

SEPTEMBER 4, 2019

Tax Fraud Charges: *Jordan* Stay of Proceedings Ordered Due to Unreasonable Delay

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In a recent decision, the Court of Québec (Court) held that section 11b of the *Canadian Charter of Rights and Freedoms*, which guarantees that any person charged with an offence has the right to be tried within a reasonable time, had been infringed.¹ It ordered a stay of proceedings in favour of the company, a legal person and the former officers (the Accused) who had been charged with tax fraud. The decision was rendered after a motion was filed on the basis of the Supreme Court of Canada decision in *Jordan*,² which set a maximum delay between the filing of a charge and the holding of a trial.³ Stating that a stay of proceedings is the only remedy when the right to be tried within a reasonable time is infringed, the Court reiterated the need to avoid the “culture of complacency towards delay.”

Background

In June 2013, the Accused were charged with 989 counts of tax fraud, making them liable to imprisonment and fines totalling a minimum of over \$9 million. The *Agence du revenu du Québec* (Revenu Québec) claimed that the Accused had participated in a false invoicing scheme from 2005 to 2009. In October 2018, still awaiting trial more than five years after being charged, the Accused applied to the Court for a stay of proceedings.

The Decision

The Court applied the principles of *Jordan* without distinguishing between a legal person and a natural person. Ruling in favour of the Accused, it held that “in this case, the accused made certain laudable efforts to expedite matters and the prosecution made no effort to reduce the institutional delays as required by *Jordan*, even though it had the tools at its disposal to do so.” The Court went even further, ruling that Revenu Québec and the prosecution “never made the shift required by *Jordan*” and that the matter “was managed in the same manner from beginning to end.” According to the Court, the delay of more than seven years could not be justified. [All quotes translated here.]

Effect of the Decision

This is a significant decision. It reminds us once again of the importance of the fundamental right to be tried within a reasonable time, thereby ensuring the proper functioning of the judicial system. This decision is in keeping with recent jurisprudence confirming that the ceilings established in *Jordan* apply to legal persons.⁴

¹ *Agence du revenu du Québec v Construction Frank Catania*, 505-73-000492-137/505-61-124943-135, August 1, 2019.

² *R. v Jordan*, [2016] 1 SCR 631.

³ 18 months in provincial court and 30 months for higher courts.

⁴ <https://www.canlii.org/fr/qc/qccq/doc/2019/2019qccq1957/2019qccq1957.html>; *Jeux sur mesures Maxima inc. v A.M.F.*, 2016 QCCQ 19598; *Les Industries Garanties Ltée v R*, 2017 QCCS 1504.

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