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**CASE NUMBER: 16/2006**

**DATE OF HEARING: 18 MAY 2006**

**J PERKINS**

**COMPLAINANT**

**vs**

**RSG**

**RESPONDENT**

**TRIBUNAL:** Prof Henning Viljoen (Acting Chairperson)  
Prof Ravi Nayagar  
Ms Refiloe Mokoena -Msiza

**Complainant: The Complainant did not attend.**

**Respondent: Mr Fakir Hassen, Manager Broadcast and Compliance, Policy and Regulatory Affairs of the SABC assisted by RSG - Johan Botha (Presenter) and Magdaleen Kruger (Station Manager).**

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*Complaint about the use of the word “naai” in an Afrikaans song, broadcast of a live recording - word obviously used in its secondary meaning which is the equivalent of the English “f” word - song broadcast at 22:50 at a time when large numbers of children (i.e. 16 years and younger) cannot be expected to be part of the audience as it is long past the watershed - programme not specially designed for children - warning broadcast beforehand as to the nature of the programme - the right to freedom of expression entails that material may also be broadcast that “offends, shocks or disturbs” - this is part of the content of democracy where tolerance for the views of others are expected - no contravention of the Code found – complaint not upheld – J Perkins v RSG, case no. 16/2006*

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## SUMMARY

Complaint about the use of the word “naai” in an Afrikaans song, which was a broadcast of a live recording. Only very naïve persons would not realize that the word is used in its secondary meaning which is the equivalent of the English “f” word. The song was broadcast at about 22:50 and the Tribunal considered that this is a time when large numbers of children (i.e. 16 years and younger) cannot be expected to be part of the audience (clause 18.1). Progressively less suitable material may be broadcast as the period after the watershed proceeds (clause 23 of the Code). The programme was not specially designed for children (clause 26). A warning was broadcast earlier in the evening to inform listeners as to the nature of the programme. The right to freedom of expression entails that what may be broadcast is not only material that is favourably received but also that which “offends, shocks or disturbs”. Such are the demands of democracy, which expects tolerance for the views of others. No contravention of the Code was found. The complaint was not upheld.

## JUDGMENT

### PROF HP VILJOEN

[1] On 3 April 2006 at about 22:50 on RSG a song was broadcast in the programme “Tempo” that caused offence to some and the following complaint was lodged with the BCCSA.

[2] **“Radio Station: RSG, Programme: Tempo, 3 April 2006 at 21H50 - 22H00**

*“During this programme a music group was aired by the name of “Rokkeloos”. The lyrics of the songs that were played on this specific date on the mentioned time above was extremely fowl. Especially the last song that had explicit Afrikaans words incorporated in the lyrics,: “ Ek hou van melkert, breiwerk, skaapbraai en hard.....etc. ” with the explicit words to be filled in on the dots, too fowl for me to mention in this letter. In my opinion this type of lyrics condones to free and open sex, especially to our youth. In a country where HIV is a growing problem. The government are currently launching a campaign against t-shirts and posters with alcoholic slogans on them. This to try and prevent our children in starting to drink on an early age. I wonder what effect this type of lyrics will have on our youth when sex and drinking alcohol are promoted freely over the sound waves of South Africa. I truly hope that the radio station RSG will be reprimanded and prevented from broadcasting this type of lyrics again.”*

[3] The SABC responded as follows:

*“The Afrikaans word naai was used in the lyrics of one of the songs sung by the female Afrikaans band Rokkeloos. As the band’s name Rokkeloos suggests, they sang about things that women do - melktert bak, breiwerk doen, skaapvleis braai en hard naai, the last word having a double meaning – stitching in English, and a four-letter word in a colloquial sense that could be offensive to some. The interpretation of the lyrics is left to the mind of the listener, admittedly through deliberate and calculated use thereof by the band. It should also be noted that it was a live performance from the KKNK arts festival in Oudtshoorn, broadcast after 21:30 and aimed at a specialist listener audience. We do not believe there has been any breach of the Code.”*

[4] To this response the Complainant replied the following:

*“With regards to the report rendered as possible explanation by the Manager: Broadcast Compliance (Fakir Hassen) dated 5 April 2006: The second comment made by person Hassen refers to the bands name, namely Rokkeloos and about the things women like to do. With all respect to person Hassen, words like "bak" and "doen" have been conveniently been inserted into the report. Another flaw in the argument submitted is that "melktert" and "skaapvleis braai" is things enjoyed by women, however these are things equally enjoyed by men. My interpretation of the group’s name "Rokkeloos" rather suggest to me a group of females renouncing their sexuality (the word translated directly meaning "without dresses"). I don't see them with aprons behind the stove baking "melktert". Referring to the double meaning of the word, during the performance the lead singer mentioned the word condom on more than one occasion. This immediately deletes the better meaning of the mentioned word. I for one would like to see how stitching is performed with a condom. Point three in the report mentioned the following: "The interpretation of the lyrics is left to the mind of the listener..." When listening in how the words where pronounced and screamed no imagination is needed to interpret the real meaning. Point four seems to be using the fact that because it was a "live performance" that this makes it all okay. If I interpret their statement correctly we can go and rape and pillage as much as we like as long as it is a live performance. Looking at the time this music was aired, maybe our babies and toddlers were already in bed, my concern is our teenagers that are still awake at 21H50.”*

[5] We were informed during the hearing that the broadcast was a live recording of the performance of an all female band by the name of “Rokkeloos” at the Klein Karoo Nasionale Kunstefees (KKNK) in Oudtshoorn. On a point of information: The name “Rokkeloos” can be translated as “Dress less”, suggesting that the all

female band have abandoned the traditional attire of women and are now practicing an alternative lifestyle. In the song, the following words are repeated endlessly: “Ons hou van melktert, breiwerk, skaapbraai en hard naai” with the emphasis every time on the last word. It is this last word that caused the offence, giving rise to the complaint. According to the Pharos *Groot Woordeboek/Major Dictionary* the Afrikaans word “naai” means “stitch, sew; having sexual intercourse (taboo)”. It is significant that the word “taboo” was inserted by the editor after the last (secondary) meaning of the word. It would take a very naïve person not to realize that the secondary meaning of the word was intended. At the hearing, the producer of the programme described the band as “punk”, “alternative” and “in your face”. It could thus be expected of such a band that they would have little deference for taboos.

[6] The programme during which the song was broadcast, is aimed at that part of the Afrikaans youth who like to listen to alternative music. In the words of the producer: “It is generation specific and aimed at this sub-culture”. We were assured that this particular song was broadcast at about 22:50 in the evening. We were also informed that when the programme schedule was announced on the radio earlier in the evening, listeners were warned about the crude nature of the songs that would be broadcast in this particular programme.

[7] Two clauses of the Broadcasting Code might be applicable in this case. The first one is clause 18.1 which reads:

*Broadcasters shall not broadcast material unsuitable for children at times when large numbers of children may be expected to be part of the audience.*

The second is clause 26 that deals with the use of language in the following way:  
*Offensive language, including profanity, blasphemy and other religiously insensitive material shall not be used in programmes specially designed for children.*

As for these two clauses, one must keep in mind that “children” are defined in the Broadcasting Code as persons below 16 years. I do not think that large numbers of children could be expected to be part of the audience at 22:50 in the evening. Clause 18.1 can therefore not be applicable. As for clause 26, the programme “Tempo” is not designed for under 16 year olds and this clause is thus also not applicable.

The late hour at which this song was broadcast, i.e. long after the watershed beginning at 21:00, eliminates clause 27, and in clause 23 of the Code it is stated that progressively less suitable material may be broadcast later in the evening.

- [8] As in most of the cases that we have to decide, we have to weigh the right of the broadcaster to freedom of expression against the right of the listeners not to be offended by what they hear on public radio broadcasts. We have a Constitution that protects not only freedom of speech but also all the other basic rights accepted universally as those rights that are indispensable to a democracy. The view of our Constitutional Court regarding freedom of expression is contained, *inter alia*, in the judgment of the case of *Islamic Unity Convention v IBA and Others* 2002(4) SA 294 (CC) where the following was said at p 307, paragraph [28]:

*“... freedom to speak one's mind is now an inherent quality of the type of society contemplated by the Constitution as a whole and is specifically promoted by the freedoms of conscience, expression, assembly, association and political participation protected by sections 15 to 19 of the Bill of Rights. South Africa is not alone in its recognition of the right to freedom of expression and its importance to a democratic society. The right has been described as ‘...one of the essential foundations of a democratic society; one of the basic conditions for its progress and for the development of every one of its members ...’(Sieghart The International Law of Human Rights (1983) at 330). As such it is protected in almost every international human rights instrument. In Handyside v The United Kingdom ((1976) 1 EHRR 737 at 754) the European Court of Human Rights pointed out that this approach to the right to freedom of expression is - 'applicable 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 . . . Such are the demands of that pluralism, tolerance and broadmindedness without which there is no 'democratic society'."*

- [9] This view of the Constitutional Court is legal authority in our law that we have to obey. We realize that the word complained of did “offend, shock or disturb” the Complainant, and probably other listeners too. (I hasten to add that this is the only complaint that we received regarding this broadcast.) Many others might think it was in extremely bad taste. But this is not the test that we have to apply. The test is whether the South African society in general can tolerate the use of such a word. Although not used as frequently as its English counterpart (the “f” word), we should treat the use of the word in the same manner as we do with the English word. In this regard the Tribunal of the BCCSA said in the matter of *HB Gunning v e-tv*, case no. 10/2003 “... *although the ‘f’ word was frequently used and may have been offensive to certain viewers, one cannot categorise the utilization of the ‘f’ word as beyond contemporary South African standards of mores insofar that the word could not be tolerated by the vast majority of South African viewers.*”
- [10] The target audience is also an important factor to consider. The producer referred to the “sub-culture of Afrikaans alternative music listeners”. It would be hypocritical to allow the “f” word in English songs but to censure broadcasters for broadcasting the Afrikaans equivalent. Coupled with this is the fact that listeners were forewarned as to the crude nature of the programme.
- [11] Finally, I have to correct one perception of the Complainant. In the final paragraph of his letter of complaint, he states that hopes that we will prevent RSG from broadcasting this type of lyrics again. Just to set the record straight: We cannot prevent any broadcaster from broadcasting material that offends. We can only react when a complaint has been lodged by finding the broadcaster guilty or not guilty of contravening the Code and, in the former case, by imposing a sanction.

**It should be stressed that the word “naai” should not, as a result of this judgment, be regarded as generally acceptable in broadcasts. The particularly late time slot of the broadcast and the context saved it.**

**In the result no contravention of the Code is found and the complaint can therefore not be upheld .**

**PROF HP VILJOEN**

*Commissioner Nayagar and Co-Opted member Mokoena-Msiza concurred*