

Top judge backs Jordan juggernaut, warns bar against filing fake AI-generated precedents in court

By **Cristin Schmitz**

Law360 Canada (June 10, 2026, 5:32 PM EDT) -- The Supreme Court's controversial *Jordan* decision, which has sparked the dismissal of thousands of cases due to unconstitutional trial delay, is still good law, but stays of proceedings are not a cure for undue systemic trial delay, Canada's top judge says.

"One stay of proceedings is too many," Supreme Court of Canada Chief Justice Richard Wagner stressed at his annual press conference in Ottawa June 9.

"It should never happen in Canada that criminal proceedings should be stayed because of delays," he told reporters. "Society should find the means and the ways to make sure that criminal trials will ... proceed within the reasonable delay" parameters set out by the top court in *R. v. Jordan*, 2016 SCC 27.



Chief Justice of Canada Richard Wagner

Continuing trial delays, politicized attacks on judges and courts, lawyers' onus not to pollute Canadian jurisprudence with AI-generated "fake news," and other issues facing the justice system were among the topics the chief justice addressed in his Q-and-A session with the national media.

He also announced that the Supreme Court's next "opening of the court" ceremony will be held Oct. 5, 2026, in its newly refurbished temporary headquarters in the West Memorial Building on

Wellington Street, where the court will move before its fall session begins.

Before then, the chief justice advised court watchers to take advantage of the last chance to participate in the public tours continuing all summer in the Supreme Court of Canada's iconic 1940 building. The art deco courthouse is slated to be mothballed for years to enable necessary repairs, preservation and modernization. "I would encourage people to take advantage of that opportunity," he said.

Speaking against the backdrop of ongoing efforts by the Crown to defang or water down the top court's decade-old Charter s. 11(b) speedy trial juggernaut, *R. v. Jordan*, as well as repeated efforts by appellate courts to clarify its application, Chief Justice Wagner was asked whether he thought the decision was "worth it" and whether he had any message for provincial governments who continue to underfund the justice system.

(*Jordan* imposed presumptive time caps of 18 months from the charge to the actual or anticipated end of trial in provincial court and 30 months in superior trial court, beyond which the burden shifts to the Crown to justify net delay above the ceiling.)

Chief Justice Wagner said he stands behind *Jordan*, notwithstanding that he and three other judges disagreed with its creation of bright-line caps on trial delay a decade ago.

"*Jordan's* framework is still good," he told reporters. "We still believe that ... the strict [ceilings on] delays were necessary."

"It is unfair for a victim to wait for five years to testify in a criminal trial," he explained. "It is unfair for the accused to wait for five years to have his trial over.... It was unfair for everybody, and for society at the same time."

He added, "I want to reassure the public that we are very mindful that there should not be a stay of proceedings and that effort should be made by every stakeholder in the justice system that such event will never happen or should never happen."

Post-*Jordan* efforts to reduce trial delays are positive but remain "a work in progress," he said.

"I think we're going in the right direction since *Jordan* was released. I think that all kinds of proceedings and new processes were put in place to facilitate the process of criminal trials in Canada. Many people contributed to those exercises: the judges, the civil servants, government in a way also in providing more resources, because the problem at the beginning is resources. And I think that the elected officials got the message [of *Jordan*] years ago," he said.

"I think that governments invested more in technology and in resources," he said. There is still "a lot more to do, but I think we're on the right path. So, I think that the *Jordan* framework is still good."

The Supreme Court is also working to ensure that *Jordan* "is applied properly across the country," he said.

(To that end, the top court issued two s. 11(b) rulings in Ontario Crown appeals last month that elaborated on exceptions to the presumptive *Jordan* time limits in "particularly complex" criminal prosecutions and in joint trials: *R. v. Vrbanic*, 2026 SCC 19; *R. v. Jacques-Taylor*, 2026 SCC 20. Writing for eight judges in *Vrbanic*, the chief justice declined the Crown's invitation to "consider more fundamental changes to the *Jordan* ceilings" as well as its request to revisit *Jordan's* holding that issuing a stay of proceedings is the minimum s. 24(1) Charter remedy that follows a breach of s. 11(b) before conviction.)

In his remarks, Chief Justice Wagner also addressed the new reality that artificial intelligence is present in courtrooms "in ways both promising and problematic."

"In an environment where information can be generated and shared rapidly, distinguishing fact from fiction has become more difficult and more important," Chief Justice Wagner emphasized. "New technologies offer opportunities to improve access and efficiency, but they also require courts to adapt quickly and thoughtfully. Such adaptation requires investment and time" — both of which are

essential to maintain public trust in the justice system.

He highlighted the growing number of AI-“hallucinated” or fake legal decisions now cited in court, pointing to a publication last March by Courtready, a legal tech company, which stated that since January 2024, Canadian courts and tribunals have flagged at least 211 non-existent cases in parties’ legal submissions across 111 decisions.

“That’s a big number,” the chief justice remarked.

(Courtready sells a product described as a “Canadian legal citation verification tool designed to flag fictitious citations before they reach the court.” According to the company, in 87 of 111 cases (78 per cent), the person who submitted non-existent precedents was self-represented. And in 82 of the cases, AI was found to be, or was presumed by the court to be, the generator of the non-existent case law.)

Chief Justice Wagner noted, however, that some lawyers have also filed fake precedents with the courts.

“In that sense I think that the law associations, the bar, law societies have a responsibility to make sure that the lawyers in Canada — as officers of the court when they go before court and they file documents, memorandums and briefs — should make sure ... that what they ... refer to is real,” he said. “That’s the responsibility, I think, of the law societies in various provinces.”

Chief Justice Wagner said that the problem of fake case law polluting jurisprudential waters is more acute at the trial and appellate court levels than at the Supreme Court of Canada “where we have a legal branch, we have good lawyers, every judge has three clerks and we read everything.”

“Chances that we’ll have fake cases submitted to us is very low,” he observed. “At the Supreme Court level, everything is filtered in a way. So, chances are that we will not be caught by surprise by fake jurisprudence.”

“But the first responsibility belongs to lawyers to make sure that they don’t” file fake case law, he stressed.

Asked by a reporter what internal “guardrails” the Supreme Court of Canada puts around the use of AI by its own judges and staff, the chief justice said the top court follows 2024 advisory general guidance from the Canadian Judicial Council.

“Essentially, if I summarize the guidelines, it’s that AI might be used for summary of documents, but ... it will never be used to render judgment. It should never be used in the analysis of the facts and the law with a view to obtain a judgment. That will be always the judge who will do that work, and [AI] should not be used.”

The chief justice noted that the Action Committee on Modernizing Court Operations, which he co-chairs with the federal Minister of Justice Sean Fraser, has also issued guidelines on AI use in court.

However, such guidance is “a work in progress because AI evolves so rapidly that we have to ... adapt to the new developments in terms of guidelines,” he remarked.

“So, we’re following that very closely because we’re dealing with the law, and it’s important that justice be rendered based on a real law, actual law, actual jurisprudence and actual arguments,” he said. “We’re very mindful of the problematic, the advantages, but also with the major disadvantages.”

In other remarks, the chief justice spoke of attempts in Canada to undermine public confidence in the justice system by portraying judges and courts as partisan actors or as “obstacles to the will of the public.”

“A non-partisan judiciary, free from all politicization, is essential to the rule of law,” the chief justice said in French. “Of course, criticism and questioning are part of a healthy democratic process. But rhetorical attacks that challenge the legitimacy of courts or judges can weaken the entire justice system.”

Photo of Chief Justice of Canada Richard Wagner: Cristin Schmitz

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