BROADCASTING COMPLAINTS COMMISSION OF SOUTH AFRICA

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Case No: 27/1997

Date of Hearing: **15 January 1998**

THE REVEREND EDWARD W PRYOR **Complainant**

vs

M-NET **Respondent**

In regard to the film: **RESERVOIR DOGS**

Commission: **Prof Kobus van Rooyen S.C. (Chairperson)**
Ms Lauren Gower
Rev Danie du Toit

The Complainant in person supported by members of the South Hill Evangelical Church.

For the Respondent: Mr Willem Hattingh and Mr Jacques Kruger from M-Net.

SUMMARY

Discussion of "offensive to the religious convictions of a section" in clause 7 of the BCCSA Code of Conduct. Taking in vain of the Lord's Name discussed and found not to have amounted to offensive usage.

JUDGMENT

1. INTRODUCTION

The Respondent, a licensed broadcaster who has signed the Code of the Broadcasting Complaints Commission of South Africa in 1993, screened the film *Reservoir Dogs* on four occasions after the 21:00 watershed during 1997. The Complainant, who is the moderator of the South Hills Evangelical Church, lodged a complaint with this Commission. The complaint was, in the main, directed at the taking in vain of the Lord's Name by the characters in this film in the form of "Jesus Christ" and other forms. He also referred to the unrestrained violence in the film.

Respondent did not dispute that the film contained several instances of the taking in vain of the Lord's Name and that, at times, the film contained instances of serious violence. Respondent, however, argued that the film had been passed with an 18 age restriction by a publications committee under the Publications Act and that it had taken several steps to warn viewers of the violence and language in the film. Respondent also indicated that subscribers to its pay channel are provided with a parental control mechanism which, if set according to a specific code, privy to the subscriber, eliminates all films with age restrictions ranging from 18 to even PG. Furthermore, all decoders could be set on either the red or green channel. The green channel broadcasts a sanitised version of the language of the film whilst the red channel broadcasts the film in its original form (subject to possible cuts under the Publications Act or, where fitting, by the broadcaster itself). The TV magazine which is provided to all subscribers, as requested by this Commission, constantly informs viewers of the age restrictions and indicates whether a film could give rise to offense to sensitive viewers in regard to violence, sex, nudity and language. A warning is also given at the start of the film and for more or less 60 seconds the age restriction plus classification is shown in the left hand corner of the television screen. Where there is an advertisement break, the age restriction plus classification is once again displayed in the left hand corner for 60 seconds.

This Commission has no doubt that the Respondent has taken reasonable steps to ensure that its subscribers were well informed as to all these aspects. Nevertheless, it is our duty to inquire whether the film as a whole or of aspects of it are not in conflict with the Code. Clause 7 of the Code provides that material which is indecent or obscene or offensive shall not be broadcast. Clause 7 also contains a provision that material which is offensive to the

religious convictions or feelings of a section of the South African community may not be broadcast.

The Constitutional Court held in *De Klerk v Du Plessis* 1996(3)SA850(CC) that the interim Constitution only applied to relations between the State and individuals. The present Constitution, however, makes it clear that where appropriate the Bill of Rights also has so called horizontal application. See section 8(2) of the Constitution which provides as follows:

> "A provision of the Bill of Rights binds a natural or juristic person if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right".

Although section 8(3) only refers to the duties of a court, a tribunal such as the Broadcasting Complaints Commission which was set up by the National Association of Broadcasters is, in our view, also bound by section 8(2) and section 8(3). The Commission acts as a disciplinary body and broadcasters are bound to give effect to its sanctions. Section 34 of the Constitution provides that everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, *where appropriate, another independent and impartial tribunal or forum*. Since the Constitution of this Commission ousts the jurisdiction of the courts for broadcasters and where agreed to, for complainants, we believe that section 34 places the Commission in the same position as that of a court. The Commission has a duty to act in the same manner as a court would act and therefore, in our view, it is bound by the Bill of Rights. It is also of interest to note that section 39 provides that when interpreting the Bill of Rights, a court, tribunal or forum must promote the values that underlie an open democratic society based on human dignity, equality and freedom: must consider international law; and may consider foreign law. Section 39(2) provides that "when interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights:

When applying clause 7 of the Code of the BCCSA, it would, accordingly, be necessary for this Commission to promote the spirit, purport and objects of the Bill of Rights.

Section 16 of the Constitution, which deals with freedom of expression, provides as follows:

"16(1) Everyone has the right to

(a) freedom of the press and other media;
(b) freedom to receive or impart information or ideas;
(c) freedom of artistic creativity; and
(d) academic freedom and freedom of scientific research."

Section 16(2) imposes a direct limitation on section 16(1) by providing that the said rights do not extend to propaganda for war, incitement to imminent violence or the advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

II. THE NATURE OF THE COMPLAINT AND THE REASONING OF THE COMMISSION.

The complainant referred to the film as a thoroughly degraded and degrading film. He also referred to the fact that specifically "Jesus Christ" is uttered repeatedly, not as an invocation but as an expletive, in transgression of God's Third Commandment, forbidding the taking of his name "in vain". Furthermore, the high frequency of the use of the word "fuck" was complained about. Generally it was, according to the Complainant, a revolting, degrading and, at no point, edifying film. The changing consensus of our pagan society, it was argued, may permit such a film, but for people living under the authority of Scripture it is wholy objectionable. It was also mentioned by Mr Bates, who accompanied the Complainant, that the film did nothing for the upliftment of this society as would be expected from big business.

On the other hand Respondent referred to the matters discussed above and also referred to reviews of the Tarantino film, which were positive about the artistic quality of the film. Just before the screening of *Reservoir Dogs* at 22:00 the host at M-Net said the following:

> "Coming up next is Quentin Tarantino's gritty, bone-chilling directorial debut *Reservoir Dogs*, in which a group of criminals, who don't know each other at all, are hired to steal a shipment of diamonds. Hall Hinson, famous critic at the Washington Post, said that this movie is as caustic as battery acid, and if it doesn't pin your ears back, nothing ever will. Please take note, however, Reservoir Dogs contains scenes of graphic violence and therefore it's not recommended for sensitive viewers. And with that warning, it's good night from me. Candice Hillebrand".

Terms "blasphemy" and "offensive" have been interpreted judicially. Blasphemy must be understood in its limited, juridical sense. It has been described as matter which "smaadt, lastert of vervloekt" God and as "iets toeschrijven dat tot hem nict behoort, of iets van hem ontkennen, dat hem eigen is of verachtelijk van hem spreken". Van der Linden *Koopmans*

Handboek 2.3.2; Moorman *Verhandeling Over de Misdaden* 1.2.12; the definition includes, in addition, mere denials of the existence of God. Milton *South African Criminal Law and Procedure* vol 2 argues that the mere publication of matter denying or which is hostile to the Christian faith is not, as such, blasphemy. The denial, to be blasphemy, according to Milton, must be associated with ribald, contumelious or scurrilous language or conduct. Also see Wulfsohn 1964 *South African Law Journal 93*. In *Publications Control Board v Gallo (Africa) Ltd* 1975(3) SA 665(A) at 671H Rumpff CJ also mentioned *obiter* that blasphemy has a bearing on the Christian concept of God. All members of the Trinity are protected. Wessels CJ states in *R v Webb* 1934 AD 493: "What applies to God applies equally in a Christian country to Jesus Christ".

In so far as the term "offensive" is concerned, the *Gallo* court held that "offensive" does not relate to matter which is merely displeasing or annoying, but to material which is repugnant, mortifying or painful. Within the context of the *Gallo* judgment this definition is justified with reference to freedom of religion, which allows for differences between sections which may cause annoyance. It must, however, be read together with the same Judge's pronouncement in *Publications Control Board v William Heineman Ltd* 1965(4) SA 137(A) which accentuates the fact that freedom of speech includes the freedom to write a story. In the light of this limited meaning of offensiveness, the mere encroachment upon the religious convictions or feelings of a section of the population is legally not offensive. This approach is also realistic in the light of the function of literature and drama. In their attempts to portray life as it is, authors and producers often find it necessary to make use of expressions that are typical of the characters or the situation depicted. In the light of the BCCSA Code, the Films and Publications Act and the Constitution, it is, of course, true that certain limitations are placed on this freedom.

In so far the likely viewer's views are concerned, it was held in *Human and Rousseau Uitgewers v Snyman NO* 1978(3) SA 836(T) that the likely viewership is irrelevant when the religious convictions or feelings of a section has to be ascertained. However, the court held that in so far as interpretation and the degree of encroachment are concerned, the likely viewer's point of view may be taken into consideration as a factor. In *Buuren Uitgewers v Raad van Beheer oor Publikasies* 1975(1) SA 379(C) it was also held that the likely readership of a book is relevant when a similar provision under the now repealed Publications and Entertainment Act of 1963 was considered.

Although the Code of the BCCSA does not refer to the recognition of drama and art, this Commission has to take note of section 16 of the Constitution which proclaims freedom of artistic creativity as a fundamental right.

There is little doubt that the misuse of the Lord's Name amounts to sinful conduct according to Judaeo Christian doctrine. On the other hand it is also clear that this kind of language forms part of the vocabulary of many people and that it would be unrealistic to ignore this fact.

An approach by which certain profane words are automatically cut would, in fact, be reviewable by the High Court on the grounds that this Commission was not applying its mind properly to the question whether the particular use of certain words is more than annoying, and indeed mortifying or painful in terms of the *Gallo* case. The same reasoning applies to statements that profanities are always offensive when employed as expletives.

It is also of interest to note that in *S v Insight Publications (Pty) Ltd* 1965(2) SA 775 (C) the frequent taking of the Lord's Name in vain in a particular publication was found to be not undesirable in terms of the Publications and Entertainments Act. It is clear from this judgment that an absolutist approach is not in accordance with the law. In any case, this Commission cannot ignore section 16(2) of the Constitution which limits freedom of speech in these instances only by the advocacy of hatred based on religion and which constitutes incitement to cause harm.

Accordingly, in spite of the fact that we agree with the complainant that the frequency of the taking in vain of the Lord's Name in this film is annoying, we would not be acting in accordance with the meaning of the word "offensive" in law if we were to find that these instances are repugnant in terms of the *Gallo* judgment. Even if we were not to refer to section 16(2) Constitution of the Republic, the finding is that the words are not legally offensive. When referring to the Constitution's section 16(2), it is abundantly clear that the instances of the taking in vain of the Lord's Name, disturbing as they might be, do not amount to the advocacy of hatred based on religion which would, furthermore, constitute incitement to cause harm.

In so far as the time slot of the screening of this film is concerned, we agree with the Respondent's decision to only screen this film after the watershed, i.e. 21:00 - 05:00. The Respondent also acted in accordance with our guidelines in informing viewers by way of introduction as well as several other methods mentioned earlier, that the film contains material which could be offensive or disturbing to the sensitive ear. By imparting this information to viewers, the Respondent made it possible for viewers to exercise their freedom to receive information (see section 16(1)(b) of the Constitution of the RSA) and to exercise their freedom to choose in the light of such information.

In so far as the excessive forms of violence portrayed in this film are concerned, we once again agree that this film could not have been shown before the watershed. One must also bear in mind that the parental control device, where activated by parents, would exclude children under 18 from watching this film.

In so far as complainant's argument that a film should be edifying is concerned, it must be borne in mind that the legal issue is not whether it is edifying but whether it is harmful. In *Publications Control Board* v *William Heinemann Ltd* 1965(4) SA137 (A) Steyn CJ at 154 D observed that a book need not be a tract on morality and "that it does not become objectionable merely because it does not seek to make a contribution towards the advancement of moral integrity".

The complaint is not upheld.

PROF JCW VAN ROOYEN S.C.
CHAIRPERSON