

RADIO BROADCASTING

REVISION OF RADIOTELEGRAPH ACT—CLARIFYING OF
SECTIONS DEALING WITH LICENSING RADIO
RECEIVING SETS

The house resumed from Thursday, May 12, consideration in committee of Bill No. 52, respecting radio in Canada—Mr. Howe—Mr. Sanderson in the chair.

The CHAIRMAN: Section 9.

Mr. LAWSON: As some of the prior sections to section 9 were allowed to stand, because the minister was going to consider having certain amendments moved to those prior sections, may I suggest to him that it might facilitate our dealing with the subsequent clauses if he would go back to those which stood and deal first with the proposed amendments to them?

Mr. HOWE: According to my records, the first clause to stand was section 4, subsection 1, paragraph (e). I was asked by the right hon. leader of the opposition to obtain an opinion from the Department of Justice as to the legality of that clause. I have that opinion, which I will read and table. It is from C. P. Plaxton, acting deputy minister of justice.

Dear Sir:

In connection with the consideration in the House of Commons of Bill 52, entitled "An Act respecting Radio in Canada," and in particular of the provisions of section 4 (1) (e) of the said bill which empowers the minister to make regulations,

"(e) prescribing that no radio receiving set or radio apparatus for installation or use as, or in, a private receiving station may be sold, repaired or maintained by any person until a licence is first obtained for such station;"

you request my opinion upon two questions relative to the legislative competence of the parliament of Canada which the Right Hon. Mr. Bennett asked to be submitted to this department. These two questions as set out in the issue of the House of Commons debates for May 11, 1938, page 3014, and my answers thereto are as follows:

Question 1: Has this parliament power to legislate with respect to the sale and conditions of sale of radios in Ontario?

Answer: In the form in which this question is framed, unrelated as it is to any provision of the bill, the answer would clearly be in the negative. But assuming that the question is intended to elicit an opinion as to the validity of said section 4 (1) (e), I think that the said provision, as framed, does not profess to legislate with respect to the sale and conditions of sale of radios in Ontario. It professes rather to impose a condition upon the sale or servicing of a radio receiving set or apparatus when, but only when, such set or

apparatus is "for installation or use as, or in, a private receiving station"; and "private receiving station" as defined by section 2 (f) "means a radio receiving set or radio apparatus intended for or capable of receiving broadcasting."

In the reference re Regulation and Control of Radio Communication in Canada (1932) A.C. 304, the judicial committee of the privy council (opinion by Lord Dunedin) held that broadcasting, as a subject matter of legislation, fell within the exclusive legislative competence of the dominion parliament, in virtue of section 91 (29) and section 92 (10) (a), as being within the scope of the word "telegraphs," and also an undertaking "connecting the province with any other or others of the provinces and extending beyond the limits of the province." The board said, in this connection:

"The argument of the province really depends on making, as already said, a sharp distinction between the transmitting and the receiving instrument. In their lordships' opinion this cannot be done. Once it is conceded, as it must be, keeping in view the duties under the convention, that the transmitting instrument must be so to speak under the control of the dominion, it follows in their lordships' opinion that the receiving instrument must share its fate. Broadcasting as a system cannot exist without both a transmitter and a receiver. The receiver is indeed useless without a transmitter and can be reduced to a nonentity if the transmitter closes. The system cannot be divided into two parts, each independent of the other."

It follows, in my view, that it is clearly within the competence of the dominion parliament to require all private receiving stations, as defined, to obtain licences and to pay the fees prescribed therefor; and that being the case, I think it is likewise within the competence of the dominion parliament to provide for the effective enforcement of the provisions concerning licences and payment of fees therefor by appropriate ancillary provisions. Said paragraph (e) appears, in my view, to be directed to this object, not to the object of regulating the sale or conditions of sale of radios in any province.

Question 2: Has this parliament the right to insist upon a repair contractor ascertaining whether or not a licence has been taken out by the owner of the radio upon which he is to work, and to make him liable to a penalty if he fails to do so?

Answer: In view of the observations set out in my answer to question 1, it follows that this question should be answered in the affirmative.

In view of the opinion, and in view of the fact that this section which is now being embodied in the act has been in the radio regulations passed by order in council in 1932 and in subsequent years, and that it has worked effectively and has not caused any serious difficulty to date, I recommend that paragraph (e) be allowed to stand.

The CHAIRMAN: Section 4, subsection 1, paragraph (e).