



**SUPERIOR COURT OF QUEBEC
CRIMINAL CHAMBER**

January 8th, 2019

NOTICE TO MEMBERS OF THE BAR

**DIRECTIVE CR/2019-01 CONCERNING *JORDAN* APPLICATIONS
(Section 11(b) of the *Charter*)**

Section 11(b) of the *Canadian Charter of Rights and Freedoms* (hereafter, the *Charter*) provides:

11. Any person charged with an offence has the right
(b) to be tried within a reasonable time.

In *R. v. Jordan*, [2016 SCC 27](#) (hereafter, *Jordan*), the Supreme Court fixed a presumptive ceiling of thirty (30) months for cases tried in superior court, beyond which the delay from the charge to the actual or anticipated end of trial is presumed to be unreasonable.

Thus, the Supreme Court established a new framework for applying section 11(b) of the *Charter*, having found that the parties were operating within a culture of complacency towards delay in the criminal justice system. In *R. v. Cody*, [2017 SCC 31](#) the Supreme Court reemphasized the important role trial judges and trial courts play in curtailing unnecessary delay and changing courtroom culture.

This Directive is part of the proactive approach adopted by the Superior Court of Quebec in the wake of those judgments. The Directive provides a procedural framework for section 11(b) applications in order to ensure the proper administration of justice and to avoid further delays. The Directive applies to all criminal proceedings before the Superior Court of Quebec, unless a judge decides otherwise.

Notice of Intention

1. Unless permitted by a judge, at least two weeks before filing a section 11(b) application, the Defence must send a notice of its intention to file the application to the Prosecution, to all the accused, and to the Office of the Coordinator of the Criminal Chamber. The notice must be sent by e-mail to one of the following addresses: ch.crim.csq.mtl@judex.qc.ca (Montreal Division) or ch.crim.csq.qc@judex.qc.ca (Quebec Division). The Defence must indicate in the subject line of the e-mail: “*Jordan Notice of Intention – File No – Name of accused*”.
2. The Defence must indicate the anticipated date for the filing of the application in the e-mail. It is not necessary to file the notice in the court record at this time, but the notice must be annexed to the forthcoming application.
3. If the Defence does not file the application on the date indicated in the e-mail, the notice of intention becomes null and void and is of no effect. If, later on, the Defence decides to once again file a section 11(b) application, it must send another notice, in accordance with the first paragraph. In that case, the Defence must indicate in the notice whether it is a second or third notice, and so on.

Application

4. A section 11(b) application must be filed in the court record and must be detailed and supported by affidavits for any evidence that does not already appear in the record.
5. The evidence that appears in the record includes court documents (undertaking, recognizance, information, indictment, etc.), minutes of proceedings, written judgments or judgments that have been transcribed, and transcripts that have already been filed.

Jordan Case Management Judge (551.1 of the Criminal Code)

6. If in his/her opinion it is necessary for the proper administration of justice, the chief justice appoints a case management judge to manage and/or adjudicate the application. Subject to section 551.1(1) of the *Criminal Code*, he/she may do so as soon as the notice of intention is received by the Office of the Coordinator of the Criminal Chamber.

Jordan Case Management Conference

7. Unless otherwise decided by a judge, each time a section 11(b) application is filed, the court holds a *Jordan* case management conference, which may be held during the

pre-hearing conference, where appropriate. The judge presiding over the *Jordan* case management conference fixes the date of the hearing of the application, as well as the dates for the filing of the parties' supporting materials, and makes the necessary rulings in accordance with this Directive. Among other things, the judge decides whether it is necessary to order the preparation of the transcripts that are relevant to the application.

Form CR/2019-01: *Jordan* Application

8. Unless otherwise decided by a judge, the parties must complete [Form CR/2019-01](#) and file it in the court record three (3) working days before the *Jordan* case management conference. The form must also be sent by e-mail to the Office of the Coordinator of the Criminal Chamber at one of the following addresses: ch.crim.csq.mtl@judex.qc.ca (Montreal Division) or ch.crim.csq.qc@judex.qc.ca (Quebec Division). The parties must indicate in the subject line of the e-mail: "*Jordan Application – Form CR/2019-01 – File No – Name of accused*".

9. Form CR/2019-01 is intended to be a case management tool, and not an exhaustive statement of the parties' respective positions. However, the parties must include sufficient details to permit the case management judge to make the necessary rulings and establish a reasonable timeline for the hearing of the application. The parties can also use the form to determine which periods of delay will be the object of admissions.

10. Form CR/2019-01 may be modified at any time in order to take into account new jurisprudence or a legislative change, or for any other reason, subject to the issue of a notice to the members of the bar.

Hearing of the *Jordan* Application

11. Unless otherwise decided by a judge, all section 11(b) applications must be heard at least three (3) months before the beginning of the trial or before the first day of pre-trial applications.

***Jordan* Application Supporting Materials**

12. The supporting materials for a *Jordan* application include the factums of the parties, the Table of Delays CR/2019-01 and the relevant transcripts. A joint statement of facts may also be filed, where appropriate.

13. Unless otherwise decided by a judge, the supporting materials of the Defence must be filed at least four (4) weeks prior to the hearing of the application. The supporting materials of the Prosecution must be filed at least two (2) weeks prior to the hearing of the

application. The Table of Delays CR/2019-01, as well as the joint statement of facts where appropriate, must be filed at the same time as the Prosecution's supporting materials.

- **Factums**

14. Unless otherwise decided by a judge, factums not exceeding fifteen (15) pages (letter size paper, double spaced, Times New Roman font, size 12) must be filed in the court record. The factums must clearly state the reasons for which a party considers any period of delay to be attributable to the defence or to discrete events, pursuant to *Jordan*.

15. In addition, in cases where the transitional exceptional circumstance may apply (that is, cases where a charge was laid before July 8th 2016), unless otherwise decided by a judge, the factums must clearly attribute each period of delay in the proceedings to one of the five (5) categories of delay described in *R. v. Morin*, [\[1992\] 1 S.C.R. 771](#) (hereafter, *Morin*) ((i) inherent delay; (ii) actions of the accused; (iii) actions of the Prosecution; (iv) institutional delay; and (v) other reasons for delay). As such, in transitional cases, the parties are allowed five (5) additional pages for their factums, for a total of twenty (20) pages (letter size paper, double spaced, Times New Roman font, size 12).

- **Table of Delays CR/2019-01**

16. Unless otherwise decided by a judge, the information described at paragraphs 14-15 must also be detailed in the [Table of Delays CR/2019-01](#), which must be completed by both parties and filed in the court record. The table describes the history of the proceedings since the laying of the charges and summarizes the positions of the parties.

17. In cases where the transitional exceptional circumstance is not applicable, or where a judge has exempted the parties from the obligation provided for by paragraph 15 of this Directive, the Table of Delays CR/2019-01 may be modified accordingly by the parties.

- **Transcripts**


18. Unless otherwise permitted by a judge, only those excerpts of the transcripts that reproduce the discussions at the opening of the term of the assises, or those relating to adjournments or to the selection of the next hearing date must be filed. Each party is responsible for ensuring that the excerpts they deem necessary are annexed to their factum.

- **Joint Statement of Facts**

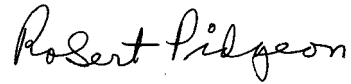
19. The parties are encouraged to collaborate in order to file a joint statement of facts, so that only the core issues be the subject of debate. The parties should, in particular, try to agree on any periods of delay attributable to the defence or to exceptional circumstances arising from a discrete event, pursuant to *Jordan*, or, in transitional cases, to any of the five (5) categories of delay identified in *Morin*.

Coming Into Force

20. This Directive comes into force on January 8th, 2019.



Jacques R. Fournier
Chief Justice of the Superior Court of Quebec



Robert Pidgeon
Associate Chief Justice