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### **Sessional Paper No.P-136**

P-136 Petition relating to Fund a program to assist Ontarians who have been wrongfully accused (Sessional Paper No. 136) (Tabled by MPP McDonell, February 22, 2017)

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#### **RESPONSE:**

In Ontario, police independently decide when to investigate alleged criminal conduct and when to lay charges. The police lay charges where they believe on reasonable grounds that an offence has been committed. Once criminal charges are laid, the Crown must screen every charge to determine whether there is a reasonable prospect of conviction or if the prosecution of the matter is in the public interest.

Independent prosecutorial discretion is a fundamental principle of Ontario's justice system. The proper administration of criminal justice requires that Crown counsel assess the prosecution at every stage of the proceedings. The Crown is duty-bound to withdraw cases where the Crown has determined there is no reasonable prospect of conviction or it is not in the public interest to proceed with the prosecution. In cases where there is a reasonable prospect of conviction and public interest in proceeding, the Crown must then determine whether there is a reasonable possibility of resolving the case without proceeding to trial.

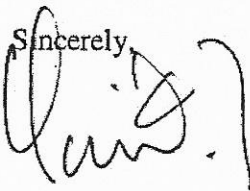
In every case, the Crown must provide the defence with a resolution position and there may be ongoing resolution discussions between defence counsel and the Crown throughout the matter. The Crown may exercise its discretion to accept fair and reasonable resolutions, in accordance with Crown policy. When considering any resolution of a case, the Crown's goal is always to protect the public, while ensuring the rights of the accused are protected and maintaining the public's confidence in the administration of justice.

There are a number of reasons why cases result in a stay or withdraw without the matter proceeding to trial. In appropriate circumstances, the case may be resolved through other alternative means such as the accused completing a restorative justice or diversion program. Upon successful completion of the program, the Crown will withdraw or stay the charges.

In other situations, the case may be resolved by way of the accused agreeing to enter into a peace bond, which requires the accused to keep the peace and abide by other conditions, such as having no contact with named individuals. Again, the Crown will withdraw or stay the charge upon the accused entering the peace bond. Another example is where the accused who is facing multiple cases chooses to plead guilty to one or more of the cases on the basis that the Crown will withdraw the remaining cases as part of a global resolution. Lastly, in some circumstances, the Crown will file a "replacement information" which lists new or amended charges and then withdraw the original case information.

The ministry acknowledges that being subject to criminal proceedings is a difficult process for accused persons, as indeed it is for all involved in the case, including victims, witnesses and family members. For those persons who are charged with an offence and are not convicted, the primary recourse available to seek monetary compensation is through civil litigation against the police and/or the Crown. In rare circumstances, the defence may make an application to the criminal court to impose costs in the matter. Both legal actions must be independently decided on an individual basis, in accordance with the governing legal principles.

Another circumstance in which compensation or a review of the criminal proceedings may be sought is where a person alleges to have been wrongfully convicted of a criminal offence. Innocence Canada plays an important role in our justice system by looking out for the interests of those who may have been wrongfully convicted, and by working to prevent future injustices through legal education and reform. Ontario is improving access to justice for people who may have been wrongfully convicted of a crime, but cannot afford legal representation. Part of our work to improve access to justice for all Ontarians includes supporting organizations that provide legal expertise to people unable to afford it. That's why Ontario is providing \$825,000 over three years to Innocence Canada.

Sincerely,  


Yasir Naqvi  
Attorney General