

ASSET CONFISCATION UPDATE – 25 June 2008

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Foley's List

DPP v Waters – Costs under the Confiscation Act

In *DPP v Waters*, Judge McInerney of the County Court on 17 June 2008 refused the DPP's application for costs and made important policy observations concerning the award of costs in confiscation litigation.

Facts

Mr Waters made an application for exclusion under s.51 of the *Confiscation Act*. The property sought to be excluded had been restrained on the basis of the offending of another person. Mr Waters was not involved in that offending.

Approximately one week before the trial of the exclusion application, Mr Waters abandoned the application. Upon abandonment, the DPP sought costs against Mr Waters. The application for costs was opposed.

Held

Judge McInerney refused the application for costs and made the following observations:

- In applications for costs by the DPP, the County Court should be guided by the general policy applicable to criminal proceedings - namely that no costs orders are made in favour of the DPP.
- Successful applicants for exclusion should be entitled to costs orders of “*all costs incurred*”. Parliament intended that more generous costs orders be made in those circumstances than the usual party / party costs orders.
- The expression “*forfeiture order*” in s.133A of the *Confiscation Act* should be interpreted as extending to property that has been automatically forfeited. Hence,

the Court has no power to award costs in favour of the DPP (even if it wished to do so) under an application for exclusion from automatic forfeiture under s.51.

This is an important decision because it gives further guidance and certainty on the question of costs in litigation under the *Confiscation Act*.

About the author

Christian Juebner is a barrister at the Victorian Bar. Christian practices predominantly in confiscations and proceeds of crime.

Before coming to the Bar, Christian was a partner with Deacons. Through his commercial experience, he has a detailed knowledge of property, equity and trust issues, all of which are relevant to and impact on proceedings under the Confiscation Act.

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