

REPUBLIC OF SOUTH AFRICA
REINSTATEMENT OF ENROLMENT OF CERTAIN LEGAL PRACTITIONERS BILL

(As introduced in the National Assembly as a section 75 Bill ; explanatory summary

Of Bill published in Government Gazette No. of) (The English text is the

Official text of the Bill)

(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B - 2002]

BILL

To provide for the reinstatement of the enrolment of legal practitioners who were struck off the roll of advocates or attorneys as a result of their opposition to the political dispensation of apartheid and who are since deceased; and to provide for matters connected therewith.

PREAMBLE

IN ORDER TO recognise the injustices of the past and to honour those legal practitioners who suffered for justice and freedom in our land;

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Reinstatement on roll of advocates or attorneys

1. (1) Despite the provisions of the Admission of Advocates Act, 1964 (Act No. 74 of 1964), and the Attorneys Act, 1979 (Act No. 53 of 1979), the name of any deceased person who was removed from the roll of advocates or attorneys prior to 1994, may, upon application brought by —

- a. a member of the person's family;
- b. the General Council of the Bar of South Africa;
- c. the Bar Council concerned;
- d. the Society of Advocates concerned;
- e. the Law Society of South Africa;
- f. the law society concerned; or
- g. any other interested person,

to any High Court, be reinstated to the roll of advocates or attorneys, as the case may be, if the Court is satisfied that the conduct that led to that person's name being removed from the roll in question was directly related to that person's commitment to resisting the apartheid regime and to bringing about political change in the Republic.

- (2) If a High Court orders that the name of a person must be reinstated as contemplated in subsection (1) —

- a. to the roll of advocates, the registrar of the Court must forthwith forward a certified copy of that order to the Director-General: Justice and Constitutional Development, who must cause the particulars of the order to be entered on the roll of advocates; or
- b. to the roll of attorneys, the registrar of the Court must restore the name of the person to the roll of attorneys.

Short title

1. This Act is called the Reinstatement of Enrolment of Certain Legal Practitioners Act, 2002.

MEMORANDUM ON THE OBJECTS OF THE REINSTATEMENT OF ENROLMENT OF CERTAIN LEGAL PRACTITIONERS BILL, 2001

1. OBJECTS OF BILL

The objects of the Bill are to make provision for the reinstatement of the enrolment of legal practitioners who -

- i. were struck off the roll of advocates or attorneys as a result of their opposition to the political dispensation of apartheid; and
- ii. are deceased.

2. DISCUSSION

The Bill seeks to provide that the name of any deceased person who was removed from the roll of advocates or attorneys prior to 1994, may, on application to the High Court, be reinstated to the roll of advocates or attorneys, as the case may be.

The application may be brought by —

- a member of the person's family;
- the General Council of the Bar of South Africa;
- the Bar Council concerned;
- the Society of Advocates concerned;
- the Law Society of South Africa;
- the Law Society concerned; or
- any other interested person.

The Court would have to be satisfied that the conduct that led to the deceased person's name being removed from the roll was directly related to that person's commitment to resisting the apartheid regime and to bringing about political change in South Africa.

If the High Court orders that the name of the person be reinstated to the roll of advocates, the registrar of the Court must forward a certified copy of the order to the Director-General: Justice and Constitutional Development who must, in turn, cause the particulars of the order to be entered on the roll of advocates. If the Court orders that the name of the person be reinstated to the roll of attorneys, the registrar of the Court must reinstate the name of the person to the roll of attorneys.

3. DEPARTMENTS / BODIES / PERSONS CONSULTED

The draft Bill was circulated to the following persons for comment:

- 3.1 The Judicial Service Commission
- 3.2 Judges President
- 3.3 General Council of the Bar
- 3.4 Law Societies
- 3.5 The Law Society of South Africa
- 3.6 Black Lawyers Association
- 3.7 Nadel
- 3.8 Legal Resources Centre
- 3.9 Lawyers for Human Rights
- 3.10 Independent Association of Advocates

4. IMPLICATION FOR PROVINCES

None.

5. FINANCIAL IMPLICATIONS FOR STATE

None.

6. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Justice and Constitutional Development are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), since it contains no provision to which the procedure set out in section 74 of 76 of the Constitution applies.