zation—but with the location of the new sidings in Windsor. Although the sidings were built on land already owned by the railway and served by railway tracks, the land had not previously been used as a holding and transfer area. Since there are residential areas contiguous to the tracks on both sides, the neighbourhood residents were understandably disturbed by the substantial change in the railway activities in the area, and they succeeded in obtaining a hearing before the Railway Transport Committee of the Canadian Transport Commission on the application by the CPR to change the usage of the sidings.

In my submission to the committee on behalf of the citizens on June 17, 1975, I described the situation as follows:

There are really two kinds of problems raised by the Powell siding. The simpler problem relates to the traditional pedestrian crossing. The lack of such a crossing has proved an inconvenience to residents especially of the Remington Park area to the south of the tracks because it hampers their access to Memorial Park immediately to the north of the tracks.

● (1702)

What I regard as the more serious problem concerns the environmental effects from noise and air pollution caused by the use of the Powell siding by trains for long periods of time. When there are no delays, the occupancy of the tracks is for a very short period of time, but on the 25 per cent or so of occasions on which the trains are not on time, the use of the new tracks constitutes a genuine and serious annoyance for the residents. Even if the diesel engines are disconnected and taken to the CPR railway station, the continued presence of refrigeration cars and cabooses causes a noise and pollution problem. On days when the schedule is awry this nuisance may be present for 6 to 12 hours or longer.

Many residents described the railway usage in much stronger language than I did. I might also add that many people were ready to substantiate that the delays were much higher than the 25 per cent figure I used in my submission. With the additional observation possible during the lapse of time since then, I am inclined to agree with them.

After lengthy hearings the Railway Transport Committee held on April 17, 1977, that the application of the CPR to construct and use the sidings should be rejected. The committee said in part, and I would like to quote from the decision of the Railway Transport Committee:

In our opinion, the difficulty was created by the fact that, contrary to the Railway Act, Canadian Pacific constructed Powell sidings without first applying for and obtaining the requisite approvals from the committee—

It is one thing for the committee to consider the opening of what is proposed to be a lightly travelled branch line through farm land or uninhabited open country (or a siding on a main line through the same kind of territory), and quite another for the committee to consider two sidings along the main line to be used for international traffic through the Detroit River Tunnel as is the case here, and as is also the case here, that traffic will not merely pass over the sidings without stopping, but trains containing, among other things, cars with dangerous commodities will, according to the evidence before us, be left standing sometimes for hours. By no stretch of the imagination could it be suggested that Powell sidings are in open country or even in a lightly populated area. They are located in the middle of a city with residential districts, a park and a school in close proximity on one side and a residential area and substantial open space on the other. It is the Powell sidings in that character that we must consider, not Powell sidings as two isolated pieces of track.

For these reasons, the Application of Canadian Pacific under section 216 of the Railway Act fails."

The committee could not reach agreement at that time on the disposition of the motion for costs by the citizens, and that question remains undecided to this day.

The problem which this bill addresses arises from the application by CP Rail in July, 1977, not for a review by the CTC of the decision, but for a new hearing. The public argument began in November of 1977 and continued through April, 1978. The neighbourhood citizens were once again put in the position of having to engage legal counsel to defend their rights to undisturbed possesion of their property. In fact, representation for the citizens was made possible by a decision of the Windsor city council to pay a lawyer to act on their behalf before the CTC. Without this generous decision by the city of Windsor, the residents would have been in a most unfortunate plight.

The second set of hearings before the CTC has been conducted on the premise that the doctrine of *res judicata* has no application to the proceedings, and I am informed that counsel for the CTC contended on an application before a federal court that *res judicata* does not apply.

The doctrine of *res judicata* is described by Halsbury's "Laws of England" (4th ed., 1976, vol. 16, para. 1527) as a "fundamental doctrine of all courts that there must be an end of litigation." It applies where the subject matter in dispute in a later case is the same as in a previous case, i.e., where everything that was in controversy in the second case as the foundation of the claim for relief was also in controversy or open to controversy in the first case. Where a plea of *res judicata* cannot be established because the causes of action are not identical, issue estoppel may preclude a party from contending the contrary of any point which has been determined against him. This is sometimes also referred to as *res judicata.*

The doctrine of *res judicata* does not apply to administrative tribunals, but it does apply to quasi-judicial tribunals exercising judicial functions. The citation for this is the "Canadian Encyclopedic Digest," (Ontario) 3rd edition, 1973, paragraph 104.

In fact, the CTC has held that on a review it is, in effect, bound by the doctrine of *res judicata.* Witness the statement by a review committee in the Comsol case:

The power to review, now to be found in section 63 of the National Transportation Act, has been given to the commission and to its predecessors for pragmatic reasons. It is an expeditious manner to correct an error or to meet changed circumstances. In themselves these two factors encompass all motives for review. The nature and the degree of the error may vary almost ad infinitum. The changed circumstances may have developed after the decision had been rendered or for sufficient reason some circumstances may not have been placed before the commission at the time of the original hearing. With respect to the correction of an error, the remedial process may exist concurrently with the appeal jurisdiction of the Federal Court. With respect to a change of circumstances, the remedial process is left to the commission. It amounts, when changed circumstances are invoked, to a reopening of the original hearing in order to receive further evidence.

The jurisdiction of the commission is administrative, legislative and quasi-judicial. For instance, the commission is called upon to make an administrative decision when it sets a specific speed limit pursuant to the Railway Act. In adopting regulations, the commission legislates by delegation. When making a decision on a matter in dispute between parties in adverse interest, the commission performs its quasi-judicial role . . . The finality of a decision rendered in the quasi-judicial context must be seen in that very context which is not the context of an administrative decision even if the procedure followed to reach a conclusion in either instance may have been the same under the general rules of the commission—