

**GERHARDUS FRANCOIS JANSE VAN RENSBURG N.O.v THE MINISTER
FOR TRADE AND INDUSTRY N.O.**

CCT 13/99

Explanatory Note

The following explanation is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

This case concerns the constitutionality of sections 7(3) and 8(5)(a) of the Consumer Affairs (Unfair Business Practices) Act. The first authorizes investigation officers appointed by the Consumer Affairs Committee to conduct searches and seizures. The second section empowers the Minister for Trade and Industry, on the recommendation of the Committee, to stay or prevent any unfair business practice under investigation and to attach money or property related to an investigation. Both sections were declared constitutionally invalid by Van Dijkhorst J in the Transvaal High Court. This Court was asked to confirm the order of invalidity.

Since the judgment of Van Dijkhorst J section 7(3) was materially amended. The High Court was not called upon to consider the provisions of section 7(3) as they now read, nor were they before this Court. In a unanimous judgment by Justice Goldstone it was decided that the Court should not make an order in respect of the confirmation proceedings relating to that section.

Section 8(5)(a) of the Act was not amended, and was thus considered by the Court. The Court confirms its invalidation: while conferring a wide discretion on the Minister, the section does not provide guidance as to the exercise of those powers nor suggest any administrative procedures to be followed in exercising them. The section thus infringes the right to just administrative action and cannot be justified.

However, it would not be in the public interest simply to strike down section 8(5)(a) and thus allow persons who are under investigation for unlawful business practices to continue that practice or dissipate or hide assets. But the Minister should not be able to continue exercising the infringing discretion in the interim. Accordingly, as a temporary measure, the Court has given directions to ensure the administrative fairness of the exercise of these ministerial powers.