



CHAIRPERSON'S ANNUAL REPORT 1999 - 2000

1. INTRODUCTION

The Broadcasting Complaints Commission had a particularly active year : complaints which were heard by the panel ranged from “Satan: The Unauthorised Biography” to a broadcast giving exact information as to how to make a pipe bomb, and the broadcast of a hoax that the top five stories of a building in Port Elizabeth had been blown off. Furthermore, workshops were held with the SABC, e-tv and M-Net as to the implementation of a system of classification and age restrictions. Three applications for review were also lodged to either the IBA or the High Court, against decisions by the Tribunal of the Commission. Discrimination on racial grounds formed the subject of a number of complaints.

On the whole, complaints have increased. The increase should, however, not be attributed to a falling of standards in broadcasting in South Africa. It should rather be attributed to the widespread publicity which is given to this Commission by all the broadcasters under its jurisdiction.

The complaints received between the 1st of January 1999 and the 30th of April 2000 total 1140. These may be categorised as below.

Investigated: 237
General: 169
Adjudications: 46
Panel sessions: 52
Orchestrated: 550
Advertised: 84
Referred to the BMCC: 2

2. AGE RESTRICTIONS AND CLASSIFICATION OF FEATURE FILMS

On 1 June 1998, when the Films and Publications Act of 1996 became operative, television broadcasters were no longer under an obligation to submit films for certification. This meant that a television channel had to make its own decision as to whether it would broadcast a film. The Films and Publications Act does, however, provide that hard pornography and material which advocates hatred based on race, religion, ethnicity or gender, or that constitutes incitement to harm, may not be broadcast. All other categories, accordingly, fall under the Code of this Commission, which is also subject to the Bill of Rights.

The guidance which this Commission has given to television broadcasters is that the accent should be on the conveying of information to viewers, as to the nature of a film and its age restriction. Classification and age restrictions have been the subject of several workshops with the television channels and the outcome is: as from 21h00 during week evenings and 21h30 on Saturday evening, adult material may be broadcast. The watershed period closes at the next morning. The classification would be: in regard to sex (S), nudity (N), coarse language (L), violence (V), and possibly a (P) for prejudice. The Films and Publications Board has included "P" in its schedule of symbols. "P" would indicate some form of prejudice in the programme. In the film "Rhodes", for

example, the SABC added the “P” symbol during the introductory minutes to warn viewers that racially derogatory language would form part of this historical film.

At this stage, we have left the use of the “P” symbol to the discretion of the broadcasters. The SABC will be using the symbol, while e-tv has decided against using the symbol, arguing that the use of a symbol might be perceived to be paternalistic or, in any case, difficult to apply. M-Net will, in all probability, be adding the “P” symbol to its others. On-air "live" warnings before the broadcast are also required, in particularly problematic instances.

The film controversial but acclaimed film “Damage” was broadcast at 22h30 by SABC and since proper warnings accompanied the screening of this controversial film, complaints were dismissed.

It should be borne in mind that M-Net, as subscription channel which provides subscribers with a parental control mechanism, is subject to a 20:30 watershed. M-Net also has a so-called green channel on which coarse language is muted.

3. A DUTY TO BROADCAST

A broadcaster, more especially the South African Broadcasting Corporation, is under a duty to inform the public. At times, information conveyed could well be deemed offensive. When the SABC screened the violent acts, particularly of troops against children in Sierra Leone, complaints were received. The Commission held that brutal abuse of human rights, as illustrated in this film, could well serve as a warning to all South Africans.

When the SABC screened scenes where a girl who had allegedly been raped was given the opportunity to flog her alleged rapists, the approach of the Commission was identical. Complaints that the SABC had aligned itself with the

illegal act of the woman and others who flogged the rapists, were rejected by the Commission. The duty to inform the public about acts of this nature, was regarded as of special importance. The public could itself decide as to moral blameworthiness. The activities were clearly illegal. The mere portrayal thereof, was, however, not tantamount to an approval of such conduct by the SABC.

When e-tv, in its "Felicia on E" show broadcast an interview with a prostitute who conveyed that she did not regard commercial sex as immoral, and that it was in fact a quite interesting job, complaints were also received. e-tv, as well as Felicia Mabuza Suttle had clearly warned that this was not a programme suitable for children. The Commission held that e-tv had given sufficient warning to parents. Furthermore, the host of the programme clearly did not give any support to the points of view of the alleged prostitute. The Commission held that there was a duty on broadcasters to reveal such attitudes to the public.

When the SABC screened the film "Kids" on AIDS day, complaints were also received. The film illustrated, in explicit detail, how teenagers take part in promiscuous activities and drug abuse. The coarse language of the children was also quite shocking. Again the Commission held that the SABC had a duty to inform parents as to possible dangers to children. The film had been shown after the watershed time.

4. HATE SPEECH

Section 16(2)(c) of the Constitution of the Republic provides that the advocacy of hatred based on race and that incites to harm is not protected by the fundamental right of freedom of speech. When a host on a Radio 702 show commented that the Voortrekker Monument, which was built in the 1940s to honour the memory of the Voortrekkers during the previous century, said that the building should be changed into a gay disco, that people should dance on the

sarcophagus and that the building should be painted pink, there was an outcry from twenty-six Afrikaner organisations, as well as the Herstigte Nasionale party.

It was held that although the light-hearted observations of the host would for many be in particularly questionable taste, the language did not amount to hate speech, or was likely to harm relations between sections of the community.

An application to the High Court to review this decision, has been lodged. As of the writing of this report, the applicants have indicated that they are reformulating their application.

A complaint was also received against another host on Radio 702 who was particularly critical of Israeli immigration officers at an airport in Israel. The complaint arose after a call from a by a young lady who complained to the host that she had allegedly been mistreated by Israeli immigration officers, while being questioning before entry into the country. The Commission held that the views expressed by the host were genuinely held, and that the views did not amount to anti-Semitic propaganda or hate speech. An application for review by the IBA was not successful.

5. RACIALLY DISCRIMINATORY BROADCASTS

Quite a number of complaints were received from listeners and viewers about the identification of alleged offenders by reference to their race. In an instance where a white man entered a bus destined for a black area and shot several passengers, television and radio reported the fact that he was white, and that he had escaped on a motor cycle. It was also quoted that a policeman on the scene attributed motivation for the crime to racism. The Commission held that, as a general rule, there should not be reference to racial identity. However, when compelling reasons exist, as were present in this case, such identity should be conveyed.

When a black man shot several white people at a military base, Tempe, complaints were also received that the broadcaster had shown undue sympathy for the offender. According to the complaints, undue accent was placed on racism as motivation for the shootings. The Commission held that the broadcasts had, in no way, affected race relations, but had simply informed the public as to what the speculation was in regard to what had happened, as well as to possible motivation for the conduct.

6. ALLEGATION IS NOT FACT

The chairperson of the South African Telecommunications and Radio Authority filed a complaint against the SABC for stating that allegations against him had been confirmed by a report which was in possession of the SABC. As it turned out, the report has simply restated the allegations. It was accordingly held by the Commission that the SABC had contravened the Code by effectively distorting allegation to what could be understood as having been a fact. An on-air correction was directed by the Commission.

7. AN ARMS LENGTH APPROACH

In two matters which came before the Commission, news items dealt with comment by SABC officials about ex-employees. In both instances the Commission held that it was important that when relations with deposed or previous employees were discussed on air by the SABC, an opportunity should be given to such persons to defend themselves on air, or that at least, the point of view of such a person who was being criticised also be included in the item. In the case of *Sparks vs SABC*, Mr Allister Sparks, a former head of SABC TV news, was accused of having been racist in his approach to appointments. Mr Sparks complained that given his substantial role in the liberation struggle against the "apartheid government", such an observation was not only untrue,

but also uncalled for. The SABC argued that it had merely been acting against accusations, as broadcast, by Mr Sparks during an interview about the awarding of positions on the SABC Board. The Commission held that the observation by the Chief Executive of News went further than necessary in response to Mr Sparks's accusations, and that he should have been granted an opportunity to respond to the observations. This matter is presently the subject of a review at the IBA, the review having been brought by the SABC.

8. PRIVACY

When the SABC broadcast a news programme in which the persons who picked up minors at a prostitution venue were clearly identifiable, a complaint was received that the privacy of the man who had been shown as picking up minors, had been violated. In its argument before the Commission, the SABC contended that overseas experiments by which broadcasters identified alleged wrongdoers in this manner, proved to be most successful in the combating of this kind of crime. The Commission held that in cases of privacy complaints, the person whose privacy had allegedly been violated, must complain personally. Only in cases where public interest demanded otherwise, could disinterested parties also lodge such a complaint. Public interest was not present in this case and, accordingly, the complainant did not have standing before the Commission.

The same approach was followed in regard to complaints that the deposed cricket captain, Hansie Cronje's privacy had been violated by a programme on e-tv. In the programme, a caricature of his face was shown to answer to questions concerning his confession that he had been involved in match-fixing.

9. RELIGIOUS OFFENCE

Clause 7 of the Broadcasting Code provides that material which is offensive to the religious convictions or feelings of a section of the population, may not be

broadcast. The commission has held that in the interpretation of this clause, it is guided by section 16(2)(c) of the Constitution of the Republic. Accordingly, the absence of advocacy of hatred based on religion, would weigh heavily in favour of a finding that the material had not been offensive. In the event, the word “offensive” has a limited meaning in law.

Numerous complaints about alleged blasphemous language used by characters in feature films, as well as in sitcoms, were received - as they have been since the Commission's inception.

The Commission has held that during "children's time", language of this nature, as well as coarse language, should be excised by a broadcaster. Furthermore, in "family time", such language should be excised as far as it was practically possible. However, after the watershed which is 20h30 in the evenings for M-Net, and 21h00 for the SABC and e-tv, no cuts would generally be necessary. According to the policy of the Commission and workshops with the television channels, the solution is that classification, age restriction, and verbal warning before a broadcast would usually suffice. Viewers, in particular parents, should be informed by broadcasters as to the idea of the watershed, and when it is effective; also that a watershed time indicates that more controversial material would be screened and that the material could include what is usually termed to be blasphemous material. The Commission has pointed out that “blasphemy” has a limited meaning in law and that the taking in vain of the Lord's name does not itself generally amount to such.

In *Smart vs M-Net*, the complainant contended that a judgment of the European Court of Human Rights supported his complaint against the taking in vain of the Lord's name in feature films. The Commission distinguished the European Court of Human Rights case (the so-called Otto Preminger case, 1994) on the basis that the scenes portrayed in this film differed substantially from the taking in vain of the Lord's name, which has, sadly for many religious people, become part of

the language of many people, as well as characters in films. The complaint was accordingly dismissed.

In one instance, it was found that an interviewee had offended Jewish religious people by referring to the Talmud in an extremely derogatory fashion. The reference could possibly have been saved if the host of the programme had taken corrective action. However, this was not done and, accordingly, it was found that the broadcaster, Cape Talk, had contravened the Code.

10. ADMINISTRATION

The Registrar of the Commission, Mrs Shouneez Martin, who is assisted by a secretary, Ms Angelique Hargreaves, have managed our offices extremely well. As Registrar, Mrs Martin deals directly with complaints from the public and then, with the assistance of her secretary, liaises with broadcasters as well as the Commissioners. When she finds that a complaint has some substance, it is referred to the chairperson, who then decides whether an adjudicator (one of the Commissioners) should be appointed or whether the complaint justifies a hearing by a panel of the Commission. Forty complaints were dealt with by a panel. When an adjudicator has taken a decision, his or her decision can be taken on appeal to the full panel. When a panel has decided on a matter, the decision is final. In such a case, the matter may be taken on review to the Broadcasting Monitoring and Complaints Committee of the IBA. The latter committee will only intervene when it finds that the panel had not acted within the rules of natural justice, or had neglected to apply the procedures as prescribed by the Constitution of the BCCSA.

11. PROCEDURE BEFORE THE COMMISSION

As in the past, the Commission has strived to maintain a relatively informal procedure. The intention is to make it possible for ordinary members of the

public to address the Commission without fear that they would be subjected to legal intricacies and jargon. The Commission has, in fact, often experienced that when a complainant gets the opportunity to meet the particular broadcaster, a mutual understanding often results.

This Commission can also certify that all the broadcasters which are subject to its jurisdiction and as listed below, have complied with all the directives of this Commission, and have given their full support of the procedures before the Commission. The National Association of Broadcasters has also supported the BCCSA in funding its costs.

12. WEB SITE

The BCCSA set up a web site early in 1999. We were in fact complimented for the quality of this web site, which was also accessible from the web site of the Canadian Broadcasting Standards Council. As a result of changes in Internet service providers, the web site is presently not accessible. The matter will be rectified as soon as possible.

13. REPORTS

Three detailed reports of how complaints were dealt with, were distributed in 1999. The latest edition, covering the first four months in 2000, will be distributed soon. The full judgment of the panel, as well as the shorter judgments of adjudicators, are also distributed. The reports of panel judgments now number more than two hundred, and illustrate how the Commission has been at pains to balance the viewers and broadcasters' rights in such a fashion as to be constitutionally justifiable.

14. THE CODE

During 1999 the Independent Broadcasting Authority drafted a new Code. The Commission also made several inputs in this regard. This draft Code will be dealt with by Parliament, since the original Code, which corresponds with the BCCSA Code, was published as part of the IBA Act in 1993.

Especially in the area of indecency and obscenity, the Commission has encountered interpretation problems. The approach has been that where privacy and dignity, insofar as sex and sex language, is fundamentally violated, findings of indecency or obscenity would be justified. Guidance has also been taken from schedules 6 and 9 of Films and Publications Act, which lays down what the limits are, without reference to words such as “indecent” or “obscene”. From that Act, it is clear - and this has also been the approach of the Commission - that *bona fide* drama, material of a documentary nature, and material of a scientific nature are exempted from control. Obviously, this kind of material would under circumstances justify classification and/or age restrictions. *Bona fide* art would also be exempted, except in the case of child sex.

15. CONCLUSION

I would like to thank all my colleagues for the splendid co-operation given to me and the office during this year, as in the past. Each one of them has a busy life and we are grateful for the expertise which they have provided to this Commission.

Kobus van Rooyen S.C.

Chairperson, 24 May 2000

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