

FEDERAL-PROVINCIAL CONFERENCE
OF
FIRST MINISTERS

Report of the Continuing Committee of Ministers
on the Constitution to First Ministers

COMMUNICATIONS

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The Ministers studied two drafts. The federal draft is based on exclusive jurisdiction for both orders of government and provides for federal-provincial consultation.

The provincial draft supported by ten governments, is based on virtually total concurrency with each level of government being paramount in some areas. It enshrines the principle of prevention of disruption of the "free flow of information". It also provides a mechanism for the resolution of conflicts of provincial laws where such conflicts in fact disrupt the free flow of information, irrespective of intention, by way of federal legislation enacted pursuant to the petition of a province.

Frequency Spectrum

The federal draft provides for exclusive Federal jurisdiction over the spectrum. The intent of the draft is that the federal government would discharge its responsibility in a way that will not frustrate provincial jurisdiction over provincial undertakings. It was recognized that the language of the draft is inadequate for this purpose. The provincial draft provides for concurrency over the spectrum with federal paramountcy over matters of a technical nature respecting management of the radio frequency spectrum; the draft provides for provincial paramountcy over other matters which are considered to be of a non-technical nature.

Broadcasting

The federal draft provides for exclusive federal jurisdiction in this area.

The provincial draft provides for full concurrency with federal paramountcy over broadcast network undertakings extending to four or more provinces and foreign broadcast signals and residual provincial paramountcy.

Cable

The federal draft provides for exclusive federal jurisdiction over national cable undertakings operating as national carriers and cable works and undertakings that provide programming or other services beyond the limits of a province. The federal draft also provides for exclusive provincial jurisdiction over cable undertakings in the province involving off-air or closed circuit systems, subject to exclusive federal jurisdiction over distribution of a national program service as defined from time to time by Parliament, carriage of telecommunications 'for a national purpose' and technical standards and non-Canadian programming.

The provincial draft provides for exclusive provincial jurisdiction over closed circuit cable undertakings wholly situate within the province and concurrency with provincial paramountcy over other cable undertakings. The draft provides for federal paramountcy over the redistribution of broadcast signals that extend to four or more provinces and foreign broadcast signals on cable undertakings.

Carriers

The federal draft provides for exclusive federal jurisdiction over national carriers and space and satellite carriers including earth stations. It also provides for priority carriage of telecommunications 'for a national purpose' on provincial undertakings.

The draft provides for exclusive provincial jurisdiction over carrier works and undertakings in the province, except for exclusive federal jurisdiction in interprovincial and international telecommunications services, interconnection, networking, rates and charges as well as technical standards and priority carriage 'for a national purpose', technical standards and earth stations.

The provincial draft provides for exclusive provincial jurisdiction over works and undertakings wholly situated within the province. It provides for concurrent jurisdiction with provincial paramountcy over other works and undertakings subject to federal paramountcy over the space segment of communications satellites and the use of telecommunications works and undertakings for aeronautics, radio-navigation, defence, and national emergencies.

<u>Issues for Consideration by</u>	<u>t Ministers</u>
<u>Spectrum:</u>	The issue is In this area tion confer: communicati..... same the federal jurisdiction t to interfere with jurisdic- vinces in the field of
<u>Broadcasting:</u>	The issue is whether broadcasting should remain exclusively within federal jurisdiction (as per federal draft attached) or whether the field should concurrent with federal paramountcy over national networks (as per provincial draft - copy attached) and residual provincial paramountcy.
<u>Cable:</u>	Both proposals provide for provincial jurisdiction in cable systems. The issue is the extent of involvement of each order of government in this area.
<u>Carriers:</u>	The issue is whether there should be exclusive federal jurisdiction or concurrent jurisdiction with provincial paramountcy in interprovincial and international carriage.
<u>Technical Standards:</u>	The issue is whether there should be exclusive federal jurisdiction over all technical aspects of telecommunications.

RESTRICTED

GENERAL DRAFT ON COMMUNICATIONS

1. Section 91 of the B.N.A. Act would be amended by adding the following paragraphs:

(w) The frequency spectrum including technical aspects only of frequency assignment.

(x) Interprovincial and international telecommunications services and the technical aspects of telecommunications.

(y) Telecommunications works and undertakings transmitting by broadcasting and telecommunications works and undertaking, other than carrier works and undertakings, providing programming or other services beyond the limits of a province.

(z) The regulation and distribution, including distribution in priority to all other signals through land or any telecommunications undertakings in a province, of a national program service as defined from time to time by Parliament, and the regulation and distribution of non-Canadian programming.

2. Section 92 of the B.N.A. Act would be amended by adding the following paragraphs:

(y) Telecommunications carrier works and undertakings in the province other than:

) national and international telecommunications carriers;

) space and satellite telecommunications carriers including related earth stations;

) carriage on all or any telecommunications carriers in the province of telecommunications for a national purpose.

(z) Telecommunications works and undertakings providing programming or other services in the province and not within the jurisdiction of Parliament by virtue of class (y) of section 91.

3. A provision to the following effect would be added:

The Government of Canada and the governments of the provinces shall consult together at least once every year, bilaterally or on a regional or national basis, on the formulation, co-ordination and implementation of laws, policies, programmes and practices relating to telecommunications.

BEST EFFORTS DRAFT

COMMUNICATIONS

- (1) In each province the Legislature may make laws in relation to telecommunication works and undertakings in the province notwithstanding that such works and undertakings connect the province with any other or others of the provinces, extend beyond the limits of the province, or emit signals originating in the province beyond the province, or receive or distribute in the province signals originating outside the province.
- (2) The Parliament of Canada may make laws in relation to telecommunication works and undertakings mentioned in sub-section (1) other than works and undertakings wholly situate within a province.
- (3) No law enacted by the Legislature of a province or the Parliament of Canada under this section shall in its pith and substance be directed to the disruption of the free flow of information.
- (4) Any law enacted by the Legislature of a province under sub-section (1) prevails over a law enacted by Parliament under sub-section (2) except a law of Parliament in relation to:
 - (a) matters of a technical nature respecting management of the radio frequency spectrum;
 - (b) the space segment of communication satellites;
 - (c) regulation of Canadian broadcasting transmitting network undertakings that extend to four or more provinces, including the re-distribution of their signals by other telecommunications undertakings;
 - (d) foreign broadcast signals, including the re-distribution of these signals by other telecommunications undertakings;
 - (e) the use of telecommunication works and undertakings for aeronautics, radio-navigation, defence, or in national emergencies.
- (5) In the event that the laws of two or more provinces conflict so as to disrupt the free flow of information, one of the provinces may petition the Parliament of Canada to enact a law to resolve the specific conflict and such law shall prevail.