

The BCCSA as an Independent Judicial Tribunal

The Broadcasting Complaints Commission of South Africa ("BCCSA") was established by the National Association of Broadcasters ("NAB") in 1993. According to the BCCSA's Constitution it is a body corporate, capable of suing and being sued in its corporate name, and of performing all such acts as are necessary for or incidental to the carrying out of its objects, and for the performance of its functions and duties under its Constitution.

The BCCSA shall be based in Johannesburg but the Chairperson may, when he or she deems it appropriate, decide to hold a session of the Tribunal of the Commission at any place in South Africa. The BCCSA was recognized by the Independent Broadcasting Authority ("IBA", now ICASA) in 1995 in terms of section 56(2) of the IBA Act 1993. During these hearings before the IBA, the IBA emphasized that the BCCSA must be an independent judicial tribunal so that it could, without fear or favour, adjudicate complaints from the public against the broadcasters, which are members of the NAB.

The BCCSA has no jurisdiction as to election complaints. Such jurisdiction resides with the Complaints and Compliance Committee ("CCC") of the ICASA, The CCC also has jurisdiction to hear complaints about content against broadcasters which are not members of the NAB. Complaints other than those which relate to content of broadcasts, all fall under the jurisdiction of the CCC.

Although the NAB provides the funds for the BCCSA, the BCCSA is, as a body corporate, entirely independent from the NAB. The BCCSA has an enforceable ongoing contract with the NAB, according to the BCCSA Constitution, to provide the BCCSA with its reasonable expenses. If the NAB does not provide the reasonable expenses, which would include all complaint sessions of the BCCSA, the BCCSA may take the matter to an independent arbitrator who will enforce the contract. If it is found that the NAB is or has omitted to provide such reasonable expenses, it is bound in law to do so.

Other features of the Constitution which uphold the BCCSA's character as an independent judicial tribunal in terms of section 34 of the Constitution of the Republic, are the following:

1. The Commissioners are appointed by an independent panel chaired by an independent person (up to now by a retired Judge of Appeal) plus other persons appointed at an AGM of the BCCSA. Although it was, initially, the thinking that half of the Commissioners would be appointed from persons nominated by the NAB, the Constitution was amended at the insistence of the IBA so that all candidates would be nominated by members of the public.

2. The Chair is elected at an AGM without any intervention from the appointment panel or the NAB and may be a person from outside the Commission. So as to ensure the independence of the Chair he or she is in no way answerable to the Commission in so far as the judicial work is concerned. He or she appoints each Tribunal from the Commissioners and has, in any case, the right to appoint ad hoc Commissioners where Commissioners are not available or where it is in the interests of representivity.

3. The BCCSA is not, in any manner, accountable or answerable to the NAB.

4. Only the BCCSA may, at an AGM or SGM, amend its Constitution and it does so independently from the NAB.

5. Only the BCCSA may dissolve the BCCSA and the NAB has no right to do so or withdraw its funding of reasonable expenses.

6. The BCCSA appoints its own Registrar. The Chair appoints other staff members, including the accountant. The Chair is also in the sole control of the Office of the BCCSA.

7. All salaries or fees are paid by the BCCSA, which has its own bank account and appoints its auditor annually.

8. The BCCSA may impose sanctions, which include fines. It has an internal appeal procedure.

In sum, the BCCSA is an independent judicial tribunal which must reach its decisions on the Broadcasting Code independently and in line with the precepts of administrative justice, as required by the Constitution of the Republic and legislation that governs fair administrative justice. Although initially set up by the Broadcasting industry, it is entirely independent from that industry and it would be in conflict with its corporate independence to be called an "industry body".