

A SURVEY OF CANADIAN BROADCASTING LEGISLATION

Canada's national broadcasting service entered a new stage on the 2nd of November when the Canadian Broadcasting Act, enacted at the last session of Parliament, came into effect. On that date the experiment of the previous four years came to a close to be succeeded by a new plan of administration. Before reviewing the new statute and its implications, it may prove of interest to survey briefly the developments preceding this legislation.

The Royal Commission on Radio Broadcasting appointed in 1929 was directed by the terms of reference "to examine into the broadcasting situation in the Dominion of Canada and to make recommendations to the Government as to the future administration, management, control and financing thereof." After an exhaustive investigation in Canada, and considering also the systems in Great Britain, in the principal countries of Europe, and the methods of the National Broadcasting Company in the United States, The Royal Commission on September 11, 1929, submitted recommendations¹ the first two of which were:

- (a) That broadcasting should be placed on a basis of public service and that the stations providing a service of this kind should be owned and operated by one national company; that provincial authorities should have full control over the programs of the station or stations in their respective areas;
- (b) That the company should be known as the Canadian Radio Broadcasting Company; that it should be vested with all the powers of private enterprise and that its status and duties should correspond to those of a public utility.

The Royal Commission strongly emphasized the desirability of nationalization of broadcasting in Canada and the following extract from its report is of particular significance:

As our foremost duty, we have concentrated our attention on the broader consideration of the interests of the listening public and of the nation. From what we have learned in our investigations and studies, we are impelled to the conclusion that these interests can be adequately served only by some form of public ownership, operation, and control behind which is the national power and prestige of the whole public of the Dominion of Canada.

Before action was taken by the Dominion Government to implement the report, the jurisdiction of the Parliament of

¹ *Report of the Royal Commission on Radio Broadcasting, 1929.* King's Printer, Ottawa.

Canada to regulate and control radio communication, and particularly whether it was within the jurisdiction of the Dominion to enact the Radio-telegraph Act, (R.S.C. 1927, Chapter 195), was questioned by the Government of the Province of Quebec in a submission to the Court of King's Bench (in appeal) of that Province. Ultimately, early in 1931, in order to determine the jurisdiction of the Dominion, the Governor General in Council, after considering a report by the Minister of Justice, referred the following questions² to the Supreme Court of Canada for hearing and consideration, pursuant to the authority of s. 35 of the Supreme Court Act, (R.S.C., 1927, Chapter 35):

1. Has the Parliament of Canada jurisdiction to regulate and control radio communication, including the transmission and reception of signs, signals, pictures, and sounds of all kinds by means of Hertzian waves, and including the right to determine the character, use and location of apparatus employed?
2. If not, in what particular or particulars or to what extent is the jurisdiction of Parliament limited?

The judgment of the majority of the Supreme Court affirmed the jurisdiction of the Parliament of Canada. On appeal to the Judicial Committee of the Privy Council this judgment was upheld. To students of Canadian constitutional law these judgments³ are of especial interest, and particularly the judgment on appeal to the Privy Council wherein their Lordships state that:

This idea of Canada as a Dominion being bound by a convention equivalent to a treaty with foreign powers was quite unthought of in 1867. It is the outcome of the gradual development of the position of Canada vis-à-vis to the mother country Great Britain, which is found in these later days expressed in the Statute of Westminster. It is not, therefore, to be expected that such a matter should be dealt with in explicit words in either s. 91 or s. 92 [of the B.N.A. Act].

And in concluding the judgment:

Although the question had obviously to be decided on the terms of the statute, it is a matter of congratulation that the result arrived at seems consonant with common sense.

When the constitutional issue was settled, immediate action was taken by the Dominion Government, to determine the pattern which radio broadcasting should follow in Canada. A special committee of the House of Commons was appointed on March 2, 1932, for the following purposes:

² Order in Council, P.C. 372, dated February 17, 1931.

³ *In the Matter of a Reference as to the Jurisdiction of Parliament to Regulate and Control Radio Communication*, [1931] S.C.R. 541. On appeal to the Privy Council, [1932] A.C. 304.

- (1) To consider the report of the Royal Commission on Radio Broadcasting dated the 11th day of September, 1929, and, commonly known as the Aird Report.
- (2) To advise and recommend a complete technical scheme for radio broadcasting for Canada, so designed as to ensure from Canadian sources as complete and satisfactory a service as the present development of radio science will permit.
- (3) To investigate and report upon the most satisfactory agency for carrying out such a scheme, with power to the said Committee to send for persons and papers and to examine witnesses, and to report from time to time to this House.

In its report,⁴ the committee recommended the creation of a Commission, rather than a publicly owned Company, with wide powers. The report was implemented by the enactment of the Canadian Radio Broadcasting Act, 1932,⁵ assented to the 27th of May, 1932, which provided for the creation of the Canadian Radio Broadcasting Commission. The Board of three Commissioners was appointed in October of that year and commenced administration as a legal body on January 18, 1933.

This was the inauguration of an entirely new national service in Canada, and the early work of the Commission was both pioneering and experimental. The statute conferred upon the Commission two main powers: (1) to regulate and control all broadcasting in Canada, and (2) to carry on the business of broadcasting in Canada. The first of these powers was previously vested in the Department of Marine under the Radiotelegraph Act, and the wisdom of placing the two powers under one authority has been questioned. The Commission had necessarily, therefore, not only to organize and develop a system of national broadcasting but also to promulgate regulations, with the authority of the Governor in Council, for the control of all broadcasting in Canada. This placed the Commission in the position of making and administering regulations applicable equally to its own stations and privately owned stations with certain of which it was in competition in so far as commercially sponsored programmes were concerned.

The organization of the national broadcasting service involved the provision of wire line and station facilities and the engagement of artists and musicians. On account of a restricted budget which did not allow any extensive capital expenditures, the Commission was able to acquire only a small nucleus of stations by purchase or lease, and had to rent time on selected

⁴ *Report of Proceedings and Minutes of Special Committee of House of Commons on Radio Broadcasting, 1932.* King's Printer, Ottawa.

⁵ The Canadian Radio Broadcasting Act, 1932, 22 and 23 Geo. V, c. 51.

stations to provide a basic national network. Wire line facilities to connect the stations had to be leased, the high cost of which became a major restrictive factor in extending operations. A survey and stock-taking of talent had to be conducted and programmes arranged. It was accordingly a historical landmark in national broadcasting in Canada when a regular schedule of one hour daily national programmes was inaugurated in the first week of May, 1933. Previously coast-to-coast network programmes had been spasmodic and uncertain, being dependent upon commercial sponsorship.

Early in the spring of 1933, the Rt. Honourable R. B. Bennett, Prime Minister, invited Major Gladstone Murray, Director of Public Relations for the British Broadcasting Corporation, and recently appointed first General Manager of the Canadian Broadcasting Corporation, to come to Canada to advise on initial organization and policy of the Commission. After a careful survey Major Murray submitted a comprehensive report⁶ on July 25, 1933, containing highly important advice. An interim report submitted earlier resulted in the enactment by Parliament of several amendments⁷ to the Canadian Radio Broadcasting Act permitting more flexibility in the development of policy and operations of the Commission.

Two special committees of the House of Commons reviewed the work of the Commission. The first, in 1934, submitted as its first recommendation⁸:

That in view of evidence given before this committee, the Government should, during the recess, consider the advisability of amending the Act, with a view to securing better broadcast facilities throughout the Dominion. In the opinion of your committee, radio broadcasting could best be conducted by a general manager.

No action was taken by the Government on this report. The second special committee⁹ appointed in 1936 not only reiterated the recommendation of the previous committee that radio broadcasting could best be conducted by a general manager, but recommended also the repeal of the Canadian Radio Broad-

⁶ *National Radio in Canada*. Report by Major Gladstone Murray, Director of Public Relations, British Broadcasting Corporation, July 25, 1933. (See newspapers of that date.)

⁷ An Act to amend the Canadian Radio Broadcasting Act, 1932. 23 and 24 Geo. V, c. 35.

⁸ *Minutes of Proceedings and Evidence and Final Report of Special Committee of House of Commons on the operations of the Commission under the Canadian Radio Broadcasting Act, 1932*. King's Printer, Ottawa.

⁹ *Minutes of Proceedings and Evidence and Final Report of Special Committee of the House of Commons on the Canadian Radio Commission, 1936*. King's Printer, Ottawa.

casting Act of 1932 and the substitution therefor of a new Act placing the direction of broadcasting under "a corporation with an honorary board of nine governors chosen to give representation to all parts of Canada." It was further recommended that the proposed corporation should be given powers corresponding to those of the British Broadcasting Corporation with certain additional powers applying to regulation of commercially sponsored programmes, and that it should be granted "the fullest possible freedom in so far as its internal activities are concerned." The recommendation of the Royal Commission (1929) that technical and regulatory control of stations should be administered by the Department of Marine under the Radiotelegraph Act was reaffirmed. Other important recommendations dealt with the development and operation of the national service under the Corporation.

These recommendations were implemented in the enactment by Parliament of the Canadian Broadcasting Act, 1936.¹⁰ This statute provided for the creation of the Canadian Broadcasting Corporation, consisting of a board of nine governors appointed by the Governor in Council and chosen to give representation to the principal geographical divisions of Canada. It is provided that the members of the board shall serve in an honorary capacity, but with a yearly honorarium to the chairman and an allowance to each other member for each meeting attended, together with travelling expenses. The appointments are for a period of three years, but of those first appointed one third retire at the end of each of three years. The Board of Governors is responsible for policy of the Corporation. Actual operations are under the direction of the General Manager who is chief executive. The General Manager and Assistant General Manager are appointed by the Governor in Council on the recommendation of the Corporation.

Section 8 of the Act defines the scope of the operating powers of the Corporation. In addition to the operation and maintenance of broadcasting stations and production, or exchange, of programmes the Corporation is empowered to "publish and distribute, whether gratis or otherwise, such papers, periodicals, and other literary matter as may seem conducive to any of the objects of the Corporation," and to "collect news relating to current events in any part of the world and in any manner that may be thought fit and to establish and subscribe to news agencies." Other provisions relate to the acquisition of copyrights

¹⁰ The Canadian Broadcasting Act, 1936. 1 Ed. VIII, c. 24.

and patents; the purchase, lease, and disposal of property; and the establishment of a pension fund for the benefit of employees.

By section 22 the Corporation is empowered to make regulations controlling programmes broadcast by Canadian stations. The Corporation has authority over all programmes broadcast in Canada, but technical and regulatory control of broadcasting stations reverts to the Department of Transport under the Radiotelegraph Act, thus abolishing the dual control vested in the former Commission. Other provisions deal with the procedure in acquiring property, by-laws, accounting, banking, working capital advances and advances for capital works, and annual audit by the Auditor General of Canada.

In contrast with the Canadian Radio Broadcasting Act of 1932, the new statute provides for freedom of action in internal management. The Corporation has full control over the employment and dismissal of employees; it maintains its own accounting system and conducts its own banking, subject to the provision that the system must be satisfactory to the Minister of Transport.

The progressive implications of this legislation can not be overestimated. First and foremost it recognizes broadcasting as a *business* distinguished from the formula for administering departments of Government. By experience, not only in Canada but over a longer period in Great Britain, the wisdom and necessity of this distinction has been demonstrated. But as a business it falls for obvious reasons within the public service type of organization. Under this legislation ultimate responsibility is vested in the Minister of Transport, but with ultimate control residing in Parliament, the Board of Governors determines and supervises policy, and actual operations and activities are directed by the General Manager.

The phenomenal development of radio broadcasting within the short space of fifteen years is one of the miracles of the age in which we live. At first regarded as a toy solely for amusement, it has become a major force of both national and international importance. The Report of the (British) Broadcasting Committee, 1935, referred to "the influence of broadcasting upon the mind and spirit of the nation," which aptly expresses the true significance of radio broadcasting. Canadian listeners should not be unmindful of the vital meaning of radio in our national life and of the wisdom of Parliament in enacting new legislation to permit development of the national service efficiently and effectively.

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