

The Doctrine of Abuse of Process

The Supreme Court of Canada had this to say about abuse of process:

The doctrine of abuse of process engages the inherent power of the court to prevent the misuse of its procedure in a way that would be manifestly unfair to a party to the litigation before it or would in some other way bring the administration of justice into disrepute. It is a flexible doctrine unencumbered by the specific requirements of concepts such as issue estoppel.¹

As can be seen from the above passage, the focus of the abuse of process doctrine is on the integrity of the judicial process and not on the motive, however dishonourable, or status of the parties.

In the context of estate litigation, where emotions are often raw and grievances long held, a party to an action cannot be blinded by perceived motives when considering whether to strike a claim as an abuse of process.

The best way to approach abuse of process is to consider claims that the court has held to be an abuse of process. A good example is where a party re-litigates a claim, however disguised, solely to achieve a more favourable judicial result or harass the other side. Such a case is both manifestly unfair to the defendant as well as bringing the administration of justice into disrepute.

The real attraction of the doctrine of abuse of process is its flexibility and the latitude it provides the court in its application. However, as with all procedural or early motions, it is often a difficult case to meet. The facts must be clear in order to successfully argue that a claim should be struck as an abuse of process.

¹ See *Toronto (City) v. C.U.P.E., Local 79*, [2003] 3 S.C.R. 77 and *Canam Enterprises Inc. v. Coles* (2000), 51 O.R. (3d) 481 (C.A.)