



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: 27/2017

DATE OF HEARING: 29 NOVEMBER 2017
JUDGMENT RELEASE DATE: 15 DECEMBER 2017

SWANEPOEL

COMPLAINANT

vs

JACARANDA FM

RESPONDENT

TRIBUNAL: **PROF HP VILJOEN (CHAIRPERSON)**
 ADV B TLHAKUNG
 MR R KHARIDZHA
 DR L VENTER

For the Complainant: The Complainant did not attend.

For the Respondent: Mr Gavin Meiring

The complaint that an explicit book extract was read outside the watershed period without prior notification. Swanepoel vs Jacaranda FM, Case No: 27/2017(BCCSA)

SUMMARY

A complaint was received after a book extract containing explicit content was read outside the regulated watershed period by Rian van Heerden on Jacaranda FM. The station's targeted audience at all times and particularly at the airing of the Scenic Drive are mainly adults. This is an extenuating factor. Provisions of Clause 6(1) and (11) read with Clause 12(1) and (2) of the Broadcasting Code are thus not infringed.

JUDGMENT

B TLHAKUNG

[1] The Registrar received a complaint concerning a broadcast on Jacaranda FM 94.2 broadcast on the 21st of September 2017, and aired between 18h00 and 19h00.

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

“Please see details in regards with a complaint that I have against Jacaranda FM

Show: Scenic Drive with Rian on Jacaranda FM

Date: 21st of September 2017 Between 18h00 and 19h00

Complaint: Did not notify users that there is going to be explicit content. There was an extract from a book that was read on air where it is explained in detail how a boy is raped. My two children was in my car and heard it because I was not notified in advance of it and I am not very happy. They must realise that there is small children in vehicles with their parents at time of the evening.”

[3] **The Broadcaster responded as follows:**

BCCSA Complaint – Pieter Swanepoel 21st September 2017

In Response to the complaint from Mr Swanepoel it needs to be understood from the outset that Jacaranda FM did not broadcast this content with the intent to provide gratuitous content of a sexual nature for the purpose of sensation but rather as a way of exposing this sort of atrocity that exist in South Africa on a daily basis.

The context of the broadcast was around a direct excerpt from a book ‘Noem my Skollie’ written by an ex convict and Cape Flats gangster John Fredericks and dramatized in the Film Skollie released last year. Fredricks was interviewed by Rian Van Heerden on the Scenic Drive show which aims to tell people's stories and to educate listeners about various matters - some light hearted, others serious. This show is known for thought provoking discussions broadcast everyday between 18h00 and 19h00.

The quote read by Van Heerden, reflects the harsh reality of life on the Cape Flats and is unfortunately not something that can be sugar-coated. It refers to an incident that happened to the author and was read with the intent to contextualize the interview that was to follow. The intention of the interview was to expose and highlight an unfortunate reality that few are willing to share. This was a rare opportunity to inform listeners about this reality and daily danger to South African children. Because of the topics inherent explicit nature, it was scheduled at 18h20, long after the scheduled threshold period when there would likely be children listening.

Jacaranda FM feels that this complaint should be dismissed for the following reasons:

1. In terms of clause 6(1) “Broadcasting service licensees must not broadcast material which is harmful or disturbing to children at times when a large number of children

are likely to be part of the audience.” The broadcast time was not at a time when there would be large number of children listening. It also needs to be noted that Jacaranda FM does not target children at all appealing to a target audience of 25 – 49.

Response: *I agree that there should not be a huge amount of children listening, but I still feel that the broadcaster could have given a warning as to the sensitivity of the content (same as with television broadcasts where they inform you that it could be sensitive to viewers e.g Carte Blanch which is broadcast after 19h00 on a Sunday evening). Also we do not live in the old age’s where mom is at home (where she is able to collect the children from school at 14:00) and dad works. We live in society where mom and dad works and they only collect the children from daycare / aftercare at 17h00 and 19h00. “The broadcast time was not at a time when there would be large number of children listening”, So it is ok if one or two children listens to the content as long as there is not a huge amount of children listening at the same time. Once again they could have given a warning and asked parents to move to another station as there is content of a sensitive nature going to be read on air.*

2. In terms of clause 6(11) “No excessively or grossly offensive language should be used before the watershed period on television or at times when a large number of children are likely to be part of the audience on television or radio.” In the broadcast there was no use of any excessive or grossly offensive language. The use of the word penis was necessary in the context of the story and other more offensive words relating to the same thing were not used. Furthermore, buttocks was used in the same context which is the more medical term of reference indicating that the idea behind the content was not to shock for gratuitous reasons but rather to describe the despicable act.

Response: *Agreed, but keep in mind a five year old understands what a “Penis” and a “Buttocks” is and how do you explain to a child why would you put a “Penis” into a “Buttocks”.*

3. The time of the broadcast was at 18h20. Even if there were to have been content that would not have been appropriate for children, this time does not fall within the watershed period of between 14h00 and 16h00 when it would be likely that children might have been picked up from School in the afternoons. Jacaranda FM consistently applies these self imposed rules on threshold periods (07h00 to 08h00 and 14h00 to 16h00) where adult related content is normally avoided.

Response: *I agree that there should not be a huge amount of children listening, but I still feel that the broadcaster could have given a warning as to the sensitivity of the content (same as with television broadcasts where they inform you that it could be sensitive to viewers). Also we do not live in the old age’s where mom is at home (where she is able to collect the children from school at 14:00) and dad works. We live in society where mom and dad works and they only collect the children from daycare / aftercare at 18h00 – 19h00. “The broadcast time was not at a time when there would be large number of children listening”, So it is ok if one or two children listens to the content as long as there is not a huge amount of children listening at the same time. Once again they could have given a warning and asked parents to move to another station as there is content of a sensitive nature going to be read on air.*

4. The BCCSA code clause 12(1) makes specific reference to matters of public interest – “Broadcasting service licensees are entitled to broadcast comment on and criticism of any actions or events of public importance.” Child molestation and rape of children clearly is of public importance and Jacaranda FM has taken the view to expose it in

a way that would be hard hitting but effective through the experience of an actual victim.

Response: *Agreed, that it is a huge problem. But it is still not a topic that I want my 2 and 5 year old to hear especially if it is not coming from me. I still feel that they could as a courtesy gave us a warning that they are going to broadcast explicit content*

5. Clause 12 (2) further states – “Comment must be an honest expression of opinion and must be presented in such manner that it appears clearly to be comment, and must be made on facts truly stated or fairly indicated and referred to.” Jacaranda FM has taken factual information as written by the victim in the book ‘Noem my Skollie’ and as such did not sensationalize the comment.
6. We have to protect our children. They need to be made aware that there are sexual predators out there. This theme unfortunately can no longer be swept under the carpet and Jacaranda FM felt it has an obligation to create conversation around this in a show that is known for its debate and discussions about topics we don't necessarily like, but need to have.

Based on the above Jacaranda FM would recommend that the BCCSA dismiss this complaint with no Tribunal.

EVALUATION

- [4] The Tribunal listened to the insert in question. The Complainant is of the view that Rian van Heerden, the presenter of the Scenic Drive, should have given a prior notification or warning to the listeners that an explicit book extract was going to be read out. The complaint must therefore be evaluated within the context whether the broadcasting of this explicit nature contravened the Broadcasting Code of Conduct when broadcasted around 18:20. In this matter the applicable clauses are 6(1) and (11); clause 7, all read with clauses 12(1) and (2) respectively.
- [5] Clause 6 (1) and (11) of the Broadcasting Code concern the broadcasting of material likely to be inappropriate for children outside the watershed period. Thus we are going to evaluate whether the extract in question fits the latter inappropriateness.
- [6] At all times, the Broadcasting Complaints Commission is tasked with the objective to protect the interest of children; hence, when evaluating the content complained of, the Commission need to balance the latter protection with the

clauses 12(1) and (2) which allows for the discussions of public interest. Where there is an honest expression of opinion in a reasonable manner versus the timing of the broadcast, then an acceptable balance would have been reached.

- [7] From listening to the interview clip, it is apparent, firstly, that the extract had to be read, not only as a preface to the interview, but rather as a substantive part of the interview, in addressing a sensitive topic of child molestation. The question is whether the broadcast contained inappropriate content as alluded to by the Complainant; and would thus constitute harmful material to children. However, clause 6 expects of us to go a step further and weigh in whether it is possible that a large number of children could have possibly been part of the audience. Given the fact that Jacaranda FM targets a mature audience, the latter fact justifies that the introduction was made without providing for any prior cautionary statement to the listeners to assist with the choice to either continue listening or not; particularly those who might have been in the company of children as was the case in this matter.
- [8] Clause 1 of the Broadcasting Code defines watershed as the period falling between 21h00 and 5h00; thus creating the obligation on broadcasters to exercise caution when broadcasting material which might contain an element of inappropriateness. It must be reiterated that Jacaranda FM targets an adult audience between the ages of 25 – 49; and while the Scenic Drive airs between 18h00 and 19h00, thus outside the regulated watershed period, from their general daily practice of discussing sensitive topics, it is unlikely that any cautionary statements need to have been communicated.
- [9] In South Africa, a large number of children are at home around 18h00, finishing off their homework or are busy with dinner preparations, as everyone wants to go to bed early for the next day. This statement however does not question that, at times, children might still be in the car with their parents and accordingly listen to adult programmes by default; as was the case in this matter. In fact, it reiterates

the point that around the stipulated time it is possible that not a large number of children are likely to be part of the audience when harmful material broadcasted by an adult radio station is aired.

[10] It is, however, important that all the broadcasters share a common understanding of the watershed period to mean the period between 21h00 and 5h00 as set out in Clause 1 of the Code; and to consistently apply it as such. While there is a need to keep the balance between the entitlement and right to broadcast topics of public interest versus the obligation to protect children from harmful material; the common understanding of the watershed period remains vital in assisting with this much needed balance.

[11] In this matter, even though this important topic was discussed outside the watershed period, the fact that Jacaranda FM's target audience is mainly adults, exonerates them from wrongdoing. The highlighted extract was a substantive part of the discussion, and had to be read as such. There was neither repetition nor over-emphasis of the molestation process; the reading of the extract remained a preamble that was meant to be for the audience.

We therefore find that there was no infringement of the Code and the complaint is not upheld.

**ADV B TLHAKUNG
BCCSA COMMISSIONER**

Chairperson Viljoen and Commissioners Kharidzha and Venter concurred in the above judgment of the Chairperson.