



P.O.Box 412365 • Craighall • Tel (011) 325-5755 • Fax (011) 325-5736 • e-mail: bccsa@nabsa.co.za
No 2 Albury Park • Magalieszicht Ave • Dunkeld West • 2196 • www.bccsa.co.za

Case no: 06/2004

Date of Hearing: 14 March 2003

C Dench

Complainant

vs

e-tv

Respondent

TRIBUNAL:

**Mr Ratha Mokgoathheng (Deputy Chairperson)
Mr Barnard Mokwena (Broadcasting Rep)
Dr Linda Venter (Co-Opted)**

For the Respondent:

**Mr Olifile Bop Tshweu, Regulatory Affairs
Executive**

Film contained a dark and grainy sex scene and offensive language broadcast at 20H00 at a time when a large number of children were likely to be part of the audience. Tribunal finding, that within context film suitable for viewing with sixteen-age classification and LNS icons at time of broadcast. – Dench v etv case no: 06/2004.

SUMMARY

Complaint against e-tv regarding broadcast of a film at 20h00 when a large number of children was likely to have been part of the audience. Film containing a sex scene and crude language.

JUDGMENT

Ratha Mokgoathheng (Deputy Chairperson)

- [1] C Dench's complaint is based on the feature film "Disclosure" which was broadcast by the Respondent in an early time-slot, viz 20H00 on the 15th January 2004. Complainant contends that the film contained explicit sex scenes, and offensive language, that the featured film was broadcast when a large number of children was part of the audience and that the film was unsuitable for children, as it would adversely influence children's moral and sexual behaviour. Complainant is of the view that the film should have been shown in a later time slot.
- [2] The Respondent submits that contextually viewed, although the film contained one sex scene and some offensive language, these were integral to the plot of the film and not so graphic or so explicit as to justify the conclusion that the film is inappropriate for persons under eighteen years.
- [3] "Applicable Rule 18.1 of the Code provides as follows:
- "Broadcasters shall not broadcast material unsuitable for children at times when large numbers of children may be expected to be part of the audience."
- [4] The Tribunal viewed the film which stars Michael Douglas and Demi Moore. This celebrated film was released in 1994 and explores executive and sexual power relations between at the work place. The Film and Publication Board issued an eighteen years age restriction certificate.
- [5] The Respondent's programme advisors imposed a 16- years age restriction and added the sex and language warning icon. The Respondent submits that the classification its programme advisors accorded this film is in line with its commercial and artistic imperatives.
- [6] The Complainant is entitled to express an opinion that this film is not suitable to be broadcast when a large number of children is likely to be part of the audience. This film contains only one sex scene. This sex scene is played out in a dark subdued background, the scene is not graphic nor explicit.

- [7] This sex scene does not combine sexual activity with violence. The genitalia or pubic areas of the actors are not visible, the scene do not contain discernible thrusting movements, the camera does not linger nor does it focus vividly on the genitalia. The film explores the utilisation of executive corporate power to achieve sexual exploitation of subordinate employees.
- [8] In the Tribunal's view the sex scene is essential and integral to the plot, and is not gratuitously inserted to glamorise sex. The Film and Publication Board's 1994 certificate is, in the view of the Tribunal, out-dated and is thus not appropriate as the Tribunal concurs with the Respondent that there are special circumstances entitling the Respondent to deviate therefrom.
- [9] The Tribunal, despite the recommendations of the Respondent's programme advisors, is obliged to view the film and make decisions regarding its merits in terms of the Commission's Code. The Tribunal even though the Film and Publication Board issued an age restriction of eighteen regarding the classification of this film, is of the view that the absence of graphic explicit sex scenes, nudity and offensive language justifies Respondent's decision to re-classify the film for broadcasting purposes.
- [10] It is trite that contemporary South African mores, views and tolerance are not static. The legal test in determining whether the material broadcast is legally permissible is not what is offensive to individuals or whether members of a community themselves might be offended by seeing, but what the community would not allow 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.
- [11] The Tribunal is aware that the watershed applicable to the Respondent is 21H00, that there is a duty on the Respondent to exercise its discretion circumspectly with regard to the suitability of this material it broadcasts on a sliding scale.
- [12] The Tribunal is of the view that the broadcast of this film viewed in context did not amount to a contravention of the Code.

The complaint is dismissed.

**RATHA MOKGOATLHENG
DEPUTY CHAIRPERSON**

Commissioners: Mokwena and Venter concurred in the above judgment.