

Order in Council P.C. 1981-2171 is actually titled "Order Varying Canadian Transport Commission Orders and Decisions". The Order varied a number of CTC decisions bearing dates from 1976 to early 1981 wherein the RTC had detailed the provision and frequency of passenger train service on various routes. P.C. 1981-2171 substituted the decision of the Governor in Council to eliminate or drastically reduce these specified services.

However, the Committee received testimony to the effect that while the Governor in Council may indeed vary an order of his own motion, he cannot act in such a way as to implement a decision or order which is beyond the scope and power of the CTC itself. The Committee is also of the opinion that Order in Council P.C. 1981-2171 violated the rules of natural justice.⁽⁵⁾

In a similar vein this Committee (i.e the Senate Committee on Transport and Communications) also feels it relevant to be mindful in its report of the fact that the initial order effecting the route cancellations was strongly attacked as being in contravention of the provisions of the *Statutory Instruments Act*. One of the grounds for this objection was that Order in Council P.C. 1981-2171 which was made on August 6, 1981 was not transmitted for registration to the Clerk of the Privy Council within seven days as is required in the *Statutory Instruments Act*. Whether the Governor in Council agreed with the assessment that Order P.C. 1981-2171 was a regulation requiring registration is not certain. However, the Order was ultimately registered prior to its implementation and came to be known as SOR/81-892. This registration took place on 3 November 1981, nearly three months after the Order was first made.

While this may appear to be no more than an adjustment of legal formality, the Committee is of the view that when there is great controversy in the public mind as well as before the courts as to the legitimacy of an action by the Governor in Council, the strictest adherence to procedural formality regarding the order in question is of considerable importance. When the Governor in Council decrees the elimination of nearly one-fifth of the entire passenger rail service in Canada without resort to the public forum, then the minute adherence to statutory provisions concerning transmittal, recording and publication of the order in question is, it seems to the Committee, to be a minimum requirement.

The stated rationale for proceeding by way of order in council pursuant to section 64(1) was that a speedy decision was necessary and that following the CTC route would involve lengthy public hearings. Furthermore, in the government's opinion, these route discontinuances were essential in order to finance additional modern equipment for VIA, and there must have been a possibility that the CTC would not, in applying the criteria of the *Railway Act* as discussed above, reach the same conclusion with respect to the route cancellation. This would have put the Minister in a difficult, undesirable, and possibly legally indefensible position of having to instruct the CTC's Railway Transport Committee as to his view of the proper decision. For all of these reasons the route cancellation bypassed the normal CTC channels.

⁽⁵⁾ Paragraphs 1 and 2 of the Ninth Report of the Standing Joint Committee on Regulations and other Statutory Instruments, dated 12 November 1981, which set out additional legal objections to Order in Council P.C. 1981-2171, are reproduced in Appendix IV.