Complainant: The Complainants were invited but did not attend.

Respondent: Mr Dan Rosengarten from Rosin Wright, Rosengarten – also in attendance: Ms Bronwyn Keene-Young (Channel Director) Mr Bop Tshweu (Regulatory Affairs Executive), Mr Thabo Makelene, Publicity Writer and Ms Terja Berney, Producer Endemol.

Complaint about programme “Fear factor” during which woman participant was injured while being dragged on sand by 4x4 vehicle – sufficient warning to parents and children by showing PG icon and written warning at start and end of programme not to attempt imitation of stunts – participants voluntarily accepted risk of injury – for the courts and not the BCCSA to decide whether the bounds of “volenti non fit iniuria” overstepped – test of what is offensive to public morals restated as what community can tolerate, not what is offensive to the individual viewer – clause 15 of Code relating to violence to women not applicable as the risk of violence was voluntarily accepted and men were also exposed to violence - this was also not a case of sanctioning, promoting or glamorizing
violence to women – violence was not gratuitous: compare this event to a rugby match or boxing bout in which women also partake these days – no contravention of Code found – complaints not upheld - P Boltt & Others vs e-tv, Case no 10/2006.

SUMMARY

Complaint about programme “Fear factor” during which a woman participant was injured while being dragged, zigzag style, on sand by 4x4 vehicle. Tribunal found that there was sufficient warning to parents and children by showing a PG icon and a written warning at the start and end of the programme not to attempt an imitation of the stunts. The participants voluntarily accepted the risk of injury. It was for the courts and not the BCCSA to decide whether the bounds of “volenti non fit injuria” were overstepped. The test of what is offensive to public morals was restated, namely as that what the community can tolerate, not that what is offensive to the individual viewer. Clause 15 of the Code relating to violence to women found not to be applicable as the risk of violence was voluntarily accepted and men were also exposed to the same violence. This was also not a case of sanctioning, promoting or glamorizing violence to women. The violence was not gratuitous if this event was to be compared to a rugby match or boxing bout in which women also partake these days. No contravention of Code was found and the complaints were not upheld.

JUDGMENT

PROF HENNING VILJOEN

[1] “Fear factor” is a programme broadcast by e-tv in which contestants participate in dangerous events with the incentive of substantial prize money for the eventual winner. The programme has been described in a previous judgment (see Animal Welfare Coalition and Others v M-Net, case no. 02/2003) as “… a series of competitions to test the capacity of the contestants to succeed in hair-raising and gruesome experiences”. On 23 January 2006 at 20:00 an episode of this programme was broadcast in which one event comprised the contestants being dragged, zigzag fashion, over a large stretch of sand by a 4x4 vehicle at quite a fast speed. The contestants had protective clothing on but no crash helmets. Medical emergency personnel were at hand. One of the contestants, a woman by the name of Lebo, was injured during this event. The most serious injury that she
sustained was to her forehead where a large abrasion was clearly visible. A close shot of the wound was on screen for about one second. She was immediately tended to by the medical personnel and then taken to hospital. We were informed at the hearing that she soon recovered from her injuries and rejoined the set.

[2] This injury to Lebo caused quite an uproar in the media and soon the complaints came rushing in to the BCCSA. Complaints were received from the following persons:
Philip Boltt, Nirvashnee Chetty, Elizabeth van Wyk (who admitted to not watching the particular segment of the show), Shoneez Campbell, Samantha Oakes, Ian Schoeman, Morné Stickling, Jacques Nel, Johan de Klerk, Lance Engelbrecht, Antony Brown, Laurie Goss, Chris Watts and Pieter de Wet.
The complaints generally relate to the fact that children were exposed to the violence, that the producers took unnecessary risks and were negligent, that the safety of the contestants was compromised, that viewers were offended and traumatized by watching such violence. One complainant, Mr P Boltt, averred that the broadcast constituted a contravention of clause 15 of the Code relating to violence against women.

[3] Because of all the emotion that this episode generated amongst the viewing public, we find it necessary at the outset to reiterate the role of the Broadcasting Complaints Commission of SA (the BCCSA). The BCCSA is an independent and self regulatory body which mediates and adjudicates upon complaints against broadcasters who have accepted its Code of Conduct. By far the majority of broadcasters in South Africa have signed this Code. In the context of the complaints that we have received, we have to emphasize that the BCCSA cannot resolve claims for damages for bodily injury. That is for the civil courts to decide. Neither can we order that no further episodes of a particular series be broadcast, as some of the complainants have requested us to do. We can only adjudicate upon complaints about programmes that have been screened.
Having said this, we now turn to the merits of the complaints. We shall first deal with the complaint that children were exposed to this violence on television. One complainant averred that there was no parental warning beforehand. The members of the Tribunal viewed this broadcast during the hearing and are satisfied that there was a PG (parental guidance) icon clearly visible on the screen at the start of the programme and again after the commercial breaks. The following warning also appeared at the start and at the end of the broadcast in question:

“The stunts seen in this programme were designed and supervised by trained professionals. They are extremely dangerous and should not be attempted by anyone, anywhere, anytime.”

The Tribunal is satisfied that there was sufficient warning to parents about the nature of the programme they and their children were about to see. We deal with the aspect of violence again in paragraphs [7] and [8] below.

Some complainants are of the view that the producers took unnecessary risks with the safety of the contestants and that they were negligent. This is a matter on which the BCCSA has no jurisdiction. We were informed during the hearing that it was required of the contestants beforehand to sign an indemnity. This is in compliance with the legal maxim “volenti non fit injuria” or voluntary assumption of risk. It is for a court of law, and not the BCCSA, to decide whether the producers exceeded the limits of the indemnity. We touch upon this aspect further in paragraphs [7] and [8] below.

From the general style of the majority of complaints, it seems that the complainants regard the material they saw on television as being offensive to public morals. The test for offensiveness to public morals has been laid down by this Tribunal in many judgments of which C Smith and Others v e-tv, case 12/2003, is one example. In that judgment the following was said:

“The legal test in determining whether material can be categorised as such (i.e. as being offensive), is not what is offensive to an individual or whether members
of a community themselves might be offended by seeing it, but what the community will tolerate, and what members of such community would not abide other members seeing because it would be beyond the contemporary South African standard of tolerance to allow them to see it - it is the standard of tolerance, not taste or approval that is relevant”

We are also bound, in terms of section 16 of the Constitution of South Africa, and in terms of our Code, to protect the right of broadcasters to freedom of expression. This right, of course, is not unlimited and in a particular case we may decide that the broadcaster concerned has overstepped the limits of its rights. Any limitation to this right will have to comply with the prescripts of the Constitution, namely that such limitation must be reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom. No such limitation could lawfully be placed on the broadcaster’s right to freedom of expression in this particular case.

[7] We now turn to the complaint by Mr Bollt that the broadcast complained of violated clause 15 of the Code of Conduct. The clause reads:

15. Violence against women

Broadcasters shall:

(i) not broadcast material which, judged within context, sanctions, promotes or glamorizes any aspect of violence against women;
(ii) ensure that women are not depicted as victims of violence unless the violence is integral to the story being told;
(iii) be particularly sensitive not to perpetuate the link between women in a sexual context and women as victims of violence.

Although it is understandable that someone could be tempted to apply clause 15 to the facts of this case, on deeper reflection it is clear that this clause is not applicable. We are of the view that what has happened in this episode, cannot be labeled as sanctioning, promoting, or glamorizing of violence against women. It would be a contradiction to describe the female participants as “victims of violence” but not the male participants who were subject to the same measure of
violence. The participants, both female and male, undertake the same stunts in this event of their own volition. The action involved in the stunts comprises a certain degree of violence. The participants all accept the risk of suffering possible injury and the viewers all accept the risk of watching possible injury being caused to the participants. We think that the voluntary assumption of risk distinguishes this case from the situation where women are involuntarily subjected to violence, a situation that the drafters of clause 15 probably had in mind. We find that clause 15 of the Code is not applicable and could therefore not have been contravened.

During the hearing the argument was raised that what happened to Lebo and the subsequent close shot of her injury could amount to gratuitous violence. If we were to find that the event constituted gratuitous violence, the broadcaster would be guilty of contravening clause 14 of the Code. After considering this argument, we have come to the conclusion that the violence depicted in this event cannot be described as gratuitous. The example, by comparison, was given by Mr Rosengarten, for the respondent, of a rugby match which often resulted in injuries to players and the cameras dwelling on the injured player being removed from the field. One could add to that the example of a boxing match which seems to have as its objective the intentional injury to the participants. The cameras would also focus on bloodied and swollen faces after the bout. It should be pointed out that women also partake in such sports these days. In all these instances the viewers accept that there is always a risk of injury to the players or participants of such dangerous games and they accept the risk of watching such violence and possible injury. In this instance we find that the violence to which Lebo was subjected, and the subsequent injury, was not gratuitous and that there was no contravention of clause 14 of the Code.

In the result no contravention of the Broadcasting Code of Conduct was found and the complaints can therefore not be upheld.
All the complaints were dismissed.

HP VILJOEN
BCCSA COMMISSIONER

Chairperson, Prof van Rooyen & Co-Opted Commissioner Mokoena-Msiza concurred with the judgment.