

The Crown Lands Department, the Government, and the Settlers of McNab Township, Canada West

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Article abstract

After the 1837-38 rebellions, it was important to maintain public trust in government. At the same time people expected significant reforms and, ultimately, responsible government. The circumstances surrounding Archibald McNab and the settlers whom he had located in McNab Township in the 1830s and 1840s, highlight ways in which the transition to responsible government took form. The settlers, deceived and oppressed by McNab, became useful political tools and their plight was highly publicized by reformers. McNab came to represent the old ways of using position and power to further one's own status and wealth while a new ideal of serving the public interest was moving to the fore. Because so many of the settlers' problems stemmed from land distribution, the government had to handle the issue carefully. Encouraging settlement was the most important activity of the government in this period and its policies needed to apply consistently across Canada West in order to maintain trust and stability. Its handling of the difficulties in McNab was both consistent and flexible, raising no cries of special treatment.

The Crown Lands Department, the Government, and the Settlers of McNab Township, Canada West

by

Michelle Vosburgh

In October 1841, Archibald McNab, chief of the Scottish highland clan of that name, in a petition to the governor of Canada, suggested that he be allowed to “examine into the rights of the parties cutting timber” and to identify to the collector of timber duties those who were illegally acquiring the timber of McNab Township. He was concerned that the timber in the township “not be further plundered.”¹ It might appear at first glance that the offer was a generous one, but given the allegations that swirled around McNab and his activities in the township, the offer may be seen in a very different light. Those allegations included the plundering of the timber of the township by McNab himself, along with his heavy-handed treatment of the settlers there. The petition of 6 October 1841 was another link in the chain that had brought McNab to Canada as a settlement promoter nearly two decades before, eager to rebuild the family fortunes with the help of a friendly government.

By 1841, though, McNab was on the defensive, his power and position severely curbed by the changes that had swept Upper Canada since his arrival.

In 1823, Archibald McNab, also referred to as the Chief, the Laird, and simply, the McNab, proposed a settlement scheme to Upper Canada’s government.² In return for assisting the emigration of settlers from Britain, he would receive land for himself. Despite some misgivings over details, the executive council agreed to the proposal for McNab Township. The order-in-council gave him authority to issue location tickets to settlers at his discretion, to charge rents in repayment of his expenses in assisting settlers and families beginning after three years of settlement, and to acquire their patents on their behalf once settlement conditions were fulfilled. McNab’s subsequent activities have become somewhat of a legend. From the time of the earliest complaints, the familiar refrain was that the Laird was attempting to recreate

¹ Archives of Ontario (hereafter cited as AO), RG 1-54-2, Land Petitions, Petition of Archibald McNab, 6 October 1841.

² The spelling of McNab throughout the archival records varies: McNab, MacNab, McNabb. The variation McNab will be used throughout this paper since that is the official spelling of the township, and it is also the variation used by Archibald McNab in his correspondence.

a Scottish feudal estate in the backwoods of Upper Canada. Among the more notorious aspects of McNab's activities were his representations to settlers that he was, in fact, the owner of the land on which they resided, allegations of illegal timber removal, questionable land transactions, and harassment in the form of lawsuits, evictions and seizures of land and goods. The first serious complaints came in 1829, but despite an investigation the following year, the abuses continued.³ It was not until 1839 that things changed significantly. The timing, so soon after the 1837-38 rebellions, was not a coincidence.

The government's handling of the settlers in McNab Township was a reflection of the

larger forces at work in the colony after the uprisings, the same forces that led the Laird to negotiate the relinquishment of

Abstract

After the 1837-38 rebellions, it was important to maintain public trust in government. At the same time people expected significant reforms and, ultimately, responsible government. The circumstances surrounding Archibald McNab and the settlers whom he had located in McNab Township in the 1830s and 1840s, highlight ways in which the transition to responsible government took form. The settlers, deceived and oppressed by McNab, became useful political tools and their plight was highly publicized by reformers. McNab came to represent the old ways of using position and power to further one's own status and wealth while a new ideal of serving the public interest was moving to the fore. Because so many of the settlers' problems stemmed from land distribution, the government had to handle the issue carefully. Encouraging settlement was the most important activity of the government in this period and its policies needed to apply consistently across Canada West in order to maintain trust and stability. Its handling of the difficulties in McNab was both consistent and flexible, raising no cries of special treatment.

Résumé: *Après les rebellions de 1837-38, il était de prime importance de maintenir la confiance du public dans le gouvernement. En même temps, les gens s'attendaient à d'importantes réformes et, par la suite, à un gouvernement responsable. Le cas d'Archibald McNab et les circonstances de l'installation des colons dans la commune de McNab, durant les années 1830 et 1840, mettent en lumière les méthodes par lesquelles le passage à un gouvernement responsable, se sont développées. Les colons, déçus et opprimés par McNab, sont devenus des instruments politiques utiles, leur situation lamentable étant fortement exploitée en public par les réformistes. Pendant qu'un nouvel idéal de service public se développait, McNab représentait les anciennes manières de se servir d'un poste public, utilisant notamment son pouvoir pour avancer son propre statut et augmenter sa propre richesse. Étant donné que l'origine de nombreux problèmes des colons était à trouver dans le processus de distribution des terres, le gouvernement devait traiter la question avec prudence. À cette époque, la tâche la plus importante du gouvernement était d'encourager la colonisation, et sa politique devait pouvoir s'appliquer uniformément à l'ensemble de l'Ouest canadien, cela afin de maintenir aussi bien la confiance du public que la stabilité politique. La façon dont le gouvernement a traité le problème dans la commune de McNab, a été à la fois uniforme et flexible, et aucune protestation de traitement préférentiel n'en a résulté.*

his claims with the government in 1839. Archibald McNab became a representation of all that was corrupt and self-serv-

³ There are a number of published sources, mostly local histories, which highlight the problems caused by Archibald McNab, some in great detail. Marjorie J.F. Fraser, "Feudalism in Upper Canada, 1823-1843," *Ontario History*, 12 (1914):142-52; Alexander Fraser, *The Last Laird of MacNab* (Toronto, 1899), <<http://www.ourroots.ca>>, accessed 27 February 2005; Peter Hessel, *McNab: The Township*, (Arnprior, Ont., 1988); Clyde C. Kennedy, *The Upper Ottawa Valley* (Renfrew: Renfrew County Council, 1970), 109-14; Bernard Shaw, "Tyrant of the Ottawa Valley," *The Beaver*, 75 (1995): 27-33.

ing about the old establishment, tied into the network of the “Family Compact.” In the press, the reformers portrayed him as a despot, abusing his position to benefit himself at the expense of his settlers. Disabling and condemning the man, in terms of his authority and power, and at the same time empowering his settlers, represented one part of the larger efforts at achieving responsible government both for reformers, and for conservatives anxious to separate themselves from the activities and abuses of the Family Compact. The publicity put a lot of pressure on government to do something constructive, but also provided a means for government to demonstrate that it was taking action, in good faith, to relieve some of the burdens of the McNab settlers. Reforms were meant to show that such a man would no longer be able to use his connections and influence to protect his own interests. The reforms went even further though, because a new ideal was taking shape: positions of power were opportunities to serve the public interest, not to further one’s own personal wealth or status at the expense of others.

This was closely related to another key aspect of responsible government – creating a society in which everyone could be assured of fairness and justice and count on a basic stability of government and institutions. Members of the colonial government and political leaders of various political stripes were making conscious efforts to reinforce the stability of, and popular trust in, government institutions and activities – most notably in this period, land distribution and settlement. This

was key in a society where land distribution was the major focus of progress, and a key source of government revenue. An ongoing issue that had come to the forefront during the rebellions was the unfairness of the land distribution policy. There was an increasing sense within the government and Crown Lands Department in the late 1830s and early 1840s of the need to facilitate the settlement of *bona fide* settlers, while restricting and ultimately preventing speculation, plundering, and the impediment of settlement because of large tracts of wild land. Part of this shift was the appointment of a number of regular local crown land agents, who could better respond to local circumstances and serve both the government and the public. The department’s operating policy came to be one that was willing to hear the cases of squatters, competing claimants and such, and to treat them favourably when, often with the assistance of local agents and surveyors, they could prove themselves to be actual settlers with the intention of clearing and farming the land. In the end, it meant that they would receive the opportunity whenever possible to purchase a reasonable amount of land at a reasonable cost. While the settlers of McNab were in more unusual circumstances, nevertheless, those who could prove themselves *bona fide* settlers received favourable consideration from the Crown Lands Department within the scope and resolution of frameworks already in place, including a local Crown Land Agent, Francis Allan, who would play a key role in resolving the issues in the township. The principles of order, trust, and stability in government

Portrait of Archibald McNab, chief of the Scottish highland clan of that name. Courtesy of the Royal Ontario Museum, 935.26.2.

underlay the post-rebellion resolutions of the problems found in the settlement.

Archibald McNab's sojourn in Upper Canada began as a result of pecuniary difficulties. The family's Scottish estate was mired in debt when Archibald became Laird after his uncle's death. A hostile creditor forced the estate's liquidation and, as a result, McNab did not inherit much more than the title.⁴ In an effort to rebuild the family finances, he proposed a settlement plan in Upper Canada. In exchange for an agreed upon amount of land for himself, he would assist Scottish Highlanders, including those from the McNab clan, to emigrate to Canada and settle on lands set aside for that purpose. He spent some time in Upper Canada lobbying members of the government.

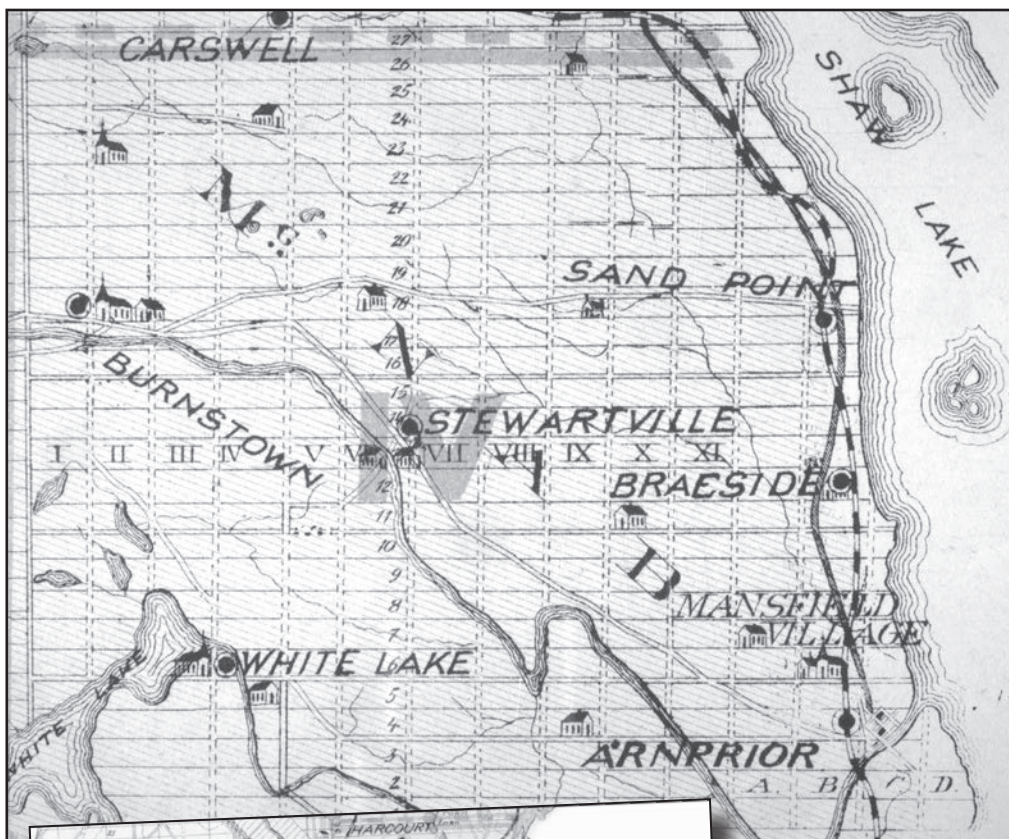


Lieutenant Governor Peregrine Maitland expressed concern about the risk for McNab as well as the possible consequences for the government should the arrangements fail.⁵ Taking a different view, John Strachan cautioned that the terms left the door open for the settlers to be burdened with a “*perpetual* rent charge.”⁶ As it would turn out, those con-

⁴ Alan Cameron and Julian Gwyn, “Archibald McNab,” *Dictionary of Canadian Biography*, <<http://www.biographi.ca/EN/ShowBioPrintable.asp?BioId=38210>>; M.J.F. Fraser, “Feudalism,” 145.

⁵ Sir Peregrine Maitland to Lord Bathurst, quoted in Shaw, “Tyrant,” 28.

⁶ John Strachan, quoted in Cameron and Gwyn, “Archibald McNab,” *DCB*.



Above: McNab Township, part of Renfrew County, as seen in 1880, courtesy of the Canadian County Atlas Digital Project, <<http://digital.library.mcgill.ca/County/Atlas>>.

cerns were well-founded. Nevertheless, the Laird's proposal received approval, with the stipulation that after eighteen months, the government would review "the experiment" and decide whether to continue with the arrangement.⁷ The executive council acceded to the request for Wilmot Township at the juncture of the Madawaska and Ottawa Rivers, which was renamed McNab Township.⁸

The council authorized an initial grant of 1,200 acres and when the township settlement was complete, the grant would be increased to a total of 5,000 acres. McNab was to identify the lots he wished to be included in this grant, and he could do with these what he wished. He had authority to issue locations tickets for the rest of the lots, with the exception of the clergy and crown reserves, and the lands paid to the surveyor. Each family or male over 21 years that he brought to the township would receive a location ticket from him for a minimum of 100 acres. On his recommendation, the grant could be increased "to such families as have means, and are strong in number, and whom it may be deemed prudent to encourage." The settlers were to pay the interest on the money spent by McNab for their emigration and settlement in money or produce, whatever the set-

tlers' choice. Moreover, they were also to "have the liberty to pay up the principal and interest at any time during the first seven years." There was no mention in the council record of "rents" to be paid to the Laird by settlers located on crown lands beyond the repayment of the money and interest he spent on their behalf. The council also very clearly noted "that the conditions entered upon between the Laird of McNab and each settler be fully explained in detail." Moreover, he was to make sure that it was "distinctly stated" that, upon entering arrangements with him, the settlers would have no further claim for land grants from the government. Once the patent fees were paid and the Laird was satisfied regarding the completion of settlement duties, the patents would issue to the settlers or to McNab as petitioner in trust.⁹

Despite their caution, the government left several loopholes; notably the timber resources in the township. The evidence certainly implies that McNab took full advantage of those loopholes, as well as the township's isolation, and the settlers' ignorance. His failure to disclose the true nature of his authority regarding the township began early. In a letter to his Scottish agent, Dr. Buchanan Hamilton, who was to recruit potential set-

⁷ No records regarding such a "review" or an extension of McNab's supervision of the settlement of the township have been found. M.J.F. Fraser "Feudalism," 149 suggests that the eighteen month period for settlement under McNab's control was extended indefinitely in 1827. Thomas Radenhurst, acting Surveyor General, reported in 1840 that he was not aware of any document that extended the control of McNab township beyond the original eighteen month limit, quoted in "Township of McNab – Unheard of Imposition," *Toronto Examiner*, 11 November 1840.

⁸ According to Shaw, "Tyrant," 28, McNab had originally petitioned for Torbolton Tp, further down-river on the Ottawa River.

⁹ The 1823 agreement has been printed in Fraser, *The Last Laird*, 14-16.

tlers in Scotland, McNab wrote that the township, containing over 80,000 acres “has today been handed over to me by Sir Peregrine [Maitland]” and enclosed a bond “especially prepared by the Attorney General” that settlers were to sign before they received their tickets for the passage.¹⁰ Later, those bonds became one of the main sources of conflict between McNab and his settlers.

The bonds’ wording muddled the government-approved arrangement. McNab agreed to procure the patent for the lot for the settler (at the settler’s expense) on condition of the settlement duties being performed, (which was the usual course in Upper Canada) *and* the settler granting McNab a mortgage upon the land. That mortgage required that the settler “will yearly thereafter pay to me, my heirs and successors for ever one bushel of wheat or Indian corn, or oats of like value, for every cleared acre... in name of quit rent.” Later settlers sometimes had different amounts of rent prescribed, but the bonds were the same. What really signalled McNab’s underhandedness was the fact that there was no indication in the bond that once the settler’s debt was paid the settler was no longer obligated to pay the Laird anything, nor was there any mention of the seven-year period in which the settler could pay his debt in full. In other words, the agreements that these settlers signed

indicated rent payments in perpetuity to McNab who was representing himself as the owner of the township. Although the bond indicated that the settlers would receive a patent in their name or, as noted in the executive council report, the patents would be issued to McNab in trust for them, it is unclear whether the settlers understood that the patent would give them ownership.¹¹

Twenty-one families came from Scotland in 1825 and their difficulties began soon after when promised supplies were not forthcoming. Stories later circulated about McNab demanding that settlers ask his permission to leave the township to find work, and any who disobeyed had their names entered in a “Black List” book.¹² Word got back to Scotland, and Hamilton apparently would no longer assist McNab in finding potential settlers in Scotland.¹³ As a result, the Laird spent time in Montreal to find more settlers among new arrivals to Canada. Many settlers would later recount that he had talked to them in Montreal and persuaded them to take up lands in his township.¹⁴ Like the “old settlers” they signed bonds obligating them to pay rent to him. Later, they too would claim that they believed that McNab owned the land.

That something was amiss in the township became apparent soon after the initial settlement when fifteen settlers

¹⁰ Archibald McNab to Hamilton, 10 August 1824, Fraser, *The Last Laird*, 17-18.

¹¹ Sample of bond can be found printed in M.J.F. Fraser, “Feudalism,” 147.

¹² *Ibid.*, 148.

¹³ *Ibid.*, 149.

¹⁴ Alexander McDonnell’s report, 25 June 1830, and Francis Allan’s report, 1840, *Journal of the House of Assembly of Province of Canada*, 1841, Vol.1, Appendix H.H.

submitted in 1829 what would become the first of a number of petitions. They asked that the government step in and have their agreements with McNab nullified. They openly admitted that they had been ignorant of the “usages and customs of the country” and now were saddled with a burden that no one else in the province had to bear.¹⁵ In 1830 the government appointed Alexander McDonnell, who worked for the Crown Lands Department in Newcastle District to investigate. Most of the settlers were unwilling or unable to pay the rents and expressed their willingness to purchase their land from the government at a valuation. Despite the problems McDonnell found, the government at this point did nothing, which is really not surprising. The bonds signed by the individual settlers were between Archibald McNab and themselves, and it had been clearly indicated in 1823 that the settlers would have no further claims on government once they entered an agreement with him. Of course, McNab’s position and connections were such that government intervention on behalf of the settlers was an even more remote possibility.

When McNab found it difficult to collect the rents, he took another tack: litigation. It did not seem to matter whether or not settlers could not pay their rent because of hardship. He won most of the cases in the early 1830s on the basis of

breach of covenant, referring to the bond signed by the settlers, and their failure to comply with the terms. The legal status of the bonds seemed unquestionable no matter how dubious the manner in which the settlers were persuaded to sign. As time went on, McNab’s legal pursuit of his settlers became more intense, betraying both his need for funds and his efforts to assert his authority over the township. At the same time however, his success in court began to wane.¹⁶

Timber proved to be the most profitable commodity in the early stages of settlement. The township’s situation on the Ottawa River was ideal, especially as the river valley became a hub of the lumber industry in Upper Canada. The Laird took advantage of the money to be made in timber. The historical record is unclear concerning any timber arrangements he may have had with the government before 1835, but there are suggestions that he had a “gentleman’s agreement” that allowed him timber “privileges” in McNab and neighbouring townships.¹⁷ Provisions may have been in place for him to sell the timber without paying dues to the government or for him to be able to collect the crown timber dues for himself from those who wanted to cut in the township. Whether the arrangements, formal or informal, really existed, sources alleged that Archibald McNab made a lot of money from timber.¹⁸ In 1835 he

¹⁵ 1829 Petition to Sir John Colborne, Executive Council, quoted in Cameron and Gwyn, “Archibald McNab,” *DCB*.

¹⁶ AO, RG 22, Perth (Lanark) district court, case files, 1837-41.

¹⁷ Cameron and Gwyn, “Archibald McNab,” *DCB*.

¹⁸ AO, RG 1-54-2, Land Petitions, Dugald C. McNab; Petition of the settlers of the Township of

finally turned to the government seeking a formal agreement for the right to cut or collect duties on the timber cut on unlocated lots in the township. If the allegations brought against him by the settlers and others were true, then the new arrangement, agreed to by the government in 1836, only confirmed what he had already been doing since 1825. Estimates of the amount of revenue he generated from timber varied considerably, anywhere from £100 to £800 annually.¹⁹

McNab's dubious activities in the 1830s would later come to light in the period following the rebellions. It became apparent during the unrest that he had lost most of what respect he may have had as Laird when township settlers offered their support to the government in the wake of violence, but refused to serve under him as Colonel. To explain their position they cited the hardships he caused through rents and litigation. Apparently McNab still had support in government, since the governor's reply to the petition declined any intervention in the "purely private nature" of the agreements between McNab and the settlers.²⁰ While one later historian would accuse the government of trying to frighten the settlers by distributing four hundred copies of the petition and

reply in the township, it seems more likely that McNab himself was behind it.²¹

Perceiving which way the wind was blowing after the rebellions, Archibald McNab realized that changing circumstances did not bode well for his activities. In 1839 he moved quickly to come to a new arrangement. In exchange for giving up the 5,000 acres allotted to him in the 1823 agreement, the timber of McNab township, and all claims to rent owing to him, he asked the Upper Canadian government for £9,000 - £5,000 for the value of the land he was giving up and £4,000 in compensation for his expenses over the fourteen years since the initial settlement. Council asked for an account of his expenditures, but McNab could not produce anything more than rough estimates. The government agreed to the proposition, but he was only to receive £4,000 in total. The money was to be raised through the sale of the lands in the township to the settlers. McNab did retain ownership of several lots for which he already acquired the patents - lots not considered part of the original 5,000 acres.

Even before the rebellions though, the Laird's control over McNab Township had been waning. Growing settlement and diminishing isolation meant that

McNab, 14 April 1840, printed in *Journal of the House of Assembly of Province of Canada*, 1841, Vol.1, Appendix H.H.

¹⁹ AO, RG 1-54-2, Land Petitions, Dugald C. McNab; Petition of the settlers of the Township of McNab, 14 April 1840, printed in *Journal of the House of Assembly of Province of Canada*, 1841, Vol.1, Appendix H.H. There was even a suggestion that McNab made £30 000 from timber in a petition from McNab settlers, mentioned in Hessel, *McNab Township*, p.58, and M.J.F. Fraser, "Feudalism," 151.

²⁰ Lieutenant Governor Francis Bond Head, reply to 1837 McNab settlers petition, quoted in M.J.F. Fraser, "Feudalism," 151.

²¹ *Ibid.*, 151. Unfortunately, there are no citations included to check such declarations in the archival records.

stories and rumours spread further afield, and the people of the township realized that their situation was vastly different than elsewhere in the province. The Laird was wielding a degree of power and authority that was no longer acceptable to many. The people of Upper Canada had lived with the “Family Compact” and its clientele system for decades. In the late 1830s and early 1840s, Archibald McNab became a symbol of the



Waba Cottage, the Laird's house, seen here abandoned in 1935. It was later rebuilt and is now a museum. AO 10010824 C 120 3-0-0-152.

worst elements of that conservative elite; a caricature of the power that privileged position and political connections could bring. The use of the appellations “The McNab” and the “Chief” in the reform press took on a satirical note. It became a common metaphor to liken Archibald McNab to a medieval feudal lord who treated his people like vassals, there only to serve him and increase his wealth, while making only cursory efforts to fulfill his obligations as laird. The reform press made much of the ludicrous idea that McNab believed he could recreate a Scottish feudal estate in enlightened nineteenth-century British North America.

Sympathy for the settlers was growing, thanks to the press, and they found support coming from those who were in a position to help them in real and tangible ways. Perth attorney, Thomas M. Radenhurst, offered his services to defend the settlers in the lawsuits that plagued them. Not surprising, Radenhurst's political persuasions were reformist.²² His increasingly successful efforts in court on behalf of

the settlers were helping to break the Laird's power. Likewise, assistance in drawing up petitions to the governor was also intended to reduce the control that Archibald McNab wielded in the township. In 1839, the Laird alluded to Radenhurst's involvement and assistance. At the settlers' next meeting, the attorney heard of the problems for himself, and a “black catalogue” was given to him “with success to [his] mission.”²³ No doubt McNab's influence and actions had probably convinced many settlers to switch their political loyalties, especially after reformers took up their cause.²⁴

Francis Hincks, reformer and editor of the *Toronto Examiner*, was outspoken

²² AO, F 553, Thomas Radenhurst Papers, Envelope 16.

²³ AO, F 553, Thomas Radenhurst Papers, Envelope 15, Alexander McNab to Thomas Radenhurst, 21 June 1839.

²⁴ AO, F 553, Thomas Radenhurst Papers, Envelope 16, Dugald C. McNab to Thomas Radenhurst, 3 November 1841.

in the fight for a fair resolution in McNab. In 1840 a lengthy article appeared on the front page of the *Examiner*, noting that a letter from a settler contained information that, together with material from an “official source,” merited the attention of readers. The “official source” was John Radenhurst, former acting Surveyor General. The information had been presented before the Laird agreed in September 1839 to give up his claim to lands in return for cash, and, at the time of the article, he had not yet received patents for the 5,000 acres he claimed. Radenhurst justified his reluctance to issue the patents because the lots McNab claimed were “those on which he had placed settlers who I understand have made considerable improvements.”²⁵ Withholding patents because of persons with other claims to lots was becoming a common and accepted practice in the Crown Lands Department.²⁶ Hincks pointed to McNab’s efforts to acquire these lands as evidence of the still relatively cozy relationship between the Laird and some members of the executive. The article went on to outline some of the settlers’ grievances, including McNab’s misrepresentation of himself as owner in order to compel settlers to sign the bonds and agree to pay annual rent, as well as his treatment of settlers who failed to pay their rents. His attempt to acquire patents for lands where he had

located settlers was confirmed by both Radenhurst and the *Examiner*’s correspondent. Instead of aiding the Laird, the editor called for a government inquiry, it being the responsibility of government to “protect the oppressed immigrants.”²⁷

Archibald McNab’s response was swift. A week later, Hincks published a letter from him protesting the “grave and extraordinary charges” that would bring him “into public odium with [his] own people” and the rest of society. The editor remarked in the same issue that McNab was suing him for libel, but was adamant that a lawsuit would not deter him from further journalistic investigation. Moreover, if McNab was not guilty of the charges, Hincks reasoned, it would have been better for him to respond with evidence to prove his innocence than to pursue a suit for libel. In concluding his comments, Hincks noted that if McNab were indeed in “public odium” with his own people, it was his own fault, and he “need not be under any alarm as to the effect of our articles.”²⁸

The initial article and Archibald McNab’s response set off a flurry of correspondence to the *Examiner* and other papers. Stories of specific cases of abuse, heavy-handedness, and questionable transactions on the part of the Laird began to flood the public realm. One of the first letters came from “A Reformer of

²⁵ John Radenhurst, quoted in “Township of McNab – Unheard of Imposition,” *Toronto Examiner*, 11 November 1840.

²⁶ Michelle Vosburgh, “Agents of progress: the role of crown land agents and surveyors in the distribution of crown lands in Upper Canada, 1837-1870” (Ph.D. diss., McMaster University, 2004), 47.

²⁷ “Township of McNab – Unheard of Imposition,” *Toronto Examiner*, 11 November 1840.

²⁸ “The McNab,” *Toronto Examiner*, 18 November 1840.

Such Abuses" (Dugald C. McNab would later reveal that he was "Reformer") who accused McNab of unfair and unethical behaviour.²⁹ He claimed that the Laird, who was not the only Archibald McNab in the township, took advantage of this other Archibald, "an illiterate and simple old man," to acquire two lots for himself. Similarly, another 600 acres had been located to an Allan McNab who, the author believed, was Archibald McNab's illegitimate teenage son by his housekeeper. Such activities went against the new direction of crown lands administration in the province.

If men like McNab were still able to get away with blatant disregard for government regulations and public sentiment then the people's respect for government authority would be diminished. Similarly, if McNab was able to continue to manipulate the legal system for his own purposes, then how could the justice system be counted upon as fair and impartial? Dugald McNab hit upon this issue as well when he accused the Laird of using "a tool of his, one John Ritchie, J.P." to sign warrants to "arrest money in person's hands who may be owing these poor settlers" who in turn owed McNab rent.³⁰ The Laird's position and the connections that supported him had to be broken. Hincks also referred in the same issue to a letter that Dugald McNab had written to him privately alleging that

the Laird was trying to broker a better deal for himself with the present government, "knowing it is much easier to settle with the present people in power than with that 'd—d Radical' as the McNab calls him." The "d—d radical" was the newly-appointed governor for the united Province of Canada, George Poulet Thomson, Lord Sydenham, who was very supportive of the idea of responsible government. The *Examiner* had received other letters detailing abuses, but Hincks replied that, for now, the behaviour of Archibald McNab was apparent for all to see and would not publish any more accounts of the difficulties.³¹ This was a wise move on Hincks' part, given that he was already being sued and perhaps feared that, in their enthusiasm, the latest letters might contain allegations not easily proven. However, the *Examiner* continued its support for the settlers of McNab Township, and groups of settlers expressed thanks to John Radenhurst, Dugald McNab and Francis Hincks.³² The allegations helped to highlight how McNab represented the old way of doing things, and why it was time for change.

The conservative papers were not silent on these issues. McNab himself responded by asking the editor of the *Toronto Patriot* to publish a letter in which he refuted the charges. He argued that he did not force anyone to sign the bonds, which may have been true, but he said

²⁹ Dugald C. McNab acknowledged his authorship of this letter from "A Reformer of Such Abuses" in another letter that was published in the *Toronto Examiner*, 20 November 1841.

³⁰ "To the editor of the *Examiner*," *Toronto Examiner*, 2 December 1840.

³¹ "The McNab," *Toronto Examiner*, 2 December 1840.

³² "The Macnab" and "The McNab again," *Toronto Examiner*, 20 January 1841.

nothing on the issue of whether he gave the impression that he owned the land. There was no acknowledgement that he may have used his position to manipulate or deceive. He asked why, if he had committed so many wrongs, no one had ever filed a suit against him, or charged him with a criminal offense? There was nothing said about the fact that the majority of settlers would have had little time or money to initiate a lawsuit and little power or influence to compel a criminal investigation. Accompanying his letter were several from settlers who had only praise for him and spoke glowingly of all his efforts on behalf of the settlers. One of the letters came from James McNie.³³ Coincidentally, the McNab's piper was a man named James McNee; he had never been required to pay rent.³⁴

Even though McNab won the libel suit, the damage was done. There had been so much exposure and discussion of the situation, that in the public eye, the Laird was found "morally guilty" of many offences.³⁵ Clearly the reformers had found a good issue that resonated with the public on several levels. When the trial was held and the verdict came back in favour of Archibald McNab, not surprisingly, the reformers, including Hincks,

declared a moral victory: instead of the £4,000 in damages he sued for, the jury awarded him £5.³⁶ Hincks pointed out that the trial had shown that McNab had the responsibilities of a "public servant" and that he had been "drawing considerable revenue [from] public property." The impression that McNab had not been serving the public but cheating the public to benefit himself carried a lot of weight for the reformers' cause.³⁷ Other, more conservative-leaning papers, of course, argued that McNab's victory was the true one, and that although the damages were negligible, the costs, which were estimated to be about £200, made for a substantial victory for Archibald McNab.³⁸

The fullest account of the situation in McNab Township emerged with the printing of Francis Allan's 1840 inspection report in the Legislative Assembly's papers in 1841. However, the report only became public after conservative MPs, who still supported McNab, tried to have it suppressed, citing the upcoming suit for libel. Allan Napier McNab, a kinsman of Archibald McNab, led the debate against the publication, after Malcolm Cameron, MP for the riding which included McNab Township, asked for the assembly's approval for its release.³⁹ Dur-

³³ "The McNab," *Kingston Chronicle and Gazette*, 9 March 1842.

³⁴ Lot 7, Conc. A, Alexander McDonnell's report, 25 June 1830, *Journal of the House of Assembly of Province of Canada*, 1841, Vol. 1, Appendix H.H.

³⁵ "Libel actions – their folly" from *Woodstock Herald*, reprinted in *Toronto Examiner*, 3 November 1841.

³⁶ "The McNab Case," *Toronto Examiner*, 20 April 1841. John Radenhurst was among several witnesses, "Action for Libel," *Toronto Examiner*, 4 May 1842.

³⁷ *Toronto Examiner*, 4 May 1842.

³⁸ *Kingston Chronicle and Gazette*, 30 April 1842.

³⁹ "The Assizes – Actions for Libel," *Toronto Examiner*, 13 October 1841.

ing the debate, Allan N. McNab argued that if the settlers had complaints against the Laird, “the Courts of Law were open to them.” Those opposed responded by quoting a “favourite saying of Sir Allan’s that ‘enquiry could do no harm.’”⁴⁰ Hincks published the “remarks” portion of Allan’s report in his paper soon after the debates, and the full report would eventually be published as an appendix in the *Journals* of the assembly.⁴¹

In some ways, Allan’s report was a repeat of McDonnell’s ten years earlier except this time the complaints were louder and the settlers’ defiance of McNab’s authority was much more apparent. The tone of the report was a mirror of the petitions that both gave rise to and came after the report. Both “old” settlers – those who had come to Canada at McNab’s expense – and “new” settlers, who were already in Canada when the Laird persuaded them to settle, signed the petitions. The 1840 petition did not dwell on individual problems, and only mentioned the lawsuits in passing. Rather, it concentrated on showing how McNab had not spent large sums of money to aid in the development of the township as he claimed, and that he had been making a lot of money from timber and speculation

facilitated by questionable acquisitions of land patents. The petition did not ask for relief for the settlers, merely that an impartial person be sent to investigate.⁴² The wording of the petition was clever; it emphasized how McNab was hampering the township’s progress and perhaps taking advantage of the government. Even before the government had received the petition however, it had determined that an inspection of the township was necessary, if for nothing else, to value the lots for their sale under the 1839 agreement with McNab.⁴³

The Crown Lands Department’s instructions to Allan regarding his inspection were not much different than those given to other crown land agents throughout the province. Except for the point of inquiring about the rents paid to McNab by the occupants and dealing with disputes over claims that involved him, the valuation was to proceed according to the normal policy of the department. The Commissioner of Crown Lands, R.B. Sullivan, even told Allan to use the standard inspection and valuation form, and to add the information about rents in the remarks section.⁴⁴ When the Laird made some overtures about accompanying Allan on his inspection,

⁴⁰ 17 August 1841, *Debates of the Legislative Assembly of United Canada*, Elizabeth Nish, ed., Vol. 1, (Montreal, 1970), 605

⁴¹ “Executive Council – McNab’s case,” *Toronto Examiner*, 17 November 1841.

⁴² Petition of the settlers of the Township of McNab, 14 April 1840, printed in *Journal of the House of Assembly of Province of Canada*, 1841, Vol.1, Appendix H.H.

⁴³ AO, RG 1-6-3-2, Commissioner of crown lands’ outgoing correspondence to land agents, R.B. Sullivan to Francis Allan, 15 February 1840, #24 and 17 February 1840, #25.

⁴⁴ AO, RG 1-6-3-2, Commissioner of crown lands’ outgoing correspondence to land agents, R.B. Sullivan to Francis Allan, 21 February 1840, #29. Extracts from the instructions were also printed along with McNab’s supporters’ letters, “The McNab,” *Kingston Chronicle and Gazette*, 9 March 1842.

Sullivan quickly concurred with Allan's decision that such an occurrence would be "obviously incorrect, perhaps fearing that McNab's presence would intimidate settlers."⁴⁵ Besides, if the government and the department were to establish a good relationship with the settlers, it would not do to make it appear that they were working closely with the Laird.

Allan's report consisted of two parts: his overall remarks, and the lot-by-lot inspection and valuation report. In his remarks, he emphasized the ways in which Archibald McNab's actions had hampered the efforts of individuals to improve their land, as well as hindered the overall progress of the township. Allan was blunt in his assessment of the Laird's rents: "the system of rent and mortgage added to an arbitrary bearing and persecuting spirit seems to have checked all enterprise and paralyzed the industry of the settlers." Since the amount of rent was based on cleared acreage, it probably deterred many settlers from clearing any more than what they needed in order to survive, especially in the poorer areas of the township. Likewise, the roads, Allan wrote, were terrible, especially given the length of settlement. The statute labour required by law was performed on roads chosen by McNab, and instead of furthering the development of the township, the roads that were improved were those that would be of use to him.⁴⁶

Again, the emphasis was on the ways in which improvement in the settlement had been hampered, an important principle in a society that was very concerned with progress. Allan also wrote at length on the various ways in which McNab had acquired land through questionable means and had taken actions against individuals that made it much more difficult for them to succeed as farmers or tradesmen in their new homes.⁴⁷ It was very apparent that Allan believed the Laird had cheated or defrauded both the government and individual settlers.

While Allan carried out his investigation and wrote his report, attitudes were changing, no matter where one stood on the political scale, and the resolution of problems in McNab Township reflected this. The 1839 agreement that agreed to pay McNab in return for him relinquishing his claim to 5,000 acres, and for any money he had expended, left a heavy burden on the government. Part of Allan's investigation was to value the lands to be sold to raise the money owed to McNab. When the settlers were informed of the value of their lands, and told the amount and due date of the first installment, there was a great deal of protest. Not only were they unhappy with the valuations and the impending deadline, some were surprised to find that their names were entered for lots unbeknownst to them, or which they had long abandoned.

⁴⁵ AO, RG 1-6-3-2, Commissioner of crown lands' outgoing correspondence to land agents, R.B. Sullivan to Francis Allan, 7 April 1840, #50.

⁴⁶ Remarks upon the petition of Angus McNab and others, settlers," Francis Allan, printed in *Journal of the House of Assembly of Province of Canada*, 1841, Vol.1, Appendix H.H.

⁴⁷ *Ibid.*

Among the latter was Andrew Russell, a leading citizen who appears to have played an important, though understated, role in the dispute with Archibald McNab. Russell's wife was McNab's first cousin once removed. The Russells had actually taken up land in the township at the invitation of the Laird, but quickly found themselves in intolerable circumstances. They left after only two years so Russell could find more suitable employment. A dispute later arose in the family over the question of an inheritance that Archibald McNab had not paid out of the estate left to him.⁴⁸ Whether this was the reason for Russell's later involvement on the side of the settlers is unclear, but nevertheless among Russell's papers are a number of draft petitions from 1842-43, after Allan's investigation, that make it clear that a great deal of thought went into the wording of petitions in order to improve the likelihood of a positive outcome.⁴⁹

These petitions and others signed by large numbers of the McNab settlers set forth several arguments. First, they believed that, like other settlers who had come to Upper Canada in the 1820s, they should receive their land as grants, instead of having to purchase them. Many, however, had already indicated to both McDonnell and Allan that they were willing to purchase their lands from the government. Secondly, they believed that the valuations set by Allan were too high

and reflected the added value of their own improvements. That said, however, for many of the lots, the greatest value lay in the timber and Archibald McNab had already appropriated that, so that loss should be taken into consideration in the valuations. Thirdly, they needed more time to pay. They appealed to the good will of government by citing the ways the Laird had hampered progress in the settlement.⁵⁰ Individual settlers also petitioned the government regarding specific disputes and problems. At the same time, McNab was petitioning the government through formal channels, and using informal connections to obtain the money owed to him under the 1839 agreement.⁵¹ All of this was happening during a period when politicians, executive and civil servants were working through the changes, both legislative and conceptual, that had accompanied the 1841 Act of Union.

The government's response to the problems of McNab Township was two-fold. First, it upheld the 1823 and 1839 agreements with the Laird, honouring the locations he had made and arranging for him to be paid out of the proceeds of the land sales of the township. Second, it applied the same criteria to solving the settlers' disputes in McNab and the same rules regarding land purchases in the township as elsewhere in the province. The one exception was that the McNab settlers, upon producing receipts or other

⁴⁸ AO, F 540, Andrew Russell Papers, "Land Dealings" file.

⁴⁹ AO, F 540, Andrew Russell Papers, "Petitions" file.

⁵⁰ AO, RG 1-54-2, Land Petitions, Inhabitants of McNab, 29 September 1843, 29 November 1843, Dugald C. McNab, 25 February 1845

⁵¹ AO, RG 1-54-2, Land Petitions, Archibald McNab, 6 October 1841 and 4 March 1844.

proof of rents paid to the Laird, would have their purchase price reduced by the same amount. The government then took over the administration of the township, which reinforced the stability of government and its trustworthiness. This was especially important in the period immediately following the rebellions and the Act of Union. People could be assured that their government would not abandon its old obligations and commitments without due recourse.

The resolution of the rents question occasioned protest from both sides, but the government and Crown Lands Department worked to ensure consistency and integrity in their policies. One of the most significant issues was the fact that many settlers could not produce all or even some of the required rent receipts from McNab. Sullivan had asked Allan to “examine into the truth of any statement” regarding payment of rent in cash or kind to McNab, and to make note of how much could be proven through receipts.⁵² Since so few settlers could produce receipts for all the rent they said they had paid, the department decided to accept attestations, on oath, about the amount of rent paid before the 1839 agreement.⁵³ The government decision in

May 1842 to deduct those rents from the money owed to the Laird, occasioned a very strong protest from him. He called the order in council “an extraordinary document” that impeached him as an “imposter” because it implied he charged rents he had no right to claim and as a “swindler” obtaining money to which he had no right. He argued, to no effect, that the Court of King’s Bench had usually upheld his title and rights to the rents and the government should not now declare that he had to repay the rents.⁵⁴ Two years later he was still unhappy about the decision but had tempered his tone about the rents that were “unjustly charged” against him.⁵⁵ The decision still rankled nearly a decade later when again he protested the rent deductions.⁵⁶

While the settlers of McNab Township hoped to receive more concessions, it was important to the Crown Lands Department that it show consistency in its policies. The settlers’ claims were not the only ones that dated back to the 1820s, and preferential treatment for them would lead to demands for the same from others. In particular, the department was dealing with many claims from squatters, some of whom had been in possession of lots for decades and who

⁵² AO, RG 1-6-3-2, Commissioner of crown lands’ outgoing correspondence to land agents, R.B. Sullivan to Francis Allan, March 1840, #29.

⁵³ AO, RG 1-9, Crown land administration files – Settlement: McNab Tp, Francis Allan to A. N. Morin, commissioner of crown lands, 12 April 1843, 10530. AO, RG 1-58, Township Papers, Attestation on oath regarding rent paid to McNab, E ½ Lot 13 Conc. 1, McNab township.

⁵⁴ AO, RG 1-2-4, Surveyor-General’s incoming correspondence, Archibald McNab to John Davidson, commissioner of crown lands, 31 May 1842, 17908-14.

⁵⁵ AO, RG 1-54-2, Land Petitions, Archibald McNab, 4 March 1844.

⁵⁶ AO, RG 1-2-4, Surveyor-General’s incoming correspondence, Archibald McNab to John Rolph, 7 February 1852, 26007.

had even been paying taxes on the land. The policy of the department was that squatters, upon proving to the department that they were legitimate settlers, had to pay for the land, even though they may have taken possession when granting was still the dominant means of alienating crown lands.⁵⁷ The same held for the McNab settlers, in cases of disputes about claims, occupants who could prove they were legitimate settlers were given permission to purchase the land they occupied on the same terms and conditions.⁵⁸

A.N. Morin, Commissioner of Crown Lands in 1843, made it clear that it was important the department handle the McNab case just like any other in the province. In a letter to Allan outlining how to rectify a problem of the interest owing on the purchase of McNab lots, Morin wrote,

the rule in all similar cases strictly followed out by the department is to charge interest from the date of sale to date of payment and as the rule in this instance has evidently been overlooked, I have to request your immediate attention to correct the omission.

For the McNab settlers, the department considered the date of sale as 27 September 1839, the date of the agreement with Archibald McNab. Collecting the interest from the settlers was important to the de-

partment because it still owed McNab the interest on the £4,000 to be paid to him under the agreement. The department had neglected to tell Allan or the settlers this, and as a result, the first installments had been paid without any interest, and the interest on the subsequent payments was calculated from the day the first installment was paid. Thus, the longer settlers put off paying the first installment, the less money they would owe the government. Morin asked Allan to explain the situation to the settlers immediately; he softened the blow by reasoning that the interest would be much less than the rents the settlers would otherwise have owed the Laird.⁵⁹ The Crown Lands Department had to enforce the policy of interest from the date of purchase in order to be consistent across the province.

The Crown Lands Department was also caught between the settlers and Archibald McNab on the issue of the installments. On the one side, settlers, both as individuals and as groups, were petitioning for relief from installments because of hardships, and Allan was having difficulties enforcing payment schedules. On the other side, McNab was demanding his money, using what influence he still had to pressure the government and the Crown Lands Department to take stricter

⁵⁷ Vosburgh, "Agents of Progress," 72-75.

⁵⁸ AO, RG 1-58, Township Papers, and RG 1-246-3, Numeric Land Files, provide numerous examples of the methods by which the Crown Lands Department handled disputed claims. For example, RG 1-58, Township Papers, John Wallace, Lot 16, Conc. 1, McNab, and related petition, AO RG 1-54-2, Land Petitions, John Wallace. Similarly, the Second Heir and Devisee commission handled McNab cases just as they would any other, for example, AO, RG 40-5, Second Heir and Devisee Commission, #3073, Allan Stewart and John Fisher, 1847.

⁵⁹ AO, RG 1-9, Crown land administration files: Settlement: McNab Tp, A.N. Morin to Francis Allan, 30 May 1843, 10512-3.

measures to obtain payments from the settlers. By 1843, it was apparent that the department had a problem with arrears in the township. The failure to pay was not just because settlers refused, but because of hardship in the area as well, caused in part by a slump in the timber trade. Allan, in spring 1843, recommended that demand for payment should be made "in pretty strong terms" but to go any further would mean "utter ruin" for most.⁶⁰ In contrast, McNab was demanding that the government take action to eject all the settlers in arrears, and sell the lands to others better able to pay. The council members, like Allan, were reluctant to see such actions taken because of the economic difficulties in the region, not to mention political ambitions. So they compromised, asking the commissioner of crown lands to provide the attorney general with a list of defaulters who "have means to pay the installments due by them."⁶¹ Allan, who likely had the task of drawing up the requested list, agreed that the effect of a few legal actions would probably result in the payment of arrears by "all who are really able."⁶² The concern for the settlers caught in unfortunate economic circumstances was not restricted to McNab settlers though. Crown land agents throughout

the province worked very hard on behalf of similarly situated settlers, and very often with support from the department for their efforts. In urging patience, Allan was typical of most agents. In the same way, the department was not giving the McNab settlers special treatment, instead its handling of the issue was not much different from comparable situations.⁶³

In 1841 McNab was already petitioning for payment of the £4,000. No longer the paternalistic laird whose duty was to take care of his people, he implied in that petition that the government was being too easy on the settlers. Moreover, as introduced earlier, he wanted the authority "to examine into the rights of the parties cutting timber, and to direct the Collector of duties who are and who are not legally entitled to sell their timber." The duties thus received could "be laid aside to answer [McNab's] claims."⁶⁴ He thought that perhaps the timber dues could be paid to him as well. Timber plundering was a problem throughout the colonial period in Upper Canada, and the government was unable to prevent much of the activity because of a lack of personnel. There is no evidence though, that the government took him up on his offer. Given his checkered history, it is not surpris-

⁶⁰ AO, RG 1-9, Crown land administration files: Settlement: McNab Tp, Francis Allan to A.N. Morin, 12 April 1843, 10503.

⁶¹ AO, RG 1-9, Crown land administration files: Settlement: McNab Tp, James Hopkins to A.N. Morin, 27 May 1843, and executive council minute, 10507-11.

⁶² AO, RG 1-9, Crown land administration files: Settlement: McNab Tp, Francis Allan to A.N. Morin, 31 July 1843, 10519. The proceedings were suspended by early 1844 because of a change of Attorney General, AO, RG 1-9, Crown land administration files: Settlement: McNab Tp, Comments on Archibald McNab's 4 March 1844 petition by T. Bouthillier, Crown Lands Department, 10537.

⁶³ Vosburgh, "Agents of Progress," 69-75.

⁶⁴ AO, RG 1-54-2, Land Petitions, Petition of Archibald McNab, 6 October 1841.

ing.⁶⁵ To do so would have compromised the trust of the settlers and others in the willingness of the government to provide relief from the hardships caused by the Laird. Moreover, officials remained adamant that only the money received from McNab settlers was to be paid to the Laird, despite his pleas that he needed more money because of pressing concerns in Scotland.⁶⁶ McNab continued to be dissatisfied with the rate at which he received money and was still looking for a resolution of the matter in the early 1850s, after he had left Canada.⁶⁷

Archibald McNab had come to Canada with high hopes for his Ottawa River settlement to restore the family estate and fortunes in Scotland. The pride he took in his ancestry and his position was unquestionable. It drove him to undertake a settlement scheme that would involve a great deal of organization and work, and some questionable behaviour. It also led him down a very different

path than he had originally envisioned. Events in Upper Canada led to significant political and social changes, and in the new milieu that resulted, people like McNab no longer fit. At the same time, the government's handling of the township's difficulties highlights how things had changed. Rather than an abrupt shift, there was negotiation, and a conscientious attempt to maintain continuity during what might have been a time of major upheaval and confusion. The contrast between Archibald McNab, who became a figure of distrust, and the very careful way in which the government, especially through the Crown Lands Department, attempted to keep and nurture the trust of the settlers, is particularly apparent. The achievement of responsible government was especially apparent to the McNab settlers: having broken the control of the Laird McNab, they could deal with a government that was more consistent and responsive.

⁶⁵ AO, RG 1-9, Crown land administration files: Settlement: McNab Tp, A.N. Morin to Francis Allan, 30 May 1843, 10514.

⁶⁶ AO, RG 1-54-2, Land Petitions, Petition of Archibald McNab, 4 March 1844, and AO, RG 1-9, Crown land administration files: Settlement: McNab Tp, Comments on Petition of Archibald McNab, 4 March 1884, by T. Bouthillier, Crown Lands Department, 10537.

⁶⁷ AO, RG 1-2-4, Surveyor-General's incoming correspondence, Letters re: Archibald McNab, 1851-1852, 25377, 25885, 26007.