Saying “No” by Saying “Yes”
The Canadian Radio-Television and Telecommunication Commission’s
Precedent-Setting Decision on Al Jazeera, 15 July 2004

by
Marilyn Mercer

A thesis submitted to
the Faculty of Graduate Studies and Research
in partial fulfillment of
the requirements for the degree of

Master of Journalism

School of Journalism and Communication

Carleton University
Ottawa, Ontario
December 2009

© copyright 2009, Marilyn Mercer

Library and Archives
Canada

Published Heritage
Branch

395 Wellington Street
Ottawa ON K1A 0N4
Canada

Bibliothèque et
Archives Canada

Direction du
Patrimoine de l'édition

395, rue Wellington
Ottawa ON K1A 0N4
Canada

Your file *Votre référence*
ISBN: 978-0-494-63826-2
Our file *Notre référence*
ISBN: 978-0-494-63826-2

NOTICE:

The author has granted a non-exclusive license allowing Library and Archives Canada to reproduce, publish, archive, preserve, conserve, communicate to the public by telecommunication or on the Internet, loan, distribute and sell theses worldwide, for commercial or non-commercial purposes, in microform, paper, electronic and/or any other formats.

The author retains copyright ownership and moral rights in this thesis. Neither the thesis nor substantial extracts from it may be printed or otherwise reproduced without the author's permission.

AVIS:

L'auteur a accordé une licence non exclusive permettant à la Bibliothèque et Archives Canada de reproduire, publier, archiver, sauvegarder, conserver, transmettre au public par télécommunication ou par l'Internet, prêter, distribuer et vendre des thèses partout dans le monde, à des fins commerciales ou autres, sur support microforme, papier, électronique et/ou autres formats.

L'auteur conserve la propriété du droit d'auteur et des droits moraux qui protègent cette thèse. Ni la thèse ni des extraits substantiels de celle-ci ne doivent être imprimés ou autrement reproduits sans son autorisation.

In compliance with the Canadian Privacy Act some supporting forms may have been removed from this thesis.

While these forms may be included in the document page count, their removal does not represent any loss of content from the thesis.

Conformément à la loi canadienne sur la protection de la vie privée, quelques formulaires secondaires ont été enlevés de cette thèse.

Bien que ces formulaires aient inclus dans la pagination, il n'y aura aucun contenu manquant.

■+■
Canada

Abstract

This is a case study of how the Canadian Radio-television and Telecommunications Commission (CRTC) approved a proposal by cable and satellite service providers to distribute the Arabic-language TV news channel Al Jazeera. Pro-Israel lobbyists opposed it. Unprecedented restrictions in the CRTC's July 2004 decision required Canadian carriers to block any possible abusive comment found within Al Jazeera programming *before* distributing it. Despite demand for daily news from the Arab world, Canadian carriers have yet to offer the channel to any would-be subscriber. This thesis suggests that the Commission calculated such a result to avoid violation of Canada's hate laws and to protect the regulator against a Charter of Rights and Freedoms challenge based on freedom of expression by those wishing to receive Al Jazeera. Losing such a challenge could have weakened CRTC power when changing global technology and market development were leading many to question its role and relevance.

Acknowledgements

I offer many thanks to Professor Christopher Waddell for his editing and advice by questioning. Diane Bonn in the CRTC Documentation Center was always helpful in tracking down material and people for my research. The late Charles Dalfen, former Chairman of the CRTC, clarified what was precedent-setting in the details of his Commission's policy on the Al Jazeera Arabic news network. Retired CBC executive Doug Ward offered helpful advice on contacts. Consultant David Keeble shed light on some CRTC history and provided the term "quasi-judicial theatre." Administrative law scholar Hudson Janisch generously offered me his legal insight on the Al Jazeera decision. Professors Susan Harada and Kathryn O'Hara encouraged me to the finish line. Elizabeth Dwivedi patiently proofread. Former Israeli diplomat Ofir Gendelman offered his unique insight as a lover of Arabic and as the first Jewish Israeli ever interviewed on Al Jazeera. I'm indebted to former CRTC Commissioner Stuart Langford for this thesis title, "Saying No by Saying Yes," and to both him and former vice-chair of broadcasting, Commissioner Andrée Wylie, for a rare glimpse of tribunal life. My son Matthew inspired me with his curiosity about why we don't get Al Jazeera on cable in Canada.

Contents

Introduction	1
Chapter 1: Quasi-Judicial Theatre: How the Broadcasting Distribution Undertakings (BDUs) Lost the Arabic Market	21
Chapter 2: “All this trouble from a matchbox like this?” Al Jazeera Uncensored	51
Chapter 3: A Creature of Statute: The Independent Regulator	93
Conclusion	129
Works Cited	140

List of Appendices

Appendix A: Chronology	156
Appendix B: CRTC Commissioners Who Determined the Al Jazeera Decision	158
Appendix C: CRTC Organization Chart	159

Introduction

“It was an interesting summer.”¹ The quiet-spoken Charles Dalfen, former Chairman of the regulatory tribunal called the Canadian Radio-television and Telecommunications Commission (CRTC), rationed his description of the 2004 season with an insider’s discretion. He wasn’t talking about the minority results of the June 28th federal general election or the summer’s unusually cool wet weather, which seemed to give the figurative cold shoulder to what the government-appointed members of his Commission released in mid-July of that year. One columnist went so far as to say, “[O]ur federal broadcast watchdogs should ask for danger pay . . . thanks to their decisions to pull the plug on Quebec City radio station CHOI, bar the introduction of RAI International to the digital dial while allowing in the Arabic news network Al- Jazeera.”²

Being a “creature of statute,”³ the CRTC wields the power vested in it by legislation passed by Parliament. It makes its rulings following a public process on the record, independent of secret government party cabinet meetings, but this thesis will show how political pressure from lobbyists or politicians may affect or even change the regulator’s decisions.

It is difficult to remember a week when the CRTC encountered more howling disapproval of its rulings, decisions that brought thousands out onto the streets of Québec City and busloads of protesters to Parliament Hill. The CHOI-FM notice marked the first time in the 36-year history of the Commission that it had not renewed a broadcaster’s

¹ Charles Dalfen, personal interview, 2 May 2008.

² Antonia Zerbisias, “Vilified CRTC Caught in the Act,” Toronto Star 18 July 2004.

³ Diane Rhéaume, letter to J. Edward Antecol, 24 Aug. 2006, CRTC File No.:8622-P49-200610510, 9 August 2008 <<http://www.crtc.gc.ca/archive/ENG/Letters?2006/lt060824.htm?Print=True>>.

licence “because of its verbal content.”⁴ Revoking or not renewing a licence⁵ is very rare because Canadian court cases have determined “that licensees have a right to expect renewal.”⁶

The two other rulings drawing fire in the press were on proposals by the Canadian Cable Television Association (CCTA) and Vidéotron to offer the international Italian public television service, RAI International, and the most-watched TV channel in the Arab world, Al Jazeera. The Commission released its notice on CHOI-FM on Tuesday July 13, 2004, and promptly called for applications regarding the soon-to-be-available frequency.⁷ CRTC strategists may have hoped that the uproar over CHOI-FM would divert attention from what it published two days later. Its verdicts on Al Jazeera and RAI International must have disappointed members of the Standing Committee on Canadian Heritage, chaired by MP Clifford Lincoln (Liberal – Lachine Lac Saint-Louis). One of the 97 recommendations (16.1) about the CRTC was to permit Broadcasting Distribution Undertakings (BDUs) to “enhance the diversity of international program offerings on the Canadian system.”⁸ The reaction from tens of thousands of Italian-speaking Canadians immediately put intense pressure on many Liberal MPs in Paul Martin’s government to

⁴ Kevin Dougherty, “CHOI Wastes No Time Appealing to New Minister,” *The Gazette* 21 July 2004, 9 November 2009 <<http://www.friends.ca/news-item/4333>> .

⁵ In 1968 the CRTC did not renew CJLS Yarmouth when the licensee admitted it altered broadcasts to avoid offending advertisers. (Decision CRTC 68-44 Ottawa, 3 October 1968; cited in Davey Committee, Vol. 1 at Senate Standing Committee on Mass Media, at 87.)

⁶ G. Bruce Doern, “Regulating on the Run: The Transformation of the CRTC as a Regulatory Institution,” *Canadian Public Administration* 40.3 (1997): 521.

⁷ Broadcasting Public Notice CRTC 2004-271, *CHOI-FM Non-Renewal of Licence* (13 July 2004)

⁸ Canada, Ministry of Heritage, *Our Cultural Sovereignty: The Second Century of Canadian Broadcasting*, Standing Committee on Canadian Heritage, Clifford Lincoln M.P. (Chair), 11 June 2003, 01 October 2008 <<http://www.parl.gc.ca/InfoComDoc/37/2/HERI/Studies/Reports/heri...>>.

get RAI approved, which eventually occurred in May of 2005 through a change of CRTC policy.⁹

The Al Jazeera decision, along with the initial RAI International ruling, resulted from part of an omnibus request by BDUs a year earlier to list 15 such non-Canadian third-language satellite services as eligible for digital distribution in Canada.¹⁰ The second precedent in two days saw the CRTC publish, through separate notice, approval of Al Jazeera, but it required BDUs to censor the Arabic broadcaster *ex ante*, that is, before distributing its program content, solely to keep any possible abusive comment from reaching Canadian TV screens.¹¹ Michael Hennessy, President of the CCTA, was “stunned” by the Al Jazeera decision, calling it “a frightening precedent” because it gave the distributor “a role in controlling content that we don’t originate.”¹² Normally, BDUs are forbidden by law from altering or deleting a programming service as they distribute it, unless “as required or authorized under a condition of its licence.”¹³ So the CRTC was anticipating that Al Jazeera would carry hate speech. It had never before anticipated such action by a successful applicant, thereby causing it to require prior restraint as a condition of licence.

This thesis will answer the core research question on why no BDU has thus far distributed Al Jazeera or challenged the decision in a higher court. The thesis will also examine the influence exerted by pro-Israel lobbyists, and some Liberal MPs and Senators, to keep the Arabic-language channel from being distributed in Canada.

⁹ Broadcasting Public Notice CRTC 2005-51, Revised Lists of Eligible Satellite Services (13 May 2005).

¹⁰ Broadcasting Public Notice CRTC 2003-36, Call for Comments on Proposals for the Addition of Non-Canadian Satellite Services to the List of Services Eligible for Digital Distribution (11 July 2003).

¹¹ Broadcasting Public Notice CRTC 2004-51, Requests to Add Al Jazeera to the Lists of Eligible Satellite Services for Distribution on a Digital Basis (15 July 2004).

¹² James Adams, “Al-Jazeera May Never Air in Canada,” Globe and Mail 16 July 2004.

¹³ Broadcasting Distribution Regulations, SOR/97-55, s.7, s. 8., <<http://laws.justice.gc.ca/en/showtdm/cr/SOR-97-555>>.

Al Jazeera promised it “was going to be unlike any news channel ever seen before in the Arab world.”¹⁴ It kept its promise. It launched its service from Doha, Qatar, in November 1996. By April 2003, when Saddam Hussein’s statue fell in Baghdad, Al Jazeera was the most-watched news service among Arabic-speaking people. Its audience of fifty million, including four million Europeans,¹⁵ represented a reversal of the West-to-East media flow of information. The British organization Index on Censorship awarded Al Jazeera a prize for “courage in circumventing censorship” on March 26, 2003, not long after the U.S.-led invasion of Iraq.¹⁶

Through events such as the October 2000 second Palestinian *intifada*, the October 2001 U.S.-led war in Afghanistan and the invasion of Iraq in March 2003, Arab viewers witnessed, for the first time, Western-style free press journalism deliver an Arab perspective from a media company headquartered in an Arab country.

As the only viable democracy in the Middle East, and with a free press and free-speech laws, Israel dominated the regional narrative for Western consumption. Its global reach in media influence far exceeded that of state-controlled Arab media, and in five Arab-Israeli wars, even Arabs picked up Israeli news to find out what was happening.¹⁷

Al Jazeera is approved for distribution in Israel through the Ministry of Communications. It is distributed on YES satellite and HOT cable. The channel’s willingness to reflect daily discourse in the region by airing abusive comment on some of its talk shows about Israel, and Jewish people in general, prompts pressure on the Israeli

¹⁴ Hugh Miles, Al-Jazeera: The Inside Story of the Arab News Channel That Is Challenging the West (New York: Grove, 2005) 70.

¹⁵ Miles 275.

¹⁶ Ciar Byrne, “Al-Jazeera Wins Anti-Censorship Award,” Guardian 27 Mar. 2003, 9 Aug. 2009 <<http://www.guardian.co.uk/media/2003/mar/27/tvnews.iraqandthemedial>>.

¹⁷ Jihad Fakhreddine, “The Long March of Pan-Arab Media: A Personal View,” Arab Media & Society (2007): 10-11.

government to take away Al Jazeera's press credentials.¹⁸ But Israel "knows the neighbourhood," according to Ofir Gendelman, a former Ottawa-based Israeli diplomat.¹⁹ As the country's first Arabic-speaking Jewish Israeli to appear on Al Jazeera, he pioneered a relationship that is part of what he calls "a tough game." Israel reasons that it's better to work through diplomacy, uphold freedom of speech and get its public relations narrative, or *hasbara*,²⁰ broadcast to a currently estimated 70 million viewers through the appearance of Arabic-speaking Israeli officials on the channel, than to lose an opportunity to influence the Arab man on the street, or Arab women, many of the latter being illiterate.²¹ It is a carefully constructed strategy coming out of Israel's Ministry of Foreign Affairs in Jerusalem, where Mr. Gendelman is deputy director of Arab Press and Public Affairs. He wants to think of Al Jazeera as part of a solution if "the war on terror is at least in part a war over ideas."²²

As well as in Israel, this thesis will describe the politics surrounding the distribution of Al Jazeera's Arabic news channel in the United States, which has been a grey-market source for many Canadians. The thesis will also examine some of the regulatory differences between the U.S. and Canada.

If the CRTC anticipated that Al Jazeera would air hate speech in Canada, thereby approving it only for BDUs willing to pre-clear it, the Commission must also have

¹⁸ Amir Mizroch, "Analysis: Stay in the Ring with Al-Jazeera," Jerusalem Post 12 Mar. 2008.

¹⁹ Ofir Gendelman, telephone interview with author, 16 Apr. 2008.

²⁰ *Hasbara* means "explanation" in Hebrew and may refer "variously to information, spin and propaganda," according to a Guardian News Service report by Rachel Shabi in Tel Aviv, reprinted in the Toronto Globe and Mail 2 Jan. 2009: A9.

²¹ Noha Mellor, The Making of Arab News (Oxford: Rowman & Littlefield: 2005).

²² Qtd. in George Abraham, "Al Jazeera as West's Friend," Khaleej Times Online 1 May 2007, 1 Apr. 2008 <<http://www.khaleejtimes.com/DisplayArticleNew.asp?xfile=data/opinion/2007/May/opinion...>>.

worried that CHOI-FM's past practices were a good indicator of future behavior. In 2002 it had renewed that station's licence for only two years, rather than the usual seven.²³

At the time of the CRTC five-member panel deliberation on CHOI-FM in the winter of 2004, the regulator had 97 formal complaints in its files about abusive comments, personal attacks, and failure to comply with the Radio Regulations (1986) since Genex had taken over the licence in February 1997. The station, known locally as Radio X, attracted a young, mostly male audience and its marketing strategy was hate speech.²⁴ Anyone seemed to be fair game for humiliation and ridicule, sexist suggestion, invasion of privacy, racist rumour, and some even for annihilation. One morning, host Jeff Fillion suggested on air that gassing mentally challenged people in a local institution, referred to as a "zoo," might be an appropriate way to deal with them, followed by scooping up their remains in garbage bags for trash pickup.²⁵ In due course, Genex challenged the CRTC decision in the Federal Court of Appeal and lost, whereupon Charles Dalfen proclaimed: "The decision is very clear that we have the authority to monitor, police and regulate content. . . . The idea that we can't regulate content is nonsense."²⁶ It was a point well taken after a profitable Canadian broadcaster had, for several years, been exposing many in its community to contempt. Unlike its American counterpart, the FCC (Federal Communications Commission), the CRTC doesn't have the power to levy heavy fines against a misbehaving broadcaster or order in armed marshals to shut it down if violations persist. For the CRTC, policing means "its rulings and decision are enforced

²³ Broadcasting Decision CRTC 2002-189, Short-Term Licence Renewal for CHOI-FM (16 July 2002).

²⁴ Marc Raboy, interview with Jonathan Sterne, Bad Subjects, December 2005, 15 June 2008 <<http://bad.eserver.org/issues/2006/74/raboy.html>>.

²⁵ See Broadcasting Public Notice CRTC 2004-271, par. 49.

²⁶ Rheal Sequin, "Federal Court Tunes Out Quebec City Radio Station," Globe and Mail 2 Sept. 2005.

ultimately by the courts.”²⁷ There is an assumption in Canadian law that a licence to broadcast will be renewed “unless there is clear evidence of non-compliance.”²⁸ This assumes there is an opportunity to demonstrate compliance over time.

The authority Dalfen referred to was, of course, what the Broadcasting Act bestows on the Commission in subsection 3(1) to make sure that Canadian broadcasters’ programming service will be of “high standard.” Section 10 of the Broadcasting Act gives the CRTC the authority to create regulations, which it has done. Section 3 of the Regulations forbids a licensee from broadcasting

any abusive comment that, when taken in context, tends to or is likely to expose an individual or a group or class of individuals to hatred or contempt on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, age or mental or physical disability.²⁹

In his article “Stroking the Airwaves: The Regulation of Broadcasting by the CRTC,” former CRTC Chairman John Meisel wrote:

Even if the CRTC knew in advance that a station planned to air a program that would incontrovertibly snub these (or other) regulations, it has no power to act until *after* the program in question has been broadcast. Thus freedom of speech is enshrined in the Broadcasting Act, but likewise, so is accountability. To repeat, regulation, at least in Canada, is not to be confused with censorship.³⁰

The key difference for Al Jazeera, not being Canadian, is that it’s beyond the control of a Canadian regulator if it breaks CRTC rules. But since its Al Jazeera decision, the CRTC has not anticipated that any new international services it has approved will air hate speech, thus requiring its program content to be censored *ex ante*. It did look as if the applicants for Canadian satellite subscription radio undertakings would be asked next,

²⁷ Doern. 529

²⁸ Doern. 527

²⁹ See Radio Regulations, 1986, SOR/86-982, s. 5(1), <<http://www.crtc.gc.ca/eng/LEGAL/Radioreg.htm>>.

³⁰ John Meisel, “Stroking the Airwaves: The Regulation of Broadcasting by the CRTC,” Communications in Canadian Society, ed. Craig McKie and Benjamin D. Singer (Toronto: Nelson Canada, 2001) 265-290.

given the large number of American radio services they were requesting to carry to Canadians willing to pay. In the November 2004 CRTC public hearings to license these services, lawyer Bob Buchan said that he had read the Al Jazeera decision and assumed its conditions would be applied to his client's licence, if granted.³¹ The licence was approved,³² but no such conditions were attached, despite the potential for abusive comment from the likes of American shock-jock Howard Stern, whose rants against identifiable groups such as "blacks and Arabs" were known by the CRTC to have violated the Canadian Broadcast Standards Council (CBSC) codes as far back as 1997.³³

This thesis will compare and contrast the Al Jazeera decision with others, especially those the CRTC has made on approving non-Canadian services. The CRTC deals with abusive content found within Canadian broadcast programming by investigating *ex post*, or *after* content is distributed and written complaints arrive at the Commission about what people saw or heard. CHOI-FM is a case in point. The station did not comply with repeated warnings that it had failed to meet the standards expected of a Canadian broadcaster using publicly owned airwaves. Within days of learning of the non-renewal of its licence, an estimated 50,000 demonstrators, citing freedom of expression, marched around Québec City to defend the rights of CHOI-FM, which had the largest audience in the market.³⁴

The CRTC writes its decisions with the Charter of Rights and Freedoms clearly in mind and tries to balance its reasons with the intentions of other pieces of legislation such

³¹ Transcript of proceedings before the Canadian Radio-television and Telecommunications Commission, par. 1955, 2 Nov. 2004, 11 Jan. 2008 <<http://www.crtc.gc.ca/eng/transcripts/2004tb1102.htm>>.

³² Broadcasting Decision CRTC 2005-246, Ottawa, Satellite Subscription Radio Undertaking (16 June 2005).

³³ CBSC Decision 97/98-0015+, <<http://www.cbsc.ca/english/decisions/decisions/1997/97/1017.htm>>.

³⁴ Kim Lunman, "Can't Quash CRTC Ruling, Frulla Says," Globe and Mail 31 July 2004.

as the Criminal Code. This thesis argues that while the Al Jazeera decision was open to a Charter challenge based on freedom of expression, the Commission knew it could defend the CHOI-FM decision with irrefutable evidence of non-compliance in the highest courts of the land. Law-abiding domestic broadcasters would surely have questioned the existence and credibility of the CRTC if it had allowed CHOI-FM to commandeer public airwaves indefinitely, like pirates of ill-gotten advertising gains. The CRTC was on the horns of a dilemma. To have absolutely denied Al Jazeera because of a hunch that it would air abuse in future was to run the risk of a successful legal challenge based on discrimination against a minority group. If such a challenge were later upheld in Canadian courts, based on denying BDUs and Arabic-speaking viewers reception of a news channel that met the regulator's criteria for third-language non-Canadian services, the CRTC's jurisdiction to do so could have been denied. This would have trimmed the Commission's power at a time when the Liberal-appointed Telecommunications Panel Review,³⁵ and certain witnesses appearing before the Standing Committee on Canadian Heritage, were calling for just that.³⁶ Unconditionally approving Al Jazeera would have risked costly administration to de-list the channel if complaints and evidence arrived that it was airing abusive comment. Once Arabic-speaking customers got used to the service, it would be a public relations nightmare to shut it down. Given a "matchbox"³⁷ like Al

³⁵ This panel made its final report in March 2006 recommending a restructuring of and a reduced role for the CRTC and that it refrain from *ex ante* regulation of telecommunications in Canada. See report at <www.telecomreview.ca>.

³⁶ Canada, Ministry of Heritage, Our Cultural Sovereignty.

³⁷ Egypt's President Hosni Mubarak referred to Al Jazeera as a "matchbox" after touring its studios in 2000. Hugh Miles, Al-Jazeera: The Inside Story of the Arab News Channel That Is Challenging the West (New York: Grove, 2005) 11.

Jazeera, Commissioners didn't want to ignite a scenario such as the hullabaloo over the de-listing of Country Music Television.³⁸

CHOI-FM fans were aided and abetted by the station's thirty-five employees to denounce what seemed the imminent demise of the distinctive sound of the station, a business valued at \$25 million.³⁹ Eyeing Québec voters, Opposition party leaders Stephen Harper and Jack Layton and Québec premier Jean Charest called the CRTC decision draconian. NDP Heritage critic Charlie Angus said that the CRTC wasn't representing the public's desire for "plurality of opinion on Canada's airwaves" and declared that the independent regulator needed a "comprehensive review."⁴⁰ Federal Heritage Minister Liza Frulla, appointed to her cabinet post by Prime Minister Paul Martin just a week after the CRTC decision on CHOI-FM, said that she'd have to get legal advice on whether or not her government could intervene. Non-renewal of licence is not listed in the Broadcasting Act as a category of CRTC ruling that Cabinet has the option of either setting aside or sending back to the regulator for reconsideration.⁴¹ Despite having co-authored and named the 872-page report of Clifford Lincoln's Standing Committee on Canadian Heritage, an exhaustive look at the state of Canadian broadcasting and the regulator's powers,⁴² Liza Frulla didn't seem to know that her government could only intervene if the Commission was issuing, amending or renewing a licence.

³⁸ Keith Acheson and Christopher Maule, "Canada's Cultural Policies: You Can't Have It Both Ways," Canadian Foreign Policy 4.3, Winter 1997.

³⁹ Tu Thanh Ha, "Free-Speech Fight Erupts After CRTC Bans Station," Globe and Mail 14 July 2004.

⁴⁰ "Thousands March in Support of Quebec Radio Station," CBC News, 10 Aug. 2004, CBC.ca 2004, 5 May 2008<<http://www.cbc.ca/canada/story/2004/08/10/choiottawa040810.html>>.

⁴¹ Broadcasting Act, S.C. 1991, section 28.

⁴² Laura Bracken, "Remember the Lincoln Report? Well, It's Back.," Playback Magazine 3 Jan. 2005.

This thesis will demonstrate the regulator's broad powers of discretion to make broadcasting policy and regulations, to give exemptions to those regulations and to create policy inconsistency, to make conditions of licensing, and to interpret the broadcasting needs and interests of Canada's multicultural communities, favouring Canadian broadcasters not yet ready to serve them over foreign ones that are. The Commission approves or denies non-Canadian third-language services for distribution in Canada. According to former CRTC Commissioner Stuart Langford, the CRTC tests for approval were about "competitiveness against Canadian signals, Canadian service providers."⁴³ This case study will look at the transparency of that process through analysis of written CRTC reasons in selected decisions.

When the CCTA and Vidéotron proposed in 2003 that the CRTC list Al Jazeera, RAI International and additional non-Canadian third-language digital satellite services, they were aware that satellite TV piracy was costing their industry roughly \$400 million a year in revenues flowing through grey or black market signal access, enabled by phony U.S. billing addresses or illegal decoder cards.⁴⁴

The CRTC exists under the Broadcasting Act to watch over and regulate Canada's broadcasting system, which should "safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada."⁴⁵ It is expected to provide heft to domestic sovereignty and national identity within the federal Heritage Department's quest to protect Canadian culture from foreign domination.

⁴³ Stuart Langford, personal interview, 31 Mar. 2008.

⁴⁴ "CRTC Head Slams Satellite TV Piracy," CBC.ca Arts 2002, CBC News online, 31 Jan. 2008 <<http://www.cbc.ca/arts/story/2002/11/29/crtc291102.html>>

⁴⁵ Broadcasting Act, S.C. 1991, c.11, s.5.

To show the context in which the CRTC made its Al Jazeera decision, this thesis will refer to the CHOI-FM ruling. It preceded the Al Jazeera decision by two days, perhaps planned to signal consistency on regulating abusive content, no matter if made in Canada or off shore. The issue of freedom of expression was cited in both decisions, but only CHOI-FM took the CRTC to the Federal Court of Appeal. Technically, according to former CRTC vice-chair of broadcasting Andrée Wylie, an original applicant for a licence can reapply for that licence if it comes “forward with a different case,” meaning a way to convince the CRTC of its intention to play by the rules of Canadian broadcasting policy and legislation.⁴⁶ CHOI-FM did not do that, nor did the Canadian sponsors of Al Jazeera repeat their request to carry it without conditions of licence, conditions which amount to *denial*, not approval.

Through various media, CHOI-FM licensee Genex Communications Inc. (Genex), headed by Patrice Demers, demonized the Commission for violating the station’s freedom of expression. Genex vowed to take the CRTC to court for violating the free speech rights of its morning shock-jocks Jean-Francois (Jeff) Fillion and André Arthur, from CHOI-FM sister station CKNU-FM, who hooked up for a simulcast half-hour weekday chat full of invective and coarse commentary.

What the CRTC did in setting a precedent with Genex was not the same as saying that its on-air staff could not express their views, but rather determining that the morning show content was “inappropriate and incompatible with holding the public trust incumbent in a license to broadcast.”⁴⁷ In other words, Genex was behaving as if it had rights but no responsibilities within a community whose public airwaves it was using to

⁴⁶ Andrée Wylie, personal interview, 15 Jan. 2008.

⁴⁷ Marc Raboy, “CRTC Is Doing Its Job: CHOI Ruling,” Montreal Gazette 16 July 2004.

make a fortune marketing abusive comment as entertainment. So the CRTC had to be the intermediary through which CHOI-FM met its obligations.

The CRTC is charged with deciding who gets a licence to broadcast in Canada. Its investigation into the conduct of the CHOI-FM licensee was triggered by years of complaints from the public, *after* offending comments were aired, or *ex post*. Genex owner Patrice Demers accused the CRTC of censoring his enterprise, and his lawyer Guy Bertrand said the decision was political because the station's politics "angers the political elite."⁴⁸ André Arthur, or King Arthur as he's known in Quebec City, is an avowed libertarian federalist. His years at various radio "pulpits" meant his views were well known to voters. After he lost his job at Genex, they sent him twice to Parliament as an MP (Independent – Portneuf-Jacques-Cartier). Arthur, assigned by a minority Conservative government to the Commons Industry Committee, which monitors the telecommunications mandate of the CRTC, was asked if he liked that turn of events, to which he replied, "Ask a fire-hydrant if it likes dogs."⁴⁹

The Federal Court of Appeal decided that so far as Genex was concerned, the CRTC did not "unlawfully set itself up as a censor of the content of the appellant's programs."⁵⁰ In the end, Genex preferred to sell its enterprise to another company rather than pursue a Supreme Court of Canada appeal, and the CRTC approved of that.⁵¹

It's no sure bet that the courts would have sided with the CRTC had the sponsors of Al Jazeera appealed its approval with conditions, conditions that essentially denied it the chance to be provided in Canada. A year and a half later, during hearings to consider

⁴⁸ Rheal Seguin, "Federal Court Tunes Out Quebec City Radio Station," Globe and Mail 2 Sept. 2005.

⁴⁹ Elizabeth Thompson, "Shock Jock Monitors CRTC," Montreal Gazette 27 Apr. 2006.

⁵⁰ Genex Communications Inc. v. Canada (Attorney General), (2005 FCA 283), 1 Sept. 2005.

⁵¹ Broadcasting Decision CRTC 2006-600 Ottawa, Radio Nord Communication Inc., French-Language FM Radio Station in Québec (20 Oct. 2006).

adding nine non-Canadian Chinese-language services to digital distribution lists, the CRTC heard details from Rogers Communications Inc. as it urged the Commission not to repeat the Al Jazeera decision, saying it was “tantamount to a denial of the request” and did not meet the “objectives of the Broadcasting Act.”⁵²

I approach this thesis “as a general student of the politics of regulation.”⁵³ This does not necessarily refer to partisan party politics, “but rather to areas where the CRTC takes on roles in resolving or simply debating issues, where the different values of interests must be aired and discussed.”⁵⁴ I have set the thesis out in three chapters. The first will examine the CRTC public hearing, which, as the Commission’s former vice-chair of broadcasting Andrée Wylie explains, was an administrative “all paper process” without oral presentation, a kind of electronic “public sphere” given the application was neither for a new licence to broadcast, nor the renewal of a licence.⁵⁵ That was the case with the CCTA and Vidéotron proposals to distribute Al Jazeera, RAI International and thirteen other non-Canadian third-language services to Canadian cable subscribers via digital distribution. At that time, the hearing generated one of the largest, if not *the* largest response by interveners for a distribution request by BDUs, with 1,200 submissions in support of Al Jazeera alone, and 500 opposed.⁵⁶ Chapter 1 will look at the context in which participants found themselves leading up to the summer hearing of 2003, and at

⁵² Broadcasting Public Notice CRTC 2006-166, Addition of Nine Non-Canadian Chinese-Language Services to the Lists of Eligible Satellite Services for Distribution on a Digital Basis, 22 Dec. 2006.

⁵³ Richard J. Schultz, “Still Standing: The CRTC, 1976-1996,” Changing the Rules: Canadian Regulatory Regimes and Institutions, ed. G. Bruce Doern, M. Margaret Hill, J. Michael Prince and Richard Schultz (Toronto: U of Toronto P, 1999).

⁵⁴ Doern 528.

⁵⁵ Jürgen Habermas, The Structural Transformation of the Public Sphere (Cambridge: MIT Press, 1962). The “public sphere” is a kind of imagined community, which comes together with the state to determine what society needs.

⁵⁶ Simon Tuck and Richard Blackwell, “No Hearings as Al-Jazeera Wins Bid,” Globe and Mail 19 July 2004.

the Commission's quasi-judicial process, which was "broadly but not totally independent from elected ministers."⁵⁷ Under the 1991 Broadcasting Act, CRTC decisions on Canadian operations may, within certain limits, be appealed to the federal Cabinet and potentially referred back to the Commission for reconsideration, or set aside altogether citing written reasons. Decisions on the distribution of non-Canadian services are final and cannot be appealed to Cabinet.⁵⁸ For this reason, federal ministers may be pressured directly by those supporting non-Canadian proposals, and CRTC Commissioners are lobbied publicly in the normal course of accepting arguments and evidence presented at hearings. In an effort to protect TeleLatino, a Canadian station (owned by Corus Entertainment Inc.) broadcasting in Spanish and Italian, the CRTC turned down RAI International, which pressured Cabinet members in Paul Martin's government to get the decision reversed through a "revised approach" in CRTC assessment to approving non-Canadian third-language TV services.⁵⁹ Lobbying can become "pretty nasty," according to former CRTC commissioner Andrew Cardozo: "[L]obbying is extremely heavy, I would say often crosses the line, and becomes personal, either with ministers or personal with commissioners."⁶⁰ Former Heritage Minister Sheila Copps says that she nipped lobbying of her office in the bud by never overturning a CRTC decision.⁶¹

Chapter 1 reveals that Liberal Party MPs did try to influence the CRTC's Al Jazeera decision. Both the pro-Israel and the Arab lobby groups played key roles in the outcome, and this chapter examines some of the tactics used to influence the Commission,

⁵⁷ Doern.

⁵⁸ Andrée Whylic, personal interview, 15 Jan. 2008.

⁵⁹ Broadcasting Public Notice CRTC 2004-96, Improving the Diversity of Third-Language Television Services: A Revised Approach (16 Dec. 2004).

⁶⁰ Jennifer Ditchburn, "Arms-Length Telecom Regulator in an Arm-Wrestle with Conservatives," Canadian Press 26 Dec. 2006.

⁶¹ Sheila Copps, personal interview, 3 Mar. 2008.

including what Al Jazeera and its champions did to try to prove the service would fit into the Canadian broadcasting system. Part of the objective of this chapter is to examine what quasi-judicial means in light of the Al Jazeera decision, which was taken unanimously by the full nine-member Commission panel, without any written dissent.

Chapter 2 will look at the nature of Al Jazeera, its origins, and why its content is so controversial, both within the Arab world and elsewhere. Some scholarly analysis of Arab news values and observations by key Al Jazeera Arabic watchers will, hopefully, clarify Al Jazeera's challenge to the way western media is covering international affairs post 9/11.

Chapter 3 will focus on the CRTC as an institution. It has no direct jurisdiction over non-Canadian channels such as Al Jazeera. If it is to "command and control"⁶² both consumers of international broadcasting content and those who produce it, the Commission has only one point of constraint on behaviour and that is the Canadian sponsors, in this case BDUs. The "paper hearing" requesting carriage of Al Jazeera Arabic, RAI International and other services in July 2003 will be compared with other subsequent ones on non-Canadian third-language service proposals, which led in 2006, for example, to approving, without conditions, both Al Arabiya, a Saudi owned Arabic-language news channel launched to compete with Al Jazeera in 2003, and nine Chinese state broadcasting services.

The CRTC reports to Parliament through the Ministry for Canadian Heritage, but retains virtually all of the responsibility as an industry regulator for making Canada's

⁶² Richard Schultz, "Canadian Communications and the Spectre of Globalization: 'Just Another Word ...,'" How Canadians Communicate II: Media, Globalization, and Identity, ed. David Taras, Maria Bakardjieva, and Frits Pannekoek (Calgary: U of Calgary P, 2007) 23-46.

broadcasting policy.⁶³ It is the contention of this thesis that the decision on Al Jazeera was taken to protect that tradition.

Sources, terminology, methodology and scope of the study

This case study deals with the CRTC decision on Al Jazeera, the context in which that decision was taken, what Al Jazeera's Canadian champions first proposed in spring 2003, and what they got in summer 2004. For comparative purposes it also refers to selected decisions made both prior to as well as during the Dalfen-led Commission, which ended when Mr. Dalfen's term finished at the end of December in 2006. I have used a historical methodology, trying to follow links from each bit of evidence revealed on why BDUs did not offer Al Jazeera to their customers, when the channel's popularity was at an all-time high in the Arab world. Technological advancement as well as geopolitical context form a backdrop to the decision, given post 9/11 and pro-Israel networks' opposition to Al Jazeera, which was seen as "a mouthpiece for terrorists."⁶⁴

The 22 countries of the Arab world, in which Al Jazeera is the most-watched TV service, comprise a geographic region larger than Canada with ten times the population.⁶⁵ Referring to Arab people as an "ethnic group" seems misleading. Their world is a language group for the purposes of this case study. There are several references to 500,000 people of Arab origin living in Canada in both the BDU proposals and interventions seen at the CRTC public hearing process. I will refer to Statistics Canada census figures regarding the number of Arabic-language speakers in Canada. The terms

⁶³ Schultz, "Still Standing: The CRTC, 1976-1996" (Toronto: U of Toronto P, 1999).

⁶⁴ Miles 112.

⁶⁵ Steve Paikin, The Agenda, TVO, 28 May 2008, 02 Oct. 2008 <http://www.tvo.org/cfm/x/tvoorg/theagenda/index.cfm?page_id=7&bpn=779221&ts=2008-05-28%20%2020:00:45.0>.

“Israel lobby” or “pro-Israel network,”⁶⁶ rather than “Jewish lobby,” will be used to refer to Al Jazeera’s opposition; not all Jewish people support Israel’s policies and actions or oppose approving Al Jazeera for Canadian distribution, and many who support Israel and oppose Al Jazeera are not Jewish.

My original hypothesis assumed that the pro-Israel lobby persuaded the Commission to conclude what it did. This assumption was based largely on attribution by various media, including that of the Canadian Jewish Congress (CJC), to the lobby’s arguments in winning over the Commission. CJC president Ed Morgan said after the 2004 decision, “[W]e are pleased that the alternatives CJC recommended to the CRTC to protect minority communities in Canada from vilification while still protecting free speech have been accepted.”⁶⁷ Such persuasive efforts may have played a role, but I will argue that the over-riding reason for the CRTC decision on Al Jazeera had more to do with its institutional concerns about holding onto the considerable power it has to independently regulate the Canadian broadcasting system and to create policy under which international services may become part of that.

Some people were reluctant to go on the record for this case study, most notably some former CRTC Commissioners and current staff, who did not want to be tape-recorded. One senior Commission lawyer agreed to go on the record but later declined, as so instructed by his employer. Whether for reasons to do with the quasi-judicial status of the CRTC or whether the Al Jazeera decision is “an embarrassment,” as one academic

⁶⁶ John J. Mearsheimer and Walt M. Stephen, The Israel Lobby and U.S. Foreign Policy (Toronto: Penguin Group [Canada], 2007).

⁶⁷ Ron Csillag, “Al-Jazeera Ruling Evokes Mixed Response,” CJC 28 July 2004, 30 Oct. 2007 <<http://www.cjc.ca/ptemplate.php?Story=925&action=itn>>.

administrative lawyer has suggested,⁶⁸ persuading primary sources to talk to gather supporting evidence for this thesis has been challenging. Vidéotron refused an interview on the question of a potential pro-Israel subscriber boycott, referred to in Montreal media, saying that it never discusses its negotiations on proposed new service offerings with those outside the company. An MP co-chair of the ad hoc group Liberal Parliamentarians for Israel ignored e-mails requesting an interview on this group's late intervention. Communications lawyer Bob Buchan, who has appeared many times before the Commission, ignored requests for an interview on the Al Jazeera case, one he anticipated would have implications for his client's application to establish Canadian Satellite Radio in partnership with American XM satellite radio. Neither Janet Yale nor her successor to the CCTA leadership, Michael Hennessy, were available to interview given their subsequent senior roles at Telus, which regularly appears before the CRTC.

I have relied on primary sources from CRTC files, some of which I received after repeated requests. I have also relied on personal interviews, records of Heritage Department meetings with CRTC officers, various reports, and on one access-to-information request. The latter was for the CRTC minutes of its February 25-27, 2004, deliberations on the request to distribute Al Jazeera and other non-Canadian third-language digital TV services. The CRTC sought an independent legal opinion on its Al Jazeera decision,⁶⁹ which it does prior to any published ruling, the jurisdiction of which might later be questioned.⁷⁰ This 13-page document was not available for my research.

This case study seeks to understand how the CRTC balances the various laws, regulations, responsibilities and interests affecting broadcasting services before

⁶⁸ Hudson Janisch, personal interview, 29 Apr. 2008.

⁶⁹ Wylie, personal interview.

⁷⁰ Janisch, personal interview.

publishing its reasons for decisions. For the curious onlooker, there are not many opportunities for “follow up questions,” which could lead to a clearer view through a less steamed-up transparency. I hope this work will reinforce the too few sources of academic analysis of the CRTC and of the politics of its regulation.

Chapter One

Quasi-Judicial Theatre: How the Broadcasting Distribution Undertakings Lost the Arabic Market

It is not often that someone gives evidence before a parliamentary committee about shopping adventures, but that's what Janet Yale did when she appeared before the Standing Committee on Canadian Heritage on February 19, 2002. In her capacity as President and CEO of the industry lobby called the Canadian Cable Television Association (CCTA), she was testifying in front of the group chaired by MP Clifford Lincoln studying the state of the Canadian Broadcasting System. The MPs wondered how Canada's Broadcasting Distribution Undertakings (BDUs) calculated their financial losses from Canadians accessing the grey market of Direct Broadcast Satellite (DBS) systems in the U.S. through companies such as DirecTV and Dish Network. Dish had been carrying the Arabic-language Al Jazeera news channel since 1999. Many residents of Middle Eastern heritage in Canada watched it in their neighbourhood cafés.⁷¹ Restaurant operators wanting to draw trade could hack into U.S. DBS systems, decode encrypted signals, and get the channel free. Some grey-market customers paid U.S. companies after getting an American mailing address, from which they could be billed. DBS has been referred to as "a cable company in the sky, albeit with vastly improved choice."⁷² Ms. Yale testified that the problem of signal theft in Canada was particularly acute in populated areas near the American border, such as southwestern Ontario. She said the market loss affected all Canadian distributors whether satellite or cable. Satellite dish and decoding card dealers could bring the gear into the country without Canada

⁷¹ Jeff Heinrich, "Don't Expect Al-Jazeera Here Too Soon, Videotron Cautions," The Gazette 21 July 2004.

⁷² Paul Attallah, "Narrowcasting: Home Video and DBS," Cultural Industries in Canada: Problems, Policies and Prospects, ed. Michael Dorland (Toronto: James Lorimer, 1996) 257-279.

Customs batting an eye. Specialty or convenience stores sold the dishes and cards where people such as Ms. Yale could buy them: “We’ve done that just to see how easy it is to do. It’s not illegal to sell the cards. It’s not illegal to buy the dishes.”⁷³ That’s why the ambiguous legal market was called “grey.” It wasn’t illegal to sell the hardware for greater choice of satellite signals from south of the border. It was illegal, however, for Canadians to receive content not approved by the CRTC and for which no copyright fees were paid. Canadian BDUs authorize customers through selling them decoding devices to unscramble encrypted signals. BDUs contribute a minimum of 5 percent of their gross annual revenue towards making Canadian content, and between September 2002 and August 2003 that amounted to \$135.7 million.⁷⁴ So the CCTA saw lots of potential losers and wanted CRTC sanction to distribute more international services to maximize choice for customers, to keep them from stealing signals where no copyright fees had been paid, and to add value to its industry’s investment of \$5 billion in extending broadband and making digital network upgrades.⁷⁵

“You can’t compete with free” was the mantra of Janet Yale’s leadership, not just of the CCTA, but also as chair of the Canadian Television Fund. The regulated tend to support regulation as a “means of controlling risk.”⁷⁶ At the Broadcast Executives Society luncheon in Toronto on September 19, 2002, Yale asked that the CRTC “give customers what they want,” regulate consistently so that her industry could more easily access capital, and deal with the grey and black marketers whose Christmas sales would

⁷³ Canada, Parliament, Standing Committee on Canadian Heritage, Evidence Contents, Feb. 2002, 14 Oct 2008 <<http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=585887&Language=E&Mode=1&Parl=37&Ses=1>>.

⁷⁴ Canada, CRTC, Performance Report, 31 Mar. 2004, 15 Feb. 2008 <<http://www.crtc.gc.ca/eng/BACKGRND/dpr2004/dpr2004.htm#ac>>.

⁷⁵ Canada, Ministry of Heritage, Our Cultural Sovereignty, ch. 12.

⁷⁶ Liora Salter, “Accountability and Capture of Agencies: Proposals for Change,” Canada's Century: Governance in a Maturing Society, ed. C.E.S. Franks (Montreal & Kingston: McGill-Queen's UP, 1995).

continue promoting the tools to steal what the CCTA members were selling.⁷⁷ Ms. Yale, a lawyer, had previously worked at the CRTC. She understood that the agreement between a licensed BDU and its regulator was also conciliation, a social bargain. In exchange for the privilege of licence, BDUs are expected to support cultural policy objectives by donating to the cost of making content through the television fund accessed by Canadian producers. Yale lobbied the CRTC the following month in a letter about the impact of signal theft, saying that it deprived programmers of revenues from advertising, it deprived producers of licence fees, and that the more Canadians “defected” to the grey and black markets, the less support there would be for the Canadian broadcasting system in general.⁷⁸

The CRTC got the message that if it didn’t do something, it might not have as much to regulate as it thought. It began informal consultation with various industry players, including many who had started the Coalition Against Satellite Signal Theft (CASST), which spent more than \$8 million for airtime to campaign against signal theft in the four months ending in February 2003.⁷⁹ Beyond reporting the industry’s progress in the CRTC Chairman’s speeches and the regulator’s Broadcast Monitor Report, the Commission prepared to receive more proposals for authorizing non-Canadian services. The CCTA evidence from its industry surveys indicated that between 520,000 and 700,000 households in Canadian border areas such as Estevan, Saskatchewan; Saint John, New Brunswick; and southwestern Ontario were taking unauthorized services and getting no

⁷⁷ Janet Yale, “You Can’t Compete With Free,” Broadcast Executives Society luncheon, Toronto, Sept. 2002, 29 Sept. 2008 <<http://www.digitalhome.ca/forum/showthread.php?t=2392>>.

⁷⁸ Letter from CCTA to CRTC, 28 Oct. 2002, CRTC file # 01RP37 – X/03, Vol. 5.

⁷⁹ Canada, CRTC, Performance Report, 31 Mar. 2004, 15 Feb. 2008 <<http://www.crtc.gc.ca/eng/BACKGRND/dpr2004/dpr2004.htm#ac>>.

Canadian content.⁸⁰ In Hamilton, Mountain Cable watched illegal DirecTV dishes springing up like toadstools in every part of town and wanted permission to offer the very popular HBO and Showtime American pay TV channels to its customers.⁸¹ In addition to these efforts to keep people watching the Canadian broadcasting system, Janet Yale asked the CRTC to let CCTA members add Fox News, ESPN and Nickelodeon Kids to digital services, in place since 2001. Canadians were increasingly getting entertainment such as games, DVDs and the Internet on their TVs, “where they want, when they want.”⁸²

There are, according to the 2006 Canadian census, approximately 17,000 Arabic speakers in the Windsor and London areas of Ontario.⁸³ Many of them have relatives across the border in Dearborn, Michigan, where, according to the 2000 U.S. census, roughly 30 percent of the population is Arab-American.⁸⁴ Services such as Al Jazeera are available through the American company Dish Network, which carries fifteen Arabic channels through three tiers from \$26 to \$40 per month, sold separately from basic programming.⁸⁵ With little to choose from in the way of Western-style news in Arabic, lots of Arabic-speaking residents in North America wanted Al Jazeera, which was available in most of their heritage countries. The Broadcasting Act of 1991 states that broadcasting in Canada should “reflect the multicultural and multiracial nature of

⁸⁰ Study commissioned by the CCTA in 2002 by the firm Gregg Kelly, Sullivan & Woolstencroft, CRTC file # 01RP37-X/03, Vol. 5.

⁸¹ Mark McNeil, “Cable companies want even TV Field,” Hamilton Spectator 23 August 2003, 9 November 2009 <<http://www.friends.ca/news-item/4832>>.

⁸² McNeil.

⁸³ Canada, Statistics Canada, 2006 Census, Profile of Language, Immigration, Citizenship, Mobility and Migration, Cat. No. 94-577-X2006004, Dec. 2007, 29 June 2008 <<http://www12.statcan.ca/english/census06/data/profiles/release/index.cfm>>.

⁸⁴ United States Census, Arab Population in Selected Places: 2000, <www.census.gov/prod/2003pubs/c2kbr-23.pdf>.

⁸⁵ Dish Network, Channel Descriptions, 10 Oct. 2008 <http://www.idishnetwork.com/programming_channel-desc.php>.

Canadian society” (section 3.1.d iii). With few Canadian TV service options in non-official languages, multicultural communities were looking south of the border to grey and black market dealers for the means to get greater choice in one of the most globalized countries in the world.⁸⁶

In March 2003, with war looming in Iraq, Canadian lawyer Bernard Montigny was acting as communications consultant for Reach Media of California. It holds North America’s distribution rights for Al Jazeera. In a letter dated March 13, 2003, Mr. Montigny asked both the CCTA and Vidéotron to sponsor Al Jazeera’s passage “through the proper channels” of approval for the Canadian broadcasting system.⁸⁷ (He is the same Mr. Montigny who later became the CRTC’s General Counsel, Broadcasting.)

Representing Reach Media Inc., which had offices in Montreal at the time, Mr. Montigny advised Janet Yale that his client distributed Al Jazeera in the United States and “strongly wishes to import it in Canada.” He addressed Canada’s historical concerns about cultural sovereignty with the assurance, “There are no American or European programs aired in Al Jazeera.”

On the face of it, Montigny’s letter seemed to foretell success before the regulator, as it listed how the Arabic news channel met the criteria expected by the CRTC for the request to be listed.⁸⁸ That is, Al Jazeera, through its agent, agreed to be sponsored by the Canadian party filing the proposal, had distribution rights for Canada, would not prevent a Canadian broadcaster from obtaining rights to its programming, would not compete with a Canadian service, and showed evidence of demand for its programming.

⁸⁶ In Foreign Policy magazine’s globalization index of 62 countries, Canada ranked 7th in 2003, ahead of both the U.S. and the U.K.

⁸⁷ Bernard Montigny, letter to Janet Yale, CCTA, and to Edward Trépanier, Vidéotron, 13 Mar. 2003, CRTC files.

⁸⁸ Broadcasting Public Notice CRTC 2003-36.

Included was a description of the Arabic-language service and a copy of the program schedule, with the assurance that “Al Jazeera’s style is freedom of expression and balanced editorial content with respect for opinion diversity.” Living in Quebec at the time, Mr. Montigny had to be aware of CHOI-FM’s style of freedom of expression, about which CRTC Chairman Charles Dalfen would later say is not an absolute right, but one balanced “against equal and opposite rights.”⁸⁹ In CHOI-FM’s case, Dalfen made the distinction, “It is not about controversial comments. It is about abusive comments.”⁹⁰ Failure to take responsibility for preventing such comment echoed subsequent reasons for the Al Jazeera decision, except that its approval would impose responsibility for potential violations on a BDU not previously held accountable for programming other than the community programming it originated, and without 7 years to comply, as CHOI-FM had had.

According to the 2006 Canadian census, the combined Arabic-language population of Quebec City and Montreal is 112,290. Fourteen percent of Montreal’s population is Arabic-speaking. Vidéotron provides cable to most Quebec subscribers and to Gatineau, Quebec, where the Arabic-speaking population combined with that of Ottawa is 30,895, or 16% of the regional population. In March 2003, as the Anglo-American coalition invasion of Iraq dominated world news, Vidéotron hoped to cut grey market business within the Arabic-speaking community. A few months later, Vidéotron spokesperson

⁸⁹Tuck and Blackwell.

⁹⁰ Richard Blackwell, "Radio Crackdown Opens Deep Divide," Globe and Mail 15 July 2004.

Jean-Paul Galarneau told CBC The National: “If we don’t offer . . . Al Jazeera, the Arabic people are going to purchase an American dish.”⁹¹

CCTA member companies such as Cogeco Cable Inc. (Cogeco) serving the London, Ontario, area and Rogers Communications Inc. (Rogers) serving Toronto, where, according to the 2006 Census, the Arabic-speaking population is about 56,000, were no doubt banking on the same plan when the CCTA, in receipt of Bernard Montigny’s request for sponsorship, applied to the CRTC to launch several more non-Canadian third language satellite TV services in 2003, and added Al Jazeera to the mix. The Lincoln Committee heard in 2002 that multicultural communities in Canada were so frustrated with the lack of TV variety in their languages that to pick up a greater array of channels from the U.S. they were raffling off satellite dishes and decoding gear in church and mosque basements following religious services.

When the Supreme Court of Canada interpreted the Radiocommunications Act to mean that receiving unlicensed satellite programming broke Canadian law, the RCMP was ordered to crack down on violators, make a bee-line to suspect homes and drive off with any dodgy direct-to-home dishes.⁹²

Globalization has been described as “the archetypal late-modern condition,” which results in increasing numbers of people from myriad cultures uprooting their lives and moving elsewhere in the world.⁹³ Academic Kevin Dowler quotes from an essay by Canadian security intelligence expert Wesley Wark, who describes the “national

⁹¹ Carolyn Dunn (reporter), “In a Relatively Short Time, Al-Jazeera Has Gained International Prominence,” The National, CBC, 11 July 2003, Transcript, Canadian Jewish Congress, 4 Jan. 2008 <<http://www.cjc.ca/ptemplate.php?action=itn&Story=350>>.

⁹² Bell ExpressVu Limited Partnership v. Rex, [2002] 2 S.C.R.559. The RCMP website, 27 Mar. 2003, referred to in CRTC file # 5520-01RP37-X/03 Vol. 28, says police seized 80 direct-to-home satellite dishes in a raid in Richmond, B.C., <www.rcmp-bcmedia.ca/pressrelease.jsp?vRelease=2708>.

⁹³ John Sinclair and Stuart Cunningham, “Diasporas and the Media,” Floating Lives: The Media and Asian Diasporas, ed. Stuart Cunningham and John Sinclair (Lanham: Rowman & Littlefield, 2001).

insecurity state” at the beginning of World War II: “[A]n insecure internal frontier opened up, . . . metaphysically located in the racial tension between Canadians of British origin and the new Central European immigrants.”⁹⁴ This tension applies, according to Kevin Dowler, to the colonizing threat of invading American culture, but equally so to the threat from what immigration presented to Canada by way of imported cultures. Given Canada’s failure to secure sovereignty over its space in the first phase of its national development through building transportation and communications systems, Dowler extrapolates that Canada’s defense is linked to strategies for securing “the internal, ‘metaphysical’ frontier of culture.” Leaning on Wark’s analysis, Dowler suggests that rather than defining a Canadian identity through various structures and procedures, “the rationale for a Canadian cultural policy is to be found in the security interests of the state.”⁹⁵ It’s a rationale the Qatari government could identify with. Chapter 2 of this thesis will describe how living next to a powerful neighbour, Saudi Arabia, prompted tiny Qatar to launch Al Jazeera to boost its interests in security and regional influence.

Framing Canadian broadcasting, its regulation and program distribution as a national security interest would seem to include securing the cash for Canadian enterprise. Prior to the Al Jazeera precedent, the CRTC had no problem unconditionally approving non-Canadian third-language services for the lists of satellite services (the lists) eligible for distribution on a digital basis, so long as “a foreign service not hold or exercise preferential or exclusive programming rights in relation to the distribution of

⁹⁴ Kevin Dowler, "The Cultural Industries Policy Apparatus," The Cultural Industries in Canada: Problems, Policies and Prospects, ed. Michael Dorland (Toronto: James Lorimer, 1996). 328-346.

⁹⁵ Dowler 330.

programming in Canada.”⁹⁶ In other words, if a Canadian licensee such as Telelatino, (owned by Corus Entertainment Inc.), which carries some of RAI International’s content, risked losing that content, the CRTC would refuse to list RAI for digital distribution in Canada. Commission policy on new foreign digital pay and specialty services, outlined in 2000, turned thumbs down to any that were competitive, either wholly or partially, with a Canadian service. New and existing Canadian third-language services, including those in alliance with non-Canadian services, were given priority. Foreign services wishing inclusion on the lists had to have a Canadian sponsor, such as a cable company, to request approval. This policy was later handy when the CRTC required BDUs to have a condition of licence, or responsibility, to log every Al Jazeera program they carried and censor it for possible abusive comment.

In words, which may only be understandable to the CRTC, requests to be added to the lists “will be granted where approval would be in the public interest.”⁹⁷ “In the public interest” may be the least transparent expression quoted by the CRTC to justify its decisions, an example of how it determines its own processes. Appearing before the Commons Heritage Committee in 2002, Senator Jean-Robert Gauthier complained about not being able to get a satisfactory answer from the Commission about what the phrase meant when he questioned the CRTC’s denial of TFO’s application for cable distribution in Quebec.⁹⁸ (TFO is the Ontario French-language educational broadcaster.) The regulator’s not-in-the-public-interest rationale seemed to imply “because we said so,” and the ambiguity seemed to serve the regulator’s purposes to “command and control,”

⁹⁶ Public Notice CRTC 2000-6, Ottawa, Licensing Framework Policy for New Digital Pay and Specialty Services (13 Jan. 2000), par. 52.

⁹⁷ Ibid. par. 51.

⁹⁸ Canada, Ministry of Heritage, Our Cultural Sovereignty, ch. 19.

independent of government. The Lincoln Committee went on to recommend that the government department responsible for the regulator “develop a policy statement for Canada’s broadcasting system and include appropriate definition of key terms.”⁹⁹

To those disappointed diverse communities who were left to forage in the grey market after the CRTC’s July 2004 decisions, or hope that broadcasting of Al Jazeera would soon come over the unregulated Internet, the debate about Canadian laws was adding to the confusion.

In April 2002, the Supreme Court of Canada had ruled that, in Canada, accessing satellite signals unauthorized by the CRTC was illegal.¹⁰⁰ In view of that, two men from Drummondville, Quebec, previously accused, then acquitted of signal theft (in the mid-1990’s when there were no Canadian satellite companies), were back in the Cour du Québec in May 2002. This time the defendants argued that their Charter rights of freedom of expression were infringed by the state prohibition on receiving an encrypted American satellite signal, which they happened to have hacked into illegally. It’s unlikely that the CRTC was oblivious to this pending judgment. One of the many complaints against Quebec City’s CHOI-FM morning man Jeff Fillion was that he encouraged listeners to help themselves to encrypted U.S. satellite signals for free. It’s also unlikely that the CRTC could have predicted the outcome while it was “taking forever” to come to its Al Jazeera decision.¹⁰¹ In October 2004, following shortly after Al Jazeera’s approval with conditions, Quebec court Judge Danielle Côté ruled that two sections of the Radiocommunications Act declaring it illegal for Canadians to decode an

⁹⁹ Canada, Ministry of Heritage, Our Cultural Sovereignty, ch. 19.

¹⁰⁰ Bell ExpressVu Limited Partnership v. Rex, [2002] 2 S.C.R. 559.

¹⁰¹ Stuart Langford, in a personal interview (31 Mar. 2008), used the word “forever” to describe the length of time it took for the Commission to render its Al Jazeera decision.

encrypted programming signal are unconstitutional because they violate freedom of expression guaranteed in the Charter.¹⁰² Shocked members of the cultural policy community faced what looked like “grey” futures. Limp efforts to legislate RCMP raids on residents with contraband U.S. signals withered away when Parliament ended for the June 2004 election.¹⁰³ The “whole broadcast framework in Canada” was now in question, as University of Ottawa law professor Michael Geist put it.¹⁰⁴ Securing Canada’s “metaphysical frontier of culture” needed another line of defense against the Trojan horse of foreign satellite-delivered content.¹⁰⁵ That defense turned out to be the Cour Supérieure du Québec, which overturned the unconstitutionality ruling on appeal, saying it went beyond the limits of what Judge Côté was supposed to have ruled on.¹⁰⁶ But it’s worth noting how her arguments engaged the debate on non-Canadian third-language digital services wanting CRTC approval. Acknowledging historical federal government reasons for first creating legislation to control Canadian broadcasting sourced in Canada, keeping it “free from foreign interference or influence,” Judge Côté wrote: “[T]he legislator has never stopped to consider the true consequences of a total decoding ban on the citizen’s freedom of expression in regards to the right to receive available ethnic programming.”¹⁰⁷ The judge referred back to the spring of 2004 when Bill C-2 legislation was being debated on whether to create TV police to inspect private homes and carry away anything used to receive unapproved foreign satellite signals. She

¹⁰² R. v. Richard Thériault et Jacques D’Argy, [2004] J.Q. no. 11142.

¹⁰³ Christopher Dornan, “Other People’s Money: The Debate Over Foreign Ownership in the Media,” How Canadians Communicate: Media, Globalization and Identity, ed. David Taras, Maria Bakardjeva and Frits Pannekoek, vol. 2 (Calgary: U of Calgary P, 2007).

¹⁰⁴ Richard Blackwell, “Ottawa Urged to Appeal Satellite Signal Ruling,” Globe and Mail 1 Nov. 2004.

¹⁰⁵ Barry Berlin, The American Trojan Horse: U.S. Television Confronts Canadian Economic and Cultural Nationalism (New York: Greenwood, 1990).

¹⁰⁶ R. v. Richard Thériault et Jacques D’Argy, [2005] J.Q. no. 2499 (31 Mar. 2005).

¹⁰⁷ Glenn Wanamaker, “Satellite Rules Violate Charter,” Cablecaster Magazine 29 Oct. 2004.

said that ex-patriots of Italy, Lebanon, Venezuela and Portugal all complained to the federal government that they couldn't legally pick up what their counterparts living in the United States could. Next Judge Côté suggested that the federal government failed to show in its cultural policies "that a less sweeping ban on decoding which would take into account the interest of ethnic communities, could be just as effective in protecting the Canadian industry."¹⁰⁸ In other words, picking up global channels such as RAI International and Al Jazeera via DBS companies in the U.S. isn't the same as picking up American influence, and if the regulator were to approve such services for digital distribution in Canada, Canadian distributors, whose industry was creating a moral panic over its need for protection, could stop crying and get ready for more business. Lawyer and communications consultant Bernard Montigny had put forth similar arguments when he invited both Vidéotron and the CCTA to sponsor Al Jazeera's approval for Canadian distribution. He wrote in March of 2003, anticipating their sponsorship would "help the country fight the so called grey market," and went on to say, "Many persons would jump at the opportunity to be a complete adherent to the Canadian broadcasting system if this distinguished service was available."¹⁰⁹ His pitch included estimates from Rimon Beakeley, Lebanon's ambassador to Canada, that the Lebanese population in Canada is between 300,000 to 350,000 and the non-Lebanese Arab population is about 100,000. As for marketing the channel in Canada, Mr. Montigny relays that Reach Media Inc. would see Al Jazeera as part of an Arabic tier including LBC (Lebanon Broadcasting Company), ART (Arab Radio and Television) and ART Movies, and that people of Arabic descent in

¹⁰⁸ Wanamaker.

¹⁰⁹ Bernard Montigny, letter to Janet Yale, CCTA, and to Edward Trépanier, Vidéotron, 13 Mar. 2003. CRTC files.

Canada “have the financial means to subscribe to Al Jazeera and would do so if it became available in Canada.”

In the dog days of summer 2003, the CRTC released its invitation to respond to proposals for authorizing the digital distribution of 15 new non-Canadian, third-language satellite services, including Al Jazeera and RAI International.¹¹⁰ More than 1,700 responses on the Al Jazeera proposal alone arrived before the tight deadline of 11 August 2003, as well as a petition including more than 100,000 signatures in support of the RAI International proposal, showing how eager affected communities were to get on with the regulator’s process. It would take the CRTC 370 days to publish its decisions on July 15, 2004.

This all-paper proceeding to hear from interveners marked the first time the Commission had “been asked to consider the addition of such a number and range of non-Canadian third-language services”.¹¹¹ Nahla Abdo emailed the Commission, encouraged by its call for comments, to say that she was paying an American satellite company \$45 US per month to receive Al Jazeera at her Ottawa home and that she wanted Al Jazeera approved in Canada so that she could get it cheaper and “stop worrying about watching a station which isn’t legally broadcast in Canada.”¹¹² Karin Brothers of Toronto did not think the CRTC was being fair with interveners “for sitting on this application since March . . . and then demanding such fast responses.” She self-identifies as holding dual American and Canadian citizenship with Jewish family and said she doesn’t feel any more threatened by Al Jazeera’s content than she does by “the

¹¹⁰ Broadcasting Public Notice CRTC 2003-36.

¹¹¹ Broadcasting Public Notice CRTC 2004-50, Requests to Add Non-Canadian Third-Language Services to the Lists of Eligible Satellite Services for Distribution on a Digital Basis (15 July 2004), par. 92.

¹¹² CRTC file 5520-01RP37-X, vol. 18.

ravings of Jerry Springer.”¹¹³ Several e-mail senders asked that they not be identified on the CRTC public files or websites for fear of receiving threats from those opposed to their position.

The Muslim Canadian Congress wrote in support of the CCTA application to add Al Jazeera to digital cable service. The letter was from Amina Sherazee, barrister and solicitor on behalf of the Congress. She zeroed in on the CRTC’s lack of jurisdiction to deny the carriage of Al Jazeera and said that to do so would be to deny Arabs and Muslims in Canada “full participation of Canadian society . . . which exclusion is repugnantly based on race and religion.” She suggested that to do so would be unconstitutional, “which would similarly deprive the CRTC of jurisdiction to deny the application.” Ms. Sherazee argued that to prevent the entire Al Jazeera network from being received by its audience, based on vague “notions of ‘hate propaganda’ is . . . unreasonable” and does not fulfill the purpose or spirit of the Multiculturalism Act, and that there are Canadian laws, and civil and criminal courts to deal with addressing any concerns about broadcast content on *any* channel.¹¹⁴ So the CRTC knew that it could be facing a Charter challenge if it outright denied a service that met its policy criteria, based on assumptions that Al Jazeera might misbehave and was guilty as *might* be charged. It is indicative of a perceived double standard that Ms. Sherazee’s arguments assumed that the CRTC had jurisdiction to approve Al Jazeera as it would any Canadian service meeting its policy criteria, but did not have jurisdiction to deny its approval.

The Global Television Network (Global) intervened on the Al Jazeera proposal by reminding the Commission that its policies on adding new foreign services should not

¹¹³ Letter from Karin Brothers to CRTC, 08 Aug. 2003, CRTC file # 5520-01RP37-X, vol. 17.

¹¹⁴ Amina Sherazee, letter to Secretary General, CRTC, 01 Aug. 2003. CRTC file 5520-01RP37-X/03, vol. 23.

come at the expense of Canadian programming services. Just as the CRTC had denied proposals to add three U.S. Spice Platinum Channels over concerns that these adult entertainment services would ignore Canadian laws, Global was suggesting to the Commission that it should be concerned about the same thing if it approved Al Jazeera.¹¹⁵ This, said Global, would create a double standard for accountability between Canadian operations and foreign channels. Global then went on to quote from two CBC programs, which had done recent stories on Al Jazeera. Global secured as evidence from Bowden's Media Monitoring Limited complete interview transcripts of CBC Radio's The Current for July 16, 2003, and the CBC Television show Disclosure aired on April 1, 2003, which it attached to its intervention. On the first show, host Jim Brown interviewed Al Jazeera producer Imad Musa. Mr. Musa agreed that his network included inflammatory comment from callers and guests about Jewish people, because it comes out of the reality of Middle East discourse. He explained that Al Jazeera producers do not use delete buttons on such expression because their network is distinguished by its lack of censorship in a region where prior restraint practices are routine and self-censorship is carried out by those editors wanting to keep their jobs in state-controlled media. On Disclosure, reporter Gillian Findley profiled Al Jazeera, featuring some of its hosts. Sheikh Yosef al-Karudari presents a weekly religion show called Sharia and Life, where he has been heard to bless Palestinian suicide bombers who have killed residents of Israel. Dr. Faisal Al Kassam hosts The Opposite Direction, probably Al Jazeera's most popular talk show, which "has included a variety of extreme and anti-Semitic views, including a debate on whether the Holocaust ever really happened." Global urged the CRTC to deny Al Jazeera

¹¹⁵ Broadcasting Public Notice CRTC 2001-82, Revised Lists of Eligible Satellite Services, 13 July 2001. In this decision, referring to the Spice Platinum Channels the CRTC said: "The Commission is not satisfied that compliance would be maintained at all times."

authorization based on the fact that no Canadian licensed broadcaster would ever be permitted to air content such as this, which would violate the core values and objectives of the Broadcasting Act and the Television Broadcasting Regulations 1987. Global argued that given its extra-territorial status, Al Jazeera could ignore other CRTC policies such as keeping logger tapes.¹¹⁶ It's possible that Global was keenly interested in keeping Al Jazeera out of Canada because of what had happened a year before on the downtown campus of Concordia University in Montreal. The Asper Foundation, headed by Israel Asper, a prominent Manitoba Liberal, who owned CanWest Global Communications, had asked members of Montreal's Jewish community if they wanted former Israeli Prime Minister and Likud Party leader Benjamin Netanyahu to speak in Montreal ahead of an appearance he was making in Winnipeg. Many Montreal Jewish community members were interested in hearing from Mr. Netanyahu and arranged for him to address students at the downtown campus of Concordia University. One fifth of Concordia's student population, or about 5,000 at the time, were Muslim and when they found out about the plan to have Netanyahu address members of the student body, they circulated notices to pro-Palestinians in Montreal to join a peaceful protest. That turned into a melée when pushing and shoving led to minor injuries and some property damage. It was clear that the intention of this demonstration was "to stop Netanyahu from speaking."¹¹⁷ The demonstrators succeeded and Mr. Netanyahu didn't make it to the podium. Police cancelled the event because they could not guarantee his safety. Many in the Montreal

¹¹⁶ Letter from Global Television Network, a CanWest Company, to Ms. Diane Rhéaume, Secretary General, CRTC, 11 August 2003, CRTC file # 5520-01RP37-X, vol. 18.

¹¹⁷ Tu Thanh Ha and Ingrid Peritz, "Tensions between Arab, Jewish Students Poison Atmosphere at Montreal University," Globe and Mail 14 Sep.2002.

Jewish community were outraged that their rights to receive Mr. Netanyahu's speech were denied, that their rights to freedom of speech were denied in such a public manner.

James Kafieh, Chair of the Arab Canadian Civil Liberties Association wrote an intervention to the CRTC to support Al Jazeera's debut in Canada saying, "[T]he importance of the Middle East in world events is increasingly obvious. . . . [T]he gap in understanding between that region of the world and our own has never been greater."¹¹⁸

B'nai Brith Canada just made the deadline with its intervention. It reminded the CRTC that if it approved Al Jazeera, the latter would not be subject to the Commission's jurisdiction and that its only means of controlling Al Jazeera would be a "blunt instrument," that is, de-listing it from eligibility for digital distribution. B'Nai Brith suggested that Canadian Arab Television, already approved but not launched, could be the ticket to an alternative version of Al Jazeera in Canada, and that it "could elect to acquire some of the content currently on Al-Jazeera." The difference would be that if this hybrid drew complaints, the CRTC would actually be able to investigate, and if warranted, issue the equivalent of a court order to "time-delay" or push a button to keep abusive comment from airing, to comply with Canadian expectations for standards.¹¹⁹ B'Nai Brith attached an appendix listing incidents of hate comment on Al Jazeera, such as: "On October 24, 2000, a Palestinian mufti stated on-air that 'there can be no peace with the Jews because they suck and use the blood of Arabs on the Holidays of Passover and Purim.'" ¹²⁰ This particular quote appears often in the letters of many opposed to Al Jazeera. Examination of the public files reveals that lobby groups both for and against Al

¹¹⁸ Letter from James Kafieh to CRTC, 11 Aug. 2003, CRTC file # 5520-01RP37-X03, vol. 27.

¹¹⁹ Letter from B'nai Brith Canada to Ms. Diane Rhéaume, Secretary General, CRTC, 11 Aug. 2003, 24 Jan. 2008 <<http://www.bnaibrith.ca/briefs/crts/Al-Jazeera030811.html>> .

¹²⁰ Ibid.

Jazeera were offering their supporters sample writing aids to use when e-mailing the Commission's "paper hearing."

David Lidov self-identifies as Jewish and is an associate professor in the Faculty of Fine Arts at York University. He wrote to the CRTC that he didn't own a TV but was grateful for Al Jazeera's reporting of the U.S. invasion of Iraq, which he accessed through his Internet browser. He believes he got a more balanced view of the war, "because of al-Jazeera's contribution." He quotes from an op-ed piece in the Montreal Gazette by the heads of B'nai Brith and the Canadian Jewish Congress making their case against Al Jazeera: "Their objections are not silly, but they should not prevail." Mr. Lidov warns against taking selected quotes from Al-Jazeera programming out of context and says that Canada's policy of multiculturalism "is a resource for all of Canada" and that it could benefit from improving "our access to opinions and debate from the Arab world."¹²¹

The Council on American Islamic Relations Canada (CAIR-CAN), based in Ottawa, lobbies against discrimination of Islamic people and monitors media to that end. It supported the bid to distribute Al Jazeera in Canada, saying that Canadians should "look first to the biases in their own media before using neutrality as a criterion for the approval of foreign channels."¹²²

The pro-Israel lobby network was also urging Liberal Parliamentarians for Israel, co-chaired by MP for Winnipeg South Centre Anita Neville and Senator David Smith, to act. One of the founders of this ad hoc group was Art Eggleton, MP for the riding of York

¹²¹ Email from David Lidov to CRTC, 9 Aug. 2003, CRTC File # 5520-01RP37-X/03, vol. 24.

¹²² Email from Amy Awad of CAIR-CAN to CRTC, (undated), CRTC File # 5520-01RP37-X/03, vol. 23.

Centre, with the second largest Jewish population in Canada.¹²³ This group of politicians first discussed the Al Jazeera proposal in North Bay on August 21, 2003, at a National Liberal Caucus, and agreed that something had to be done to head off its approval.¹²⁴ Thirteen Liberal Parliamentarians signed their names to a letter, which Mr. Eggleton sent to Diane Rhéaume, secretary general of the CRTC.¹²⁵ The only problem was that the letter arrived two weeks after the Commission's deadline of 11 August 2003 and was sent back. By contrast, 16 MPs, many of them Liberal, managed to meet the same CRTC deadline of written support for RAI International. One Liberal MP, Colleen Beaumier, representing BramptonWest-Mississauga, home to a significant Muslim population, who supported Al Jazeera's approval, also got her letter to the CRTC on time.

When an intervention is late by more than a few days, it is returned to the sender. Some late interventions are placed on the public file, but the one from the 13 Liberal Parliamentarians for Israel was not, signifying it was not to be considered as comment on the public record in CRTC deliberations. Neither was the reply from Diane Rhéaume put on the public file, telling the group that more than 3,000 interveners, including other Liberal MPs supporting other proposals, had managed to hit the deadline and it wouldn't be fair to make an exception to its process for the sake of others who had missed or met the cutoff.

¹²³ Marshall Shapiro, "Canada Needs to be More Supportive of Israel: Eggleton," Jewish Tribune 29 Sept. 2004, 18 Mar. 2008 <<http://www.jewishtribune.ca/tribune/jt-040929-00.html>>.

¹²⁴ This information is taken from a letter sent by MP Art Eggleton to CRTC Secretary General Diane Rhéaume, dated 28 August 2003, acknowledging the CRTC deadline of 11 August 2003, but explaining that it was "impossible" for the "concerned Liberal Parliamentarians" to act within the confines of the deadline as their action depended on the outcome an August 28 meeting.

¹²⁵ Signatories to the letter sent to the CRTC were Senator Jack Austin, Prof. Irwin Cotler MP, Senator Isobel Finnerty, Ms. Marlene Jennings MP, Senator Richard Kroft, Honourable Jim Peterson MP, Mr. Joe Volpe MP, Dr. Carolyn Bennett MP, Ms. Raymonde Folco MP, Senator Leo Kolber, Ms. Anita Neville MP, and Mr. Jacques Saada MP. A copy of this letter was provided by CRTC staff member Bob Bowman at the request of the author.

This did not sit well with Art Eggleton and his fellow signatories, who fired off a second letter dated September 11, 2003, saying that their letter had arrived well before the September 15 deadline for rebuttals by the applicants and that, “given the breadth of Parliamentary support for this submission and the nature of our concerns, I ask you to revisit your decision....” In this case, the CRTC held to its process and politely rebuffed the group saying, “[G]iven the large number of submissions received, . . . a full spectrum of views related to this important matter will be amply represented before it in its deliberations.” Whether the Liberal Party MPs and Senators were simply putting on a symbolic show of protest to satisfy any pro-Israel constituents in their ridings who happened to be opposed to Al Jazeera, or whether they assumed that the Commission could make an exception in its process for elected legislators, is difficult to determine. As the sun was setting on Jean Chrétien’s leadership, it could be that the activities of this ad hoc group anticipated Paul Martin’s response to the “democratic deficit,” that is, giving individual MPs greater independence regarding their role in government.¹²⁶

Six of the signatories to the letter from Liberal Parliamentarians for Israel, including former head of the Canadian Jewish Congress Irwin Cotler, were soon appointed Cabinet ministers in Paul Martin’s government.¹²⁷ Cabinet ministers do not interfere in CRTC deliberations in the event that a decision on a Canadian operation is referred to the government for review. Commission decisions on foreign services, wanting Canadian distribution, are final and cannot be appealed to Cabinet. A government’s ministers may

¹²⁶ Peter Aucoin and Lori Turnbull, “The Democratic Deficit: Paul Martin and Parliamentary Reform,” *Canadian Public Administration* 46.4 (2003).

¹²⁷ On 12 December 2003 Paul Martin was sworn in as 21st Prime Minister of Canada. His Cabinet included Jacques Saada, Government House Leader; Dr. Carolyn Bennett, Minister of State (Public Health); Joe Volpe, Minister of Human Resources and Skills Development; Irwin Cotler, Minister of Justice and Attorney General; James Peterson, Minister of International Trade; and Senator Jack Austin, Leader of the Government in the Senate.

well be lobbied directly by those with interests in a non-Canadian broadcaster. RAI International representatives, wanting distribution in Canada, approached Sheila Copps when she was Minister of Heritage and she referred them to the proper CRTC process.¹²⁸ When that ultimately failed to work in their favour, they and their supporters lobbied government ministers to reverse the CRTC denial, which ultimately got results in the form of a CRTC policy change.¹²⁹

Despite being sent back to Minister Eggleton, the letter from 13 Liberal Parliamentarians was no doubt read by at least some Commissioners, if not all. In fact either the first name or the initials of 9 Commissioners under the handwritten columns of “IN” and “OUT” are penciled along the top margin of the August 28, 2003, letter from the Liberals. The name “Stuart” appears under the “IN” column.¹³⁰ Stuart Langford, a former CBC reporter, speechwriter for Pierre Trudeau, administrative lawyer and former CRTC Commissioner, was one of ten, including Chairman Dalfen, who determined the Al Jazeera decision. When asked if he could remember being consulted about whether the letter from the Liberals should be in or out of the public consultation process, Mr. Langford says he remembers the controversy within the tribunal about the letter’s late arrival. He wasn’t sure how the names or initials of Commissioners came to be penciled in as a record of a straw poll on the top page of the letter:

It could have been a staffer’s view going in as to where he thought the split would come, or it might be accurate, or it may just show that we do discuss things, that we’re not all asleep all the time, that in our first go around, this is the way we split. And then after further discussion, some of us got convinced otherwise . . . but I

¹²⁸ Copps, personal interview.

¹²⁹ Broadcasting Public Notice CRTC 2005-104, Revised Approach for the Consideration of Broadcasting Licence Applications Proposing New Third-Language Ethnic Category 2 Pay and Specialty Services (23 Nov. 2005), par. 28.

¹³⁰ Under the “in” column are Andrew Cardoso, Stuart Langford, Ron Williams, Cindy Grauer, and Andrée Whylic. In the “out” column are Jean-Marc Demers, Joan Pennefather, Andrée Noel, and David Colville.

mean that's very normal to see a document like that . . . usually it says 'yes, no' . . . at the top. People keep their own little lists.¹³¹

Former CRTC Vice-Chair of Broadcasting Andrée Wylie has no problem with MPs supporting or opposing, on behalf of constituents, applications before the CRTC and believes that she would have been the last person to be persuaded by politicians on how to decide matters before the Commission. When asked if she thought other Commissioners with ties to the Liberal Party¹³² were persuaded by the Liberal ad hoc submission, she said that she could not speak for anyone who might have been, but added, "We're all human beings."¹³³ She added that no meetings happened between Commissioners and those either opposed to or supportive of the Al Jazeera proposal for Canadian distribution. If either side had requested a face-to-face chat with Commissioners and the tribunal panelists agreed to meet, process would have dictated that members of the other side be required to attend also.

Robert Bowman, CRTC Senior Analyst for Distribution and Competitive policy and "keeper of the lists" of satellite services approved for digital distribution in Canada, says that the letter from the Liberal Parliamentarians opposing Al Jazeera was "not a smoking gun" or proof of what made Commissioners decide as they did.¹³⁴ Nevertheless, the CRTC knew that if Al Jazeera were to be distributed in Canada without prior restraint, it was likely that there would be future complaints about the news network that refused as a matter of principle to censor any broadcast comment by means of a delete button or time-shifting technology.

¹³¹ Langford, personal interview.

¹³² Former Commissioners Langford, Grauer and Williams who participated in determining the Al Jazeera decision have documented ties to the federal Liberal Party.

¹³³ Wylie, personal interview.

¹³⁴ Robert Bowman, personal interview, 14 Feb. 2008.

The Canadian Jewish Congress (CJC) may well have complained first if the CRTC had approved the reception of Al Jazeera uncensored in Canada. In its August 8, 2003, submission to the CRTC on the Vidéotron and CCTA proposed sponsorship of Al Jazeera, the CJC “strongly opposed” its distribution, saying: “Al Jazeera has demonstrated a pattern of airing virulent and dangerous hate propaganda and/or contemptuous speech, largely targeted at the Jewish people.”¹³⁵ Its main argument for keeping Al Jazeera out of Canada was that “control of its content is beyond the reach of the Canadian regulatory regime.” It should be noted that in 2003, ninety-three foreign-owned channels, mostly coming from south of the border, were permitted to distribute programming in Canada and did not carry prior restraint as conditions of licence of the BDUs wanting to distribute them.¹³⁶

The long established CJC, organized in 1919, which self-describes in its background remarks to the Commission as “the Jewish community’s vehicle for defense and representation,” was framing its opposition as representing the best interests of “Canadian society at large” and as “concerned with the rights and freedoms of all Canadians and, in particular, the rights of ethnic, religious and other minority groups in Canadian Society.”

In a regulatory body, quasi-judicial functions are called upon when there is “a duty to hear both sides of a dispute”¹³⁷ when natural justice principles are at stake. The types of evidence admissible have a lower threshold than that accepted by a court of law, though not as a means of circumventing natural justice, according to former CRTC

¹³⁵ M. Keith Landy, letter to Diane Rheaume, Secretary General, CRTC, 8 Aug. 2003, CJC’s Submission to the CRTC on Al Jazeera, 15 Jan. 2009 <<http://www.cjc.ca/template.php?action=briefs&item=50>>.

¹³⁶ Bart Beaty and Rebecca Sullivan, “Canadian Television and the Limits of Cultural Citizenship,” *How Canadians Communicate: Media, Globalization and Identity*, eds. David Taras, Maria Bakardjieva and Frits Pannekoek, vol. 2 (Calgary: U of Calgary P, 2007).

¹³⁷ Doern 526.

Commissioner Stuart Langford: “We do accept people’s views, we do accept people’s opinions, we do accept people’s, almost feelings about certain things, . . . we’ll accept . . . their belief and we’ll give it the weight we think it deserves.”¹³⁸ Witnesses are not sworn or affirmed to tell the truth on the broadcasting side, as they can be on the telecom side of the CRTC mandate.¹³⁹ When it came to presenting evidence to back up its opposition to Al Jazeera’s broadcast programming, the CJC selected quotations which, it said, “are drawn from transcripts translated from the Arabic by the Middle East Media Research Institute (MEMRI).”¹⁴⁰ One of the quotations is from the 10 July 2001 show The Opposition Direction on which host Faisal Al-Qassam says: “‘Hezbollah’ is a beautiful, mighty name, and as many have said, it succeeded in expelling the Zionists from southern [Lebanon] like dogs – my apologies to the dogs. . . .”

There were no full program transcripts translated from Arabic to English included in the CRTC public files on the proposal by Vidéotron and CCTA to distribute Al Jazeera in Canada. The British Columbia Civil Liberties Association (BCCLA) filed an intervention with the CRTC complaining that the CJC failed to provide it with a full program transcript of the sources of offensive clips presented as evidence to the CRTC:

The BCCLA has attempted to obtain transcripts of the cited programs from the CJC, to no avail. Instead, the CJC provided us with summaries of programming. Summaries are, of course, markedly different than actual transcripts in their ability to convey the meaning of the various pieces of programming. We queried the CJC as to whether they relied on the summaries, or actual transcripts of programs, in crafting their submission to you. To date, despite the passage of five months, we have not heard a response. The BCCLA is concerned that a decision on the application not be based on summaries of programming, but rather on the actual contents of the programs themselves. . . . We suggest that any reliance on the programming references made in the CJC submission . . . be reconsidered or

¹³⁸ Langford, personal interview.

¹³⁹ Langford, personal interview.

¹⁴⁰ CJC’s Submission to the CRTC on Al Jazeera, par. 39, 8 Aug. 2003, 15 Jan. 2009 <<http://www.cjc.ca/template.php?action=briefs&item=50>>.

eliminated altogether.¹⁴¹

The 19 honorary directors of the BCCLA are a group of luminaries including lawyers, a former Prime Minister (Kim Campbell), a former Premier (Mike Harcourt), various academics (including Michael Ignatieff) and media personalities (such as Rafe Mair and David Suzuki). The CRTC response was that it could not consider this intervention because it was received after the deadline for rebuttals of September 15, 2003.

The CRTC's decision on Al Jazeera would suggest that it did not have the full program transcripts used as MEMRI's source of what the Arabic-language broadcaster had aired in the past, because in its reasoning for approving Al Jazeera with conditions, it says the base of evidence "upon which to characterize the entire programming of a service that has, to the best of the Commission's knowledge, been broadcasting 24 hours a day, 7 days a week, since 1996" is "too slim."¹⁴² It acknowledges the need for context in order to evaluate the statements supplied by MEMRI in the CJC's submission, and the Commission points out that most of these examples "were made well over two years ago and may not provide accurate examples of Al Jazeera's current programming."¹⁴³

The CRTC decision noted a supporter of Al Jazeera, the Council on American Islamic Relations Canada (CAIR-CAN), agreed that Al Jazeera had broadcast a comment describing "Jews as 'apes and pigs,'" saying the reference came from an e-mail read on air and that such comments could be part of a discussion on anti-Semitism. But the CRTC said there was no evidence presented to suggest such a program discussion was

¹⁴¹ Kirk Tausaw, letter to Diane Rheaume, CRTC, 29 Apr. 2004, CRTC Ref. # 174807, CRTC file # BRO 6700-72.

¹⁴² Broadcasting Public Notice CRTC 2004-51, par. 70.

¹⁴³ Broadcasting Public Notice CRTC 2004-51, par. 71.

part of this case.¹⁴⁴ Again, the CRTC is anticipating that Al Jazeera would be guilty at some point of violating Canada's laws if approved for distribution, and reminds readers of its decision that in Canada, a broadcaster is responsible for what guests and callers say on a program, despite professionalism of program staff to prevent hateful broadcasts.

It's not clear if anyone at the CRTC knew anything about the Middle East Media Research Institution (MEMRI). The Commission's former Vice-Chair of Broadcasting, Andrée Wylie, said that "neither the sponsors . . . nor any other party countered the evidence as presented and therefore the CRTC did not appoint itself to do so."¹⁴⁵ Perhaps given the BCCLA experience, in the short time span allowed by the public hearing, it was not possible for supporters of the Al Jazeera proposal to pull together evidence countering what MEMRI provided the CJC.

Richard Gizbert thinks that the CRTC should have known about MEMRI, "should bookmark it" as a reference.¹⁴⁶ He's a Canadian journalist and contract host for a media analysis program on Al Jazeera's English network called The Listening Post. MEMRI regularly e-mails journalists and their media outlets, politicians and policy makers in western democratic countries, offering free its translations and analysis of selected Arabic-language media excerpts from the Middle East. Gizbert notes that MEMRI's profile has grown since 9/11 and many mainstream news outlets use its quotes.

Criticism leveled at MEMRI, a think tank with charitable status, headquartered in Washington D.C., is that it tends to select extremist views for translation, as representative of a vast Arabic press. The argument is tantamount to CHOI-FM's most outrageous quotes being held up as demonstrative of the Canadian press. Juan Cole is an

¹⁴⁴ Broadcasting Public Notice CRTC 2004-51, par. 66.

¹⁴⁵ Wylie, personal interview.

¹⁴⁶ Richard Gizbert, personal interview, 07 Mar. 2008.

Arabic-speaking history professor at the University of Michigan who suggests that MEMRI functions as a public relations tool for the Likud Party in Israel, despite having no affiliation with that party.¹⁴⁷ British print journalist Brian Whitaker has also criticized MEMRI for distorted analysis.¹⁴⁸ MEMRI launched in 1998 and describes its operation as “independent” in contributing to the debate on U.S. Middle East policy.¹⁴⁹ Its president and founder is former Israel Defense Forces (IDF) Colonel Yigal Carmon, who served in military intelligence from 1968 to 1988 and advised former Israeli Prime Ministers Yitzhak Shamir and Yitzhak Rabin in counter-terrorism.¹⁵⁰ Demonizing defined enemies is an age-old tactic used by parties to any conflict, and Col. Carmon no doubt learned through experience that *hasbara*, meaning “explanation” in Hebrew, and “referring variously to information, spin and propaganda,”¹⁵¹ must be carefully crafted and targeted to win international support for Israel, support which Al Jazeera has helped erode, as will be revealed in Chapter 2.

Perhaps if Commission procedure had not been electronic, there would have been an opportunity to question witnesses face to face on the contextual whereabouts of complete program translations from Arabic to English. The electronic process seemed to permit selective presentation of facts designed to create an emotional rather than rational response. The desired outcome for the CJC using MEMRI’s clips was to stop Al Jazeera from being distributed by Canadian BDUs, and its mission, as that of Muslim

¹⁴⁷ Juan Cole, “Intimidation by Israeli-Linked Organization Aimed at U.S. Academic: MEMRI Tries a SLAPP,” 23 Nov. 2004, 21 Feb. 2008 <JuanCole.com>.

¹⁴⁸ Brian Whitaker, “Selective MEMRI,” Guardian 12 Aug. 2002, 10 Apr. 2007 <<http://www.guardian.co.uk/elsewhere/journalist/story/0,7792,773258,00.html>>

¹⁴⁹ <<http://www.memri.org/archives.html>>.

¹⁵⁰ Middle East Media Research Institute, 9 Mar. 2007, International Relations Center, 2 Feb. 2008 <<http://rightweb.irc-online.org/profile/1511>>.

¹⁵¹ Rachel Shabi, “New Information Agency Winning Support for Israel,” Globe and Mail 2 Jan. 2009.

demonstrators opposed to Benjamin Netanyahu speaking at Concordia University, was accomplished.

Referring to the then CRTC Chairman Charles Dalfen, whose role in deliberations was to seek consensus from his tribunal members, former Commissioner Stuart Langford said:

But I have to take my hat off to Chuck on this one, I mean he's Jewish. It's a tough one for him personally, I'm sure though he never said a word about it, reading some of those transcripts were not fun, even for a bog Irish descendent like myself. But for a guy who is a Jewish guy, it's a little rough, it's pretty rough stuff. . . . I actually remember one of the lines about comparing Jews to dogs, and one of the guys wrote apologizing, saying 'my apologies to the dogs'. . . pretty visceral.¹⁵²

It is entirely feasible that Commissioners reading hateful comment directed at the identity of a colleague would feel empathy for that colleague. It's also understandable that the colleague whose heritage group was so maligned would not want to speak about it because it would distract from the "professional" business at hand to the "personal." Someone as experienced in law and public service leadership as Charles Dalfen would want to exemplify disciplined rational decision-making, backed up by fairness to the facts as presented. The length of time it took to release the written decision on Al Jazeera may well be a clue to the anguish of its rendering. Under the circumstances it's entirely possible that none of the Commissioners in the CRTC deliberations would want to dissent from saying "no" to Al Jazeera, given what MEMRI, through the CJC presentation, had put forward as a sampler of hate, albeit out of context, from dated Al Jazeera broadcasts.

¹⁵² Langford, personal interview.

Commissioners rely on research, sometimes contracted outside the tribunal, and on a staff of 418 in both Gatineau and regional offices around the country.¹⁵³ Some are analysts with expertise and historical knowledge of cases and precedents. The tribunal members encourage these analysts to make recommendations from which Commissioners may select options for decisions.¹⁵⁴ It's likely that the staff analysts laid out three or four options for deciding the Al Jazeera case. Option 1 was probably to approve, knowing that there might at some point be a complaint about Al Jazeera violating Canada's hate laws, which would, unlike CHOI-FM, exceed CRTC jurisdictional reach. Option 2 was to deny Al Jazeera, knowing that it did not meet CRTC criteria for denial, in that it was not in competition with a Canadian operation. Option 3 was to find some middle ground. Remembering deliberations in which he had participated, former Commissioner Stuart Langford says: "There's a long and pretty thorough discussion around the table."¹⁵⁵ No doubt along with hundreds of other CRTC decisions published between the summers of 2003 and 2004, Charles Dalfen supervised the writing of the Al Jazeera decision, a carefully balanced report on what the CRTC "heard," how it weighed the evidence before it, and its reasons for approving, with conditions. But a writer has to know where he's going, how the story is going to end, before publishing it. And it's clear that the CRTC did not want Al Jazeera broadcast in Canada, so it had to figure out a way of achieving that end: "That's when we said 'no' by saying 'yes,'" according to former CRTC Commissioner Stuart Langford.¹⁵⁶ He recounted the tribunal's strategy:

Well we're not totally naïve in making that decision and we suspected, couldn't say for sure, that the conditions we put on it would be so unacceptable to the BDUs,

¹⁵³ Charles Dalfen, Standing Committee on Canadian Heritage (Ottawa, House of Commons, 1 Feb. 2005).

¹⁵⁴ Langford, personal interview.

¹⁵⁵ Langford, personal interview.

¹⁵⁶ Langford, personal interview.

satellite providers, cable companies, they wouldn't carry it . . . because they would be on the hook, they would be liable for any hate law violations that might follow from it, and who would want to take that on with the track record of Al Jazeera? I mean it's as simple as that, pragmatic truth.¹⁵⁷

The BDUs would find it difficult to claim that their freedom of expression rights and those of Arabic-speaking customers wanting Al Jazeera had been violated because the CRTC could point to its *approval* of the service, based on the understanding of licensee responsibility covered in the Broadcasting Act. It was a metaphorical “checkmate.” The decision likely kept the regulator from facing a Supreme Court challenge it risked losing if it had denied Al Jazeera. That public challenge would have been based on violating industry rights to distribute the channel without prior restraint to an Arabic-speaking minority in Canada wanting to receive it.¹⁵⁸ If a Quebec judge (Côté) can see the unconstitutionality of punishing signal “thieves” accessing DBS distributed programming from south of Canada’s borders, it’s a good bet that federal or Supreme Court judges would side with a heritage language group in Canada wanting to legally pay a Canadian source of such programming, without prior restraint.

¹⁵⁷ Langford, personal interview.

¹⁵⁸ Janisch, personal interview.

Chapter Two

“All this trouble from a matchbox like this?” Al Jazeera Uncensored

Picture a leader wrapping up his formal visit to a desert country whose head of state is ready to call it a day. It's midnight at the oasis. The visitor's curiosity won't counsel sleep, because before he heads home, he wants to drop over to a spot that hasn't been on the official itinerary. His agreeable hosts arrange for his unexpected arrival near the edge of town, past the cactus garden, at the entrance of a tiny TV station whose main newsroom is about fifty square feet. It brims with the business of gathering and sending satellite news, some past reports of which have roundly criticized the visitor's leadership. He can't believe what's behind the curtain of his anxiety and says: “All this trouble from a matchbox like this?”¹⁵⁹

These were Egyptian President Hosni Mubarak's impressions in 2000 at Al Jazeera headquarters in Doha. It's capital to miniscule Qatar, the emirate whose adult population is about eighty thousand,¹⁶⁰ whose local politics are usually avoided by Al Jazeera, relying as it does on the Emir's financial grants and on meeting the Arab world's need for news from a bigger arena.¹⁶¹ Depending on perspective, the “matchbox” metaphor suggests a news outlet capable of delivering both “heat and light” to an audience in the dark about “what is going on inside their countries.”¹⁶²

Unlike other satellite TV channels in the Arab world that offered Lebanese belly dancing or Egyptian soaps, when it launched, the Arabic-language Al Jazeera spoke

¹⁵⁹ Miles 11.

¹⁶⁰ Miles 7.

¹⁶¹ Marc Lynch, Voices of the New Arab Public: Iraq, Al-Jazeera, and Middle East Politics Today (New York: Columbia UP, 2006) 66.

¹⁶² Mellor 82.

explicitly to a “transnational audience addressed as fellow Muslims and fellow Arabs” and gave politics priority by starting “a region-wide public discourse that quickly reached an incredibly widespread and diverse audience,” moving the channel to “the center of an emerging Arab public sphere.”¹⁶³ It’s ironic that as Arab audiences were building for uncensored news and talk shows in Arabic from Al Jazeera, inspired by independent versions like BBC World and CNN, many western news models were erasing the distinction between themselves and a military agenda of “weaponized information” as they climbed aboard the war-in-Iraq bandwagon to integrate “into military command structures” of embedding.¹⁶⁴ The consequences of Al Jazeera’s coverage of the post 9/11 American-led wars in Afghanistan and Iraq, and previous conflicts in Israel, had “cultural-political implications”¹⁶⁵ for Middle East popular opinion, which affected the politics surrounding the debate about Al Jazeera’s distribution in Canada.

The objective of this chapter is to examine “the track record of Al Jazeera” as one CRTC Commissioner put it, illuminated by the reaction to its service, which the CRTC calculated would not encourage BDUs to bulk up on their liability insurance. It is beyond the scope of this case study to tell the history of the press in the Arab world, but comparing news values between Arab and Western news media is a start towards shining a light on Al Jazeera’s “track record,” given that news values flow from respective cultural contexts. I depend on Arab scholars for many of these comparisons.

¹⁶³ Lynch, *Voices of the New Arab Public* 41.

¹⁶⁴ David Miller, “Information Dominance: The Philosophy of Total Propaganda Control?,” *War, Media and Propaganda: A Global Perspective*, ed. Yahya Kamalipour and Nancy Snow (Lanham: Rowman & Littlefield, 2004) 9-10.

¹⁶⁵ Yahya R. Kamalipour and Nancy Snow, eds., *War, Media and Propaganda: A Global Perspective* (Lanham: Rowman & Littlefield, 2004) 3.

A 1970s study of Arab news values done by Yahya Abu Bakr suggested that news selection followed the theme of pan-Arabism, the concept of Arab countries unifying in a single political entity, and that anti-imperialism and items about development plans also influenced news selection.¹⁶⁶ Munir K. Nasser's work suggested that Third World journalists were seeing themselves with a role more akin to educating than just informing.¹⁶⁷ In Al Jazeera's programming schedule, for example, there are programs like From Washington and during the national election, US Presidential Race, which actually help explain to the Arab world how democracy functions, and within Arab communities in the United States, Al Jazeera's programs "educate Arabs about life in the West."¹⁶⁸ Al Jazeera is credited with creating

a new regional standard in accurate reporting. . . . It accustomed Arabs to a standard form of Arabic speech. . . . It set a new standard of excellence in translation and is used as a benchmark by professional translators all over the world. The network's Arabic-language website is an exceptional resource. . . . The Opposite Direction has broken every taboo and done great things for women's rights.¹⁶⁹

Whereas American news has moved from being dominated by political or "hard" news towards more human-interest news and lifestyle information, Arab media focus more on "protocol" news of leaders, the conflict with Israel, and Arab politics.¹⁷⁰ The American journalist Scotti Williston has worked in the Arab world and reasons that the decline of political and international news on major U.S. networks can be traced to Congressional revisions in the Television Act in the 1980s and 1990s. These reduced the importance of public service broadcasting and its tax benefits for stations in favour of

¹⁶⁶ Yahya Abu Bakr, "Towards an Intra-Cultural News Exchange in the Arab States, News Values and Principles of Cross-Cultural Communication, ed. Louis da Costa Alcino et al. (Paris: UNESCO, 1980).

¹⁶⁷ Munir K. Nasser, "News Values Versus Ideology: A Third World Perspective," Comparative Mass Media Systems, ed. L. John Martine and Anju Grover Chaudhary (New York: Longman, 1983).

¹⁶⁸ Miles 399-400.

¹⁶⁹ Miles 335.

¹⁷⁰ Mellor 79.

commercialization, leading to the cutting of costly foreign news bureaus and the relegation of international news to cheaper cable “breaking news” operations (CNN).¹⁷¹ Canadian news agencies have also reduced their foreign bureaus in budget cost-cutting. Journalists like Amy Goodman, host of the independent listener/viewer supported Democracy Now! program in the United States, documents the shrinking of media ownership diversity in her country over the last three decades.¹⁷² She cites the pattern of companies like Westinghouse and General Electric, which manufacture some components for weapons, buying networks like CBS and NBC and turning them into cheerleaders for battle such as during the 1991 Gulf War, when coverage looked like “a military hardware show” where viewers “almost never see journalists at the target end, asking people huddled in their homes what it feels like not to know what the next moment will bring.”¹⁷³

While western news selection gives heavier weight to local news than international affairs, local Arab news coverage is slim compared to reporting on pan-Arab and international events.¹⁷⁴ The latter is most likely due to reporters not being allowed to hold their countries’ leaders to account in repressive regimes that control media and information. Al Jazeera reporter Omar Al-Issawi is Lebanese from Kuwait and told an audience at UCLA International Institute in 2003 what it’s like for Arab journalists:

Other journalists throughout the Arab world are today in prisons. . . . [T]orture has become an art form. Torture is not only the preserve of the Iraqi regime under Saddam Hussein. It happens in all Arab governments. And journalists know that . . . unlike Western journalists, Arab journalists don’t have

¹⁷¹ Scotti Williston, "Global News and the Vanishing American Foreign Correspondent," Transnational Broadcasting Studies 6 (2001), 14 Apr. 2009 <www.tbsjournal.com/Archives/Spring01/Williston.html>.

¹⁷² Democracy Now! is on radio and TV, <<http://www.democracynow.org/stations/canada/ontario>> .

¹⁷³ Amy Goodman and David Goodman, "Why Media Ownership Matters," Mother Jones 4 Apr. 2005.

¹⁷⁴ Muhammed Ayish, "Political Communication on Arab World Television: Evolving Patterns," Political Communication 19 (2002).

governments to back them up. If one of us disappears it is usually the work of our government.¹⁷⁵

It's been suggested that western audiences have been moving away from political news because they enjoy greater political stability than do those in the Arab world, and their fears have moved elsewhere, to issues like global warming and pandemics for example, whereas Arab audiences have real worries about wars in their region and political instability, with few options to act on those fears.¹⁷⁶

In Sociology of News two Arab scholars, Abdel Nabi and Abdel Fattah, wrote in 1989 about the place of news in Arab society. They distinguish between an event and a process, that is, it is more important to report on the process of repairing the rails than the train crash event, because fixing up the train tracks has a "greater role in the public sphere."¹⁷⁷ This may illuminate what happened on Al Jazeera when the UN released, in October 2005, its report (108 pages) on the assassination of Lebanon's Prime Minister Rafik Hariri. Abderrahim Foukara, chief of Al Jazeera's Arabic bureau in Washington, D.C., who happened to be in New York, was on the air with Doha right after he got his copy, and ended up being asked by the producer in the control room if he would read the whole report "live" while someone in Doha did simultaneous translation! This was done in response to a pro-Syrian guest in the studio, who criticized Foukara's rushed summary of the report release "event" as selecting details before people were ready to discuss it. It took four and a half hours to read into the televised record.¹⁷⁸

¹⁷⁵ Leslie Evans, Al Jazeera, Radio Sawa Founders Report on Media in the Middle East, 2003, UCLA International Institute, 23 Apr. 2009 <<http://www.international.ucla.edu/print.asp?parentid=5087>>.

¹⁷⁶ Mellor 80.

¹⁷⁷ Mellor 82.

¹⁷⁸ Josh Rushing with Sean Elder, Mission Al Jazeera (New York: Palgrave MacMillan, 2007) 166-167.

Nabi and Fattah also identify “moral and social responsibility of newspeople” as being the avoidance of stirring up public opinion or ethnic or religious conflict and as preserving national unity and the status quo.¹⁷⁹ As the bombing in Iraq was winding up, between April 11 and May 31, 2003, Al Jazeera talk shows, along the lines of CBC Radio’s Cross Country Checkup, took scores of calls from Arabs eager to assess the situation. Host Jumana al-Namour of Al Jazeera’s Platform one day firmly cut off an Iraqi caller from Germany who wanted to slander Shia and Kurds: “I am sorry, but we cannot continue with your words, which are hateful and destructive.”¹⁸⁰ To another caller who wanted to sling abuse at non-Kurdish Iraqis, she quickly shut him down to remind viewers that “most of our callers have affirmed that what Iraq needs now is unity and constructiveness.”¹⁸¹ On April 22 she appeared to read the audience the riot act with these instructions: “[I]n recent days some callers seem to be confused about the purpose of this program, . . . which is to present your views, not to be a platform for insults or poison or incitement or defamation of some individual or group.”¹⁸² I quote from these and other examples to document from Arabic-fluent scholars contrasting evidence to what the CRTC 2003 paper hearing produced, that Al Jazeera fosters abuse on the air. While it doesn’t employ time-shifting technology, its talk show hosts remind large audiences to maintain respectful dialogue as an extension of the news channel’s values.

¹⁷⁹ Mellor 76.

¹⁸⁰ Lynch, Voices of the New Arab Public 204.

¹⁸¹ Lynch, Voices of the New Arab Public 204.

¹⁸² Lynch, Voices of the New Arab Public 204.

Enhancing Islamic values is also cited as an important use for media in Arab society.¹⁸³ As will be shown later, open dialogue, not in short supply on Al Jazeera's talk shows, is an Islamic faith value.

What western audiences would regard as investigative journalism, that is, revealing hidden events and processes that the public should know about, was, before Al Jazeera came along, almost impossible to carry out in the Arab world where reporters are not protected, where access to information is not easily acquired, and where journalists themselves, within a culture that values privacy and discretion,¹⁸⁴ do not approve of using hidden microphones and cameras or revealing, in the public interest, secret documents.¹⁸⁵ But Al Jazeera's program Top Secret, done by Yosri Fouda from the channel's London bureau, has "founded the tradition of investigative reporting in the Arab world."¹⁸⁶

Back in 1964 when the Arab Press Union released its charter, social responsibility was identified as a journalist's top consideration; that is, he was to think of the impact of expressing his opinion, to verify anything being published, protect sources, "not to comment on disorder occurring in other countries unless they have correct information," avoid distortion and not act on personal interest.¹⁸⁷ Social responsibility was cited by the Iraqi Governing Council (IGC) as the reason for limits on journalists in 2003.¹⁸⁸ The United States civilian administrator in Iraq, Paul Bremmer, had drawn up a media regulatory framework, and a "media commissioner" was appointed to monitor and

¹⁸³ Mellor 83.

¹⁸⁴ Steve Tatham, Losing Arab Hearts and Minds: The Coalition, Al-Jazeera and Muslim Public Opinion (New York: Front Street, 2006) 63.

¹⁸⁵ Mellor 85.

¹⁸⁶ Miles 335.

¹⁸⁷ Mellor 85.

¹⁸⁸ Mellor 85.

heavily fine those journalists deemed not to be socially responsible.¹⁸⁹ Remember that Iraq was allegedly being transformed from a state ruled by an individual to the rule of democracy's legislation. Al Jazeera's Baghdad bureau chief Waddah Khanfar was not impressed, saying that increased harassment by the military forces of the media covering the war in Iraq and accusations that they were inciting violence were "unsubstantiated" and, he added, "There is no defined legal framework within which one can discuss these matters."¹⁹⁰ Under pressure to become "informers" by the IGC, Khanfar asked where the protection was for journalists that democracy was supposed to provide.¹⁹¹ A new television service called Iraqi Media Network (IMN) was to replace the former Iraqi Ministry of Information version and was launched, with no previous media experience, by a U.S. defense contractor called Scientific Applications International Corporation (SAIC), with Al Jazeera helping to train its staff.¹⁹² But even SAIC's managers came under the tight control of Bremmer and were asked to "drop the readings from the Koran, the 'vox-pop' man-in-the-street interviews (usually critical of the U.S. invasion) and even to run their content past the wife of a U.S.-friendly Iraqi Kurdish leader for a pre-broadcast check."¹⁹³ Since the Pentagon was paying \$6 million a month for this TV outlet, it basically wanted a good public address system with no journalistic questioning, and it presented European and American movies "from Uday Hussein's personal video collection, looted from his mansion and broadcast illegally, without attention to copyright law."¹⁹⁴

¹⁸⁹ Miles 295.

¹⁹⁰ Miles 315.

¹⁹¹ Miles 315.

¹⁹² Miles 282.

¹⁹³ Miller, "Information Dominance," 13.

¹⁹⁴ Miles 283.

In spring of 2003, Al Jazeera had aired a tape from bin Laden's deputy, Dr. Ayman al-Zawahiri, calling on Muslims to "attack Western embassies and commercial interests in retaliation for the war in Iraq."¹⁹⁵ Naturally the U.S. State Department spokesmen and Secretary of State Colin Powell voiced their outrage, which Al Jazeera also broadcast in simultaneous translation.¹⁹⁶ One of Al Jazeera's journalists, Omar Al Issawi, the point man for the channel at CentCom, explains what happens following the airing of Al Qaeda messages on Al Jazeera:

What we do is we have analysts and commentators come in and analyse, criticize, critique what has just been delivered on the air. Because it is important for our viewers to learn what the other side of bin Laden's argument is. . . . Now thankfully after all of these messages, either by bin Laden or by his lieutenant, Ayman al Zawahiri . . . nobody has taken them up on their word, because our viewers are more sophisticated and more intelligent and smarter than that. . . . But we don't believe in a blackout on bin Laden. We know that if we don't broadcast that, somebody else will. Because bin Laden is news and people want to know.¹⁹⁷

What is interesting about Al Issawi's remarks is that they reveal how western media and Bush Administration appointees framed, by omission, Al Jazeera's coverage of the 'war on terror' as essentially inciting violence against the west, and how competitive Arab satellite TV was in 2003, to the point where Al Jazeera felt compelled to air Al Qaeda messages, but being socially responsible put them in context with Arab critical analysis.

U.S. Marine Captain and press officer Josh Rushing, who later launched his second career as an on-air military analyst with Al Jazeera English, noticed with respect to Al Jazeera reporters, that "unlike some of the journalists in Doha, the story seemed to be more important to them for its inherent social purpose rather than their own career

¹⁹⁵ Miles 294.

¹⁹⁶ Miles 295.

¹⁹⁷ Evans 4.

ambitions.”¹⁹⁸ He had connected with many journalists through his work at Coalition Central Command (CentCom), where the world’s news reporters received daily briefings on the war in Iraq.

To complicate perceptions of Al Jazeera uncensored, which so concerned the CRTC, is that much of the channel’s short history coincides with various wars in the Middle East and Afghanistan, all of whose combatants have a stake in controlling the regional narrative. Al Jazeera was narrating from an Arab perspective. The Palestinian-Jordanian journalist and scholar Rami Khouri argued that the way to find the whole story on the 2003 Iraq war, for example, was to look at television news from both the American and the Arab sides, something that was easier for Middle Easterners to do given their easy access to American satellite news channels, which largely left out reporting tens of thousands of casualties, whereas Arab reports were primarily about civilian casualties resulting from American practices there.¹⁹⁹ Another reason that Americans might have thought Al Jazeera was so biased was because, according to journalist Hugh Miles:

The popular American media has not reported particularly comprehensively about foreign affairs for years. Somewhere between the trial of OJ Simpson and Janet Jackson’s nipple, analytical news reporting in America was replaced with celebrity journalists providing sound bites and prejudice, to be recycled later as news. Given this dearth of quality foreign news, it is no surprise that second-hand reports from Al-Jazeera about rising levels of hatred for America in the Middle East seem made up.²⁰⁰

Western journalists like to cite their democracies’ freedom of the press tenets, expressed by John Stuart Mill in his 1859 publication On Liberty, at a time when the press was often censored in the interests of various power centres like church and state.²⁰¹

¹⁹⁸ Rushing and Elder 48.

¹⁹⁹ Rami Khouri, "U.S., Arab TV: Each Tell Only Half the Story," National Catholic Reporter 11 Apr 2003, 15 Apr. 2009 <http://natcath.org/NCR_Online/archives2/2003b/041103/041103w.htm>.

²⁰⁰ Miles 364.

Some argue today's media have too much power for which they are unaccountable, that journalists face little danger in democracies, and that valiant images of press members speaking truth to power are an outdated reference to a more dangerous time when media could be shut down for what truth they published and the writers put in harm's way.²⁰² The picture isn't so antiquated in today's "guided democracies"²⁰³ where journalists are murdered along with human rights lawyers,²⁰⁴ and where freedom of the press in democracies like the U.S. and U.K. can become a casualty of "weaponized information" to fight wars where even friends can be attacked if they get in the way of achieving "information dominance," the new "key to victory."²⁰⁵ The fact that British Prime Minister Tony Blair and U.S. President George W. Bush discussed their ally Qatar in Washington on April 16, 2004, and the possibility of bombing Al-Jazeera, is denied by both parties, including Blair talking Bush out of such a plan. But David Keogh, a communications officer in the British Cabinet office, and Leo O'Connor, a Labour Party researcher for anti-war parliamentarian Anthony Clarke, were both found guilty in May 2007 of violating the Official Secrets Act for leaking a memo describing details of the conversation, which appeared in the London press. A London appeal court later lifted a ban imposed by the judge against the media reporting on the contents of the leaked document.²⁰⁶

²⁰¹ John Stuart Mill, On Liberty and the Subjection of Women, 1859, ed. Alan Ryan (London: Penguin, 2006).

²⁰² Onora O'Neill, A Question of Trust (Cambridge: Cambridge UP, 2002).

²⁰³ A term coined by Russian political scientist Gleb Pavlovsky to mean democracy with increased autocracy, or rule by self-appointed leader.

²⁰⁴ Keith Gessen, "The Accused: A Murder Outraged the Anti-Kremlin Opposition. The Murder Trial Divided It," The New Yorker 23 Mar.2009.

²⁰⁵ Miller, "Information Dominance," 12.

²⁰⁶ "London Appeal Court Quashes Judge's Gagging Order," Reporters Without Borders 2007, <http://www.rsf.org/print.php3?id_article=23158> .

The story seems credible given the bombing of Al Jazeera bureaus in both Kabul and Baghdad. The 2003 war in Iraq was “the most dangerous war for journalists ever,” and the United States military appeared to have killed “the largest single group of them.”²⁰⁷ Tariq Ayyoub was one in this group, a cameraman for Al Jazeera, who died when a U.S. A10 airplane fired missiles at the station’s Baghdad bureau, whose coordinates had been pre-registered with the American military.²⁰⁸ The Pentagon framed Al Jazeera’s track record as an enemy enabler after the channel aired from its Kabul bureau following 9/11 Osama bin Laden’s taped messages, which many western media paid to repeat, and the Pentagon no doubt monitored. Former U.S. Marine Josh Rushing reminds us that it was the United States government that first distributed Al Qaeda tapes to American media. The first tapes implicating bin Laden in 9/11 were found by Marines searching a house in Kandahar, who handed them over to the U.S. State Department, who studied them, copied them, and then distributed them to the U.S. media.²⁰⁹ The Pentagon instructed U.S. bombers to hit the Al Jazeera bureau in Kabul in 2001, saying it was “a facility used by Al-Qaeda.”²¹⁰ The station’s correspondent Taysir Alluni interviewed Taliban officials post 9/11 in the course of doing his job, which was likely monitored by the U.S. military, which said: “It is not relevant for us to know that it was a broadcast facility.”²¹¹ In friendlier times, the previous April, the Emir of Qatar had arranged for a group of visiting United States congressmen to meet a delegation of the Taliban going through Doha.²¹²

²⁰⁷ Phillip Knightley, “History or Bunkum?,” Tell Me Lies: Propaganda and Media Distortion in the Attack on Iraq, ed. David Miller (London: Pluto, 2004) 100.

²⁰⁸ Miles 266.

²⁰⁹ Rushing and Elder 156.

²¹⁰ Miles 166.

²¹¹ Miles 166.

²¹² Miles 104.

In 2003 the Bush Administration had connected the dots with Britain's Labour Prime Minister Tony Blair in a rationale for fighting terrorists by joining forces to attack Iraq on March 20, first bombing Baghdad.²¹³ During that war, the Pentagon determined that Al Jazeera uncensored was feeding anti-American sentiment through its relentless visuals of civilian casualties in Iraq and regarded Al Jazeera as an enemy propaganda outlet. The channel was temporarily banned from Iraq in 2004, supposedly because one of the Iraqi guests on its very popular talk show The Opposite Direction had suggested that Israel had interests in Iraq, which was refuted by a second Iraqi guest. According to former U.S. Marine Captain Josh Rushing: "Off the record, both [U.S.] military and Iraqi officials admitted that Al Jazeera's ban related more to their belief that the network was inciting violence in Iraq. . . . Since Al Jazeera has left Iraq, though, the violence has escalated exponentially."²¹⁴

Inevitably the topic of beheadings comes up when talking about Al Jazeera. Many who are ignorant about the station's service assume that Al Jazeera has broadcast such executions, for example those of Daniel Pearl in Pakistan and Nick Berg in Iraq. Josh Rushing and other sources deny this, explaining that Al Jazeera has received tapes from hostage takers that show such acts, but that the network's editors "always stop the tape before the actual beheading. . . . The footage they have shown . . . is identical to what U.S. news networks aired from the exact same tapes, though invariably some U.S. media outlets will report in their headlines that Al Jazeera showed a beheading tape (without clarifying that it didn't show the tape's gruesome end)."²¹⁵ The managers at Al Jazeera

²¹³ Faisal Bodi, "Al Jazeera's War," Miller, Tell Me Lies 243.

²¹⁴ Rushing and Elder 175.

²¹⁵ Rushing and Elder 123-124.

have vigorously denied airing beheading footage of hostages, even offering “ a \$10,000 reward to any critic who could document such a broadcast.”²¹⁶

An American scholar on Arab media and former ambassador to Yemen and the United Arab Emirates, William A. Rugh, has delivered a thoughtful critique of his country’s public diplomacy following the end of the Cold War. He deplores the dismantling of the Voice of America’s Arabic Service (active since the end of the Second World War) by the Board of Broadcast Governors, the agency in charge of the United States’ civilian foreign broadcasting. Its chair of the Middle East Committee, Norman Pattiz, replaced it with the non-commercial Arabic-language pop music Radio Sawa, targeting the under-30 age group. It airs news bulletins on the half hour “to combat hate media.”²¹⁷ This is reported by a former U.S. public diplomacy worker turned academic in communications at California State University, Nancy Snow who took this to mean “any media that was decidedly anti-US or anti-Israel in tone or content.”²¹⁸ Radio Sawa is basically a propaganda station, fitting NATO’s description of propaganda as “any information, ideas, or special appeals disseminated to influence the opinion, emotions, attitudes or behaviour of any specified group in order to benefit the sponsor, either directly or indirectly.”²¹⁹ Along with Radio Sawa, the BBG launched the Middle East Television Network, known as Al-Hurra, basically the new name for VOA. Unlike journalists at Al Jazeera, “Al-Hurra staff are not even allowed to question the U.S. administration, only to repeat policy internationally.”²²⁰ So it would appear these stations have more in common with the

²¹⁶ Lynch, Voices of the New Arab Public 233.

²¹⁷ Nancy Snow, “Brainscrubbing: The Failures of US Public Diplomacy After 9/11,” Miller, Tell Me Lies 54.

²¹⁸ Snow 55.

²¹⁹ Snow 54.

²²⁰ Miles 377.

regime mouthpieces found in the pre-Al Jazeera Middle East than with anything resembling an independent news outlet serving citizens in a democracy, whose values the Bush Administration stated it wished to extend to Iraq.

Public diplomacy is the explanation of “what is behind American policy decisions and how the American public sees the issues,” as well as the monitoring of foreign opinion and its analysis.²²¹ According to William A. Rugh, President George W. Bush didn’t seem interested in foreign opinion. After U.S. Secretary of State Colin Powell complained to Qatar’s Emir about Al Jazeera’s coverage and was reminded of its editorial independence, and after Defense Secretary Donald Rumsfeld labeled the channel’s content as “vicious, inaccurate and inexcusable reporting,” Al Jazeera was boycotted by American officials who would not participate in its talk shows.²²²

When he was a U.S. Marine press officer during the Iraq war, John Rushing did not share this notion of marginalization. He was quoted in the film Control Room, directed by Egyptian-American Jehane Noujain: “The fodder that feeds the fires of 9/11 is the Arab perspective. There’s no greater shaper that we have access to than Al-Jazeera. It’s too important to ignore.”²²³ Later recruited at Al Jazeera English, Rushing offers a scenario as to how incitement to violence (something the United States says originates on Al Jazeera) may actually be triggered by U.S. soldiers. By refusing to comment to an Arab reporter, for example, when asked why they fired on a mosque (because they were fired on first), leaves viewers manipulated by “an Arab eye-witness screaming that they were peacefully praying when blood-lusting Marines mercilessly attacked.” Rushing adds, “[Y]oung Arabs watching the news on Al Jazeera might conclude they have the

²²¹ William A. Rugh, “Repairing American Public Diplomacy,” Arab Media & Society 7 (Winter 2009).

²²² Rugh.

²²³ Control Room, dir. Jehane Noujaim, Magnolia Pictures.

responsibility to fight the infidels who assault their mosques and the pious Muslims within.”²²⁴

Al Jazeera’s notion of journalistic objectivity requires its reporters to get as wide a range of views and vantage points as deadlines will allow, to fulfill its motto of “the opinion and the other opinion.”²²⁵ In their book on Al Jazeera, Egyptian-Canadian Middle East media scholar Adel Iskandar and co-author Mohammed El Nawawy use the term “contextual objectivity” when talking about Al Jazeera’s methodology, giving the voice to the voiceless, especially in its talk shows.²²⁶ There one may very well hear comments by bigoted guests or bigoted callers, challenged by other guests and callers, posing the dilemma not easily resolved in the Arab world as to whether Al Jazeera is responsible for comment it airs, despite reminders to viewers that these are “not the opinion of the station.”²²⁷ It’s a dilemma because, unlike in Canada, independent regulation of broadcasting laid out by democratically elected lawmakers doesn’t exist. So Al Jazeera is in the position of being both a kind of Qatar-based public broadcaster and regulator, not unlike CBC in the early years when it also regulated broadcasting in Canada.²²⁸

The U.S. strategy to marginalize Al Jazeera is not shared by the Israeli government. Ofir Gendelman, a former diplomat at the Embassy of Israel in Ottawa, was the first spokesperson to the Arab media from the Israeli Ministry of Foreign Affairs in Jerusalem. He describes a time before Al Jazeera arrived in the region, when Arab TV newscasts

²²⁴ Rushing and Elder 172-173.

²²⁵ Miles 11.

²²⁶ Mohammed el-Nawawy and Adel Iskander, Al Jazeera: How the Free Arab News Network Scooped the World and Changed the Middle East (Boulder: Westview, 2002).

²²⁷ Miles 199.

²²⁸ Canada, CRTC, CRTC Origins, <<http://www.crtc.gc.ca/eng/backgrnd/brochures/b19903>>.

used to be “deadly dull,” serving largely as the “mouthpieces of their respective regimes”:

The newscasts dutifully reported on the daily activities of the ruling king or Dictator – whom he met, where he visited, how many people came from far and wide to greet him. . . . Then along came Al-Jazeera, which for the first time ever allowed criticism of these same Arab regimes (except, of course, the Qatari ruling family, one of whose members is the founder of the channel). Arab viewers were immediately captivated and ratings soared.²²⁹

Capitalizing on these ratings is one of the reasons the Israeli foreign ministry set up a special group to present “brand” Israel in media throughout the Arab world. Members of this official Israeli group were given the best training available in both Israel and the United States with which to target the Israeli message “directly to the Arab street, in its own language and over the heads of its illiberal governments.”²³⁰

The CRTC seriously considered the fact that Al Jazeera had been available in Israel since 1999, but the “possibility that there would be flagrant violation of the hate laws in Canada” was what kept the Commission from granting its approval for BDUs to distribute the channel, without monitoring it 24 hours a day, 7 days a week and without conditions of prior restraint.²³¹

Israel’s “neighbourhood” is obviously very different from Canada’s. There are 1.2 million Arab citizens in Israel and approximately 3.7 million Palestinians in the West Bank and Gaza.²³² Arabic is Israel’s second official language after Hebrew and learning

²²⁹ Ofir Gendelman, “How I Learned to Love Al-Jazeera,” Ottawa Citizen 21 Apr. 2007.

²³⁰ Gendelman, “Al-Jazeera.”

²³¹ Langford, personal interview.

²³² Naomi Sakr, Satellite Realms: Transnational Television, Globalization and the Middle East (New York: I.B. Tauris, 2001) 123.

Arabic is now mandatory in Israeli schools.²³³ Ofir Gendelman further explains how the uncensored Al Jazeera came to Israel:

Now the way that things work here is that the High Courts of Justice basically have the power to rule on every given issue. And if the government at the time had decided to not let Al Jazeera air here, Al Jazeera would then have made an appeal to the court and the court would have decided to let them air because this is free speech. OK? And the fact of the matter is, a lot of people get Al Jazeera without any need to subscribe to any cable or satellite. They get it with their dish that they install on their roof . . . because in most of the Arab countries, they don't have regulation of cable and satellite broadcasting so everyone gets his own channels and there are about 600 or 700 Arabic-language TV channels.²³⁴

So if both Arab speakers in Canada and Israel have found their own ways of receiving Al Jazeera without waiting for government approval, it's not clear how hate laws in either country can be enforced, as regulators claim they must be. What is clear is that there is another "grey area," and by the way, the grey marketers in Canada are paying too much. Al Jazeera is free of charge in the Middle East, but it's been trying to make subscription income outside the region because its commercial revenue has been sharply limited by Saudi Arabia's pressure on potential advertisers to boycott Al Jazeera.²³⁵ It can clearly afford to be independent from ratings driven by pressure for advertising revenue, but it strives for large audiences like any professional news network and makes revenue by selling its pictures to media around the world. Unlike western news reporting, some Arab satellite channels like Abu Dhabi TV, a mostly entertainment channel, have in the past referred to Jerusalem as "occupied Jerusalem,"²³⁶ and sometimes Arabic media put Israel

²³³ Ofir Gendelman, personal interview, 16 Apr. 2008.

²³⁴ Gendelman, personal interview.

²³⁵ Miles 64.

²³⁶ Ofir Gendelman, E-mail to the author, 18 Apr. 2008.

in quotation marks as a way of de-legitimizing it.²³⁷ But Al Jazeera was the first Arab channel to break the taboo on interviewing Israelis, as Ofir Gendelman explains:

Up until '98 or '99 no viewers in the Arab world ever saw an Israeli. Ever! Look. You in Canada cannot understand this because it never happened. . . . We never met Syrians or Yemenites, or Iraqis or Iranians. Never. You can't meet them because the borders are closed. And until the peace treaty with Egypt and Jordan, we never actually saw Jordanians or Egyptians, an Iraqi, Syrian and so forth. So in the Arab world it was the same but worse because there was a very harsh incitement against Jews and Israelis in general. I would say anti-Semitic and even Nazi-like. Jews were portrayed as animals as pigs and apes as people with horns and tails. A lot of people today are shocked to see that I'm human. I'm not kidding. They are absolutely certain that we are, I would say not human, even Satanic-like.²³⁸

Egyptian-Canadian scholar Adel Iskander agrees:

They were the first Arab network to invite Israeli officials to come on. I cannot tell you how horrifying that would be for an Arab audience in the late '90s: to turn on the television and see an Israeli speaking, Israelis had never spoken! One, they don't exist. Secondly, they don't speak. They just kill. For them to be involved in a dialogue was really just mind-boggling to an Arab audience.²³⁹

The CRTC seemed to give more weight to interveners using English translations of Arabic-language evidence provided by MEMRI, whom Washington sponsored with charitable status. It's interesting to note that in 2005 fewer than five Arabic-speaking American administration spokesmen were capable of participating in an Arabic-language debate on Al Jazeera.²⁴⁰ This is in a country where there are 1.8 million Arabic speakers, residing mostly in the industrial north in Michigan, Ohio, Wisconsin, Pennsylvania and in parts of California.²⁴¹

²³⁷ Ken Rockburn, Interview with Ofir Gendelman on Talk Politics, 2007, cpac TV, 17 April 2008 <<http://www.cpac.ca/forms/index.asp?dsp=template&act=view3&pagetype=vod&lang=e&clipID=483>>.

²³⁸ Ofir Gendelman, personal interview, 16 Apr. 2008.

²³⁹ Rushing and Elder 134.

²⁴⁰ Miles 384.

²⁴¹ Miles 390.

The comments of Hugh Miles, raised in the Arab world due to postings there by his father Oliver, a British diplomat, highlight how impossible the CRTC conditions were for Canadian BDUs to fulfill. Miles has noted that the investment of billions of dollars in public relations in Arab countries by successive American governments contrasts with the existence of very few Arabic speakers in the United States government, including the CIA. This was compounded by suspicions over many Arab experts post 9/11, which allowed the first name given to the Anglo-American campaign in Afghanistan to be Operation Infinite Justice until it was pointed out that the Arabic translation was ‘divine retribution,’ which was about as useful as ‘crusade.’²⁴²

Currently no native Arabic speakers in the American or British intelligence services make it their business to monitor Al-Jazeera’s output around the clock. When I asked one senior British naval officer responsible for media liaison during the invasion of Iraq what he made of Al-Jazeera’s coverage of the war, he told me, “I had no one to watch the output for me, so I have no idea whether Al Jazeera represented us fairly or not. In Doha there was a Jordanian guy hired by the Brits to watch TV stations and comment on the output. The result was that it was judged broadly balanced.”²⁴³

If there is a dearth of British and American Arabic-speakers in intelligence operations to monitor Al Jazeera during something as well resourced as a war, how are Canadian cable providers supposed to recruit and retain monitors around the clock 365 days a year who can make split second decisions about cutting out something as ill-defined as ‘hate’ in Canadian law? And if there was a dearth of coalition forces watching Al Jazeera during the 2003 Iraq war, how could the Bush Administration have understood the context of the pictures without understanding the audio? It was the lack of this kind of context that so concerned the B.C. Civil Liberties Association about evidence presented by the Canadian

²⁴² Miles 159.

²⁴³ Miles 384.

Jewish Congress to argue its case to the CRTC for barring Al Jazeera's distribution in Canada.

Marc Lynch, a political science scholar at Williams College in Massachusetts in 2006, studied Al Jazeera's talk shows and assembled a database of 976 programs, which he analysed (being fluent in Arabic). He found examples of four talk shows that "sound explicitly anti-Semitic themes," such as a 1999 No Limits program on "World Zionism" and another No Limits show in 2000 on David Irving's views on the truth of the Holocaust; The Opposite Direction in 2000 devoted an episode to similarities between Nazis and Zionists; and the last one in March 2002, was a No Limits broadcast focused on the Protocols of the Elders of Zion.²⁴⁴ These are widely cited examples in the west, and of course rightly condemned, but as Lynch points out, anti-Semitic discourse was far more likely to be found within United States allies' "government-controlled media of Saudi Arabia and Egypt . . . than in the elite Arab public sphere."²⁴⁵

Al Jazeera has been inextricably linked to the many crises in the Middle East since the network launched in November of 1996. Shortly thereafter, sensing an opportunity to gather news, it established a bureau in Baghdad, which no one else had, because "no other international networks had a functional relationship with the Iraqi regime."²⁴⁶ It got its first major international news scoop when American and British forces bombed one hundred targets in Iraq over a four-day period beginning on December 16, 1998, at the start of Ramadan, the Muslim holy month. Operation Desert Fox, as it was called, was the Anglo-American response to Saddam Hussein's refusal to cooperate with UN inspectors looking for weapons of mass destruction (WMD). Every western news outlet

²⁴⁴ Lynch, Voices of the New Arab Public 61.

²⁴⁵ Lynch, Voices of the New Arab Public 61.

²⁴⁶ Lynch, Voices of the New Arab Public 48.

presenting international news wanted the pictures that Al Jazeera shot. Just as its coverage of the Gulf War of 1991 made CNN part of the story, so Operation Desert Fox covered by Al Jazeera made it part of the international news narrative.²⁴⁷ Al Jazeera's talk shows brimmed with debate and comment from the Arab world, generally outraged that its holy month began "with fear instead of hope, with war instead of peace, with destruction instead of birth, with death instead of life."²⁴⁸ These were the on-air words on December 20, 1998, of one of Al Jazeera's most illustrious presenters, Muslim cleric Sheikh Yusuf al-Qaradawi, who guest hosts a very popular weekly program called Sharia and Life, on which he advises the faithful far and wide on matters of the Koran. He framed the Iraq attacks as "primarily about defending Israel" and said the United States was "setting itself above God in determining matters of life and death."²⁴⁹ Then, using words the United States could have scripted for him, he pronounced: "We consider the Iraqi regime a criminal and harmful regime for its people. . . . I call on the Iraqi president to allow freedoms inside of Iraq and to allow the Iraqi people a voice."²⁵⁰

Iraq and the suffering of its people under UN sanctions after the 1991 Gulf War were frequent topics on Al Jazeera talk shows. The Emir of Qatar was interested in initiatives to end the sanctions.²⁵¹ He had opened Qatar's huge ports to Iraq after the 1991 Gulf war to deliver goods allowed under the United Nation oil-for-food program.²⁵² Guests and callers questioned and debated the apparent inability of the Arab world to stop the embargo, while viewers were united in their identification with fellow Arabs under siege.

²⁴⁷ Lynch, Voices of the New Arab Public 135-136.

²⁴⁸ Lynch, Voices of the New Arab Public 125.

²⁴⁹ Lynch, Voices of the New Arab Public 125.

²⁵⁰ Lynch, Voices of the New Arab Public 126.

²⁵¹ el-Nawawy and Iskander.

²⁵² Miles 21.

Al Jazeera was influencing public opinion by showing a humanitarian crisis just as western media had done during the Ethiopian famines of 1984-85. Capitalizing on its popularity, Saddam Hussein gave Al Jazeera access to Iraqi leaders. The channel included lots of opposition to his regime in its talk shows, opposition that ultimately lost the argument to the “politics of authenticity and identity;” that is, regime change by superpower force where Arabs would die, was not an option.²⁵³

Al Jazeera’s coverage of the second Palestinian *intifada*, or uprising, in September 2000 (provoked by then Israeli opposition leader Ariel Sharon visiting Al-Haram al Sharif, a holy site in Jerusalem known as Temple Mount to Jewish Israelis) got world attention at the start of this revolt when a French camera crew captured a Palestinian father and his twelve year old son, Mohammed al-Dura, pinned down by cross fire between Israeli soldiers and Palestinian militia in Gaza. The boy was shot, it was assumed at the time, by Israeli forces²⁵⁴ and died in his father’s arms. That footage was shown around the world, eroding support for Israel, and repeated for days on Al Jazeera, “defining the shared Arab experience of the crisis and directly contributing to a resurgence of protest activity.”²⁵⁵ One Israeli academic described the event as “one of the most disastrous setbacks Israel has suffered in decades,” an example, as said on CBS 60 Minutes, of how “one picture can be worth a thousand weapons.”²⁵⁶

When Al Jazeera became the first Arab television news network to interview Israelis, prompting, by the way, many other Arab media to follow suit, some viewers called the channel “an American-Zionist plot . . . as part of a strategy to divide and rule the Arabs

²⁵³ Lynch, Voices of the New Arab Public 17.

²⁵⁴ James Fallows, “Who shot Mohammed al-Dura?,” The Atlantic June 2003.

²⁵⁵ Lynch, Voices of the New Arab Public 42.

²⁵⁶ Fallows.

and so aid the Israeli oppression of the Palestinians.”²⁵⁷ In fact, in a 2003 survey by the Jerusalem Media and Communication Centre listing nine television stations, Al Jazeera was by far the most popular, as reported by 51.2 percent of Palestinians in the West Bank and 52.5 percent in Gaza; audiences in these territories prefer pan-Arab satellite stations in general for the quality and range of programs over local and national ones.²⁵⁸

When Israel doesn't like Al Jazeera's coverage of events in the West Bank and Gaza, it accuses the channel of reporting for incitement of violence. Most Americans had never heard of Al Jazeera until the channel aired, on Sunday October 7, 2001, remarks taped by Osama bin Laden, and reported in USA Today, thanking God for “the fear in America engendered by 9/11.”²⁵⁹ These and other prerecorded bin Laden statements have appeared on Al Jazeera in a sort of C-SPAN format, albeit not in real time,²⁶⁰ and one assumes the Al-Qaeda leader chose Al Jazeera and later its competitor Al-Arabiya because of their large audiences.²⁶¹ Other news networks around the world wanted to air the bin Laden footage because of its news value, as did Al Jazeera, not because it was a “mouthpiece for terrorists.”²⁶² In fact the “most prominent Islamist face of al-Jazeera,” Sheikh Qaradawi, a presenter on Sharia and Life, opposes the closed views of bin Laden and reminds his viewers about Islamic thinking that “takes dialogue as a foundational point for its social

²⁵⁷ Miles 341.

²⁵⁸ Giovanna Maiola and Ward David, “Democracy and the Media in Palestine: A Comparison of Election Coverage by Local and Pan-Arab Media,” Arab Media and Political Renewal: Community, Legitimacy and Public Life, ed. Naomi Sakr (New York: I.B. Tauris, 2007) 99.

²⁵⁹ A. Alan Borovoy, Categorically Incorrect: Ethical Fallacies in Canada's War on Terror (Toronto: Dundurn, 2006) 16.

²⁶⁰ C-SPAN is an American political network of record created by cable companies in 1979 as a public service dedicated to airing governmental proceedings. Its motto is “unedited and balanced news.” 23 Feb. 2009 <<http://politics.slashdot.org/article.p/?sid=07/03/08/1723243>> .

²⁶¹ Al Arabiya is the Dubai-based, Saudi-owned satellite TV news channel launched in February 2003 to compete with Al Jazeera.

²⁶² Miles 112.

theory and practice.”²⁶³ Springing as it does from an Islamic society, it would seem that one of Al Jazeera’s news values contained in its motto, “the opinion and the other opinion,” is inspired by Islamic teaching. Qaradawi finds commandment in the Quran to dialogue and chastises “extremists [who] pretend that there are no points of agreement between us, the Jews and Christians.”²⁶⁴ One begins to understand how outrageous things get said on a show like The Opposite Direction when Qaradawi holds forth on the nature of extremism:

[It is] bigotry and intolerance, which make a person obstinately devoted to his own opinions and prejudices. . . . Such a person does not allow any opportunity for dialogue with others. . . . [This] attitude contradicts the consensus of the Islamic community, that what every person says can be totally or partly accepted or rejected.²⁶⁵

It’s kind of like Jon Stewart, host of The Daily Show, criticizing the hosts on CNN’s Crossfire for doing theatre instead of news debate during the 2004 Presidential election: “[Y]ou have a responsibility to the public discourse and you fail miserably.”²⁶⁶ Indeed, Al Jazeera’s talk shows, which may become very heated, and which feature guests at the extremes of the debate, are often criticized in the same way.²⁶⁷

Chastised for receiving and broadcasting bin Laden’s messages, Al Jazeera’s editor in chief met with Alistair Campbell, the Director of Communications and Strategy for Prime Minister Tony Blair, on 10 January 2003 in London to hear that the channel “would incite killing” by presenting bin Laden’s clips, which could contain secret coded messages.²⁶⁸ U.S. National Security adviser Condoleezza Rice had previously asked American TV

²⁶³ Lynch, Voices of the New Arab Public 87.

²⁶⁴ Lynch, Voices of the New Arab Public 87.

²⁶⁵ Lynch, Voices of the New Arab Public 87.

²⁶⁶ Media Matters, Crossfire, 15 Oct. 2004.

²⁶⁷ Lynch, Voices of the New Arab Public 78.

²⁶⁸ Tatham 94.

bosses to keep bin Laden's comments off the airwaves for that very reason.²⁶⁹ Critics have said this was really about concern over losing "hearts and minds," because as former President Dwight D. Eisenhower once remarked, "Fundamentally, public opinion wins wars."²⁷⁰ The fact that bin Laden's messages, coded or otherwise, were freely available to anyone with access to an Internet connection didn't seem to register with compliant American network executives "frozen in the White House headlights."²⁷¹

The modernization of Qatar through its enlightened Emir Sheikh Hamad bin Khalifa Al Thani and his wife Sheikha Moza bint Nasser al-Misned has been accompanied by what seems like a Western-style free press and post-secondary education system that propels the miniature country's influence along with what its massive wealth delivers.²⁷² Like Canada, Qatar shares its border with a much more powerful nation, in the latter's case Saudi Arabia, over which it has disputed border demarcation and endured occasional military attacks.²⁷³ Since taking over from his father in a bloodless coup in 1995 at the age of 45, the Emir has led Qatar to embrace more liberal ideas than would be expected within a Muslim society whose conservative Sunni Wahhabi religion is also shared by the Saudis.

When a BBC-Saudi partnership to launch the first satellite TV World Service in the Arabic language foundered over editorial control in April 1996, the Emir of Qatar saw an opportunity. It is reported that he had liked this service, which only lasted 18 months, and wanted Qatar to have a satellite channel independent of Saudi domination over Arab

²⁶⁹ Miles 116.

²⁷⁰ Tatham 1.

²⁷¹ Tatham 188.

²⁷² Qatar has the second largest known natural gas reserves of any country except Russia. See Miles, Al-Jazeera: The Inside Story of the Arab News Channel That Is Challenging the West.

²⁷³ Miles 20.

media. He quickly arranged for the out-of-work, BBC-trained, Arabic-speaking staff to recover their careers in a new venture, albeit not in London studios or in Rome, where the Saudi satellite pay-TV company Orbit was based. With a start-up grant of \$135 million U.S., he saw that Al Jazeera was launched in November from Doha, the first time an Arabic-language news service based on Western-style free press programming had ever been located in an Arab country. Many Arabic press outlets are headquartered in London or European capitals rather than Arab countries in order to disencumber themselves from operating in restrictive societies, although self-censorship is a feature of the Arab press since so much of it is financed by repressive states.

The Emir of Qatar had lived in the U.K. for several years while going to school, which no doubt familiarized him with the BBC and parliamentary democracy. Al Jazeera was to be independent of state interference, and in 1998 Qatar abolished its Ministry of Information and Culture, where the censorship bureaucracy was housed. This was a sign of true reform in the Arab world, but not necessarily democracy, given the Emir still has ultimate control over his country's affairs. Local news media operating in Qatar must obey "national and ethical laws." Criticizing the Emir or religion is frowned upon, and the government still controls who gets a media licence and access to the Internet in Qatar.²⁷⁴

After the 1991 Gulf War, Arabs wanted their own replica of CNN. Like other Arab satellite outlets, Al Jazeera was inspired by the 24-hour news channel, which had the effect of "changing the rules of international politics" and, by the way, Middle Eastern media.²⁷⁵ The turning point, as Sami Raffoul, general manager of the Pan-Arab

²⁷⁴ Mellor 56.

²⁷⁵ Sakr, Satellite Realms 84.

Research Centre in Dubai, observed to author Naomi Sakr, was CNN letting its viewers make their own judgments about the unedited pictures it rushed to air from Baghdad. Accompanied by sparse commentary, not in Arabic, CNN was inviting viewers to interpret the news for themselves, something no Arab state broadcaster was offering on the then terrestrial TV services.²⁷⁶ The value of letting viewers “interpret the news for themselves” could be debated in either Arab or Western cultures. Not offering much of an audio track is certainly cheaper to provide, which isn’t a news value.

The formal style of Arab state television originated in the 1960’s in Saudi Arabia as it tried to counter Gamal Abdel Nasser’s secular leadership goal of regional dominance. Nasser was the President of the United Arab Republic (Egypt), and he infused “Voice of the Arabs, Egypt’s radio service in the 1950’s and 1960’s”²⁷⁷ with passionate rhetoric, to foster Arab nationalism, or “Arabism”, the notion that from Morocco to the Gulf, Arabs should, with Egyptian leadership, throw off colonialism and unite in a single state.²⁷⁸ Arab nationalism forced the United States to dismantle its huge military base at Dhahran in Saudi Arabia, built after the Second World War.²⁷⁹

During the early part of the twentieth century when the British dominated the Middle East and the importance of oil was first recognized, British Foreign Secretary Lord Curzon pushed for setting up self-governing states that would be called an “Arab façade,” behind which Britain would rule.²⁸⁰ According to linguist and political science scholar Noam Chomsky, the United States took over this system and “added another layer of

²⁷⁶ Sakr, *Satellite Realms* 84.

²⁷⁷ Lynch, *Voices of the New Arab Public* 36.

²⁷⁸ Roger Hardy, "How Suez Made Nasser an Arab Icon," BBC News, 2006, <http://news.bbc.co.uk/2/hi/middle_east/5204490.stm> .

²⁷⁹ Noam Chomsky and Gilbert Achcar, *Perilous Power: The Middle East & U.S. Foreign Policy*, ed. Stephen R. Shalom (Boulder: Paradigm, 2007) 64.

²⁸⁰ Chomsky and Achcar 55.

structure to it, “what were called peripheral states . . . the local cops on the beat.” These included Turkey, Iran under the Shah, Pakistan, and later Israel when in 1967 it defeated Nasser, the “main threat” to the Saudi kingdom.²⁸¹ Thus began “the strategic importance of Israel,” reversing for the United States its lack of military presence in the oil-rich kingdom of Saudi Arabia and beyond.²⁸²

Nasser founded Voice of the Arabs, or Sawt al-Arab radio, as a strategy for politicizing the masses to pressure rival regimes. Not letting facts get in the way of dreams, it carried by transistor radio to the far reaches of the Republic, Arab victory in the 1967 Six-Day War with Israeli. Other Arab media followed that euphoric lead, only to learn a week later from foreign sources that Arab forces had been soundly crushed. That misleading news had deeply betrayed Arab audiences, who turned to BBC Arabic World Service Radio; state media then settled into covering the “meet and greet” of various rulers of the realms, where nothing much seemed to be happening.²⁸³

Saudi television of the 1970s was top heavy with religious programming and live broadcasts of pilgrimages to Mecca and Medina by Muslims from all over the world. After the 1973 spike in oil prices, the Arab League created Arabsat, or the Arab Satellite Communications Organization. Fast forward to August 1990, when Iraq invaded Kuwait. Saudi Arabia, which borders both, failed to broadcast the invasion to its citizens. State media did not mention the invasion for two days. Word leaked out through Saudis privileged to own satellite dishes, who had picked up CNN for U.S. troops stationed in the Persian Gulf. A satellite TV news channel had just demonstrated how to trump Arab

²⁸¹ Chomsky and Achcar 56.

²⁸² Chomsky and Achcar 25.

²⁸³ Evans 2.

state media, and the world got to eavesdrop on normally secretive diplomacy talks.²⁸⁴

The “CNN effect” was fresh even by Western standards, gathering news of what seemed like instantaneous “dialogue between warring parties,” and in other cases “an acceleration of policy,” with varying degrees of effectiveness.²⁸⁵ Unprecedented in the heavily censored Arab region, its appeal was huge and the population wanted its own replica.

The Emir’s easing of censorship over Qatari media gave western-trained Al Jazeera journalists the chance to report on Middle East matters as though they were working for a European broadcaster; in fact, many Al Jazeera reporters had worked for western media, not just the BBC. Al Jazeera set up twelve bureaus to start, recruited from all of the Arab state nationalities, unlike the BBC, which heavily relied on staff of Egyptian origin,²⁸⁶ and created a journalistic code of ethics, released a few days before the CRTC’s decision on Al Jazeera.²⁸⁷ So frequently did Al Jazeera rattle the status quo that its staff was ordered out of many Arab countries but later allowed back in, although its reporters cannot work in neighbouring Bahrain, Saudi Arabia, or in Jordan “in protest against the channel’s provocative debates on these countries’ internal and external affairs.”²⁸⁸ Foreign ministers, including Israel’s, making trips to Doha to complain about coverage have been told by the Qatari foreign ministry, not unlike what the British Foreign Office says of the BBC, “the independence of which is provided for by law,” that Qatar’s government is at arms length from Al Jazeera, and while it can’t really interfere with its

²⁸⁴ Sakr, Satellite Realms 84.

²⁸⁵ The CNN Effect: TV and Foreign Policy, Centre for Defence Information, 1995, 23 Feb. 2009 <<http://www.cdi.org/adm/834/transcript.html>>.

²⁸⁶ Abdul Hadi Jiad, “The BBC: A Personal Account,” Miller, Tell Me Lies 206.

²⁸⁷ Al Jazeera Code of Ethics, Al Jazeera, 2004, 10 Apr. 2007 <<http://english.aljazeera.net/English/archive/archive?archivedId=5190>>.

²⁸⁸ Mellor 56.

editorial policy, it will pass on the concern.²⁸⁹ Ambassadors located in Doha have been so busy forwarding complaints from their Arab home states that many feel as if they're ambassadors to a TV station, not a country.²⁹⁰ But the set piece which these diplomats may encounter no doubt reflects the "realignment" of Qatar's ruling elite, as scholar Naomi Sakr contends: "[M]ost evidence suggests that the alliances and priorities of Arab ruling elites influence the shape and orientation of Arab media, so that editorial content is ultimately attributable not to people outside the elite but to political agendas that reflect patterns of elite ownership and control."²⁹¹ So according to Sakr, it isn't so much that media changes politics in the Arab world, as much as the politics of change surfaces in media. The Emir of Qatar, schooled in Britain's military academy at Sandhurst, has no doubt learned a thing or two about strategy. By promoting freedom of expression in the Arab world where the chattering classes and *vox populi* may mingle in pluralism, Qatar draws critics away from the notion that it's an agent to both the United States and Israel "to 'disguise' its contribution to American hegemony in the Gulf region."²⁹²

Qatar may be no more than a mirage of a country to some "Arab nationalists who consider it as a historical mistake," but Al Jazeera has given it more than nation-state cachet by serving transnational interests, such as pan-Arab or pan-Islamic, to bolster its

²⁸⁹ Olivier Da Lage, "The Politics of Al Jazeera or the Diplomacy of Doha," The Al Jazeera Phenomenon: Critical Perspectives on New Arab Media, ed. Mohamed Zayani (Boulder: Paradigm, 2005) 49.

²⁹⁰ Miles 57.

²⁹¹ Naomi Sakr, "Approaches to Exploring Media-Politics Connections in the Arab World," Arab Media and Political Renewal: Community, Legitimacy and Public Life, ed. Naomi Sakr (London: I.B. Tauris, 2007) 6.

²⁹² Mohammed El Oifi, "Influence without Power: Al Jazeera and the Arab Public Sphere," The Al Jazeera Phenomenon: Critical Perspectives on New Arab Media, ed. Mohamed Zayani (Boulder: Paradigm, 2005) 77.

identity through influence, not power.²⁹³ It's not unlike what some have said about Canada's rationale for cultural policy being found in its security interests.²⁹⁴

For the time being, Qatar has become a new theatre for a large U.S. military airbase, from which forces were deployed against Iraq in 2003. Al Jazeera has provided something quite unique, an expression of Arabic truth to superpower, via Arab public opinion, engaged in the public space of transnational Arab talk shows.²⁹⁵

The irony is, just as Al Jazeera uncensored appeared to be embracing democratic values of freedom of the press, and providing a space for wide-ranging debate on international affairs, American media were stifling dissent about government policy, surrendering their key role in a democracy. As the War on Terror began post 9/11 with a coalition of western powers plus a few Muslim ones attacking Afghanistan, CNN's then CEO and chairman Walter Isaacson sent his staff a memo reminding them not to report from a Taliban perspective: "We must talk about how the Taliban are using civilian shields and how the Taliban have harbored the terrorists responsible for killing close to 5000 innocent people"; if civilian deaths were revealed, Isaacson thought it was important that CNN reporters "not forget it is that country's leaders who are responsible for the situation Afghanistan is now in."²⁹⁶ Mr. Isaacson had perhaps forgotten the ten-year war between the Red Army and the Mujahideen, instigated by the Soviet Union, which had devastated Afghanistan a decade before September 11, 2001. The fact that the

²⁹³ Oifi 77.

²⁹⁴ Dowler, "The Cultural Industries Policy Apparatus," 330.

²⁹⁵ Lynch, Voices of the New Arab Public.

²⁹⁶ Miles 140.

UN was reporting that with winter approaching, estimates of 7.5 million Afghans would soon need food, water and medicine as a result of displacement, was not in the memo.²⁹⁷

Phil Donahue, former host of a popular show on MSNBC, owned by General Electric, which made components for combat aircraft used in the 1991 Gulf War,²⁹⁸ was fired in February 2003 for inviting guests opposed to going to war to appear before Iraq was attacked March 20.²⁹⁹ The authors of Manufacturing Consent would recognize this firing as making way for a “filter” through which the public has to be given biased information to protect the business interests of the media owner.³⁰⁰

Following the invasion of Iraq by the Anglo-American coalition forces, when New York Magazine journalist Michael Wolff enquired on the lack of information at CentCom’s daily briefings with “Why are we here? Why should we stay? What’s the value of what we’re learning at this million dollar press center?” he was verbally attacked on Fox TV for his lack of patriotism, and that network’s commentator Rush Limbaugh published Wolff’s email address, which received 3,000 personal messages of hate.³⁰¹

The CRTC approved Fox News, owned by Rupert Murdoch’s News Corporation, for distribution by BDUs in Canada without conditions of prior restraint. B’nai Brith Canada and others supported the Fox application. Twenty-six individuals did not, concerned about possible abusive comment by its hosts, in particular, Bill O’Reilly.³⁰² For example, he had called for the bombing of Afghanistan’s infrastructure, which would deny citizens

²⁹⁷ Miles 138.

²⁹⁸ The searchable website of the U.S. Air force lists details of General Electric-built engines in the F117 Nighthawk, the Thunderbolt II, the Pave Hawks combat helicopter, and the M61A1 Vulcan gun assembled to the Tomcat combat fighter jet, all of which were used in the Gulf War. <<http://www.af.mil/index.asp>>

²⁹⁹ Goodman and Goodman.

³⁰⁰ Noam Chomsky and Edward Herman, Manufacturing Consent: The Political Economy of the Mass Media, 1988 (Montreal: Black Rose, 1995).

³⁰¹ Knightley, "History or Bunkum?" 105.

³⁰² Broadcasting Public Notice CRTC 2004-88, Ottawa, Revised Lists of Eligible Satellite Services (18 Nov. 2004).

the necessities of life such as water, which would violate international law: “The Afghans are responsible for the Taliban. We should not target civilians, but if they don’t rise up against this criminal government, they starve, period.”³⁰³ The CRTC most likely didn’t know about comments like these if interveners didn’t research and provide them, but the question is, should the CRTC have known? If it depends only on those outside its institution to supply evidence, how can it verify that Fox News doesn’t spread hate before approving it?

Monitoring centres of power on behalf of citizens is what professional members of a free press are expected to do for the health of their democracies.³⁰⁴ Most Arabs don’t live within democracy, although “those Arabs with access to satellite television consistently have more positive attitudes toward democracy.”³⁰⁵ Many are cynical about the notion that spreading it around the Middle East is the key objective of the world’s superpower. International relations scholar Gilbert Achcar at the University of Paris would agree:

The centrality of oil for U.S. policy in the Middle East is not speculation. One just has to read every strategic document produced by Washington for decades, which has been stressing oil as the major factor behind the importance of the area. . . . Of course, there are ways of putting it to make it more palatable: The United States supposedly is protecting the global economy and its access to oil. In the strategic documents, the U.S. presents itself consistently as defending not only its own interests but also the interests of its partners and allies against all kinds of threats.³⁰⁶

The fact that one of the United States’ closest allies is the repressive Saudi Arabia has not gone unnoticed by Al Jazeera, but its independence on covering international news rarely allows it to question the ‘local’ Qatari regime that funds its operation, and that regards its

³⁰³ Miles 362.

³⁰⁴ Tatham 45. Tatham cites Robert Fisk, who is quoting Amira Hass, an Israeli Jewish journalist for Ha’aretz who lives and works in the Palestinian Territories.

³⁰⁵ Lynch, *Voices of the New Arab Public* 7.

³⁰⁶ Chomsky and Achcar 56.

relationship with America the country's "first consideration."³⁰⁷ It has to be said that to stay competitive, pan-Arab satellite channels such as Al Jazeera "simply have to rely on foreign relations issues to attract audiences from all over the region."³⁰⁸

What Al Jazeera created within the Arab world was a public sphere in which most issues and subjects could be discussed, where public opinion could be monitored through talk and phone-in shows. Little attention was given to this opinion by the west until after 9/11, when the Bush regime was concerned about winning the battle for hearts and minds and framed Al Jazeera as an obstacle to victory on that front. During the war in Iraq, Al Jazeera and similar media like the Dubai-based Saudi-owned Al Arabiya, launched in February 2003, "arguably represented the single greatest strategic difference between 1991 and 2003" because the coalition forces were not in control of their own narrative.³⁰⁹

In fact the coalition forces were themselves not in agreement about how that narrative ought best to be controlled. David Howard, a civil servant and head of Britain's Ministry of Defence Communications Planning Unit, said later that one of the problems between his country and that of the United States was "a very different attitude towards the war taken by their media: 'The US had an incredibly compliant press.'³¹⁰ He believed that the Pentagon didn't understand the kinds of "pressures that some of the other Coalition governments would face" from their media.³¹¹ In fact, many British viewers had complained to the broadcasting regulator in January of 2002, the Independent Television Commission (now Ofcom), about Fox News coverage post 9/11. The regulator wrote Fox saying that while it might regard itself as "fair and balanced," what it fed to

³⁰⁷ Miles 10. Qatar Foreign Minister, Sheikh Hamad bin Jasim bin Jabr Al Thani, said this in 2002.

³⁰⁸ Mellor 36.

³⁰⁹ Lynch, Voices of the New Arab Public 6.

³¹⁰ Tatham 102.

³¹¹ Tatham 103.

Americans would not be granted approval for broadcast from within the U.K. “since it would contravene the television regulator’s rules on ‘due impartiality’.”³¹²

In the United States, one of the few Arabic-speaking representatives of the State Department, Dr. Nabil Khouri, admitted that Fox News is less than fair and balanced but that Al Jazeera shouldn’t be compared with it: “[B]ut why do we criticize Al-Jazeera and not criticize Fox? Well, how many Arabs watch Fox? I am concerned about US-Arab relations. We have a serious problem with Arab public opinion.”³¹³

Again one is reminded of the wisdom of comedian Jon Stewart when he said on Crossfire: “We need help from the media and they’re hurting us.” Helping the strategies of pro-war politicians not being held to account in a democracy would seem to be Fox News’ share of responsibility for Arab public opinion, but broadcast regulators in the U.K., aided by a media-literate citizenry, seemed to be the only ones noticing.

In their post-mortems following the Iraq campaign, the British concluded that not embedding Arab media with their forces had been a failed security strategy if hearts and minds needed to be won, because it gave the impression that there was no interest in Arab public opinion – in fact, that Arabs could be marginalized:

Arab audiences would have been able to view Coalition soldiers as individuals, rather than as an oppressive and invading presence. By building up a rapport, in the same way as many Western journalists, they might have been able to see the care and attention that the Coalition claimed was paid to selecting targets and the way in which captured Iraqi troops and injured civilians were attended to. Their presence would have required careful management; obviously Arabic-speaking Coalition minders with sufficient rank and stature to ensure the channels received the access they wanted were a pre-requisite. But the imagination and innovation needed to accomplish this were absent.³¹⁴

³¹² Miles 362.

³¹³ Miles 364.

³¹⁴ Tatham 108.

The allegations of bias in reporting the coalition troops' invasion and occupation of Iraq leveled at Al Jazeera by members of the Bush Administration are no doubt true, but it's likely impossible for any reporter with a personal connection to those being killed in war to remain aloof, once he or she has accurately reported events as they took place.³¹⁵ That doesn't mean that viewers around the world, policy makers and democratically elected members of government should have been deprived of a trained Arab reporter's perspective in order to make up their own minds about what they were seeing "and why certain people react[ed] in certain ways."³¹⁶ To make the point from a British reporter's perspective during the Falklands war in 1982, the London Evening Standard journalist Max Hasting said: "No British reporter could be neutral when his own country was fighting: objectivity was a peacetime luxury, and reporting an extension of the war effort."³¹⁷

Al Jazeera's Iraqi staff were familiar with places being bombed by coalition forces, but Al Jazeera's "own country" is actually a diverse region with diverse perspectives, but whose people share a common colonial heritage and language and, in many cases, religion; and although they did not admire the Saddam Hussein regime, they identified with other Arabs trapped in the fog of war and Al Jazeera could not have persuaded them otherwise if it hoped to continue operating as a credible regional news service. This is an example of the possibility that public opinion affects the news media more than the news media affect public opinion.³¹⁸ So that when the CRTC was "saying 'no' by saying 'yes'"

³¹⁵ Tatham 191.

³¹⁶ United Kingdom, House of Commons, Hansard, 3 Apr. 2003. Labour MP Ann Clywd was commenting on the difficulty Al Jazeera encountered in Baghdad and asking if MPs could have at their disposal an Arab news channel to see what the "Arabs are seeing."

³¹⁷ Tatham 192.

³¹⁸ Michael Schudson, The Sociology of News (New York: Norton, 2003).

to Al Jazeera, it was really saying no to Arab public opinion, reflected on TV, dissent that Canadians should have been able to watch, if only to evaluate the War on Terror, which Canada had signed up for in Afghanistan.

Al Jazeera's track record as a channel not willing to bow to an American government demand for self-censoring from its own media seemed finally to be reconciled with one of its sharpest critics, Alistair Campbell, when he told an Al Jazeera interviewer on November 24, 2004:

I found out that contrary to the view of the Americans, who consider Al-Jazeera to be a negative tool, you look at yourselves as a factor of change and reform and modernization in the Arab world. This is what we want and what we are endeavouring to realize. The visit opened my eyes to new things.³¹⁹

Steve Tatham, who served as Britain's Royal Navy spokesman on coalition forces in Iraq in 2003, notes in his book that many U.S. mainstream media had close connections with government during the Bush administration; for example, Fox TV's chairman was a former political strategist for the Republican Party and host Tony Snow was a speechwriter for the Presidency of George H.W. Bush. Fox cable news is the channel most watched by members of the U.S. military and it's now ahead of CNN as the "leading cable news provider in the United States."³²⁰

Demonizing Al Jazeera as anti-West intensified when the channel broadcast images of captured coalition soldiers and coalition war dead in Iraq, something western media didn't hesitate to show when it was Iraqi soldiers who were dead or taken as prisoners.³²¹ The International Press Institute (IPI) defended Al Jazeera when it suggested in an open letter to Colin Powell that the U.S. had a double standard wherein it supported balanced

³¹⁹ Tatham 190.

³²⁰ Tatham 36.

³²¹ John Pilger, "Crime Against Humanity"; Miller, Tell Me Lies 31.

news stories being reported in the West “while trying to prevent similar news stories being aired in the Middle East.”³²²

From the beginning of the War on Terror, Vietnam haunted the Pentagon; that is, it could win all its battles but lose the media war. The Bush administration had to control information, which it did through U.S. Attorney General John Ashcroft restricting the Freedom of Information Act.³²³ Then it dreamed up ways media might have to turn over information the Administration might need, resulting in new legislation by Congress called the Patriot Act, where among other things, government could require satellite content providers to hand over information in customer data bases.³²⁴

And there was a subtler form of power. The negative characterizing of Arab people in Hollywood films puts this frequently-used bias in sharp relief when imagining the reaction of just about any other racial group to being regularly cast as villains. It continues to this day. A 2009 film called Taken, starring Liam Neeson, about female white slavery serving—you guessed it—an Arab sheikh, is just one recent example, but many such examples in Hollywood movies date back decades, as scholars like Edward W. Said³²⁵ and Jack G. Shaheen³²⁶ have described. Canadian pop-culture has its own examples. Bad as red-haired girls might be, “London street-Arabs” in such classics as *Anne of Green Gables* is what proper PEI folk did *not* want to adopt as farm hands.³²⁷ The history of Arab immigration in Canada dates back to 1882 in Montreal when four Syrians arrived, and this is when similar Arab immigration began in the United States,

³²² Pilger 124.

³²³ Miles 121.

³²⁴ Miles 120.

³²⁵ Edward W. Said, Covering Islam: How the Media and the Experts Determine How We See The Rest of the World, revised ed. (New York: Vintage, 1997).

³²⁶ Jack G. Shaheen, Reel Bad Arabs: How Hollywood Vilifies a People (New York: Olive Branch, 2001).

³²⁷ Lucy Maud Montgomery, Anne of Green Gables (Toronto: Ryerson Press, 1942) 8.

but have Arabs in North America been as successful as other groups in lobbying for their interests?³²⁸ Clearly not in the case of having the media it wants sanctioned for distribution.

Asked about the significance and extent of anti-Arab racism in his country, Noam Chomsky said: “In the United States, it’s really the last legitimate form of racism. You don’t have to try to cover it up. . . . It’s considered natural and normal that you should be an anti-Arab racist.”³²⁹ Perhaps it was on this fertile soil that vilifying Al Jazeera seemed . . . well, natural.

Fifteen of the nineteen hijackers who flew planes into the World Trade Centre in New York on September 11, 2001, were Saudi and none had set foot in Canada, but in solidarity with its bordering neighbour, on 15 October 2001 Canada’s Liberal government introduced the Anti-Terrorism Act to Parliament, which promised to spend \$7.7 billion over five years to, among many other things, “ensure that Canadian values of respect and fairness are preserved through stronger laws against hate crimes and propaganda.”³³⁰ It’s not clear what this means, but perhaps government agencies were preparing for stronger hate law enforcement, and tribunals like the CRTC anticipated Al Jazeera wouldn’t pass the sniff test if distributed within Canada.

Within a week of its 15 July 2004 “approval” of Al Jazeera for carriage by BDUs wishing to offer it, Vidéotron was telling reporters that “it’s not a clear thing,” meaning that it wasn’t sure investing “more than half a million (dollars) to offer (Al- Jazeera) to

³²⁸ Baha Abu-Laban, An Olive Branch on the Family Tree: The Arabs in Canada (Toronto: McClelland and Stewart, 1980) 53.

³²⁹ Chomsky and Achcar 211.

³³⁰ Foreign Affairs and International Trade Backgrounder, 2001, <[http://www.dfait-maeci.gc.ca/ anti-terrorism/Canadaactions-en.asp](http://www.dfait-maeci.gc.ca/anti-terrorism/Canadaactions-en.asp)>.

2,000 customers” would be worth it.³³¹ Jean-Paul Galarneau, Vidéotron’s general manager of communications, stated that the company currently had 2,000 customers who took the Arabic-language arts and culture service ART channel for \$14.95 a month, but he didn’t know if the 116,000 Arabic speakers in Quebec would translate into enough extra business to make it profitable, given the CRTC’s conditions which would require hiring three new daily shifts of staff and extra equipment for logging and time-shifting. His concern was no longer that reflected by Vidéotron V.P. of Regulatory Affairs Édouard G. Trépanier, who had the previous year told the CRTC that his company estimated that in Montreal’s Arabic neighbourhoods “between 25,000 to 40,000 clients of Dish TV and DirecTV” could be repatriated to Vidéotron with packages of non-Canadian Arabic channels linked with “Canadian services of the Arab language.”³³² Galarneau also noted that a small number of Jewish customers “who claim Al-Jazeera is anti-Semitic and anti-Israel” led to cancellations of Vidéotron subscriptions in protest. He claimed that one customer was sending an email to “thousands of people” saying, “I look at Al-Jazeera’s Web site quite often and it is full of propaganda and hate.”³³³

Two months after the CRTC approved Al Jazeera with conditions, it approved with no conditions of prior restraint the non-Canadian MSNBC, owned by General Electric.³³⁴ And two months after that, Canadian subscribers who were watching MSNBC Canada³³⁵ would witness a shocking exchange of hateful comment, directed at

³³¹ Heinrich, "Don't expect Al-Jazeera here too soon, Videotron cautions."

³³² Édouard G. Trépanier, letter to CRTC, 15 September 2003, CRTC file 5520-01RP37-X/03, Vol. 27.

³³³ Heinrich.

³³⁴ Broadcasting Public Notice CRTC 2004-71, Ottawa, Revised Lists of Eligible Satellite Services (16 Sept. 2004).

³³⁵ Decision CRTC 2000-650, Ottawa. MSNBC Canada was approved as a Category 2 specialty television service until 31 Aug. 2007 (24 Dec. 2000) and equally owned by Rogers Broadcasting Limited (Rogers) Shaw Communications Inc. (Shaw) and MSNBC U.S.

Palestinians, on a show called Imus in the Morning, simulcast from CBS-owned WFAN radio in New York City. The following chapter opens with details of this incident.

Chapter Three

A Creature of Statute: The Independent Regulator

Yasser Arafat, leader of the Palestinian Liberation Organization, died November 11, 2004, in Paris, France, at a military hospital where he had gone for treatment. The next day his body was flown to his birthplace of Cairo for a private funeral attended by his wife Suha and dignitaries from around the world. That same day his casket was flown to the West Bank for interment in Ramallah. The numbers of mourners rushing to the landing helicopter carrying his body were so large that once his casket arrived at the gravesite, security officials cancelled the ceremony to quickly inter his remains.³³⁶

In the studios of WFAN Sports Radio in New York City watching this news unfold live on television sat Don Imus, acerbic presenter of Imus in the Morning. This syndicated “public affairs” show reached 60 radio stations across the U.S. and was simulcast on MSNBC cable and MSNBC Canada, the latter having been licensed by the CRTC in late 2000 for seven years with no conditions of prior restraint.³³⁷ MSNBC’s description of itself reads: “Built on the worldwide resources of NBC News, MSNBC defines news for the next generation. . . .”³³⁸ With Imus was his regular Miami-based sports “shock” jock Sid Rosenberg and the show’s producer Bernard McGuirk. This was their running commentary as they watched Arafat’s casket float through a sea of Palestinians:

Imus: You would think the Palestinian people would be pissed off, because

³³⁶ Correspondents BBC, Reporters' Log: Arafat Funeral, <http://news.bbc.co.uk/2/hi/middle_east/4005605.stm>.

³³⁷ Broadcasting Decision CRTC 2006-19, Ottawa, Complaints Regarding Comments Made on the Program Imus in the Morning on MSNBC Canada Regarding Palestinians, Iraqis and Muslims (27 Jan. 2006) par. 19.

³³⁸ <<http://today.msnbc.msn.com/id/3080273/>>.

Arafat stole billions of dollars from them, and they are all eating dirt.
And that fat pig wife is living in Paris.

Rosenberg: They're all brainwashed though, that's what it is, and they're stupid to begin with. But they are brainwashed. Stinking animals. (laughter)
They ought to drop the bomb right there, kill 'em all right now...

McGuirk: Just imagine standing there. (laughter)

Rosenberg: Oh, the stench...

Imus: Well the problem is that we have Andrea [Mitchell, NBC foreign correspondent] there. We wouldn't want anything to happen to her.³³⁹

Rosenberg: Oh she's got to get out. Just warn Andrea, get out, and then drop the bomb, kill everybody.

McGuirk: It's like the worst Woodstock. (laughter)

A few weeks later, on November 19, 2004, Imus in the Morning presented a parody of General George S. Patton Jr. returned from the dead to give his views on a news report of a United States Marine in Iraq who shot a badly wounded insurgent just outside a mosque. The parody referred to "the Muslim masses" as having a "pack-of-rabid-sheep mentality" and a lost comrade as victim of "a booby-trapped raghead cadaver."³⁴⁰

About 100 complaints arrived at the CRTC on the Arafat burial coverage and 10 for the Patton parody.³⁴¹ Unrelated to these incidents, ten days later the MSNBC Canada specialty television service, differentiated from MSNBC by carrying 15 percent Canadian content (such as CBC news and CPAC clips), had signed off for good. Its owners' reasons were the disruptive scheduling and "financially burdensome" Canadian programming requirements.³⁴²

³³⁹ Andrea Mitchell is married to former Chairman of the Federal Reserve Board, Alan Greenspan.

³⁴⁰ Broadcasting Decision CRTC 2006-19.

³⁴¹ Broadcasting Decision CRTC 2006-19.

³⁴² Broadcasting Public Notice CRTC 2003-67, Call for Comments on Proposals for the Addition of Non-Canadian Satellite Services to the List of Services Eligible for Digital Distribution (18 Dec. 2003) par..6.

Despite its defunct status, the Commission process for addressing complaints about what had aired on MSNBC Canada still kicked into gear “in order to provide guidance to the industry and public on acceptable programming content standards.”³⁴³ Figuratively, it looked as if this channel was being taken out to the woodshed as a whipping boy for its U.S. relative. The American MSNBC was approved for Canadian BDUs to distribute without conditions of prior restraint on September 16, 2004, a couple of months after the CRTC released its Al Jazeera Arabic decision.³⁴⁴

The CRTC is a creature of statute, meaning that it was created (in 1968) by Parliament, and its authority is subject to the will of that legislature.³⁴⁵ The commission gives effect to the objectives of the Broadcasting Act and creates “secondary legislation” a form of law called regulation.³⁴⁶ “Regulation is an appropriation of the citizen’s resources to serve public policy goals.”³⁴⁷ The regulator has been described as “a government in miniature.”³⁴⁸ As noted in chapter 1, the CRTC is somewhat unique. It creates substantial social policy as if it were the government ministry through which it reports to Parliament, namely Canadian Heritage. The CRTC is expected to decide on what comes before it with the neutrality of a judge. Its decisions are legal instruments to apply law, not to make it.³⁴⁹ What’s different about the “court” of the CRTC is that the same players keep appearing before it year after year: “[T]hose who hold multiple

³⁴³ Broadcasting Decision CRTC 2006-19.

³⁴⁴ Broadcasting Public Notice CRTC 2004-71.

³⁴⁵ Leslie A. Pal, Beyond Policy Analysis: Public Issue Management in Turbulent Times, 3rd ed. (Toronto: Nelson, 2006) 154.

³⁴⁶ Pal 154.

³⁴⁷ Organization for Economic Cooperation and Development, Canada: Maintaining Leadership Through Innovation (OECD, 2002).

³⁴⁸ David J. Mullan and J.M. Evans, Administrative Law: Cases, Text, and Materials, 5th ed. (Toronto: Emoud Montgomery, 2003) 685.

³⁴⁹ Pal 155.

licenses return for each hearing of relevance to their interests.”³⁵⁰ Due to this on-going conversation, plus the fact that industry players may get tapped to sit on the Commission, or vice versa, the CRTC, like other tribunals, is sometimes accused of being captive to those it’s regulating and to “inner-circle thinking.”³⁵¹ Commissioners are appointed through the Prime Minister’s Office (PMO) in a process run by a political party operative named “director of appointments,” who happened to be Penny Collenette at the time of the Dalfen Commission.³⁵² Names of potential Commissioners are put forward by various people in government, for example by Sheila Copps, named Minister for Canadian Heritage in Liberal Prime Minister Chrétien’s cabinet shuffle of 1996. The director of appointments arranges hiring interviews for prospective candidates; after approval by Cabinet, the successful ones are officially named to represent, as outlined in the Act, the interests of Canadians, “including equal rights.”³⁵³ The CRTC chairmanship is a much sought-after position with great influence for the successful candidate, but “somebody’s politics wouldn’t play a role in it [the appointment] per se because it’s pretty controversial [the CRTC] and you need people that aren’t going to get into trouble because they’re there because they were a riding president’s brother-in-law.”³⁵⁴

Charles Dalfen, originally from Montreal, had already served with the Commission from 1976-1980 as its first vice-chairman of telecommunications when that mandate was added to the CRTC. Highly regarded, with experience as both a Carleton and University of Toronto professor, a government consultant and respected communications lawyer, he

³⁵⁰ Liora Salter and Felix Nii Lantei Odartey-Wellington, The CRTC and Broadcasting Regulation in Canada (Toronto: Thomson Carswell, 2008) 151.

³⁵¹ Salter and Odartey-Wellington 792.

³⁵² Copps, personal interview.

³⁵³ Broadcasting Decision CRTC 2006-19, par. 12.

³⁵⁴ Copps, personal interview.

arrived after competing for the post of Commission Chair, at the start of 2002 from Torys law firm in Toronto.³⁵⁵ Penny Collenette advertised the CRTC chairman posting and prepared a short list of “star” candidates for “more than one” interview by the Prime Minister and/or the Minister for Canadian Heritage.³⁵⁶ At the time Dalfen was appointed, the Chrétien government was interested in “updating governance legislation” for the CRTC, reducing the number of part-time Commissioners and, at the beginning of a new millennium, figuring out “how to tackle the Internet age.”³⁵⁷ Mr. Dalfen was incapacitated for the first six months of his appointment due to an accident. David Colville, Vice-chair of telecommunications, filled in for him, and while Sheila Copps ultimately believes that Dalfen did a very good job of managing the Commission, “the bigger picture we didn’t get to.”³⁵⁸

Vice-chair of broadcasting Andrée Wylie also had a previous career in teaching and with the Commission as a lawyer in its legal department.³⁵⁹ Together she and Charles Dalfen essentially ran the place, as had their predecessors in these roles. And because of their history with the CRTC, it’s not unreasonable to assume that both had a stake in protecting the institution’s considerable jurisdiction and well-established role in making policy. This chapter will look at the independent nature of the regulatory body and how it governs its processes and deals with the challenges of Canadian pluralism at a time when many question its role and relevance.³⁶⁰

³⁵⁵ "Toronto Telecommunications Lawyer Appointed New Chairman of CRTC," 2001, <<http://www.friends.ca/news-item/6459>> .

³⁵⁶ Copps, personal interview.

³⁵⁷ Copps, personal interview.

³⁵⁸ Copps, personal interview.

³⁵⁹ Wylie, personal interview.

³⁶⁰ Clifford Lincoln, *Our Cultural Sovereignty: The Second Century of Canadian Broadcasting* (Ottawa: House of Commons, June 2003), Ch.19. Sec. H, “[F]ew witnesses voiced praise for the CRTC.”

In 2004 the CRTC processed 853 broadcasting and 790 telecommunications applications, and issued 445 orders and 729 decisions; it responded to 55,386 queries and complaints.³⁶¹ If public hearings are in person, rather than “paper” hearings, commissioners are studied for clues on how they’re likely to rule on matters before them. The regulator consults widely, and sometimes hires outside research and expertise; it requests comment from anyone who’s interested in the matter before it, reads their submissions, then goes away and thinks about what it should do, as a creature of statute, with publicly registered opinions or suggestions. CRTC chairwoman Françoise Bertrand, who preceded Charles Dalfen, is credited with raising public awareness of the importance of participating in CRTC hearings; she traveled the country “consulting with regular folk on issues like television programming and multicultural media,” and she introduced a “vision plan” which identified the issues to be dealt with by the Commission over the coming years with an accompanying calendar.³⁶²

The debate at CRTC public hearings is usually informal, which affords the Commission more time to hear more applications than would be the case if it “followed stricter court-like procedures.”³⁶³ Questioning, not cross examination, of competing parties is carried out by Commissioners to clarify, and parties aren’t allowed to cross examine each other in order to discredit each other, although the CRTC has been known to take requests for this and, in some cases, grant permission.³⁶⁴ Following each hearing, CRTC staff assigned to the application submit a report “summarizing the material put forward at the hearing. In other cases, the staff may actually prepare a draft decision

³⁶¹ Dalfen, Standing Committee on Canadian Heritage.

³⁶² Jennifer Ditchburn, “CRTC Chairwoman Françoise Bertrand Resigns,” Toronto Star / Canadian Press 5 Dec. 2000.

³⁶³ Mullan and Evans 467.

³⁶⁴ Mullan and Evans 467.

following a hearing, which the agency may ultimately accept as its own.”³⁶⁵ The Commission publishes the reasons for its decisions as part of its rulings. Unlike a judge, no Canadian court jury ever publishes its reasons for a decision, so we see within its own processes the degree of accountability attached to the Commission’s history of operation.

The CRTC has a process for dealing with complaints, such as those directed at MSNBC Canada’s service of November 12 and 19, 2004. Under section 9 of CRTC Rules of Procedure, a consumer of programming services may register a written complaint, which the CRTC then sends to the licensee in question, for a response. CRTC staff examines the source material (presuming the station has kept logs) and looks at the response provided to the complainants, then decides what to do. In the past it has called in a Crown prosecutor to go after a licensee, as it did with Fundy Broadcasting for airing comments on November 6, 1987, against Jews and people of colour on its CFBC Saint John radio open line program featuring guest Terry Long of the Aryan Nation group.³⁶⁶ The CRTC may levy limited fines against Canadian offenders, with Fundy, for example, having to pay \$5,000 after pleading guilty to broadcasting abusive comment. In law, abusive comment “refers, among other things, to inciting hatred against an identifiable group . . . and by virtue of the Broadcasting Act the CRTC has a role in this regime.”³⁶⁷ Under section 32.2 (a) (b) of the 1991 Broadcasting Act, a person who fails to comply with a CRTC regulation or order on conviction of the offence may be fined through the courts up to \$20,000 and a corporation up to \$200,000 for each day the offence continues. The Standing Committee on Heritage, chaired by M.P. Clifford Lincoln (Liberal-Lachine Lac Saint-Louis), had in 2003 recommended in its report (section 19.11) that the CRTC

³⁶⁵ Mullan and Evans 438.

³⁶⁶ Public Notice CRTC 1988-213, Policy Regarding Open-Line Programming (23 Dec. 1988).

³⁶⁷ Salter and Odartey-Wellington 229.

be able to fine corporations \$2 million per offence and individuals \$50,000 per offence, but so far the government has not acted on the Lincoln Committee recommendations.³⁶⁸ When it comes to “extraterritorial enforcement of its standards,” complaints registered with the CRTC can only be acted on when the broadcasting services originate in Canada, because the licensees have a duty to respond, which would not be the case with Al Jazeera, for example, because it’s outside CRTC jurisdiction.³⁶⁹ Understandably, the CRTC does not talk publicly about its inability to “directly enforce its own rules when problems occur,” and in the case of non-renewal of licence for CHOI-FM, the CRTC would have preferred a less drastic solution to achieve compliance.³⁷⁰ In most cases, publicly reminding an errant service provider, either in print or at a CRTC licence renewal hearing, on expectations for programming standards, is usually sufficient for future compliance if a broadcaster wants to stay out of court. The multiple licence-holders who regularly appear before the CRTC know the rules backwards and forwards and the country’s public broadcaster is expected to know them as well. But the Commission literally had to lay down the law with Société Radio-Canada (SRC) about breaching CRTC Television Broadcasting Regulations, 1987 (section 5 b) on its very popular variety TV program Tout le monde en parle. Its producers invited on the show Dr. Pierre Mailloux, known in Montreal as “Doc Mailloux,” to defend his well-publicized comments about American black people, seemingly without any regard for the impact of his racist comments on people of colour in Québec. SRC defended its programmers by citing the Canadian Charter of Rights and Freedoms section 2 (b) on freedom of expression and thought.

³⁶⁸ Lincoln, Our Cultural Sovereignty: The Second Century of Canadian Broadcasting.

³⁶⁹ Gaelle Lussiaa-Berdou, "Guess Who's Coming to Dinner-Time News," UBC Thunderbird Nov. 2003.

³⁷⁰ Grant Robertson, "CRTC Pushes for Power to Levy Fines," Globe and Mail 31 July 2008.

The Commission reminded SRC that when it did not renew the licence of CHOI-FM on the 13th of July 2004, freedom of expression put forward by Genex as a defense had had to be counterbalanced with listeners' rights to broadcast programming that complied with the regulation of not exposing people to contempt. It's this kind of policy-making that gives life to the legislated principles of the Broadcasting Act.³⁷¹ The reason the public broadcaster got such a dressing down was because a few months prior to its "set-up" with the Doc, the CRTC had to publicly scold Montreal radio station CKAC for breaching section 3 (b) of the Radio Regulations 1986 on abusive comment, for featuring Mailloux' opinions on Bonjour Montréal about the intellect of American slave descendents.³⁷² In both cases the CRTC acted *ex post* following numerous complaints.

If compliance is not forthcoming on programming standards, under the Act the CRTC can issue an order, which may ultimately be registered with the court (a court order), and if non-compliance persists, the authorities may haul the errant licensee in front of a judge and hold him in contempt. It's difficult to do that when the service originates outside Canada.³⁷³

In its Broadcasting Decision CRTC 2006-19, the CRTC noted that MSNBC Canada was, at the time of the complaints, "a member in good standing of the Canadian Broadcast Standards Council (CBSC)." Initiated by the private industry as a self-regulatory body for its Canadian members, the CBSC has been taking some of the workload off the Commission since 1990 after it approved the CBSC sharing its efforts to

³⁷¹ Mullan and Evans 676.

³⁷² Broadcasting Decision CRTC 2006-565, Ottawa, Complaints Concerning Abusive Comments Broadcast by Société Radio-Canada on the 25 September 2005 Episode of the Program Tout le Monde en Parle (28 Sept. 2006).

³⁷³ Langford, personal interview.

ensure industry compliance with the Act.³⁷⁴ The CRTC noted that under the Act, broadcasters are responsible for what they air and that MSNBC Canada was also subject to the Specialty Services Regulations, 1990, that among other things prohibit abusive comment. In its decision, the CRTC notes that Rogers, part owner of MSNBC Canada, replied January 9, 2005, to complainants and apologized for the November 12, 2004, broadcast comments, saying that they were “highly offensive and completely unnecessary” and not shared by MSNBC Canada or Rogers. The licensee didn’t refer to complaints about the November 19, 2004, broadcast and defended Imus in the Morning, saying it’s supposed to be provocative but that the show also provides “insightful discussion about news and current events, including the war in Iraq and Israeli-Palestinian conflict.”³⁷⁵ Many American politicians were in the habit of listening to Imus’s show, and the audience demographics tilted towards well-educated, high-income earning men.³⁷⁶

What’s worth noting at this instance is that western regulators, unlike Ministries of Information in the Arab world, do not pre-clear content for broadcast and nothing in the Act suggests that the CRTC should be a censorship agency.

What is significant about the MSNBC Canada decision is that the CRTC zeroed in on the November 19, 2004, broadcast as an opportunity to remind the industry and the public of journalistic principles, such as independence. Not surprisingly, it found terms like “raghead” abusive when describing Muslims, and pointed out: “Given the context of the statements (e.g. the military conflict in Iraq), the Commission finds that such phrases are

³⁷⁴ Bohdan Szuchewycz and Jeanette Sloniowski, "Stern Radio: Taming the Shock Jock," Canadian Communications: Issues in Contemporary Media and Culture (Scarborough: Prentice Hall, Allyn and Bacon, 1999).

³⁷⁵ Broadcasting Decision CRTC 2006-19.

³⁷⁶ "The Resurrection of Don Imus," 2007, <<http://nymag.com/new/features/355339/index2.html>>.

particularly problematic and were likely to expose Muslims to hatred or contempt based on their religion.” It emphasizes that a state of military conflict is a time when “broadcasters must be especially vigilant to ensure that vulnerable groups or individuals are not exposed to hatred or contempt due to the use of disparaging, insulting or abusive language.” Remember that this is a Canadian broadcasting regulator taking to task an American news and public affairs program, whose content has showed up on Canadian TV screens through Canadian BDUs that, with the Al Jazeera precedent, would now seem not just responsible for community programming they originate, but also for whatever they distribute from off shore. The CRTC was reminding the Canadian industry that news services are expected to be independent and they should not expect them to be an extension of the state’s military line, defining and demonizing an enemy. As detailed in chapter two, a state of war can expose vulnerable groups to hatred, as when Fox News host Bill O’Reilly suggested that Afghans, the overwhelming number of whom are Muslims, should have their water supply bombed and starve if they don’t get rid of the Taliban.

The CRTC also has a history of reminding broadcast journalists about principles and practices, as it did in a landmark report back in 1970 following a CBC television program called “Air of Death” on fluorine poisoning of crops and cattle in a region of southern Ontario.³⁷⁷ The program sparked a debate on principles of fairness and balance and the role of journalists and public affairs broadcasting in a democracy “making judgments about the truth or importance of public issues” without being held to account over simply “collecting diverse opinions and laying them out, smorgasbord fashion.” Using a kind of

³⁷⁷ Report of the Special Committee Appointed in Connection with the CBC Program “Air of Death”, Ottawa: CRTC, 1970, cited in Salter and Odartey-Wellington 240.

“weights and measures” system within a particular program, in order to be neutral, was not how good journalism would thrive, according to the Commission.³⁷⁸ This CRTC report laid the groundwork for what the CBC later produced as a journalistic policy and practices guide. The CRTC likes to see codes of ethics guiding broadcasters and was at first encouraged when Genex created one, which it didn’t follow in managing what CHOI-FM aired. The CRTC was able to point to that as evidence of lack of compliance in its ultimate non-renewal of licence, which it would not have been able to do in the case of Al Jazeera, whose code of ethics (released two days before the CRTC decision on Al Jazeera) was for a non-Canadian service and therefore beyond CRTC jurisdiction.³⁷⁹

Given the lack of depth in mainstream media foreign news coverage in the United States, the widespread ignorance during the war in Iraq of Arab history, culture and language, the acceptable racism directed at Arab people, and the First Amendment, it shouldn’t surprise anyone that certain American media personalities take licence to say what they think about Palestinians, with no factual basis to account for their remarks (“they are all eating dirt,” “they’re stupid to begin with, . . . they’re brainwashed . . . stinking animals. . . .”)

The CRTC criteria for determining abusive comment is whether the comment in question targets a race, national or ethnic group, people of particular colour, religion, sex, sexual orientation, age or mental or physical disability for exposure to hatred or contempt, as outlined in its Regulations, previously referred to, which have the force of law. In his February 1, 2005, appearance before the Standing Committee on Canadian Heritage, which had requested “an overview of the CRTC’s mandate and activities”

³⁷⁸Salter and Odartey-Wellington, 212.

³⁷⁹Wylie, personal interview.

Charles Dalfen said that the regulation on “abusive commentary . . . was adopted in its original form nearly seventy years ago. Similar rules are in place in many other countries.”³⁸⁰

The CRTC found that certain comments made during the November 12 and 19, 2004, broadcasts of Imus in the Morning on MSNBC Canada were abusive “within the meaning of section 3 (b) of the Regulations,” but it stopped short of fining the service or asking the Solicitor General’s office to prosecute, as it had with Fundy Broadcasting Co. Ltd., for example. Unlike Fundy, this commentary was made on an American program, where the First Amendment of the United States Constitution says that Congress “shall make no law . . . abridging the freedom of speech or of the press,” so one may wonder if that, plus the fact that the MSNBC Canada service was now defunct, led the CRTC to decide not to push its ruling any further.³⁸¹ Also, Rogers did apologize for remarks made in the 12 November 2004 broadcast, and it was in good standing with the CBSC and frequently appears before the Commission regarding its many licences. So the Commission would want to choose its battles carefully and perhaps one about a now defunct service was not the proverbial mountain to die on. There’s no doubt that Rogers got the public message, as it had recently come through a public hearing process on its application to carry nine non-Canadian Chinese-language services, which was strongly opposed by thousands who intervened.³⁸² What is not clear is the Commission’s reasoning on one complaint as to why the American MSNBC was not approved with conditions of prior restraint, as in the case to approve Al Jazeera two months previously. In its January 2006 decision, the CRTC said that since it approved MSNBC in September of 2004, it “has not received any

³⁸⁰ Dalfen, Standing Committee on Canadian Heritage.

³⁸¹ Michael G. Crawford, The Journalist’s Legal Guide, 4th ed. (Scarborough: Carswell, 2002).

³⁸² Broadcasting Public Notice CRTC 2006-166.

complaints about the Imus in the Morning program on MSNBC,” as if it were a different program from the one aired November 12 and 19, 2004, on MSNBC Canada! Noting that the American MSNBC had apologized about “the content of those broadcasts,” the Commission didn’t think “that the record” supported the placing of restrictions on either the program or “on MSNBC in general at this time.”

But Imus’ reputation preceded him. About a year later in April 2007, MSNBC dropped its simulcast of the show and Imus was fired from the CBS-owned Sports Radio WFAN station in New York, but not for racist remarks on his show about Palestinians. American Express Co., Sprint Nextel Corp., Staples Inc., Procter and Gamble Co., and General Motors got nervous about business boycotts and said they were pulling their advertising from the station after Imus made a racial slur about Rutgers black women basketball team members being “nappy-headed hos.”³⁸³ Comparing the CRTC with the Federal Communication Commission (FCC), its equivalent south of the border, is, according to former CRTC chairman Keith Spicer, “comparing the incomparable.” He oversimplifies the differences by saying, “[B]etween the CRTC and the FCC it was culture versus market, national unity versus national free-for-all, identity politics versus bucks and business. . . .”³⁸⁴ In other words, in the United States, it’s the market, not government, that regulates the business of broadcasting.

What *is* supposed to be censored in the United States broadcasting business, especially during the day and early evening when children may be around, is indecency, which isn’t defined as abuse. The Broadcast Decency Enforcement Act of 2005, in the works for years and finally signed into law in 2006 by President Bush and enforced by the FCC,

³⁸³ <<http://www.msnbc.msn.com/id/17999196>>.

³⁸⁴ Keith Spicer, Life Sentences: Memoirs of an Incurable Canadian (Toronto: McClelland & Stewart, 2004) 215.

can fine offenders up to \$325,000 for each violation to a maximum of \$3 million dollars,³⁸⁵ for nudity, for example, or profane language. It seems the founders of Al Jazeera had the same zeal for unabridged press as those who entrenched freedom of the press and speech in the First Amendment of the U.S. Constitution in 1791. It was “the Fathers of the American Revolution . . . after suffering under the oppressive and restrictive rule” of British monarchy that decreed that Congress could not make any laws to restrict freedom of speech and of the press in the United States.³⁸⁶ Yet abusive comment from south of the border may end up on Canadian TV screens where it is dealt with *ex post*, or after it is broadcast and complaints are registered, whereas conditions of licence were assigned to the carriage of Al Jazeera Arabic saying that it had to be constantly monitored and that BDUs had permission to cut out any abusive comment *before* airing it, which is nigh impossible to do.

What this focus on Imus in the Morning demonstrates is how easy it would be for a pro-Arab agency functioning like MEMRI to cherry-pick hateful comment broadcast in the West to illustrate the need for tight controls over TV broadcasting, along the lines of what pro-Israel groups did at the CRTC hearing where Al Jazeera Arabic was considered for distribution in Canada. As British playwright Tom Stoppard put into the lines of one of his characters in Night and Day: “No matter how imperfect things are, if you’ve got a free press everything is correctable, and without it everything is concealable.”³⁸⁷ Those opposed to Al Jazeera getting Canadian distribution told the CRTC that if Commissioners approved it, they would be countenancing what they would never allow on TV screens in

³⁸⁵ "A bill to increase the penalties for violations by television and radio broadcasters of the prohibitions against transmission of obscene, indecent, and profane language," <<http://www.congress.org/congressorg/bill.xc?billnum=S.193&congress=109>> 2005.

³⁸⁶ Crawford, The Journalist's Legal Guide, 6.

³⁸⁷ Tom Stoppard, Night and Day (New York: Samuel French, 1980).

Canada, and Charles Dalfen acknowledged this challenge in devising the Al Jazeera decision.³⁸⁸ Conversely, abusive comment gets broadcast in Canada with a good deal of regularity by CRTC-licensed services operating under the Broadcasting Act, which says that they're responsible for what they air. But it's not until *after they've aired it* that the CRTC pursues them with complaints at hand from consumers. Neither it nor the CBSC pursues a licensee without complaints triggering the investigation. The enforcement of CRTC Regulations or CBSC codes on violence, ethics or sex-role portrayal cannot be applied to non-Canadian services, whether they're owned by the Emir of Qatar or General Electric, because there is no Canadian jurisdiction to do so, and as mentioned earlier, "The inability to directly enforce its own rules when problems occur is something the CRTC has not talked about publicly,"³⁸⁹ likely because drawing politicians' attention to it at Standing Committee on Canadian Heritage sessions³⁹⁰ or taxpayers' attention to any lack of power is not a strategy for keeping it. What the CRTC did in making an example of MSNBC Canada was to demonstrate its independence to regulate under the Broadcasting Act, because clearly it had no clout over MSNBC in the United States. Previous attempts to exert any control over a U.S. television service such as Country Music Television had blown up into a very public dispute between the two countries, which wasn't the regulator's finest hour defending Canadian cultural sovereignty.³⁹¹

The politics in Canada surrounding Al Jazeera Arabic prompted, for the first time, the CRTC to head off at the pass potential abusive comment within a non-Canadian service

³⁸⁸ Charles Dalfen, personal interview.

³⁸⁹ Robertson, "CRTC pushes for power to levy fines."

³⁹⁰ Dalfen, Standing Committee on Canadian Heritage. When he appeared February 1, 2005, Charles Dalfen did not mention the Commission's lack of success in enforcing its rules on CHOI-FM.

³⁹¹ Acheson and Maule, "Canada's Cultural Policies - You Can't Have It Both Ways," 65-81.

before it was broadcast, before anyone could complain and ask the regulator to investigate what had been aired, and to do this through the Canadian conduit sponsoring it, the BDUs. Canadian broadcasters are responsible under the Act for what they broadcast, and in the case of BDUs this means community channel programming, the only programming that they *originate*. What was precedent setting in the CRTC's Al Jazeera decision was that the BDUs' responsibility was now interpreted under the Act to also include what they *distributed*, that is Al Jazeera. The abusive speech prohibitions in the Regulations were also applied to what BDUs would carry, in this case Al Jazeera, not just to what they originated as community programming.³⁹²

In the case of The Howard Stern Radio Show, which began syndication September 2, 1997, on two Canadian radio stations, CHOM-FM in Montreal and CILQ-FM in Toronto, between 6 and 10 in the morning, complaints began the day of its Canadian debut, *after* people heard Stern's broadcast brand of comment. The CBSC dealt with the hundreds of complaints over the following weeks and it's important to realize that as members of the CBSC, both of these stations, being private broadcasters, were part of an industry that has "chosen to adhere" to the rules and laws of broadcasting in Canada.³⁹³

The CBSC rendered its decision mid-November of 1997. Until that time, both radio stations saw their ratings soar and took the licence to broadcast Stern until they were told that they'd breached "one or more of the Codes" with Stern's comments about the French and French Canadians and offensive comments directed at "Japanese, gays, Poles, Sikhs, blacks and Arabs among others."³⁹⁴ CHOM-FM and CILQ-FM were also found to have aired offensive material when children could be listening, to be in breach of the Canadian

³⁹² Salter and Odartey-Wellington 268.

³⁹³ Szuchewycz and Sloniowski.

³⁹⁴ Szuchewycz and Sloniowski.

Association of Broadcasters (CAB) Code of Ethics, and the Sex-Role Portrayal code.

Each of the stations was required to broadcast the CBSC decision “within the next thirty days” in prime time and “to provide confirmation of the airing of the statements to the CBSC and to each of the complainants who filed a Ruling Request.” When it looks as if a recurrence is likely, the CBSC may require broadcasters to fix the problem within three days, which was the case with The Howard Stern Show when the licensees were told to edit the show to meet Canadian standards.³⁹⁵ These stations had a few months to air Stern unabridged and grow audiences, but both ultimately had to pre-clear The Howard Stern Show by means of time shifting equipment when a station monitor heard abusive comment. CHOM-FM dropped the program after 11 months because audiences tired of the cutting and tuned out, but CILQ-FM continued airing Stern until November 2001.³⁹⁶ In a rebuttal to columnist Andrew Coyne’s criticism of the CBSC decision, which appeared in the Ottawa Citizen, Ronald I. Cohen, National Chair of the CBSC since July 1993, quoted a sampling of Howard Stern, some of which The Citizen had to excise. The gist of one of Stern’s fantasies was that a nude woman, whose vocal chords he had just ripped out, would service him sexually by his pool after which he would break her legs and permanently position them in the back of her neck where they would “knit and mend.”³⁹⁷

Comments like these, originating in New York City and distributed by Canadian terrestrial stations, were the focus of complaints to the CRTC by MediaWatch when licence renewal time approached. When the CRTC renewed the licence for CILQ-FM in

³⁹⁵ Ron Cohen, Notes for an Address by National Chair CBSC to Canadian Ethnic Journalists' and Writers' Club, 4 March 2004, <www.cbsc.ca/english/documents/speeches/CEJWC20040304.pdf>.

³⁹⁶ Cohen, CBSC.

³⁹⁷ Szuchewycz and Sloniowski.

1999 for six years, it was conditional on Stern being edited to conform to Canadian standards.³⁹⁸ This would be an example of the CRTC trying to regulate “with a light hand and a subtle touch.”³⁹⁹ In the past the courts have ruled that “the CRTC is not empowered to prevent something being broadcast in the first place, or even prevent a program being repeated on air.”⁴⁰⁰

In a May 29, 1998, complaint to the CRTC, a CILQ-FM listener in Toronto said that Howard Stern had accused the Polish “of murdering off the Jews of Poland” and that if denying the Holocaust is a hate crime, “then it is equally reprehensible to falsely accuse a nation of having perpetrated a Holocaust.”⁴⁰¹ Stern had told his listeners that being Jewish, he used to get beaten up at school by the only three other white boys there, who happened to be Polish. Then he said to his sidekick Robin Quivers:

Howard Stern: Polacks hate Jews. It’s their natural enemy just like dogs hate cats.
Oh, please. The Poles during World War II...

Quivers: You’re born hating Jews?

Howard Stern: Yeah! Poles hate Jews. There used to be a lot of Jews in Poland but they took care of that. I don’t think there’s even three living in all of Poland.

The CBSC agreed with the complainant, saying that to accuse an entire nation of hating any other national group “is likely to bring opprobrium on the ‘haters’ rather than the ‘hated.’ It is in this sense abusively discriminatory vis-à-vis persons of Polish nationality and in breach of Article 2 of the CAB Code of Ethics.”⁴⁰²

³⁹⁸ Online News CBC, Guardian of the Airwaves, 7 Apr. 2006.

³⁹⁹ Salter and Odartey-Wellington 233.

⁴⁰⁰ Salter and Odartey-Wellington 232.

⁴⁰¹ CBSC Decision 97/98-1186. CILQ-FM re The Howard Stern Show (“Poland”) Toronto, 3 Feb. 1999 .

⁴⁰² CBSC Decision 97/98-1186.

In January 2006 Howard Stern joined SIRIUS Satellite Radio in the U.S. for a salary of \$500 million over five years, and his show was available a month later on SIRIUS CANADA.⁴⁰³ Subscription satellite radio content and “other fee-based media” are not regulated in the United States.⁴⁰⁴ Al Jazeera, for example, is available to anyone in the U.S. with a satellite dish and unobstructed view of the sky, after ordering from EchoStar Communications Corporation’s Dish Network for about \$25 per month. Even if the American government had wanted to order EchoStar to stop distributing Al Jazeera, most subscribers would likely have been able to pick it up via other satellite companies around the world.⁴⁰⁵ It’s a different story with cable. Consumers have organized protests and lobbies targeting cable businesses who even think about carrying Al Jazeera for customers in large Arab American communities, with the result that it’s rarely offered in the cable marketplace where anti-Arab sentiment runs high in the wake of 9/11. Recently Al Jazeera’s English language news service launched in Washington D.C. on a non-commercial carrier, and continued to be carried in Burlington, Vermont, despite the efforts of the Israel Center of Vermont to keep it off city-owned cable, a boycott opposed by the majority of local citizens in a public debate.⁴⁰⁶

Under pressure from the FCC, Clear Channel Communications Inc. had dropped The Howard Stern Show “from the 6 of its 1,200 radio stations that were carrying it.”⁴⁰⁷ In November 2004, a few months after approving Al Jazeera with conditions of prior restraint, the CRTC had approved three Canadian satellite subscription radio distribution

⁴⁰³ <<http://www.friends.ca/news-item/945>>.

⁴⁰⁴ NewsHour, “Revolution in Radio,” PBS Online, 4 May 2005 <<http://www.pbs.org/newshour/media/radio/comparison.html>> .

⁴⁰⁵ Miles, 118. (Note: In October 2001, 150,000 subscribed to Al Jazeera through EchoStar in the U.S.)

⁴⁰⁶ Jackson Allers, Al Jazeera English launches in first major U.S. cable market, 10 July 2009, The Arab American News, Osama Siblani, 6 Aug. 2009 <<http://www.arabamericannews.com/news/index.php?mod=article&cat=USA&article=2335>>.

⁴⁰⁷ Cohen, CBSC.

undertakings without such conditions, knowing that content could include hosts like Stern. Former Commissioner Stuart Langford explains:

We took the position there that . . . you have to pay, you have to subscribe, you have to choose to get Howard Stern and we took the position that if you want to choose to listen to this guy that's one thing. What we don't want, is him beaming into people's houses who don't choose it, who may be away and whose children will listen to it. So that kind of gives you an idea of the way they [CRTC] look at it.⁴⁰⁸

But people in Canada wanting Al Jazeera Arabic were willing to pay, to subscribe to, and choose that service whether carried on cable or satellite. One wonders why the licence of BDUs applying to the Commission to distribute the Arabic news channel to paying subscribers who chose it, was defined differently than the licence for a service carrying a talk show that the CBSC had already cited for spreading abuse and violating its codes. Perhaps CRTC spokesperson Maria DaSilva clarified it best when she responded to the Ryerson Review of Journalism. Writer Julie Meehan had asked her about the different Canadian content regulations between terrestrial and satellite radio, and DaSilva said not to compare the regulations between two types of service: "Don't make the comparison to the other regulations . . . it's two types of service. It's the same thing for television—different regulations for different services."⁴⁰⁹ But wasn't the *denial* of RAI on the same day as the *approval* of Al Jazeera an attempt to be *consistent* on regulating different non-Canadian third language digital television services, according to policy criteria about a foreign service not competing with a Canadian one?

Talking about the Canadian consumer's wants and needs, and technology and tastes "outstripping the ability of the Commission to keep up in its processes," Stuart Langford explains:

⁴⁰⁸ Langford, personal interview.

⁴⁰⁹ Julie Meehan, "A Constellation of Problems," Ryerson Review of Journalism 20 November 2005.

We were very aware that our first decision in RAI was not going to be a good one. But we felt constrained by the policies we already had in place. And we knew that if we just...let this one in, then that way lies disaster for a regulatory Commission. Yes, you're really popular that first day, but then you'll get all kinds of other people saying 'don't listen to your own policies, don't worry about the Act, do whatever you want.'.... So what we did we thought was the only option, to say under our present constraints we can't do that but we're going to look at the constraints, so it was a two-step thing, and that seemed to satisfy everybody and we did it. I mean people are always upset if they can't have what they want right away.⁴¹⁰

The RAI International case is a prime example of the CRTC maintaining its independence, even when it knows it is making a bad decision, against tremendous political pressure, literally from one government (Italy) to another (Canada). Italy had passed a law granting anyone holding an Italian passport the right to vote in Italian general elections and referenda. New parliamentary seats were being created to represent Italians living abroad, and those elected to these new seats were to be based outside of Italy. It wanted one of the largest ex-patriot communities (living in Canada) to be able to get informed through RAI about the Italian election and to participate in it. RAI estimated that 20,000 Canadian homes were receiving RAI International from Echostar satellite service through either grey or black market access.⁴¹¹ Roughly 100,000 Italian Canadians out of an approximate population of 1.3 million Italians in Canada signed a petition in favor of receiving RAI in Canada, and after initially saying no, the CRTC reversed its policy. The policy output was protecting Canadian services like Telelatino, whose business would be threatened if RAI International were to compete with it in Canada. So the compromise was that RAI was approved if those wanting to subscribe to it also paid for the Canadian Italian-language channel, the so-called "buy-through" policy. Going forward, this policy would mean discontinuing the "competitiveness test"

⁴¹⁰ Langford, personal interview.

⁴¹¹ Quoted in CCTA letter to CRTC. 28 Oct. 2002, CRTC File 0IRP37-X/03, Vol. 5.

and would apply to other non-Canadian third language general interest channels in determining whether they should be added to the lists of eligible satellite services for digital distribution in Canada.⁴¹² Critics said this policy would actually encourage more black market business due to the increased costs to multicultural consumers who just want a popular channel from their heritage region that doesn't cost them \$50 per month in Canada, plus the cost of hooking up to digital cable.⁴¹³ A Montreal Gazette editorial suggested that the "regulator is not really regulating," because of the fact that satellite-distributed TV meant the CRTC was "losing its grip on the real world" and that "everyone knows there's a thriving black market in satellite TV."⁴¹⁴ Except that this time, the shrinking Paul Martin government knew that TV police running raids on the rooftops of diverse communities wasn't the way to win multicultural hearts and minds in the next televised election.

The CRTC has "broad powers that enable it to develop policies and regulations to fit current situations"⁴¹⁵ as the RAI and Al Jazeera decisions demonstrate, but arm's length from Cabinet or not, "the most essential consideration is that a decision of a regulatory body must always be consistent with government policy."⁴¹⁶ Following the RAI case, both the decision on the Al Arabiya news channel and the addition in 2006 of nine non-Canadian Chinese-language services to the lists of eligible satellite services for digital distribution, exemplify this.

⁴¹² See Broadcasting Public Notice CRTC 2004-96 Ottawa (16 Dec.2004) and Broadcasting Public Notice CRTC 2005-51 (13 May 2005) par. 33.

⁴¹³ The Gazette, "CRTC Decision Helps Black Market," Friends of Canadian Broadcasting, <http://www.friends.ca/print/News/Friends_News/archives/articles12200404.asp> (20 Dec. 2004).

⁴¹⁴ The Gazette, "CRTC Decision Helps Black Market."

⁴¹⁵ Salter and Odartey-Wellington 138.

⁴¹⁶ Donna Soble Kaufman, Broadcasting Law in Canada: Fairness in the Administrative Process (Toronto: Carswell, 1987) 69.

Al Arabiya was launched from the United Arab Emirates' capital city of Dubai in February 2003. Its parent company, Middle East Broadcasting Centre (MBC), is owned by the brother-in-law of the late King Fahd of Saudi Arabia. As war looked likely in Iraq, the Saudis seized the opportunity to try knocking Al Jazeera off its lead as the most watched TV news service in the Arab world and to recruit some of its staff with offers of more money.⁴¹⁷ MBC had at one point been the most popular TV news channel in the Arab world and Al Arabiya was billed as "less sensationalist" than Al Jazeera, with the added bonus of having access to all of the Arabic speaking countries from which Al Jazeera had been expelled—that is, Syria, Jordan, Kuwait and Saudi Arabia.⁴¹⁸ Rogers Communications Inc. (Rogers) sponsored the request to add Al Arabiya to the digital lists and the CRTC received more than seventy supportive interventions.⁴¹⁹ None of the pro-Israel lobbyist groups filed any opposition to this service, whose format was very similar to Al Jazeera's: "Arabic news interspersed with sport, weather, business news, commentaries and panel discussions."⁴²⁰

In its decision to approve Al Arabiya, the CRTC quotes the channel's supporters saying that "availability of Al Arabiya would contribute to a better understanding of events in the Middle East 'due to its moderate and unbiased policy.'"⁴²¹ Marc Lynch is director of the Institute for Middle East Studies at George Washington University, and a political science scholar who's fluent in Arabic.⁴²² He would not agree that Al Arabiya is "unbiased." From his analysis of Al Arabiya talk shows, he noted that they used more

⁴¹⁷ Miles 221.

⁴¹⁸ Miles 221.

⁴¹⁹ Broadcasting Public Notice CRTC 2006-157, Ottawa, Addition of Al Arabiya News Channel to the Lists of Eligible Satellite Services for Distribution on a Digital Basis (14 Dec. 2006). par. 3.

⁴²⁰ Miles 220.

⁴²¹ Broadcasting Public Notice CRTC 2006-157. par. 3.

⁴²² Marc Lynch, About Lynch, 2008, Foreign Policy, 6 July 2009 <http://lynch.foreignpolicy.com/About_Lynch>.

Saudi and official Arab sources, and not as many independent or critical commentators as Al Jazeera programs. This was done to placate the United States, and George W. Bush granted Al Arabiya interviews when he chose to appear on Arab media, for example, “to contain the damage of the Abu Ghraib scandals.”⁴²³ When he was appointed the first managing director of this new channel, Salah al-Qallab announced: “We are not going to make problems for Arab countries.”⁴²⁴ The plan seemed to be to establish a news organ more in keeping with Arab regime status quo, albeit with glitzier production values, and it was reported that “all of al-Arabiya’s interviews will be pre-recorded,” which would ensure a chance to edit out any potential abusive comment or controversial material before broadcast, a sharp contrast to Al Jazeera’s open dialogue from diverse sources within an Arab public sphere.⁴²⁵

The highly competitive nature of network TV news coverage during the 2003 war in Iraq meant that Al Arabiya did broadcast some sensational hostage videos and graphic scenes of human carnage, as did other Arab television news services, much to the displeasure of the Bush Administration.⁴²⁶ While Al Arabiya managed to successfully compete with Al Jazeera, its management was replaced early in 2004 by the Saudi owners, “putting in a more pro-American editorial team even at the risk of losing market share.”⁴²⁷ This type of action was most likely the reason there was no concern about potential broadcasts of hateful comment, and no pro-Israel lobby network opposition to Al Arabiya when it came before the CRTC, sponsored by Rogers.

⁴²³ Lynch, Voices of the New Arab Public 44.

⁴²⁴ Lynch, Voices of the New Arab Public 43.

⁴²⁵ Lynch, Voices of the New Arab Public 43.

⁴²⁶ Lynch, Voices of the New Arab Public 214.

⁴²⁷ Lynch, Voices of the New Arab Public 65.

While Jean Chrétien's Liberal government was not in agreement with going to war in Iraq, its anti-terrorism plan "parallels the actions of our international partners, and will . . . ensure that Canadian values of respect and fairness are preserved through stronger laws against hate crimes and propaganda."⁴²⁸ Al Arabiya would have been seen as maintaining status quo within the Arab region, being controllable in a way that U.S. foreign policy appreciated, and in keeping with Canadian government anti-terrorism plans. In Israel, Al Arabiya officials begged the government there not to boycott Al Jazeera because it would only bolster its popularity within the Arab world as another casualty of Israeli get-tough tactics.⁴²⁹

With Al Arabiya's Canadian supporters' contention that it was "unbiased," and in the absence of any counter evidence, the CRTC was obviously inclined to approve Al Arabiya for carriage in Canada under its revised policy, sparked by RAI, that "provides that distribution of such services will generally be authorized, subject to distribution and linkage requirements," the latter referring to subscription "buy through" to any similar Canadian services.⁴³⁰

Another hallmark of the Chrétien government foreign policy was trade.⁴³¹ It was within the context of Team Canada's trade missions to Southeast Asia that the CCTA requested in September 2005 to add to the lists of eligible satellite services for distribution on a digital basis nine non-Canadian, Chinese-language, general interest programming services, referred to as the "Great Wall Package."⁴³² The CCTA application

⁴²⁸ House of Commons, "Canada's Anti-Terrorism Plan," Proposed Anti-Terrorism Act, <www.hc-sc.gc.ca/hc-ps/alt_formats/hecs-sesc/pdf/ed-ud/event-incident/radiolog/info/terror-eng.pdf> (2001).

⁴²⁹ Mizroch, "Analysis: Stay in the Ring with Al-Jazeera."

⁴³⁰ CRTC Public Notice 2004-96.

⁴³¹ Peter Mansbridge, "One on One," CBC Television, 7 Feb. 2009 <http://www.cbc.ca/mansbridge/2009/02/allan_gotlieb_1.html>.

⁴³² Broadcasting Public Notice CRTC 2006-166, par. 1.

cited several reasons for listing these services for Canadian distribution echoing the request to list Al Jazeera Arabic, namely, enhancing diversity within the Canadian mosaic, meeting demand for more choice within the heritage community and combating signal piracy, because the “Chinese know signals are available in the U.S. and not in Canada.”⁴³³ The nine Chinese language services were operated by China International TV Corporation (CITVC), as delegated by the Chinese government.⁴³⁴

One of the channels in this package—China Central Television’s CCTV-4 ⁴³⁵—was problematic because “dating back to 1999 and 2001” this channel, which was “owned at the national level,” had, according to opposition registered with the CRTC, aired abusive comment in its news stories targeting followers of Falun Gong.⁴³⁶

In the “paper” hearing process, Nepean (Ontario) housewife Rose Chan wrote that she did not believe the CRTC should approve the Great Wall Package because the “owner of these 9 channels abuses human rights.”⁴³⁷ Tony Bai emailed the Commission saying: “I know the communists for sure will put a lot of money and every effort to hire or seduce many fake support voices. They are good at this.”⁴³⁸ M.P. Bill Siksay (NDP Burnaby-Douglas) wrote to say that he was concerned about the concentration of Chinese language media controlled by one broadcaster, that is, the Chinese Communist government.⁴³⁹

As in the case of the CCTA request to list Al Jazeera, most of the interventions registered with the CRTC were in support of the request to list CCTV-4 and the other

⁴³³ CCTA. Letter to CRTC 8 September 2005, File 5520-01RP93-X/05, Vol. 2.

⁴³⁴ CCTA. Letter to CRTC, File 5520-01RP93-X/05, Vol. 2.

⁴³⁵ Robert Bowman, personal interview, 14 Feb. 2008.

⁴³⁶ Broadcasting Public Notice CRTC 2006-166. par. 3, 7.

⁴³⁷ E-mail to CRTC, (undated) CRTC File 5520-01 RP93-X/05, Vol. 3.

⁴³⁸ E-mail to CRTC, 5 Jan. 2006. CRTC File 5520-01 RP93-X/05, Vol. 3.

⁴³⁹ Letter dated 21 April 2006, CRTC File 5520-01 RP93-X/, Vol. 5.

channels in the Great Wall Package, but hundreds of other letters (about 650) were opposed to adding these services to the digital lists, saying that they were “‘many channels but one voice’ of the Chinese Communist Party (CCP), consisting of propaganda that includes lies, fabricated stories, or pieces of misleading news,” and that “‘the services do not follow a code of ethics, nor . . . any freedom of speech.’”⁴⁴⁰ Some of the groups and individuals filing opposition comments told the CRTC that Chinese media coverage of SARS, the Tiananmen Square killings and some 9/11 programming created misleading or false news according to CCP ideological direction, and that alone should be enough to keep the channels out of Canada.⁴⁴¹ The Falun Dafa Association of Canada (FDAC) suggested that these services did not meet journalistic standards expected in Canada; FDAC was cited by the CRTC, however, for providing uncertified translations of quotations of broadcast news stories from some of the nine stations.⁴⁴² Tibetan organizations in Canada told the CRTC that CCTV-4 aired hate in a broadcast in April of 2001 about the Dalai Lama when he visited Taiwan.⁴⁴³ A New York based Chinese-language service drew the Commission’s attention to a CBSC ruling about a Canadian company’s network broadcast. Fairchild Television’s network Talentvision had aired a story in December 2001 that had violated various CAB codes, and if this had not been aired on a Canadian licensee’s network, it would not have come to the Commission’s attention. The story in question showed the scene of a brutal murder of a wife and her father, allegedly committed by the husband whose reasons for killing his family were

⁴⁴⁰ Broadcasting Public Notice CRTC 2006-166, par. 7.

⁴⁴¹ Broadcasting Public Notice CRTC 2006-166, par. 11.

⁴⁴² Broadcasting Public Notice CRTC 2006-166, par. 14.

⁴⁴³ Broadcasting Public Notice CRTC 2006-166, par. 15.

attributed to his belief in Falun Gong.⁴⁴⁴ Professor of art and sculpture Kunlun Zhang wrote to the Commission saying that he was a Falun Gong follower living in Ottawa who became a Canadian citizen in 1995. He said that while visiting family in China in 2000 he was arrested and released a few months later with the help of the Canadian government and Amnesty International. He claimed he had been forced to watch DVDs denouncing Falun Gong and CCTV at full volume in a labour camp and was beaten if he dropped his head or shut his eyes. This he said was an attempt to brainwash him.⁴⁴⁵

Unlike the “paper” hearing in which Al Jazeera along with other non-Canadian third-language services were considered, after the public comment and reply by the applicants phase closed for the Great Wall Package, the CRTC received three “requests for an oral public hearing in light of the concerns raised by various parties during the proceeding as to the content of the nine services.”⁴⁴⁶ This is a good example of the quasi-judicial nature of the Commission, its duty to hear both sides and provide natural justice; in this landmark case, the CRTC granted the requests to issue another call for comments and a re-opening of proceeding to permit the filing of evidence.⁴⁴⁷ By doing this, the CRTC expected those opposed to the Great Wall Package to make a compelling case against approving the nine services. It expected details such as tapes, transcripts of programs and dates of broadcast, and it required translations to be certified. What’s interesting is that nowhere in the CRTC public files on the request to list Al Jazeera does the Commission require the translated Arabic program excerpts supplied by pro-Israel lobby groups to be

⁴⁴⁴ Broadcasting Public Notice CRTC 2006-166, par. 12.

⁴⁴⁵ Statement by Professor Kunlun Zhang. 5 Jan. 2006, CRTC File 5520-0IRP93-X/05, Vol. 4.

⁴⁴⁶ Broadcasting Public Notice CRTC 2006-166, par. 17.

⁴⁴⁷ Broadcasting Public Notice CRTC 2005-124-1, Call for Comments on the Proposed Addition of Nine Non-Canadian Chinese-Language Services to the Lists of Eligible Satellite Services for Distribution on a Digital Basis—Re-Opening of Proceeding to Permit the Filing of Evidence (31 March 2006).

certified. It's unclear if the Commission determined Washington D.C. based MEMRI to be certified as a translation service, or if it did not think certification was required, since those in favour of Al Jazeera did not dispute the translated quotes.

Phase two of the request to list the Great Wall Package proceeded, with the majority of those who filed comments with the Commission (2,500) opposed to the request to approve the nine services and 2,000 signing a petition to this effect. The CRTC also received lots of support letters for the nine services (220) and 91 signatures on a petition of support, along with 100 individuals registering comments.⁴⁴⁸ In this second phase, M.P. Siksay filed a report by Reporters Without Borders, which was critical of the Xinhua News Agency, which provided news to some of the nine channels, saying that it's a censored news-gathering arm of the Chinese government. M.P. Charlie Angus (NDP Timmins-James Bay) said the CRTC should be wary of approving a group of stations with connections to "widely recognized human rights violations and full government control." Lu Shumin, Ambassador of the People's Republic of China, wrote a letter supporting the Great Wall Package application saying that the "reasonable rights" of Canadians should not be denied by those making false accusations.⁴⁴⁹

FDAC and Canadians Against Propaganda (CAP) provided videotaped evidence from 1999-2001 including news stories broadcast on CCTV-4 with certified English translation. FDAC also provided online English-language news articles from Xinhua Agency and cctv.com sources, which the CRTC would not consider as evidence.

⁴⁴⁸ Broadcasting Public Notice CRTC 2006-166, par. 32.

⁴⁴⁹ These letters dated 21 Apr. 2006, CRTC File 5520-01RP93-X/05, vol. 9.

The CAP group said that the CRTC should focus on “the mandate of the CCP and its use of media as a weapon to carry out its hate campaigns.”⁴⁵⁰ It also said that the short window of 33 days that the CRTC had extended from the original deadline for further evidence gathering was insufficient given the “CCP’s ability to hide information,” and that viewers don’t usually tape TV shows, which limited CAP’s sources. Then it revealed that it had asked the CITVC on April 19, 2006, to provide it with copies of specific CCTV broadcast programs “that might have been used to incite hate,” but that CITVC did not provide this material.

In its reply to Phase Two, Rogers said the evidence provided by those opposed to the Great Wall Package was stale. Then it warned the CRTC that if it applied the same conditions to this request to carry the Great Wall Package as it had applied to the Al Jazeera decision, it would “be tantamount to a denial of the request” and “would not meet the objectives of the Broadcasting Act.”⁴⁵¹

Rogers contended in the case of Al Jazeera that it would require at least five full-time employees fluent in English and Arabic, with a sound knowledge of Middle East geopolitical nuances, and a solid understanding of Canadian constitutional law as well as broadcasting law, policy, regulation and standards, and having the technical experience to operate digital editing equipment after making split second decisions regarding program content. If five such qualified employees could be found, Rogers estimated that the cost of compliance would be approximately \$625,000 in recurring annual operating costs (salaries and benefits) and \$20,000 in one-time capital costs (ie., switching equipment to override the Al Jazeera feed with a blank screen).⁴⁵²

When asked if this was a realistic depiction of cost structure, CRTC staff member Bob Bowman said that the CRTC did not have a chance to counter those estimates.⁴⁵³ In any case, the costs of monitoring the nine Chinese-language services and deleting any

⁴⁵⁰ Falun Dafa Assoc. of Canada & CAP letters, Apr. 2006-CRTC File 5520-01RP93-X/05, vol. 9.

⁴⁵¹ Broadcasting Public Notice CRTC 2006-166, par. 57.

⁴⁵² Broadcasting Public Notice CRTC 2006-166, par. 56

⁴⁵³ Robert Bowman, personal interview, 14 Feb.2008.

potential hateful comment would likely have resulted in what happened to Al Jazeera in Canada, that is, no BDU distribution to ready customers, who would then probably turn to American DBS means.

CITVC told the Commission that the Great Wall Package of channels “obeys the laws of every country in which its services are broadcast, and that Canada would be no exception.”⁴⁵⁴ In the end, the CRTC concluded that there was insufficient evidence presented to say that eight of the services in the Great Wall Package had ever broadcast hateful comment. CCTV-4 was, however, found to have broadcast abusive comment directed at Falun Gong in two news stories on 31 January 2001 and one story in February 2001, as exhibited by CAP and the Chinese Insight Research Society (CIRS) in translations certified by an Immigration and Refugee Board translator. The Commission also accepted evidence of two other stories aired on CCTV-4 on August 9, 1999, directed at Falun Gong members and said the comments were not in line with Canadians’ expectations for “factual and credible” news and made the targeted group vulnerable to contempt. The CRTC quoted from the offending passages and attached in the appendices to its decision segments of newscasts transcribed from CCTV-4. It went so far as to say that one quote “could incite violence and threaten the physical security of Falun Gong practitioners.”⁴⁵⁵ The regulator decided to approve all nine services in the Great Wall Package without conditions, saying it wasn’t convinced that the offending stories on CCTV-4 “are typical of the content currently aired on CCTV-4.”⁴⁵⁶ It seemingly dismissed claims of those opposed to approving the Great Wall Package of the difficulty in actually acquiring evidence damaging to the CCTV-4 network, the state news

⁴⁵⁴ Broadcasting Public Notice CRTC 2006-166, par. 63.

⁴⁵⁵ Broadcasting Public Notice CRTC 2006-166, par. 103.

⁴⁵⁶ Broadcasting Public Notice CRTC 2006-166, par. 110.

broadcaster in China, which presumably had no interest in cooperating with its critics. The Commission reserved the remedy of removing a service from the lists of eligible satellite services approved for digital distribution if abusive comment were to be broadcast while distributed in Canada, something that wasn't proffered in the Al Jazeera decision.

Yet the CRTC December 2006 decision on the Great Wall Package would seem to be in tune with Canadian government policy. It's worth noting that in 2007 China was Canada's third largest export destination (of more than \$9 billion worth of goods) after the U.S. and U.K and its second largest source of imports after the U.S.,⁴⁵⁷ far greater than the Canadian trade profile with the Arab world of 22 countries and 310 million consumers.⁴⁵⁸

Another not-so-obvious factor in how the CRTC determined "saying no by saying yes" to Al Jazeera may be found within the politics surrounding broadcast regulation in Canada. The Arab lobby may simply not have been as effective as that of other groups wanting approval for non-Canadian third-language services requested at "paper" hearings to be added to the lists of eligible digital channels for Canadian distribution. In a position paper presented to the House of Commons Standing Committee on Foreign Affairs and International Trade, the Canadian Islamic Congress spoke of the Arab-Muslim community as being diverse but with common concerns:

What they lack here in Canada, however is a unified understanding of the political system and the importance of engaging politicians in proactive discussions on issues of national and international importance; this is a vital component of

⁴⁵⁷ Michael Holden, Canada's Trade Policy and Economic Relationship with China (Ottawa: Library of Parliament, 2 Nov. 2008).

⁴⁵⁸ Richard Mann, Canada-Arab Business Council Presentation to the Subcommittee on International Trade. (Ottawa: Canadian-Arab Business Council, 21 Feb. 2005).

being citizens of a democratic society.⁴⁵⁹

In the end, the CRTC cited section 7 (a) of the Broadcasting Distribution Regulations “that states, in part, that a licensee shall not alter or delete a programming service in the course of its distribution,” to fashion a means for discouraging carriage of Al Jazeera.

Charles Dalfen explained as follows:

In the Al Jazeera Public Notice the Commission invited any broadcast distributor that wished to distribute Al Jazeera to apply for a condition of licence that would permit it to alter or delete the service to comply with the condition that it not distribute abusive comment. While this approach was new for the Commission, it was not unprecedented as far as the CRTC authorizing alteration or deletion of signals is concerned.⁴⁶⁰

He then went on to use as an example Decision CRTC 99-258, which gave Shaw Cablesystems Ltd. permission to alter the signal of The Sports Network to test the effectiveness of an advertising market research project.⁴⁶¹ And it should be clarified here that broadcast distributors have the technical means and permission to alter signal content when it comes to substituting Canadian commercial messages for foreign commercial content. But as Charles Dalfen explained, using such approval to alter a twenty-four-hour news service *ex ante* for abusive content was a new policy approach for the CRTC. Al Jazeera had no intention of airing hateful content, but as a matter of principle, no plan to censor it if it occurred, by going to a blank screen. Interviewed in a Globe and Mail Update with Canadian Press shortly after releasing the Al Jazeera decision, Charles Dalfen said, “Al Jazeera has broadcast objectionable material”; on the other hand, he continued, “Al Jazeera met the test of being a credible news service, and the commission

⁴⁵⁹ Canadian Islamic Congress, Canada's Relations with Countries of the Muslim World (Ottawa: A position paper presented to the House of Commons Standing Committee on Foreign Affairs and International Trade, 6 May 2003).

⁴⁶⁰ Dalfen, personal interview.

⁴⁶¹ See also Decision CRTC 2000-90 on signal substitution when two channels are broadcasting the same programming.

had a legal duty not to unduly infringe freedom of expression . . . [so] we couldn't absolutely ban it."⁴⁶² In an interview with Reuters, the executive vice-president of B'nai Brith, Frank Dimant, responded to the CRTC's decision by saying: "We're obviously going to have to now ensure that it's monitored effectively. . . . We hope we're going to be using the definitions that exist in Canada in terms of hate speech and promotion of hatred against any minority groups in this country because we know Al Jazeera has a history of that kind of hate speech."⁴⁶³

It was clear from this that the pro-Israel lobby network was on its mark, ready to complain to the CRTC and would, according to Bob Stark, the CRTC regional officer in Vancouver, "require someone to listen to their grievances."⁴⁶⁴ That "someone" was to be a BDU choosing to carry it. But as Michael Hennessey, head of the CCTA, told Reuters: "Cable companies do not want to be forced into the position of having to decide what is appropriate for Canadians to watch."⁴⁶⁵ The next day he told CTV news: "We're not going to take that liability to censor. It's not practical. For all practical purposes, that decision is as good as saying no to al Jazeera."⁴⁶⁶

When asked if he thought that the CRTC decision on Al Jazeera was an act of self-preservation on the part of the Commission, academic Hudson Janisch, one of Canada's top administrative lawyers, said:

To some extent yes. I think the Commission is always very sensitive when people start arguing that they are no longer relevant, that all the new technology is sweeping in, and I think to an extent that they wanted to come up with a decision

⁴⁶² Allison Dunfield, "Al-Jazeera to Begin Broadcasting in Canada," Globe and Mail 25 July 2004.

⁴⁶³ David Ljunggren, "Canada Allows Al Jazeera on Air, Imposes Limits," 15 July 2004, <<http://agonist.org/story/2004/7/15/11193/4333>> .

⁴⁶⁴ Lussiaa-Berdou, "Guess Who's Coming to Dinner-Time News."

⁴⁶⁵ David Ljunggren, Canada Allows Al Jazeera, Cable Firms Uninterested, July 15, 2004, Reuters, 21 June 2009.

⁴⁶⁶ CTV.ca News staff, CRTC Approves Al Jazeera for Canadian viewers, 16 July 2004, CTVglobemedia, 21 June 2009.

that was distinctive, and got a lot of . . . media coverage at the time....I think if they had . . . completely denied the application they might well have got themselves in a more difficult legal position....The [Federal] Court may well have been prepared to intervene on a total prohibition.⁴⁶⁷

Janisch says that in a judicial review of a CRTC ruling, the higher court usually backs away from overturning a tribunal's decision (in a procedure referred to in legal jargon as "curial deference") because that decision is based on expertise, but he believes that a BDU could have appealed an outright ban on Al Jazeera based on freedom of speech under the Charter "and the restrictions on the Commission's authority." Under the Act, the Commission has the authority to decide which non-Canadian channels can be brought into Canada, but, says Janisch, "a total prohibition where other similar foreign programs are being allowed in would be seen as something outside the Commission's jurisdiction."⁴⁶⁸

Charles Dalfen was clearly proud of the middle ground that his Commission's decision found with the political and cultural challenges posed in putting Al Jazeera on Canadian television: "In this case nobody said do what we did. . . . Everybody said approve or deny. That was the end of it."⁴⁶⁹ And that likely is the end of it, until Al Jazeera Arabic's 24-hour news service is broadcast for Canadian pickup on the Internet, which for the time being the CRTC does not regulate.

⁴⁶⁷ Janisch, personal interview.

⁴⁶⁸ Janisch, personal interview.

⁴⁶⁹ Dalfen, personal interview.

Conclusion

It was a year and a half following the events of September 11, 2001, that the debate began about whether to allow the Arabic Al Jazeera news network to connect to the Canadian broadcasting system. Following 9/11, the War on Terror was, in part, satellite TV services dueling for public opinion, and in part, as Ofir Gendelman has suggested, “a war of ideas” fed by fear about what’s at stake in the Middle East and Afghanistan. In Canada one can access lots of pop culture where preventing success of Arabs, often portrayed as “bad guys,” is heroic, so keeping Canada clear of the Arab perspective of Al Jazeera seemed a natural defensive tactic of the pro-Israel lobby. Such a defense was also keeping Canadians from witnessing the forces for change in the Arab world led by Al Jazeera in areas we take for granted, such as inviting Israelis to speak for themselves on matters affecting them and others in the Middle East and beyond.

Under the Broadcasting Act, Sec. 14 (1), the CRTC “may undertake, sponsor, promote or assist in research relating to any matter within its jurisdiction,” and it has jurisdiction over the *carriage* of non-Canadian broadcasting services. During such a contentious CRTC public hearing, which took place against the backdrop of war in Iraq, the Commission chose not to hire any independent expert advice on the most watched television news channel in the Arab world, but rather relied on the evidence of both sides of the debate, which was in some cases incomplete as presented by the Arab Muslim community representatives and in other cases unbalanced by the pro-Israel lobbyists.

It’s conceivable that if Canadian BDUs had applied to distribute Al Jazeera in 2000, they may very well have received CRTC approval without conditions of prior restraint

and without carriage of Al Jazeera being regulated as an extension of their community cable programming, something they were clearly not equipped to handle nor had expected. The unfairness of the CRTC conditions of approval for unprepared BDUs meant that Al Jazeera Arabic would not be offered to a minority Canadian community wanting it.

The American Department of State's Human Rights Report on Qatar in 2000 praised the Arab state for abolishing censorship of foreign news media and commended Al Jazeera for operating "freely" and for call-in shows, where criticism of the Emir "for meeting the Israeli Prime Minister . . . and for allowing the Israeli Trade Office to remain open before the November Islamic Summit" was openly expressed.⁴⁷⁰ Greg Sullivan, a Department of State spokesman, said during Al Jazeera's coverage of the second *intifada* that he watched the channel in his office every day and that his country recognized it "as a powerful voice with a wide viewership in the Arab world."⁴⁷¹ The U.S. government's Voice of America wanted its programs broadcast on Al Jazeera, although the latter declined, and the international media were using the channel's daily reports from the West Bank as if they originated from any respected "Western news agency."⁴⁷² Al Jazeera had Jewish journalists on its payroll and during the second *intifada* regularly interviewed Gideon Ezra, Israel's former General Security Services deputy head, and Yigal Carmon, former counter-terrorism adviser to Israeli Prime Ministers Shamir and Rabin. Carmon had set up MEMRI in 1998. Examples of abusive comment from phone-callers or guests on Al Jazeera, broadcast in democratic Israel, were easier to access

⁴⁷⁰ Miles 382.

⁴⁷¹ Miles 94.

⁴⁷² Miles 94-95.

than was the evidence of hate on the Chinese-language CCTV-4, as requested from inaccessible CCP sources by its critics for the CRTC hearing on the Great Wall Package.

One can't help noticing the discrepancy between approving the distribution of Al Jazeera conditional on prior restraint by BDUs, and the channels in the Great Wall Package approved with no conditions of prior restraint. The Commission has the discretion to create such discrepancies. Discretion is defined in administrative law as "the power to make a decision that cannot be determined to be right or wrong in any objective way," although in choosing between various courses of action there may be answers "that are wrong in law."⁴⁷³ Being wrong in law would have required that the CRTC meet a challenge in Federal court and have been found to exceed its jurisdiction—which didn't happen. But that doesn't mean that if a challenge had been launched, the courts would have deferred to the CRTC:

There was a Charter right that could be raised . . . because once you get a Charter right involved, then the courts apply what they call a 'correctness test', that is they actually look at the decision and say, is this decision legally authorized. . . . I would have thought there would have been a much greater chance of success had the cable industry been interested at that stage to stop the CRTC by taking them to court.⁴⁷⁴

In 2000 many Israelis regarded Al Jazeera hopefully as a modernizing force in the region, going so far as to criticize the Israel Broadcasting Authority, the country's public broadcaster for "failing to show the Palestinian side of the intifada"; such a turning of the tables prompted the Israeli government to devise media strategies that would defend its narratives.⁴⁷⁵ After 9/11, Al Jazeera's watch on centres of power, whether the Palestinian Authority, Israel's leadership, al-Qaeda, non-democratic Arab regimes, or the

⁴⁷³ Kaufman 23.

⁴⁷⁴ Janisch, personal interview.

⁴⁷⁵ Miles 92.

United States Department of State, was met with suspicion by the George W. Bush administration. What's often forgotten is the sympathy for the United States in most of the Arab world following 9/11, and when that support plummeted following American military retaliation in Afghanistan and Iraq, the prime scapegoat for polling evidence of "unprecedented levels of hostility to the United States in the region" was Al Jazeera.⁴⁷⁶ Its coverage of the effects of the bombing of multiple Muslim communities, followed by Arabs discussing this in the heat of the moment, was framed in the United States and elsewhere by supporters of the Bush administration as "hate TV." As American values of freedom of speech and press were compromised, the Arab world began interpreting U.S. foreign policies as marching back to a new colonialism.

Unlike RAI International, and the boisterous Italian lobby in Canada, Al Jazeera did not enjoy the support of many Arab governments willing to lean on Canadian parliamentarians and the broadcasting regulator to get the most watched news channel in the Arab world distributed in Canada. It wasn't in the interests of powerful Arab regimes to promote independent media. This had been demonstrated in 1996 by the collapsed partnership between the BBC and Saudi-owned Orbit, from which Al Jazeera had arisen. It didn't seem to be within the capacity of the Arab- Muslim community in Canada to effectively challenge the pro-Israel lobby evidence before the quasi-judicial CRTC, whose decision reflects political sensitivities.

Al Jazeera was no doubt a hot potato for the Commission. It seemed to tightly contain the process of "hearing" the request for its carriage. It should be remembered that the CRTC has the discretion to decide whether or not it's even in the public interest to hold a

⁴⁷⁶ Lynch, Voices of the New Arab Public 19.

public hearing on something that comes before it.⁴⁷⁷ Even though supporters of Al Jazeera on the CRTC public file vastly outnumbered those opposed, it wasn't a democratic vote that the CRTC was administering, but rather the Act, which doesn't mention hate but rather high standards, and entrusts the Commission to set regulations, which it has done on matters of abusive content. It agreed to "hear" the request to distribute Al Jazeera as one of several other requests for non-Canadian third-language services, and scheduled its process in the summer when many potential participants, not to mention journalists, are on holidays. There was just one month for interventions to be filed on the public record, and five weeks for rebuttals. The regulator probably took the Liberal Parliamentarians for Israel submission into consideration in its decision because the evidence points to its having been discussed, and in order to discuss whether or not to allow it to exist on the public record, one assumes Commissioners would have read it. The details of that submission were not available for this case study, but accompanying correspondence was. It wouldn't be in the interests of the tribunal to leave that late arriving intervention on the public file; readers might assume the Commission had been influenced by it, which would defeat the regulator's purpose in providing natural justice and not being seen to represent the interests of any particular constituency. Although Bernard Montigny, General Counsel (Broadcasting) at the CRTC, agreed to go on the record for the research purposes of this thesis, his employer likely saw his previous role as legal counsel for Al Jazeera's North American distributor as a conflict of interest in the Commission's role to provide natural justice.

The use of MEMRI-provided quotes from Al Jazeera programming attached to the CJC submission clearly pointed the Commission towards directing BDUs to use prior

⁴⁷⁷ Kaufman 23.

restraint before distributing it. Yet there seemed a lack of transparency about faith in the translated evidence provided by participants in one hearing requiring no official Canadian certified translation, while other groups in the Great Wall Package hearing were required to certify translations of their evidence offered as examples of hate.

The trouble with using ideologically driven selection of facts such as MEMRI's hate clip sampler is that the problem of getting at the truth of Al Jazeera's service was not backed up with careful research on which the CRTC could justify its policy of requiring BDUs to be its de facto censor. With no face-to-face oral presentations, the CRTC Commissioners could not question evidence lacking proper context and could not question BDUs on how they would deal with complaints about abusive content, as Commissioners had questioned applicants for licences of subscription satellite radio distribution undertakings a few months following the Al Jazeera decision. At the end of that process, the CRTC didn't say "no" by saying "yes" when it approved the licences, even though it mused at the public hearing that an offence might be committed by way of distributing Howard Stern types of entertainment to paying subscribers. Despite different regulations for different services, the CRTC may, in the case of Al Jazeera, have used its considerable discretionary power to render something other than natural justice, something that could be challenged as "outside the powers conferred by the parent Act."⁴⁷⁸

Keeping Al Jazeera Arabic off TV screens in Canada may have been in part a CRTC institutional self-preservation strategy. If it had given outright approval and BDUs began offering the channel to customers, any subsequent complaints would have to have been deflected by the regulator, with no power to deal with them except through the *carriage*

⁴⁷⁸ Kaufman 24.

by BDUs of a non-Canadian service. Support for its jurisdiction in deciding which non-Canadian channels get connected to the Canadian system would have eroded. The Commission may also have been banking on the costliness and time-consuming nature of taking issues to court and on the history of its relationship with those being regulated:

You have cable companies that are constantly coming back to the Commission looking for certain advantages and certain benefits that they can get in the regulatory process. And so they are going to be very reluctant to confront the regulator directly and take them to court. If you look over the years, there are many, many instances where broadcasters could have challenged the CRTC, or cable companies could have challenged the CRTC and very, very seldom have actually done so.⁴⁷⁹

The irony cited by Al Jazeera critics during the summer 2003 paper CRTC “hearing” was that to *approve* this service, the Commission would be allowing a foreign news network to get away with what it would never sanction for a Canadian operation. But the CRTC policy on Al Jazeera Arabic created a double standard, which doesn’t seem to be natural justice. The principle of not requiring *ex ante* control over broadcasting in Canada, even if the regulator knows ahead of time that abusive programming is scheduled, seemingly didn’t apply to one Arabic broadcaster approved for the Canadian system. Channels like Fox News, MSNBC and SIRIUS satellite subscription radio *could* evade prior restraint conditions on their approval for Canadian distribution. Channels like CCTV-4 seemingly got approved because no one wanted to insult a powerful trading partner, and in the words of one Commissioner about the Great Wall Package of broadcasters, “What we had was evidence that they weren’t very accurate broadcasters . . . and shouldn’t be believed. . . . [T]he difference between Al Jazeera and the Chinese services was that we didn’t have before us evidence of what you could call a focused hate

⁴⁷⁹ Janisch, personal interview.

campaign against a group.”⁴⁸⁰ This seems to indicate that the CRTC regarded Al Jazeera as worrisome precisely because it qualifies as a bona fide news service. Evidence of a “focused hate campaign” had been supplied by MEMRI in a list of out-of-context, dated quotes.

Had the disparate Arab lobby presenting its case before the CRTC asked scholars such as Marc Lynch to address the regulator, Commissioners might have given less weight to the MEMRI quotes after considering his informed opinion: “It is impossible to quantify the damage done by partisan translation services such as the Middle East Media Research Institute, which have consistently misled American audiences about the real distribution of opinion and argument in the Arab media.”⁴⁸¹ Lynch has referred to the hate-spewing media sanctioned by U.S.- friendly regimes such as Saudi Arabia and Egypt as being far more harmful than anything expressed in elite Arab media such as Al Jazeera. MEMRI has been known to try to shut down criticism of its translation services from University of Michigan Middle East scholar Juan Cole (quoted in chapter 1) by using a SLAPP, or Strategic Lawsuit Against Public Participation.

One of the key principles of democracy is freedom of speech, “based on the experience that injustice is less likely to endure, or even to emerge, in an atmosphere of open public debate.”⁴⁸² The events of 9/11 led many western governments including Canada’s to adopt public security measures that some argue are threatening civil liberties, which democracies must also safeguard. The CRTC said in its Al Jazeera decision that it was trying to balance the freedom of speech rights guaranteed in the Charter with the right of minority communities to be protected from contempt and told BDUs that if they

⁴⁸⁰ Langford, personal interview.

⁴⁸¹ Lynch, Voices of the New Arab Public 253, footnote # 10.

⁴⁸² Borovoy 108.

wanted to carry it, they had to be responsible for what Al Jazeera broadcast in Canada. The BDUs have not asked the CRTC for a waiver to use prior restraint on Al Jazeera because they don't want to be cast in that role and don't seem to have been consulted about taking it on ahead of the Commission's decision. Neither do BDUs want a public spat with the pro-Israel lobby network, or to be accused of exposing a religious or racial or ethnic group to hate propaganda. If the BDUs decided to risk offering a bona fide news network, Al Jazeera, to Arabic speaking customers, proving by a third party that in doing so they were motivated to breach the peace would be very difficult to achieve in a Canadian court. The most likely motive of a BDU, however, is to avoid anything that's bad for business. Being accused of distributing hate is bad for business, and the irony of Canada's hate laws is that those being labeled as anti-Semitic, for example, could themselves argue that they were being exposed to "hatred or contempt."⁴⁸³ A legal defense in a charge of committing a hate crime is if the person uttering the abusive content believes it to be true, or is making an argument and opinion on a religious subject, which could be within the context of Al Jazeera's service area. Ofir Gendelman described his own experience when some Arab viewers on first seeing a Jew on TV were shocked to learn that he wasn't the embodiment of religious evil, that is, Satan. There on Al Jazeera was a sort of miracle, a Jewish man speaking directly to Arabs, in their living rooms or coffee shops, like one human being to another, in Arabic, "and not through third parties like what has happened since the establishment of Israel, where somebody tells you what the Israelis said or are going to say."⁴⁸⁴

⁴⁸³ Borovoy 109.

⁴⁸⁴ Miles 93.

In its decision the CRTC “notes that the Supreme Court of Canada has upheld the objective of hate propaganda laws as sufficiently compelling to justify limiting the expression right in a number of cases.”⁴⁸⁵ But in the case of CHOI-FM, for example, the Court did so *after* abusive comment was broadcast, and after CHOI-FM was given years to demonstrate a pattern of compliance with the laws of the land. Canadian courts have not justified prior restraint nor does the Act prescribe it.

In its written reasons for deciding as it did, the CRTC concluded that it wouldn’t be right to deny Al Jazeera’s digital carriage “based on statements that the parties submitted were broadcast in the past but for which adequate context was not provided.”⁴⁸⁶ In the absence of any evidence that the MEMRI quotes misrepresented the Arabic news service, saying “no” to connecting Al Jazeera to the Canadian system was really what the CRTC had to calculate. It had to figure out how to do that without its *de facto* denial being “an unconstitutional prior restraint of freedom of expression that could not be justified under the Charter.”⁴⁸⁷ It appears to have succeeded because so far no one has challenged its ruling in a higher court.

As Rogers said at the CRTC’s Great Wall Package request hearing, in practice the Al Jazeera ruling amounts to a denial. Rogers may well have signaled to the Commission that the CRTC had better not make the same ruling in the case of the non-Canadian Chinese-language services or else it would take legal action, potentially threatening CRTC jurisdiction. Given the larger population of Chinese language speakers than Arabic speakers in Canada, there’s likely more business for BDUs with the former, in

⁴⁸⁵ Broadcasting Public Notice CRTC 2004-51, par. 62.

⁴⁸⁶ Broadcasting Public Notice CRTC 2004-51, par. 69.

⁴⁸⁷ Broadcasting Public Notice CRTC 2004-51, par. 25.

which case the marketplace may be playing a greater role in regulating broadcasting in Canada, something that's also a threat to CRTC jurisdiction.

Those in the marketplace have willingly agreed to be regulated by the CRTC and see its role in managing risk as valuable to the industry. But as John Meisel has said, regulation is not to be confused with censorship, and there's nothing in Parliament's legislation creating the CRTC that sanctions either *ex ante* censoring of potentially risky content, or appointing a proxy to do so. The Act also gives those broadcasting the responsibility to be accountable, which assumes that when rules are broken, there's a chance to publicly explain, take appropriate action, and face the consequences, including fines or worse, as CHOI-FM may attest.

What was different about the CRTC decision to approve with conditions Al Jazeera Arabic was that this service didn't have a chance to be accountable to a potential Canadian public, to have the process of time whereby a quasi-judicial body considers complaints and decides in consultation with the licensee what to do about them. There were no second chances for Al Jazeera Arabic to be distributed on the digital dials in Canada because there was no first chance for this service, which met the regulator's criteria for approval. Regulation in turbulent times, like broadcasting, as the CRTC reminded readers in its MSNBC Canada decision, must take care not to expose vulnerable communities to treatment which renders them unworthy of what the majority enjoys in the way of respect and fairness. In applying the principles of natural justice, the CRTC must apply them for all. In its ruling on Al Jazeera Arabic, the Commission failed to meet its own test.

Works Cited

Secondary Sources

- Abu-Laban, Baha. An Olive Branch on the Family Tree: The Arabs in Canada. Toronto: McClelland and Stewart, 1980.
- Acheson, Keith, and Christopher Maule. "Canada's Cultural Policies: You Can't Have It Both Ways." Canadian Foreign Policy 4.3 (Winter 1997).
- Attallah, Paul. "Narrowcasting: Home Video and DBS." Cultural Industries in Canada: Problems, Policies and Prospects. Ed. Michael Dorland. Toronto: James Lorimer, 1996. 257-279.
- Aucoin, Peter, and Lori Turnbull. "The Democratic Deficit: Paul Martin and Parliamentary Reform." Canadian Public Administration 46.4 (2003): 427-449.
- Ayish, Muhammed. "Political Communication on Arab World Television. Evolving Patterns." Political Communication 19 (2002): 137-154.
- Bakr, Yahya Abu. "Towards an Intra-Cultural News Exchange in the Arab States." News Values and Principles of Cross-Cultural Communication. Ed. Louis da Costa Alcino et al. Paris: UNESCO, 1980. 16-26.
- Beaty, Bart, and Rebecca Sullivan. "Canadian Television and the Limits of Cultural Citizenship." How Canadians Communicate: Media, Globalization and Identity. Eds. David Taras, Maria Bakardjieva and Frits Pannekoek. Vol. 2. Calgary: U of Calgary P, 2007. 65-82.
- Berlin, Barry. The American Trojan Horse: U.S. Television Confronts Canadian Economic and Cultural Nationalism. New York: Greenwood, 1990.
- Bodi, Faisal. "Al Jazeera's War." Tell Me Lies. Ed. David Miller. London: Pluto Press, 2004.
- Borovoy, A. Alan. Categorically Incorrect: Ethical Fallacies in Canada's War on Terror. Toronto: Dundurn, 2006.
- Chomsky, Noam, and Gilbert Achcar. Perilous Power: The Middle East & U.S. Foreign Policy. Ed. Stephen R. Shalom. Boulder: Paradigm, 2007.
- Chomsky, Noam, and Edward Herman. Manufacturing Consent: The Political Economy of the Mass Media. 1988. Montreal: Black Rose Books, 1995.

- "The CNN Effect: TV and Foreign Policy." Washington, 1995. America's Defense Monitor. <<http://www.cdi.org/adm/834/transcript.html>>. 23 Feb. 2009.
- Crawford, Michael G. The Journalist's Legal Guide. 4th ed. Scarborough: Carswell, 2002.
- Doern, G. Bruce. "Regulating on the Run: The Transformation of the CRTC as a Regulatory Institution." Canadian Public Administration 40.3 (1997): 516-538.
- Dornan, Christopher. "Other People's Money: The Debate over Foreign Ownership in the Media." How Canadians Communicate: Media, Globalization and Identity. Ed. David Taras, Maria Bakardjieva and Frits Pannekoek. Vol. 2. Calgary: U of Calgary P, 2007. 47-64.
- Dowler, Kevin. "The Cultural Industries Policy Apparatus." The Cultural Industries in Canada: Problems, Policies and Prospects. Ed. Michael Dorland. Toronto: James Lorimer, 1996. 328-346.
- el-Nawawy, Mohammed, and Adel Iskander. Al Jazeera. Boulder: Westview, 2002.
- Fakhreddine, Jihad. "The Long March of Pan-Arab Media: A Personal View." Arab Media & Society (2007): 10-11.
- Habermas, Jurgen. The Structural Transformation of the Public Sphere. Cambridge: MIT Press, 1962.
- Jiad, Abdul Hadi. "The BBC: A Personal Account." Tell Me Lies: Propaganda and Media Distortion in the Attack on Iraq. Ed. David Miller. London: Pluto Press, 2004. 204-209.
- Kamalipour, Yahya R., and Nancy Snow, eds. War, Media and Propaganda: A Global Perspective. Lanham: Rowman & Littlefield, 2004.
- Kaufman, Donna Soble. Broadcasting Law in Canada: Fairness in the Administrative Process. Toronto: Carswell, 1987.
- Knightley, Phillip. "History or Bunkum?" Tell Me Lies. Ed. David Miller. London: Pluto Press, 2004. 100-107.
- Lage, Olivier Da. "The Politics of Al Jazeera or the Diplomacy of Doha." The Al Jazeera Phenomenon: Critical Perspectives on New Arab Media. Ed. Mohamed Zayani. Boulder: Paradigm, 2005.
- Lynch, Marc. Voices of the New Arab Public: Iraq, Al-Jazeera, and Middle East Politics Today. New York: Columbia UP, 2006.

- Lynch, Marc. Washington, 2008. Foreign Policy. <http://lynch.foreignpolicy.com/About_Lynch>. 6 July 2009.
- Maiola, Giovanna, and Ward David. "Democracy, and the Media in Palestine: A Comparison of Election Coverage by Local and Pan-Arab Media." Arab Media and Political Renewal. Ed. Naomi Sakr. New York: I.B. Tauris, 2007.
- Mearsheimer, John J., and Walt M. Stephen. The Israel Lobby and U.S. Foreign Policy. Toronto: Penguin Group (Canada), 2007.
- Mellor, Noha. The Making of Arab News. Oxford: Rowman & Littlefield, 2005.
- "Middle East Media Research Institute." Somerville, NM. 9 March 2007. Right Web Profile. International Relations Center. <<http://rightweb.irc-online.org/profile/1511>>. 2 Feb. 2008.
- Miles, Hugh. Al-Jazeera: The Inside Story of the Arab News Channel That Is Challenging the West. New York: Grove, 2005.
- Mill, John Stuart. On Liberty and the Subjection of Women. 1859. Ed. Alan Ryan. London: Penguin Books, 2006.
- Miller, David. "Information Dominance: The Philosophy of Total Propaganda Control?" War, Media and Propaganda: A Global Perspective. Eds. Yahya Kamalipour and Nancy Snow. Lanham: Rowman & Littlefield, 2004. 7-16.
- Miller, David, ed. Tell Me Lies: Propoganda and Media Distortion in the Attack on Iraq. London: Pluto Press, 2004.
- Montgomery, Lucy Maud. Anne of Green Gables. Toronto: Ryerson Press, 1942.
- Mullan, David J., and J.M. Evans. Administrative Law: Cases, Text, and Materials. 5th ed. Toronto: Emoud Montgomery, 2003.
- Nasser, Munir K. "News Values Versus Ideology: A Third World Perspective." Comparative Mass Media Systems. Eds. L. John Martine and Anju Grover Chaudhary. New York: Longman, 1983.
- Oifi, Mohammed El. "Influence Without Power: Al Jazeera and the Arab Public Sphere." The Al Jazeera Phenomenon: Critical Perspectives on New Arab Media. Ed. Mohamed Zayani. Boulder: Paradigm, 2005. 223.
- Organization for Economic Cooperation and Development. Canada: Maintaining Leadership through Innovation. OECD Publishing, 2002.
- O'Neill, Onora. A Question of Trust. Cambridge: Cambridge UP, 2002.

- Pal, Leslie A. Beyond Policy Analysis: Public Issue Management in Turbulent Times. 3rd ed. Toronto: Nelson, 2006.
- Pilger, John. "Crime Against Humanity." Tell Me Lies: Propaganda and Media Distortion in the Attack on Iraq. Ed. David Miller. London: Pluto Press, 2003.
- Rugh, William A. "Repairing American Public Diplomacy." Arab Media & Society 7 (Winter 2009).
- Rushing, Josh, with Sean Elder. Mission Al Jazeera. New York: Palgrave MacMillan, 2007.
- Said, Edward W. Covering Islam: How the Media and the Experts Determine How We See the Rest of the World. Rev. ed. New York: Vintage Books, 1997.
- Sakr, Naomi. Satellite Realms: Transnational Television, Globalization and the Middle East. New York: I.B. Tauris, 2001.
- Sakr, Naomi. "Approaches to Exploring Media-Politics Connections in the Arab World." Arab Media and Political Renewal: Community, Legitimacy and Public Life. Ed. Naomi Sakr. London: I.B. Tauris, 2007. 1-12.
- Salter, Liora. "Accountability and Capture of Agencies: Proposals for Change." Canada's Century: Governance in a Maturing Society. Ed. C.E.S. Franks. Montreal & Kingston: McGill-Queen's UP, 1995. 278-297.
- Salter, Liora, and Felix Nii Lantei Odartey-Wellington. The CRTC and Broadcasting Regulation in Canada. Toronto: Thomson Carswell, 2008.
- Schudson, Michael. The Sociology of News. New York: W.W. Norton, 2003.
- Schultz, Richard J. "Still Standing: The CRTC, 1976-1996." Changing the Rules: Canadian Regulatory Regimes and Institutions. Eds. G. Bruce Doern, et al. Toronto: U of Toronto P, 1999. 29-56.
- Schultz, Richard. "Canadian Communications and the Spectre of Globalization: 'Just Another Word...'" How Canadians Communicate II: Media, Globalization, and Identity. Ed. David Taras, Maria Bakardjieva, Frits Pannekoek. Calgary: U of Calgary P, 2007. 23-46.
- Shaheen, Jack G. Reel Bad Arabs: How Hollywood Vilifies a People. New York: Olive Branch Press, 2001.
- Sinclair, John, and Stuart Cunningham. "Diasporas and the Media." Floating Lives: The Media and Asian Diasporas. Eds. Stuart Cunningham and John Sinclair. Lanham: Rowman & Littlefield, 2001. 1-34.

Snow, Nancy. "Brainscrubbing: The Failures of US Public Diplomacy after 9/11." Tell Me Lies. Ed. David Miller. London: Pluto Press, 2004. 52-62.

Spicer, Keith. Life Sentences: Memoirs of an Incurable Canadian. Toronto: McClelland & Stewart, 2004.

Stoppard, Tom. Night and Day. New York: Samuel French, 1980.

Szuchewycz, Bohdan, and Jeanette Sloniowski. "Stern Radio: Taming the Shock Jock." Canadian Communications: Issues in Contemporary Media and Culture. Scarborough: Prentice Hall, Allyn & Bacon, 1999. 224-237.

Tatham, Steve. Losing Arab Hearts and Minds: The Coalition, Al-Jazeera and Muslim Public Opinion. New York: Front Street Press, 2006.

Williston, Scotti. "Global News and the Vanishing American Foreign Correspondent." Transnational Broadcasting Studies 6 (2001). <www.tbsjournal.com/Archives/Spring01/Williston.html>. 14 Apr. 2009.

Primary Sources

Access to Information

Canadian Radio-television and Telecommunications Commission Staff Meeting. 25-27 Feb. 2004. Addition of Non-Canadian Services to the Lists of Eligible Satellite Services – Distribution and Competitive Policy.

Acts & Statutes

Canada. Broadcasting Act. S.C.1991, c.11.

---. Canadian Radio-television and Telecommunications Act. S.C. 1974-75-76, c.49.

United States. Broadcast Decency Enforcement Act of 2005. Washington, D.C. 15 June 2006. <<http://www.congress.org/congressorg/bill.xc?billnum=S.193&congress=109>>.

Blog entries

Cole, Juan. 23 November 2004. "Intimidation by Israeli-Linked Organization Aimed at U.S. Academic: MEMRI Tries a SLAPP." <JuanCole.com>. 21 February 2008.

CBSC Entries

CBSC Decision 97/98-1186. CILQ-FM re. The Howard Stern Show ("Poland"). Toronto. 3 Feb. 1999.

Cohen, Ron. "Notes for an Address by National Chair CBSC to Canadian Ethnic Journalists' and Writers' Club". Toronto. 4 March 2004. <www.cbsc.ca/english/documents/speeches/CEJWC20040304.pdf>.

Conferences

Evans, Leslie. "Al Jazeera, Radio Sawa Founders Report on Media in the Middle East." Los Angeles, 2003. UCLA International Institute.
<http://www.international.ucla.edu/print.asp?parentid=5087>. 23 Apr. 2009.

Court Cases and Rulings

Bell ExpressVu Limited Partnership v. Rex. [2002] 2 S.C.R.559.

Genex Communications Inc. v. Canada (Attorney General). 2005 FCA 283. 1 Sept. 2005.

R. v. Richard Thériault et Jacques D'Argy, [2004] J.Q. no. 11142 . [2005] J.Q. no. 2499. 31 March 2005.

CRTC Correspondence

Abdo, Nahla. E-mail to CRTC. CRTC file 5520-01 RP37-X-Vol.18.

Angus, Charlie, MP. Letter to CRTC. 21 Apr. 2006.

Awad, Amy. E-mail to CRTC. No date. CRTC File # 5520-01RP37-X/03-Vol. 23.

Bai, Tony. E-mail to CRTC. 5 Jan. 2006

B'nai Brith Canada. Letter to CRTC. 11 Aug. 2003. <<http://www.bnaibrith.ca/briefs/crts/Al-Jazeera030811.html>>. 24 Jan. 2008.

Brothers, Karin. Letter to CRTC. 08 Aug.2003. CRTC file # 5520-01RP37-X-Vol.17.

CCTA. Commissioned study in 2002 by the firm Gregg, Kelly, Sullivan & Woolstencroft. The Strategic Counsel. CRTC file# 01RP37-X/03-Vol. 5.

---. Letter to CRTC. 8 Sept. 2005

---. Letter to CRTC. 28 Oct. 2002. CRTC file # 01RP37-X/03-Vol. 5.

Chan, Rose. E-mail to CRTC. No date.

Eggleton, Art. Letter to CRTC. 28 Aug. 2003.

---. Letter to CRTC. 11 Sept. 2003.

Falun Dafa Association of Canada & Canadians Against Propaganda. Letter to CRTC. Apr. 2006.

Global Television Network. Letter to CRTC. 11 Aug. 2003. CRTC file # 5520-01RP37-X- Vol. 18.

Kafieh, James. Letter to CRTC. 11 Aug. 2003. CRTC file # 5520-01RP37-X03-Vol. 27.

Landy, M. Keith. Letter to CRTC with CJC submission. 8 Aug. 2003. <http://www.cjc.ca/template.php?action=briefs&item=50>. 15 Jan. 2009.

Lidov, David. E-mail to CRTC. 9 Aug. 2003. CRTC File # 5520-01RP37-X/03-Vol. 24.

Montigny, Bernard. Letter to Janet Yale, CCTA and to Edward Trépanier, Vidétron. 13 Mar. 2003.

Rhéaume, Diane.(CRTC) Letter to J. E. Antecol. 24 Aug. 2006. CRTC File # 8622-P49-200610510. < <http://www.crtc.gc.ca/archive/ENG/Letters?2006/lt060824.htm?Print=True>>. 9 Aug. 2008.

Sherazee, Amina. Letter to CRTC. 1 Aug. 2003. CRTC file # 5520-01RP37-X/03-Vol.23.

Shumin, Lu Ambassador, People's Republic of China. Letter to CRTC. 21 Apr. 2006.

Siksay, Bill, MP. Letter to CRTC. Jan. 2006.

---. Letter to CRTC. 21 Apr. 2006.

Tausaw, Kirk. Letter to CRTC. 29 Apr. 2004. CRTC file # BRO 6700-72.

Trépanier, Édouard G. Letter to CRTC. 15 Sept. 2003.

Zhang, Kunlun. Submission to CRTC. 5 Jan. 2006.

CRTC Documents

Canada. Broadcasting Decision CRTC 68-44. Ottawa. CJLS Non-Renewal of Licence 3 Oct. 1968.

---. Broadcasting Decision CRTC 2000-650. Ottawa. MSNBC Canada. 14 Dec. 2000.

---. Broadcasting Decision CRTC 2002-189. Ottawa. Short-Term Licence Renewal for CHOI-FM. 16 July 2002.

---. Broadcasting Decision CRTC 2005-246. Ottawa. Satellite Subscription Radio Undertaking. 16 June 2005.

---. Broadcasting Decision CRTC 2006-565. Complaints Concerning Abusive Comments Broadcast by Société Radio-Canada on the 25 September 2005 Episode of the Program Tout le Monde en Parle. Ottawa. 28 Sept. 2006.

---. Broadcasting Decision CRTC 2006-600. Ottawa. Radio Nord Communication Inc. French-language FM Radio Station in Québec. 20 Oct. 2006.

---. Broadcasting Decision CRTC 2006-19. Ottawa. Complaints Regarding Comments Made on the Program Imus in the Morning on MSNBC Canada Regarding Palestinians, Iraqis and Muslims. 27 Jan. 2006.

---. Broadcasting Distribution Regulations (SOR/97-55) s.7.s.8.

---. Broadcasting Public Notice CRTC 2001-82. Revised Lists of Eligible Satellite Services. 13 July 2001.

---. Broadcasting Public Notice CRTC 2003-36. Call for Comments on Proposals for the Addition of Non-Canadian Satellite Services to the list of Services Eligible for Digital Distribution. 11 July 2003.

---. Broadcasting Public Notice CRTC 2003-67. Call for Comments on Proposals for the Addition of Non-Canadian Satellite Services to the List of Services Eligible for Digital Distribution. 18 Dec. 2003.

---. Broadcasting Public Notice CRTC 2004-271. CHOI-FM Non-Renewal of Licence. 13 July 2004.

---. Broadcasting Public Notice CRTC 2004-88. Ottawa. Revised Lists of Eligible Satellite Services. 18 Nov. 2004.

---. Broadcasting Public Notice CRTC 2004-96. Improving the Diversity of Third-Language Television Service – A Revised Approach. 16 Dec. 2004.

- . Broadcasting Public Notice CRTC 2004-51. Requests to Add Al Jazeera to the Lists of Eligible Satellite Services for Distribution on a Digital Basis. 15 July 2004.
- . Broadcasting Public Notice CRTC 2004-71. Ottawa. Revised Lists of Eligible Satellite Services. 16 Sept. 2004.
- . Broadcasting Public Notice CRTC 2005-51. Revised Lists of Eligible Satellite Services. 13 May 2005.
- . Broadcasting Public Notice CRTC 2005-104. Revised Approach for the Consideration of Broadcasting Licence Applications Proposing New Third-Language Ethnic Category 2 Pay and Specialty Services. 23 Nov. 2005.
- . Broadcasting Public Notice CRTC 2005-124-1. Call for Comments on the Proposed Addition of Nine Non-Canadian Chinese-Language Services to the Lists of Eligible Satellite Services for Distribution on a Digital Basis – Re-opening of Proceeding to Permit the Filing of Evidence. 31 Mar. 2006.
- . Broadcasting Public Notice CRTC 2006-157. Ottawa. Addition of Al Arabiya News Channel to the Lists of Eligible Satellite Services for Distribution on a Digital Basis. 14 Dec. 2006.
- . Broadcasting Public Notice CRTC 2006-166. Addition of Nine Non-Canadian Chinese-Language Services to the Lists of Eligible Satellite Services for Distribution on a Digital Basis. Ottawa. 22 Dec. 2006.
- . Public Notice CRTC 1988-213. Policy Regarding Open-Line Programming. 23 Dec. 1988.
- . Public Notice CRTC 2000-6. Ottawa. Licensing Framework Policy for New Digital Pay and Specialty Services. 13 Jan. 2000.
- . Public Notice CRTC 2000-90. Ottawa. Signal Substitution for Atlantic and Quebec Region Stations Wanting License Amendment to Insert Promotion Material as a Substitute for Non-Canadian Advertising Material of Non-Canadian Satellite Services. 30 June 2000.
- . Radio Regulations, 1986. SOR/86-982, s. 5(1). <http://www.crtc.gc.ca/eng/LEGAL/Radioreg.htm>.

Government Documents

Canada. CRTC. "CRTC Origins." Ottawa. <<http://www.crtc.gc.ca/eng/backgrnd/brochures/b19903>>.

- . CRTC. Performance Report. 31 Mar. 2004. <<http://www.crtc.gc.ca/eng/BACKGRND/dpr2004/dpr2004.htm#ac>>. 15 Feb. 2008.
- . Foreign Affairs and International Trade. Canada's Actions Against Terrorism Since September 11. Ottawa. 2001 <<http://www.dfait-maeci.gc.ca/anti-terrorism/Canadaactions-en.asp>> .
- . House of Commons. Standing Committee on Canadian Heritage. Evidence. 1st sess., 37th Parliament. 19 Feb. 2002. Janet Yale testifies.
- . House of Commons. Standing Committee on Canadian Heritage. Evidence. 1st sess., 38th Parliament. 1 Feb. 2005. Charles Dalfen testifies.
- . House of Commons. Standing Committee on Foreign Affairs and International Trade. Evidence. 2nd sess., 37th Parliament. 6 May 2003. Canadian Islamic Congress V.P. Mrs. Wahida Valiante testifies on Canada's Relations with Countries of the Muslim World.
- . House of Commons. Standing Committee on Foreign Affairs and International Trade. Evidence. 1st sess., 38th Parliament. 21 Feb. 2005. Director General Canada-Arab Business Council, Richard Mann testifies.
- . House of Commons. "Canada's Anti-Terrorism Plan." 2001. <www.hc-sc.gc.ca/hc-ps/alt_formats/hecs-secs/pdf/ed-ud/event-incident/radiolog/info/terror-eng/pdf>.
- . Ministry of Heritage. Our Cultural Sovereignty: The Second Century of Canadian Broadcasting. Standing Committee on Canadian Heritage. Clifford Lincoln M.P., Chair. 11 June 2003. <<http://www.parl.gc.ca/InfoComDoc/37/2/HERI/Studies/Reports/heri...>>. 01 Oct. 2008.
- . Holden, Michael. Canada's Trade Policy and Economic Relationship with China. Ottawa: Library of Parliament. Rev. 2 Nov. 2008. <<http://www.parl.gc.ca/information/library/PRBpubs/prb0432-e.htm#Introduction>>.
- . Intven, Hank, Gerri Sinclair and André Tremblay. Telecommunications Policy Review Panel. Report commissioned by Ministry of Industry. Ottawa. Mar. 2006. <www.telecomreview.ca>.
- . Special Committee on Mass Media. The Uncertain Mirror: Report of the Special Senate Committee on Mass Media. Ottawa: Information Canada. 1970.
- . Statistics Canada. 2006 Census. Profile of Language, Immigration, Citizenship, Mobility and Migration. Cat. No. 94-577-X2006004. Dec. 2007. <<http://www12.statcan.ca/english/census06/data/profiles/release/index.cfm>>. 29 June 2008.

---. Transcript of proceedings before the Canadian Radio-television and Telecommunications Commission. Par.1955. 2 Nov. 2004. 11 Jan. 2008.

United Kingdom. House of Commons. Hansard. 3 Apr. 2003. Labour MP Ann Clywd. Question Period.

United States Census. Arab Population in Selected Places: 2000. <www.census.gov/prod/2003pubs/c2kbr-23.pdf>.

Film and Broadcast Electronic

Control Room. Dir. Jehane Noujain. Magnolia Pictures. 2004.

Gotlieb, Allan. Interview by Peter Mansbridge. One on One. CBC Television. Feb. 2009. <http://www.cbc.ca/mansbridge/2009/02/allan_gotlieb_1.html>. 7 Feb. 2009.

Paikin, Steve. The Agenda. 28 May 2008. TVO. <http://www.tvo.org/cfm/tvoorg/theagenda/index.cfm?page_id=7&bpn=779221&ts=2008-05-28%20:00:45.0>. 02 Oct.2008.

Raboy, Marc. Interview by Jonathan Sterne. Bad Subjects. Dec.2005. <http://bad.eserver.org/issues/2006/74/raboy.html>. 15 June 2008.

Rockburn, Ken. "Interview with Ofir Gendelman on Talk Politics". Ottawa, 2007. TV Interview. CPAC.<<http://www.cpac.ca/forms/index.asp?dsp=template&act=view3&pagetype=vod&lang=e&clipID=483>>. 17 Apr. 2008.

Personal Interviews

Bowman, Robert. CRTC, Distribution and Competitive Policy. 14 Feb. 2008.

Copps, Sheila. Former Minister of Heritage. 3 Mar. 2008.

Dalfen, Charles. Former Chairman, CRTC. 2 May 2008.

Gendelman, Ofir. Israel Foreign Ministry. 16 Apr. 2008.

Gizbert, Richard. Host, The Listening Post. Al Jazeera English. 7 Mar. 2008.

Janisch, Hudson. Administrative lawyer and scholar. 29 Apr. 2008.

Keeble, David. Consultant and former Senior V.P., CAB. 28 Feb. 2008.

Langford, Stuart. Former CRTC Commissioner. 31 Mar. 2008.

Wylie, Andre. Former CRTC Commissioner. 15 Jan. 2008.

News Media

Abraham, George. "Al Jazeera as West's Friend." Khaleej Times Online 1 May 2007 ed.

Adams, James. "Al-Jazeera May Never Air in Canada." Globe and Mail 16 July 2004.

Allers, Jackson. "Al Jazeera English Launches in First Major U.S. Cable Market." Detroit, 10 July 2009. The Arab American News. Osama Siblani.
<<http://www.arabamericannews.com/news/index.php?mod=article&cat=USA&article=2335>>. 6 Aug. 2009.

BBC. Correspondents. "Reporters' Log: Arafat Funeral."
<http://news.bbc.co.uk/2/hi/middle_east/4005605.stm>.

Blackwell, Richard. "Ottawa Urged to Appeal Satellite Signal Ruling." Globe and Mail 1 Nov. 2004.

---. "Radio Crackdown Opens Deep Divide." Globe and Mail 15 July 2004.

Bracken, Laura. "Remember the Lincoln Report? Well, It's Back." Playback Magazine 3 Jan. 2005.

Byrne, Ciar. "Al-Jazeera Wins Anti-censorship Award." Guardian 27 Mar. 2003.
<<http://www.guardian.co.uk/media/2003/mar/27/tvnews.iraqandthemedial>>.
9 Aug. 2009.

Canada Newswire. "SIRIUS Canada Adds Howard Stern to Satellite Radio Line Up."
1 Feb. 2006. <<http://www.friends.ca/news-item/945>>.

Canadian Press. "Toronto Telecommunications Lawyer Appointed New Chairman of CRTC." 28 Nov. 2001. <<http://www.friends.ca/news-item/6459>>.

CBC Online News. "CRTC head slams satellite TV piracy." CBC.ca Arts 2002. 31 Jan. 2008 . <<http://www.cbc.ca/arts/story/2002/11/29/crtc291102.html>>.

---. "Guardian of the Airwaves." 7 Apr. 2006. <<http://www.cbc.ca/news/background/crtc/>>.

- . "Thousands March in Support of Quebec Radio Station." CBC.ca. 2004.
<<http://www.cbc.ca/canada/story/2004/08/10/choiottawa040810.html>>. 5 May 2008.
- Csillag, Ron. "Al-Jazeera Ruling Evokes Mixed Response." CJC 28 July 2004.
<<http://www.cjc.ca/ptemplate.php?Story=925&action=itn>>. 30 Oct. 2007.
- CTV.ca. "CRTC Approves Al Jazeera for Canadian Viewers." 16 July 2004.
<http://www.ctv.ca/sevlet/ArticleNews/story/CTVNews/1089894102595_32/?hub=Topstories>. 21 June 2009.
- Ditchburn, Jennifer. "Arms-Length Telecom Regulator in an Arm-Wrestle with Conservatives." Canadian Press 26 Dec. 2006.
- . "CRTC Chairwoman Francoise Bertrand Resigns." The Toronto Star/The Canadian Press 5 Dec. 2000.
- Dougherty, Kevin. "CHOI Wastes No Time Appealing to New Minister." The Gazette 21 July 2004. <<http://www.friends.ca/news-item/4333>>. 9 November 2009.
- Dunfield, Allison. "Al-Jazeera to Begin Broadcasting in Canada." Globe and Mail 25 July 2004.
- Dunn, Carolyn (reporter). "In a Relatively Short Time, Al-Jazeera Has Gained International Prominence." The National. CBC. 11 July 2003. Transcript. Canadian Jewish Congress. <<http://www.cjc.ca/ptemplate.php?action=itn&Story=350>>. 4 Jan. 2008.
- Fallows, James. "Who Shot Mohammed Al-Dura?" The Atlantic June 2003.
- Garbus, Martin. "The Resurrection of Don Imus." 6 Aug. 2007. New York Magazine.
<<http://nymag.com/new/features/355339/index2.html>>.
- Gendelman, Ofir. "How I Learned to Love Al-Jazeera." Ottawa Citizen 21 Apr. 2007.
- Gessen, Keith. "The Accused: A Murder Outraged the Anti-Kremlin Opposition. The Murder Trial Divided It." The New Yorker 23 Mar. 2009.
- Goodman, Amy, and David Goodman. "Why Media Ownership Matters." Mother Jones 4 Apr. 2005.
- Ha, Tu Thanh. "Free-Speech Fight Erupts after CRTC Bans Station." Globe and Mail 14 July 2004.
- Hardy, Roger. "How Suez Made Nasser an Arab Icon." 2006. <http://news.bbc.co.uk/2/hi/middle_east/5204490.stm> .

- Heinrich, Jeff. "Don't Expect Al-Jazeera Here Too Soon, Vidéotron Cautions." The Gazette 21 July 2004, Final Ed.: A7.
- Khoury, Rami. "U.S., Arab TV: Each Tell Only Half the Story " National Catholic Reporter 11 Apr. 2003. <http://natcath.org/NCR_Online/archives2/2003b/041103/041103w.htm>. 15 Apr. 2009.
- Ljunggren, David. "Canada Allows Al Jazeera on Air, Imposes Limits." 15 July 2004. <<http://agonist.org/story/2004/7/15/11193/4333>>.
- . "Canada Allows Al Jazeera, Cable Firms Uninterested." Ottawa. Reuters. 15 July 2004. <http://news.yahoo.com/news?tmpl=stor...ljazeera_col_3>. 21 June 2009.
- Lunman, Kim. "Can't Quash CRTC Ruling, Frulla Says." Globe and Mail 31 July 2004.
- Lussiaa-Berdou, Gaelle. "Guess Who's Coming to Dinner-Time News." The UBC Thunderbird Nov. 2003.
- McNeil, Mark. "Cable Companies Want Even TV Field." Hamilton Spectator 23 August 2003. <<http://www.friends.ca/news-item/4832>>. 9 November 2009.
- Media Matters. "Crossfire." 15 October 2004. <<http://mediamatters.org/research/200410160003>>.
- Meehan, Julie. "A Constellation of Problems." Ryerson Review of Journalism 20 Nov. 2005.
- Mizroch, Amir. "Analysis: Stay in the Ring with Al-Jazeera." News Analysis. Jerusalem Post 12 Mar. 2008.
- MSNBC TV fact sheet. 5 Nov. 2008. <<http://today.msnbc.msn.com/id/3080273/>>.
- NewsHour. "Revolution in Radio." PBS Online. 4 May 2005. <<http://www.pbs.org/newshour/media/radio/comparison.html>>. 7 June 2009.
- Raboy, Marc. "CRTC Is Doing Its Job: CHOI Ruling." Montreal Gazette 16 July 2004, Op Ed., Final ed.: A15.
- Robertson, Grant. "CRTC Pushes for Power to Levy Fines." Globe and Mail 31 July 2008.
- Seguin, Rheal. "Federal Court Tunes out Quebec City Radio Station." Globe and Mail 2 Sept. 2005.

Shabi, Rachel. "New Information Agency Winning Support for Israel." Globe and Mail 2 Jan. 2009.

Shapiro, Marshall. "Canada Needs to Be More Supportive of Israel: Eggleton." Jewish Tribune 29 Sept. 2004. <<http://www.jewishtribune.ca/tribune/jt-040929-00.html>>. 18 Mar. 2008.

The Gazette. "CRTC Decision Helps Black Market." Friends of Canadian Broadcasting 20 Dec. 2004. <http://www.friends.ca/print/News/Friends_News/archives/articles12200404.asp>. 3 Mar. 2008.

Thompson, Elizabeth. "Shock Jock Monitors CRTC." Montreal Gazette 27 Apr. 2006.

Tu Thanh Ha, and Ingrid Peritz. "Tensions between Arab, Jewish Students Poison Atmosphere at Montreal University." Globe and Mail 14 Sept. 2002.

Tuck, Simon, and Richard Blackwell. "No Hearings as Al-Jazeera Wins Bid." Globe and Mail 19 July 2004.

Wanamaker, Glenn. "Satellite Rules Violate Charter." Cablecaster Magazine 29 Oct. 2004.

Whitaker, Brian. "Selective MEMRI." Guardian 12 Aug. 2002. <<http://www.guardian.co.uk/elsewhere/journalist/story/0,7792,773258,00.html>>. 10 Apr. 2007.

Zerbisias, Antonia. "Vilified CRTC Caught in the Act." Toronto Star 18 July 2004.

News Releases

"Al Jazeera Code of Ethics". Doha, 2004. Al Jazeera. <<http://english.aljazeera.net/English/archive/archive?archivedId=5190>>. 10 Apr. 2007.

Reporters Without Borders. "London Appeal Court Quashes Judge's Gagging Order." <<http://www.rsf.org/London-appeal-court-quashes-judge.html>>. 3 Aug. 2007.

Yale, Janet. "You Can't Compete With Free." Broadcast Executives Society luncheon. Toronto. Sept. 2002. <<http://www.digitalhome.ca/forum/showthread.php?t=2392>>. 29 Sept. 2008.

Company or Organization Websites

Democracy Now! is an independently produced program on both radio and TV. <<http://www.democracynow.org/stations/canada/ontario>>.

Dish network. Channel Descriptions. 10 Oct. 2008. <http://www.idishnetwork.com/programming_channel-desc.php>.

MEMRI. <<http://www.memri.org/archives.html>>.

United States Air Force. <<http://www.af.mil/index.asp>> .

Appendix A

Chronology

1968	Pierre Juneau appointed first Chairman of the CRTC by Pierre Trudeau, with a purpose to repatriate any foreign control of the Canadian broadcasting industry.
1976	Telecommunications added to CRTC regulatory mandate, with Charles Dalfen appointed for four years as its first vice-chairman.
1982	Adoption of the Canadian Charter of Rights and Freedoms in which rights of ethnic groups, among other groups, are enshrined.
21 July 1988	Canadian Multiculturalism Act becomes law.
4 Oct. 1988	Canada-US Free Trade Agreement (FTA) is signed.
June 1991	Adoption of new Broadcasting Act wherein broadcasting is identified as a basic public service and a “power of direction” authorizes Cabinet to instruct CRTC on general policy orientation.
1995	First licences for Canadian direct-to-home satellite service (DTH) granted to Bell ExpressVu and Power DirecTV.
Nov. 1996	Al Jazeera Arabic satellite news channel launched in Doha, Qatar.
May 1999	CRTC announces it will not regulate the Internet, for now.
28 Nov. 2001	Charles Dalfen appointed chairman of CRTC by Prime Minister Jean Chrétien, to take effect January 1, 2002.
26 Apr. 2002	SCOC rules accessing unauthorized satellite signals in Canada is illegal.
13 Feb. 2003	Prime Minister Jean Chrétien tells U.S. not to go it alone in Iraq.
Feb. 2003	Al Arabiya launched in Dubai, UAE, to compete with Al Jazeera.
13 Mar. 2003	Bernard Montigny, representing Reach Media Inc. of California, requests CCTA sponsorship in Al Jazeera’s bid to the CRTC.
18 Mar. 2003	Prime Minister Jean Chrétien restates opposition to Iraq war.
20 Mar. 2003	U.S.-led invasion of Iraq leads to removal of Saddam Hussein’s regime.
4 Apr. 2003	Opposition leader Stephen Harper tells FOX NEWS most Canadians outside Quebec, including himself, support U.S.-led invasion of Iraq.
11 June 2003	Report on broadcasting policy by the Standing Committee on Canadian Heritage, chaired by Liberal MP Clifford Lincoln, is released.

11 July 2003	CRTC calls for comment to be received by 11 August 2003 on proposals by BDUs for listing 15 foreign satellite services for digital distribution, among which are requests to add Al Jazeera Arabic and RAI International.
11 Aug. 2003	CRTC receives 1,700 comments for Al Jazeera, with 500 opposed and gives sponsors until 15 September 2003 to respond to comments.
12 Dec. 2003	Paul Martin replaces Jean Chrétien as leader of the Liberal Party of Canada and Prime Minister. In a cabinet shuffle, Hélène Scherrer replaces Sheila Copps as Minister of Canadian Heritage.
28 June 2004	A general election in Canada leads to a Liberal minority government led by Prime Minister Paul Martin.
13 July 2004	Al Jazeera publishes its code of ethics at media conference in Doha.
13 July 2004	CRTC does not renew licence of CHOI-FM in Québec City.
15 July 2004	CRTC approves digital distribution of Al Jazeera with conditions but denies distribution of RAI International, Italy's public broadcaster.
20 July 2004	Liza Frulla replaces Hélène Scherrer as Minister of Canadian Heritage.
11 Apr. 2005	Liberal Industry Minister David Emerson launches Telecommunications Policy Review Panel.
13 May 2005	CRTC approves digital distribution of RAI by means of policy change.
28 Nov. 2005	Liberal minority government falls on confidence vote.
23 Jan. 2006	Conservative minority government led by Prime Minister Stephen Harper is elected to Parliament.
22 Mar. 2006	Telecommunications Policy Review Panel delivers its report to Conservative Industry Minister Maxime Bernier recommending reduced digital distribution role for the CRTC.
1 Apr. 2006	After 50 years, industry lobby group CCTA disbands.
14 Dec. 2006	CRTC approves Al Arabiya News Channel for digital distribution.
22 Dec. 2006	CRTC approves nine non-Canadian Chinese-language services for digital distribution.
31 Dec. 2006	After 5-year CRTC term, Charles Dalfen returns to Tory LLP in Toronto, where he dies suddenly on May 26, 2009.
25 Jan. 2007	Konrad von Finkenstein appointed CRTC Chairman.
5 June 2009	CRTC reaffirms its ten-year practice to refrain from regulating the Internet, for now, and asks Federal Court of Appeal for clarification on the status of Internet Service Providers (ISPs) under the Broadcasting Act.

Appendix B

CRTC Commissioners Who Determined Al Jazeera Decision Released July 15, 2004

Charles Dalfen	Chairman
Andrée Wylie	Vice-Chair Broadcasting – lawyer, formerly with CRTC
David Colville	Vice-Chair Telecommunications – former Chair, CRTC and regional Commissioner for Atlantic Canada
Stuart Langford	Administrative lawyer, national Commissioner, former E.A. to Liberal Finance Minister John Turner, speechwriter for Prime Minister Pierre Trudeau
Barbara Cram	Lawyer, regional Commissioner Manitoba/Saskatchewan
Ron Williams	Private radio executive, regional Commissioner Alberta/Northwest Territories
Andrée Noël	Former director of Public Affairs with long distance carrier Fonorola Inc. and regional Commissioner for Quebec
Jean-Marc Demers	Former Chair, Quebec Telecommunications Board and former assistant general counsel with CRTC
Joan Pennefather	Former cultural administrator NFB

Note:

Cindy Grauer, regional Commissioner for British Columbia/Yukon, and Commissioner

Andrew Cardozo both participated in deliberations on the request to list Al Jazeera

as eligible for digital distribution, but left the CRTC in 2003.

Page 159
"Appendix C"
submitted as blank
page.