

CANADA / JUDGMENT

R. v. R.B.-C.

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SUPREME COURT OF CANADA

Citation: R. v. R.B.-C., 2026 SCC 30

Appeal Heard: January 16, 2026

Judgment Rendered: September 11, 2026

Docket: 41677

Between:

R.B.-C.

Appellant

and

His Majesty The King

Respondent

- and -

Director of Public Prosecutions,

Attorney General of Quebec,

Attorney General of Nova Scotia,

Attorney General of Manitoba,

Attorney General of British Columbia,

Attorney General of Alberta,

Director of Criminal and Penal Prosecutions,

Association québécoise des avocats et avocates de la défense,

Canadian Civil Liberties Association,

British Columbia Civil Liberties Association and

Criminal Lawyers' Association (Ontario)

Interveners

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

Reasons for Judgment:

(paras. 1 to 85)

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

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R.B.-C. Appellant

v.

His Majesty The King Respondent

and

Director of Public Prosecutions,

Attorney General of Quebec,

Attorney General of Nova Scotia,

Attorney General of Manitoba,

Attorney General of British Columbia,

Attorney General of Alberta,

Director of Criminal and Penal Prosecutions,

Association québécoise des avocats et avocates de la défense,

Canadian Civil Liberties Association,

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2026 SCC 30

File No.: 41677.

2026: January 16; 2026: September 11.

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 — Sentencing — Delay between verdict and sentencing — Remedy — Offender claiming that constitutional right to be tried within reasonable time infringed by post-verdict sentencing delay of more than 12 months and seeking stay of proceedings — Whether offender's right to be tried within reasonable time infringed by post-verdict sentencing delay — If so, whether stay of proceedings is appropriate remedy — Canadian Charter of Rights and Freedoms, ss. 11(b), 24(1).

The offender was found guilty of sexual assault in October 2021. Sentencing proceedings before the trial judge commenced immediately upon conviction, but had not yet concluded by October 2022, at which time the offender brought an application for a stay of proceedings on the basis that the post-verdict sentencing delay violated his right to be tried within a reasonable time under s. 11(b) of the Charter . The trial judge dismissed the application. She concluded that post-verdict sentencing delay is subject to a five-month ceiling after which it becomes presumptively unreasonable under s. 11(b), but that the net post-verdict sentencing delay in the instant case was just under four months. She imposed a conditional sentence of two years less a day, followed by one year of probation. On appeal by the offender, the Court of Appeal revised the calculation of the net post-verdict sentencing delay and found that the delay exceeded the five-month presumptive ceiling, thus infringing the offender's right under s. 11(b) of the Charter . Treating the unreasonable sentencing delay as an enhanced mitigating factor, the court reduced the length of the offender's conditional sentence to 20 months.

Held : The appeal should be dismissed.

A presumptive ceiling for post-verdict sentencing delay should not be imposed. Rather, the appropriate test for assessing whether a post-verdict sentencing delay infringes the right to be tried within a reasonable time as guaranteed by s. 11(b) of the Charter is whether the time taken to impose the sentence was markedly longer than it reasonably should have been in all the circumstances. Where a breach of s. 11(b) is established, the remedy that will ordinarily be appropriate for unreasonable post-verdict sentencing delay is a reduction in sentence. In the instant case, the time taken to complete the sentencing proceedings markedly exceeded what it reasonably should have been. Although the Court of Appeal erred in applying a five-month presumptive ceiling, it reasonably determined that the proper and proportionate remedy in the circumstances was a reduction of the offender's conditional sentence to 20 months.

Section 11(b) of the Charter , which guarantees that any person charged with an offence has the right to be tried within a reasonable time, is a constitutional commitment that attaches to each of the many stages in a criminal proceeding and spans from the initial laying of the charge to the final imposition of any sentence. However, the presumptive ceilings established in *R. v. Jordan* , 2016 SCC 27, [2016] 1 S.C.R. 631, that require trials to be conducted within 18 months in provincial courts and 30 months in superior courts do not govern the entire period to which s. 11(b) applies.

The period of post-verdict delay must be assessed separately because, after conviction, the offender is no longer presumed innocent and the fair-trial interests protected before verdict are spent, although significant liberty and security interests remain. The Jordan ceilings were adopted to respond to a specific, proven culture of complacency in bringing accused persons to trial; no comparable evidentiary foundation has been established for the sentencing phase of criminal proceedings.

Parliament has specified that sentencing must take place as soon as practicable after guilt is found. Sentencing requires an information-gathering and decision-making process that begins once guilt is established and ends only when all components of the sanction are fixed. To discharge its duty to impose a fit and proportionate sentence that reflects the moral blameworthiness of the offender and the severity of the offence, a court requires suitable evidence and sound submissions concerning the range of available penalties. Sentencing is not a single, discrete event. It is an inherently individualized process requiring the sentencing judge to move beyond the question of guilt and engage in the delicate task of fitting the punishment to the specific offender and the specific offence. Importantly, a fit and proportionate sentence cannot be imposed in an informational vacuum; it must rest on a full appreciation of the circumstances of the offender, the offence, and the principles of sentencing. Sentencing proceedings vary greatly in length and complexity depending on what information a sentencing judge requires to impose a fit and proportionate sentence in the circumstances of the case. That individualized, fact-dependent inquiry may reasonably demand more or less time, depending on the offender, the offence, and the issues engaged.

The markedly longer test is well suited to the sentencing context, which is individualized, information-dependent, and often iterative, while remaining sufficiently robust to identify delay that exceeds what was reasonably necessary in all of the circumstances. It reflects the different balance of interests after a valid finding of guilt: the offender's liberty, security and fair-trial interests remain constitutionally protected, but they are attenuated in light of the adjudicated finding of guilt; at the same time, society's interest in the timely imposition of a fit and proportionate sentence is heightened. Assessing whether post-verdict sentencing delay was markedly longer than it reasonably should have been invites a contextual inquiry. The question is not whether the delay was long in the abstract, and there is no fixed duration that automatically triggers s. 11(b). The same period of delay may carry very different constitutional significance depending on the complexity of the sentencing exercise, the information required to impose sentence, and the issues that must be resolved. Whether sentencing has taken markedly longer than reasonably necessary in the circumstances is based on a variety of considerations, and it remains an objective and normative assessment. Relevant considerations may include the overall duration of the delay; the complexity of the case; anything from the parties, the sentencing judge, or the court that might inform the reason for specific periods of delay; the parties' positions and conduct; and a consideration of how long comparable cases typically take to reach a decision in light of the relevant local circumstances.

The markedly longer standard is objective and normative in nature. That is, the proper inquiry is whether sentencing proceedings have taken markedly longer than they should reasonably take in a criminal justice system functioning as it ought to in a free and democratic society, not how long it happens to take in a particular jurisdiction given existing resource constraints.

Methodologically, the markedly longer standard requires courts to compare the time actually taken to complete the sentencing process with the time it reasonably should have taken in all of the circumstances. This assessment is not mechanical, but contextual, and must consider both the overall length of the proceedings and the reasons for particular periods of delay.

Where a breach of s. 11(b) is established, a court must craft the remedy it considers appropriate and just in the circumstances, having regard to the nature of the breach, its effects, and the need to preserve both the offender's constitutional rights and the public interest in a lawful and proportionate sentence. The balance of rights and interests is qualitatively different in the post-verdict context as the presumption of innocence has been rebutted by proof of guilt beyond a reasonable doubt. Section 24(1) of the Charter provides a wide remedial scope and gives rise to a discretionary and contextual inquiry. The remedy that will ordinarily be appropriate for unreasonable post-verdict sentencing delay is a reduction in sentence, although in exceptional cases a stay of proceedings may be available.

Cases Cited

Overruled: *R. v. Charley*, 2019 ONCA 726, 147 O.R. (3d) 497; considered: *R. v. Jordan*, 2016 SCC 27, [2016] 1 S.C.R. 631; *R. v. K.G.K.*, 2020 SCC 7, [2020] 1 S.C.R. 364; referred to: *R. v. MacDougall*, [1998] 3 S.C.R. 45; *R. v. Morin*, [1992] 1 S.C.R. 771; *R. v. Jacques-Taylor*, 2026 SCC 20; *R. v. Vrbancic*, 2026 SCC 19; *Quebec (Attorney General) v. Senneville*, 2025 SCC 33; *R. v. Gardiner*, [1982] 2 S.C.R. 368; *R. v. Nahanee*, 2022 SCC 37, [2022] 3 S.C.R. 3; *R. v. Brown*, [1991] 2 S.C.R. 518; *R. v. Ferguson*, 2008 SCC 6, [2008] 1 S.C.R. 96; *R. v. Aragon*, 2022 ONCA 244, 413 C.C.C. (3d) 79; *R. v. Gladue*, [1999] 1 S.C.R. 688; *R. v. Ipeelee*, 2012 SCC 13, [2012] 1 S.C.R. 433; *R. v. Anderson*, 2021 NSCA 62, 74 C.R. (7th) 333; *R. v. Morris*, 2021 ONCA 680, 159 O.R. (3d) 641; *R. v. K.J.M.*, 2019 SCC 55, [2019] 4 S.C.R. 39; *R. v. J.F.*, 2022 SCC 17, [2022] 1 S.C.R. 330; *R. v. Fouani*, 2025 ABCJ 2, 569 C.R.R. (2d) 232; *R. v. Cape*, 2025 ABCJ 129; *R. v. S.P.P.*, 2024 NSSC 42; *R. v. Clemons*, 2018 MBQB 144, 421 C.R.R. (2d) 26, *aff'd* 2020 MBCA 4; *R. v. S.C.W.*, 2018 BCCA 346, 367 C.C.C. (3d) 518; *Lévesque Paquette v. R.*, 2022 QCCA 1047; *Chemama v. R.*, 2024 QCCA 405; *Snowball v. R.*, 2026 QCCA 76; *R. v. Rahey*, [1987] 1 S.C.R. 588; *R. v. Varennes*, 2025 SCC 22; *R. v. Jones*, [1994] 2 S.C.R. 229; *R. v. Askov*, [1990] 2 S.C.R. 1199; *R. v. K.R.J.*, 2016 SCC 31, [2016] 1 S.C.R. 906; *Mills v. The Queen*, [1986] 1 S.C.R. 863; *R. v. Gamble*, [1988] 2 S.C.R. 595; *Vancouver (City) v. Ward*, 2010 SCC 27, [2010] 2 S.C.R. 28; *R. v. Nasogaluak*, 2010 SCC 6, [2010] 1 S.C.R. 206; *R. v. Bosley* (1992), 18 C.R. (4th) 347; *R. v. Leaver* (1996), 3 C.R. (5th) 138; *R. v. Panousis*, 2002 ABQB 1109, 329 A.R. 47; *Canada (Minister of Citizenship and Immigration) v. Tobias*, [1997] 3 S.C.R. 391; *R. v. O'Connor*, [1995] 4 S.C.R. 411; *R. v. Brunelle*, 2024 SCC 3; *R. v. Regan*, 2002 SCC 12, [2002] 1 S.C.R. 297; *R. v. Babos*, 2014 SCC 16, [2014] 1 S.C.R. 309.

Statutes and Regulations Cited

Canadian Charter of Rights and Freedoms , ss. 11(b), 24(1).

Criminal Code , R.S.C. 1985, c. C-46 , ss. 523(1)(a), 718, 718.2(a)(iii.1), (e), 720, 721(1), 722(1), 722.2(1), 723(1), (2), (3), (4), 724(2), (3).

APPEAL from a judgment of the Ontario Court of Appeal (Trotter, Favreau and Gomery JJ.A.), 2024 ONCA 930 , 175 O.R. (3d) 81, [2024] O.J. No. 5916 (Lexis), 2024 CarswellOnt 19873 (WL), reducing the offender's 24-month conditional sentence to a 20-month conditional sentence. Appeal dismissed.

Arash Ghiassi and Julia Kirby , for the appellant.

Jeremy Tatum and Brett Cohen , for the respondent.

Mark J. Covan and Kelvin Ramchand , for the intervener Director of Public Prosecutions.

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Susanne E. Elliott , K.C. , and Lara Vizsolyi , for the intervener Attorney General of British Columbia.

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Julia Blais-Quintal and Caroline Jennis , for the intervener Association québécoise des avocats et avocates de la défense.

Chris Rudnicki and Theresa Donkor , for the intervener Canadian Civil Liberties Association.

James Foy , for the intervener British Columbia Civil Liberties Association.

Howard L. Krongold and Rick Frank , for the intervener Criminal Lawyers' Association (Ontario).

The judgment of the Court was delivered by

Martin J. —

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I. Overview

[1] Section 11(b) of the Canadian Charter of Rights and Freedoms guarantees that “[a]ny person charged with an offence has the right . . . to be tried within a reasonable time”. This constitutional commitment attaches to each of the many stages in a criminal proceeding and spans from the initial laying of the charge to the final imposition of any sentence. It affirms the core principle that “[t]imely justice is one of the hallmarks of a free and democratic society” (R. v. Jordan , 2016 SCC 27, [2016] 1 S.C.R. 631, at para. 1).

[2] In Jordan , this Court articulated a framework for determining whether the length of a criminal trial infringes s. 11(b). Faced with evidence that a culture of complacency towards delay had taken hold, this Court established presumptive ceilings that require trials to be concluded within 18 months in provincial courts and 30 months in superior courts (para. 46). To date, this Court has not imposed presumptive ceilings for delays at any other stage of a criminal proceeding.

[3] This appeal requires this Court to determine how to assess the reasonableness of delay in the period between conviction and sentencing. The appellant asks us to adopt the Court of Appeal for Ontario’s approach in R. v. Charley , 2019 ONCA 726, 147 O.R. (3d) 497, at para. 87, and impose a five-month presumptive ceiling over which delay would be presumed to breach s. 11(b). In the Crown’s view, the better approach is to ask whether the time taken to impose the sentence was markedly longer than it reasonably should have been in all the circumstances.

[4] We accept that the more flexible standard proposed by the Crown should be adopted. Parliament has specified that sentencing must take place “as soon as practicable” after guilt is found (Criminal Code , R.S.C. 1985, c. C-46, s. 720). This statutory requirement reflects the reality that while sentencing in Canadian criminal law may occur at a hearing (or series of hearings), it requires an information-gathering and decision-making process that begins once guilt is

established and ends only when all components of the sanction (including ancillary orders) are fixed. To discharge its duty to impose a fit and proportionate sentence that reflects the moral blameworthiness of the offender and the severity of the offence, a court requires suitable evidence and sound submissions concerning the range of available penalties.

[5] Whether sentencing has taken markedly longer than reasonably necessary in the circumstances is based on a variety of considerations, and it remains an objective and normative assessment. Relevant considerations may include the overall duration of the delay; the complexity of the case; anything from the parties, the sentencing judge, or the court that might inform the reason for specific periods of delay; the parties' positions and conduct; and a consideration of how long comparable cases typically take to reach a decision in light of the relevant local circumstances.

[6] Where a breach of s. 11(b) is established, the balance of rights and interests is qualitatively different in the post-verdict context as the presumption of innocence has been rebutted by proof of guilt beyond a reasonable doubt. Section 24(1) of the Charter provides a wide remedial scope and gives rise to a discretionary and contextual inquiry. The remedy that will ordinarily be appropriate for unreasonable post-verdict sentencing delay is a reduction in sentence, although in exceptional cases a stay of proceedings may be available.

II. Background

[7] The appellant, an Iranian citizen present in Canada on a post-graduation work permit, was found guilty of sexual assault on October 7, 2021. Upon conviction, the trial judge ordered the preparation of a pre-sentence report and scheduled an attendance for October 15, 2021. On that day, the parties attended before the trial judge and confirmed a further attendance on December 13, 2021.

[8] On December 13, 2021, the defence requested an adjournment to obtain a transcript of the trial decision. The matter was adjourned on consent to January 17, 2022, at which point the trial judge scheduled sentencing submissions for February 25, 2022.

[9] On February 25, 2022, the parties attended before the trial judge to make sentencing submissions. Defence counsel sought a conditional discharge and raised collateral immigration consequences as part of his argument. The Crown was not able to make submissions within the fixed time allocated for the hearing. According to the trial judge, this was due in part to technical difficulties that delayed the hearing itself, which took place virtually during the COVID-19 pandemic. The hearing was scheduled to continue on April 5, 2022.

[10] On April 5, 2022, the parties attended before another judge and were advised that the trial judge was not available. The matter was put over to April 19, 2022. On that day, the parties reattended before the trial judge and the Crown made its submissions on sentencing. The trial judge then set a return date of May 24, 2022.

[11] On May 24, 2022, the trial judge posed questions to the Crown and defence counsel. As Crown counsel who attended that day was not the Crown assigned to the file, it was agreed that counsel would provide written responses to the trial judge's questions and reattend at a later date. The questions related to: (i) whether s. 718.2(a)(iii.1) of the Criminal Code applied; (ii) the availability of a conditional sentence; (iii) the principle of restraint for first-time offenders; and (iv) collateral immigration consequences. The matter was then put over to July 12, 2022.

[12] On July 12, 2022, the parties attended before another judge who advised that the trial judge was not available due to an emergency. The matter was adjourned to July 15, 2022, and then re-scheduled to September 16, 2022.

[13] On September 16, 2022, the parties appeared before the trial judge once again. The trial judge advised that she was not ready to impose a sentence, and sought additional clarification on the immigration consequences of the proposed sentences. A few days later, the parties scheduled a continuation for October 20, 2022.

[14] On October 20, 2022, the parties attended before the trial judge for what was expected to be the delivery of her sentencing reasons. However, immediately before the court attendance, defence counsel filed and served an application for a stay of proceedings on the basis that the post-verdict sentencing delay violated the appellant's right to be tried within a reasonable time under s. 11(b) of the Charter . Due to the timing of the application, the appellant waived any further delay required for the Crown's response.

[15] On December 16, 2022, more than 14 months after the finding of guilt was entered, the parties attended before the trial judge and made submissions on the s. 11(b) application. The trial judge dismissed the application with reasons to follow, and then read her sentencing reasons. She sentenced the appellant to a conditional sentence of two years less a day, followed by one year of probation.

III. Decisions Below

A. Ontario Court of Justice (Redgate J.)

[16] In her reasons for decision on the s. 11(b) application, the trial judge held that the Jordan analysis applies to the assessment of post-verdict sentencing delay, but that the presumptive ceilings established in that case did not apply. Relying on the Court of Appeal for Ontario's decision in Charley , she concluded that post-verdict sentencing delay is instead subject to a five-month ceiling, after which it becomes presumptively unreasonable under s. 11(b) of the Charter .

[17] Turning to the facts of this case, the trial judge found that the sentencing phase of the proceedings — calculated as the period between October 7, 2021 and October 20, 2022 — was 378 days. Of this, she attributed 74 days to the defence on account of defence counsel's request for an adjournment to obtain a transcript of the trial reasons. The trial judge deducted an additional 80 days to account for her unavailability in April and July of 2022, which she treated as a discrete event. She also deducted 69 days to account for the complexity of the matter, which included

needing additional time for submissions on the immigration consequences of the proposed sentences. Finally, she deducted 39 days as a discrete event to account for the delay stemming from the inability to complete the sentencing submissions on February 25, 2022.

[18] Based on this analysis, the trial judge concluded that the net post-verdict sentencing delay was 116 days, or just under four months. This fell below the five-month presumptive ceiling established in *Charley* . The trial judge therefore dismissed the appellant's s. 11(b) application.

B. Court of Appeal for Ontario, 2024 ONCA 930, 175 O.R. (3d) 81 (Trotter, Favreau and Gomery JJ.A.)

[19] The Court of Appeal dismissed the conviction appeal, but granted the appellant leave to appeal the sentence and allowed the sentence appeal on the basis that the trial judge made two errors in her s. 11(b) analysis. First, it held that the trial judge erred by deducting 69 days from the net post-verdict sentencing delay to account for the complexity of the case. In the Court of Appeal's view, the collateral immigration consequences of the appellant's conviction did not generate the sort of complexity that would justify delay beyond the presumptive ceiling. Second, the Court of Appeal held that the trial judge erred in deducting 39 days from the net post-verdict sentencing delay due to the inability to complete the sentencing submissions on February 25, 2022. It concluded that the technical difficulties and missteps that contributed to this delay were not an exceptional circumstance, and should have been properly managed to ensure that sentencing was completed within an acceptable timeframe.

[20] Based on the Court of Appeal's revised calculation, the net post-verdict sentencing delay in this case was 225 days, which exceeded the five-month presumptive ceiling from *Charley* . The Court of Appeal therefore held that the delay infringed the appellant's rights under s. 11(b) of the Charter .

[21] Turning to remedy, the Court of Appeal held that the appropriate remedy for post-verdict sentencing delay should be directed at the sentence, not the conviction itself. On that basis, it treated the unreasonable sentencing delay as an enhanced mitigating factor and reduced the length of the appellant's conditional sentence to 20 months. It rejected the appellant's request for a conditional discharge, emphasizing that sexual assault is a serious offence and that the sanction must remain proportionate. It also acknowledged that the reduction of the appellant's sentence might not eliminate the immigration consequences of his conviction, but held that those consequences had already been taken into account in the trial judge's sentencing analysis.

IV. Issues

[22] This appeal raises two issues:

1. Did the Court of Appeal err in holding that the post-verdict sentencing delay in this case infringed the appellant's right to be tried within a reasonable time?

2. Did the Court of Appeal err in holding that the appropriate remedy in this case was a reduction in the length of the appellant's conditional sentence?

Resolving these issues will require this Court to consider: (1) the proper approach to assessing the reasonableness of post-verdict sentencing delay under s. 11(b) of the Charter ; and (2) the appropriate remedy for unreasonable post-verdict sentencing delay.

V. Analysis

A. Jordan Established Presumptive Ceilings for Criminal Trial Delay

[23] It is settled law that the protections afforded by s. 11(b) extend beyond the end of evidence and argument at trial, up to and including the date when a sentence is imposed (R. v. K.G.K. , 2020 SCC 7, [2020] 1 S.C.R. 364, at para. 3; R. v. MacDougall , [1998] 3 S.C.R. 45, at para. 19).

[24] In Jordan , the Court fundamentally recast the framework for determining whether an accused has been tried within a reasonable time under s. 11(b) of the Charter . The majority concluded that the prior framework set out in R. v. Morin , [1992] 1 S.C.R. 771, had become too unpredictable, complex, and retrospective, and had contributed to a “culture of complacency” toward delay in the criminal justice system (para. 4; see also R. v. Jacques-Taylor , 2026 SCC 20, at para. 40; R. v. Vrbanic , 2026 SCC 19, at para. 22). The Court therefore replaced that framework with a new presumptive-ceiling approach intended to provide clearer guidance, encourage proactive case management, and protect not only the accused's liberty, security of the person, and fair-trial interests, but also the interests of victims, witnesses, and public confidence in the administration of justice.

[25] At the centre of the new framework is a presumptive ceiling for the time between the laying of the charge and the actual or anticipated end of trial. The ceiling is 18 months for cases tried in provincial court, and 30 months for cases tried in superior court (or in provincial court following a preliminary inquiry). In calculating the relevant delay, periods waived by the defence or attributable to defence conduct are deducted. If the resulting net delay exceeds the applicable ceiling, the delay is presumptively unreasonable and the burden shifts to the Crown to rebut that presumption by establishing exceptional circumstances.

[26] Where the delay falls below the presumptive ceiling, the burden remains on the defence. A stay below the ceiling will be rare and limited to clear cases. The defence must show both that it took “meaningful steps that demonstrate a sustained effort to expedite the proceedings”, and that “the case took markedly longer than it reasonably should have” (Jordan , at para. 48). This assessment is contextual, not mathematical, and demands consideration of “the complexity of the case, local considerations, and whether the Crown took reasonable steps to expedite the proceedings” (para. 87).

[27] However, the presumptive ceilings established in *Jordan* do not govern the entire period to which s. 11(b) applies. They apply only to the period between the laying of the charge and the actual or anticipated end of evidence and argument at trial (*Jordan* , at para. 49; see also *K.G.K.* , at paras. 31 and 33). Indeed, the *Jordan* majority explicitly acknowledged that the “issue of delay in sentencing, however, is not before us, and we make no comment about how this ceiling should apply to s. 11(b) applications brought after a conviction is entered” (para. 49, fn. 2).

[28] The Court of Appeal for Ontario extended the logic of *Jordan* to post-verdict sentencing delay in *Charley* . The court accepted that s. 11(b) applies not only to the period before verdict, but also to the sentencing phase, relying on the established principle that the right to be tried within a reasonable time includes the right to be sentenced within a reasonable time. However, the court held that the 18- and 30-month ceilings created in *Jordan* do not include post-verdict delay. This period of delay must therefore be assessed separately because, after conviction, the accused is no longer presumed innocent and the fair-trial interests protected before verdict are spent, although significant liberty and security interests remain.

[29] The court in *Charley* rejected the Crown’s submission that post-verdict delay should be assessed under *Jordan* principles but without any presumptive ceiling. Doherty J.A. reasoned that presumptive ceilings are the “heart” of the *Jordan* framework: without them, the analysis would revert to the retrospective, case-specific uncertainty that *Jordan* was designed to replace (para. 61). The court held that the same concerns animating *Jordan* — certainty, analytical simplicity, proactive case management, and the need to displace a culture of complacency — apply with equal force to sentencing. It therefore created a separate five-month presumptive ceiling for post-verdict delay (para. 87). As in *Jordan* , that ceiling is not an aspirational target; it is the point at which post-verdict delay becomes presumptively unreasonable and the Crown bears the burden of justification.

[30] In *K.G.K.* , released after the Court of Appeal’s decision in *Charley* , this Court declined to extend the *Jordan* presumptive ceilings to verdict deliberation time, emphasizing that those ceilings were a targeted response to delay in bringing accused persons to trial and were not intended to govern all phases of the criminal process. Recognizing that deliberation time is inherently variable and closely tied to the adjudicative function, the Court adopted a different standard: whether the time taken to render a verdict was “markedly longer than it reasonably should have [been] in all of the circumstances” (para. 4). That elevated threshold was justified in part by the presumption of judicial integrity, which reflects confidence that judges act conscientiously, manage their workload responsibly, and take no longer than reasonably necessary to decide cases, absent compelling evidence to the contrary.

B. A Separate Presumptive Ceiling for Post-Verdict Sentencing Delay Is Not Warranted

[31] The appellant submits that this Court should adopt the approach in *Charley* and impose a separate presumptive ceiling for post-verdict sentencing delay. The Crown responds that no such ceiling is warranted, and that sentencing delay should instead be assessed contextually by asking whether the proceedings took markedly longer than they reasonably should have in all of the circumstances.

[32] With respect, I would decline to follow *Charley* or impose a separate presumptive ceiling for post-verdict sentencing delay. The Jordan ceilings were adopted to respond to a specific, proven culture of complacency in bringing accused persons to trial; no comparable evidentiary foundation has been established for the sentencing phase of criminal proceedings. Sentencing is also a highly variable and information-dependent process: some matters may be resolved quickly, while others require reports, contested factual hearings, submissions on collateral consequences, or time for the sentencing judge to craft a fit and proportionate sentence. Given that variability, a fixed ceiling would risk treating unlike cases alike and could undermine the flexibility required by Parliament's direction that sentencing occur "as soon as practicable" (*Criminal Code* , s. 720).

(1) The Variability of Sentencing Proceedings Makes Them Ill-Suited for Presumptive Ceilings

[33] Sentencing is not a single, discrete event. Rather, it is an information-gathering and decision-making process that begins once guilt has been established and ends only when all components of the sanction have been fixed. It is an inherently individualized process requiring the sentencing judge to move beyond the question of guilt and engage in the delicate task of fitting the punishment to the specific offender and the specific offence (*Quebec (Attorney General) v. Senneville* , 2025 SCC 33, at para. 1; *R. v. Gardiner* , [1982] 2 S.C.R. 368, at p. 406). Importantly, a fit and proportionate sentence cannot be imposed in an informational vacuum; it must rest on a full appreciation of the circumstances of the offender, the offence, and the principles of sentencing.

[34] Against this backdrop, a range of features may legitimately extend the time required to conclude sentencing proceedings. These may include the preparation or updating of pre-sentence reports, psychiatric or psychological evaluations, or treatment records; the filing of victim or community impact statements; hearings to resolve disputed facts or legal issues; dangerous offender and long-term offender applications; and submissions on ancillary orders, restitution, or collateral consequences. Sentencing submissions may be contested rather than joint, requiring more extensive evidence and argument, or may require further submissions where the court is considering a disposition outside the parties' proposed range (*R. v. Nahanee* , 2022 SCC 37, [2022] 3 S.C.R. 3). Where sentencing follows a jury verdict, additional time may also be required to identify and apply the factual findings that are necessarily implicit in the verdict (*Criminal Code* , s. 724(2); *R. v. Brown* , [1991] 2 S.C.R. 518, at p. 523; *R. v. Ferguson* , 2008 SCC 6, [2008] 1 S.C.R. 96, at para. 18; *R. v. Aragon* , 2022 ONCA 244, 413 C.C.C. (3d) 79, at para. 106). Each

of these steps is directed toward ensuring that the sentence imposed is informed and proportionate, and each may reasonably require additional time.

[35] Sentencing may also take longer where the court is required to address the systemic and background factors affecting Indigenous and other racialized offenders. Section 718.2(e) of the Criminal Code requires sentencing judges to pay particular attention to the circumstances of Indigenous offenders, which requires a “different method of analysis” that considers systemic and background factors, often communicated in Gladue reports (R. v. Gladue , [1999] 1 S.C.R. 688, at para. 93; R. v. Ipeelee , 2012 SCC 13, [2012] 1 S.C.R. 433 , at para. 59). Impact of Race and Culture Assessments may also be required to appreciate the systemic and background factors affecting other members of racialized communities. Prepared by individuals “with specialized knowledge, education and experience”, these assessments provide “‘indispensable’ content” in determining a fit sentence (R. v. Anderson , 2021 NSCA 62, 74 C.R. (7th) 333, at paras. 109 and 119, citing Ipeelee , at para. 60; see also R. v. Morris , 2021 ONCA 680, 159 O.R. (3d) 641, at para. 138), and may take months to prepare (I.F., Attorney General of Nova Scotia, at para. 12).

[36] The Criminal Code expressly contemplates an individualized sentencing process that proceeds on a complete record. Section 720(1) directs courts to proceed to sentencing “as soon as practicable” after a finding of guilt, adopting a qualitative standard that prioritizes efficiency without sacrificing completeness or fairness. The Criminal Code also authorizes the court to hear submissions on relevant facts (s. 723(1)), receive relevant evidence (s. 723(2)), require the production of additional evidence (s. 723(3)), and compel live testimony where the interests of justice require it (s. 723(4)). It also permits sentencing to be delayed for rehabilitative purposes, including to allow an offender to attend a treatment program (s. 720(2)). Together, these provisions reflect Parliament’s intent that sentencing should be an individualized and informed process.

[37] It is nevertheless incumbent upon the sentencing judge to control the proceedings. At an early stage, the judge ought to direct counsel for both parties to clearly articulate their respective positions on sentence. This includes specifying the matters in dispute and the nature of any evidence to be adduced. In addition, the sentencing judge should establish timelines governing the exchange of materials and the scheduling of oral argument. Both the Crown and the defence bear a corresponding duty to collaborate to ensure that the sentencing hearing proceeds efficiently and without unnecessary delay (Charley , at para. 74).

[38] In sum, sentencing proceedings vary greatly in length and complexity depending on what information a sentencing judge requires to impose a fit and proportionate sentence in the circumstances of the case. That individualized, fact-dependent inquiry may reasonably demand more or less time, depending on the offender, the offence, and the issues engaged.

(2) The Rationale for Presumptive Ceilings Does Not Apply to Post-Verdict Sentencing Delay

[39] The variable nature of sentencing does not, on its own, rule out the possibility of a presumptive ceiling. After all, Jordan imposed presumptive ceilings on trials even though trials themselves vary greatly in length and complexity depending on the number of charges, witnesses, accused, legal issues, and evidentiary disputes.

[40] However, as this Court explained in *K.G.K.*, the shift to presumptive ceilings in Jordan “represented a specific solution designed to address a specific problem: the culture of complacency towards excessive delay associated with ‘bringing those charged with criminal offences to trial’” (para. 34, citing *Jordan*, at para. 2). Drawing on multiple studies and reports, the Jordan majority found that unnecessary procedures, inefficient practices, and inadequate resourcing had become accepted as the norm, producing ever-increasing delay and eroding public confidence in the administration of justice (paras. 37-40). The existing s. 11(b) framework from *Morin* was considered inadequate to counter this culture because it rationalized delay at the back end and failed to encourage participants to take preventative measures (paras. 35 and 41). Against that backdrop, the Court concluded that there were “compelling reasons” to depart from *Morin* and adopt a new framework centred on presumptive ceilings as a means of catalyzing systemic change (paras. 44-45). As Moldaver J. aptly summarized in *K.G.K.*, the “well-documented extent of the culture of complacency in the criminal justice system and its effect on accused persons were significant justifications for creating a new approach to assess delays in bringing accused persons to trial” (para. 37).

[41] Since *Jordan*, this Court has consistently rejected invitations to extend the Jordan ceilings to other phases of the criminal process or to recalibrate them for particular types of proceedings absent evidence of a real problem. In *R. v. K.J.M.*, 2019 SCC 55, [2019] 4 S.C.R. 39, the Court declined to introduce a lower presumptive ceiling for youth justice proceedings on the basis that it had “not been shown that there is a problem regarding delay in the youth criminal justice system, let alone one that warrants the imposition of a new constitutional standard” (para. 63). In *K.G.K.*, the Court similarly declined to extend the Jordan ceilings to verdict deliberation time on the basis that there was “no suggestion here . . . that delay arising from verdict deliberation time contributes to the systemic problem that Jordan sought to address” (para. 38). And in *R. v. J.F.*, 2022 SCC 17, [2022] 1 S.C.R. 330, this Court declined to modify the presumptive ceilings for retrials absent proof of a “real problem” (para. 65). These cases reflect that departures from, or extensions of, the Jordan ceilings must be grounded in cogent evidence of a pressing need for systemic change.

[42] That said, there is no cogent evidence of a culture of complacency towards delay in sentencing proceedings, either in Ontario or elsewhere in Canada. The appellant relies on a supposed “dearth of case law” as symptomatic of a lack of attention to sentencing delay, which he says is consistent with a culture of complacency towards post-verdict delay (transcript, at p. 15). However, I do not find this argument persuasive. A lack of reported decisions on post-verdict sentencing delay may simply reflect strategic litigation choices or publication practices, rather than entrenched complacency. Absent an evidentiary record that demonstrates a widespread, structural problem with delay at the sentencing stage of criminal proceedings, there is no

principled basis for introducing a new presumptive ceiling at that stage.

[43] I would therefore decline to follow Charley . Although that approach has the merit of promoting certainty, discipline, and timely movement toward sentence, it did not sufficiently consider the rationale for adopting the Jordan ceilings: they were not created simply because bright-line rules are useful, but because there was cogent evidence of a real systemic problem as to the time required to bring accused persons to trial. This is not to say that sentencing practices, including scheduling practices, should not be subject to careful and on-going reviews in order to consider the s. 11(b) interests of offenders at this stage in the criminal process.

C. The Test for Assessing the Reasonableness of Post-Verdict Sentencing Delay Is the “Markedly Longer” Test

[44] Sentencing proceedings are not shielded from constitutional scrutiny under s. 11(b) of the Charter . The guarantee of trial within a reasonable time extends to the imposition of sentence, and undue delay affects the offender’s liberty, security and fair-trial interests, defers finality for victims and others affected by the offence, and diminishes public confidence in the administration of justice. The issue for this Court is therefore not whether post-verdict sentencing delay may infringe s. 11(b), but the standard by which courts are to determine when such delay has become constitutionally unreasonable.

[45] Provincial trial or appellate courts have taken different approaches to what the appropriate test should be for whether post-verdict sentencing delay is unreasonable under s. 11(b). Alberta and Nova Scotia have adopted the “markedly longer” test (R. v. Fouani , 2025 ABCJ 2, 569 C.R.R. (2d) 232 , at para. 67; R. v. Cape , 2025 ABCJ 129 , at para. 120; R. v. S.P.P. , 2024 NSSC 42 , at para. 100). Manitoba and British Columbia have applied the MacDougall standard, which incorporates the Morin framework by requiring consideration of the length of delay, reasons for delay, any waiver by the accused and prejudice suffered by the accused (MacDougall , at para. 60; R. v. Clemons , 2018 MBQB 144, 421 C.R.R. (2d) 26, at paras. 38-42, aff’d 2020 MBCA 4 ; R. v. S.C.W. , 2018 BCCA 346, 367 C.C.C. (3d) 518). Quebec has opted for a [translation] “flexible, modulated approach” which “requires a general and contextual look, but one that keeps in mind the requirements of diligence recognized by the Jordan decision and subsequent jurisprudence” (Lévesque Paquette v. R. , 2022 QCCA 1047, at para. 63; see also Chemama v. R. , 2024 QCCA 405, at para. 351).

[46] The Crown argues that the markedly longer test offers analytical clarity and doctrinal workability by providing a single, contextual standard capable of accounting for the variable and information-dependent nature of sentencing proceedings. In contrast, the appellant argues that the Crown’s proposed test is inappropriate because it replicates Morin ’s unpredictability and imposes an unfair burden on the defence.

[47] In my view, the “markedly longer” test is the appropriate test for assessing the reasonableness of post-verdict sentencing delay. It is consistent with this Court’s existing s. 11(b) jurisprudence, including the standard applied below the Jordan ceilings and to verdict deliberation time in K.G.K. , and it avoids introducing unnecessary complexity into the

framework. It is also well suited to the sentencing context, which is individualized, information-dependent, and often iterative, while remaining sufficiently robust to identify delay that exceeds what was reasonably necessary in all of the circumstances. Finally, it reflects the different balance of interests after a valid finding of guilt: the offender's s. 11(b) interests remain important but are attenuated, while society's interest in the prompt imposition of a fit and proportionate sentence assumes heightened significance.

(1) The “Markedly Longer” Test Is Consistent With This Court’s Section 11(b) Jurisprudence and Avoids Unnecessary Complexity

[48] The “markedly longer” standard is an established standard from this Court’s s. 11(b) jurisprudence. Under *Jordan*, where trial delay falls below the presumptive ceilings, an accused must show that the proceedings took markedly longer than they reasonably should have in order to establish a breach of s. 11(b) (para. 82). As stated, the same standard applies to delay occasioned by verdict deliberation time following trial (*K.G.K.*, at para. 54). Applying that same standard to post-verdict sentencing delay promotes coherence and continuity within the s. 11(b) framework and avoids creating a patchwork of stage-specific tests.

[49] Adopting a different test for post-verdict sentencing delay would entail practical difficulties because sentencing necessarily includes a period (or periods) of judicial deliberation. In *K.G.K.*, *Moldaver J.* explained that verdict deliberation time is assessed using the “markedly longer” standard because of the presumption of judicial integrity, which presupposes that trial judges will only take as much deliberation time as was reasonably necessary in the circumstances (paras. 65-66). Because that presumption applies with equal force to sentencing deliberations, fidelity to *K.G.K.* would require us to apply the “markedly longer” standard to sentencing deliberations. If a materially different standard were applied to the non-deliberative aspects of the sentencing process — such as the preparation of reports or submissions — reviewing courts would be forced to fragment the sentencing process and draw artificial distinctions about what constitutes “deliberation” or not. Applying the same “markedly longer” standard to the entire post-verdict sentencing period avoids this problem.

[50] A heightened “markedly longer” standard, over a standard based on what simply took “longer” or some lesser formulation, is also appropriate given the different balance of interests that prevails after a finding of guilt. I return to this point in addressing remedy, but it bears noting here that, once guilt has been established, the offender’s s. 11(b) interests in liberty, security of the person, and trial fairness, while still real, are diminished. At the same time, society’s interest in the proper adjudication of the matter on its merits — including the prompt imposition of a fit and proportionate sentence — assumes heightened importance. This altered balance supports a contextual standard that remains capable of identifying constitutionally unreasonable delay, without treating sentencing delay in the same manner as delay in bringing a presumptively innocent person to trial.

(2) Considerations That Inform Whether Post-Verdict Sentencing Delay Took Markedly Longer Than It Reasonably Should Have in All the Circumstances

[51] Assessing whether post-verdict sentencing delay was markedly longer than it reasonably should have been invites a contextual inquiry. The question is not whether the delay was long in the abstract, and there is no fixed duration that automatically triggers s. 11(b). The same period of delay may carry very different constitutional significance depending on the complexity of the sentencing exercise, the information required to impose sentence, and the issues that must be resolved. The markedly longer standard is designed to capture this reality.

[52] Importantly, the markedly longer standard is objective and normative in nature. That is, the proper inquiry is whether sentencing proceedings have taken markedly longer than they should reasonably take in a criminal justice system functioning as it ought to in a free and democratic society, not how long it happens to take in a particular jurisdiction given existing resource constraints.

[53] Methodologically, the markedly longer standard requires courts to compare the time actually taken to complete the sentencing process with the time it reasonably should have taken in all of the circumstances. This assessment is not mechanical, but contextual, and must consider both the overall length of the proceedings and the reasons for particular periods of delay.

[54] In *K.G.K.* , this Court identified a non-exhaustive list of factors relevant to determining whether verdict deliberation time offends s. 11(b) (paras. 67-72). In my view, those same considerations can inform the assessment of whether sentencing proceedings took markedly longer than they reasonably should have, by providing a structured framework for evaluating whether the elapsed time crossed the elevated threshold imposed by that standard. The breadth of these considerations allows courts to account for the same kinds of matters that would also be relevant under a *Jordan* analysis including waiver, defence-caused delay or exceptional circumstances.

[55] First, in exceptional cases, the sheer duration of the post-verdict delay may be so plainly excessive that it constitutes a breach of s. 11(b) regardless of context (*K.G.K.* , at para. 68). That said, the analysis ordinarily begins by considering how long the post-verdict period lasted, and it is “extremely unlikely” that elapsed time, by itself, will satisfy the markedly longer threshold (para. 68).

[56] Second, the complexity of the case will be an important consideration (*K.G.K.* , at para. 70). Delay accrued post-verdict will vary with the case’s complexity (see *Jordan* , at para. 88, quoting *Morin* , at pp. 791-92). Relevant factors may include “[t]he amount and nature of the evidence adduced, the number of co-accused (if any), the legal issues raised by the case, and the parties’ positions” (*K.G.K.* , at para. 70), the consideration of reports including pre-sentence reports, Gladue reports and Impact of Race and Cultural Assessments (*Criminal Code* , s. 721(1)), the adjudication of contested facts (e.g., *Gardiner* hearings; s. 724(3)), settling any facts that are express or implied that are essential to the jury’s verdict of guilty (s. 724(2)), the consideration of victim and community impact statements (ss. 722(1) and 722.2(1)), associated proceedings (e.g., dangerous offender applications, calling evidence to demonstrate harsh conditions in a remand

centre, applications for enhanced pre-sentence credit, etc.), and any potential collateral consequences, among other considerations. Importantly, however, complexity is not to be conflated with the “particularly complex” standard or evaluated within the Jordan discrete exceptional circumstance (para. 77).

[57] Third, any information from the parties, the sentencing judge, or the court that might inform the reason for specific periods of delay is relevant. This may include, for example, communications identifying a medical emergency. Or, in the context of delayed reports, reasons for any delay should be clearly articulated. Delay may be attributable to unavailable or uncooperative collateral contacts, the offender’s conduct, or lack of resourcing. This information will allow the court to properly assess the cause of delay and how it fits into the markedly longer analysis (I.F., Attorney General of Alberta, at para. 21).

[58] Fourth, the parties’ positions and conduct may also be relevant. If legal issues are raised early and addressed efficiently, the time taken to resolve them may be reasonable. But if issues are raised late or dealt with in a way that unnecessarily extends the proceedings, that may support a finding that the delay was markedly longer than it reasonably should have been.

[59] Fifth, it can be useful to compare the elapsed time against how long comparable cases typically take to reach a decision in light of the relevant local circumstances (K.G.K. , at para. 72, citing Jordan , at para. 89). For example, what constitutes a reasonable time may differ between a remote fly-in circuit court and an urban courthouse, given the distinct logistical and institutional realities in each setting (see *Snowball v. R.* , 2026 QCCA 76 , at para. 57). However, where prolonged sentencing timelines are the product of systemic underfunding or entrenched structural deficiencies, such comparisons may be of limited assistance, since prevailing practice cannot by itself define the constitutional standard of reasonableness.

[60] A benefit of a presumptive ceiling is that it provides a real incentive to move matters along and may help attract the resources necessary to ensure the timely provision of the information, reports and statements that underpin sentencing. By choosing the more flexible markedly longer standard we are not countenancing situations in which such information is unreasonably constrained by a lack of necessary resources. Rather, the markedly longer standard is objective and normative. It asks how long sentencing reasonably should have taken in all the circumstances, not merely how long sentencing often takes in a system that may be affected by chronic delay. That objective and normative inquiry does not displace the usual deference owed on appeal to the sentencing judge’s underlying findings of fact.

[61] Local circumstances remain relevant, but they are not a licence to normalize systemic under-resourcing, institutional inertia, or entrenched operational deficiencies. Gladue reports, for example, may be necessary to arrive at a fit and individualized sentence for Indigenous offenders; however, delay attributable to obtaining such a report must still be assessed with care. The importance of the report does not mean that institutional scarcity, administrative inaction, or systemic under-resourcing can justify unreasonable post-verdict delay. Thus, where the record shows that prevailing timelines are themselves the product of such deficiencies, those timelines

cannot, standing alone, justify delay. This does not require sentencing judges to audit every comparator case. It simply means that common practice is not conclusive of constitutional reasonableness as there is no room for a culture of complacency at the sentencing stage. Where the structure or operation of the system causes sentencing to take markedly longer than reasonably necessary, the constitutional standard is not relaxed; the system is expected to respond.

D. Remedies for Unreasonable Post-Verdict Sentencing Delay Are Discretionary

[62] Section 24(1) of the Charter guarantees that “[a]nyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances”. The question in this case is what remedies are appropriate and just for a breach of s. 11(b) occurring in the post-verdict sentencing phase of a criminal proceeding.

[63] In *R. v. Rahey*, [1987] 1 S.C.R. 588, this Court held that a stay of proceedings is the appropriate remedy for unreasonable delay occurring before conviction, because any lesser remedy would permit the trial to continue and thereby compound the breach of s. 11(b). That conclusion, however, was directed to pre-conviction delay, where the accused remains presumptively innocent and the proceedings leading to a determination of guilt are themselves tainted by unconstitutional delay. *Rahey* did not address the distinct remedial question that arises after a valid finding of guilt has been entered; indeed, this Court has more recently confirmed that it has taken “no position on the appropriate remedy for a breach of s. 11(b) that occurs after a conviction is entered, but before sentencing” (*R. v. Varennes*, 2025 SCC 22, at para. 82, fn. 3; see also *Jordan*, at para. 49, fn. 2).

[64] The appellant argues that only a stay of proceedings can remedy unreasonable post-verdict sentencing delay. He submits that, once a breach of s. 11(b) is established, the court lacks jurisdiction to proceed further and the only remedy that can prevent additional s. 11(b) violations is a stay (or an absolute discharge, which would be functionally similar to a stay). The Crown submits that an automatic stay is not an appropriate or just remedy for unreasonable post-verdict sentencing delay, highlighting that the s. 11(b) interests at stake after conviction are diluted, while society’s interest in the prompt imposition of a fit sentence is correspondingly heightened.

[65] I agree with the Crown. The default stay of proceedings remedy for pre-conviction delay should not be extended to unreasonable delay in the post-verdict sentencing phase. Once guilt has been validly established, the offender’s s. 11(b) interests, while still real, are attenuated, and society’s interest in the prompt imposition of a fit and proportionate sentence assumes heightened importance. In that context, s. 24(1) requires a discretionary and contextual remedial inquiry, not an automatic result which presumes the inadequacy of tailored alternative remedies. A court must craft the remedy it considers “appropriate and just in the circumstances”, having regard to the nature of the breach, its effects, and the need to preserve both the offender’s constitutional rights and the public interest in a lawful and proportionate sentence.

(1) The Balance of Interests Under Section 11(b) Is Qualitatively Different in the Post-Verdict Sentencing Phase

[66] The right to be tried within a reasonable time protected by s. 11(b) of the Charter balances two distinct sets of interests. For the subject of criminal proceedings, it safeguards their interest in liberty, security of the person, and the right to a fair trial by ensuring that the proceedings are resolved in a timely manner (Jordan , at para. 20). These interests are balanced against society's expectation that criminal matters will be decided on their merits, which would be undermined by an overly strict interpretation of s. 11(b) (Morin , at p. 786).

[67] After conviction, however, the balancing of these interests is qualitatively different than before conviction. The focus shifts away from the interests of the individual subject to the proceedings and toward society's interest in resolving criminal matters on their merits through the imposition of a fit and proportionate sentence.

[68] For the individual, they are no longer an accused person and their s. 11(b) interests become more narrowly defined (R. v. Jones , [1994] 2 S.C.R. 229, at p. 291). Although s. 11(b) continues to apply through sentencing, delay after conviction engages the right in a more attenuated manner than delay before verdict (MacDougall , at para. 67), reflecting that the presumption of innocence has fallen away.

[69] A convicted offender no longer possesses the liberty interests of an untried accused, whose freedom is constrained by unresolved allegations (Jones , at pp. 282-83 and 286-87). Delay in sentencing may impact the liberty of an offender by prolonging detention or release conditions (MacDougall , at para. 33). However, any such continuing restraint on liberty is tethered to an adjudicated finding of guilt rather than a mere allegation of criminal wrongdoing. The Criminal Code reflects this shift by altering the treatment of release orders once guilt is established (s. 523(1)(a)).

[70] The offender's interest in security of the person is likewise recalibrated after conviction. Before conviction, undue delay threatens security of the person by prolonging the stress, anxiety, and stigma associated with a pending criminal accusation (Jordan , at para. 20; Rahey , at p. 605). This is especially true for the factually innocent (R. v. Askov , [1990] 2 S.C.R. 1199, at p. 1219). After guilt is determined, those sorts of harms do not disappear, but they are qualitatively different. Undue sentencing delay can cause the offender to live "in suspense, uncertain of his or her fate, unable to get on with his or her life", and so face stress and anxiety (MacDougall , at para. 34). However, once the presumption of innocence has been extinguished, much of the uncertainty faced by the offender no longer stems from unresolved allegations, but from the fact of the offence and the adjudicated finding of guilt.

[71] The fair-trial interest protected by s. 11(b) is also altered post-verdict. Before trial, delay may compromise fairness by degrading evidence and impairing the accused's ability to mount a defence (Jordan , at para. 20). It is true that evidence can remain important at sentencing, and delay may impede an offender's ability to adduce it (MacDougall , at para. 35). However, once the trial has concluded, those concerns are largely diminished because the evidentiary record has

been preserved (K.G.K. , at para. 60). Sentencing proceedings are governed by different evidentiary principles, affording judges wide latitude to receive information relevant to crafting a fit sentence (Gardiner , at p. 414). Hence, while fairness remains an important consideration at sentencing, the bulk of trial-fairness interests dissipate once guilt has been established (MacDougall , at para. 35).

[72] With regard to society's interest in the proper disposition of criminal proceedings, they assume greater prominence post-conviction. As Gonthier J. explained in Jones , sentencing recalibrates “the fulcrum in the state-individual balancing”: the focus shifts away from trial fairness toward the public interest in the imposition of an appropriate sanction (p. 288; see also pp. 286 and 292). This heightened societal interest is reflected in the Criminal Code itself, which identifies the protection of society through the imposition of just sanctions as the fundamental purpose of sentencing (s. 718; see also R. v. K.R.J. , 2016 SCC 31, [2016] 1 S.C.R. 906, at para. 33). To equate the protections available post-conviction with those that apply pre-trial “ignores a rather critical intervening fact: the accused has been found guilty of a crime” (Jones , at p. 286).

[73] In sum, the balance of interests under s. 11(b) is materially different once guilt has been established. The offender's liberty, security, and fair-trial interests remain constitutionally protected, but they are attenuated in light of the adjudicated finding of guilt; at the same time, society's interest in the timely imposition of a fit and proportionate sentence is heightened. That altered balance makes the automatic stay remedy described in Rahey unsuitable for unreasonable delay in the post-verdict sentencing phase.

(2) Section 24(1) of the Charter Confers Broad Remedial Discretion

[74] Section 24(1) of the Charter confers broad remedial discretion on courts of competent jurisdiction. As this Court has observed, it is “difficult to imagine language which could give the court a wider and less fettered discretion” in crafting remedies than s. 24(1) (Mills v. The Queen , [1986] 1 S.C.R. 863, at p. 965, per McIntyre J.). Accordingly, this Court has repeatedly emphasized that s. 24(1) must be interpreted generously and purposively, giving courts wide latitude to craft appropriate remedies (R. v. Gamble , [1988] 2 S.C.R. 595; Mills). Its purpose is to provide remedies that are effective and meaningful, not only for individual claimants but for society as a whole. While that discretion is expansive, it is not unbounded: remedies must still be responsive to the nature of the breach and the interests affected (Vancouver (City) v. Ward , 2010 SCC 27, [2010] 2 S.C.R. 28, at para. 19).

[75] Once guilt has been established, society's interest in the prompt imposition of a fit sentence is amplified, and the offender's s. 11(b) interests, though still real, are lessened. The remedial inquiry must therefore be attentive to the altered posture of the case. What is required is a remedy that meaningfully responds to the Charter breach without losing sight of the fact that the finding of guilt itself was lawfully obtained and is not tainted by the delay.

[76] The remedy that will ordinarily be appropriate for unreasonable post-verdict sentencing delay is a reduced sentence. Unreasonable sentencing delay may prolong uncertainty, extend restrictions on liberty, and defer the commencement or completion of the sanction. A sentence-based remedy responds directly to those harms and can, as nearly as possible, place the offender in the position they would have occupied had the sentencing process not taken markedly longer than it reasonably should have.

[77] Delay may, in some circumstances, be considered as a mitigating factor even in the absence of a Charter breach (*R. v. Nasogaluak* , 2010 SCC 6, [2010] 1 S.C.R. 206 , at para. 53, citing *R. v. Bosley* (1992), 18 C.R. (4th) 347 (Ont. C.A.); *R. v. Leaver* (1996), 3 C.R. (5th) 138 (Ont. C.A.); *R. v. Panousis* , 2002 ABQB 1109, 329 A.R. 47). But where the sentencing process has become constitutionally unreasonable, the reduction is justified on a different footing (*Nasogaluak* , at para. 64). It is not part of the ordinary calibration of a fit sentence for the offence and the offender and it should not be seen as “enhanced” mitigation. It is a constitutional remedy under s. 24(1), directed to the breach itself. The reduction answers the legal wrong that has occurred: unreasonable delay in the sentencing process.

[78] However, s. 24(1) does not confine courts to sentence reductions alone. Courts possess a wide remedial discretion under s. 24(1) (*Mills* , at pp. 973-74, per La Forest J.). A stay of proceedings may be an “appropriate and just” remedy for post-verdict sentencing delay although such relief will likely be “rare” and confined to “clear cases” (*K.G.K.* , at para. 65, citing *Jordan* , at para. 48). However, s. 24(1) demands that this conclusion be reached after due consideration of all relevant factors and not simply presumed. A stay is the “ultimate remedy” and is reserved for the “clearest of cases” (*Canada (Minister of Citizenship and Immigration) v. Tobias* , [1997] 3 S.C.R. 391, at paras. 86 and 110; *R. v. O’Connor* , [1995] 4 S.C.R. 411, at para. 69). Consistently, the Court has required that a stay issue only where: (i) the abuse is manifested or aggravated through the trial; (ii) no alternative remedy is capable of redressing the prejudice; and (iii) in cases of uncertainty, the balance favours “denouncing misconduct and preserving the integrity of the justice system” over the competing societal interests in proceeding to a determination on the merits (*R. v. Brunelle* , 2024 SCC 3, at para. 29; *R. v. Regan* , 2002 SCC 12, [2002] 1 S.C.R. 297 , at paras. 54 and 57; *R. v. Babos* , 2014 SCC 16, [2014] 1 S.C.R. 309, at para. 32).

[79] The effect of a stay of proceedings differs fundamentally in the post-verdict context. Before verdict, a stay halts the prosecution because the adjudication of guilt has been impacted by unreasonable delay. After conviction, however, the “proceedings” in issue are those directed to sentencing, not to the determination of guilt. A stay therefore operates prospectively, bringing the sentencing process to an end without disturbing a valid finding of guilt that was unaffected by the breach. This reflects the forward-looking nature of the remedy: the law does not unwind completed and untainted proceedings, but halts what remains. To nullify a lawful conviction on the basis of post-verdict delay would confer an unjustified windfall, contrary to s. 24(1)’s requirement that remedies be appropriate and just in the circumstances.

[80] While I have discussed reduction in sentence and a stay of proceedings as potential remedies, “[i]t is impossible to reduce this wide discretion to some sort of binding formula for general application in all cases, and it is not for appellate courts to pre-empt or cut down this wide discretion” (Mills , at p. 965, per McIntyre J.). Section 24(1) empowers courts to craft innovative, tailored relief, equipping judges with “a scalpel instead of an axe — a tool that may fashion, more carefully than ever, solutions taking into account the sometimes complementary and sometimes opposing concerns of fairness to the individual, societal interests, and the integrity of the judicial system” (O’Connor , at para. 69). The breadth of remedial discretion persists after verdict.

E. Application

[81] The Court of Appeal erred in law by holding that post-verdict sentencing delay exceeding five months is presumptively unreasonable under s. 11(b). The proper inquiry was whether the delay was markedly longer than it reasonably should have been in all the circumstances. However, this error was immaterial. On the facts of this case, I am satisfied that the time taken to complete the sentencing proceedings markedly exceeded what it reasonably should have been. Accordingly, the Court of Appeal was correct to conclude that there was a breach of s. 11(b) in this case.

[82] The principal source of complexity identified by the trial judge concerned the collateral immigration consequences of the appellant’s conviction. While the need to understand those consequences was legitimate, the issue itself was neither novel nor unusually complex, and the governing legal principles were well settled. Moreover, the issue of collateral consequences was raised relatively early in the sentencing process, and was addressed in an initial opinion letter dated February 19, 2022. However, the trial judge sought further information and submissions on the issue of collateral consequences on May 24, 2022 and September 16, 2022, resulting in two additional opinion letters. Once the trial judge’s concerns became apparent, they should have been identified and managed at the earliest opportunity so that counsel could respond in a focused and efficient way. Instead, the issue unfolded incrementally across multiple appearances, without a structured process or timetable, and as a result, the consideration of collateral immigration consequences took longer than it reasonably should have.

[83] Additional periods of delay arose from adjournments related to transcripts, counsel unavailability, technical difficulties, and instances of judicial unavailability due to unforeseen circumstances. None of these factors is remarkable in isolation. However, the inquiry is cumulative. When these periods are considered together, alongside the modest complexity of the case and the incremental way in which the immigration issue was managed, they do not satisfactorily explain the length of time that elapsed before sentence was imposed. On the whole record, the sentencing proceedings took markedly longer than they reasonably should have.

[84] On the issue of remedy, the Court of Appeal held that an appropriate and just remedy for the s. 11(b) violation is reduction of the conditional sentence of 2 years less a day to a conditional sentence of 20 months. Although the Court of Appeal erred in applying Charley , its remedial assessment reflected the extent of the unconstitutional post-verdict delay, which it reasonably quantified at approximately four months. I would accept that conclusion as a proper and proportionate remedy in the circumstances.

VI. Conclusion

[85] In the result, I would dismiss the appeal.

Appeal dismissed.

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