

APPENDIX

(See p. 2537)

REGULATIONS AND OTHER STATUTORY INSTRUMENTS

SEVENTH REPORT OF STANDING JOINT COMMITTEE

Tuesday, June 16, 1981

The Standing Joint Committee on Regulations and other Statutory Instruments has the honour to present its Seventh Report as follows:

(Statutory Instruments No. 12)

1. In accordance with its permanent reference, section 26 of the *Statutory Instruments Act*, S.C. 1970-71-72, C. 38, your Joint Committee has determined to draw to the special attention of both Houses:

SOR/77-869—as extended by SOR/81-25, Railway Passenger Services Adjustment Assistance Regulations.

SOR/78-286—Railway Passenger Services Contract Regulations.

SOR/78-287—Schedule D to the *Financial Administration Act*, amendment.

2. Your Committee's objections to these regulations are four fold.

(i) VIA Rail Canada Inc. has been established and set up in business—and in consequence almost all the railway passenger services of the country have been brought into government ownership, control and funding—pursuant to an involved use of subordinate powers, a dollar vote in an Appropriation Act and the three slim regulations under report. At no time has Parliament had the opportunity to debate and to settle what are very significant matters.

(ii) The operative dollar vote, Vote 52d, Department of Transport, *Appropriation Act No. 1, 1977*, refers only to "selected rail passenger services", yet SOR/78-286, made under that vote, purports to apply not only to passenger services operated over railway lines but also to other passenger services, and not only those in substitution for rail services but also those ancillary to them.

(iii) An item critical to the funding of the services provided by VIA Rail Canada Inc., the "prescribed portion" of the employee costs of the railway companies (for severance benefits, early retirement benefits and the like) in implementing the changeover to VIA Rail control of passenger services, has never been prescribed by a regulation made under Vote 52d, but is contained in an unpublished and, hence unscrutinized, statutory instrument.

(iv) The prerequisites to or limitations on payment of the "prescribed portion" need not be set out in a regulation. Any terms or conditions subject to which payment is to be made that are set by the Governor in Council by regulation must be obeyed, but if the minister sets any others, they may, without their being embodied in any regulation, be embodied in the arrangements entered into with the

railway companies. Thus, the very terms of what was a vital part of the VIA Rail programme were left to the minister to determine in conjunction with the railway companies.

3. To explain its objections, your Committee must set out the rather complicated path followed in revamping railway passenger services under public auspices and funding without recourse being had to Parliament in any real way. The very provenance of VIA Rail Canada Inc., makes out the Committee's chief objection, that Parliament has been bypassed by the executive.

On 12 January 1977 Canadian National Railways incorporated a subsidiary, VIA Rail Canada Inc., under the provisions of the *Canada Business Corporations Act*.

By Vote 52d, Department of Transport, *Appropriation Act No. 1, 1977* (a dollar vote), VIA Rail Canada Inc., was deemed to be a railway company for the purposes of section 11 of the *Railway Act*, thus bypassing the Canadian Transport Commission and the public hearing process.

By Vote L56a, Department of Transport, *Appropriation Act No. 3, 1977-78*, the Minister of Transport was authorized to purchase "on behalf of and to hold in trust for Her Majesty in Right of Canada all of the issued common shares of VIA Rail Canada Inc. and to pay \$100,000.00 in consideration thereof". Upon the completion of that purchase, VIA Rail Canada Inc. became a company the shares in which were all beneficially owned by the Queen. As such, it also became a Government Company within the meaning of the *Government Companies Operation Act* (as amended by item 4 of the Schedule to the *Canada Business Corporations Act*, S.C. 1974-75-76 cap. 33). As a Government Company, VIA Rail Canada Inc. became by virtue of section 3 of the *Government Companies Operation Act* an agent of Her Majesty and its powers could only be exercisable as an agent of Her Majesty.

By Order in Council, SOR/78-287, VIA Rail Canada Inc. was made a Crown Corporation by the addition of its name to Schedule D to the *Financial Administration Act*.

The whole authority for public funding of the VIA Rail operation and its takeover of railway passenger services provided by railway companies rests in the dollar vote, Vote 52d, Department of Transport, *Appropriation Act No. 1, 1977*, which reads as follows:

52d Surface Transportation—With respect to surface transportation:

- (a) to deem VIA Rail Canada Inc., a railway company incorporated pursuant to Section 11 of the *Railway Act*;
- (b) to authorize, subject to the approval of the Minister, VIA Rail Canada Inc. and any railway company to enter