Supreme Court Finds that “Court procedures should facilitate, not impede, the just resolution of Aboriginal claims”

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What you need to know

A recent unanimous decision from the Supreme court of Canada— *Saskatchewan (Environment) v. Métis Nation – Saskatchewan*, 2025 SCC 4 — clarified and expanded upon the abuse of process doctrine, particularly in the context of claims relating to the Aboriginal rights of Indigenous litigants.

This decision highlights the distinction between claims that seek to establish Aboriginal rights from those pertaining to the duty to consult and accommodate. It also reaffirms the interim role the duty plays while a final determination of an Aboriginal rights claim is pending.

More generally, this case provides importance guidance on the abuse of process doctrine applicable to all claims. Where an abuse of process is alleged because of the risk of inconsistent outcomes across different cases, courts should deal with that risk if and when it actually arises, instead of striking pleadings in the anticipation of potential inconsistent outcomes. For example, while it is not necessarily an abuse of process to challenge a general policy in one proceeding and the policy's application in a specific instance in another proceeding, it does pose a risk of inconsistent outcomes. The Supreme Court found that case management is one way to addresses this risk.

Background

This case arose from three separate disputes between the province of Saskatchewan and the Métis Nation – Saskatchewan (MNS):

- **The 1994 Action:** In 1994, MNS brought an action against the province of Saskatchewan seeking, among other things, a declaration of Aboriginal title and rights to land in Saskatchewan (the 1994 Action). In 2005, the court stayed the action because the MNS had failed to comply with an order to disclose certain

documents. MNS has never moved to lift the stay, nor has Saskatchewan taken steps to have the Action dismissed.

- **The 2020 Action:** In 2010, Saskatchewan adopted a Crown consultation policy (the Policy), which stated that the province did not recognize Aboriginal title or commercial harvesting rights within the province and would not consult First Nations or Métis groups in respect of these rights. The MNS commenced an action in 2020 against Saskatchewan, challenging the validity of the Policy and seeking multiple declarations, including a declaration that the province's duty to consult and accommodate includes consultation grounded in claims to Aboriginal title and commercial harvesting rights (the 2020 Action). A decision is pending in this action.
- **The 2021 Application:** In 2021, MNS brough an application for judicial review of Saskatchewan's decision to issue uranium exploration permits in northwestern Saskatchewan (the 2021 Application). The MNS sought, among other things, a declaration that Saskatchewan had breached its duty to consult and accommodate towards the MNS in refusing to consult with them before issuing the permits.

The Court of King's Bench

In MNS' 2021 Application before the Court of Queen's Bench (as it then was), Saskatchewan filed an application to strike certain paragraphs of MNS' application for abuse of process. Saskatchewan argued that certain arguments in the 2021 Application were the same as its arguments in the 1994 and 2020 proceedings (together, the Actions). Justice Robertson granted Saskatchewan's application to strike on the basis of abuse of process, finding that the 2021 Application raised the same issues at in the Actions.[1]

The Court of Appeal

The Court of Appeal unanimously allowed MNS' appeal, finding that while the 2021 Application and the Actions related to the same issues, they were not identical proceedings. As such, MNS' pleadings were not an abuse of process.[2]

The Supreme Court clarifies and expands the abuse of process doctrine

The Supreme Court unanimously dismissed Saskatchewan's appeal and found that neither the 1994 Action nor the 2020 Action rendered the 2021 Application an abuse of process.

The standard of review

Justice Rowe, writing for the Court, began with an overview of the abuse of process doctrine. On the standard of review, stating that whether an abuse of process exists is a question of law to be reviewed on the correctness standard. That said, the remedial question is discretionary and is entitled to deference, to be overturned where the appellate court finds an error of principle, a palpable and overriding factual error, or where the first instance court failed to exercise its discretion judicially.

The abuse of process doctrine

Next, Justice Rowe reiterated the basic principles of the abuse of process doctrine. Here, Justice Rowe considered the doctrine through Saskatchewan's argument alleging a multiplicity of proceedings. Saskatchewan argued that the 2021 Application was an abuse of process due to the two earlier Actions.

The application of the doctrine to MNS' three proceedings

In determining whether the 2021 Application was an abuse of process, Justice Rowe separated his analysis into two portions. He began by identifying the purposes of the three legal proceedings, and the remedies sought by MNS in each:

- **The 1994 Action:** to claim and seek a declaration of Aboriginal title and commercial harvesting rights over land in Saskatchewan.
- **The 2020 Action:** (1) to delineate the scope of Saskatchewan's duty to consult and accommodate in a general sense; and (2) to seek various declarations regarding the Policy, including a declaration that Saskatchewan has a duty to consult and accommodate the Métis regarding their asserted Aboriginal Title and commercial harvesting rights.
- **The 2021 Application:** (1) to seek a declaration that Saskatchewan has a duty to consult and accommodate regarding the impact of the exploration permits on the Métis' claim of Aboriginal Title and commercial harvesting rights; and (2) to seek an order in the nature of *certiorari* quashing and/or setting aside the permits.

Justice Rowe then considered whether the asserted claims in the 2021 Application were an abuse of process by virtue of either of the earlier two Actions.

First, he found that the 1994 Action did not render the 2021 Application an abuse of process. Saskatchewan argued that 1994 Action status was determinative of whether Saskatchewan owed MNS a duty to consult and accommodate and that the Court should consider the 1994 Action effectively abandoned by the MNS. As such, the MNS argument in the 2021 Application that Saskatchewan had breached its duty to consult and accommodate was an abuse of process.

Justice Rowe disagreed with Saskatchewan and emphasized that the purpose of the duty to consult and accommodate is to protect Aboriginal and treaty rights pending a final determination of claims. Saskatchewan's duty to consult and accommodate the MNS existed irrespective of the 1994 Action's status, since the status of the 1994 Action has no bearing on the fact that Saskatchewan had proper notice of the MNS' asserted claim. Justice Rowe instead characterized the 1994 Action as "the legal vehicle which MNS selected in order to *vindicate* its claim."[3] [emphasis added] Therefore, there was no abuse of process with respect to the two claims being pursued concurrently through separate proceedings. The Court did not address whether Saskatchewan had breached its duty in issuing the permits.

Justice Rowe then turned to the question of whether the 2020 Action rendered the 2021 Application an abuse of process. Again, the Court found that there was no abuse of process in this case.

Justice Rowe reiterated that the mere overlap of an issue between two proceedings does not rise to an abuse of process, nor does a lack of a perfect overlap of issues mean there is no abuse of process. Thus, while there may have been overlap between the two proceedings (whether Saskatchewan has a duty to consult and accommodate the MNS with regards to their asserted Aboriginal Title and commercial harvesting rights), the Court concluded that the 2020 Action sought to delineate the scope of Saskatchewan's duty to consult and accommodate *in a general sense*, while the 2021 Application sought to judicially review *a discrete decision* by Saskatchewan. As such, the issues were not identical.

Further, the Court noted that if it found the 2021 Application was indeed an abuse of process, this finding may improperly immunize Saskatchewan's decisions to issue the permits from judicial review, thereby impacting the MNS' rights.

The Court did note that the 2021 Application and the 2020 Action had the "*potential* for inconsistent outcomes"[4] [emphasis in original], which is one of the bases on which a court can establish an abuse of process finding. That said, the Court found that the risk of inconsistency in these circumstances could be resolved through case management, especially since striking pleadings for abuse of process is a drastic remedy that "should be granted only in the 'clearest of cases', when the abuse falls at the high end of spectrum".[5] The Court concluded that the facts of this case did not rise to this level, which suggests that Courts should deal with risks of inconsistent outcomes as they arise, instead of striking pleadings in the anticipation of *potential* inconsistent outcomes.

Additional Court commentary on Indigenous rights claims and the doctrine of abuse of process

The Supreme Court concluded by providing some helpful commentary on the Aboriginal rights claims before the courts more generally. The Court stressed that the principles of the abuse of process doctrine apply equally to Indigenous groups asserting claims of Aboriginal title and rights as to any other matter; Indigenous claimants are not immune from abuses of process, but the context in which Aboriginal claims arise is an important consideration that may frame the analysis. Justice Rowe emphasized that "Court procedures should facilitate, not impede, the just resolution of Aboriginal claims."[6]

Key takeaways

- Abuse of process claims can arise in the context of Indigenous rights litigation, but the Indigenous rights claim **context must be taken into consideration** when applying the abuse of process doctrine to a specific case.
- The duty to consult and accommodate **exists independently** of an Indigenous group's litigation to establish an Aboriginal right; the litigation is the **legal vehicle to vindicate a claim**. It is not inherently an abuse of process to assert breaches of the Crown's duty to consult and accommodate while such litigation is unresolved.
- It is not inherently an abuse of process to challenge a general policy in one proceeding and the policy's application in a specific instance in another proceeding. The mere overlap of an issue is not enough to establish an abuse of process. Here, while the Supreme Court found there was "clearly" an overlap between the two proceedings, it concluded that the 2020 Action dealt *generally*

with the duty to consult while the 2021 Application dealt with a *specific* instance of the duty to consult.

- In all cases where an abuse of process is alleged because of **the risk of inconsistent outcomes** across different cases, courts should deal with that risk ***if and when*** **it actually arises**, instead of striking pleadings in the anticipation of *potential* inconsistent outcomes. Case management is an example of how to address this risk.

Footnotes

[1] *Métis Nation – Saskatchewan and Métis Nation – Saskatchewan Secretariat Inc. v Saskatchewan (Environment)*, 2022 SKQB 23.

[2] *Métis Nation – Saskatchewan v Saskatchewan (Environment)*, 2023 SKCA 35.

[3] Para 53.

[4] Para 60.

[5] Para 60.

[6] Para 62.

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