

# Issue Estoppel, Collateral Attack & Abuse of Process


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## The Common Thread

- Interest reipublicae ut sit finis litium
- yet
- It is in the public interest that justice be done in each case

## Common Underlying Values

- Forestalling vexatious actions
  - Preserving scarce judicial resources
  - Ensuring the integrity of the legal system
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## The Cases

- Danyluk v. Ainsworth 2001 SCC 44
  - Toronto v. CUPE 2003 SCC 63
  - Bourdon v. Stelco 2005 SCC 64
  - May v. Ferndale 2005 SCC 82
  - Grenier v. Canada 2005 FCA 348
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## Issue Estoppel

Toronto v. CUPE

Issue estoppel is a branch of *res judicata* (the other branch being cause of action estoppel), which precludes the relitigation of issues previously decided in court in another proceeding. For issue estoppel to be successfully invoked, three preconditions must be met: (1) the issue must be the same as the one decided in the prior decision; (2) the prior judicial decision must have been final; and (3) the parties to both proceedings must be the same, or their privies. [para 23]

## Collateral Attack

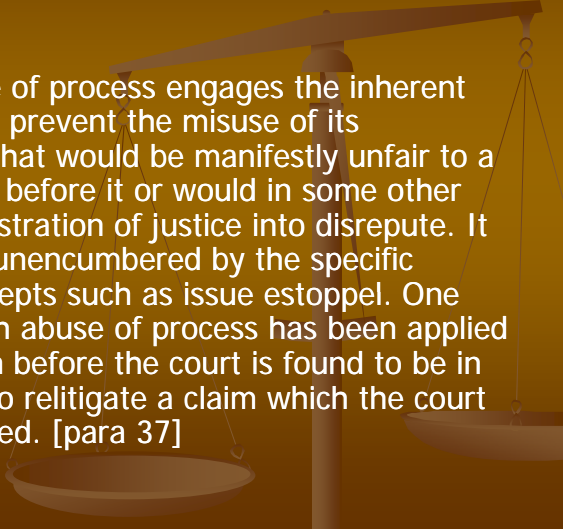
Toronto v. CUPE

The rule against collateral attack has long been a fundamental rule that a court order, made by a court having jurisdiction to make it, stands and is binding and conclusive unless it is set aside on appeal or lawfully quashed. It is also well settled in the authorities that such an order may not be attacked collaterally -- and a collateral attack may be described as an attack made in proceedings other than those whose specific object is the reversal, variation, or nullification of the order or judgment. [para 33]

## Abuse of Process

Toronto v. CUPE

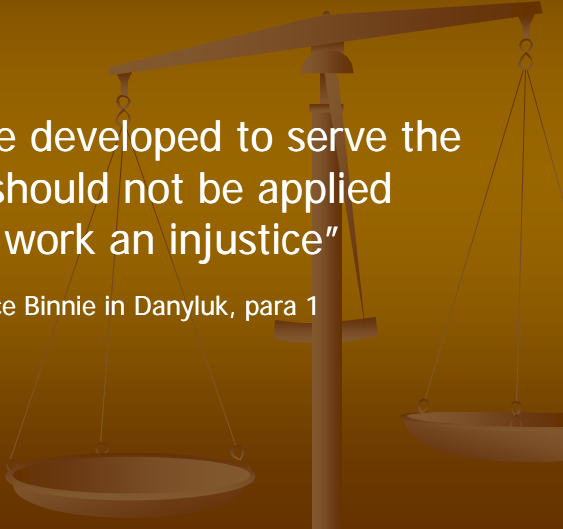
The doctrine of abuse of process engages the inherent power of the court to prevent the misuse of its procedure, in a way that would be manifestly unfair to a party to the litigation before it or would in some other way bring the administration of justice into disrepute. It is a flexible doctrine unencumbered by the specific requirements of concepts such as issue estoppel. One circumstance in which abuse of process has been applied is where the litigation before the court is found to be in essence an attempt to relitigate a claim which the court has already determined. [para 37]



## Exercise of Discretion

"A judicial doctrine developed to serve the ends of justice should not be applied mechanically to work an injustice"

per Justice Binnie in Danyluk, para 1



## Exercise of Discretion : Factors

### Legislative Intent

- wording of the statute
- purpose of the legislation
- availability of appeal or other remedy
- safeguards in the procedures
- relative expertise of the decision makers
- circumstances giving rise to prior proceedings
- potential injustice

## Habeas Corpus & Federal Administration

### Federal Court or Provincial Superior Court ?

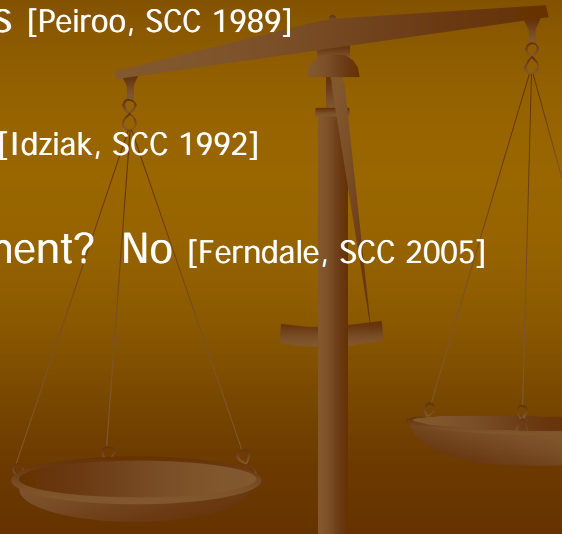
To sum up therefore, the jurisprudence of this Court establishes that prisoners may choose to challenge the legality of a decision affecting their residual liberty either in a provincial superior court by way of *habeas corpus* or in the Federal Court by way of judicial review. As a matter of principle, a provincial superior court should exercise its jurisdiction when it is requested to do so. *Habeas corpus* jurisdiction should not be declined merely because another alternative remedy exists and would appear as or more convenient in the eyes of the court. The option belongs to the applicant. Only in limited circumstances will it be appropriate for a provincial superior court to decline to exercise its *habeas corpus* jurisdiction. For instance, in criminal law, where a statute confers jurisdiction on a court of appeal to correct the errors of a lower court and release the applicant if need be, *habeas corpus* will not be available (i.e. *Gamble*). Jurisdiction should also be declined where there is in place a complete, comprehensive and expert procedure for review of an administrative decision (i.e. *Pringle and Peiroo*).

## Comprehensive Procedure

Immigration ? Yes [Peiroo, SCC 1989]

Extradition ? No [Idziak, SCC 1992]

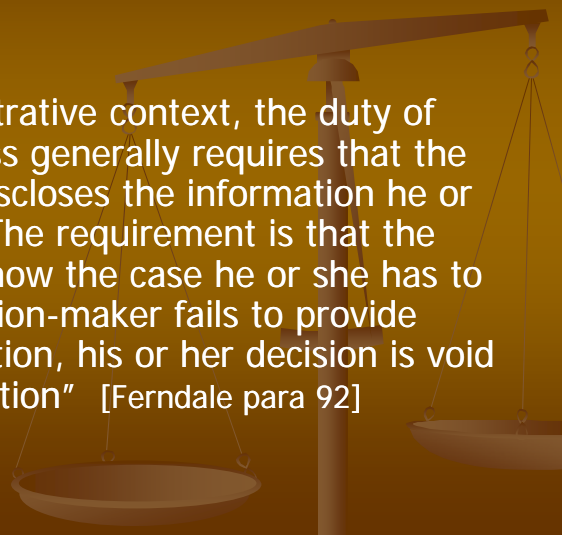
Prisoner Confinement? No [Ferndale, SCC 2005]



## Denial of Fairness

Decision Void

" In the administrative context, the duty of procedural fairness generally requires that the decision-maker discloses the information he or she relied upon. The requirement is that the individual must know the case he or she has to meet. If the decision-maker fails to provide sufficient information, his or her decision is void for lack of jurisdiction" [Ferndale para 92]



## Denial of Fairness

### Decision Voidable

"If the conditions precedent to the exercise of a judicial jurisdiction are satisfied (as here), subsequent errors in its exercise, including violations of natural justice, render the decision voidable, not void: *Harelkin v. University of Regina*, [1979] 2 S.C.R. 561, at pp. 584-85. The decision remains a "judicial decision", although seriously flawed by the want of proper notice and the denial of the opportunity to be heard.

[Danyluk, para 47]

## Conclusion

"A judicial doctrine developed to serve the ends of justice should not be applied mechanically to work an injustice"

per Justice Binnie in *Danyluk*, para 1