

23 May 2005

**THE BROADCASTING COMPLAINTS COMMISSION OF SOUTH AFRICA
(BCCSA)**

Du Preez Brink **Complainant**
(on behalf of the Freedom Front Plus)

vs.

South African Broadcasting Company (SABC) **Respondent**

Re: Pretoria/Tshwane on the SABC Television and Radio news bulletins

COMPLAINANT'S PLEA

THE COMPLAINT

- 1 The Complainant registered a complaint with the BCCSA regarding the false, misleading and prejudicial use of the name “Tshwane” as a substitute for the lawful and official name “Pretoria” in the SABC’s television news bulletin of 10 May 2005 on SABC2. The original complaint, as lodged per e-mail, is attached hereto as Annexure “A”. As this conduct of the SABC is a continual one being perpetrated in all televised, some radio and Internet news bulletin broadcasts, we wish to extend this complaint to all those instances and media and will request appropriate sanctions and remedies.

BASIS OF THE COMPLAINT

1 This complaint refers to various televised, radio and Internet news bulletins broadcast by the SABC that has developed a practice of negating the official and lawful name of the city of “Pretoria” and substituting it for “Tshwane” or “City of Tshwane”. This practice is still continuing and constitutes intentional or, at the very least, gross negligent breaches of the BBCSA’s Code, and specifically as follows:

- 1.1 Clause 2.1 of the Code has been breached in that the SABC has relied (and still is) on dubious information to initiate and continue a practice that creates news reports that are false, misleading, inaccurate and prejudicial to the outcome of a legal administrative process currently underway, which process in itself is flawed, as elucidated below.

- 1.2 Clause 2.2 of the Code has been breached in that the news has been (and still is) presented out of context and in a prejudicial manner with a concomitant intentional departure from the legal and factual status by distortion, misrepresentation and material omission of the fact that “Pretoria” is legally still the official name of the “Central Business District” (“CBD”) and the city itself, and that “Tshwane” does not refer to a city at all, but merely to an aggregate of cities and rural areas for the sake of establishing a metropolitan municipal council to provide municipal services as per the Local Government Municipal Structures Act 117 of 1998 and the Constriction Act of 1996, as elucidated below. This constitutes to our mind a form of semantic engineering in support of the outcome of the process currently underway at the South African Geographical Names Council.

- 1.3 Clause 2.3 of the Code has been breached in that the SABC has presented news as facts that can not be found to be reasonably true having regard to the source of the news used by the SABC in setting out its defence in this matter, attached hereto as Annexure “**B**”, and as elucidated below.

- 1.4 Clause 2.4 of the Code has been breached in that sufficient grounds existed to doubt the correctness of the use of “Tshwane” instead of “Pretoria” in news reports as the practice was a departure from the judicial status quo and any such departure must be verified by legal means and not by merely relying on field reports, and executive and administrative acts, as elucidated below.

- 1.5 Clause 7.1.1 of the Code has been breached as the SABC presented material that is likely, and has already contributed to, harming relations between sections of the population as evidenced by the reactions of the residents of the city of Pretoria, opposition political parties, civil organisations, and the pro-Pretoria march on 21 May 2005 wherein four thousand (4000) people protested publicly against the Pretoria name change process, as further elucidated below.

DETAILED ANALYSIS OF THE CODE BREACHES

1 BACKGROUND

- 1.1 In sketching the background to this matter, we hereby wish to submit an outline of the history of the city of Pretoria compiled by Professor Pieter Labuschagne from the University of South Africa, attached hereto as Annexure “C”.
- 1.2 In order to facilitate ease of reference, we will deal with the most important historical events that forms the basis of this case as follows:
- A. On 16 November 1855 the Volksraad of the then Zuid-Afrikaanse Republiek passed a motion that portions of the farms Elandspoord and Daspoort must be proclaimed as a township and is to be called “Pretoria” (Labuschagne p.8-9). That was a lawful decision made by the highest legal authority for that area before the forming of the Union and the later Republic of South Africa.
 - B. After the Anglo-Boer War and with the forming of the Union in 1910, Pretoria was officially made the *de jure* administrative (executive) capital of South Africa (by virtue of Article 18 of the South Africa Act of 1909). This arrangement was adopted in subsequent constitutions until the adoption of the Interim Constitution of 1992 and the Constitution of South Africa of 1996 that did not make explicit mention of the names of the capital cities. However, after the adoption of the Constitution of 1996 the name Pretoria has consistently been used as the name for the administrative capital of South Africa until recently, and has been accepted as constitutional convention in the Constitution of 1996, as explained below.

C. During 2000 the City of Tshwane Metropolitan Council (“Tshwane Council”) was created in terms of the Local Government Municipal Structures Act 117 of 1998 (in existence since 6 December 2000 by virtue of Notice No. 6770 of 2000 (dated 1 October 2000) and as amended by Notice No. 8702 of 2000 (dated 4 December 2000). The Demarcation Board created in terms of Act 117 of 1998, established the geographical boundaries of the Tshwane Council to include various towns, cities and rural areas, i.e. Pretoria, Centurion, Akasia, Soshanguve, Hammanskraal, Temba Winterveld etc. (The new boundary is indicated on the map contained in Annexure “D” hereto obtained from the website of the Tshwane Council at www.tshwane.gov.za) The purpose of the creation of the Tshwane Council was to give effect to the creation of a level of local government in accordance with Chapter 7 of the Constitution of 1996. The effect was the aggregation of Pretoria city, other towns and rural areas within one local government boundary for the purpose of providing services to communities. The objective of the creation of the Tshwane Council (and other Municipal Councils) was not to replace existing city, town and rural names, as explained below. The result is that “Pretoria” is still the official name of administrative capital of South Africa.

D. On 6 April 2005 the Tshwane Council issued a public notice (“Notice”) stating that it had decided on a meeting held on 7 March 2005 to formally register the “City of Tshwane” as geographical place name on the database of the South African Geographical Names Council (“SAGNC”) in terms of the South African Geographical Names Council Act 188 of 1998 (“SAGNC Act”). The specific instruction was as follows (as translated from the Afrikaans Notice): *“That the Municipal Manager be authorised to (a) initiate all legal and administrative procedures in order to register the geographical area that constitutes the Municipality as a city with the name of “Tshwane”.*” The Notice furthermore invited the public to submit their opinions and suggestions to the Tshwane Council in writing within fourteen (14) days after publications thereof. The Notice is attached hereto as Annexure “E”.

- E. According to news reports, the SAGNC made a statement on or around 12 April 2005 that the Tshwane Council had followed due process in their application and that the SAGNC would meet on May 19 to 20 to consider the application. The date of the SAGNC meeting has since been postponed to 25 to 26 May 2005.
- F. Since the decision was made by the Tshwane Council to register the name “Tshwane” with the SANGC, the SABC has been consistently using the name “Tshwane” or “City of Tshwane” in its televised, radio, and Internet news bulletins when referring to the area that is still known as “Pretoria”, as indicated on the map in Annexure “D”. Specifically, after this complaint has been lodged, a televised news report by SABC2 on 21 May 2004 (18:00) referred to the city of Pretoria as “the inner city of Tshwane” (translated from Afrikaans).

2 CODE BREACHES: THE TECHNICAL (FORMAL) ARGUMENT

- 2.1 The process initiated with the SANGC has an objective to register the geographical area of the Tshwane Council as a “*city*” named “Tshwane” and so that the name can be used on news bulletins, road maps, weather forecasts and all official documents (See Annexures “B” and “E”).
- 2.2 For the sake of completeness, the process set out in The South African Geographical Council Act (Act no 118 of 1998) and the Handbook on Geographical Names includes the following:
- 2.2.1 The SANGC must receive proposed geographical names¹ submitted by State departments, statutory bodies, provincial governments, municipalities and or other bodies or individuals (section 9(1)(c));
- 2.2.2 Recommend geographical names falling within the national competence to the Minister of Arts and Culture for approval (section 9(1)(d));

¹ A geographical name is defined in the Act as the name of any terrestrial feature within the territorial limits of the Republic, together with the area of the jurisdiction of the Republic, acquired by treaty whether a) natural or made or adapted, by human agency; or b) populated or unpopulated. The Handbook on Geographical Names issued in terms of the act specifically excludes the names of local authorities from the jurisdiction of the SANGC.

- 2.2.3 The Minister of Arts and Culture may approve or reject a geographical name recommended by the SANGC (section 10(1));
- 2.2.4 A geographical name approved or rejected by the Minister of Arts and Culture must be published in the Official Gazette (section 10(2));
- 2.2.5 Any person or body dissatisfied with a geographical name approved by the Minister may, within one month from the date of publication of the name in the official gazette, lodge a complaint in writing to the Minister (section 10(3));
- 2.2.6 The Minister may then refer the complaint back to the SANGC for advice whether or not to reject or amend a geographical name so approved (section 10(4));
- 2.2.7 The Minister must inform the complainant of the decision on the complaint and the reasons for the decision (section 10(5));

The Tribunal's attention is drawn to the fact that the process of registering the name Tshwane as a geographical name is still at 2.2.1 above, while it is expected that the procedure set out in 2.2.2 is only expected after the meeting of the SANGC scheduled for 26 May 2005.

- 2.3 Without having regard to the merits of the application by the Tshwane Council to the SAGNC, it is clear that the SABC has pre-empted the outcome of the process and is still perpetuating same by using the name "Tshwane" instead of "Pretoria" when referring to the CBD and/or city of Pretoria, while the process to register "Tshwane" with the SANGC was still ongoing and may still be for some time to come.
- 2.4 This constitutes a clear breach of the mentioned Codes as a legal and administrative process was prejudged and the outcome accepted as a *fait accompli* without waiting for the final approval of the name by the SAGNC. Surely the SABC should have realised that if the Tshwane Council has to perform a further legal and administrative act, like an application to the SAGNC, to create a *de jure* name (which is in any event the wrong process and to be dealt with below), that they would have to await the outcome of the process within the SAGNC before they could use any new names? The

reasonable broadcaster would not have taken such a decision to pre-empt the outcome of a legal and administrative process.

2.5 The SABC can also not rely on the pronouncements made by the SAGNC Chairman, Tommy Ntsewa, that the “Tshwane Metro followed correct legal procedures in registering the name Tshwane with the SAGNC” (see Annexure “**B**”), as he was also prejudging a procedural outcome and thereby negated the rules of administrative and natural justice. In complying with its functions as a responsible public broadcaster, the SABC should at the very least have had their internal legal department review news bulletins to ensure the correctness thereof. The SABC has not, thus far, submitted that they have done so and as their response to this and other complaints does not appear to be drafted by their legal counsel, it appears that the SABC did not submit the matter to their own legal counsel and thus acted with a complete disregard of their duty to broadcast news truthfully.

2.6 The SABC can also not rely on the fact that the decision was made by the Tshwane Council to register the name “Tshwane” and that accordingly a new legal status has come about that may be used as fact in news bulletins. The change of a name amounts to a change in legal status and not a matter to be taken lightly. In addition, the SABC was well aware and even reported continuously on the opposition to the name change decision, which included various political and legal opinions, and as such, should have realised that this contentious issue does not give rise to certainty in regard to the status of the names “Tshwane” and “Pretoria”, and should have at least taken due care in obtaining proper legal counsel before using the name in news reports. Clearly the SABC has not done so and set out in Paragraph 2.5 above.

2.7 The SABC can not rely on the fact that the municipal accounts that residents in the area receive are also headed “Tshwane” as these accounts are for municipal services delivered by the Tshwane Council as per Act 117 of 1998 and has no bearing on the status and names of the various areas that form part of the municipal area. A municipal boundary created in terms of Act 117 of 1998 does not substitute or destroy the name status of the areas contained therein. The new

municipal boundaries' only purpose is the facilitation of a new local government bodies for the delivery of services. They do not and can not provide the basis for a local government to create new towns, cities or names therefore. Any such powers would also be *contra* to the purpose of local government as provided for in Chapter 7 of the Constitution of 1996 (see Annexure "F").

- 2.8 Having regard to the SAPA report that the SABC submitted "which throws some light on the matter as well" (see Annexure "B"), we wish to submit that it is clear from that report (paragraphs 5, 6, 8, 10 and 11) that the SABC should have known that the name of "Tshwane" was still being considered in a process with the SAGNC (although flawed) and that they could not lawfully use the name as a substitute for "Pretoria" when referring to the city area. Any conduct perpetrated after reading this report can only be regarded as an intentional breach of the Code and should be severely punished. Furthermore, as set out in the substantive argument below, the information contained in the SAPA report contains inaccuracies (see Paragraph 3.4 below) and the SABC should have relied on more substantial methods to ascertain the truth, especially since this matter is so controversial and sensitive.
- 2.9 Although we will submit below that the SAGNC process is seriously flawed, the conduct perpetrated by the SABC as set out above is a clear indication of the intent of the SABC not to respect and await certain legal processes by statutory bodies and thereby propagating untruthful and inaccurate information as facts.
- 2.10 It is our contention that at this stage of our submission sufficient grounds already exist that the SABC could be found guilty of contravening the Code of the BCCSA and that the substantive arguments provided below will serve to confirm this submission. In further support hereof, we wish to submit the recent ruling by the South African Advertising Standards Authority ("ASA") in the matter Tshwane Metro Council / Pretoria Civil Action and Another / 978, 1039, attached hereto as Annexure "G". The ASA ruled that "Tshwane" consists of various areas, including Pretoria, which still legally exists and that in referring to Pretoria as "Tshwane" in advertising, consumers were being misled that the capital city is actually not Pretoria any more.

2.11 We, therefore, request that the BCCSA make the same finding.

3 CODE BREACHES: THE SUBSTANTIVE ARGUMENT

3.1 We will now deal with the merits of the application to the SAGNC. The flawed process that will be outlined below will only be in support of the stated argument that the SABC has intentionally ignored the fact that “Pretoria” is still the lawful name of the city north of Centurion and can not be called the “City of Tshwane” and in doing so, breaches the Code.

3.2 The substantive submission must be read against the background as set out above that Act 117 of 1998 does not allow for the change of city and place names, but only allows for the creation of local governments for the purposes of the provision of services to local communities in certain delineated geographical areas. The Act does not change the status of existing city names in those geographical areas but deals with the constitutional purposes as outlined in Chapter 7 of the Constitution of 1996, which excludes name changes of cities.

3.3 Furthermore, the Constitutional nature of calling the administrative capital of South Africa “Pretoria” has not changed either. Prof. M Wiechers (previously of UNISA) argues that the name “Pretoria” was explicitly acknowledged in all South African constitutions as the name of the administrative capital (and thus the city area) up to the last two constitutions, in which case “Pretoria” as the name of the administrative capital can be deemed to have been adopted by constitutional convention.

3.4 As for the application by the Tshwane Council to the SAGNC, it is again important to note that the process initiated with the SANGC has an objective to register the geographical area of the Tshwane Council as a “city” named “Tshwane” and so that the name can be used on news bulletins, road maps, weather forecasts and all official documents (See Annexures “B” and “E”). We hereby submit that the process is seriously flawed due to the following reasons:

- 3.4.1 The SAGNC has the capacity to accept applications for proposed geographical names from, amongst others, local governments, and to submit the applications to the responsible Minister for approval (Article 9(1) (c) and (d)).
- 3.4.2 A geographical name is defined in the SAGNC Act as the name of any terrestrial feature within the jurisdiction of South Africa whether man made or natural and whether inhabited or not. The names of local governments are explicitly excluded from the jurisdiction of the SAGNC and this exclusion is supported by the official SAGNC guide. Local government boundaries are not terrestrial features as much as magisterial districts can not be seen as terrestrial features, but purely as geographical markers of the jurisdiction of the magistrate courts. This will also explain why no magisterial districts appear on the place name register. Thus, the Tshwane Council can not validly apply for the registration of the name “City of Tshwane” with the offices of the SAGNC.
- 3.4.3 Furthermore, the Tshwane Council wishes to apply for the registration of the local government boundary as a “city” with the name “City of Tshwane”. However, this is problematic as the proposed area consists of cities (Pretoria and Centurion), towns (Akasia, Mabopane, Temba and Pienaarsrivier) and rural areas (Hammanskraal). The make-up of the area does not comply with the nature of a city that is made up of buildings, streets and plains larger than those found in towns. It would thus be impossible to register a city name like the “City of Tshwane” for the Tshwane Council boundary as this would be an inaccurate and untrue description and name. The SAGNC also does not have the legal capacity to award city status to the Tshwane Council geographical boundary.
- 3.4.4 Furthermore, the application process followed by the Tshwane Council is prejudicial to the residents of Pretoria as the opportunity to object to the application to the SAGNC has been purely window dressing. The Tshwane Council issued the Public Notice on 6 April 2005 and interested parties had

fourteen (14) days within which to react on the intended application process, yet on 12 April 2005 the Chairman of the SAGNC proclaimed in the media that the Tshwane Council had followed the correct and legal procedures to register the name “Tshwane” with the SAGNC. It thus seems that the application was already made prior to the issue of the Public Notice and this clearly flouts the rules of natural and administrative justice. At worst, it would seem that the SAGNC is in collusion with the Tshwane Council to register a city and name that has no legal basis. In this regard they are also harming relations between sections of the population as evidenced by research performed by Mr. Dirk Hermann from Solidarity (see Annexure “H”) wherein he found that up to 89% of the Afrikaans speaking minority will feel alienated if Pretoria’s name is changed.

4 CONCLUSION

- 4.1 Having regard to the background, the technical and substantive arguments, we submit that the mentioned Codes have been breached as explained above and request the following sanctions:

REMEDIES REQUESTED

- 1 An urgent verdict and relief based upon the following considerations:
 - 1.1 A tangible right of the Complainant and a community that is opposing the name change of Pretoria is being seriously prejudiced by the SABC's pre-empting of the process itself, in that the outcome is treated as a *fait accompli* which can influence the real result of the legal and administrative process, and opposition thereof, currently underway. The Complainant has a clear right to oppose the name change process administratively and judicially, but the right to administrative and natural justice is seriously being undermined by the SABC on an intentional basis. The Complainant, furthermore, has a clear right established by the Code to receive truthful, accurate and impartial news, a right that is intentionally and *mala fide* being ignored and infringed by the SABC.
 - 1.2 This infringement by the SABC is occurring on a continual and intentional basis with false and misleading references made to "Tshwane" on a daily basis that serves to reinforce the perception that "Pretoria's" name has already been lawfully changed to "Tshwane" and can have an adverse influential effect on the process. Furthermore, the continual infringement of the Code and the daily dissemination of false news is an indication of the lack of respect the SABC has for the Code, the BCCSA and the population of South Africa. The further allowance of this continual act of semantic and cultural engineering, propaganda and spreading of lies shall materially prejudice and irreparably harm my client's and the Freedom Front Plus' further endeavours to achieve judicial and administrative justice in the name change process.

1.3 Therefore, we humbly request for urgent relief and as such that the Tribunal reach a verdict by not later than Wednesday the 25th of May 2005.

2 The relief sought is as follows:

2.1 An immediate cessation of the use of the name “Tshwane” when actual reference is made to the city of “Pretoria”;

2.2 A public apology and/or correction on all broadcast channels for the incorrect use of the name “Tshwane”;

2.3 An appropriate fine for the intentional propagation of incorrect information.

3 Alternatively, and in the event that the Tribunal does not foresee that it would be reasonably possible to apply their minds timeously in order to reach a verdict by the said date, the Tribunal is requested to immediately make an interim order obliging the Respondent to refrain from referring to the city of Pretoria as Tshwane, until the Tribunal has made a final order.

ON BEHALF OF DU PREEZ BRINK AND THE FREEDOM FRONT PLUS

Advocate Anton Alberts