The Supreme Court examines the notion of abuse of process in the case of inordinate delay in administrative and disciplinary proceedings

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The Supreme Court recently considered, in the *Law Society of Saskatchewan v. Abrametz*[1] decision, the applicable test to determine whether a delay is inordinate and constitutes an abuse of process that could lead to a stay of administrative proceedings.

In this case, a Saskatchewan lawyer requested that the disciplinary proceedings against him be terminated due to a delay that he claimed was inordinate and constituted an abuse of process. The Law Society of Saskatchewan's inquiry had begun six years before his application was filed. After analysis, the Supreme Court concluded that there was no abuse of process.

In its study of the question of delay, the Supreme Court recalled that the analytical framework for determining whether a delay constitutes an abuse of process remains that which was developed by the Supreme Court in the *Blencoe*[2] decision rendered twenty years earlier. In this way, the majority rejected the idea of bringing a test akin to the *Jordan*[3] decision regarding inordinate delay into the context of administrative proceedings.

Here is the analysis grid for determining whether a delay constitutes an abuse of process:

1. The delay must be inordinate. Contextual factors must be considered, such as the nature and purpose of the proceedings, the length and causes of the delay and the complexity of the facts and issues in the case. Moreover, if the party itself caused or waived the delay, then it cannot amount to an abuse of process.
2. The delay must have caused significant prejudice directly. It could, for example, be psychological harm, a damaged reputation, sustained media attention or loss of business.

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3. If these first two conditions are met, the delay in question constitutes an abuse of process when it is manifestly unfair to a party or otherwise brings the administration of justice into disrepute.

Thus, once the abuse of process has been established, several remedies are possible depending on the seriousness of the harm suffered. These can range, in particular, from the reduction of the sanction and the ruling against the organization at fault to pay all costs to the stay of the proceedings.

The members of Lavery's Administrative Law team regularly represent various professional orders and remain available to advise you and answer your questions in connection with this new development in jurisprudence.

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1. 2022 SCC 29, July 8, 2022.
2. *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44.
3. *R v. Jordan*, 2016 SCC 27.

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