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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.

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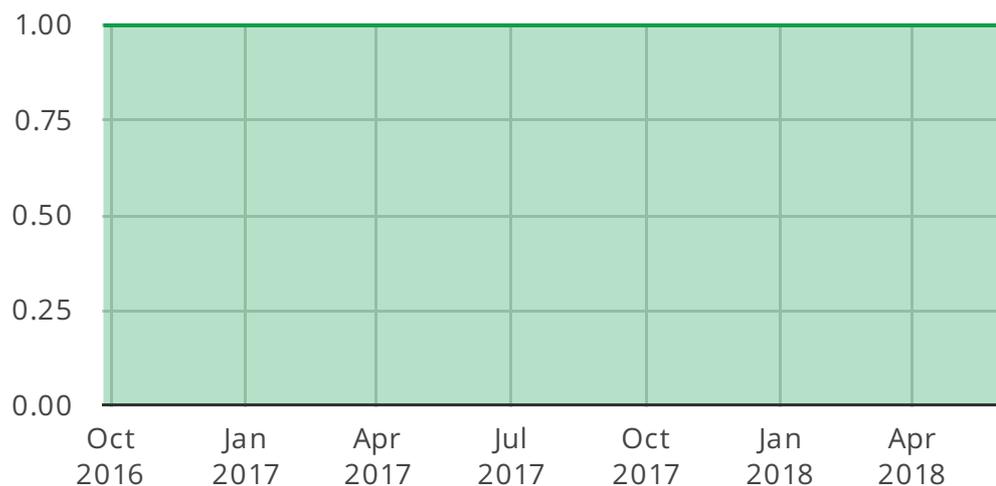
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This study presents a fresh perspective on judicial stays of criminal proceedings by examining discretion in the context of the law of criminal evidence. Previously, evidence scholars have demonstrated that every exclusionary rule and discretion in the law of criminal evidence can be explained in reference to the protection of the innocent from wrongful conviction and/or the protection of the moral integrity of the criminal process.⁹ Many of the questions raised -- such as, whether abuse of process should ever lead to an automatic stay of process or always to judicial discretion; when, if there is evidence of police malpractice, this doctrine should apply rather than the court's discretion to exclude evidence -- are of interest to practitioners as well as to academic lawyers. 9. In general, see Choo, Andrew, *Abuse of Process and Judicial Stays of Criminal Proceedings* (1993); in the present context, pp.78-87. Choo, at p.185, favours a principle which acknowledges the injury to the defendant, rather than one which penalises the errant executive. 10. Choo, , *International Kidnapping, Disguised Extradition and Abuse of Process* (1994) 57 *Modern Law Review* 626, at 632-633, says that Lord Griffiths puts forward a non-discretionary view of abuse of process. 11. Bennett, above n.4, p.150f. 12. *Idem*, p.155g.

Abuse of process is a cause of action in tort arising from one party making misusing or perversion of regularly issued court process (civil or criminal) not justified by the underlying legal action. It is a common law intentional tort. It is to be distinguished from malicious prosecution, another type of tort that involves misuse of the public right of access to the courts.

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.Â 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.Â 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. Abuse of process is a cause of action in tort arising from one party making misusing or perversion of regularly issued court process (civil or criminal) not justified by the underlying legal action. It is a common law intentional tort. It is to be distinguished from malicious prosecution, another type of tort that involves misuse of the public right of access to the courts. This study presents a fresh perspective on judicial stays of criminal proceedings by examining discretion in the context of the law of criminal evidence. Previously, evidence scholars have demonstrated that every exclusionary rule and discretion in the law of criminal evidence can be explained in reference to the protection of the innocent from wrongful conviction and/or the protection of the moral integrity of the criminal process.Â Many of the questions raised -- such as, whether abuse of process should ever lead to an automatic stay of process or always to judicial discretion; when, if there is evidence of police malpractice, this doctrine should apply rather than the court's discretion to exclude evidence -- are of interest to practitioners as well as to academic lawyers.