



ADJUDICATION NO: 18/A/2022

NAME OF PROGRAMME: THE BLACK DOOR
DATE AND TIME OF BROADCAST: 13 APRIL and 6 MAY, 21h30-22h00
BROADCASTER: e.tv
COMPLAINANT: SOGWANGQA AND MAIMANE

COMPLAINT

Complaints that episodes of a soap opera contained explicit sexual conduct and nudity and was broadcast too soon after the commencement of the watershed.

APPLICABLE CLAUSES

The following clauses of the BCCSA Free-to-Air Code of Conduct:

- 7(1) Programming on television which contains scenes of explicit violence and/or sexual conduct and/or nudity and/or grossly offensive language intended for adult audiences must not be broadcast before the watershed period.
 - 7(3) Some programmes broadcast outside the watershed period may not be suitable for very young children. Licensees must provide sufficient information, in terms of regular scheduling patterns or audience advisories, to assist parents and *de facto* or legal guardians to make appropriate viewing choices.
 - 7(4) Television broadcasting service licensees may, with the advance of the watershed period, progressively broadcast more adult material.
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ADJUDICATION

[1] Two complaints were lodged with the BCCSA against e.tv for broadcasting two episodes of a soap opera that contained alleged explicit sexual conduct and nudity at 21.30 straight after the watershed.

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

Sogwangqa: "I am a concerned viewer on etv. I have a complaint about the content of explicit sex shown on recently launched etv drama series The Black Door. This is against the Code of Conduct signed by etv. Could you please discontinue the drama series or make changes that will not reveal explicit sex, like other shows on etv. Use Imbewu as an example. I am aware of the watershed period and age restrictions but still, the content of the drama series is explicit in terms of the way the characters dress. For instance, in episode 3 of THE BLACK DOOR on 13 April 2022 when some of the characters in that "club" were wearing G-strings. G-strings worn by those women characters showed buttocks. Yes I am an adult but showing bums on TV is kind of gross and sensitive. It would be better if women characters wore short stuff and some crop tops, but G-strings reveal buttocks, even the shame of the private.

Maimane: "I want to lay a formal complaint about the high content of nudity and sex scenes that are of hardcore pornography for public television drama on Black door drama series televised on 06-May-2022 from 21h30 till 22h00 p.m.

Regardless that there was a warning issued that the program has an age restriction of 18 it doesn't make it right for eTv to broadcast such high pornography content at times that most teenagers between the age of 13yrs and 17yrs are still up at the times that this Black door series is broadcast between 21h30-22h00.

Therefore I would like to appeal to the BCCSA to recommend eTV to move this Black door series to a later time after 10h30 p.m. or shutdown the broadcast of Black door completely from South African public television if eTV is refusing or failing to comply with the reschedule of this high pornography content series.

In response

I am also making an appeal to the BCC board to review and make new changes and amend clause 7 to suite parents and children, not only the TV broadcaster. It is not fair to parents or our young teenagers we are trying to protect by all means as none of the community I lead nor members of my church agree with your swift response.

I humbly request for my original complaint to also be escalated to the BCC management and be copied in all response going forward.

I will give BCC board and eTv 14 days to respond, before I opt for a political resolution to request the review of BCC board member fit to hold office."

[3] The Broadcaster Responded as follows:

“Re: The Black Door- Watershed

- [1] This letter is in response to a complaint by Ms Nasiphi Sogwangqa and Mr Michael Maimane regarding episodes 3 and 20 of *The Black Door* drama series (“the program”) broadcasted on the 13th of April and 6th of May 2022 respectively at 21h30 on etv Channel.
- [2] Ms Sogwangqa alleged that the program must be ‘discontinued’ (not broadcasted) due to explicit sex. Mr Maimane alleged that the program is hardcore pornography which must be “shut down completely” or broadcast after 22:30 instead of 21h30-22h00 where teenagers are “still up.”
- [3] We have been asked by the Registrar to respond to the complaint in terms of clause 7(4) of the BCCSA Free-to-Air code of conduct for broadcasting service licensee (“the code”) which provides:

Television broadcasting service licensees may, with the advance of the watershed period, progressively broadcast more adult material.

- [4] The Registrar of the BCCSA has also forwarded numerous inadmissible¹ complaints demanding that the commission prohibits the broadcasting of the program because it is unsuitable for children viewing, indecent, distasteful and pornographic. We shall therefore also encompass submissions to address these concerns in our response.

Context

- [5] The Black Door is a *bona fide* drama series which is centered around a young man—*Khaya Sokhulu* who is the ray of hope for his struggling family and is forced into prostitution to save his family. Khaya returns home to pursue his lifelong dream of starting his own logistics business but things take a twisted and dramatic turn when his brother—*Chuma Sokhulu*, mysteriously dies and the only way that the young man can protect his family is by taking his brother’s place in the seedy underworld of prostitution at “The Black Door”.
- [6] *Chuma* lived a double-life a Preacher and Prostitute to make ends meet. Episode 3 features *Chuma’s* memorial at the Church and at the Black Door.
- [7] There is a scene establishing the ‘black door’ plot featuring the manager praising a pole dancer and promising to discipline another sex worker.
- [8] In Episode 20, *Khaya* who has been hired to replace his brother, *Chumo*, at a façade factory adjacent to the Black Door, discovers that *Chuma* was a male prostitute at the Black Door and that *Chuma’s* bible carried sex toys inside. *Khaya* accepts the Bible to join prostitution.
- [9] The scene features male and bare-breasted female prostitutes at the background. There is also a scene with midget prostitutes in their lingerie.

¹ Mostly vexatious

- [10] *Khaya* intoxicated himself to try and cope as he was being fed reluctantly to a cougar client at the Black door. He is shown distant, disturbed and absent emotionally and psychologically while the cougar sexually harass him and is implied performing oral sex.
- [11] The program is not an erotic drama aimed at glamourizing, promoting and stimulating sexual feelings and pleasures like in pornographic programs. Rather, the Black door is presented as an undesirable dark place where rich ugly old men and women prey on desperate young beautiful people from unprivileged backgrounds.
- [12] The sexual theme, scenes and thematic elements are essential for the development of characters, setting and plot.
- [13] Sexual scenes contain no displays of genitalia, copulation or penetration but merely portrayed and simulated conduct which is always between consenting adults in compliance with clause 8 of the code.

Warnings and Advisories

- [14] All episodes of the program are sent to Compliance for classification prior broadcasting. Many episodes were initially assigned age restrictions ranging from 16 to 18, however, due to our responsible-broadcasting policy, etv decided to assign all episodes with an 18 age restriction regardless in order to assist parents in parental control duties.
- [15] We are of the view that given the impact of moderate thematic elements with no explicit sex and nudity on episode 3, a 16 age restriction would have sufficed. However, due to the above extra caution, episode 3 was assigned an 18 age restriction.
- [16] Additional advisories for strong sex, violence and language were assigned to episode 13, and strong sex, nudity, violence and language to episode 20.
- [17] The classification graphics "18VSL" and "18VSNL" were continuously displayed on screen throughout the entire program respectively to exceed the clause 9(1) requirements of the code.
- [18] Extra warning board was displayed prior the commencement of the program with the text:

Warning the following program is of an adult nature and it's rated 18 due to explicit sex and nudity.

Viewer discretion is advised
- [19] A voice over was also added in the duration of the board saying:

Warning the following program is of an adult nature and it's rated 18 due to explicit sex and nudity.

Viewer discretion is advised
- [20] Furthermore, the above warnings and advisories were repeated after advert breaks to exceed the clause 9(3) requirements of the code.
- [21] Furthermore, the Channel's original desired slot of broadcast was 21h00, however Compliance advised the channel to schedule it after 21h30 in compliance with clause 7(4) relating to the progressive / 'sliding scale' rule. The Channel had to move the established daily flagship drama— *Imbewu*, from its successful reputable slot at 21h30 to 21h00 in order to accommodate the program.

[22] The program airs after *Imbewu*, an adult daily telenovela which is assigned age restrictions between 13 and 16². However, etv, decided to assign 16 age restriction to all *Imbewu* episodes in compliance with the 'progressive'/ 'sliding scale' rule [clause 7(4)].

Watershed and Family viewing time with Children

[23] The Complainant Maimane wrote:

Regardless that there was a warning issued that the program has an age restriction of 18 it doesn't make it right for eTv to broadcast such high pornography content at times that most teenagers between the age of 13yrs and 17yrs are still up at the times that this Black door series is broadcast between 21h30-22h00.

[24] The Complainant Maimane is of the view that the program must at least be broadcast after 22:30 or not be broadcast because he alleged that it is "hardcore pornography".

[25] The *Sibiya*³ case concerns the film— *Six Feet Under* which was rated 18SNL and broadcasted at 21h00 on etv channel. The Complainant *Sibiya* objected to the gay sex scene and expressed concern about the effect of this scene on children. He requested that this type of programme be broadcast after 23h00.

[26] Complaint van Eck stated that *Six Feet Under* was broadcast in the early evening during family time.⁴

[27] The BCCSA Tribunal held:

Broadcasters are also bound by the provisions of our Code that were formulated to protect children. These provisions were included in the Code because it is accepted in our country that children are a group in need of special protection. One such method of protection is the watershed which means that during a week night, as was the case with the broadcasts complained of, material that is not suitable for children may not be broadcast in family time that is before 21:00. The Complainant Van Eck errs when she states in her letter of complaint that the broadcast was in the early evening, in family time. The episode complained of started at 21:00 and the watershed provision was therefore not contravened.

[28] The film— *Disclosure* contained a passionate sex scene with oral foreplay and close-up fondling of genitals on a Thursday night at 20h00 on etv channel. The film was rated 18 SN by the Film and Publication Board but etv rated it 16 which was accepted by the BCCSA Tribunal⁵ who also held:

...the sex scene is essential and integral to the plot, and is not gratuitously inserted to glamorise sex. The Film and Publication Board's 1994 certificate is, in the view of the Tribunal, out-dated and is thus not appropriate as the Tribunal concurs with the Respondent that there are special circumstances entitling the Respondent to deviate therefrom.⁶

² See the beginning of episode 3 broadcast copy, prior the Black Door program

³ *sibiya and others vs etv* Case Number: 17/2003

⁴ Para 2 *sibiya and others vs etv* Case Number: 17/2003

⁵ Para 9 "The Tribunal, despite the recommendations of the Respondent's programme advisors, is obliged to view the film and make decisions regarding its merits in terms of the Commission's Code. The Tribunal even though the Film and Publication Board issued an age restriction of eighteen regarding the classification of this film, is of the view that the absence of graphic explicit sex scenes, nudity and offensive language justifies Respondent's decision to reclassify the film for broadcasting purposes".

⁶ Para 8 of *C Dench v etv*

[1] The Tribunal accordingly concluded that:

The Tribunal is aware that the watershed applicable to the Respondent is 21H00, that there is a duty on the Respondent to exercise its discretion circumspectly with regard to the suitability of this material it broadcasts on a sliding scale. [12] The Tribunal is of the view that the broadcast of this film viewed in context did not amount to a contravention of the Code.

[2] We submit that the sexual scenes in the Black door are not gratuitously inserted to glamorize sex as evident from context above. Furthermore, we are of the view that scenes in the program are less intense than the scene in *Disclosure* and therefore suitable for broadcasting at 21h31 which is after watershed when children are not expected in the audience because 'family time' ends before 21h00.

Protection of children and Parental responsibility

[29] The rights of broadcasters to freedom of expression and children's rights to be protected from harmful material must be balanced. This balance is attained by the duty of Broadcasters to inform parents about harmful content in programs and by parents who have a duty to protect their children by making informed decisions.

[30] Well before commencement of the premier broadcast and during broadcast, the program was promoted as an "ADULTS ONLY" drama with sexual theme and also as "Raunchy, Emotional and Risqué"⁷. This was and continues to be presented in different channels and also marketed in many different formats and platforms such as online, social media⁸, magazines articles⁹, posters, billboards¹⁰.

[31] We submit that in addition to the advisory requirements demonstrated above, etv took an extra step to inform parents about the adult-nature of the program. It was all left to the parents to exercise parental responsibility in order to protect their children.

Freedom of expression and Standard of tolerance

[32] Instead of exercising parental control by utilizing information provided by etv, the complainants rather seek to remove the program off television which amounts to censorship as it was administered by the apartheid regime to restricts our right to freedom of expression.

[33] In *Rev Howell* case¹¹, the BCCSA Tribunal held:

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. Those restrictions would be incompatible with the new democratic dispensation heralded by the Constitution which guarantees that freedom of

⁷ <https://www.youtube.com/watch?v=kaAMPZZDg6Q>

⁸ See the attached file titled "Online and Social media- the Black door"

⁹ <https://www.news24.com/drum/celebs/news/we-are-pushing-boundaries-adults-only-etv-drama-the-black-door-ready-to-go-live-20220407>

¹⁰ See the attached file titled –"Billboards- The Black Door"

¹¹ *Rev. Howell v etv*, CASE NO: 28/2002

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.

- [34] We understand that the program may offend, shock or disturb some viewers and besides that it is unlawful to remove it off air, in *Rev Howell* concerning the allegedly soft-pornographic film, the commission set a precedent about the standard of tolerance by stating:

According to the Canadian Supreme Court, the test in matters such as these is that it is the standard of tolerance, not taste, that is relevant. What matters is not what members of society think is right for themselves to see. What matters is what members of society would not abide other members of society seeing because it would be beyond the contemporary community standard of tolerance to allow them to see it.

- [35] In *Sibiya*¹², the Tribunal held:

*This complaint is about a sex scene between two men. The Complainant states the following: "At this time in our country when we have an Aids epidemic this kind of immoral behaviour shown on public television must be totally condemned and banned from public broadcast". The Complainant suggests that this kind of programme be aired well after midnight "... so those sick enough who want to watch this trash do not subject normal people to this kind of rubbish"*¹³.

- [36] Similarly in *Dench*¹⁴ the Tribunal held:

*It is trite that contemporary South African mores, views and tolerance are not static. The legal test in determining whether the material broadcast is legally permissible is not what is offensive to individuals or whether members of a community themselves might be offended by seeing, but what the community would not allow other members seeing, because it would be beyond the contemporary South African standard of tolerance to allow them to see it. It is the standard of tolerance not taste or approval that is relevant*¹⁵.

- [37] The Constitutional Court held¹⁶:

The corollary of freedom of expression and its related rights is tolerance by society of different views. Tolerance, of course, does not require approbation of a particular view. In essence, it requires the acceptance of the public airing of disagreements and the refusal to silence unpopular views.

- [38] It was emphasized in *Rev Howell* that "the freedom to choose and the freedom to view even what is, at times, described as "junk", is an important element within our democracy"¹⁷.

¹² *M Sibiya, E van Eck, A Bemath v etv* Case no 17/2003

¹³ Para 4 *Sibiya and others*

¹⁴ *Dench v etv- Sex and Language* case 06/2004

¹⁵ Para 10 *Dench*

¹⁶ *Case and Curtis v Minister of Safety and Security* 1996 (3) SA 617 (CC)

¹⁷ Para 19 CASE NO: 28/2002

[39] We understand that the program may be distasteful to some conservatives, but we are of the view that it passes the standard of tolerance.

Conclusion

[40] In light of the above, we submit that clauses 7(4) of the code is not contravened. We therefore humbly request the commission to dismiss the case and protect our freedom of expression which is the cornerstone of our democracy.

EVALUATION

[4] I have watched both episodes that the Complainants refer to. Episode 3, aired on 13 April, contained no explicit sexual conduct or nudity. It mainly covered the funeral of one of the characters. Episode 20, broadcast on 6 May, contained the following:

- Bare breasts and buttocks but no shots of genitals or full-frontal nudity.
- Implied oral genital contact.
- Implied sexual intercourse but no shots of genitals.

[5] Clause 7 of the Code prohibits explicit sexual conduct and nudity before the watershed. Sexual conduct is defined in the Code as follows:

“sexual conduct” means: (i) the display of genitals or of the anus; (ii) masturbation; (iii) sexual intercourse including anal sexual intercourse, (iv) in the case of child pornography, the fondling or touching of breasts, genitalia or the anus; (v) the penetration of a vagina or anus with any object; (vi) oral genital contact; or (vii) oral anal contact”.

There is a difference between explicit sexual conduct/nudity and implied sexual conduct. Explicit nudity would be full unrestricted frontal nudity without any clothes. Explicit/graphic sexual conduct would include overt close-up shots of genitalia and penetration that are open for observation. Explicit oral contact will

also include overt close-up shots of genitalia. Implied or implicit sexual conduct would be suggested behaviour which is not directly expressed or portrayed.

[6] Freedom of choice for adults is guaranteed by the Constitution. To enable adults to make informed choices for themselves and their children, sufficient information about programmes should be available to them. In compliance with the Code, the programmes under discussion were broadcast after the watershed at 9.30 and the allegedly offensive scenes occurred about 20 minutes after the start of the episode, complying with the 'sliding scale' rule and providing the appropriate age restrictions and on-screen warnings. Audience advisories of 18VSL and 18VSNL respectively were continuously displayed on screen. An additional warning board was displayed prior to the commencement of the programme, stating: *Warning - the following programme is of an adult nature and it's rated 18 due to explicit sex and nudity. Viewer discretion is advised.* This warning was repeated verbally by a voice-over. Another factor to keep in mind is that although e.tv is a free-to-air broadcaster, it has a parental control mechanism in place for use by parents and caregivers.

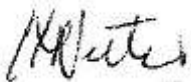
[7] Complainant Maimane is of the opinion that the episode of 6 May contained hardcore pornography. The Oxford Dictionary defines pornography as 'printed or visual material containing the explicit description or display of sexual organs or activity, intended to stimulate erotic rather than aesthetic or emotional feelings'. In this case there were no close-up (or any) shots of genitalia and sexual conduct was implied and not explicit. The relevant scenes were functional in portraying the setting and storyline and were not intended to stimulate erotic feelings.

[8] Clearly the Complainants were shocked and dismayed after being exposed to the programme. The protection of vulnerable members of the society, especially children, against content that is in contravention of the Code of Conduct, is amongst others, one of the primary reasons for the existence of the BBCSA. However, the purpose of the standards contained in the Broadcasting Code is not

to sanitise the airwaves, but rather to ensure a balance between the rights of broadcasters to freedom of expression and the rights of audiences/children to be protected against harmful material. To obtain this balance, it is the responsibility of broadcasters to inform audiences/parents about harmful content so that they can fulfill their duty to protect their children by making informed decisions.

[9] As mentioned above, adult viewers should have freedom of choice. What is considered as offensive by one person, is not offensive to another. The Constitutional Court has held that freedom of speech includes the right to air offensive material within reasonable limits. The Code does not regulate the question of taste. Neither does it prohibit any subject – the factors taken into consideration is how the subject was dealt with and the context in which it was used. It is not the task of the BCCSA to agree or disagree with a complaint. Its only task is to establish whether the Code has been contravened.

[10] Taking all these factors into consideration, in my opinion, the programme would not be beyond the contemporary South African standard of tolerance. **In the result and judged in context, I could find no contravention of the Code and therefore the complaint is not upheld.**



**DR LINDA VENTER
COMMISSIONER: BROADCASTING COMPLAINTS COMMISSION**