

***R v. K.J.M.* – Examining the *Jordan* Framework in a Youth Setting**

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R v. K.J.M. is a Supreme Court of Canada decision, and is one of their most recent cases regarding delays under the *Jordan* approach. In 2015, a youth was charged with multiple offences that arose out of a fight. He stabbed another person with a box cutter, but maintained his innocence, citing self-defence. He was eventually found guilty of aggravated assault and possession of a weapon for a dangerous purpose; however, this verdict came approximately 19 months after the charges were originally brought against him.¹

It is important to note, *R v. Jordan*, the leading case on delays in the criminal justice system, came out almost 15 months after K.J.M. was charged with the aforementioned offences. *Jordan* introduced a new framework, seeking to address the issue of an overwhelming amount of delay within the criminal justice system.² The key points to take away from *Jordan* are that delay is unreasonable when it extends over 18 months for provincial court proceedings, or over 30 months for superior court proceedings.³

At trial, approximately 18 and a half months after charges had been laid, the accused brought forward a *Charter* violation argument under section 11(b). The trial judge confirmed that while the delay was longer than the 18 months given in *Jordan*, she refused to stay proceedings, and rejected the 11(b) claim on the grounds that it “is just not the clearest of cases where I should stay it.”⁴ On appeal to the Court of Appeal of Alberta, the justices provided more concrete reasoning on why a stay of proceedings was not allowed. While there was disagreement on

¹ *R v K.J.M.*, 2019 SCC 55 at para 1.

² *R v Jordan*, 2016 SCC 27 at para 40.

³ *Ibid* at para 49.

⁴ *Supra* note 1 at para 20.

whether the 18 month limit should be in place for youth proceedings, a majority found that a stay should not be granted in this situation, especially as it occurred during a transitional period.⁵

The release of the *Jordan* decision was understandably a confusing time for all parties who were currently in the midst of court proceedings within the criminal justice system. On appeal, it was the Supreme Court of Canada who would decide how and if *Jordan* would apply to youth criminal justice proceedings moving forward.

There are two main issues in the K.J.M. case; first, whether the two limits on delay apply to proceedings in youth justice court, and second, if the delay in this case was in fact unreasonable.

To start, it is important to note that the relevant portion of section 11 of the *Charter*, provides that a “person charged with an offence has the right to be informed without unreasonable delay of the specific offence, [and] to be tried within a reasonable time.”⁶ Most importantly, the latter, regarding trial within a reasonable time. The majority of the SCC confirms that the timeframes announced in *Jordan* do apply to youth proceedings, and they decline to lower the timeframe more, even though efficiency is of the utmost importance in youth cases.⁷ The reasoning given for this is that there was no evidence provided showing that delays are an issue in youth justice system, and it would need to be quite demonstrable to impose a new constitutional standard.⁸ The majority goes further to state that in the end, *Jordan* did more than simply set time limits for delays, it allows consideration of case-specific factors (such as youth) when determining whether a delay was unreasonable.⁹

⁵ *Ibid* at paras 25-27.

⁶ *Canadian Charter of Rights and Freedoms*, s 7, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11, ss 11(a), 11(b).

⁷ *Supra* note 1 at para 62.

⁸ *Ibid* at para 63.

⁹ *Ibid* at para 74.

In determining whether the delay in the case at hand was unreasonable, the majority applies the *Jordan* framework (as the framework extends to transitional cases), first calculating the total delay, and then subtracting any delay that was caused by the defence.¹⁰ Furthermore, any delay caused by “discrete exceptional events” which are unforeseeable or unavoidable to a reasonable standard, are also deducted.¹¹ Once the framework has been applied, the total delay falls below the ceiling provided for in *Jordan*. However, there can be a stay of proceedings even if the delay falls within the provided timeframe, if the defence can establish that they took meaningful steps showing an ongoing effort to accelerate proceedings, and the case “took markedly longer than it reasonably should have.”¹² In the end, the majority does not decide to issue a stay, citing that while the delay was excessive, the parties’ reliance on prior law leads one not to be persuaded that it took markedly longer than would be reasonably accepted.¹³

The dissent in this case would lower the delay timeframe for youth proceedings in provincial court from 18 to 15 months.¹⁴ While this is not accepted in Canada, it does leave an opportunity for it to be brought up and argued again.

The issue surrounding delay, and the controversy surrounding a system that normalized (and potentially still normalizes) extensive delays, was mended in part by the *Jordan* decision. However, as per Moldaver J., there cannot be contentment to wait until the 18 or 30 month limit is within sight before moving forward, as that is essentially the kind of “normalized indifference” that prompted *Jordan* in the first place.¹⁵ He then goes further to affirm that this is especially important in a youth context, and the tolerance for delay in such context has, and will continue to

¹⁰ *Ibid* at paras 91-93.

¹¹ *Ibid* at para 98.

¹² *Ibid* at para 104.

¹³ *Ibid* at para 119.

¹⁴ *Ibid* at para 173.

¹⁵ *Ibid* at para 81.

be, lower than the adult context.¹⁶ *Jordan* established the framework for a reformed criminal justice system with regard to delays, and *K.J.M.* confirms that the framework remains intact and valid, in the youth context as well.

¹⁶ *Ibid.*

Table of Authorities

Legislation:

Canadian Charter of Rights and Freedoms, s 7, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

Jurisprudence:

R v K.J.M., 2019 SCC 55.

R v Jordan, 2016 SCC 27.