

THE LEGAL PRACTITIONERS PROCLAMATION (CHAPTER 146)

as amended by

THE LEGAL PRACTITIONERS (AMENDMENT) LAW, 1962

(No. 14 of 1962)

(Promulgated 7th August, 1962)

and

THE LEGAL PRACTITIONERS (AMENDMENT) LAW, 1965

(No. 19 of 1965)

(Promulgated 1st January, 1966)

and

**THE CONSTITUTIONAL AMENDMENT (ADAPTATION OF EXISTING LAWS)
ORDER, 1966**

(Legal Notice No. 84 of 1966)

(Date of Commencement – 30th September, 1966)

and

**THE CONSTITUTIONAL AMENDMENT (ADAPTATION OF EXISTING LAWS)
ORDER, 1966**

(No. 4)

(Legal Notice No. 99 of 1966)

Reprinted by direction of the Attorney-General in terms of section 3 of the Amendments Incorporation Law, 1961.

Date of Reprint : 20th January, 1967.

CHAPTER 146

LEGAL PRACTITIONERS

To consolidate and amend the law relating to the admission and enrolment of legal practitioners to practise in Botswana¹, and matters ancillary thereto.

94 of 1955
13 of 1956
14 of 1962
19 of 1965

Interpretation.

1. In this Proclamation, unless inconsistent with the context —
(Attorney General)²

“British subject” includes a British protected person.

“Courts of Botswana” means and includes the Botswana Court of Appeal, the High Court of Botswana and the Subordinate Courts established under the Subordinate Courts Proclamation, but, subject to the provisions of any other law, does not include any African Court or African Court of Appeal established under any law relating to such courts;

“State Counsel” means any professional assistant appointed to assist the Attorney-General;

“High Court” means the Chief Justice or any Judge of the High Court;

“legal practitioner” means any person entitled or admitted to practise as an advocate, attorney, notary public or conveyancer in terms of this Proclamation;

“Registrar” means the Registrar of the High Court and includes an Assistant Registrar;

“Roll” means the roll kept by the Registrar in terms of section 11.

Saving of Rights and Non-application to Law Officers.

2. (1) Nothing in this Proclamation contained with reference to the admission of advocates, attorneys, notaries public or conveyancers shall apply to any person whose name, at the commencement of this Proclamation, appears on the roll kept by the Registrar in terms of Rule 9 of the Legal Practitioners Rules then in force, unless such person thereafter withdraws his name from the roll at his own request or has been struck off the roll in terms of this Proclamation.

(2) Notwithstanding anything in this Proclamation contained each of the following persons shall be entitled, in connection with the duties of his office, to

(1) Amended by L.N. 84/1966 and L.N. 99/1966

(2) Deleted by H.M.C. Order 1/1963

exercise any of the functions of a legal practitioner, that is to say the Attorney-General, the Deputy Attorney-General, any State Counsel and any person delegated by the Attorney-General to appear on behalf of the State in criminal matters in the Courts of Botswana¹.

Admission of Legal Practitioners.

3. Any fit and proper person who possesses the qualifications hereinafter prescribed may apply to the High Court upon written petition to be admitted and enrolled as an advocate, attorney, notary public or conveyancer, as the case may be.

Proof of Qualifications.

4. Every person who applies to be admitted and enrolled as a legal practitioner shall produce to the satisfaction of the High Court proof of the possession by him of the qualifications prescribed by this Proclamation in respect of such admission and enrolment.

Service on the Attorney-General.

5. A copy of every petition for admission as a legal practitioner, together with copies of supporting affidavits and certificates, shall be served upon the Attorney-General not less than ten days before the hearing of such petition and such service may be effected personally or by registered post, or by lodging a copy with the Registrar :

Provided that if the High Court is satisfied that the application is urgent it may, in cases of application for admission and enrolment as an advocate or as an attorney, dispense with such service.

Oaths to be Taken and Fees Paid.

6. No person shall be enrolled as a legal practitioner until he shall have taken before the Registrar the oath or affirmation² of office set out in the Schedule hereto and shall have paid the fees prescribed by section 11.

Provided that a person referred to in paragraphs (a) or (b) of section 14A shall not be required to take the oath of allegiance.³

Qualifications for Admission as an Advocate.

7. The following persons shall be qualified to be admitted and to practise as advocates —

(1) Amended by Law 19 of 1965 and L.N. 84 of 1966

(2) Amended by Law 14 of 1962

(3) Amended by Law 19 of 1965

- (a) any Botswana Citizen or¹ British subject who shall have been admitted as Barrister in England, Northern Ireland, the Republic of Ireland or as an advocate in the Court of Session of Scotland, and who at the date of such petition is still entitled to practise as such Barrister in England, Northern Ireland or the Republic of Ireland, or as an advocate in Scotland; or
- (b) any Botswana Citizen or¹ British subject who shall have been admitted to practise as an advocate in any Division of the Supreme Court of South Africa or in the High Court of Southern Rhodesia, and who at the date of such petition remains enrolled as an advocate of such Supreme Court or High Court, and has practised exclusively as an advocate of such Court and not in partnership with any attorney of such Court :

Provided that no such person shall be admitted to practise as an advocate of the Courts of Botswana² or, after having been so admitted, shall continue to practise as aforesaid, who shall either himself be carrying on, directly or indirectly, the business of an attorney, or be directly or indirectly interested in the business of any attorney or firm of attorneys in any Province of the Republic of South Africa or in Southern Rhodesia.

Qualifications for Admission of an Attorney.

8. The following persons shall be qualified to be admitted and subject to the provisions of section 11A³ to practise as attorneys —

- (a) any Botswana Citizen or¹ British subject who, being an attorney or solicitor of any of the Courts of Record in London, Belfast or Dublin, or being a Writer to the Signet or a solicitor or law agent admitted to practise in the Court of Session of Scotland, is not under any order of suspension in any such Courts respectively ;
- (b) any Botswana Citizen or¹ British subject who has been admitted to practise as an attorney or solicitor in any Division of the Supreme Court of South Africa or in the High Court of Southern Rhodesia, and who at the date of such petition remains enrolled as an attorney of such Court and is not under any order of suspension in any such Court ;
- (c) any Botswana Citizen or¹ British subject entitled under this Proclamation to be admitted as an advocate of the Courts of Botswana², provided that he satisfies the High Court that he has not practised as an advocate for a period of three months immediately preceding his application for admission as an attorney under this Proclamation.

Rights of Advocates and Attorneys

9. Advocates and attorneys whether entitled to practise as such at the commencement of this Proclamation, or admitted and enrolled in terms of this Proclamation,

(1) Amended by L.N. 84/1966 and 99/1966

(2) Amended by L.N. 84/1966

(3) Amended by Law 14/1962

shall subject to the provisions of section 11A¹ have a right of audience in the Courts of Botswana:²

Provided that no advocate shall have a right of audience in any such Court unless he is acting on the instructions of a person entitled to practise as an attorney.³

Qualifications of Notaries Public and Conveyancers.

10. There shall be qualified to be admitted and to practise —

- (a) as a notary public any Botswana Citizen or⁴ British subject who has been admitted as an attorney of the Courts of Botswana², whether before or after the date of commencement of this Proclamation, and who has also been admitted to practise as a notary public by any Division of the Supreme Court of South Africa or by the High Court of Southern Rhodesia, and who at the date of such petition remains enrolled as a notary public in such Court and is not under any order of suspension in any such Court.
- (b) as a conveyancer any Botswana Citizen or⁴ British subject who has been admitted as an attorney of the Courts of Botswana², whether before or after the date of commencement of this Proclamation, and who has also been admitted to practise as a conveyancer by any Division of the Supreme Court of South Africa or by the High Court of Southern Rhodesia, and who at the date of such petition remains enrolled as a conveyancer in such Court and is not under any order of suspension of any such Court.

Records to be Kept by Registrar.

11. (1) The Registrar shall keep a roll of legal practitioners entitled or admitted to practise in terms of this Proclamation and every person so admitted shall pay a fee of R10 for a certificate of admission and enrolment under the hand of the Registrar in the form in the Schedule hereto.

(2) Such roll shall be in the form of separate alphabetical lists recording the names of advocates, attorneys, notaries public and conveyancers respectively, entitled to practise by reason of section 2, or admitted to practise under this Proclamation, with the dates of such admission and the relevant addresses.

(3) Whenever the High Court makes an order striking off the roll or suspending from practise any legal practitioner, or whenever any legal practitioner applies to have his name removed from the roll or the Registrar is required to remove the name of an attorney from the roll under section 11A (5),⁵ the Registrar shall forthwith enter on the roll kept by him, a note or minute of such order or removal opposite the name of the legal practitioner concerned.

(1) Amended by Law 14/1962

(2) Amended by L.N. 84/1966

(3) Amended by Law 19/1965

(4) Amended by L.N. 84/1966 and 99/1966

(5) Amended by Law 19/1965

“Practising Certificates for Attorneys.”¹

11A. (1) No attorney shall be entitled to practice as such in the Courts of Botswana² in any year unless he is in possession of a practising certificate for that year issued under this section:

Provided that this sub-section shall not apply during the month of January in any year in respect of any attorney who has held a practising certificate for the immediately preceding year.

(2) The Registrar shall issue a practising certificate for any year in such form as the Chief Justice may prescribe to any person admitted and enrolled as an attorney under this Proclamation or any previous law who applies for the same in accordance with the provisions of sub section (3) and pays the fee prescribed in sub section (4).

(3) Every attorney applying for a practising certificate under this section shall deliver to the Registrar a written application in such form as the Chief Justice may prescribe stating the name and place or places of business of the applicant and the date of his admission and enrolment as an attorney and signed by him or his duly authorised agent.

(4) The fee to be paid to the Registrar in respect of every practising certificate issued by him shall be two rand in the case of an attorney ordinarily resident in Botswana² and fifty rand in the case of any other attorney :

Provided that where an attorney ordinarily resident outside Botswana² is the partner, employer or employee of an attorney who is in possession of a practising certificate for any year the fee payable by such attorney for a practising certificate for that year shall be two rand:

Further provided that the fees referred to in this sub section shall be reduced by one-half in the case of certificates issued for the year 1962.

(5) If any attorney fails to obtain a practising certificate under this section for any year, the Registrar shall notify such attorney of the provisions of this section by means of a registered letter posted to him at his last known address; and if within 90 days of the posting of such letter the attorney has not obtained such certificate the Registrar shall remove the name of such attorney from the roll.³

Removal and Suspension from Roll.

12. (1) The High Court may, on reasonable cause shown, order the suspension or removal of any person from the roll.

(2) The Registrar shall refer any complaint of professional misconduct by any advocate to the Attorney-General, who shall investigate the complaint and take such action thereon as he shall deem fit.

(1) Inserted by Law 14 1962

(2) Amended by L.N. 54 1966

(3) Inserted by Law 19 1963

(3) (a) The Registrar shall refer any complaint of professional misconduct by any legal practitioner, other than an advocate, to the Attorney-General, who may take such action thereon as he shall deem fit, or may appoint a Committee consisting of State Counsel, as chairman, and two attorneys appointed by him practising in Lesotho or Swaziland:

Provided that if for any reason State Counsel is not available the Committee shall consist of three attorneys practising in Lesotho or Swaziland appointed by the Attorney-General, the senior of whom shall be chairman.

(b) The Committee shall investigate any complaint referred to it by the Attorney-General under paragraph (a) of this sub section and report thereon to the Attorney-General. The Attorney-General shall take such action on the report as he shall deem fit.

(4) Every application to suspend or remove from the roll shall be made by the Attorney-General by way of motion to the High Court, supported by affidavit or affidavits of the facts on which the application is based:

Provided that the High Court may order that any question of fact shall be tried by pleadings or otherwise as the Court shall deem fit.

(5) No costs may be awarded on such application against the Attorney-General unless the High Court is satisfied that he has acted *mala fide* in bringing the application.

(6) The Attorney-General and the members of any committee shall not be subject or liable to any action or proceedings for damages on the ground of defamation in the *bona fide* execution of their duties and the taking of any steps or the institution of any proceedings under or purporting to be under the provisions of this section.

(7) The members of the committee appointed under sub section (3) of this section shall be paid from the general revenues of Botswana¹ such reasonable expenses as may be fixed by the Chief Justice.

Offences.

13. (1) No person, other than an advocate, attorney, notary or conveyancer (admitted and enrolled, and in the case of an attorney entitled² to practise in the Courts of Botswana¹), shall practise as such within Botswana¹ or in any manner hold himself out as or pretend to be, or make use of any words or any name, title or addition or description implying or tending to the belief that he is an advocate, attorney, notary or conveyancer or is recognised by law as such.

(2) No person shall orally or by means of any written or printed matter or

in any manner whatsoever, directly or indirectly, either for himself or for any other person, canvass, advertise or tout for, or make known his preparedness or that of such other person to undertake, any work, whether for or without remuneration, in connection with the administration or liquidation or distribution of the estate of any deceased or insolvent person, lunatic, or person under other disability.

(3) No advocate, attorney, notary or conveyancer who shall have been struck off the rolls or suspended from practice shall while he is struck off or suspended continue to practise as an advocate, attorney, notary or conveyancer directly or indirectly by himself or in partnership or association with any other person.

(4) No attorney, notary or conveyancer shall employ in any capacity whatsoever any person who shall have been struck off the rolls (except in pursuance of section 11A(5))¹ or suspended from practice while such person is struck off or suspended.

(5) No attorney, notary or conveyancer shall make over, share or divide with any person other than a practising attorney, notary or conveyancer in Botswana² or a legal practitioner outside Botswana², either by way of partnership, commission or allowance or in any other manner, any portion whatsoever of his professional fees.

(6) Any person contravening any of the provisions of this section shall be guilty of an offence and liable on conviction to a fine not exceeding R200 for each offence :

Provided that it shall not be deemed to be a contravention of sub section (2) if —

- (a) any board of executors, or trust company (not being a private company within the meaning of the law relating to Companies)
 - (i) has in its name or title words indicating that its objects or functions include work in connection with the administration, liquidation or distribution of any estate mentioned in sub section (2) ; or
 - (ii) on signboards, nameplates, or notices exhibited on the premises in which it carries on business, on its stationery, or on its usual annual almanacs or in any advertisement in the public press, or in its annual reports or any report of the proceedings at an annual general meeting makes known by a simple statement to that effect that its objects or functions include any such work ;
- (b) any person in reply to a direct enquiry voluntarily made of him by someone else makes known the preparedness of himself or some other person to perform any such work ;

(1) Amended by Law 19/1965

(2) Amended by L.N. 84/1966

(c) any shareholder or employee of a board of executors or trust company described in sub-paragraph (a) above canvasses another shareholder or employee of the same board of executors or trust company on behalf of such board or company.

(d) any attorney, notary or conveyancer or any commercial banking institution or any such board of executors or trust company indicates in any public notice required by law in connection with the liquidation or administration of any estate, that he or it does such work.

(7) Any legal practitioner contravening sub section (2), (4) or (5) shall be guilty of unprofessional conduct and shall, in addition to the liability imposed by sub section (6), be liable to be struck of the roll or suspended from practice.

(8) Save as provided in sub section (9), any person, not being a practising advocate, attorney, notary or conveyancer, who for or in expectation of any fee, gain or reward, direct or indirect, to himself or to any other person, draws or prepares or causes to be drawn or prepared any of the following documents:

(a) Any contract, deed or instrument relating to land or immovable property or to any right in or to land or immovable property, other than conditions of sale or brokers' notes;

(b) any will or other testamentary instrument;

(c) any memorandum or articles of association or prospectus of any company;

(d) any contract, deed or instrument relating to the creation or dissolution of any partnership or any variation of the terms thereof;

(e) any instrument or document relating to or required or intended for use in any action, suit or other proceeding in a Court of civil jurisdiction within Botswana¹;

shall be guilty of an offence and liable on conviction in respect of each offence to a fine not exceeding R200 and in default of payment thereof to imprisonment not exceeding three months:

Provided that the words "fee, gain or reward direct or indirect" shall not include or apply to --

(i) the salary or emoluments of an employee if no fee, gain or reward is sought or obtained by his employer from the person on whose behalf the document was drawn or prepared; or

(ii) any commission or other remuneration to which any person is or may be entitled either by law or otherwise for services in his capacity as executor, administrator, trustee, curator, tutor or guardian by virtue of his appointment as such by any Court of law or under the provisions of any

(1) Amended by L. N. 84 of 1966

will or other testamentary instrument, or as agent for any person holding such appointment.

(9) The provisions of sub section (8) shall not apply to —

- (a) any person in the employ of a practising attorney, notary or conveyancer drawing or preparing or causing to be drawn or prepared any of the aforesaid documents in the course of his employment and on behalf of his employer;
- (b) any person in the service of the Government of Botswana¹ drawing or preparing or causing to be prepared any of the aforesaid documents in the course of his duty;
- (c) any trustee under the laws relating to insolvency or any executor, administrator or curator or any liquidator of a company drawing or preparing any such document in the course of his statutory duties and receiving such fees as may be allowed by law;
- (d) any practising advocate in so far as he would be entitled but for the passing of this Proclamation to draw or prepare any of the aforesaid documents in the ordinary course of his profession.

Rules.

14. The Chief Justice may make rules generally for carrying the purposes or provisions of this Proclamation into effect.

Exemption of Aliens.²

14A. The provisions of sections 7, 8 and 10 shall have effect in relation to any person who, although not a Botswana Citizen or³ British subject —

- (a) is domiciled in Botswana in terms of section 3 of the Immigration Law, 1966 (No. 19 of 1966);
- (b) is exempted in writing by the Minister for the time being responsible for immigration from the nationality requirement mentioned in those sections; or
- (c) is enrolled as an advocate, attorney, notary public or conveyancer under this Proclamation (or in the manner mentioned in section 2);

as if he was a Botswana Citizen or³ British subject.

Short Title.

15. This Proclamation may be cited as the Legal Practitioners Proclamation.

(1) Amended by L. N. 54 of 1966

(2) Amended by Law 19 of 1965

(3) Amended by L. N. 54 of 1966 and 98 of 1966

SCHEDULE
OATH OR AFFIRMATION OF OFFICE ¹

(In the Courts of Botswana)

I.....do swear (or do solemnly affirm) that I will truly and honestly demean myself in the practice of an
.....according to the best of my knowledge and ability.

(In the case of an Oath here add)

So help me God.

.....
Sworn (or Affirmed) before me.....
at.....this.....day of....., 19.....

.....
Registrar.

CERTIFICATE OF ADMISSION AND ENROLMENT

(In the Courts of Botswana¹)

No.....

(R10 stamp)

This is to certify that.....

.....
of.....has been registered as.....and is
entitled to practise as such in the Court of Appeal, High Court and Subordinate
Courts of Botswana¹.

.....
Registrar.

Lobatsi, Botswana¹.

(Date)