

Ten Memorable CRTC Moments, or Why Communications Lawyers Need Danger Pay

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Good afternoon, everyone.

I have been at these conferences for over 300 years – well, okay, 30 years. In that period, this conference has analysed every new development in communications law and policy that can be imagined.

We've had great speakers and the topics have been critical and important.

So in picking my topic for today's luncheon address, I thought at first I should focus on "The Ten Most Critical Moments in CRTC History" or maybe "The Ten Most Important CRTC Decisions".

But then I remembered that my remarks would be made after lunch on a Friday afternoon.

In recognition of this, I've decided to do something a little different.

Instead, I propose to focus on Ten Memorable CRTC Moments. And here are my categories for discussion:

The Most Dangerous Application Ever Presented to the CRTC
The Strangest Interruption at a CRTC Hearing
The Best Use of Puns at a CRTC Hearing
The Most Honest Answer to a CRTC Question
The Best Off-the-Cuff Answer to a CRTC Question
 When it Helps to be an English Scholar
A CRTC Hearing that Rose to a New Level
The Most Far-Flung Reference at a CRTC Hearing
The Most Effective Put-Down by a CRTC Commissioner

And, finally,

The Most Effective Put-Down by a Witness at a CRTC Hearing

In order to collect these memorable moments, I have talked to a number of my colleagues for suggestions. They include Bob Buchan, Sheridan Scott, John Riley, Laurie Dunbar, Greg Kane, David Elder, Grant Buchanan and others. So I want to thank them for their suggestions.

I should tell you that in making my selection of memorable moments, I have avoided cases where applicants have been clearly drunk, or where CRTC commissioners fell asleep at hearings (whether for hours or for days). True, these kind of events are memorable -- but I've been paid a handsome sum not to mention them. So I won't.

So let me get to my first category.

1. The Most Dangerous Application Ever Presented

This happened at a CRTC hearing in 1994. There were two applications for a nature/adventure service. One of them was from TSN and The Discovery Channel and it ended up winning the licence. But the other applicant was fierce competition. It showed up at the CRTC hearing with [PAUSE] a live cheetah. And all through their presentation, this animal sat on the table in front of the presenters. Needless to say, the CRTC commissioners were just a bit apprehensive as they eyed the adult cheetah, which I might add was looking directly at them and ominously licking its lips.

At one point, the Chairman of the hearing, Keith Spicer, said rather nervously, "Umm,. I hope he's had breakfast..."

In the result, the applicant did not win the licence. But it certainly has earned the award as the most dangerous application ever presented. And no CRTC commissioner – I am pleased to say -- slept through the application.

My next category is:

2. The Strangest Interruption at a CRTC Hearing

Now many of you will have been present when the fire alarm has gone off at a CRTC hearing. This is pretty routine and of course the hearing is then adjourned and counsel get to wander into the courtyard of the Place du Portage for a while.

However, a somewhat different interruption occurred in a Bell rate case in the late 1970s. Charles Dalfen was chairing the hearing and the room was filled with counsel at various tables. A Bell witness was being cross-examined. Suddenly, the door at the back flew open. In strode one of the largest guys you've ever seen – 6 foot 6, close to 300 pounds. In a stentorian voice, he announced that he was here to serve a summons on one of the counsel. Where is he?, he shouted. Jaws dropped around the room.

As this big burly guy advanced to perform his task, Dalfen said, "Excuse me, this is a hearing; you're not permitted to interfere with this." But that didn't bother the process

server a bit. He just continued until he had accomplished his mission and then walked right out.

There's a follow-up to this story. A few years later, this same bailiff had forcibly seized some chattels from some poor defendant. But this time there was retaliation and someone ended up torching the bailiff's car in Sandy Hill. Bob Buchan saw the story in the Ottawa Citizen and said, "Hey I know that guy. He's the big bruiser that interrupted the CRTC hearing." But his car was torched. This retaliation could have happened to any bailiff, but somehow it happened to him.

Now I don't want to imply any direct connection here, but the conclusion to be drawn may be: "Don't mess with the hearing process of the CRTC"

My next category is

3. Best Use of Puns at a Hearing

This occurred in the hearing in May 1996 on the application for The Horse Network. This was already a troubled application, because it was opposed by the Horsemen's Benevolent and Protective Association. However, the hearing began to go downhill when one of the CRTC commissioners asked the applicant: "I see you have commissioned an audience survey from Angus Reid, I wondered if you had considered using the Gallup poll."

This led to pun after pun being perpetrated at the hearing.

The culmination of all this occurred at the end of the hearing when the applicant seemed confused with a question posed by David Elder, the CRTC counsel. Finally, after waiting for a response which was not forthcoming, David said, helpfully, "I'll take that to be a "neigh".

That brought the house down.

David was later criticized in private by the CRTC chair for lowering the tone of the hearing, but in my view, it was worth it to win the "best pun" prize. As for the Horse Network application, I am sorry to tell you that in Decision 96-618, the application was "hoofed".

My next category is

4. The Most Honest Answer to a CRTC Question

And here we have a tie!

The first winner for the most honest answer is Johnny Lombardi, the owner of CHIN, the Italian language radio station in Toronto. Johnny was asked at a hearing how he would define the difference between a national advertiser and a local advertiser on his station.

He responded: “A national advertiser is anyone – anyone -- who will pay me at the national rate card”.

The second winner for the most honest answer is Doug Bassett, who at the time was the President of CFTO-TV, Toronto. This was when the CTV Network was owned by eight different stations, and the various owners of the stations did not always see eye to eye.

Anyway, the hearing was discussing whether Global TV should be regulated as a network. And Doug Bassett was asked how he would define the term “network”. His answer: “My definition of a network is eight guys in a room fighting with each other.”

My next category is:

5. The Best Off-the-Cuff Answer to a CRTC Question

This time we have three winners for the prize:

The first winner is John Riley who was the presenter for an application in 1994 for a service to be called the Cartoon Network. (Later in 1996, a revised application was approved and that channel is now called Teletoon.) Anyway, back in 1994, the application for the Cartoon Network included a sample weekly schedule to show what the programming would look like. So at 7 am they would have Tom & Jerry cartoons. At 2 pm the illustrative schedule would show Bullwinkle.

But looking at the sample schedule, a commissioner noticed that at 4 pm, the schedule said only “After-School Program Block.” So he said to John, “Mr. Riley what are you planning for this after-school program block at 4 pm.?”

Luckily, John was completely prepared for this question. Without batting an eye, he said, “Oh, that’s where we’re putting our block of hard core pornography.”

There was an awkward pause, and then the whole room erupted in laughter.

The second winner of the best off-the-cuff response is a broadcaster named Bill Yuill. The irrepressible Mr. Yuill was from Medicine Hat, where he owned virtually all the media. Yuill also owned a ranch with horses and he was always saying things like “I feel like I’ve been rid hard and put to bed wet.”

Anyway, Yuill was at a CRTC hearing trying to acquire another radio station. The Chairman at the hearing was André Bureau, and André was trying to get Yuill to offer higher transfer benefits. At the end of the day, André said he was going to adjourn the hearing for the day, but encouraged Bill and his team to review the benefits package overnight and see if they might improve it.

So the hearing resumed the next morning. The Chairman asked Bill if he and his partners had given further consideration to the benefits issue. And here's what Bill said: "Yes, Mr Chairman, we discussed the issue for hours. In fact when I got out of bed this morning, my socks were still warm."

So that was Bill Yuill.

The third winner of the prize for the best off-the-cuff response is Fil Fraser. He was presenting the application for TV Canada at a CRTC hearing in 1988. The application did not go very well in the first day and it was then adjourned until the following morning. So the next morning, Chairman André Bureau opened the proceedings saying he hoped the applicant had a pleasant time the night before. Fil Fraser replied: "Thank you, Mr Chairman, I slept like a baby—slept for two hours, cried for three..."

My next category is

6. When it Helps to be an English Scholar

This goes back to one of the first CRTC hearings I attended in the mid 1970s. At that time, one of the part-time commissioners was Northrop Frye, the president of Victoria College and Canada's greatest literary critic. For a number of CRTC hearings, Dr. Frye had dutifully sat on the panel but had never asked a single question. Some of us wondered how the great man could stand listening to the sometimes mindless presentations by applicants and interveners, but that is another story.

At this particular hearing, however, there was an intervention by Israel (Sruki) Switzer, a consulting engineer who was also a well-known gadfly. Switzer concluded his passionate objection to the application by quoting the masthead motto of the *Globe and Mail*: "The subject who is truly loyal to the Chief Magistrate will neither advise nor submit to arbitrary measures—Junius." (Switzer also had that motto emblazoned on his own letterhead.) After quoting the motto, Switzer added for dramatic effect, "And I only wish I could have delivered it in the original Latin!"

The CRTC panel was chaired by Pierre Juneau and when the questioning concluded, he looked around to see if any of his fellow commissioners wanted to ask questions. Suddenly he noticed Dr. Frye's hand raised. "Oh, Dr. Frye, do you have a question?" he asked.

"Just a matter to correct the record, Mr. Chairman," Frye replied. "Junius was the pen name of a British writer in the late eighteenth century who only wrote in English."

There was a pregnant pause as this information sunk in. Pierre Juneau later told me laughingly that he felt suddenly very proud of his commission—there

can't be any subject that at least someone on the panel doesn't know something about!

So that brings me to my next category:

7. A CRTC Hearing that Rose to a New Level

This story involves one of Canada most eccentric broadcasters, Geoff Stirling. Mr. Stirling passed away last December at the age of 92, but he was best known as the owner of CJON-TV St. John's, Newfoundland, which likes to call itself Canada's Superstation.

Geoff Stirling was a bit eccentric, in that he used his station to promote a variety of personal interests such as eastern mysticism and intestinal health. For example, he devoted many hours of unscheduled broadcast time to conversations with gurus such as Ram Dass and Swami Shyam and to a variety of esoteric subjects ranging from pyramids to unidentified flying objects. As another example, after Geoff was diagnosed with arthritis, he reportedly had a doctor inject liquid gold directly into his blood.

Anyway, there came a time in the late 1970s when the Commission decided to have a show-cause hearing into the renewal of CJON-TV's licence, for a variety of sins. However, knowing of Stirling's reputation, none of the commissioners wanted to go to the hearing. However, Charles Dalfen, who was the Vice-Chair at the time, and who had never met Mr. Stirling, agreed to go and chair the hearing in St. John's.

Unfortunately, Geoff Stirling had recently returned from India, where he had been visiting with his guru at an Ashram.

So when the hearing began, Dalfen and his fellow commissioners came out of the back room to confront Mr. Stirling. What they found was a bit unusual. Mr. Stirling was not in the prescribed seat in front of the applicant's witness table. Instead, he was seated cross-legged on top of the witness table. He was clearly ready for a serene and (shall I say) elevated discussion with the Commissioners from Ottawa.

So as I say, this was a CRTC hearing that rose to a completely new level.

While still on the Indian theme, my next category is

8. The Most Far-Flung Reference at a CRTC Hearing

The 1996 hearing that resulted in the licensing of a number of specialty services featured a long parade of supplicants, including a large number of applications by CHUM and its team which included Moses Znaimer. It also included, for the first time, an applicant for a South Asian channel led by Shan Chandrasekar. He was completely unlike all of the other applicants. Not only was he an Indian, but he appeared alone to pitch for his new service, in stark contrast to the other teams which featured batteries of executives, consultants and lawyers.

When he took his seat alone, he left the seat closest to the Commission vacant. He told the Commission that he did so because, "I did not want you to think that I was Moses Znaimer". The commissioners erupted in laughter and that was just the beginning as he kept them in stitches throughout. For every question, there was something amusing in response.

Finally, there was one question which had been asked of all applicants, namely "How do you expect to be able to handle digital migration?" When the inevitable question was posed this time, Mr. Chandrasekar responded with an answer that nobody could have anticipated, "My people have migrated over 10,000 miles to be here in this country, so digital migration will not be a problem for us!"

In honour of this response, I have given Shan the special award for the most far-flung reference at a CRTC hearing.

That brings me to my next category, which is

9. The Most Effective Put-Down by a CRTC Commissioner

This brings me back to the irrepressible Bill Yuill.

Once when André Bureau, the then CRTC Chair, asked him whether he would accept a particular condition of licence, Yuill interrupted him in mid-question with the statement, "I have trouble with any condition of licence."

But André got back at Bill Yuill later at the same hearing. At the start of a long answer, Yuill said, "My mother told me if you don't have anything nice to say, don't say anything at all".

Then he gave his answer. There was a long pause. Then André Bureau said, "You should have listened to your mother."

So that brings me to my final category, which is

10. The Most Effective Put-Down by a Witness at a CRTC Hearing

Over the years, there have been a number of industry executives who REALLY didn't appreciate being asked questions at a CRTC hearing.

In the 70s, for example, I remember Barry Adams, the counsel for Premier Cablevision in Vancouver, telling me that his clients Bud Shepard and Garth Pither had such a distaste for the CRTC and the hearing process that the hairs would rise on the back of their necks if they got anywhere near the Commission. So the only solution was to keep them away from the hearing at all costs.

And then you have people like Jean de Grandpré, the President of BCE, who made it kind of clear that he didn't appreciate being questioned about anything.

But when it comes to the best put-downs by a witness at a CRTC hearing, there are two contenders for the top prize. The runner-up prize goes to Brian Hewat, a Bell Canada executive.

Mr. Hewat was a witness for Bell Canada in the Unitel interconnection case in 1985 and he was probably the smartest guy in the room. But then Laurie Dunbar asked him rather an innocuous question. Here is Mr. Hewat's response: "Mr. Dunbar, the Hand of God has not touched me on the shoulder on that issue".

There was a loud guffaw from John Rook (the one from Toronto) who was acting for one of the parties and who remembers this vividly. But Mr. Hewat was not amused.

That brings me to the winner for the most effective put-down by a witness at a CRTC hearing. – namely, Eldon Thompson, the President of Telesat Canada.

This happened in a CRTC hearing in 1977, when the late Gordon Henderson (of Gowling & Henderson) was cross examining Eldon Thompson on behalf of the Director of Investigation & Research. After a particularly harsh question, Thompson stared straight ahead and remained silent.

When Henderson asked him if he was ever going to answer, Thompson replied: "I probably shouldn't say this, but in our preparation, my counsel advised me to count to ten before answering any stupid questions".

So that concludes my Ten Memorable CRTC Moments.

I know many of you will be disappointed that I didn't focus on more serious topics in my remarks today. Topics like "Should the closed captioning for the adult porn channels include groans and sighs?"

I am sorry I didn't get to this and other important topics. However, there is only so much time on a Friday afternoon. So we'll have to deal with those topics at the next Law Society conference in 2016.

Thank you.