



Compass Chambers

# The Use of Criminal Convictions in Civil Proceedings

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# Introduction

- Lady Carmichael – Vincent Friel v Dr Ian Brown
- Increase in childhood abuse cases – Limitation (Childhood Abuse) (Scotland) Act 2017
- Crown Expects 4,000 indictments to arise from Child Abuse Inquiry
- What use can a Pursuer put such a conviction to?
- Is the existence of a conviction fatal to the defence of the action?
- If the conviction is to be challenged, how do you go about it?

# The Legislative Provision

- Section 10(1) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968
- Renders admissible as evidence the conviction itself
- S10 (2) provides –
  - (a) he shall be taken to have committed that offence unless the contrary is proved, and
  - (b) indictments or complaints shall be admissible evidence to identify the facts which constituted that offence.

# Hall v Craggs

- Lady Wollfe, 2016
- “What then to make of the conviction? I am not persuaded that there is the requisite identity of issues as between the conviction and the bases of liability in these proceedings, such as to enable the pursuers to succeed simply by reason of the fact of the conviction itself. Even if I am wrong on that, and there is such an identity of issue such as to bring section 10(1) into play, in the particular, if unusual circumstances here, the first defenders have made their position clear that they are seeking to invoke section 10(2) to demonstrate that they did not commit the offence”



- There must be a requisite identity of issues between the conviction and the bases of liability in the civil proceedings;
- Even if such an identity exists, the effect of section 10(1) and (2) is to reverse the onus to the convicted party;
- The convicted party has a right to try and rebut that onus;
- That is not the same as seeking to prove that the convicted party was wrongfully convicted- Towers;
- What the convicted party may offer to prove is commensurate with the whole subject matter of the conviction itself.

# Steven Paterson v David McLeod

- Example of S10(1) and (2) in operation and the difficulties that can be encountered by a Pursuer in discharging the onus of proof that is placed upon them.
- However, the facts of the case and the evidence of the standard of driving of the pursuer, it is difficult to see how, even absent the conviction, the pursuer would have been able to establish liability and avoid a finding of sole fault.

# Friel v Brown

- Lady Carmichael, Outer House
- Decision to be reclaimed?
- Action dismissed as abuse of process



- In order to succeed in proving his case against the defender, the pursuer would have to prove that he suffered a vaso-vagal attack. Such a finding would undermine the verdict of the jury convicting him.
- Permitting the case to proceed against the defender would amount to a collateral attack on the conviction which are contrary to public policy and therefore an abuse of process. The attack on the conviction need not be the sole or dominant purpose of the proceedings.





- In response, the pursuer concentrated on the operation and terms of section 10(1) and (2) of the 1968 Act, contending that the pursuer was seeking to do no more than was permitted in terms of section 10(2)(a), namely rebutting the presumption which existed, and offering to prove that he had not been committed the acts of which he was convicted.



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