

Inventory No. 1/19

**Inventory of the Archives of the Department of the
Attorney - General of the Cape Colony,
1661 - 1923**

Dr. J.H. Breytenbach and S.D. Naudé

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This inventory is written in English.

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FONDS SPECIFICATIONS**Title:**

Archives of the Department of the Attorney - General of the Cape Colony

Period:

1661 - 1923

Fonds Code:

1/19

Extent:

357.60 lin m

Repository:

Cape Town Archives Repository

Record Creator (origination):

Fiscal (1661 - 1803)

Attorney - General (1803 - 1806)

Fiscal (1806 - 1828)

Attorney - General (1828 -)

Abstract:

The office of the Fiscal was established with the settlement of the colony. The fiscal had to supervise the finances and the administration of justice and was public prosecutor. In the execution of his tasks as fiscal he was subject to the Court of Justice. On the commencement of the Batavian Republic's administration of the Cape in 1803, the office of the Fiscal was abolished and an Attorney - General appointed. After the second British Occupation of the Cape in 1806 the office of Fiscal was re - introduced. In 1828 the judicial system was re - organised and the permanent post of Attorney - General was established. The Attorney - General was the State's public prosecutor in all criminal cases. Subordinates to the department of the Colonial Secretary he acted as lawyer of the state and legal advisor to the various departments.

CONTEXT

BIOGRAPHICAL HISTORY

On the commencement of the Batavian Republic's administration of the Cape in 1803 the office of Fiscal was abolished and an Attorney - General, G. Beelaerts van Blokland, appointed. After the second British occupation of the Cape in 1806 the office of Fiscal was re - introduced. [1] In 1828 the Charter of Justice resulted in a revamping of the whole judicial system and the establishment of the permanent post of Attorney - General. [2]

The Attorney - General was the state's public prosecutor in all criminal cases. Subordinate to the Department of the Colonial Secretary, he acted as the lawyer of the state and legal adviser to the various government departments and offices. [3]

As the work of the Attorney - General increased, he was granted greater independence in the execution of his duties. In 1873 the clerks of the various courts in the Colony, the Master of the Supreme Court, the Registrar of Deeds and all magistrates were permitted to correspond directly with the Attorney - general in connection with judicial matters. Only in cases concerning the obtaining of legal advice, certain departments were still required to approach the Attorney - General through the offices of the Colonial Secretary. [4]

In 1878 the ministerial of the Law Department, under the Attorney - General as ministerial head, was created. The departments of the Attorney - General of the Eastern Province, the Supreme Court, the Eastern Province Supreme Court, the Circuit Courts and the Registrar fell within this ministerial division. [5] Later the offices of the Registrar of Deeds (1887); prisons (1889), convict stations and the Porter Reformatory (which were re - allocated to the ministerial control of the Colonial Secretary in 1894); districts courts and police, excluding the police of Cape's Town's district no. 1 (1894); police of Cape Town's district no 1 (1894); police of Cape Town's district no 1 (1896) [6] and the administration of mines (1907) [7] were placed under the Attorney - General's ministerial control.

While retaining his judicial functions and powers the Attorney - General's duties increased in time and his powers were extended accordingly: in 1894 he was empowered to sign the appointments of field - cornets and in 1900 to confer with the judges of the appeal court in connection with regulations in terms of the Water Act of 1899. [8] He was also responsible for the proper administration of the offices and institutions which were placed under his control from time to time.

At Union in 1910 the department as such was abolished and placed under the control of the Union's Department of Justice. From an initial staff of two members with administrative expenses of £ 1650 in 1828 the department of the Attorney - General had grown to one of the largest of the Cape Colony in 1910 with a staff of over six hundred with expenses of £ 635 980 for the financial year 1908 - 1909. [9]

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1. C.G. Botha: Die openbare argiewe van Suid - Afrika, p.15.
 2. Ibid.
 3. A.G. 2771 Diverse stukke, 1828.
 4. P.J. Venter: Government departments of the Cape of Good Hope 1806 - 1910, p. 58.
 5. The Cape of good hope Government Gazette, 31 May 1878, Government Notice no. 442, 1878.
 6. Venter, pp. 34 - 35.
 7. Venter, p. 56.
 8. Venter, p. 57.
 9. C.O. 5970 Cape of Good Hope Blue Book and Statistical Register, 1821. C.O. 6053 Cape of Good Hope Blue Book and Statistical Register, 1909.

CUSTODIAL HISTORY

A. THE ARCHIVES OF THE FISCAL

Of the office of the Fiscal in its original form no archives have remained preserved and of the office of the Independent Fiscal during the Dutch administration very few archives have survived. Except for a few volumes, the archives of the Fiscal dates after the second British occupation and gives a reasonably complete picture of the Fiscal's activities and an interesting insight into the general history of the Cape Colony during this period.

B. THE ARCHIVES OF THE ATTORNEY - GENERAL

The few archives of the Attorney - General during the Batavian administration which have remained preserved have been placed with the archives of the Fiscal. The archives described as those of the permanent establishment of the office.

The archives are almost complete, except for a few volumes, especially pertaining to the early period, which have not remained preserved. Those that have remained preserved give an almost complete picture of the activities of the office.

Prior to 1878 the activities of the Attorney - General were limited and there are therefore fewer archives. After obtaining its independence the office sharply increased its volume of archives annually, especially during the period 1899 - 1905 as a result of the Anglo - Boer War. This archives is a valuable source of information concerning this war.

As the Attorney - General's duties comprised not only judicial but also administrative functions, his office consisted of a judicial and an administrative section.

The administrative section comprises all documents relating to the administration of the office, i.e. all correspondence, received and despatched.

The judicial section comprises the court records, i.e. preliminary examinations, cases, inquests, prison reports, crown prosecutors' reports, etc.

C. MISCELLANEOUS INSTITUTIONS

The archives placed under this heading are, from an historical point of view, of great importance. These bodies were created during the Anglo - Boer War as a means to control the implementation of martial law in the Cape Colony

1. 1) Military Courts: The military courts were established at the instigation of Lord Kitchener, British Commander in Chief in South Africa to investigate cases of rebellion in areas under martial law. The courts, created by the various British military commanders on authority from the Commander in Chief to whom they were responsible, had complete jurisdiction. The Attorney - General had no authority over them, and they were only required to deposit certain original documents and other material in his office. These archives cover 16 volumes and, as all archives were not received by the Attorney - General the archives of the military courts cannot be regarded as complete. The British military authorities kept their own records and presumably took them back to England. They never formed part of the colonial archives. The military courts were not permanent bodies. They were instituted from

time to time by the military commanders at places where rebels or political offenders were detained for their trial. After the Trials the court was disbanded. Especially during 1901 and 1902 numerous such courts were created.

2. 2) High Treason Commission: The High Treason Commission was a permanent body which was only disbanded in 1903. The commission was created by Act. No. 6 of 1900 to investigate cases of persons charged with high treason who were not tried by the Special High Treason Court, created by the same act. [11] The High Treason Commission was under the control of the Attorney - General in whose office its archives of 53 volumes are deposited. The archives are almost complete although a few volumes have been damaged by water.
3. 3) Martial Law Board: The Board was created on 9 October 1901 to investigate complaints regarding the implementation of martial law in the Colony, except in cases where monetary compensation was claimed from Her Majesty's government. The Martial Law Board consisted of three members: one nominated by the Governor of the Cape, one appointed by the Prime Minister of the Cape and one elected by the Commanding Officer at the Cape. Decisions in cases heard by the Board were by majority vote and subject to the approval of the Commanding Officer at the Cape who had the right of veto for military reasons. Such cases were laid before the Commander in Chief of the British forces in South Africa for a final decision. The Board commenced its sessions on 16 October 1901 and subsequently met regularly up to 29 July 1902 when it was disbanded. Seventy - five meetings were held in all and 540 cases completed. The archives of the Martial Law Board are, except in singular instances complete and placed with the archives of the Attorney - General. Although a part of the latter archives, it must be borne in mind that the Board at no time was subordinate to the Attorney - General.

11. H. Tennant and E.J. Jackson eg.: Cape of Good Hope. Acts of Parliament, Session of 1900...., Act No. 6 1900, pp. 4251 - 4269.

CONTENT AND STRUCTURE***ARRANGEMENT***

The archives of the Attorney - general comprises three sections:

1. A. The archives of the Fiscal
2. B. The archives of the Attorney - general
3. C. The archives of diverse bodies, e.g. military courts, Treason Commission and Martial Law Council.

DESCRIPTION OF THE SUBORDINATE COMPONENTS

A FISCAL
a PAPERS RECEIVED 1812 - 1822

All records after 1806.

b PAPERS DESPATCHED 1812 - 1827

All records after 1806.

c JOURNAL 1813 - 1823

All records after 1806.

d PLACCATEN**56 - 64**

Placcaten

1686 - 1806

- 56** Vol. 5.
1686 - 1791
- 57** Vol. 6.
1787 - 1792
- 58** Vol. 7
1784 - 1786
- 59** Vol. 8.
1793 - 1797
- 60** Vol. 9.
1796 - 1798
- 61** Vol.10.
1799 - 1802
- 62** Vol.11
1802 - 1803
- 63** Vol.12.
1804
- 64** Vol.13.
1805 - 1806

e MISCELLANEOUS PAPERS 1687 - 1827

Records after 1806 are not listed

65 - 67

Extract Resolutions, Council of Policy

1661 - 1781

- 65** 1661 - 1762
- 66** 1762 - 1774
- 67** 1687 - 1781

71

Notes regarding Criminal Cases Register of Offences Miscellaneous loose and fragmentary documents

1815 - 1816;1820;1796 - 1817

B ATTORNEY - GENERAL
All records after 1806

C MISCELLANEOUS INSTITUTIONS
All records after 1806