



CASE NUMBER: 13/2025

DATE OF HEARING: 24 JULY 2025

JUDGMENT RELEASE DATE: 06 OCTOBER 2025

MPHUTHI

COMPLAINANT

VS

MULTICHOICE CHANNEL 157

RESPONDENT

TRIBUNAL:

**DR S LÖTTER (CHAIRPERSON)
MR E NAIDU
ADV B LINCHWE-TLHAKUNG**

FOR THE COMPLAINANT [IN PERSON]: MR MPHUTHI

**FOR THE RESPONDENT: MR THABO MOHALE: SENIOR ASSOCIATE
ACCOMPANIED BY MR BRUCE MKHIZE - HEAD: REGULATORY AFFAIRS OF
MULTICHOICE.**

Held: The Respondent contravened Clause 10.3 of the Code. Mphuthi vs Multichoice Channel 157, Case No:13/2025 (BCCSA).

SUMMARY

The Complainant held the view that the continued broadcast of the programme despite the huge public uproar throughout the years constituted incitement to cause harm. The Respondent presented hate speech arguments and did not focus on the impact of the continued broadcast. Despite having alluded to the corrective interventions the Respondent did not present the results of the

previous interventions in order that it could contrast the public view. The Respondent further failed to evidence that its broadcast was sensitive to the psychological harm caused due to prolonged exposure to violence and possible childhood trauma. Thus, the Respondent continued broadcast led to the advocating of hatred that is based on race, ethnicity, gender or religion and which constitutes incitement to cause harm.

JUDGMENT

ADV LINCHWE-TLHAKUNG

[1] About 324 complaints were lodged with the BCCSA against the broadcast of the Isencane Lengane [*hereinafter referred to as 'the programme'*] Episode on the 20th of April 2025 and at 21:00 by Moja Love on Channel 157 of MultiChoice [*hereinafter referred to as 'the Respondent'*] however only the complaint lodged by Mr Mphuthi [*hereinafter referred to as 'the Complainant'*] was correctly followed through until the end. The Complainant is of the view that the continued broadcast of the impugned program by the Respondent despite enormous public uproar against the broadcast of the programme, especially within the context of Gender Based Violence in South Africa, incites violence to cause harm.

[2] THE COMPLAINT READS AS FOLLOWS:

"Formal Complaint Against Moja Love – Isencane Lengane Episode Aired on 20 April 2025 at 21:00 (Clauses 9.5 and 10.3 of the BCCSA)

I am writing as a concerned and law-abiding citizen of the Republic of South Africa to lodge a formal complaint against the television channel Moja Love for its continued broadcast of the programme *Isencane Lengane*, specifically the episode aired on 20 April 2025 at 21:00.

The episode, which has since sparked widespread condemnation on social media platforms including X (formerly Twitter), TikTok, Facebook, and Instagram, depicts scenes that, in my respectful view, **violate the Subscription Broadcasting Code of Conduct**, more specifically **Clause 9.5 read with Clause 10.3**, both of which deal with the depiction of **violence** in broadcasting.

As a conservative and legally minded citizen, I believe it is vital that broadcasters are held to the highest standards when it comes to the protection of dignity, the prevention of harm, and the

responsible portrayal of intimate relationships — particularly where **domestic abuse or coercive behaviour** is apparent.

Whether Moja Love, in broadcasting the 20 April 2025 Episode of *Isencane Lengane*, violated:

- [a] **Clause 9.5** of the Subscription Code, which prohibits the glamorisation or promotion of violence in any form;
- [b] **Clause 10.3**, which obligates broadcasters to ensure that the portrayal of violence in domestic or intimate relationships is handled with extreme sensitivity and without any suggestion of approval, normalisation, or entertainment value.
- [c] **Clause 9.5**: "the explicit infliction of or explicit effects of **extreme violence** which constitutes incitement to cause harm."
- [d] **Clause 10.3**: "*advocates hatred that is based on race, ethnicity, **gender** or religion and which constitutes incitement to cause harm.*"

In the Episode aired on 20 April 2025, Moja Love broadcast a deeply disturbing interaction between the central couple in *Isencane Lengane*. This included:

- [a] **Verbal aggression, psychological manipulation, and controlling behaviour** by the male partner towards his wife;
- [b] The **humiliation and emotional distress** of the female participant, with no visible intervention, contextualisation, or support from producers;
- [c] A complete **lack of content warnings or viewer advisories**, despite the emotionally charged and potentially traumatic content;
- [d] A broader **pattern of normalising abuse**, as this type of behaviour has been portrayed repeatedly throughout the season with no meaningful narrative accountability or editorial framing.

Following the Episode, social media erupted with thousands of concerned posts and threads. Viewers expressed their collective shock at how the show continues to air such distressing interpersonal dynamics — particularly among young, vulnerable individuals — under the guise of "reality entertainment."

This, in my respectful view, **violates both Clause 9.5 and Clause 10.3** of the Code. The programme appears to depict abuse and coercive behaviour in a manner that risks *normalising or trivialising domestic violence*, particularly for impressionable viewers. In a country grappling with high levels of **gender-based violence**, this is not only irresponsible, but also unacceptable.

IN LIGHT OF THE ABOVE, I RESPECTFULLY SUBMIT THAT:

- [a] Moja Love is in clear breach of **Clauses 9.5 read together with 10.3** of the Subscription Broadcasting Code of Conduct;
- [b] The broadcaster has failed to uphold its ethical and legal obligation to avoid the glamorisation, trivialisation, or implicit acceptance of violence within intimate relationships;
- [c] There is sufficient public evidence, including widespread online condemnation, to warrant formal **investigation and regulatory scrutiny**.

ACCORDINGLY, I REQUEST THAT THE BCCSA TO:

- [a] Initiate an investigation** into the content of the 20 April 2025 episode;
- [b] Request an explanation** from Moja Love regarding editorial processes and participant protections;
- [c] Review the broader ethical practices** of the programme in light of ongoing complaints and recurring themes of violence and control;
- [d] Consider suspending the programme** or issuing appropriate sanctions if found in breach of the Code.

In conclusion, no entertainment value can justify the **harmful, unfiltered portrayal of domestic abuse**. As a nation committed to the values of human dignity, equality, and the rule of law, we must ensure that our broadcasters uphold those same principles in their content.

Can I also add an example where the main male character instructs their infant to go play outside while they held what looked like a Sjambok in his hand. That is a sign of domestic violence and that is an issue of national importance.”

[3] THE BROADCASTER RESPONDED AS FOLLOWS:

“INTRODUCTION

1. The matter arises out of an Episode of Isencane Lengane (“the Show”) aired on Sunday, 20 April 2025.
2. Given the numerous complaints and the fact that they emanate from the same Show that was aired on the same day, the Respondent requests the BCCSA to exercise its discretion and consolidate the complaints.
3. In essence, the complaints are that the Show glorifies, promotes and thereby perpetuates GBV and essentially has done nothing to protect Thando from Siyacela.
4. The Show, which is already in its Season 7 (seven), is a reality television show that is a continuation of the story of Thando and Siyacela (“the Couple”) who married as teenagers under the customs of the communities where they live.
5. The Show not only highlights the Couple’s story, but it is intended to educate and encourage a dialogue and/or conversation amongst the South African public on issues and realities faced by persons in their shoes and/or similar background as couples in general, regardless of their social standing and background. It does this by, amongst other things, highlighting:
 - 5.1 the Couple’s challenges as they navigate life;
 - 5.2 the trauma associated with the loss of parents;
 - 5.3 the impact of alcohol on the Couple and the family unit; and
 - 5.4 most importantly, the successes that often come with navigating such harsh environments especially by Thando, Siyacela’s wife.
6. It is the Respondent’s submission that whilst the impugned episode may have come across as offensive and insensitive, the issues raised by the show are a necessary part of the discourse on gender-based violence (“**GBV**”).

THE ESSENCE OF THE COMPLAINTS SUMMARISED:

7. The essence of the complaints is that the Episode violated various provisions of the BCCSA Code in three parts paraphrased as follows:
 - 7.1. The Show, i.e., the Episode in question violated clause 10.2 in that of the Code in that the broadcast material, judged within context, incites imminent violence;
 - 7.2. The Episode in question violated clause 10.3 of the Code in that the broadcast material, judged within context, advocates for hatred, based on race, ethnicity, gender or religion which constitutes incitement to cause harm; and
 - 7.3. The Episode in question perpetuates GBV and the Channel has essentially done nothing to protect Thando from Siyacela.
8. The Respondent will in detail below set out its submission and implores the BCCSA to find that the Show:
 - 8.1. does not incite imminent violence within the meaning of clause 10.2 of the Code;
 - 8.2. does not meet the jurisdictional requirements for hate speech within the context of clause 10.3 of the Code;
 - 8.3. does not rise to that which is contemplated in clauses 10.2 and 10.3 of the Code; and
 - 8.4. in any event falls within the protection afforded in clause 11 of the Code.

9. THE FINAL EPISODE AND SEASON FINALE OF ISENCANE LENGANE:

9.1 EPISODE 13:

- 9.1.1 Following the broadcast of the impugned Episode, which was Episode 12, a detailed Episode with the necessary context (having regard to the Show being a reality show) was broadcast being Episode 13 which was aired on Sunday, 27th April 2025 and the following were clear take-aways from Episode 13;
- 9.1.2 That Siyacela clearly did not assault Thando as it may have appeared and/or construed by viewers on the impugned episode;
- 9.1.3 That Thando's family attended at Siyacela's residence to hold discussions with Siyacela and his family and amicably resolve any issues; and
- 9.1.4 That Thando's family enquired and implored Thando to leave with them on that day and not stay with Siyacela whilst the conflict between the parties were being resolved.

9.2 THE SEASON FINALE

- 9.2.1 A Season Finale was aired on 4th of May 2025 and the purpose of the Finale was amongst other things:
 - 9.2.1.1 To have all the families in one setting with a mediator and seasoned presenter, Mr Nimrod Nkosi to discuss the issues that arose in Episode 12 including the entire Season;

- 9.2.1.2 Have a representative from the Respondent to share some of the behind-the-scenes work being done by the Channel in assisting both couples particularly Thando;
- 9.2.1.3 Getting some insights from Gender Activists on the scourge of GBV and what more can the Respondent do; and
- 9.2.1.4 Shared learnings from a Clinical Psychologist on GBV and the role of media in creating awareness.

10. THE RESPONDENT'S SUBMISSIONS:

the applicable legal framework

- 11. Clause 10 of the Code is a mirror image of section 16 of the Constitution.¹
- 12. In order to further contextualise clause 10 of the Code and the concomitant rights, it is worth quoting at length from the judgement of ***Khumalo and Others v Holomisa***² which held:

"The print, broadcast and electronic media have a particular role in the protection of freedom of expression in our society. Every citizen has the right to freedom of the press and the media and the right to receive information and ideas. The media are key agents in ensuring that these aspects of the right to freedom of information are respected. The ability of each citizen to be a responsible and effective member of our society depends upon the manner in which the media carry out their constitutional mandate . . . The media thus rely on freedom of expression and must foster it. In this sense they are both bearers of right and bearers of constitutional obligations in relation to freedom of expression.

Furthermore, the media are important agents in ensuring that government is open, responsive and accountable to the people as the founding values of our Constitution require . . . In a democratic society, then, the mass media play a role of undeniable importance. They bear an obligation to provide citizens both with information and with a platform for the exchange of ideas which is crucial to the development of a democratic culture . . . [T]hey have a constitutional duty to act with vigour, courage, integrity and responsibility. The manner in which the media carry out their constitutional mandate will have a significant impact on the development of our democratic society." [Emphasis added]

- 13. It is clear then that the media plays an important role in our society and its freedom of speech should not be readily curtailed.

DOES THE BROADCAST INCITE IMMENT VIOLENCE - CLAUSE 10.2

- 14. The Respondent submits that there is a huge distinction between "broadcasting violence" and "inciting violence".
- 15. 'Incitement' is defined as "actually encouraging or pressuring others to commit a violent act, where in all the circumstances the violent act actually occurred or was likely to occur."³ No such incitement has been established on the facts including on all the Episodes broadcast i.e., Episode 12, 13 and the Season Finale.

¹ Appellant's submission to the adjudicator

² 2002 (8) BCLR 771 (CC) ("**Holomisa**") at paras 22-24.

³ see Milo D, Penfold G and Stein A, '*Freedom of Expression*' in Woolman S, Roux T and Bishop, M, (eds), Constitutional Law of South Africa (2008) at 42-72.

16. Further, it is accepted that the protection afforded by the right to freedom of speech extends to offensive information and ideas. Our courts, and in line with international trends, have endorsed the dictum of the European Court of Human Rights in **Handyside v The United Kingdom**,⁴ that freedom of expression extends to information or ideas 'that offend, shock or disturb . . . Such are the demands of . . . pluralism, tolerance and broadmindedness'⁵
17. More recently, in **Masuku and Another v South African Human Rights Commission obo South African Jewish Board of Deputies**⁶ the SCA expressed the view that '[t]he fact that particular expression may be hurtful of people's feelings, or wounding distasteful political inflammatory or downright offensive, does not exclude it from protection . . . The bounds of constitutional protection are only overstepped when the speech involves propaganda for war; incitement of imminent violence; or the advocacy of hatred that is based on race, ethnicity, gender or religion and that constitutes incitement to cause harm.'⁷
18. On the above-mentioned authorities and factual background, it is the Respondent's submission that the impugned broadcast, i.e. Episode 12, has not infringed upon the provisions of the BCCSA Code, particularly clause 10.2, however distasteful or hurtful it may have been to the complainants.
19. In the circumstances, the broadcast does not offend against the Code since there was no incitement to imminent violence.

DID THE BROADCAST ADVOCATE FOR HATRED - Clause 10.3

20. Clause 10.3 of the Code is the so called "hate speech" provision that imitates Section 16(2)(c) of the Constitution, which states that the constitutional right to freedom of expression does not extend to the "advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm".
21. The essence of the complaints is that Siyacela's conduct advocates for hatred based on Thando's gender.
22. It is key to briefly outline the brief legal framework and context including the criteria a complaint needs to meet for this provision to be applicable.

WHAT IS HATE SPEECH?

23. Section 16(2)(c) of the Constitution describes hate speech as the 'advocacy of hatred based on race, ethnicity, gender or religion and that constitutes incitement to cause harm'.
24. Therefore, for a statement or broadcast to constitute hate speech, all of the below discussed criteria must be met.

THE SPEECH / BROADCAST MUST ADVOCATE HATRED

⁴ (1976) 1 EHRR 737 754.

⁵ Confirmed by the Constitutional Court in *Islamic Unity Convention v Independent Broadcasting Authority and Others* 2002 (5) BCLR 433 (CC) at para 26.

⁶ [2019] 1 All SA 608 (SCA), 2019 (2) SA 194 (SCA)

⁷ *Ibid.*

25. In order for there to be a finding that the broadcast advocates for hate-speech and/or advocates for hatred based on gender, it is not the broadcast of the show that would meet this requirement but rather Siyacela's conduct against Thando.
26. Again, as outlined above, on Episode 12 and the Season Finale, Siyacela explained that he did not assault Thando nor had any intentions of assaulting her. In the Season Finale, Thando reiterates that Siyacela did not assault her and that he has on numerous occasions post Episode 12, tendered an apology to her which she has accepted.
27. Even if the show had caused that alleged submerged hatred, the Code, astutely, does not concern itself with the 'causing' of hatred, but rather, the 'advocacy' of hatred.
28. Advocating hatred means, in context, 'actively promote hatred or attempt to instil hatred in others'.⁸
29. The Canadian Supreme Court explained that the term 'hatred' 'connotes emotion of an intense and extreme nature that is clearly associated with vilification and detestation'.⁹
30. Nothing in the broadcast actively calls on anyone to hate anyone. The majority of the complaints identify the violent nature of the husband against the wife, and the rest of the complaints turn on the allegation that Siyacela intended to sjambok Thando.
31. The context of the broadcast is therefore one of depicting the personal, albeit tumultuous, relationship between a couple, who share a common problem with many other relationships in South Africa, namely, GBV.
32. In *Hotz and Others v UCT*,¹⁰ Wallis JA sought to balance freedom of expression with the hate speech restrictions by noting that 'A court should not be hasty to conclude that because language is angry in tone or conveys hostility it is therefore to be characterised as hate speech, even if it has the overtones of race or ethnicity'.
33. It cannot be that the depiction of that tumultuous personal relationship advocates for hatred, especially not on grounds of race, ethnicity, gender, or religion. Instead, the broadcast, viewed in context, clearly seeks to expose GBV as a scourge in our society by depicting the realities of a typical relationship in South Africa.
34. Furthermore, Milo¹¹ correctly points out that the advocacy of hatred cannot "simply advocate hatred of a specific person" but must instead advocate hatred based on "group characteristics". Indeed, laws governing hate speech cannot concern themselves with personal conflict between individuals but seek to protect the interests of groups of people.
35. Therefore, the broadcast of the supposed submerged hatred of the wife against the husband cannot amount to hate speech or the violation of section 10.3 of the Code.

'EXPOSING' V 'ADVOCATING':

⁸ See Currie I and De Waal J, *The Bill of Rights Handbook* (5th ed 2005) at 375. See also *Freedom Front v South African Human Rights Commission* 2003 (11) BCLR 1283 (SAHRC) where it was held that 'calling for the killing of people because they belong to a particular community or race must amount to the advocacy of hatred unless the context clearly indicates otherwise'.

⁹ *R v Keegstra* [1990] 3 SCR 697 at 777.

¹⁰ 2016 ZASCA 159

¹¹ Milo D, Penfold G and Stein, A, 'Freedom of Expression' in Woolman S, Roux T and Bishop M (eds), *Constitutional Law of South Africa* (2008) (referred to hereafter as Milo et al) at 42–80 to 42–81.

36. The necessity of this distinction was illustrated in the famous hate speech case involving former president of the African National Congress Youth League, Julius Malema, who chanted the words 'Dubula ibhunu' ('shoot the boer') at various public meetings.
37. While the Equality Court found Malema to have published hate speech, and banned him from singing the song,¹² it could not be said that the media who broadcast Malema's hate speech were also guilty of advocating hate speech or incitement of imminent violence, since the media aims simply to either to report facts or comment upon such facts.
38. This principle is further illustrated in the decision of the European Court of Human Rights, in *Jersild v Denmark*,¹³ where a Danish journalist interviewed three members of the so called "Green Jackets", a racist organisation, in a documentary where the racists made abusive and derogatory remarks about immigrants and ethnic groups in Denmark. The journalist was convicted by the *court a quo* for aiding and abetting the spreading of racist speech in terms of Danish hate speech criminal laws. This was overturned by the European Court of Human Rights, which held:

"Taken as a whole, the feature could not objectively have appeared to have as its purpose the propagation of racist views and ideas. On the contrary, it clearly sought – by means of an interview – to expose, analyse and explain this particular group of youths, limited and frustrated by their social situation, with criminal records and violent attitudes, thus dealing with specific aspects of a matter that already then was of great public concern."¹⁴
39. Similarly, a broadcast exposing GBV, cannot be equated to advocating for GBV.

THE ADVOCACY MUST RELATE EITHER TO RACE, ETHNICITY, GENDER OR RELIGION

40. The broadcast of the episode and/or the advocacy of hatred must relate to one of the grounds listed in section 16(2)(c) and section 10.3 of the Code, namely race, ethnicity, gender or religion.
41. That the husband displays violent conduct towards her wife, however distasteful as that may be, is not in itself a jurisdictional requirements for hate speech.
42. Further, the broadcast must have incited imminent violence.

WHAT IS INCITEMENT?

43. Milo et al contend that the meaning of 'incitement' is 'to instigate or actively persuade others to cause harm' ¹⁵
44. In *R v Andrews*,¹⁶ Cory JA described incitement to cause harm thus:

"When an expression does instil detestation, it does incalculable damage to the Canadian community and lays the foundations for the mistreatment of members of the victimised group. I would have thought it sufficient to look back at the quintessence of evil manifested

¹² *Afriforum and Another v Malema and Another* (Vereniging van Regslui vir Afrikaans as Amicus Curiae) 2011 (12) BCLR 1289 (EqC). This judgment was overturned and upheld by the Supreme Court of Appeal and found that the Song was not hate speech.

¹³ (1995) 19 EHRR 1.

¹⁴ at para 33.

¹⁵ Milo et al at 42–80.

¹⁶ (1989) 39 CRR 36 at 56.

in the Third Reich and its hate propaganda to realise the destructive effects of the promotion of hatred.”

45. With respect, there is nothing in the broadcast of episode 12 that expressly and actively seeks to instigate or persuade others to imminent violence against any group of persons.

THE IMPORTANCE AND RELEVANCE OF CLAUSE 11 OF THE CODE

46. The BCCSA has held that it is permissible for a programme that contains a discussion about hate speech to contain a verbatim quotation of the hate speech for purposes of informing the public and eliciting discussion and debate.
47. The context of the impugned broadcast makes it clear that the purpose of the broadcast is to facilitate debate, inform, educate and entertain.
48. Furthermore, and of importance, in a similar complaint and in relation to this Show, the BCCSA Tribunal in ***Multichoice Channel 157 v Sobudula & others***¹⁷ dealing with similar facts found that the Show did not violate any provisions of the Code.
49. We pause to mention that the BCCSA is a creature of statute and following the *stare decisis* principle, the BCCSA is bound by the decision of the Tribunal handed down on the 14th of April 2023.
50. In ***SAHRC v SABC***,¹⁸ the South African Human Rights Commission filed a complaint against the SABC for the broadcast of Mbongeni Ngema’s song ‘AmaNdiya’ on the grounds that the broadcast amounted to hate speech in terms of the Broadcasting Code. The song, comments on the relationship between black people and Indians in KwaZulu-Natal and casts such relationship in a bad light where Indians are said to be oppressive, disrespectful and hateful against black people. The BCCSA held that the song amounts to hate speech as it advocates hatred against Indian people. Notwithstanding that ruling, the BCCSA concluded that the broadcast did not contravene the Broadcasting Code as the broadcast of the song ‘*was part of a bona fide current affairs programme and informed debate*’ and *was not an attempt to broadcast hate speech under the guise of a current affairs programme*.
51. It is thus clear that clause 11 of the Code may not be ignored when a broadcast has been found to contravene clause 10 provisions.
52. Given that the broadcast was a *bona fide* attempt to expose GBV and illicit debate with the hope of eradicating such violence, which is clearly a matter of public importance, the Respondent did not violate any provisions of the Code particularly when read with clause 11.

CONCLUSION

53. From the facts and arguments set out above, the Respondent submits that the broadcast of episode 12 did not infringe on any provisions of the Code i.e., clauses 10.2 and 10.3 of the Code.

¹⁷ Adjudication no 06/A/2023

¹⁸ Case no 31/2002 (BCCSA) 13 June 2002

54. In the event that it is found that the broadcast contravened clauses 10.2 and 10.3, the exception as contained in clause 11 is applicable in the circumstances. The broadcast of episode 12 still enjoys protection under Clause 11 of the Code.”

[4] **THE COMPLAINANT REPLIED AS FOLLOWS:**

“Counter arguments to Respondent’s Justification of Harmful Content in *Isencane Lengane*: A Legal and Ethical Rebuttal under the BCCSA Code

I. INTRODUCTION & STRUCTURE OF COUNTERARGUMENTS

The Respondent’s submission attempts to justify the impugned episode of *Isencane Lengane* through claims of “context,” “freedom of expression,” and “public discourse.” However, as argued below, these justifications do not absolve the broadcaster from the core obligations imposed under the **BCCSA Code of Conduct for Broadcasters**, especially clauses **10.2 (incitement to imminent violence)**, **10.3 (hate speech)**, and the overarching duty under clause **28** to avoid material that *sanitizes* or *normalizes* gender-based violence (GBV).

1. Statement:

“Given the numerous complaints and the fact that they emanate from the same Show... consolidate the complaints.”

My Counterargument: This procedural point is irrelevant to the merits. Consolidation should not serve to dilute the individual trauma or distinct perspectives raised by each complainant. **Each complainant’s constitutional dignity (Section 10 of the Constitution)** demands separate and serious consideration. In *MEC for Education: KwaZulu-Natal v Pillay 2008 (1) SA 474 (CC)*, the Constitutional Court emphasized the obligation to consider individual context and harm, even in a broader systemic issue.

2. Statement: “The Show... is intended to educate and encourage a dialogue... including the impact of alcohol, loss, and success... especially by Thando.”

My Counterargument: Intent does not equal impact. While the Respondent emphasizes educational intent, **the BCCSA Code (Clause 28.1)** focuses on the *effect* of content—particularly when dealing with children, women, and victims of trauma. The show’s presentation of GBV as “entertainment” with minimal contextual framing risks **normalizing violence**, thus violating **Clause 10.2** and **Clause 28.2**, which prohibit material likely to “sanction, promote or glamorize violence.”

3. Claim:

“The impugned episode may have come across as offensive and insensitive, [but it] is a necessary part of the discourse on GBV.”

My Counterargument: *Per S v Mamabolo (2001 (3) SA 409 (CC))* and *Islamic Unity Convention v IBA (2002)*, the **right to freedom of expression** does not include the right to perpetuate harm or normalize systemic abuse. When the medium lacks **editorial disclaimers**, **trigger warnings**, or **proactive redress mechanisms**, it ceases to educate and begins to exploit.

4. On Incitement to Imminent Violence (Clause 10.2)

Claim:

“There is a huge distinction between broadcasting violence and inciting violence... no such incitement was established.”

My Counterargument: Clause 10.2 does **not require overt calls to violence**, only that the material “**judged within context**” may be reasonably construed as *likely to incite imminent violence*. The repeated *broadcasting of unchallenged verbal abuse, controlling behaviour, and threats of physical violence*—without narrative correction or intervention—**constitutes tacit endorsement**, especially to vulnerable audiences.

- **Case Reference:** In *Freedom of Expression Institute v SABC (BCCSA, Case No: 24/2003)*, even the absence of direct intent was insufficient to exonerate a broadcaster where societal harms were not adequately balanced or mitigated.

5. On Hate Speech (Clause 10.3)

“The Show does not advocate for hatred... there was no intention to vilify women or promote GBV.”

My Counterargument: The legal definition of hate speech under Section 16(2)(c) and Clause 10.3 of the Code is **not intent-based but effect-based**. It covers any material that “*constitutes advocacy of hatred based on gender and incites harm*.”

- **Harm includes psychological harm**, normalized abuse, and social reinforcement of gender inequality. Siyacela’s behaviour—**unrepudiated and uncontextualized by the Show’s producers**—meets this threshold.
- In *SAHRC v Khaya FM (BCCSA, 2011)*, *harm* was found in *repeated toxic messaging*, even if subtly embedded.

6. On the Follow-Up Episodes (Episode 13 and Finale)

Claim:

“The Finale addressed the controversy... Thando said she was not assaulted... a psychologist and gender activist were featured.”

My Counterargument: A post-facto sanitization does not retroactively sanitize the original harm. This approach mirrors the logic rejected in *SAHRC v SABC (Case 31/2002)* where the Commission held that broadcasting a problematic message **and then apologizing or contextualizing it later** does **not erase the original violation**.

Further, **power dynamics** and **coercion in abusive relationships** make any “voluntary statements” by the survivor suspect without expert verification.

- **Case Reference:** *Le Roux v Dey (2011)* confirms that post-facto justifications or clarifications cannot cure prior defamatory or harmful publications.

7. On Freedom of Expression (Clause 11 and Section 16)

Claim:

“Freedom of expression protects even offensive or distasteful content. Clause 11 applies.”

My Counterargument: Freedom of expression is **not absolute**. As per **Section 16(2) of the Constitution**, it does *not protect* content that amounts to:

- (a) propaganda for war,
- (b) incitement of imminent violence,
- (c) advocacy of hatred based on gender *that incites harm*.

While the media plays a critical watchdog role (*Holomisa v Argus Newspapers*), the BCCSA Code **qualifies this role** by requiring “**due care**” when dealing with vulnerable communities and potentially harmful content.

- **Clause 11** protects “*bona fide discussion, argument or opinion on a matter of public interest*”—but *this requires balance, fairness, and journalistic integrity*. A reality TV show devoid of these does not qualify.

8. On Precedent (Sobudula & Others Decision)

Claim:

“This Tribunal has already ruled on similar facts in Sobudula; we are bound by precedent.”

My Counterargument: The principle of *stare decisis* does **not bind** the BCCSA to **factual analogies**, especially where *new evidence, escalation of harmful patterns, or fresh complaints by new victims* arise. Precedents serve consistency, not injustice. Further, each episode must be judged **on its own merits**.

- **See:** *Brümmer v Minister for Social Development (2009)* where it was affirmed that public bodies must continually assess rights impacts, even within settled jurisprudence.

9. On the Role of Media

Claim:

“Media must report facts and reflect reality—even if violent. We merely portrayed GBV; we did not advocate it.”

My Counterargument: **Media's ethical responsibility**, as codified in Clause 28, extends beyond reporting—it includes **challenging harmful norms, safeguarding dignity, and ensuring that victims are not re-victimized**. If GBV is aired without disclaimers, expert framing, or a critical lens, it risks being seen as *entertainment*—which constitutes **constructive perpetuation** of violence.

Conclusion:

- If a young girl in rural South Africa watches this show, will she walk away **empowered** or **traumatized**?
- If *Isencane Lengane* truly sought to educate, why were expert voices, protective warnings, and survivor-centred framing **absent until complaints were lodged**?
- Does free expression allow media to show violence **without proactive protection** for viewers and participants?
- What is the role of ethics when legality is satisfied but harm persists?

These are not rhetorical flourishes—they are the moral tests of a just media system.

Suggested Relief:

I respectfully submit that:

- **Episode 12 of *Isencane Lengane* violated Clauses 10.2 and 10.3** of the BCCSA Code;
- The **post-broadcast justification** is inadequate to reverse the *prima facie* harm caused;
- **Clause 11** is inapplicable due to lack of bona fide journalistic standards;
- Sanctions including a public apology, broadcast review, and internal ethics audit be imposed.”

EVALUATION

[5] While this Tribunal would like to take into consideration the utilisation of the legal principles set out by the Equality Court’s decision on Mr Julius Malema [*hereinafter referred to as ‘Mr Malema’*], as presented by the Respondent to strengthen its argument around hate speech - it is imperative that we do not undermine the distinction between the facts of the current case and *MultiChoice versus Nxumalo* matter, including that of Mr. Malema. The primary focus in *MultiChoice v Nxumalo* was dealing with the provisions of clause 10 (3) of the Code of Conduct:

10. A subscription broadcasting service licensee may not knowingly broadcast material which, judged within context –
 - (3) advocates hatred that is based on race, ethnicity, gender or religion and which constitutes incitement to cause harm.

[6] BACKGROUND:

As alluded from various documents on record, this is not the first time that a complaint about this particular programme is before the BCCSA. The initial matter was first decided through Adjudication No: 06/A/2023. This matter attracted about 50 complaints, and the finding thereof was overturned on Appeal by the BCCSA Tribunal.

6.1 THE ISSUES WHICH WERE BEFORE THE BCCSA IN THAT MATTER ENTAILED THE FOLLOWING:

- 6.1.1 In **Adjudication No: 06/A/2023** the Respondent presented the argument that:

- [a] The viewers of the programme would naturally wait for the next Episode to find out of the interventions introduced by the Respondent. The same argument was presented before the current matter; this line of argument will be revisited later.
- [b] The Respondent went further and stated that the reason for this broadcast was to fully expose GBV and its effects on the victims so as to spur society into dialogue and positive action against the scourge of GBV. The Channel was more of a messenger in this case than an instigator.

The Adjudicator found that the Broadcaster had contravened the Code of Conduct. However, the matter was appealed.

6.2 On appeal in ***MultiChoice v Nxumalo and Others***, the BCCSA Tribunal was presented with a similar argument offered in response to the complaint that was adjudicated:

6.2.1 The objective of the show is to educate and encourage a dialogue and/or conversation amongst the South African Public (“the Public”) on issues and realities faced by persons in their shoes and/or similar background (including persons in general, regardless of their social standing). It does this by, amongst other things:

- [a] showcasing the Couple’s challenges as they navigate life;
- [b] understanding the trauma associated with the loss of parents;
- [c] seeing the impact of alcohol on the Couple and the family unit;
and

[d] more importantly, the successes that often come with navigating such harsh environments especially by Thando, Siyacela's wife.

6.2.2 The Tribunal concluded that there was no contravention of clause 10 of the Code since there was no incitement of imminent violence or advocacy of gender-based hatred.

[7] THE CURRENT MATTER

This particular complaint attracted about 324 complainants. Even though only one Complainant followed through with the complaint lodged with the BCCSA, the magnitude of the complaints received cannot be ignored. As the existence of explicit violence in the impugned broadcast was never contested nor denied throughout the presentations by both parties, the remaining issue that has to be determined is whether the violence advocated hatred based on gender which constituted 'incitement to cause harm'.

[8] In ***MultiChoice v Nxumalo and Others***, at par. 8.3.1.1 and 8.3.1.2 respectively the Broadcaster rightfully stated that:

'... , the presence of the incitement to cause harm is a sine quo non to the contravention of clauses 9.5 ... That is to say, there cannot be a contravention of these clauses without the presence of an incitement to cause harm.'

The word "incitement" is derived from the word "incite". The South African Concise Oxford Dictionary and Black's Law Dictionary define "incite" and "incitement" respectively as follows: "encourage or stir up (violent or unlawful behaviour); urge or persuade to act in a violent or unlawful way".'

In persuading the Tribunal that there was no existence of the 'incitement' or encouragement to cause harm, the Respondent argued that there were follow-up rectifying programmes broadcasted during which the couple was to be counselled and made to understand the implications of their continual violent

behaviour against each other. It is these ineffective intervention proceedings that has substantively remained a recurring issue when it comes to the Respondent's approach to the impugned problem through the previous broadcasts of this programme.

- [9] The Tribunal was further provided with the follow-up videos to confirm that the broadcaster rectified the impression created by the previous programmes in the series, and that the couple received counselling. In this instance, however, episode 13 in particular failed to present the rectification that was alluded to by the Respondent. Episode 13 was a continuation of Episode 12, and the following facts were presented as proof that rectification of the conduct was broadcast:

[a] Thando's family came to assess the *status quo* as she had called them and relayed to them the issues of the day;

[b] When they got out of the minibus, they planned to take Thando with them and leave without entering into any discussions;

[c] Thando convinced her family to first call in Siyacela into the meeting as an attempt to resolve the matter, even though Siyacela flatly refused;

[d] Later, Siyacela got embroiled in some violent altercations with Thando's family, including pulling Thando's mom as she held their child and further attempted to fight Thando's uncle due to their disagreements.

- [10] There was no employed corrective approach from the Respondent to deal with any or some of the issues that were portrayed during the previous episode, as argued by the Respondent. The Respondent's submissions during the Tribunal could therefore not have been a reference to Episode 13, as no corrective follow-up episode to the violence portrayed in Episode 12 was displayed. In fact,

another explicit violent spat between Siyacela and Thando's family occurred in Episode 13. Thando still went and asked Siyacela for the approval to go home with her family and was nevertheless satisfied with his answer when he declined permission. Her mom even swore to never come to her aid in future as she was seen as condoning Siyacela's behaviour – consistently evidencing the behavioural patterns of abused women.

The Respondent in *MultiChoice v Nxumalo and Others*, utilised the same strategy and defined a 'season finale' as the 'supposed' follow-up rectifying programme. A similar entourage as the one set out in the mitigating grounds was also present, be that as it may the Respondent left the viewers stunned as:

7.1 SIYACELA

7.1.1 Continued with his abhorrent behaviour against anyone who was trying to call him out;

7.1.2 Neither the Broadcaster nor the counsellor could reach their objective to drive him to understand that he is presenting an untouchable attitude especially in the face of his violent behaviour which was the cause of the viewers' complaints;

[a] **Sobudula's**¹⁹ complaint evidencing the Respondent's failure to reach its objective:

when given a platform by the broadcaster to reflect on his behaviour Siyacela stated that his abusive behaviour 'is none of anyone's business'.

7.1.3 Siyacela left the room still thinking he is untouchable.

7.2 THANDO

7.2.1 Continued with her abuse denialism approach, a 'clear and concerning' characteristic of the victims of intimate partner violence. She made it clear that her understanding of what entails violent and abusive behaviour in one of the podcast²⁰, according to her - failure to be physically abused by her husband would result in her concluding that she is not loved;

[a] **Zwane**²¹ stated with concern that at the 'season finale':

'The wife confessed that it was not the first time that he physically assaulted her...She also said he once beat her with a belt. He has isolated her from her family and controls every aspect of her life. [Further Siyacela stated that] she is only allowed to have friends that he has vetted.'

7.2.2 Such that she was against the filing of a police report against her husband.

[11] As stated earlier, the presence of violence is not in dispute, but the incitement or encouragement to cause harm remains a determinate factor. It is trite that the Respondent is consistently maintaining, and highly persuaded by their understanding that the continued broadcast of this programme encourages public debate around the issues of GBV, especially for the followers, the Complainant included. However, despite the corrective measures taken in the previous series', Siyacela keeps threatening Thando in this series. While it could have been argued that the presence of gender-based violence was originally deliberately integrated to create awareness among the public, it is very clear from this series that it has not subsided. Had the couple been able to resolve their disputes without Siyacela becoming threatening and displaying violent behaviour, the Respondent's argument could have proved relevant- however this is not the

²⁰ Meaningful conversations with Zandi - Thando Dlamuka| 8 December 2024
²¹ MultiChoice v Nxumalo and Others

case. Siyacela defies everyone who tries to engage with him. The reality that the audience is left with is that Siyacela succeeded in driving his in-laws away without rescuing Thando from the toxic environment, even though this was the primary reason for their visit.

[12] Clearly, the Respondent's 'corrective approach' to both Siyacela and Thando continue to consistently fail to yield the expected punitive or mostly importantly corrective results. Instead, Siyacela has throughout the years developed an even more aggressive approach and started settling into the idea of seeing himself as untouchable and continues to display no regard whatsoever to any form of authority. On the other hand, Thando continues to justify and regard all these explicit violent behaviour against her as a sign of affection or 'love'.

[13] What is concerning about the programme is that it is not a drama but a reality show. Siyacela does not act for dramatic effect; he portrays his true feelings towards Thando including every other participant in the show. Instead of his tendency to violence abating, it increases. In the ***MultiChoice v Nxumalo and others***, Siyacela, amongst other things, threw Thando's cell phone on the floor. In the impugned second series, he is cracking a whip and threatening, not only Thando, but even the elderly relative women who were called as relevant authority to intervene. The reference to previous decisions of the BCCSA that programmes advocating hatred did not constitute a contravention of the Code does not assist the Respondent's argument. In the ***SAHRC v SABC*** judgment, the impugned programme was "*a bona fide current affairs programme and informed debate*" and not a reality show as in the present case. A reality show cannot be equated with a current affairs show, a debate between various experts on a topic or a *bona fide* drama. The exclusion mentioned in Clause 11 is therefore not applicable.

[14] The Respondent in its Heads of Arguments incorrectly presented the essence of Episode 13 as a 'corrective programme'. This is the same *modus operandi*

alluded to in paragraph 7 of this judgment, where the impugned programme was followed by a season finale – and even in that matter, it is incorrect to refer to the latter as a corrective measure to deal with Siyacela's violence or Thando's mental state thus far. Episode 13 was in fact a normal follow-through programme, and the Respondent's intervention methodologies were non-existent and not part of the programme. In Episode 13, Siyacela still continued to threaten Thando's family members violently – in particular her mom, aunt and uncle. The only saving grace in this instance was that the male members of Thando's family vehemently stood their ground against these continued violent threats. It is trite that the Respondent may have, throughout the years, succeeded in creating awareness of gender-based violence; however, the Respondent has not succeeded in providing any useful reformatory tools or advice to address this scourge throughout the previous seasons until the current. Be that as it, may we do not see any evidence portraying the Respondent's concern – and finding varied ways of correcting either Siyacela or Thando's behaviour, especially on the face of public scrutiny throughout the years.

- [15] The parties who are participating in the reality show are actually illustrating the living reality of the impact of gender-based violence, both for men and for women. Siyacela's violent behaviour did not abate over time; consistently throughout both series, there were no consequences against him for continually perpetrating violence in the programme. Siyacela's continued with his threatening behaviour, accompanied by violent gestures towards Thando, without him facing any corrective or punitive consequences. On the other hand, Thando continues to sink deeper into denialism portraying typical behaviour of women who are subjected to intimate partner violence. Thus, throughout the years the programme has not only created awareness of gender- based violence but also inadvertently promoted hatred based on gender that continued to incite harm, not only to Thando but her loved ones too. The Respondent contravened Clause 10.3 of the Code.

- [16] The parties are given the opportunity to file their grounds for mitigation or aggravation respectively, prior to the finalisation of the sanction:

Mphuthi: “I respectfully submit the following aggravating factors for consideration by the Tribunal prior to the finalisation of sanction.

1. **Normalisation and Perpetuation of Gender-Based Violence (GBV):** As mentioned by the Tribunal, the programme repeatedly depicts instances of gender-based violence and abusive conduct without adequate editorial contextualisation, warnings, or provision of victim support resources. Such omission entrenches the normalisation of GBV and constitutes a breach of Clause 10.3 of the BCCSA Code of Conduct, which prohibits advocacy of hatred based on gender that constitutes incitement to cause harm. The Constitutional Court in *Qwelane v South African Human Rights Commission and Another* 2021 (6) SA 579 (CC) affirmed that speech or expression that legitimises gender-based harm can meet the threshold of incitement, thereby aligning the broadcaster’s duty with constitutional imperatives under s 9 (Equality) and s 10 (Human Dignity) of the Constitution.
2. **Disregard for Public Complaints and Welfare:** Despite receipt of a substantial number of public complaints (324 in total), coupled with widespread public outrage, the broadcaster persisted in airing further episodes featuring explicit violence and abusive behaviour. This conduct demonstrates not only a disregard for the welfare of viewers and participants but also a failure to uphold its duty under Clause 12 (Violence and Explicit Content) of the Code to exercise due care and avoid unjustifiable depictions of violence.
3. **Ineffectiveness of Alleged Corrective Episodes:** The respondent’s claim that subsequent episodes were corrective is not borne out by the content itself. Violence persisted and, in instances, escalated, with no meaningful corrective consequences for the perpetrator. Such editorial inaction fails to satisfy the broadcaster’s obligation under Clause 28.2 of the Code, which requires broadcasters to exercise heightened responsibility in reality programming where participants’ conduct has real-world impact.
4. **Risk of Tacit Approval and Psychological Harm:** By failing to adequately condemn or contextualise the abusive conduct, the broadcaster risks conveying tacit approval or glamorisation of GBV. This causes psychological harm to viewers and reinforces harmful gender stereotypes, contrary to the spirit of Clause 28.1 (Fairness, Responsibility and Sensitivity) and Clause 12.1 (Protection against Harm).
5. **Advocacy of Hatred Based on Gender:** The continued broadcast of violent, abusive conduct without corrective or reformatory intervention constitutes advocacy of hatred based on gender and incites harm, in direct violation of Clause 10.3 of the Code. The Constitutional Court has consistently underscored in cases such as *Qwelane* that where gendered expression is capable of inciting harm, it cannot be shielded by the right to freedom of expression in s 16(2)(c) of the Constitution.
6. **Reality Programming Heightens Responsibility:** As a reality television programme, the violent conduct depicted is real rather than fictional. The absence of scripting heightens the stakes for both participant welfare and audience impact. The broadcaster therefore bore an enhanced responsibility to ensure the dignity and safety of participants, consistent with the broadcaster’s duty under Clause 28 (Reality and Factual Programming).
7. **Failure of Editorial Oversight and Viewer Protection Mechanisms:** The lack of timely warnings, psychological triggers, or engagement of expert input demonstrates a failure of

editorial oversight. This neglect exposes vulnerable viewers, including children, to traumatic content in breach of Clause 12.2 (Child Protection in Programming).

8. **Post-Broadcast Apologies Insufficient:** Post-broadcast apologies or panel discussions cannot retrospectively erase the harm caused by the original broadcast. The failure to proactively prevent harm contravenes the standard of reasonable editorial care articulated in prior BCCSA jurisprudence.
9. **Failure to Learn from Precedent:** The broadcaster's repeated failure to learn from past BCCSA decisions and implement effective corrective measures illustrates negligence and an inadequate commitment to social responsibility, aggravating the seriousness of this violation.

Conclusion:

The aggravating factors outlined above demonstrate a sustained and systemic failure by the respondent to comply with the BCCSA Code of Conduct, South African constitutional values, and jurisprudence aimed at curbing gender-based harm. The persistent normalisation of GBV through the programme has resulted in real, ongoing harm.

In these circumstances, I respectfully submit that the sanction should reflect the gravity of the breaches, including but not limited to:

- Suspension of all future episodes of the programme, as well as any related future programmes that may feature Siyacela.
- A public, on-air apology; and
- The imposition of enforced editorial and compliance reforms.

Such measures are necessary to vindicate the rights of viewers and participants under s 9 (Equality), s 10 (Human Dignity), and s 12 (Freedom and Security of the Person) of the Constitution, and to restore public confidence in the broadcaster's adherence to the BCCSA Code.

MULTICHOICE: "GROUNDS FOR MITIGATION"

1. INTRODUCTION

- 1.1. The Broadcasting Complaints Commission of South Africa ("**BCCSA**") has found that MultiChoice has contravened clause 10.2 and 10.3 of the BCCSA Subscription Code of Conduct for Broadcasters ("**Code**") in relation to the episode of the reality show Isencane Lengane aired on 20 April 2025 ("**Broadcast**").
- 1.2. Consequently, MultiChoice has been invited to, as it hereby does, submit mitigating factors.
- 1.3. MultiChoice requests the Commission to consider, as mitigating factors:
 - 1.3.1. the *bona fide* editorial intent of the Broadcast;
 - 1.3.2. the remedial actions undertaken; and
 - 1.3.3. the proportionality that should inform any contemplated sanction.

2. ARGUMENTS IN MITIGATION

Bona Fide Broadcast.

- 2.1. From the outset, Moja Love (“the Channel”) and MultiChoice laboured under the *bona fide* view that GBV had to be portrayed as it occurs in the real world. The intention was to fully expose GBV and its effects on the victims so as to spur society into dialogue and positive action against the scourge of GBV. The Channel sincerely held the view that the proverbial “*shoot the messenger*” response will not be helpful in fighting the menace that is GBV, but by silencing any would-be messenger, will only serve to perpetuate the scourge.
- 2.2. The Channel’s editorial intention in broadcasting Isencane Lengane has always been to raise awareness about the scourge of GBV in South Africa, and to spark public dialogue around the systemic, cultural and intergenerational challenges many couples face.
- 2.3. The Channel did not set out to glamorise or trivialise abuse, nor did it seek to encourage harmful conduct. The show’s format as a reality programme necessarily reflects raw interpersonal conflict that mirrors realities in many households, with the intention to provoke reflection and remedial dialogue, not imitation.
- 2.4. In Nxumalo²², the Tribunal accepted that reality programming can serve as “a mirror of society” and that discomfort alone is not indicative of advocacy of hatred or incitement of violence. The Broadcast was intended to serve as that mirror, so as to stir up positive change.
- 2.5. The Broadcast was intended to highlight the lived realities of many individuals affected by gender-based violence in South Africa. The Channel’s editorial approach was informed by a *bona fide* belief that no reasonable viewer would be incited or encouraged to engage in violence as a result. At no stage was it the intention of the Channel to incite imminent harm rather, the objective was to confront the GBV issue openly in order to promote awareness and contribute meaningfully to its eradication.

Post-Broadcast Corrective Action

- 2.6. The Channel implemented the following steps as part of the corrective actions:
 - 2.6.1. In Episode 14, which was broadcast on 4 May 2025 and being the season finale, the Channel arranged a sit-down discussion and invited to the show, to participate in these discussions, the following panellists:
 - 2.6.1.1. Ms Nkuli Tleane - Psycho Social Therapist and Managing Director at Kwelanga Consulting;
 - 2.6.1.2. Ms Nonzakazi Cekete - Deputy Head of the Channel and Spokesperson and Media Liaison for Moja Love;
 - 2.6.1.3. Ms Onica N. Maqwaqwa - Co-Founder of The Wise Collective at @Wise4Afrika (an advocacy organisation focused on ending GBV);
 - 2.6.1.4. Siyacela Dlamuka – the husband in the Broadcast;
 - 2.6.1.5. Thando Dlamuka – the wife in the Broadcast;

²² Multichoice v Nxumalo and Others (Case No: 02/2023)

- 2.6.1.6. Nthombikayise Msomi – Thando's Mother;
 - 2.6.1.7. Ayanda Msomi – Thando's Uncle;
 - 2.6.1.8. Lindo Msomi - Thando's Uncle;
 - 2.6.1.9. Mkhize Dlamuka – Siyacela's Mother; and
 - 2.6.1.10. Mashange Dlamuka – Siyacela's Aunt.
- 2.6.2. During episode 14, the panellists weighed in on Siyacela's generally abusive behaviour for which he was reprimanded for.
- 2.6.3. Thando was given an opportunity to have her say and, when asked whether Siyacela had hit her with the whip he had carried during the Broadcast, she stated that although he had hit her in the past, those incidents had been resolved and he had not hit her with the whip²³, but she indicated that it deeply hurt her when Siyacela uses strong and foul language when he speaks to her;
- 2.6.4. Siyacela, having listened to his wife's complaints and to the panellists' reproach, he publicly and sincerely apologised to Thando for using strong language in her presence²⁴;
- 2.6.5. The GBV Hotline is indicated on the screen at every break interval, which is a strong indication of the stance the Channel has taken against GBV;
- 2.7 Viewed holistically, it is apparent that the Channel does not promote or in any way endorse GBV. The Channel's immediate and ongoing efforts to prevent GBV provide clear evidence that it does not, in fact, support or promote such behaviour.
- 2.8 The remedial steps taken by the Channel were also forward-looking, in that both Thando and Siyacela were, and continue to be, encouraged during counselling to address conflict without inflicting, accepting, or tolerating abuse. Furthermore, the special broadcast provided both Siyacela and Thando with the opportunity to work on their own marriage and to decide whether they wished for the show to continue, which they both agreed to²⁵.
- 2.9 We have attached a copy of episode 14.

Proportionality and Sanction Principles

- 2.10 The Channel respectfully submits that any sanction must be:
- 2.10.1 Proportionate to the actual harm caused; and
 - 2.10.2 Forward-looking, with a rehabilitative rather than punitive emphasis;
- 2.11 The Channel submits that any sanction should:

²³ Episode 14 – At minute 16

²⁴ Episode 14 – At minute 19

²⁵ Episode 14 – At Minute 23

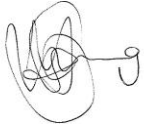
- 2.11.1 Reflect the absence of intentional wrongdoing;
- 2.11.2 Credit the corrective action already taken; and
- 2.11.3 Encourage further dialogue and compliance;
- 2.12 In light of the above, the Respondent respectfully prays that:
 - 2.12.1 The Commission takes full account of the Respondent's *bona fide* editorial intent, cooperation, reforms, and willingness to comply with future guidance.
 - 2.12.2 The Commission considers the imposition of a caution or reprimand as contemplated in the Code.

3 CONCLUSION

The Channel submits that the proactive steps undertaken by the Channel are mitigating and request that the Commissioner imposes the most lenient sanction against the Channel."

- [17] The BCCSA considered the respective parties' mitigation submissions and noted with concern that even with the season finale dubbed Episode 14, and despite the high rise in the public discontent, the Respondent's corrective intervention appears to be unproductive. The continuation of the programme gives the impression that the Respondent has not succeed in achieving the goal it set for itself. The topic may have been highlighted and awareness of GBV has been created but the real-life experiences of the participants do not illustrate any improvement in their situation. The Respondent failed to address the change in the tone of the very conversation that was the primary objective of the broadcast, and thus inadvertently created a perception of promoting hatred based on gender that continued to incite harm, not only to Thando but also to her loved ones. The Respondent is urged to reconsider the impact of the programme on Siyacela and Thando, to properly monitor their psychological diagnostic processes and to include it in future broadcasts as a way to not only save them from further psycho-social degradation, but to continue fostering public discussions as they go through their respective healing processes, which appears to be the ultimate goal of the programme.

The provisions of clause 10.3 has been contravened by the Respondent, and a fine of R40 000 is imposed.



ADV BOITUMELO LINCHWE-TLHAKUNG
COMMISSIONER: BROADCASTING COMPLAINTS COMMISSION
Chairperson Lötter and Commissioner Naidu concurred with the judgment
