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CASE SUMMARY: REGULATORS BE WARNED; IF YOU TAKE TOO LONG, YOUR CASE COULD BE DISMISSED

The Saskatchewan Court of Appeal held that the Law Society of Saskatchewan's hearing committee had erred in denying a stay of proceedings to a lawyer, Mr. Abrametz. The Court of Appeal concluded there were undue delays in the investigation and prosecution of Mr. Abrametz, and these delays constituted an abuse of process warranting a stay of proceedings.

Administrative law – Decisions reviewed – Law Societies – Abuse of process – Judicial review – Appeals – Procedural requirements and fairness – Compliance with legislation – Stay of proceedings – Delay – Standard of review – Correctness – Barristers and solicitors – Disciplinary proceedings – Professional misconduct

Abrametz v. Law Society of Saskatchewan, [2020] SJ No 266, 2020 SKCA 81, Court of Appeal for Saskatchewan, July 3, 2020, Ottenbreit, Leurer and Barrington-Foote JJ.A.

The Appellant, Mr. Abrametz, is an experienced lawyer practising in Saskatchewan. The Respondent, Law Society of Saskatchewan, began an investigation of Mr. Abrametz's trust accounts in 2012. The investigation started with a review of financial transactions and the investigator's creation of a trust report in 2014.

In 2015, the Respondent split the investigation and the prosecution into two streams.

For the prosecution, in 2015, the Respondent made a Formal Complaint initiating charges that alleged Mr. Abrametz was guilty of conduct unbecoming of a lawyer. The charges related to the allegations originally made by the Respondent in February 2013, and were unrelated to the tax issue that was still being investigated. In March 2016, Mr. Abrametz applied for a stay of proceedings in respect of these charges because the Respondent was still investigating him in respect of the tax issues. The Respondent's hearing committee denied the application in August 2016. The disciplinary hearing took place in May 2017 and continued in August and September; the decision was rendered in January 2018. The hearing committee found Mr. Abrametz guilty of breaching some of the Respondent's accounting rules.

The penalty hearing was scheduled for August 2018. In July 2018, Mr. Abrametz advised he was applying to seek a stay of proceedings based on delay (based on the Charter), loss of jurisdiction, and delay constituting an abuse of process. The Respondent's hearing committee heard these arguments in September 2018 and rendered its decision (rejecting these arguments) in November 2018. In September 2018, the Respondent's hearing committee also held a hearing regarding the issue of penalty. In January 2019, the committee ordered Mr. Abrametz disbarred, with no right to apply for readmission as a lawyer before January 2021.

From 2015 onwards, while pursuing the disciplinary proceeding, the Respondent's investigators sought to further investigate Mr. Abrametz with respect to his tax records. The investigators sought production of Mr. Abrametz's tax records. He opposed this request. The investigators then issued subpoenas to Mr. Abrametz's accountants. Mr. Abrametz then applied to court in 2016 to set aside the subpoenas. The Court of Queen's Bench ordered the subpoenas to be quashed because the Respondent improperly sought to discover documents through this route instead of a document production application. The Court of Queen's Bench subsequently ordered, pursuant to a document production provision, that the tax records ought to be produced by Mr. Abrametz. Mr. Abrametz filed an appeal of this decision.

Mr. Abrametz appealed the Respondent hearing committee's decision to refuse a stay of proceedings. This appeal was heard by the Court of Appeal.

The Saskatchewan Court of Appeal first considered the applicable standard of review for a statutory appeal. The Court of Appeal held that appellate standards of review apply to a statutory appeal, as per *Housen v. Nikolaisen*.

The Court of Appeal concluded that two of Mr. Abrametz's grounds of appeal related to the hearing committee's interpretation of the Respondent's rules and Code and were extricable questions of law, which were reviewable on a correctness standard. The Court of Appeal also concluded that Mr. Abrametz's ground of appeal alleging an abuse of process was also a question of law, reviewable on a correctness standard.

The focus of the Court of Appeal's analysis related to the abuse of process argument based on undue delays. The Court of Appeal reviewed several previous decisions where the courts had considered this argument since the decision in *Blencoe*.

The Court of Appeal found the proceedings started in December 2012 and the relevant time period stopped on May 2017 when the hearing commenced. That is a period of 53 months (approx. 4.5 years). The hearing committee had incorrectly calculated the relevant period of time.

The Court of Appeal then tried to determine how much of the delay was attributable to Mr. Abrametz and how much to the Respondent. The hearing committee had erred in determining these issues. For instance, there was an insufficient explanation by the Respondent to account for 15 of the initial 22-months of delay. In total, the Court of Appeal concluded that 32 ½ months of the delay was undue.

The Court of Appeal then considered the prejudice experienced by Mr. Abrametz. The hearing committee had erred in this analysis. The Court of Appeal concluded that Mr. Abrametz had proven he experienced significant personal prejudice that would affect the public's sense of decency and fairness.

The Court of Appeal concluded that it was an error for the Respondent's hearing committee to refuse a stay of proceedings based on undue delay.

The Court of Appeal allowed the appeal. The Respondent hearing committee's decision was reversed and a stay of proceedings was ordered by the Court of Appeal. The penalty and costs award of the Respondent's hearing committee were also set aside.

This case was digested by [Scott J. Marcinkow](#), and first published in the LexisNexis® Harper Grey Administrative Law Netletter and the Harper Grey Administrative Law Newsletter. If you would like to discuss this case further, please contact Scott Marcinkow at smarcinkow@harpergrey.com.