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**CASE NUMBER: 02/2012**

**DATE OF HEARING: 23 FEBRUARY 2012**

**BEWEGING VIR CHRISTELIK VOLKSEIE  
ONDERWYS (BCVO)**

**1<sup>ST</sup> COMPLAINANT**

**GELDENHUYS**

**2<sup>ND</sup> COMPLAINANT**

**vs**

**JACARANDA 94.2 FM**

**RESPONDENT**

**TRIBUNAL: PROF KOBUS VAN ROOYEN SC (CHAIRPERSON)  
DR LYNDA GILFILLAN  
MS GIUSEPPINA HARPER  
ADV BOITUMELO MMUSINYANE**

**For the Complainants: Advocate JJW Hayes, Mr J Strydom: Attorney, Mr PJ Kruger: Attorney, Mr B Geldenhuys and Ms L Van Wyk: Chief Executive Office of BCVO**

**For the Respondent: Mr JD Crawford, Legal Representative accompanied by Mr Neil Johnson: Jacaranda Programme Manager and Mr Rian van Heerden: the Presenter.**

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*Undue joke made of results of BCVO schools. Broadcaster directed to broadcast apology. BCVO & Geldenhuys vs Jacaranda 94.2 FM ,Case no: 02/2012(BCTSA).*

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#### **SUMMARY**

**Complaints were received with regard to a remark which a presenter on Jacaranda 94.2 radio made after the news on the morning of 4 January 2012, when the 95%**

matric pass rate for private schools that fall under the *Beweging vir Christelik-Volkseie Onderwys (BCVO)* was conveyed. The complainants, acting on behalf of the children at the BCVO schools who wrote the 2011 matric exam, complained to the BCCSA about the following remark made by a presenter after the splendid matric results were broadcast during the news. The standard of the examination complies with the standards approved by the official body Umalusi.

The complaint read as follows: We are very upset about comments that Rian van Heerden made this morning after the seven o'clock news BCVO. It was after the news about BCVO's 95 % matric pass rate. He said that the matrics of the right wingers only had to answer two questions to pass, namely:

1. "Wie is Hendrik French Verwoerd? Answer: "Eerste minister" - correct
2. "Wie regeer die land? Answer: Die kommuniste – and if they did spell communists correctly they obtained a distinction.

It was held that neither satire nor the attempt at a joke could save the remark which defamed the matriculants at the schools.

The radio station was accordingly held to have breached the Broadcasting Code when, on 4 January 2012, it belittled the academic standards of BCVO matriculants. Their exam, which had a 95% pass rate, had met with official approval and complied with the highest national standards. Poking fun at the academic standards achieved by the learners was therefore unjust.

The radio station was directed to broadcast an apology over the news twice before 31 March 2012.

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## JUDGMENT

### JCW VAN ROOYEN SC

[1] Complaints were received with regard to a remark which a presenter on Jacaranda 94.2 radio made after the news on the morning of 4 January 2012, when the 95% matric pass rate for private schools that fall under the *Beweging vir Christelik-Volkseie Onderwys (BCVO)* was conveyed.

[2] The complaints read as follows:

**BEWEGING VIR CHRISTELIK - VOLKSEIE ONDERWYS: "COMPLAINT AGAINST RIAN VAN HEERDEN**

Please note that a copy of this complaint goes to the Broadcasting Complaints Commission. We are very upset about comments that Rian van Heerden made this morning after the seven o'clock news BCVO. It was after the news about BCVO's 95 % matric pass rate. He said that the matrices of the right wingers only had to answer two questions to pass, namely:

1. "Wie is Hendrik French Verwoerd? Answer: "Eerste minister" - correct
2. "Wie regeer die land? Answer: Die kommuniste – and if they did spell communists correctly they obtained a distinction.

We strongly take exception to such belittling statements and see it in a very seriously light. We are eager to hear what Jacaranda's actions will be against your employee and to rectify this incident. We are looking forward to your answer."

**B.Geldenhuys:** "Die Grondwet van Suid-Afrika beskerm die reg tot vryheid van spraak. Daar is egter sekere beperkings op hierdie reg, o.a. waar dit skadelik is vir kinders en waar dit onverdraagsaamheid teenoor 'n geloof openbaar.

Die BCVO is 'n beheerliggaam vir talle Christelike Afrikaanse skole reg oor die land. Die BCVO bied 'n geregistreerde matriekeksamen aan wat goedgekeur is deur UMALUSI en aanvaar word deur al die universiteite in Suid-Afrika.

Op 4 Januarie 2012, tydens die 07:00 nuus, het die nuusleser van die radiostasie Jacaranda 94,2 bekend gemaak dat die BCVO se matriekeksamen het 'n slaagsyfer behaal van 95% vir die 2011 eksamen, ander Privaat skole so bietjie minder en dan die Staatskole wat sukkel om 'n 70% slaagsyfer te behaal.

Net na die nuus maak die aanbieder Rian van Heerden die volgende aanmerking:

Sy woorde was in die lyn van: "Die regsies, hulle het seker net 2 vrae om te antwoord."

Een: "Wie is Hendrik French Verwoerd?"  
Antwoord: "Eerste Minister" - Reg

Twee: "Wie regeer die land?"  
Antwoord: "Die Kommuniste" - Reg - en as hul kommuniste reg spel kry jy n onderskeiding.

Uit bogenoemde wil dit voorkom of Mnr Rian van Heerden uiters onverdraagsaam is teenoor Christelike skole en hulle as "regs" klassifiseer. Sy aanmerking is ook uiters skadelik teenoor kinders. Nie net die kinders wat in 2011 die BCVO se matriekeksamen geskryf het nie, maar ook die derduisende kinders wat tans in Christelike Afrikaanse skole is en in die toekoms die BCVO se matriekeksamen gaan skryf.

Dit is verstommend dat 'n persoon wat onverdraagsaam is teenoor die Christelike geloof en die Christelike lewenswyse, die platform van 'n radiostasie het om sy onverdraagsaamheid te propageer. Dit is verder verstommend dat sy skadelike, neerhalende uitlatings teenoor kinders toegelaat word."

[3] The Radio station responded as follows:

"I refer to the abovementioned complaint. The reference to the pass rate of BCVO schools was of course satirical. It is a well-known fact that "Christelike Afrikaans" schools have been set up as culturally specific schools and can therefore in the traditional sense be seen as adhering to many values also usually associated with the "right-wing". My

comments after the 07h00 news bulletin were designed to poke fun at some of the heroes and fears of the old guard and were (once again) of course not meant to be taken literally. These comments were not in any way directed at the Christian faith or aimed directly at children....rather at the school system that is provided for them.It was merely an attempt at satirical humour.”

[4] The Complainants replied as follows:

**BCVO:** “We are not at all satisfied with the [radio station’s] answer. You as Broadcasting Complaint Commission can’t allow presenters to make comments that bring disrespect to other people and/or organizations. This presenter did make belittling statements against BCVO and our clients. He did admit it by saying: “....rather **at the school system that is provided for them.**”

We will not be satisfied before he at least makes a public apology that we will be aware of and during the same time frame that the incident took place. Furthermore we insist to approve the content of the apology before it goes on air. We also expect a full disciplinary hearing against him with full feedback. We take exception at the comment that we are part of the “right-wing”. The BCVO is a strongly religious educational organisation which promotes the Reformed confession and ethos to our pupils. Therefore we see it as unacceptable disrespect to our organization. We will not accept [the] excuse that it was only a joke, especially not in the public media where a presenter easily influences people. We are therefore of the opinion that he purposely tried to bring disrespect to our organization.

We want to know what actions will be put in place to prevent Rian van Heerden from doing the same again towards any organization or people as well as what Radio Jacaranda will do to rectify this incident and prevent it from happening again. Presenters must know that they cannot make comments that bring disrespect to any one and laugh it off by saying: it was only a joke.”

**Geldenhuis: Jacaranda Stereo programme by Rian van Heerden on 4<sup>th</sup> of January 2012: Reply to Van Heerden’s response regarding complaint.**

The [radio station’s] response constitutes nothing else but a full admission regarding the merits of the complaint laid against him. In his very own words, The [radio station] states that his utterances were “satirical”. “Satire” means a form of communication “holding up a person or society to ridicule, or showing the foolishness or wickedness of an idea, customs, etc.; also ‘mocking’” (Oxford Advanced Learner’s Dictionary of Current English”, Hornby, A.S. *et.al.*, Oxford University Press, 3<sup>rd</sup> edition, 20<sup>th</sup> impression, 1984).No community radiostation (and indeed, no medium of communication either on community- or national level, especially in a country like South Africa – rife with prejudice, hatred and intolerance) may ridicule any segment of society – both in terms of national legislation as well as International Law.The [radio station’s] further admission, namely that his offensive comments “were designed to poke fun”, aggravates the situation. He clearly misuses his position behind the microphone to mock and ridicule (and thus, to humiliate) the people involved with- and the idea behind Christian Afrikaans education. Van Heerden, as a person, might find such people and/or ideas ridiculous; but his personal beliefs can never be allowed to be broadcast in the aforesaid humiliating way to thousands of people who hold opinions and beliefs contrary to his own.If that was to be the case (as we are all “equal before the law”), broadcasts “mocking” and/or “poking fun” at Blacks, homosexuals, atheists, ancestor-worshipping, etc., must also be admissible.The radio station’s further (non-sensical) argument – namely that his comments were not directed at the *Christian faith* but at the relevant *school system* – is equally damning and incriminatory. The *very basis* of the BCVO’s Christian Afrikaans

school system (as opposed to a secular educational system) is the *Christian faith*. By ridiculing a Christian school system, Van Heerden *ipso facto* ridiculed the Christian faith underlying that school system. His argument, that these schools “*can therefore in the traditional sense be seen as adhering to many values also usually associated with the “right wing”*”, not only constitutes a gross sweeping statement and an unwarranted generalisation; but also demonstrates Van Heerden’s political immaturity and - imbalances. Christian ethnic education is practised by Christian Dutch, Christian Americans, Christian Yugoslavs – all without being branded “right wing”. Why should that in South Africa be the case? In the premises, the strongest possible action against Van Heerden and Jacaranda (which carries co-responsibility for Van Heerden’s actions in lieu of any internal steps or measures against him) is demanded. We anxiously await your answer.”

- [5] Since it is the radio station which is the respondent in this matter, I have taken the liberty of amending the complaints and replies where the respondent is identified as Mr van Heerden. The latter approach to the matter was, of course, initiated by the radio station which, in its response to the complaints, simply provided Mr van Heerden’s response. I should also add that, in so far as it was argued that Mr van Heerden should be subjected to a disciplinary inquiry, that argument was also irrelevant to this inquiry. The BCCSA Tribunal is not a disciplinary inquiry against Mr van Heerden but rather an inquiry as to whether Jacaranda 94.2, which is responsible for what its presenters say, was in contravention of the Broadcasting Code.

## EVALUATION

- [6] In so far as the complainants in their replies refer to religion as a basis for a contravention, I should immediately state that the Broadcasting Code, in accordance with section 16 of the Constitution of the Republic of South Africa, only limits religious speech if it amounts to the advocacy of religion-based hatred that constitutes incitement to cause harm. The presenter expressed an opinion, which is a far cry from “advocacy” or “incitement”. Although harm in terms of the hate speech provision may take the form of religious hurt, harm is merely one of the requirements for hate speech. Thus, even if religious hurt was caused, the elements of advocacy and incitement were absent from the broadcast. The mere expression of a view, even if it is in questionable taste according to some listeners, is permitted according to the principle of freedom of expression, as guaranteed in the

Constitution and the Broadcasting Code. Freedom of expression has been held by the Constitutional Court to lie at the heart of our democracy,<sup>1</sup> and the Court has held that it must be given a generous application.<sup>2</sup> In any case, although religion is an important facet of the BCVO, the presenter did not direct his statement at the religious facet of the BCVO. It was broadly directed at the underlying culture and philosophy of BCVO schools, which, the presenter implied, has led to the lowering of standards in the school's matric exams.

[7] The BCVO is a section 21 company, and its main aim according to its registration as a section 21 company, is to further "Christelik-Volkseie Onderwys" – which might be translated as Christian education that includes a recognition of Afrikaner values. The notion of Afrikaner values is, of course, itself open to debate. However, it would seem that the BCVO supports Afrikaner values from a more traditional perspective. I need not take it further than that, since it is not necessary to decide whether the BCVO or its schools have been defamed. The complainants limited their complaints to the interests of the children. In the response the matter was, however, approached from a wider angle. It is impermissible for a complainant to widen the ambit of its complaint in the response and, accordingly, the reputation of the learners is the only matter before us. The actual victims of the presenter's scorn were, indeed, the learners who had completed their matric exam. Defamation, which has its origins in common law, is proscribed<sup>3</sup> by the Constitution of the Republic and also by the Broadcasting Code. The law is however clear: in the interests of freedom of expression not all derogatory statements amount to defamation. EM Grosskopf JA states as follows in *Argus Printing & Publishing Co Ltd v IFP* 1992 (3) SA 579 (A) at 588:

The traditional standard for determining whether utterances are defamatory is whether the imputation conveyed by them lowers the plaintiff in the estimation of right-thinking persons generally. Mere debate on political questions, or expressions of disagreement with an opponent's political views, would clearly not be actionable. Even personal criticisms of a political opponent are

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<sup>1</sup> *SANDU v Minister of Defence* 1999 (4) SA 469 (CC).

<sup>2</sup> *Laugh It Off Promotions CC v SAB International (Finance) BV t/a SABMARK International (Freedom of Expression Institute as Amicus Curiae)* 2006 (1) SA 144 (CC).

<sup>3</sup> Reputation is a right of personality and is included in the Constitution's protection of dignity, from which it has stemmed.

not readily regarded as defamatory. In *Pienaar and Another v Argus Printing and Publishing Co Ltd* 1956 (4) SA 310 (W) at 318C-E, Ludorf J said the following:

' . . . I think that the Courts must not avoid the reality that in South Africa political matters are usually discussed in forthright terms. Strong epithets are used and accusations come readily to the tongue. I think, too, that the public and readers of newspapers that debate political matters, are aware of this. How soon the audiences of political speakers would dwindle if the speakers were to use the tones, terms and expressions that one could expect from a lecturer at a meeting of the ladies' agricultural union on the subject of pruning roses!'

[8] In *Khumalo v Holomisa* O'Regan J emphasised not only the important role of the media in our Constitutional order, but also the importance that is attached to dignity and its offshoot, reputation, within that order.<sup>4</sup> The Constitutional Court has,

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<sup>4</sup> 2002(5) SA 401(CC): [24] In a democratic society, then, the mass media play a role of undeniable importance. They bear an obligation to provide citizens both with information and with a platform for the exchange of ideas which is crucial to the development of a democratic culture. As primary agents of the dissemination of information and ideas, they are, inevitably, extremely powerful institutions in a democracy and they have a constitutional duty to act with vigour, courage, integrity and responsibility. The manner in which the media carry out their constitutional mandate will have a significant impact on the development of our democratic society. If the media are scrupulous and reliable in the performance of their constitutional obligations, they will invigorate and strengthen our fledgling democracy. If they vacillate in the performance of their duties, the constitutional goals will be imperilled. The Constitution thus asserts and protects the media in the performance of their obligations to the broader society, principally through the provisions of s 16.

[25] However, although freedom of expression is fundamental to our democratic society, it is not a paramount value. It must be construed in the context of the other values enshrined in our Constitution. In particular, the values of human dignity, freedom and equality....

[26] It has long been recognised in democratic societies that the law of defamation lies at the intersection of the freedom of speech and the protection of reputation or good name. ...  
Under our new constitutional order, the recognition and protection of human dignity is a foundational constitutional value. ...

[27] In the context of the *actio injuriarum*, our common law has separated the causes of action for claims for injuries to reputation (*fama*) and *dignitas*. *Dignitas* concerns the individual's own sense of self-worth, but included in the concept are a variety of personal rights including, for example, privacy. In our new constitutional order, no sharp line can be drawn between these injuries to personality rights. The value of human dignity in our Constitution is not only concerned with an individual's sense of self-worth, but constitutes an affirmation of the worth of human beings in our society. It includes the intrinsic worth of human beings shared by all people as well as the individual reputation of each person built upon his or her own individual achievements. The value of human dignity in our Constitution therefore values both the personal sense of self-worth as well as the public's estimation of the worth or value of an individual. It should also be noted that there is a close link between human dignity and privacy in A our constitutional order. ...

[28] The law of defamation seeks to protect the legitimate interest individuals have in their reputation. To this end, therefore, it is one of the aspects of our law which supports the protection of the value of human dignity. When considering the constitutionality of the law of defamation, therefore, we need to ask whether an appropriate balance is struck between the protection of freedom of expression on the one hand, and the value of human dignity on the other....

however, also held that any inquiry into constitutional rights must commence with all the rights at the same level. Thereafter the outcome is reached after balancing takes place with reference to the facts of the particular case and the weight attributed to the competing rights.<sup>5</sup>

[9] Truth plus public interest and reasonableness, which includes fair comment and satire, would be a defence for the Respondent. Of course, it was common cause that what the presenter said was not true. That would have been clear to the reasonable listener to the broadcast. Truth plus public interest cannot, accordingly, be a defence against what was *prima facie* defamatory.<sup>6</sup> The next question is whether the opinion expressed could be saved by the reasonableness of the comment, in short, whether the words used were justified by the allegedly satirical nature thereof.

[10] *Wikipedia* describes satire as follows:

In satire, vices, follies, abuses, and shortcomings are held up to ridicule, ideally with the intent of shaming individuals, and society itself, into improvement. Although satire is usually meant to be funny, its greater purpose is often constructive social criticism, using wit as a weapon. A common feature of satire is strong irony or sarcasm—"in satire, irony is militant"—but parody, burlesque, exaggeration, juxtaposition, comparison, analogy, and double entendre are all frequently used in satirical speech and writing. This "militant" irony or sarcasm often professes to approve of (or at least accept as natural) the very things the satirist wishes to attack.

For the purposes of this judgment, this definition will suffice as a guideline. The guideline also demonstrates that the notion of satire, which has a circumscribed meaning, cannot merely be bandied about as a defence. Furthermore, satire or the caricature of persons is, in any case, not always a defence to defamation.<sup>7</sup>

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<sup>5</sup> See *De Reuck v Director of Public Prosecutions and Others* 2004(1) SA 406(CC) at para [55] where Langa DP states the following: "In the High Court judgment, the view is expressed that persons who possess materials that create a reasonable risk of harm to A children forfeit the protection of the freedom of expression and privacy rights altogether, and that s 28(2) of the Constitution 'trumps' other provisions of the Bill of Rights. I do not agree. This would be alien to the approach adopted by this Court that constitutional rights are mutually interrelated and interdependent and form a single constitutional value system. This Court has held that s 28(2), like the other rights enshrined in the Bill of Rights, is subject to limitations that are reasonable and justifiable in compliance with s 36.

<sup>6</sup> The Freedom of Expression Institute *Media and the Law - A handbook for community journalists* 2007, at 17.

<sup>7</sup> See the remarks of Brand AJ in *Le Roux v Dey (Freedom of Expression Institute & Restorative Justice Centre as Amici Curiae)* 2011 (3) SA 274 (CC) at para [86].

[11] It is clear that the presenter holds the view that learners at the BCVO schools are subjected to an apartheid mindset that regards Dr HF Verwoerd as a heroic figure, and dissenters as “communist”. More than 4 000 learners currently attend BCVO schools, which are to be found throughout the country. The BCVO has an examination body that is accredited and registered with government institutions, including Umalusi<sup>8</sup> which ensures that the level of assessment of learners are of a national standard and also ensures that the providers of education and training have the capacity to deliver and assess qualifications and learning programmes. We have no reason to doubt the evidence before us that the academic standard at BCVO schools is widely regarded as being very high. In fact, the news item that led to the comment by the presenter indicated that there was a matric pass rate of 95% in 2011. This result was confirmed by the Complainants.

[12] The Respondent was unable to show that the learners at the BCVO schools in any way fitted his description regarding academic standards. It is clear that the intention behind the presenter’s statement was to make the learners appear foolish and stupid in the light of the traditional values and philosophy underpinning the BCVO schools. Viewed from the perspective of satire, which was the defence of the Respondent, one could hardly regard the learners as being involved in some or other “vice, abuse or shortcoming” that should be held up to ridicule or contempt with the intention of shaming the learners into some kind of *improvement*. While many people might not agree with the underlying values of BCVO schools, that is not sufficient reason to make denigratory remarks about their learners. The learners are in legitimate schools, whose academic standards are safeguarded by Umalusi. It is, accordingly, inappropriate in this instance to attempt to justify the presenter’s utterances by means of a reference to satire. The broadcaster’s utterances amount to a slur that strikes at the very heart of standards adhered to by the schools. When one bears in mind the fact that learners at these schools are directly tainted by the slur regarding their schools’ academic standards, despite the fact that the learners had performed exceedingly well in the 2011 matric exams that were externally

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<sup>8</sup> Umalusi means “shepherd” in the Nguni languages. Umalusi is a Council established in terms of the General and Further Education and Training Act 58 of 2001.

moderated, the scales of justice tip in favour of the learners. In this balancing process,<sup>9</sup> special weight is also given to the fact that the rights of the learners – as children – are regarded as being of paramount importance in section 28 of the Constitution of the Republic.<sup>10</sup> This conclusion is also underscored by the approach of the Constitutional Court, which attributes special weight to the rights of minorities within our society.<sup>11</sup>

[13] A further question is whether the statement of the presenter should not simply be regarded as a joke. I believe that the following statement of Brand AJ in *Le Roux v Dey (Freedom of Expression Institute & Restorative Justice Centre as Amici Curiae)* 2011 (3) SA 274 (CC) answers this question adequately:

“[114] What I distil from all this is that in the present context, the question is not so much whether the attempt at a joke is objectively funny or not. Nor is it of any real consequence whether we regard the joke as unsavoury or whether we think that those who may laugh at it would be acting improperly. *The real question is whether the reasonable observer will — perhaps while laughing — understand the joke as belittling the plaintiff; as making the plaintiff look foolish and unworthy of respect; or as exposing the plaintiff to ridicule and contempt.* Everyday experience tells us that jokes are often intended to and are frequently more effective in destroying the image of those at whom they are aimed. If the joke then achieves that purpose, it is defamatory, even when it is hilariously funny to everyone, apart from the victim.”

[14] A final question is whether the Complainants are not too sensitive. Should they not, within the ordinary hurly-burly of everyday life, accept that the schools’ traditional

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<sup>9</sup> See note 5 above.

<sup>10</sup> Section 28(2) of the Constitution of the Republic provides as follows: “A Child’s best interests are of paramount importance in every matter concerning the child”. It should, of course, be borne in mind that in the balancing process of rights in the Bill of Rights, all rights, even the said children’s rights, lie at an equal level when the process of balancing commences – see *De Reuck v Director of Public Prosecutions and Others* 2004(1) SA 406(CC) at para [55].

<sup>11</sup> Compare *Christian Education South Africa v Minister of Education* 2000 (4) SA 757 (CC) and *Prince v President Cape Law Society, and Others* 2002 (2) SA 794 (CC) at par [112] where the majority states: “The fact that they are a very small group within the larger South African community [the Court was referring to members of the Rastafarian religion] is no reason to deprive them of the protection to which they are entitled under the Bill of Rights. On the contrary their vulnerability as a small and marginalised group means that the Bill of Rights has particular significance for them. The interest protected [in that case by s 15(1) and s 31 of the Constitution] is ‘not a statistical one dependent on a counter-balancing of numbers, but a qualitative one based on respect for diversity’.”

approach might be open to jest, which might also strike at the learners? In this regard, the minority approach of Ponnar AJA (as he then was) is relevant.<sup>12</sup> A Minister's claim that she had been defamed by the *Mail & Guardian* newspaper was rejected by the majority of the Supreme Court of Appeal. It concerned the low grade she had received for her performance during the year. She claimed that the newspaper had wrongly referred to her having appointed a friend to a Board in her department, while she had not, in fact, been the authority responsible for the appointment. Lewis JA (with whom Howie P agreed)<sup>13</sup> held that the newspaper had, in the circumstances, acted reasonably, despite the error. Ponnar AJA (as he then was), however, based his concurring conclusion on a different ground and reasoned as follows:

“[85] It is fair to say, that there was at that time a public perception created by the extensive reportage, long before the publication of the report card, that the Minister may indeed have been guilty of nepotism. Those allegations had repeatedly been made in the media amidst strident calls for a full, fair and proper inquiry into her role in the scandal. Not only did those calls go unanswered, but the Minister's evasive and contradictory responses did little to erode that perception. Properly understood, the words complained of were no more than a reference to the role she had played in the matter as revealed by the information already in the public domain. Views already shaped by the preceding avalanche of publicity would not have been altered by the report card. The report card was intended to be allusive rather than specific. It was evidently designed for entertainment rather than instruction. It sought to be irreverent rather than informative. So construed, although the matter is by no means free from doubt, the Minister was not disparaged by the words complained of..

The Minister has been too sensitive about the report card. She is in her own right a public figure who at the relevant time was entrusted with a key national portfolio. The true enquiry relates to the manner in which the report card would have been understood by those readers of it whose reactions are relevant to the action. In my view, it cannot be said that to those readers it bore a defamatory meaning. It follows that the report card was not defamatory of the Minister.”

The circumstances of the present matter, however, differ substantially from the political scenario sketched in the above matter. Whatever one might argue from a political or cultural perspective about the BCVO itself, the children's rights should be paramount. The slur, as broadcast, was directed at their academic prowess, and no reasonable ground could be found for this attack.

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<sup>12</sup> Cf *Mthembi-Mahanyele v Mail & Guardian Ltd* 2004 (6) SA 329 (SCA).

<sup>13</sup> Two Judges of Appeal voted in the minority and found that there had, indeed, been defamation.

[15] In the result the complaint is upheld and the Broadcaster is directed to broadcast the following statement during the first three minutes of its 07:00 newscast and one additional newscast, on or before 31 March 2012:

**“Die Uitsaaiklagtekommissie van Suid-Afrika het bevind dat Jacaranda 94.2 die Uitsaaikode verbreek het toe dit op 4 Januarie 2012 die standaard van die Matriek-eksamen in die Beweging vir Christelik-Volkseie Onderwys skole afgekraak het. Die eksamen, wat afgelê is met `n slaagsyfer van 95%, is amptelik goedgekeur en het voldoen aan die hoogste standaard. Dit was dus ongeregverdig om die draak met hulle matriekstandaarde te steek. Jacaranda bied sy opregte verskoning vir hierdie ongegronde belediging van die matrikulante aan.”<sup>14</sup>**



**PROF KOBUS VAN ROOYEN SC  
CHAIRPERSON**

*Commissioners Gilfillan, Mmusinyane and Harper concurred with the judgment of the Chairperson.*

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<sup>14</sup> “The Broadcasting Complaints Commission of South Africa found Jacaranda 94.2 in breach of the Broadcasting Code when, on 4 January 2012, it belittled the academic standards of BCVO matriculants. Their exam, which had a 95% pass rate, had met with official approval and complied with the highest national standards. Poking fun at the academic standards achieved by the learners was therefore unjust. Jacaranda sincerely apologises for the unjustified insult that was directed at the matriculants.”