



ADJUDICATION NO: 10/A/2022

NAME OF PROGRAMME: REFILWE MOLOTO, SEGMENT: THE
WORLD VIEW"

DATE AND TIME OF BROADCAST: 10 MARCH 2022 BETWEEN 7:30 TO 7:50

BROADCASTER: 567 CAPE TALK

COMPLAINANT: SPILKIN

COMPLAINT

Complaint concerning alleged hate speech.

APPLICABLE CLAUSES

4(2) Broadcasting service licensees must not broadcast material which, judged within context, amounts to (a) propaganda for war; (b) incitement of imminent violence; or (c) the advocacy of hatred that is based on race, ethnicity, religion or gender and that constitutes incitement to cause harm.

5. Exclusions

Clauses 3 and 4 do not apply to:

(3) a broadcast which amounts to a bona fide discussion, argument or opinion on a matter of public interest.

ADJUDICATION

[1] A complaint was lodged with the BCCSA against 567 Cape Talk where the

Complainant alleges that the presenter made uneducated anti-semitic remarks when she compared Israel to the President of Russia.

[2] The complaint reads as follows:

"This is the second time within a month that I have heard Refilwe Moloto speak badly about Israel or the Jewish people on her morning show on 567 Cape Talk.

This morning, 10 March 2022, between 07:30 and 07:50, she compared Israel to Putin, making the remark that Israel uses the excuse of people using themselves as human shields, to bomb hospitals. This is an uneducated remark, and is made in hate towards Israel defending her people.

...

When I bring this up in conversations, so many people complain about her and how often she is doing this, but no-one ever does anything about it, and I am tired of her Antisemitism, and Anti-semitic remarks.

I would appreciate this being looked at, I shouldn't have to feel attacked by listening to 567, and Refilwe is the only presenter I have come across that shows this hatred towards Jewish people and the state of Israel."

[3] The Broadcaster responded as follows:

"Attached is the audio from this morning's show. It is a segment called "The World View" and features correspondent Adam Gilchrist. Please take a listen.

This in no way resembles hate speech.

Refilwe commented on Adam mentioning the bombing of a children's hospital in Ukraine, when Adam mentioned that Russian president Putin is expected to justify the action by saying there were Ukrainian forces hiding nearby.

Refilwe replied briefly by saying Israel has done the same when bombing hospitals and Adam replied that Islamic State is known to occupy areas near hospitals.

At the end of the exchange Refilwe commented "wrongs upon wrongs" – basically saying all sides in conflict & war have a part to play in the violence."

EVALUATION

[4] The ventilation of a complaint on the grounds of anti-Semitism must be filtered through the light of free speech passing the prism of hate speech.

- [5] The complainant does not specifically mention the relevant applicable clause which, in her view, had been contravened. However, it appears that Clause 4(2) of the Code is relevant:

Broadcasting service licensees must not broadcast material which, judged within context, amounts to (a) propaganda for war; (b) incitement of imminent violence; or (c) the advocacy of hatred that is based on race, ethnicity, religion or gender and that constitutes incitement to cause harm.

- [6] The aforementioned clause cannot be read in isolation to the circumstances and it should be noted that clause 5(3) would exclude the aforementioned clause if the broadcast in question were found to be a “*bona fide* discussion, argument or opinion on a matter of public interest”.

- [7] The BCCSA’s point of departure in any complaint is that “... any inquiry by the BCCSA must commence with freedom of expression as a basic premise. One does not commence with a negative view in regard to a broadcast, but with what may be termed an open-minded, freedom-oriented approach to the material”¹

- [8] The BCCSA has in the past pronounced on anti-Semitism content as follows:

So as to avoid any doubt as to our approach to the expression of anti-Semitism, it should be emphasised that the Tribunal’s approach to anti-Semitism does not mean that anti-Semitism should not be rejected as obnoxious. Since our Constitution, however, allows for freedom of expression, which would include the expression of opinion, it is impossible to prohibit anti-Semitism as such. The Constitution allows people to be racists or atheists and they are permitted to say that they are racists or atheists. However, the limit is set where the manner in which such view is

¹ South African Veterinary Council & Lester v M-Net: BCCSA Case no. 42 of 2014.

expressed amounts to the advocacy of hatred that is based on race, gender, ethnicity or religion and that constitutes incitement to cause harm. The mere fact that a person hates Afrikaners does not mean that his or her view is equal to hate speech: when that hate is, however, expressed in terms which satisfy the requirement of section 16(2)(c) of the Constitution, forbidden terrain is reached.²

- [9] *Advocacy of hatred means an endeavour to instil detestation, enmity, ill-will or malevolence against another. This could be achieved not only through the spoken word, but the spoken word would probably be the strongest medium to achieve this aim.*
- [10] The Respondent is a talk radio station and one would expect robust conversation as part of its content offering. Not only is the Respondent a talk radio station but the complaint relates to a segment in the “breakfast slot”. It is highly likely that contentious issues will arise from time to time during this programme. The role of the adjudicator is to determine whether a breach of the Code occurred. .
- [11] I read the complaint, response and listened to the clip in question, numerous times. It is clear that the segment is a conflation of news and commentary - yet remains current affairs commentary which is governed by code 12 of the Free to Air Code of Conduct.
- [12] The broadcast must be judged in context. The inclusion of the comments by Mr Gilchrist goes a long way in balancing that of Mrs Moloto. To this end, even if Mrs Moloto’s comment, in isolation, were to be a breach of the Code, Mr Gilchrist’s comment which followed immediately, provided the required balance. Also, the

² BCCSA Case No: 23/2003, *Van Wyk and Several Others v SABC*, BCCSA Case No: 11/2017 and *United Democratic Movement and Others v eNCA*, Adjudication 12/A/2021: *United Democratic Movement & Several Others vs eNCA*.

comment is based on facts clearly stated or fairly referred to. Considering the requirements in terms of the Code, I can find no breach of the Code.

[13] In terms of precedent set, a two-pronged test for hate speech must be applied. I can neither find any advocacy towards hatred of the Israeli people nor an incitement to commit violence in any aspect of the broadcast.

After considering all the facts, it is found that the Broadcaster has not contravened the Code. The complaint is accordingly not upheld

A handwritten signature in black ink, appearing to read 'RA Chemaly', with a horizontal line extending from the end of the signature.

**RA CHEMALY
COMMISSIONER: BROADCASTING COMPLAINTS COMMISSION**