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# Bid to end exclusion of private institutions

Judgment reserved in fight for equal sporting opportunities

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**T**HE Independent Institute of Education, South Africa's largest registered and accredited private provider of higher education wants students from its institutions to receive the same sporting opportunities as their counterparts at public institutions.

It turned to the Gauteng High Court, Pretoria, arguing that as things stood, students from private higher education institutions were excluded from participating in premier sporting events.

According to the institute, they could thus not attract major sponsorship for the events which they were entitled to enter.

The organisation argued that the exclusion was unfair discrimination and negatively affected the dignity of those students who were excluded.

They lost out on opportunities and advantages available to their counterparts in public higher education institutions.

Varsity College, the educational brand of the institute, has been operating for about 20 years and has eight campuses throughout the country. About 14 000 students attend its colleges.

Advocate Andrea Gabriel SC, told the court, which in this instance sat as the Equality Court, that the application was to secure equal participation and opportunities for students in certain national "premier" sporting competitions.

Several bodies were cited as respondents, but Gabriel said they were seeking an order mainly against University Sport South Africa – the body recognised by government and responsible for all higher education sport.

To illustrate her argument, Gabriel said student A and student B both attended higher education institutions, which were regulated by government through the same national law. Both students had the same sporting abilities and represented their institutions.

The only difference was that A went to a public institution and B to a private institution.

"A is allowed to enter certain sporting competitions described

as premier or elite competitions, but B is not, because she attends a private education institution."

Gabriel said it was not permissible in law and against the constitution that one had better opportunities than the other.

The private competitions from which Independent Institute of Education students are excluded, are "Varsity Sports" and "Varsity Cup" competitions.

Varsity Sports include competitions relating to hockey, cricket, mountain bike challenges, beach volleyball, football, sevens rugby, netball and athletics.

The sporting opportunities under the broad label of Varsity Cup, include rugby competitions, including Varsity Cup and Varsity Shield.

Gabriel said the court should order University Sport South Africa to remove barriers to the participation of Independent Institute of Education Varsity College students from entry to these sporting competitions.

The defences raised by the respondents were largely to the effect that these were "private" sporting competitions, run by non-governmental bodies available only to students from public higher education institutions.

University Sport South Africa said it had no control over these "private" competitions and could not compel these bodies to include the students.

It denied that there was any inequality in the exclusion.

Gabriel said both public and private higher education institutions were regulated by government through a single law – the Higher Education Act.

She said there could thus be no legitimate distinction drawn between the students and those who attended public higher education institutions.

"If there is no difference in sporting ability and potential between higher education students in public and private institutions, why then are the sporting competitions and opportunities offered limited only to students at public institutions?" she asked.

Gabriel urged the court to reject the defence of University Sport SA that it had no control over private competitions.

Judgment was reserved.