S.C.C. File Number 41741

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

BETWEEN:

HIS MAJESTY THE KING IN RIGHT OF CANADA

Appellant

and

ROBERT VRBANIC and SARAH JOSIPOVIC

Respondent

and

ATTORNEY GENERAL OF ONTARIO, ATTORNEY GENERAL OF QUEBEC, ATTORNEY GENERAL OF MANITOBA, ATTORNEY GENERAL OF BRITISH COLUMBIA, DIRECTOR OF CRIMINAL AND PENAL PROSECUTIONS, BATTERED WOMEN'S SUPPORT SERVICES ASSOCIATION, CANADIAN ASSOCIATION OF CHIEFS OF POLICE and CRIMINAL LAWYERS' ASSOCIATION

Interveners

FACTUM OF INTERVENER
CANADIAN ASSOCIATION OF CHIEFS OF POLICE

(Pursuant to Rule 37 of the Rules of the *Supreme Court of Canada*)

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PART I – OVERVIEW and STATEMENT OF FACTS

Overview

1. The intervener Canadian Association of Chiefs of Police ("CACP") notes the increasing use of electronic evidence in criminal cases. This evidence can include in-car digital camera systems, body-worn camera footage, closed circuit television (CCTV), cellular phone data, texts, GPS coordinates, electronic surveillance data, computer hard drives and network data. The increasing use of electronic data can provide certainty and reliability for evidence. However, providing this evidence comes with a cost of processing the information for disclosure.

2. Preparation of evidence for disclosure continues to become more complex, requiring electronic tools and processes to provide evidence in a useful form. Most importantly, preparation of complex evidence requires human resources to review, vet for privilege and privacy concerns, and ensure provision of the evidence in readable format.

3. The CACP and all its members acknowledge and recognize the importance of an accused person's right to a trial within a reasonable time. However, police agencies occupy a unique position within the criminal justice system. Unlike other participants, police agencies have obligations and duties to all citizens. They must respect the *Charter*[1] rights and human rights of every member of society, while also ensuring the provision of adequate and effective policing within their respective jurisdictions.

4. The CACP is concerned about the rigid application of the timeframes set out in *Jordan*[2] exemplified in this case. It is the position of the CACP that in assessing the reasonableness of timeframes under a *Jordan* analysis, the unique position of police agencies, together with the necessity of allocating resources fairly, should properly be considered in determining the existence of exceptional circumstances.

5. The CACP submits that the public interest analysis under *Jordan* must not be confined to the narrow lens of ensuring speedy trials for accused persons. Public confidence in the administration of justice also depends on the fair allocation of police resources, to preserve

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[1] *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, Schedule B to the *Canada Act, 1982 (UK)*, 1982, c11, S 91 (24). [*Charter*]
[2] *R v Jordan*, 2016 SCC 27 [*Jordan*]

safety for all members of the public, and the interest of the public of ensuring that matters that have utilized extensive police investigative resources will be determined on the merits, are both appropriate factors to be considered in determining whether a delay was reasonable. Strict adherence to rigid timeframes risks undermining, rather than advancing, public confidence in a fair and effective criminal justice system.

Statement of facts

6. The CACP accepts the facts as outlined by the Appellant and the Respondents, and takes no position with respect to any difference between the parties as to the relevant facts.

7. The CACP would like to emphasize the significant amount of resources that went into this particular investigation including the fact that the amount of disclosure was voluminous[3], the case arose out of a 2-year-long operation, involving 20 individuals and multiple locations and seizures of evidence[4], the investigation involved two wiretap authorizations and many other warrants and judicial authorizations[5], and the investigation resulted in hundreds of surveillance reports and more than 10,000 intercepted voice communications[6].

PART II – QUESTIONS AND ISSUES

8. The CACP accepts the questions and issues as outlined in the Appellant's Factum.

9. The CACP will only address issues relating to the effect of a rigid application of the principles outlined in *Jordan* may have on the operation of police services.

PART III – STATEMENT OF ARGUMENT

(a) *Jordan* complex case analysis should consider the broad nature of police services

10. *Jordan* requires all criminal justice participants to do their part in ensuring that an accused has a right to trial within a reasonable time pursuant to section 11(b) of the *Charter*.

11. While police services play an essential role in safeguarding the *Charter* rights of an accused person, their mandate extends more broadly to serving and protecting all members of society, and adequate and effective policing. This responsibility can be seen, for example, in the

[3] *R. v Vrbanic*, 2025 ONCA 151 [*Vrbanic ONCA*], para. 3
[4] *Vrbanic ONCA*, para. 39
[5] *Vrbanic ONCA*, para. 39
[6] *Vrbanic ONCA*, para. 39

Declaration of Principles of the *CSPA*[7], which affirms that policing in Ontario must be delivered in accordance with fundamental principles. These include ensuring the safety and security of all persons and property in Ontario, including on First Nation reserves; safeguarding the fundamental rights and freedoms guaranteed by the *Charter* and the *Human Rights Code*[8]; the importance of respecting victims of crime and understanding their needs; and, ensuring that all communities across Ontario, including First Nation reserves, receive equitable levels of policing.

12. These responsibilities can also be seen in the duties of a police officer as set out in section 82 of the *CSPA*, which, in addition to laying charges and participating in prosecutions, also includes: preserving the peace; preventing crimes and other offences and providing assistance and encouragement to other persons in their prevention; assisting victims of crime; apprehending criminals and other offenders and others who may lawfully be taken into custody; executing warrants that are to be executed by police officers and performing related duties; performing the lawful duties that the chief of police assigns; completing training required by this Act or the regulations; complying with the prescribed code of conduct; and, performing such other duties as are assigned to them by or under this or any other Act, including any prescribed duties.[9]

13. There are many other examples in provincial and federal legislation that outline the diverse duties of a police officer. The *Manitoba PSA*[10] outlines numerous duties in addition to laying charges and participating in prosecutions, such as: preserving the public peace; preventing crime and offences against the laws in force in the municipality; assisting victims of crime; apprehending criminals and others who may lawfully be taken into custody; executing warrants that are to be executed by peace officers, and performing related duties; enforcing municipal by-laws; and, performing other duties assigned by the police chief.[11]

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[7] *Community Safety and Policing Act, 2019*, SO 2019, Chapter 1, Schedule 1 [*CSPA*]
[8] *Human Rights Code*, RSO 1990, c H.19
[9] *CSPA*, section 82
[10] *The Police Services Act*, CCSM c P94.5 [*Manitoba PSA*]
[11] *Manitoba PSA*, section 25

14. Similarly, the *Alberta Police Act*[12] outlines guiding principles for policing in Alberta, such as: ensuring the safety and security of all persons and property in Alberta; safeguarding the fundamental rights guaranteed by the *Charter* and the *Alberta Human Rights Act*; co-operation with the communities they serve; consideration of health-related situations, conditions or impediments of individuals; recognize the history and cultures of First Nations, Inuit and Metis peoples in Alberta; reflect the pluralistic character of society and the communities they serve; and, promote a culture of accountability.[13]

(b) Preparing disclosure is complex and time-consuming

15. The preparation of materials for disclosure in the criminal context is often onerous, resource intensive and complex. In *Stinchcombe*[14], the high level of disclosure owed to an accused person was outlined by this Honourable Court. All relevant evidence in a Crown's possession, whether the evidence is inculpatory or exculpatory and whether or not the Crown intends to rely on the evidence, must be disclosed to an accused. However, even accepting this high level of disclosure, the Supreme Court of Canada noted that rules with respect to privilege must be applied to the disclosure obligations. For example, the Court identified informer privilege, the exclusion of clearly irrelevant matters, and withholding identity of individuals to protect them from harassment or injury.[15]

16. In addition to the obligation to disclose "fruits of the investigation", there is also an obligation to disclose information in the possession of police that could be considered "first party" relevant information, such as relevant police discipline records.[16] In addition to first party disclosure obligations, a police service is often the subject of requests for third party records, either pursuant to common law, as set out in *O'Connor*[17], or with respect to statutory provisions, such as section 278.1 of the *Criminal Code*[18].

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[12] *The Police Act*, RSA 2000, c P-17 [*Alberta Police Act*]
[13] *Alberta Police Act*, section 1.1(a) to (g)
[14] *R v Stinchcombe*, 1991 CanLII 45 (SCC) [*Stinchcombe*]
[15] *Stinchcombe,* p. 8 (cited to CanLII)
[16] *R v McNeil*, 2009 SCC 3 [*McNeil*]
[17] *R v O'Connor*, 1995 CanLII 51 (SCC) [*O'Connor*], as clarified by *McNeil*
[18] *Criminal Code*, RSC 1985. C C-46; see, for example, *R v Quesnelle*, 2014 SCC 46 [*Quesnelle*]

17. However, the Supreme Court of Canada has clearly recognized that individuals have privacy rights pursuant to the *Charter*, and unnecessary intrusions into an individual's privacy must be guarded against. In *McNeil,* the Court held at paragraph 43:

> The privacy of the victim and any other witnesses must yield to preparing a full answer and defence. But it need not yield any further. The Committee considers that, provided the making of full answer and defence is not impaired, it is desirable to permit limitations on the use of disclosure materials that recognize the privacy interests of victims and witnesses.

18. The Supreme Court of Canada has also noted that the very nature of police reports will generally give rise to privacy interests, and often affects the "informational privacy" of individuals protected pursuant to section 8 of the *Charter*. Police reports may reveal family status, health information, details about housing and employment, as well as personal conflicts and relationships between individuals.[19]

19. *Stinchcombe* made it clear that disclosure of information is subject to recognized privileges. There are many different forms of privilege that may apply in the context of police records, which could include informant privilege, solicitor-client privilege, and other forms of statutory privilege, such as those found in the *YCJA*[20] or the *WPPA*[21]. Given the numerous considerations that come into play in the context of disclosure, it must be recognized that all material intended for disclosure requires careful review to determine whether appropriate redactions are necessary. The review process is resource intensive and places significant demands on police services.

(c) Preparing electronic evidence can add to complexity of disclosure

20. Adding to the complexity of the disclosure process is the increasing reliance upon digital and electronic forms of evidence used in criminal investigations. Electronically recorded evidence can provide certainty and reliability with respect to incidents that have occurred, but it can also add to the burden on police officers attempting to provide disclosure.

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[19] *Quesnelle*, para. 32, 33
[20] *Youth Criminal Justice Act*, SC 2022, c 1 [*YCJA*]
[21] *Witness Protection Program Act*, SC 1996, c 15 [*WPPA*]

21. The Supreme Court of Canada has recognized that certain evidence, such as wiretap evidence, requires document review and vetting, which consumes significant police resources.[22] In *World Bank*, the Court noted the type of third party production requested by the accused would consume significant police resources, as stated at paragraph 130: "… The process of obtaining, reviewing and vetting documents in wiretap cases may require significant resources on the part of police…"

22. Given the increase in electronic evidence, and the complexity of preparing the information gathered in electronic form for disclosure, it is the position of the CACP that the resources required to process and vet electronic information for disclosure, and the competing demands on police resources, should be recognized by this Court as an appropriate consideration, in the context of a *Jordan* analysis.

23. The volume and complexity of electronic information that needs to be prepared can appropriately be considered under the existing factors outlined in *Jordan*. Depending on surrounding circumstances, this may be a relevant factor in determining the time needed to prepare a case for trial. It also could be a matter going to complexity, either general complexity or, in some circumstances, discreet events.

24. There have been some cases that have recognized the complexity of electronic information in conducting a *Jordan* analysis. In *Edwards*[23], the Manitoba Court of Appeal noted that the evidence had been collected pursuant to numerous judicial authorizations, such as interception of private communications, general warrants for covert entries, general warrants for video installations, tracking warrants for vehicles, transmission data recorder warrants, and tracking and ping warrants for cellular devices.

25. In *Edwards,* the Court was clear that a qualitative, rather than quantitative, analysis was appropriate, but also noted that the issue of disclosure had to be considered in context. It was necessary to provide the evidence in a "useable, manageable and searchable form", and that it

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[22] *World Bank Group v Wallace*, 2016 SCC 15 [*World Bank*]
[23] *R v Edwards*, 2024 MBCA 27 [*Edwards*], application for leave to appeal dismissed 2024 CanLII 88335 (SCC)

would have been "unreasonable to simply hand over the voluminous raw video on its own".[24] Given the nature of the evidence and the requirement to provide disclosure in a useable and manageable form, the Court upheld the trial judge's decision not to stay the matter for a breach of a trial within a reasonable time, according to the *Jordan* analysis.

26. It is the submission of the CACP that a proper analysis of the complexity associated with extensive electronic evidence should explicitly account for police resources required to review, vet and redact the evidence, as well as the broader operational obligations and duties of police agency personnel. While electronic evidence can enhance certainty and reliability, its preparation for disclosure demands significant human resources.

27. The Ontario Superior Court of Justice has recognized the exponential use of video surveillance in criminal matters, and that the pace of providing disclosure must be considered, bearing in mind that considerable police human resources are required to provide the electronic disclosure. In *Nyadu*[25], the Ontario Superior Court of Justice held at paragraph 35:

> The necessity of vetting and consultation to protect CI privilege (and handlers' continuing investigations where appropriate) are fundamental to essential disclosure. Again, I recognize that this disclosure process will require additional time to prepare and will depend on the complexity of the case. In complex cases, the process of obtaining, reviewing and vetting documents in wiretap cases may require significant resources on the part of police.

28. In *Kulasingham*[26], the Ontario Superior Court of Justice overturned a decision of an Ontario Court of Justice judge, which had stayed a charge of assault causing bodily harm based on the delay in bringing the matter to trial. The Court found that the judge ignored evidence regarding the reason for police delay in producing evidence from an electronically recorded statement. The Court held that it was wrong for the judge to assume that production of the statement required nothing more than copying a file from a computer. Furthermore, the Court

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[24] *Edwards*, para. 35
[25] *R v Kevin Nyadu*, 2024 ONSC 3822 [*Nyadu*]
[26] *R v Kulasingam*, 2025 ONSC 3619 [*Kulasingam*]

stated the trial judge erred by attempting to reform or influence police procedures, rather than taking a holistic, objective look at the progress of the case.[27]

29. The Court confirmed that the trial judge had improperly attempted to use the delay decision to compel police to allocate additional resources to disclosure, and noted the exponential increase in the demand for video disclosure and the corresponding pressure this places on already scarce human resources, noting at paragraph 41:

> The exponential increase in demand for video disclosure is comparatively recent and is clearly taking some time to be digested. Resources may indeed need to be re-allocated or fresh resources applied. However, the reasons in this case failed to reflect any appreciation for the fact that the video evidence in question required scarce human resources to review the video, to make judgments and then to apply technical skills to redact. Human error required that process to be repeated. In comparing the time required in this case to other cases not requiring review and redaction of video evidence, the Learned Justice compared apples to oranges and applied the wrong standard.

30. When considering the need for a speedy trial, it is rare to find cases that consider the need for police to fulfil their other duties to society. In *McCann*[28], the Ontario Court of Justice was considering delay with respect to forensic examination of computers in the context of a child pornography case. In a rare recognition of the police service's other duties, the Court observed at paragraph 64:

> In considering the time requirement to produce the forensic report it should be noted that not all of those three months could be devoted exclusively to work on this case alone. Other emergency calls for investigative assistance had to be addressed, the analyst had to attend a two-day training session and the analyst also had a necessary and well earned two-week scheduled vacation.

31. It is the position of the CACP that when conducting a complexity analysis, the demand on police resources, and the duties and obligations police have to all citizens, should be appropriate considerations in determining whether delay was reasonable.

32. In answer to the rigid application of *Jordan*, some provinces have adopted a pre-screening model between Crown Attorney offices and their respective police services. The goal of the pre-screening model is to ensure that all disclosure is completed prior to the laying of

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[27] *Kulasingham,* para. 8
[28] *R v McCann*, 2022 ONCJ 336 [*McCann*]

charges for an individual. The Crown Attorney's office has the ultimate say on when a file is ready for prosecution by accessing the completeness of disclosure. Once given the green-light, police can charge the individual since it is at this time the *Jordan* clock starts ticking. This may seem like a practical solution, but it may come at an increased safety risk for more serious cases.

33. Take for example a homicide, police place many resources in the investigation such as securing the scene, interviewing witnesses, collecting digital evidence and seeking judicial authorizations. Once a suspect is identified, the police can interview the individual and continue with their investigation. Once the suspect is confirmed, it is at this stage that police are placed into a difficult situation. If they charge the individual prior to the completion of disclosure, the *Jordan* clock starts and disclosure is still ongoing. If they do not charge the individual and release them pending charges and completion of disclosure to go through the pre-screening process, police have potentially put public safety at risk all for the sake of not starting the *Jordan* clock. This is an extremely difficult position for police services – either put public safety at risk or risk having the file judicially stayed for violating the rigid *Jordan* timelines.

(d) Emphasis on speedy trial is too narrow a definition of public confidence

34. In *Jordan*, the Supreme Court of Canada determined that the seriousness or gravity of an offence, which was the balancing of public interest that was contained in prior Supreme Court of Canada jurisprudence on delay[29], would no longer be a factor. The presence of exceptional circumstances would be the only basis to justify delay.[30] The Court emphasized that public confidence would be increased by the requirement for criminal trials to be conducted within a reasonable time.[31]

35. It is the position of the CACP that the Court's weighing of the public interest in *Jordan*, equating public confidence solely with the right to a trial within a reasonable time, is a far too narrow interpretation of the necessity to weigh the public interest in assessing the right to a trial within a reasonable time and the obligations that police services have to ensure safety of the communities in which they serve.

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[29] As originally set out in *R v Morin*, 1992 CanLII 89 (SCC)
[30] *Jordan*, para. 81
[31] *Jordan*, para. 25, 55

36. It is respectfully the position of the CACP that public confidence is undermined when serious criminal charges, which consume extensive police resources, are precipitously stayed based on a rigid application of the *Jordan* timelines.

37. The CACP is concerned that rigid application of the *Jordan* timeframes could result in police officers involved in complex criminal investigations hesitating to lay charges, knowing that the timeframes required in *Jordan* start upon the laying of charges. Even in highly complex cases, where evidence to be processed may be extensive and require multiple technical skills to prepare for disclosure, police officers should feel free to make arrests and lay charges where there is sufficient evidence to support such charges, or where considerations of public safety or preservation of evidence are apparent. Delaying arrests and laying charges could result in concerns about public safety.

38. It is the position of the CACP that the unique responsibilities and duties of police agencies, and the public interest in the determination on the merits, should be legitimate considerations with respect to the *Jordan* principles when considering the time required to prepare evidence for disclosure.

PART IV – COSTS

39. The CACP does not seek costs of this appeal, and asks that no costs be awarded against it.

PART V – ORDER SOUGHT

40. The CACP does not request a specific order with respect to the appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED on October 7, 2025.



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SCHEDULE "A" – LIST OF AUTHORITIES

Tab	Description
1.	*R v Edwards*, 2024 MBCA 27, application for leave to appeal dismissed 2024 CanLII 88335 (SCC)
2.	*R v Ivarone*, 2023 ONCJ 69
3.	*R v Jordan*, 2016 SCC 27
4.	*R v Kevin Nyadu*, 2024 ONSC 3822
5.	*R v Kulasingam*, 2025 ONSC 3619
6.	*R v McCann*, 2022 ONCJ 336
7.	*R v McNeil*, 2009 SCC 3
8.	*R v Morin*, 1992 CanLII 89 (SCC)
9.	*R v O'Connor*, 1995 CanLII 51 (SCC)
10.	*R v Quesnelle*, 2014 SCC 46
11.	*R v Stinchcombe*, 1991 CanLII 45 (SCC)
12.	*R. v Vrbanic*, 2025 ONCA 151
13.	*World Bank Group v Wallace*, 2016 SCC 15

SCHEDULE "B" – STATUTES

Tab	Description
1.	*Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, Schedule B to the *Canada Act, 1982 (UK)*, 1982, c11, S 91 (24)
2.	*Community Safety and Policing Act, 2019*, SO 2019, Chapter 1, Schedule 1
3.	*Criminal Code*, RSC 1985. C C-46
4.	*Human Rights Code*, RSO 1990, c H.19
5.	*The Police Services Act*, CCSM c P94.5
6.	*The Police Act*, RSA 2000, c P-17
7.	*Witness Protection Program Act*, SC 1996, c 15
8.	*Youth Criminal Justice Act*, SC 2022, c 1