CITATION: R v. Sean Chanderbhan, 2025 ONSC 6757
COURT FILE NO.: CRIM J(P) 28/23
DATE: 2025 12 04

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
HIS MAJESTY THE KING	)	
Respondent	)	*E. Guimond*, for the Crown
– and –	)	
SEAN CHANDERBHAN	)	
Applicant	)	*R. Singh Bal,* for the Defendant
	)	*D. Katz*, for the Complainant
	)	**HEARD:** August 18, November 10 and 28, 2025 in Brampton

RULING ON APPLICATION FOR A STAY OF PROCEEDINGS

RESTRICTION ON PUBLICATION

Pursuant to an order of this court issued under s.486.4(1) of the Criminal Code, no information that could serve to identify the complainant in this prosecution shall be published in any document or broadcast or transmitted in any way.

[1] Sean Chanderbhan applies for a stay of proceedings of all six charges against him because of the alleged breach of his constitutional right to be tried within a reasonable time. Mr. Chanderbhan seeks enforcement of that right under s. 11(b) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982 (the "*Charter*") having regard to the presumptive time limits to complete a trial set out in *R. v. Jordan*, 2016 SCC 27. He asks for that remedy under s. 24(1) of the *Charter*.

[2] This application was made at the end of the trial that was heard by me without a jury. Counsel for the Crown and defence argued the application at the same time as the closing submissions on the substantive issues. The timing of the application came about because Mr. Chanderbhan instructed Mr. Bal to bring the application based on information that came to his attention during the trial.

Facts

[3] On an application under s. 11(b), the logical place to start is the date of the applicant's arrest. Sean Chanderbhan was arrested on March 24, 2021 and charged with three offences of a sexual nature with respect to the complainant, M.G. Those charges are as follows:

1. That he, between the 1st day of January 2018, and the 10th day of February 2021, at the City of Mississauga, in the Central West Region, did commit a sexual assault on M. G., contrary to section 271 of the *Criminal Code of Canada;*

2. That he, between the 1st day of January 2018, and the 2nd day of May 2019, at the City of Mississauga, in the Central West Region, did for a sexual purpose touch M. G., a person under the age of sixteen years, directly with a part of his body, contrary to section 151 of the *Criminal Code of Canada;*

3. That he, between the 1st day of January 2018, and the 2nd day of May 2019, at the City of Mississauga, in the Central West Region, did for a sexual purpose invite M. G., a person under the age of sixteen years, to touch directly with a part of his body, contrary to section 152 of the *Criminal Code of Canada;*

[4] Just shy of one year later, the Crown laid a new information on March 21, 2022 to list the original charges from the 2021 information and to add three more charges against Mr. Chanderbhan. Those added charges are:

4. That he, between the 2nd day of May 2019, and the 10th day of February 2021, at the City of Mississauga, in the Central West Region, being in the position of trust or authority towards M.G., a young person between the ages of sixteen and seventeen, or being in a relationship with M. G. that it exploitive of her, did for a sexual purpose touch directly or indirectly the body of M. G. with a part of his body, contrary to section 153(1)(a) of the *Criminal Code of Canada*;

5. That he, between the 2nd day of May 2019, and the 10th day of February 2021, at the City of Mississauga, in the Central West Region, being in the position of trust or authority towards M. G., a young person between the ages of sixteen and seventeen, or being in a relationship with M. G. that it exploitive of her, did

for a sexual purpose, invite, counsel, or incite M. G. to touch a part of his body with a part of her body, contrary to section 153(1)(b) of the *Criminal Code of Canada;*

6. That he, between the 2nd day of May 2019, and the 10th day of February 2021, at the City of Mississauga, in the Central West Region, unlawfully did by means of a telecommunication, communicate with M. G., a young person under the age of eighteen years, for the purpose of facilitating the commission of an offence with respect to that person under section 153(1) of the *Criminal Code of Canada*, contrary to section 172.1(1) of the *Criminal Code of Canada*;

[5] The 2021 information was withdrawn at the request of the Crown at the start of the preliminary inquiry on September 15, 2022. The preliminary inquiry proceeded on the charges in the new information. Mr. Chanderbhan was committed to trial on all six counts in the Superior Court of Justice.

[6] The estimated time for trial given at the judicial pre-trial was 5 to 6 days. The trial was initially set to proceed on January 20, 2025 with a jury. Mr. Chanderbhan re-elected trial by a judge alone on the first day of trial.

[7] During M.G.'s cross-examination by Mr. Bal on January 22, 2025, M.G. referred to a text exchange between herself and Mr. Chanderbhan that M.G. stated she had sent to Constable Patty Kastoun by email. Constable Kastoun was the Officer in Charge of the investigation at all material times.

[8] As this text exchange had not been disclosed to the defence by the Crown under *R. v. Stinchcombe*, [1991] 3 S.C.R. 326, Mr. Bal asked for an opportunity to take instructions from his client. The following day, the parties agreed to ask the court for an adjournment of the trial. This adjournment was granted to accommodate any need of the defence to engage an expert for an opinion as to the composition and timing of the texts.

[9] In view of the circumstances in which this disclosure issue was discovered and the concession by Mr. Bal that they constituted special circumstances at the time, counsel agreed that time would stop running under s. 11(b) while the trial was adjourned. This agreement was premised on the belief of both counsel that Constable Kastoun had just been sent the document by M.G. earlier that day.

[10] The trial resumed on June 9, 2025, with the expectation that the evidence for the trial would be concluded by June 12, 2025. On June 10, the Crown made more disclosure to the defence. As a direct consequence, Mr. Bal brought a motion for a mis-trial. A *voire dire* was held on the motion at which Constable Kastoun testified. It was on that day that Constable Kastoun advised the court she had first received the previous disclosure from M.G. electronically on October 23, 2024 and not during the trial.

[11] On June 11, 2025, I dismissed the mis-trial motion for oral reasons. On June 12, 2025, Mr. Bal advised the court at the end of the day that he expected to receive instructions to bring an application under s. 11(b).

[12] On June 12, 2025, the trial was adjourned yet again and scheduled to continue October 9 and 10, 2025, subject to Mr. Bal receiving instructions from Mr. Chanderbhan

to bring an application under s. 11(b). A case conference was scheduled for June 20, 2025 to provide Mr. Bal with the opportunity to consult with his client and to advise the court if he had received those instructions. If he advised the court he was instructed to bring the application, the court would schedule a hearing date and revisit dates for the resumption of trial.

[13] At the case conference on June 20, Mr. Bal advised the court that he had received instructions to bring the application. The continuation dates to complete the evidence at trial and for closing submissions were rescheduled for August 19 and 20, 2025. It was also ordered at that time, on consent, that Mr. Chanderbhan's application would be argued at the time closing submissions were made.

The defendant's position

[14] In the application, Mr. Bal has set out the chronology of the prosecution of the charges against Mr. Chanderbhan in the following manner:

a) March 24, 2021 – Mr. Chanderbhan arrested, and swearing of Information.

b) May 31, 2021 – First appearance, matter adjourned for disclosure

c) August 23, 2021 – Disclosure still unavailable, matter adjourned for receipt of initial disclosure

d) October 18, 2021 – Disclosure still being vetted, adjourned for crown pre-trial in anticipation of disclosure being received

e) November 22, 2021 – disclosure still not received, matter adjourned further

f) January 16, 2022 – Initial disclosure provided

g) January 24, 2022 – disclosure received, matter adjourned for a Judicial pre-trial

h) March 18, 2022 – JPT conducted; adjourned to March 21

i) March 21, 2022 – New information laid with additional charges; adjourned to April 28

j) April 28, 2022 – Change in counsel; adjourned to May 19

k) May 19, 2022 – Adjourned to June 16 to schedule preliminary inquiry.

l) June 16, 2022 – Preliminary inquiry set for Sept 15–16

m) September 6, 2022 – Crown unavailable to confirm readiness; matter adjourned

n) September 9, 2022 – Adjourned to Sept 12 for confirmation

o) September 12, 2022 – Preliminary inquiry confirmed; adjourned to Sept 15.

p) September 15, 2022 – Preliminary inquiry commenced.

q) September 16, 2022 – Preliminary inquiry not concluded; adjourned to Sept 23 with 11B waiver.

r) September 23, 2022 – Adjourned to Sept 29 to add dates.

s) September 29, 2022 – TSC date set; adjourned to Nov 3.

t) November 3, 2022 – No recorded event, but 35 days of delay.

u) December 15, 2022 – Continued Preliminary Inquiry scheduled for Jan 17.

v) January 16, 2023 – Matter brought forward to confirm Preliminary inquiry logistics. (w) January 17, 2023 – Preliminary Inquiry held; committed to stand trial; adjourned.

w) February 3, 2023 – First appearance at the Superior Court of Justice, JPT scheduled and matter adjourned.

x) February 24, 2023 – JPT held, trial scheduled for February 26, 2024. Matter adjourned to schedule PTM dates.

y) March 7, 2023 – Adjourned to Sept 18 for Stage 1 of 278 application.

(aa) August 28, 2023 – Defence requested adjournment of the September 18, 2023 date; PTM rescheduled for Oct 20.

(bb) October 6, 2023 – Confirmation hearing; matter remains on Oct 20.

(cc) October 20, 2023 – Defence materials filed; Stage 1 rescheduled to Nov 3. (dd) November 3, 2023 – Stage 1 heard and granted on consent; Stage 2 scheduled for Jan 24, 2024.

(dd) January 12, 2024 –Confirmation hearing for PTMs, motions confirmed.

(ee) January 22, 2024 – Crown application for Voluntariness and Testimonial Aids adjourned due to a defence request. (gg) January 24, 2024 – Stage 2 278 Application heard.

(ff) February 8, 2024 – Calvin Barry's office removed as counsel of record, previously scheduled trial dates are vacated with an 11b waiver and new trial dates schedule for January 20, 2025.

(gg) April 15, 2024 – Mr. Bal retained by Mr. Chanderbhan; adjourned to Oct 18 for trial readiness.

(hh) October 18, 2024 – Adjourned to Oct 24 for s. 278 leave application.

(ii) October 24, 2024 – Adjourned to Oct 31 for multiple applications.

(jj) October 31, 2024 – Stage 1 of new s. 278 application; adjourned to Dec 6.

(kk) December 6, 2024 – Stage 2 heard; adjourned to Jan 10, 2025 for trial confirmation.

(ll) January 10, 2025 – Trial readiness confirmed; Exit JPT set for Jan 15.

(mm) January 15, 2025 – Exit Pre-Trial held; trial to commence Jan 20.

(nn) January 20–23, 2025 – First four days of trial, trial adjourned due to late disclosure.

(oo) February 28, 2025 – Adjourned to continuation date of June 9.

(pp) June 9–12, 2025 – Days 5 to 7 of trial; adjourned to June 20 for instructions and to confirm trial continuation dates.

(qq) June 20, 2025 – Defence confirms intent to bring a s. 11(b) application; adjourned to Aug 19 for trial continuation.

(rr) August 19–20, 2025 – Days 8 and 9 of trial, and s. 11(b) hearing.

[15] Mr. Chanderbhan submits that the total time from the date of his arrest until the last day of trial has been 1,610 days. He concedes that 512 of those days have been attributable to the defence in one of two ways: either delay waived by the defence, or delay caused solely by the conduct of the defence. The defence delay acknowledged in Mr. Bal's submissions consist of the following periods and computation of those delays:

a. April 28, 2022 to June 16, 2022 (49 days) – the Applicant changed counsel leading to a short delay in setting dates for a preliminary inquiry.

b. September 23, 2022 to January 17, 2023 (116 days) – the applicant specifically waived delay for continuation of the preliminary inquiry.

c. February 26, 2024 to January 20, 2025 (347 days) – the applicant specifically waived delay until the new trial dates due to change of counsel.

[16] Mr. Chanderbhan argues that the net delay is therefore 1,098 days, which is 6 months and 18 days beyond the presumptive ceiling of 30 months set under *R. v. Jordan*

to complete a trial in the Superior Court of Justice. As Mr. Bal puts it, the delay here is presumptively unreasonable.

[17] It is further the position of the defence that there are no exceptional circumstances on which the excess delay in this case can be justified. He submits that the case is not of such a complexity that the delay caused by the disclosure issues qualifies as exceptional circumstances. The delay was caused by the failure of the Crown to make that disclosure and other institutional delay that has resulted in the scheduling of the trial outside the limits set under *Jordan*.

[18] Mr. Chanderbhan therefore applies for a stay of all charges for breach of his s.11(b) rights.

The Crown's Position

[19] The Crown concedes that the police service that investigated the offences and the Crown that prosecutes the charges are considered one state actor for the purpose of making disclosure under *Stinchcombe*, and for the calculation of delay on the part of the Crown.

[20] It is the Crown's position that the defence has miscalculated the periods of delay that are attributable to the Crown, as well as the delay caused by the defence. In addition, Mr. Guimond argues that any delays that occurred because of police action or inaction that took the trial beyond the *Jordan* limit were discreet and unforeseen circumstances that justified that delay.

[21] Mr. Guimond filed a comprehensive brief on the question of whether the *Jordan* time for the additional charges added to the new information sworn on March 21, 2022 started to run as of that date, and not at the same time the original information was laid on March 24, 2021.

Net Delay

[22] Mr. Chanderbhan has the right to a trial within a reasonable time under s. 11(b) of the *Charter*. The Supreme Court of Canada held in *Jordan* that the presumptive ceiling to have a trial in the Superior Court is 30 months from the start of the case to its conclusion.

[23] In *R. v. Coulter*, 2016 ONCA 704, the *Court of Appeal* set out the analytical steps for the court to follow when deciding an application for a stay under s. 11(b):

> **A. The New Framework Summarized**
>
> [34] Calculate the **total delay**, which is the period from the charge to the actual or anticipated end of trial (*Jordan*, at para. 47).
>
> [35] Subtract **defence delay** from the total delay, which results in the "**Net Delay**" (*Jordan*, at para. 66).
>
> [36] Compare the Net Delay to the presumptive ceiling (*Jordan*, at para. 66).
>
> [37] If the Net Delay exceeds the presumptive ceiling, it is presumptively unreasonable. To rebut the presumption, the Crown must establish the presence of **exceptional circumstances** (*Jordan*, para. 47). If it cannot rebut the presumption, a stay will follow (*Jordan*, para. 47). In general, exceptional circumstances fall under two categories: **discrete events** and **particularly complex cases** (*Jordan*, para. 71).
>
> [38] Subtract delay caused by discrete events from the Net Delay (leaving the "**Remaining Delay**") for the purpose of determining whether the presumptive ceiling has been reached (*Jordan*, para. 75).

> [39] If the Remaining Delay exceeds the presumptive ceiling, the court must consider whether the case was particularly complex such that the time the case has taken is justified and the delay is reasonable (*Jordan*, at para. 80).
>
> [40] If the **Remaining Delay falls below the presumptive ceiling**, the onus is on the defence to show that the delay is unreasonable (*Jordan*, para. 48).
>
> [41] The new framework, including the presumptive ceiling, applies to cases already in the system when *Jordan* was released (the "**Transitional Cases**") (*Jordan*, para. 96).

[24] In my view, it appears that from the submissions of the defence and the Crown that there are two periods of delay that are contentious in terms of both length and attribution.

1. 2022

[25] The first is the time between July 14 and September 15, 2022, a period of 63 days. This delay was caused by the unavailability of defence counsel to attend the preliminary inquiry. The Crown made reference to a scheduling form dated June 7, 2022 where dates were offered within this period for the preliminary inquiry.

[26] The Crown argues that this period of delay was not included in Mr. Bal's calculations and should be added to the defence caused delay. Mr. Guimond agrees with the defence submission that there is no bright line principle that defence counsel should be perpetually available for a preliminary inquiry, especially where the court offered has no intervening dates. See *R. v. Hanan*, 2023 SCC 12, at para. 9. However, I am inclined

to treat this period as defence caused delay as the defence had reasonable notice of the available dates for the preliminary hearing.

[27] This time adds 63 more days, or two months to defence attributable delay in the case. The additional two months does not reduce the excess delay in the case below the presumptive ceiling for the completion of trial in the Superior Court imposed by *Jordan*.

2. 2025

[28] The second period in contention extends from January 23 to August 20, 2025. The periods of time in question relate to the time of the trial. This length of time is pivotal to the question of attributable delay to determine the outcome of the application.

[29] The disclosure issue first detected during M.G.'s cross-examination on January 22, 2025 concerned text messages between herself and Mr. Chanderbhan that she sent to Constable Kastoun electronically. The trial was adjourned on January 23, 2025 for the defence to review that disclosure and to possibly have an expert test the veracity and timeliness of the text messages.

[30] At the hearing of the request for adjournment on January 23, 2025, Mr. Bal conceded (on page 12 of the transcript) that the non-disclosure by the Crown had been caused by "exceptional circumstances". He made this concession based on the understanding shared by both counsel that this disclosure was something that the complainant had not disclosed to Constable Kastoun before the morning of January 22, 2025. The defence therefore considered this to be an unavoidable event that often occurs

at a trial. Mr. Bal confirmed to the court that, as the adjournment was caused by an exceptional circumstance, the delay resulting from the non-disclosure would not count as time running under s. 11(b).

[31] The trial was therefore adjourned to criminal motions court on February 28, 2025 to set a trial continuation date. The Crown consented to the adjournment given the concession by the defence for s. 11(b) purposes and the timelines discussed with the court. On February 28, 2025, Dennison J. fixed June 9, 2025 as the date to continue the trial with June 12 as the anticipated completion date.

[32] The trial resumed on June 9, 2025 as scheduled. On June 10, 2025, new information came to light that the text messages M.G. had spoken about during her cross-examination on January 22, 2025 had actually been sent to Constable Kastoun in a link to an iCloud based app on October 23, 2024. The defence considered this late breaking news as grounds to bring a motion for a mis-trial.

[33] Constable Kastoun testified on the *voire dire* held on the mis-trial motion that she had received the link on October 23, 2024 and had acknowledged receipt of that email to M.G. However, she had neglected to open the link or to log its contents at the end of her shift that day.

[34] On June 11, 2025, the court dismissed the mis-trial motion for oral reasons. The trial continued for the balance of that day and on June 12, 2025.

[35] The Crown closed its case at the end of the day on June 12, 2025, and the trial was adjourned for a second time to October 9 and 10, 2025. Mr. Bal raised the prospect of bringing a defence application under s. 11(b) based on the evidence heard over the last four days. A case conference was arranged for June 20, 2025 in the event Mr. Bal received instructions to bring that application. It was at the case conference on June 20, 2025 that Mr. Bal informed the court of his instructions to bring the application. Upon learning of the defendant's intentions, the court brought the trial continuation dates forward to August 19 and 20, 2025 to minimize further delay.

[36] Mr. Bal made the submission at the case conference that the concession he had made on January 23, 2025 when requesting an adjournment of the trial for exceptional circumstances had been made on an uninformed basis. Mr. Bal advised the court that he was therefore withdrawing that concession.

[37] The defence argues that the time between January 23, 2025 and August 20, 2025 should be considered Crown delay because that concession was uninformed or given erroneously. The concession that the disclosure issue that day constituted an exceptional circumstance was based on mistaken information about the receipt of that disclosure. This would count for 7 months of delay if accepted. Alternatively, the Crown is responsible for the delay between June 12, 2025 and August 20, 2025, a period of two months and 8 days.

[38] I conclude that the reason for the adjournment request, and the resulting delay until the trial resumed, was mostly attributable to the Crown.

[39] The law entitles me to apportion delay in certain circumstances. If I am to apportion the delay in resuming the trial in this case, I base the apportionment on the following facts:

a. Mr. Guimond was not available on March 17 when Mr. Bal was available;

b. Mr. Guimond was possibly available on March 24 when Mr. Bal was not;

c. Mr. Bal was not available on April 7, 2025 until he became available on April 21, at which time Mr. Guimond was not;

d. Mr. Bal was unavailable throughout May 2025.

[40] For the period from January 23 to June 9, 2025, I therefore apportion 59 days for the time Mr. Bal was not available for trial between March 24 and April 21, 2025, and for the month of May 2025 to defence caused delay.

[41] I consider the delay of the trial after June 12, 2025 to August 19, 2025 to be attributable to the Crown because of the revelation that the non-disclosure detected on January 22, 2025 was the responsibility of the police. This was not an inadvertent oversight as discussed in *R. v. Cody*, 2017 SCC 31 at para. 58. This was a detectable piece of information when it was conveyed by M.G. on October 23, 2024. Receipt of this information could have been verified on the day of the adjournment in January 2025 if proper protocols for the receipt and cataloging of information were in place to enhance the disclosure process.

[42] I am also adjusting the computation of the time by Mr. Bal for the waiver of delay for the dates between February 8, 2024 (rather than February 26, to be consistent with his chronology) and the trial date due to a change in counsel. This adjustment increases Mr. Bal's calculation for delay caused or waived by the defence from 347 days to 365 days, an increase of 18 days. The time for defence caused delay or waiver conceded by Mr. Bal in para. 15 above should therefore be adjusted to 530 days.

[43] The total defence attributable delay to bring this trial to a conclusion is 652 days when the adjusted delay conceded as defence is considered along with the 63-day delay when scheduling the preliminary inquiry and the apportionment of delay during trial. The net delay is therefore 958 days, which is 45 days greater than the 30-month presumptive limit, or approximately 1.5 months.

Start of Jordan time for counts 4,5 and 6

[44] The new information that added counts 4,5 and 6 to the charges against Mr. Chanderbhan in March 2022 was laid approximately one year after the original information. The new charges were brought under ss. 153(1)(a), 153(1)(b) and s. 172.1(1) of the Criminal Code. These new charges are all grounded on the alleged conduct of Mr. Chanderbhan as a person being in a position of trust and authority towards M.G., a young person between the ages of sixteen and seventeen at the time of committing acts of a sexual nature or purpose.

[45] The Crown agrees that these charges were laid based on the statement given by M.G. in February 2021 before Mr. Chanderbhan's arrest.

[46] The Crown has referred the court to the decision of A.D. Kurke, J. in *R.v. Rolling*, 2025 ONSC 4212, and to para. 6 in particular, which reads:

> [6] Where various charges are laid against an accused at various times, and joined, the delay clock will run from the date the information was laid for each set of charges. However, where one set of charges is laid and then more follow which are absorbed into the trial schedule for the first set, the date when the bulk of charges was laid may be appropriately looked to as the starting point for the *Jordan* calculation: *R. v. Anderson*, 2025 ONCA 172, at para. 6. In addition, periods of delay can be apportioned among Crown, defence, and court where the lack of availability of the various participants has contributed to delay: *R. v. Boulanger*, 2022 SCC 2, at paras. 7-10; *R. v. Hanan*, 2023 SCC 12 (CanLII), [2023] S.C.J. No. 101, at para. 9.

[47] In *R. v. Anderson*, 2025 ONCA 172, Code J., sitting as an *ad hoc* judge of the Court of Appeal, wrote that the *Jordan* date for the charges that were laid against the accused over time should run from the date the bulk of the charges were brought. That is an approach that is consistent with the approach proposed by the defence here. In *Anderson*, further charges were brought on dates after the first charge because the defendant was accused of sexually assaulting multiple complainants and those charges related to different individuals.

[48] I consider the foundation of the charges in this case to be the three charges originally brought on March 24, 2021, on which the further three charges were added a year later. It would not be inconsistent with the decision in *R.v. Rolling* to view the additional charges as a continuation of the first set of charges to travel through the prosecution of the case against Mr. Chanderbhan up to and including trial. Although Mr. Guimond makes the argument that the first set of charges apply to a segment of time before M.G. turned sixteen years of age and the other three charges are linked to a time

when she was sixteen and seventeen, all charges relate to a continuum of alleged criminal conduct.

[49] The adding of further charges in a new information brought one year after the first three charges does not start the clock running for the first set, with another clock running for the second set of charges. All six charges were brought on the same allegations of fact set out in M.G.'s statement. There were no new facts discovered after the first information was laid, and there was no ongoing investigation that turned up new grounds to bring the additional charges. Mr. Chanderbhan was entitled to know the entire case he had to meet in totality and to the benefit of the time to make full answer and defence to those charges. The additional charges have a retrospective effect to animate those rights.

[50] It is also worth noting that the delay in adding the second set of charges was entirely within the control of the Crown. It would not be in the interests of justice, or in keeping with the policy behind *Jordan* that the Crown could reset the start date of any *Jordan* limit by adding charges that are similar to, or a variation of an earlier set of charges that are at risk of being stayed. This is the case particularly where a charge is withdrawn with the intention of laying a new charge and a gap occurs, as the defendant remains subject to the judicial process and the continuation of his s. 11(b) interests: *R. v. Milani*, 2014 ONCA 536, at para. 48.

[51] In my view, the overlap between the initial information laid in March 2021 and the second information in March 2022 is analogous to the result in *Milani*. Mr. Chanderbhan

remained subject to the same prosecutorial process throughout the laying of each information as much as the defendant was subject to the judicial process during the gap between the laying of the first and second information in that case.

[52] The *Jordan* clock therefore started to run on March 24, 2021 for all six counts on the indictment when the information containing the first three charges was laid.

Concession of Exceptional Circumstances

[53] Counsel for each the Crown and the defence are agreed that the concession initially made by Mr. Bal that the non-disclosure giving rise to the request for the adjournment of the trial was not a waiver of Mr. Chanderbhan's s. 11(b) rights. They also agree that the court is not bound by an erroneous concession by either party of an exceptional circumstance in any event. The court is not bound by erroneous concessions by the Crown in allocating periods of delay: *R. v. Tran*, 2012 ONCA 18. I would think that also applies to erroneous concessions made by the defence. See also *R. v. McManus,* 2017 ONCA 188.

[54] The consideration of any submission regarding an exceptional circumstance generally comes when the defence has followed the analytical path under *R. v. Coulter* and established that the net delay exceeds the presumptive ceiling under *Jordan*. It is at that time that the Crown is called upon to rebut the submission that the net delay exceeds the presumptive ceiling that makes the delay unreasonable. This, in my view, places the onus on the Crown to establish the existence and applicability of exceptional circumstances

[55] The acknowledgement given by Mr. Guimond that the police and the Crown may be viewed as a unitary actor leads me to conclude that the omission of Constable Kastoun to transmit the link provided by M.G. to the Crown was the reason for that non-disclosure prior to trial, and therefore the reason for the adjournment of the trial on January 23, 2025. The communication of that omission led to the misunderstanding of counsel that Constable Kastoun had not received the information until the day of M.G.'s cross-examination. This was a mistake that is attributable to the Crown having access to the information and its source.

[56] The charges laid against Mr. Chanderbhan and the evidence heard at trial do not involve a discreet issue or raise the case to the level of particular complexity that would justify a finding of exceptional circumstances. Accordingly, there is no basis to relieve the net delay in the prosecution of those charges beyond the 30-month ceiling contemplated in *R. v. Jordan* by the Supreme Court of Canada.

Conclusion

[57] In view of these findings, the net delay exceeding the time limit for the trial of this case in the Superior Court of Justice was unreasonable. On assessing all the relevant factors and having regard to the applicable legal principles, I am not satisfied that the Crown has rebutted the presumption of unreasonableness to show the passage of time is otherwise reasonable. Under the jurisprudence starting with *Mills v. The Queen*, 1986 CanLII 15 (SCC), granting a stay of the proceedings upon a finding that the rights of an accused person under s. 11(b) have been violated is the appropriate remedy.

[58] The application is granted. Mr. Chanderbhan's right to a trial without reasonable delay under s. 11(b) of the Charter has been breached, and he is entitled to a remedy. In accordance with s. 24(1), I impose a stay of proceedings on all six charges in the indictment against him.

Emery J.

DATE: December 4, 2025

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SUPERIOR COURT OF JUSTICE - ONTARIO

His Majesty the King

-and-

Sean Chanderbhan

COUNSEL: E. Guimond, for the Crown
R. Singh Bal, for the Accused
D. Katz, for the Complainant

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