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 NUMBER: 44/2005

DATE OF HEARING: 21 JULY 2005

W & T SANDEMAN **COMPLAINANTS**

vs

SABC1 **RESPONDENT**

TRIBUNAL: **Prof Kobus van Rooyen SC (Chairperson)**
Mr Ratha Mokgoatlheng
Prof Gerrit Olivier (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.**

Comment – journalist entitled to express an honestly held comment in the exercise of her right to freedom of expression and religion. W & T Sandeman vs SABC1, Case No: 44/2005.

SUMMARY

Broadcast alleged to be against Christian morality and bordering on hate speech – held that journalist within her constitutional right of freedom of religion, opinion and belief to make a comment on the alternative religious belief known as wicca.

JUDGMENT

RATHA MOKGOATLHENG (Deputy Chairperson)

[1] The Complainants lodged a complaint against the Respondent in having broadcast on the 9th June 05 at 12:00, the documentary programme ***"L'Attitude".***

[2] The Complaint is premised on the following:

(i) the programme depicted Christianity as being sexist, and a hierarchical dictatorship;

(ii) the programme propagated unfounded allegations against Christianity bordering on hate speech;

(iii) the programme was based on the uninformed opinion of the interviewer of the "high priestess";

(iv) the programme was shown at a time when a large number of young impressionable minds were watching television.

[3] The applicable rules are 35.1 and 35.2

Comment

35.1 Licensees shall be entitled to broadcast comment on and criticism of any actions or events of public importance.

35.2 Comment shall be an honest expression of opinion and shall be presented in such manner that it appears clearly to be comment, and shall be made on facts truly stated or fairly indicated and referred to.

[4] The programme explores alternative religious beliefs known as "wicca" and compares same to the mainstream established norms of religious beliefs. The journalist interviews practitioners of this alternative religious belief and presents the adherents' views to her audience.

[5] In terms of the Constitution of the Republic of South Africa, everyone has a right to freedom of expression, and also a right to freedom of religion, opinion or belief. The journalist is entitled to have an opinion on any subject matter. The opinion proferred by the journalist that her experience of Christianity was male dominated and sexist, and hierarchically dictatorial is an expression made within her constitutional right, and even though the Complainants assail the opinion as

espoused by a person ignorant in the Christian religion, this does not render such utterances an advocacy of hatred based on religion that constitutes incitement to cause harm.

[6] The discussion in this episode was high flown and would not have engaged younger viewers as it pertained to philosophical issues expounded by wicca adherents. It may be so that the Complainants as Christians were, offended by the programme, but in a democratic South Africa, the Constitution guarantees the exchange of radical robust discourse in the market place of ideas. Persons who disagree with some of these ideas are enjoined to be tolerant of the views of others, these views, however startling, may not be suppressed because other persons differ therewith. The Constitutional Court has emphasized that freedom of expression includes the right to even publish views that offend.[1] The limit is to be found in section 36 of the Constitution.

[7] It is common cause that South Africa has recently emerged from a severely restricted past where the state extensively circumscribed and controlled freedom of expression.[2] Those restrictions would be incompatible with the new democratic dispensation heralded by the Constitution which guarantees that 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 pluralism, tolerance and broadmindedness without which there is no democratic society.

The complaint is dismissed.

RATHA MOKGOATLHENG
DEPUTY CHAIRPERSON

The Chairperson, JCW van Rooyen and Co-Opted Member Olivier concurred

---

[1] Compare *De Reuck v Director of Public Prosecutions* WLD and Others 2004(1) SA 406(CC) at par [49].
[2] See *Human Rights Commission v SABC* 2003(1) BCLR 92(BCCSA) at par [20]–[22].