



SUPREME COURT OF CANADA

CITATION: Law Society of
Saskatchewan v. Abrametz, 2022
SCC 29

APPEAL HEARD: November 8,
2021

JUDGMENT RENDERED: July 8,
2022

DOCKET: 39340

BETWEEN:

Law Society of Saskatchewan
Appellant

and

Peter V. Abrametz
Respondent

- and -

**Attorney General of Ontario, Attorney General of Quebec, Attorney General
of British Columbia, Attorney General of Saskatchewan, Law Society of
Alberta, Law Society of Manitoba, College of Physicians and Surgeons of
Ontario, College of Nurses of Ontario, Ontario College of Pharmacists, Royal
College of Dental Surgeons of Ontario, Federation of Law Societies of Canada,
Alberta Securities Commission, British Columbia Securities Commission,
Barreau du Québec and Canadian Association of Refugee Lawyers**
Intervenors

CORAM: Wagner C.J. and Moldaver, Karakatsanis, Côté, Brown, Rowe, Martin,
Kasirer and Jamal JJ.

**REASONS FOR
JUDGMENT:** Rowe J. (Wagner C.J. and Moldaver, Karakatsanis, Brown,
Martin, Kasirer and Jamal JJ. concurring)
(paras. 1 to 127)

**DISSENTING
REASONS:** Côté J.
(paras. 128 to 226)

NOTE: This document is subject to editorial revision before its reproduction in final form in the *Canada Supreme Court Reports*.

Law Society of Saskatchewan

Appellant

v.

Peter V. Abrametz

Respondent

and

**Attorney General of Ontario,
Attorney General of Quebec,
Attorney General of British Columbia,
Attorney General of Saskatchewan,
Law Society of Alberta,
Law Society of Manitoba,
College of Physicians and Surgeons of Ontario,
College of Nurses of Ontario,
Ontario College of Pharmacists,
Royal College of Dental Surgeons of Ontario,
Federation of Law Societies of Canada,
Alberta Securities Commission,
British Columbia Securities Commission,
Barreau du Québec and
Canadian Association of Refugee Lawyers**

Interveners

Indexed as: Law Society of Saskatchewan v. Abrametz

2022 SCC 29

File No.: 39340.

2021: November 8; 2022: July 8.

Present: Wagner C.J. and Moldaver, Karakatsanis, Côté, Brown, Rowe, Martin, Kasirer and Jamal JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR SASKATCHEWAN

Administrative law — Abuse of process — Delay — Disciplinary proceedings brought by law society against member lawyer — Lengthy delay in proceedings prompting member to apply for stay of proceedings on basis of inordinate delay amounting to abuse of process — Whether delay amounted to abuse of process — Whether stay of proceedings warranted.

Administrative law — Appeals — Standard of review — Standard of review applicable to questions of procedural fairness and to abuse of process in statutory appeals.

The Law Society of Saskatchewan brought disciplinary proceedings against one of its member lawyers in 2012. In 2018, the member was found guilty of four charges of conduct unbecoming a lawyer, and in 2019, disbarred without a right to apply for readmission for almost two years. During the disciplinary proceedings, the member applied for a stay of the proceedings on the basis of inordinate delay amounting to an abuse of process. His application was dismissed by the Hearing Committee of the Law Society. The Court of Appeal dismissed the member's conduct appeal but allowed his appeal of the stay decision. It granted the stay, concluding that there had been inordinate delay which resulted in significant prejudice to the member

such that the public's sense of decency and fairness would be affected and the Law Society's disciplinary process brought into disrepute.

Held (Côté J. dissenting): The appeal should be allowed, the judgment of the Court of Appeal set aside and the matter remitted to the Court of Appeal to address the outstanding grounds of appeal.

Per Wagner C.J. and Moldaver, Karakatsanis, Brown, **Rowe**, Martin, Kasirer and Jamal JJ.: The instant case is a statutory appeal pursuant to Saskatchewan's *The Legal Profession Act, 1990*. Therefore, the standard of review is correctness for questions of law and palpable and overriding error for questions of fact and of mixed fact and law. Whether there has been an abuse of process is a question of law; thus, the applicable standard of review is correctness. While the Court of Appeal correctly determined the standard of review, it failed to apply it properly. There was also no proper basis for the Court of Appeal to contradict the Hearing Committee's attribution of certain delays to the member, and no palpable and overriding error justified the Court of Appeal's substitution of its own views for the Hearing Committee's conclusions that there was no significant prejudice to the member. While the actions of the Law Society were not above reproach, the delay was not inordinate. There was no abuse of process.

In *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, the Court held that when the legislature provides for a statutory appeal mechanism from an administrative decision maker to a court, this indicates that appellate standards are to apply. While this proposition was stated in the context of

substantive review, the direction that appeals are to be decided according to the appellate standards of review was categorical. Thus, where questions of procedural fairness are dealt with through a statutory appeal mechanism, they are subject to appellate standards of review.

In administrative proceedings, abuse of process is a question of procedural fairness. The Court dealt with abuse of process as it relates to administrative delay in *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44, [2000] 2 S.C.R. 307, and recognized that decision makers have, as a corollary to their duty to act fairly, the power to assess allegedly abusive delay. Delay may constitute an abuse of process in two ways: the fairness of a hearing can be compromised where delay impairs a party's ability to answer the complaint against them, or, even when there is no prejudice to hearing fairness, an abuse of process may occur if significant prejudice has come about due to inordinate delay.

Blencoe sets out a three-step test to determine whether delay that does not affect hearing fairness nonetheless amounts to an abuse of process. First, the delay must be inordinate. This is determined on an assessment of the context overall, including 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. These factors are not exhaustive, such that additional contextual factors can be considered in a particular case. Second, the delay must have directly caused significant prejudice. Prejudice is a question of fact. Examples include significant psychological harm, stigma attached to the individual's

reputation, disruption to family life, loss of work or business opportunities, as well as extended and intrusive media attention. When these two requirements are met, courts or tribunals will proceed to a final assessment of whether the delay amounts to an abuse of process. Delay will amount to an abuse of process if it is manifestly unfair to a party or in some other way brings the administration of justice into disrepute.

When an abuse of process is found, several remedies are available. Courts and tribunals must be mindful as to appropriate remedies in the various contexts in which abuse of process can occur. Remedies for abuse of process can serve several purposes: they can compensate the applicant for the prejudice caused by the delay, serve as an incentive for the decision maker to address any problems of systemic delay, or express the court or the tribunal's concern relating to delay in the administrative system. As the doctrine of abuse of process is broad, it can usefully be appreciated on a spectrum. Various remedies are available, up to and including a permanent stay of proceedings.

A stay of proceedings is the ultimate remedy for abuse of process, because it is final: the process will be permanently stayed. In disciplinary matters, that means that charges will not be dealt with, any complaint will go unheard and the public will not be protected. Given these consequences, a stay should be granted only in the clearest of cases, when the abuse falls at the high end of the spectrum of seriousness. The decision whether to grant a stay involves a balancing of public interests. On one hand, the public has an interest in ensuring that a tribunal established for its protection

follows fair procedures, untainted by an abuse of process. On the other hand, the public has an interest in the resolution of administrative cases on the merits. A balance must be struck between the public interest in a fair administrative process untainted by abuse and the competing public interest in having the complaint decided after a public hearing. When faced with a proceeding that has resulted in abuse, the court or tribunal must ask itself whether going ahead with the proceeding would result in more harm to the public interest than if the proceedings were permanently halted. If the answer is yes, then a stay of proceeding should be ordered. Otherwise, the application for a stay should be dismissed. In conducting this inquiry, the court or tribunal may have regard to whether other available remedies for abuse of process, short of a stay, would adequately protect the public's interest in the proper administration of justice.

When an abuse of process is established, but the abuse is not such that a stay of proceedings is warranted, other remedies may be appropriate. While proof of significant prejudice is required to establish an abuse of process, the remedies ordered may vary according to the degree of prejudice. A high degree of prejudice may justify a stay. Lesser, but nevertheless significant prejudice, could justify other remedies. In such cases, the public interest can be properly served by continuation of the proceedings, while the applicant receives some compensation for the abuse that he or she suffered. In the context of a disciplinary tribunal, a stay of proceedings, a reduction in sanction, or variation of an award of costs are possible remedies. This is not an exhaustive list. Various tribunals may be empowered by their enabling statutes to grant

other remedies. They should not hesitate to use such tools to combat inordinate delay amounting to an abuse of process.

Per Côté J. (dissenting): There is disagreement with the majority's disposition. The delay in these proceedings amounted to an abuse of process, and the Court of Appeal did not err in quashing the penalty for professional misconduct imposed on the member. Disagreement with the majority also extends to the legal principles governing the assessment of inordinate delay in administrative proceedings, including the majority's reframing of the test for whether administrative delay amounts to an abuse of process and its reliance on *Vavilov* for the proposition that appellate standards of review apply in the present case.

The Court recognized in *Blencoe* that inordinate delay, on its own, is a breach of procedural fairness and thus abusive. An applicant need not demonstrate significant prejudice for unfair conduct to constitute an abuse of process; this requirement applies only where a stay of proceedings is sought. Inordinate delay risks bringing the administration of justice into disrepute. For this reason alone, courts must sanction it whenever it is brought to their attention. They possess a wide range of remedial tools, including declarations, costs, orders for an expedited hearing, reductions in penalty, and stays of proceedings, to grant relief that is proportionate to the abuse of process.

The majority purportedly relies on *Blencoe* in articulating a three-step test for determining whether delay in administrative proceedings amounts to an abuse of

process; however, this framework rests on a mistaken understanding of the doctrine of abuse of process. Under the majority's approach, even inordinate delay that directly causes significant prejudice is not per se abusive, as the last step of its test indicates. Not only is this proposition doctrinally flawed, but it results in an unduly elevated standard that is disproportionate to the remedies available for abusive delay, which range from a mere declaration to a stay of proceedings. The majority's test is so onerous that it invites complacency in administrative proceedings. The Court rightly recognized in *Blencoe* that inordinate delay, on its own, is a breach of the duty of fairness. Prejudice is not a necessary condition for delay to be inordinate, although it may contribute to such a finding. Evidence of prejudice remains highly significant at the remedial stage, since the remedy must be proportionate to the abuse of process. This is consistent with the central principle laid down by the majority in *Blencoe*, namely that courts may grant a stay of proceedings only in the clearest of cases, where the applicant has demonstrated significant prejudice arising from inordinate administrative delay.

Abuse of process must be disentangled analytically from a stay of proceedings, which is but one of the remedies available at common law to redress abusive conduct. It is crucial to draw this distinction because the threshold for demonstrating abusive conduct is much lower than the one for obtaining a stay of proceedings. The Court has established stringent requirements for granting a stay of proceedings. To obtain a stay, an applicant must satisfy the following test: there must be prejudice to the fairness of the trial or the integrity of the justice system that will be manifested, perpetuated or aggravated through the conduct of the trial, or by its

outcome; there must be no alternative remedy capable of redressing the prejudice; and where it is unclear whether a stay is warranted after the first two steps, the court is required to balance the interests in favour of granting a stay, such as denouncing misconduct and preserving the integrity of the justice system, against the interest that society has in having a final decision on the merits. This test also applies to abusive delay in administrative proceedings.

The majority conflates the doctrine of abuse of process with the test for stays of proceedings, which are only a subset of the remedies that courts may order to sanction abusive conduct. The majority thus fails to distinguish between, on the one hand, the test for whether conduct amounts to an abuse of process and, on the other hand, the test for whether a stay of proceedings is warranted in the circumstances. The former is flexible and unencumbered by particular requirements; the court must simply determine whether the impugned conduct undermines adjudicative fairness or the integrity of the justice system. The latter establishes an onerous threshold that is met only in the clearest of cases, where the applicant satisfies specific, stringent requirements.

Where the applicant has demonstrated that the delay is inordinate, the next step in the analysis is for the court to determine the appropriate remedy in the circumstances. Courts possess an extensive arsenal of remedial tools to sanction and redress abusive conduct that account for the circumstances of each case, ranging from a declaration to a stay of proceedings. The choice of remedy for an abuse of process

falls within the trial judge's discretion. Applicants must satisfy a specific test to obtain a stay of proceedings, but other remedies are not subject to that test. The guiding principle in determining the appropriate remedy is proportionality. Courts must consider the nature and magnitude of the prejudice as primary factors, alongside the length and causes of the delay, in selecting a remedy proportionate to the abuse of process. As mandated by *Blencoe*, the applicant must demonstrate significant prejudice to obtain a stay of proceedings for inordinate delay in the administrative law context, but this standard does not apply to alternative remedies.

With respect to the applicable standard of review, the Court's jurisprudence is clear: the question of whether an administrative decision maker has complied with its duty of fairness is subject to the standard of correctness, regardless of the existence of an appeal mechanism. There is no reason to revisit this well-established starting point. The majority purports to clarify the standard of review applicable to questions of procedural fairness in a statutory appeal. It does so, however, without meaningfully considering *Khela*, the governing authority on this point of law, or any other case relating to the duty of procedural fairness. The mere reference to *Vavilov*, a judgment that was rendered in a different context and that excluded procedural fairness review from its purview, does not suffice to oust *Khela* and other directly applicable precedents.

While clarifications to the framework for determining the standard of review applicable to questions of procedural fairness are warranted, the Court should

draw on its existing jurisprudence to articulate a principled approach. The standard of correctness must remain the starting point of the analysis in the context of procedural fairness review. It is for the courts to provide the legal answer to procedural fairness questions. The correctness standard applies to questions of compliance with the duty of procedural fairness as defined by the common law or by statute. However, the requirements of fairness are context-dependent, and deference is owed to the administrative decision maker's underlying findings of fact.

The majority's articulation of the standard of review in the context of inordinate administrative delay cannot be agreed with. Inordinate delay constitutes an abuse of process on its own; it is the legal standard against which an administrative body's conduct is measured. Courts do not owe deference to an administrative decision maker's conclusion on whether delay is inordinate and its choice of remedy for abuse of process.

In the case at bar, there is agreement with the analysis of the Court of Appeal. The delay grossly exceeded the inherent time requirements of this case; it is plainly inordinate and, as a result, abusive. This inordinate delay caused serious prejudice to the member and his employees. In these circumstances, the Court of Appeal correctly sanctioned this abuse of process by ordering that the penalty for professional misconduct, but not the convictions themselves, be set aside.

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By Rowe J.

Applied: *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44, [2000] 2 S.C.R. 307; *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653; **distinguished:** *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339; *Mission Institution v. Khela*, 2014 SCC 24, [2014] 1 S.C.R. 502; **considered:** *Sazant v. College of Physicians and Surgeons of Ontario*, 2012 ONCA 727, 113 O.R. (3d) 420, leave to appeal refused, [2013] 2 S.C.R. xii; *Misra v. College of Physicians & Surgeons of Saskatchewan* (1988), 52 D.L.R. (4th) 477; *Investment Dealers Association of Canada v. MacBain*, 2007 SKCA 70, 299 Sask. R. 122; *Law Society of Upper Canada v. Abbott*, 2017 ONCA 525, 139 O.R. (3d) 290, leave to appeal refused, [2018] 1 S.C.R. v; **referred to:** *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235; *Ward v. Quebec (Commission des droits de la personne et des droits de la jeunesse)*, 2021 SCC 43; *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, [2003] 3 S.C.R. 77; *Behn v. Moulton Contracting Ltd.*, 2013 SCC 26, [2013] 2 S.C.R. 227; *R. v. Power*, [1994] 1 S.C.R. 601; *R. v. Jewitt*, [1985] 2 S.C.R. 128; *R. v. Young* (1984), 40 C.R. (3d) 289; *R. v. Cawthorne*, 2016 SCC 32, [2016] 1 S.C.R. 983; *R. v. O'Connor*, [1995] 4 S.C.R. 411; *Canam Enterprises Inc. v. Coles* (2000), 51 O.R. (3d) 481, rev'd 2002 SCC 63, [2002] 3 S.C.R. 307; *R. v. Conway*, [1989] 1 S.C.R. 1659; *R. v. Scott*, [1990] 3 S.C.R. 979; *British Columbia (Workers' Compensation Board) v. Figliola*, 2011 SCC 52, [2011] 3 S.C.R. 422; *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44, [2001] 2 S.C.R. 460; *R. v. Jordan*, 2016 SCC 27, [2016] 1 S.C.R. 631; *R. v. Wigglesworth*,

[1987] 2 S.C.R. 541; *Pharmascience Inc. v. Binet*, 2006 SCC 48, [2006] 2 S.C.R. 513; *Finney v. Barreau du Québec*, 2004 SCC 36, [2004] 2 S.C.R. 17; *Fortin v. Chrétien*, 2001 SCC 45, [2001] 2 S.C.R. 500; *Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 S.C.R. 869; *Béliveau v. Barreau du Québec* (1992), 101 D.L.R. 324; *Canada (Attorney General) v. Whaling*, 2014 SCC 20, [2014] 1 S.C.R. 392; *Wachtler v. College of Physicians and Surgeons (Alta.)*, 2009 ABCA 130, 448 A.R. 317; *Irvine v. Canada (Restrictive Trade Practices Commission)*, [1987] 1 S.C.R. 181; *Syndicat des employés de production du Québec et de l'Acadie v. Canada (Canadian Human Rights Commission)*, [1989] 2 S.C.R. 879; *Diaz-Rodriguez v. British Columbia (Police Complaint Commissioner)*, 2020 BCCA 221, 39 B.C.L.R. (6th) 87; *Camara v. Canada*, 2015 FCA 43, 91 Admin. L.R. (5th) 13; *Hennig v. Institute of Chartered Accountants (Alta.)*, 2008 ABCA 241, 433 A.R. 221; *Brown v. Assn. of Professional Engineers and Geoscientists of British Columbia*, [1994] B.C.J. No. 2037 (QL), 1994 CarswellBC 2980 (WL); *Stefani v. College Of Dental Surgeons (British Columbia)* (1996), 27 B.C.L.R. (3d) 34; *Financial and Consumer Services Commission v. Emond*, 2020 NBCA 42; *R. v. Regan*, 2002 SCC 12, [2002] 1 S.C.R. 297; *Robertson v. British Columbia (Commissioner, Teachers Act)*, 2014 BCCA 331, 64 B.C.L.R. (5th) 258; *R. (J.) v. College of Psychologists (British Columbia)* (1995), 33 Admin. L.R. (2d) 174; *Adams v. Law Society of Alberta*, 2000 ABCA 240, 266 A.R. 157; *Benhaim v. St-Germain*, 2016 SCC 48, [2016] 2 S.C.R. 352; *Hydro-Québec v. Matta*, 2020 SCC 37; *H.L. v. Canada (Attorney General)*, 2005 SCC 25, [2005] 1 S.C.R. 401; *Salomon v. Matte-Thompson*, 2019 SCC 14, [2019] 1 S.C.R. 729.

By Côté J. (dissenting)

Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65, [2019] 4 S.C.R. 653; *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44, [2000] 2 S.C.R. 307; *Behn v. Moulton Contracting Ltd.*, 2013 SCC 26, [2013] 2 S.C.R. 227; *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, [2003] 3 S.C.R. 77; *R. v. Regan*, 2002 SCC 12, [2002] 1 S.C.R. 297; *R. v. O'Connor*, [1995] 4 S.C.R. 411; *Canada (Citizenship and Immigration) v. Harkat*, 2014 SCC 37, [2014] 2 S.C.R. 33; *R. v. Nixon*, 2011 SCC 34, [2011] 2 S.C.R. 566; *R. v. Anderson*, 2014 SCC 41, [2014] 2 S.C.R. 167; *R. v. Babos*, 2014 SCC 16, [2014] 1 S.C.R. 309; *United States of America v. Cobb*, 2001 SCC 19, [2001] 1 S.C.R. 587; *R. v. Scott*, [1990] 3 S.C.R. 979; *R. v. Power*, [1994] 1 S.C.R. 601; *R. v. Carosella*, [1997] 1 S.C.R. 80; *Canada (Minister of Citizenship and Immigration) v. Tobiass*, [1997] 3 S.C.R. 391; *R. v. Nasogaluak*, 2010 SCC 6, [2010] 1 S.C.R. 206; *R. v. Sullivan*, 2022 SCC 19; *Ontario v. O.P.S.E.U.*, 2003 SCC 64, [2003] 3 S.C.R. 149; *I.A.T.S.E., Stage Local 56 v. Société de la Place des Arts de Montréal*, 2004 SCC 2, [2004] 1 S.C.R. 43; *R. v. Bjelland*, 2009 SCC 38, [2009] 2 S.C.R. 651; *R. v. Bellusci*, 2012 SCC 44, [2012] 2 S.C.R. 509; *Vancouver (City) v. Ward*, 2010 SCC 27, [2010] 2 S.C.R. 28; *Mission Institution v. Khela*, 2014 SCC 24, [2014] 1 S.C.R. 502; *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339; *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190; *C.U.P.E. v. Ontario (Minister of Labour)*, 2003 SCC 29, [2003] 1 S.C.R. 539; *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817; *Cardinal v. Director of Kent Institution*, [1985] 2 S.C.R. 643; *Canada*

(Attorney General) v. Mavi, 2011 SCC 30, [2011] 2 S.C.R. 504; *Mount Sinai Hospital Center v. Quebec (Minister of Health and Social Services)*, 2001 SCC 41, [2001] 2 S.C.R. 281; *Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2001 SCC 52, [2001] 2 S.C.R. 781; *Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653; *Martineau v. Matsqui Institution Disciplinary Board*, [1980] 1 S.C.R. 602; *Kane v. Board of Governors (University of British Columbia)*, [1980] 1 S.C.R. 1105; *Attorney General of Canada v. Inuit Tapirisat of Canada*, [1980] 2 S.C.R. 735; *Nicholson v. Haldimand-Norfolk Regional Board of Commissioners of Police*, [1979] 1 S.C.R. 311; *R. v. Shepherd*, 2009 SCC 35, [2009] 2 S.C.R. 527; *R. v. Dussault*, 2022 SCC 16; *R. v. Le*, 2019 SCC 34, [2019] 2 S.C.R. 692; *R. v. Katigbak*, 2011 SCC 48, [2011] 3 S.C.R. 326; *Bergeron v. Canada (Attorney General)*, 2015 FCA 160, 474 N.R. 366; *R. v. Owen*, 2003 SCC 33, [2003] 1 S.C.R. 779; *Moreau-Bérubé v. New Brunswick (Judicial Council)*, 2002 SCC 11, [2002] 1 S.C.R. 249; *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, 2007 SCC 15, [2007] 1 S.C.R. 650; *R. v. Yusuf*, 2021 SCC 2; *R. v. Pauls*, 2020 ONCA 220, 149 O.R. (3d) 609; *R. v. Virk*, 2021 BCCA 58, 403 C.C.C. (3d) 492.

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APPEAL from a judgment of the Saskatchewan Court of Appeal (Ottenbreit, Leurer and Barrington-Foote JJ.A.), 2020 SKCA 81, [2020] S.J. No. 266 (QL), 2020 CarswellSask 336 (WL), setting aside a decision of the Hearing Committee for the Law Society of Saskatchewan (Chow, McCuskee and Sorestad), 2018 SKLSS 8, [2018] L.S.D.D. No. 265 (QL). Appeal allowed, Côté J. dissenting.

Alyssa Tomkins, Paul Daly and Charles R. Daoust, for the appellant.

Amanda M. Quayle, Q.C., Gordon J. Kuski, Q.C., and Lauren J. Wihak,
for the respondent.

Alexandra Clark and Matthew Chung, for the intervener the Attorney
General of Ontario.

Stéphane Rochette and Abdou Thiaw, for the intervener the Attorney
General of Quebec.

Meera Bennett and Robert Danay, for the intervener the Attorney General
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Laura Mazenc and Johnna Van Parys, for the intervener the Attorney
General of Saskatchewan.

James T. Casey, Q.C., and Katrina Haymond, for the intervener the Law Society of Alberta.

Ayli Klein, for the intervener the Law Society of Manitoba.

Lisa Brownstone, Amy Block and Linda Rothstein, for the interveners the College of Physicians and Surgeons of Ontario, the College of Nurses of Ontario, the Ontario College of Pharmacists and the Royal College of Dental Surgeons of Ontario.

Ewa Krajewska and Mannu Chowdhury, for the intervener the Federation of Law Societies of Canada.

Lorenz Berner, Tracy Knight and Jennifer L. Whately, for the interveners the Alberta Securities Commission and the British Columbia Securities Commission.

Sylvie Champagne, Nicolas Le Grand Alary and André-Philippe Mallette, for the intervener Barreau du Québec.

Audrey Macklin and Prasanna Balasundaram, for the intervener the Canadian Association of Refugee Lawyers.

The judgment of Wagner C.J. and Moldaver, Karakatsanis, Brown, Rowe, Martin, Kasirer and Jamal JJ. was delivered by

ROWE J. —

I. Introduction

[1] This appeal arises from disciplinary proceedings pursued by the appellant, the Law Society of Saskatchewan (“Law Society”), against the respondent, Peter V. Abrametz. Mr. Abrametz was found guilty of four charges of conduct unbecoming a lawyer, and disbarred without a right to apply for readmission for almost two years.

[2] During the disciplinary proceedings, Mr. Abrametz applied for a stay of the proceedings on the basis of inordinate delay amounting to an abuse of process. His application was dismissed by the Hearing Committee for the Law Society (“Hearing Committee”), but allowed on appeal by the Court of Appeal for Saskatchewan. The Law Society appeals from that decision.

[3] This appeal affords the Court the opportunity to address once again the doctrine of abuse of process as it relates to inordinate delay in the administrative context. This was recognized more than 20 years ago in *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44, [2000] 2 S.C.R. 307. This appeal also allows us to clarify the standard of review applicable to questions of procedural fairness and to abuse of process in statutory appeals.

[4] I would allow the appeal. While the Court of Appeal correctly determined the standard of review, it failed to apply it properly. The Hearing Committee did not err when it concluded that there was no abuse of process.

II. Facts

[5] Mr. Abrametz is a member of the Law Society of Saskatchewan. He has practiced in Prince Albert, Saskatchewan, for 49 years.

A. *Pre-Charge Investigation*

[6] In 2012, the Law Society commenced an audit investigation of Mr. Abrametz's financial records due to apparent irregularities in the use of a trust account. On the eve of a visit by investigators to his office in December 2012, Mr. Abrametz self-reported to the Law Society that he had failed to promptly deposit more than \$36,000 in fees into his office account.

[7] The Law Society's investigation related to eight transactions by Mr. Abrametz. In seven of these, Mr. Abrametz had issued cheques to clients that were then endorsed by the clients and cashed by Mr. Abrametz. In the other case, he had issued three cheques to a fictitious person, endorsed that false name on the cheques and cashed them. In addition, Mr. Abrametz had on 11 occasions advanced money to clients, relating to settlement funds, charging them a flat 30 percent fee of the amount advanced, as well as a 30 percent contingency fee, and interest.

[8] The investigation also looked into whether some of these transactions were carried out to evade tax.

[9] In February 2013, Mr. Abrametz was served with a notice of intention to interim suspend. However, by agreement with the Law Society in March 2013, Mr. Abrametz was allowed to continue to practice, subject to certain conditions: Mr. Abrametz had to retain another lawyer to supervise and monitor his practice and trust account activities; he had to seek prior approval from this supervisor for withdrawals/cheques from any trust account; and he could not accept the return of trust cheques from clients, nor accept endorsed cheques to be cashed or negotiated. A second notice of intention to interim suspend was served in November 2014, but the Law Society and Mr. Abrametz again agreed that he could continue to practice under substantially similar conditions. Mr. Abrametz continued to practice under these conditions without incident while the Law Society investigation continued.

[10] In October 2014, the auditor submitted a final trust report to the Law Society.

[11] In October 2015, the Law Society issued a formal complaint containing seven charges against Mr. Abrametz and appointed a Hearing Committee.

B. *Post-Charge Prosecution*

[12] A simultaneous investigation into Mr. Abrametz's tax situation gave rise to litigation before the Court of Queen's Bench between the Law Society and Mr. Abrametz regarding the scope of the Law Society's investigatory powers: 2016 SKQB 134; 2016 SKQB 320, 408 D.L.R. (4th) 134.

[13] In March 2016, Mr. Abrametz applied to the Hearing Committee for an interim stay of the disciplinary proceedings until the resolution of the tax investigation. The Hearing Committee dismissed the request in August 2016.

[14] The Hearing Committee heard the disciplinary matter on May 17-19, August 9-10 and September 29, 2017. The conduct decision was rendered on January 10, 2018. Mr. Abrametz was found guilty of four of the seven charges. The four convictions were for matters disclosed in his self-report; they related to the advances to clients on settlement funds (referred to above).

[15] On July 13, 2018, Mr. Abrametz applied for a stay of proceedings on the basis that the time taken by the Law Society to investigate and decide his case constituted an abuse of process. The application was heard on September 18, 2018, at the same hearing as that for submissions regarding penalty. The stay application was dismissed on November 9, 2018, in the stay decision.

[16] On January 20, 2019, the penalty decision was rendered; the Committee ordered Mr. Abrametz disbarred without a right to apply for readmission until January 1, 2021.

[17] The conduct, stay and penalty decisions were published as one. In these reasons I address primarily the stay.

III. Judgments Below

A. *Hearing Committee for the Law Society of Saskatchewan, 2018 SKLSS 8 (D. Chow, J. McCuskee and E. Sorestad)*

[18] On the question of delay, the Hearing Committee found that Mr. Abrametz had made extensive efforts to conceal his actions. The Committee also referred to the complexity arising from the nature and number of allegations of conduct unbecoming and the number of client files and other documents that needed to be examined. The Hearing Committee also found that a significant share of delay in the proceedings should be attributed to Mr. Abrametz, due to his unavailability or the unavailability of his counsel. The Hearing Committee further noted that Mr. Abrametz had brought an application for a temporary stay of proceedings in April 2016.

[19] The Hearing Committee found that the delay was neither inordinate nor unacceptable given the complexity of the case, the extent of the investigation and the delay attributed directly to Mr. Abrametz's conduct. The Hearing Committee also concluded that any prejudice that Mr. Abrametz may have experienced as a result of the delay was not so significant that continuation of the process would be so unfair to him that the public's sense of fairness would be harmed, having regard to the Law Society's mandate to protect the public.

B. *Court of Appeal for Saskatchewan, 2020 SKCA 81 (Ottenbreit, Leurer and Barrington-Foote JJA.)*

[20] Mr. Abrametz appealed the conduct, penalty and stay decisions to the Court of Appeal pursuant to s. 56(1) of *The Legal Profession Act, 1990*, S.S. 1990-91, c. L-10.1.

[21] The Court of Appeal dismissed Mr. Abrametz's conduct appeal but allowed the stay appeal.

[22] The Court of Appeal held that whether there had been delay constituting an abuse of process is a question of law, reviewable on the basis of correctness; the findings of fact underlying the stay decision are reviewable on the standard of palpable and overriding error.

[23] The Court of Appeal stated that *Blencoe* set a high threshold for finding an abuse of process where hearing fairness had not been compromised. The Court of Appeal concluded, nonetheless, that Mr. Abrametz was entitled to a stay.

[24] The Court of Appeal concluded that there were significant periods that were not adequately explained and that could not be justified by the scale and complexity of the proceedings. The Court of Appeal concluded that of the 53-month period in issue, only 18 months were inherent to the process, and only 2 ½ months were attributable to Mr. Abrametz. The remainder, totaling 32 ½ months, the Court of

Appeal concluded, was undue delay. The Hearing Committee's failure to reach that conclusion was the result of palpable and overriding errors (as referred to), and the Hearing Committee's failure to apply the law correctly to the facts.

[25] The Court of Appeal concluded that there had been inordinate delay which resulted in significant prejudice to Mr. Abrametz, such that the public's sense of decency and fairness would be affected. It concluded that this inordinate delay would bring the Law Society's disciplinary process into disrepute. Mr. Abrametz's application for a stay should have been granted by the Hearing Committee.

IV. Analysis

A. *Standard of Review*

[26] This case allows the Court to clarify the standard of review applicable to questions of procedural fairness and abuse of process in a statutory appeal. The Court received submissions from the parties and interveners on this point.

[27] In *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, the Court held that when the legislature provides for a statutory appeal mechanism from an administrative decision maker to a court, this indicates that appellate standards are to apply: paras. 33 and 36-52. While this proposition was stated in the context of substantive review, the direction that appeals are to be decided according to the appellate standards of review was categorical. Thus, where questions

of procedural fairness are dealt with through a statutory appeal mechanism, they are subject to appellate standards of review.

[28] This does not depart from *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339, and *Mission Institution v. Khela*, 2014 SCC 24, [2014] 1 S.C.R. 502, as those decisions related to judicial review and to the granting of prerogative writs. Here, we are dealing with a statutory appeal. As our Court has stated in *Vavilov*, at para. 36, “[w]here a legislature has provided that parties may appeal from an administrative decision to a court, either as of right or with leave, it has subjected the administrative regime to appellate oversight and indicated that it expects the court to scrutinize such administrative decisions on an appellate basis.”

[29] This case is a statutory appeal pursuant to *The Legal Profession Act, 1990*. Therefore, the standard of review is correctness for questions of law and palpable and overriding error for questions of fact and of mixed fact and law: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235; *Ward v. Quebec (Commission des droits de la personne et des droits de la jeunesse)*, 2021 SCC 43, at paras. 24-25.

[30] Whether there has been an abuse of process is a question of law. Thus, the applicable standard of review is correctness.

B. *Inordinate Delay in Administrative Law*

(1) Introduction

[31] Administrative decision makers regularly decide issues that affect individuals' rights, privileges and interests. This Court recognized the important role of administrative decision makers in *Vavilov*, at para. 4:

This area of the law concerns matters which are fundamental to our legal and constitutional order, and seeks to navigate the proper relationship between administrative decision makers, the courts and individuals in our society. In parallel with the law, the role of administrative decision making in Canada has also evolved. Today, the administration of countless public bodies and regulatory regimes has been entrusted to statutory delegates with decision-making power. The number, diversity and importance of the matters that come before such delegates has made administrative decision making one of the principal manifestations of state power in the lives of Canadians.

[32] Legislatures delegate authority to administrative decision makers because of their proximity and responsiveness to stakeholders, their ability to render decisions promptly, flexibly and efficiently, and their ability to provide simplified and streamlined proceedings that can promote access to justice: *Vavilov*, at para. 29.

(2) The Doctrine of Abuse of Process

[33] The doctrine of abuse of process is rooted in a court's inherent and residual discretion to prevent abuse of its process: *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, [2003] 3 S.C.R. 77, at para. 35; *Behn v. Moulton Contracting Ltd.*, 2013 SCC 26, [2013] 2 S.C.R. 227, at para. 39; *R. v. Power*, [1994] 1 S.C.R. 601, at p. 612; P. M. Perell, "A Survey of Abuse of Process", in T. L. Archibald and R. S. Echlin, eds., *Annual Review of Civil Litigation 2007* (2007), 243, at p. 243. The doctrine was

recognized in *R. v. Jewitt*, [1985] 2 S.C.R. 128, at pp. 135-37, where the Court drew from Dubin J.A. in *R. v. Young* (1984), 40 C.R. (3d) 289 (Ont. C.A.), at p. 329, where he stated that

there is a residual discretion in a trial court judge to stay proceedings where compelling an accused to stand trial would violate those fundamental principles of justice which underlie the community's sense of fair play and decency and to prevent the abuse of a court's process through oppressive or vexatious proceedings. [Emphasis added; p. 135.]

[34] Abuse of process is a broad concept that applies in various contexts: *C.U.P.E.*, at para. 36; *Behn*, at para. 39. In criminal proceedings, unfair or oppressive treatment of an accused can constitute an abuse of the court's process and warrant judicial intervention: *R. v. Cawthorne*, 2016 SCC 32, [2016] 1 S.C.R. 983, at para. 25, citing *Power*, at pp. 612-15; *Jewitt*, at pp. 136-37; *R. v. O'Connor*, [1995] 4 S.C.R. 411, at para. 59. In civil matters, it can warrant granting a motion to strike pleadings or to preclude relitigation of an issue: see *Behn*; *Canam Enterprises Inc. v. Coles* (2000), 51 O.R. (3d) 481 (C.A.), rev'd 2022 SCC 63, [2002] 3 S.C.R. 307.

[35] It is also characterized by its flexibility. It is not encumbered by specific requirements, unlike the concepts of *res judicata* and issue estoppel: *Behn*, at para. 40; *C.U.P.E.*, at paras. 37-38. In *Behn*, at para. 40, LeBel J. referred with approval to Goudge J.A., dissenting, in *Canam Enterprises Inc.* (C.A.), where Goudge J.A. explained that 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. [Emphasis added; para. 55.]

Such flexibility is important in the administrative law context, given the wide variety of circumstances in which delegated authority is exercised.

[36] The primary focus is the integrity of courts' adjudicative functions, and less on the interests of parties: *C.U.P.E.*, at para. 43; *R. v. Conway*, [1989] 1 S.C.R. 1659, at p. 1667; *R. v. Scott*, [1990] 3 S.C.R. 979, at p. 1007. The proper administration of justice and ensuring fairness are central to the doctrine: *Behn*, at para. 41; *British Columbia (Workers' Compensation Board) v. Figliola*, 2011 SCC 52, [2011] 3 S.C.R. 422, at paras. 24-25 and 31. It aims to prevent unfairness by precluding "abuse of the decision-making process": *Figliola*, at para. 34, citing *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44, [2001] 2 S.C.R. 460, at para. 20.

[37] Such considerations underlie the courts' concern with inordinate delay in the administrative context.

(3) Abuse of Process in Administrative Proceedings

[38] In administrative proceedings, abuse of process is a question of procedural fairness: *Blencoe*, at paras. 105-7 and 121; G. Régimbald, *Canadian Administrative*

Law (3rd ed. 2021), at pp. 344-350; P. Garant, with P. Garant and J. Garant, *Droit administratif* (7th ed. 2017), at pp. 766-67). This Court dealt with abuse of process as it relates to administrative delay in *Blencoe*. Our Court recognized that decision makers have, as a corollary to their duty to act fairly, the power to assess allegedly abusive delay.

[39] Mr. Blencoe, a former British Columbia Cabinet Minister, was accused by several women of sexual harassment. They filed complaints with the then British Columbia Council of Human Rights. Hearings were scheduled more than 30 months after the initial complaints were filed. Mr. Blencoe applied to have the proceedings stayed on the basis of abuse of process. While this Court declined to do so, it described circumstances when a stay could be ordered.

[40] The Court explained two ways in which delay may constitute an abuse of process.

[41] The first concerns hearing fairness. The fairness of a hearing can be compromised where delay impairs a party's ability to answer the complaint against them, such as when memories have faded, essential witnesses are unavailable or evidence has been lost: *Blencoe*, at para. 102; D. J. M. Brown and J. M. Evans, with the assistance of D. Fairlie, *Judicial Review of Administrative Action in Canada* (loose-leaf), at § 9:57.

[42] This is not what is in issue in this appeal. Rather, the Court is concerned with a second category of abuse of process. Even when there is no prejudice to hearing fairness, an abuse of process may occur if significant prejudice has come about due to inordinate delay: *Blencoe*, at paras. 122 and 132.

[43] *Blencoe* sets out a three-step test to determine whether delay that does not affect hearing fairness nonetheless amounts to an abuse of process. First, the delay must be inordinate. Second, the delay must have directly caused significant prejudice. When these two requirements are met, courts or tribunals will proceed to a final assessment of whether the delay amounts to an abuse of process. Delay will amount to an abuse of process if it is manifestly unfair to a party or in some other way brings the administration of justice into disrepute: *Behn*, at paras. 40-41.

[44] The minority reasons in *Blencoe* concluded that there was an abuse of process, although the appropriate remedy was not a stay but rather an order for an expedited hearing and costs. In my view, the two sets of reasons in *Blencoe* can be read as complementing each other and expressing a coherent set of principles. The majority reasons set a higher threshold only for an abuse of process requiring a stay, and accepted that lesser remedies continue to be available where a stay is not warranted. With respect to when a stay of proceedings is warranted, the minority reasons recognized that a threshold of “shocking abuse” is necessary to justify a stay of proceedings (para. 155). Moreover, the minority reasons set a lower threshold for an

abuse of process which might call for a lesser remedy, such as an order for an expedited hearing or costs.

(4) Calls to “Jordanize” Blencoe

[45] The Court received submissions to the effect that since *Blencoe*, it has become more active in addressing institutional delays in criminal proceedings: see *R. v. Jordan*, 2016 SCC 27, [2016] 1 S.C.R. 631. Mr. Abrametz and some of the interveners argue the *Blencoe* test needs to be revisited to bring it into conformity with contemporary approaches to delay. Mr. Abrametz refers to the “culture of complacency” in the criminal justice system addressed in *Jordan: R.F.*, at paras. 88-104. Without asking for the direct adoption of the *Jordan* framework in administrative law, Mr. Abrametz sought to have this Court recognize inordinate delay as prejudicial in and of itself.

[46] Inordinate delay in administrative proceedings, as in other legal proceedings, is contrary to the interests of society. Decisions by administrative decision makers need to be rendered promptly and efficiently. Administrative delay undermines a key purpose for which such decision-making authority was delegated — expeditious and efficient decision-making.

[47] However, there are important reasons why *Jordan* does not apply to administrative proceedings. *Jordan* deals with the right to be tried within a reasonable time under s. 11(b) of the *Canadian Charter of Rights and Freedom*. No such *Charter*

right applies to administrative proceedings. As such, there is no constitutional right outside the criminal context to be “tried” within a reasonable time.

[48] There are fundamental differences between criminal and administrative proceedings: *Blencoe*, at paras. 88-96. A human rights body’s investigation is aimed at determining what took place and seeks to settle the matter in a non-adversarial manner. The purpose of human rights proceedings is to eradicate discrimination, rather than to punish an offender: *Blencoe*, at paras. 94 and 126. Similar distinctions can be drawn between disciplinary and criminal matters. While the former are intended to regulate professional conduct within a limited private sphere of activity, the latter is intended to maintain public order and welfare for the broad public: *R. v. Wigglesworth*, [1987] 2 S.C.R. 541, at p. 560.

[49] I will now deal more fully with the application of the doctrine of abuse of process to administrative delays.

(5) First Requirement: Whether the Delay is Inordinate

[50] That a process took considerable time does not in itself amount to inordinate delay. Rather, one must consider the time in light of the circumstances of the case (Brown and Evans, at § 9:57-9:58; R. W. Macaulay, J. L. H. Sprague and L. Sossin, *Practice and Procedure Before Administrative Tribunals* (loose-leaf), at § 16:81; *Blencoe*, at para. 122). A process that seems lengthy may be justified *on the basis of fairness*.

[51] In determining whether delay is inordinate, the court or tribunal should consider the following contextual factors: (a) the nature and purpose of the proceedings, (b) the length and causes of the delay, and (c) the complexity of the facts and issues in the case. These factors are not exhaustive, such that additional contextual factors can be considered in a particular case.

(a) *The Nature and Purpose of the Proceedings*

(i) Introduction

[52] Many public bodies and regulatory agencies have been entrusted with decision-making authority as statutory delegates: *Vavilov*, at paras. 4 and 88. Their decisions vary in complexity and significance. Sometimes they involve technical considerations. Other times, common sense and an understanding of the practicalities of ordinary life suffice: *Vavilov*, at para. 88. Of necessity, time requirements inherent to each of these kinds of proceedings will vary.

(ii) Disciplinary Proceedings

[53] The purposes of disciplinary bodies are to protect the public, to regulate the profession and to preserve public confidence in the profession: *The Legal Profession Act, 1990*, ss. 3.1 and 3.2; *Pharmascience Inc. v. Binet*, 2006 SCC 48, [2006] 2 S.C.R. 513, at para. 36; *Finney v. Barreau du Québec*, 2004 SCC 36, [2004] 2 S.C.R. 17, at para. 16; *Fortin v. Chrétien*, 2001 SCC 45, [2001] 2 S.C.R. 500, at

para. 17; *Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 S.C.R. 869, at pp. 887-88; *Wigglesworth*, at p. 560; G. MacKenzie, *Lawyers & Ethics: Professional Responsibility and Discipline* (loose-leaf), at § 26:1. The client or patient is often in a vulnerable position in the professional relationship: *Pharmascience Inc.*, at para. 36; *Fortin*, at para. 17. The public places great trust in the advice and services of professionals: *Pharmascience Inc.*, at para. 36.

[54] Disciplinary proceedings are neither civil nor criminal, but rather *sui generis*: MacKenzie, at § 26:2; *Béliveau v. Barreau du Québec* (1992), 101 D.L.R. (4th) 324 (Que. C.A.). They maintain discipline within a limited sphere of private activity. Thus, as stated before, they differ from criminal matters, which are of a public nature, intended to promote order and welfare within a public sphere of activity: *Wigglesworth*, at p. 560; *Canada (Attorney General) v. Whaling*, 2014 SCC 20, [2014] 1 S.C.R. 392, at para. 45.

[55] In disciplinary proceedings, inordinate delay can be harmful to members of professional bodies, complainants and the public in general. Allegations of misconduct against a member can weigh heavily on that person. They can overshadow his or her professional reputation, career and personal life. Anxiety and stress caused by the uncertainty of the outcome and the stigma attached to outstanding complaints are good reasons to investigate and prosecute in a timely way. Disciplinary bodies have a duty to deal fairly with members whose livelihood and reputation are affected by such proceedings: MacKenzie, at § 26:1.

[56] Complainants, whether patients or clients, benefit from having their case proceed promptly, so that they can be heard and move on to put the matter behind them. Finally, the public at large expects professionals guilty of misconduct to be effectively regulated and properly sanctioned. Given their role to protect the public from harmful professional conduct, disciplinary bodies must ensure that the public's concerns are addressed on a timely basis: *Wachtler v. College of Physicians and Surgeons (Alta.)*, 2009 ABCA 130, 448 A.R. 317, at paras. 46-47.

(b) *The Length and Causes of the Delay*

[57] When an applicant submits that inordinate delay amounts to an abuse of process, courts and tribunals are called on first to ascertain the length and causes of the delay: *Blencoe*, at para. 122.

[58] The duty to be fair is relevant at all stages of administrative proceedings, including the investigative stage: D. P. Jones and A. S. de Villars, *Principles of Administrative Law* (7th ed. 2020), at p. 285; Garant, at pp. 655-57; *Irvine v. Canada (Restrictive Trade Practices Commission)*, [1987] 1 S.C.R. 181; *Syndicat des employés de production du Québec et de l'Acadie v. Canada (Canadian Human Rights Commission)*, [1989] 2 S.C.R. 879; see, for example, *Blencoe*, at para. 123. When assessing the actual time period of delay, the starting point should be when the administrative decision maker's obligations, as well as the interests of the public and the parties in a timely process are engaged. It should end when the proceeding is completed, including the time taken to render a decision.

[59] As noted, a lengthy delay is not *per se* inordinate; it may be justifiable when considered in context. For instance, a case will sometimes involve parallel criminal and administrative proceedings. Some disciplinary proceedings involve allegations of conduct that may be criminal, such as sexual misconduct, fraud and obstruction of justice: MacKenzie, at § 26:5. In some circumstances, disciplinary bodies will proceed while the criminal proceeding are outstanding. In other circumstances, suspension of the disciplinary proceedings to await the conclusion of criminal proceedings can be justified. This can be consistent with procedural fairness and not constitute an abuse of process, even if the delay that results is lengthy.

[60] In *Sazant v. College of Physicians and Surgeons of Ontario*, 2012 ONCA 727, 113 O.R. (3d) 420 (leave to appeal refused, [2013] 2 S.C.R. xii), for example, allegations against the member involved multiple complainants who were likely to be called as similar fact witnesses in criminal proceedings. The College monitored progress of the criminal proceedings and proceeded to investigate when the criminal charges were stayed. This added to the time for the disciplinary process. However, as the Court of Appeal concluded, it would have been impractical and unfair to the member for the College to pursue disciplinary proceedings arising from the allegations of misconduct against him without waiting for the criminal proceedings to be resolved: para. 245.

[61] Besides considering the duration of the delay, the court or tribunal should consider the causes of the delay. This includes whether the applicant contributed to or waived parts of the delay: *Blencoe*, at para. 122.

[62] If the delay was caused by the party who complains of that delay, it *cannot* amount to an abuse of process: *Blencoe*, at para. 125; *Diaz-Rodriguez v. British Columbia (Police Complaint Commissioner)*, 2020 BCCA 221, 39 B.C.L.R. (6th) 87, at para. 50; *Camara v. Canada*, 2015 FCA 43, 91 Admin. L.R. (5th) 13, at paras. 13-14. Nor will there be unfairness if the delay is an inherent part of a fair process.

[63] Delay can be waived. This can be explicit or implicit. Thus, if the applicant asked for suspension of the proceedings, or did not object to a suspension of proceedings while other investigations proceeded and acted in a way that unequivocally suggests they acquiesced to such delay, it can constitute a waiver: *Diaz-Rodriguez*, at para. 51.

[64] Finally, whether the administrative body used its resources efficiently should be considered in the analysis of inordinate delay. That said, insufficient agency resources cannot excuse inordinate delay in any case: *Blencoe*, at para. 135. Administrative tribunals have a duty to devote adequate resources to ensure the integrity of the process: see *Hennig v. Institute of Chartered Accountants (Alta.)*, 2008 ABCA 241, 433 A.R. 221, at para. 31.

[65] In sum, the requirements of procedural fairness sometimes slow the pace at which the proceedings progress. Whether the resulting delays are justified will depend on the circumstances of each case.

(c) *The Complexity of the Facts and Issues in the Case*

[66] The complexity of the facts and issues in a case will affect the time required to decide the matter. For example, sexual abuse allegations might entail difficult and time-consuming investigations. By contrast, large numbers of documents do not necessarily entail complexity, especially in a routine case dealing with issues in which the tribunal has experience. Assessing inordinate delay must account for the wide range of contexts in the administrative system.

(6) Second Requirement: Significant Prejudice

[67] The requirement for significant prejudice is grounded in the foundations of the doctrine of abuse of process in administrative law. If delay alone was sufficient to lead to an abuse of process, it would be “tantamount to imposing a judicially created limitation period”: *Blencoe*, at para. 101. It is only where there is *detriment* to an individual that a court or a tribunal will conclude that there has been an abuse of process: *Blencoe*, at para. 109; *Brown v. Assn. of Professional Engineers and Geoscientists of British Columbia*, [1994] B.C.J. No. 2037 (QL), 1994 CarswellBC 2980 (WL); *Stefani v. College of Dental Surgeons (British Columbia)* (1996), 27 B.C.L.R. (3d) 34 (S.C.); *Misra v. College of Physicians & Surgeons of Saskatchewan*,

(1988), 52 D.L.R. 477 (Sask. C.A.). Furthermore, in some cases, delay by itself may be beneficial to the affected party. For example, if the affected party is facing the penalty of disbarment, delay in the administrative process might be welcomed by the affected party, insofar as it enables him or her to continue practicing. These are some of the reasons why the doctrine of abuse of process as it relates to administrative delay requires proof of significant prejudice.

[68] The reality is that an investigation or proceeding against an individual tends to disrupt his or her life. This was so in *Blencoe*, where the majority acknowledged that Mr. Blencoe and his family had suffered prejudice from the moment that sexual harassment allegations against him were made public. The Court concluded, however, that such prejudice could not be said to result directly from the delay in the human rights proceedings, but rather it resulted from the fact that such proceedings were undertaken: para. 133. It is the prejudice caused by inordinate delay that is relevant to the abuse of process analysis. That said, prejudice caused by the investigation of or proceedings against an individual can be exacerbated by inordinate delay. That is to be taken into account: paras. 68-73 and 133.

[69] Prejudice is a question of fact. Examples include significant psychological harm, stigma attached to the individual's reputation, disruption to family life, loss of work or business opportunities, as well as extended and intrusive media attention, especially given technological developments, the speed at which information can travel today and how easy it is to access.

[70] In *Misra*, a doctor was suspended from practice for almost six years, while the College of Physicians and Surgeons chose to wait for years for the completion of criminal proceedings against him before proceeding with the disciplinary process. The criminal proceedings were eventually abandoned. Dr. Misra's reputation had suffered; he had been unable to practice his profession; his professional prospects were diminished.

[71] In *Investment Dealers Association of Canada v. MacBain*, 2007 SKCA 70, 299 Sask. R. 122, lengthy delays exacerbated the harm to the applicant's reputation by publicity from a disciplinary investigation. Profits from his business collapsed, then recovered to some degree as publicity around the initial investigation faded, only to be threatened again after the negative publicity around his business was revived years later when the notices of hearing were finally issued: paras. 40-41; see also *Financial and Consumer Services Commission v. Emond*, 2020 NBCA 42. This is the type of significant prejudice contemplated in *Blencoe*.

(7) Conclusion: A Final Assessment

[72] The test for whether delay amounts to an abuse of process has three steps. First, the delay must be inordinate. This is determined on an assessment of the context overall. Second, the delay must have caused significant prejudice. When these two requirements are met, the court or tribunal is to conduct a final assessment as to whether abuse of process is established. This will be so when the delay is manifestly unfair to

the party to the proceedings or in some other way brings the administration of justice into disrepute: *Behn*, at paras. 40-41.

[73] When an abuse of process is found, several remedies are available.

C. Remedies

(1) Introduction to Remedies for Abuse of Process

[74] Courts and tribunals must be mindful as to appropriate remedies in the various contexts in which abuse of process can occur: *Blencoe*, at para. 117; *O'Connor*, at para. 66, per L'Heureux-Dubé J., writing for a unanimous Court on this point. In this judgment, I will address the main remedies. The list that follows is not intended to be exhaustive.

[75] Remedies for abuse of process can serve several purposes. They can compensate the applicant for the prejudice caused by the delay. They can serve as an incentive for the decision maker to address any problems of systemic delay. Remedies can also express the court or the tribunal's concern relating to delay in the administrative system.

[76] As noted, the doctrine of abuse of process is broad; it can usefully be appreciated on a spectrum: see, in criminal matters, *R. v. Regan*, 2002 SCC 12, [2002] 1 S.C.R. 297, at para. 107. Various remedies are available, up to and including a

permanent stay of proceedings. However, when this high threshold is not met, when there is inordinate delay and resulting prejudice, but it is “not significant enough that proceeding in its wake would, in and of itself, shock the community’s sense of fairness and decency” (*Regan*, at para. 107), then other remedies are available.

[77] Before addressing various remedies for delay amounting to abuse of process, I would make two preliminary points.

(a) *Internal tribunal procedure*

[78] Addressing delay is an obligation on all parties. As soon as delay becomes a concern, the affected party should seek to use all available procedures to move matters forward. The tribunal may often have internal procedures for dealing with delay; the party complaining of delay should avail itself of these. Even if there are no such procedures, the affected party should raise the issue of delay on the record, by means such as correspondence or oral submissions.

[79] In most cases, the affected party should avail itself of the tribunal procedures first. If the affected party does not act in a timely manner to raise concerns about delay, this may be considered in determining the relevant remedy. That said, in considering whether an affected party has sought to move matters forward, one has to be mindful of practical impediments to doing so: see, for example, *Wachtler*, at para. 44. There may be exceptional cases where the affected party may ask the courts to step in, in accordance with the existing rules.

(b) *Mandamus*

[80] *Mandamus* can be sought to compel administrative decision makers to carry out their duties and, in so doing, to limit delay in administrative proceedings: *Blencoe*, at para. 150. A party who believes he or she is facing undue delay can seek such a remedy, or an order for an expedited hearing, even before an abuse of process exists, rather than “waiting in the weeds” in the hopes of obtaining a stay at some future point: *Blencoe*, at para. 182. *Mandamus* may also be ordered as a remedy for an abuse of process if one is found.

[81] My comments here do not intend to change any of the standards applicable for obtaining an order of *mandamus* generally. They merely affirm that it may also be an appropriate tool to prevent and address abuse of process.

[82] Also, if used at the right moment, the remedy of an expedited hearing can protect the interests of all parties: *Blencoe*, at para. 182; D. J. Mullan and D. Harrington, “The *Charter* and Administrative Decision-Making: The Dampening Effects of *Blencoe*” (2002), 27 *Queen’s L.J.* 879 (QL), at pp. 908-9.

(2) Stay of Proceedings

[83] A stay of proceedings is the ultimate remedy for abuse of process. It is “ultimate” because it is “final”; the process will be permanently stayed: *Regan*, at para. 53. In disciplinary matters, that means that charges will not be dealt with, any

complaint will go unheard and the public will not be protected. Given these consequences, a stay should be granted only in the “clearest of cases”, when the abuse falls at the high end of the spectrum of seriousness: *Blencoe*, at para. 120, citing *Power*, at p. 616.

[84] The decision whether to grant a stay involves a balancing of public interests. On one hand, the public has an interest in ensuring that a tribunal established for its protection follows fair procedures, untainted by an abuse of process. On the other hand, the public has an interest in the resolution of administrative cases on the merits. A balance must be struck between the public interest in a *fair administrative process untainted by abuse* and the competing public interest in having the *complaint decided on its merits*: *Blencoe*, at paras. 118-21 and 154; *Conway*, at p. 1667; *Robertson v. British Columbia (Commissioner, Teachers Act)*, 2014 BCCA 331, 64 B.C.L.R. (5th) 258, at paras. 78-80; *Diaz-Rodriguez*, at paras. 71-73; *Law Society of Upper Canada v. Abbott*, 2017 ONCA 525, 139 O.R. (3d) 290, at paras. 61-63 (leave to appeal refused, [2018] 1 S.C.R. v).

[85] When faced with a proceeding that has resulted in abuse, the court or tribunal must ask itself: would going ahead with the proceeding result in more harm to the public interest than if the proceedings were permanently halted? If the answer is *yes*, then a stay of proceeding should be ordered. Otherwise, the application for a stay should be dismissed. In conducting this inquiry, the court or tribunal may have regard

to whether other available remedies for abuse of process, short of a stay, would adequately protect the public's interest in the proper administration of justice.

[86] A stay will be more difficult to obtain where the charges are more serious. For example, in *Diaz-Rodriguez*, a police officer faced disciplinary proceedings because he used a police baton to repeatedly strike a young man on the head. He also attempted, after the fact, to lay (apparently) unfounded charges, including assaulting a police officer; being intoxicated in a public place; and causing a disturbance: para. 72. The Court of Appeal concluded that in this context, the public interest in fairness in the administrative process did not outweigh the public interest in having the matter proceed to a resolution on its merits: para. 73 (see also: *Robertson*, at paras. 79-80; *R. (J.) v. College of Psychologists (British Columbia)* (1995), 33 Admin. L.R. 2(d) 174 (B.C.S.C.), at para. 10). The same was also true in *Sazant*, in which Dr. Sazant faced allegations of sexual misconduct against children. There was a strong public interest in having the case considered on the merits, despite the length of the delay: para. 248.

[87] Even if rare, stays of proceedings are sometimes warranted. An example is *MacBain* where the charge against an investment dealer did not involve complex factual or legal issues, and he did not contribute to or waive the delay. As well, the Investment Dealers Association failed to provide an explanation for the delay (three years and eight months). When the Court of Appeal heard the case, almost seven years had passed since the commencement of the investigation. Moreover, the member was

seriously affected, his business declined greatly, and his personal life was adversely impacted: para. 41.

[88] Finally, in the present case, the Court of Appeal considered that the absence of complainants was relevant in the weighing of competing interests; in effect, the absence of complainants favoured for a stay: paras. 209-10. I cannot agree. The *absence* of a complainant is a neutral factor. The public at large expects a professional who is guilty of misconduct to be effectively regulated and properly sanctioned. A professional misconduct hearing involves more than the interests of those affected; rather one needs to consider “the effect of the individual’s misconduct on both the individual client and generally on the profession in question. This public dimension is of critical significance to the mandate of professional disciplinary bodies”: *Adams v. Law Society of Alberta*, 2000 ABCA 240, 266 A.R. 157, at para. 6.

(3) Other Remedies: Reduction in Sanction and Costs

[89] When an abuse of process is established, but the abuse is not such that a stay of proceedings is warranted, other remedies may be appropriate: *Blencoe*, at para. 117; *Brown and Evans*, at § 9:60.

[90] The threshold to grant such remedies will be lower than that required for a stay. While proof of significant prejudice is required to establish an abuse of process, the remedies ordered may vary according to the degree of prejudice. A high degree of prejudice may justify a stay. Lesser, but nevertheless significant prejudice, could justify

other remedies. In such cases, the public interest can be properly served by continuation of the proceedings, while the applicant receives some compensation for the abuse that he or she suffered.

[91] In the context of a disciplinary tribunal, I will address two further remedies: a reduction in sanction and/or costs.

(a) *Reduction in Sanction*

[92] When a member is found guilty of professional misconduct, the tribunal must determine the appropriate sanction.

[93] As noted, the Law Society's disciplinary process has as its purposes the protection of the public, regulation of the profession and preservation of public confidence in the legal profession. These purposes are relevant to deciding the sanction to be imposed.

[94] A wide range of penalties is possible, from a reprimand to a lifetime revocation of a licence to practice. Various factors, including the presence of an abuse of process, can be considered when determining the appropriate sanction (see J. T. Casey, *The Regulation of Professions in Canada* (loose-leaf), at § 14:3; J. G. Villeneuve et al., *Précis de droit professionnel* (2007), at pp. 246-49; MacKenzie, at § 26:18). Since *Blencoe*, numerous tribunals and courts have taken abuse of process into account as an attenuating factor in deciding an appropriate sanction.

[95] *Wachtler* provides an example of how delay can be a factor in determining what disciplinary sanctions should be imposed. The Court of Appeal reduced the member's penalty given the length of the proceedings. The member had received a penalty including a three-month suspension and a costs award against him following disciplinary proceedings by the College of Physicians and Surgeons: paras. 9-10. The Court of Appeal found that the College had failed to properly consider the lengthy delay in the case. The Court of Appeal concluded that although the member had shown that he suffered some prejudice, he was unable to demonstrate that the prejudice was such as would justify a stay: para. 36. Instead, the Court of Appeal reduced the sentence to a one-month suspension (which had already been served) and set aside the costs award: paras. 45-46 and 49.

[96] The threshold for a reduction in the sanction will be particularly high when the presumptive penalty is licence revocation. Given the gravity of the misconduct generally required for such a penalty to be imposed, setting it aside might imperil public confidence in the administration of justice, rather than enhance it.

[97] For example, in *Abbott*, the Court of Appeal dealt with a lawyer who had engaged in professional misconduct where licence revocation was the presumptive penalty, as he had knowingly participated in mortgage fraud: para. 17. The Hearing Division of the Law Society Tribunal revoked the lawyer's licence to practice. Given the lengthy delay in the proceedings, the Appeal Division of the Law Society Tribunal reversed this decision, set aside the penalty of licence revocation and substituted a two-

year suspension. The Divisional Court dismissed the appeal from the Appeal Division. The Court of Appeal allowed the appeal and reinstated the penalty of licence revocation: see paras. 88-90 and 98.

[98] As noted, abuse of process can be viewed on a spectrum. To convert a presumptive licence revocation into a lesser penalty requires a significant abuse of process, one at the high end of the spectrum. Moreover, under no circumstances should the adjustment of the penalty undermine the purposes of the disciplinary process, notably the protection of the public and its confidence in the administration of justice. For these reasons, a remedy that substitutes a licence revocation for a lesser penalty will generally be as difficult to receive as a stay. Both may equally undermine a professional body's responsibility to regulate the profession.

(b) *Costs*

[99] Courts faced with applications for review of administrative delay have the discretion to set aside an order of costs against a party or to order costs against the administrative agency. This can be done in the exercise of the court's discretion relating to costs. As *Blencoe* illustrates, even where inordinate delay does not amount to abuse of process, it may still justify an award of costs against the agency: para. 136.

(4) Conclusion

[100] A stay of proceedings, a reduction in sanction, or variation of an award of costs are possible remedies. This is not an exhaustive list. Various tribunals may be empowered by their enabling statutes to grant other remedies. They should not hesitate to use such tools to combat inordinate delay amounting to an abuse of process.

V. Summary

[101] Where delay has not affected the fairness of a hearing, the test to determine if the delay amounts to an abuse of process has three steps:

1. First, the delay must be inordinate. This is determined on an assessment of the context overall, including 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; and
2. Second, the delay itself must have caused significant prejudice;
3. When these two requirements are met, the court or tribunal should conduct a final assessment as to whether abuse of process is established. This will be so when the delay is manifestly unfair to a party to the litigation or in some other way brings the administration of justice into disrepute.

[102] When an abuse of process is found, various remedies are available. In rare cases, where going ahead with the proceeding results in more harm to the public interest than if the proceedings were halted, a permanent stay of proceedings will be justified. When this threshold is not met, other remedies exist, including reduction of sanction and a variation in any award of costs.

VI. Application to the Present Case

[103] The Hearing Committee found that the delay did not amount to an abuse of process given the complexity of the case, the scale of the investigation and the delay that could be attributed directly to Mr. Abrametz's conduct. The Hearing Committee also concluded that Mr. Abrametz failed to demonstrate that he suffered significant prejudice from the delay.

[104] The Court of Appeal substituted its own views with respect to the foregoing, and concluded that there had been an abuse of process such that a stay was warranted.

[105] The Court of Appeal did not err in identifying the applicable standard of review: paras. 71-75. However, it failed to apply it properly. Deference should have been accorded to the Hearing Committee as to its findings of fact and of mixed fact and law. It was not. Instead, the Court of Appeal made its own findings of fact. With respect, this was not open to them.

[106] Regarding the remedy, the Court of Appeal purported to stay the proceedings; however, while it set aside the penalty and costs award imposed by the penalty decision, it allowed the findings of professional misconduct to stand: para. 217. This unusual result is more akin to a reduction in sanction, rather than a stay. Nonetheless, such an order could only have been made if there was an abuse of process in Mr. Abrametz's case. The three-step test I have previously described to determine if delay amounts to an abuse of process applies. As I will explain, none of the requirements were met.

A. *The Delay Was Long, But Not Inordinate*

[107] The audit started on December 4, 2012. The Hearing Committee heard the disciplinary matter between May and September of 2017, and rendered the conduct decision on January 10, 2018. Mr. Abrametz applied for a stay of proceedings on July 13, 2018, that is after the conduct decision, but before the Penalty Hearing was scheduled. The Penalty Hearing took place on September 18, 2018. In the same hearing, the Hearing Committee dealt with the application for a stay. The stay decision was rendered on November 9, 2018.

[108] From the start of the audit in December 4, 2012, to the stay decision, on November 9, 2018, about 71 months passed. This delay gives rise to serious concern. However, considered contextually, the delay was not inordinate.

[109] The Hearing Committee found that the delay in preparing the report was reasonable. In so doing it had regard to the complexity of the case and the scale of the investigation: at paras. 357 and 364. Further it found that the delay was caused largely by Mr. Abrametz; it noted that 14 ½ months of delay were attributable to Mr. Abrametz or his counsel's unavailability: para. 360. It also considered Mr. Abrametz's application to put proceedings on hold pending a different matter before the Court of Queen's Bench, as well as Mr. Abrametz's complaint against Mr. Huber, the Law Society's disciplinary counsel, as contributing to delay: paras. 360-61.

[110] While the Court of Appeal acknowledged that it should defer to the Hearing Committee's findings of fact, it proceeded to do otherwise, on the basis that the Committee has made a series of palpable and overriding errors.

[111] The Court of Appeal concluded that the Hearing Committee committed such errors of fact both as to the scale and complexity of the investigation. In arriving at this conclusion, the Court of Appeal reviewed in detail the evidence presented before the Hearing Committee. The court acknowledged that the auditor, Mr. Allen, described his investigation as "considerable" and said it was "exceptionally difficult" and that he produced a final report of more than a thousand pages. However, it concluded that "volume and complexity are not the same". It found that there is little evidence of what Mr. Allen did during certain periods. The Court determined that Mr. Allen should have finished his report by June 2013 based on the draft report (specifically its page count),

the lack of “particulars” of what Mr. Allen did other than complete his trust report, and Mr. Huber’s time records: paras. 182-88.

[112] The Court of Appeal further proceeded to make its own findings by analyzing the evidence and, based on this, characterizing each time period so as to determine the time it considered to be undue delay.

[113] One must ask, under a deferential standard of review, is this what appellate courts are called on to do? The “primary role” of the Hearing Committee was “to weigh and assess voluminous quantities of evidence”: *Housen*, at para. 18. An appellate court is not free to interfere with factual conclusions merely because it disagrees with the weight to be assigned to the underlying evidence: para. 23; *Benhaim v. St-Germain*, 2016 SCC 48, [2016] 2 S.C.R. 352; *Hydro-Québec v. Matta*, 2020 SCC 37, at para. 33. An error is *palpable* if it is plainly seen and if all the evidence need not be reconsidered in order to identify it, and is *overriding* if it has affected the result: *Hydro-Québec*, at para. 33; *H.L. v. Canada (Attorney General)*, 2005 SCC 25, [2005] 1 S.C.R. 401, at paras. 55-56 and 69-70; *Salomon v. Matte-Thompson*, 2019 SCC 14, [2019] 1 S.C.R. 729, at para. 33.

[114] The Court of Appeal departed from its proper role when it substituted its own findings of fact, notably on the scale and the complexity of the investigation. The Hearing Committee’s conclusions were grounded in the evidence before it, in particular, the affidavit of the auditor of the Law Society, Mr. Allen. The Court of

Appeal gave no deference to the Hearing Committee's findings, and simply reweighed this evidence and substituted its own findings.

[115] The Court of Appeal found that there were errors in the Hearing Committee's conclusions regarding the delay attributable to Mr. Abrametz: para. 193. However, the Hearing Committee's finding that, at a certain point, Mr. Abrametz stopped cooperating in the investigation was supported by uncontroverted evidence. There was no proper basis for the Court of Appeal to contradict the Hearing Committee's attribution of certain delays to Mr. Abrametz.

[116] In short, applying the standard of palpable and overriding error, there was no proper basis for the Court of Appeal to set aside the Hearing Committee's findings that the delay was not inordinate.

B. *There Was No Significant Prejudice to Mr. Abrametz*

[117] Mr. Abrametz identified four types of prejudice that he said were caused by the delay: the media attention; the practice conditions; the impact on his health; and the impact on his family and employees. The Hearing Committee concluded that none of these claims, individually or cumulatively, amounted to significant prejudice that was caused by the delay. The Court of Appeal disagreed; it concluded that Mr. Abrametz suffered significant prejudice.

(1) Media Attention

[118] The Hearing Committee accepted that Mr. Abrametz's reputation suffered as a result of media attention, but concluded that he had failed to demonstrate that this arose from the delay rather than the fact that he was subject to investigation and prosecution. The adverse publicity occurred over a short period early in 2018. The Hearing Committee found that the hearing gave rise to media attention, rather than the period of the investigation which preceded it.

[119] The Court of Appeal concluded that the Hearing Committee erred by failing to consider that Mr. Abrametz practiced under a cloud of suspicion for more than four years. It considered, in particular, that members of the bar and Mr. Abrametz's staff knew that he was being investigated and was practicing under supervision as a result of misconduct allegations. This was so because the Law Society publishes information relating to disciplinary proceedings on its website.

[120] With respect, the issue is not whether the proceedings were disclosed as they were, but whether Mr. Abrametz suffered significant prejudice from such disclosure. The Hearing Committee found he suffered "some degree of stress", but not significant prejudice: para. 335. In all this, no palpable and overriding error was identified that warranted the Court of Appeal's substitution of its own view.

(2) Practice Conditions

[121] Regarding the practice conditions, the Hearing Committee did not accept Mr. Abrametz's submission that these caused him significant prejudice; the Hearing

Committee did so based on the fact that Mr. Abrametz consented to the conditions, they were not overly restrictive of his practice and they were consistent with the Law Society's mandate to protect the public. It also noted that most of the allegations against Mr. Abrametz were determined to be well founded. The Hearing Committee held that Mr. Abrametz had been unable to provide evidence that he suffered from the conditions in the five years before the disciplinary hearing. He had not argued that the practice conditions impacted his billings or his caseload or the time typically required by him to process his files. Thus, he had provided no evidence that the practice conditions significantly impacted the viability or profitability of his practice.

[122] The Court of Appeal took the view that neither Mr. Abrametz's consent to the conditions nor the fact that he was found guilty of most of the charges were relevant. However, the court failed to address the core of the Hearing Committee's analysis on this point, which turned on the lack of evidence of any prejudice resulting from the conditions. Mr. Abrametz was not suspended and he continued to practice until the hearing. Thus, the Court of Appeal failed to set out a proper basis for interfering with the finding that Mr. Abrametz did not suffer significant prejudice from the conditions on his practice.

(3) The Impact on Mr. Abrametz's Health, Family and Employees

[123] The Hearing Committee was not persuaded that the minor medical condition complained of by Mr. Abrametz and the stress experienced by his family and

employees were connected to the delay. Here again, no palpable and overriding error was identified that would justify the Court of Appeal's substitution of its own views.

(4) Conclusion on the Requirement of Significant Prejudice

[124] It was not shown that the Hearing Committee committed any palpable and overriding error when it concluded that Mr. Abrametz failed to demonstrate any significant prejudice. The Court of Appeal erred by interfering with its findings of fact and findings of mixed fact and law. Even if one could view the remedy ordered by the Court of Appeal as a reduction in sanction, and although the threshold to grant such remedy is lower than that required for a stay, proof of significant prejudice is nonetheless required as part of the three-step test to establish an abuse of process. There was no such proof in this case.

C. *Conclusion on Abuse of Process*

[125] Since the Hearing Committee has not been shown to have erred in its finding that there was no inordinate delay or significant prejudice to Mr. Abrametz, there is no basis to set aside its conclusion that there was no abuse of process in this case. Consequently, it is not necessary to proceed to the next step and consider what remedy should be ordered.

[126] Notwithstanding the foregoing, the actions of the Law Society were not above reproach. The Law Society is entrusted with self-regulation of the profession,

and by extension an aspect of the rule of law. The Law Society should be keenly aware of the importance of justice being done in a timely way; it should make every effort to safeguard procedural fairness. In all this, the Law Society should set an example for its own members.

VII. Conclusion

[127] I would allow the appeal, set aside the judgment of the Court of Appeal and remit the matter to the Court of Appeal to address the outstanding grounds of appeal. Costs are awarded to the Law Society in this Court and in the Court of Appeal.

The following are the reasons delivered by

CÔTÉ J. —

I. Overview

[128] I have had the opportunity to read the reasons of my colleague Rowe J. I disagree with the majority's disposition of this appeal. In my view, the delay in these proceedings amounted to an abuse of process, and the Saskatchewan Court of Appeal did not err in quashing the penalty for professional misconduct imposed on the respondent, Peter V. Abrametz (2020 SKCA 81). My disagreement with the majority,

however, also extends to the legal principles governing the assessment of inordinate delay in administrative proceedings.

[129] Without referring to any precedents on procedural fairness review, my colleague relies on *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, for the proposition that appellate standards of review apply in the present case. Yet our Court’s jurisprudence is clear: the question of whether an administrative decision maker has complied with its duty of fairness is subject to the standard of correctness — regardless of the existence of an appeal mechanism. I see no reason to revisit this well-established starting point.

[130] Nor do I agree with the majority’s reframing of the test for whether administrative delay amounts to an abuse of process. This Court recognized in *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44, [2000] 2 S.C.R. 307, that inordinate delay — on its own — is a breach of procedural fairness and thus abusive. An applicant need not demonstrate “significant prejudice” for unfair conduct to constitute an abuse of process; this requirement applies only where a stay of proceedings is sought.

[131] The case law on abuse of process confirms that this common law doctrine focuses on the integrity of the justice system rather than the particular interests of litigants. Inordinate delay, I stress, risks bringing the administration of justice into disrepute. For this reason alone, courts must sanction it whenever it is brought to their attention. They possess a wide range of remedial tools — including declarations, costs,

orders for an expedited hearing, reductions in penalty, and stays of proceedings — to grant relief that is proportionate to the abuse of process. In determining the appropriate remedy, courts must consider the length, causes, and effects of delay as well as the public interest.

[132] Applying this framework to the case at bar, I agree with the analysis of the Court of Appeal. The appellant, the Law Society of Saskatchewan, subjected Mr. Abrametz to disciplinary proceedings spanning a period of more than 6 years, 32 ½ months of which remain unexplained. The delay grossly exceeded the inherent time requirements of this case; it is plainly inordinate and, as a result, abusive. This undue delay caused serious prejudice to Mr. Abrametz and also affected his employees, all of whom experienced additional stress from the unjustified extension of the proceedings.

[133] In these circumstances, the Court of Appeal rightly sanctioned the Law Society's abuse of process by ordering that the penalty for Mr. Abrametz's professional misconduct be set aside. I would accordingly dismiss the appeal.

II. Abuse of Process and Inordinate Delay in Administrative Proceedings

[134] I begin my analysis by discussing the framework for assessing abuse of process resulting from inordinate delay in administrative proceedings. I do so because the standard of review depends on the parameters of the test for abuse of process arising from administrative delay. Here, the majority posits that the final assessment of

whether delay constitutes an abuse of process is a question of law subject to correctness review, but that findings made with respect to the “requirements” of this test, including inordinate delay, are entitled to deference. Yet as I explain, the doctrine of abuse of process is unencumbered by specific requirements at common law. Inordinate delay is one of the manifestations of abusive conduct that undermines the integrity of the justice system. Therefore, the test for abuse of process arising from administrative delay is based entirely on the “inordinate delay” standard, the application of which is a question of law.

[135] To be more specific, the majority purportedly relies on *Blencoe* in articulating a three-step test for determining whether delay in administrative proceedings amounts to an abuse of process. The test begins with two requirements: inordinate delay and significant prejudice caused by the delay. Where both requirements are met, there is a final step at which the court must assess whether the delay amounts to an abuse of process because it is manifestly unfair to a party or otherwise brings the administration of justice into disrepute.

[136] With respect, I am of the view that this framework rests on a mistaken understanding of the doctrine of abuse of process. Under the majority’s approach, even inordinate delay that directly causes significant prejudice is not *per se* abusive, as the last step of its test indicates. Not only is this proposition doctrinally flawed, but it results in an unduly elevated standard that is disproportionate to the remedies available for abusive delay, which range from a mere declaration to a stay of proceedings. Simply

put, the majority's test is so onerous that it invites complacency in administrative proceedings.

[137] This Court rightly recognized in *Blencoe* that inordinate delay — on its own — is a breach of the duty of fairness. In my view, courts should distance themselves from such procedural unfairness by calling it what it is: an abuse of process. Prejudice is not a necessary condition for delay to be inordinate, although it may contribute to such a finding. Evidence of prejudice, I add, remains highly significant at the remedial stage, since the remedy must be proportionate to the abuse of process. This is consistent with the central principle laid down by the majority in *Blencoe* — namely that courts may grant a stay of proceedings only in the “clearest of cases”, where the applicant has demonstrated significant prejudice arising from inordinate administrative delay.

A. *Doctrine of Abuse of Process at Common Law*

[138] The doctrine of abuse of process “has its roots in a judge’s inherent and residual discretion to prevent abuse of the court’s process” (*Behn v. Moulton Contracting Ltd.*, 2013 SCC 26, [2013] 2 S.C.R. 227, at para. 39; *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, [2003] 3 S.C.R. 77, at para. 35). This common law doctrine “is used in a variety of legal contexts” (*Toronto v. C.U.P.E.*, at para. 36; see also *Behn*, at para. 39). Moreover, the analysis of abuse of process at common law “dovetail[s]” with that of the procedural rights guaranteed in the *Canadian Charter of Rights and Freedoms* (*R. v. Regan*, 2002 SCC 12, [2002] 1 S.C.R.

297, at para. 50; see also *R. v. O'Connor*, [1995] 4 S.C.R. 411, at para. 71). The remedies for abuse of process at common law may, however, diverge from those available under s. 24(1) of the *Charter* (*O'Connor*, at para. 68).

[139] The doctrine of abuse of process “is characterized by its flexibility” and “is unencumbered by specific requirements” (*Behn*, at para. 40; see also *Toronto v. C.U.P.E.*, at para. 42). The test for abuse of process — in all of its applications — is whether the impugned conduct affects adjudicative fairness or would otherwise bring the administration of justice into disrepute (*Blencoe*, at para. 115; *Canada (Citizenship and Immigration) v. Harkat*, 2014 SCC 37, [2014] 2 S.C.R. 33, at para. 106; *R. v. Nixon*, 2011 SCC 34, [2011] 2 S.C.R. 566, at para. 68; *R. v. Anderson*, 2014 SCC 41, [2014] 2 S.C.R. 167, at paras. 49-50; *O'Connor*, at paras. 60-64; *R. v. Babos*, 2014 SCC 16, [2014] 1 S.C.R. 309, at para. 31; *Regan*, at para. 49; *Behn*, at para. 39; *United States of America v. Cobb*, 2001 SCC 19, [2001] 1 S.C.R. 587, at paras. 36-40; *R. v. Scott*, [1990] 3 S.C.R. 979, at p. 1007; *R. v. Power*, [1994] 1 S.C.R. 601, at p. 616). In sum, an abuse of process may arise from two often interrelated categories: adjudicative unfairness and harm to the integrity of the justice system.

[140] Abuse of process must be disentangled analytically from a stay of proceedings, which is but one of the remedies available at common law to redress abusive conduct (*Regan*, at para. 53; *Blencoe*, at para. 117; see also S. Coughlan, “Threading Together Abuse of Process and Exclusion of Evidence: How it Became Possible to Rebuke Mr. Big” (2015), 71 *S.C.L.R.* (2d) 415, at pp. 425-29; F. Lowery,

“Abuse of Process: The Need for Structure” (2014), 20 *Auckland U. L. Rev.* 223, at pp. 234 et seq.). It is crucial to draw this distinction because the threshold for demonstrating abusive conduct is much lower than the one for obtaining a stay of proceedings.

[141] This Court has established stringent requirements for granting a stay of proceedings due to the “drastic” nature of this remedy (*Regan*, at para. 53). It is only in the “clearest of cases” that courts may stay proceedings (*O’Connor*, at paras. 68 and 82; *R. v. Carosella*, [1997] 1 S.C.R. 80, at para. 52; *Canada (Minister of Citizenship and Immigration) v. Tobiass*, [1997] 3 S.C.R. 391, at para. 59; *Blencoe*, at para. 118; *Regan*, at para. 53; *R. v. Nasogaluak*, 2010 SCC 6, [2010] 1 S.C.R. 206, at para. 17; *Babos*, at para. 31; *R. v. Sullivan*, 2022 SCC 19, at para. 95). An applicant must satisfy the following test to obtain a stay:

- (1) there must be prejudice to the fairness of the trial or the integrity of the justice system that will be manifested, perpetuated or aggravated through the conduct of the trial, or by its outcome;
- (2) there must be no alternative remedy capable of redressing the prejudice; and
- (3) where it is unclear whether a stay is warranted after the first two steps, the court is required to balance the interests in favour of granting a stay, such as denouncing misconduct and preserving the

integrity of the justice system, against the interest that society has in having a final decision on the merits (*Sullivan*, at para. 95; *Babos*, at para. 32; *Regan*, at paras. 54-57; *Tobiass*, at paras. 90-92; *O'Connor*, at paras. 75-82).

This test also applies to abusive delay in administrative proceedings, as indicated by Bastarache J.'s references to the "clearest of cases" threshold in *Blencoe*, at paras. 118 and 120.

[142] With respect, I am of the view that the majority's reasons conflate the doctrine of abuse of process with the test for stays of proceedings, which are only a subset of the remedies that courts may order to sanction abusive conduct. The majority thus fails to distinguish between, on the one hand, the test for whether conduct amounts to an abuse of process and, on the other hand, the test for whether a stay of proceedings is warranted in the circumstances (*O'Connor*, at para. 72). The former is flexible and unencumbered by particular requirements; the court must simply determine whether the impugned conduct undermines adjudicative fairness or the integrity of the justice system. The latter establishes an onerous threshold that is met only in the clearest of cases, where the applicant satisfies specific, stringent requirements.

[143] One final point concerning abuse of process is in order. This common law doctrine has always focused on the *integrity of the justice system* rather than the interests of particular litigants, as Arbour J. underscored in *Toronto v. C.U.P.E.*, at para. 43:

In all of its applications, the primary focus of the doctrine of abuse of process is the integrity of the adjudicative functions of courts. Whether it serves to disentitle the Crown from proceeding because of undue delays (see *Blencoe, supra*), or whether it prevents a civil party from using the courts for an improper purpose (see *Hunter, supra*, and *Demeter, supra*), the focus is less on the interest of parties and more on the integrity of judicial decision making as a branch of the administration of justice. In a case such as the present one, it is that concern that compels a bar against relitigation, more than any sense of unfairness to a party being called twice to put its case forward, for example. When that is understood, the parameters of the doctrine become easier to define, and the exercise of discretion is better anchored in principle. [Emphasis added.]

Stated differently, the doctrine of abuse of process “transcends the interests of litigants and focuses on the integrity of the entire system” (*Ontario v. O.P.S.E.U.*, 2003 SCC 64, [2003] 3 S.C.R. 149, at para. 12 (emphasis added); see also *I.A.T.S.E., Stage Local 56 v. Société de la Place des Arts de Montréal*, 2004 SCC 2, [2004] 1 S.C.R. 43, at para. 16).

[144] In other words, courts must condemn conduct that, if left unsanctioned, would “leave the impression that the justice system condones conduct that offends society’s sense of fair play and decency” (*Babos*, at para. 35; see also *Toronto v. C.U.P.E.*, at para. 43). This is the primary concern addressed by the doctrine of abuse of process at common law, and it is independent of any prejudice suffered by litigants subject to such abusive conduct.

B. *Abusive Delay in Administrative Proceedings*

(1) Overview of the *Blencoe* Framework

[145] This Court’s decision in *Blencoe* was a significant jurisprudential step in addressing the issue of delay in administrative proceedings. In that case, Bastarache J., writing for a five-judge majority, and LeBel J., dissenting in part, both recognized that inordinate administrative delay amounts to an abuse of process, even when the hearing is not unfair to the applicant. Bastarache and LeBel JJ. further agreed that courts possess multiple remedial options to sanction abusive delay under administrative law principles. In my view, their opinions broadly complement each other, and their teachings should be reaffirmed in the present case.

[146] As the following passage makes clear, Bastarache J.’s majority opinion focused on the high threshold to be met for an applicant to obtain a stay of proceedings — the only remedy sought by the applicant in that case:

In my view, there are appropriate remedies available in the administrative law context to deal with state-caused delay in human rights proceedings. However, delay, without more, will not warrant a stay of proceedings as an abuse of process at common law. Staying proceedings for the mere passage of time would be tantamount to imposing a judicially created limitation period. In the administrative law context, there must be proof of significant prejudice which results from an unacceptable delay. [Emphasis added; citations omitted; para. 101.]

Relying on the jurisprudence on stays of proceedings, Bastarache J. reaffirmed that the “power [to order a stay] can be exercised only in the ‘clearest of cases’” (para. 118). I note that the guidance provided by Bastarache J. concerning the “clearest of cases” threshold for obtaining a *stay of proceedings* corresponds precisely to the test for *abuse of process* laid down by the majority in this case.

[147] The threshold for obtaining a stay of proceedings set out in *Blencoe* may be summarized as follows. First, the delay must be “unreasonable or inordinate” so as to constitute a breach of the duty of fairness (para. 121). Bastarache J. stressed that “[t]here is no abuse of process by delay *per se*” (para. 121); the delay must be “clearly unacceptable” in the circumstances of the case (para. 115). To determine whether the delay is inordinate, the court must undertake a contextual assessment of “the nature of the case and its complexity, the facts and issues, the purpose and nature of the proceedings, whether the respondent contributed to the delay or waived the delay, and other circumstances of the case” (para. 122). Second, the delay must “have directly caused a significant prejudice” (para. 115). Where both requirements are met, the court must consider whether the public interest favours halting the proceedings (para. 120).

[148] LeBel J., for his part, took a more holistic approach to abuse of process arising from inordinate delay in administrative proceedings. While he noted that “[w]hoever asks for a stay of proceedings carries a heavy burden” (para. 180), he focused on the “lower threshold of unreasonable delay that might warrant some kind of judicial action and different, less radical, remedies than a stay in the administrative proceedings” (para. 155). Indeed, LeBel J. stressed that inordinate delay is a breach of procedural fairness and thus abusive. He discussed three possible remedies for abusive delay in administrative proceedings: a stay of proceedings, an order for an expedited hearing, and costs (para. 179).

[149] Under LeBel J.'s approach, the court must first balance three contextual factors (as opposed to requirements) in assessing whether the delay is inordinate, at para. 160:

- (1) the time taken compared to the inherent time requirements of the matter . . . ;
- (2) the causes of delay beyond the inherent time requirements of the matter . . . ; and
- (3) the impact of the delay, considered as encompassing both prejudice in an evidentiary sense and other harms to the lives of real people impacted by the ongoing delay. [Emphasis deleted.]

Where the court concludes that the delay is inordinate, it must turn its attention to the appropriate remedy in the circumstances. The selection of the remedy requires the court to weigh the three contextual factors listed above as well as other competing interests — including those of the community and, where applicable, of other private litigants (para. 178).

(2) Inordinate Delay Is Abusive — Irrespective of Prejudice

[150] As noted above, *Toronto v. C.U.P.E.* confirms that inordinate delay in administrative proceedings belongs to the category of abusive conduct that undermines the integrity of the administration of justice — regardless of its effects on the interests of litigants (para. 43). It follows that courts may condemn administrative delay as abusive even where there is no evidence of prejudice. However, prejudice remains a highly significant consideration in determining the appropriate remedy.

[151] The majority in this case proffers two reasons for its position that “significant prejudice” is required for an abuse of process to arise from administrative delay. Its first justification is that sanctioning abuse of process in the absence of significant prejudice would be “tantamount to imposing a judicially created limitation period” (para. 67, citing *Blencoe*, at para. 101, where Bastarache J. referred to stays of proceedings only). With respect, this assertion is plainly wrong, and it is symptomatic of the conflation of abuse of process with the remedy of a stay of proceedings. Far from establishing a limitation period, alternative remedies *allow* the claim to proceed but *condemn* state conduct that undermines the integrity of the justice system. Indeed, I cannot help but mention the irony in the proposition that LeBel J.’s proposed remedy for abusive delay in *Blencoe* — an order for an expedited hearing — is akin to a statutory limitation period.

[152] I am troubled, to say the least, by the second justification offered by the majority — namely that “delay by itself may be beneficial to the affected party. For example, if the affected party is facing the penalty of disbarment, delay in the administrative process might be welcomed by the affected party, insofar as it enables him or her to continue practicing” (para. 67). It is trite law that professional bodies bear the onus of proving the misconduct of persons subject to their jurisdiction. Those who have done nothing wrong will not “benefit” from administrative delay, even if they are allowed to maintain their practice. It is thus improper for courts to consider the unproven “benefits” flowing from administrative delay, since to do so assumes that applicants are guilty of the disciplinary charges brought against them.

[153] In any event, the additional stress caused by inordinately long administrative proceedings may very well be prejudicial, regardless of whether the applicant prevails on the merits. I reiterate that professional bodies, like other administrative decision makers, owe a *duty* of fairness to professionals subject to disciplinary proceedings. The existence and scope of this duty are independent of the outcome of the adjudication. Inordinate delay — in *all* cases — is procedurally unfair and thus abusive.

(3) Remedies at Common Law

[154] Where the applicant has demonstrated that the delay is inordinate, the next step in the analysis is for the court to determine the appropriate remedy in the circumstances. Courts possess an extensive arsenal of remedial tools to sanction and redress abusive conduct, ranging from a declaration to a stay of proceedings. The choice of remedy for an abuse of process — be it at common law or under s. 24(1) of the *Charter* — falls within the trial judge's discretion (*Tobiass*, at para. 87; *Regan*, at para. 117; *R. v. Bjelland*, 2009 SCC 38, [2009] 2 S.C.R. 651, at paras. 15 and 51; *R. v. Bellusci*, 2012 SCC 44, [2012] 2 S.C.R. 509, at paras. 17-18; *Babos*, at para. 48). As noted above, applicants must satisfy a specific test to obtain a stay of proceedings, but other remedies are not subject to that test.

[155] Originally, a stay of proceedings was seen as the only remedy available for an abuse of process at common law (see, e.g., L'Heureux-Dubé J.'s *obiter dictum* in *O'Connor*, at para. 68). However, in *Blencoe*, Bastarache J. rightly noted that there is

“no support for the notion that a stay is the only remedy available in administrative law proceedings”, and he stressed that “[o]ther remedies are available”, without elaborating on them (para. 117). In the context of inordinate delay, LeBel J. mentioned orders for costs and orders for an expedited hearing as alternative remedies.

[156] There exist other remedial options at common law to redress abusive administrative delay, including reductions in sanction, orders for the exclusion of evidence, and declarations. Traditional prerogative writs such as *mandamus* may of course complement these remedies. In short, courts have a wide discretion to grant remedies for abusive conduct that account for the circumstances of each case.

[157] The guiding principle in determining the appropriate remedy is proportionality. LeBel J.’s approach in *Blencoe* requires courts to consider the nature and magnitude of the prejudice as primary factors — alongside the length and causes of the delay — in selecting a remedy proportionate to the abuse of process. As mandated by *Blencoe*, the applicant must demonstrate “significant prejudice” to obtain a stay of proceedings for inordinate delay in the administrative law context (para. 101), but this standard does not apply to alternative remedies.

[158] Under LeBel J.’s approach, prejudice remains an integral part of the analysis in that it dictates the proper judicial response to the abuse of process. The absence of any prejudice entails that, in certain cases, a declaration of abuse of process may be the only appropriate redress. Although less drastic than other remedies, declaratory relief allows the judiciary to distance itself from abusive conduct and to

deter administrative decision makers from ignoring delays in subsequent proceedings (*Vancouver (City) v. Ward*, 2010 SCC 27, [2010] 2 S.C.R. 28, at para. 37).

[159] In the final analysis, this approach avoids the unfortunate inference that courts condone inordinate delay where the applicant fails to meet the high threshold of “significant prejudice”. I echo LeBel J.’s vehement criticism of avoidable delays in *Blencoe*: “Unreasonable delay in administrative proceedings is illegal under administrative law” (para. 162 (emphasis added)). In my view, it is incumbent on courts to condemn such conduct as an abuse of process whenever it is brought to their attention.

III. Standard of Review

A. *Inconsistency With Khela*

[160] The majority purports to “clarify” the standard of review applicable to questions of procedural fairness in a statutory appeal. It does so, however, without meaningfully considering *Mission Institution v. Khela*, 2014 SCC 24, [2014] 1 S.C.R. 502 — the governing authority on this point of law — or any other case relating to the duty of procedural fairness. I see no reason to revisit the foundations of *Khela*.

[161] In *Khela*, LeBel J. unambiguously confirmed for a unanimous court that “the standard for determining whether the decision maker complied with the duty of procedural fairness will continue to be ‘correctness’” (para. 79; see also *Canada*

(*Citizenship and Immigration*) v. *Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339, at para. 43, referring to *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190; *C.U.P.E. v. Ontario (Minister of Labour)*, 2003 SCC 29, [2003] 1 S.C.R. 539, at para. 100; *Toronto v. C.U.P.E.*, at para. 15 (applying the correctness standard to the issue of abuse of process); *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, at paras. 55-62 (applying the reasonableness standard to the “substantive aspects” of the decision only)). Moreover, the framework articulated by this Court for assessing questions of procedural fairness applies irrespective of any appeal mechanism, although the existence of appeal rights is a relevant consideration in determining the content of the common law duty of fairness (*Baker*, at para. 24).

[162] Despite this clear statement in *Khela*, the majority asserts that “where questions of procedural fairness are dealt with through a statutory appeal mechanism, they are subject to appellate standards of review” (para. 27). This is so, in its view, because of this Court’s categorical direction in *Vavilov* that appeals are to be decided according to appellate standards of review.

[163] But the assertion on which the majority relies was made in the context of *substantive* review — in which the presumptive standard of review is reasonableness, by contrast with *Khela*. Indeed, the passages of *Vavilov* cited by my colleague (at paras. 27-28) established the principle that “[the legislature] may direct that derogation from the presumption of reasonableness review is appropriate by providing for a statutory appeal mechanism from an administrative decision maker to a court, thereby

signalling the application of appellate standards” (*Vavilov*, at para. 33 (emphasis added)); see also para. 36).

[164] With respect, the mere reference to *Vavilov*—a judgment that was rendered in a different context and that excluded procedural fairness review from its purview—does not suffice to oust *Khela* and other directly applicable precedents. Indeed, in *Vavilov*, at para. 23, this Court expressly excluded issues of procedural fairness from the framework developed in that case—and rightly so. The central “conceptual basis” for the presumption of reasonableness review in the *Vavilov* framework is “respect for the legislature’s institutional design choice to delegate certain matters to non-judicial decision makers through statute” (para. 26). Moreover, “the consideration of expertise is folded into the new starting point . . . , namely the presumption of reasonableness review” (para. 58). Neither of these considerations applies where procedural fairness is in issue.

[165] First, the duty of procedural fairness exists independently of statutorily confined administrative regimes. It is a “general common law principle” incrementally developed by courts over multiple decades of jurisprudence (*Cardinal v. Director of Kent Institution*, [1985] 2 S.C.R. 643, at p. 653; see also *Khela*, at para. 82; *Canada (Attorney General) v. Mavi*, 2011 SCC 30, [2011] 2 S.C.R. 504, at para. 38; *Dunsmuir*, at para. 87; *Mount Sinai Hospital Center v. Quebec (Minister of Health and Social Services)*, 2001 SCC 41, [2001] 2 S.C.R. 281, at para. 22; *Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2001

SCC 52, [2001] 2 S.C.R. 781, at paras. 18-22; *Baker*, at paras. 20-28; *Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653, at p. 669; *Martineau v. Matsqui Institution Disciplinary Board*, [1980] 1 S.C.R. 602; *Kane v. Board of Governors (University of British Columbia)*, [1980] 1 S.C.R. 1105; *Attorney General of Canada v. Inuit Tapirisat of Canada*, [1980] 2 S.C.R. 735; *Nicholson v. Haldimand-Norfolk Regional Board of Commissioners of Police*, [1979] 1 S.C.R. 311).

[166] The legislature's delegation of authority to make decisions within a given administrative regime has little to do with the question of whether the process conforms to fairness requirements at common law, or whether such requirements have been ousted expressly or by necessary implication by the enabling statute (see *Baker*, at paras. 21-28; *Ocean Port*, at para. 22). Using *Baker* as a concrete example, I reject the proposition that an immigration officer empowered by the *Immigration Act*, R.S.C. 1985, c. I-2, to make administrative decisions was entitled to deference from a court applying the common law test for impartiality. In that case, L'Heureux-Dubé J. rightly circumscribed the scope of deference to the "substantive aspects" of the decision (paras. 55 and 62).

[167] In my view, deference to substantive decisions presupposes that the administrative process is fair and thus subject to review by courts on a correctness standard. The proposition that procedural fairness underlies reasonableness review is ingrained in the *Vavilov* framework itself. This Court emphasized in *Vavilov* that "the focus of reasonableness review must be on the decision actually made by the decision

maker, including both the decision maker's reasoning process and the outcome" (para. 83). Consequently, courts cannot accord deference to an administrative decision maker who fails to give reasons in circumstances where doing so is required at common law. The same reasoning applies to other types of procedural unfairness as well.

[168] Second, the application of common law principles falls squarely within the expertise of the judiciary. For example, this Court stressed in *Toronto v. C.U.P.E.* that abuse of process in the context of relitigation "is clearly outside the sphere of expertise of a labour arbitrator who may be called to have recourse to [it]" (para. 15; see also *C.U.P.E. v. Ontario*, at para. 100: "It is for the courts, not the Minister, to provide the legal answer to procedural fairness questions."). Likewise, this Court's reasoning in *Dunsmuir* indicates that courts must have the last word on the application of the duty of fairness, at para. 84:

We can see nothing problematic with a grievance adjudicator considering a public law duty of fairness issue where such a duty exists. It falls squarely within the adjudicator's task to resolve a grievance. However, as will be explained below, the proper approach is to first identify the nature of the employment relationship and the applicable law. Where, as here, the relationship is contractual, a public law duty of fairness is not engaged and therefore should play no role in resolving the grievance.

[169] The standard of correctness must remain the starting point of the analysis in the context of procedural fairness review. The majority's reliance on the existence of an appeal mechanism as the determinative factor undermines *Khela*, as it overlooks this starting point. Admittedly, the majority's approach usually leads to the same result where the enabling statute establishes an appeal mechanism. Since procedural fairness

is a legal standard, the assessment of whether an administrative decision maker complied with this duty is a question of law subject to correctness review on appeal (*R. v. Shepherd*, 2009 SCC 35, [2009] 2 S.C.R. 527, at para. 20; *R. v. Dussault*, 2022 SCC 16, at para. 26; *R. v. Le*, 2019 SCC 34, [2019] 2 S.C.R. 692, at para. 23; *R. v. Katigbak*, 2011 SCC 48, [2011] 3 S.C.R. 326, at para. 68).

[170] Nevertheless, the present case illustrates that appellate standards of review significantly diverge from *Khela* when it comes to remedial issues. I explained above that the choice of remedy for abuse of process is discretionary. It is well established in this Court’s jurisprudence that “an appellate court will be justified in intervening in a trial judge’s exercise of his discretion only if the trial judge misdirects himself or if his decision is so clearly wrong as to amount to an injustice”, and that “where a trial judge exercises her or his discretion, that decision cannot be replaced simply because the appellate court has a different assessment of the facts” (*Regan*, at para. 117, quoting *Tobiass*, at para. 87; see also *Bjelland*, at para. 15; *Bellusci*, at paras. 17-18; *Babos*, at para. 48). This deferential approach is a far cry from the one adopted in this Court’s precedents on the duty of fairness at common law.

B. *Standard of Review Applicable to Questions of Procedural Fairness*

[171] I acknowledge the need to clarify the framework for determining the standard of review applicable to questions of procedural fairness. Multiple judges and authors have underscored the untenable uncertainty plaguing the jurisprudence on procedural fairness review (see, e.g., *Bergeron v. Canada (Attorney General)*, 2015

FCA 160, 474 N.R. 366, at paras. 67-71, per Stratas J.A. (describing the state of the law as a “jurisprudential muddle”); D. McKee, “The Standard of Review for Questions of Procedural Fairness” (2016), 41 *Queen’s L.J.* 355). While clarifications are warranted, I believe this Court should draw on its existing jurisprudence to articulate a principled approach.

[172] The governing authority on procedural fairness review, as mentioned above, is *Khela*. In that case, LeBel J. confirmed that the question of whether an administrative body has complied with its duty of procedural fairness is, in principle, subject to correctness review (para. 79). Nevertheless, legislatures may — within constitutional bounds — oust the common law and specify the applicable standard of review by statute (*Khosa*, at para. 18; *R. v. Owen*, 2003 SCC 33, [2003] 1 S.C.R. 779, at paras. 31-33; *Vavilov*, at paras. 34-35; *Dunsmuir*, at paras. 30-31; see, e.g., *Administrative Tribunals Act*, S.B.C. 2004, c. 45, s. 58(2)(b)).

[173] I now turn to the passages in this Court’s jurisprudence that, according to some judges and authors, have muddled the analysis of the standard of review applicable to questions of procedural fairness. The first source of uncertainty flows from the remark in *Khela* that the decision maker was “entitled to a margin of deference” and to “[s]ome deference” on specific points, at para. 89:

Section 27(3) [of the *Corrections and Conditional Release Act*] authorizes the withholding of information when the Commissioner has “reasonable grounds to believe” that should the information be released, it might threaten the security of the prison, the safety of any person or the conduct of an investigation. The Commissioner, or his or her

representative, is in the best position to determine whether such a risk could in fact materialize. As a result, the Commissioner, or the warden, is entitled to a margin of deference on this point. Similarly, the warden and the Commissioner are in the best position to determine whether a given source or informant is reliable. Some deference is accordingly owed on this point as well. If, however, certain information is withheld without invoking s. 27(3), deference will not be warranted, and the decision will be procedurally unfair and therefore unlawful. [Emphasis added.]

[174] This passage illustrates two important propositions from *Khela*. First, the content of the duty of fairness may be determined by statute, subject to constitutional limitations. The provision at issue in *Khela*, s. 27(3) of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20, derogates from the general common law right to information in the context of decisions on matters such as inmate transfers, but the Court recognized that this provision does not eliminate the constitutionally-protected right to *habeas corpus*. Second, administrative decision makers are entitled to deference regarding their underlying findings of fact. The Court adopted a deferential approach to the highly contextual assessments of risk and reliability upon which decisions under s. 27(3) depend.

[175] Although the Court emphasized in *Khela* that compliance with the duty of fairness is a question of law, it reaffirmed the longstanding principle that courts cannot establish fairness requirements in a vacuum: “. . . the concept of procedural fairness is eminently variable and its content is to be decided in the specific context of each case” (*Knight*, at p. 682; *Baker*, at para. 21; *Moreau-Bérubé v. New Brunswick (Judicial Council)*, 2002 SCC 11, [2002] 1 S.C.R. 249, at paras. 74-75; *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, 2007 SCC 15, [2007] 1 S.C.R. 650, at

para. 231; *Dunsmuir*, at para. 79). Accordingly, where the administrative decision maker has made factual determinations with respect to the underlying context, such findings are entitled to deference. Institutional constraints on the administrative decision maker are also important contextual factors (see *Baker*, at para. 27).

[176] The second source of uncertainty flows from this Court's statement in *VIA Rail Canada Inc.*, that "[c]onsiderable deference is owed to procedural rulings made by a tribunal with the authority to control its own process" (para. 231; see also *Baker*, at para. 27). In my view, this assertion may be reconciled with more recent jurisprudence and remains good law.

[177] Indeed, *Khela* mandates only that the question of compliance with the duty of procedural fairness be subject to the correctness standard; all procedural rulings falling *within the bounds of fairness* are entitled to deference. For example, while an opportunity for a party to make submissions may be required at common law in a given context, the administrative decision maker might opt for a hearing, written submissions, or both. Where all three options satisfy the duty of fairness, the reviewing court should not substitute its view for that of the administrative decision maker concerning the most appropriate procedure.

[178] As this Court stated in *Moreau-Bérubé*, "[e]valuating whether procedural fairness, or the duty of fairness, has been adhered to by a tribunal requires an assessment of the procedures and safeguards required in a particular situation" (para. 74). J. M. Evans, writing extrajudicially, has rightly emphasized that "the duty

of fairness connotes a legally imposed minimum, not optimal, standard of procedural propriety” (“Fair’s Fair: Judging Administrative Procedures” (2015), 28 *C.J.A.L.P.* 111, at p. 121 (emphasis deleted)). Consequently, the reviewing court’s role is not to dictate the “correct” or most “fair” procedure in the circumstances, but rather to ensure that minimum fairness requirements are met.

[179] This Court’s jurisprudence on procedural fairness review may thus be synthesized as follows. The reviewing court must apply the correctness standard to questions of compliance with the duty of procedural fairness as defined by the common law or by statute. The requirements of fairness are context-dependent, and deference is owed to the administrative decision maker’s underlying findings of fact. In reviewing procedural issues, the court’s role is to determine whether the proceedings comport with *minimum* fairness requirements in a particular situation. Stated differently, the court must refrain from dictating what it considers to be the optimal procedure among the options that meet this standard.

C. *Standard of Review in the Context of Inordinate Administrative Delay*

[180] Applying appellate standards of review, the majority asserts that for questions of procedural fairness and abuse of process in a statutory appeal “the applicable standard of review is correctness” because “[w]hether there has been an abuse of process is a question of law” (para. 30). I agree with this conclusion (albeit for different reasons), but I cannot subscribe to the majority’s articulation of the standard of review in the context of inordinate administrative delay.

[181] According to the majority, the standard of palpable and overriding error applies to the two requirements of its test, namely inordinate delay and significant prejudice. The third step of the test, which requires the court to “conduct a final assessment as to whether abuse of process is established” (para. 101), is subject to the standard of correctness.

[182] I disagree with the position that courts owe deference to an administrative decision maker’s conclusion on whether delay is inordinate. As discussed above, inordinate delay constitutes an abuse of process on its own; it *is* the legal standard against which an administrative body’s conduct is measured. I reiterate that the application of a legal standard to the facts is a question of law subject to correctness review (*Shepherd*, at para. 20; *Dussault*, at para. 26; *Le*, at para. 23; *Katigbak*, at para. 68).

[183] My conclusion is buttressed by the jurisprudence on the right to be tried within a reasonable time under s. 11(b) of the *Charter*. In *R. v. Yusuf*, 2021 SCC 2, at para. 2, this Court endorsed the Ontario Court of Appeal’s formulation of the standard of review applicable to s. 11(b) rulings: “Deference is owed to a trial judge’s underlying findings of fact. Characterizations of periods of delay and the ultimate decision concerning whether there has been unreasonable delay are reviewable on a standard of correctness” (*R. v. Pauls*, 2020 ONCA 220, 149 O.R. (3d) 609, at para. 40). Moreover, it is noteworthy that both Mr. Abrametz and the Law Society invoked *R. v. Virk*, 2021 BCCA 58, 403 C.C.C. (3d) 492, in which the British Columbia Court of Appeal

similarly held that the standard of correctness applies to a trial judge's conclusion on the unreasonableness of delay (paras. 23-24).

[184] Although the remedies for them differ, unreasonable delay at common law and unreasonable delay under s. 11(b) are conceptually equivalent; they represent the same manifestation of an abuse of process. Given that unreasonable delay is a question of law in criminal proceedings, the same must be true in the context of administrative proceedings. As L'Heureux-Dubé J. concluded in *O'Connor*, "there is no real utility in maintaining two distinct analytic regimes" for abuse of process at common law and abusive conduct contrary to the *Charter* (para. 71). Here, and with respect, the majority's application of a deferential standard of review to the requirement of inordinate delay creates unwarranted incoherence in the law.

[185] Therefore, I would articulate the standard of review for assessing delay in administrative proceedings as follows. The reviewing court owes deference to the administrative decision maker's underlying findings of fact — notably on the length, causes, and effects of the delay. The characterization of periods of delay, the conclusion on whether the delay is inordinate, and the remedy for abuse of process are all subject to correctness review.

IV. Application

[186] In discussing the delay in this case, the majority acknowledges that “the actions of the Law Society were not above reproach” (para. 126). With respect, this is a major understatement.

[187] I conclude without hesitation that the magnitude of the undue delay in this case, which amounted to 32 ½ months in total, meets the “clearly unacceptable” threshold established in *Blencoe* (para. 115). This inordinate delay caused stress and related health issues to Mr. Abrametz, who was also subject to intrusive conditions for maintaining his legal practice. His employees were adversely affected as well by these unjustifiably long proceedings.

[188] In my view, the length of the unexplained delay and the extent of the prejudice it caused require a correspondingly serious remedy. I conclude that the Court of Appeal rightly ordered that the penalty imposed on Mr. Abrametz be set aside. His disbarment would not serve the public interest.

A. *Inordinate Delay*

[189] The Law Society initiated its audit investigation of Mr. Abrametz in December 2012. The Law Society’s auditor, Mr. Allen, completed a trust report about 23 months later, in October 2014. Almost a full year elapsed before the Law Society issued a formal complaint against Mr. Abrametz in October 2015. The parties litigated certain procedural matters before the commencement of the hearing in May 2017. The penalty decision rendered by the Law Society’s Hearing Committee in January 2019

brought the disciplinary proceedings to an end. By then, the proceedings had been going on for approximately 73 months — or just over 6 years since the beginning of the investigation.

[190] In my view, the delay was plainly inordinate in the circumstances, and I say this regardless of the standard of review. The Law Society failed to provide justifications for several lengthy gaps, particularly at the investigatory stage, where most of the undue delay occurred. Cumulatively, the periods of unexplained delay are “clearly unacceptable” and thus inordinate within the meaning of *Blencoe*.

[191] In its brief analysis of delay, the Hearing Committee made only findings of a general nature: the investigation was complex and extensive; Mr. Abrametz cooperated with Mr. Allen initially but ceased to do so in May 2015; and around 14 months of delay were attributable to the unavailability of Mr. Abrametz’s counsel. The Hearing Committee did not determine the inherent time requirements of any step in the proceedings, nor did it address the substantial gaps in the investigation in particular.

[192] Given the blatantly excessive delay in this case, it was incumbent on the Hearing Committee to carefully assess the justifications for the time taken at each key step of the investigation. It merely referred to the affidavit of Mr. Huber, counsel for the Law Society. But neither this affidavit nor the rest of the record discloses any reasonable justifications for the gaps in the proceedings.

[193] I disagree with the majority’s assertion that “[t]he Court of Appeal departed from its proper role” in assessing whether the delay was inordinate (para. 114). In the absence of a thorough analysis by the Hearing Committee, the Court of Appeal rightfully made an independent assessment of the periods of delay at every key step of the proceedings. While the Hearing Committee’s findings of fact are entitled to deference, I reiterate that the characterization of periods of delay and the overall conclusion on whether the delay was inordinate are subject to the standard of correctness.

[194] After carefully reviewing the record, I substantially agree with the Court of Appeal’s meticulous analysis, and I accept its conclusion that 32 ½ months of delay in the proceedings were unjustified. This case is not a close call. I agree with the Court of Appeal that “[t]his delay did not marginally overshoot what might have been considered appropriate. . . . [I]t so grossly exceeded the inherent requirements of this case as to be ‘clearly unacceptable’ within the meaning of *Blencoe*” (para. 197 (CanLII)).

[195] Given the Court of Appeal’s thorough analysis, it is unnecessary to review each step of the proceedings in detail. I nonetheless address below the relevance of the Hearing Committee’s findings on the complexity of the investigation and on Mr. Abrametz’s lack of cooperation.

(1) Complexity of the Investigation

[196] The complexity of the investigation cannot account for the Law Society's inactivity between the beginning of the audit investigation and the issuance of the formal complaint, the period during which most of the unexplained delay occurred.

[197] The proceedings started on the right track. In February 2013, only two months into the investigation, the Law Society's Conduct Investigation Committee ("CIC") issued a notice of intention to interim suspend Mr. Abrametz based on the information he had self-reported. This notice referred to all the charges of which Mr. Abrametz was eventually found guilty, almost six years later. Moreover, as early as March 2013, Mr. Allen completed a draft trust report that, according to the Court of Appeal, already contained most of the content and attachments that were used in the final trust report (para. 188). The same month, after negotiating with the CIC, Mr. Abrametz signed an undertaking allowing him to maintain his legal practice under stringent conditions.

[198] The final trust report, however, was completed by Mr. Allen no less than a year and a half later, in October 2014. The record contains scant evidence of any work done by Mr. Allen during that 19-month period, as the Court of Appeal pointed out: there are no "particulars of when Mr. Allen spent . . . time" reviewing client files and other documents, nor is there any "evidence of what he did in 2014, other than the bare fact that he completed his final trust report on October 30, 2014" (para. 19). Given the deficient explanations offered by the Law Society, the Court of Appeal did not err in finding 15 months of unexplained delay between the draft and the final trust report.

[199] Similarly, after the completion of the trust report, the Law Society inexplicably took an additional 12 months to issue the formal complaint against Mr. Abrametz in October 2015. The formal complaint, I observe, merely reiterated the charges specified in a report prepared by the CIC — the draft of which was reasonably complete by March 2015, or 4 ½ months after the trust report. Yet from that point, the Law Society took over 7 months to issue the formal complaint, a four-page document that substantially reproduced the content of its draft report. Mr. Huber’s time records, unsurprisingly, reveal that he worked only a few hours per month on this file during that period. In this context, the Court of Appeal’s conclusion that there were 6 months of undue delay between the trust report and the formal complaint seems inevitable.

[200] To recap, by the time the Law Society issued the formal complaint, the investigation had already been plagued by 21 months of undue delay. It is not worthwhile to examine the other steps of the proceedings in detail. Much of the subsequent undue delay may be attributed to the lack of direction in the investigation and, in particular, the undue focus on Mr. Abrametz’s alleged tax evasion.

[201] As early as October 2013, Mr. Allen became aware of the tax issue, but his progress was stalled by Mr. Abrametz’s refusal to disclose his financial records the following month. As the Court of Appeal explained, “a decision was made to focus on the tax issue — which the [Law Society] had allowed to languish since . . . October 2013 — rather than expeditiously moving the other charges forward at the same time” (para. 190). The Law Society inexplicably waited until September 2015 to

bring an application under s. 63 of *The Legal Profession Act, 1990*, S.S. 1990-91, c. L-10.1, to obtain the financial records sought by Mr. Allen two years earlier.

[202] Simply put, the time and resources dedicated to the tax issue — which was far more complex than the charges for conduct unbecoming a lawyer — derailed the proceedings. This emphasis was misplaced because the charges laid out in the formal complaint sufficed to have Mr. Abrametz disbarred. Had the Law Society focused on swiftly bringing these charges from the outset, the investigation and prosecution could have proceeded within a reasonable timeframe. The harm had already been done by the time the Law Society communicated its decision to bifurcate the proceedings in July 2015.

(2) Cooperation

[203] The Hearing Committee noted that “[w]hile the Member initially cooperated with the investigation, that cooperation ceased in May of 2015” (2018 SKLSS 8, at para. 357 (CanLII)). This finding relates to Mr. Abrametz’s resistance to disclosing his tax records — which was evident as early as October 2013, when he refused to respond to Mr. Allen’s tax-related questions. In all other matters, Mr. Abrametz *was* cooperative. I further note that the bulk of the unexplained delay occurred prior to May 2015.

[204] In any event, this finding rests on a mistaken interpretation of *The Legal Profession Act, 1990*. The Law Society was *required* by law to make an application

under s. 63 to obtain the financial records that Mr. Abrametz refused to disclose. Characterizing Mr. Abrametz as “uncooperative” for reasonably opposing the disclosure of his personal financial records would effectively nullify this procedural protection.

[205] It is noteworthy that the Law Society attempted to obtain the same financial records by issuing subpoenas to Mr. Abrametz and his accountants under s. 39 of *The Legal Profession Act, 1990*. The Court of Queen’s Bench quashed these subpoenas as an abuse of process, holding that the Law Society was improperly seeking to discover documents by circumventing the s. 63 process and related hearing. The need for judicial oversight implies that Mr. Abrametz justifiably opposed the production of his financial records. Given the ambiguity that surrounded the scope of the Law Society’s investigatory powers prior to adjudication, it was an error to conclude that Mr. Abrametz was uncooperative.

[206] Not only did the Law Society commit an abuse of process by improperly issuing subpoenas, but it also made a frivolous submission in defending its decision to do so. The Law Society argued that Mr. Abrametz did not have standing to challenge the subpoenas served on his accountants for the production of his personal financial records. Needless to say, conduct of this nature is not conducive to the efficient and timely progression of disciplinary proceedings.

B. *Prejudice*

[207] The Hearing Committee found that the prejudice in this case did not meet the threshold for obtaining a stay of proceedings. I would not interfere with this finding, although I note that the prejudice was far from negligible. Regarding causation, however, the Hearing Committee erred in asserting that there was no causal connection between the unexplained delay and the prejudice.

(1) Nature and Magnitude

[208] The most detrimental effect of the delay was the stress suffered by Mr. Abrametz and his employees. Mr. Abrametz was monitored for high blood pressure resulting from this stress. Importantly, the Hearing Committee considered this prejudice only in analyzing Mr. Abrametz's claim under s. 7 of the *Charter*. I note that the requirements in the s. 7 context are demonstrably higher than the "significant prejudice" threshold for obtaining a stay of proceedings. Indeed, the majority in *Blencoe* stressed that "anxiety, stress and stigma" do not engage the liberty and security interests protected by s. 7 (para. 97). Nonetheless, it also recognized that "significant psychological harm to a person, or . . . stigma to a person's reputation" caused by inordinate delay may warrant a stay of proceedings (para. 115).

[209] Therefore, it is important to bear in mind that the Hearing Committee's characterization of the prejudice in this case reflected an onerous *Charter* standard that Mr. Abrametz did not have to satisfy under the *Blencoe* framework. The Hearing Committee's findings that Mr. Abrametz suffered "some degree of stress" and that he had a related "minor medical condition" (paras. 335 and 337) were understandable in

discussing s. 7 of the *Charter*. But such detrimental effects must be taken seriously in assessing the magnitude of the prejudice pursuant to administrative law principles. Moreover, the Hearing Committee acknowledged that Mr. Abrametz's employees experienced stress throughout the proceedings (para. 338; A.R., vol. I, at p. 352).

[210] Read contextually, the Hearing Committee's assessment of the prejudice does not preclude the conclusion that the detrimental effects suffered by Mr. Abrametz and his employees were serious, even if they were not so significant as to justify a stay of proceedings. In my view, this is the only reasonable interpretation of the circumstances: a sword of Damocles hung over Mr. Abrametz's professional career for several years — and unduly so for a period of 32 ½ months. This inordinate delay also affected his employees, who worked in precarious circumstances far longer than necessary.

[211] The intrusive conditions imposed by the Law Society on Mr. Abrametz's legal practice constituted an additional form of prejudice, albeit a less serious one. The Hearing Committee erred in considering the fact that "the majority of the allegations lodged against the Member were determined by this Hearing Committee to be well founded" (para. 352). This remark worryingly suggests that the Hearing Committee's analysis of prejudice might have been tainted by its conclusions on Mr. Abrametz's guilt. To reiterate, professional bodies owe a duty of fairness to all persons subject to their proceedings — including those in breach of their professional obligations. Inordinate delay is abusive, irrespective of the outcome of the proceedings.

[212] Unlike the Court of Appeal, I am not taking account of the reputational harm suffered by Mr. Abrametz. There is no reviewable error in the Hearing Committee’s finding that this harm was caused by the hearing itself rather than by the delay. The Hearing Committee noted that “[t]he Member has not pointed to any publicity, adverse or otherwise, of the proceedings between 2013 and 2018. The publicity occurred over a short period of time early in 2018” (para. 350). With respect, the Court of Appeal erred in interfering with this finding.

(2) Causation

[213] I part ways with the Hearing Committee on the assessment of causation in respect of the stress experienced by Mr. Abrametz and his employees. In the Hearing Committee’s view, there was no causal link between the delay and these detrimental effects. However, this conclusion flowed from the application of an erroneous legal standard of causation. The Hearing Committee stated that it had to be “satisfied that any delay in the investigation or hearing process is the contributing cause to the harm that the Member may have experienced due to the stress” (para. 336 (emphasis added)).

[214] Although deference applies to findings on causation, it is wrong *in law* to suggest that prejudice must have a single contributing cause. Indeed, the Hearing Committee effectively applied a “but for” causation test. Yet this Court stated in *Blencoe* that causation is established where delay is “a contributing cause” (para. 68 (emphasis added)). In that case, Bastarache J. assumed, without deciding, that the delay had “exacerbated” the stigma suffered, although he expressed doubt about whether

reputational damage could depend on the duration of the proceedings (para. 71). LeBel J., for his part, acknowledged that “delay was not the only cause” of the prejudice, but he concluded that the delay had “contributed significantly to its aggravation” (para. 177).

[215] Even if we adopt Bastarache J.’s approach to causation in *Blencoe*, the nature of the prejudice in this case is not akin to reputational damage. Reputation “is quickly ruined and difficult to re-establish” (*Blencoe*, at para. 71), whereas the effects of stress are *continuous*, and thus directly dependent on the duration of the proceedings. Common sense dictates that an unjustified delay of 32 ½ months in career-altering proceedings would, at minimum, be a contributing cause of the stress experienced by the affected person. The Hearing Committee’s findings on the lack of causation thus cannot stand.

[216] I note, once more, that the outcome of disciplinary proceedings cannot inform the assessment of prejudice and causation. In this case, the proceedings were not the original cause of the prejudice. Nevertheless, the unexplained delay undoubtedly contributed to the detrimental effects suffered by Mr. Abrametz and his employees by unduly extending the proceedings by 32 ½ months.

C. *Remedy*

[217] As a preliminary matter, I emphasize that the Court of Appeal did *not* grant a stay of proceedings, despite its characterization of the remedy it ordered:

For these reasons, I would allow the appeal on the ground that the Hearing Committee erred by dismissing Mr. Abrametz’s application to stay the proceedings as a result of undue delay constituting an abuse of process. The [Law Society] proceedings which were commenced by the Formal Complaint are stayed. In the result, the penalty and costs award imposed by the Penalty Decision are set aside. The findings of professional misconduct stand. [Emphasis added; para. 217.]

A stay of proceedings — the “ultimate remedy” (*Tobiass*, at para. 86) — annuls the disposition as well as the legal and factual bases on which it rests. By maintaining Mr. Abrametz’s convictions, the Court of Appeal effectively quashed the penalty rather than staying the proceedings.

[218] Given the nature of the remedy at issue, I will not address the test articulated by this Court for determining whether proceedings should be stayed (see above, at para. 141). Instead, my analysis focuses on the justifications for setting aside Mr. Abrametz’s penalty. I am of the view that the Court of Appeal ordered the correct remedy in the circumstances of this case.

[219] The guiding principle in selecting the remedy for an abuse of process is proportionality. Courts have multiple remedial options at their disposal, ranging from a declaration to a stay of proceedings. The remedy must be proportionate to the severity of the abusive conduct, having regard to the length of the unexplained delay and the nature and magnitude of the prejudice it caused. Considerations relating to the public interest complement this contextual analysis.

[220] In this case, the length of the inordinate delay militates in favour of a strong remedy. Simply put, the Law Society demonstrably failed to comply with its duty of procedural fairness toward Mr. Abrametz. The periods of unexplained delay substantially exceeded the inherent time requirements of the case and are “clearly unacceptable” within the meaning of *Blencoe*. In my view, courts should not hesitate to condemn such procedural unfairness. Accordingly, the remedy of setting aside the penalty is apposite because it signals to the Law Society — and to administrative bodies more generally — that unacceptable delay brings the administration of justice into disrepute.

[221] The prejudice in this case does not meet the high threshold required for a stay of proceedings, but it is far from negligible. For an unexplained period of 32 ½ months, Mr. Abrametz and his employees experienced undue stress arising from these career-altering disciplinary proceedings. Mr. Abrametz was monitored for high blood pressure, a medical condition attributable to these stressful circumstances. He was also subject to intrusive conditions in order to maintain his legal practice. These prejudicial effects, taken together, are serious.

[222] Overall, the nature and magnitude of the prejudice, considered in light of the length of the unexplained delay, warrant a correspondingly serious remedy, if perhaps not a stay. This factor thus supports the quashing of the penalty imposed by the Hearing Committee.

[223] Finally, the public interest would not be served by maintaining the penalty imposed by the Law Society on Mr. Abrametz. It is true that he was found guilty of serious breaches of his professional obligations. However, multiple considerations convince me that the protection of the public does not require Mr. Abrametz's disbarment at this point. The Law Society took swift action to impose stringent conditions on his legal practice in order to prevent further misconduct. He was closely monitored by the Law Society for over four years — during which time his conduct was exemplary, according to the Hearing Committee (para. 395). Prior to the misconduct investigated by the Law Society, Mr. Abrametz was a longstanding practitioner with no disciplinary record. Additionally, I note that none of his clients complained of his actions.

[224] In short, Mr. Abrametz has already paid a hefty price for his misconduct, and he has proved that his practice is no longer a matter of concern for the protection of the public. The remedy ordered by the Court of Appeal does not annul the proceedings or their outcome, as a stay would. The consequences of staying the proceedings would be much more serious: "Charges that are stayed may never be prosecuted; an alleged victim will never get his or her day in court; society will never have the matter resolved by a trier of fact" (*Regan*, at para. 53). Here, the allegations of professional misconduct were debated at a public hearing that attracted media attention. The Hearing Committee's findings of guilt stand — as does the stigma flowing from them. These convictions leave an indelible mark on Mr. Abrametz's disciplinary record, which may be accessed by members of the public at their

convenience. In this context, the justifications for punishing Mr. Abrametz no longer hold; the penalty of disbarment would not be in the public interest.

V. Conclusion

[225] No less than 6 years elapsed between the beginning of the Law Society's audit investigation and its penalty decision, 32 ½ months of which were unjustified. This inordinate delay caused serious prejudice to Mr. Abrametz and his employees. In these circumstances, the Court of Appeal correctly sanctioned this abuse of process by ordering that the penalty for professional misconduct — but not the convictions themselves — be set aside.

[226] For these reasons, I would dismiss the appeal.

Appeal allowed, CÔTÉ J. dissenting.

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