

*Transportation*

fact is I did not. Apparently that deals with the first point.

The main discussion we had on clause 17 related to the question of whether there should be a larger quorum for the new kind of review, which is and will be of a somewhat more formal character than is provided in clause 17 subclause 4, because this is a new kind of subject matter which would come before this commission. It could not have come before the Board of Transport Commissioners which does not now have jurisdiction over many modes of transportation.

● (3:20 p.m.)

The hon. member for Springfield suggested that there should be a larger quorum for these hearings than would be required for the hearings of one of the committees, and the hon. member for York South raised a question which I confess quite frankly—I do not apologize for this, I just confess it—I did not understand because I am not a lawyer. However, I think I have now been sufficiently instructed to understand it. The hon. member for York South seemed to imply that because it was provided in this case that a review could not be conducted by the committee which had heard the case originally no member of that committee could sit on the review. I have had the best legal advice I could obtain on the subject and was informed that all that the provision means in law is that the particular committee could not conduct the review but that any members of the committee, even those who were at the original hearing, are not prohibited from participating in the review. They would do so not as members of the committee but as members of the commission. I was also told that it had been a long-standing practice of the Board of Transport Commissioners in its hearings and reviews and it has frequently happened that some of those who have participated in an original hearing have also participated in a review.

The hon. member for Acadia raised a point, which was also raised by the hon. member for Edmonton-Strathcona and the hon. member for Peace River, that it might be difficult to constitute an appropriate review without having some of the members of the original committee participate in the review because they would have some expertise or at any rate greater knowledge of the particular mode of transport about which the review was to be conducted. I had thought that it would not be appropriate for those persons who had heard the case in the first instance to take part in such a review. I was told that there is a

distinction in law between a review and an appeal, that these reviews are not appeals and that there is not only no reason why someone who took part in the original hearing should not sit in review but that in many cases it is highly desirable that they should do so, and that this would be found to have been the practice of the board over the years. When one reflects on it I think it becomes quite apparent why this would seem to be appropriate.

I believe that this disposes of all the points except the one raised by the hon. member for Springfield. I would agree at once that in the case of a review under clause 17 subclause (4) it would certainly be necessary to have a larger number of commissioners sitting than would have sat on the original hearing. This would almost be essential, particularly as it would be desirable to have taking part in the review members of some of the other committees and particularly of the one related to the other mode of transport which was asking for the review. Therefore the only question that seems to be left of those that were raised is whether parliament should prescribe a higher quorum for such reviews than is done for the Board of Transport Commissioners at the present time.

I am told that on balance, in such reviews as have been conducted by the Board of Transport Commissioners over the years, it has always been the case that a large number of commissioners have sat than at the original hearing. In the new legislation and in the law as it now stands it is provided that the commission will have authority to set a larger quorum for any particular purpose if it wishes to do so and also that the Governor in Council can prescribe such larger quorum if he feels that the commission has not made adequate provision for such a review.

I find that this point was very carefully considered by the legal advisers of the Board of Transport Commissioners, of the Air Transport Board and the law officers of the Department of Justice, and that after they had weighed the pros and cons it was their view that the provisions in this regard, which had all been very carefully thought out, were adequate to meet all these needs. It was felt that an attempt to prescribe, in some particular circumstance, another quorum was not really necessary and that in view of the law and the practice in jurisprudence there would be no real doubt as to what would happen in fact.

[Mr. Pickersgill.]