

James Sutton Elliott

by Ed Bebee, 2013

Elliott.--In this City, on Thursday, Aug.23, at the residence of a friend, No. 111 East 27th-st., of typhoid fever, JAMES SUTTON ELLIOTT, late Principal Military Storekeeper in Her Britannic Majesty's service, aged 54 years and seven months.¹

This Obituary notice in the New York Times marked a miserable end to a remarkable career—who was Elliott; what happened; why should we care?

The story starts in 1840, when the “extraordinary expenses” of the 1837 rebellion, incurred in Kingston, came under the scrutiny of the Clerk of the Ordnance at the Tower of London. He had been spurred into action by a letter from C.E. Trevelyan, Adjutant Secretary to the Treasury.²

The Commander-in-Chief in Canada at the time of the 1837 Rebellion, Sir John Colborne, had returned to England. His replacement, Sir Richard Jackson, naturally refused to accept responsibility for his predecessor's actions. The military staff at Montreal and at Kingston wrung their hands and “regretted that they had been unable to provide proper explanations in a timely manner”.

As a result, Richard Eaton and James Sutton Elliott were sent to Canada as Commissioners of the Ordnance to look into the situation and to report back. They had received very far-reaching instructions to carry out a thorough review, which also involved Rideau Canal management and the financial and other aspects of the extensive Ordnance land holdings. Eaton and Elliott can be regarded as perhaps the first management consultants in Canada.³

Elliott was to spend the next fifteen years in Canada as the senior Military Storekeeper, based in Montreal. He soon became embroiled in the political and financial storms swirling around the Ordnance Vesting Act (see Appendix). An early example of his involvement shows in the following letter, dated 5th May 1840, sent to Richard Byham, Secretary of the Board of Ordnance in London.

Sir

With respect to the 7th article of the instructions dated 25th ultimo requesting the Rents due by the occupants of Bytown & securing the control to the Department of the property of the Rideau Canal, we have the honor respectfully to submit for the consideration of the Master General & Board whether a communication from the Colonial Secretary to the Governor General of the Canadas acquainting His Excellency with the object proposed by that part of the instructions might not facilitate the passing of the Vesting Act and tend to obviate any difficulties which we might otherwise encounter in carrying the wishes of the Master General & Board into effect.

We have the honor to be

Sir,

Your most observant

humble servants

Richard Eaton

J S Elliott⁴

Richard Eaton became ill and had to return to England, leaving Elliott to carry out the assigned tasks. He must have been a young man of immense energy and determination; he quickly produced a Rent Roll of the Rideau properties controlled by the Ordnance, showing who occupied the various lots, the rents, and the amounts owing. Given the distances to be travelled, the difficulties in finding the tenants, the number of squatters, and the usual challenges of rent collection, it is no wonder that the Royal Engineers and the local Military Storekeepers had been slow to carry out the task.

Major challenges for Elliott lay ahead in Bytown. Lt.Col. By had laid out the area in two different sections; Upper Town, to the west of the canal and south of Barrack Hill; Lower Town, to the east of the canal and south of reserved property (Lot O) along the banks of the Ottawa River extending to the west bank of the Rideau River. He had also taken over land deemed necessary for the construction of the Rideau Canal. Naturally, the amount taken was generous, since it would be difficult to determine in advance exactly how much might be required. Any land that was not actually needed for the canal and associated works was expected to be returned upon canal completion.

The lots in Lower Town that were available for lease required erecting a building of at least 30 feet square. The annual lease payment for most of the lots was 2 shillings, 6 pence (2/6). This was about a day's wages for a common labourer, half a day's wage for a carpenter. There is considerable evidence that the daily wage was close to subsistence for a common labourer with a family, so that they were unlikely lessees.⁵

The records indicate that there was a brisk demand for the Lower Town lots. On a list of the leases for the period 1827-1831, the names of prominent Canal staff members can be found; James Fitzgibbon, William Tormey, John Burrows, Thomas Burrowes, William Clegg, Angus McGillivray. These leases can only be described as speculative, since most of these people also had lots in the more attractive Upper Town, where they lived.⁶

Were such investments in Lower Town profitable? They certainly were for Fitzgibbon, who leased Lot A on Rideau Street for 2/6 and subdivided it into two lots. He then offered one of the sub-divided lots on a 30 year lease for £200 to Joseph and Remi Miville for a tavern. Fitzgibbon managed to lease the steamboat wharf on Entrance Bay, where he also built a house. Other examples where the senior staff did well might be cited, such as Clegg, who leased lots M and N on Rideau Street for 2/6 and 10 shillings per annum while his neighbour, Joseph McCloy, had to pay £2 per annum for Lot K. Of course, all of this might be regarded as nothing more than offering an "employee discount", still widely practiced today in many businesses.

The citizens of Bytown might have grumbled about the "employee discount" but they had a more basic grievance. The voting franchise was based on land ownership—the lots as laid out by Lt.Col. By were leased. What to do?

The only course of action open to the lessees was a petition, and so accordingly one was sent dated 9 July 1829, with the following key request.

..... That by the tenures upon which the occupants of Lots in Bytown (upon which a great majority of them have expended far more capital than would be required to purchase a free-hold qualification) hold their possessions utterly deprives them of the power of voting for a representative in the provincial Parliament and thereby goes to exclude them from the right of Elective franchise...⁷

There was little sympathy for their position from Lt.Col. By, who forwarded the petition

to the Governor-in-Chief with a caustic comment.

...there was no compulsion or persuasion used to induce persons to take these lots, those who do take them can have no right to complain.⁸

The redoubtable Dr. Alexander J. Christie, publisher of the Bytown Gazette, fired back in an editorial.

We sometimes since suggested the necessity of renewing the application for a change in tenure in our Bytown lots. The insignificant trifle extracted as rent for these lots can be no object to Government, while its exactions is a serious injury to the holders of them; it not only deprives individuals, who have expended many hundred pounds upon them of the right of voting as freeholders, but also operates in depreciating the actual value of them — for in Canada, where almost all fixed property is held in freehold, leasehold tenures must be deemed inferior. If there be no way by which these lots can be obtained in freehold, might not an application to the ensuing Session of Parliament be made to obtain an act qualifying the lease-holders of them to vote on their improvements carrying a certain rate on the Assessment Roll? As matters now stand, the holders of leased lots in Bytown not only are incapable of voting, but enjoy the state of taxation without representation.⁹

Matters dragged on with no resolution in sight. Yet another petition was sent to the new Governor-in-Chief, Lord Sydenham.

It is further respectfully submitted to your Excellency, that the present tenures by which the Lots in Bytown are held, have an unjust effect upon the Elective Franchise, to the owners, While the sub-tenant, upon the payment of a specific amount of yearly rent, is by the present laws which regulate Elections in Towns, entitled to return a member to the Provincial Legislature; whatever amount of Capital the feu-holders and leasees in Bytown may expend on the improvement of their lots, or whatever may be the intrinsic value of each lot, are, by, the trifling feu duty, or annual rent to which they are subjected by their present tenures, totally deprived of the right to vote, and thereby actually and virtually disenfranchised.

Whereby your Petitioners humbly pray, that you would be pleased to take their case under your favourable consideration, and to remedy the evil complained of, by permitting them to obtain a mutation of the tenure of their lots, from the present form to that of free and common soccage, under such equitable conditions as to your Excellency may seem proper. And your Petitioners will ever pray.

Bytown, 4th June, 1841.¹⁰

Incidentally, at the Bytown election on March 8-9, 1842, there were only 90 eligible voters out of a population of 600.¹¹

The Ordnance was well aware that its extensive and valuable land holdings in Upper Canada made it a target for members of the Legislative Assembly. To safeguard its interests, a Vesting Act was passed in 1843 to protect all the Ordnance lands and related assets that might be required for present and future military purposes. The identification and declaration of such purposes was solely up to the Master General and the Honorable Board of Ordnance in London.

Elliott was heavily involved in promoting the cause of the Ordnance Vesting Bill and

identifying powerful supporters to ensure safe passage—nothing untoward there. Several provisions were inserted into the Bill by his opponents, notably one directing that lands taken, but not used, for the construction of the Rideau Canal should be returned to the previous owners.

It quickly became apparent that the Ordnance had no intention of returning the land. The *Ottawa Advocate* published a series of letters excoriating the Ordnance Officers, including the late Lt.Col. By, and with special attention given to the minutes of a Board consisting of Col. Holloway, Royal Engineers, Captain Boxer, Royal Navy, and J.S. Elliott, Ordnance Commissioner.¹² The minutes indicate that the Ordnance intended to keep possession of Spark's land that had not been used for the canal on the assertion that it was needed for military purposes. They agreed to pursue the legal option, a proceeding in the Court of Chancery, suggested by the Ordnance lawyers, Draper and Scott.¹³

A Select Committee of the Legislative Assembly, under the Chairmanship of William Stewart, the member for Russell County, was formed to inquire into the matter.¹⁴ When Nicholas Sparks attempted to enter upon his lands, the Ordnance had enforced a Writ from the Court of Chancery to prevent him from doing so. They had also considered serving a Writ in Chancery upon Stewart, who had a store that was partially on the land taken from Sparks.

The evidence of Elliott before the Committee gives an insight into how he viewed the situation. When asked why he permitted the insertion of language in the Vesting Bill directing the return of unused land to the previous owners, he replied:

I had no option in the matter: it was not a part of the original Bill; it was inserted in Committee.¹⁵

Asked whether he complied with the requirements of the Act to restore the lands to Sparks, he was brief:

I did not.¹⁶

On the question as to whether he had refused to give Sparks back his lands, the answer was curt:

I never refused, for he never applied for them. If he had applied for them, I unquestionably should have refused them.¹⁷

Finally, Stewart Derbishire, a former member of the Legislative Assembly from Ottawa, was called as a witness and reviewed the situation that led to the eventual passage of the Act. It was his opinion that without the clause requiring the return of lands unused for canal purposes, the Act would not have passed. He was asked if any of the lands in question had been put to that or any other purpose. His reply was revealing:

The stumps remain in this land just as they were eighteen years ago. It is an unsightly waste between the Upper and Lower Town, and as such greatly retarding the prosperity of the place. The only use to which it has ever been put has been the leasing a portion to a man, who ploughed and took one crop of grain from it, which certainly was not a Canal use; and enclosing two acres for a burial ground for the inhabitants, to which purpose the ground has been put, and is now full. It is needless to observe that the Ordnance Officers could not have contemplated excavating the burial ground for Canal purposes, when they gave it up for a cemetery.¹⁸

The role played by John Scott is interesting. It is tempting to see a clear-eyed assessment of mutual benefit between the young lawyer, still in his twenties, and the Ordnance Storekeeper, some ten years older—both aggressive and eager to make their mark. There were more experienced lawyers available and the Ordnance would have been a highly desirable client. Elliott had employed Scott as the solicitor handling deeds and other matters relating to the Ordnance lands. The fee charged by Scott was 25 shillings for preparation of deeds and related title searches.¹⁹ In a later hearing of the Legislative Assembly, it was suggested that Scott received preferential treatment in acquiring several lots that the current possessors had been refused the right to purchase.²⁰ The following year (1847), Scott, as a Reformer, was elected to the first town council of Bytown, and subsequently voted in by the council as the first Mayor. He later became the Bytown representative in the legislature, 1848-1851.²¹

Another provision of the Act was that the Ordnance could sue and be sued in the Upper Canada courts. Elliott had foreseen that this provision might have serious consequences but its inclusion was imperative to ensure passage of the Vesting Act.

This latter provision naturally had widespread support among ordinary business men who dealt with the Ordnance, but it also had unexpected support among members of the Legislative Assembly who might otherwise have been ready to side with the Crown. The case of *Tulley & Miller vs The Ordnance* illustrated the situation.²²

The Royal Engineers in Toronto, commanded by Lt.Col. Sir Richard Bonnycastle, decided to call tenders for the construction of a stone wall along the lake front of their lands. They drew up plans and an Estimate of Costs then went to tender. Three firms replied—the lowest bid was twice the Estimate. Despite his staff's recommendation that no bids be accepted, Sir Richard decided to take the lowest bid. The firm of Tulley & Miller (T&M) set to work.

Details are murky but it seems that T&M then decided that the local “lake stone” was unsuitable and recommended using stone quarried in Kingston. Naturally this change would be very expensive, but Sir Richard pressed on. Finally, as costs were ballooning, the contract was cancelled. T&M demanded to be paid for costs incurred to the date of cancellation, but the military refused. T&M sued and the case went to court. Eventually the case wound up in the Court of Queen's Bench which reluctantly found for T&M. The military were shocked.

In a letter dated 17 March 1843, Elliott pointed out that the then Attorney General, Mr. Baldwin, as well as an Ordnance lawyer, Mr. Wicksteed, had predicted that this would happen. Chief Justice Robinson had recommended that Clauses XXX and XXXI be amended so that the Principal Officers would have the same legal immunity with respect to law suits as the Commander-in-Chief, The Lords of the Admiralty, etc.

An interesting clarification is provided by Elliott on the status of Military lands in Lower Canada settled by Special Ordinance 2 Vic. Cap.21, “which contained provisions still more obnoxious and expressly declared that the Property of the Crown (vested in the Principal Officers) might be taken in execution under a judgment against the Principal Officers.” He noted that the Upper Canada Board of Works could sue and be sued. Elliott provided a powerful summary of the dangers of proceeding to amend the Vesting Act:

These precedents no doubt will embarrass the endeavour to annul the objectionable part of the clause in the Ordnance Vesting Act, and some danger may arise in affording an opportunity for rediscussing the merits of a Bill the attainment of which was so protracted

and surrounded by difficulties as well as its present existence viewed with great jealousy.

He concluded by suggesting that the Secretary of State for Colonial Affairs write to the Provincial Government to amend the offending clause.

There is an unsigned marginal note, dated 13 September 1843, to Elliott's letter requesting that an Ordnance lawyer, Mr. Clarke, be asked for his opinion as to how to proceed with the T&M case and the possibility of amending the Vesting Act. This opinion was for the Inspector General of Fortifications in London.

Clarke responded in a calm letter to the Master General and Board of Ordnance, dated 13 October 1843. He made the following points:

1. Pay the legal fees of the Ordnance lawyers. Nothing could be gained by suing T&M since the principals have declared insolvency.

2. No great case of difficulty had arisen from the clause "sue and be sued", and he didn't foresee any such cases as likely.

3. Given that Chief Justice Robinson's opinions carry some weight, he would recommend that Commissioner Elliott meet with Attorney General Baldwin to review the Act and the Chief Justice's opinions, and seek Baldwin's advice to the Board as to whether or not to try to get the Act amended.

4. Only then should the Master General go to the Secretary of State for approval.²³

The Vesting Act provision of "sue and be sued" remained unchanged.

Ordnance Revenues

The Ordnance was a dogged fighter to control land revenues, whether directly connected with the Rideau Canal or not. What sort of revenue streams were involved here?

An official statement of such revenues became available as the British began to pull out of Canada. As part of the transfer process of the Rideau Canal from the Ordnance to the Government of Canada, Elliott, as Chief Ordnance Storekeeper, prepared a summary financial report for the years 1848-1852.²⁴

The revenues comprised two elements; tolls and rents from canal lands. Elliott had set toll rates for the 1844 season that produced the only revenue surplus on record. As the St. Lawrence canals opened, the ability of forwarders on the Ordnance canals to charge high freight rates to pay the high tolls collapsed.²⁵ Another factor: typhus closed the Ordnance canals in the summer of 1847.²⁶ Toll revenues fell 50% between 1848 and 1852 (£4702 to £2357), due chiefly to the forced reduction in toll rates. Rents from canal lands were more promising; between 1848 and 1852, they nearly doubled, but the levels were low (£247 to £468). Rents from non-canal lands went up sharply in the same period (£1082 to £1807).

The financial report showed a steady decrease year over year in the total expenditures, achieved by cutting the Civil Establishment of the Ordnance by 50% (£4136 to £2100) and slashing Works and Repairs by two-thirds (£9362 to £3666). Expenditures on lockmasters and labourers was cut modestly in 1852 (£5297 to £4787). Total expenditures in 1848 were 80% higher than in 1852 (£18743 vs £10563).

The Committee of the Executive Council of the Legislative Assembly were guarded in

their assessment of this report, noting only that revenues from leasing valuable water power might be obtained. More to the point of Elliott's endeavours, the Committee made the following statement.

They are also of opinion that it is of great importance to ascertain the views of the Imperial Government with respect to the land now occupied by the Ordnance at *Bytown* (sic) and elsewhere along and near the line of the Canal. In the event of the abandonment of the Canal, the property can scarcely be required for Military purposes, and its maintenance will probably only entail further expense on the Imperial Government. On the other hand, the transfer of this property, which is the only productive portion of the Ordnance property to be transferred to the Province might be an inducement to the Provincial Parliament to maintain the Canal in an efficient state.²⁷

Organization

What sort of organization was supporting Elliott's efforts on behalf of the Ordnance? There is a list for 1846 that describes the Military Department at Head Quarters Montreal. The Ordnance Department is listed as:

Ordnance Storekeeper: James Sutton Elliott

Deputy Ordnance Storekeeper: W.H. Blenkarne

Clerks: William Skakel, E. Fayrer, Thomas Caithness, J.B. Cole, J. Greg.

Barrack Master: W.H. Gray.²⁸

What was the work situation like? In 1846, Elliott was writing letters to the Board of Ordnance analyzing the amount of work in the Montreal Storekeeper's office, the current staff establishment and the number of clerks actually employed. Skakel's retirement had been approved and he must be replaced. Additional clerks were required, since the amount of work was such that the clerks were falling ill.

Elliott stated that he personally had to reorganize the Ledger, Cash Book and Journal on a double-entry basis and was keeping them himself.²⁹

Elliott's involvement in land sales and purchases extended outside those connected with the Rideau Canal. He is listed as the agent for the Principal Officers of Her Majesty's Ordnance in connection with the purchase of land in Montreal by the Ordnance in January, 1846. In 1847 he was the agent for a land purchase in Quebec City.

In the context of the Rideau Canal, the formal laying of the corner stone of the first lock was a Masonic event. From a social and career perspective, it is worth noting that Elliott was an active member of Saint Paul's Masonic Lodge in Montreal. He is listed as a Senior Warden in 1847 and as the Master for 1848 and 1849.³⁰

Elliott left Canada in 1855 and was placed on half-pay of £600 per annum. However, his outstanding work as a Commissioner of the Ordnance in Canada did not go unnoticed and he soon faced new challenges in England.

Weedon

The Royal Ordnance Depot of Weedon in Northhamptonshire was built by Colonel

Pilkington, Commanding Officer of the Royal Engineers. Work was started in September 1805 and was basically completed in 1810. A short branch canal connected the site with the Grand Junction Canal.³¹ The Ordnance canal ended in a large basin in the middle of the Storehouse Enclosure. From 1837 the storehouses were used for a time as barracks, with two of the north side buildings converted into a military prison in 1844/45.³²

In June 1855 Weedon was chosen as a Depot for storing cloth, uniforms, saddlery and “necessaries” for all Army units apart from the Royal Engineers and the Artillery. Weedon was selected because the storehouses were empty, although the prison was still in operation.³³

In November 1855, material at the Tower of London began to be moved to Weedon, over the objections of the Director General of Army Clothing, Colonel Sir Thomas St. Vincent Troubridge, Bart. He pointed out that, due to the distance from London, regular inspections would be difficult. However, since the use of Weedon would avoid the cost of constructing new storehouses in London (very expensive) and since there was regular daily rail service between London and Weedon, his objections did not carry much weight.³⁴



*Drawing of c. 1853-4 looking west along the Ordnance Canal within the Storehouse Enclosure.
(This gives some notion of Elliott's working environment.)³⁵*

On December 1st, 1855, James Sutton Elliott was appointed Principal Military Storekeeper of Weedon at an annual salary of £800. He came highly recommended on the basis of his Canadian experience.³⁶

From the beginning, the flow of goods through Weedon was beyond the capability of the staff to keep track of. Elliott made several requests for additional staff, and the initial requests were granted. However, the new clerks were generally inexperienced and this increased supervisory load made matters worse. In addition, there was another factor: the Ordnance accounting system was not set up to track clothing stores, so that Elliott was forced to improvise as he went along. In terms of checks on accuracy, the lack of staff meant that often the same man was responsible for entries of goods, supplying the same goods and certifying that the entries and supplies were accurate. Elliott stated that the system, as it stood, was incapable of handling the situation.³⁷

The timing could not have been worse. The Crimean war was closing and all the

supplies were being brought back to England. But then the confrontation with China took place, with thousands of men needing supplies from Weedon. No sooner had this been dealt with than the Indian Mutiny sprang up, with supplies to be found for tens of thousands of troops. In all, some 130,000–140,000 men required clothing.³⁸

Were there warning signs that things were beginning to unravel at Weedon? With the clarity of hindsight, perhaps.

The table “Account of the Expenditure at the Clothing Depot at Weedon” covers the period from 7th December 1855 to 15th May 1858. “Travelling” and “Lodging” expenditures were stable during 1856, but suddenly jumped in 1857 to double and triple the previous quarterly levels. Certainly there were legitimate trips to London to deal with business issues and probably many of those trips involved overnight stays in London. Elliott was entitled to lodging expenses for his house in Weedon, which seem to have been in the range of £5 per month.

Consider the following pairs of “travel” and “lodging”, by quarter, for 1857: March quarter: £216; £57; June quarter: £115; £110; September quarter: £32; £150; December quarter: £181; £237. For the March quarter, 1858: £113; £173.³⁹

Nevertheless, his superiors suspected nothing. Eventually London began to come to the conclusion that Elliott could not deal with the situation, and put it down to the fact that he was not a military man. They planned to transfer Captain Gordon from Dublin to Weedon and for Elliott to go to Dublin. Together, the stores at Dublin were formally handed over to Elliott, but there was some delay in the formal transfer of the Dublin cash account.⁴⁰

Elliott made a dramatic exit. He borrowed from suppliers: £500 from Samuel Isaac; £350 from Messrs. Cox;⁴¹ paid the workers, and took the rest of the cash at Weedon, some £1600. On the 22nd of May 1858, he absconded with government funds of £2048.10s.6d, an actress, Mrs. Sinclair, and leaving his wife.⁴²

Life on the run

Elliott and his companion arrived in Boston, June 5, on the *America*. For the next few weeks, they moved frequently across northern New York State and the eastern seaboard, generally using last name aliases that began with “E”. He must have known that a private detective was after him. Elliott was arrested in New York on July 23rd, and was charged with embezzling the sum of £2,223.3d, plus interest from June 12th.⁴³

A Special Term hearing took place in the First District of the Supreme Court of New York State in July 1858. Elliott's lawyers moved to vacate the order of arrest on the grounds that the plaintiff's affidavit was insufficient, since it was the Queen, and not the Secretary of State for War, who was the real plaintiff. The Court denied the motion to discharge the order of arrest, but allowed a renewal of the motion.

In the interim, Elliott was held in the Eldridge Street Jail. Miss (Mrs) Sinclair left town for Rhode Island, where Elliott had rented a cottage, still insisting that she was his wife. An trans-Atlantic exchange of letters took place between the supplier Isaac and Elliott. Isaac is remarkably restrained, after expressing surprise at the turn of events. He asked Elliott to help him with recovering his firm's status as a supplier to the Government. Elliott responded by stating that Isaac's loan was never a bribe and that Isaac's firm had never received preferential treatment. He went on to say that he expected to prevail and

to receive money over and above the amount claimed by the Government.⁴⁴

The trial took place in September in the General Term. The plaintiff established that he had the right to sue in the name of the Queen. Elliott's lawyers argued that he had become entitled to various fees and perquisites that exceeded the amount of the plaintiff's claim, and they asserted the right to apply as a set-off or counter-claim. The court found for the plaintiff, with costs.⁴⁵

Elliott was forced to give up all the money that he had left, and was discharged to wander the streets of New York. Nothing more was heard from Sinclair.

Aftermath

In testimony before the Commission, Sir Thomas Troubridge admitted that Elliott wrote numerous letters, pleading for more staff and admitting that his accounts were in arrears. It appeared that there were always official reasons (usually budgetary) from the Secretary of War's office for not granting Elliott's pleas, which were supported by Troubridge and Assistant Director-General Ramsay.⁴⁶ Despite all this, the senior managers back in London made only cursory inspections at Weedon. Troubridge had never been to Weedon, nor had he ever asked whether Ordnance regulations were being followed.

No; I had no opportunity of going into the question. With a man of his very long standing and experience it would have been tantamount to an imputation to have questioned his proceedings at first starting. I was in constant communication personally with him, and he seemed to me to be the most intelligent active man possible, and thoroughly conversant with his duties in every way; it never even occurred to me to ask him any such questions.⁴⁷

Troubridge's testimony concluded with the following frank admission.

I wish to say that I speak with great diffidence upon questions of examination of accounts. I really have no practical knowledge upon the subject, never having received any storekeeper's accounts. I wish everything that I have said upon the subject, as to how I would have checked Mr. Elliott's accounts if they had been received during my stay here, to be received as not of much value, because I really know very little about it. I had not an opportunity of making myself acquainted with this part of the duties, therefore nothing I have said can have much weight.⁴⁸

After considerable effort by Captain Gordon along with a team of civilian accountants hired by the Commissioners, it was concluded that Elliott had done all that could be done with the staff available and under the extreme demands made upon him.

Captain Gordon, whose ability and experience give great weight to every statement furnished by him, qualified the opinion he at first expressed in condemnation of Mr. Elliott's system, and told us, on his second examination, "that Mr. Elliott did not do himself justice in the report he laid before the Contracts Committee of what books he kept. His books were better than shown by him."⁴⁹

The accountants were equally forthright in defending Elliott from suspicion of fraud in managing the accounts.

After detailing an instance of laxity and irregularity on Mr. Elliott's part in the granting of

certificates to a contractor, though no pecuniary loss was sustained in consequence, they add, "Although from what has been stated, the remark may appear superfluous, yet, considering the doubts upon the point which the mismanagement of the accounts of the depot has given rise to, we think it right to state expressly that nothing has come before us in the course of our investigation to warrant the suggestion of fraudulent practices by the late Principal Military Storekeeper in dealing with the stores confided to his administration."⁵⁰

The Commissioners turned their attention to the cash accounts. They noted that the accounts appeared to be kept with complete accuracy and by double-entry.

We deem it right to express emphatically our opinion that there is no ground for the suggestion or the supposition that the complication and arrears of the Store accounts have any connexion with the deficiency in the cash balance. We must notice that no officer was ever sent down to Weedon to balance the cash book and ascertain the existence of the cash balance exhibited by the cash book. Formerly the "respective officers" examined once a month the Storekeeper's state of cash and the actual amount of money in his hands. We have had no explanation offered to us why this salutary check upon the Storekeeper was abandoned;...⁵¹

Conclusion

It's easy to be wise after the event. Perhaps the Commissioners summed it up best.

On the 1st December 1855, Mr. James Sutton Elliott was appointed by Lord Panmure to the post of Principal Military Storekeeper at the Weedon Depôt, with a salary of 800/. per annum. He is acknowledged on all hands to have been a clever and able officer. He had been employed for 35 years in the public service under the Board of Ordnance and in Canada. He had strong recommendations from the authorities in Canada, as also from the Treasury, for the able manner in which he had discharged his duties on a Commission on the organization of the naval and military establishments abroad, and he had been selected by the Board of Ordnance as the most able and efficient servant they had to represent the Civil Department on that Commission. These qualifications, as well as the consideration of the saving which would be made of his half-pay, amounting to 600/. a year, consequent on the reduction of the post of Principal Military Storekeeper in Canada, induced Lord Panmure to appoint him as the head of the new establishment at Weedon. It appears that some years previously when in Canada, Mr. Elliott had incurred the censure of the Board of Ordnance for deserting his wife and forming a disreputable connexion; but it is stated that from the time of his return to England, and when he was recommended for his appointment, he was living with his wife on the most amicable terms. There was not the slightest suspicion of his honesty. Although the circumstances just mentioned may have furnished reason for somewhat strict supervision of his proceedings, we are not prepared to express an opinion that they constituted a permanent disqualification for Government employment in a person otherwise well fitted for office, and upon whose character no other imputation was known to rest.⁵²

Only one question remains unanswered by the Commissioners' Report and was not addressed in the decision of the Supreme Court of New York state. Elliott had to provide

a guarantee of £2000 as a condition of employment. This was readily arranged through a Guarantee Society policy. In the initial calculation of the loss to the Government, the £2000 guarantee was set against the amount stolen by Elliott, along with unpaid salary and various other amounts, leaving a net loss of some £400. Why were Elliott's lawyers unable to convince the Court?

It has been suggested that the Guarantee Society refused to honour the policy because the Government had failed to supervise Elliott appropriately.

The difference of £174.10.9 between what he embezzled and what he was charged with is more difficult to account for. A small part might be interest charged since the 12th June 1858, as stated in the prosecution case. The remainder seems too small to cover the costs of the prosecution. We have been unable to find any accounting information in the court documents uncovered to date.

Searching the files of the Old Bailey in London has failed to turn up any reference to the proceedings alleged to have taken place in order to obtain the *Writ of Extent* that was accepted by the New York State Supreme Court. This may be due to the fact that there was no "trial" in the usual sense since the defendant was not present or represented. Sir Jonathan Peel's submission would be accepted at face value since he was representing the Crown.⁵³

Why Should We Care?

Here are my answers to the question I posed at the beginning of this narrative—your mileage may vary.

1. The story brings a broader view of some of those strong-willed individuals and the competing forces driving the development of Bytown. Land ownership and control propelled urban growth and was arguably more significant for long term economic progress than the transitory Rideau Canal transportation capabilities.

2. It is a compelling story of determined personal effort and commitment: (i) to achieve difficult and unpopular goals; and (ii) to excel in two different situations in different locations. Experience in Canada on a smaller stage gave Elliott an opportunity in England on a larger stage.

3. The story provides insight into the mid-19th century military management environment and the consequences of known and unaddressed significant weaknesses, such as the complete lack of a control system for a major element of basic military readiness and provisioning, namely clothing and related items.

4. It highlights widely ignored or unknown players facing an unbalanced risk/reward system of heavy responsibilities for little monetary reward.⁵⁴ The fact that catastrophic failure was uncommon speaks volumes about the dedication of the "little man" in the British military environment.

Appendix: Ordnance Property

The Principal Officers of the Ordnance were granted broad rights to whatever property might be required for military purposes. Given the unsettled conditions of the early 19th century in North America following the American Revolution, this was understandable and civilians appreciated the fact that the British were willing to expend vast sums for the defence of Canada.

In the case of the Rideau Waterway, there were a series of Acts passed between 1827 and 1846 spelling out in great detail the powers granted to the military for defence purposes. The construction of the canal and its works was covered under a specific piece of legislation passed February 17, 1827.⁵⁵ The superintendent, Lt.Col. John By, was given the general authority:

To explore the route for the proposed Rideau canal; to ascertain what lands it may be necessary to occupy; to erect bridges, &c.; to alter the route of the canal, if necessary; general powers to do what may be necessary for making and preserving the canal; to contract for the surrender to his Majesty of any lands required; to arrange for the absolute surrender of so much land as may be required; to vest in His Majesty lands ascertained and set out as required; to arrange arbitration for cases where recompense is not made by voluntary agreement for land taken or damages done.

This was followed by a series of Ordinances dealing with Ordnance property. The Ordinance of 1839 stated that lands, messuages, etc., taken, but no longer wanted for the service of Her Majesty's Ordnance "should be sold or disposed of." Another Act was passed in February 1840 that authorized:

Any general officer or person appointed by the Commander-in-Chief, to cause surveys to be made of any ground which may be required for the erection of any fort, barrack, battery, or other military work, and to cause the same to be marked out and purchased.

The Ordinance of the Special Council of 12th May 1840 made the 1839 Ordinance permanent.⁵⁶

So far, it appeared that the civilian authorities were willing to be cooperative but the directive to have surveys made of properties required for military purposes suggests that there was a certain degree of caution to avert an open-ended assertion of "military purposes" to avoid having to give back properties. Bytown was the case in point and Elliott's efforts to shield properties under a "military needs" umbrella must have convinced many legislators that even more specific legislation might be needed. In addition, the 1827 Act had vested the acquired properties in the Crown. It was thought that it might be more efficient from the point of view of managing, selling or disposing of property if it were vested in the Principal Officers. This was done by repealing the earlier Ordinances and passing a new Act, known as the Ordnance Vesting Act.⁵⁷

Sections V-VII of the Act dealt specifically with the situation in Bytown and proposed a method for dealing with the arrears of rents due from disgruntled "tenants". The issue of lands taken at Bytown was directly dealt with in Section XXIX, which was largely aimed at the conversion of Seigniorial rights. There is what appears to be an "add-on" phrase:

Provided always, and be it enacted, that all lands taken from private owners at Bytown, under the authority of the Rideau Canal Act, for the uses of the Canal, which have not been used for that purpose be restored to the party or parties from which the same were taken.

There were certain other provisions in Sections XXX-XXXII that concerned Elliott. Section XXX explicitly allowed for the Principal Officers to be sued; XXXI provided that such suits would be tried in the Court of local jurisdiction where the properties in question were located; XXXII stated "in all cases of judgments or decisions given against the said Principal Officers, they shall pay full costs and charges to the successful party." However, Section XXXVII provided that:

Nor shall any Officer of Her Majesty's Ordnance be personally liable, nor shall any property of such Officer be liable to any legal process or execution in such suits, actions, or other proceedings as aforesaid.

The final Act that broke the delaying tactics of Elliott and the Principal Officers was a brief document specifically aimed at dispelling any uncertainty about the intentions of the Ordnance Vesting Act. The Provincial Parliament passed "An Act to explain a certain provision of the Ordnance Vesting Act, and to remove certain difficulties which have occurred in carrying the said provision into effect."⁵⁸ The preamble of this Act quoted the "add-on" proviso in the 29th section of the Vesting Act, and added:

Doubts have arisen as to the true intent and meaning of the same, and as to the land to which it is intended to apply; and proceedings in law and in equity, which have arisen out of such doubts, have been commenced and are still pending.

For greater clarity, the explanatory Act went on to link the clarification to the 1827 Act:

That the Proviso recited in the Preamble to this Act shall be construed to apply to all the land at Bytown set out and ascertained and taken from Nicholas Sparks, of the said Town, Esquire, under the provisions of the Act of the Legislature of Upper Canada, passed in the eighth year of the Reign of King George the Fourth.

Not only did the explanatory Act spell out that one of the main purposes was to restore Spark's lands, but it went on in Sections IV - VIII to specifically name James Sutton Elliott as one of three Arbitrators who would establish the appropriate compensation to Sparks. A second was Stewart Derbishire and the third was John Alexander Macdonald.

To be perfectly clear, Section VI stated:

And be it enacted, That every award of the said Arbitrators, or any two of them, made as aforesaid, shall be final and conclusive, and no such award shall be set aside for any defect or want of form, provided the parcel of land for which compensation is awarded and the amount of such compensation, be thereby ascertained.

To provide some impetus or sense of urgency to the proceedings, Section II directed:

And be it enacted, That the said Principal Officers shall, within one month after the passing of this Act, obtain a certificate from the Officer Commanding Her Majesty's Forces in this Province, setting forth what part or parts of the land to which the said Proviso is applicable, it is necessary to retain for the service or the Ordnance Department for Military or Canal purposes; and such part or parts shall be retained by and remain vested in the said Principal Officers in trust for Her Majesty, and the remainder (if any) shall be immediately thereafter absolutely re-vested in the said Nicholas Sparks, or the party or parties claiming under him, to his and their own proper use for ever; any law to the contrary notwithstanding.

Glossary

Some of the terms used to describe the military system of dealing with land holdings are reflective of earlier times in British history. To make the situation more intelligible, the terms are explained below.

1. Court of Chancery: to be "in chancery" denotes the process of litigation in a court of equity. In law, "equity" implies (a) resort to general principles of fairness and justice whenever existing law is inadequate; (b) a system of rules and doctrines (...) supplementing common and statute law and superseding such law when it proves inadequate for just settlement.⁵⁹

A "Writ in Chancery" refers to a decision of the Court of Chancery.

The Court of Chancery of Upper Canada was modelled on the Court of Chancery in England. The Establishment Act, 7 Wm 4 cap.2 (1837), was modified several times in the following years.⁶⁰

2. Feu duty: in Scottish history or law, a right to the use and enjoyment of lands, houses, or other heritable property subjects in perpetuity in consideration of agricultural services or annual payment in grain or money, called *feu duty* and certain other contingent burdens. This was deemed an ignoble tenure, as distinguished from *wardholding*, where the service was purely military, and *blanch-holding* where it was merely nominal (my italics).⁶¹

3. Freehold: (1) the holding of a piece of land, an office, etc., for life or with the right to pass it on through inheritance: (2) an estate, office, etc., held in this way.⁶²

4. Free soccage: in English law, a tenure held in feudal times by services which were certain, free and honorable.⁶³

5. Messuages: a dwelling house; in law, a dwelling house and adjoining land including the adjacent buildings.⁶⁴

6. Perquisites: (1) A fee, profit, compensation, or emoluments in addition to the stated income, wages, or salary, resulting from one's employment or position, especially something customary or expected, as a tip or gratuity: (2) something to which a person, institution, etc., is entitled by virtue of status, position, or character; prerogative; right: (3) in law, goods or property acquired by one's own exertions, or bought with one's own money in distinction from inherited property.⁶⁵

7. Writ of Extent: in law (a) in Great Britain, a writ (*writ of extent*) by which the person, goods, and property of a debtor could formally be seized to force payment; (b) seizure by such a writ.⁶⁶

Endnotes

- 1 New York Times: 1860/08/28.
www.nytimes.com/1860/08/28/news/died.html?pagewanted=print
- 2 The amount in question was £116,903, only £10,000 of which was in the approved budget. The Clerk of the Ordnance was the "Chief Financial Officer" for the Ordnance Department. Over and above the financial aspects of the position, there was the responsibility for all of the supplies, guns, ammunition, etc., needed by the British Army anywhere in the Empire. Various outposts, such as Montreal, Kingston, and Ottawa had Military Storekeepers whose responsibilities concerned ordering and shipping supplies to the local military groups. They also looked after the financial accounting associated with these groups. More information on the activities and challenges of a Storekeeper's job can be found in the archival source listed in Endnote 3.
- 3 There is considerable detailed information on the Eaton/Elliott mission and findings. Library and Archives Canada, MG13, W.O. 44, Reel B-1298, Volume 24, 1827-1847, "Rideau Canal and the Canadian Establishment, Volume 7", pp. 472-482; 517-519; 522-523.
The Eaton-Elliott recommendations for the Rideau Canal are summarized in my book "Invisible Army: Hard Times, Heritage and Heartbreak": Ed Bebee & The Friends of the Rideau, Smiths Falls, Ontario, Canada; 2010; ISBN 978-0-9696052-4-9; pp. 154-155.
- 4 Reel B-1298, p. 512.
- 5 Robert Legget, "Rideau Waterway": University of Toronto Press, Revised Edition, 1972. ISBN 0-8020-6156-7; page 47.
- 6 "Lower Town Ottawa", Volume 1, 1826-1854; Manuscript Report 104; Michael Newton; Robert Haig, ed; Published by the National Capital Commission, 1979: pp. 1-593; Chapter VI, pp 66-92.
- 7 Petition of the inhabitants of Bytown to Sir James Kempt. Bytown, 9th July, 1829. LAC, Hill Collection, MG2419, vol.22, 5548-5550.
- 8 LAC, RG5, A1, Vol.95, reel C-6858, By to Lt. Col. Yorker, 18 July 1829.
- 9 A.J. Christie, Bytown Gazette, September 1, 1836.
- 10 Petition of the inhabitants of Bytown to His Excellency Lord Sydenham, for changing their Leases to Deeds, June 4, 1841. LAC, Hill Collection, MG2419, vol.24, p.5933.
- 11 A.H.D. Ross, "Ottawa Past and Present", Toronto; The Musson Book Company Limited, 1927, pages 114-116.
- 12 This is a series of 6 letters, dated between 20th January and 16th February, 1845. "The Ordnance Department And THE PEOPLE OF BYTOWN; Being A Series Of Letters Originally Published In THE OTTAWA ADVOCATE; BYTOWN"; PRINTED AT THE OTTAWA ADVOCATE OFFICE. 1845. Found at ia700502.us.archive.org/11/items/cihm_22009/cihm_22009.pdf
- 13 The Court of Chancery of Upper Canada was a court that settled equity matters, usually in cases involving land titles and ownership, at the time that the Ordnance made its application. The Court had been established by an Act of the House of Assembly of Upper Canada in 1837.
- 14 Report of the Select Committee to which was referred the Petition of N. Sparks and others, of Bytown. Submitted 22 March 1845. Appendix, 4th Volume, Journals of the Legislative Assembly, 28th November 1844-29th March 1845, 1st Session, 2nd Provincial Parliament, Appendix (F.F.F.), pp. FFF[1]-[7].www.canadiana.org/view/9_00955_4_2.
- 15 Ibid: Question #3, p. FFF[2].
- 16 Ibid: Question #6, p. FFF[2].
- 17 Ibid: Question #7, p. FFF[2].
- 18 Ibid: Question #75, p. FFF[6].
- 19 Ibid: Question #22, p. FFF[3].
- 20 Appendix, 5th Volume, Journals of the Legislative Assembly, 20th March 1846-9th June 1846, 2nd Session, 2nd Provincial Parliament, Appendix (C.C.C.), pp. C.C.C.[1]-[4], Question #23, p. C.C.C. [3]. www.canadiana.org/view/9_900955_5_3.
- 21 Scott's meteoric career is laid out in "Chain of Office: Biographical Sketches of the Early Mayors of Ottawa (1847-1948)" Dave Mullington, General Store Publishing House, 499 O'Brien Rd., Box

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- 415, Renfrew, Ontario, Canada K7V 4A6. ISBN 1-897113-17-X. pp. 5-8.
- 22 Letter, Elliott to Master General and Board of Ordnance, 17 March 1843; Library and Archives Canada; MG13, W.O. 44, Volume 46, 1846-1849; Reel B-1316, p. 364
- 23 Ibid: p. 393.
- 24 Journals of the Legislative Assembly of the Province of Canada, 19th August 1852 to the 14th June 1853, First Session, Fourth Provincial Parliament; Part II, 27th April - 14th June 1853. Page 967. www.canadiana.org/view/9_00952_11_2/0195
- 25 "Invisible Army"; p. 12; p.305.
- 26 Perth Courier, 14 September 1847, Volume XIII, No. 47, page 4, column 2.
- 27 Journals, etc. : pages 967-968; italics in original.
- 28 "The Montreal almanack and book of general reference and information for 1846: being the second year after leap year: astronomical part by H. Wells". Montreal. Donoghue and Mantz. p.34. [Archive.org/stream/cihm_40880/cihm_40880_djvu.txt](http://archive.org/stream/cihm_40880/cihm_40880_djvu.txt)
- 29 Letter, Elliott to Board of Ordnance; Library and Archives Canada; MG13 WO 44, Reel B-1298, Volume 24, 1827-1847, "Rideau Canal and the Canadian Establishment, Volume 7", pp. 13-19.
- 30 [Archive.org/stream/cihm_04349/cihm_04349_djvu.txt](http://archive.org/stream/cihm_04349/cihm_04349_djvu.txt).
- 31 Colonel Pilkington was a close friend of Lt. Col. By. "For King & Country: Lieutenant Colonel John By, R.E., Indefatigable Civil-Military Engineer": Mark Andrews, The Heritage Merrickville Foundation, P.O. Box 404, Merrickville, Ontario, 1998; pp. 75-77.
- 32 Jeremy Lake, "Thematic Survey Of The Ordnance Yards And Magazine Depots; Summary Report, Thematic Listing Programme, Final Draft January 2003"; English Heritage; p.70.
- 33 Liv Gibbs, "Crimea To Boer War" in "Conservation Plan for Storehouse Enclosure, Royal Ordnance Depot, Weedon Bec, Northampton"; Adopted 2005: page 39.
- 34 Report of The Commissioners Appointed To Inquire Into The State Of The Store And Clothing Depôts At Weedon, Woolwich, And The Tower, &c., Together With The Minutes And Evidence And Appendices, Presented to Both Houses of Parliament by Command of Her Majesty. London; Printed By George Edward Eyre And William Spottiswoode, Printers To The Queen's Most Excellent Majesty, For Her Majesty's Stationery Office. 1859. Page iv, para. 4.
- 35 Liv Gibbs: page 39.
- 36 Report of The Commissioners: page v, para. 1.
- 37 Ibid: page vi, paras. 1-3.
- 38 Ibid: page vi, para. 5.
- 39 Ibid: page 313, Appendix 9.
- 40 Ibid; page vii, para. 1
- 41 Ibid; page 285, paras. 7947, 7948.
- 42 Ibid; page iii, para. 1; page 313, Appendix 9.
- 43 New York Daily Tribune, Saturday July 24, 1858; page 7
- 44 Report of The Commissioners: pages 330-332.
- 45 Peel a. Elliott. Reports of Practice Cases Determined in the Courts of the State of New York; Vol. VII. John S. Voorhies, Law Bookseller And Publisher, 20 Nassau Street. 1859. Pages 433-444.
- 46 Report of The Commissioners: page 17, paras. 330-338.
- 47 Ibid; page 17, para 323.
- 48 Ibid; page 19, para 372.
- 49 Ibid; page xi, para 2.
- 50 Ibid; page xii, para 3.
- 51 Ibid; page xiii, para 1.
- 52 Ibid; page v, para 1.
- 53 Clive Emsley, Tim Hitchcock and Robert Shoemaker, "Crime and Justice - Trial Procedures", *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 7.0, 02 January 2013)
- 54 Report of The Commissioners: page xxi, para. 8.

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- 55 "An Act to confer upon his Majesty certain powers and authorities, necessary to the making, maintaining, and using the canal intended to be completed under his Majesty's direction, for connecting the waters of Lake Ontario with the river Ottawa, and for other purposes therein mentioned." Statutes of the Province of Upper Canada, Third Session of the Ninth Provincial Parliament, 5 December 1826 to 17th February 1827, in the Eighth Year of the Reign of George IV, C.1, Chapter I; pp. 432-437.
- 56 "Appendix No. 58. Ordnance Property." General Report of the Commissioner of Public Works for the Year Ending 30th June 1867. pp.444-447.
- 57 "An Act for vesting in the Principal Officers of Her Majesty's Ordnance, the Estates and Property therein described, for granting certain powers to the said Officers, and for other purposes therein mentioned." Statutes of the Province of Upper Canada, 7 Vic Cap 11, 9th December 1843.
- 58 "An Act to explain a certain provision of the Ordnance Vesting Act, and to remove certain difficulties which have occurred in carrying the said provision into effect." Statutes of the Province of Upper Canada, 9 Vic Cap XLII, 9 June 1846.
- 59 Webster's New Twentieth Century Dictionary of the English language, Unabridged, Second Edition, Volume I, A-Micro; The World Publishing Company; Cleveland and New York. 1958. pp. iii-1138, p. 302.
- 60 The Statutes of Her Majesty's Province of Upper Canada; Third Session, Thirteenth Provincial Parliament, 1837-38. [books/google.ca/books?di=tMcAAAAIAAJ](https://books.google.ca/books?di=tMcAAAAIAAJ)
- 61 Webster; page 670.
- 62 Ibid: page 730.
- 63 Ibid: page 730
- 64 Ibid: page 1130.
- 65 Ibid: Volume II, pp. 1139-2129; page 1337.
- 66 Ibid: Volume I, page 649.