

# Freedom of Speech

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12 September 2025

## INTRODUCTION

The events that took place earlier this year regarding Anton Taylor and the Hawks raid, have sparked widespread concern over abuse of state power and resources, as well as freedom of speech and the repercussions thereof.

## BACKGROUND

Popular social media comedian, Anton Taylor, uploaded a video in which he portrayed a fictional character, a Czech criminal, who claimed to have bribed the now suspended police minister Senzo Mchunu with a BMW and three prostitutes, in order to investigate KZN Police Commissioner General Nhlanhla Mkhwanazi.

Following this, The Directorate for Priority Crime Investigation (Hawks) raided Taylor's house, confiscated his cell phone for two weeks, and obtained a court order to track his location.

A Hawks captain informed Taylor that Senzo Mchunu was upset and insulted and "couldn't let this slide". Senzo Mchunu himself confirmed that he had sent the Hawks after Taylor because of the video in question.

## PROSECUTION

Senzo Mchunu pressed charges against Taylor, namely "crimes against the state", which is a term more commonly used to describe terrorism, rather than crimes involving dignity and reputation.

The docket was referred to the Director of Public Prosecutions (DPP), who declined to prosecute Taylor, citing unreasonable prospects of success.

## BACKLASH

This series of events has caused widespread concern and criticism over the use of elite crime-fighting resources, where there are well established legal alternatives, such as the laws surrounding defamation, which is protected by both common law and statutory provisions.

Furthermore, satirical content and freedom of expression is protected under our laws, and this was clearly an abuse of power, costing the taxpayer hundreds of thousands of Rands, all to intimidate an individual.

## DEFAMATION

When an individual feels as if their reputation has been infringed upon, the well established legal remedy of defamation is available. Defamation of character falls under civil law, not criminal law, meaning that the state is not involved and no criminal charges are laid.

Defamation is defined as the unlawful and intentional publication of material involving another, which damages their reputation.

The elements are (i) unlawfulness, (ii) intention, (iii) publication, and (iv) defamatory matter.

The fact that the DPP refused to prosecute Taylor, based on the unreasonable chances of success, is telling as to the strength of this remedy in this case.

The main defences to defamation are (i) Truth and Public Interest, (ii) Fair Comment, (iii) Privilege and (iv) Reasonable Publication. Although not specifically mentioned as a defence, political satire may qualify as Fair Comment, and is protected under section 16(1) (c) of the Constitution, which deals with freedom of expression, including artistic creativity.

One cannot help but compare Taylor's video and the issues at hand, to the cartoons of Zapiro, and his legal battles with then President, Jacob Zuma, who ultimately dropped the charges of defamation against Zapiro, for the various cartoon depictions of himself in an unfavourable light.

## CONCLUSION

This matter is ongoing, inasmuch as Taylor may press charges, and there are calls from prominent figures, such as the Western Cape Mayor, Geordin Hill-Lewis, to investigate the judge who approved the search warrant.

The eventual outcome is of general importance for all those interested in the laws surrounding freedom of speech, abuse of power and state resources, and political satire.



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