

into contracts for the purpose of providing a unified management and control of rail passenger services in Canada; and

(c) to authorize the Minister, subject to such terms and conditions as the Governor in Council may prescribe by regulations

(i) to enter into a contract with VIA Rail Canada Inc. with respect to

(a) the provision, management, or the operation of selected rail passenger services in such a manner as to improve efficiency, effectiveness and economy in rail passenger services in Canada;

(b) the reimbursement of the net cost to the corporation of operating a rail passenger service in accordance with the provisions of the contract;

(c) incentive payments for the efficient operation of the rail passenger services in accordance with the provisions of the contract;

(ii) to reimburse, out of monies to be appropriated by Parliament, a railway company for the prescribed portion of the cost incurred by the company for the provision of income maintenance benefits, layoff benefits, relocation expenses, early retirement benefits, severance benefits and other benefits to its employees where such costs are incurred as a result of the implementation of the provisions of the contract or discontinuance of a rail passenger service provided that the aggregate of the amounts payable annually pursuant to this authority for the purposes set out in Clauses (b) and (c) does not exceed \$240,000,000—\$1.

Upon this foundation hangs now all the law and the administration of almost all railway passenger services in Canada.

4. While your Committee questions the validity of the Railway Passenger Services Contract Regulations extending to non-rail services, its principal objection to the regulations under report is made in terms of its tenth criterion for the scrutiny of statutory instruments:

Whether any Regulation or other Statutory Instrument within its term of reference, in the judgment of the Committee: . . .

10. in the absence of express authority to that effect in the enabling statute or prerogative, appears to amount to the exercise of a substantive legislative power properly the subject of direct parliamentary enactment, and not merely to the formulation of subordinate provisions of the technical or administrative character properly the subject of delegated legislation;

In your Committee's judgment, the settling of the legal regime to govern the now publicly owned, controlled and funded railway passenger service is too important a matter to be left to the corporate policy, and virtually unlimited corporate powers, of VIA Rail Canada Inc., a corporation wholly owned by the Crown, and to skeletal regulations made under a dollar

vote which in the nature of procedure in the House of Commons cannot have been subjected to significant debate. Parliament should have been, and still should be, given the opportunity to debate the future and structure of railway passenger services in Canada and the manner of their management and control; and your committee is inclined to believe that this should include the maintenance of the jurisdiction of the Canadian Transport Commission over VIA Rail Canada. As things stand now, even if a bill to regulate railway passenger services and VIA Rail Canada Inc. were to be introduced, many important matters have been effectively foreclosed from Parliament's debate and disposition by the extensive and preemptive executive action that has already been taken. It is objectionable in principle that relationships between the new public railway passenger authority and the railway companies, and the takeover of services, should have been settled without parliamentary involvement.

5. It might well be thought unfortunate that your Committee has taken so long to raise these important considerations in a report to the Houses. Your Committee's predecessor but one was dealing with the VIA Rail issue at the dissolution of the Thirtieth Parliament in March 1979. Your Committee's immediate predecessor had but little time to do anything. By the opening of the Thirty-second Parliament the new VIA Rail system was fully in place and it was decided that what should be sought was the introduction of legislation to place the new system on a statutory footing. It may be that your Committee has been too patient in seeking assurances from the Minister of Transport that a bill to regularize VIA Rail Canada Inc.'s activities and powers would be introduced. Indications of the preparation of such a bill were received but lately it has become apparent that legislative action has become a retreating vision. Your Committee's joint chairmen's most recent correspondence with the Minister of Transport is attached as Appendix A to this report.

6. In objecting to the use of the regulations under report and to Vote 52d, Department of Transport, *Appropriation Act No. 1, 1977*, your Committee is doing no more than particularizing its predecessors' and its own general and principled objections to the making of regulations under votes in Appropriation Acts. In its Second Report for the Second Session of the Thirtieth Parliament (Statutory Instruments No. 1), the then Committee said:

"In the review of statutory instruments the Committee has been struck by the number of instances of the use of Votes in Appropriation Acts as vehicles for the conferring of subordinate law-making powers, usually upon the Governor in Council. From 1st January 1972 to 30th June 1976 at least one hundred and four items of delegated legislation have to the knowledge of the Committee, been made pursuant to Votes. (The task of adding up the number is not easy since spent regulations are removed from the Index to Part II of the Canada Gazette at the