

In several instances, the lessee companies which often undertook leases of railway networks for periods of over 990 years entered into agreements with the smaller lessor railways to provide specified railway passenger services. The agreements were then sanctioned by a provincial or federal legislative enactment. The degree of promised service is in some of the cases very detailed. In fact, in some instances, the actual provision of a certain number of trains per day is set out in the schedule to the enabling statute. This issue was raised before the Federal Court of Canada and continues to be the object of further proceedings in that court's appeal division. Consequently, in keeping with its stated policy, the Committee expresses no opinion on a matter which is now before the courts.

However, the Committee has considered with some interest the possibility of residual obligations of CP Rail or CN Rail where, in the course of taking over smaller railway companies, they have undertaken through contractual obligations to provide specific railway services over a given route. This matter was raised in one of the challenges to the government actions relating to last autumn's Order in Council which effected the approximate one-fifth reduction in VIA services. The Committee recognizes that this submission was rejected in first instance in the Federal Court. However, the Committee notes with interest that the door was left open in the decision of the learned trial judge as to the possibility of pursuing actions in damages by affected parties against the operating railway companies for the withdrawal of services contrary to their validly undertaken contractual obligations.

In this context, the Committee observes that CP Rail and CN Rail were providing passenger rail services in this country long before the creation of VIA Rail Canada Inc. The Committee also notes that it has pursued this line of reasoning with representatives on one of the operating railways, namely Canadian Pacific, but did not find its responses very helpful. The Committee does find itself in agreement with the representatives of CP Rail in their estimation of the serious impact of the two operating railways re-entering the passenger rail service business. No doubt the operating railways, CP Rail and CN Rail, would resist any such notion of a return to the provision of general rail passenger services when they have found the provision of equipment and services to VIA a more satisfactory enterprise.

To reiterate, the Committee is not advocating or counselling that CP Rail and CN Rail should be required to provide services which VIA has discontinued on government instructions. The Committee only notes that a serious legal issue remains outstanding in this area and awaits a final decision by the courts on this matter.

(iii) Confidentiality and the Canadian Transport Commission

In its operation of passenger rail services in Canada, VIA has entered into contractual arrangements with CP Rail and CN Rail for such things as the use of locomotives and power units, for the maintenance of rolling stock and other equipment, for stationary facilities such as railway stations, and for roadbed services such as switching. The amounts of money involved in these contractual arrangements are very considerable indeed and, in fact, constitute the major portion of VIA's annual budget. For 1980, VIA paid approximately \$290 million to CN and \$66 million to Canadian Pacific. These charges from the operating railways to VIA take the form of monthly statements, adjusted by final post year-end bills. This billing system will be discussed in more detail later in the Report.