

# **When can the SAPS be sued for damages suffered by crime victims?**

The numerous civil claims that have in recent times been instituted by various crime victims against the State for the failure of the South African Police Services ("SAPS") to protect them, is another indication of the high levels of crime that we are experiencing in our country.

The good news for victims of crime is that the courts in most of these cases have held the State liable for damages suffered as a result of crimes that could have been prevented by the SAPS.

In the case of *Hamilton vs Minister of Safety and Security* [2003] (1) ALL SA 678(C) the court had to decide whether a police officer owes the public at large a duty of care to verify information when considering an application for a fire-arm licence.

The plaintiff sued the Minister of Safety and Security for injuries he sustained when one X shot him. He alleged that the police officer who handled the fire-arm licence application of X, failed to verify the information that had been supplied in the application when it was lodged.

The plaintiff succeeded to prove in court that X was physiologically disturbed and that she had a history of violent outbursts and of alcohol and substance abuse. The plaintiff alleged that the police officer failed to exercise his duty of care to verify the information supplied by X in the application and that, had the police officer not failed to do this, X's application would not have been successful.

In respect of the duty of care the court held that the police has the general duty to exercise reasonable care in the prevention of violent crimes. The learned judge indicated that one or two telephone calls to X's next-of-kin and her employer would in all probability have revealed her unsuitability to possess a fire-arm and that the plaintiff in the matter had been a foreseeable plaintiff since he fell within the group against which X's irrational anger and violent tendencies could be directed. The court also held that the necessary cordial link between the

negligent issuing of the fire-arm licence to X and the plaintiff's wounding by X had been proved.

The State was accordingly held to be liable to the plaintiff for damages suffered as a result of being shot by X.

Our enquiries at the Rustenburg Police Office have revealed that the SAPS has now, as a result of this decision, introduced a system of phone calls to verify information supplied by applicants for fire-arm licences to family members and others as part of their standard procedure.

Many believe, as a result of this Hamilton decision and other recent similar cases where the State has been held liable, that "the flood gates have now opened". It is however important to realise that not every crime will justify an action against the SAPS for failure to protect the public. Each case will have to be decided on its merits to establish whether the police had a duty of care in the specific circumstances and whether they negligently failed to perform their duty.