

**GOVERNMENT IN CANADA: THE
PRINCIPLES AND INSTITUTIONS OF OUR
FEDERAL AND PROVINCIAL
CONSTITUTIONS. WITH A SKETCH OF THE
CONSTITUTIONAL HISTORY OF
CANADA. SECOND EDITION**

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GOVERNMENT IN CANADA.

THE PRINCIPLES AND INSTITUTIONS
OF OUR FEDERAL AND PROVINCIAL
CONSTITUTIONS.

THE B. N. A. ACT, 1867, COMPARED WITH THE UNITED
STATES CONSTITUTION,

WITH

A SKETCH OF THE CONSTITUTIONAL HISTORY OF CANADA;

BY

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ON TREATIES AFFECTING CANADA AND THE UNITED STATES," ETC.

SECOND EDITION;

ENLARGED AND IMPROVED.

TORONTO:
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1887.

This Work

IS,

BY KIND PERMISSION, RESPECTFULLY INSCRIBED

TO THE

HON. EDWARD BLAKE,

BY

THE AUTHOR.

ADVERTISEMENT TO THE SECOND EDITION.

THE writer took advantage of the long vacation of the present year to prepare the second edition of this work for the press. The order of the edition of 1879 has been retained but the book has been entirely re-written and enlarged to fully twice its original size. The B. N. A. Act and its amendments have been made the text of three fourths of the present volume ; no section has been omitted and in every necessary case the corresponding sections in the U. S. Constitution have been referred to. The chapters on the People and their Rights and the Courts and their Procedure will, it is trusted, be of use to the general public. The chapter on Criminal Law received many useful additions and suggestions from Mr. Irving Q. C. of the Ontario bar and the writer is glad to acknowledge this assistance from such an experienced and distinguished counsel. The history of former governments in Part II is an amplification of the introductory sketch in the former edition. It would be outside the design of the book to make this as complete as it should be. The writer may on some future occasion arrange the materials provided for this Part in a constitutional history of Canada.

During a period of twenty years the constitution of Canada has been put to many tests. It is less difficult to say now than it was ten years ago, that our federal constitution may turn out to be something different from what the framers of it intended. It cannot be at one and the same time a federation and the reproduction of a constitutional monarchy. If the provinces are not absolute within their

own legislative limits, but subject to a veto from the central government, then there is theoretically only one Legislature in Canada. If the central government absorbs all the executive of the government "of and over Canada," there can be none left for the provinces. But the writer hopes to shew in these pages that the federation is not endangered by a veto held over the provinces, as a similar one is held over the Dominion, or that the executive power is not as readily at hand for the one as the other. Over each of our governments there is one paramount authority and the administration that would strike at the legislative authority of the provinces is liable to have its own rule applied to its own legislation. The veto is an accident of the Canadian federation as it has been of other leagues, but it no more affects the principles of a federal union than does the absence of sovereignty. A number of tenants may unite as well as a number of landlords.

On the question of the executive power the reader will notice that in the U. S. constitution it is vested in the President. That is the executive for the *United States*. There writs and process run in the name of *The People*, and Congress enacts in that way just as we use the name of the Queen. The individual or *separate* States have their executive also in *The People*, and their process is tested in that way, their legislation is enacted in that way, and still there is not a word about it in the United States constitution. With us the executive power "of and over" Canada is vested in the Queen and it is contended in these pages that the Queen's name is as warranted in provincial matters as it is in matters in the Dominion.

On one other point the writer may be permitted to make a remark. That is as to the reserve powers in Canadian legislatures. It will be seen in the chapter on the distribution of legislative power (page 95) that there is no analogy

at all between our constitution and that of the American union on the delegation of powers. Two elaborate classes of subjects were prepared by the framers of our union—one to go to the central government, another to the local. It was felt that notwithstanding the particularity of these classes there might be something over and above them in both cases. What the 91st and 92nd sections then provided was that any subject not in the central class assigned to the Dominion should go to the Dominion government if it related to the peace, order and good government of all the provinces; and that any subject not on the local list if for any matter within the provinces should go to the local government.

The reader will also see that there is no analogy between the judicial power in the United States and the judicial power in Canada, though the practical working of the two judicatures is the same so far as declaring unconstitutional laws to be void. The courts in Canada are Queen's Courts testing all Dominion and provincial legislation by the standard of an Imperial Statute—the Constitution of Canada. In the United States the judicial power is vested in the Supreme Court and that power is independent of the President and of Congress.

These are some of the points that will be found in detail in this volume. The writer studied the United States constitution with many aids, but he took the text of the Canadian constitution as his best guide. It is impossible to reconcile many of the judgments of the courts on our side of the line, the reader will not easily form an opinion from decided cases. But when the whole Act of 1867 is viewed in its history, its intentions and its language, there is no substantial desire of its promoters that may not be effected by it. It is, like every federal charter, liable to drift into pure centralism on the one hand or to exaggerated claims for State rights on

the other : over and above this it is liable to be lost in the principles of monarchy and the exercise of the veto power. Dangers such as these have been met and overcome in the American Union and they can be met and overcome in our own.

The writer hopes that this volume will be acceptable to the Canadian public as a useful book on the constitution. He does not flatter himself that the sale of the former large edition was due to anything more than the pressing necessity for some work on the subject ; but he hopes that the present edition will deserve some of the praise that its predecessor received. He is, however, willing to commit it to the public on its merits, and will be glad to learn from any one who is able or entitled to speak on the subject.

The writer is under obligations to Mr. Houston, librarian of the legislative assembly of Ontario, and to Mr. Bain, of the Toronto public library, and gladly avails himself of this opportunity to acknowledge the courtesies extended by them.

The index of this edition has been prepared by Mr. W. McBrady, B. A., student-at-law, and the proof sheets compared and corrected by him.

The Long Vacation,

TORONTO, 1887.

PREFACE TO THE FIRST EDITION.

IN the compilation of the following pages the writer has endeavoured to make a fair use of such materials as were within his reach, in order to effect the object he intended. Preceded by no writer on the subject, and desirous of rejecting such contemporary opinion as was neither judicial nor official nor otherwise authoritative, he has found the task not at all an easy one. From the number of distinguished constitutional lawyers in Canada, and especially in this province, one might have been justified in the expectation that something more permanent than a speech at the hustings or a pamphlet in some party issue would have remained as instructive reading on the subject. As to contemporary opinion, very little of it is entitled to grave consideration.

It is needless to say that the writer has carefully avoided using any public expression of opinion, no matter how authoritative it might appear, unless it bore the stamp of some authority upon it. In regard to decisions of the courts and judicial *dicta* on the subject, the former *must* of course be taken to be law; the latter carry weight proportionate to the reputation and ability of the particular judge pronouncing them. It must be admitted that a judge, in construing our Constitutional Act or any section of it or any statute in fact, familiarizes himself necessarily with the spirit of the Act; and if he goes out of his way to express an uncalled for opinion, or what may