

NOVA SCOTIA COURT OF APPEAL
Citation: *R. v. Mouchayleh*, 2017 NSCA 51

Date: 20170621
Docket: CAC 457002
Registry: Halifax

Between:

Youhanna Mouchayleh

Appellant

v.

Her Majesty the Queen

Respondent

Judge: The Honourable Justice Peter M. S. Bryson

Appeal Heard: March 21, 2017, in Halifax, Nova Scotia

Subject: Criminal law. Section 11(b) of the *Canadian Charter of Rights and Freedoms*. Right to be tried within a reasonable time.

Summary: On April 10, 2012, Mr. Mouchayleh was charged with possession of cocaine for the purpose of trafficking. He elected Provincial Court on August 29, 2012 and pleaded not guilty on October 3, 2012. Trial was estimated at one day and was scheduled for October 3, 2013. A brief but late Crown disclosure was made the day before trial. Mr. Mouchayleh was granted an adjournment, although the Crown offered to split the case. Defence counsel now advised the case would only take half a day. But he was not available for a new proposed date of October 17, 2013. New date set for September 25, 2014. New counsel sought adjournment of that date and brought *Charter* motion for delay. Trial judge dismissed motion. Trial proceeded and Mr. Mouchayleh was convicted. He appealed.

Issues: Was Mr. Mouchayleh's right to be tried within a reasonable time violated?

Result: Appeal dismissed. Trial judge did not err in her application of the *Morin* criteria. The judge allocated much of the delay to the defence. Under the *Jordan* criteria, the net delay was 18 months. The defence argued it was 29½ months. Even so, under *Jordan*, transitional exceptional circumstances permitted a greater delay owing to judge's findings of defence conduct, lack of prejudice, and reliance on pre-*Jordan* law.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 16 pages.