

CANADA / JUDGMENT

R. v. Jacques-Taylor

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SUPREME COURT OF CANADA

Citation: R. v. Jacques-Taylor, 2026 SCC 20

Appeal Heard: November 7, 2025

Judgment Rendered: May 29, 2026

Docket: 41430

Between:

His Majesty The King

Appellant

and

Elijah Jacques-Taylor

Respondent

- and -

Director of Public Prosecutions,

Director of Criminal and Penal Prosecutions,

Attorney General of British Columbia,

Attorney General of Alberta,

Criminal Lawyers' Association (Ontario) and

Independent Criminal Defence Advocacy Society

Interveners

Coram: Wagner C.J. and Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal, O'Bonsawin and Moreau JJ.

Reasons for Judgment:

(paras. 1 to 98)

Côté J. (Wagner C.J. and Rowe, Kasirer, Jamal and O'Bonsawin JJ. concurring)

Dissenting Reasons:

(paras. 99 to 145)

Karakatsanis J. (Martin and Moreau JJ. concurring)

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His Majesty The King Appellant

v.

Elijah Jacques-Taylor Respondent

and

Director of Public Prosecutions,

Director of Criminal and Penal Prosecutions,

Attorney General of British Columbia,

Attorney General of Alberta,

Criminal Lawyers' Association (Ontario) and

Independent Criminal Defence Advocacy Society Interveners

Indexed as: R. v. Jacques-Taylor

2026 SCC 20

File No.: 41430.

2025: November 7; 2026: May 29.

Present: Wagner C.J. and Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal, O'Bonsawin and Moreau JJ.

on appeal from the court of appeal for ontario

Constitutional law — Charter of Rights — Right to be tried within reasonable time — Exceptional circumstances — Discrete exceptional circumstance — Joint trial — Delay in scheduling joint trial of accused and co-accused due in part to schedule of co-accused's counsel — Accused applying for stay of proceedings on basis that right to be tried within reasonable time violated — Case management judge granting stay — Whether delay occasioned by co-accused in joint trial can amount to discrete exceptional circumstance when assessing whether accused's right to be tried within reasonable time violated — Canadian Charter of Rights and Freedoms, s. 11(b).

In November 2021, the accused and co-accused were charged with indictable drug- and firearm-related offences following a traffic stop. Both elected to be tried by a provincial court judge and the Crown did not sever the indictment. Under Jordan's 18-month ceiling, the date at which the delay would become presumptively unreasonable was May 2023. The earliest available trial dates were in August 2023. Counsel for the accused was available in August but counsel for the co-accused was not, and counsel for the accused was unavailable in September 2023. Ultimately, the trial was scheduled for October 2023, placing the trial end date at 22 months and 2 weeks from the date on which charges were laid.

In July 2022, the case management judge directed that any s. 11(b) Charter applications should be filed within 120 days and counsel for the accused indicated that an application would be filed in September 2022; however, the notice of application was filed in January 2023 and the application itself in February 2023. In response to the application, the Crown sought earlier trial dates, but defence counsel were unavailable. The case management judge deducted one month of defence delay for the unavailability of the accused's counsel in September 2023 and three months for the delay caused by the COVID-19 pandemic, which was a discrete exceptional circumstance, but refused the Crown's request to attribute to the accused the delay in August 2023 caused by the unavailability of the co-accused's counsel. He held that the resulting net delay of 18 months and 2 weeks was presumptively unreasonable and the Crown had failed to rebut the presumption, and granted the stay of proceedings. The Court of Appeal found no reviewable error and affirmed the decision, holding that since the accused and his co-accused had not proceeded as a collective, the delay caused solely by the unavailability of the co-accused's counsel could not be attributed to the accused.

Held (Karakatsanis, Martin and Moreau JJ. dissenting): The appeal should be allowed, the stay of proceedings set aside and the matter remitted back for trial.

Per Wagner C.J. and Côté, Rowe, Kasirer, Jamal and O'Bonsawin JJ.: All actors in the criminal justice system have a duty to proactively collaborate and joint trials are a powerful tool for ensuring systemic efficiency. The Jordan ceilings beyond which delays are presumptively unreasonable can be rebutted and delay flowing from the Crown's decision to conduct a joint prosecution may, sometimes, amount to a discrete exceptional circumstance, transforming an otherwise unreasonable delay into a reasonable one. In the instant case, the delay caused by the unavailability of the co-accused's counsel amounts to a discrete exceptional circumstance that should be deducted from the net delay, bringing the total delay to under 18 months, rendering it presumptively reasonable. In the absence of argument as to why the presumptively reasonable delay would nonetheless be unreasonable, the delay is reasonable and the stay of proceedings must be set aside.

The duty to ensure that cases proceed to trial quickly outlined in Jordan applies to each and every actor in the criminal justice system. While the Crown has a unique role to play in bringing the accused to trial promptly, this duty cannot be borne by it alone, and judges must not fail to properly consider the duty of all parties. Courts must harness their broad case management powers so that the parties collaborate and conduct the case as efficiently as possible. The defence

and the Crown must cooperate in good faith at every stage of the proceedings to ensure: prompt disclosure; reasonable admissions on uncontested issues; streamlined evidence; the identification and anticipation of potential hurdles; the swift resolution of pre-trial motions; and the close circumscription of issues at trial. Where the accused cannot adequately explain inaction, tardiness or lack of cooperation, courts should make deductions for defence delay or, in certain cases, find that defence conduct amounts to a discrete exceptional circumstance. Discrete exceptional circumstances are specific periods of delay that lie outside the Crown's control: they are reasonably unforeseen or unavoidable, and cannot reasonably be remedied by the Crown. They can and do arise regularly: a particular event does not need to be rare to amount to a discrete exceptional circumstance.

Joint trials should be held wherever it is in the interests of justice to do so as the norm rather than the exception. They play a key role in guaranteeing the right of all accused persons to a trial within a reasonable time, as they reduce the overall number of trials, mitigate the risk of contradictory verdicts, obviate the need for witnesses to testify in multiple proceedings on the same set of facts, ensure that scarce judicial resources are used as efficiently as possible, better serve the court's truth-seeking function, and safeguard public confidence in the judicial process. Joint trials have their own set of unique challenges, such as coordinating schedules between the Crown and multiple defence counsel. But Crown and defence counsel alike cannot remain passive; they must proactively collaborate to find solutions. The Jordan framework must be able to account for the clear advantages that are conferred by joint trials and the need to balance the s. 11(b) right of multiple accused persons throughout the criminal justice system.

Delays caused by a co-accused in the context of a joint trial can amount to discrete exceptional circumstances. The four criteria outlined by the Court of Appeal for Ontario in *R. v. Tran*, 2023 ONCA 532, 429 C.C.C. (3d) 55, that the Crown must demonstrate should be adopted: (1) the joint trial is in the interests of justice; (2) the delay has arisen as a result of the joint trial; (3) the delay is unforeseen or reasonably unavoidable; and (4) the Crown could not reasonably have ameliorated that delay. Should the Crown satisfy these four criteria, the period of delay that results from proceeding jointly will be deducted as a discrete exceptional circumstance. Under the first criterion, judges should turn their minds to traditionally relevant criteria, such as: the general prejudice to the accused; the legal and factual nexus between the counts; the complexity of the evidence; whether the accused intends to testify on one count but not another; the possibility of inconsistent verdicts; the desire to avoid a multiplicity of proceedings; the use of similar fact evidence at trial; the length of the trial having regard to the evidence to be called; the potential prejudice to the accused with respect to the right to be tried within a reasonable time; and the existence of antagonistic defences as between co-accused. Judges should also give significant consideration to the gains in efficiency that will be generated throughout the system by proceeding jointly, as well as the likely negative knock-on effects that will occur if severance is ordered. Under the second criterion, even if the Crown fails to demonstrate that the delay flows directly from proceeding jointly against the co-accused, this does not foreclose the possibility of proving that the period of delay still amounts to a discrete exceptional circumstance, but the Crown will need to allege reasons other than proceeding jointly. Under the third criterion, judges

must keep in mind that delay may not be unforeseen, but sometimes it is unavoidable. And under the last criterion, the Crown will need to demonstrate that it took reasonable steps in light of the circumstances to minimize the delay that resulted from proceeding jointly.

In the instant case, the case management judge erred in law by failing to conclude that proceeding jointly was in the interests of justice and that the unavailability of the co-accused's counsel could amount to a discrete exceptional circumstance. The Crown has met the four criteria. First, a joint trial is in the interests of justice as the charges arose out of the same traffic stop that involved both of the co-accused and there was no potential risk of any injustice to the accused by trying him with his co-accused. Second, the delay arose as a direct result of the contemplated joint trial as counsel for the accused was available in August 2023, while counsel for the co-accused was not. Had counsel for the co-accused been available during the proposed trial dates, the delay would have fallen below the ceiling. Third, the delay was the unavoidable result of a scheduling conflict between defence counsel in a joint proceeding and the Crown had no control over their schedules. Fourth, the Crown could not have reasonably remedied the period of delay caused by the scheduling conflict. While the Crown is not entirely blameless in this matter, it is held to a standard of reasonableness, not perfection.

Additionally, the case management judge's conclusion that the issue of non-compliance with his 120-day case management deadline had no application to the case before him evinces legal error: defence inaction was highly relevant to the analysis of the reasonableness of the Crown's overall conduct. Notice of a forthcoming s. 11(b) application was given verbally in July 2022, but counsel for the accused waited until late January 2023 to file a notice of application and did not file the completed application until the end of February. This complete absence of communication, coupled with the failure to adhere to a clear case management deadline, was unjustified and unreasonable. The Crown cannot reasonably be expected to chase after defence counsel where they fail to meet deadlines. However, this period was not subtracted as defence delay in the instant case given that the Crown explicitly declined to ask that this period be deducted.

Per Karakatsanis , Martin and Moreau JJ. (dissenting): The appeal should be dismissed. There is agreement with the majority that delay caused by difficulties scheduling co-accused can be a discrete exceptional circumstance, because it is often reasonably unavoidable. But the accused's conduct cannot satisfy the Crown's obligation to take reasonable steps to attempt to avoid the delay in response to an exceptional circumstance. In this case, the accused's failure to promptly assert their s. 11(b) right did not prevent the Crown from taking steps to meet the presumptive ceiling, so the Crown must bear responsibility for the failure to try this case within Jordan's limits.

To show exceptional circumstances under Jordan , the Crown need only show (1) that the event was reasonably unforeseen or reasonably unavoidable, and (2) that the Crown could not reasonably remedy the resulting delay once it arose. The two preconditions to establish exceptional circumstances in joint trials set out in Tran — that the joint trial is in the interests of justice and that the delay arose because of the joint trial — are unnecessary. Joint trials are presumed to be in the interests of justice. It would serve no useful purpose to require the Crown

to routinely demonstrate as much on s. 11(b) applications. Nor is it necessary to engage in the additional inquiry of whether the delay was caused by the joint nature of the trial. There is no special rule for joint trials. The question is always whether the delay was reasonably unforeseen or reasonably unavoidable, and whether the Crown could reasonably have done anything about it. Any part of the delay that the Crown could reasonably have mitigated may not be subtracted from the total period of delay as an exceptional circumstance.

It is the Crown's obligation to take reasonable steps to respond to an exceptional circumstance. That does not mean defence conduct cannot inform what reasonable steps the Crown must take. For example, if the defence plans to abandon a scheduled pre-trial motion, but does not tell the Crown, the Crown cannot be faulted for failing to suggest trial dates before the motion. But that is not the same as a defence obligation to take proactive steps: it is the Crown who must do what it can to address an exceptional circumstance before the delay exceeds the ceiling. Jordan imposes obligations on all participants in the justice system to avoid delay, but that does not mean that the defence shares in every onus under every step of the different analyses. Once the ceiling elapses, the onus is on the Crown to justify the delay. That assignment of the burden is deliberate, and it would be defeated by requiring the defence to act.

In this case, the Crown has not carried its burden to take reasonable steps in response to the delay caused by the unavailability of the co-accused's counsel. When trial dates were set, this case was already more than four months over the Jordan ceiling. A few weeks later, the accused advised he would bring a s. 11(b) application, which he filed a few months after that. The Crown did nothing to respond to these events. Two weeks after the formal application was filed — close to eight months after it was alerted to s. 11(b) concerns — the Crown finally floated alternative trial dates. That was too late to show the proactive mitigation Jordan requires. Trial judges can and should set deadlines for s. 11(b) applications. But the accused's missed s. 11(b) filing deadline does not excuse the Crown's failure to act. If the missed deadline had been found to have caused delay, that time could have been deducted as defence delay, but the application judge concluded that it did not impact the total delay. Moreover, the accused did nothing to clearly and unequivocally signal that he accepted the pace of the proceedings so as to waive his s. 11(b) right. Missing a filing deadline is not, and never has been, clear and unequivocal waiver.

Cases Cited

By Côté J.

Applied: *R. v. Jordan*, 2016 SCC 27, [2016] 1 S.C.R. 631; *R. v. Tran*, 2023 ONCA 532, 429 C.C.C. (3d) 55; considered: *R. v. Vassell*, 2016 SCC 26, [2016] 1 S.C.R. 625; *R. v. Singh*, 2025 ONCA 843; *R. v. Singh*, 2016 BCCA 427, 344 C.C.C. (3d) 516; referred to: *R. v. Gopie*, 2017 ONCA 728, 140 O.R. (3d) 171; *R. v. Yusuf*, 2021 SCC 2, [2021] 1 S.C.R. 5; *R. v. Boulanger*, 2022 SCC 2, [2022] 1 S.C.R. 9; *R. v. Hanan*, 2023 SCC 12, [2023] 1 S.C.R. 467; *R. v. Pauls*, 2020 ONCA 220, 149 O.R. (3d) 609, aff'd 2021 SCC 2, [2021] 1 S.C.R. 5; *R. v. J.F.*, 2022 SCC 17, [2022] 1 S.C.R. 330; *R. v. MacDougall*, [1998] 3 S.C.R. 45; *R. v. Kalanj*, [1989] 1 S.C.R. 1594; *R. v. K.G.K.*, 2020 SCC 7, [2020] 1 S.C.R. 364; *R. v. Cody*, 2017 SCC 31, [2017] 1 S.C.R. 659; *R. v. Askov*, [1990] 2 S.C.R. 1199; *R. v. K.J.M.*, 2019 SCC 55,

[2019] 4 S.C.R. 39; R. v. Vrbancic , 2026 SCC 19; R. v. Klassen , 2018 ABCA 258, 72 Alta. L.R. (6th) 282; R. v. Morin , [1992] 1 S.C.R. 771; Boucher v. The Queen , [1955] S.C.R. 16; R. v. Anderson , 2014 SCC 41, [2014] 2 S.C.R. 167; R. v. Ste-Marie , 2022 SCC 3, [2022] 1 S.C.R. 14; Jean v. R. , 2020 QCCA 1455; R. v. Cochrane , 2018 ABCA 80, 359 C.C.C. (3d) 210; R. v. Furlong , 2012 NLCA 29, 323 Nfld. & P.E.I.R. 77; R. v. Felderhof (2003), 68 O.R. (3d) 481; R. v. Haevischer , 2023 SCC 11, [2023] 1 S.C.R. 416; R. v. Di Paola , 2025 SCC 31; R. v. R.V. , 2021 SCC 10, [2021] 1 S.C.R. 131; R. v. Sciascia , 2017 SCC 57, [2017] 2 S.C.R. 539; Phillips v. The Queen , [1983] 2 S.C.R. 161; R. v. Chow , 2005 SCC 24, [2005] 1 S.C.R. 384; R. v. S.J.L. , 2009 SCC 14, [2009] 1 S.C.R. 426; R. v. Crawford , [1995] 1 S.C.R. 858; R. v. Last , 2009 SCC 45, [2009] 3 S.C.R. 146; R. v. Cowan , 2021 SCC 45, [2021] 3 S.C.R. 323; R. v. Jaser , 2024 ONCA 448, 172 O.R. (3d) 1; Dagenais v. Canadian Broadcasting Corp. , [1994] 3 S.C.R. 835; R. v. Ny , 2016 ONSC 8031, 343 C.C.C. (3d) 512; R. v. Rai , 2019 BCCA 377, 381 C.C.C. (3d) 1; R. v. Eheler , 2021 BCCA 316, 74 C.R. (7th) 29; R. v. Shepherd , 2009 SCC 35, [2009] 2 S.C.R. 527; R. v. Beaver , 2022 SCC 54, [2022] 3 S.C.R. 718; Sinclair v. Venezia Turismo , 2025 SCC 27; R. v. Morton , 2020 ABCA 250, 391 C.C.C. (3d) 288; R. v. Kazman , 2020 ONCA 22, 452 C.R.R. (2d) 185; R. v. Anderson , 2025 ONCA 172, 446 C.C.C. (3d) 476; R. v. Oliver (2005), 194 O.A.C. 284; R. v. Allen (1996), 92 O.A.C. 345; R. v. Chung , 2021 ONCA 188, 402 C.C.C. (3d) 145; R. v. Potter, 2020 NSCA 9, 385 C.C.C. (3d) 1; R. v. Albinowski , 2018 ONCA 1084, 371 C.C.C. (3d) 190.

By Karakatsanis J. (dissenting)

R. v. Jordan , 2016 SCC 27, [2016] 1 S.C.R. 631; R. v. Askov , [1990] 2 S.C.R. 1199; R. v. Vassell , 2016 SCC 26, [2016] 1 S.C.R. 625; R. v. Tran , 2023 ONCA 532, 429 C.C.C. (3d) 55; R. v. Chow , 2005 SCC 24, [2005] 1 S.C.R. 384; R. v. Dos Santos , 2025 ONCA 598, 178 O.R. (3d) 481; R. v. J.F. , 2022 SCC 17, [2022] 1 S.C.R. 330; R. v. Loiacono , 2023 ABCA 157; R. v. Varennes , 2025 SCC 22; R. v. Bird , 2019 SCC 7, [2019] 1 S.C.R. 409.

Statutes and Regulations Cited

Canadian Charter of Rights and Freedoms , s. 11(b).

APPEAL from a judgment of the Ontario Court of Appeal (Benotto, Favreau and Madsen JJ.A.), 2024 ONCA 458 , 560 C.R.R. (2d) 126, [2024] O.J. No. 2635 (Lexis), 2024 CarswellOnt 8626 (WL), affirming the stay of proceedings entered by Prutschi J., 2023 ONCJ 243, [2023] O.J. No. 2617 (Lexis), 2023 CarswellOnt 8722 (WL). Appeal allowed, Karakatsanis, Martin and Moreau JJ. dissenting.

Philippe G. Cowle and Tracy Kozlowski , for the appellant.

Kayla Tink and Rachel Lichtman , for the respondent.

Jennifer Conroy and Ian Bell , for the intervener Director of Public Prosecutions.

Daphné Godin-Garito , for the intervener Director of Criminal and Penal Prosecutions.

Lesley Ruzicka , K.C. , and Mark Sheardown , for the intervener Attorney General of British Columbia.

Julie Morgan , for the intervener Attorney General of Alberta.

Boris Bytensky and Robert Nanni , for the intervener Criminal Lawyers' Association (Ontario).

Tony C. Paisana and Sarah Pringle , for the intervener Independent Criminal Defence Advocacy Society.

The judgment of Wagner C.J. and Côté, Rowe, Kasirer, Jamal and O'Bonsawin JJ. was delivered by Côté J. —

I. Overview

[1] In *R. v. Jordan* , 2016 SCC 27, [2016] 1 S.C.R. 631, the Court emphasized that all actors in the criminal justice system have a duty to participate in reforming the culture of complacency. While individual and systemic efforts have been laudable, considerable work yet remains. This case offers an opportunity for the Court to address three distinct, but intertwined, issues: (1) the duty of all actors in the criminal justice system to proactively collaborate; (2) the role of joint trials as a powerful tool for ensuring systemic efficiency; and (3) the discrete exceptional circumstances that may result from the Crown's decision to proceed jointly.

[2] In regard to the first issue, it must be repeated that the duty outlined in *Jordan* applies to each and every actor in the criminal justice system, be it the defence, the Crown, or the judge. While the Crown does have a unique role to play in bringing the accused to trial promptly, this duty cannot be borne by it alone. All must be proactive in ensuring that proceedings move forward efficiently and quickly. This is not lofty idealism; it is a constitutional imperative, for the accused, for the victims, and for society at large.

[3] The Court has reiterated, time and again, that the criminal justice system must employ all means at its disposal to bring accused persons to trial within a reasonable time. For the courts, this means harnessing their broad case management powers so that the parties collaborate and conduct the case as efficiently as possible. For the defence and the Crown, this means cooperating in good faith at every stage of the proceedings. Prompt disclosure must be made without hesitation. Reasonable admissions on uncontested or largely peripheral issues should be the norm. Evidence ought to be streamlined to the extent that is reasonable to do so. The parties should also identify and anticipate potential hurdles. Pre-trial motions should be resolved swiftly and the issues at trial closely circumscribed. In short, everyone has their part to play, and judges must not fail to properly consider the duty of all parties to ensure that the case proceeds quickly to trial.

[4] In regard to the second issue, joint trials should be held wherever it is in the interests of justice to do so. This will be the norm rather than the exception, as joint trials are an essential component of any well-oiled criminal justice system. Notably, they reduce the overall number of trials, mitigate the risk of contradictory verdicts, and obviate the need for witnesses to testify in multiple proceedings relating to the same set of facts. These advantages increase systemic efficiency, which, in turn, leads to shorter trial delays across the entire criminal justice system. In

short, joint trials are indispensable and play a key role in guaranteeing the right of all accused persons to a trial within a reasonable time.

[5] Of course, joint trials are not without their own set of unique challenges. In particular, coordinating schedules between the Crown and multiple defence counsel is, even at the best of times, easier said than done. Even so, faced with an overburdened criminal justice system, Crown and defence counsel alike cannot remain passive. Instead, they must proactively collaborate to find solutions that move the case through the system quickly and efficiently, thereby ensuring that the accused's right under s. 11(b) of the Canadian Charter of Rights and Freedoms is respected. This requires give and take from both sides in any criminal prosecution. However, proactive collaboration becomes particularly crucial in joint proceedings, where coordination is more difficult and scheduling conflicts are likely to abound. Everyone involved — be it the Crown, the defence, or the court — has an imperative duty to work together so that the accused's right to a trial within a reasonable time is respected.

[6] Finally, in regard to the third issue, the Court is being asked to decide whether a delay occasioned by proceeding jointly can amount to a discrete exceptional circumstance. More precisely, can a delay caused by a co-accused be considered a discrete exceptional circumstance in relation to an accused, irrespective of whether the accused is in any way responsible for that delay? In the case at bar, scheduling conflicts led to a delay that exceeded the presumptive 18-month Jordan ceiling by just two weeks. The Crown chose not to sever the indictment.

[7] I am of the view that delays flowing from the Crown's decision to conduct a joint prosecution may, sometimes, amount to discrete exceptional circumstances. In the instant case, I am of the view that the delay caused by the unavailability of the co-accused's counsel amounts to a discrete exceptional circumstance. It should therefore be deducted from the net delay. This brings the total delay to under 18 months, rendering it presumptively reasonable.

[8] Accordingly, I would allow the Crown's appeal, set aside the stay of proceedings, and order that the matter be remitted back for trial.

II. Facts and Procedural History

A. Facts

[9] On November 18, 2021, the police intercepted Elijah Jacques-Taylor, the respondent, and his three co-accused in the course of a routine R.I.D.E. program stop. Upon approaching the vehicle, the police spotted cannabis in plain view and within reach of the driver. This led to a search of the vehicle. The police discovered two loaded firearms, including one on the respondent's person. The firearm that is alleged to have been in the possession of the respondent is described as an illegally modified automatic handgun equipped with a prohibited high-capacity 30-round magazine. In an information sworn the same day, the police charged the four co-accused with indictable drug- and firearm-related offences. Under Jordan's 18-month ceiling, the date at which the delay would become presumptively unreasonable was May 18, 2023. A table of the dates relevant to this appeal are reproduced in the appendix below.

[10] The Crown completed substantial disclosure by mid-February 2022, and a Crown attorney took carriage of the file at the end of March. The first pre-trial conference was scheduled for June 15, 2022, but was pushed back to July 6, 2022, because of a clerical error. At the pre-trial conference, it became clear that only the respondent and one of his co-accused would actually proceed to trial. By all accounts, the trial was to be straightforward, and it was projected to last only three days.

[11] The earliest available trial dates were August 8 to 10, 2023. The respondent's counsel was available for the month of August. However, counsel for the co-accused was unavailable from August 8 to 31, 2023. Trial dates in September 2023 were contemplated, but this time counsel for the respondent was unavailable. [1] Hence, the date was pushed back further still to October 2 to 4, 2023. This placed the anticipated trial end date at 22 months and 2 weeks from the date on which charges were laid — November 18, 2021.

[12] During the hearing on July 6, 2022, the case management judge directed all parties to file any s. 11(b) applications within 120 days (i.e., by November 3, 2022). On July 25, 2022, at a subsequent case management hearing, the respondent and his co-accused elected to be tried by a provincial court judge, setting the ceiling at 18 months. Counsel acting on behalf of the respondent indicated that a s. 11(b) Charter application would be forthcoming, specifying only that it would be filed at the hearing scheduled for September 26, 2022. However, it was neither filed nor raised by the defence at the September 26 hearing.

[13] Despite the clear four-month deadline set by the case management judge, counsel for the respondent failed to submit the s. 11(b) application to the court on or before November 3, 2022. The notice of application was not filed until January 24, 2023. In response, the Crown sought dates in February 2023 for the s. 11(b) application hearing. This was too early for the respondent's counsel, who still needed to "order and receive the transcripts and also actually put together the application" (A.R., at p. 193). The application itself was not filed until February 27, 2023. This placed the filing of the application at roughly eight months after the July 2022 pre-trial conference (when the trial dates were initially set) and almost four months beyond the deadline that the case management judge had set for filing the application.

[14] In response to the application, the Crown sought earlier trial dates, in April/May or July of 2023. Counsel for the respondent was unavailable for the July dates, though she may have been available for the dates in April/May. Counsel for the co-accused was unavailable in April/May, but available in July.

[15] The s. 11(b) stay application was heard on March 27, 2023, and the judgment granting the application was rendered on June 8, 2023.

B. Ontario Court of Justice, 2023 ONCJ 243 (Prutschi J.)

[16] In his judgment, the case management judge deducted a total of four months from the delay: one month of defence delay for the unavailability of the respondent's counsel in September 2023 and a further three months for the delay caused by the COVID-19 pandemic,

which was a discrete exceptional circumstance. However, he refused to attribute the delay in August (i.e., August 8 to 31, 2023) caused by the unavailability of the co-accused's counsel to the respondent. After applying the deductions, the case management judge was left with a total of 18 months and 2 weeks. As the delay was presumptively unreasonable and the Crown had failed to rebut the presumption, the case management judge granted the application and entered a stay of proceedings.

C. Court of Appeal for Ontario, 2024 ONCA 458, 560 C.R.R. (2d) 126 (Benotto, Favreau and Madsen JJ.A.)

[17] In a succinct judgment, the Court of Appeal for Ontario found no reviewable error and affirmed the case management judge's decision. It reaffirmed its holdings from *R. v. Gopie*, 2017 ONCA 728, 140 O.R. (3d) 171, at para. 128, noting that "an individualized approach must be taken to the attribution of defence-caused delay in cases of jointly-charged accused" (para. 8). Given that the respondent and his co-accused had not proceeded as a collective, the delay caused solely by the unavailability of the co-accused's counsel could not be attributed to the respondent. The appeal was therefore dismissed and the stay affirmed.

III. Issues

[18] On appeal before the Court, the Crown asks us to resolve two issues.

[19] Firstly, it asks how the Jordan framework is to be applied to cases involving co-accused in a joint prosecution. More precisely, it asks that we resolve a question that the Court intentionally left unanswered in *R. v. Yusuf*, 2021 SCC 2, [2021] 1 S.C.R. 5: whether delays caused by one accused can be deducted from the net delay of his or her co-accused as a discrete exceptional circumstance. The Crown contends that they can be. By contrast, the respondent argues that an individualized approach must be favoured and that the defence is not an amorphous, singular entity. Consequently, where an accused is not directly or indirectly responsible for the delay, it should not be deducted.

[20] Secondly, the Crown asks the Court to define the precise scope of what it terms the "Boulanger/Hanan contextual approach" to apportioning delays among the defence and the Crown. In *R. v. Boulanger*, 2022 SCC 2, [2022] 1 S.C.R. 9, and later in *R. v. Hanan*, 2023 SCC 12, [2023] 1 S.C.R. 467, the Court held that defence delay could be apportioned between the Crown and the defence in cases where the delay is not entirely attributable to the defence and where it is fair and reasonable to do so. In the case at bar, the Crown argues that this "approach" does not apply where Charter-compliant trial dates are initially offered but are declined by the defence for want of availability. Under such circumstances, it argues, no portion of the delay should be attributed to the Crown. The respondent argues that whether the defence declines Charter-compliant dates is simply one of the many elements that must be factored into the contextual analysis and that it is not, in and of itself, determinative of the issue.

[21] In the instant case, the Court need only answer the first question: Can a delay caused by a co-accused be considered a discrete exceptional circumstance in relation to the accused?

[22] However, before turning directly to this question, I am of the view that it is necessary to review and discuss the Jordan framework. In particular, two aspects of the framework must be canvassed: first, the duty of all involved in the criminal justice system to proactively collaborate; and second, the role that joint prosecutions play in promoting systemic efficiency.

IV. Standard of Review

[23] The characterization of delay and the ultimate decision concerning the unreasonableness of delay are questions of law. Therefore, they are reviewed according to the correctness standard. However, underlying findings of fact invite deference, absent palpable and overriding error (Boulanger , at para. 4; R. v. Pauls , 2020 ONCA 220, 149 O.R. (3d) 609, at para. 40, aff'd 2021 SCC 2, [2021] 1 S.C.R. 5, at paras. 2-3).

V. Analysis

A. The Jordan Framework

[24] Section 11(b) of the Charter guarantees the right of all persons who are “charged with an offence” to be tried “within a reasonable time”. As the Court noted in Jordan , the primary purpose of s. 11(b) is to ensure that presumptively innocent accused persons’ rights to liberty, security of the person, and a fair trial are respected (para. 20). However, that is not all. Section 11(b) also serves a broader collective purpose: to advance both victims’ and society’s collective interests in speedy trials, thereby ensuring that public confidence in the administration of justice is maintained (paras. 22-28).

[25] The right guaranteed by s. 11(b) is engaged from the moment a person is charged with an offence and is thereby subject to criminal proceedings (R. v. J.F. , 2022 SCC 17, [2022] 1 S.C.R. 330, at para. 23; R. v. MacDougall , [1998] 3 S.C.R. 45, at paras. 11-13; R. v. Kalanj , [1989] 1 S.C.R. 1594, at p. 1602). The counter begins running from the moment that charges are laid and stops at the actual or anticipated conclusion of the trial, i.e., the moment that the case is turned over to the trier of fact (J.F. , at para. 27; R. v. K.G.K. , 2020 SCC 7, [2020] 1 S.C.R. 364, at para. 31).

[26] In Jordan , the Court identified two distinct ceilings beyond which delays are presumptively unreasonable: (1) a ceiling of 18 months for trials that take place before a provincial court; and (2) a ceiling of 30 months for trials that take place before a superior court or, alternatively, before a provincial court following a preliminary inquiry (J.F. , at para. 26; Jordan , at para. 46).

[27] The application of the framework is straightforward.

[28] At the first step of the Jordan framework, the court must calculate the delay from the moment the accused is charged with an offence to the actual or anticipated end of trial (para. 60; R. v. Cody , 2017 SCC 31, [2017] 1 S.C.R. 659, at para. 21). This is the “gross delay”. The court must then subtract from the gross delay any delay that is attributable to the defence. This leaves the “net delay”. Delay will be attributable to the defence where (1) a specific period of time has been waived by the defence or (2) the defence has caused the delay.

[29] A period of delay will be attributable to the defence where the accused has waived it. Waiver may be made expressly or implicitly, though it is essential that it always be clear and unequivocal (Jordan , at para. 61; J.F. , at para. 47). Importantly, waiver applies only to the specific circumscribed period that is waived, and not to the accused's right under s. 11(b) of the Charter in general (Jordan , at para. 61; J.F. , at para. 46).

[30] A period of delay will also be attributable to the defence where the defence is the sole or direct cause of that delay (Jordan , at para. 66). This is often referred to as "defence delay". Defence delay includes any period of delay that results from conduct that is undertaken for an illegitimate or unjustifiable purpose, such as dilatory tactics and frivolous applications (Jordan , at para. 63; R. v. Askov , [1990] 2 S.C.R. 1199, at pp. 1227-28). It also includes delays that are occasioned by the defence's unavailability where both the Crown and the court were ready to proceed (Jordan , at para. 64).

[31] However, defence delay does not include delays that result from conduct that is both legitimate and reasonable under the circumstances (Jordan , at para. 65; Boulanger , at paras. 5-6). Furthermore, delays for which the defence is not solely responsible but to which it has contributed may be apportioned between the Crown and the defence. This may be done where it is fair and reasonable to do so under the circumstances (Boulanger , at paras. 8-10; Hanan , at para. 9).

[32] I pause here to note that the circumstances encompassed in defence delay are neither predefined nor limited. Determining whether the defence has caused a given period of delay — be it in whole or in part — requires a contextual and fact-driven analysis (Jordan , at paras. 64-65). Equally, whether the conduct is illegitimate or not will often depend on the circumstances. Conduct may be legitimate under certain circumstances, but not under others. It is therefore impossible, and in fact undesirable, to attempt to enumerate the circumstances under which a delay may be considered defence delay. Trial judges should rely upon their common sense, experience, and knowledge of their own jurisdiction in making these determinations.

[33] Once any period of delay waived by the defence and defence delay are subtracted from the gross delay, if the net delay exceeds the presumptive ceiling of 18 or 30 months, then it is presumed to be unreasonable. If, to the contrary, the net delay falls below the ceiling, then it is presumed to be reasonable.

[34] Because the ceilings are presumptive, either party can argue that the delay is reasonable or unreasonable at the second step of the Jordan framework (J.F. , at para. 68; Cody , at paras. 22-25; Jordan , at paras. 47, 67-68 and 82-83). The onus falls on the party against whom the presumption applies (Jordan , at paras. 46-48 and 105; Cody , at paras. 23-25). Notwithstanding, in both cases, the presumption is not easily rebutted (Jordan , at paras. 56 and 83).

[35] In the case of a presumptively unreasonable delay, the onus lies with the Crown to rebut the presumption in one of two ways (Jordan , at para. 56; R. v. K.J.M. , 2019 SCC 55, [2019] 4 S.C.R. 39, at para. 82). First, it may demonstrate that certain periods of delay constitute "discrete

exceptional circumstances” and must be deducted from the net delay. Should these deductions lower the net delay below the ceiling, the delay will become presumptively reasonable once again. In the alternative, the Crown may argue that the case can be characterized as “particularly complex”, such that a delay greater than 18 or 30 months is reasonable (Jordan , at para. 80).

[36] The apparent simplicity of these two exceptions belies some of the real difficulties that their application has posed for courts in the decade since the release of Jordan . Some courts have struggled to properly construe the notions of “exceptionality” and “complexity”, often favouring an overly narrow interpretation of the exceptions under Jordan . The case complexity exception is fully canvassed in the Court’s decision in R. v. Vrbanic , 2026 SCC 19. Given that this appeal raises only the issue of discrete exceptional circumstances, I will limit my comments to how the notion of “exceptionality” ought to be construed.

[37] The Court held in Jordan that discrete exceptional circumstances are specific periods of delay that lie outside the Crown’s control (para. 69). It follows that (1) they are either reasonably unforeseen or reasonably unavoidable, and (2) the Crown cannot reasonably remedy the delays emanating from those circumstances once they arise. At its heart, the inquiry is focused on the reasonableness of the measures taken by the Crown to both obviate and promptly deal with the various difficulties that can arise in the course of any criminal proceeding. It appears, however, that courts have on occasion been reluctant to conclude that a particular event amounts to a discrete exceptional circumstance on the basis that it is not sufficiently rare. This is not the proper approach.

[38] At first blush, the notion of “exceptionality” may call to mind the idea of “rarity”. However, exceptionality should not be interpreted in this manner. Exceptional circumstances can and do arise frequently. While rare events can amount to discrete exceptional circumstances, rarity is not a sine qua non of exceptionality. As Jordan states clearly, events fall into the category of “exceptional circumstances” where they are (a) reasonably unforeseen or (b) reasonably unavoidable. Nowhere is it mentioned that they must occur only rarely or infrequently. In truth, what makes these events “exceptional” is that they “lie outside the Crown’s control” (Jordan , at para. 69 (emphasis deleted)). As the Alberta Court of Appeal put it, “[d]iscrete events are those that disturb the normal course of the matter and which no one . . . could reasonably mitigate” (R. v. Klassen , 2018 ABCA 258, 72 Alta. L.R. (6th) 282, at para. 89). Our Court did not intend for this understanding of “exceptionality” to be equated with “rarity”. This was made abundantly clear when our Court noted that exceptional circumstances “need not meet a further hurdle of being rare or entirely uncommon” (Jordan , at para. 69). Moreover, that rarity was not intended to be equated with exceptionality is readily apparent from our Court’s reliance on relatively mundane examples to illustrate what may amount to discrete exceptional circumstances. For instance, the Court cited medical or family emergencies and trials that go longer than the parties reasonably could have predicted as discrete exceptional circumstances (paras. 72-73). Such difficulties, while they do not occur in every prosecution, are far from rare. Courts should adopt a broader interpretation of what constitutes discrete exceptional circumstances because they can and do arise regularly.

[39] With these clarifications in mind, I now turn to another aspect of Jordan that warrants discussion: the duty of all participants in the criminal justice system to diligently and proactively work in concert to achieve speedier trials (paras. 116 and 137; Cody , at para. 36).

B. The Duty to Ensure That Cases Proceed to Trial Quickly

[40] As I noted at the outset of these reasons, in Jordan the Court took aim at the culture of complacency that had become deeply engrained in our criminal justice system. Faced with this dire problem, and recognizing the unworkability of the Morin framework, the Court devised a new s. 11(b) framework characterized by two presumptive ceilings (Jordan , at paras. 37-38 and 46; R. v. Morin , [1992] 1 S.C.R. 771). These ceilings were not merely intended to be aspirational targets, but rather were the points at which delays become presumptively unreasonable (para. 56). Indeed, the Court noted, Canadians rightly expect the criminal justice system to bring accused persons to trial expeditiously (para. 27). Justice delayed is justice denied. This is true not only for the presumptively innocent accused — who is forced to live with the sword of Damocles hanging precariously over his or her head — but also for victims and society as a whole, who are denied the certainty of closure that a judgment on the merits brings (paras. 2 and 19).

[41] In order to tackle this rampant culture of complacency, the Court charted a new course: Jordan . Under the new framework, the Court emphasized the duty of every actor in the criminal justice system to take personal responsibility for expediting criminal proceedings and complying with the new ceilings. This was not merely an invitation. Rather, it is a duty that is incumbent upon all: Crown counsel, defence counsel, and courts.

[42] Of course, given the unique quasi-judicial status of Crown counsel as “ministers of justice”, they play a central role in bringing the accused to trial within a reasonable time and, in doing so, seeing that justice is done (Boucher v. The Queen , [1955] S.C.R. 16, at pp. 23-24; R. v. Anderson , 2014 SCC 41, [2014] 2 S.C.R. 167, at para. 37). However, Crown counsel’s unique position in the criminal justice system should not be misunderstood as somehow requiring them to shoulder this burden alone.

[43] The defence, too, must ensure that proceedings move forward quickly and efficiently. The Court’s holdings in Jordan could not have made this any clearer: “This framework is intended to focus the s. 11(b) analysis on the issues that matter and encourage all participants in the criminal justice system to cooperate in achieving reasonably prompt justice , with a view to fulfilling s. 11(b)’s important objectives” (para. 5 (emphasis added); see also paras. 45 and 116-17).

[44] In practice, this requires proactive good faith cooperation on the part of the defence when dealing with the Crown and the court. In order to ensure compliance with this duty, illegitimate or unjustifiable defence conduct that results in delays must give rise to deductions for those delays (J.F. , at para. 32; R. v. Ste-Marie , 2022 SCC 3, [2022] 1 S.C.R. 14, at para. 11; Cody , at para. 28). It cannot be stressed enough that the accused must be proactive in resolving issues promptly when they arise. Where the accused cannot adequately explain inaction, tardiness, or a lack of

cooperation, courts should not hesitate to make deductions for defence delay or, in certain cases, find that defence conduct amounts to a discrete exceptional circumstance (J.F. , at para. 33; Cody , at para. 33). Lest it be forgotten, s. 11(b) was always intended to be a shield, and not a sword with which to frustrate the ends of justice (Jordan , at para. 21; Morin , at pp. 801-2; Askov , at p. 1222).

[45] The duty to proactively collaborate becomes particularly heightened where the procedural or legal complexities of the prosecution require increased coordination to avoid needlessly delaying proceedings. For instance, in cases where many pre-trial motions are envisaged, the parties must — together and with the help of the case management judge — build a concrete plan that will allow them to expedite the proceedings. The parties should not hesitate to make admissions and resolve issues before they arise wherever this is reasonably possible. Moreover, procedural mechanisms that enhance trial efficiency should also be favoured. For example, the use of a blended voir dire may, depending on the particularities of the case, be a powerful mechanism for reducing the amount of time needed at trial (Jean v. R. , 2020 QCCA 1455, at paras. 30 and 35; R. v. Cochrane , 2018 ABCA 80, 359 C.C.C. (3d) 210, at para. 5; R. v. Furlong , 2012 NLCA 29, 323 Nfld. & P.E.I.R. 77, at para. 28). The parties and the court should ask themselves whether issues can be decided in advance, or the proceedings shortened, by reliance on written rather than oral submissions (R. v. Felderhof (2003), 68 O.R. (3d) 481 (C.A.), at para. 57; R. v. Haevischer , 2023 SCC 11, [2023] 1 S.C.R. 416, at para. 102). Crown counsel should also consider whether the indictment contains essentially duplicative or superfluous counts that will serve only to complicate and prolong the proceedings (R. v. Di Paola , 2025 SCC 31, at para. 52; R. v. R.V. , 2021 SCC 10, [2021] 1 S.C.R. 131, at para. 78; R. v. Sciascia , 2017 SCC 57, [2017] 2 S.C.R. 539, at para. 32).

[46] The need to favour procedures that enhance trial efficiency brings me to my next point: the importance of joint trials to enable the justice system to bring accused persons to trial more swiftly.

C. The Role of Joint Trials in Ensuring an Efficient Criminal Justice System

[47] Joint trials, it cannot be overstated, play a crucial role in attaining the objective of efficient criminal justice. The strong preference for joint trials in our criminal justice system therefore closely aligns with Jordan ’s purpose.

[48] It has long been recognized that where two or more accused are alleged to have committed a crime together, they should be jointly charged and jointly tried (Phillips v. The Queen , [1983] 2 S.C.R. 161, at p. 169; R. v. Chow , 2005 SCC 24, [2005] 1 S.C.R. 384, at para. 10; R. v. S.J.L. , 2009 SCC 14, [2009] 1 S.C.R. 426, at para. 50). The presumption in favour of joint trials is strong. So strong, in fact, that severance will not be ordered unless proceeding jointly will work an injustice to one of the accused (R. v. Crawford , [1995] 1 S.C.R. 858, at para. 31; Chow , at para. 47). Accordingly, joint trials are the rule, while severance is the exception (Sciascia , at para. 33; Chow , at paras. 10 and 47).

[49] This preference for joint trials is entirely unsurprising. Proceeding jointly promotes the proper and efficient administration of justice, which is a compelling policy consideration (Sciascia , at para. 33). Joint trials promote the proper and efficient administration of justice in several ways.

[50] Firstly, joint trials ensure that already scarce judicial resources are used as efficiently as possible. Proceeding jointly means that fewer judges and fewer Crown prosecutors are needed to try the charges. Likewise, fewer juries need be empanelled, and the disruption occasioned to witnesses is lessened. Hence, proceeding jointly limits costs not only to the criminal justice system, but also to society more broadly. That is not all, however. In addition, procedural matters and similar or identical evidentiary issues can be streamlined and dealt with conclusively in a single trial, rather than repeatedly and inefficiently across multiple trials. This has the added advantage of diminishing the possibility of contradictory verdicts. Moreover, the more efficient distribution of resources throughout the system in turn enables the judiciary to serve a greater number of worthy litigants and to do so more quickly. In this respect, one must not lose sight of the fact that the interests of justice encompass not only the rights of the accused to a fair trial, but also “society’s interest in seeing that justice is done in a reasonably efficient and cost-effective manner” (R. v. Last , 2009 SCC 45, [2009] 3 S.C.R. 146, at para. 16; see also R. v. Cowan , 2021 SCC 45, [2021] 3 S.C.R. 323, at para. 63).

[51] Secondly, joint trials better serve the court’s truth - seeking function. When several persons are accused of an offence, particularly where it is alleged that they conspired or engaged in a joint criminal enterprise, “it is undeniable that the full truth about an incident is much more likely to emerge if every alleged participant gives his account on one occasion” (Crawford , at para. 30, citing D. W. Elliott, “Cut Throat Tactics: the freedom of an accused to prejudice a co-accused”, [1991] Crim. L. Rev. 5, at p. 17; see also R. v. Jaser , 2024 ONCA 448, 172 O.R. (3d) 1, at paras. 155-56). The same can be said in respect of witness and complainant testimony. Memories are fallible. Over time, details become blurry, are forgotten, or are even misremembered. Requiring witnesses to testify repeatedly increases the risk that testimony will be less consistent with the truth, even in the case of a witness who endeavours to testify as truthfully as possible.

[52] Thirdly, joint trials safeguard public confidence in the judicial process. Joint trials reduce delays, which makes a stay of proceedings less likely. Ensuring that justice is done quickly and in accordance with the Charter can only increase confidence in the justice system. Furthermore, by reducing the number of proceedings, joint trials help to alleviate the various burdens that are placed on all of the actors involved in prosecutions, thereby bolstering public confidence in the criminal justice system. The legal costs associated with being forced to participate in multiple criminal proceedings are often ruinous for the ordinary person. For witnesses and complainants, being continually forced to relive highly traumatic events, while also being subjected to the rigours of cross-examination, can be a shattering experience. Trying multiple accused jointly limits these side effects.

[53] To summarize, joint trials ensure systemic efficiency. They reduce trial delays across the board, reduce costs, enhance the truth-seeking function of criminal trials, and limit the burdens that are borne by complainants, witnesses, and, importantly, accused persons. Therefore, joint trials play an important role in safeguarding public confidence in the administration of justice. Of course, I hasten to note that proceeding jointly is not always appropriate (R. v. Vassell , 2016 SCC 26, [2016] 1 S.C.R. 625, at para. 10). This was noted by the Court in Jordan , where it highlighted that severance may be desirable under limited circumstances (para. 129). Notwithstanding, in the vast majority of cases, proceeding jointly will be in the interests of justice and, accordingly, severance will not be appropriate.

[54] It is an unfortunate but unavoidable fact of the trial process that jointly prosecuting multiple co-accused may lead to proceedings that are lengthier than would normally be the case for a person who is tried individually. However, perfect solutions do not exist and, as with anything, there are necessary trade-offs. Even though a given prosecution may be prolonged as a result of the joint trial, major systemic efficiencies are nonetheless created elsewhere. These gains in efficiency ensure better protection of the s. 11(b) right throughout the criminal justice system.

[55] Section 11(b) also encompasses a broader societal interest in speedy trials. An individual's trial does not take place in a vacuum. In some jurisdictions, hundreds of people may be tried weekly. Severance cannot be ordered simply to gain a few days or weeks here or there, all the while creating a series of knock-on effects that cause worse delays elsewhere. Courts cannot simply order severance in the name of protecting one accused's s. 11(b) right without accounting for the delays that such an order would occasion elsewhere. At the very least, severance entails assigning a new judge and new Crown counsel, and attempting to allocate a new set of trial dates that, evidently, cannot be used for other trials. Someone else will have to bear these delays: other accused persons. But they, too , have the right to be tried within a reasonable time.

[56] Endorsing an approach that, in effect, raises the bar for joint trials would run counter to Jordan 's spirit and fail to strike the appropriate balance between the competing rights of accused persons across the criminal justice system. Building a more efficient criminal justice system ensures better outcomes for everyone. We must therefore avoid solutions that merely contribute to systemic delays. Requiring the Crown to consider severance as a routine (or even occasional) means of protecting an accused's right to a trial within a reasonable time would put undue strain on the system by simply creating delays elsewhere. This cannot be the solution. Rather, the Jordan framework must be able to account for the clear advantages that are conferred by joint trials and the need to balance the s. 11(b) right of multiple accused persons throughout the criminal justice system (Crawford , at paras. 33-34; Dagenais v. Canadian Broadcasting Corp. , [1994] 3 S.C.R. 835, at p. 877).

D. Delays Caused by a Co-Accused Can Amount to Discrete Exceptional Circumstances

[57] On the other hand, of course, it must not be forgotten that an accused's s. 11(b) right cannot simply be sacrificed on the altar of efficiency (Jordan , at para. 79; Vassell , at paras. 4-5). At its core, the right enshrined in s. 11(b) is one that is reserved for an individual accused of a crime: "Any person charged with an offence has the right . . . to be tried within a reasonable time". This right is constitutionally guaranteed and cannot be subordinated to considerations of pure expediency. The "reasonable time" referred to in this provision means one that adheres to the Jordan framework.

[58] That said, although the ceilings are not aspirational targets, they do remain presumptive. The presumption can be rebutted by invoking either or both of the two exceptional circumstances identified in Jordan , and there is no reason why these exceptions cannot be applied to delays resulting from proceeding jointly. As Fairburn J. (as she then was) remarked in R. v. Ny , 2016 ONSC 8031, 343 C.C.C. (3d) 512, at para. 47, "the concept of 'reasonable time' within s. 11(b) may fluctuate depending on whether accused are standing alone or together. Provided it is in the interests of justice to proceed jointly, delay above the ceiling may reflect the realities of life in a joint trial and transform an otherwise unreasonable delay into a reasonable one."

[59] The Court of Appeal for Ontario has already held that delays resulting from joint trials can be considered exceptional circumstances. In R. v. Tran , 2023 ONCA 532, 429 C.C.C. (3d) 55, the accused and two other persons were jointly charged in the course of a large-scale drug investigation. Delays were occasioned by a change of counsel for the two co-accused. When replacement dates were sought, none were available to Mr. Tran's counsel inside the period of reasonable delay. The net delay exceeded the 18-month ceiling by nine days. As a result, Mr. Tran filed a s. 11(b) application. The application was dismissed, and he was subsequently convicted. Mr. Tran's appeal was dismissed. Paciocco J.A., writing for the court, noted that the Crown can rebut the presumption of unreasonable delay by establishing that the delay flowing from proceeding jointly amounts to a discrete exceptional circumstance that must be deducted. The Crown needs to satisfy the following four criteria: (1) the joint trial is in the interests of justice; (2) the delay has arisen as a result of the joint trial; (3) the delay is unforeseen or reasonably unavoidable; and (4) the Crown could not reasonably have ameliorated that delay.

[60] More recently, in R. v. Singh , 2025 ONCA 843, Tulloch C.J.O. reaffirmed Tran 's holdings on this question and underscored the importance of reconciling an accused person's right under s. 11(b) of the Charter with society's interest in joint trials. He noted that "[a]pplying Jordan mechanically without meaningfully accounting for [society's interest in conducting joint trials] risks fragmenting cases into a multiplicity of proceedings, compounding systemic delay, and undermining the vital role of project prosecutions" (para. 1).

[61] The Court of Appeal for Ontario is not alone in this regard. Identical criteria have also been adopted by the British Columbia Court of Appeal. In R. v. Singh , 2016 BCCA 427, 344 C.C.C. (3d) 516, the Court of Appeal held that delays occasioned by scheduling conflicts in a joint trial can

amount to exceptional circumstances. In a way largely analogous to what later transpired in *Tran*, a co-accused sought multiple adjournments that pushed the net delay beyond the presumptive ceiling. The Court of Appeal held that delays caused by a co-accused can amount to exceptional circumstances that are deductible from another co-accused's net delay (paras. 80 and 83). The court went on to note that while severance may be appropriate under certain circumstances, it is not a panacea, and the interests of justice "may dictate otherwise" (para. 81). The scheduling conflict that resulted from the adjournment in question was held to be both reasonably unforeseen and reasonably unavoidable. Moreover, the Crown had taken reasonable steps to expedite the proceedings once the delay had crystallized. Given that the trial judge had concluded that proceeding jointly was in the interests of justice and had twice rejected severance, it would have been unreasonable to require that the Crown unilaterally sever the proceedings by preferring a separate indictment against the co-accused. Accordingly, the delay occasioned by the adjournment sought by the co-accused constituted a discrete exceptional circumstance (paras. 82-83).

[62] While *Singh* is distinguishable from *Tran* on the facts — insofar as the trial judge twice rejected the Crown's request for severance in *Singh* — the British Columbia Court of Appeal has subsequently held in at least one decision that scheduling conflicts between defence counsel can amount to a discrete exceptional circumstance that can be deducted from the net delay for the co-accused (*R. v. Rai*, 2019 BCCA 377, 381 C.C.C. (3d) 1, at paras. 153-63; see also *R. v. Eheler*, 2021 BCCA 316, 74 C.R. (7th) 29, at para. 74).

[63] Finally, at least one other intermediate appellate court has recognized the general principle that delays resulting from a co-accused's conduct may be deducted from the net delay of the accused as a discrete exceptional circumstance (*Klassen*, at paras. 88 and 94-95).

[64] I agree with the approach to exceptional circumstances arising from joint trials that was outlined by Paciocco J.A. in *Tran*. It is entirely consistent with the *Jordan* framework, and I adopt the four criteria that he outlines therein.

[65] Firstly, the Crown must demonstrate that proceeding jointly is in the interests of justice. When determining whether the Crown has satisfied its onus at this threshold stage, judges should turn their minds to traditionally relevant criteria, such as, but not limited to, the following elements:

... the general prejudice to the accused; the legal and factual nexus between the counts; the complexity of the evidence; whether the accused intends to testify on one count but not another; the possibility of inconsistent verdicts; the desire to avoid a multiplicity of proceedings; the use of similar fact evidence at trial; the length of the trial having regard to the evidence to be called; the potential prejudice to the accused with respect to the right to be tried within a reasonable time; and the existence of antagonistic defences as between co-accused persons ...

(*Last*, at para. 18)

[66] Given that the analysis takes place in the context of adjudicating s. 11(b) applications, judges should also give significant consideration to the gains in efficiency that will be generated throughout the system by proceeding jointly, as well as the likely negative knock-on effects that will occur if severance is ordered. Equally, judges must keep in mind that the presumption in favour of joint trials is strong and that, in most cases, it will not be difficult for the Crown to satisfy the evidentiary burden at this threshold stage. Even in cases where additional delay is caused by proceeding jointly, the presumption in favour of proceeding jointly will not easily be displaced. This is because “delay caused by proceeding against multiple co-accused must be accepted as a fact of life and must be considered in deciding what constitutes a reasonable time for trial” (Vassell , para. 6).

[67] That presumption is not absolute, however. In this regard, Vassell provides a useful illustration of circumstances where a joint prosecution may cease to be in the interests of justice: for instance, where a co-accused repeatedly waylays the proceedings and, in doing so, prevents his co-accused from moving the case forward expeditiously. A judge may conclude that, under such circumstances, proceeding jointly is no longer in the interests of justice (Vassell , at paras. 5-7). I note, parenthetically, that it is not necessary for the accused to seek severance in order to demonstrate that a joint trial is not in the interests of justice.

[68] Secondly, the Crown must demonstrate that the delay arises as a direct result of the joint proceedings. To take the example of Tran , the change of counsel for the two co-accused would not have affected Mr. Tran’s trial had it not been for the Crown’s decision to jointly indict all of the co-accused. Even if the Crown fails to demonstrate that the delay flows directly from proceeding jointly against the co-accused, this does not foreclose the possibility of proving that the period of delay still amounts to a discrete exceptional circumstance. However, the Crown will need to allege reasons other than proceeding jointly.

[69] Thirdly, and in line with this Court’s holdings in Jordan , the Crown must demonstrate that the exceptional circumstance was either (a) reasonably unforeseen or (b) reasonably unavoidable. In making this assessment, judges must keep in mind that “delay caused by proceeding against multiple co-accused must be accepted as a fact of life and must be considered in deciding what constitutes a reasonable time for trial” (Vassell , at para. 6; see also Jordan , at para. 77). In other words, such delay may not be unforeseen, but sometimes it is unavoidable.

[70] Fourthly and finally, the Crown must show that it could not have ameliorated the delay stemming from the decision to proceed jointly. The Crown will need to demonstrate that it took reasonable steps in an attempt to minimize the delay that resulted from proceeding jointly. Here, it should be emphasized once more that, as the Court noted in Jordan , this does not require the Crown to take every measure imaginable or to show that these measures were successful. Rather, it must show that the steps it took were reasonable ones in light of the circumstances (para. 70).

[71] Should the Crown satisfy these four criteria, the period of delay that results from proceeding jointly will be deducted as a discrete exceptional circumstance. Finally, before turning to the application of the framework to the case at bar, I note that my colleague Justice

Karakatsanis takes issue with the first two criteria laid out in *Tran*. In her view, it would serve no useful purpose for the Crown to routinely demonstrate that the trial is in the interests of justice, given that there is a presumption in favour of joint proceedings (para. 124). She also holds that there is no need to inquire as to whether the delay stems from the joint nature of the trial, given that the question is always “whether the delay was reasonably unforeseen or reasonably unavoidable, and whether the Crown could reasonably have done anything about it” (para. 125).

[72] As my colleague rightly notes, joint trials are presumed to be in the interests of justice. Where the Crown demonstrates that the co-accused are “charged with offences arising out of the same event or series of events”, it will be entitled to rely upon this presumption (*Chow* , at para. 47, quoting *Crawford* , at para. 30). Accordingly, the Crown’s evidentiary burden will, in this respect, be minimal in most cases. However, it is important not to lose sight of the fact that the notion of reasonable conduct permeates the *Jordan* framework (see, e.g., paras. 69-70). Where proceeding jointly is not in the interests of justice, the Crown’s conduct will not be reasonable, and it will be unable to invoke discrete exceptional circumstances. Therefore, the first criterion is not redundant. Even if, in practice, the Crown can routinely rely upon this presumption, it nevertheless remains one that the defence can rebut by showing that the joint prosecution is not in the interests of justice (see, e.g., the non-exhaustive list of factors identified in *Last* , at paras. 16-18).

[73] Moreover, and with respect for the opposing view, showing that the delay is caused by proceeding jointly is a necessary part of the Crown’s demonstration. Causality is not a new criterion in the *Jordan* framework. Whenever discrete exceptional circumstances are alleged, the delay that the Crown wishes to have deducted must flow from the discrete event. Often, the causality between the discrete event and the delay that is produced will be self-evident. Sometimes less so. Either way, causality must logically be established between the two in some way. Hence, when *Paciocco J.A.* described the second criterion in *Tran* , he was simply making explicit that which had always been implicit in the *Jordan* framework, and nothing more. I turn now to the application of the framework to the case at bar.

E. Application

[74] The Court’s intervention is warranted under the circumstances.

[75] Firstly, the case management judge erred in law by failing to conclude that proceeding jointly was in the interests of justice in the present case and that the unavailability of the co-accused’s counsel could amount to a discrete exceptional circumstance.

[76] Secondly, the case management judge’s conclusion that the issue of non-compliance with his 120-day case management deadline had “no application” to the case before him evinces legal error. Defence inaction was in fact highly relevant to the analysis of the reasonableness of the Crown’s overall conduct. Consequently, failure to consider this factor taints the analysis, amounting to an error of law (*R. v. Shepherd* , 2009 SCC 35, [2009] 2 S.C.R. 527, at para. 20; *R. v. Beaver* , 2022 SCC 54, [2022] 3 S.C.R. 718, at para. 73; *Sinclair v. Venezia Turismo* , 2025 SCC 27, at para. 42).

(1) The Scheduling Conflict Amounted to a Discrete Exceptional Circumstance

[77] I am of the opinion that the case management judge erred in concluding that no discrete exceptional circumstances were at play. However, in the case management judge's defence, I wish to make it clear that he had neither the guidance of this Court nor that of the Court of Appeal in Tran when he ruled on the respondent's s. 11(b) application.

[78] The Crown has satisfied me that the four criteria laid out in Tran are met in this case: (1) the joint trial was in the interests of justice; (2) the delay arose because of the joint trial; (3) the delay was reasonably unavoidable; and (4) the Crown could not reasonably have ameliorated that delay.

[79] Firstly, it is clear that a joint trial is in the interests of justice. The charges arose out of the same traffic stop that involved both of the co-accused. The factual nexus that links the offences charged with the two co-accused is irrefutable. Furthermore, there was no potential risk of any injustice being occasioned to the respondent by trying him with his co-accused. Indeed, during oral submissions before us, counsel for the respondent acknowledged that proceeding jointly was reasonable and that severance was not a viable option (transcript, at pp. 75 and 85). The first criterion is plainly met: proceeding jointly is in the interests of justice.

[80] Secondly, it is undeniable that the delay arose as a direct result of the contemplated joint trial. Counsel for the respondent was available in August, while counsel for the co-accused was not. This scheduling conflict between defence counsel is inextricably tied to the Crown's decision to proceed jointly against the respondent and his co-accused, and it resulted in an additional three weeks of delay (August 11 to 31, 2023). Had counsel for the co-accused been available during the proposed August trial dates (August 8 to 10, 2023), the delay would have fallen below the ceiling. Therefore, the second criterion is met.

[81] Thirdly, the delay was the unavoidable result of a scheduling conflict between defence counsel in a joint proceeding. Trial dates for the month of August 2023 were offered. Counsel for the respondent was available, but counsel for the co-accused was not. The Crown had no control over the schedules of defence counsel.

[82] Finally, the Crown could not have reasonably remedied the three-week period of delay that was occasioned by the scheduling conflict. It is true that the Crown is not entirely blameless in this matter. In particular, it should have sought new trial dates from the moment that the respondent's notice of application was filed in January 2023. It did not. However, that does not change the fact that, prior to the filing of the notice of application, it was proceeding under the reasonable, albeit mistaken, impression that the respondent would not proceed with his s. 11(b) application. Moreover, the Crown took active steps shortly after the filing of the s. 11(b) application to obtain new trial dates in April/May or July of that year. As a result, the Crown cannot be faulted for not having taken more measures to mitigate the three weeks of delay caused by proceeding jointly. The Crown is held to a standard of reasonableness, not perfection. The fourth criterion is met.

[83] Given that the four criteria identified in *Tran* have been met, I find that the additional three weeks of delay (i.e., August 11 to 31, 2023) caused by a scheduling conflict that resulted from proceeding jointly against the two co-accused amount to a discrete exceptional circumstance. This period must be deducted from the 18 months and 2 weeks of net delay. This brings the total delay under the 18-month Jordan ceiling.

[84] In the absence of argument from the respondent as to why the presumptively reasonable delay would nonetheless be unreasonable, I must conclude that the delay is reasonable. Therefore, the stay of proceedings must be set aside.

(2) The Respondent's Failure to Adhere to Case Management Deadlines Is Relevant to the Assessment of the Crown's Overall Conduct

[85] I have already concluded that the scheduling conflict amounted to a discrete exceptional circumstance and that the ceiling was not exceeded. However, in light of the particular facts of this case, I nonetheless believe it necessary to highlight (1) the critical role that case management plays in protecting an accused's s. 11(b) right and (2) the way in which defence conduct may inform the analysis of the reasonableness of the steps taken by the Crown to mitigate delays.

[86] In the present case, the failure of counsel for the respondent to respect the judge's 120-day case management deadline for filing the s. 11(b) application was unjustified and unreasonable. At the risk of repeating myself, *Jordan* was an unequivocal call to action to tackle the rampant culture of complacency. It was addressed to all actors within the criminal justice system, including the defence. While there is undoubtedly no judicial magic bullet for the problem of systemic delays, there are nonetheless a raft of measures that, taken together, serve to better protect the accused's right to a trial within a reasonable time.

[87] One of the measures explicitly and repeatedly adverted to by the Court in *Jordan* and its progeny is case management. Case management decisions play an essential role in ensuring compliance with the Jordan ceilings (*R. v. Morton* , 2020 ABCA 250, 391 C.C.C. (3d) 288, at para. 61; *R. v. Kazman* , 2020 ONCA 22, 452 C.R.R. (2d) 185, at para. 16; *R. v. Anderson* , 2025 ONCA 172, 446 C.C.C. (3d) 476, at para. 17). They help the parties focus their attention on possible or likely sources of delay. This, in turn, better equips all involved with the means to anticipate and to mitigate delays, thereby expediting the proceedings (*Jordan* , at paras. 70 and 114). Accordingly, case management powers represent a powerful tool that trial judges must actively employ in order to minimize delays (*Cody* , at para. 38; *Haevischer* , at para. 76).

[88] Evidently, for case management decisions to be of any use in achieving this goal, they cannot merely be an invitation to the parties. Rather, they must be binding upon them (*R. v. Oliver* (2005), 194 O.A.C. 284 (C.A.), at para. 29; *Anderson* (C.A.), at para. 25). As Doherty J.A. underscored in *Kazman* , “ [n]o one . . . can be allowed to ignore court orders and deadlines while the constitutional clock runs down and valuable court resources are consumed. After *Jordan* , trial judges must engage in proactive case management of criminal trials. Litigants must cooperate in those case management efforts ” (para. 16 (emphasis added)). Here, the case management judge made judicious use of that power by imposing a 120-day deadline for the

filing of any s. 11(b) applications.

[89] That is not to say that a party necessarily acts unreasonably in every case where it cannot respect a deadline. Genuine difficulties can and do arise. Parties may be frustrated in their attempts to meet deadlines despite diligent and good faith efforts to do so. If a valid excuse is provided, the court should accept it. Recall, however, that the protection under s. 11(b) is that of a shield, and not of a sword. Thus, for an excuse to be valid, reasonable measures need to have been taken. When a party becomes aware that it will be unable to respect a deadline, it is incumbent upon counsel to promptly bring this matter to the court's attention so that alternative solutions may be found or extensions sought (Oliver , at para. 29). The parties are not held to a standard of perfection. Instead, they must show that their conduct is reasonable under the circumstances.

[90] In her reasons, my colleague asserts that the "Crown's obligation to take reasonable steps does not depend on the accused's failure to promptly assert their s. 11(b) right" (para. 131). I recognize that this may be true in the strictest sense. However, the jurisprudence of our Court is also clear that the parties "have a responsibility to take proactive measures to prevent [the presumptive ceilings] from being exceeded" and that this responsibility "lies upon both the Crown and the defence " (J.F. , at para. 56 (emphasis added)). In other words, an accused is not allowed to simply lie in the weeds, whatever the intent may be. This is even more important when a case management judge has imposed a clear deadline on the parties. Even if one accepts, in abstracto , that there is no legal obligation to assert one's s. 11(b) right, the accused is not entitled to "do nothing when they believe that their s. 11(b) right is not being or will not be respected " (J.F. , at para. 58 (emphasis added)). Inaction, where it is unreasonable or motivated by an otherwise illegitimate purpose, may lead to periods of delay that can be attributed to the defence. But that is not all. It may also be relevant to the analysis of the reasonableness of the steps taken by the Crown to mitigate delay. That is not to say that the unreasonable conduct of an accused can, on its own, satisfy the Crown's obligation to take reasonable steps. However, it may be highly relevant to the analysis, as it is here.

[91] In the instant case, counsel for the respondent indicated in July 2022 that the s. 11(b) application would be filed at a subsequent hearing that was to be held on September 26, 2022. She failed to follow through on this undertaking. She then proceeded to ignore the deadline of November 3, 2022, by several months. At no time did she believe it necessary to advise either the Crown or the court. It was reasonable for the Crown to believe that the respondent had abandoned his application. Moreover, when the respondent filed his notice of application, the Crown sought to move the s. 11(b) hearing up to early February 2023. However, the respondent still was not ready to plead his application roughly seven months after having given verbal notice of his intent to bring it. The Crown also sought earlier trial dates in April/May or July 2023.

[92] The conduct of the respondent during the pre-trial proceedings, COVID-19, and the joint nature of the proceedings are important contextual factors that cannot be ignored when analyzing the reasonableness of the steps taken by the Crown and the moment those steps were taken. As the Court noted in K.G.K. , "[r]easonableness under s. 11(b) has always accounted for

the reality that “[n]o case is an island to be treated as if it were the only case with a legitimate demand on court resources” (para. 61, quoting *R. v. Allen* (1996), 92 O.A.C. 345, at para. 27). The Crown cannot reasonably be expected to chase after defence counsel where they fail to meet deadlines set by the case management judge and agreed to by the parties. Under those circumstances, devoting additional time and resources that could be spent elsewhere would not be judicious. Of course, had the Crown remained passive in the face of proactive defence conduct, the conclusion concerning the reasonableness of the steps taken by the Crown may have been very different. But that is not the case here. The lateness of the application necessarily informs the analysis of the reasonableness of the Crown’s conduct. My colleague notes that s. 11(b) applications “should generally be heard well in advance of scheduled trial dates” so that the appropriate remedies can be ordered and breaches avoided (para. 143). I wholeheartedly agree. But if remedies are to be ordered at the appropriate time, then an application must actually be filed with the court, and said filing must be done in a timely manner.

[93] During oral submissions before us, counsel for the respondent was asked why the deadline was not adhered to and why neither the Crown nor the case management judge was informed of the reasons for the failure to file a s. 11(b) application before the deadline and of the respondent’s intention to still file one. Some of the reasons provided by counsel as to why the deadline had not been respected appear legitimate (for instance, time had been required to get prior approval from legal aid and then to prepare the application). On the other hand, counsel’s admission that the application had been brought at a time “that was convenient for them” cannot be construed as a legitimate reason (transcript, at p. 48). As has already been noted, case management deadlines are not mere invitations. Ignoring them for the sake of convenience or for tactical considerations is not a legitimate reason.

[94] Counsel’s statement stands in stark contrast to her own comments regarding the importance of case management decisions in protecting the right to a trial within a reasonable time. As she stated in oral submissions before us, “in terms of the Crown’s duty to provide an accused a trial within a reasonable time, perhaps one of the tools that the Crown has in order to do that is to resort to prompt case management” (transcript, at p. 69). This statement is perplexing given the respondent’s conduct at the pre-trial stage. Case management was precisely the tool that the Crown employed here — and the case management judge’s directive was ignored.

[95] Finally, as an aside, I note that the Crown did not ask the Court to deduct the period resulting from the respondent’s inaction as defence delay (transcript, at pp. 113-14). I acknowledge that this was not a case where the two co-accused proceeded as a collective. Had that been the case, the delay caused by one would necessarily have also been attributable to the other as defence delay (*R. v. Chung* , 2021 ONCA 188, 402 C.C.C. (3d) 145, at para. 195; *R. v. Potter* , 2020 NSCA 9, 385 C.C.C. (3d) 1, at paras. 361-63; *R. v. Albinowski* , 2018 ONCA 1084, 371 C.C.C. (3d) 190, at para. 38). However, even where two co-accused do not proceed collectively, defence delays caused by one may still also be attributed to the other. This will be the case where the other accused fails to act reasonably in the face of the delay. In such a case, the accused would not be held accountable for the delay caused by his or her co-accused, but rather the

accused would be held accountable for his or her own action (or inaction) in the face the delay.

[96] This approach is hardly novel. In *Ste-Marie* , the Court held that the inaction of an accused in the face of delay caused by his co-accused could be characterized as defence delay: “Although the conflict of interest did not directly involve him, he never expressed concern about the delays caused by his co-accused. Moreover, the prosecution offered him his own preliminary inquiry several times, but he always refused” (para. 10). This approach is entirely consistent with the individualized approach under *Jordan* . It accords with the duty that is incumbent on the accused, and all parties, to take proactive steps to ensure that the case proceeds quickly to trial. The defence “should not be allowed to benefit from its own delay-causing conduct or from its tactics aimed at causing delay” (*Ste-Marie* , at para. 11 (emphasis added)).

[97] In the instant case, notice of a forthcoming s. 11(b) Charter application was given verbally in July 2022. However, counsel for the respondent waited until late January 2023 to file a notice of application and did not file the completed application until the end of February. This complete absence of communication, coupled with the failure to adhere to a clear case management deadline, was unjustified and unreasonable. As Cromwell J. (dissenting, but not on this point) remarked in *Jordan* , “[u]nreasonable actions by the accused may take diverse forms, such as . . . failure to attend court appearances or to give timely notice of intended Charter applications ” (para. 193 (emphasis added)). However, given that the Crown explicitly declined to ask that this period be subtracted as defence delay, I will abstain from doing so.

VI. Disposition

[98] In light of the foregoing conclusions, I would allow the Crown’s appeal, set aside the stay of proceedings, and remit the matter back for trial.

The reasons of Karakatsanis, Martin and Moreau JJ. were delivered by

Karakatsanis J. —

I. Overview

[99] Society pays a high price when a criminal case is stayed before it reaches the merits. The accused, presumed innocent, cannot be vindicated by an acquittal. The victims and their families are denied justice and closure. The public loses confidence in the justice system.

[100] But the public does not condone institutional breaches of the Canadian Charter of Rights and Freedoms . The right to trial within a reasonable time belongs to individuals who are presumed innocent. And everyone suffers when matters are not resolved efficiently and promptly. That is why the right occupies a central place in our criminal justice system: a charge casts a pall over the lives of everyone implicated — the accused, the witnesses, and the victims — and fairness to all parties demands its resolution within a reasonable time. Protracted proceedings undermine public confidence in the justice system as much as stayed proceedings.

[101] There is no easy solution to the problem of delay in criminal proceedings. Almost a decade ago, this Court implemented a predictable approach that presumes prejudice and unreasonable delay when a case takes longer than 18 or 30 months, creating incentives to change a culture of complacency (R. v. Jordan , 2016 SCC 27, [2016] 1 S.C.R. 631).

[102] Jordan ’s flexibility means that a stay does not necessarily follow when a case exceeds its ceiling, especially by a narrow margin. But that flexibility only goes so far. Even close cases sometimes result in stays, and this is such a case.

[103] To justify delay over the ceiling, the Crown must show it took reasonable steps to avoid delay in response to an exceptional circumstance. Here, counsel’s availability in a joint trial created reasonably unavoidable delay. The court must also be satisfied, however, that Crown counsel could not reasonably remedy the delay once it arose. Defence conduct can inform the reasonableness of the Crown’s conduct. But the duty to take reasonable steps to remedy the delay in exceptional circumstances ultimately belongs to the Crown, not the defence.

[104] Applying the Jordan framework for exceptional circumstances, I cannot accept that the Crown took reasonable steps to mitigate the delay here. When trial dates were set, they already exceeded the Jordan ceiling by four and a half months, yet the Crown took no remedial steps. When the defence confirmed it would file a s. 11(b) application less than three weeks later, the Crown again did not respond. And when the defence filed its formal notice of application a few months later, the Crown once again did nothing. The Crown only floated alternative trial dates two weeks after the defence filed its full application, and only once it had filed its own materials. That was far too late to show proactive mitigation, or for the court to accommodate the Crown’s proposed timelines.

[105] The defence filed its full s. 11(b) application late. But the application judge found this added no delay to these proceedings, and that the Crown had notice of the forthcoming application. That means the defence’s conduct did not prevent the Crown from taking steps to meet the presumptive ceiling, so the Crown must bear responsibility for the failure to try this case within Jordan ’s limits. I would dismiss the appeal.

II. Background

[106] Elijah Jacques-Taylor and a co-accused were jointly charged with firearms offences in an information sworn in November of 2021. They elected to be tried in provincial court. Mr. Jacques-Taylor’s charges were stayed before his trial could take place in early October of 2023, over 22 months later.

[107] The parties did not set trial dates until July 6, 2022 — almost eight months post-charge. The trial coordinator began by offering trial dates of August 8 to 10, 2023 — almost 21 months post-charge. The Crown and Mr. Jacques-Taylor’s counsel were both available on those dates, but the co-accused’s counsel was not. Then the trial coordinator offered September dates, but Mr. Jacques-Taylor’s counsel was unavailable in September. The parties finally settled on October 2 to 4.

[108] When the trial dates were set, the case management judge told the parties that if they were contemplating a s. 11(b) application, they should file it within 120 days. Just over two weeks later, Mr. Jacques-Taylor advised that he planned on doing so, and sought direction as to how s. 11(b) applications were being scheduled. He filed his notice of application late, in January 2023, and ultimately filed his full s. 11(b) application on February 27, 2023.

[109] On March 16, 2023, the Crown floated earlier trial dates, in April and July. Mr. Jacques-Taylor’s counsel was available in April but not July, and his co-accused’s counsel was available in July but not April, so those efforts failed.

III. Judicial History

A. Ontario Court of Justice, 2023 ONCJ 243 (Prutschi J.)

[110] The Crown asked the application judge to hold Mr. Jacques-Taylor accountable for filing his s. 11(b) application too late. The application judge declined: by mentioning the s. 11(b) application shortly after trial dates were set in July 2022, Mr. Jacques-Taylor “squarely placed the Crown on notice”, which “served as [a]n invitation to monitor case collapses . . . to see whether earlier trial dates could be obtained” (para. 31). Had the Crown made those efforts before March of 2023, the application judge explained, it might have succeeded. The application judge found that the late filing did not impact the timing of the proceedings.

[111] After deductions not in dispute here, the total delay came out to 18 months and two weeks. The application judge acknowledged this was “a borderline case lying very close to the bright 11(b) line drawn by Jordan ” (para. 52). But he concluded that the Crown had tools it decided not to use, including prioritizing this case and the unpalatable option of severing the defendants to ease the scheduling complexity. He stayed the proceedings.

B. Court of Appeal for Ontario, 2024 ONCA 458, 560 C.R.R. (2d) 126 (Benotto, Favreau and Madsen JJ.A.)

[112] In short reasons, the Court of Appeal dismissed the Crown’s appeal. It held that the application judge correctly declined to deduct the period arising from the unavailability of Mr. Jacques-Taylor’s co-accused. And it agreed that the application judge did not err in deciding that the Crown should have mitigated the delay arising from the joint prosecution. The application judge had not required the Crown to sever the proceedings — he had merely recognized that the option existed (para. 9).

IV. Analysis

A. The Crown Failed to Take Reasonable Steps to Address the Delay

(1) Legal Framework

[113] Section 11(b) of the Charter protects at least two interests: the liberty-based individual interest in clearing one's name at the earliest possible opportunity, and the community's interest in ensuring that those accused of breaking the law are brought to trial and treated fairly (Jordan , at paras. 25-26; R. v. Askov , [1990] 2 S.C.R. 1199, at pp. 1219-20).

[114] Jordan implements that protection through presumptive ceilings that run from the date a charge is laid to the actual or anticipated end of the trial. In provincial court, the ceiling is 18 months, and in superior court, the ceiling is 30 months. The presumptive ceiling marks the point at which the burden to show unreasonable delay shifts from the accused to the Crown. Once the ceiling is exceeded, the Crown may rebut the presumption of unreasonable delay by showing "exceptional circumstances".

[115] Exceptional circumstances lie outside the Crown's control in that (1) they are reasonably unforeseen or reasonably unavoidable, and (2) Crown counsel cannot reasonably remedy the resulting delay once it arises (Jordan , at para. 69). Jordan explains that "[i]t is not enough for the Crown, once the ceiling is breached, to point to a past difficulty. It must also show that it took reasonable available steps to avoid and address the problem before the delay exceeded the ceiling" (para. 70 (emphasis in original)). There is no requirement that the Crown's efforts ultimately succeed; it need only show that it took reasonable steps to avert the delay. Reasonableness is the standard, not success (para. 70).

[116] This is the Crown's obligation to take reasonable steps. The Crown must always be prepared to mitigate delay arising from exceptional circumstances, and within reason, "should be capable of prioritizing cases that have faltered due to unforeseen events" (Jordan , at para. 75, citing R. v. Vassell , 2016 SCC 26, [2016] 1 S.C.R. 625). That means any part of the delay that the Crown and the system could reasonably have mitigated may not be subtracted from the total delay as an exceptional circumstance.

[117] If the Crown can show that an unforeseen or unavoidable discrete event caused delay, and that it took reasonable steps in response, that delay is subtracted from the total time. This reflects the Court's quantitative approach to assessing delay arising from discrete exceptional circumstances.

(2) The Parties' Positions

[118] The Crown argues that delay caused by one co-accused can be a discrete exceptional circumstance for the other co-accused. It emphasizes this Court's recognition of the value of joint prosecutions to the administration of justice. It contends that co-accused delay is generally reasonably unforeseen or reasonably unavoidable, and generally cannot reasonably be remedied by the Crown. And it says this is just such a case: the Crown could not have avoided the delay caused by accommodating both counsel's schedules.

[119] The Crown says that the defence's conduct should inform whether it took reasonable steps in response to the delay here. Because the defence did not file a s. 11(b) application for several months after trial dates were set, and never sought severance, the Crown claims it reasonably assumed the defence was content with the pace of the proceedings.

[120] Mr. Jacques-Taylor responds that joint trials should not come at the expense of an accused person's s. 11(b) right. He argues that the Crown should generally bear the responsibility for delay arising from joint prosecutions when it proceeds jointly. Jordan's discrete exceptional circumstances category, he claims, should be reserved for events which are outside the Crown's control. Because the Crown chooses whether to proceed jointly, co-accused delay is within its control and does not qualify.

[121] As for reasonable steps, Mr. Jacques-Taylor suggests that the Crown should have realized delay was a problem when trial dates were assigned and responded accordingly. Having not done so, he says, the Crown cannot show that it took reasonable steps. The defence had advised that it would be bringing a s. 11(b) application and never waived its s. 11(b) right.

(3) Co-Accused Delay Can Constitute a Discrete Exceptional Circumstance

[122] I agree that delay caused by difficulties scheduling two co-accused can be a discrete exceptional circumstance, because it is often reasonably unavoidable. As this case shows, finding dates that work for multiple counsel can cause delay. To show exceptional circumstances under Jordan, the Crown need only show (1) that the event was reasonably unforeseen or reasonably unavoidable, and (2) that the Crown could not reasonably remedy the resulting delay once it arose (Jordan, at para. 69).

[123] In R. v. Tran, 2023 ONCA 532, 429 C.C.C. (3d) 55, the Ontario Court of Appeal added two preconditions to establish exceptional circumstances in joint trials: that the joint trial is in the interests of justice, and that the delay arose because of the joint trial. In my view, these additional requirements are unnecessary additions to Jordan's exceptional circumstances test.

[124] The Crown need not show that a joint trial was in the interests of justice each time it wants to establish that scheduling problems led to delay in a joint proceeding. Because "separate trials for alleged co-conspirators are the exception, not the rule" (R. v. Chow, 2005 SCC 24, [2005] 1 S.C.R. 384, at para. 47), joint trials are presumed to be in the interests of justice — especially when the accused does not challenge the joint nature of the proceedings by seeking severance. It would serve no useful purpose to require the Crown to routinely demonstrate as much on s. 11(b) applications.

[125] Nor is it necessary to engage in the additional inquiry of whether the delay was caused by the joint nature of the trial. There is no special rule for joint trials. The question is always whether the delay was reasonably unforeseen or reasonably unavoidable, and whether the Crown could reasonably have done anything about it. If those two criteria are made out, so are exceptional circumstances, and the delay does not count toward the Jordan ceiling.

[126] The delay caused by scheduling multiple counsel in joint trials will often be reasonably unavoidable. Severing the proceedings to allow each accused to proceed on a timeline uninterrupted by the other might mitigate delay. But in a legal system which so heavily favours joint proceedings, expecting the Crown to sever regularly would generally not be reasonable. Severance risks inconsistent verdicts and compromising both trials' capacity to discover the truth — and it adds to the court's caseload. Severance may be reasonable in particularly complex trials or where delay is inordinate. But generally, it is presumed that joint trials are in the interests of justice.

[127] Thus, co-accused delay caused by scheduling joint trials will often be an exceptional circumstance. That does not mean, however, that it always will. Like delay arising from mistrials, this conclusion "is not automatic", because "[s]uch a presumption would encourage complacency", so the Crown must "always discharge its burden of proving exceptional circumstances under Jordan " (R. v. Dos Santos , 2025 ONCA 598, 178 O.R. (3d) 481, at para. 35). Depending on the facts of a specific case, the unavailability of counsel to a co-accused could prove reasonably avoidable or reasonably foreseeable.

(4) The Accused's Conduct Cannot Satisfy the Crown's Obligation to Take Reasonable Steps

[128] The Crown's obligation to take reasonable available steps to respond to an exceptional circumstance is just that — the Crown's obligation. To show exceptional circumstances, the Crown must do whatever it reasonably can "to avoid and address the problem before the delay exceed[s] the ceiling" (Jordan , at para. 70 (emphasis in original)).

[129] The Crown argues that its responsibility to take reasonable steps depends on the defence's efforts to seek s. 11(b) relief. It argues that the accused's "failure to apply promptly for relief pursuant to s. 11(b) should in most cases weigh heavily against the submission that the Crown acted unreasonably by failing to prioritize [their] case" (A.F., at para. 35). And it says that the absence of a s. 11(b) application makes it "reasonable in most cases for the Crown to conclude that the accused is content with the pace of the proceedings" (para. 37). These factors, the Crown says, can support the conclusion that it has met its burden to take reasonable steps.

[130] The Crown adds that the Court cannot assess whether the Crown took reasonable steps without "a pragmatic assessment of the level of s. 11(b) jeopardy that would have been apparent to the Crown at the time the delay was accruing" (A.F., at para. 34). It says it must rely on the accused to signal whether the delay is unreasonable, because the accused "has access to relevant information that is not available to the Crown" (para. 34).

[131] I disagree. The Crown's obligation to take reasonable steps does not depend on the accused's failure to promptly assert their s. 11(b) right. That does not mean defence conduct cannot inform what reasonable steps the Crown must take. For example, if the defence plans to abandon a scheduled pre-trial motion, but does not tell the Crown, the Crown cannot be faulted for failing to suggest trial dates before the motion. But that is not the same as a defence obligation to take proactive steps: it is the Crown who must do what it can to address an exceptional circumstance before the delay exceeds the ceiling.

[132] The Crown emphasizes that Jordan imposes obligations on all participants in the justice system to avoid delay (Jordan , at paras. 116-17). That is true, and it is important. But it does not mean that the defence shares in every onus under every step of the different analyses under Jordan . The Jordan framework is designed to incentivize both parties to avoid a culture of delay. It works by shifting the justificatory burden at the presumptive ceiling. At first, the onus is on the accused to show that the delay was unreasonable. But once the ceiling elapses, that onus shifts to the Crown, and "the presence of exceptional circumstances is the only basis upon which the Crown can discharge its burden to justify a delay that exceeds the ceiling" (Jordan , at para. 81 (emphasis in original)). It must show unforeseeability or unavailability, and it must show that it took reasonable steps in response. That assignment of the burden is deliberate, and it would be defeated by requiring the defence to act.

[133] The Crown, not the accused, must respond to delay that exceeds the presumptive ceiling. Excusing the Crown from making any effort to mitigate delay until the defence files a full s. 11(b) application contradicts that principle. If the Crown could discharge its onus to take reasonable steps by pointing to what the accused has or has not done, then the onus would really belong to the accused: unless the accused responds to an exceptional circumstance, the Crown discharges its burden to take reasonable steps. That is not how Jordan assigns the over-the-ceiling burden.

[134] Nor does the Crown need the defence to do anything to make the level of s. 11(b) jeopardy apparent, because Jordan 's presumptive ceilings make that jeopardy clear. After 18 months, the delay is presumed unreasonable. The first trial dates offered to the parties here were already over the ceiling. What relevant information could Mr. Jacques-Taylor have had that the Crown lacked? The Crown does not say.

[135] The same reasoning applies to the Crown's suggestion that the absence of a s. 11(b) application makes it reasonable to infer that the accused is content with the pace of the proceedings. Only a "clear and unequivocal" waiver can license that inference (Jordan , at para. 61), and the Court has held for decades that silence or inaction is not enough (R. v. J.F. , 2022 SCC 17, [2022] 1 S.C.R. 330, at para. 47; Askov , at pp. 1228-29). But the Crown's submission reverse-engineers an implicit waiver standard into the reasonable steps analysis: until and unless the accused stands on their rights, the Crown could take "reasonable steps" by doing nothing. That is not the law.

[136] Nor should it be. It would encourage the complacency Jordan sought to eradicate from the criminal justice system. In Jordan , the Court explained that under the Morin framework, “[d]elay is condemned or rationalized at the back end”, and as a result, “participants in the justice system . . . are not encouraged to take preventative measures to address inefficient practices and resourcing problems” (para. 41). That is exactly what happened here. Faced with trial dates that exceeded Jordan ’s clear ceiling, the Crown chose to do nothing until the eleventh hour. It now asks the Court to retroactively endorse its approach by changing the reasonable steps doctrine. I would decline.

[137] Nor would I accept the Crown’s suggestion that in the context of co-accused delay, the accused’s failure to apply for severance “should in most cases weigh heavily in favour of the conclusion that the decision to proceed with a joint trial was reasonable” (A.F., at para. 35). Precisely because separate trials are “the exception, not the rule” for co-accused persons (Chow , at para. 47), severance applications are rarely granted. Requiring accused persons to bring severance applications to protect their s. 11(b) right would flood the system with a huge volume of doomed applications and cause more delay, not less.

[138] There is no need to provide an exhaustive list of what might count as reasonable steps. But I emphasize that sometimes, there is nothing the Crown can do about delay caused by an exceptional circumstance. That does not mean the Crown cannot avail itself of the exceptional circumstances doctrine. The reasonable steps requirement is a way of determining whether “Crown counsel cannot reasonably remedy the delays emanating from [exceptional] circumstances once they arise” (Jordan , at para. 69). If the record shows that the Crown cannot do so, it has carried its reasonable steps burden (see, e.g., R. v. Loiacono , 2023 ABCA 157, at para. 28).

[139] I add this. Accused persons have a responsibility to act diligently and to cooperate with the Crown and the court, but lack of diligence does not automatically disentitle them to s. 11(b)’s protection. The right to be tried within a reasonable time is not something that accused persons must earn. It is a constitutional entitlement. That means defence conduct must amount to waiver or defence delay to be deducted from the total time it takes to finish a trial. And those categories come with requirements of their own: waiver must be clear and unequivocal, and defence delay must cause a loss of otherwise usable court time (Jordan , at paras. 61, 64).

B. Application

[140] The Crown has not carried its burden to take reasonable steps in response to the delay caused by the unavailability of the co-accused’s counsel. It did nothing about the obvious delay until it was far too late. When trial dates were set, this case was already more than four months over the Jordan ceiling. A few weeks later, the defence advised it would bring a s. 11(b) application. And a few months after that, the defence filed a notice of application. The Crown did nothing to respond to these events. Two weeks after the formal application was filed — close to eight months after it was alerted to s. 11(b) concerns — the Crown finally floated alternative trial dates. That was too late to show the proactive mitigation Jordan requires.

[141] Mr. Jacques-Taylor’s missed filing deadline does not excuse the Crown’s failure to act. Nor does it transform the Crown’s inaction into “reasonable steps”. The application judge — the same judge who set that deadline — concluded that the missed deadline did not impact the total delay. The Crown has not suggested otherwise. It did not argue this factual finding was a palpable and overriding error, as my colleague now concludes. It did not even argue this period should be deducted from the total delay: it relied on the delay stemming from the scheduling challenges.

[142] Even if the Crown had made that argument, the missed deadline would not have excused it from taking reasonable steps to mitigate the delay, or permitted it to do nothing at all in the face of that delay. Once it appears the ceiling is breached, the Crown must take reasonable steps in response — it is not enough to stand idle and observe that the accused missed a filing deadline. Mr. Jacques-Taylor gave the Crown notice of the forthcoming application less than three weeks after trial dates were set, so it had plenty of time to take those steps. And Mr. Jacques-Taylor did nothing to clearly and unequivocally signal that he accepted the pace of the proceedings so as to waive his s. 11(b) right. Missing a filing deadline is not, and never has been, clear and unequivocal waiver.

[143] To be clear, trial judges can and should set deadlines for s. 11(b) applications. Jordan is designed to proactively prevent trial delay, not to remedy it in retrospect. If a trial judge finds that, without intervention, the Jordan ceiling likely will be breached by the anticipated end of trial, they may order powerful remedies to expedite matters, and so prevent a breach and stay of proceedings down the road (R. v. Varennes , 2025 SCC 22, at paras. 82, 86 and 103-5). For this reason, s. 11(b) applications should generally be heard well in advance of scheduled trial dates.

[144] Filing deadlines are therefore important case management tools to keep cases on track. All parties are obliged to follow court orders, including filing deadlines (R. v. Bird , 2019 SCC 7, [2019] 1 S.C.R. 409, at para. 1). If an accused misses a s. 11(b) filing deadline, and that failure causes delay, that time can be deduced as defence delay. But the application judge considered and rejected the argument that Mr. Jacques-Taylor’s missed deadline delayed these proceedings. That conclusion is unassailable here. There is therefore no basis to hold Mr. Jacques-Taylor’s late filing against him as defence delay.

[145] It is not enough to point to what the accused did or did not do. The Crown must show that it took reasonable steps, or that there was nothing it could have done. The application judge found neither. There are no grounds for appellate intervention. I would dismiss the appeal.

APPENDIX

Timeline

Date

Time Elapsed*

Event

18 Nov 2021

-

Information sworn

14 Feb 2022

3 months

Substantial disclosure completed

31 Mar 2022

4 months 2 weeks

Crown pre-trial meeting with respondent's counsel

15 Jun 2022

7 months

Pre-trial conference aborted because of clerical error

6 Jul 2022

7 months 3 weeks

Trial scheduling court, trial dates set for October 2-4, 2023, 120-day deadline set for s. 11(b) applications

25 Jul 2022

8 months 1 week

Counsel indicates intent to file s. 11(b) application

26 Sep 2022

10 months 1 week

Bench warrant extended

3 Nov 2022

11 months 2 weeks

120-day s. 11(b) application deadline

24 Jan 2023

14 months 1 week

Notice of s. 11(b) application filed

27 Feb 2023

15 months 1 week

Section 11(b) application filed

14-16 Mar 2023

16 months

Trial dates sought for April/May or July 2023

27 Mar 2023

16 months 1 week

Section 11(b) application hearing

18 May 2023

18 months

Presumptive 18-month ceiling

8 Jun 2023

18 months 3 weeks

Judgment on s. 11(b) application rendered

8-10 Aug 2023

20 months 3 weeks

Discrete exceptional circumstance : proposed trial dates (co-accused unavailable for the month of August)

Sep 2023

21-22 months

Defence delay : proposed trial dates (respondent unavailable for the month of September)

2-4 Oct 2023

22 months 2 weeks

Projected end of trial

* Does not account for deductions: COVID-19 (-3 months), defence delay (-1 month), defence scheduling conflict (-3 weeks)

Appeal allowed, Karakatsanis, Martin and Moreau JJ. dissenting .

Solicitor for the appellant: Attorney General of Ontario , Crown Law Office — Criminal, Toronto.

Solicitors for the respondent: Lichtman Law, Toronto.

Solicitor for the intervener Director of Public Prosecutions: Public Prosecution Service of Canada, Toronto.

Solicitor for the intervener Director of Criminal and Penal Prosecutions: Director of Criminal and Penal Prosecutions, Montréal.

Solicitor for the intervener Attorney General of British Columbia: Attorney General of British Columbia — Criminal Appeals and Special Prosecutions, Victoria.

Solicitor for the intervener Attorney General of Alberta: Alberta Crown Prosecution Service — Appeals and Specialized Prosecutions Office, Calgary.

Solicitors for the intervener Criminal Lawyers' Association (Ontario): Bytensky Shikhman, Toronto; Daniel Brown Law, Toronto.

Solicitors for the intervener Independent Criminal Defence Advocacy Society: Peck and Company, Vancouver.

[1] In his factum, the respondent submits that it is unclear from the record whether trial dates were actually available in September. I agree that a careful reading of the transcripts does not make it possible to determine exactly what was available and on what date. However, the case management judge concluded that dates were available in September. This factual conclusion invites deference on appeal. In order to avoid these types of disputes in the future, courts should clearly record proposed trial dates and the availabilities of each party.

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