

NATIONAL ASSEMBLY

FIRST SESSION

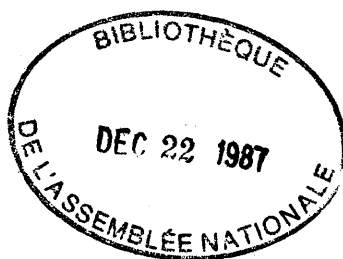
THIRTY-THIRD LEGISLATURE

Bill 110

An Act respecting the Régie des télécommunications

Introduction

**Introduced by
Mr Richard D. French
Minister of Communications**



**Québec Official Publisher
1987**

EXPLANATORY NOTES

This bill replaces the Act respecting the Régie des services publics. It establishes a board under the name "Régie des télécommunications".

The board is composed of three members and its main function, in the pursuance of its objectives, consists in the economic and technical regulation of telecommunications services. For that purpose, the board has exclusive jurisdiction

— to issue, alter or cancel an authorization to operate an undertaking whose object is the public conveyance of communications;

— to fix tariffs and conditions in respect of telecommunications services supplied by operating companies;

— to decide any dispute in respect of the application of a tariff or the provision of a telecommunications service.

The board is also required to see to the continuity and development of telecommunications services and to advise the Minister periodically on the state of the regulatory system and its correspondance to socio-economic, technical and scientific changes.

The bill empowers the Régie des télécommunications to withdraw an undertaking from tariff control, with the approval of the Government, where in its opinion the undertaking has sufficient competition to guarantee fair and reasonable prices and rates.

The bill empowers the Minister to issue directives, to be approved by the Government, regarding the aims and objectives of the board.

The bill also specifies the regulatory powers of the Government and the Régie, respectively. Regulations made by the Régie are subject to approval by the Government.

Lastly, the bill allows the board to award costs to persons whose participation at public hearings is considered expedient to the deliberations.

ACT REPLACED BY THIS BILL

- Act respecting the Régie des services publics (R.S.Q., chapter R-8)

ACTS AMENDED BY THIS BILL

- Railway Act (R.S.Q., chapter C-14)
- Cities and Towns Act (R.S.Q., chapter C-19)
- Municipal Code of Québec (R.S.Q., chapter C-27.1)
- Telegraph and Telephone Companies Act (R.S.Q., chapter C-45)
- James Bay Region Development Act (R.S.Q., chapter D-8)
- Act to secure the handicapped in the exercise of their rights (R.S.Q., chapter E-20.1)
- Hydro-Québec Act (R.S.Q., chapter H-5)
- Act respecting certain public utility installations (R.S.Q., chapter I-13)
- Act respecting the Ministère des Communications (R.S.Q., chapter M-24)
- Act respecting educational programming (R.S.Q., chapter P-30.1)
- Consumer Protection Act (R.S.Q., chapter P-40.1)
- Environment Quality Act (R.S.Q., chapter Q-2)
- Act respecting the Civil Service Superannuation Plan (R.S.Q., chapter R-12)
- Act respecting the Société de radio-télévision du Québec (R.S.Q., chapter S-11.1)

Bill 110

An Act respecting the Régie des télécommunications

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

APPLICATION

1. This Act applies, within the scope of the jurisdiction of Québec, to the distribution of telecommunications services by an operating company.

2. In this Act, unless otherwise indicated by the context,

“telecommunications undertaking” means an undertaking the object of which is the public conveyance of communications by emission, transmission or reception of sounds, images, signs, signals, data or messages by wire, cable, waves or any other electric, electronic, magnetic, electromagnetic or optical means;

“telecommunications service” means any service and any property supplied to the user by an operating company;

“operating company” means a person or company authorized to carry on a telecommunications undertaking or exercising such right as lessee, trustee, liquidator, sequestrator or assignee;

“user” means a person who buys or leases a telecommunications service.

3. This Act is binding on the Government, Government departments and agencies which are mandataries of the Government.

4. This Act is designed to further the following purposes:

(1) the availability of reliable, high-quality telecommunications services corresponding to the needs of users, throughout the territory and in every region;

(2) the application of fair and reasonable tariffs for any telecommunications service;

(3) the standardization of prices throughout the territory of Québec for comparable telecommunications services;

(4) a proper balance between the interest of users and the requirements for viability on the part of the operating companies;

(5) the continuity and extension of efficient and innovative telecommunications services to promote local and regional economic development.

CHAPTER II

RÉGIE DES TÉLÉCOMMUNICATIONS

DIVISION I

ESTABLISHMENT

5. The “Régie des télécommunications” is hereby established.

6. The Régie shall consist of three controllers, including the president and vice-president, appointed for a fixed term of not over five years by the Government, which shall fix their salaries and other conditions of employment. The term of office of a controller may be renewed only once.

The controllers shall hold office on a full-time basis.

7. At the request of the president, the Government may, for the proper dispatch of the business of the Régie, appoint two additional controllers for such period as it may determine and fix their remuneration.

8. Notwithstanding the expiry of his term, a controller may, with the authorization of the Government, continue to examine any application or request referred to him and decide it.

9. No controller may, under pain of forfeiture of office, have any direct or indirect interest in an undertaking putting his personal interest in conflict with that of the Régie. However, such forfeiture is not incurred if the interest devolves to him by succession or gift, provided he renounces or disposes of it with dispatch.

10. The vice-president shall exercise the powers of the president in case of his absence or inability to act.

11. Two controllers, including the president or vice-president, constitute a quorum. A controller shall decide only questions that are referred to him.

12. The decisions of the Régie must be made with diligence and give reasons; they form part of the records of the Régie, which shall immediately send a certified copy of every decision to the parties and the Minister of Communications. At the request of the Minister, it shall also send him a copy of any other relevant document.

13. The employees of the Régie shall be appointed and remunerated in accordance with the Public Service Act (R.S.Q., chapter F-3.1.1).

14. The Régie shall have its head office within the territory of the Communauté urbaine de Québec, and may have offices at such other places in Québec as the Minister may designate, upon recommendation of the president.

The Régie may sit at any place in Québec.

15. The Régie may make rules of internal management respecting the conduct of business.

16. Any document emanating from the Régie signed by the president or a person designated by him for that purpose is authentic. The same applies to any copy of a document emanating from the Régie certified by the president or a person designated by him for that purpose.

17. The controllers and employees of the Régie cannot be prosecuted on account of official acts done in good faith in the performance of their duties.

18. Except on a question of jurisdiction, article 33 of the Code of Civil Procedure (R.S.Q., chapter C-25) does not apply to the Régie

and no extraordinary recourse provided in articles 834 to 850 of that Code may be exercised nor any injunction granted against the Régie acting in its official capacity.

19. The fiscal year of the Régie ends on 31 March each year.

20. Not later than 30 June each year, the Régie shall send a report of its activities for the preceding fiscal year to the Minister.

The report shall include a summary of the applications and requests filed with the Régie and of the decisions it has made and the number, nature and results of the investigations conducted during the year.

The report shall also contain any other information required by the Minister on the activities of the Régie.

The Minister shall table the report in the National Assembly within thirty days after receiving it if the Assembly is then sitting or, if it is not sitting, within thirty days after the commencement of the next sitting.

DIVISION II

FUNCTIONS AND POWERS

21. The function of the Régie is to provide economic and technical regulation of telecommunications services. The Régie shall have exclusive power to

(1) issue, amend or cancel authorization to carry on a telecommunications undertaking;

(2) fix the tariffs for and the conditions applicable to the provision of telecommunications services;

(3) decide any dispute relating to the application of a tariff or the provision of any telecommunications service.

The Régie shall also ensure the continuity and development of telecommunications services.

The powers conferred on the Régie under the first paragraph shall be exercised in accordance with the regulations under sections 62 and 63 where applicable.

22. The Régie shall hear any petition and render a decision on any matter referred to it under the Act respecting educational programming (R.S.Q., chapter P-30.1).

23. Only the holder of an authorization granted by the Régie may carry on a telecommunications undertaking.

24. Any person or company wishing to carry on a telecommunications undertaking shall apply to the Régie for authorization to that effect.

The same rule applies to any operating company wishing to

- (1) cease or alter its operations;
- (2) assign or amalgamate its undertaking;
- (3) acquire or establish any other undertaking.

25. The Régie shall publish a notice in a daily newspaper of circulation within the territory contemplated in the application.

The notice shall indicate

- (1) the name and address of the applicant;
- (2) the territory contemplated;
- (3) the time fixed by the Régie within which any interested person may make representations.

26. The Régie may grant an authorization to operate to any person or company having the technical and financial capacity required to provide continuous, high-quality telecommunications services. The Régie may attach such conditions as it may fix to such an authorization.

27. The Régie may cancel or amend the authorization granted to any operating company

(1) which repeatedly contravenes this Act or the regulations thereunder in such a manner as to severely affect the quality or continuity of the telecommunications services which it provides;

(2) to which an authorization was granted or which is affected by an authorization granted pursuant to an application under the second paragraph of section 24.

28. The Régie shall ensure that the regular telecommunications services are maintained during cancellation proceedings and after an authorization is ordered cancelled pursuant to paragraph 1 of section 27.

29. On cancelling an authorization to carry on a telecommunications undertaking and subject to fair and prior compensation, the Régie may order the transfer of the whole or part of the assets and liabilities of the holder of the authorization to another operating company.

If the companies concerned do not agree on the prices, on the terms and conditions of payment of the compensation or on arbitration for that purpose within 60 days after the decision to cancel is rendered, the Régie shall fix the amount of the compensation and order payment thereof to the holder whose authorization is cancelled.

Any interested person may appeal to the Expropriation Division of the Provincial Court in respect of the compensation fixed by the Régie. Such appeal does not, however, stay the cancellation or transfer referred to in the first paragraph.

30. The employees of the operating company whose authorization is cancelled become, from the date fixed in the decision, the employees of the operating company in whose favour the transfer is made.

31. The Régie may, of its own initiative or at the request of any interested person, set forth general guidelines in respect of tariffs.

32. The price or rate of any telecommunications service shall be fixed by the Régie, which may require any relevant information or document from the operating company.

33. Before fixing tariffs, the Régie shall ascertain that the prices or rates charged by an operating company are fair and reasonable.

For that purpose, the Régie shall take into account, in particular, the level of revenues and expenditures and the return on capital required for the viability of the operating company. The Régie may also take into consideration the level of research and development expenses. It shall also see to it that prices or rates, taking regional special characteristics into account, are similar to those generally authorized for equivalent telecommunications services throughout the territory of Québec.

34. The Régie may exempt any telecommunications service from the application of section 32, subject to such conditions as it may fix, if it considers that the service has sufficient competition to guarantee fair and reasonable prices or rates. The decision of the Régie comes into force on the date of its approval by the Government.

35. In no case may an operating company charge a price or rate different from that fixed by the Régie.

Any agreement providing for a different price or rate is null and the refund of any excess amount may be claimed.

36. The Régie shall have exclusive jurisdiction to decide the location of the installations and the conditions of operation of any telecommunications undertaking. It may, in particular,

(1) in the case of an operating company authorized to extend its undertaking over the territory of a local municipality, decide any dispute between the company and the municipality in respect of the use of properties owned by the municipality and, for that purpose, allow their use subject to conditions fixed by the Régie;

(2) decide any dispute between an operating company and a local municipality in respect of conditions fixed under subparagraph 1;

(3) order, on the application of an interested person, the extension of any telecommunications service provided by an operating company over the territory of the local municipality where the company carries on its undertaking, fix conditions therefor and, where applicable, apportion costs between the operating company and the municipality.

The Régie, in all cases where its decision might derogate from a zoning by-law, shall convene the local municipality or any other person concerned by public notice.

37. The Régie, before rendering a decision that may modify the use of an immovable situated in a reserved area or in an agricultural zone established in accordance with the Act to preserve agricultural land (R.S.Q., chapter P-41.1), must obtain the advice of the Commission de protection du territoire agricole du Québec.

38. Every operating company which, by way of network interconnection, places its installations at the disposal of a third person, or any person who wishes to use the installations, must obtain the authorization of the Régie.

The Régie may attach such conditions to the authorization as it may prescribe.

39. In performing its supervisory duties, the Régie may make any decision it considers necessary in respect of the quality and the continuity

of any telecommunications service, the mode of distribution of the service and the conditions relating to the use of the installations of an operating company.

40. Every person or company concerned by a decision of the Régie shall comply therewith.

41. The Régie may decide an application in part only. It may also make any provisional decision it deems necessary to protect the rights of the parties.

42. The Régie may revise or revoke any decision it has made

(1) where a new fact is discovered which could have justified a different decision had it been known in due time;

(2) where, for reasons deemed sufficient, a party interested in the dispute could not be heard;

(3) where a substantive or procedural defect may invalidate the decision.

43. Any decision containing clerical errors, mistakes in calculation or any other error of form may be rectified by the Régie.

44. The Régie shall allow every interested person to make representations where

(1) it cancels or amends an authorization;

(2) it fixes a tariff;

(3) it allows an operating company to place its network at the disposal of another operating company or of a third party by way of network interconnection.

45. Every three years, the Régie shall give its advice to the Minister in respect of the state of the regulations and their correspondence to socioeconomic, technical and scientific changes.

The advice shall also include an analysis of the development potential of the telecommunications undertakings as to their capacity to meet the demand for modern and high-quality telecommunications services.

The Régie may give such advice to the Minister at any time if circumstances so require.

46. The Régie shall advise the Minister on any matter he may refer to it.

DIVISION III

HEARINGS

47. The Régie shall call a public hearing

(1) where it intends to set forth general guidelines on the devising of tariffs;

(2) where it is examining the advisability of exempting any telecommunications service from the application of section 32;

(3) where it intends to make a decision which may derogate from a zoning by-law.

The Régie may also, of its own initiative or on the application of an interested person, call a public hearing to examine any matter submitted to it.

48. Before the holding of a public hearing, the Régie shall give written instructions fixing the date of the filing of each party's proof and the place and date of the hearing and providing any information it considers necessary.

49. At every public hearing, the Régie shall be assisted by an attorney.

50. The Régie may cause members of its staff or any other expert it may designate to give testimony.

51. The Régie may award costs, including representation expenses and expert's fees, to persons whose participation in its proceedings it considers expedient.

DIVISION IV

INSPECTION AND INVESTIGATIONS

52. A controller or any other person designated in writing by the president may, for the purposes of an inspection to verify the carrying out of this Act,

(1) enter the establishment or property of an operating company at any reasonable time;

(2) examine and make copies of books, records, accounts, files and other documents relating to the distribution of telecommunications services;

(3) require any information in respect of the carrying out of this Act and the production of any related document.

Every person having control, custody or possession of the books, records, accounts, files and other documents shall, on request, communicate them to the controller or the designated person and facilitate his examination of them.

The controller or designated person shall, on request, identify himself and produce a certificate of his quality issued by the Régie.

53. No person may hinder the work of a controller or designated person in the performance of his inspection duties.

54. The Régie may conduct any investigation necessary for the performance of its functions and, for that purpose, the controllers and any person specially authorized by the Régie shall have the powers and immunity of commissioners appointed under the Act respecting public inquiry commissions (R.S.Q., chapter C-37), except the power to order imprisonment.

CHAPTER III

APPEAL

55. A decision of the Régie may be appealed from the Court of Appeal, with leave of a judge of that court, on any ground that involves a question of law which, in the opinion of that judge, should be submitted to the Court of Appeal.

56. The appeal is brought in accordance with the rules of the Code of Civil Procedure, except as provided under sections 75 to 78.

57. For the purposes of this chapter, any expression in the Code of Civil Procedure designating the prothonotary of the Superior Court designates the president of the Régie and any expression designating the court whose judgment is appealed from designates the Régie.

58. The application for leave to bring an appeal must be submitted within 30 days after the date on which the decision of the Régie has taken effect, by a motion accompanied with a copy of the decision and the documents related to the contestation, if they are not reproduced in the decision.

59. Any party or the Attorney General may appeal from a decision of the Régie. The Attorney General may, *ex officio* and without notice, take part in the hearing as if he were a party thereto.

60. If leave to appeal is granted, it is brought by way of an inscription filed in the office of the Court of Appeal within ten days after the judgment authorizing the appeal.

61. The appeal does not suspend the execution of the decision of the Régie.

CHAPTER IV

REGULATIONS AND DIRECTIVES

DIVISION I

REGULATIONS

62. The Government may, by regulation, establish

- (1) norms respecting the territory covered by an authorization;
- (2) terms and conditions in respect of the acquisition, assignment or amalgamation of an operating company;
- (3) the annual dues payable to the Régie by an operating company;
- (4) the duties payable to the Régie by a person or company other than an operating company;
- (5) the provisions of the regulations made under this Act the violation of which constitutes an offence.

63. The Régie may determine, by regulation,

- (1) the rights and obligations of the operating companies and of users in respect of telecommunications services;
- (2) norms relating to the operations of an operating company, its financial and administrative practices and the technical requirements it must fulfil;
- (3) norms respecting the quality and maintenance of telecommunications services;

(4) conditions respecting the use of telecommunications installations by any person other than an operating company;

(5) norms relating to methods and practices as regards tariffs.

The regulations shall be submitted to the Government for approval.

64. The Régie may prescribe rules of procedure and practice applicable to the conduct and examination of any business referred to it.

The rules shall be submitted to the Government for approval.

DIVISION II

DIRECTIVES

65. The Minister may issue directives concerning the aims and objectives of the Régie in the exercise of its functions under this Act.

The directives must be approved by the Government, and come into force on the day of their approval. Upon being approved, they bind the Régie, which shall comply therewith.

Every directive issued under this section shall be tabled in the National Assembly within fifteen days after its approval by the Government if the Assembly is sitting or, if it is not sitting, within fifteen days after the commencement of the next sitting.

CHAPTER V

PENAL PROVISIONS

66. Every operating company that contravenes the second paragraph of section 24 or section 38 is guilty of an offence and liable, in addition to costs, to a fine of not less than \$1 000 nor more than \$5 000 and, in the case of a subsequent offence within five years, to a fine of not less than \$5 000 nor more than \$25 000.

67. Every person who contravenes section 23 or 40 or a regulatory provision made under this Act the violation of which constitutes an offence under paragraph 5 of section 62 is guilty of an offence and liable, in addition to costs, to a fine of not less than \$500 nor more than \$2 500. Where the offence continues for more than one day, a separate offence shall be counted for each day during which it continues.

68. Every person who contravenes section 53 is guilty of an offence and liable, in addition to costs, to a fine of not less than \$500 nor more than \$1 000.

69. Proceedings are brought in accordance with the Summary Convictions Act (R.S.Q., chapter P-15).

70. Notwithstanding subsection 2 of section 12 of the Summary Convictions Act, separate offences may be charged in a single count.

CHAPTER VI

TRANSITIONAL AND FINAL PROVISIONS

71. This Act replaces the Act respecting the Régie des services publics (R.S.Q., chapter R-8).

72. Regulations made under the Act respecting the Régie des services publics remain in force to the extent that they are consistent with this Act.

73. The regulation fixing the tariff of fees and dues payable to the Régie des services publics by certain public services, made by Order 469-82 (1982, G.O. 2, 1066) and amended by Order 68-87 (1987, G.O. 2, 977), remains in force.

74. Orders and decisions of the Régie des services publics retain their full effect.

75. Matters before the Régie des services publics are continued before the Régie des télécommunications.

76. Notwithstanding section 6, the controllers appointed under the Act respecting the Régie des services publics remain in office until the expiry of their terms.

77. The staff of the Régie des services publics in office on (*insert here the date of assent to this Act*) become the staff of the Régie des télécommunications.

78. Appropriations granted to the Régie des services publics are transferred to the Régie des télécommunications to the extent determined by the Government.

79. Section 141 of the Railway Act (R.S.Q., chapter C-14) is amended by replacing the words “, the Commission des transports du Québec or of the Régie des services publics” in the seventh and eighth lines by the words “or the Commission des transports du Québec”.

80. Section 244 of the said Act is amended by striking out the words “the Régie des services publics” in the fourth line.

81. Section 415 of the Cities and Towns Act (R.S.Q., chapter C-19) is amended

(1) by replacing the words “Régie des services publics” in the second, third and seventh paragraphs of paragraph 18 by the words “Régie des télécommunications”;

(2) by replacing the words “secretary of the Régie des services publics” in the second line of the sixth paragraph of paragraph 18 by the words “Régie des télécommunications”.

82. Article 557 of the Municipal Code of Québec (R.S.Q., chapter C-27.1), amended by section 6 of chapter 42 and by section 755 of chapter 57 of the statutes of 1987, is again amended

(1) by replacing the words “Régie des services publics” in the fifth line of the fourth paragraph of paragraph 6 by the words “Régie des télécommunications”;

(2) by replacing the words “Régie des services publics” in the second, third and seventh paragraphs of paragraph 7 by the words “Régie des télécommunications”;

(3) by replacing the words “secretary of the Régie des services publics” in the second line of the sixth paragraph of paragraph 7 by the words “Régie des télécommunications”.

83. Section 9 of the Telegraph and Telephone Companies Act (R.S.Q., chapter C-45) is amended by replacing the words “Régie des services publics” in the first line of the third paragraph by the words “Régie des télécommunications”.

84. Section 42 of the James Bay Region Development Act (R.S.Q., chapter D-8) is amended by replacing the words “Act respecting the Régie des services publics (chapter R-8)” in the fourth and fifth lines of the first paragraph by the words “Act respecting the Régie des télécommunications”.

85. Section 68 of the Act to secure the handicapped in the exercise of their rights (R.S.Q., chapter E-20.1) is replaced by the following section:

68. The Régie des télécommunications shall see to it that every development programme, approved or modified by the Régie des services publics, for the purpose of providing to the handicapped access to telecommunications is complied with and carried out."

86. Section 30 of the Hydro-Québec Act (R.S.Q., chapter H-5) is amended by replacing the words "Régie des services publics" in the fifth line of the first paragraph by the words "Régie des télécommunications".

87. Section 39.8 of the said Act is amended by replacing the words "Act respecting the Régie des services publics (chapter R-8)" in the fourth and fifth lines by the words "Act respecting the Régie des télécommunications".

88. Section 48.1 of the said Act is amended by replacing the words "Act respecting the Régie des services publics (chapter R-8)" in the fourth and fifth lines by the words "Act respecting the Régie des télécommunications".

89. Section 2 of the Act respecting certain public utility installations (R.S.Q., chapter I-13) is amended by replacing the words "Régie des services publics" in the first and second lines by the words "Régie des télécommunications".

90. Section 4 of the Act respecting the Ministère des Communications (R.S.Q., chapter M-24) is amended

- (1) by striking out subparagraphs *a*, *b* and *f* of the first paragraph;
- (2) by striking out the second paragraph.

91. Section 1 of the Act respecting educational programming (R.S.Q., chapter P-30.1) is amended by replacing paragraph *d* by the following paragraph:

"(d) "Board" means the Régie des télécommunications."

92. Section 5 of the Act respecting the Consumer Protection Act (R.S.Q., chapter P-40.1) is amended by replacing paragraph *c* by the following paragraph:

"(c) contracts regarding any telecommunications service supplied by an operating company within the meaning of section 2 of the Act respecting the Régie des télécommunications."

93. Section 64 of the Environment Quality Act (R.S.Q., chapter Q-2) is amended by replacing the words “Régie des services publics” in the second line of the second paragraph by the words “Régie des télécommunications”.

94. Section 67 of the said Act is amended by replacing the words “Régie des services publics” in the second line of the second paragraph by the words “Régie des télécommunications”.

95. Schedule III to the Act respecting the Civil Service Superannuation Plan (R.S.Q., chapter R-12), amended by section 160 of chapter 47 of the statutes of 1987, is again amended by striking out the words “The Régie des services publics” in paragraph 1.

96. Section 20.1 of the Act respecting the Société de radio-télévision du Québec (R.S.Q., chapter S-11.1) is amended by replacing the words “Régie des services publics” in the second line by the words “Régie des télécommunications”.

97. In any Act, regulation, proclamation, order in council, order, contract or other document, the expression “Régie des services publics” is replaced by the expression “Régie des télécommunications”, unless the context indicates otherwise.

98. Any reference in statutes and statutory instruments to a provision of the Act respecting the Régie des services publics is a reference to the corresponding provision of this Act.

99. The Minister of Communications is responsible for the administration of this Act.

100. This Act comes into force on (*insert here the date of assent to this Act*).