

s. 92(10)(a). The Supreme Court accordingly found that the *Canada Labour Code* was not applicable to the shortline owned and operated by Central Western. In so holding, the Supreme Court overturned the decision of the Federal Court of Appeal.

The Supreme Court noted that it did not have to deal with another issue which had been considered by the Federal Court of Appeal, namely, whether Central Western came under federal jurisdiction by virtue of a declaration by Parliament that it was for the general advantage of Canada pursuant to s. 92(10)(c) of the *Constitution Act, 1867*. Prior to the Supreme Court's hearing of the appeal, the federal government passed legislation, retroactive to 1 July 1986, which operated to withdraw any s. 92(10)(c) declaration that might exist with respect to Central Western. Therefore it was unnecessary for the Supreme Court to address the matter of s. 92(10)(c).

In summary, it would appear from the above case that if the Truro-Sydney rail line were to be sold to a shortline operator who was provincially incorporated, the shortline would not necessarily fall under provincial labour jurisdiction. There is a possibility that the shortline could be subject to the *Canada Labour Code* on the basis of s. 92(10)(a) of the *Constitution Act, 1867*, and therefore be bound by the unions' agreements with CN, but only if it were found to satisfy either of the tests set out by the Supreme Court in the *Central Western* case.

In addition to these concerns, the Committee is well aware of the importance placed by many witnesses on the traditional role of the railway in the Province of Nova Scotia. To many it is a way of life and an essential transportation lifeline for the province. Because of this, many believe that this line must be maintained in perpetuity.

While recognizing the importance of this line to the people of Nova Scotia and the serious concerns expressed over its future, the Committee is faced with some inescapable conclusions. These are:

CN rail is not disposed to provide this service and, by its own acknowledgement, considers a private railway operator better "structured" to provide this service than it is itself;

Unless the Government of Nova Scotia can provide evidence to the contrary, under the terms of the *National Transportation Act, 1987*, CN has the legal right to sell this rail line provided it complies with all the statutory requirements and the regulatory process set out in Chapter 1;

The safeguards that have been proposed by Peat Marwick to guarantee the future of the Truro-Sydney line provide hollow comfort because they are not safeguards in the true sense;

The majority of safeguards that are proposed, such as sound management and a due diligence study, are factors that would be examined by the NTA before it allowed a sale to take place; **rather than being safeguards, they are part of the normal process for assessing whether a potential buyer is fit to operate a shortline railway;**