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CASE NUMBER: 10/2018

DATE OF HEARING: 16 MAY 2018

JUDGMENT RELEASE DATE: 20 JUNE 2018

CHURR

COMPLAINANT

vs

eNCA

RESPONDENT

**TRIBUNAL: PROF SUNETTE LÖTTER (DEPUTY CHAIRPERSON)
MS NOKUBONGA FAKUDE
ADV BOITUMELO TLHAKUNG**

FOR THE COMPLAINANT: The Complainant in person.

FOR THE RESPONDENT: Mr Ndivhuho Norman Munzhelele, General Head: Regulatory and Strategy accompanied by Mr Morapedi Pilane, assistant Compliance Officer.

Clauses 28.1.1, 28.1.3 and 28.2 of the Code of Conduct for Subscription Broadcasting Service Licensees. Clauses not infringed - statements were not news but comments that were an honest expression of opinion and clearly presented and indicated as comment. Churr vs eNCA, Case No: 10/2018 (BCCSA)

SUMMARY

The complainant complained about a news feature that was broadcast on eNCA channel following a report during a news programme about a mass shooting in the USA. The complainant was of the opinion that the interview constituted news and therefore subject

to the provisions of Clause 28.1 of the Code of Conduct for Subscription Broadcasting Licensees. The interview was conducted with the Director of Gun Free South Africa. The interview did not constitute news and therefore Clause 28.1 is not applicable. Clause 28.2 was applicable but not contravened as the statements complained of were clearly comments that were honest expressions of opinion and clearly presented and indicated as comment.

JUDGMENT

S LÖTTER

[1] The Registrar of the BCCSA received a complaint regarding an interview that was conducted with Adele Kirsten, Director of Gun Free South Africa, that was broadcast on eNCA on 23 February 2018 at 07h40 during a news programme.

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

“SAY NO TO FAKE RESEARCHERS AND FAKE NEWS.

eNCA News; seven minute news interview broadcast 23 February 2018 @ 07h40 to 07h47 refers.

**eNCA News; 7 minute broadcast with Adele Kirsten Director of Gun Free South Africa
One sided news of National and International importance.
Pay to view DSTV channel 403**

Clause 28. News and comments on matters of public importance

28.1.1 Licensees must report news truthfully, accurately and fairly

28.1.2 News must be presented in the correct context and in a fair manner, without intentional or negligent departure from the facts, whether by.....

28.1.3 Only that which may reasonably be true, having due regard to the source of the news, may be presented as fact, and such fact must be broadcast fairly with due regard to context and importance. If a report is not based on fact or is founded on opinion, supposition, rumours or allegations, it must be presented in such manner as to indicate clearly that such is the case.

28.1.5 If it subsequently appears that a broadcast report was incorrect in a material respect, it must be immediately rectified and without reservation. The rectification must be presented with such a degree of prominence and timing as in the circumstances may be adequate and fair so as to readily attract attention.

COMPLAINT:

eNCA News interview with Adele Kirsten- Director of Gun Free South Africa refers. During the above news / interview broadcast, which was one sided and contained many inaccurate as well as misleading statements by Adele Kirsten. It is accepted that the eNCA news broadcaster, and many of the eNCA viewers, are not aware that there are two sides to the firearms debate.

The content of the “news interview” was done in a form of an “interview” where only supporting questions were asked. Many statements made during the news interview was **misleading, false and incorrect**.

As the eNCA news reporter cannot know beforehand what the person being interviewed will say during the interview, only clauses 28.1.2 and 28.1.5 would apply in this instance. Although a case may be made for using clause 28.1.1 "fairly" as well:

As it is a matter of National and International interest, it is deemed important that eNCA attention is drawn to all the errors and misleading statements made by Adele Kirsten the Director of Gun Free South Africa during the eNCA news interview. The BCCSA ruling on this complaint will alert news stations to take note of the source of the news as contemplated in point 28.1.3. For this reason clause 28.1.3 cannot be used in this instance as the reliability of the source of the news must first be established, and recorded.

Once eNCA is made aware of all the errors, then clause 28.1.3 can be used for future news reports dealing with firearm related interviews and reports. There are a number of upcoming events in the future such as the Constitutional Court ruling and the announcement of the Firearm Amnesty. Proposed changes to the Firearms Control ACT 2000. News worthy events that will no doubt afford both Gun Free South Africa as well as those that have opposing views to be aired.

That is if the eNca news station wants to report, in a balanced and fair manner, news relating to Firearms.

This matter has national and international importance as Adele Kirsten – Director of Gun Free South Africa - is a well-known advocate for removing firearms, locally as well as internationally. Adele Kirsten has been commentating on Television, newspapers, radio shows, magazines, press releases, so her credentials are not questioned. However, as she has made many factual errors, her actual knowledge on laws, firearms and the research that she refers to, is very questionable.

This complaint is not done to enable eNCA to retract a news interview, where Adele Kirsten made many propaganda statements, which had many factual mistakes. The full broadcast will be analyzed and incorrect statements will be highlighted. Some items may be seen as a difference of "logic" or matter of experience and knowledge. Therefore the full interview will be recounted so that matters are not taken out of context.

The desired result of this objection is to inform eNCA that they should take due regard of the Source of the anti guns "news opinions". Which objection is supported by showing all the actual factual errors made by Adele Kirsten – Director of Gun Free South Africa. The second reason for this objection is to inform eNCA that to have a balanced and fair news reporting, eNCA should also allow pro-firearm groups a platform as well.

This balance can be achieved in two ways.

The first would be to allow a pro-firearm person to speak to matters such as the American school shooting, the laws in the USA and South Africa. And also to speak on the proposed firearm amnesty to be announced soon.

The second way for eNCA to achieve a balance is to have a debate where some of the differences of opinions, and factual errors can be debated. eNCA has many debate platforms and I am sure that Adele Kirsten - Director of Gun Free South Africa, would welcome an opportunity to debate many of the points raised in this objection.

An apology stating that there was a news interview, with many incorrect claims will not be a balanced correction of misleading statements. That will be news about news. It is requested that to correct this news, an opportunity is granted to expose the benefits of firearm ownership.

The eNCA news interview 23 February 2018 at 07h40.

The main thrust of the complaint will rely on clause 28.1.5. Recounting factually incorrect and misleading statements made by Adele Kirsten in a seven minute eNCA news broadcast/interview.

References to the statements will show incorrect and misleading statements made.

It will for instance be shown that USA suicides is NOT one of the highest in the world as was claimed during the news interview. The USA does not even make the list of top 25 in the world. Thus it is a fallacy to infer that the high rate of firearm ownership in the USA leads to high rates of suicides in the USA. Some countries such as Japan (at number 18) has no suicides by firearms. The World Health Organization (WHO) list of the top 25 suicide risk countries show that hanging, poisoning and jumping are the most common methods used when committing suicide. The things that are most common as the cause of suicide are unemployment, despair and harsh living conditions and social pressures. It is obvious that to call for the banning of ropes, chairs and poison will not stop suicides. And firearms are not the method used, or the cause of suicides in any of the top 25 nations listed by the WHO. **Neither are firearms the most common method used for suicide in any of the top 25 countries.**

Ropes, chairs and jumping are stated as leading methods used for suicides. The causes and reasons associated with high rates of suicide, requires a far more balanced approach and news reporting. It is unacceptable that gun ownership is to blame for high rates of suicide. Especially as the country singled out in the news interview, the USA with high firearm ownership, is not even in the top 25 countries in the world when analyzing suicide rates.

28.1.1 Licensees must report news truthfully, accurately and fairly...

28.1.3 Only that which may reasonably be true, having due regard to the source of the news,

The news media is mandated and required to present news in **a fair and balanced and responsible and factually correct manner.** It is therefore incorrect for any person to "**blame the gun**" for suicides.

The **benefits of firearm ownership** should also be **mentioned in a balanced and fair manner.** For example, it is never mentioned that firearms are also used for sport. Or **that firearms can save lives.** It is agreed that firearm ownership has associated risks to be managed. The same can be said of car ownership. And the ownership of ropes, chairs, poison, alcohol and cars also have high risks to be managed as far as suicides are concerned."

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

"Complaints Re: Enca interview with Kirsten Ms. Adele Kirsten

This letter is a response to a complaint by Mr Ludig Churr about the broadcast of the interview on eNCA on February 23 2018 at 07h40 and 07h47 respectively. According to the complainant the comments made on eNCA were false and misleading.

The Complaint

Essentially the complainant disputes the comments made during the interview by Ms. Kirsten, the director from Gun Free South Africa during about gun control. Kirsten drew comparisons between South Africa and USA and made some of the following notable observations.

- USA experience high suicide rate and also have massacres and interpersonal crimes and this is attributed to easy access to automatic firearms, whereas South Africa has strict gun laws with limited guns.

- Controlling legal stock of firearms is the best way to reduce gun related crimes because too many legal guns get lost.
- About 18 to 20 guns get lost a day in South Africa
- 2 to 5 Police firearm get stolen a day and some of this loss is due to corruption.
- Poor enforcement of gun laws but the proposed national firearm amnesty will remove illegal firearms.

The above in part gave rise to this complaint.

At the outset, we submit that eNCAB by all account this was an honest expression of opinion which viewers are free to either support or reject. It is worth noting that the views and opinions expressed by the interviewees do not necessarily represent the position of eNCA.

The factual errors the complainant suggests Ms. Kirsten made, as he concedes, are mostly matters of contention in the political and highly polarized debate on private gun ownership. eNCA respectfully submit that it gave a fair and balanced coverage in its attempt to examine how a mass shooting in United States could be of interest to South Africa. This particular interview follows general news coverage on mass shooting itself, using visual material and information sourced from international news agencies.

The Context

It is our submission that when dealing with this complaint due regard has to be given to the nature and format of the story in that this was not a typical current affairs programme. Current affairs programme have depth and time in that it offers opportunities for various analysts and commentators with opposing views on the subject matter to have discussion at the same time. Whilst it is ideal to have opposing sides for the discussion this is often difficult to achieve due to time allocations. The interview was done as part of news package and therefore given the way news are prepared it would not have done justice to the viewers if so many experts were invited for such a short timeslot.

The guest

Essentially the story was about stricter gun control in South Africa in a wake of mass shootings in the USA. Ms. Kirsten was identified as a guest and, her affiliation with Gun Free South Africa was considered. Gun Free South Africa is a well-known advocacy of strict gun control and thus it was best placed and a credible organization to discuss the subject. As a broadcaster, we are entitled to decide on the purview, scope and extent of the subject matter. However, no broadcaster can succumb to the demands for airtime by interest groups who take exception to the coverage of an issue. eNCA take note of the suggestions made by the complainant and we shall certainly bear this in mind should we wish to have a timely, newsworthy debate on gun issues in South Africa in future.

The Code

Bearing in mind the relevant provisions of the Code, the expert opinion expressed during the interview amounted to fair comment and a protected speech. The Code permits us to broadcast comment on any criticism of actions or events of public importance. Again, viewers are at liberty to either accept or reject such comments or criticisms. The allegation that only favorable questions were asked is unfounded. We really believe that the comments were within reasonable bounds.

Taking all these into account, we submit that eNCA complied with all the relevant provisions of the Code did not breach any of the provisions of the Code. We emphatically dispute the allegations laid out by the complainant that the interview was misleading and not balanced.

In the course of the interview Ms. Kirsten was providing an expert analysis about curbing gun related violence. She was making a valid point considering that these views are held by many people supporting stricter gun control.”

[4] The Complainant replied as follows:

“Detailed reply to claims made by eNCA in their letter of 19 April 2018.

In the course of the interview Ms. Kirsten was providing an expert analysis about curbing gun related violence. She was making a valid point considering that these views are held by many people supporting stricter gun control.

- The “expert was factually incorrect in many instances. eNCA did not refute one error brought to their attention.” A point was made that Adele Kirsten cannot be an “expert” as she made many incorrect and misleading statements regarding firearm ownership in both the USA and SA.
- There are many people in the USA and SA NOT supporting stricter gun control. There are many researchers and research papers that shows that gun controls do not work. It did not work in South Africa.

By all account this was an honest expression of opinion which viewers are free to either support or reject

- Viewers that are undecided can only support or reject any argument if they are presented with both sides of the argument.

The factual errors the complainant suggests Ms. Kirsten made, as he concedes, are mostly matters of contention in the political and highly polarized debate on private gun ownership.

- No. Adele Kirsten made many factual errors, which remains unanswered. The opinions she expressed is biased, and factually incorrect. There is no need to duplicate all her factual errors. As eNCA did not disprove any of the factual errors brought to their notice such factual errors remain. Adele Kirsten made so many mistakes that she cannot be seen as an expert. In this regard Adele Kirsten shares the same shortcoming of those that oppose firearms ownership. They are ignorant of the true facts. And all anti firearms groups ignore inconvenient truths that exposes their ignorance.

Whilst it is ideal to have opposing sides for the discussion this is often difficult to achieve due to time allocations. The interview was done as part of news package and therefore given the way news are prepared it would not have done justice to the viewers if so many experts were invited for such a short timeslot.

This was the request made to eNCA:-

- To provide an opportunity at a more convenient time to have at least one opposing point of view to be expressed at a date and time that suits the broadcaster. This request was clearly stated. At no time was it suggested that an opposing opinion should have been given at the very same time that Adele Kirsten was interviewed. Thus to make the request clear. eNCA to confirm whether the broadcaster in order to be fair, balanced, will give an opportunity for an opposing point of view to be presented to the eNCA viewers. Or not. See next point.

eNCA take note of the suggestions made by the complainant and we shall certainly bear this in mind should we wish to have a timely, newsworthy debate on gun issues in South Africa in future.

- The broadcaster reply is an undertaking to bear suggestions made in mind, should they wish for a debate. There is no undertaking at all that an opposing point of view will be given a platform. Therefore it is possible that the broadcaster can and may invite a number of guests, all of the same mind to debate this issue. Only if and when the broadcaster deems some other event to be newsworthy. This is hardly an undertaking to be fair and balanced on a matter that all parties agree to be of national interest. Where only one side of the debate was already aired.
- It will be appreciated if eNCA can clarify the concession made by them in their letter of 19 April 2018.

The Code

Bearing in mind the relevant provisions of the Code, the expert opinion expressed during the interview amounted to fair comment and a protected speech. The Code permits us to broadcast comment on any criticism of actions or events of public importance. Again, viewers are at liberty to either accept or reject such comments or criticisms.

- Again. Viewers will only have the liberty to accept or reject comments if they are given both sides of the debate.

The allegation that only favorable questions were asked is unfounded. We really believe that the comments were within reasonable bounds.

- eNCA to indicate one probing interrogative, or opposing point of view question that was asked during the news interview.

Taking all these into account, we submit that eNCA complied with all the relevant provisions of the Code.

- This eNCA claim will only hold true once the eNCA broadcaster has afforded a platform opportunity for an opposing point of view to be expressed. Until such time, only one side of the debate has been aired.
- Allowing only one side of any debate is tantamount to propaganda. It cannot be seen as fair and balanced news.”

EVALUATION

- [5] This complaint concerns an interview that was conducted as part of a “news package”. The interview was informed by the latest mass-shooting at a school in Florida in the USA. The guest on the news programme, Ms Adel Kirsten, was introduced as the Director of Gun Free South Africa and she was asked about her views on the suggestion that teachers in the USA should be armed to prevent similar situations (the mass shooting). The interviewer asked whether it made sense throwing more guns after

violence. Ms Kirsten was then asked how this (the situation in the USA) “relates to us at home”.

- [6] Ms Kirsten responded by indicating that we have the same concerns here (in South Africa) as in the USA but that there are both differences and similarities. She said there were no massacres here and gun deaths were inter-personal and crime related. She was also of the opinion that access to fire arms is one of the key facts why massacres occur in the USA and also why the USA has “some of the highest suicide rates” in the world. She then continues to point out that gun violence manifests differently in South Africa and she elaborates on the strict gun control applied in South Africa.
- [7] The complainant’s main concern is Ms Kirsten’s statement about the suicide rate. Suffice to say that it was clear during the rest of the interview that Ms Kirsten was expressing her views and that her comments were based on her own honest opinion. The complainant was of the opinion that her views were not based on proper research. He was of the opinion that the interview did not comply with the requirements set out in Clauses 28.1.1 and 28.1.3 of the Code
- [8] In terms of Clause 28.1.1 licensees must report news truthfully, accurately and fairly. While this interview was conducted during the news programme it is clear that Ms. Kirsten was being interviewed regarding her views on gun control. Her views on the topic do not qualify as news. Clause 28.1.1 is therefore not applicable.
- [9] Clause 28.1.3 determines “Only that which may reasonably be true, having due regard to the source of the news, may be presented as fact, and such fact must be broadcast fairly with due regard to context and importance. If a report is not based on fact or is *founded on opinion, supposition, rumours or allegations*, it must be presented in such manner as to indicate clearly that such is the case” (own emphasis). Even if we are wrong and it could be argued that Ms. Kirsten’s views constitute news (which we do not believe), this Clause was not contravened. The broadcaster ensured that viewers were made aware that the “report” is not based on fact but founded on opinion by

introducing Ms. Kirsten as the director of Gun Free South Africa. The necessary context required by this clause was therefore provided to viewers. Viewers would have expected Ms. Kirsten's opinions and comments expressed during the interview to be informed by her association with and her position as director of Gun Free South Africa as this was clearly indicated at the beginning of the interview.

[10] However, Clause 28.2 is applicable in this instance. In terms of Clause 28.2.1 licensees may broadcast comment on and criticism of any actions or events of public importance. Clause 28.2.2 provides that 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.

[11] The question is therefore whether the topic is of public importance and if that is the case, whether the comment was an honest expression of opinion and presented as such. The short interview dealt with gun control. It can be accepted, without having to labour the point, that the issue of gun control is of public importance in South Africa.

[12] The complainant states repetitively that factual errors were made during the interview but only identifies the statement about the suicide rate. He refers to other errors in the interview, but never identifies them in his complaint as is clear from the following statements:

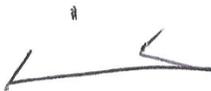
Many statements made during the news interview was **misleading, false and incorrect.**

However, as she has made many factual errors, her actual knowledge on laws, firearms and the research that she refers to, is very questionable.

As it is a matter of **National and International interest**, it is deemed important that eNCA attention is drawn to **all the errors and misleading statements made by Adele Kirsten the Director of Gun Free South Africa** during the eNCA news interview.

Which objection is supported by showing all the **actual factual errors** made by Adele Kirsten – Director of Gun Free South Africa.

- [13] Mr Churr argued his case at the Tribunal and expressed his disagreement with some of Ms. Kirsten's other statements. These included her statements about the number of guns one is allowed to own privately and the type of guns private owners are allowed to own. It appeared as if the Complainant did not disagree with Ms. Kirsten's opinion in respect of these aspects because he thought her opinion was based on facts not truly stated but, rather, that his dissatisfaction is based on his view that there is a positive side to gun ownership which was not mentioned.
- [14] Ms Kirsten's statement about the suicide rate in the USA was the only statement that the complainant alleged was incorrect based on information he supplied. Having listened carefully to the interview, it appears that Ms Kirsten said that the USA has *some* (own emphasis) of the highest suicide rates in the world. The value that a viewer would have attached to this statement will be determined by the fact that she is pro-gun-control (as stated at the beginning of the interview) and secondly by the fact that she does not attempt to validate her statement by any authority. It was her opinion and neither she nor the interviewer attempted to present it as anything else. The generality of Ms Kirsten's reference to statistics in two of her other statements confirms the fact that this interview was comment based on honest opinion made on facts fairly stated as required in Clause 28.2.2.
- [15] **Clauses 28.1.1 and 1.3 are not applicable. Clause 28.2 is applicable but not contravened. The complaint is dismissed.**



PROF S LÖTTER
BCCSA DEPUTY CHAIRPERSON

Commissioners Fakude and Tlhakung concurred in the above judgment.