

## **HIDE-AND-SEEK: THE MATRIMONIAL ASSETS GAME – Rita Keevil (Consultant – Family Law)**

Marriage in or out of community is irrelevant to the need for support by a spouse or children.

When a divorcing couple is unable to agree on the division of assets and support for dependents, the Rules of the High Court compel each spouse to provide full disclosure of income from every source, with documentary confirmation and a full list of the matrimonial assets.

Sadly, it is not uncommon for a spouse to attempt to hide assets and down play his income and wealth. This is particularly so if the party is self-employed or has income from various sources.

Usually the “hiding” spouse has greater wealth than the “seeking” spouse with the latter being unable to afford the services of a forensic accountant or investigator. Thus, she (... it is generally she) needs to rely on the financial literacy and investigation skills of her attorney. The attorney will have armory that even the tax man does not – an estranged spouse who is willing to tell all to get a fair share.

The most obvious issue is whether the life style matches the declared wealth and income. If he has bought an Aston Martin for cash, a declared salary of P12 000 per month would be dubious!

A self employed person can put many expenses through his business and needs to be reminded to state his total cost to company as income for these purposes. Many business owners may attempt to hide income by inflating expenses, understating income or taking cash. Clues of this conduct may include the movement of stock, the appointment book and the lifestyle.

Income and wealth is less likely to be hidden where there are partners or third party shareholders as everyone would have to be in on it.

The most common hidey holes are offshore accounts and assets which are difficult to track, a web of companies (often Luxembourg, Ireland and the Cayman Islands) requiring detailed forensic analysis to assess true value and hiding behind the corporate veil. In the recent English Supreme Court decision in **Petrodel v Prest**, Mr Prest was dragged from behind the corporate veil on the basis that his sole control over the companies made the entities his alter ego. Similar decisions have been made about trusts. In recent years a number of high profile businessmen have been imprisoned for failure to disclose.