



P.O.Box 412365 • Craighall • Tel (011) 326 3130 • Fax (011) 326 3198 • email: bccsa@nabsa.co.za
Block No 8 • Burnside Island Office Park • 410 Jan Smuts Avenue • Craighall Park • 2196 • www.bccsa.co.za

CASE NUMBER: 01/2017

DATE OF HEARING: 09 FEBRUARY 2017
JUDGMENT RELEASE DATE: 08 MARCH 2017

CRAIG BUSCH

COMPLAINANT

VS

M-NET

RESPONDENT

TRIBUNAL: **PROF HENNING VILJOEN (CHAIRPERSON)**
 ADV TUMI THLAKUNG
 DR LINDA VENTER
 MS NOKUBONGA FAKU
 DR ALLI CHICKTAY

FOR THE COMPLAINT: Attorneys: Mr Gerhard Botha and Mr R Katombe from Gerhard Botha Attorneys at Law and the Complainant: Mr Craig Busch.

FOR THE RESPONDENT: Dr Dario Milo: Partner of Webber Wentzel Attorneys accompanied by Mr Caleb Kipa: Candidate Attorney of Webber Wentzel Attorneys, Mr George Mazarakis: Executive Producer, Ms Joy Summers: Producer, Mr Wynand Grobler: Managing Editor of Carte Blanche.

Complaint about a broadcast by Carte Blanche in which the Complainant, a public figure and television personality was portrayed not to be the person he claimed to be, namely a lover of big cats and conservationist, but in fact a person who ill-treated his animals - complaint that the Broadcaster did not make reasonable efforts to fairly present opposing points of view and failed to provide Complainant with the opportunity to respond and failed to exercise exceptional care and consideration in matters that involved the dignity and privacy of the Complainant - Tribunal finding that the Broadcaster did make reasonable effort to fairly present Complainant's version of the facts and allow Complainant to reply - Tribunal finding that Complainant's refusal to appear on camera caused him to miss the opportunity to present his side of the case and he was the author of his own misfortune - Tribunal also finding that the Complainant's right to privacy and dignity, being that of a

public figure, was overridden by a legitimate public interest - no contravention of the Code was found - Busch vs M-Net, Case No: 01/2017(BCCSA).

SUMMARY

This is a complaint about a broadcast by Carte Blanche in which the Complainant, a public figure and television personality was portrayed not to be the person he claimed to be, namely a lover of big cats and conservationist, but in fact a person who ill-treated his animals. The Complainant alleged that the Broadcaster did not make reasonable efforts to fairly present opposing points of view and failed to provide him with the opportunity to respond to the allegations against him and that the Broadcaster also failed to exercise exceptional care and consideration in matters that involved the dignity and privacy of the Complainant. From the correspondence between the Broadcaster and the Complainant it appeared that the Complainant refused to appear on camera and this caused him to miss the opportunity to present his side of the case. He was thus the author of his own misfortune. The Tribunal found that the Broadcaster made reasonable effort to fairly present Complainant's version of the facts even though he refused to appear on camera. The Tribunal also found that the Complainant's right to privacy and dignity, being that of a public figure, was overridden by a legitimate public interest. No contravention of the Code was found.

JUDGMENT

HP VILJOEN

[1] On 24 July 2016 at approximately 20:00 M-Net (hereafter the Broadcaster) broadcast in their regular programme "Carte Blanche" an insert on Mr Craig Busch, the Complainant. Mr Busch lodged a complaint with the BCCSA. The gist of his complaints is that the Broadcaster failed to make reasonable efforts to present opposing points of view, that the Complainant was not given the opportunity to respond to allegations made against him and that the Broadcaster failed to exercise exceptional care and consideration in matters involving the privacy and dignity of the Complainant.

[2] At the start of the hearing the representative of the Complainant conceded that Mr Busch, also known as the "Lion Man", is a public figure. The Broadcaster is therefore

within its rights in airing this programme with the purpose to expose, in the public interest, the Complainant as a person who is not what he purports to be.

[3] **The complaint reads as follows:**

**“COMPLAINT AGAINST ELECTRONIC MEDIA NETWORK (PROPRIETARY) LIMITED
CARTE BLANCHE (COMBINED ARTISTIC PRODUCTIONS CC)**

COMPLAINANT: MR. C BUSCH

1. The above matter refers.
2. We act for Mr. Craig Bush ("our client"), on whose instructions we lodge this complaint.
3. The Electronic Media Network (Pty) Ltd (known as M-Net) ("herein after referred to as "the Respondent") aired an insert in its current affairs program "Carte Blanche" on Channel 101 on 24 July 2016 at approximately 20:00. This insert was produced by Combined Artistic Productions CC.
4. The insert question can be viewed at <http://carteblanche.dstv.com/player/1080594/>.
5. It is our submission that the Respondent has contravened The BCCSA's Code of Conduct for Subscription Broadcasting Service Licensees, and specifically clause 28.3.1 thereof, in that broadcasting the insert it failed to make reasonable efforts to fairly present opposing views considering that:
 - 5.1 The Respondent and or its agents failed to investigate and corroborate the claims raised by interviewees Fred Berrange, Francisco Garcia, Theo Potgieter, Marlene Potgieter and Steven Kelly, who were all once associated with our client or Jabula Big Cat Sanctuary, our client's park, which associations were subsequently ended at the behest of our client. The Respondent elected to present carefully edited versions of the interviews with the aim to induce the viewer to form an adverse opinion of our client based on incorrect facts. The Respondent and or its agents further failed to question the motivation of these individuals and present it (such motivation) to the viewer in order for the viewer to evaluate what weight to ascribe to each testimony. Had the producers of the insert provided further details on the interviewees to our client, they would have been informed under what circumstances these people's association was terminated.
 - 5.2 The Presenter and the edited intervention of Mr Thinus Rautenbach gave the impression of our client as a squatter on Mr Rautenbach's land and refuses to pay for it or to vacate. This is despite court documents being public documents and yet the broadcast failed to give context of the legal matters at issue in order for the viewers to form their own opinion on the *bona fides* of each parties' claim, as our client brought a counter claim against Mr Rautenbach. The court documents had been supplied to Carte Blanche in April 2016, although no consideration was given to such documents, including our client's counterclaim.
 - 5.3 The insert makes use of an anonymous eye-witness and the viewers were given an impression that it is this eye-witness who was recounting what he had observed. However, this anonymous witness' voice was not distorted to protect his identity as would be standard with a witness who does not want to be exposed for fear of reprisal. However, on closer examination one can deduce that it is actually a voice-over artist who is

reciting a scene and the viewer is not informed of this fact. The average viewer can easily be misled by this omission. Our client was never given an opportunity to challenge this allegation or this fictitious character.

6. It is further submitted that the Respondent also contravened 28.3.2 of the code in that it failed to provide our client with an opportunity to respond.
 - 6.1 In correspondence from our offices to the producers of "Carte Blanche" we requested further details on the allegations against our client in order for our client to grant and prepare for the interview sought by the producers. However, the producers failed to adhere to the reasonable requests of our client. In an email of 12 April 2016 reiterated such request and confirmed that our client was not asking for confirmation of the sources already interviewed and consulted regarding our client. However, the producers of the show sent correspondence on 13 April 2016 with general allegations with insufficient detail to enable our client to prepare a detailed and accurate response.
7. The producers failed to exercise exceptional care and consideration in matters involving the privacy and dignity of our client in contravened clause 28.4 of the code in that:
 - 7.1 The presenter informs the viewer at infancy of the insert that our client's move to South Africa was preceded by him having "lost his reputation". This assertion is not backed up by any facts and from the onset tarnishes our client's image and the selective nature of the editing of the interviewees that follows, confirms this narrative.
 - 7.2 The broadcast refers to the criminal record of our client and a document is presented on screen to insinuate that it is a copy of our client's official criminal record. Our client is a citizen of New Zealand and the criminal record of an individual cannot be accessed without his consent and can only be accessed by request made by state officials in South Africa investigating the commission of a crime. Our client has never been convicted of a crime where incarceration was a sentence and therefore according to New Zealand Law he has a "clean slate" and can answer to any question about his criminal history that he has no criminal record. This aspect of the insert was presented to the public to corroborate the narrative that our client is violent.
 - 7.3 Our client was visited by two representatives of Carte Blanche and they signed a disclaimer acknowledging that they will not take video footage of our client without his permission and prior arrangement. However, in contravention of such warranties he was secretly and without any consent filmed and the reaction of Thembi the white lion in the insert was, in retrospect, probably caused by these two representatives of Carte Blanche in order for the lion to be agitated to allow them to capture footage to fit their narrative. This footage was acquired in contravention of our client's right to privacy and dignity.
 - 7.4 Notwithstanding requests to receive information about the date of specific interviews conducted by Carte Blanche, as well as the supply of the unedited footage obtained illegally by the two representatives of Carte Blanche, the legal representatives of Carte Blanche confirmed that no such information shall be made available to our offices.
8. We attach hereto the following documentation in substantiation of our client's complaint:
 - a. Correspondence exchanged with the producers of the insert, Combined

Artistic Productions CC and our offices;

- b. Correspondence exchanged with the legal representatives of the Respondent and;
 - c. The indemnification form signed by the representatives of Combined Artistic Productions CC, and social media exchanges between our client and these individuals after their visit to our client.
9. Due to the insert being screened our client had already been inundated with negative comments regarding his alleged abusive actions towards animals and also individuals.
10. It will be appreciated if you can investigate the complaint and supply us with the proposed action to be taken against the Respondent and or its agents.
11. It will also be appreciated if you need any further information or clarification on any of the aforesaid aspects.
12. Kindly acknowledge receipt hereof.”

[4] The Broadcaster's representative lodged a comprehensive response which we are not going to repeat here as we will deal with the arguments which were presented to us. The Broadcaster's representative also lodged comprehensive heads of argument. The Complainant's representative indicated that he would like to lodge heads of argument after the hearing. However, after he was allowed to reply to the Broadcaster's response during the hearing, he indicated that he was satisfied that he has had sufficient opportunity to deal with the Broadcaster's arguments.

EVALUATION

The presentation of opposing points of view

[5] The first complaint is that the Broadcaster did not comply with the provision of clause 28.3.1 of the Subscription Broadcasting Licensees Code of Conduct. This clause reads as follows:

28.3.1 In presenting a programme in which controversial issues of public importance are discussed, a licensee must make reasonable efforts to fairly present opposing points of view either in the same programme or in a subsequent programme forming part of the same series of programmes presented within a reasonable period of time of the original broadcast and within substantially the same time slot.

The philosophy behind this clause is that sufficient opposing points of view on a matter be presented to viewers so that each one will be in a position to judge for him- or herself what the truth is. Without this clause, it would be possible for broadcasters to brainwash their audiences and to subject them to what amounts to propaganda.

[6] As stated in paragraph [2], it was conceded that the Complainant is a public figure. It was also not denied that the programme complained about touched upon a matter of public interest. The onus is thus on the Broadcaster to prove, on a balance of probabilities, that it made reasonable efforts to fairly present opposing points of view. We heard detailed argument, first by the Complainant's representative and in response thereto, by the Broadcaster's representative on the lack of efforts, and the reasonable efforts, respectively, made to present opposing views to the audience. In this type of investigative journalism programme for which Carte Blanche is well-known, the obvious strategy which is expected of the Broadcaster is to offer the opportunity to the person being investigated to appear on camera and to refute, if possible, any allegations made against him or her. In this instance, according to the Broadcaster, such offer was made to the Complainant, in fact on more than one occasion. The Complainant initially dismissed all the allegations against him as a "smear campaign". Later on, as correspondence developed between the legal representatives of the parties, it seems that the Complainant toned down his resistance to an interview. This is evident from a letter by his attorney to the Broadcaster, dated 12 April 2016, (p 006 of the Complainant's bundle of documents, hereafter Bundle "A") in which he stated that he is willing to grant an interview to the Broadcaster, but on condition that he be informed beforehand about the allegations against him and what information would be required from him.

[7] The following day, on 13 April 2016, the Broadcaster wrote to the Complainant's attorney (see p 057 of Bundle "A") setting out, succinctly we could add, the allegations against the Complainant. The Broadcaster starts its letter by stating that the thrust of the programme is that the Complainant's reputation as the "Lion Man" is not what it is made out to be. Then the Broadcaster continues with a list of allegations against the Complainant, including that he:

7.1 has been reckless with the safety of his lions,

7.2 has covered up a lion attack on one of his guests,

- 7.3 has put his lions at risk on international television shows,
- 7.4 has diverted funds meant for animals to his own purposes,
- 7.5 has been seen kicking and punching his animals,
- 7.6 has removed baby animals from their mothers,
- 7.7 has left it to his staff to find money to feed the animals, while he went away,
- 7.8 has used people and "milked" them for their money,
- 7.9 has exhibited violent behaviour towards women and has a criminal record in New Zealand to this effect,
- 7.10 does not own the land on which his sanctuary is situated.

The Broadcaster gave the Complainant until 20 April 2016 to grant the interview.

- [8] The next letter by the Complainant's attorney, dated 19 April 2016 (see p 059 of Bundle "A") effectively closed the door to any interview with the Broadcaster. The attorney states that he has received instructions from his client not to grant the requested interview " for the simple reason that the various allegations against him and Jabula Big Cat Sanctuary are simply unfounded". The letter nevertheless continues to deal with eight of the allegations set out in the Broadcaster's letter mentioned above. We are not going to discuss the Complainant's arguments because, apart from explaining his views on some of the allegations, the letter amounts to a general denial of the truth of all the allegations. It is thus clear from this letter that the Complainant was adamant in not granting an interview to the Broadcaster. He also refers to the attempt by one or more of the Broadcaster's sources "... to cause our client reputational harm." This seems to confirm the Complainant's first reaction to the programme, namely that it was all a smear campaign against him.
- [9] During argument before us, the representative of the Complainant, went to pains to explain why his client refused to appear on the programme. He argued that his client was not sufficiently informed beforehand of the exact nature of the intended questioning before the camera. On each of the allegations by the Broadcaster, mentioned in paragraph [7] above, the representative argued either that it was not true or that not sufficient detail was given for his client to respond to. This resulted in some hair splitting arguments, for instance that the welfare of the giraffe was not mentioned, that the Complainant was not informed that the rearing of baby leopards

will be discussed and that mention was made of the kicking of animals but not the dragging of the lions. In response to this argument, the Broadcaster's representative referred the Tribunal to our decision in the case of *City of Tshwane v M-Net*¹ where it was decided that there is no onus on a broadcaster in this type of case to reveal to a complainant the exact contents of a programme which it intends to broadcast. We think that the allegations against the Complainant, mentioned in paragraph [7] above, contained enough information to disclose the thrust of the programme. This should have elicited a response from the Complainant and failure to do so makes for a negative deduction against the Complainant.

- [10] Proof that the Broadcaster made reasonable efforts to get the Complainant to appear on camera to present an opposing point of view, is contained in a transcript of a telephone conversation between the Complainant and Mr Derek Watts who is part of the Broadcasting team (see p 179 of Bundle "A"). This is apart from the letter dated 13 April 2016 from the Broadcaster mentioned above. In the transcript, dated beginning of April 2016, Mr Watts says, inter alia,

Craig there are some serious allegations against you. Some by former colleagues, and we'd like to give you a right to reply.

The Complainant responded to this as follows:

Ah, yes, I have one reply, and it's a smear campaign.

Mr Watts' reply to this was

Can we talk to you about it next Monday the 11th?

Further on Mr Watts states

But Craig if you have this evidence and you seem to be quite confident in what you're saying, surely the best solution is an interview.

and

Okay, well we'd like to hear that story on camera.

The Complainant's reaction to this seems to imply that he was willing to appear on camera but, as stated in paragraph 8 above, the Complainant later instructed his attorney to inform the Broadcaster that he will not grant the interview (on camera).

¹ Case 06/2009

- [11] The only conclusion that we can arrive at, after we have considered all the evidence, is that the Broadcaster made reasonable efforts to fairly present opposing points of view. During the insert the Broadcaster went to pains to inform the viewers of the Complainant's side of the story as far as they could, based on the available evidence, for example (see "Final Script", p 090 of Bundle "A"):

Craig upsound

"Out of concern for wildlife and the almighty greed of mankind there is a calling within me to come to Africa and be part of Africa."

Up sound Craig and giraffe

"OK watch Zenda, this is how you do it I know."

Up sound Craig with giraffe

"Normally you have to dart these guys, but I managed to catch her. We are going to save ya, the jackals are not going to get you."

Craig Busch

"We just pulled these boys off just yesterday - four lovely boys (referring to lion cubs). Now I pulled them off the mother. Cubs do better if you hand raise them in captivity."

Derek

"We have got other allegations that you have treated your lions badly, that you have beaten up women."

Craig

"I don't do that. I love my cats OK. I don't do that at all, and I am sick of smear campaigns."

Commentary twenty four

In a legal letter to Carte Blanche Craig says he would never abuse his animals as that would jeopardise his own safety. He denies that he would place any of his animals under his care at risk, or that any funds received and earmarked for the animals had been misappropriated.

- [12] Taking this evidence into consideration, we are convinced that the Broadcaster made reasonable efforts to fairly present opposing points of view. From the evidence that was available to the Broadcaster and which was inserted in the programme, it is clear that the Complainant eventually had no intention to appear on camera to refute the allegations against him and the best he could do was to deny all the allegations. The downside to this, seen from the viewpoint of the Complainant, is that he missed the opportunity to explain away some or all of the allegations levelled against him and his

operation on the farm. It was then left to the Broadcaster to decide which evidence to show to the viewers and which to leave out. Should the Complainant not be satisfied with what was broadcast, as he obviously was not, he is solely to blame for his misfortune.

[13] The Complainant (or his attorney) gave another interpretation to clause 28.3.1. The attorney gave no explanation for the failure of the Complainant to appear on television, save to state that he received instructions from his client not to grant the interview because the allegations are "simply unfounded" (see paragraph 2 of the attorney's letter dated 19 April 2016 - p 059 of Bundle "A"). According to the attorney's letter dated 2 August 2016 (see p 001 of Bundle "A") clause 28.3.1 was not complied with by the Broadcaster because:

13.1 the Broadcaster failed to investigate and corroborate the claims raised by five of the interviewees;

13.2 the interview with Mr Thinus Rautenbach created the impression that the Complainant was a squatter on Mr Rautenbach's land and refused to pay for it or to vacate the land; and

13.3 the average viewer would be misled by a voice-over artist who recounted what he allegedly saw.

[14] The Broadcaster's representative dealt with each of these grounds. He referred to the twelve sources (people) whom the Broadcaster interviewed before the broadcast and showed that there was a reasonable belief in the truth of what they consistently claimed because they were independent, they had first-hand experience of the Complainant and there was no reason to doubt the truth of what they said. We accept this.

[15] A big issue was made about the Complainant's dispute with Mr Rautenbach, the person from whom the Complainant bought the farm. A large part of the bundle of documents submitted by the Complainant consists of documents setting out the legal battle between the Complainant and Mr Rautenbach relating to the claim for payment of the farm and a counterclaim by the Complainant and the question of the eviction of the Complainant from the farm. Although we cannot prescribe to the Broadcaster what to include and what to exclude in a programme of this nature, we do not consider

this as such an important legal argument, considering that the purpose of the programme was, as stated in paragraph 1.2 of the Broadcaster's heads of argument: "... there were allegations that Mr Busch claiming to be a lover of big cats/wild animals and a conservationist, he was in fact a person who ill-treated his animals and who uses them to advance his fame and business." Of course, the animals were kept on the farm and the legal battle relating to the farm was part of the Broadcaster's strategy to give the viewers insight into the character of the Complainant. The way in which the Broadcaster presented all this to the viewers, namely that Mr Rautenbach "alleges" and Mr Rautenbach "says", calls for an answer from the Complainant - an answer that was never given because he refused to appear on television. We accept that the Broadcaster had no reason to doubt the truthfulness of Mr Rautenbach's version of events and that the Broadcaster was reasonable in the manner in which it handled this controversial issue.

[16] Likewise, a big issue was made about the Complainant's application for an order in terms of the Protection from Harassment Act against one of the interviewees, Mr Steven Kelly. A large part of the Complainant's bundle of documents was also devoted to this legal battle. The Broadcaster's representative also argued that they had no reason to doubt the truth of what this interviewee had to say about the Complainant. We do not want to make a finding on the truthfulness of this interviewee, especially in the light of the unsavoury nature of the exchange of messages between this person and the Complainant. Even if what he says is not the truth, there is overwhelming evidence submitted by the other interviewees relating to the character of the Complainant and this brings us to the point that the Complainant had a case to answer. He, however, let the opportunity go by.

[17] As for the ground mentioned in paragraph 13.3 above, the Broadcaster's defence is that the use of a voice over artist to disguise the identity of a confidential source is a standard broadcasting technique. We accept this and find that this is not a valid legal complaint against the broadcast.

In conclusion, we find that the Broadcaster did not contravene clause 28.3.1 of the Code.

The right to reply

[18] The second complaint is based on clause 28.3.2 of the same Code. It reads:

28.3.2 A person whose views are to be criticised in a broadcasting programme on a controversial issue of public importance must be given a right to reply to such criticism on the same programme. If this is impracticable, however, an opportunity for response to the programme should be provided where appropriate, for example in a right to reply programme or in a pre-arranged discussion programme with the prior consent of the person concerned.

We are having problems with the legal basis for this complaint. It is probably the result of an incorrect interpretation by the Complainant of the applicability of clause 28.3.2. We are not dealing here with a case where the views of a person (the Complainant) are to be criticised. The Carte Blanche programme was one in which controversial issues of public importance were to be discussed and the duty was on the Broadcaster to make reasonable efforts to fairly present opposing points of view (clause 28.3.1). We have dealt above with the complaint based on that clause and found that there was no contravention.

[19] Clause 28.3.2 corresponds with clause 13(2) of the Free-to-Air Code of Conduct. For an example of how we have applied clause 13(2) in the past we refer to the case of *Kwele v SABC Radio (Motswedding FM)*² where in a news item it was reported that the complainant in that case was dismissed from his work after a disciplinary hearing. The complainant was of the view that the news item contained inaccuracies about him and complained to the broadcaster. The broadcaster granted him a right of reply within a reasonable time in a follow-up programme. The complainant failed to adequately respond to the news item and the Tribunal held that such failure could not be remedied by the BCCSA. It was held that the broadcaster did not contravene the Code.

[20] The complaint by the Complainant in terms of clause 28.3.2 covers much the same ground as his complaint in terms of clause 28.3.1 and one gets the impression that he

² BCCSA Case no. 03/2002

is trying to get a second bite at the cherry, as it were. Although clauses 28.3.1 and 28.3.2 deal with the same principle of fairness to a person whose reputation may be damaged or whose dignity may be impaired by what is about to be broadcast or what has been broadcast, we think there is a subtle difference between the two clauses. To distinguish the one from the other we have to consider the wording. Clause 28.3.1 refers to "... fairly present opposing points of view ..." while clause 28.3.2 refers to "... the right to reply ..." of a person whose views are criticised in a broadcast. We think that the type of investigative journalism programme that we are dealing with here is best regulated by clause 28.3.1. This is the type of programme where certain allegations, that should be based on facts, are presented to the listeners/viewers and it is then left to the listeners/viewers to decide who is right and who is wrong. The situation envisaged by clause 28.3.2 is where, during a discussion, someone or his or her views are criticised and then the broadcaster must ensure that the person being criticised is given the right to reply. It is significant that the clause refers to a "right to reply programme" which suggests that the situation occurs where the criticised person is not present in the first programme. Although clause 28.3.1 also refers to a "subsequent programme" we think that in this instance the Broadcaster made more than a reasonable effort to get the Complainant on to the programme, so that the Complainant cannot demand that a subsequent programme be arranged for him.

- [21] We would like to make it clear that we do not want to limit the scope of clause 28.3.2. Even if we are wrong in finding that the Complainant gave a wrong interpretation to clause 28.3.2, the fact remains that the Complainant did not accept the invitation to appear before the cameras and thereby lost the opportunity to present an opposing point of view or, if you like, to reply to the allegations. Whichever clause he bases his complaint on, his failure to accept the invitation cannot be remedied by the BCCSA and, like in the *Kwele* case, we find that the Broadcaster did not contravene any of the two clauses.

The dignity and privacy of the Complainant

- [22] The third ground for the complaint is that the Broadcaster contravened clause 28.4 of the Code which reads:

Insofar as both news and comment are concerned, broadcasting licensees must exercise exceptional care and consideration in matters involving the private lives, private concerns and dignity of individuals, bearing in mind that the rights to privacy and dignity may be overridden by a legitimate public interest.

The Complainant then mentions certain matters involving his privacy and dignity. At the outset we must state that some of the matters mentioned by him clearly do not fall under this clause.

[23] The first matter is that the presenter, at the beginning of the programme, refers to a legal battle in New Zealand between the Complainant and his mother which the Complainant lost. Not only did he lose the legal battle but, in the words of the presenter he "... *lost the park, lost the cats and in some quarters had lost his reputation as the lion man ...?* The presenter does not state in which quarters he had lost his reputation but it seems to be a reasonable deduction to be made. As he had no infrastructure in New Zealand anymore to pose as the "Lion Man", it seems reasonable to assume that, at least in New Zealand, he had lost his reputation. We cannot agree with the Complainant that the assertion is not backed up by any facts.

[24] The second matter relates to the disclosure that the Complainant has a criminal record in New Zealand. Despite his objection that this information was disclosed in the programme, and thus his privacy and dignity were intruded upon, the Broadcaster referred the Tribunal to correspondence between the Broadcaster and the Complainant's attorney wherein last mentioned did not deny that his client had been involved in a criminal matter in New Zealand and confirmed that he was ordered to pay a fine, which he did. We were also informed that some online articles made reference to the complainant's conviction (not that one can believe everything you read on the Internet), as well as in the Complainant's Wikipedia profile. The Complainant's argument that he was not incarcerated in New Zealand and that he therefore had a "clean slate", according to the laws of that country, does not detract from the fact that such information may be published in this country because the New Zealand law which prohibits such publication does not apply here. We do not find any contravention here.

[25] The third matter on which the Complainant relies, is that the undercover Carte Blanche researchers breached the disclaimer which they had signed, by capturing the agitated reaction of Thembi, the white lion, on film footage "to fit their narrative" and thus, presumably, impaired the dignity of the Complainant. The breach of the disclaimer is not something that falls within the jurisdiction of the BCCSA and we cannot express an opinion on the matter. It is also not uncommon for investigative journalists to surreptitiously obtain camera footage of the subject of their investigation. We can find no impairment of the dignity of the Complainant in the way in which the footage was obtained.

[26] The fourth matter refers to the refusal by the Broadcaster to supply dates of interviews and unedited footage to the Complainant. This, in our view, has nothing to do with the dignity of the Complainant and we cannot accept this argument. Even if any of the arguments mentioned above convinced us that the dignity and privacy of the Complainant had been impaired by the Broadcaster, clause 28.4 of the Code continues to state that the rights to dignity and privacy of the individual may be overridden by a legitimate public interest. In this regard we have stated above that the Complainant is a public figure and there is a legitimate public interest in the way in which he treats his animals. We therefore find that the Broadcaster has not contravened clause 28.4 of the Code.

Legal authority relied upon by the Complainant

[27] The Complainant's representative relied on a previous case of this Tribunal³ and argued that because, according to him, the facts are similar, we should apply that decision in this instance. In that case the Tribunal found that the Broadcaster in the Carte Blanche programme failed to inform the viewers that it was in possession of a legal opinion of senior counsel that would have put quite another perspective on the case as presented by Carte Blanche. The Broadcaster also admitted to a substantial error in this case. The facts do not seem to correspond at all and that case should therefore be distinguished from the present one. We do not think that case is relevant.

³ *Neil Diamond, Justine Diamond & Casino Retail (Pty) Ltd v Electronic Media Network (Pty) Ltd*, case 17/2014

[28] Another case which the Complainant wants us to apply, is the case of *Isimangaliso Wetland Park Authority v Electronic Media Network (Pty) Ltd*⁴. In that case the broadcaster was found to have contravened the Code because of, *inter alia*, lack of integrity and reliability of the evidence and failure to afford a right of reply, an omission to properly research the facts and the failure to include replies where these should have been included. As should hopefully be clear from what has been said above, none of these grounds are present in this case and that case is also not applicable.

In the result we find that the Broadcaster has not contravened any of the clauses of the Code relied upon by the Complainant and the complaint is thus not upheld.



**HP VILJOEN
CHAIRPERSON**

Commissioners Fakude, Thlakung, Venter and Chicktay concurred with the judgment of the Chairperson.

⁴ Case 2/2016