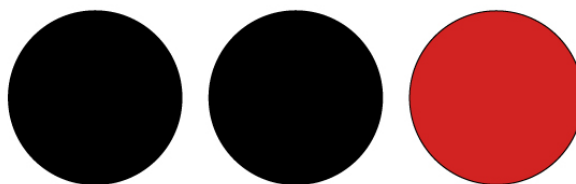




**BATTERED WOMEN'S
SUPPORT SERVICES**



Safety Changes Everything

January 18, 2022

Honourable David Lametti, P.C.,
M.P. Minister of Justice and Attorney-General of Canada
House of Commons
Ottawa, ON K1A 0A6

RE: *R. v. Jordan* Framework and Implications for Gender-Based Violence

Dear Minister Lametti,

I am writing to you on behalf of Battered Women's Support Services (BWSS). Battered Women's Support Services provides education, advocacy, and support services to assist women experiencing gender-based violence. We work from a feminist perspective to eliminate gender-based violence (GBV) and promote gender equity. For over forty years, we have been working towards ending violence against women, girls, femmes, LGBTQ2S, and non-binary survivors of violence. Our specialized provides crisis intervention, legal advocacy, counselling and support, and information and referral services to meet survivors' individual complex needs. We also provide GBV prevention and intervention services, as well as community education and training programs to end gender-based violence.

We are writing today to express our significant concern with respect to the Jordan framework, and its implications for crimes of gender-based violence and femicide. On July 8th, 2016, in a 5-4 ruling, the Supreme Court of Canada in *R. v. Jordan* introduced a new analytical framework for determining whether an accused has been tried within a reasonable time. The Court made clear that an accused's right to be tried within a reasonable time, pursuant to Section 11(b) of the *Charter*, "cannot be held in abeyance while the system works to respond" to the new time ceilings¹ set out under *Jordan*. On 16 June 2017, the Supreme Court unanimously upheld the Jordan decision in *R. v. Cody*: "The Jordan framework now governs the s. 11(b) analysis."² In its decision in *Jordan*, the Court prescribed that the application of *R. v. Jordan* will utilize "the good sense of trial judges to determine the reasonableness of

¹ 18 months for one-stage provincial court trials and 30 months for two-stage superior court trials, counted from the date of Crown Counsel charging until the completion of trial.

² *R. v. Cody*, 2017 SCC 31, para. 3

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the delay in the circumstances of each case.”³ Further, *Jordan* encourages participants in the criminal legal system to “cooperate in achieving reasonably prompt justice”.⁴

As an intersectional-feminist voice against violence and oppression, we know that the discretionary power that is awarded to judges under *Jordan* is not neutral. The criminal legal system reproduces a power differential between survivors, the people who abuse them, and the legal system. Further, given that survivors are not afforded an independent voice or legal standing in criminal legal proceedings, their participation towards “achieving reasonable prompt justice” is illusory.

In a review of cases stayed under the *Jordan* framework, BWSS’s Research and Policy team has found that its use has appeared to favour perpetrators of gender-based violence. Across 140 cases reviewed in this study, we have found that between 2016 and 2020, defence counsel has invoked *R. v. Jordan* tactically, arguing for a stay of proceedings to help their clients escape culpability. Nearly half a decade following *R. v. Jordan*, hundreds of cases have been stayed due to routine delays, including numerous cases involving violence against women and homicide.⁵ Many survivors of violence have found themselves further victimized by the *Jordan* decision, as cases are stayed with little regard for their need for justice, accountability, or safety.⁶ The criminal legal system does not provide the best path to safety and healing for all survivors, however, it does remain an important recourse to many.

The *Jordan* framework must not be used to escape accountability for systemic violence. In a similar vein, the Truth and Reconciliation Commission calls on all levels of government “to review and amend their respective statutes of limitations to ensure that they conform to the principle that governments and other entities cannot rely on limitation defences to defend legal actions of historical abuse brought by Aboriginal people.”⁷ Canada’s institutions are built on gendered racism and colonialism - dispossessing Indigenous peoples of their land; subjugating women, and enforcing slavery. Canadian law still sustains these systems. Until our legal system adopts a strong feminist, anti-racist and decolonial practice, we cannot have reasonable faith in “the good sense of trial judges” or the legal system to achieve justice for women under *R. v. Jordan*, especially Black, Indigenous, and racialized women and 2SLGBTQIA persons.⁸

Your most recent mandate letter of December 16, 2021, states, “We remain committed to ensuring that public policies are informed and developed through an intersectional lens, including applying frameworks such as Gender-based Analysis Plus (GBA Plus) and the quality-of-life indicators in decision-making.”⁹ Further, all Cabinet members are instructed to commit to “Fully implement the United Nations Declaration on the Rights of Indigenous Peoples Act and work with Indigenous Peoples to accelerate the co-development of an action plan to achieve the objectives of the Declaration.”

³ *R. v. Jordan*, 2016 SCC 27, para. 98.

⁴ *Ibid*, para. 5.

⁵ Murder, sex assault cases among those tossed due to delays in Canadian courts, June 16, 2017: <https://www.cbc.ca/news/canada/jordan-ruling-stays-canadian-cases-1.4163829>

⁶ See Appendix of case samples below.

⁷ Truth and Reconciliation Commission of Canada: Calls to Action, 2015, https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/indigenous-people/aboriginal-peoples-documents/calls_to_action_english2.pdf

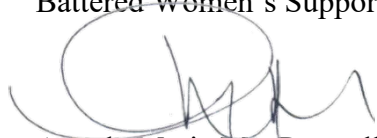
⁸ Tanovich, David M. “The Charter of Whiteness: Twenty-Five Years of Maintaining Racial Injustice in the Canadian Criminal Justice System.” SSRN Electronic Journal, 2008. <https://doi.org/10.2139/ssrn.1142523>.

⁹ Minister of Justice and Attorney General of Canada Mandate Letter, December 16, 2021, <https://pm.gc.ca/en/mandate-letters/2021/12/16/minister-justice-and-attorney-general-canada-mandate-letter>

Rates of gender-based violence continue to climb, including against Indigenous, Black, and racialized women. Even more, when reports are made, only 1 in 10 cases will lead to a criminal conviction.¹⁰ The pandemic has exacerbated gender-based violence, with 32 percent of Canadians reporting increased domestic violence, and crisis lines, like BWSS's own hotline, reporting a 400 percent increase in calls.¹¹ Many women already fear being blamed, stereotyped, or disbelieved. *The Jordan* framework creates another reason for survivors to fear re-victimization by our judiciary system and question whether to come forward. For example, upon learning that the BC Court of Appeal had upheld a Jordan-related stay of proceedings against the man who was convicted of abusing her as a child, Jeeti Pooni told media, "It was very disheartening, disappointing — you name it — when one has spoken their truth, testified and there's a guilty verdict, and then you receive this news."¹² The Court itself acknowledged "A stay of proceedings in these circumstances marks a failure of the justice system."

Changes to the judiciary system are urgently needed to offer viable paths to survivors like Jeeti Pooni. At the provincial level, Alberta's auditor general is recommending an analysis of Jordan-related delays; Ontario's Attorney General has committed to ensuring a court backlog doesn't result in stays for sexual assault charges; Crown attorneys in Nova Scotia are proposing the Attorney General get involved in triaging cases, and the Nova Scotia Justice Minister has expressed concerns about Jordan-related stays specifically in sexual assault cases.¹³ If the federal government is serious about combatting gender-based violence and femicide, it needs to change the system that prevents effective and timely access to justice for survivors. Please feel free to contact us on our proposed changes to the Jordan framework. We can be reached at director@bwss.org or 604-808-0507. Thank you for your time and consideration.

Yours sincerely,
Battered Women's Support Services



Angela Marie MacDougall
Executive Director

¹⁰ Rotenberg, Cristine. "This Juristat Measures the 'Fall-out' of Sexual Assault Cases in the Canadian Criminal Justice System in Order to Provide Vital Context for How Sexual Assaults Are Handled in the Justice System." From arrest to conviction: Court case outcomes of police-reported sexual assaults in Canada, 2009 to 2014. Government of Canada, Statistics Canada, October 26, 2017. <https://www150.statcan.gc.ca/n1/pub/85-002-x/2017001/article/54870-eng.htm>.

¹¹ Women and Gender Equality Canada, "COVID-19 and Gender Based Violence," <https://women-gender-equality.canada.ca/en/gender-based-violence-knowledge-centre/snapshot-covid-19-gender-based-violence.html>

¹² Lindsay, B. "Victim of childhood sex assault says system silences survivors after court delays set abuser free," February 12, 2021, <https://www.cbc.ca/news/canada/british-columbia/bc-sex-assault-court-delays-appeal-1.5911699>

¹³ Ashley Joannou, "Auditor general recommends more analysis of Jordan delays in Alberta," June 10, 2021 <https://edmontonjournal.com/news/politics/auditor-general-recommends-more-analysis-of-jordan-delays-in-alberta>; N.S. court backlog worsening due to COVID and the 'Jordan ticker,' October 28, 2021, <https://www.cbc.ca/news/canada/nova-scotia/nova-scotia-court-backlog-worsens-1.6227770>; N.S. justice minister concerned about sex assault cases tossed over delays, January 7, 2021, <https://www.cbc.ca/news/canada/nova-scotia/n-s-justice-minister-concerned-about-sex-assault-cases-tossed-over-delays-1.5864881>

APPENDIX

Supreme Court of Canada refuses to hear sexual assault case tossed due to delays, May 27, 2021
<https://www.cbc.ca/news/canada/nova-scotia/supreme-court-of-canada-refuses-to-hear-n-s-sexual-assault-case-tossed-due-to-delays-1.6042349>

Accused rapist avoids prosecution in Kitchener court due to delays in bringing case to trial, May 25, 2021
<https://www.therecord.com/news/waterloo-region/2021/05/25/accused-rapist-avoids-prosecution-in-kitchener-court-due-to-delays-in-bringing-case-to-trial.html>

Stay of sex assault charges after court delays leaves Manitoba woman feeling victimized, silenced: 'Somebody didn't do their job and because of that, I don't get my justice,' Mar 31, 2021
<https://www.cbc.ca/news/canada/manitoba/woman-sexual-assault-trial-thrown-out-court-delays-1.5970535>

Judge tosses Hamilton sex assault case following long pandemic-related delay: Case had been set for a one-day trial date of May 8, 2020, already near to an 18-month limit, March 30, 2021
<https://www.thestar.com/news/gta/2021/03/30/judge-tosses-hamilton-sex-assault-case-following-long-pandemic-related-delay.html>

Labrador's slow courts dissuade sexual assault victims from reporting: advocate.
May 26, 2021
<https://atlantic.ctvnews.ca/labrador-s-slow-courts-dissuade-sexual-assault-victims-from-reporting-advocates-1.5443159>

Victim of childhood sex assault says system silences survivors after court delays set abuser free: B.C. Court of Appeal upholds stay of proceedings for Manjit Virk, despite criminal convictions, February 11, 2021
<https://www.cbc.ca/news/canada/british-columbia/bc-sex-assault-court-delays-appeal-1.5911699>

Judge dismisses N.S. sexual assault case due to lengthy delay, December 30, 2020
<https://www.cbc.ca/news/canada/nova-scotia/judge-dismisses-n-s-sexual-assault-case-due-to-lengthy-delay-1.5857260>

Judge issues stay in trial of former Alberta teacher accused of sex offences, February 5, 2020
<https://www.cbc.ca/news/canada/edmonton/sherwood-park-teacher-accused-sex-offences-trial-stayed-1.5453198>

After 4 years of waiting, her alleged abuser was finally brought to trial — then charges were stayed: How 1 victim in Quebec is dealing with the Jordan decision, June 12, 2017
<https://www.cbc.ca/news/canada/montreal/quebec-jordan-decision-sexual-assault-1.4153433>

Child sex assault stayed in Manitoba due to trial delay, January 26, 2017
<https://www.ctvnews.ca/canada/child-sex-assault-stayed-in-manitoba-due-to-trial-delay-1.3258041>