

THE EFFECT OF A PROVISIONAL SEQUESTRATION ORDER - DOES IT IMPOSE A LIMITATION TO MY RIGHT TO BE A MEMBER OF PARLIAMENT?

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SUMMARY

The question asked in this article is inspired by the recent case of Mr Julius Malema. Why the matter is so important and has enjoyed so much attention, is the fact that it was widely suggested that a final order of sequestration would affect Mr Malema's political career in that it would not be possible for him to continue to serve as Member of Parliament. The question that immediately comes to the fore is whether the provisional order of sequestration would not already result in such an outcome. As stipulated by the *Constitution of the Republic of South Africa, 1996*, an unrehabilitated insolvent may not become a member of the National Assembly, National Council of Provinces, or a Provincial Legislator. Do the words "unrehabilitated insolvent" also include a person who is under provisional sequestration? The purpose of this article is to investigate the effect of a provisional order of sequestration and the focus will be on the ability of an insolvent to act as a Member of Parliament. The legal position in the South African law will be compared with the legal position in the United States of America – which is, with regard to the insolvency law, recognized as a very successful, modern, progressive and dynamic legal system. Voluminous changes to the American bankruptcy law system, to adapt to current practical situations and the current economic climate, have been effected as recently as in 2005. Brief reference will also be made to the legal position in the United Kingdom, due to South Africa's historical ties with the UK and the reliance in the past on the English insolvency law and the *Bankruptcy Act, 1986*.

KEYWORDS: insolvency; provisional sequestration; final sequestration; effect of sequestration; competency of insolvent.

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