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CASE NUMBER: 15/2016

DATE OF HEARING: OCTOBER 2016

JUDGMENT RELEASE DATE: 28 NOVEMBER 2016

ERASMUS

COMPLAINANT

vs

JACARANDA FM

RESPONDENT

**TRIBUNAL: PROF HP VILJOEN (ACTING CHAIRPERSON)
PROF V BRONSTEIN
DR T MMUSINYANE**

THE COMPLAINANT: The Complainant was invited but was unable to attend.

RESPONDENT: Mr Gavin Meiring: Programme Manager.

Confession session about sexual exploits - not beyond boundaries of freedom of expression in context of radio station aimed at adults- caution recommended when children are likely to be in the audience. Warnings recommended – Erasmus vs Jacaranda FM, Case: 15/2016(BCCSA)

SUMMARY

The complaint was a about the programme where a member of the public confessed to having had a sexual threesome with the bridesmaid and the bride's sister one hour before his wedding. Jacaranda FM is an adult radio station and the broadcast was held to fall within the boundaries of freedom of expression. Semble: The broadcaster was warned against broadcasting promos at times when children are likely to be in the audience. A system of warnings was recommended to guard against violations of the code.

JUDGMENT

PROF V BRONSTEIN

- [1] This case is about an insert on Jacaranda FM known as a confession session. During the programme a listener confessed to having had a sexual threesome with the bridesmaid and the bride's sister one hour before the wedding. The complainant made a written complaint to the BCCSA.

It often happens that unfortunately the complainant is not able to attend the hearing. Despite having only one party before us the written submissions of the complaint were carefully considered and we judged this matter in an objective and impartial way.

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

“Herewith my complain as discussed:

This morning around **10h25 - 10h45 on the 13th of September 2016**, a comment was repeated of person that must have dialed in on some talk show of I think Riaan van Heerden, because I think (om not sure)I heard him asking a question to the person after he told the story:

This Guy phones in to say that 3 hours before he got married he "slept" with the brides maid of honour, when the bride's sister walked in on them, instead of telling on them she joined them, and the wedding ceremony went on without anyone telling the bride. The Person on Jacaranda which I suspect(but im not sure because it was just to quick to know) was Riaan van Heerden then asked, does she still not know and the guy said no he doesn't think so and that they still live in the same complex.

I am so APPALLED!!! my heart is still beating out of my chest!!! at Jacaranda for repeating such comments, can you imagine the degrading of all of our society, children hearing this and thinking it is ok to cheat and have sex and an orgy on your wife with her best friend and her sister 3 hours before she gets married to her love of her life?? Jacaranda is broadcasting and creating a sick society with no integrity or morals! I refuse to let them get away with such filth. Is it not enough that people get hurt with such things why broadcast it?? I know you do not have control over people phoning in, but surely you do not have to repeat it for all of us. I am disgusted and expect the person who repeated this on National broadcasting radio to be removed and fined, he is not building our nation our morals or a health society, where we can trust each other, this is to no ones upbuilding!!!! I need a reply on what will be done please!

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

“Jacaranda FM concerning Complaint from Danette Erasmus on the 13TH September 2016

The complaint in questions stems from a broadcast on the Martin Bester Drive where we have a feature called “Confession Session” and listeners are invited to confess to whatever they

wish to do. The Confessions are sent on a what's app voice message system, and then Martin Bester called the listener to interrogate or ask questions about the confession

Our intention with the feature is to give listeners the opportunity to confess to something they have done wrong and regret doing. This does two things, firstly, it gives someone the opportunity to deal with something they carried with them for a while and be honest about it, for once. Secondly, the rest of us get to learn from their mistakes and are encouraged to deal with mistakes we've made sooner rather than later.

The confession from an anonymous man was around the story that one hour before his wedding, he had slept with the bridesmaid and then was joined by the Brides sister. The audio of the broadcast is attached as 2016.09.12-17.15-S and the actual audio can be heard on the clip from 04.47 to 08.36

Jacaranda FM does not in any way condone the caller's behavior, nor do we glorify it. We don't allow the caller to brag about such behavior anywhere in this piece. We also made sure that the language used to explain his error in judgment is **not** humorous, sensational or anything else but sincere and apologetic. We also didn't air any follow-up calls that could turn this piece into something trashy and puerile.

The intention of the feature is to give adults the opportunity to come forward and confess something profound, in an honest, respectful way (to the victims and listeners), possibly to give the rest of us perspective on our own problems or even encourage us to be that forthcoming with guilt and deceit.

The Story was nonetheless shocking and we then recycled this as a big moment on the Martin Bester Drive, so as to make people aware of the feature as it was brand new. Also attached is the promo (promo confessions) made out of the incident which is what was played on the morning in Question at 10h25.

It is normal practice for the station to recycle content which is why this was replayed around 5x between 20h00 on the 12th September to 15h00 on the 13th September the following day.

As such we are of the view that Jacaranda FM has not violated the broadcasting code of conduct for the following reasons –

1. The content on the martin Bester Drive is protected under the constitution with respect to the freedom of speech and freedom of expression.
2. The content was not in contravention of section 9 of the Broadcasting code of Conduct pertaining to sexual content as it in no way advocates or incites violence as set out in the code of conduct.

Jacaranda FM stands by the position that we have not contravened the Broadcasting Code of Conduct. We ask the BCCSA to dismiss this complaint without the need for a hearing.”

[4] **The Complainant replied as follows:**

“Thank you for your response! I am not satisfied with Jacaranda FM's response!

It is common cause that Jacaranda FM and I are in agreement that the content of the confession is shocking. The fact that they broadcasted or recycled this 5 times in a span of 19 hours not even a full day, is also shocking! The reasons that they gave for repeating this confession do not convince any person, it flies in the face of good morals and is in bad taste and does not promote respect for any of their listeners irrespective of their ages.

The main reason for my dissatisfaction is that the particular confession was neither apologetic, sincere or respectful but boastful.

If Jacaranda experienced this as shocking imagine how shocked the general population must have been who has no control of what is broadcasted on their favourite station, I find this highly improper and would appreciate the BCCSA to take the proper action regarding this case!"

EVALUATION

- [5] Broadcasters, as every other person, have the right to freedom of expression in terms of the Constitution of South Africa. In terms of this right they can broadcast material on any topic, as long as they do not exceed the limits of freedom of expression. Jacaranda FM describes itself as an adult radio station. In that capacity the material complained about can be broadcast. The Complainant refers to the up-building of morals of the nation. That is a laudable thought but it is not within our jurisdiction to judge where a broadcaster has failed to build up the morals of the nation. We can only apply the Code of Conduct to which the broadcasters have subscribed and decide where they have contravened the Code. In this instance the broadcast itself did not exceed the limits of freedom of expression and therefore did not violate the Code.
- [6] Even though the Broadcaster is described as an adult radio station, the possibility always exists that children may be part of the audience of listeners, especially children being transported in cars with their parents or care givers to or from school. However this broadcast was between 10:25 and 10:45 in the morning when children would not be expected to be in the audience. Hence the broadcast did not violate the code because it did not exceed the Broadcaster's right to freedom of expression, as stated in the previous paragraph.
- [7] The Broadcaster does have a policy that anticipates that at certain times of the day children are likely to be in the car listening to Jacaranda FM. Hence the station exercises more caution during these periods. It appears that at least one of the Promos which was broadcast in the afternoon, may well have violated the station's own guidelines. If that was the case the Promo should not have been broadcast at that time. Alternatively a clear warning should have been given before the Promo was broadcast. It is important to note that the complaint was not about a Promo broadcast at a certain time, i.e 15:00 in the afternoon, when children might have been in the

audience. It is further important to note that the Broadcaster is an adult radio station and that parents have the ultimate responsibility for what they allow their children to listen to. This is a redeeming factor in this case and takes us to the conclusion that the Broadcaster did not contravene the Code of Conduct.

- [8] The insert complained about is self-evidently adult listening. Although we find in this particular case that there was no contravention of the Code, we recommend that the Broadcaster provide a routine warning before such inserts are broadcast to avoid a possible breach of the code.

In the result the complaint is dismissed.

**V BRONSTEIN
COMMISSIONER**

The Acting Chairperson Prof Henning Viljoen and Commissioner Mmusinyane concurred with the judgment of Prof Bronstein.