

FOR PSA MEMBERS: DEPARTMENT OF DEFENCE (DOD)

08-04-2020

## Update: Demilitarisation - Labour Court update

The action was instituted on 17 November 2016. Prior to litigation there was a process of correspondence, consultations and drafting of Court papers. The cause of action is the misrepresentation, which induced members to consent to the process of demilitarisation in 1998. When individual contracts were concluded, members were not immediately aware of the pitfalls in their contracts.

The PSA's Advocate did anticipate that the employer would raise the defence of prescription. In the employer's answering affidavit, it raised two special pleas, namely that the claims have prescribed in terms of the *Prescription Act of 1969* and that a notice in terms of section 3 of the *Institution of Legal Proceedings Against Certain Organs of State (ILPCOS) Act of 2002* was not served on the employer.

The Court had to deal with these special pleas first and separately. If unsuccessful, then the first hearing would be held on whether the PSA had a valid claim. If so, a hearing into the quantum/amount payable by the Department will take place.

Special pleas were argued before the Labour Court on 30 August 2019. The judgment was issued on 18 December 2019. The judgment upheld the plea of prescription regarding the amount claimed prior to the Court action and granted condonation for not complying with the *ILPCOS Act*.

The employer filed an application for leave to appeal on 24 February 2020, which the PSA has opposed. The Court, on 4 March 2020, granted such leave. The PSA authorised the Advocates to oppose the appeal. The employer will be expected to file further documentation. In turn, the PSA will then file opposing Heads of Arguments and argue the special plea in the Labour Appeal Court.

The PSA will monitor the situation and keep members updated.

GENERAL MANAGER