

*Transport and Communications*

contains two subsections, one providing for an appeal to the Governor in Council and the other for an appeal from a decision of the commission to the Supreme Court of Canada on a question of law. Nobody is appealing on a question of law, although I can produce evidence that there can be an appeal on a question of law. Section 53(1) states:

The Governor in Council may at any time, in his discretion, either upon petition of any party, person or company interested, or of his own motion, and without any petition or application, vary or rescind any order, decision, rule or regulation of the Commission, whether such order or decision is made *inter partes* or otherwise, and whether such regulation is general or limited in its scope and application; and any order that the Governor in Council may make with respect thereto is binding up on the Commission and upon all parties.

That is very clear, Mr. Speaker. When the chairman of the railway union wrote to the Prime Minister he obviously had read section 53 of the act. Surely the members of the Newfoundland legislature were aware of section 53 of the Railway Act, just as the hon. members who have the responsibility of representing Newfoundland on this side of the house were aware of section 53 of the act. I would recommend to the hon. member for Notre-Dame-de-Grâce, if he has time on his travels, that he read section 53 before he starts making any legal or learned dissertations on it in this house.

**Some hon. Members:** Oh, oh.

**Mr. McGrath:** Mr. Speaker, I hope that some of the hon. members opposite who seem constrained to make unintelligent utterances from their seats will feel the same constraint to get on their feet and make an intelligent contribution to this debate.

The government house leader said that this report contravened a statute of parliament and that it was *ultra vires*—in fact, I forget all the legal jargon that was used. But, Mr. Speaker, we on this side are aware of the law of the land. We have read the statutes. We have read the preamble to the National Transportation Act which covers such a possibility and which states that Canada's national transportation policy is expressly declared to be subject to legal and constitutional requirements, and further that the National Transportation Act is restricted to subject matters within the jurisdiction of the parliament of Canada relating to transportation. This declaration is nothing more than an expression of the constitutional and legislative limitations placed upon the parliament of Canada, but it is an important declaration in

[Mr. McGrath.]

that it cautions parliament to be at all times aware of these constitutional limitations in regard to legislation.

It may be that because of this awareness there exist certain areas of transport within which parliament cannot trespass. The act provides that one of the vice-presidents of the Canadian Transport Commission must be a barrister or advocate of at least ten years' standing at the bar of any province of Canada—this is referred to in section 7(2)—with very special powers upon any question of law that may arise during proceedings of the commission.

The Newfoundland railway passenger service is a part of what was known as the Newfoundland Railway. It was one of the assets of the government and of the people of Newfoundland which they brought into the union with them. As such the Newfoundland Railway consists of a form of mail, freight and passenger service, and as a consequence I submit that it is clearly outside the jurisdiction of this parliament, and I will tell you why.

The Newfoundland Railway is a specific, identified, and described mode of transport in the constitutional documents that cover the union of Newfoundland with Canada. I present this argument because the only thing we have heard from the house leader who has raised objection to this report is his contention that parliament does not have the authority to deal with the matter, that the matter is *sub judice*, that it is *ultra vires*, and everything else.

Even the Canadian Transport Commission, in its order authorizing the railway to withdraw from rail passenger service, referred to the Statutes of Canada containing the terms of union. I wish to quote briefly from the act of union in the 1949 Statutes of Canada as follows:

At the date of union, or as soon thereafter as practicable, Canada will take over the following services and will as from the date of union relieve the province of Newfoundland of the public costs incurred in respect of each service taken over, namely (a) the Newfoundland Railway—

Just to clinch it, Mr. Speaker, on April 1, 1949, 20 years ago to the day, on April Fool's day, by Order in Council P.C. 1454 the Governor in Council entrusted to Canadian National Railways the operation and management of the Newfoundland Railway, and the operative