



Case in Brief: **R. v. J.F.**

Judgment of May 6, 2022 | On appeal from the Court of Appeal of Quebec
Neutral citation: 2022 SCC 17

The Supreme Court rules the delay for the retrial of a Quebec father charged with multiple sex offences was reasonable.

In 2011, J.F. was charged with seven counts of sexual offences involving his daughter committed between 1986 and 2001 in Quebec. Following a preliminary inquiry, J.F.'s trial began before the Court of Québec in late 2013.

Meanwhile, in 2016, the Supreme Court of Canada issued its ruling in [R. v. Jordan](#). In that case, the Supreme Court established limits on the amount of time between a person being charged and the conclusion of their trial. The limit is 30 months for a trial in a provincial court, such as the Court of Québec, following a preliminary inquiry.

Eventually, J.F.'s trial ended with his acquittal in 2017, six years after he was charged. The Crown appealed to Quebec's Court of Appeal, which ordered a new trial. Before the retrial began, J.F. asked the court to stop or "stay" the proceedings. He argued that the delays during his first trial and before his retrial were unreasonable. Due to these delays, J.F. argued his right under the *Canadian Charter of Rights and Freedoms* (*Charter*) "to be tried within a reasonable time", was violated.

The retrial judge agreed with J.F. that his section 11(b) *Charter* right had been violated. The Crown appealed to Quebec's Court of Appeal. The judges on that court ruled that the delay for each trial must be considered separately. They said that it would only be necessary to consider the delay for the retrial, if the delay for the first trial were reasonable. In J.F.'s case, however, the first trial delay was unreasonable. So the Court of Appeal dismissed the Crown's appeal and did not consider the retrial delay. The Crown then appealed to the Supreme Court of Canada.

The Supreme Court has sided with the Crown.

Only the delay for the retrial is counted.

Writing for a majority of the judges of the Supreme Court, Chief Justice Richard Wagner said the *Jordan* decision requires both the Crown and the defence lawyers to act in a timely manner. This includes the accused raising an issue of delay promptly. As a result, in the case of a single trial, an accused who believes their right to be tried within a reasonable time has been violated must raise the issue before their trial. Sometimes an accused may raise the issue on appeal, but that would be exceptional. An accused should not raise the delay for their first trial after an appeal court has ordered a retrial.

Once an appeal court has ordered a retrial, the Chief Justice said only the delay for that retrial counts, and the same time limit as set out in the *Jordan* case applies. A delay from the first trial will be considered in exceptional circumstances only.

In this case, J.F. did not raise the delay issue before or during his first trial, and he did not raise it at the Court of Appeal. He only raised it at his retrial. So only the delay for the retrial can be considered. That delay was 10 months and 5 days, which is well below the 30-month limit. As such, it was reasonable, and there is no reason to stay the proceedings.

Breakdown of the decision: **Majority:** Chief Justice [Wagner](#) allowed the appeal, set aside the stay of proceedings and sent the case back to the Court of Québec for the trial to continue before another judge (Justices [Moldaver](#), [Karakatsanis](#), [Brown](#), [Rowe](#), [Martin](#), [Kasirer](#) and [Jamal](#) agreed) | **Dissenting:** Justice [Côté](#) would have dismissed the appeal and upheld the stay of proceedings.

More information (case # 39267): [Decision](#) | [Case information](#) | [Webcast of hearing](#)

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