VALUATION IN THE CONSTITUTIONAL ERA

WJ du Plessis *

SUMMARY

The Constitution brought about a new compensation regime for expropriations. Compensation for expropriation must now be "just and equitable". Whereas before the Constitution came into force market value played a central role in compensation for expropriation, market value is now only one factor or aspect of compensation that the court needs to take into account. Yet we find that courts tend to focus on market value and to still employ the valuation methods used to calculate market value. This article argues that the methods used to calculate the market value, once thought to be objective, are not as objective as was believed. While it is impossible to give judges specific tools for the assessment of market value, this article provides guidelines on how the calculation of compensation should be approached.

KEYWORDS: property clause; expropriation; compensation; valuation; market value.

* Elmien du Plessis. BA (International Relations), LLB, LLD (US). Associate Professor, Faculty of Law, North-West University. Part of this paper is based on ch 2 of Du Plessis WJ Compensation for Expropriation under the Constitution (LLD-thesis University of Stellenbosch 2009) under the guidance of Prof AJ van der Walt. This work is supplemented on the research supported in part by the National Research Foundation of South Africa for the grant, Unique Grant No 94148. Any opinion, finding and conclusion or recommendation expressed in this material is that of the author(s) and the NRF does not accept any liability in this regard.