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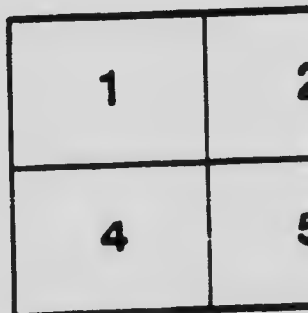
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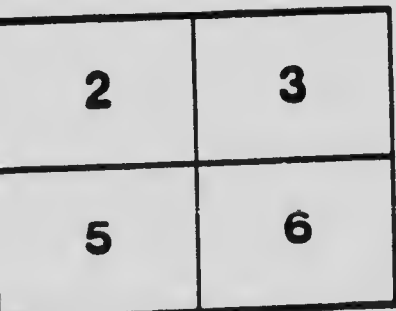
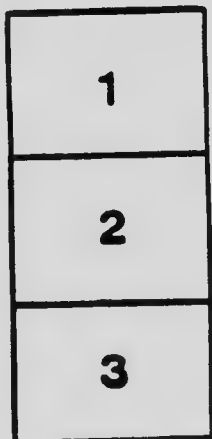
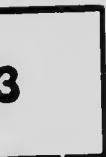
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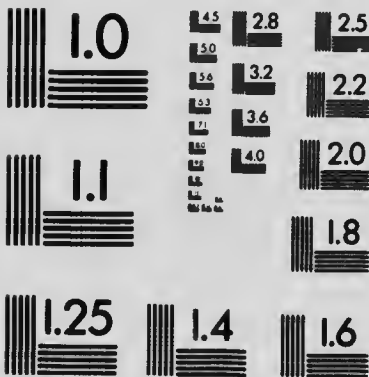
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Provincial

PROVINCIAL ELECTIONS, 1902

**ATTORNEY-GENERAL'S
DEPARTMENT.**

Administrative Duties.

Advisory Duties.

Revision of the Statutes.

Legislation and Law Reform.

Constitutional Cases.

Election Laws.

Prosecutions under Election Laws.

Municipal Accounting.

This Department was presided over by the Hon. Sir Oliver Mowat, G.C.M.G., for over twenty-three years without interruption until his retirement in 1896, when he was succeeded by the late Hon. A. S. Hardy, K.C., who held the office until his retirement, on account of ill-health, in 1899. Since 1899 it has been presided over by the Hon. J. M. Gibson, K.C.

The duties and responsibilities of that "high officer,"—as the Attorney-General has been judicially styled—as the general agent for the Crown, are most arduous, exacting, and continuous.

Administrative Duties.

To this Department belongs the supervision of the administration of justice throughout the Province, including the investigation of complaints made in respect to the conduct of magistrates, the prosecution of criminals both for offences com-

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mitted against the laws of the Dominion and for those against the statutes of the Province. These prosecutions at the Assizes are conducted by counsel appointed by the Attorney-General, and at the General Sessions and County Judges' Criminal Courts by the County Attorneys; but cases are constantly arising upon which the advice and direction of the Department is required, while in many offences of a serious character the evidence has to be obtained through officers directly instructed by this Department. In connection with criminal prosecutions arise applications for bail, which in all cases *may be* made to the Judges at Toronto, and in many serious cases *must be* so made; also applications to be relieved from forfeiture of bail. These can be favorably entertained only where the circumstances are of a very exceptional nature, and careful inquiry into the facts upon which it is claimed relief should be granted is always made. It advises as to proceedings before Justices of the Peace and other inferior magistrates, for, notwithstanding the forms provided for ordinary cases, the applications made to discharge prisoners on *habeas corpus*, or to quash convictions on account of irregularities, or insufficiency in the proceedings before these officers, are very numerous. In many of these, this Department finds it necessary to make inquiry and to intervene. Cases of difficulty are also from time to time reserved by Judges at the Assizes and other criminal Courts for the opinion of the Judges of the High Court, sitting together at Toronto; and these are, wherever practicable, argued by the officers of this Department. To the Attorney-General also belongs the consideration of applications for leave to appeal under the Criminal Code, for leave to file informations in his name in connection with supposed invasions of public right, for *fiats* for petitions of right, for prosecutions for criminal breach of trust, for the entry up of records of acquittal, for entries of *nolle prosequi*, and for the admission of criminals as King's evidence, etc., etc. It is his duty also to make appointments to all offices connected with the administration of justice, such as Justices of the Peace, Police and Stipendiary magistrates, Coroners, County Attorneys, and the officers of the various courts in the different counties. The following matters are also dealt with by this Department: Administration of Estates of Intestates who have no heirs, or next of kin; Consideration of cases of Escheat and Forfeiture; Remission of Fines and Penalties.

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Advisory Duties.

It is the duty of this Department to advise the officers of the other Departments of the Government upon the numerous legal questions which constantly arise in connection with the varied matters coming before them, and advice is constantly required by County Attorneys, Crown Counsel, Coroners, and all others employed in the administration of justice.

It is also the office of the Attorney-General's Department to see that all Statutes and Orders-in-Council are drawn up in proper form, and that the public interests, as well as the rights of individuals, are carefully guarded. This is all the more necessary in the case of Statutes, since there is only one legislative chamber. The manner in which the work of supervision has been carried out is the best possible proof that, with an experienced and watchful Premier and a competent and careful Attorney-General, there is not the slightest need for a second one.

Revision of the Statutes.

In the work of Revision the greatest possible industry has been displayed. This has had the effect of eliminating the repealed Legislation, and of consolidating and arranging, under a most excellent system of classification, that which remains in force. The first Revision was completed in 1877, the code being published in two volumes under the title of Revised Statutes of Ontario. Subsequent revisions brought the work down to 1887 and 1897 respectively.

Compilation of Imperial Statutes in Force in the Province.

The work of compiling and putting in concise form all the statute law of England and of the United Kingdom of Great Britain and Ireland in force in this Province (hitherto inaccessible except by reference to large, rare and expensive volumes) has been undertaken under the direction of the Attorney-General, and is now about complete. This compilation will no doubt be of utmost advantage to the public and profession.

Legislation and Law Reform.

Legislation has been well abreast of the times, and, generally speaking, has been as progressive as that of any country in the world. No reforms are being clamored for by the people. Measures of legislation have been given by Liberal Governments

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at the right time, and all the important measures of reform have been easily and naturally accepted by the people and assimilated as a part of our system. A good illustration of this is to be found in the reforms of our Courts and law practice. That, which in England gave rise to much confusion and clogging of the wheels of justice, was, by means of Sir Oliver Mowat's Administration of Justice Act of 1873, followed by the Judicature Act of 1881, experienced as a comparatively easy transition from what now appears to have been a mediæval to a common sense and modern system. The suitor no longer spends half a fortune with no better result than to find out that he is in the wrong Court, the best talent of the legal profession is no longer wasted in sharp practice and scientific hair splitting, multiplicity of actions has been discouraged in favour of expedition and directness as well as completeness of remedies, and law and equity, so far as the Administration of Justice is concerned, have become synonymous terms.

The enlarged powers of Division Courts relieving the County Courts, the increased powers of the County Courts relieving the High Court, and the limitations of Appeals, have all tended to abridge the "law's delays" and to make the redress of wrongs speedy, sure, and comparatively inexpensive. But the good work has not yet been completed. At the last session of the Legislature the Attorney-General introduced a Bill having further reforms in view, which, if it had met with even a half cordial support from the Opposition would, with some few modifications, have been of great advantage to litigants.

Constitutional Cases.

Each Attorney-General has been obliged to repel attacks upon the rights of the Province, both in the Courts and in the Canadian Privy Council. The success which has attended all the cases is the best proof of the vigilance and legal acumen of the Ministers who have held this Portfolio.

The following are some of the cases in which the rights of the Province have been fought for and maintained :—

(1) *The Insurance Case.*

In which the right of the Provincial Legislature to impose conditions upon insurance companies incorporated by Charters granted by authorities other than that of the Province was demonstrated.

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(2) *The Escheats Case.*

Whereby it was decided, after a long and tedious struggle, that lands which escheat to the Crown for want of heirs belong to the Province. A direct result of this decision was the establishment out of the proceeds of escheated property of the "Andrew Mercer Reformatory for Women."

(3) *The Rivers and Streams Case.*

In connection with this case it may be remarked that the disallowance by the late Dominion Government of the Statute in question, which was not claimed to be beyond the competence of the Ontario Legislature, was an unwarrantable exercise of a dangerous power for the benefit of a political favourite, and a violation of the conditions laid down by Sir John Macdonald himself.

(4) *The Liquor License Case.*

In which a Dominion enactment known as "The McCarthy Act" was held unconstitutional and void.

(5) *The Case Respecting Assignments and Preferences by Insolvents.*

(6) *The Indian Annuities Case.*

In which a claim amounting to about \$500,000 made by the late Dominion Government on behalf of the Indians was successfully resisted.

(7) *The Boundary Case.*

To which the Province owes "New Ontario" and all that results from such ownership.

(8) *The Fisheries Case.*

In which the rights of the Province to the ownership of the fish in the waters of the Province was demonstrated, and a large revenue producing asset saved to the Province.

(9) *The Mines Act and Extra Provincial Corporations Act.*

The Attorney-General is at the present time engaged in asserting the rights of the Province to pass the recent Mines Act and the Act taxing extra Provincial Corporations.

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Election Laws.

Besides a general supervision of the Legislation of the House and the Chairmanship of the Legal Committee, another highly important duty assumed by the Attorney-General is the revision from time to time of the Election Laws of the Province, the perfecting and simplification of the procedure connected with election trials and prosecutions, and the devising of punishments "to fit the crime." Mr. Whitney poses as the apostle of electoral purity, and claims that his proposed punishments for electoral offences have been the most stringent. The best answer to these boasts is a comparison of the punishments for various offences as proposed by Mr. Whitney on the one hand and by the Attorney-General (Mr. Gibson) on the other in Bills introduced in the session of 1900.

OFFENCE.	MR. WHITNEY'S PUNISHMENTS.	THE ATTORNEY-GENERAL'S PUNISHMENTS.
Undue Influence.	Penalty of \$200 and 6 months' imprisonment.	Penalty of \$200 and imprisonment for 1 year.
Personation.	Penalty of \$200 and 6 months' imprisonment.	Penalty of \$400 and 1 year's imprisonment.
Voting more than once.	Penalty of \$200 and 3 months' imprisonment.	Penalty of \$200 and 6 months' imprisonment.
Returning Officer, etc., falsifying or altering list of voters or poll-book.	Penalty of \$2,000 and 6 months' imprisonment.	Penalty of \$2,000 and 12 months' imprisonment.
Offences respecting ballot boxes and ballot papers. (a) By Returning Officers. (b) By other persons.	(a) 2 years' imprisonment. (b) 6 months' imprisonment.	(a) 3 years' imprisonment. (b) 1 year's imprisonment.
Unlawfully destroying or injuring documents relating to elections or aiding or abetting therein.	Penalty of \$2,000 and 6 months' imprisonment.	Penalty of \$2,000 and 12 months' imprisonment.

But the Bill introduced by Mr. Whitney had the very serious defect that it lacked any provision for indemnity to witnesses who speak the truth in connection with electoral corruption

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The Attorney-General, however, introduced into his Bill the provisions of the English law with respect to indemnity to witnesses, and as a consequence any witness who, in the opinion of the Court, answers truly all questions put to him, whether such questions incriminate him or not, will be relieved of the consequences of his acts. Thus a premium is put upon *truth* and not upon falsehood, a result which Mr. Whitney's Bill would not have promoted but would have retarded. Without indemnity to truthful witnesses, the punishments already provided for electoral offences were too severe and were proposed to be made more so by Mr. Whitney. Had his suggestions been adopted the desire of an offender to shield himself by falsehood would only have been increased, the securing of convictions made more difficult, and the cause of electoral purity thrown back.

Prosecutions under the Elections Act.

The Opposition have charged the Government with an unwillingness to prosecute persons accused of electoral offences, and have laid particular stress upon the cases of Wildfong and Cummings in connection with the North Waterloo Election. Mr. Whitney charged that the Government "dared not" prosecute these two men. The best refutation of this unfounded charge is that they *were* prosecuted, and no doubt much to Mr. Whitney's disappointment, *acquitted*. More than that, they were tried before the Police Magistrate of Berlin on a criminal charge under the Criminal Code without waiting for the delay necessary to procure the holding of a sittings of the Election Court; and instead of displaying an unwillingness to prosecute, or being guilty of an attempt to "shield" the offenders, the Government went to an expense of nearly \$200 to bring one witness alone (one of Mr. Whitney's affidavit makers) from Carstairs, Alberta, to give evidence for the prosecution. The men were tried on the charge "That they did on May 23rd, 1899, unlawfully, willfully, without legal justification or excuse, and without colour of right, injure a large number, to-wit, 25, of the ballot papers properly marked in favor of Henry George Lackner at an election of a Member of the Legislative Assembly of the Province of Ontario, electoral district North Riding of Waterloo County."

The charge was laid under section 50 of the Criminal Code, and the cases came on for hearing on the 15th July, 1901. 30 witnesses in all were examined, but not a shadow of wrongdoing on the part of the accused could be proven. Neither the Con-

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servative or Liberal scrutineers nor the constables or poll clerks saw anything of even a suspicious nature, and the cases having been thoroughly fought out were dismissed. In dealing with the cases, the *Mail and Empire* said that they were dismissed "on the advice of the Crown Attorney," anxious apparently to have its readers infer that that official is a henchman of the Ontario Government. Unfortunately for its theory, Mr. Bowlby has never been looked upon as a supporter of the present Government. He was not even appointed by it. The charge is also made that the defaced ballots were not produced at the trial. Col. Clark, the Clerk of the House, attended with all the papers and ballots that were in his possession, but the ballots in question had not been returned from the Court of Appeal where they were sent in connection with the Election Trial. The case for the prosecution suffered nothing, however, by their absence, as everything that could have been proven by their presence was admitted by Counsel for the defence. The prosecution, nevertheless, offered to send for the ballots—indeed, had them wired for—and they could have been on hand the next morning, necessitating only a slight adjournment, but the admissions of the defence rendered their production unnecessary. It is worthy of note that these prosecutions are extraordinary inasmuch as the Attorney-General departed from the usual course followed in regard to criminal prosecutions and took it upon himself to expressly instruct the Crown Attorney to proceed with the cases.

Municipal Accounting As It Was and Is.

Previous to 1st May, 1897, there was no Governmental supervision of Municipal accounts. Numerous serious losses had been sustained by the Municipalities throughout the Province of Ontario for many years. No reliable record can be obtained of the deficits that accumulated during those years of Municipal mismanagement, but it is safe to say the sum total would reach a very large amount.

During the first year (1897) in which the office of Provincial Municipal Auditor was created the ascertained losses by the Municipalities throughout the Province were nearly \$100,000.

In 1898	they	were	\$11,000
" 1899	"	"	4,000
" 1900	there	were	no losses.
" 1901	"	"	" "

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