



CHAIRPERSON'S Bi-Annual Report: 1999 – 2001

1. INTRODUCTION

Since new Commissioners were appointed in August 2000, I have decided to combine the 1999 and 2000 reports, so that a broader overview is available. Previous Reports are on our Website.

During the terms reported on, there was an increased interest in the Community, from Parliament, the Human Rights Commission and the Gender Commission, in matters relating to racism and gender discrimination in the media. The Human Rights Commission's Report on racism in the media was of particular interest. This Commission's Chair and Deputy Chair addressed the Commission during the hearings in 2000.

We also detect an increased interest in the protection of privacy. Privacy has recently been commented upon by the Canadian Chief Justice as being at the core of liberty. We support this view, but add that within our specific historical background, equality, dignity and the prohibition of unfair discrimination are also core rights. A debate as to the hierarchical position of freedom of speech within fundamental rights has and is taking place. This Commission has quoted, with approval, the observation of Mokgoro J and O'Regan J in the Constitutional Court: freedom of speech lies at the heart of our democracy in that it gives life to and supports other rights such as the right to equality, dignity and privacy.

The Broadcasting Complaints Commission had a particularly active two years: complaints which were heard by the panel ranged from “Satan: The Unauthorized Biography” to a broadcast giving exact information as to how to make a pipe bomb, and the broadcast of a hoax that the top stories of a building in Port Elizabeth had been blown off! In 2000 media interest reached a climax when we heard complaints against the SABC for broadcasting material which allegedly showed how some members of the South African Police Dog Unit set dogs on detained illegal immigrants and when an anchor from Radio 702 put the receiver down in the ear of the Minister of Health after she had refused to answer his questions as to her stand on the cause of AIDS. In both instances the Broadcaster was found not to have contravened the Broadcasting Code: in the first since it had a duty to reveal (alleged) gross inhumanity of man towards man; and in the second, since the conduct of the anchor amounted to a poor display of manners, but did not contravene the Code. An apology was, in any case, broadcast.

Furthermore, three workshops were held by the Chair and some Commissioners 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. The applications for review to the IBA were unsuccessful and in one instance, the application was withdrawn (Sparks matter). The application for review to the High Court by the Voortrekkermonument Aksiekomitee seems to have been abandoned.

Discrimination on racial grounds also formed the subject of a number of complaints and in 2000 the BCCSA found that Highveld Stereo had contravened the Code by having broadcast a racially derogatory word in a joke which was also found to have been degrading of women. Degradation to women in the form

of sexual violence, was also the basis upon which the broadcast by e-tv of the soft porn film, *Emmanuelle*, was found to *have* been in contravention of the Code.

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 advertisement which is given to this Commission by all the broadcasters under our jurisdiction. The 2000 local elections also apparently inspired complaints from the DP, ACDP, AZAPO and the DA in the months preceding the elections.

2. AGE RESTRICTIONS AND CLASSIFICATION OF FEATURE FILMS

On 1 June 1998, when the Films and Publications Act, 1996 became operative, television broadcasters were no longer under an obligation to submit films for certification. This means that a television channel has to take a decision itself 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, and that constitutes incitement to harm, may not be broadcast.

The guidance, which this Commission has given to television channels, is that the accent should be on the conveying of information to viewers as to the nature of a film and the 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 weekend evenings, adult material may be broadcast. 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 each broadcaster. The SABC will be using the symbol, whilst e-TV has decided against using the symbol, arguing that once the symbol is used, the list of potential prejudice is endless. e-tv will rather, in controversial cases, give an on-air warning. M-Net will, in all probability, be adding the “P” symbol to its classification symbols. On-air warnings before the broadcast are also required, in particularly problematic instances. During a November 2000 workshop with TV broadcasters and the Executive of the Film and Publication Board, it in any case appeared that the CEO of the FPB has understanding for concerns about the vagueness of the P symbol.

The controversial but acclaimed film “Damage” was broadcast at 22h30 by SABC and since proper warnings accompanied the screening of this film, the complaints were dismissed. However, the BCCSA found that a 22:00 broadcast of *Emmanuelle 1* amounted to a contravention of the Code, in spite of an age restriction and classification.

It should be borne in mind that M-Net, as subscription channel, which provides subscribers with a parental control mechanism, is subject to a 20:00 watershed. M-Net also provides a so-called green channel on which coarse language is not heard.

3. A DUTY TO BROADCAST

A broadcaster, and especially the South African Broadcasting Corporation, is under a duty to inform the public. At times, the information conveyed could very well also be quite offensive. When the SABC screened the violent activities of

troopers against children in Sierra Leone, complaints were received. This Commission held that the obvious disrespect for human rights as illustrated in this film, should be a constant reminder to South Africans to steer a course clear of acts of such an abominable nature. The same principle was applied to the material on the Dog Unit, which came before the BCCSA in October 2000. Allegations that the material was shown with a political motive, in the light of the coming local elections, were found to be unsubstantiated.

When the SABC screened scenes where a girl who had allegedly been raped flogged her alleged rapist, 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 rapist, were rejected by the Commission. The duty to inform the public about acts of this nature, was regarded as of special importance. The public itself, could make up its mind as to the moral blameworthiness of what had happened. From a legal point of view, of course, the activities were illegal. The mere portrayal thereof, was, however, not tantamount to an acceptance of such conduct by the SABC.

When e-tv, in its "Felicia on E" show broadcast an interview with an alleged prostitute who conveyed that she did not regard commercial sex as immoral, and that it was in fact a quite interesting profession, complaints were also received. e-tv, as well as Felicia Mabuza Suttle had, however, clearly warned that this was not a programme for children. It was held that e-tv had sufficiently warned parents that this was not a programme for children. What is more, the host to the programme clearly did not give her 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 illustrates how teenagers take part in promiscuous activities and drug abuse in explicit detail. The coarse language of the children is also

quite shocking. Once again, the Commission held that the SABC had a duty to inform parents as to what possible dangers face their children when they go out in the evenings. The film was also shown after the watershed.

4. HATE SPEECH

Section 16(2)(c) of the Constitution of the Republic provides that the advocacy of hatred based on race that incites to harm is not protected by the freedom of speech fundamental right. When a host on a Radio 702 show commented that the Voortrekker Monument, which was built in the 40's to honour the memory of the Voortrekkers during the previous century, said that the building should be changed into a gay disco, that persons 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 and a member of the public.

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.

A complaint was also received against another host on Radio 702 who was particularly critical of Israeli immigration officers at an airport in Israel. This criticism resulted from a call by a young lady who complained to the host that she had allegedly been mistreated by immigration officers while questioning her 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.

When a presenter on Highveld Stereo used racially derogatory language in a playful war of words with the traffic commentator, the BCCSA held that this

amounted a contravention of the Code. It also degraded women in that it implied that women were merely the subjects of a male's sexual whims – thereby giving support to the stereotype that females are the sexual toys of men.

5. **RACIALLY DISCRIMINATORY BROADCASTS**

Quite a number of complaints were received from listeners and viewers about the identification of alleged offenders by reference to the fact that they were white. When a white man entered a bus destined for a predominantly black area in a predominantly white area and shot people on the bus, 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 the act to what he regarded as 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 persons at a military base, Tempe, complaints were also received that the broadcaster had shown undue sympathy for the offender. There was also, according to the complaints, undue accent on alleged racism which had led to these deeds. 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 motivations for the conduct.

6. **WHEN ALLEGATION BECOMES 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, however, the report simply *restated* the allegations. It was accordingly held by the Commission that the SABC had contravened the Code by upgrading an

allegation to what could be understood as having been a fact according to the news. An on-air correction was directed by the Commission.

Under this heading it should also be mentioned that *Carte Blanche* incorrectly named the Deputy Minister of Home Affairs, Dr Sisulu, as a member of the Dyambu Trust, while the Master's Certificate only indicated two trustees, who did not include Dr Sisulu. The Tribunal held that *Carte Blanche* had erred in not conveying to her that they were in possession of a document which listed her as one of the trustees. She would then have been in a position to reject the document.

7. **AN ARM'S LENGTH APPROACH**

In two matters, which came before the Commission, news items dealt with comment by SABC officials on 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 had been criticised be conveyed in the item. In the case of *Sparks vs. SABC*, Mr Sparks, a previous head of TV news, was suggested as 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 simply been acting against accusations, as broadcast, by Mr Sparks during an interview for the filling of vacancies on the SABC Board. The Commission held that the observation by the Chief Executive of News went further than the accusation by Mr Sparks had called for, and that he should have been granted an opportunity to respond to the observations. The application to the IBA for the review of this decision was withdrawn by the SABC.

8. PRIVACY

When the SABC broadcast a news programme in which the persons who picked up minors at a prostitution spot, were clearly identifiable, a complaint was received that the privacy of the man who had been shown as picking up minors, had been violated. Interestingly, 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, other people could 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 a deposed cricket captain's privacy had been violated by a programme on e-tv. In the programme, a mock-up of his face was shown to answer to sensitive questions concerning his confession that he had been involved in match fixing.

A complaint by a member of the public was, however, allowed when e-tv broadcast that the deceased spokesperson for the office of the President had, according to ANC sources, died as a result of an AIDS related disease. In evidence by e-tv it emerged that they were prepared to confirm by affidavit that they had obtained the information from reliable ANC sources. The BCCSA held that, although the matter is a sensitive one and broadcasters should only after due consideration publish such material, the present matter was in the public interest since the deceased had taken part in the AIDS debate, even if only as

spokesperson. In any case, our law or the Broadcasting Code does not protect the privacy and dignity of a deceased person.

9. OFFENCE TO RELIGION

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 any case, 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 – not only in this term, but in fact in every year of this Commission’s seven year existence.

The Commission has held that in 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 20h00 in the evenings for M-Net, and 21h00 for the SABC and E TV, on a sliding scale, no cuts would generally be necessary. The solution, according to the policy of the Commission and workshops with the television channels, is that classification and age restriction and verbal warning before a broadcast would usually suffice. Parents should know and be made aware of the fact by the broadcasters, that 21h00 is the watershed : a watershed which 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 itself does not usually amount to blasphemy. In the November 2000 workshop with the TV

broadcasters it was, however, agreed that instances where the taking in vain of the Lord's Name is combined with foul language, should be excised, even after the watershed. Obviously, where works of special artistic, dramatic or historical interest are broadcast, such an excision would not be justified.

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 Cape Talk had contravened the Code.

A complaint by several Muslims that programmes on the amputation of limbs in Nigeria and the Sudan as punishment had given undue accent to the amputation and created the impression that *Shar'ia* consisted only of amputation, was dismissed by the Commission. There was clear evidence that, especially in the first programme, which was judged together with the second programme, speakers indicated that *Shari'a* encompassed the whole set of Rules which governed the life of a Muslim.

10. **ADMINISTRATION**

The Registrar of the Commission, Mrs Shouneez Martin, who is assisted by a secretary, Ms Angelique Hargreaves, succeeded by Ms Donna Mohamed 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, has to liaise with broadcasters as well as the Commissioners. When she finds that a complaint has some substance to it, 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 direct hearing by the Tribunal of the Commission. Forty two complaints were directly dealt with by the Tribunal. When an adjudicator has taken a decision, his or her decision can be taken on appeal to the Tribunal. When the Tribunal has decided on a matter, the decision is final. In such a case, the matter could 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 Tribunal 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 before it. The intention is to make it possible for 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, at times experienced that when a complainant gets the opportunity to meet the particular broadcaster before it, a mutual understanding evolves. At times, of course, lawyers do represent clients before the Tribunal.

12. CERTIFICATION OF COMPLIANCE

This Commission can 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 well in funding its reasonable costs.

- ◆ Campus Bay FM (CBFM)
- ◆ Can-I Community Radio
- ◆ Cape Talk
- ◆ Classic FM
- ◆ e-tv
- ◆ East Coast Radio
- ◆ Go-Tell Communications
- ◆ 94.7 Highveld Stereo
- ◆ Jacaranda 94.2fm
- ◆ KFM
- ◆ M-Net
- ◆ Matie FM
- ◆ P4 Radio Cape Town
- ◆ Punt Geselsradio (Cape and Gauteng)
- ◆ Radio 702
- ◆ Radio Algoa
- ◆ Radio Cidade
- ◆ Radio Islam
- ◆ Radioranje
- ◆ Radio Pulpit
- ◆ Radio Puk
- ◆ Radio Ripple
- ◆ Radio Rosestad
- ◆ Radio Tuks
- ◆ Rapid Blue
- ◆ **The South African Broadcasting Corporation:** Radio Sunshine, CKI Stereo, Bop TV and Radio, Radio 2000, Phalaphala FM, SAFM, Radio Lotus, Ikwekwezi FM, Ligwalagwala FM, Munghana Lonene FM, Good Hope FM,

Motsweding FM, RadioSonderGrense, 5FM, Thobela FM, Lesedi FM, Umhlobo Wenene FM, Radio Metro, Ukhozi FM

- ◆ Vaal Community Radio
- ◆ Voice of Wits
- ◆ YFM

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 is also accessible from the web site of the Canadian Broadcasting Standards Council.

13. **REPORTS**

Five detailed reports of how complaints were dealt with were distributed in 1999-2000. The latest edition, covering the last four months in 2000, will be distributed soon. The full judgment of the Tribunal, as well as the shorter judgments of adjudicators, are also distributed. The reports of Tribunal judgments now number more than three hundred and fifty, and illustrate how the Commission has been at pains to balance the viewers and broadcasters' rights in such a fashion that it would 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. The matter has not been finalised.

Especially in the area of indecency and obscenity, the Commission has encountered interpretation problems. The approach has been that where privacy

and dignity, in regard to 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 this 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. INTERNATIONAL CONTACT

This Commission has, since its inception, maintained contact with overseas regulators. In 1994 the Chair and Ms Jacobsen visited the UK regulators; in 1995 we organized an international conference of content regulators; at the end of 1995 the Chair met with the Canadian regulators in Ottawa and with the Registrar of the Broadcasting Complaints Commission in London; in 1997 a representative from the French Regulator addressed the BCCSA on TV violence. The Chair met with the Regulator in France in 1997 and in 1998 the Chair and Ms Jacobsen attended the World Broadcasting Summit for Children in London; and at the end of 2000, the Chair met with the Regulator in Berlin and the Director of the Broadcasting Standards Commission in London. An international conference in South Africa is being considered, and this was the subject of the Chairperson’s interviews with the said regulators. At the beginning of 2001 the Chair met with representatives from several African Regulators, who were the guests of Mr Mandla Langa, the chair of the Independent Communications Authority of SA. This meeting has opened avenues into Africa for the BCCSA and the NAB.

16. CONCLUSION

I would like to thank all my colleagues for the splendid co-operation given to the Chairperson and the office during the term reported on, 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.

An Index of the judgments of the Tribunal has been prepared by the Chairperson and will be made available on the Website and in published form.

Kobus van Rooyen S.C.

Chairperson

8 February 2001