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**CASE NUMBER: 31/2005**

**DATE OF HEARING: 04 MAY 2005**

**L MITCHELL & OTHERS**

**COMPLAINANT**

**vs**

**SABC3**

**RESPONDENT**

**TRIBUNAL:** Prof Kobus van Rooyen SC (Chairperson)  
Mr Barnard Mokwena  
Dr Linda Venter (Co-opted under representivity clause)

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

**Respondent:** Mr Fakir Hassen, Manager Broadcast and Compliance, Policy and Regulatory Affairs of the SABC accompanied by Mr Trevor Smit, General Manager SABC3

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*Animals – cruelty to – the right to information outweighed the complaints as to cruelty in this programme. Mitchell vs SABC News, Case No: 31/2005.*

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## **SUMMARY**

**Top Billing is a well known programme on SABC 3, one of the tv channels of the SABC, the public broadcaster. It attracts a wide audience and deals with matters of interest, whether in the arts, travel, architecture and the like. In the programme under discussion the presenter took his viewers to a Vietnam restaurant where one of the dishes is snake meat. Five complaints were received about what was, inter alia, described as cruelty to animals and the broadcast of cruelty as a form of entertainment. In the Tribunal's view the information value of the insert ultimately saved it; it was not broadcast for its entertainment value. In a sense one was struck by the hopeless ordeal of the captured snake. It is true that the actual killing was not shown and that the cobra in the insert was probably merely included to frighten**

viewers. Yet it could be argued that the insert promoted cruelty to a *captured* animal. However, one must accept that this is also the ordeal of animals slaughtered at an abattoir. The more one thinks about it, the less attractive meat dishes could become! But culture, and often very local South African culture, has led to the eating of a wide variety of creatures. Only tolerance of different eating cultures would overcome the need for clashes as to what one should eat and how the living creature should be slaughtered or killed. The Tribunal believes that the insert was tolerable within a community where the right to know is one of the central values. The insert did not promote violence but, on balance, promoted knowledge of different cultures. There is also no evidence that a criminal was being paid for information. The eating of snakes is, in any case, not a criminal act in South Africa. The complaints were not upheld.

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## JUDGMENT

### JCW VAN ROOYEN (Chairperson)

[1] Top Billing is a well known programme on SABC 3, one of the tv channels of the SABC, the public broadcaster. It attracts a wide audience and deals with matters of interest, whether in the arts, travel, architecture and the like. In the programme under discussion the presenter took his viewers to a Vietnam restaurant where one of the dishes is snake. Five complaints were received about what was, inter alia, described as cruelty to animals.

[2] One of the complaints reads as follows:

“ I wish to complain about last weeks episode of Top Billing which featured the killing of a cobra. There is enough violence in this country against animals and people without a television show promoting it by using killing as a form of entertainment. The killing is portrayed as a kind of joke and is followed by the macho drinking of the blood and swallowing the heart. Perhaps future shows plan to entertain the public with some tasty cock fighting or a session or two of bear baiting. Maybe there are some human minority groups to have a go at. Violence is a sickening daily reality for many and the national broadcaster and all involved in this production should be ashamed of what this represents. A strong sanction, a public apology and a large donation to an animal preservation charity are in order.”

[3] The SABC responded as follows:

1. “We would like it to be noted that, in our opinion, these five complaints appear to be orchestrated, due to the style of the language used and the facts quoted being remarkably similar. What also strengthens this belief is that one of the complainants, Ms B Wiltshire, says in her e-mail: “**Yes, there was a warning 'for sensitive viewers'”**, when the somewhat ironic reality is that there was no such warning at all. In fact, in retrospect, we ourselves believe that perhaps we should have had such a warning for sensitive viewers, and steps have been put into place to ensure that this happens in future, but the bona fides of the complainants and even whether they actually saw the programme themselves is called into question by this fact and the fact that there is a consistent reference to killing and eating the same snake, while this is not the case at all, as will be explained later in this response.
2. The context in which this insert was shown also needs to be noted. It was part of a series of travelogues that are an essential component of *Top Billing*, in which the lifestyles of various countries and indeed nationalities or cultures of those regions are depicted. In the case of Vietnam, snake-eating is an everyday part of life, as is confirmed by the many snake restaurants shown in the insert as well. It would have been an unfair and in fact incorrect reflection of the Vietnamese lifestyle to pretend that this did not exist. The reason for including the piece on the snake in the insert was simply that this is an important part of Vietnamese culture and a vital part of the travel experience of Vietnam. Going into a snake restaurant in Vietnam is no different to going into a steak house in Texas. It is also very necessary to look at this insert in its totality and see that it is a true reflection of traveling in an exotic country.
3. Television shows like *Fear Factor* have contestants eating far more squeamish things on prime time, without any negative response from viewers.
4. There are essentially four elements to the complaints which we will deal with. These are alleged animal cruelty; the legality of snake consumption in Vietnam; alleged offense to vegetarians; and the “jocular” style of the presenter in dealing with the issue.
5. The complaints of animal cruelty are completely unfounded, as at no stage was the actual killing of any snake shown on screen. The “taunting” of a snake that one complainant refers to was a depiction of what one would see in any snake park anywhere in the world, where a handler and (especially in the Far East, catchers), show their skills at dealing with the deadly creatures. In the insert, this happened to be shown before the eating of a snake dish, and the complainants appear to have linked the two events, although there was no suggestion that the snake that had been handled in the discussion with the snake-handler was the same one that was part of the meal later.
6. The legality of snake-killing and eating in Vietnam, as pointed out by the complainants, seems to be a little confusing, as we have not been able to ascertain that this is correct and the complainants have also not

substantiated it. What we have been able to determine is that Vietnam did have a ban on killing snakes in 1998, not for the malicious practice thereof, but in an attempt to control the exploding rat population that was damaging crops (the response at the time was that locals simply took to eating the rats as well!). We had no reason to suspect the ban at the time of filming, not only because of the slew of snake restaurants openly lining the streets of Le Mat and Hanoi that tour operators frequented, but also because our footage had to first pass a Vietnamese governmental censorship board before being signed off and allowed out of the country. They clearly felt that it did not represent Vietnam in a negative light. One could hardly expect that this would have happened if it were true that “snake killing and eating in restaurants is actually banned in Vietnam”, as alleged by one complainant.

7. We find the complaint about vegetarians being offended by the programme, to be most disturbing in that it does not acknowledge any other culture besides that as narrowly defined by the complainant. Most critics have conceded that this practice of eating snakes is acceptable and commonplace in the East, so we will not attempt to justify right over wrong in the face of what is obviously a cultural paradigm. In any event, if this complaint from a vegetarian were to be carried through to its logical conclusion in a multi-cultural context, then the same complaint should be made when steaks, legs of lamb, chicken or even fish are shown as meals in television programmes. What also if Hindus then object to beef being shown on television, or Muslims object to any meat that is not Halaal, let alone pork which is offensive to followers of that religion?
8. As for the criticism of the presenter’s light-hearted approach to the incident, regular viewers of *Top Billing* would know that this is his style of dealing with unusual situations he finds himself in. In Dr Michael Mol’s own words:

*“Jocularly has always been my uncanny gut reaction to shocking situations. From my days as an emergency physician, as strange as it may seem, a sense of humour in the face of trauma seemed to help maintain a certain calm and collectedness for the task at hand. Though well masked, I was appalled at the deplorable rite and taken a little off guard.”*

In conclusion, we wish to point out that *Top Billing* is not in the business of expressing opinions or forcing a point of view. The programme simply tell stories and allow viewers to make up their own minds – and in this case, the programme has joined the ranks of the BBC and other international broadcasters whose acclaimed programmes have shown the cultural landscape of the Far East in similar situations. We therefore submit that there has been no contravention of the Code.”

[4] The Complainant's reply was as follows:

"I will argue that the program contravened the Code in at least two major ways. Firstly it contravened paragraph 14, section ii, in that it promoted, sanctioned and glamorized violence. Top Billing is a program which supposedly promotes and highlights "the best" - as the name suggests. It displays lifestyles to be looked up to, envied and emulated. The section dealing with the killing and dismemberment of a cobra promoted the killing and eating of this animal as something glamorous and trendy to do. The violence against the animal was further sanctioned, promoted and glamorized by the jokes surrounding the violent acts and the animal's death. This was not a record of a chance happening captured as news footage but a calculated decision to seek out this "experience" record it and use it for entertainment. The entertainment aspect is made clear by the fact that the killing was filmed with the eating of the heart and drinking of the blood. If this had been the preparation a beef or lamb meal on TV those animals would never be shown having a captive bolt fired into their brain and being hung up and bled to death. Thus the program went out of it's way to glamorize it's presenter as being a macho risk taker and sophisticated man of the world. A person to emulate.

Secondly the item dealt with the promotion of an illegal act as an experience viewers might wish to experience. The presenter was a party to this act and presumably the Top Billing program paid the bill for it. I understand that the sale of snakes in Vietnam is illegal. This being the case the Top Billing presenter and crew were part of, and presumably paid for an illegal act. The nature of the program being promotional they then further promoted this illegal act to others. The Code only directly stipulates a provision against paying criminals for information (Para 39.1) but I will argue that paying people to carry out illegal acts and being accomplices to those acts is far worse and this part of the complaint should be considered with reference to paragraph 12 of the Code

[5] Clause 14(2) of the Broadcasting Code provides as follows:

Licensees shall not broadcast any material which judged within context:-

- (i) contains gratuitous violence in any form i.e. violence which does not play an integral role in developing the plot, character or theme of the material as a whole.
- (ii) sanctions, promotes or glamorizes violence.

[6] The complainant has indeed raised some interesting questions in the complaint and the reply. The programme was broadcast at a time when there was not a large number of children under 10 in the audience and the programme, of course, does not amount to programming for children. I shall accordingly not deal with this

aspect, which would probably have led to a different evaluation of the programme. The complainant, in any case, does not place the complaint within this category.

[7] Freedom of expression and information has been held by the Constitutional Court<sup>1</sup> to include the right to publish even offensive material – obviously within the limits of section 36 of the Constitution, which requires that the exercise of fundamental rights is limited by what is reasonable in a free and open democracy. The European Court of Human Rights has also emphasized the need for information which could even shock in its *Jersild*<sup>2</sup> judgment. The complainant has emphasized that cruelty should not be the subject of a programme, which is essentially aimed at entertainment. The Tribunal agrees with this point of view. However, judged contextually, the insert on the snake eating did not promote or glamorize violence. The humour of the presenter was not presented in such a manner that it could be said that the programme promoted violence or cruelty to animals. It is obvious that he found himself in an embarrassing situation : any rejection of the local dish – even if the killing of snakes for this purpose is illegal in Vietnam, which we accept, would have amounted to bad manners. Of course, the SABC could have decided to not broadcast the insert. But this approach to the problem would have not been correct. Ultimately the question would be whether the right of the public to know is, in the circumstances, more important than the rights of personality of a segment of the viewers who regard this kind of programme as disgusting, with the accent on the entertainment value of the insert.

[8] In the Tribunal's view the information value of the insert ultimately saved it; it was not broadcast for its entertainment value. In a sense one was struck by the hopeless ordeal of the captured snake. It is true that the actual killing was not shown and that the cobra in the insert was probably merely included to frighten viewers. Yet it could be argued that the insert promoted cruelty to a *captured*

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<sup>1</sup> See *De Reuck v Director of Public Prosecutions(WLD) and Others* 2004(1) SA 406 (CC).

<sup>2</sup> *Jersild v Denmark* 36/1993/431/510; also *Human Rights Commission v SABC* 2003(1) BCLR 92(BCCSA) at par [19].

animal. However, one must accept that this is also the ordeal of animals slaughtered at an abattoir. The more one thinks about it, the less attractive meat dishes could become! But culture, and often very local South African culture, has led to the eating of a wide variety of creatures. Only tolerance of different eating cultures would overcome the need for clashes as to what one should eat and how the living creature should be slaughtered or killed. The Tribunal believes that the insert was tolerable within a community where the right to know is one of the central values. The insert did not promote violence but, on balance, promoted knowledge of different cultures. There is also no evidence that a criminal was being paid for information. The eating as such of snakes is, in any case, not a criminal act in South Africa.

**The complaints are not upheld in terms of the Broadcasting Code.**

**JCW VAN ROOYEN SC  
CHAIRPERSON**

*Commissioners Mokwena and Venter concurred*