



Case in Brief: ***R. v. Thanabalasingham***

Judgment of July 17, 2020 | On appeal from the Court of Appeal of Quebec
Neutral citation: 2020 SCC 18

A person’s right to trial within a reasonable time was breached because it took over four and a half years for his trial to begin, the Supreme Court has ruled.

The *Canadian Charter of Rights and Freedoms* is part of Canada’s Constitution. Under section 11(b), anyone charged with a crime has the right to be tried in a reasonable time. This right protects both people accused of crimes and society. Long criminal trials cause suffering and frustration for everyone involved. People accused of crimes often sit in jail while waiting for their trial. Victims and their families are left waiting for a final decision. The public waits longer to see justice done.

The right to be tried in a reasonable time is important. If an accused person’s trial takes too long, it can be stopped. This is called a “stay of proceedings.” It means there won’t be a verdict of guilty or not guilty.

In 2016, the Supreme Court of Canada decided an important appeal, *R. v. Jordan*. *Jordan* set out rules to decide how long is too long for a criminal trial. It said that most trials should finish either 18 or 30 months after a person is charged, depending on the type of trial. *Jordan* tells judges to “presume” (accept as true) that anything longer is “unreasonable,” unless there is something unusual to justify it. (In this context, “unreasonable” basically means “too long.”) If the time taken was unreasonable, the proceedings have to be “stayed.” *Jordan* also set out special rules for cases that had already started when the rules changed. These were called “transitional” cases.

Mr. Thanabalasingham was charged with second-degree murder of his spouse in 2012. Before the trial was scheduled, the Crown (the prosecution) wanted to change the charge to first-degree murder. The preliminary hearing (a hearing that sometimes happens before a trial for serious crimes) took over a year. There were also other delays. The trial was set for 2017, after *Jordan* was released. But just before it was going to start, Mr. Thanabalasingham said his right to be tried in a reasonable time had been breached. He asked for a stay of proceedings.

The trial judge agreed and ordered the stay. A majority at the Court of Appeal agreed.

The Supreme Court unanimously agreed that Mr. Thanabalasingham’s right to be tried in a reasonable time was breached. It said the proceedings should be stayed.

The delay in Mr. Thanabalasingham’s case was at least 45 months, and he spent it waiting in jail. This was much longer than the 30-month maximum set out in *Jordan*. The Court said it was open to the Crown to change the charge to first-degree murder. But the Crown should have been aware that this could cause delay, and the delay would affect Mr. Thanabalasingham’s right to be tried in a reasonable time.

Most of the delay in this case happened before *Jordan* was decided. This was a “transitional” case, but that didn’t matter because it also would have been stayed under the old rules.

The Court said that, because of *Jordan*, delays this bad probably wouldn’t happen again. Before *Jordan*, many people in the justice system just accepted long delays as normal. *Jordan* said it shouldn’t be this way. It sent the message that everyone in the justice system has a role to play in making sure people get tried in a reasonable time. The Crown has to be organized, share information with the defence without delay, and not waste court time. The defence has to be ready to go ahead with the trial if the court and the Crown are. Trial judges have to avoid delay where they can, even if it means denying a defence request to postpone. This is because the right to a trial in a reasonable time also benefits victims and society, too.

This case came to the Supreme Court as an appeal “as of right.” This means that the person doesn’t need the Court’s permission to appeal. There is an appeal as of right in criminal cases when a Court of Appeal judge dissents (disagrees) on a point of law, as happened here.

Breakdown of the decision: *Unanimous*: The Court dismissed the appeal (Chief Justice [Wagner](#) and Justices [Abella](#), [Moldaver](#), [Karakatsanis](#), [Côté](#), [Brown](#), [Rowe](#), [Martin](#), and [Kasirer](#))

More information (case # 37984): [Decision](#) | [Case information](#) | [Webcast of hearing](#)

Lower court rulings: [stay of proceedings](#) (Superior Court of Quebec) | [appeal](#) (Court of Appeal of Quebec, some parts only available in French)
