



“Dedicated to Justice” • «Au service de la justice»

November 22, 2016

The Honourable Jody Wilson-Raybould, P.C., M.P.
Minister of Justice & Attorney General
House of Commons
Ottawa, Ontario K1A 0A6

Dear Minister:

We are writing to you because we are extremely concerned about delays in the criminal justice system leading to charges being stayed in the most heinous crimes. Like many, we were shocked and disheartened this week when first-degree-murder charges against Adam Picard were stayed in Ottawa because of a four-year delay. The victims are devastated and the public will never know the truth about these allegations. The case represents an immense failure of our criminal justice system.

How can we allow this to happen in Canada? First-degree murder is the most serious charge an individual can face. No one who is actually interested in doing justice in this country can be satisfied with this result. The judge noted that a stay means there is no determination of guilt or vindication for the accused. The public is left with little confidence in the Canadian justice system as a result.

We know that it is to the accused's advantage to cause delays by firing their lawyers repeatedly and bringing numerous pretrial motions (e.g. demanding more disclosure). They wait and wait in custody, counting on scheduling problems for judges and Crowns (e.g. in Newfoundland and Labrador, one study found that up to 72 per cent of a court's sitting time is spent on scheduling hearings) and then apply for a stay of proceedings due to "unreasonable delay" under the Charter of Rights and Freedoms.

We do not criticize the Supreme Court of Canada ruling in *R. v. Jordan* from this summer. Cases must be dealt with expeditiously, especially serious cases. Accused people cannot languish in detention without a finding of guilt by the court. What we question is whether it will actually be possible and practical to meet their new test in courtrooms across Canada. As you know, if the time from charges are laid to the actual or expected end of trial is more than a year and a half in Provincial Court, or more than two and half years in Superior Court (where the most serious charges are heard), then an accused is presumed to have suffered unreasonable delay under Section 11(b) of the Charter. Unless the Crown can meet the stringent test for "exceptional circumstances" or there are obvious defence delay tactics or waivers of delay, the charges will be stayed. There is no need to show that any prejudice was suffered because of the delay. The seriousness of the charges is irrelevant.

The Picard case mentioned above is not an isolated incident. Last month in Edmonton, first-degree-murder charges against Lance Matthew Regan were stayed because of unreasonable delay, with the judge citing *R. v. Jordan*. Alberta prosecutors have announced that they are reviewing around 400



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criminal charges they have flagged as at risk of a similar fate. Child-sex offences and drug-trafficking charges have also been stayed in Ontario and British Columbia.

We agree with some legal experts who’ve noted the Supreme Court was flying blind when it set the standards in *R. v. Jordan* and had no idea what impact its decision would have. The ruling may have the unintended consequence of police delaying charges until cases are virtually ready for trial so they do not run the risk of their being tossed for delay – a potential risk to public safety.

We call on you to immediately streamline the *Criminal Code*, focus it on serious offences and abolish unnecessary procedures. While the provinces are responsible for administering the criminal justice system, including the courts, prosecutors and police, their resources should be prioritized immediately to deal with serious cases – no murder charge should ever be delayed to the point it gets stayed! It is simply unacceptable.

Going forward, it is imperative that no family, who’ve already suffered the violent loss of a loved one, suffer secondary victimization by a criminal court staying charges against an accused. “In this country, victims have no rights,” said Nicole Nayel, whose 28-year-old son, Fouad Nayel, a construction worker, was allegedly shot to death by Adam Picard. Mrs. Nayel said, “I lost my son and I’m losing to the system now.” She is now forced to fight for all Canadians.

We know that your mandate letter from the Prime Minister includes finding ways modernize the criminal-justice system and improve its efficiency and effectiveness. We implore you to take immediate steps to rectify the situation before many other cases are thrown out. We can no longer be complacent about delays in the criminal justice system. Allowing murderers a free pass due to procedural issues cannot be permitted in a civilized society.

Sincerely,

Heidi Illingworth
Executive Director