

Innocence Compensation: Motions to Strike and Dismiss to Forestall Financial Recovery

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Abstract : When errors in the criminal justice process lead to wrongful convictions and miscarriages of justice, it falls upon the State to make reparation for the egregious harms brought to innocent individuals. Of all the remedies available to seek compensation, private and public law litigation against the police and prosecution services is the most widely used. Unfortunately, all levels of court including the Supreme Court of Canada have explicitly endorsed the prospect of striking out or dismissing these claims at the outset on an expedited basis. The burden on agents of the State as defendants to succeed on motions for such relief is so low that very few actions will survive to give an innocent accused his or her day in court. This paper will be a quantitative and qualitative analysis on the occurrence and success of motions to strike and dismiss to forestall financial recovery for the damage caused when a criminal investigation and prosecution goes wrong. This paper will also include a comparative component on the private law systems at common law (e.g. USA, UK, Australia and New Zealand) with respect to the availability of a similar process to pre-emptively terminate litigation for the recovery of compensation to an innocent individual.

Keywords : compensation, innocence, miscarriages of justice, wrongful convictions

Conference Title : ICPLCJC 2019 : International Conference on Penal Law, Criminal Justice and Criminology

Conference Location : London, United Kingdom

Conference Dates : May 23-24, 2019