



The Supreme Court of Canada says delays caused by scheduling conflicts in a joint trial may justify them taking longer than the *Jordan* time limits.

This case was about the right of an accused person to be tried within a reasonable time, as protected under section 11(b) of the *Canadian Charter of Rights and Freedoms*. In [*R. v. Jordan*, 2016 SCC 27, \[2016\] 1 S.C.R. 631](#), the Supreme Court of Canada set limits on how long criminal cases should normally take. In provincial court, trials must be completed within 18 months of the charge being laid against the accused. This 18-month limit is known as a “ceiling”. Delays above this ceiling are presumed to be unreasonable unless the Crown shows exceptional circumstances. One such circumstance is an unexpected event that the Crown could not reasonably avoid, also known as a discrete exceptional circumstance.

The accused and co-accused were charged with drug and firearm offences following a traffic stop. They were tried together in provincial court.

In this case, the 18-month ceiling was May 2023. The earliest available trial dates were in August 2023. The accused’s lawyer was available then, but not the co-accused’s lawyer. The trial was eventually scheduled for October 2023.

The accused applied for a stay of proceedings, arguing that this delay violated his *Charter* right to be tried within a reasonable time. A stay of proceedings is a request to stop the trial. If accepted, it ends the case. The judge stayed the charges because he did not deduct the co-accused’s lawyer’s scheduling conflict from the calculation of the delay. The Court of Appeal dismissed the Crown’s appeal. The Crown appealed to the Supreme Court of Canada.

The Supreme Court allowed the appeal, set aside the stay of proceedings, and sent the case back to trial.

The unavailability of the co-accused’s lawyer was a discrete exceptional circumstance.

Writing for the majority of judges, Justice Côté said that all participants in the justice system must work together to help cases proceed efficiently and joint trials are a powerful tool to do so. They can reduce the number of proceedings, avoid inconsistent verdicts, and make better use of court resources.

Justice Côté noted that courts should adopt a broader interpretation of discrete exceptional circumstances because they happen regularly. She explained that when delay is the result of a joint trial, four criteria need to be satisfied for it to be considered as a discrete exceptional circumstance. First, the joint trial is in the interests of justice. Second, the delay needs to be a result of the joint trial. Third, the delay is unforeseen or reasonably unavoidable. And fourth, the Crown could not reasonably have reduced the delay.

In this case, Justice Côté concluded that the joint trial was appropriate and that the delay resulted from the co-accused’s lawyer being unavailable. This amounted to a discrete exceptional circumstance. Because the delay was therefore justified, the prosecution was within the *Jordan* ceiling.

Breakdown of the decision: *Majority:* Justice [Côté](#) allowed the appeal, set aside the stay of proceedings and remitted the matter back to trial (Chief Justice [Wagner](#) and Justices [Rowe](#), [Kasirer](#), [Jamal](#) and [O'Bonsawin](#) agreed) | *Dissenting:* Justices [Karakatsanis](#) would have dismissed the appeal ([Martin](#) and [Moreau](#) agreed)

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