



**THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA**

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
Date: 2 December 2010
Status: Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

* * *

THE LAW SOCIETY OF THE NORTHERN PROVINCES V MAHON

The Supreme Court of Appeal (SCA) today held that section 13(2) of the Attorneys Act 53 of 1979 permits a court to condone irregular service by a candidate attorney only if he or she has entered into a valid agreement of articles. This means that service rendered before the conclusion of a valid agreement of articles cannot be condoned under the section.

The Pretoria High Court had condoned service rendered by Ms Rochelle Mahon, a candidate attorney, for a period of five months before she concluded a valid contract of articles as the Act contemplates as ‘irregular service’. After stating that the respondent had a constitutional right to enter her chosen profession (section 22 of the Bill of Rights), it held that substantive justice would not be achieved and that it

would be unfair to the respondent, if her service was not condoned. This was because she had performed duties of a candidate attorney for the five month period, albeit not under a valid contract of articles

The SCA held that the concepts of ‘fairness’ and ‘justice’ were not freestanding requirements against which the constitutionality of a statute, its interpretation or its application to the particular facts of a case, may be tested. It further held that where there was no direct challenge to the constitutionality of section 13(2) and where the section could not be read in a way which better promotes the spirit, purport and objects of section 22 of the Bill of Rights, the high courts were bound to follow a pre-constitutional decision of the Appellate Division. The SCA ordered the respondent to surrender her certificate of enrolment and to serve the further period of three months as a candidate attorney in order to qualify for admission as an attorney.