

Combines Investigation Act

the director. This meant that the commission, if it felt that it should have counsel to assist it, had to go through the director to the minister. This is, I think, an embarrassing and unnecessarily discriminatory provision. The matter was brought up, therefore, and an agreement reached that there should not be this placement of the director and the commission in different positions with regard to their right to go to the minister to ask for counsel. We decided, therefore, that the obvious way to take care of the situation was simply to provide that wherever, in the opinion of the minister, the public interest so required, then the minister may appoint counsel. This will have the effect that both the director and the commission, equally, can come to the minister with a recommendation on this point.

The minister is placed in no more authoritative position than he had before because the present act uses the words, "the director may apply to the minister, and upon such application the minister may instruct." The application always had therefore, to be to the minister, and it was always the opinion of the minister that determined whether or not counsel should be appointed. Here again, we have made the section more flexible because now, as the amendment is worded, the minister may reach an opinion himself, and form an opinion, to instruct counsel and may do so without the necessity of an approach from the commission or the director. The whole thing is placed on a non-discriminatory basis, and it is a sensible, aboveboard basis. Why the sudden suspicion should have developed, I do not know. The director tells me that the provision is only very rarely used, and neither he nor I can recall a case in which he has done so in the last three years. It is very rarely done, but it may be done, and there may be a requirement for it.

When we were reviewing the act this particular condition was brought to our attention and we decided to remove the differentiation between the position of the two bodies. With respect to whether I can keep this information from parliament, I do not think the position under the amendment is any different from what it has been. If I had received a report or advice from the director that counsel should be appointed under the present act I think my position as minister would have been that advice I receive from public servants is confidential, that is advice given to me in my capacity as minister and in his capacity as a public servant. I could take the position now, and should take the position now, if I were asked a question under the present wording of the statute with relation to a specific inquiry as to the advice I got from the director about the appointment of

counsel, that that information would be a confidential communication. The position, therefore, will not change as a result of the wording of this amendment.

Mr. McIlraith: The early part of the minister's remarks having to do with the committee were both inaccurate and unfair.

Mr. Fulton: I recognized that and I intended to come back to it. I said it was not discussed, and that was not accurate; I am sorry. I should have said that this particular aspect of it was not raised in committee. I thank the hon. member for Ottawa West for pointing this out to me. I had meant to come back to it at the end of my reply and correct the inaccurate reference I had made.

Mr. McIlraith: I do not propose to pursue the remarks about the committee sittings, but I should remind the minister, as he well knows, that if he would take the trouble to check up on the sittings of the committee he would recall that this was an extraordinarily difficult committee to serve on. I do not propose to pursue that subject unless it becomes necessary in the course of the proceedings here tonight, but I propose to address myself directly to the clause before the committee.

When the hon. member for Gloucester raised this point when this clause was before the committee on banking and commerce the minister made clear with the assistance of the director that the purpose of changing section 13 of the act was to remove the discrimination between the position of the director and the position of the commission in so far as the right to apply to the minister to instruct counsel and so on was concerned. The minister has reiterated that in a more extended form here tonight and I accept the proposition that that is the purpose of the change in section 13 of the act. But I believe it will be better accomplished by an amendment I would like to submit to the committee.

Therefore I move that clause 5 be amended as follows:

That the word "minister" be deleted in line three and the words "director or the commission" be substituted therefor, and that the words "he may" be deleted in line four and the words "the director or the commission may apply to the minister to" be inserted.

Mr. Fulton: I am not able to see just how it would read in full at the moment. Perhaps the hon. member would read the clause to me as it would read if the amendment were accepted?

Mr. McIlraith: I would be glad to. It would read as follows:

Whenever in the opinion of the director or the commission the public interest so requires, the