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CASE NUMBER: 48/2006

DATE OF HEARING: 22 NOVEMBER 2006

REV B RUSSELL

COMPLAINANT

vs

567 CAPE TALK

RESPONDENT

**TRIBUNAL: Prof HP Viljoen (Acting Chairperson)
Dr L Venter
Prof J Heaton
Adv I Chetty**

The Complainant did not attend

For the Respondent: Ms Khahliso Mochaba, Group Regulatory Affairs Manager

Offensive language – news report about rape and murder of young girl – judged within context no contravention of Broadcasting Code found. Russel vs 567 Cape Talk, Case No: 48/2006.

SUMMARY

A complaint was received about offending and upsetting graphic sex-related material aired in a *Cape Talk* midday news report on 4 August 2006. The Tribunal held that the news item in question was not so graphic as to require a listener advisory or warning. It was also taken into account that since the target audience of news broadcasts is not children, it was unlikely that large numbers of children would have been exposed to this bulletin. At 12.00 on a Friday most children would have been at school, in any case. The electronic news media are characterised by news items that are fleeting in nature and the briefness of the news item under discussion attests that it was not sensationalised, but reported in a balanced and fair manner. Since the media play a powerful role in shaping public opinion, perceptions and attitudes, they have a responsibility to keep the public informed. It was concluded that in the light of the guarantee of freedom of expression and the finding by the Constitutional Court that freedom of speech includes the right to air offensive material, the relevant words could not be judged to have exceeded the limits of the broadcaster's freedom of expression or the boundaries of offensiveness and are not serious enough to be judged as a contravention of the Broadcasting Code. Complaint not upheld.

JUDGMENT

H.L. Venter

[1] The Registrar of the BCCSA received a complaint about offensive and upsetting language used during a *Cape Talk* midday news bulletin on 4 August 2006.

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

“On the 12pm news report on 567 Cape Talk today I was deeply offended by some of the material presented in relation to the rape and murder of the four year old girl in Cape Town. The reporter told in graphic detail how the offender told police how he ‘held her mouth closed while he raped her and sodomised her with his finger’. I am offended and upset by having to hear this kind of detail. We need the news about these horrific incidents so that we can try to change our broken society, but this was unnecessary. I normally enjoy Cape Talk but that kind of detail is unhelpful and upsetting.”

[3] **In summary, Primedia (*Cape Talk*) responded as follows:**

“Cape Talk acknowledges that some people may have been offended by the news reporting, this notwithstanding, it is Cape Talk’s respectful submission that in as much as some people may have been offended by the report, the report as broadcast in the news bulletin was fairly reported and was not sensationalised or exaggerated. Contrary to the complaint, Cape Talk respectfully submits that the detail provided in the news report was not graphic but was fact and relevant to the news report. It is our submission that failure to mention facts in our news reports would amount to censorship and hiding facts/information. A news report on a rape case and/or on a murder case will in all likelihood in all instances refer to facts which some people will always find offensive – it is the nature of such brutal incidents. South Africa is plagued by a spate of rapes and sexual cases and murders of children and as a broadcaster, Cape Talk has a duty to constantly inform the public of this scourge. The duty of the Commission is to ascertain whether the broadcast went beyond the limits of free speech.”

- [4] In this case Clause 34.7 of the Broadcasting Code is at issue. It states that licensees shall advise viewers in advance of scenes or reporting of extraordinary violence, or graphic reporting on delicate subject-matter such as sexual assault or court action related to sexual crimes, particularly during afternoon or early evening newscasts and updates when children would probably be in the audience. In the Tribunal’s view the news item in question was not so graphic as to require that listeners be advised of its graphic nature or a warning issued. Clause 34.8 of the Broadcasting Code states that licensees shall employ discretion in the use of explicit or graphic language related to stories of destruction, accidents or sexual violence which could disturb children and sensitive audiences. According to the respondent they are very careful in reporting news items and do not report details that they judge to be very graphic (which were available in the present case). It should also be borne in mind that since the target audience of news broadcasts is not children, it is unlikely that large numbers of children would have been a part of the audience. In addition, the time of the broadcast was at 12.00 on a Friday when most children would have been at school, in any case.

- [5] Furthermore, the Constitutional Court has held that freedom of speech includes the right to air offensive material. One of the demands of living in a democratic society is that one must be tolerant, not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock, or disturb. In this regard, the BCCSA has repeatedly quoted the following judgment of the European Court of Human Rights in the case *Jersild v Denmark* (36/1993/431/510). The Court found that Jerslid, a journalist, had been wrongly convicted by Danish courts for furthering racial hostility by broadcasting an interview with extremely outspoken racists. The interview included racially derogatory language of the worst kind and terminology that directly accused immigrants from Africa as being intellectually inferior. The Court held that it had been in the public interest to reveal the shocking attitudes of the group interviewed and that the public had the right to be informed thereof. Although the Jerslid case does not relate to explicit sex-related language, the salient point is that the public has a right to be exposed to current trends in society, regardless whether they are offensive or not. The test is not whether the Tribunal would regard the language used in this news bulletin as appropriate, the question to be addressed is whether the words have exceeded the limits of the broadcaster's freedom of expression and the boundaries of offensiveness. Since the media play a powerful role in shaping public opinion, perceptions and attitudes, they have a responsibility to keep the public informed. The complainant correctly states that news reports about horrific incidents like the one in the present case, may contribute to encourage people "to change our broken society". In addition, it should be taken into account that the electronic news media are characterised by news items that are fleeting in nature and the briefness of the news item under discussion attests to the fact that it was not sensationalised, but reported in a balanced and fair manner.
- [6] The complainant has a constitutional right to his view. However, the legal test in determining whether the material broadcast is permissible is not what is offensive or upsetting to specific individuals, but what the community would not allow

other members of the community to be exposed to, because it would be beyond the contemporary South African standard of tolerance to allow them to be exposed to it. The test that should be applied should be an objective standard of a reasonable viewer who is broadminded, balanced and not overly sensitive. It is concluded that the relevant words cannot be judged to have exceeded the limits of the broadcaster's freedom of expression and are not serious enough to be judged as a contravention of the Broadcasting Code.

The complaint is not upheld.

DR. H.L. VENTER

Acting Chairperson Viljoen and Ad Hoc Members Chetty and Heaton concurred with the judgment