



# **SUMMARY OF JUDGMENTS OF THE BROADCASTING COMPLAINTS COMMISSION OF SOUTH AFRICA IN RELATION TO CHILDREN**

**6 March 2001**

## **1. INTRODUCTION**

The Broadcasting Complaints Commission of South Africa (BCCSA) was set up by the National Association of Broadcasters (NAB) in 1993 to adjudicate and mediate complaints against broadcasters which sign its Code of Conduct. The BCCSA therefore has direct jurisdiction over all television channels, 19 SABC radio stations, 14 commercial radio stations and a number of community broadcasters on matters related to the Code.

The BCCSA is independent from the NAB and broadcasters. Commissioners are appointed by an independent panel, chaired by a retired Judge of the Appellate Division of the Supreme Court.

The BCCSA's Code of Conduct is identical to the Code of Conduct in the IBA Act. Since the then IBA's review of its Code of Conduct in 1998/99, the BCCSA has awaited the amendment to the IBA Act to allow the publication of the new Code.

In its judgements though, the BCCSA can already be seen to be taking forward some of the concerns of the regulator, especially in relation to children.

The protection of children was also part of the discussions at the World Broadcasting Summit for Children, attended by the Chair and Deputy Chair of the BCCSA in 1998. It was also an important theme of the 1995 International Conference on Broadcasting Regulation, held by the BCCSA in 1995.

Sophie Jehel, from the French regulator, the CSA, was also the guest speaker during one of the BCCSA's workshops with TV broadcasters in 1997. She is an expert on violence on TV and has co-authored a book on the subject.

## **2. THE CONCEPT OF LIKELY HARM**

Control of the arts and entertainment in South Africa has undergone a radical change from the censorial past. The accent is nowadays on likely harm: both physical and mental. This philosophy was initiated in South Africa by the Task

Group on Film and Publication Control, which was appointed in 1994 by the Minister of Home Affairs. The Task Group's Report was handed to the Minister in December 1994 and published in March 1995. From December 1995 to June 1996, Parliament debated the proposals of the Task Group and, in essence, adopted the philosophy of harm. Combined with this philosophy there is a clear intention, also inspired by the Task Group, to inform the public as to what possible sensitivities could be affected by a film and to employ a classification system in support thereof. Examples of this would be the parental control mechanism provided by M-Net, as well as its sanitized green channel, which contribute to parental controls of what children may watch. Full responsibility cannot, however, be delegated to parents. Broadcasters have to plan constantly to ensure that their viewers are well informed and that parents know how to operate available parental control mechanisms.

Research has shown that children, especially younger children, are harmed by certain depictions of violence. Accordingly films which show a hero using more violence than the crooks who have, for example raped the hero's wife, should be subjected to age restriction of 16.

### **3. THE WATERSHED PERIOD**

Explicit sex and crude language have also been regarded as adult material. Most complaints about crude language in fact refer to the presence of children (especially in a car) during the broadcast. Of course, some forms of crude language are so shocking, that many adults also complain about these words. The BCCSA's approach has been that adults should inform themselves of possible problems in this field by checking the relevant TV magazines. Such films would also be shown after the watershed, which over weekends is 21:30 and in the week is 21:00. As a result of M-Net's parental mechanism, their watershed is 20:00. The watershed ends at 05:00.

The BCCSA Code provides as follows:

"The electronic media shall exercise due care and responsibility in the presentation of programmes where a large number of children are likely to be part of the audience."

From the judgments of the BCCSA it emerges that such times would be "children's" time and "family" time. It has been held that a large number of younger children do not form part of the likely audience of newscasts, except the 18:00 news, which would have a spillover from children's time. Radio stations such as Highveld Stereo and Radio 702 have also argued convincingly that they are directed at adults. It might become necessary in future to obtain evidence as to the number of children who do listen to these stations.

#### 4. FEATURE FILMS

The following rules have emerged from judgments of the Commission in relation to feature films:

Except in the case of Parental Guidance films, all age restricted films may only be broadcast after the watershed (which is 21:00 during the week and 21:30 during weekend evenings, including Friday and excluding Sunday for SABC and e-tv and 20:00 for M-Net, all on a sliding scale depending on the content of the film).

Age restrictions must be advertised in the relevant TV Magazines and, where necessary, should be accompanied by classification symbols, which must be screened at the beginning of the film for at least 90 seconds and after each advertisement break for 60 seconds. Where necessary, an oral warning about the mature nature of the film should be broadcast before the film commences.

The age restrictions are:

- ALL : A or F (Family)
- Parental Guidance : PG
- No children under 10 : 10
- No children under 13 : 13
- No children under 16 : 16
- No children under 18 : 18

Classification Symbols are:

- S = Sex
- N = Nudity
- L = Language
- V = Violence

There is a difference in approach as to the use of the Symbol P which denotes prejudice according to the Guidelines of the Film and Publication Board. SABC TV has used the symbol to denote racial prejudice, but e-tv believes that it is too uncertain to be of real guidance whilst M-Net has left the matter open. The BCCSA believes that an oral warning would be important where racial prejudice emerges from a film and that an age restriction would also be important. Of course, care would have to be taken that the limitation of the Code is not overstepped and material harmful to relations (inter alia race) is shown.

A good example was the film Rhodes which is an historical docu-drama. The SABC used the P symbol to indicate the use of racially derogatory language within the historical context of the film.

The BCCSA has agreed with the TV broadcasters that insofar as language is concerned (which includes crude plus profane language) the following rules would apply:

Children time: no such language

Family Time: as clean as possible

After Watershed: Taking in vain of lord's name in combination with crude language should be excised, out of respect for sensitivities in this area as well as excessive gratuitous use, where it should be lessened. Of course, discretion should be exercised so that works of special dramatic value are not cut.

In practice each TV broadcaster has set up special divisions, whether in the form of an external advisory committee (M-Net and e-tv) or an internal committee (SABC). These committees have often work-shopped their guidelines with the BCCSA and have also, at least once a year, had a workshop where the Executive of the Film and Publication Board was present.

It has become practice for the TV committees to request a copy of the Film and Publication Board certificate of a feature film so that guidance can be gained from what the certification is for cinema and video distribution. In no instance has a TV broadcaster imposed a lower restriction and in several cases higher age restrictions have been imposed in the light of the mass audience which TV has and as a special warning to parents.

The Films and Publications Act prohibits TV from screening so-called hard pornography in Schedule 6 read with Schedules 9 and 11 of the Act. Accordingly, where a certificate of XX has been issued, no TV station may screen such a film. Where a certificate has not yet been issued, a TV broadcaster would in these cases, have to exercise its own informed opinion and in problematic cases even obtain legal advice.

## **5. CRUDE LANGUAGE ON RADIO**

A recurring complaint concerns crude language and jokes by some radio presenters. The defense from radio stations has been that they are especially directed at a modern-minded, young audience from 17 to 40 which enjoys the crudity and would be able to contextualise the material. Stations have argued that such an audience would be surprised at any suggestion of indecency. The Federal Communications Commission has tabulated seven words which are unacceptable on radio and it would be quite surprising if one of the South African radio stations were to broadcast any one of those words. The BCCSA is of the view that it would be unfair to make such a list, since such a list would amount to pre-censorship as well as a refusal to judge each case on its own merits. The Canadian and British Authorities both do not have such lists.

Nevertheless, especially car-driving parents have lodged complaints about crudities broadcast in the presence of their school going children – especially younger children. The defense of the broadcasters has continuously been that these parents should foresee that crudities would be broadcast and should take the responsibility for their children hearing the crudities - children who are,

according to the broadcasters, not part of the target audience. The BCCSA has been quite sensitive to what broadcasters have argued, but has, on occasion, set a limit to what it regards as unacceptable even amongst a mature audience. These instances have been very few and have been motivated with reference to hate speech and dignity.

## **6. JUDGMENTS**

The following is a summary of BCCSA judgments in relation to children's issues. The list is not exhaustive but serves to illustrate the sorts of issues which have been dealt with by the BCCSA in relation to children, and the precedents set.

Artistic Freedom – protected – rights of children protected by watershed, age guidance and classification. SABC & M-Net; Basic Instinct 11/97.

Bestiality- Radio – implication of - in naughty song by guest singer, Kevin “Bloody” Wilson – not blatant and would not have been understood by children. Derwin v Radio 702 02/98.

Body painting - TV – including male genitals – programme between 21:30 and 22:00 – not explicit – directed at adults. In regard to people being tattooed. Sklar & Others v SABC 10/95.

Bible – Old Testament misrepresented in “Xena” – Children's time – BCCSA holding that the Code had been contravened in having shown the particular production in Children's time – confusing to Children in the relevant religious groups. Volschenk v SABC 17/99.

Children – not part of likely audience of Radio 702 and Highveld Stereo. Steyn & Others v Highveld Stereo 01/99; Faull v SABC (SAFM) (Complaints Report Volume 3/99).

Children – not part of likely audience on news after 19:00. Glibbery v SABC 38/2000.

Children and news of brutality – complaint that brutality by some members of dog unit towards illegal immigrants traumatized child and adult who had experienced attack by dog – found to have been adequately warned of by news reader – smaller children not being regarded as likely viewers of news, and where they watch news after 19:00 parents should take necessary steps. 18:00 news, however, not being regarded as acceptable time for this kind of news, as a result of spillover from children's time. N Swanepoel & Others v SABC 24/2000; DB le Roux & B Davies v SABC 36/2000 (the latter dealing with inserts on how Phillipino rebels were being shot and killed).

Classification by Film and Publication Board – must serve as guideline – however, different nature of TV audience should be taken into consideration – accordingly, prudent to impose a slightly higher age restriction in cases of doubt. *Corniere v M-Net* 11/96.

Classification without age restriction – TV - insufficient. *Close Relations* 06/99.

Crude language - TV - in documentary on homosexuals and transvestites – not indecent or obscene given the time of broadcast: 21:30. *Dudley v SABC* 16/96.

Crude language - radio – interview with British porn actress between 08:00 and 08:30 – questions on styles in which sex performed - finding of indecency since the broadcast was during the school holidays. *Moscardi & Others v Radio 702* 03/99.

Drugs – song promoting drug abuse – contravention of Code. *Crewe v SABC* (Complaints Report 1/96).

Mighty Morphins Power Rangers Series – not acceptable as a result of violent aspects portrayed. *Worthington v SABC A/17/ 95*.

Nudity – “Penthouse Pet of the Year” – broadcast at 22:30 – age restriction imposed by broadcaster – parental control mechanism provided by M-Net to subscribers - discussion of meaning of terms such as ‘indecent or obscene’ in Code with reference to Canadian authority – no contravention found. *Drew and Others v M-Net* 08/95.

Paedophile – interview with anonymous caller on radio – caller being paedophile and conveying what his plans for the evening would be and how he would entice children to have sex with him – BCCSA holding that presenters were correct in keeping him on the line – in public interest that parents be made aware of dangers which their children could be confronted with when moving into public unaccompanied – argument that keeping him on the line was an error since he received publicity, rejected. *Ricketts v Radio 702* 16/95.

Sangomas -Initiation procedure of – TV - simulated sexuality for transmission of spirits from forebears – documentary – no contravention. Broadcast after 20:30 - two members voting in minority. *Several Complainants v SABC* 11/94.

Sex – TV - rather explicit sex, but not so explicit as to amount to soft porn – timing of 22:30 correct for this kind of film – M-Net also provides parental mechanism to block programmes out where so coded in by parents – this factor taken into consideration. *Several Complainants v M-Net* 11/95.

Sex- TV- variety of new freedoms portrayed and discussed in programme “The Works” – timing too early – must be screened after watershed. Several Complainants v SABC 10/95. Also compare Botes v SABC.

Sex education – teenage participants – BCCSA holding that it was not its task to determine whether the method employed is of educational value; that is the task of the broadcaster and its board. However, when it is clear that the methods employed are likely to contribute to more teenage sex, then the BCCSA would intervene. Since the BCCSA was not convinced, it could find no contravention of the Code. Sampson v e-tv 25/2000.

Sex education – use of children under 12 not acceptable in programme on sex – BCCSA holding that the problem is especially one of the teenagers and that they would simply laugh the remarks by pre-teens off. Spingies & Others 09/2000.

Spirits – “Poltergeist” – not suitable for children or family viewing – screened closely before watershed – no contravention. Lammers A/28/99.

Violence and brutality- TV - in material provided to SABC on prima facie brutality of some members of Dog Unit of Police to illegal immigrants – duty to show this brutality - due warning necessary Glibbery & Others v SABC 38/2000.

Violence – TV - portrayed as part of Special Assignment documentary on abuses in Sierra-Leone – Broadcaster having duty to screen these abuses, even if the brutality (in casu to children) shocks viewers. Due warnings must be given. Harrison v SABC (Complaint Report Volume 2/2000).

Watershed – “Bugsy” screened at 20:00 – age restriction of 18 – contravention – should have been shown after watershed. Small v SABC A/07/97.

Watershed – “Laughter of God” – screened after 21:00 – complainant argued that many children are still watching by 21:00 – BCCSA holding that since M-Net informed viewers beforehand of the sex and nudity and that parental mechanism is available, Code not contravened. Watershed, in any case, placing partial responsibility on parents. Louw v M-Net 05/96.

Witchcraft – interview with witchdoctor who conveyed how he murdered children and others – directed at children – contravention. Balasarus v SABC 02/97.

## **7. CONCLUSION**

It is hoped that the above summary of judgments give a useful picture of the issues faced by the self-regulatory body for South African broadcasters, in relation to children.

It is further hoped that the precedents set by these judgments, together with positive regulation in the form of licence conditions on children's programming, will contribute to an improvement in the broadcast material seen and heard by South African children.