

FOR PSA MEMBERS: DEPARTMENT OF DEFENCE (DOD)

09-12-2021

Legal opinion on approaching Constitutional Court regarding Labour Appeal Court judgement on demilitarisation of Finance Division - 2 December 2021

Members will recall from previous editions of the *Informus* that after the special pleas were argued, the Labour Court granted condonation in favour of the PSA, by ruling that claims pertaining to the last three years could proceed.

The employer appealed to the Labour Appeal Court (LAC), insisting that the whole claim had prescribed, and the condonation granted should not have been granted. The LAC ruled that the whole claim had prescribed three years after demilitarisation in terms of the *Prescription Act 68 of 1969*. Members should have instituted their claims on or before November 2001.

As the PSA's case was based on misrepresentation and breach of contract, the LAC held that it was a once-off occurrence and not ongoing as alleged by the PSA. In addition, the LAC held that the non-compliance of having to give notice of intent to sue government within six months, as contemplated by the *Institution of Legal Proceedings Against Certain Organs of the State Act 40 of 2002*, was also to be prioritised as key element by the Labour Court in not granting condonation.

The PSA, in trying to exhaust all avenues to assist members, sought further legal opinion to ascertain if the matter could be appealed to the Constitutional Court. The PSA legal counsel, after having looked at the judgement, indicated that there is little prospect of continuing with this matter to the Constitutional Court. In view thereof, the PSA has decided to bring this matter to finality and close this matter.

The PSA would like to extend appreciation to those members who worked closely with the PSA to provide the relevant information as well as their presence during the Labour Court processes.

GENERAL MANAGER