

Ensuring Justice Efficiently and Effectively: R v. Jordan
Written By: Abishanth Anantharajah

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‘Justice Delayed is Justice Denied.’ R v. Jordan is a landmark case that paved the way for future court cases ensuring the right to a trial within a reasonable amount of time. The Supreme Court of Canada dismissed the formerly existing framework behind s. 11(b) of the Canadian Charter of Rights and Freedoms (Gorman, 2017). Section 11(b) states “any person charged with an offense has the right: to be tried within a reasonable time” (Government of Canada, n.d.). Jordan's decision changed the procedures for determining whether the delay between the day an individual is charged with a criminal offense and the proposed date for their trial is reasonable while complying with s. 11(b) (Gorman, 2017). Barrett Richard Jordan and nine other co-accused were charged with numerous drug-related offenses (Canadian Legal Education Association, n.d.). Using a search warrant, law enforcement obtained opioids from Jordan's apartment. Jordan's case took nearly fifty months to make its way through the legal system. Jordan decided to use s. 11(b) for a stay of proceedings; however, this was dismissed (Paciocco, 2017). When a trial is temporarily paused by the crown's attorney or a judge, it is referred to as a stay of proceedings (Criminal Code Help, n.d.). With analysis under s. 11(b) rights, the trial judge determined that initially the case took 49.5 months to complete, which was permissible due to the intricacy of evidence found, and since it adheres with the former reasonability framework (Paciocco, 2017) (SCC, 2016). Jordan then went on to the British Columbia Court of Appeal where his appeal was dismissed (SCC, 2016). Jordan appealed his case to the Supreme Court of Canada. Jordan's main argument revolved around speaking against how the trial judges had put more weight on this being a valid institutional delay rather than seeing this as an infringement towards his liberty, and security. In a 5-4 majority, they have decided to drop all charges against Jordan because he was not sent to trial within a reasonable amount of time (Pilla, 2020) and (Sirota, 2017). This paved the way for the Supreme Court of Canada to establish new protocols under s. 11(b).

The defendant argues that legal systems failed in maintaining his s. 11(b) rights. The system did not recognize the problems with the current framework for reasonable wait times. This primary concern was addressed at the British Columbia Supreme Court using the former framework set forth by R v. Morin (SCC, 2016). This framework was developed to determine how much institutional delay was tolerable. The trial judge responded saying that Jordan's s. 11 (b) rights were

not infringed upon (Pilla, 2020) . The judge determined that the necessary time for a case of this nature is 10.5 months. (SCC, 2016). Within this time 4 months were divided into two periods. First, two months was the fault of the defense as Jordan wanted to change counsel. Secondly, the two month delay was due to the Crown's procedural needs (SCC, 2016). However, 32.5 months was on the account of institutional delay. In Jordan's case, the trial judge did note that this was well beyond the acceptable guidelines under Morin's framework. However, the trial judge indicated that institutional delays must be given less priority than a Crown's delay when determining overall wait time (Paciocco, 2017) and (SCC, 2016). Conducting trial within a reasonable amount of time is essential in protecting a presumptively innocent person's liberty, security and notions of a fair trial (Toth, nd). Liberty is accounted for because a prompt trial allows an accused person (s) to spend less time in pretrial custody. Security of the person is noted because a long trial worsens the accused stress, depression and any stigma they may encounter (Toth, n.d.). Regarding Jordan's case, the trial judge responded saying the delay was coinciding with his existing conditional sentence order; therefore, Jordan's liberty was not impacted solely by the delay (Paciocco, 2017) The security of the person was impacted; however, any major prejudice was diminished because there were many numerous charges. Finally, there was no prejudice in Jordan's ability to provide answers because the Crown's case did not require answers based on the memory of the accused (Toth, n.d.). The appeals court denied his appeal. Lastly, Jordan appealed the same arguments to the Supreme Court of Canada. The SCC sided with Jordan with a 5-4 majority (SCC, 2016) and (Sirota, 2017). Justice(s) Abella, Moldaver, Karakatsanis, Côté and Brown JJ responded stating that indeed the delay was unreasonable, and infringed upon his s. 11(b) right of the Charter (SCC, 2016). The Morin framework had both practical and doctrine issues which resulted in unwanted delays (Pila, 2020). They seek to use this opportunity to create a new framework to assess the reasonableness of delays. This is referred to as Jordan's decision.

The trial used the former Morin's framework as a key secondary source because it is an interpretation of findings derived from the former R v. Morin Court Case. The judges had to balance numerous conflicting interests from both parties when determining whether the delay was reasonable. The Crown believes that there are no errors within the Morin framework. However, the defendant believes that this framework deeply infringes on s.11 (b) rights causing deleterious consequences. The Crown argues that the trial judge failed to attribute key wait periods to the defense and this wait can equally be blamed on the defense (SCC, 2016). Crown notes a few

examples attributing this as a fault of the defense: defense approving many adjournments, defense council's failure to attend the primary inquiry, and more (SCC, 2016). The Crown believed that this was an exceptional circumstance due to the complexity of the case as well. However, the judges believe that despite this being a moderate complex case, due to the amount of evidence that was uncovered, it did not require a 44 month delay (SCC, 2016). The SCC's majority determined that the old frameworks were unnecessarily complex (Pilla, 2020). These judges used the new interest balancing test which considered three points: (1) the complications encountered by the accused during the prolonged delay; (2) potential negative impacts on society; (3) how severely the s. 11(b) rights are violated due to the delay (Pilla, 2020). The SCC balanced the delays using a series of definitive limits. This legal test was referred to as presumptive ceilings (Toth, n.d.). This test uses specific time limits to help determine tolerable and reasonable wait times (Lundrigan, 2018.). In Jordan's case new ceilings (limits) were developed. Acceptable periods of delay include 18 months at a trial court and 40 months at the superior or provincial court. In Jordan's situation, even though he was charged with drug-based offenses, the delay was very consequential and it would take nearly four years for the completion of his trial (Toth, n.d.). Delays that go past the acceptable ceilings fail to provide access to justice to the individual, family and the public. The integrity of a fair trial worsens as time progresses because the accused may be prejudiced in developing unlikely claims referring it back to faded memories and lost evidence. The SCC's ability to understand that the Morin's framework is incomplete, and determining a new presumptive ceilings legal test is critical in the decision made in R v. Jordan (Toth, n.d.).

This case is important because it touches upon the key pillars of the law. Firstly, this case demonstrates the need for access to justice. In this case, as Jordan's trial was prolonged, he was deprived of a charter right that requires him to have access to trial. Justice Canada needs to abide by a key Sustainable Development Goal which is to leave no one behind (Government of Canada, n.d.). Courts must work to ensure a peaceful and inclusive society that allows sustainable development, provides equitable justice for all citizens, develops inclusiveness, and is accountable throughout all levels of courts in Canada (Government of Canada, n.d.) R v. Jordan is both a landmark and revolutionary case because it put forth a new framework in which reasonable wait times are calculated within the Canadian judicial system. Justice must be accessible to the catered needs of an individual; this is where we strive for equity over equality. The new procedure protects individual liberty and security and promotes a trial free of prejudice. My understanding of prejudice in this

context is that when cases are properly executed in a timely manner, the integrity of the court case is preserved. The accused cannot develop untrue or inaccurate claims and attribute them to faded memories.

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