

**THE CRIME OF OBSTRUCTING THE COURSE OF JUSTICE:
IS LEGISLATIVE INTERVENTION AN IMPERATIVE?**

by

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DEDICATION

This is dedicated to my late father, Khoro Mnisi, and to my mother, Nonqaba ka Zulu Mnisi.

DECLARATION

I declare that *The crime of obstructing the course of justice: Is legislative intervention an imperative?* is my own work and that all the sources I have used or quoted have been indicated and acknowledged by means of complete references.

ERIC MNISI (Mr)

15 JUNE 2009

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SUMMARY

In this thesis, the common law crime of obstructing or defeating the course of justice as currently applied in South African law, is considered critically. The purpose of the study is to determine whether the ambit of the crime should be extended to target all conduct which undermines the proper administration of justice in South Africa. The interests protected by the crime are investigated, and those important constitutional values which underpin the crime, are identified. These values are: (i) constitutional supremacy (ii) the rule of law (iii) the doctrine of separation of powers, and (iv) the independence of the courts. In a post-constitutional era, the question raised is whether the crime as developed in the common law adequately protects these important democratic values. The historical background and development of the offence are discussed. This is followed by a comparative legal study which considers the existence and ambit of the offence in certain foreign jurisdictions. The foreign legal systems considered are England, Australia, Canada and the United States of America. The study reveals that the crime has been codified in most of these jurisdictions. Codification was driven by the need for legal certainty and compliance with constitutional imperatives. The study concludes that similar reform is necessary in South African criminal law. It is recommended that the common law offence of obstructing or defeating the course of justice be repealed and replaced with a comprehensive statutory offence which criminalises all manifestations of conduct which are intended to defeat or obstruct the proper administration of justice. The proposals are based upon the identified constitutional imperatives which underpin the crime. It is argued that the legislature is the proper institution to initiate reform in this regard. Detailed recommendations are made, which include draft legislation.

Key words: *lex Cornelia de falsis; lex Remmia; lex Julia de vi Publica; calumnia;*
course of justice; due administration of justice; judicial proceedings; official proceeding
and *res judicata*.

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