



Psychological Society of South Africa (PsySSA) is 'friend of the court' in Jon Qwelane hate speech case

Today PsySSA filed its papers as amicus curiae ('friend of the court') in the South Gauteng High Court, in a matter that concerns the contents of a newspaper article entitled "Call me names, but gay is not ok", written by Jon Qwelane and published in the Sunday Sun on 20 July 2008.

The South African Human Rights Commission seeks an apology and damages from Mr Qwelane on the grounds that the contents of the article constitute prohibited hate speech in terms of section 10(1) of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 ("the Equality Act"). Most recently, Mr Qwelane has launched a constitutional challenge against the relevant provisions of the Equality Act.

Webber Wentzel acts as attorneys, pro bono, for PsySSA. As a friend of the court, PsySSA will present evidence and make submissions regarding the important purpose served by section 10(1) of the Equality Act to stem systemic verbal and physical violence based on the prohibited grounds of discrimination in that Act. PsySSA will also present research-based evidence of the harmful psychological effects and consequences of hate speech on members of the lesbian, gay, bisexual, transgender and intersex community and on broader society.

More specifically, PsySSA intends:

- To locate the provisions of section 10(1) of the Equality Act which prohibits hate speech, within its proper psychological, social, scientific and constitutional context in order to demonstrate that hate speech causes deep psychological harm to its targets.
- To submit that section 10(1) is constitutional in that, although it limits the right to freedom of expression under section 16 of the Constitution, it does so in a manner that is reasonable and justifiable and satisfies the requirements of section 36 of the Constitution.
 - Importantly, the Equality Act does not criminalise hate speech. Rather it balances the right to freedom of expression against the constitutional protection of equality and dignity of all persons, regardless of their status or identity



- The Act is concerned with remedying the pernicious effects of discrimination on the victims of that discrimination and society generally. It does so by providing for a range of innovative and flexible civil remedies. It recognises, in its preamble, that our society is plagued by “systemic inequalities and unfair discrimination [which] remain deeply embedded in social structures, practices and attitudes, undermining the aspirations of our constitutional democracy”.
- To highlight the damaging effects that the discriminatory speech contained in Qwelane’s article has on members of the LGBTI community in particular, and on society at large.

“It is critical that in making its determination, the court considers the nature and extent of the material harm caused by homophobic hate speech. This wider social context is critical to understanding the tangible consequences of such hate speech on the lives of those who are its target and society at large”, says Professor Juan Nel, Department of Psychology, University of South Africa and President Elect of PsySSA.

Dr. Saths Cooper, President of the International Union of Psychological Science, adds that, “through its submissions to the court PsySSA will show how an understanding of the psychological effects of the underlying prejudices in our society and their expression is necessary for the development of a healthy post-apartheid South Africa.”

About PsySSA:

PsySSA is a not-for-profit association of psychology practitioners and persons involved in the academic, research and practical application of the discipline of psychology. Established in 1994, it is the nationally representative professional body for psychology in South Africa. PsySSA is committed to the transformation and development of South African psychology to serve the needs and interests of all South Africa’s people. PsySSA advances psychology as a science, a profession and as a means of promoting human well-being.

PsySSA has established an African lesbian, gay, bisexual, transgender and intersex persons human rights project, in association with INET (the International Network on Lesbian, Gay and Bisexual Concerns and Transgender Issues in Psychology). PsySSA is committed to fostering active and vocal participation by psychology professionals in current and anticipated debates on gay and lesbian issues and to support the advancement of gay and lesbian rights in Africa.



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Section 10(1) of the Equality Act: *"Subject to the proviso in section 12, no person may publish, propagate, advocate or communicate words based on one or more of the prohibited grounds, against any person, that could reasonably be construed to demonstrate a clear intention to - (a) be hurtful; (b) be harmful or to incite harm; (c) promote or propagate hatred."*

Section 36 of the Constitution: *"Limitation of rights – (1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including - (a) the nature of the right; (b) the importance of the purpose of the limitation; (c) the nature and extent of the limitation; (d) the relation between the limitation and its purpose; and (e) less restrictive means to achieve the purpose. 2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights."*
