

## **R. v. Jordan [2016] 1 SCR 631**– Right to be tried within a reasonable time – s. 11(b) Charter of Rights and Freedoms

### **Facts:**

Barrett Jordan was involved in a dial-a-dope operation in Langley and Surrey B.C. On December 17, 2008, the police obtained a search warrant and seized heroin, cocaine and crack cocaine from Mr. Jordan's apartment. On December 18, 2008, the police arrested Mr. Jordan and charged him with possession for the purpose of trafficking. Mr. Jordan was in custody until February 16<sup>th</sup>, 2009, when he was released on strict conditions, including house arrest. It took a total of 49.5 months from when Mr. Jordan was charged until the end of his trial. He was convicted on five of the 14 counts he was charged with. Mr. Jordan argued that his s. 11(b) Charter rights had been violated. The trial judge decided the delay was not unreasonable. Mr. Jordan appealed to the B.C. Court of Appeal. His appeal was dismissed. Mr. Jordan appealed to the Supreme Court of Canada. The judges of the Supreme Court of Canada agreed that Mr. Jordan's s.11(b) Charter rights had been violated. However, they split 5 to 4 on the reasons for their decision. Because Mr. Jordan had not been brought to trial within a reasonable time, his conviction was set aside.

### **The Decision:**

The majority of the judges on the Supreme Court of Canada decided to overrule a previous Supreme Court of Canada decision (*R. v. Morin*). The majority felt that the Morin decision resulted in micro counting that allows tolerance of ever-increasing delays and was too unpredictable, too confusing and too complex. They decided there should be presumptive ceilings (a maximum amount of time for an accused to get to trial). If a case took longer than 18 months in provincial court or longer than 30 months in superior court (or for cases tried in provincial court after a preliminary inquiry), this was too long, and the accused was entitled to have charges stayed. Delay waived by the defence or caused by the defence does not count towards the presumptive ceiling. Generally, delay by the Crown or institutional delay does count towards the presumptive ceiling.

The majority decided that if a case takes longer than the presumptive ceilings, the onus is on the Crown to show that exceptional circumstances outside the Crown's control caused the delay. Exceptional circumstances are circumstances that could not reasonably be foreseen or circumstances that could not reasonably be avoided and the Crown could not reasonably remedy the delays resulting from those circumstances. Exceptional circumstances fall under two categories – discrete events (the trial goes longer than expected, even when the parties set realistic estimates of time) and particularly complex cases (cases with a lot of disclosure, many witnesses, a lot of expert evidence or charges covering a long period of time). Ultimately it would be up to the judge to decide if the circumstances were exceptional.

### **Discussion Questions:**

- 1) Do you agree with the majority or the minority? Why?
- 2) Both the majority and the minority argued that the approach of the other would be more complex. Which approach do you think is less complex?
- 3) Former Chief Justice McLachlin stated that swift predictable justice is, “the most powerful deterrent of crime.” Do you agree or disagree? Do research on what are the main deterrents of crime.
- 4) Why are speedier trials a benefit? (Think about the accused, victims and witnesses).

### **Relevant Law:**

#### **Charter of Rights and Freedoms:**

Section 11(b)

#### **Resources:**

**You can read the entire case at:**

<http://canlii.ca/t/gds3>

**You can read *R. v. Morin* at:**

<http://canlii.ca/t/1fsc6>

**You can find the Charter of Rights and Freedoms at:**

<http://laws-lois.justice.gc.ca/eng/Const/page-15.html>

**Take a look at Charterpedia** (which provides legal information about each section of the Charter of Rights & Freedoms):

<http://www.justice.gc.ca/eng/csj-sjc/charter-charte/check/index.html>

The majority decided that if a case takes less time than the presumptive ceiling, the defence has to show that the delay is unreasonable. The defence would have to show 1) that it took meaningful steps to have the case heard as quickly as possible, and 2) the case took markedly longer than it should have. The majority felt that the number of cases that would be stayed below the ceiling would be rare and clear-cut.

For cases currently in the system, the majority said the presumptive ceilings must be applied flexibly and contextually, taking into account that the parties were relying on the previous state of the law.

The minority felt that *R. v. Morin* should not be overruled. They felt that:

- reasonableness cannot be captured by a number,
- that creating presumptive fixed ceilings is up to Parliament, not the court,
- that potentially thousands of cases would be stayed, and
- that the presumptive ceilings don't really simplify matters, (for example determining if the Crown has shown "exceptional circumstances" to rebut the presumption, deciding whether the defence has shown "meaningful steps" to have the case heard quickly, deciding what "markedly longer" means and, what "reasonable reliance on the previous state of the law" means).

The minority felt that deciding whether delay is reasonable should be determined on a case by case basis. Once the accused establishes a basis for a s. 11(b) inquiry, the court must decide how long it would take to deal with a similar case and how long before the court hears the case once the parties are ready, minus state delays. Then the court would consider to what extent the delay exceeds the reasonable time requirements and whether the delay can be justified.

## **Relevant Law:**

### **Charter of Rights and Freedoms**

**11.** Any person charged with an offence has the right

- (b) to be tried within a reasonable time