

Supreme Court of Appeal of South Africa

MEDIA SUMMARY– JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Status: Immediate

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.

Malcolm v Premier, Western Cape

Mr Malcolm was infected with Hepatitis B whilst a patient in the Red Cross Children's Hospital in 1994. In 2008 shortly after his 21st birthday he instituted action to recover damages against the Premier of the Western Cape in her official capacity, alleging that his infection was due to negligence on the part of the hospital staff. In terms of the Prescription Act he had one year after the impediment of minority ceased to exist in which to bring his action. At the time he was infected that would in the ordinary course have been when he reached the age of 21. However, with effect from 1 July 2007 the age of majority was lowered to 18. As a result it was argued on behalf of the Premier that he became a major by operation of law on 1 July 2007 and that as he did not bring his claim within one year from that date it had prescribed. That contention had been upheld by the Western Cape High Court.

The SCA said that it had been held in an earlier decision of the court that for the purposes of prescription the issue was not whether the person was legally a major, but whether they had reached a particular age. In the light of circumstances prevailing at the time of that decision in 1978 it held that age to be 21 years. The SCA today held that present circumstances had changed in regard to the understanding of who is a

minor in our society, in the light of social changes in South Africa and international trends. It accordingly held that in present circumstances the age at which a person ceases to be a minor for the purposes of prescription is 18 years. However, it held that this altered interpretation of the relevant statutory provision did not operate in relation to claims that had arisen before the change became effective where prescription was already running on a different basis. Accordingly the appeal was upheld and the plea of prescription was dismissed.