THE LAW AND PRACTICE OF CRIMINAL ASSET FORFEITURE IN SOUTH AFRICAN CRIMINAL PROCEDURE: A CONSTITUTIONAL DILEMMA

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SUMMARY

The deprivation of the proceeds of crime has been a feature of criminal law for many years. The original rationale for the confiscation of criminal assets at international level was the fight against organised crime, a feature of society described by the European Court of Human Rights as a "scourge" so that the draconian powers which are a feature of confiscation regimes around the world have been approved in circumstances which otherwise might have caused governments considerable difficulties before the international human rights tribunals.[1] The primary objective of this article is to determine if the asset forfeiture measures employed in the South African criminal justice system are in need of any reform and/or augmentation in accordance with the "spirit, purport and object" of the South African *Constitution*.[2] This article attempts to answer three questions. Firstly, why is criminal asset forfeiture important to law enforcement? Secondly, in which circumstances can property be forfeited and what types of property are subject to forfeiture? Thirdly, how is forfeiture accomplished, and what are its constitutional ramifications?

KEYWORDS: Criminal asset forfeiture; criminal procedure; confiscation; evidence; restraint stage; confiscation and realisation stage; constitutional; assets.

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1 Casella 2003 *Acta Juridica* 314.

2 *Constitution of the Republic of South Africa*, 1996.