

The cuts will reduce operating deficits to \$355 million by 1983-84, which will leave \$182 million for capital. In other words, you are doubling the capital budget of VIA and, by so doing, allowing it to acquire proper equipment.⁽²⁾

This decision by the Governor in Council to effect substantial reductions in the service offered by the national rail passenger carrier was taken without public hearings or inquiry, and was not examined or adjudicated upon by the Canadian Transport Commission's (CTC) Railway Transport Committee (RTC). Had the Railway Transport Committee been seized of the matter, they would have been under the legal obligation to assess the route reductions in accordance with section 260, and particularly subsection (6) of that section, of the *Railway Act*.⁽³⁾ This section sets out a number of criteria which the CTC's Railway Transport Committee is obliged to consider when evaluating a request for a route discontinuance.

In assessing an application for discontinuance, section 260 of the Act specifies that the CTC shall consider, in addition to the issue of whether or not the particular route in question remains economically viable, all matters that, in its opinion, are relevant to the "public interest". This includes, *inter alia*, the existence of alternative transportation services, the probable effect on other passenger train services, and the probable future passenger transportation needs of the area affected by the proposed route cancellation. Thus, it is clear that in such instances the Railway Transport Committee is not, in its examination of an application for a route discontinuance, confined to examining economic criteria alone. In fact, it is incumbent upon the CTC to examine factors relating to the public interest generally. In addition, the Commission can receive representations and hold public hearings on the matter. Public notice of hearings and decisions must be given.

The Governor in Council through Order in Council P.C. 1981-2171, effectively bypassed the CTC, and as a result, there was no opportunity for the public to present briefs and testimony prior to the effective implementation of the route cancellations. One can only speculate as to what degree the Governor in Council considered the factors that are set out in section 260 of the *Railway Act*, or if they were considered at all. Undoubtedly, the Governor in Council takes the position, as explained by the Minister of Transport, that the decision to effect the route reductions in order to free funds for equipment is indeed a measure that it is within the public interest to ensure the long term viability of VIA.

The legal basis upon which the Minister rested his decision is to be found in section 64(1) of the *National Transportation Act*.⁽⁴⁾ That provision provides for the Governor in Council to vary, at any time, in his discretion and even of his own motion, any order or decision of the CTC. This use of section 64(1) of the *National Transportation Act* was the subject of litigation in the Federal Court of Canada, Trial Division in three instances arising out of these route cancellations. In these cases, the Federal Court held that the Governor in Council was acting within his proper jurisdiction in the use of section 64. The Committee recognizes that appeals in these judgments have been filed and that the matter remains sub judice and consequently refrains from expressing a definitive opinion.

⁽²⁾ Senate of Canada, *Proceedings of the Standing Senate Committee on Transport and Communications*, November 10, 1982, 16:7

⁽³⁾ S. 260(6) is reproduced in Appendix II.

⁽⁴⁾ S. 64(1) is reproduced in Appendix III.