

SUPREME COURT OF APPEAL OF SOUTH AFRICA

PRESS RELEASE

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STATUS: Immediate

Minister of Safety and Security v De Witt ([2008] ZSCA

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

This appeal concerned the interpretation of s 3 of the Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002 . The Act was passed to make uniform the preconditions to instituting legal proceedings against state bodies such as the Police Services. Previous legislation regulating different state bodies had required notice to be given within prescribed time limits, and had, in certain cases, shortened the prescription period for debts owed by certain organs of state. Some of these provisions had been held to be unconstitutional because of their inflexibility.

Section 3(1) of the Act now requires notice to be given within six months of the date on which the cause of action against the organ of state arises. But s 3(4) allows a court to condone the failure to give notice. Mr de Witt had been arrested and detained by the police in May 2004. Two years later he gave notice to the Minister of Safety and Security that he intended to sue for wrongful arrest and detention. The Minister rejected the notice since it was out of time. De Witt nonetheless instituted action against the Minister before the

three-year prescriptive period had elapsed. The Minister objected to the proceedings on the basis that no notice as required had been given. De Witt applied for condonation for the late service of notice.

The Cape High Court granted condonation. The Minister appealed on the basis that condonation cannot be sought after proceedings have been instituted. Today the Supreme Court of Appeal upheld the finding and dismissed the appeal. It held that a court may condone failure to give notice, or the giving of defective notice, after proceedings have been instituted against an organ of state, subject to the preconditions set out in s 3(4)(b) – that the debt has not been extinguished by prescription; that good cause for the failure to give compliant notice exists; and that the organ of state was not unreasonably prejudiced by the failure.
