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ADJUDICATION NO: 022 /A /2013

NAME OF PROGRAMME:	**HEART 104.9 BREAKFAST SHOW AT 07:00 ON 25 JULY 2013**
BROADCASTER:	**HEART 104.9FM**
COMPLAINANTS:	**THE TRAUMA CENTRE – CAPE TOWN**

COMPLAINT

Presenter's comments incited xenophobia and amounted to hate speech.

APPLICABLE RULES

12. (1) Broadcasting service licensees are entitled to broadcast comment on and criticism of any actions or events of public importance.

(2) 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.

4. (1) Broadcasting service licensees must not broadcast material which, judged within context, sanctions, promotes or glamorises violence or unlawful conduct based on race, national or ethnic origin, colour, religion, gender, sexual orientation, age, or mental or physical disability.

(2) Broadcasting service licensees must not broadcast material which, judged within context, amounts to (a) propaganda for war; (b) incitement of imminent violence or (c) the advocacy of hatred that is based on race, ethnicity, religion or gender and that constitutes incitement to cause harm.

ADJUDICATION

[1] A complaint was lodged with the BCCSA regarding comments made by two presenters during a discussion on Heart FM's Breakfast Show. The Complainant is the Trauma Centre, a non- governmental organisation that aims to promote non-violence and to assist "survivors of social crime, political violence, torture and other cruel inhumane and degrading treatment", and which deals, inter alia, with the effects of xenophobia and racism.

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

"Complaint against Heart 104.9 FM

The Trauma Centre wishes to lodge a complaint regarding comments made by radio station, Heart 104.9 fm on 25"' July 2013 during the Breakfast Show (at about 7h00 am) by co host Julian Naldoo and later on the 26 July 2013 by Julian Naldoo and Aden Thomas on the same show.

It is our view that the radio station contravened Clause 3 and 4 of the BCCSA Free to Air Code of Conduct for Broadcasting Service Licensees and consequently the Electronic Communication Act no 36 of 2005. We believe that the comments made by Julian Naidoo when he questioned fellow host and Zimbabwean national, Tapfuma Makina on his status as a worker In South Africa Incited xenophobia which constitute a hate crime. Mr Naidoo went ahead to link the employment opportunities enjoyed by his co host to the unfortunate jobless state of '10 South Africans.' The Trauma Centre agrees with the response of Tapfuma Makina at the time when he replied 'this is how xenophobia starts.'

We condemn these comments and the subsequent response in the strongest terms and call upon the BCCSA to investigate this complaint and take the necessary action within its jurisdiction. We commit ourselves to supporting-the Commission's endeavours in this regard."

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

"Julians comments did not have any malicious intent. However we as media broadcasters are sensitive towards topics that may have negative social impact. We thoroughly satisfied that the content did not amount to hate speech but recognize the sensitivity of the issue. Julian showed poor judgement and for this and apology is in order.

I have subsequently spoken to Mrs Van Reenen-Le Roux after seeing that I have missed her email. I have extended my apology for this and she was appreciative of the call. Please advise on how we proceed with this complaint."

EVALUATION OF COMPLAINT

[4] The Complainant argues that the questioning to which a Zimbabwean presenter was subjected to regarding his employment status, as well as subsequent comments regarding the relationship between the presenter's various jobs and unemployment in South Africa, incites xenophobia and amounts to hate speech.

[5] The Respondent concedes that the topic under discussion is a sensitive one, and that the presenter's remarks revealed "poor judgment", though they lacked "malicious intent". An apology for the comments was thus regarded as being "in order".

[6] I listened to the clip involving three presenters, one of whom is Zimbabwean: at the end of a weather and sports discussion, and apparently in the broader context of a previous discussion (which is referred to but not included in the clip), one of Tapfuma Makina's co-presenters refers to him as "Mr Zimbabwe". The latter replies, "I hope you don't say anything about Zimbabweans on radio," and the third presenter immediately reacts, "Are you trying to get him deported?" These cautions are ignored, however, and are instead followed by a series of questions as to whether Mr Makina possesses a working visa, and whether it is valid ("Does HR have a copy of it?"). This in turn elicits an outraged cry from the third co-presenter. But the questioning continues, with the presenter saying somewhat disingenuously, perhaps, that he is "Just checking," "in all fairness", and that he "love[s] Tapfuma". The presenter persists, and goes on to speculate that a South African who is unemployed might think: "This dude has a morning, breakfast, sport, weekend show," and also "does voice-overs". He adds the disclaimer, "It's not his fault, I'm not judging him," and then deliberately suggests that his Zimbabwean colleague has "taken away" at least ten jobs that ten South Africans may have had. Mr Tapfuma's response is, "This is how zenophobia starts, someone listening right now, getting angry about it … who agrees with Julian" (i.e. the co-presenter asking the questions). Yet still,

the presenter persists, “But it’s a fact.” At this point, the third presenter intervenes, “I’m really, really sorry, not cool, man.”

[7] The discussion apparently takes place within the broad context of an earlier programme that is referred to by the presenter, Julian Naidoo, who apparently takes up issues raised in it after a discussion on sport. He begins by establishing Mr Makina’s national origin. At the outset, the sensitivity of the topic of foreign nationals in South Africa is highlighted, as the Zimbabwean presenter says “I hope you don’t say anything about Zimbabweans on radio.” The topic is not laid to rest, however, as the presenter goes on to raise issues of work permits, job scarcity, and goes so far as to say that a South African who is unemployed might resent the material benefits enjoyed by the Zimbabwean presenter, who has “taken away” as many as ten jobs from South Africans. The remarks come across as mischievous and provocative, and his disclaimers are patently disingenuous (“I love Tapfuma”; “I’m not judging him.”).

[8] The presenter’s remarks can be said to amount to honest comment on issues of public importance such as unemployment and the immigration status of foreign nationals in South Africa; however, what is at issue is whether they are fair comment, or fairly indicated, as the Code requires. Indeed, the remarks come across as provocative, and smack of a personal attack, however veiled this may be; they are, furthermore, sugared over with disclaimers referred to above.

[9] Regarding the complaint that the presenter’s remarks “incited xenophobia which amounts to a hate crime”, it needs to be established whether there is advocacy to commit violence in the remarks. The remarks are provocative and perhaps even inflammatory, yet there is no actual advocacy to commit acts of violence against Zimbabweans or any other racial or ethnic group. Nevertheless, the Zimbabwean presenter is all too aware of the potential for violence when he says that someone (perhaps an unemployed, aggrieved South African), may “get angry”. Anger is frequently a prelude to violence, and South Africa’s high unemployment rate is a seedbed for xenophobic violence. In recent years, ever since the xenophobic outbreak in May 2008, many people have lost their lives, and their

property has been attacked by South Africans who allegedly feel aggrieved that foreigners are taking their jobs. As such, the remarks are ill-advised. The question is whether they go so far as to have the potential to inflame violence. This is a borderline case, and broadcasters who sail close to the wind in this manner should be aware that they are literally playing with fire when uttering comments to the effect that foreign nationals are taking jobs from local people.

[10] The crucial question is whether a reasonable listener would have regarded the presenter's remarks as tolerable in the context of xenophobic violence and the ensuing trauma frequently endured by victims. In assessing this, the principle of freedom of expression should be borne in mind, a principle that guarantees the broadcaster's right to express opinion and make comment on matters of public interest. This principle has been hard-won, and the Code guarantees it,[1] as long as it does not result in the advocacy of violence, which, in the present instance, is absent, as found above.

[11] To conclude, the presenter's comments were uncalled for and ill-considered; he acted extremely injudiciously in introducing a potentially inflammatory topic, ignoring the cautions of his colleagues, and persisting in subjecting his Zimbabwean colleague to what was tantamount to an interrogation regarding his status and legitimacy as a foreign worker in South Africa. However, while the remarks might border on hate speech, there is no outright advocacy, and as such the principle of freedom of expression should be respected in a case that nevertheless sails too close to the wind. Sensitivity and caution are required in a context where foreigners are frequently and unfairly blamed for joblessness. The onus is on the presenter to be aware at all times of possible fallout in a volatile public space, and to temper comment accordingly.

In the result I find that there is no transgression of the Code.

[1] In a 2005 judgment of the BCCSA relating to xenophobia, the following was stated: "The debate does not promote xenophobia but raises issues which are particularly relevant for listeners. Freedom of expression, which is a precious Constitutional asset, could lead to listeners taking offense. But the Constitutional Court has held that freedom of expression will, at times, offend".

DR LYNDA GILFILLAN
BCCSA COMMISSIONER