

APRIL 20, 2020

Jordan Ceilings: Verdict Deliberation Time Not Included

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In the landmark case of *Jordan* rendered in July 2016, the Supreme Court of Canada (SCC) established ceilings beyond which delay from the charge to the actual or anticipated end of trial is presumed to be unreasonable and infringes section 11 (b) of the *Canadian Charter of Rights and Freedoms*, unless justified by exceptional circumstances. The Court set the ceilings at 18 months for simple cases tried in the provincial court and at 30 months for cases in the superior court or cases tried in the provincial court after a preliminary inquiry (presumptive ceilings).

On 20 March 2020, in *R. v. K.G.K.*, the SCC clarified the question of whether the presumptive ceilings established in *Jordan* encompass the trial judge's verdict deliberation time. The majority held that they do not.

The Facts

The accused was charged in April 2013. The evidence and argument at his trial concluded on 21 January 2016. Approximately nine months later, on 25 October 2016, the trial judge rendered his decision convicting the accused.

The Ruling

The majority held that the right to be tried within reasonable time in criminal and penal matters – enshrined in section 11 (b) of the *Canadian Charter of Rights and Freedoms* – also applied to verdict deliberation time. However, the majority also held, for the first time, that verdict deliberation time was not subject to the *Jordan* ceilings.

The majority justified this exclusion on the ground that *Jordan* sought to address the systemic problem of the delay from the charge to the end of trial. Deliberation time was therefore not covered by the solution designed to address this problem, one that affected countless criminal cases across the country.

According to the majority, including deliberation time in the *Jordan* ceilings would

- “run counter to *Jordan*’s goals of clarity and predictability, and likely prove unworkable in practice;”¹
- render the presentation of pre-trial applications for unreasonable delay speculative, if not impossible;
- lead to an illogical result since the prosecution would then be held accountable for this delay whereas it has no control over it; and
- make the amount of verdict deliberation time “vary greatly depending on how close to the ceiling the evidence and argument concluded;”² which would also unduly influence the way judges approach and render their verdict.

Given this exclusion of the *Jordan* ceilings, the majority developed a specific test to determine the reasonableness of deliberation time. The accused must establish that “the deliberation time took markedly longer than it reasonably should have in all of the circumstances.”³ In order to do so, the accused must rebut the presumption of judicial integrity “that the trial judge took no longer than reasonably necessary to arrive at the verdict.”⁴ The bar is therefore high. Among the factors relevant to this analysis, the majority identified the complexity of the case, the elements on the record emanating from the judge or the court and the length of time typically required to decide a case of similar nature in similar circumstances.

In this case, the majority refused to rule that the nine-month deliberation had breached the accused's right to be tried within a reasonable time.

The Impact

The majority therefore clarified the limits of the *Jordan* ceilings and indicated for the first time that verdict deliberation time is not included. However, the majority did not deprive an accused of all hope – it created a test that is demanding but that nonetheless allows the accused to challenge an overlong deliberation that infringes her or his right to be tried within a reasonable time.

Lastly, this case does not address the issue of deliberation time for decisions on incidental applications made before trial. It also does not discuss the law governing pre-charge delay.

¹ Para 41.

² Para 49.

³ Para 54.

⁴ Paras 56 and 65.

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