



Legal Sector Code Set Aside: A Victory for Transformation, or for Administrative Legality?

Deneys Reitz t/a Deneys and Others v Minister of Trade, Industry and Competition and Others; Solidarity v Minister of Trade, Industry and Competition and Others

Page | 1

(Gauteng Division, Pretoria, 7 October 2026)

Introduction

The Gauteng High Court's judgment setting aside the Legal Sector Code ("LSC") is arguably one of the most important B-BBEE decisions since *Sakeliga v PPRA*, not because it challenges transformation, but because it scrutinises the process through which transformational measures are adopted.

Like the Constitutional Court's recent Public Procurement Act judgment [Constitutional Court Judgment on the Public Procurement Act and B-BBEE](#) and the Supreme Court of Appeal's decision in *Sakeliga v PPRA*, [Sakeliga PPRA Judgment: What the Court Actually Decided](#) the Court's central concern was not the legitimacy of transformation itself. Rather, the Court examined whether public power was exercised lawfully and in accordance with constitutional requirements.

Importantly, the Court did **not** find the Legal Sector Code unconstitutional. It did **not** reject sector-specific transformation targets. It did **not** invalidate ownership requirements, management control measures, procurement obligations, briefing patterns or transformation objectives. Instead, the Court held that the Minister failed to independently exercise the statutory discretion entrusted to him under section 9 of the Broad-Based Black Economic Empowerment Act ("B-BBEE Act").

The judgment therefore represents a significant victory for constitutional legality, while yet again simultaneously reaffirming the constitutional imperative of transformation.

1. The Case

The applicants, comprising several of South Africa's largest law firms together with Solidarity, challenged the validity of the Legal Sector Code promulgated on 20 September 2024 under section 9(1) of the B-BBEE Act.

The applicants advanced numerous review grounds, including:

- *unlawful deviations from the Generic Codes;*
- *irrational targets and methodologies;*
- *inadequate empirical justification;*
- *procedural irregularities;*
- *the absence of transitional arrangements; and*
- *constitutional and legality challenges.*

However, during argument, the dispute narrowed considerably.

The Court identified the real question as being **whether the Minister independently exercised the discretion entrusted to him by section 9(1) of the B-BBEE Act when deciding to promulgate the Legal Sector Code**. The Court ultimately found that he did not.



2. What the Court Decided

The most important aspect of the judgment is understanding what it does and does not decide.

The Court found that the B-BBEE Act gives the Minister a *discretionary power* to issue sector codes. This is not a mechanical process. The Minister must *independently* satisfy himself that the proposed code complies with legislative requirements and that promulgation is warranted. While departmental officials, steering committees, technical committees and stakeholders may advise the Minister, they cannot exercise the Minister's discretion on his behalf.

The Court carefully analysed the Minister's answering affidavit and found repeated statements indicating that he regarded his role as merely:

- *accepting what the legal sector had agreed upon;*
- *recognising the outcome of the consultation process;*
- *publishing the code at the request of the legal profession; and*
- *performing a gazetting function.*

The Court considered the following statements particularly significant:

- *"My role as the Minister of the DTIC is to recognise and accept what the legal sector has collectively agreed on."*
- *"I have done nothing except to execute my legislative obligation of gazetting the LSC."*
- *"It is really not my space to be involved in the nitty-gritty of the LSC."*
- *"The legal sector, in its wisdom, has decided on the targets and weightings and these are consistent with the objectives of the Act. Hence, I published the LSC."*

The Court held that these statements demonstrated a misunderstanding of the statutory function entrusted to the Minister. The Minister was required to make the final evaluative judgement himself. Instead, he treated himself as effectively bound by the outcome of the sector process. The Court therefore reviewed and set aside the promulgation decision and referred the matter back to the Minister for reconsideration.

3. What the Court Did Not Decide

Sadly, the Court expressly refused to determine the substantive legality of the Legal Sector Code.

It therefore made **no findings** regarding:

- *ownership targets;*
- *black women ownership requirements;*
- *management control methodologies;*
- *skills development provisions;*
- *procurement and enterprise development measures;*
- *briefing obligations;*
- *exclusion of socio-economic development;*
- *exclusion of non-legal professionals from management control;*
- *alignment with Statement 003; or*
- *alleged constitutional defects in the scorecard itself.*

The Court specifically stated that those issues may require determination in future proceedings but were unnecessary to decide once the procedural defect became apparent. This distinction is critical as the judgment cannot be interpreted as judicial disapproval of the substantive content of the Legal Sector Code.



4. The Court's Most Important Statement for B-BBEE

Not surprisingly, given the scrutiny of this case, the Court devoted a substantial portion of the judgment to:

- *section 9(2) of the Constitution;*
- *substantive equality;*
- *remedial measures;*
- *transformation of the legal profession;*
- *advancement of historically disadvantaged practitioners; and*
- *the persistent underrepresentation of Black practitioners in ownership and leadership structures.*

The Court repeatedly affirmed Constitutional Court precedents in old favourites such as:

- *Minister of Finance v Van Heerden;*
- *National Coalition for Gay and Lesbian Equality;*
- *Bato Star;*
- *SAPS v Solidarity obo Barnard;* and
- *South African Restructuring and Insolvency Practitioners Association.*

The Court summarised that: "*Transformation and the rule of law are mutually reinforcing constitutional commitments.*" and further observed that: "*The constitutional imperative of transformation and the pressing need to address persistent inequalities within the legal profession remain undiminished.*" This is yet again an important judicial endorsement of the constitutional legitimacy of transformation by our courts.

So, just like the Public Procurement Act and PPRA judgements, this judgment cannot be characterised as a rejection of B-BBEE. Instead, it reaffirms transformation while insisting that transformation measures must be lawfully adopted.

5. The Risk for Sector Codes

Although the Court confined its decision to the Legal Sector Code, the broader implications may stretch well beyond the legal profession.

5.1. Ministers Cannot Merely Ratify Sector Agreements

The judgment establishes that sector codes are not self-executing.

The Minister **must**:

- *independently evaluate the code;*
- *assess departures from the Generic Codes;*
- *consider stakeholder objections;*
- *engage with identified legal concerns; and*
- *exercise personal judgement before promulgation.*

Future challenges to sector codes are certain to scrutinise the quality of ministerial decision-making more closely.



5.2. Statement 003 Becomes Increasingly Important

One of the recurring themes throughout the judgment is the concern originally raised by former Minister Patel regarding whether deviations from the Generic Codes were adequately justified. Although the Court did not decide this issue, it repeatedly referred to:

- *justification for deviations;*
- *sectoral characteristics;*
- *empirical evidence;*
- *economic rationale; and*
- *compliance with Statement 003.*

5.3. The Rule 53 Record Matters

The Court also expressed concern regarding gaps in the Rule 53 record, particularly:

- *steering committee records;*
- *technical committee deliberations;*
- *justification documents;*
- *responses to stakeholder objections; and*
- *documentation addressing Minister Patel's concerns.*

Conclusion

The Legal Sector Code judgment should not be interpreted as a setback for B-BBEE or transformation policy. Rather, it is a reminder that transformation must advance through constitutionally compliant processes. Read together with the recent Public Procurement Act judgment and *Sakeliga v PPRA*, a consistent judicial theme is beginning to emerge. The courts are not dismantling transformation measures. They are insisting that transformation operate within the confines **of legality, statutory authority and constitutional procedure.**

The practical consequence of the judgment may therefore be neither the abandonment of the Legal Sector Code nor the weakening of transformation objectives. Instead, it is likely to result in a more carefully justified, more procedurally robust and ultimately more legally defensible Legal Sector Code in the future. The Court itself recognised that the extensive consultative work already undertaken remains available to the Minister and that the Code may still be lawfully promulgated following a proper exercise of the statutory discretion entrusted to him.

Again then, the judgment is not a victory for opponents of transformation, but a victory for constitutional legality and the way transformation must be advanced in South Africa.

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