

TRAIN

IN THE SOUTH AFRICAN MEDIA COUNCIL

In the matter between :-

END CONSCRIPTION CAMPAIGN

("ECC")

Complainant

and

AIDA PARKER NEWSLETTER

("APN")

Respondent

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ADDITIONAL MEMORANDUM

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Pursuant to the Complainant's submission of a memorandum to the South African Media Council on 15 May 1986, the following has taken place :-

1. The Respondent has refused to voluntarily subject itself to the jurisdiction of the Council.
  
2. Members of the Executive Committee of the Council are of the opinion that the APN Newsletter is not a "medium" as contemplated by the Constitution of the Council, and the Council is therefore unable to deal with the complaint in terms of its Constitution.

- 3. A State of Emergency was proclaimed on 12 June 1986.
- 4. The Council has agreed to waive time limits.

The Complainant has the following additional comments :-

A. RESPONDENT'S REFUSAL TO SUBMIT TO JURISDICTION

- 1. The complaint is of sufficient public importance for the Council to deal with in terms of Article 1.5, particularly as the dissemination of APN No. 79 was wide spread.
- 2. Rule 1.4.2 of the Rule of Procedure is to the effect that the Conciliator shall not accept a complaint where legal action is considered by the Conciliator to be a possibility, unless the Complainant waives or has undertaken to waive any right to claim civil relief.
  - 2.1 It is submitted that where the Respondent has not voluntarily subjected itself to the jurisdiction of the Council, Rule 1.4.2 need not be complied

with by the Complainant. The purpose of the Rule is clearly to avoid double jeopardy, in that a Respondent who does submit to the Council's jurisdiction is subject to punitive measures in terms of Article 10.1 of the Constitution. There can be no question of double jeopardy where the Council's powers are limited to those set out in Article 10.2.

2.2 The Respondent's refusal to submit to jurisdiction gives rise to a very real fear that APN No. 79 might continue to be widely circulated, and it is unduly harsh to expect the Complainant to waive its rights to all civil relief.

B. IS APN A "MEDIUM"?

1. The primary object of the Council is to uphold and maintain the freedom of the media in South Africa (Article 1.1).
2. Throughout the Constitution of the Council reference is made to the word "media". This word is defined in Article D(1) of the

Preamble to the Constitution as "the press, radio and television services".

3. Clearly, the APN would have to fall within the definition of "press" in order for the Council to deal with this matter.

3.1 In a loose everyday sense the "press" is understood to be a reference to the newspaper industry. However, having regard to the dictionary definition of the word "press", the Constitution as a whole, and the historical evolution of the South African Media Council it is submitted that the press is not limited to newspapers but covers a far wider spectrum of media.

3.2 The Shorter Oxford English Dictionary (3rd ed) defines the "press" as :-

"The newspapers, journals, and periodical literature generally; the newspapers and journals of a country, district, party, etc, as the French Press, the London Press, the Conservative Press, the

Religious Press, etc. Hence sometimes the title of a newspaper." (own emphasis)

3.3 Article D(1) of the Preamble to the Constitution of the Council refers to media "which have as their primary function the duty to inform the public accurately and where appropriate to comment fairly on matters of public interest, without fear or favour, ...".

3.4 Article D(2) of the Preamble to the Constitution refers to "proprietors, editors, journalists, directors, producers, broadcastors, and others involved in any media".

3.5 Article 1.10 states that an object of the Council is to "promote and encourage adherence to the Code by all media generally".

3.6 Article 3 of the Preamble to the Constitution refers to the establishment of a media council (the present South African Media Council) to replace the

existing South African Press Council with wider representation and covering media other than newspapers.

3.7 It is submitted that it is clear from the above that the APN, being a periodic newsletter, is a medium as contemplated by the Constitution of the Council.

4. Alternatively, should regard only be had to whether or not the APN is a newspaper, the Complainant submits the following :-

4.1 A newspaper is defined in the Newspaper and Imprint Registration Act, No. 63 of 1971 as :-

4.1.1 A periodical publication;

4.1.2 Published;

4.1.3 At intervals not exceeding one month;

4.1.4 Consisting wholly or for the greater part of political or other news or of articles

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relating thereto or to other  
current topics;

4.1.5 With or without advertisements;

4.1.6 With or without illustrations;

4.1.7 But does not include any  
publication not intended for  
public sale or public  
dissemination.

4.2 On the last page of APN there appears :-

"Subscription rates: R89,00 for 25  
issues over twelve months."

4.3 Therefore, it is clear that APN complies  
with the first six elements of the  
definition of a newspaper as contained  
in the Newspapers and Imprint  
Registration Act.

4.4 It is submitted that because APN is  
apparently sold only to subscribers,  
this does not necessarily mean that it  
is not intended for public sale or  
public dissemination.

4.5 In S v Davidson and Bernhardt Promotions (Pty) Limited & Others, 1983 (1) SA 676(T) the Transvaal Provincial Division was called upon to interpret the words "public sale and public dissemination" contained in the Act. The publication in question was similar to the APN in that it was sold only to subscribers.

4.6 The Court held that this phrase was not to be interpreted restrictively. In particular, the fact that the nature of the contents of the publication would limit the number of subscribers, as would the extent of the subscription fee, was not a limitation that made the distribution or sale private. The Court also found that the distribution was done for the use of the public, albeit a section of the public interested in research, as it was distributed to a public library and universities.

4.7 APN No. 79 was distributed far more widely than the publication referred to in the Davidson case, and it is submitted that the principles referred to in this case apply a fortiori.



5. Therefore, in conclusion, it is submitted that whether the word "press" is interpreted widely or restrictively (in the sense that it refers to newspapers only), the APN is clearly a medium as contemplated by the Constitution of the Council.

C. STATE OF EMERGENCY

1. On 12 June 1986 the State President proclaimed a State of Emergency, and simultaneously issued Regulations in terms of the Public Safety Act, 1953 ("the Emergency Regulations").

2. In terms of the Emergency Regulations it is an offence to, inter alia, make, write, print, possess, disseminate, distribute, display, etc any subversive statement. Regulation 1(viii) defines "subversive statement". In particular, Regulation 1(viii)(v) states :-

"'Subversive statement' means a statement which contains anything which is calculated to have the effect or is likely to have the effect of inciting

the public or any person or category of persons to discredit or undermine the system of compulsory military service."

3. In terms of Article 10 of the Constitution the Council may record its opinion concerning the report complained of and do whatever it considers appropriate with a view to procuring the publication of the result of its enquiry.

4. The Council appears to be concerned that it would be unable to publish a report which is favourable to the Complainant. The Complainant has the following comments :-


4.1 The major complaint concerning APN No. 79 is that generally this publication attempts to link the Complainant to a Soviet inspired apparatus. Coupled with this, the complaint is to the effect that APN No. 79 contains numerous factual inaccuracies.

4.2 Should the Council decide as a result of its enquiry that the Respondent has contravened the Code of Conduct, the

Complainant submits that the publication of the Council's report would not amount to a contravention of the Emergency Regulations. To fall foul of the Emergency Regulations the report of the Council would have to be such that it is "calculated to have the effect or is likely to have the effect" of discrediting or undermining the system of compulsory military service. The type of report which the Council is empowered to make would fall far short of this test. A mere expression of opinion, it is submitted, does not qualify.

5. Therefore, it is submitted that the Emergency Regulations do not affect the Council's enquiry at all in this matter.

DATED at JOHANNESBURG on this 7<sup>th</sup> day of AUGUST 1986

  
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