Supreme Court Rules on Delay in Administrative Proceedings: Key Takeaways

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In ***Law Society of Saskatchewan v Abrametz***, 2022 SCC 29 [*Abrametz*], the Supreme Court of Canada declined to establish a strict timeline for inordinate delay in administrative decision-making, instead confirming the contextual approach to determining whether a delay constitutes an abuse of process adopted in *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 [*Blencoe*]. As well, the Court clarified the standard of review applicable to matters of procedural fairness, such as abuse of process, on statutory appeal.

What is the Standard of Review for a Question of Procedural Fairness?

In *Abrametz*, the Court cited its expansive decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 to confirm that, where a statutory mechanism allows for an appeal from an administrative decision-maker to a court, appellate standards of review apply.**[1]** Where questions of procedural fairness are to be dealt with through a statutory appeal, these same appellate standards apply.

The appellate standard of review is correctness for questions of law, and palpable and overriding error for questions of fact and questions of mixed fact and law.**[2]**

When does Delay Amount to an Abuse of Process?

Citing *Blencoe*, the Court listed two ways in which administrative delay may constitute an abuse of process.

First, delay may compromise the fairness of a hearing by impairing a party's ability to mount a defence to the complaint – for example, where witnesses become unavailable or evidence has been lost.**[3]**

Second, and more pertinent to the matter in *Abrametz*, inordinate delay which does not affect the fairness of a hearing may still amount to an abuse of process if it causes "significant prejudice."**[4]** The Court reiterated the three-part test from *Blencoe* which

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addresses delays in this second category:

1. The delay must be inordinate. Whether delay is inordinate is determined on a contextual assessment which considers factors including (but not limited to) the nature and purpose of the proceedings, the length and causes of the delay, and the complexity of the facts and legal issues in the matter.**[5]** A lengthy process may be justified based on fairness.**[6]**
2. The delay must have caused significant prejudice.**[7]** Notably, however, significant prejudice cannot be established merely because an individual is subjected to an investigation or an administrative proceeding. As the Court explained, these proceedings generally tend to disrupt the lives of those affected. Examples of significant prejudice caused by delay may include significant psychological harm, stigma, disruption to family life, loss of work or business opportunities where those harms result directly from, or are exacerbated by, an inordinate delay in the proceeding.**[8]**
3. Where the first two requirements are met, the reviewing decision-maker is to assess whether abuse of process is established. Abuse of process is established when the delay is manifestly unfair to the party in the proceeding, or in some other way brings the administration of justice into disrepute.**[9]**

Various remedies are available to address an abuse of process, up to and including the "ultimate remedy" of a stay of proceedings, which the Court noted is available in only the "clearest of cases", when "the abuse falls at the high end of the spectrum of seriousness."**[10]** A stay will be more difficult to obtain where the charges are more serious.**[11]** Alternative remedies may include a reduction in a sanction where an individual is found guilty of professional misconduct and/or costs.

The Court declined to establish the kind of stringent timelines for administrative proceedings that were established for criminal proceedings in *R v Jordan*, 2016 SCC 27, in part because the constitutional right to be tried within a reasonable time does not apply in the administrative context.**[12]** However, the Court took the opportunity to remind administrative decision-makers of their responsibility to render prompt and efficient decisions, noting that "administrative delay undermines a key purpose of which such decision-making authority was delegated – expeditious and efficient decision-making".**[13]**

Key Takeaways

Following *Abrametz*, it is clear that delay in administrative proceedings, alone, will not be sufficient to establish a breach of procedural fairness or obtain a stay. Where hearing fairness is not compromised due to delay, even instances of inordinate delay must still give rise to significant prejudice before an abuse of process may be established.

Parties to administrative proceedings should also take note that addressing delay is the responsibility of all individuals involved. A party who believes they are detrimentally impacted by delay should promptly raise the issue before the administrative body, use all available administrative procedures to move the matter forward, and may seek a court's assistance to expedite the matter. An application for *mandamus*, for example, may be used to compel an administrative body to carry out its statutory duties to hold a hearing or investigate a matter in order to limit ongoing delay.**[14]**

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[1] *Law Society of Saskatchewan v Abrametz*, 2022 SCC 29 [*Abrametz*] at paras 27 – 28.

[2] *Ibid* at para 29, citing *Housen v Nikolaisen*, 2002 SCC 33.

[3] *Abrametz, supra* note 1 at para 41.

[4] At para 42.

[5] At paras 51 and 101.

[6] At para 50.

[7] At para 67.

[8] At paras 68 – 69.

[9] At para 72.

[10] At para 83, citing *Blencoe* at para 120.

[11] At para 86.

[12] At paras 45 – 49.

[13] At para 46.

[14] At paras 78-82.

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