



Justice 12 years delayed: Jon Qwelane hate speech case to be heard in Constitutional Court on 22 September

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PsySSA is the professional body representing psychology and psychologists in South Africa. PsySSA advances South African psychology as a science and profession of global stature and promotes psychological praxis as relevant, proactive and responsive to societal needs and well-being. The mission of the Sexuality and Gender Division is to promote a psychological understanding of the fields of sexuality and gender in support of PsySSA's endeavours to ensure human well-being and social justice for all people.

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Twelve years after journalist and political figure Jon Qwelane published an article in the Sunday Sun entitled “Call me Names but Gay is Not Okay”, the hate speech case against him is before the Constitutional Court.

Qwelane’s now infamous article reflected a deep disdain for the dignity of LGBTI people, likening them to animals and their intimate relationships to bestiality. Qwelane’s speech caused great harm by representing gay people as responsible for the degeneration of social values; as being against the natural order of things; and as unworthy of equal rights and protections in law. Qwelane has remained unapologetic for his views and has continued to defend the indefensible for over a decade, and through various challenges and appeals in the courts.

“There is a bitter irony that today, in 2020, Qwelane would never get away with what he said back in 2008. He maintains his refusal to recognise and apologise for his hateful prejudice, which violates the very values of equality and justice that his activism against apartheid claims to stand for”, says Melanie Judge, queer activist and executive member of PsySSA’s Sexuality and Gender Division.

It is noteworthy that, at the time of its publication, Qwelane’s article led to the South African Human Rights Commission (SAHRC) receiving the largest number of complaints ever about a single incident. Over 1000 complaints were also laid with the Press Ombudsman. In the original case, the SAHRC sought an apology and damages from 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”).

In 2017, the Equality Court found that Qwelane’s words amounted to hate speech and ordered that he apologise, however he chose to appeal to the Supreme Court of Appeal (SCA). In 2019, the SCA upheld Qwelane’s constitutional challenge to the hate speech provision, and dismissed the original complaint against him. This effectively left the LGBTI community with no remedy, no recourse, and not even an apology.

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The Psychological Society of South Africa (PsySSA), through its Sexuality and Gender Division, was first admitted as amicus curiae in this matter in 2013. PsySSA led evidence in the Equality Court that highlighted the strong correlation between the prevalence and tolerance of hate speech in a society and the prevalence of hate crimes. It also showed how hate crimes occur at the extreme end of a spectrum that starts with it being socially acceptable to name call, demean and dehumanise marginalised groups.

PsySSA has been admitted as amicus curiae in the Constitutional Court and, on 22 September, will appeal the SCA order before the court. The appeal focuses on the original complaint against Qwelane and will argue that the SCA's order should be overturned. In sum, PsySSA will argue that Qwelane's article must be understood in the context of high levels of violence and persecution against LGBTI people, and that his speech attacks the dignity and equality of LGBTI individuals and communities. PsySSA, through its Sexuality and Gender Division, will also submit that the SCA's dismissal of the complaint was not only unjustified in the face of the overwhelming evidence of its impact on LGBTI people, but also at odds with the Constitution's demands that the equality and dignity of vulnerable groups be protected.

"We are hopeful that this matter will finally be laid to rest by the highest court in the land and that Qwelane will be held accountable to the public, and to the LGBTI community in particular, for the harm he has caused and relentlessly defended", states Juan Nel, University of South Africa Research Professor and a PsySSA Past President.

PsySSA is represented by Webber Wentzel and its counsel, Kate Hofmeyr, Danie Smit, Hasina Cassim and Lucelle Buchler.

END

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