ADJUDICATION NO: 05/A/2023

NAME OF PROGRAMME:	**INTERVIEW WITH MS ADELE KIRSTEN OF GUN- FREE SA**
DATE AND TIME OF BROADCAST:	**12 NOVEMBER 2022 AT 20h34**
BROADCASTER:	**eNCA**
COMPLAINANT:	**CHURR**

COMPLAINT

Complaint that a news interview contained alleged inaccurate, exaggerated, distorted, misleading and misrepresented facts.

APPLICABLE CLAUSES

The following clauses of the BCCSA Code of Conduct for Subscription Broadcasting Service Licensees:

28.2.1 Licensees may broadcast comment on and criticism of any actions or events of public importance.

28.2.2 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.

28.3.1 In presenting a programme in which controversial issues of public importance are discussed, a licensee must make reasonable efforts to fairly present opposing points of view either in the same programme or in a subsequent programme forming part of the same series of programmes presented within a reasonable period of time of the original broadcast and within substantially the same time slot.

28.3.2 A person whose views are to be criticised in a broadcasting programme on a controversial issue of public importance must be given a right to reply to such criticism on the same programme. If this is impracticable, however, an opportunity for response to the programme should be provided where appropriate, for example in a right to reply programme or in a pre-arranged discussion programme with the prior consent of the person concerned.

ADJUDICATION

[1] A complaint was lodged with the BCCSA against eNCA that a news interview contained alleged inaccurate, exaggerated, distorted, misleading and misrepresented facts. The alleged one-sided interview was broadcast on 12 November 2022 at 20.34.

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

"… The eNCA news anchor stated in closing that he **hoped that Parliament, the President, and SAPS will take note of the eNCA news and Gun Free South Africa bad data**:

THE TRUTH OF FIREARMS USED IN ATTEMPTED MURDER AND GBH

SAPS crime report for April 2019 to March 2020 is the latest crime report that supplies data for attempted murders and GBH (grievous bodily harm) segregated by weapon type used by criminals.

- Attempted murders and GBH for the year by firearms total 13 576.
- 13 576 firearms used for **attempted murders and GBH** results in a total of **37 per day** and **not 180 per day** as stated by the eNCA news anchor.
- eNCA News anchor claim of **180 per day** which totals 65 700 per year, is so far removed from reality that it is beyond the stretch of even the most active imaginations. eNCA news anchor overstating the number of 37 per day, by adding 143 per day, to arrive at the alleged **180 per day**, is an **overstatement of 390% of the truth**.

How accurate (close to the truth) is the 30 persons murdered per year news statement made by the News Anchor?

The actual number of murders caused by firearms is not 30 per day as stated by the eNCA news anchor. Graph 3 is based on actual data supplied to Parliament that shows that the number per day is at the highest 23 and not 30 per day. The four-year average for the data supplied to Parliament is 21. The 30 per day is a **31% overstatement** of the highest number of 23 per day. See attached report submitted to Parliament in reply to a written question.

A 30% overstatement of the truth is a 1) **distortion,** 2) e**xaggeration** and 3) **misrepresentations of the truth**, which eNCA news cannot defend.

The news anchor statement that <u>gun violence are killing 30 people per day</u> is incorrect and misleading Parliament, the President, Saps and the South African public**.**

<u>Is it costing the nation [nine] Billions of Rand as stated by the news anchor?</u>
The eNCA news anchor gross **distorted, exaggerated and misrepresented** overstatement that **180 injuries** [per day] caused by "**guns**" **cost billions** of rand is therefore also invalid due to the grossly overstated injury total of **65 700 persons injured per year**. The Director of Gun Free South Africa detailed later in the news interview that the alleged billions of cost **total is nine billion** rand.

The costs of **billions of rand,** as stated by eNCA news anchor, and Gun Free South Africa nine billion, was poisoned by their **hyperbolic allegation that 180 people are injured by guns [**per day]**.**

Gun Free South Africa omission of factual relevant data is their failure to account for their Firearm amnesty firearms was partners in crime with SAPS that handed over more than two thousand five hundred amnesty firearms to gangsters.

Gun Free South Africa Director reply AS TO THE SOURCE OF GUNS IN THE HANDS OF GAGSTERS at 1:53 is:

<u>Over two and a half thousand weapons</u> from the Pretoria State Armory into uh <u>gang areas</u> and and the data then becomes incredibly important because you begin to track that there was <u>this very drastic increase in gun related murders in Cape Flats communities</u> uh from about 2014 2015 which is when <u>these guns</u> [over two and a half thousand weapons] ***<u>were beginning to flood uh into the Western Cape</u>." "Secondly is through loss and theft and that's both from the state uh but primarily from civilians and that includes your private security industry."***

It is hoped that Parliament, the President, the SAPs and the South African public will **<u>NOT</u>** listen to eNCA news anchor statement that:-*"A report by Gun Free South Africa which states that gun violence in **South Africa kills 30 people every day** injuring 180 more and cost the nation billions of Rands in direct and indirect expenses".*

[3] The Broadcaster responded as follows:

"<u>RE: ENCA V CHURR- FALSE INFORMATION (12 NOVEMBER 2022)</u>

[1] This letter is in response to a complaint by Mr LD Churr ("the Complainant") regarding the comments made during an interview with Ms Adele Kirsten of Gun- Free SA ("GFSA") during a discussion on eNCA channel between 20h34 and 20h43 on the 12th of November 2022.

[2] We were requested by the Registrar of the BCCSA to respond to the complaint in terms of the clauses mentioned by the complainant.

[3] The complainant sent a 29-page complaint with several reference documents alleging contravention of the News clause 28.1, the Comments clause 28.2 as well as the Right of reply clause 28.3 of the BCCSA Code of Conduct for Subscription Broadcasting Service

Licensees ("the Code"). However, when requested by the registrar of the BCCSA to provide a summary, the complainant only referred to contravention of the news clause.

[4] This Commission has long established that the News Clause does not apply in discussion segments within the news program.[1] The complainant is also aware of this fact based on his previous cases[2] against eNCA, however, he continually disregards the precedent mentioned even directly to him in *Churr v eNCA Case No 10/2018* that:

'While this interview was conducted during the news programme it is clear that Ms. Kirsten was being interviewed regarding her views on gun control.
Her views on the topic do not qualify as news'.

Malicious and vexatious proceedings

[5] The BCCSA's procedural rule 1.5.1 provides that

The Registrar shall only accept a complaint which is not anonymous, or which, in his or her opinion, is not fraudulent, frivolous, malicious or vexatious and which prima facie falls within the ambit of the Code;

[6] As the Commission is aware, the Complainant is a regular complainant and repeatedly complains about the same and similar issues regarding alleged false information and breaching of the news, comment and right of reply clauses of the code almost every time eNCA interviews Adele Kirsten from GFSA as evident in *Churr v eNCA Case No. 10/2018 (BCCSA), Churr v eNCA Case No: 12/2022* and *Churr v eNCA Case No: 32 /A/2022.*

[7] The complainant continually disregards the Commission's decisions and precedents regarding :—

7.1. the news clause— that it does not apply on the interview/discussions segments which do not amount to news.
7.2. Opinion (clauses 28.2) and right of reply (clause 28.3) as demonstrated below.

[8] The Complainant has also repeatedly raised complaints against GSFA and Ms Kirsten on a number of occasions in online media.[3]

[9] We previously submitted the evidence showing that the Complainant's cases are not about the breach of the code but rather appear to be a personal vendetta to oppose and silence GFSA which he claims to be more opiniated with better and superior information than.

[10] We are of the view that this complaint is malicious and vexatious. However, we shall still respond in terms of clauses 28.2 and 28.3 of the code.

Opinion and Opposing views

[11] Clause 28.2 of the code provides:

1 Para 6.3 *Rustenburg Local Municipality vs eNCA Channel 403, Case No: 08/2020 (BCCSA)* and in
2 *Churr v eNCA Case No: 10/2018 (BCCSA), Churr v eNCA Case No: 12/2022* and *Churr v eNCA Case No: 32 /A/2022*
3 https://paratus.info/2015/08/10/gfsa-get-their-facts-spectacularly-wrong-again-still/
https://mbasic.facebook.com/Gunfreemzansi/photos/a.1109949542690662/1378948412457439/?type=3&source=48

28.2.1 Licensees may broadcast comment on and criticism of any actions or events of public importance.

28.2.2 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.

[12] Clause 28.3 of the code provides:

28.3.1 In presenting a programme in which controversial issues of public importance are discussed, a licensee must make reasonable efforts to fairly present opposing points of view either in the same programme or in a subsequent programme forming part of the same series of programmes presented within a reasonable period of time of the original broadcast and within substantially the same time slot.

28.3.2 A person whose views are to be criticised in a broadcasting programme on a controversial issue of public importance must be given a right to reply to such criticism on the same programme. If this is impracticable, however, an opportunity for response to the programme should be provided where appropriate, for example in a right to reply programme or in a pre-arranged discussion programme with the prior consent of the person concerned.

[13] In *Churr v eNCA Case No: 12/2022*, the BCCSA ruled that:

The Applicant did not succeed in providing a firm and rational basis for his contention that the spokesperson for Gun Control was stating facts that should have been contrasted with opposing views and that she did not express her opinion based on facts clearly stated or fairly indicated. The Applicant does not identify the clause which in his view, should have been applied in this instance. I am <u>not persuaded that the Appellant 's application has reasonable prospects of success</u>...[4]

[14] In *Churr v eNCA Case No. 10/2018 (BCCSA)*, the BCCSA ruled that regardless of Mr Churr's opposing views and alleged facts, the value that a viewer would attach to Ms Kirsten's statements is determined by
… the fact that she is pro-gun-control and secondly by the fact that she does not attempt to validate her statement by any authority. It was her opinion and neither she nor the interviewer attempted to present it as anything else. The generality of Ms Kirsten's reference to statistics in two of her other statements confirms the fact that this interview was comment based on honest opinion made on facts fairly stated as required in Clause 28.2.2.

[15] The complainant has not proven that any of the comments made by Adele Kirsten as representative of GFSA were not an honest expression of opinion presented as comments nor that they were not based on facts truly stated.

[16] We submit that as evident from the copy of broadcast, our reporter's comments are based on reference to the GFSA's report mentioned in the broadcast and which Ms Kirsten is thereafter questioned to provide opinion as a government-recognised expert in Gun control subject matters. Ms Kirsten clearly provides her opinion as such based on stated facts that she fairly indicated as usual.

[4] Para 7

[17] This Commission has also held[5] that:

> *The Broadcaster has indicated that they do offer, as a matter of course, a right of reply to any party who has been criticized in a programme. Clause 28.3.2 provides clearly that a person whose views are to be criticised in a broadcasting programme on a controversial issue of public importance must be given a right to reply to such criticism on the same programme. The Complainant was never mentioned nor were the views of people who are against gun control criticized. There was therefore no particular target for any right to reply and thus a right to reply cannot be said to be in any force.*

[18] The Complainant is not criticised anywhere in the broadcast and does not have the right to reply in terms of the Code.

[19] In light of the above, we submit that clause 28.2 and 28.3 were not violated.

[20] As the BCCSA held:

> *It remains the Broadcaster's prerogative to invite participants to a discussion or whom to approach to comment. Having said that, I conducted a quick search and found that interviews with different representatives from different organisations were broadcast over[6] a period of time for example; Gun Owners SA, and South African Gunowners' Association and which satisfies the element of balance even if the Complainant is unsatisfied that their preferred candidates were not selected to discuss the matter.*

[21] We wish to make it very clear that both GFSA and Ms Kirsten's freedom of expression in protected under our law as previously submitted[7] and as long the Complainant is not criticised, we have no obligation to give him platform to express his views regardless of his extensive letters, the exhaustion and abuse of proceedings.

Conclusion

[22] In conclusion, we submit that this complaint is not a *prima facie* case which falls within the ambit of the Code but rather malicious and vexatious. Furthermore, in light of the above there has been no contravention of clauses 28.2 and 28.3 of the Code.

[23] We therefore request the Commission to dismiss the complaint."

[4] The Complainant replied as follows:

REPLY TO eNCA SIX PAGE LETTER DATED 18 JANUARY 2023 RECEIVED VIA EMAIL 23 JANUARY 2023 OBJECTION TO eNCA NEWS INTERVIEW SUN 13 NOVEMBER 2022 @ 20H34 Aviwe Mtila speaks to Director of Gun Free South Africa, Adele Kirsten. #DStv403

[5] Para 9 Churr v eNCA Case No: 10/2018 (BCCSA), Churr v eNCA Case No: 32 /A/2022
[6] Para 9 Churr v eNCA Case No: 10/2018 (BCCSA), Churr v eNCA Case No: 32 /A/2022
[7] Para 26 – 31 of Churr v eNCA Case No: 10/2018 (BCCSA), Churr v eNCA Case No: 32 /A/2022

The BCCSA requested that the original objection emailed on 8 December 2022 be reduced and summarized to three pages. In reply to this request, a short, summarized complaint was emailed to the BCCSA on the same day 8 December 2022 to comply with the BCCSA request.

BCCSA request: " As requested previously it would be appreciated if you could please [provide] us with a summary of what your 29 pages entail in approximately 2- 3 pages by just stipulating the main facts and reasons.

This reply to eNCA letter of 18 January 2023 will rely on the shortened summarized main facts and reasons of the complaint that was supplied as requested by the BCCSA.

Summarized reply.

eNCA letter seems to be playing the man and not the ball in an attempt to divert attention away from mis and disinformation given by the eNCA news anchor as his news statements. There is a difference between asking and saying things. A review of the full interview is clear that the news Anchor not only expressed the hope that Parliament, the President and the Police will take heed of the data that was given by the news anchor as news. News that he obtained and repeated without even a basic cursory examination if his statements contained any misleading and misinformation. His claims are seen as narrative engineering. eNCA letter failed to address the issues. eNCA is attempting to sweep their News anchor news claims under the "**opinion carpet**" by claiming that their news Anchor own statements and desires are to be seen as an extension of others **opinions. eNCA is avoiding to defend the news anchors** own **factual data given as news truths, as eNCA news cannot** defend the mistruths. This eNCA avoidance is an attempt to not have their news anchor statements tested for truth by the BCCSA, and is seen as mischievous and an failed attempt at misleading the BCCSA.

EVALUATION

[5] I have watched the impugned interview and will address the following aspects of the complaint.

[6] The Complainant insists that the interview constituted news and that the news clause, Clause 28.1, is applicable to address the alleged inaccurate, exaggerated, distorted, misleading and misrepresented contents of the programme. Although the interview with the Director of Gun Free South Africa, Ms Kirsten, was conducted during a news programme, clearly, she was being interviewed regarding her views on gun control. Neither her (nor the Presenter's) views and opinions on the topic qualify as news. Clause 28.1 is therefore not applicable.

[7] Clause 28.2 is applicable in this instance. In terms of Clause 28.2.1 licensees may broadcast comment on and criticism of any actions or events of public importance. The short interview dealt with gun control, which, because of the crime situation in the country, is a topic of public importance in South Africa.

[8] Clause 28.2.2 provides that 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. It is obvious that Ms Kirsten expressed her own honest opinions, for example, she expressly said: *"I think …."* at least twice during the interview. Neither she, nor the Presenter, attempted to present her views as anything other than opinions.

Because she was introduced as Director of Gun Free South Africa, viewers would have understood that her opinions would be pro-gun-control and informed by her association with and her position as Director of Gun Free South Africa. The necessary context required by this clause was therefore provided to viewers.

[9] Clause 28.2.2 also requires that comments must be made on facts truly stated or fairly indicated and referred to. However, it does not require such facts to be true and justifiable, only that they be truly stated or fairly indicated and referred to. The Complainant compares the crime-related facts referred to on the impugned programme with the SAPS crime report for April 2019 to March 2020 in order to substantiate his allegation of distortion and misrepresentation. This SAPS crime report does not represent the latest statistics available. Be that as it may, the comments made during the interview were solely based on a report by Gun Free South Africa[8]. The Presenter introduced the interview by saying: "*Gun violence is the leading cause of murder in South Africa. <u>This is according to the report by Gun Free South Africa which states</u> …. to discuss this further, we are joined by Director of Gun Free South Africa, Adele Kirsten.*" Therefore, the truly stated,

[8] Firearms Control Briefing 3 of 2022: Using the principle of limits to stop SA's gun violence epidemic. 27 October 2022 Developed by Gun Free South Africa, available at www.gfsa.org.za

fairly indicated and referred to facts provided the viewers with the basis to evaluate the interview.

[10] Clause 28.3.1 holds that when issues of public importance are discussed, broadcasters must make reasonable efforts to fairly present opposing points of view, either in the same programme or in a subsequent programme forming part of the same series of programmes, presented within a reasonable period of time after the original broadcast and within substantially the same time slot. A number of times, the Broadcaster has broadcast interviews with representatives of organisations such as Gun Owners South Africa and South African Gunowners' Association which fulfils the requirement of balance.

[11] Clause 28.3.2 states that when a person's views are criticised in a programme on an issue of public importance, such person must be given a right to reply on the same programme or in a pre-arranged discussion programme with the person's consent. The Broadcaster has indicated that it offers, as a matter of course, a right of reply to any party who has been criticized in a programme. In this case, the Complainant was never mentioned nor were the views of people who are against gun control criticized. There was therefore no entitled party to invite for a right to reply.

[12] The Complainant also states:

> "*It is hoped that Parliament, the President, the SAPS and the South African public will **NOT** listen to eNCA news anchor statement that:-"A report by Gun Free South Africa which states that gun violence in South Africa kills 30 people every day injuring 180 more and cost the nation billions of Rands in direct and indirect expenses". [sic]*

The Complainant's contention that this statement might influence powerful decision makers against gun owners, is pure speculation and highly unlikely.

[13] The importance of editorial control, and the freedom of a broadcaster to choose the focus of a programme, has often been addressed by the BCCSA. One of the

objectives of the Code is to ensure fair and balanced comment on matters of public importance. However, this objective needs to be reconciled with the Broadcaster's right to freedom of expression, and its editorial prerogative to determine what the contents of its programmes are. In *Democratic Alliance v African National Congress and Another,*[9] Cameron J referred to freedom of expression as follows:

> *"The Constitution recognises that people in our society must be able to hear, form and express opinions freely. For freedom of expression is the cornerstone of democracy. It is valuable both for its intrinsic importance and because it is instrumentally useful. It is useful in protecting democracy, by informing citizens, encouraging debate and enabling folly and misgovernance to be exposed. It also helps the search for truth by both individuals and society generally. If society represses views it considers unacceptable, they may never be exposed as wrong. Open debate enhances truth-finding and enables us to scrutinise political argument and deliberate social values."*

[14] **I concluded that since the interview did not constitute news, Clause 28.1 is not applicable. Clause 28.2 was applicable but not contravened as the statements complained of were clearly comments that were honest expressions of opinion and clearly presented and indicated as comment. There was also no contravention of Clause 28.3. The Complainant thus failed to prove that there was unfair comment on a matter of public importance**. **In the result the Complaint is not upheld.**

DR LINDA VENTER
COMMISSIONER: BROADCASTING COMPLAINTS COMMISSION

[9] *Democratic Alliance v African National Congress and Another 2015 (2) SA 232 (CC) [122]*