Abuse of Process and Judicial Stays of Criminal Proceedings

Andrew L.-T. Choo
Oxford University Press UK (2008)

Abstract

The criminal courts have a power to stop a prosecution from proceeding altogether where it would be inappropriate for it to continue. This power to stay proceedings which constitute an abuse of the process of the court has assumed great practical significance and is potentially applicable in many situations. There is at least one consideration of the abuse of process doctrine in virtually every major criminal trial today. This fully updated second edition of Abuse of Process and Judicial Stays of Criminal Proceedings blends doctrinal discussion with a thorough consideration of the underlying theory to provide a searching analysis of the theory and practice of abuse of process in England and Wales, with comparative examinations of many other jurisdictions including The USA, Canada, Australia, and New Zealand. This edition focuses in particular upon the profound impact of the European Convention on Human Rights in this area.

Keywords

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Stay of proceedings. See also: Abuse of process, Acquittal, Crown prosecutor, Disposition, Entrapment, Extrajudicial sanctions, Judicial review, Withdrawal. A discontinuation of the administrative process pending the outcome of judicial review or a statutory appeal. Source. Title: Administrative Law. Crown prosecutors have a power under the Criminal Code to temporarily stay proceedings for a period not exceeding one year (see sections 579 and 579.1(2) of the Code), and judges can permanently stay proceedings as a remedy for a Charter breach. Source. Title: Criminal Procedure 3/e. A suspension of the court proceedings. For up to one year, the Crown may lift the stay and re-institute the proceedings. After one year the matter is stayed permanently. Source. It adopted a term, abuse of process, which as far as I know had never previously appeared in a Scottish judgment, but which was well established in England and Wales, and in many other jurisdictions. It also employed another term, inherent power or jurisdiction, which had not previously been used in this context in Scotland, although again its use in that way was familiar in England. Before going any further, it may be helpful to say a word about this terminology. Absolutely groundless, and was one in which the court, in the exercise of its discretion, ought to stop the proceedings as being an abuse of the process of the court.12.