

LEGAL UPDATE · 7 OCTOBER 2026

SUMMARY OF THE LEGAL SECTOR CODE JUDGMENT

Deneys Reitz and Others v Minister of Trade, Industry and Competition
Solidarity Trade Union v Minister of Trade, Industry and Competition

High Court of South Africa, Gauteng Division, Pretoria | Case Nos. 2024-149523 and 2025-033365

EXECUTIVE SUMMARY

The High Court reviewed and set aside the Minister's decision to promulgate the Legal Sector Code and sent the matter back to the Minister for reconsideration. The Court did not rule that the Code's contents or transformation objectives are unlawful. The defect was that the Minister did not independently exercise the discretion given to him by section 9(1) of the B-BBEE Act.

01 WHAT THE COURT DECIDED

- The decision published in Government Gazette 51271 on 20 September 2024 was reviewed and set aside.
- The matter was remitted to the Minister for a fresh decision.
- The Minister was ordered to pay the applicants' costs, including the costs of two counsel on Scale C.
- No costs order was made against the remaining respondents.

02 THE CENTRAL REASON FOR THE DECISION

Section 9(1) of the B-BBEE Act gives the Minister a discretionary and evaluative power. The Minister may rely on consultation, technical work and advice, but must personally assess the material and decide whether to issue the sector code.

- The Minister repeatedly described his role as recognising and publishing what the legal sector had agreed.
- He said that detailed targets were "not my space", that he was "duty-bound to gazette" the Code, and that he had simply carried out the publication function.
- The Court found that this showed an incorrect understanding of his legal role. The stakeholder and committee process could inform the decision, but could not replace the Minister's own judgment.
- General statements that the Minister had "applied his mind" were not enough because the record did not demonstrate the independent evaluation connecting the advice received to the conclusion reached.

03 MINISTER PATEL'S EARLIER CONCERNS

The Court treated the concerns raised by former Minister Ebrahim Patel as an important part of the background that the incoming Minister had to consider. These included:

- Whether departures from the Generic Codes were properly justified under Statement 003.
- Whether the deviations were supported by sufficient empirical and sector-specific evidence.
- Whether significant stakeholder objections had been adequately addressed.
- Whether certain provisions, including proposed criminal-offence and Charter Council provisions, exceeded the powers granted by the B-BBEE Act.

The Court did not decide whether these concerns were correct. It found that the later decision-making record did not adequately show how the Minister independently assessed whether they had been resolved.

04 WHAT THE COURT DID NOT DECIDE

The Court expressly left the substantive challenges open. It did not determine that:

- B-BBEE, sector codes, or the Legal Sector Code are inherently unconstitutional.
- The Code's ownership targets, weightings or measurement methods are invalid.
- The deviations from the Generic Codes are unlawful or irrational.
- The exclusion of socio-economic development, certain bursaries, disability-related expenditure or non-lawyers from particular measures is unlawful.
- The Charter Council itself is unlawful.
- The Code is incapable of lawful promulgation.

05 TRANSFORMATION FINDINGS

The Court strongly affirmed the constitutional need for transformation in the legal profession. It accepted that progress at entry and associate levels has not been matched at ownership, leadership and economic-participation levels, particularly for Black women.

KEY PRINCIPLE

Transformation and the rule of law are mutually reinforcing. Measures intended to advance transformation must still be adopted through a lawful exercise of public power.

06 PRACTICAL IMPLICATIONS

- The judgment is procedural: it invalidates the Minister's promulgation decision, not the underlying transformation objective.
- The Minister may reconsider and promulgate the same or a revised Code, but must independently evaluate the supporting material, the deviations, the objections and the statutory requirements.

- The extensive consultation and technical work already undertaken remain available and need not automatically be repeated from the beginning.
- If a fresh decision is made, the unresolved substantive challenges may still be litigated.
- Verification and compliance stakeholders should distinguish between the decision being set aside and a final judicial finding on the merits of the Legal Sector Code. The latter did not occur.

07 PRELIMINARY ISSUES

- Solidarity had standing to challenge the exercise of public power, including in the public interest and based on its participation in the consultation process.
- The Charter Council did not have to be joined. Its interest in the continued operation of the Code was operational rather than a direct legal interest in the Minister's earlier decision to promulgate it.

FINAL TAKEAWAY

The Legal Sector Code was not struck down because transformation is impermissible or because the Court rejected its substantive provisions. The promulgation decision was set aside because the Minister did not demonstrate that he personally exercised the independent statutory judgment required by section 9(1) of the B-BBEE Act.

Source: High Court of South Africa, Gauteng Division, Pretoria, judgment and orders dated 7 October 2026 in Case Nos. 2024-149523 and 2025-033365.

This summary is for general information only and does not constitute legal advice.

QUESTIONS ABOUT YOUR VERIFICATION?

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