

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

BETWEEN:

**R. B.-C.**

**APPELLANT**

- and -

**HIS MAJESTY THE KING**

**RESPONDENT**

-and-

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**FACTUM OF THE INTERVENER**  
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(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

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## PART I: OVERVIEW

1. This appeal raises two questions. First, does the *Jordan* framework—and its approach to presumptive ceilings—apply to post-verdict delay as well as pre-verdict delay? Second, is a stay of proceedings required to remedy the *Charter*-infringing conduct for post-verdict delay (as it is for pre-verdict delay)?
2. The BCCLA intervenes on the second question. Instead of imposing a stay of the sentencing proceedings, the Court of Appeal for Ontario reduced the Appellant’s sentence by four months. The decision under appeal undermines the principled approach to *Charter* remedies for failures of the state to conclude the trial—including the sentencing proceeding—in a reasonable time. This principled approach was established by this Court in *R. v. Rahey*, [1987] 1 S.C.R. 588 and has been unchanged since then.
3. This Court should resist the Respondent and Attorneys-General requests to shift the remedial landscape away from a principled approach. Once the state has violated a defendant’s speedy trial right, the proceeding must be stopped. A stay of proceedings is a prospective remedy; it does not change the past. If the defendant’s speedy trial right is violated post-conviction, the conviction remains. But under a principled approach to s. 24(1) of the *Charter*, the minimum remedy for post-verdict delay is the same as pre-verdict delay: to stay the proceeding and stop the prosecution, regardless of where it is at in the trial process.
4. There is only one s. 11(b) right. Once a court has found a violation of the right, the only remedy that rights the wrong committed by the state is to stop the unreasonably long proceeding. Alternative remedies are insufficient because they allow the *Charter* violation to continue. While a sentence reduction may appear like a more palatable remedy to some, such a remedy is not responsive to the violation of the *Charter* right and ignores the fundamental reality of the s. 11(b) right itself—the right to a trial, including a sentencing, in a reasonable time.
5. Allowing the state to continue the trial, including the sentencing, judicially endorses a continued *Charter* violation. It would sanction the courts’ participation in the very proceeding that, if allowed to continue, perpetuates a violation of the defendant’s *Charter* rights. The courts should not be put in this invidious position because the state has failed to try and sentence a defendant in a timely way.

6. The BCCLA takes no position on the facts.

## PART II: BCCLA POSITION ON QUESTIONS IN ISSUE

7. The Appellant states the questions in issue as follows:
- (i) What is the test for unreasonable delay in the sentencing phase?

The BCCLA takes no position on this question.

- (ii) What is the appropriate remedy for unreasonable delay in the sentence phase?

The BCCLA submits that the only appropriate remedy for a violation of s. 11(b) of the *Charter*—whether pre- or post-verdict—is a stay of proceedings. A stay of proceedings is a prospective remedy that does not change the past. Any conviction or finding of guilty previously made remains. But once a court concludes that the trial could not complete within a reasonable time, the court should not participate in the continued violation of the *Charter* right by allowing the proceeding to continue, thus increasing the unreasonable delay.

## PART III: STATEMENT OF ARGUMENT

### A. *Charter* remedies must effectively protect and enforce *Charter* rights

8. Remedies—including *Charter* remedies—are designed to right wrongs. Chief Justice McLachlin, as she then was, remarked: “Remedies make things better. They heal wounds. They put things right. Remedies allow us to mend our wounds and carry on—as individuals and as a society. Legal remedies are no exception.”<sup>1</sup>

9. Section 24(1) of the *Charter* is the general remedy-granting power under the *Charter* that gives judges the remedial tools to mend the wounds of *Charter* infringing conduct—both for the

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<sup>1</sup> Beverley McLachlin, “[Rights and Remedies-Remarks](#)” in R.J. Sharpe and Kent Roach eds., *Taking Remedies Seriously* (Ottawa: Canadian Institute for the Administration of Justice, 2010) at p. 30.

individual and for society and the legal system. It provides the court with broad discretion to craft remedies to address infringements of protected rights and freedoms. As Justice Lamer observed in *Mills v. The Queen*, s. 24(1) “establishes the right to a remedy as the foundation stone for the effective enforcement of *Charter* rights.”<sup>2</sup> In this way, remedies “fit the rights guaranteed by the *Charter*.”<sup>3</sup> Section 24(1) remedies must “be tailored to the particular right which has been violated.”<sup>4</sup>

10. A purposive interpretation to s. 24(1) *Charter* remedies ensures that “where there is a right, there must be a remedy.” This purposive approach requires first, that “the purpose of the right being protected must be promoted”. Thus, the court must craft a “responsive” remedy; in other words, a remedy that responds to the infringement of the right. Second, “the purpose of the remedies provision must be promoted” by an “effective” remedy. In other words, the remedy must effectively address the *Charter* infringement.<sup>5</sup>

11. Some remedies are designed to remedy past wrongs. Others, like a stay of proceedings, are prospective and designed to prevent future harm: “A stay of proceedings does not merely redress a past wrong. It aims to prevent the perpetuation of a wrong that, if left alone, will continue to trouble the parties and the community as a whole, in the future.”<sup>6</sup>

12. The policy question raised by this appeal is how to tailor an appropriate remedy for post-verdict delay that infringes s. 11(b) of the *Charter*. The answer is that the remedy must address and fit the right itself: namely, the right to be tried and sentenced within a reasonable time. If a person has the right to be tried and sentenced within a reasonable time, allowing the trial or sentencing to proceed beyond that time perpetuates and aggravates the very *Charter* violation which requires a remedy.

**B. A stay of the sentencing proceedings is the principled remedy for a post-verdict breach of s. 11(b) of the *Charter***

***1) The courts will not allow a trial to proceed in violation of the Charter***

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<sup>2</sup> *Mills v. The Queen*, [1986] 1 S.C.R. 863 at p. 881 (in dissent but not on this point).

<sup>3</sup> Beverley McLachlin, “Rights and Remedies-Remarks” in R.J. Sharpe and Kent Roach eds., *Taking Remedies Seriously* (Ottawa: Canadian Institute for the Administration of Justice, 2010) at p. 26.

<sup>4</sup> *R. v. Rahey*, [1987] 1 S.C.R. 588, at pp. 619-620 *per* Estey and Wilson JJ.

<sup>5</sup> *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, 2003 SCC 62, at para. 25.

<sup>6</sup> *R. v. Regan*, 2002 SCC 12, [2002] 1 S.C.R. 297, at para. 54.

13. There is only one s. 11(b) *Charter* right: the right to be tried in a reasonable time, or, in other words, the right not to be tried beyond a reasonable time. When this right has been violated, it does not make a difference what stage the trial is at: whether pre-trial, mid-trial, or at the post-trial sentencing stage. The only remedy that ensures the *Charter* violation does not continue is an end to the proceeding itself.

14. In *R. v. Rahey*, this Court held that a stay of proceedings is the minimum remedy for a violation of the speedy trial right enshrined in s. 11(b) of the *Charter*: “After the passage of an unreasonable period of time, no trial, not even the fairest possible trial, is permissible. To allow a trial to proceed after such a finding would be to participate in a further violation of the *Charter*.”<sup>7</sup> This remedial approach to s. 11(b) has been unchanged in this Court’s jurisprudence since 1987.

15. Justice Lamer cast this conclusion in terms of jurisdiction: “If an accused has the constitutional right to be tried within a reasonable time, he has the right not to be tried beyond that point in time and no court has jurisdiction to try him ... in violation of that right.”<sup>8</sup> Although *Charter* remedy jurisprudence no longer uses jurisdictional language, the essence of Justice Lamer’s holding remains the same: the courts will not participate in a proceeding that, by its very nature, is conducted in violation of a person’s s. 11(b) *Charter* right. As held recently in *R. v. Varennes*, “[t]he remedy for a breach of s. 11(b) that has already occurred has been a stay of proceedings, since any lesser remedy would allow the trial to continue and thus increase the unreasonable delay.”<sup>9</sup>

## 2) *When a finding of guilt is made, the trial continues until sentencing*

16. *R. v. Rahey* was a pre-verdict delay case. In *R. v. MacDougall*, this Court clarified that the right to be tried within a reasonable time includes the right to be sentenced within a reasonable time. McLachlin J., as she then was, concluded that the introductory language of s. 11 (“charged with an offence”) applies to sentencing: “the charges against an accused person remain unconcluded until he

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<sup>7</sup> *R. v. Rahey*, [1987] 1 S.C.R. 588, at p. 614 *per* Dickson C.J. and Lamer J.

<sup>8</sup> *R. v. Rahey*, [1987] 1 S.C.R. 588, at p. 614 *per* Dickson C.J. and Lamer J.

<sup>9</sup> *R. v. Varennes*, 2025 SCC 22, at para. 82. Justice Karakatsanis, writing for the majority, footnotes this statement and clarifies that she is not taking a “position on the appropriate remedy for a breach of s. 11(b) that occurs after a conviction is entered, but before sentencing.”

or she is released from the power of the prosecutorial arm of the law.”<sup>10</sup>

17. Sentencing is an integral part of the trial. Dickson J. (as he then was) noted that “[s]entencing is, in respect of most offenders, the only significant decision the criminal justice system is called upon to make.”<sup>11</sup> There is no way to separate sentencing from the trial process as a whole: “Crime and punishment are inextricably linked.”<sup>12</sup> The nature of the s. 11(b) *Charter* right is also inextricably linked to the remedy: if a person has the right to be tried (and sentenced) within a reasonable time, they have the right not to be tried (and sentenced) beyond that reasonable time.

18. As this Court re-emphasized in *R. v. Jordan*, trials within a reasonable time are an essential part to protecting defendants’ “interests in liberty, security of the person, and a fair trial.” Timely trials also ensure overall public confidence in the administration of justice and protect the interests of victims and their families.<sup>13</sup>

19. These societal interests are engaged post-verdict, just as they are pre-verdict. The prejudice arising from delay post-verdict is different from the prejudice that arises pre-verdict. But the prejudice to the guilty defendant waiting to be sentenced is still very real; that is why the s. 11(b) right includes the right to be sentenced within a reasonable time, for three key reasons.

20. First, “delay in sentencing clearly affects the liberty of an accused person who has been found guilty or has pleaded guilty, and has not been sentenced.” A person waiting to be sentenced is in prison or is subject to conditions that curtail their liberty. These liberty restrictions may be considered by a sentencing judge, but this is not certain. Thus, “delay in sentencing may prejudice the accused’s liberty interest.”<sup>14</sup>

21. Second, undue delay also impacts a defendant’s security interests: “[t]he person lives in suspense, uncertain of his or fate, unable to get on with his or her life, and faced with all the stress and anxiety that this entails (citations omitted).” While anxiety about eventual punishment cannot be avoided, delay in sentencing prevents an accused from beginning the process of rebuilding their life. As Chief Justice McLachlin (as she then was) noted, “[i]n a very real sense, the ‘trial’ that will

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<sup>10</sup> *R. v. MacDougall*, [1998] 3 S.C.R. 45, at para. 13.

<sup>11</sup> *R. v. Gardiner*, [1982] 2 S.C.R. 368, at p. 414.

<sup>12</sup> *R. v. Gardiner*, [1982] 2 S.C.R. 368, at p. 415.

<sup>13</sup> *R. v. Jordan*, 2016 SCC 27, at paras. 20-25.

<sup>14</sup> *R. v. MacDougall*, [1998] 3 S.C.R. 45, at para. 33.

determine the convicted person’s fate is not over until the sentence has been passed.”<sup>15</sup> And, as with a trial, “[e]vidence is important in sentencing proceedings” and delay may prejudice a defendant’s in right fair sentencing hearing.<sup>16</sup>

22. Third, delay in sentencing, as with trial delays, negatively impacts societal interests: “Society has a keen interest in ensuring that those guilty of committing crimes receive an appropriate sentence promptly.” Delay can result in too much liberty being granted to a person found guilty of an offence, putting society at risk. Delay can dim the prospects of an offender receiving rehabilitative treatment that promotes society interests and protects the public. As McLachlin J. observed, “[i]t is in society’s highest interests that the court develop and impose an appropriate sentence as soon as reasonably possible.”<sup>17</sup>

23. *MacDougall* holds that the s. 11(b) right for one stage of the trial (determining guilt) applies equally to another (determining an appropriate sentence). Both stages are part of the trial, and so s. 11(b) applies to both.

**3) *Staying the proceedings—and stopping the trial process from continuing—is the only remedy that rights the wrong***

24. Just as s. 11(b) applies to both the pre- and post-verdict stages of the trial, the appropriate remedy is the same regardless of when the s. 11(b) right is violated. The remedy must put a stop to an ongoing *Charter* violation.<sup>18</sup> If the court sentences a person after a violation of their s.11(b) *Charter* right there would be no responsive or effective remedy for the state’s wrong.<sup>19</sup> Instead of remedying the problem, the court would aggravate the very *Charter* breach that it condemns.

25. Calls for lesser remedies such as a sentence reduction for s. 11(b) breaches inevitably focus on society’s interest in sentencing a guilty offender. There is no doubt that society has an interest in imposing sentence for guilty defendants, just as it has an interest in the fact-finding process of a trial. But this societal interest in sentencing a person who has committed a crime does not give the state

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<sup>15</sup> *R. v. MacDougall*, [1998] 3 S.C.R. 45, at para. 34.

<sup>16</sup> *R. v. MacDougall*, [1998] 3 S.C.R. 45, at para. 35.

<sup>17</sup> *R. v. MacDougall*, [1998] 3 S.C.R. 45, at para. 36.

<sup>18</sup> *R. v. Charley*, 2019 ONCA 726, at para. 112.

<sup>19</sup> See *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, 2003 SCC 62, at para. 25.

carte-blanche to do so in violation of the *Charter*. In essence, the arguments seeking lesser remedies than a stay ask this Court to overturn the central reasoning regarding appropriate remedies in *R. v. Rahey*: that the court will not participate in an ongoing violation of the *Charter*.

26. Imposing a stay of proceedings for an infringement of s. 11(b) at the sentencing stage of a trial is not “tantamount to an acquittal”.<sup>20</sup> A person who has been convicted by a trial court is still convicted of the offence, even if the sentencing proceedings are stayed because the sentencing hearing has not concluded within a reasonable a time. The *Charter* breach does not impact the underlying conviction, if it has been registered by the time of s. 11(b) breach.<sup>21</sup> Rather, the breach relates to the state’s ability to conduct a sentencing proceeding and sentence a person already convicted of a crime. Because the remedy must fit the right at issue, the appropriate remedy in cases where sentencing is unreasonably delayed is a stay of the sentencing proceedings, not a stay of the underlying conviction.

27. In imposing a sentence reduction, the decision under appeal builds on other cases of the Court of Appeal for Ontario that misdescribe the available remedies after a finding of guilt, but before sentencing. In *R. v. Hartling*, the court reduced a sentence by five months because of a post-verdict s. 11(b) infringement. In declining to order a stay of proceedings, the court noted that a “stay of a valid conviction would impact public confidence in the administration of justice” and that the “appropriate and just remedy here should target the sentence, not the conviction.”<sup>22</sup>

28. This reasoning conflates a stay of proceedings with a stay of a conviction. A principled approach to remedying a post-verdict s. 11(b) breach does not result in the underlying conviction being stayed. Nor does it target the sentence itself. Rather, it focusses on the right that has been breached—the right to be tried within a reasonable time—and imposes a stay of the proceeding itself. This remedy stops the prosecution in its tracks. It prevents the state from continuing to violate the *Charter* by trying the defendant beyond a reasonable length of time. It does not change what has

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<sup>20</sup> See *R. v. Jewitt*, [1985] 2 S.C.R. 128.

<sup>21</sup> In the normal course, a conviction will be registered at the same time as a finding of guilt is made. It is only in situations when a discharge is a potential sentencing option that a trial court would first hear submissions on sentencing before deciding whether or not to register a conviction: see e.g. *R. v. Sanchez-Pino* (1973), 11 C.C.C. (2d) 53, 1973 CanLII 794 (Ont. C.A.).

<sup>22</sup> *R. v. Hartling*, 2020 ONCA 243, at paras. 113-114.

already happened.

29. While the stay may be frustrating to some, preventing a violation is exclusively within the state's control. The defendant can only successfully claim a violation of s. 11(b) when they are not responsible for the delay. Defence delay is always deducted from the s. 11(b) analysis and thus should not be part of the line-drawing exercise of what remedy is available. If the defendant caused the unreasonable delay, he is not entitled to a remedy.

30. When the state asks a court to forgive the violation of a *Charter* right by perpetuating the violation, the state is asking the court to bless its failure to honour the Constitution. When delay becomes unreasonable, the only “appropriate and just” remedy is the termination of proceedings. While s. 24(1) gives trial judges broad remedial discretion, the range of potential remedies is limited by the nature of the breach.

31. This principle is readily apparent when other *Charter* rights under s. 11 are considered. For example, where the defendant establishes a breach of s. 11(h) of the Charter—the double jeopardy protection—the Court could not allow a second prosecution to proceed but offer a lesser remedy such as a costs order.<sup>23</sup> A lesser remedy would not address the harm inherent in double jeopardy. Likewise, the remedy for a defendant convicted of a non-existent crime in violation of s. 11(g) could not be anything less than quashing the conviction. A sentence reduction or a declaration of the breach would not vindicate the right. In the context of a s. 11(b) violation, only a stay can vindicate the claimant's rights. It is not possible to proceed with a sentencing hearing that respects individual and societal interests after an unreasonable delay. Doing so would torture the meaning of the s. 11 guarantee.

32. Imposing a stay of proceedings for violations of s. 11(b) of the *Charter* is consistent with principles underlying *Charter* remedies more generally. In cases involving the exclusion of evidence under s. 24(2), a key question is whether the state conduct that lead to the *Charter* violation is sufficiently serious that there is a “need for the courts to dissociate themselves from that conduct, by excluding evidence linked to that conduct, in order to preserve public confidence in and ensure state adherence to the rule of law.”<sup>24</sup>

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<sup>23</sup> See also *R. v. Dell*, 2018 ONCA 674, at para. 101; leave to appeal refused [2018] S.C.C.A. No. 389.

<sup>24</sup> *R. v. Grant*, 2009 SCC 32, at para. 72.

33. When s. 11(b) has been violated, the only way for the court to dissociate themselves from the *Charter*-offending conduct is to stay the proceedings. If a stay of proceedings is not imposed, the court would be participating in the breach itself by conducting further hearings. This condones and perpetuates violations of the *Charter*.

34. The same principle is part of the test for a stay of proceedings for abuse of process. A stay of proceedings “does not merely redress a past wrong.” Rather, it is designed to “prevent the perpetuation of a wrong that, if left alone, will continue to trouble the parties and the community as a whole, in the future.”<sup>25</sup> In abuse of process cases, a stay of proceedings will only be appropriate when (1) “the prejudice caused by the abuse in question will be manifested, perpetuated or aggravated through the conduct of the trial, or its outcome” and (2) “no other remedy is reasonably capable of removing that prejudice.”<sup>26</sup>

35. Proceeding with a sentencing proceeding that violates s. 11(b) manifests and perpetuates the very prejudice caused by the breach. There is no other remedy capable of removing that prejudice. A sentence reduction does not remove the prejudice, for example, because to impose a sentence (even a reduced one) requires the court to hold a hearing that in itself is a violation of a person’s *Charter* right.

36. Only a stay of sentencing proceedings prevents the perpetuation of a wrong when the state has infringed s. 11(b) of the *Charter* with unreasonable post-verdict delay. Holding otherwise would undermine the “integrity of the justice system” by condoning *Charter*-infringing conduct by the court itself.<sup>27</sup>

#### **PART IV: COSTS**

37. The CCLA does not seek costs and asks that no costs be ordered against it.

#### **PART V: ORDER REQUESTED**

38. The CCLA does not seek any orders.

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<sup>25</sup> *R. v. Regan*, 2002 SCC 12, at para. 54.

<sup>26</sup> *R. v. O’Connor*, [1995] 4 S.C.R. 411, at para. 75.

<sup>27</sup> See *R. v. Babos*, 2014 SCC 16, at paras. 35 and 37.

**PART VI: SEALING, CONFIDENTIALITY, OR PUBLICATION ORDERS**

39. There is a publication ban under s. 486.4 of the *Criminal Code*.

**ALL OF WHICH is respectfully submitted this 10th day of November, 2025.**



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**PART VII: TABLE OF AUTHORITIES**

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<b><u>Secondary Sources</u></b>	
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