for the Insane. See RG 7, vol 34, #2, William Sime, Statement of Crimes and Sentence to be Served, February 1855. During his tenure as NSSC judge, Young was not known for his support of capital punishment. For example, in 1865, when sentencing to death Henry Dowsey, a cook convicted for his role in the infamous murder of the master of the *Zero*, Young was reported to have had tears in his eyes: *The Morning Chronicle* (24 November 1865) [2].

95. MG 2, vol 734, #1138, Adams G Archibald to William Young, 24 October 1856. Little is known about the use of banishment as a criminal law sanction in Nova Scotian legal history. In 1820, William Wilkie, convicted of seditious libel for having criticized in print the Halifax magistrates, was sentenced to two years' imprisonment at hard labour in the House of Corrections. It appears, though, that the sentence was commuted, in exchange for Wilkie agreeing to leave the province: Barry Cahill, "Sedition in Nova Scotia: *R v Wilkie* (1820) and the Incontestable Illegality of Seditious Libel before *R v Howe* (1835)" 17 (1994) Dal LJ 458 at 486-487. In 1836, Hugh Bell obtained leave to introduce a Bill "to authorise the inflicting punishment of banishment from the Province, upon Criminal Offenders, in certain cases" (*JHA* (1836) at 998), but the initiative went no further. In 1850, Lieutenant Governor John Harvey reported to London, "The Province having no means wherewith to try the experiment, banishment is a sentence never pronounced in its Courts...": *Journal and Proceedings of her Majesty's Council of the Province of Nova-Scotia* (1851) App at 62.

96. Robertson, *supra* note 38 at 335.

97. *The Merchant Shipping Act, 1854* (UK), 17 & 18 Vict, c 104, s 30(6).

requisite security required under the imperial statute.<sup>98</sup> Young's advice in this context took the form of a recommendation to the lieutenant governor, conveyed through the provincial secretary.<sup>99</sup>

Young's legal advice extended to other government officials, both provincial and imperial. In 1855, the postmaster general requested Young's opinion as to whether a stage coach operator could legally deliver a letter attached to a parcel without having to transfer it to the post office.<sup>100</sup> The same year, Young prepared legal opinions for the Commissariat Department about a contract relating to a barracks.<sup>101</sup> Also in 1855, the British government became interested in buying iron ore from a mine at Londonderry, Nova Scotia, but required details about the ore's quality, as well as about "the legal and mercantile state of the mines themselves."<sup>102</sup> Having received the assignment, Young visited the mine site, had title searches done, completed an abstract of title, and prepared a confidential report.<sup>103</sup> During his tenure as attorney general, Young also did work for the provincial secretary, the Ordnance Department, the Board of Works, and the Railway Commission.<sup>104</sup>

Young's work in support of railway development is especially noteworthy. The Nova Scotian railway, the first two branches of which were constructed in the 1850s, was government-owned and financed. A six-man board, the Railway Commission, supervised railway construction and decided how to spend a budget set at £200,000 per year. Legislation provided direction for board decisions.<sup>105</sup>

The railway in Nova Scotia developed very differently from its English counterpart. In England, the state offered no financial subsidies, either direct or indirect. English lines also did not develop in accordance with a national plan, administered by a state agency. The result in England, according to RW Kostal, was a system "hopelessly entangled in legal conflicts," a situation he largely attributes to the actions of lawyers. A major problem took the form of lawyers promoting "uncapitalized bubble railways."<sup>106</sup>

98. MG 2, vol 733, #494, Legal opinion of William Young, 10 June 1854.

99. See for example MG 2, vol 734, #659, William Young to Provincial Secretary, 19 May 1854.

100. MG 2, vol 734, #660, Legal opinion of William Young, 2 January 1855.

101. MG 2, vol 759, William Young, Ledger book (1844 to 1857) at 636.

102. MG 2, vol 771, #6, H Labouchere to Gaspard LeMarchant, 26 November 1855.

103. MG 2, vol 771, #18 and #25.

104. *Supra* note 101 at 620, 628, and 636.

105. Beck, *Howe*, *supra* note 38 at 69-70; SNS 1854, c 1 and 2.

106. RW Kostal, *Law and English Railway Capitalism, 1825-1875* (Oxford: Clarendon Press, 1994) at 2.

During his term as attorney general, Young served as ad hoc solicitor to the Railway Commission. In addition to his legal knowledge, Young, an early advocate of railway development in Nova Scotia,<sup>107</sup> brought to his railway work contacts at all levels of society and an awareness of provincial geography, acquired through court circuit appearances and election-related travel.<sup>108</sup>

In part, Young served as advisor, generally of a legal nature, for the railway project. In 1855, for example, Provincial Secretary Lewis M Wilkins, acting on behalf of the lieutenant governor, requested Young's legal opinion on the respective powers and duties of the executive and of the Railway Commission.<sup>109</sup> In his reply, before getting to the specifics, Young began with a caveat, that the powers "are so intermingled and dependent on each other that it is difficult if not impossible to distinguish their exact limits."<sup>110</sup> When required, Young's advice extended beyond the law. On one occasion in 1855, for instance, he advised Joseph Howe, chairman of the Railway Commission, on the sale of railway debentures through Barings in England.<sup>111</sup>

Keeping in mind project specifications and acting as needed in collaboration with the chief railway engineer, Young drafted numerous contracts and bonds connected to construction of railway sections.<sup>112</sup> He also helped to oversee the implementation of those agreements. On occasion, from the perspective of the Railway Commission, contractors needed some encouragement about the nature or timing of their obligations. As railway solicitor, Young provided the requisite notice. In 1854, for example, Howe advised Young, "Notice to be given to Black & Co. today, that no time may be lost."<sup>113</sup>

The establishment of lines and buildings for the railway meant the expropriation of private property and the payment of compensation to landowners. Contemporaries referred to expropriation as "dedication" to the public. Accordingly, in 1855, Howe requested Young, in relation to a property which adjoined a railway station: "Will you, at your leisure,

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107. Beck, *Howe*, *supra* note 42 at vol I, 283-284.

108. Young's familiarity with Nova Scotia's geography began early in his legal career. In 1821, as an articulated clerk, he travelled some 600 miles, 500 on horseback, on a mission to collect and secure debts on behalf of his principals: "Journal of William Young (1820-1821)," MG 2, vol 731, entry for 24 June 1821.

109. MG 2, vol 762, #51, Lewis M Wilkins to William Young, 20 September 1855.

110. MG 2, vol 762, #50, William Young to Provincial Secretary [Lewis M Wilkins], 3 October 1855 [draft].

111. MG 2, vol 762, #44, William Young to Joseph Howe, 19 July 1855.

112. See for example MG 2, vol 762, #9, draft agreement, June 1854.

113. MG 2, vol 762, #22, Memorandum from Joseph Howe, 29 November [1854].

(if you ever have any) have the dedication prepared, as there is a vacant house on the premises which we can let as soon as we are formally in possession.”<sup>114</sup> Young’s duties in this regard included examining property deeds, estimating compensation amounts, conducting negotiations, and drafting documentation. As a lawyer, Young respected private property rights, a concept which he had to emphasize on occasion for the Railway Commission. In 1855, Young found it necessary to assert, “Allow me to remind you that the lands on all the lines subsequent to those of Contract No 3 have not been dedicated to the public and that some awkward questions may possibly arise.”<sup>115</sup>

During the construction process, disagreements occurred between landowners and railway crews about the nature of respective rights. If an issue could not be resolved by the parties on site, Young might be asked for his legal opinion. In October 1855, for instance, Abraham Feetham, a railway roadmaster, contacted JR Forman, chief engineer, about a dispute with a landowner whose property adjoined a railway line. About railway fencing, Feetham reported, “He Say that He Shall Brake It Down As fast As I Put It Up...”<sup>116</sup> The matter apparently ended up on Young’s desk for advice, though his response is not known.

Young had an important role in the drafting of legislation which supported railway development. His contribution included work on legislation relating to railway financing, compensation for land expropriations, and regulation of the railway. Consistent with Young’s concern for private property rights, the statute which governed assessments for expropriations and other “railway damages” was much more detailed than its predecessor. Juries, comprising twelve local men, were appointed to determine the amount of compensation. Aggrieved parties could apply to the NSSC to have the proceedings overturned.<sup>117</sup> This system replaced a reliance on three appraisers, with no appeal.<sup>118</sup> The railway regulation statute concerned such aspects as interference with railway property and personnel, the conduct of passengers, the payment of tolls, and the responsibility of landowners whose property bordered the railway.<sup>119</sup> The legislation reflected a concern that an undertaking of such magnitude had to be protected. As part of his research prior to drafting that statute,

114. MG 2, vol 762, #65, Joseph Howe to William Young, 31 December 1855. For an example of a dedication of land, drafted in 1854 to accommodate the Sackville station, see MG 2, vol 762, #1 [draft].

115. MG 2, vol 762, #45, William Young to Railway Commissioners, 23 August 1855.

116. MG 2, vol 762, #55, Abm. Feetham to JR Foreman [sic], 24 October 1855.

117. SNS 1855, c 5, ss 6-7.

118. SNS 1854, c 1, s 17.

119. SNS 1856, c 10.

Young extracted relevant provisions from imperial legislation (from the years 1840–1854) and the province’s Revised Statutes.<sup>120</sup> This was not, however, merely a cut and paste job. Young modified the borrowed provisions and added new sections where necessary, in order to suit the Nova Scotian context. He explained, “The clauses as to the removal of fences & the conduct of passengers for example are not to be found in the English Acts.”<sup>121</sup>

Young’s instrumental role in helping to set up the railway, an enormously significant industrial undertaking, has been ignored to date in the historical literature. Indeed, lawyers’ involvement, as lawyers, in the development of Canadian railways has received little attention. Jamie Benidickson’s study of the career of Aemilius Irving, one of Canada’s first in-house counsel,<sup>122</sup> is an exception. From the 1850s to 1870s, Irving worked for Upper Canada’s Great Western Railway. Unlike Young, Irving was a salaried railway employee, who provided advice and other services in relation to a fully operational and privately-owned line. Much of Irving’s work was “remedial or defensive,” requiring his appearance before the courts.<sup>123</sup> Young’s work related mostly to the planning and construction of a railway. He appears to have had little, if any, involvement in railway litigation. Young did not have to contend, for example, with the many claims made against the Great Western Railway by injured passengers. Nonetheless, he and Irving had many duties in common, in terms of interpreting legislation, drafting regulations, dealing with landowner compensation claims, negotiating easements, and arranging for land acquisitions.<sup>124</sup> Young and Irving thereby shared responsibility for helping to develop the largest industrial schemes of the time in their respective provinces.

On one occasion, the Crown department which consulted Young was not pleased with his opinion and, therefore, appealed to a higher authority.<sup>125</sup> Legislation empowered the Railway Commission to expropriate any land needed for railway construction. It was decided that the best route for

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120. MG 2, vol 762, #36 (re bill for railway financing); 38 (draft re compensation for expropriation); and 39-41 (drafts of regulation statute).

121. MG 2, vol 762, #54, William Young to Railway Commissioners, 26 October 1855.

122. Jamie Benidickson, “Aemilius Irving: Solicitor to the Great Western Railway, 1856–1872” in Carol Wilton, ed, *Essays in the History of Canadian Law, Volume VII: Inside the Law: Law Firms in Historical Perspective* (Toronto: Published for The Osgoode Society for Canadian Legal History by University of Toronto Press, 1996) at 100.

123. *Ibid* at 113.

124. *Ibid* at 108, 113-114. See also Brian Young, *George-Etienne Cartier: Montreal Bourgeois* (Kingston & Montreal: McGill-Queen’s University Press, 1981) at 114-115 for a summary of Cartier’s work as a legal agent for the Grand Trunk Railway.

125. See *JHA* (1856), App 4.

the line lay through a field at the head of Bedford Basin. The Ordnance Department, a branch of the British Army responsible for administering military installations,<sup>126</sup> had possession of the property, known as Fort Sackville, on which it stationed a small guard to apprehend deserters escaping Halifax. The Railway Commission offered to pay a reasonable price for the land and to assist as necessary in catching deserters. Ordnance did not wish to relinquish the property, ostensibly for military reasons. It sought Young's counsel as attorney general.

Young did not yield to any perceived pressure from the imperial authorities. He provided the opinion that under the statute Ordnance was no different from any other land proprietor. As long as the Railway Commission properly registered its intentions, it could devote the property to railway use. Ordnance was not pleased and raised the alarm in London that the Railway Commission would next use its powers to seize the Halifax Dockyard. Sir John Russell, Colonial Secretary, intervened. He instructed Sir Gaspard Le Marchant, Lieutenant Governor of Nova Scotia, not to permit the Railway Commission to expropriate any more land that was being used for naval or military purposes, unless an imperial secretary of state gave permission. This placed Le Marchant in a difficult position. He had to obey his overseer. On the other hand, he had approved the legislation in dispute. He turned to Young for advice. As part of a report summarizing the origin and nature of the railway legislation, Young brought to Le Marchant's attention a face-saving provision. The legislation empowered the governor in council to inspect all contracts and proceedings of the Railway Commission and to suspend consent, if necessary. Although this did not obviate the need to comply with Russell's order, it did demonstrate that Le Marchant had consented to legislation under which Crown interests were protected.

In his role as government advisor, Young expressed reluctance to fulfill requests from those at the lower end of the justice hierarchy, namely JPs. In November 1856, for instance, JP James Croucher asked Young what action might be possible against two brothers who refused to work on the province's roads, as required by the statutory labour scheme.<sup>127</sup> Young provided Croucher with an opinion, supported by reference to the relevant legislation.<sup>128</sup> Young, however, cautioned, "I send this as you are in a difficulty but it is no part of my duty to answer such inquiries – otherwise

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126. Romney, *supra* note 2 at 172.

127. MG 2, vol 734, #1197, James Croucher to William Young, 29 November 1856.

128. MG 2, vol 734, #1197, William Young to James Croucher, 10 December 1856.

I would have more of them than I could have time for.”<sup>129</sup> Similarly, attorneys general in Upper Canada were reluctant to assist magistrates, whose queries became increasingly numerous with the growth of local government. A compromise was reached, whereby the Upper Canadian attorney general would provide advice to a local official if the public interest in general was at stake, or if the promotion of uniform action throughout a department was desired.<sup>130</sup>

### 3. *Supervisor of legislation*

Attorney General Young was responsible for ensuring the validity of bills which the government brought forward for enactment. He drafted individual statutes and sought similar initiative from MHAs with legal training. In 1856, for example, in a letter to Solicitor General Adams G Archibald, Young reported on having drafted a bill which embodied recent changes to English commercial law. In collaboration with William A Henry, by then the provincial secretary, Young planned to work on consolidating and improving jury legislation. Young asked whether Archibald had any law reform ideas.<sup>131</sup>

On an annual basis, Young prepared a list of legislation enacted over the past year, as well as summaries of the statutes’ purposes or effects.<sup>132</sup> The list was sent to England for review by imperial law officers, who could disallow legislation seen as outside the purview of the provincial House of Assembly. Given Young’s legislative duties, he also found himself a prime contact for law reform suggestions. For instance, he received suggestions to reform the liquor regulation law, the marriage law, and the statutory labour system. Correspondents providing law reform proposals included the lieutenant governor, the Anglican bishop, judges, and JPs.<sup>133</sup>

In addition to his work involving railway legislation, Young’s involvement in the regulation of transportation took the form of his support for the enactment of legislation which provided for the appointment of local shipping registrars.<sup>134</sup> The imperial *Merchant Shipping Act, 1854* made the lieutenant governor the province’s chief shipping registrar. In turn, the provincial statute authorized the lieutenant governor to appoint,

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129. *Ibid.* Waite, *Man from Halifax*, *supra* note 5 at 89 suggested that the attorney general had a duty to advise JPs on legal questions, but provided no authority for that statement.

130. Romney, *supra* note 2 at 173-175.

131. MG 2, vol 734, #1226, William Young to Adams G Archibald, 22 December 1856.

132. See, for example, RG 10, A, 8, *Report of the Attorney General on the Acts passed by the Legislature of Nova Scotia in the Session of 1856*.

133. See, for example, MG 2, vol 734, #1230 Sir Gaspard Le Marchant to William Young, 26 December 1856; MG 2, vol 734, #733, Bishop Binney to William Young, 7 February 1856; MG 2, vol 734, #715, William Young to Judge Dodd, 19 January 1856.

134. SNS 1855, c 11.

for particular ports, a principal officer of customs and of navigation laws. That official in essence acted as a deputy registrar. The appointment of local shipping registrars had an important security component. It enabled the central government to keep track of vessels in the province, which could be important in time of war. The reform also had implications for private business and ship ownership. By making ship registration easier, the government facilitated the transfer, charter, mortgaging, and insuring of vessels.

Attorney General Young's particular legislative focus was on reforming the province's courts and their procedures, especially in order to reduce the complexity and expense of litigation. In 1855, taking his lead from the English *Civil Law Procedure Act, 1854*,<sup>135</sup> Young introduced legislative amendments designed to facilitate how evidence could be procured and used in court.<sup>136</sup> Witnesses were able henceforth to affirm the veracity of their testimony, rather than having to swear an oath. Section 2 of the statute confirmed that parties in suits could give evidence on their own behalf. Under the English common law tradition, the parties and anyone with a potential interest in the result of a lawsuit, such as the parties' relatives, were not permitted to testify at trial.<sup>137</sup> The 1855 legislation also allowed a certified copy of a deed to be received in evidence.<sup>138</sup> Among other innovations, the statute set out guidelines for the proof of written documents, provided for documentary disclosure, made oral discovery available, allowed for the use of interrogatories, permitted witnesses to be cross-examined about prior statements, and allowed for the examination of witnesses outside the province.<sup>139</sup> These reforms facilitated the bringing forth of information relevant to judicial decision-makers. They made the pre-trial process more transparent and efficient and formed the foundation of a modern system of discovery and disclosure in the litigation process.

Also in 1855, Young had the satisfaction of administering through statute what he thought would be the *coup de grâce* to the Court of Chancery.<sup>140</sup> Chancery, a court of equity, had a wide jurisdiction.<sup>141</sup> It oversaw the administration of trusts and estates, as well as the property of

135. (UK), 17 & 18 Vic, 125.

136. SNS 1855, c 9.

137. Jack IH Jacob, "Civil Procedure Since 1800" in Jacob, *The Reform of Civil Procedure Law and Other Essays in Civil Procedure* (London: Sweet & Maxwell, 1982) 193 at 200.

138. *Supra* note 136, s 15.

139. *Ibid.*, at ss 9 (written documents), 29-30, 36 (oral discovery), 33 (documentary disclosure), and 34 (interrogatories).

140. SNS 1855, c 23.

141. The elements of the jurisdictional summary are from Barry Cahill, "Bleak House Revisited: The Records and Papers of the Court of Chancery of Nova Scotia, 1751-1855" (1989) 29 *Archivaria* 149.

married women, minors, and the mentally incompetent. It dealt with the custody of children, appointment of guardians, and committal applications involving people with mental illness. Fraud, the dissolution of partnerships, specific performance, appeals from the Probate Court, injunctions, and the foreclosure of mortgages also formed part of its purview. Foreclosure actions constituted the major portion of Chancery work, with injunction matters the second most important.<sup>142</sup>

In the second and third quarters of the nineteenth century, what to do with the Chancery Court was an important subject of debate in England and British North America, including Nova Scotia. In 1829, Thomas C Haliburton identified the three most commonly cited faults associated with Chancery in the province, namely cost, delay, and complexity.<sup>143</sup> Although Haliburton suggested that Nova Scotia's Chancery had never produced "the dissatisfaction alluded to in other Provinces," he still seemed to favour a fusion of the common law and equity courts.<sup>144</sup>

Other factors seemed to contribute to diminishing Chancery's reputation. Its judge, the Master of the Rolls, did not venture outside Halifax on circuit, and its workload was not especially onerous. As the majority of its cases involved mortgage foreclosures, leading to court-sanctioned, forced sales of property, Chancery may have been perceived as an instrument of the rich.<sup>145</sup> Political and personal enmity also played a part in creating negativity towards Chancery. In the 1830s, Joseph Howe described Simon Bradstreet Robie, Master of the Rolls, as "the enemy and oppressor of the People."<sup>146</sup> In the late 1840s, when calls for the dismantling of Chancery in Nova Scotia became particularly strong, the equity judge was Alexander Stewart, whom J Murray Beck describes as "one of the most controversial and detested of all Nova Scotian politicians"<sup>147</sup> and "probably the most disliked Tory in the province."<sup>148</sup> During the pre-responsible government period, Young had been associated

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142. Jim Cruickshank, "The Chancery Court of Nova Scotia: Jurisdiction and Procedure 1751–1855" (1992) 1 Dal J Leg Stud 27 at 33-34.

143. Thomas C Haliburton, *An Historical and Statistical Account of Nova-Scotia*, vol 2 (Halifax: Joseph Howe, 1829) at 330.

144. *Ibid.*

145. Philip Girard, *Lawyers and Legal Culture in British North America: Beamish Murdoch of Halifax* (Toronto: University of Toronto Press for the Osgoode Society for Canadian Legal History, 2011) at 105-106.

146. Quoted in Philip Girard, "Married Women's Property, Chancery Abolition, and Insolvency Law: Law Reform in Nova Scotia, 1820-1867" in Philip Girard & Jim Phillips, eds, *Essays in the History of Canadian Law*, vol III (Toronto: University of Toronto Press for the Osgoode Society, 1990) 80 at 106.

147. Beck, *Howe*, *supra* note 38 at 190.

148. *Ibid* at 14.

with the Reform cause in Nova Scotia. Reformers such as Young seem to have disliked Stewart so intensely because they perceived him as having abandoned the Reform camp in favour of personal gain through attachment to the Conservatives.<sup>149</sup>

Beginning in the second quarter of the nineteenth century, the House of Assembly began to take steps to examine perceived problems with Chancery, and Young participated in many of those initiatives.<sup>150</sup> Originally in favour of Chancery reforms, Young ultimately changed his position and advocated the court's abolition.

On 24 February 1855, when introducing the abolition bill, which he had co-drafted, Young, who tried to remain aware of developments involving Chancery outside Nova Scotia, referred to the example of New Brunswick, which the previous year had added an equity side to its Supreme Court, an approach Young described as "chancery under another name."<sup>151</sup> Young also mentioned New York and Ohio, which as part of dismantling separate equity courts had entirely transformed common law civil procedure. Young described the Nova Scotian approach as a "middle course" between the examples cited from other jurisdictions.<sup>152</sup>

On 26 March 1855, as part of statements prefatory to a vote on the Chancery bill, Young succinctly alluded to arguments based on history, statistics, legal climate, public accounts, and legal doctrine.<sup>153</sup> He pointed out that though Chancery as an institution had existed in Nova Scotia since the province's founding, the lieutenant governor had served until 1826 as Chancellor, assisted in his duties by justices of the NSSC.<sup>154</sup> Young mentioned that over the previous four years, only thirty-one causes a year had been brought in Chancery, with twenty-five involving straightforward foreclosures of mortgages.<sup>155</sup> NSSC practice, familiar to the judges, would replace "the cumbrous and expensive forms and modes of proceeding" in Chancery.<sup>156</sup> He also referred to the climate of reform in England and New Brunswick. Providing Justice Stewart a pension of £400, instead of his £700 salary, was justified as a cost-saving measure. Young succeeded

149. Beck, *Howe*, *supra* note 42 at vol I, 190-191.

150. Laurence, *Literary Man*, *supra* note 7 at 294-302.

151. *Parliamentary Debates during the Fourth Session of the Twentieth Parliament of the Province of Nova Scotia, 1855* (Halifax: Printed by Richard Nugent, 1855) at 50.

152. *Ibid.* For examples of Young's readings on Chancery, see Laurence, *Literary Man*, *supra* note 7 at 301-302.

153. *JHA 1854-1855* at 696-697.

154. In 1826, Lieutenant Governor Kempt, who had no legal training, and who found his Chancery duties onerous, appointed the province's first Master of the Rolls at a salary of £600: Beck, *Politics, Volume I*, *supra* note 38 at 94.

155. *Supra* note 153 at 697.

156. *Ibid.*

in having Chancery dismantled. However, the debate over equity would re-emerge a decade later, when Young was chief justice of the NSSC.<sup>157</sup>

In 1856, Attorney General Young further manifested his interest in court procedure reforms by presiding over legislative amendments designed to make the jury system more efficient and less onerous for jurors, actual and prospective.<sup>158</sup> In pre-Confederation Nova Scotia, jurors expressed concern about travelling lengthy distances on poor roads, paying for their accommodations if away from their home communities, missing time from their work (generally farming or fishing), and being summoned with the prospect of not actually serving on a jury.<sup>159</sup> Absenteeism among prospective jurors was common.<sup>160</sup>

Instead of the traditional jury of twelve in civil matters, the amended statute provided for nine jurors, with the possibility of a seven-member, majority verdict, rather than requiring unanimity.<sup>161</sup> For both regular and special juries, the 1856 amendments reduced the size of panels from which juries were chosen. For example, the 48-person panel for Halifax County was reduced to 36.<sup>162</sup> This lessened the possibility that a prospective juror would have to make an unnecessary journey to court. The amended statute specified jurors' pay, which plaintiffs would fund through the payment of fees.<sup>163</sup> Although the legislature had previously permitted grand juries to determine their rates of pay for participation at the quarter sessions, no such provision had been made for NSSC juries. Given the time and travel commitments associated with jury work, the lack of pay had long rankled those serving at NSSC sittings.<sup>164</sup> The 1856 amendments also brought to an end the prohibition on allowing jurors no food or drink during their deliberations.<sup>165</sup>

The 1856 reforms were innovative. Upper Canada, by contrast, did not reduce the size of civil juries or allow for majority verdicts until after Confederation. England did not permit jurors food and drink during

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157. See Laurence, *Literary Man*, *supra* note 7 at 407-412.

158. SNS 1856, c 7.

159. Brown, *supra* note 46 at 28-29.

160. David Murray, "Just Excuses: Jury Culture in Barrington Township, Nova Scotia, 1795-1837" in Margaret Conrad & Barry Moody, eds, *Planter Links: Community and Culture in Colonial Nova Scotia* (Fredericton: Acadiensis Press, 2001) 36 at 55-56.

161. *Supra* note 158, s 1.

162. *Ibid* s 3.

163. *Ibid* s 6.

164. *Parliamentary Debates during the First Session of the Twenty-First Parliament of the Province of Nova Scotia, 1856* (Halifax: Printed by Richard Nugent, 1856) (6 February 1856) at 13.

165. *Supra* note 158, s 2.

their deliberations until 1870 and would not amend the requirement for unanimity until the twentieth century.<sup>166</sup>

In addition to making jury service less of a hardship, Blake Brown sees the 1856 reforms as having been designed “to ensure that juries achieved the liberal goal of creating expedient and accurate decision-making bodies that could apply the law equally across the colony.”<sup>167</sup> That Young supported the improvement of the jury system, rather than its elimination, also reflects an approach not associated with nineteenth-century liberalism, namely a willingness to entrust important aspects of the justice system to local interests. Although Young promoted legislative measures that tended to greater centralization and uniformity, he did not pursue those aims in an absolute fashion. Young’s approach towards juries is therefore also consistent with Graeme Wynn’s conclusion, concerning the mid-nineteenth-century Maritimes, that “many tentacles of the administrative state reached but weakly into the provincial hinterlands.”<sup>168</sup>

#### 4. *Defender and facilitator of Crown and governmental interests*

Young’s work on behalf of the Crown was not confined to criminal matters and legal advice. He also defended the Crown’s interest in civil cases. He had, for example, responsibility for defending the Crown’s real property rights. In November 1854, William A Henry advised Young that the province’s telegraph company was asserting the statutory right to place poles in ditches and even in roads. Henry was of the view that Young should take legal action, if there was a prospect of success: “The public are speaking out loudly in some places and I am of opinion the Act gives [the company] no such right and that any person might abate the nuisance to the public highway.”<sup>169</sup>

Protection of the Crown’s land interests also took the form of the responsibility to prosecute trespassers on aboriginal land reserves.

166. Brown, *supra* note 46 at 120-121, 124.

167. *Ibid* at 119.

168. *Supra* note 38 at 318. In relation to JPs, Wynn suggests, “Technically subject to central control, most justices enjoyed a great deal of freedom in their conduct of local business”: *ibid* at 313. Young’s flexibility also accords with what other studies have identified in relation to the administration of justice, though strictly in a criminal context, in Quebec and Upper Canada up to the mid-point of the nineteenth century. Those two other jurisdictions, despite their reputations for emphasizing centralization, allowed strong local participation in criminal justice. See David Murray, *Colonial Justice* (Toronto: University of Toronto Press for the Osgoode Society for Canadian Legal History, 2002) at 218, 220, 223; and Donald Fyson, *Magistrates, Police, and People* (Toronto: University of Toronto Press for the Osgoode Society for Canadian Legal History, 2006) at 361. Alan Greer, in “The Birth of the Police in Canada” in *Colonial Leviathan*, *supra* note 38, 17 at 18 similarly remarks, “Free from any sort of routine supervision or administrative control, JPs could not be considered as simply agents of the state, even if they did derive their authority from the King’s commission.”

169. MG 2, vol 733, #599, WA Henry to William Young, 4 November 1854.

The extent to which Young acted on reports of trespass, as occurred in 1856, when Henry brought one to his attention, is not known.<sup>170</sup> What is clear, however, is that throughout much of the nineteenth century, trespass on Mi'kmaq reserves in Nova Scotia was a perennial problem, which governmental action, taking the form of an occasional prosecution followed by eviction, failed to redress.<sup>171</sup>

Young did defend the Crown's interests with a connection to land in the well-known case of *Hill v Fraser*, which involved an action for damages on a contract for the building of a coffer dam and wharf at the Halifax Ordnance yard. The builder incurred considerable cost over-runs and ultimately abandoned the project. He alleged that government officers had provided him with deficient construction plans and had misrepresented the nature of the substratum in that area of Halifax harbour. He sued the Crown, which through *fiat* permitted the action to proceed, for £20,000 in damages. The trial, which took twenty-one days, was thought to be the longest to date in British North America. On the final day, Young spoke for nine hours.<sup>172</sup> The builder was awarded £10,686 at trial, but on appeal, the full court ordered a new trial, after which it appears that the builder discontinued the litigation.<sup>173</sup>

Outside the adversarial sphere, Young served as a type of Crown solicitor. He drafted contracts on behalf of the Crown or government, as he did in 1855, to govern the carriage of mail.<sup>174</sup> He also prepared necessary documents relating to the Crown's land interests. On 8 April 1854, once the decision was made to transfer the Governor's Farm from the Board of Works to the Railway Commissioners, Young was entrusted with making the arrangements either by deed or lease.<sup>175</sup> In 1856, Young also received the assignment of preparing a lease for mining operations at Springhill.<sup>176</sup>

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170. MG 2, vol 734, #1049, WA Henry to William Young, 1 September 1856.

171. Sidney L Haring, *White Man's Law: Native People in Nineteenth-Century Canadian Jurisprudence* (Toronto: University of Toronto Press for the Osgoode Society for Canadian Legal History, 1998) at 178-181. Trespass on reserves was part of a more widespread problem: trespass on Crown land in general; Peter Burroughs, "The Administration of Crown Lands in Nova Scotia, 1827-1848," (1966) 35 Collections of the Nova Scotia Historical Society 79 at 97-98; Stephen J Hornsby, *Nineteenth-Century Cape Breton* (Montreal: McGill-Queen's University Press, 1992) at 54.

172. *Acadian Recorder* (17 January 1857) [3]. Young called the proceedings "interminable": MG 2, vol 736, #1249, William Young to AG Archibald, 8 January 1857. Perhaps, however, Young found comfort in his enormous fee £414/18/6: Ledger book (1844 to 1857), *supra* note 101 at 636.

173. For the report of the appeal decision, see *Hill v Fraser* (1858), 3 NSR 294. No further proceedings have been reported, and the case file at NSA (RG 39, Series C, vol 190) contains only pre-trial depositions.

174. MG 2, vol 734, #676, Draft agreement with Hiram Hyde, 1 April 1855.

175. MG 2, vol 733, #365, H Bell to William Young, 8 April 1854.

176. MG 2, vol 771 #10, William Young to James DB Fraser, 5 May 1856; *ibid*, #9, Fraser to Young, 8 May 1856.

### III. *Maintaining a private law practice*

As elsewhere in British North America, in Ireland, and in England,<sup>177</sup> Young was entitled to maintain a private law practice concurrently during his tenure as attorney general. Given its prestige, the office was perceived as good for attracting private business.<sup>178</sup> It was also thought that permitting an attorney general to remain in private practice helped him to keep his legal knowledge current and his skills sharp.<sup>179</sup> Unlike, however, his counterparts in Upper Canada, where the press of political and administrative matters left no time for private practice by the 1850s, Young was still able to carry on private law work in addition to his duties as attorney general.

Given that professional conflict of interest standards remained rudimentary during the nineteenth century, the freedom of Nova Scotian attorneys general to maintain a private law practice resulted in situations which would be manifestly inappropriate for modern lawyers.<sup>180</sup> In 1843, Attorney General James W Johnston and Alexander Stewart, another prominent Conservative, served as co-counsel for the plaintiffs in two politically-motivated libel actions brought against newspaper editor Richard Nugent.<sup>181</sup> During the *Hill* litigation, Attorney General Samuel P Fairbanks represented the builder in his appeal against the Crown. In 1869, Martin I Wilkins conceded in the House of Assembly that he had received fees for advising parties, including claimants against Crown lands and lessees of mining areas, who had interests adverse to those of the Crown. It is not known whether Young accepted private law work at odds with his duty to uphold the Crown's interests. In his favour, though, it

177. Waite, "Attorney", *supra* note 5 at 172; Casey, *supra* note 76 at 42-43. In 1853, Caleb Cushing became the first Attorney General of the United States to give up his private law practice. Congress had increased Cushing's salary to match that of other Cabinet members. Cushing also based his decision on his workload and perceived lack of time: Nancy Baker, *Conflicting Loyalties: Law and Politics in the Attorney General's Office, 1789-1990* (Lawrence, KS: University Press of Kansas, 1992) at 57, 59.

178. Romney, *supra* note 2 at 15; Brode, *supra* note 18 at 102; Cuthbertson, *supra* note 5 at 33. Cuthbertson referred specifically to the position of solicitor general. Nonetheless, his suggestion, "For lawyers in colonial Nova Scotia, 'place' and 'practice' went together," undoubtedly also embraced the more significant attorney generalship.

179. Baker, *supra* note 177 at 58.

180. For a discussion of the factors which led to the modernization of the legal profession in Nova Scotia in the last quarter of the nineteenth century, see Philip Girard, "The Roots of a Professional Renaissance: Lawyers in Nova Scotia 1850-1910" in Dale Gibson & W Wesley Pue, eds, *Glimpses of Canadian Legal History* (np: Legal Research Institute of the University of Manitoba, 1991) 155.

181. *Supra* note 39. Young and his brother, George Renny, also a lawyer, defended Nugent.

should be noted that when he served as NSSC Chief Justice, he displayed sensitivity towards avoiding professional conflicts of interest.<sup>182</sup>

In fulfilling his dual role as public and private lawyer, Young enjoyed the assistance of Samuel Cunard West, his competent and indefatigable law partner. One of Young's former articled clerks, West had obtained a law degree from Harvard Law School and joined the Nova Scotia bar in 1849.<sup>183</sup> Young placed so much reliance on West's abilities that in 1854 he left him in charge of their law office and embarked on a lengthy trip to Britain and Europe. Young's departure occurred mere months after his appointment as attorney general. Young's role as premier required travel to London, England and five weeks of negotiations over the commutation of Crown rights in the province's coal reserves. Young followed the business portion of his time away with a far lengthier pleasure trip of some two months spent in Europe.<sup>184</sup>

In terms of Young's attorney general duties, not only did West handle routine correspondence,<sup>185</sup> but he also performed substantive work issued under the name of the attorney general's office.<sup>186</sup> At the time, Nova Scotia did not have a discrete Department of Justice with salaried employees.<sup>187</sup> For assistance, West could, however, call upon articling and other clerks at his law office.<sup>188</sup> It appears that Young was expected to pay any expenses associated with that help. During Young's absence, Provincial Secretary Wilkins had promised to help West with the Attorney General's workload.<sup>189</sup> Whether Wilkins did so is not known.

The Nova Scotian practice, whereby an attorney general relied on his own resources, in terms of both personnel and office space, to complete

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182. Chief Justice Young generally declined requests to advise government officials on matters that might come before the NSSC. He also recused himself from cases in which he had been involved as a lawyer: Laurence, *Literary Man*, *supra* note 7 at 355-356.

183. Doull, *supra* note 3 at 54; *Quinquennial Catalogue of the Law School of Harvard University* (Cambridge: The Law School, 1930) at 44 (chronological list), 264 (alphabetical list); *Nugent's Nova-Scotia People's Almanac, for the Year of our Lord 1854* (Halifax: R Nugent, nd) at 44. That partnership lasted until West's sudden death on 10 November 1858, at the age of 34.

184. MG 2, vol 733, #592, William Young to Alan McDonald, 1 November 1854; MG 2, vol 733, #630, Young to Henry Black, 20 November 1854.

185. For example, see MG 2, vol 733, #514, Samuel C West to DN McQueen, 22 July 1854.

186. For a sample of West's work while William Young was away in Europe, see MG 2, vol 733, #538, Opinion on registration *de novo* of the *Laleah*.

187. See generally *JHA* (1854-55), App 11; (1856), App 2; (1857), App 22; and (1858), App 16. A quarter-century later, the office comprised only Attorney General Thompson and a messenger: *McAlpine's Halifax City Directory, for 1881-82* (Halifax: David McAlpine, [1881?]) at 490. The Department of Attorney General was established by statute in 1900: RSNS 1900, c 10.

188. In August 1853, Young described his office complement as comprising a law partner (West) and "four students or clerks." See MG 1, vol 3362, #18, William Young to AC McDonald, 11 August 1853.

189. MG 2, vol 733, #483, William Young to WA Henry, 17 June 1854.

his work also prevailed in mid-nineteenth-century England.<sup>190</sup> In contrast, Upper Canada provided its attorney general with an allowance for office rent and a clerk from the beginning of the nineteenth century.<sup>191</sup> By the mid-1850s, the combined Upper Canadian offices of the attorney general and solicitor general included five assistants, namely a chief clerk (who seemed to serve as a *de facto* attorney general), an assistant clerk, a stenographic clerk, a *per diem* clerk, and a messenger.<sup>192</sup>

West knew Young well enough to question the wisdom of the latter's 1854 overseas trip, which would deprive the government of Young's leadership as premier at a time when considerable public controversy prevailed over railway construction in the province. West politely acknowledged the "great trust & confidence" which Young had placed in him. Nonetheless, West was also "very sorry indeed you do go." He added: "I perceive there will be a great many matters I must manage & adjust on my own responsibility."<sup>193</sup> While Young was away, West provided him with regular reports about legal matters. A small amount of resentment at Young's absence crept into West's reports. In a letter dated 17 August 1854, West alluded to a "very heavy criminal calendar" and suggested, "depend upon it there is plenty work in store for you." He added, "You had better get a surfeit of pleasure now," as "[y]ou will have no time to think... after you touch Cunards Wharf."<sup>194</sup> Two weeks later, West remarked, "I had promised myself a pleasant jaunt this Summer, but one gets accustomed to disappointments & forgets them."<sup>195</sup>

West's advice extended to the value of having up-to-date legal materials on hand. In 1854, with Young in England, West wrote, "There are additional criminals in jail & I think it would be well to bring out some standard work on criminal practise."<sup>196</sup> West went on to point out: "I see there is a work on the new common law practise by Chitty & forms by Greening" and concluded, "Ought we not to have them?"<sup>197</sup> Consistent with his career-long awareness of the importance of having access to current and authoritative legal materials, as well as his practice

190. Edwards, *Law Officers*, *supra* note 75 at 5, 141; Romney, *supra*, note 2 at 15.

191. Romney, *ibid* at 40-42.

192. *Ibid* at 176. Robert A Harrison, who served as chief clerk in the 1850s, fulfilled both professional and personal duties for his principal, attorney general (and future prime minister of Canada) John A MacDonald: Peter Oliver, ed, *The Conventional Man: The Diaries of Ontario Chief Justice Robert A. Harrison, 1856-1878* (Toronto: University of Toronto Press for the Osgoode Society for Canadian Legal History, 2003) generally at 121-63.

193. MG 2, vol 733, #501, Samuel C West to William Young, 6 July 1854.

194. MG 2, vol 733, #555, Samuel C West to William Young, 17 August 1854.

195. MG 2, vol 733, #559, Samuel C West to William Young, 31 August 1854.

196. MG 2, vol 733, #571, Samuel C West to William Young, 14 September 1854.

197. *Ibid*.

of taking advantage of travel to Britain and the United States to add to his considerable law library,<sup>198</sup> Young seems to have listened to his colleague's suggestions. While in London, Young purchased a number of texts, including *Archbold's Criminal Pleading*, and a guide to the 1852 and 1854 English civil procedure statutes.<sup>199</sup>

#### IV. Remuneration

Discerning what tasks fell within the scope of Young's salaried duties as attorney general is not easy. In some instances, it is not possible to know if work was considered part of the attorney general's salaried roles, if it came within the attorney general's responsibilities yet still warranted a fee, or whether Young simply happened to fulfill a certain legal function while serving as attorney general, for which he received separate remuneration. This confusion over payment for an attorney general's services was not confined to Nova Scotia. In England, a small salary paid to the attorney general was discontinued in 1831.<sup>200</sup> Later on in the nineteenth century, the House of Commons on several occasions tried to understand (with incomplete success, it appears) what portion of an attorney general's work was performed as part of his salaried duties, what entitled an incumbent to fees, and what came within his private law practice.<sup>201</sup> In an appearance before an 1850 parliamentary committee, Sir John Jervis, then England's attorney general, explained his practice in relation to requests for legal opinions or answers to questions. Jervis treated a matter as part of his official duties and therefore did not charge for it if the request came directly from the Prime Minister or a departmental head. Jervis did charge a fee if the Home Office or Solicitor to the Treasury sent the request.<sup>202</sup>

During Young's tenure as attorney general, he received a respectable salary, £500 per year. Young's salary was half of what attorneys general earned in Upper Canada around the same time. One should not, however, overlook that the £1,000 Upper Canadian salary comprised a retainer and

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198. Young's knowledge of legal materials was well-known within the legal community. For example, law students requested and received his advice on what titles they should purchase: MG 2, vol 734, #1135, William Young to Henry Kaulback, 22 October 1856. For details about Young's private law library and his approach to legal reading, see Laurence, *Literary Man*, *supra* note 7 at 95-107, 207-213, 272-273, 422-429, and 490-492; "Learning the Law", *supra* note 86 at 95-102; and "Acquiring the Law: The Personal Law Library of William Young, Halifax, Nova Scotia, 1835" (1998) 21 Dal LJ 490.

199. MG 1, vol 3364, #75, William Young, financial records. Citation details for the criminal law text are JF Archbold, *A Summary of the law relative to Pleading and Evidence in Criminal Cases*, 9th ed by J Jervis (London, 1843). Given the number of guides available on the 1852 and 1854 legislation, it is not possible to identify which volume was bought by Young.

200. Edwards, *Law Officers*, *supra* note 75 at 74.

201. *Ibid* at 75.

202. *Ibid* at 76.

payment of all fees and reimbursements formerly received for services provided in a public capacity.<sup>203</sup> In contrast, Young was entitled to fees for performing some of his official duties. His status was, therefore, that of what Paul Romney describes as a “privileged vendor of services.”<sup>204</sup> As a result, Young charged for such work as drafting contracts for government departments. In October 1856, for instance, the firm of Young and West prepared an account of £35/11/8 for legal research, a written opinion, and the drafting of contracts and bonds on behalf of the Post Office.<sup>205</sup> Railway solicitor work also paid well. Young’s law firm charged £101/16/8 for its services in 1855 and £106/16/8 for its 1856 work.<sup>206</sup> During his years as attorney general, Young recorded a net annual average of £1,233 in business earnings, an amount which seemed additional to his £500 salary.<sup>207</sup>

In 1869, a dispute arose between then-attorney general Martin I Wilkins and Lieutenant General Sir Hastings Doyle, over payment for legal opinions which the former had prepared for the latter’s benefit. To help resolve the dispute, Young, then Chief Justice of the NSSC, was asked to describe his former billing practice as attorney general. He replied, “I never received fees nor made any charge for legal opinions furnished to the Governor or to the Officers of the Govt. consulting me as to the performance of their official duties.”<sup>208</sup> Nonetheless, Young had charged for legal opinions relating to ship registrations, which took the form of advice to the lieutenant governor.<sup>209</sup> Either Young was mistaken about an aspect of his billing policy from twelve years earlier, or he had a reason for charging in relation to that work. Perhaps he reasoned that providing

203. Romney, *supra* note 2 at 175, 186. Similarly, in 1853 Prince Edward Island commuted for £200 all fees and allowances of the attorney general and advocate general (a combined position) and combined those with a £150 salary, resulting in a global annual figure of £350: SPEI 1853, c 3. During the late 1850s, George H Cary, Attorney General of British Columbia (which at that time excluded Vancouver Island) was permitted to carry on a private law practice to supplement his £500 salary: *The Development of the Prosecutorial Role of the Attorney-General of British Columbia*, *supra* note 18 at 55.

204. Romney, *ibid* at 37.

205. MG 2, vol 734, #1097, Young & West to Arthur Woodgate, October 1856 (draft).

206. MG 2, vol 762, #68, Account with Young & West, 31 December 1855; (*ibid*), #74, Account with Young & West, 21 December 1856.

207. Ledger book (1844-1857), *supra* note 101, “Business Entries in Ledgers A to D.”

208. MG 2, vol 744, F2/155, William Young to Henry Moody, 25 February 1869. Wilkins’s anti-Confederation stance also led to tension between him and Doyle: Beck, “Rise and Fall”, *supra* note 5 at 134. Doyle had so little faith in his Attorney General that he on occasion asked Young to confirm the soundness of legal work completed by Wilkins: MG 2, vol 764, F1/2, Hastings Doyle to William Young, 14 November 1867; MG 2, vol 764, F1/42, Doyle to Young, 1 March 1869.

209. See for example MG 2, vol 734, F1/1101A, Legal opinion concerning the ship *Annie Archibald*. James B Uniacke, Young’s immediate predecessor as attorney general, also charged the Lieutenant Governor for legal opinions: RG 10, A, 4, Memorandum by James B Uniacke, 8 January 1852.

advice about ship registrations really benefitted local port officials, who were neither Crown representatives nor departmental heads.<sup>210</sup>

#### V. *Attitude towards the position*

Young found the combination of service as premier and attorney general to be exhausting. Within weeks of his appointment, on 25 April 1854, he wrote to Adams G Archibald, “I find as I expected that my new office is no sinecure.” He added: “Every day & almost every night has brought its own occupations.”<sup>211</sup> To those pressures, one must add the burden of a private law practice. In November 1854, he commented that “[t]he charge of the government & of the Criminal business of the Crown is no sinecure & though I never complain of work if I can get through it I sometimes think that I have rather too much to do.”<sup>212</sup> In Upper Canada, Robert Baldwin suggested in 1850, “No one who has not filled this office... can have any just conception how thoroughly every moment of time is occupied.”<sup>213</sup> Across the Atlantic, Sir John Jervis used some remarkably similar language to convey his impressions:

Anyone who has not held the office can have no conception of the labours of an Attorney-General. I am practising, of course, in my private business; I am obliged to prepare myself as well as I can for that, in addition to my public duty. I am kept officially in the House of Commons to two or three o’clock in the morning, sometimes, and I am obliged to be in court again at half-past nine the following morning. Nobody, who has not experienced it, can have a notion of the wear upon the Constitution.<sup>214</sup>

For both Young and Baldwin, dealing with innumerable patronage requests formed part of the workload. In nineteenth-century Nova Scotia, applicants for justice-related positions were not shy. For instance, waiting for an ill incumbent to die before seeking his position was not considered necessary. On May 29, 1856, for example, Peter Bonnett wrote to Young about the sheriff of Annapolis County, who was near death after having suffered a “paralytic attack” the previous night.<sup>215</sup> Bonnett implied his interest in the shrievalty, or in any other post that might become vacant

210. For instance, the legal opinion which Samuel West completed in 1854, in relation to a registration *de novo* of the *Laleah*, was meant to provide guidance ultimately to the controller of shipping at Digby: *supra* note 186.

211. *Supra* note 9.

212. MG 2, vol 733, #592, William Young to Alan McDonald, 1 November 1854.

213. Quoted in Romney, *supra* note 2 at 184.

214. Quoted in Edwards, *Law Officers*, *supra* note 75 at 64-65.

215. MG 2, vol 734, #889, Peter Bonnett to William Young, 29 May 1856.

should another officeholder replace the sheriff.<sup>216</sup> A week later, with the sheriff still clinging to life, another supplicant, Charles M Forbes, expressly made known his interest in the position: “this office, were I appointed, it would be my studied desire to fill in that manner that would be most creditable to myself and satisfactory to the government and county.”<sup>217</sup> Having available government-funded assistants, to at least deal with the more mundane administrative tasks associated with the attorney general’s office, as was the practice in Upper Canada, could have reduced Young’s work-induced fatigue.

Although he found his duties onerous, Young could at times display a nonchalance towards his official responsibilities. In 1854, when the premiership entailed travel to London, Young followed five weeks of work with some eight weeks of pleasure travel.<sup>218</sup> He received regular reports from the progressively more harried West, but did not appear concerned about returning home. Similarly, Young entrusted a great deal of prosecutorial work to his solicitors general. He expected those doing work on his behalf to show ability and initiative. In June 1856, William A Henry, corresponding from Cape Breton, made a request at short notice for subpoenas to compel witnesses to attend at the Guysborough murder trial of one John Snow. Young thought that the request should have occurred two weeks earlier, an oversight in relation to which he would accept no responsibility: “The criminal business on your circuit I consider as entirely out of my charge.”<sup>219</sup> Young had the luxury of taking on occasion an insouciant approach to the attorney generalship, given that he had competent and diligent assistants to support him.

### *Conclusion*

J Murray Beck suggests that Young, along with two other pre-Confederation attorneys general, James Boyle Uniacke and James William Johnston, failed to enhance the prestige associated with the attorney generalship.<sup>220</sup> If

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216. Young was part of a group entrusted with the task of choosing county sheriffs on an annual basis. The group also included another member of the executive council, the chief justice, and another NSSC judge. Although the legislation specified participation by two executive council members and did not actually mention the attorney general, in practice Young’s input was sought as the Crown’s principal law officer. See RSNS 1851, c 40, s 1; MG 2, vol 733, #635, William Young to CJ Halliburton, 30 November 1854.

217. MG 2, vol 734, #904, Charles M Forbes to William Young, 6 June 1856. Bonnett’s temerity paid off, and he became sheriff: Henry J Morgan, ed, *The Canadian Legal Directory* (Toronto: R Carswell, 1878) at 155. In Upper Canada, the large number of patronage requests compelled Baldwin to create a series of form letters with which to reply to applicants: Romney, *supra* note 2 at 172.

218. *Supra* note 184.

219. RG 10, A, 8, William Young to WA Henry, 20 June 1856.

220. Beck, “Rise and Fall”, *supra* note 5 at 132.

Beck's assertion is valid in Young's case, it was not through the latter's lack of competence, organization, or diligence. Young did not always devote his full attention to the attorney general's office. This is understandable, given that he also had a province to administer and a law practice to maintain. Nonetheless, the picture which emerges in this paper is of Young fulfilling a wide range of duties and completing a large volume of work, which required knowledge of both public and private law, as well as advocacy, advisory, and solicitorial skills. When not performing these tasks on his own, Young was careful to delegate work to capable subordinates, though he could not rely upon the resources of a provincial justice department.

If Young did contribute to a lack of public esteem for the attorney generalship, a probable cause is Young's association in the public mind with certain high-profile cases, in which the Crown was unable to secure a conviction anticipated by the community, or where the Crown pursued a penal sanction, despite public sympathy for the accused. Where a criminal trial had religious undercurrents, both possibilities co-existed, with Young certain to disappoint segments of either the Protestant or Catholic communities. Political disagreements exacerbated differences on the conduct of prosecutions. Young's avowed determination to take a course of action "consistent with the rules of law and evidence and the duty [he] owe[d] to society"<sup>221</sup> invited dissatisfaction, on non-legal grounds, among large portions of Nova Scotia's population. This public aspect of the attorney generalship therefore likely overshadowed other lesser known, but much more significant, work completed by Young in that capacity.

Removed from the drama of criminal courtrooms, Young played an important role in the overall administration of justice and legislative development. Although not known for the originality of his ideas, Young incorporated into his legislative work what he had learned about developments in the law outside Nova Scotia. With consequences for communications, transportation, and public order in the province, Young's statutory initiatives, relating to courts and their procedures, juries, ship registrations, and railways, helped to establish conditions and infrastructure necessary for the early industrial stage of the province's history. The latter two categories most obviously connote economic development. It should not be overlooked, however, that a modern state requires a stable and respected system for the impartial, timely, and affordable resolution of private law disputes. Commercial transactions, property ownership, and even public peace may be imperilled if individuals are not able to resolve their disagreements in an accepted, enforceable, and non-violent manner.

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221. *Supra* note 35.

A supporter of legislative measures which for the most part promoted greater centralization and uniformity, Young nonetheless did not pursue those aims in an absolute fashion. Through his faith in the jury system (in both the forensic and expropriation contexts), his reliance on ad hoc Crown prosecutors, and his reluctance to advise JPs, he was willing to allow local interests a role in the administration of justice.

Young's hitherto underappreciated accomplishments as attorney general invite a reappraisal of other facets of his career in the law, as a practising lawyer, law reformer, judge, and supporter of university legal education. More generally, the range and responsibility of the functions he fulfilled point to the need for further examination of the nature and significance of the British North American attorney generalship as a legal office, rather than primarily a political one.