

TO HIS ROYAL HIGHNESS,

THE GOVERNOR GENERAL IN COUNCIL.

The undersigned having been appointed Commissioners under Commission dated the 10th. day of April, 1912, in pursuance of the provisions of the Enquiries Act, Chapter 104 of the Revised Statutes of Canada, 1906, to investigate the working of the Law Branch of the House of Commons and to report on the qualifications of the Officers in that Branch, and to make suggestions as to the best course to be taken to make the service in that Branch efficient and satisfactory, now beg to submit for the consideration of YOUR ROYAL HIGHNESS IN COUNCIL, the following report:

We have occupied about twelve days in taking evidence under oath of the persons whose names appear in Schedule "A" to this report. The witnesses who were called appear to us to embrace all those who were in any way connected with the Office of the Law Branch of the House of Commons, and also all those who have had dealings with that Branch of the Service.

The evidence of the several officers of the Law Branch has fully demonstrated to us that no proper management of the office exists at the present time nor has it existed for three or four years past. There is no harmony either in the methods of working or in the relations of the several officers of the Law Branch among themselves. It is not entirely a question of the competency or incompetency of any individual officer of the Law Branch to perform the work which is assigned to him, or of unwillingness on the part of these officers to do

that work. Much of the trouble consists in a lack of respect for and confidence in the Law Clerk on the part of the officers of the Branch, and a want of reciprocal good feeling and courtesy on the part of the Law Clerk towards the subordinate officers. The relations between the officers and the head of the Branch are apparently strained and unpleasant, and this prevents the proper working of the office.

The staff of the Law Branch of the House of Commons consists of four officers, Mr. A. H. O'Brien, Law Clerk, Dr. J. K. Foran, Assistant Law Clerk, A. G. Troop, the Secretary of the Branch and Mr. H. H. Loucks the English Translator. Each of these gentlemen has been examined under oath by us, and they were given the fullest opportunity to explain the nature of the work done by them, their methods of doing it, and also as to the general conduct of the business of the Law Branch.

The evidence of Mr. O'Brien the Law Clerk besides giving in detail the nature of the work done by him and the officers of the Law Branch, consists largely in charges of incompetency against Dr. Foran the Assistant Law Clerk and of Mr. Loucks the English Translator. Mr. O'Brien's criticisms of Mr. Troop were favorable to that gentleman's ability and attention to the duties of the office. The evidence of Dr. Foran, Mr. Troop and Mr. Loucks besides giving considerable information as to the kind of work done by them, contains some very severe reflections upon Mr. O'Brien the Law Clerk, his methods of working, his extreme tendency to change and alter bills, resolutions and documents which come before him in his position as Law Clerk; and they also make charges against him both in regard to his conduct in the Office and his

making changes in bills after they had become the property of Parliament.

It is somewhat difficult to define how much of these charges and counter charges is exaggeration and how much is fact, but it is abundantly proved to us that the Law Branch of the House of Commons is disorganized, that its officers have not been working harmoniously, that the work of the Branch has been in danger of being seriously affected, that the future outlook for the Department with the staff as at present constituted is bad, and that only by a reorganization of the Law Branch can it be hoped that the very important business requiring attention in that office will receive the attention which it demands.

Taking the officers of the Law Branch individually, we find that Mr. O'Brien is a painstaking and industrious officer. His knowledge in regard to Parliamentary Bills both public and private gained by long experience is extensive. His ability as a draftsman is very good and his attention to the details of the work is also very good. His defects are a want of ability to manage the Branch as Chief Officer, his desire to change and alter any documents placed before him no matter by whom drafted, his inclination to find fault with those under him sometimes without fair justification, his irritability in dealing with those officers and his excitability. He says a good deal of his irritability is caused by the incessant strain upon him caused by the incompetency of his assistants for whose mistakes he feels himself responsible. Still we think his defects however caused, prevent his being a successful head of the Law Branch, although as an individual member of the staff he is capable of doing very good work.

In regard to Mr. Foran, we find that in the particular duties assigned to him, he has displayed only

fair ability. He is supposed to have charge of the revision of private bills, and also the supply bills. In regard to the latter he has control of them in the Department with the assistance of Mr. Troop. The Law Clerk does not in anyway interfere with that work. He also has charge of engrossing amendments to Bills made in the House of Commons and of transmitting them to the Senate. This work he seems to have the entire control of and appears to do it satisfactorily. In regard to his work upon private bills, he has not displayed any marked ability in regard to the correctness or accuracy of his revisions of such bills. He complains very bitterly of Mr. O'Brien's interference, and it is possible if he were not so interfered with or had some chief officer with whom he could consult more intimately, he would do better work of the character mentioned.

In reference to Mr. Troop, Secretary of the Law Branch, his duties appear to be to assist with the supply bills, read proof of bills both public and private with the Law Clerk and Assistant Law Clerk, and to make entries in some of the books which are kept in the office. He is a barrister of the Province of Nova Scotia, and has knowledge of stenography and typewriting. So far as we are able to judge he is a competent officer, does his work well and in this respect he has the good opinion of the Law Clerk.

Mr. Loucks is a gentleman 78 years of age. He has been in the Department for twenty-one years. His duties consist of reading proof and in making translations from French into English of bills, resolutions, orders of the House &c. For some years past he and the Law Clerk have not been on speaking terms, and for a number of years the Law Clerk has personally refused to give

him any work to do. His work apart from the translating of bills, has been with Mr. Foran and Mr. Troop. On account of his age, Mr. Loucks usefulness is considerably impaired.

These three gentlemen Mr. Foran, Mr. Troop and Mr. Loucks have severely criticised the Law Clerk's conduct, particularly his irritability of temper, his excessive interferences with them in the discharge of their duties, his strange conduct at times amounting according to their evidence to mental unbalancing, and they have expressed fears as to their personal safety. We are inclined to look upon these latter statements as somewhat exaggerated, but there is no doubt they point in our opinion conclusively to this result, that Mr. O'Brien is not well fitted to be the head of the Law Branch of the House of Commons, and that so long as he occupies that position disorganization will continue.

Evidence was given before us by the Clerk of the House of Commons, Dr. T. B. Flint, and his evidence was corroborative of some of the statements made by the Assistant Law Clerk and the Secretary of the Branch, to the effect that the Law Clerk influenced either by his tendency to alter and amend documents that were placed before him, or by an exaggerated view of the responsibilities of his office, had on some occasions made amendments and alterations in Bills after Parliament had become seized of them, and without referring these amendments to Parliament for its sanction and approval. A number of bills were placed before us in which these alleged changes had been made. This conduct on the part of the Law Clerk is no doubt wrong. It is evidence that Mr. O'Brien has not properly and fully apprehended the serious nature of the duties of the Law Clerk. He seems to have ignored

the fact that when a bill is once introduced into Parliament, there should be no amendments or alterations to it, excepting with the approval of Parliament. Mr O'Brien meets these charges of Dr. Flint and the other officers by saying that it had always been the rule in the Law Branch to make such changes in Bills as would express the intention sought to be conveyed by a Bill in proper Parliamentary language. He has cited to us instances of Bills in which the former Law Clerk made changes after they had received their third reading and maintains that in many cases the changes made by himself were so made only after consultation with those having charge of the Bills and to correct manifest errors. He believes it is one of the duties of the Law Clerk to make changes and alterations in Bills which have passed the House, so long as such changes and alterations do not affect or alter the clear meaning and intention of the enactment. He says practically that some one must finally judge as to whether the alterations should be made or not, and that it naturally falls to the lot of the law clerk to ^{be that} judge. He further contends that in regard to minor and trivial changes such as correcting the spelling of a word, making a change in a date where it was manifestly wrong, re-numbering sections in Bills or such like alterations, he considers it as essentially part of the duties of the Law Clerk to make such changes at any stage of the bill, and that he would consider he was not doing his duty if he allowed such clear and manifest errors to remain in a bill.

There can be no question that neither the Law Clerk or any other person has any right whatever to alter, amend or vary a bill once it has become the property of Parliament, and particularly after it has passed the House. Mr. O'Brien has we think shown that in regard to the changes that have been made heretofore nothing harmful has

resulted in any of the cases referred to and brought before us. Perhaps on this question it might be sufficient to say, that whatever Mr. O'Brien may have done with reference to the making of changes and alterations in bills, was done under the impression that because such things had been done or permitted in the past, he was safe in following the precedent thus established; and no doubt his conduct in this regard may also have been due to his great zeal in seeing that the bills were couched in what he thought was proper language, and contained no mistakes of any description; and while we must not be considered as agreeing with his contentions in this regard, perhaps it might be sufficient to say that in future the Law Clerk whoever he may be, should personally see that nothing of this kind is done at any stage of the Bill without the sanction of Parliament or of the Committees thereof.

The Law Branch of the House of Commons is we believe the most important of all its Departments, inasmuch as it deals with the laws of the Country, in the making and publishing of which the greatest possible care must be taken. It is also a Department requiring considerable legal knowledge as well as skill on the part of its officers in drafting and revising bills and other documents. It also demands from the Law Clerk a knowledge of the general laws of Canada, so that in drafting or revising bills whether private or public, he may be competent to judge as to whether the laws of the Country as they stand are being entrenched upon or interfered with, and to be able to advise in respect thereto. While Mr. O'Brien is possessed of many of these attainments, we feel satisfied upon a review of the whole evidence before us that he does not possess the qualifications necessary to manage and conduct the business of so important a Department. We

think that for the safety of legislation passing through Parliament, and for the harmonious working of the office, considerable reorganization should take place, and we therefore beg to submit the following suggestions for the consideration of Your Royal Highness in Council.

1. We would recommend that the head of the Law Branch of the House of Commons should be a man possessed of the above qualifications as to knowledge of law, and also of a temperament and manner which would enable him to manage and conduct the business of the Law Branch as it should be managed and conducted. We would suggest that a barrister of good standing having the required qualifications as a draftsman and the ability to advise on questions of general and constitutional law, should be appointed as Parliamentary Counsel and Law Clerk who should have charge of the whole Law Branch as its head with power to allot to the different officers of the Branch the work and services which each should perform. By this appointment it would not necessarily mean that the present officers of the Law Branch need be disturbed (with the exception of Mr. Loucks referred to hereafter) unless it is found that even with such a Chief officer as we have suggested they could not work together.

2. The importance of the Law Branch leads us further to suggest that it would be highly desirable to have a man in training in the work of the Branch, so that in the event of the Parliamentary Counsel and Law Clerk as above suggested, or other Chief Officer becoming incapacitated, the work would not be materially interfered with. We do not think that either Dr. Foran or Mr. Troop possess the qualifications necessary for such an officer, and

it would be greatly in the interest of the Law Branch to secure a barrister of some experience who would make a study of the work and the requirements of the office.

3. We think it would be in the interest of the Branch if Mr. Loucks were relieved from further service, and be placed upon the list of the retired civil servants with such superannuation allowance as may be deemed proper.

4. We think that in view of his large experience in the work of the office, the services of Mr. O'Brien should be retained, provided of course, Mr. O'Brien would be satisfied to act under the Chief Officer of the Branch. In regard to his title, we suggest that it be the Deputy Parliamentary Counsel and Law Clerk.

5. We would not recommend any change so far as Mr. Foran and Mr. Troop are concerned, as we believe that under efficient management these gentlemen will be able to perform their duties in a satisfactory manner.

We submit the evidence taken on this Enquiry upon which we base our conclusions. The evidence is marked Schedule "B" to this report.

(Sgd) W. D. Hagg
(Sgd) Adam Shortt

May 7th, 1912.