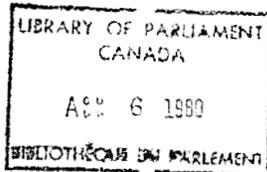


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MEETING OF THE CONTINUING COMMITTEE
OF MINISTERS ON THE CONSTITUTION

COMMUNICATIONS

Notes for a Statement by Quebec



Montreal, Quebec
July 8-11, 1980

Communications

1- The problem

The BNF Act does not contain specific provisions determining legislative authority in relation to communications. However, to justify federal intervention in this area, the Courts have used Section 92.10(a), under which the central government may legislate on "Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province", as well as Section 132 regarding obligations arising out of treaties.

More recently, the Supreme Court of Canada recognized that the federal legislative power extended to the regulation of cable TV signals from outside Canada and the regulation of the carriage of these same signals within Canada. The Supreme Court also decided that the Parliament of Canada had exclusive legislative authority with regard to the regulation of cable TV stations and their programs, at least when the TV signals broadcast over hertzian waves are intercepted and rebroadcast to subscribers to a cable company.

The fundamental importance of communications in Quebec explains the persistence shown by Quebec governments in asserting their responsibilities in this area. This is also explained, as has been said so often before, by the fact that Communications constitute for a community, a privileged, essential instrument of cultural expression and development. The importance of communications (radio, TV, etc) in the daily life of citizens is such that there is no need to stress its concrete extent.

II - Quebec 's position

During the constitutional talks of February 1979, the Prime Minister of Canada declared: "On the basic philosophy, we recognize obviously that the French-Canadian community is a distinct community culturally and linguistically from the English Canadian community, and it is certain that this duality you mention, which we have referred to, which the Pepin-Robarts Commission referred to, must be respected". Consequently, with all the respect due to that duality, Quebec, heart of French Canada, feels justified in reasserting with insistence and conviction its will to assume the development and control over all communications in its territory. Communications are all the means or

resources through which the specific values of a community are transmitted, such as its language and culture, its attitudes and way of life; it seems senseless to us to entrust to another majority the task of developing a communications policy for Quebecers.

This view has often been expressed by previous Quebec governments. We ourselves have repeated it on many occasions. We reaffirm it today.

Out of the many meetings which have been held over several years, among other things have emerged four quite distinct aspects of Communications: radio-television, cable distribution, telecommunications companies and frequency band management. The search for true constitutional reform requires that this work be approached from an overall standpoint in which the parts are truly indissociable. This means that, to us, the field of communications should be considered in its totality and not in its parts. We approach the negotiations in this spirit.

Since the Supreme Court's decision of November 1977, the federal government has sought to concentrate discussion only on cable TV leaving aside till now the other aspects of communications. The federal proposal, while recognizing the provincial role with regard to the delivery of permits, establishment of rates and the apportioning of territory, was nonetheless unsatisfactory, given that it confirmed federal supremacy over programming, limiting provincial authority in that respect. The problem is not therefore knowing how policies initiated by the Government of Canada could be managed by the federal and provincial governments, but rather to have the federal government accept the recognition of the provinces' rights to adopt and apply policies in accordance with their objectives and priorities.

The position that Quebec is putting forward today is an extension of the positions defended by previous Quebec governments and basically restates a joint proposal drafted in 1976 by Quebec and Saskatchewan. We present it again today with precisions, to take account of discussions since then.

According to this proposal, legislative authority in relation to communications would be granted to the provincial and federal governments. However, the provinces would have legislative primacy over all communications and communications systems within their respective territories,

as well as over signals originating in the province and broadcast outside that same province, including the reception and redistribution in the province of signals from outside that province.

In short, this means that provincial authority would cover namely the ownership and administration of communications and communications systems, as well as programming, including commercial advertising. The provinces could also allocate frequencies and issue permits to use these frequencies to radio and TV companies and telecommunications firms operating within their territorial boundaries. They would also be responsible for the area of interprovincial radio and television and could agree to the setting up of joint mechanisms to ensure the consistency of their policies in this respect. As radio and television constitutes a privileged instrument for collective expression in a community and a vehicle for the expression of the identity of a majority, we consider it essential to reaffirm the importance for Quebec of assuming full responsibility for educational television in its territory, which corresponds anyway to the exclusive nature of provincial jurisdiction in relation to education.

The Parliament of Canada would have the power to legislate on communications, but on the express condition that its legislation is not incompatible with legislation enacted under provincial prerogatives. It would maintain exclusive power to legislate in certain areas such as the general management of the frequency spectrum, the use of communications and communications systems in the air, defence or national emergency, and questions relative to the CBC, provided that CBC development plans are approved by the government of a province with regard to activities in that province.

It is important to stress that in addition to meeting Quebec's fundamental demands in this area, the approach advanced here would enable any province that does not have the same requirements as Quebec to leave legislation in this area up to the federal government, if it so wishes.

These are, therefore, in substance the provisions that Quebec proposes to include in a new constitution with regard to communications, from the standpoint of the four categories mentioned. The attached text expresses our concerns in this regard.

Certain other sectors in the field of culture, such as film-making and publishing, will be the subject of concrete proposals by Quebec when we reach that item on the agenda of the constitutional talks.

Quebec's proposal

Communications

CONSTITUTIONAL TEXT PROPOSED BY QUEBEC

1. In each province the legislature may make laws, subject to section (3), on communications and communications systems within the province, including the reception and redistribution within the province of broadcast signals from outside the province and the distribution outside the province of broadcast signals originating in the province. Without limiting the generality of the foregoing, the authority of the legislature on communications and communications systems will cover:
 - a) their ownership and administration;
 - b) programming, including commercial advertising;
 - c) the delivery of operating permits, as well as the specific allocation of frequencies or other technical standards.
2. The Parliament of Canada, may, from time to time, enact legislation on communications and communications systems, but no law thus enacted may affect the application of any existing or future law enacted under Section (1).
3. The Parliament of Canada may legislate on any of the following areas:
 - a) the general management of the frequency spectrum;
 - b) the use of communications and communications systems in the air, defence or national emergency;
 - c) questions relating to the CBC, whose development plans shall nevertheless be subject to approval by the government of a province with regard to activities in that province.