

government to provide ferry services to Prince Edward Island and Newfoundland. These services effectively link those provinces to the mainland railway system. These obligations are now being fulfilled by Canadian National on behalf of the government, using ferry vessels owned by the federal government. Consideration is being given to the creation of a separate Crown corporation to operate and fulfil the federal government's east coast transportation service obligations and objectives.

In addition, unlike the Kootenay Lake barge operation for railway cars only, the Gulf Ferry Services carry automobiles, trucks, buses, and individual passengers. In other words, there may be some cases where a general CTC jurisdiction over the operation and abandonment of rail car ferry or barge operations, as part of a railway operation, may create problems in policy, jurisdiction and regulatory areas.

However, it is fair to say the government agrees with the general principle that the railway transport committee should have jurisdiction over the abandonment of rail car ferry and barge operations, when these services are directly related to federally regulated railway operations.

Because the Attorney General of Canada has obtained leave of the Supreme Court of Canada to appeal the judgment of the Federal Court of Appeal, which indicated the Railway Transport Committee of the CTC did not have jurisdiction in the Kootenay Lake case, I believe further deliberations on this bill may not be productive until after the Kootenay Lake test case is finally resolved by the Supreme Court. Only then would a clear statement of the adequacies of the present Railway Act provisions be available to form the basis for the drafting of any appropriate amendments to the act.

Mr. Elmer M. MacKay (Central Nova): Mr. Speaker, I was interested in some of the remarks made by the hon. member for Windsor-Walkerville (Mr. MacGuigan). He is a very knowledgeable member, and has a great background in transport and legal matters. Particularly I was interested in hearing him raise the considerations implicit in ferry services in the eastern part of this country which link the provinces of Prince Edward Island and Newfoundland to the mainland. In the past it has been a matter of great concern, particularly to people of the island provinces, that every time there is a national rail disruption the existing situation governing rail and ferry services automatically exacerbates the situation in those provinces.

In the context of some future debate on a bill like this, I hope the House considers ways and means to make certain, every time there is a national rail tie-up, it does not necessarily tie up rail freight services to Newfoundland or prince Edward Island. I am sure that is beyond the scope of this bill, but I wanted to use this opportunity to put those thoughts forward.

It is a pleasure to speak on this particular piece of legislation because it has a very constructive purpose. Actually it purports to prevent indirectly the abandonment of transport services by CP, in a manner which could not be done directly by virtue of section 253 of the Railway Act. As the hon. member for

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Windsor-Walkerville pointed out, one of the catalysts was the action of CPR when it abandoned its railway line and barge service on Kootenay Lake. That service transported railway cars. The abandonment of it caused such a furor that our national television network did a feature film on it. Obviously the transportation disruption occasioned by the action of CP is a matter of great concern to that area. It is in the process of being appealed to the Supreme Court of Canada. Last fall the Attorney General of Canada intervened to assist in this regard.

The judgment of Mr. Justice Le Dain was a very interesting one. As has already been stated, the case was heard in Vancouver. A judgment was given from the bench, and the decision was that the Railway Transport Committee of the CTC was without jurisdiction to order Canadian Pacific to reinstate its rail barge service on Kootenay Lake, thus reversing a previous ruling made by the committee.

Ever since its creation, historically there has been buckpassing between the Department of Transport and the Canadian Transport Commission over matters of jurisdiction and definition involving the Railway Act, as well as other federal statutes. In this case, ferry or rail barge services is a key area which needs to be clarified. This very timely bill provides the House of Commons with an opportunity to do just that.

The purpose of this bill is to remove any anomalies which presently exist in the Railway Act. I think that deserves serious consideration by the House. As the learned justices of the Federal Court of Appeal pointed out, certainly these are matters of grave concern in studying the contradictions which are implicit in some of the legislation involving marine and rail transport. To require the railways to justify the abandonment of an obviously outmoded and non-productive branch line, pursuant to section 253 of the Railway Act, and yet to allow them to discontinue service as vital as the one at Kootenay Lake, which is part and parcel of a railway service, is not practical or realistic. We in the House have an opportunity to correct some of those anomalies by virtue of this bill.

In his very comprehensive decision Mr. Justice Le Dain recognized that there was a fundamental difference of legislative policy in respect of the abandonment of rail and water transport services. Therefore it is up to the House of Commons to assist in clarifying this legislative policy. This bill can be of assistance in this regard. The question of jurisdiction on the appeal resolved itself, as was noted by Mr. Justice Le Dain in the question of whether the rail barge service is the operation of a minor railway. He quoted from the findings of fact by the Railway Transport Committee of the CTC, which read as follows:

The barges were first operated to connect various towns situated on Kootenay Lake and the line of railway which ran out of these towns. These barges were an integral part of CPR's undertaking in this area, and as such formed an integral part of CPR's railway system. The barges were built uniquely to accommodate rail traffic. There are rails on each barge which link up with rails on the wharves of each point of origin and of destination, thereby enabling railway cars to be transported from one point on Kootenay Lake to another without themselves being loaded and unloaded.

The barges were never a separate operation from the operation of the railway lines which serve the Kootenay Lake area. They were built with actual rails on them so as to be able to connect directly with the lines of railway at Procter,