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R v Bard, 2026 NBPC 7

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Citation: *R v Bard*, 2026 NBPC 07
Docket: 35968701

IN THE PROVINCIAL COURT OF NEW BRUNSWICK

JUDICIAL DISTRICT OF MONCTON

BETWEEN:

HIS MAJESTY THE KING
(Respondent)

- and –

DANIEL BARD
(Applicant / Accused)

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RULING

Note: Non-substantive editorial/grammatical changes were made to this decision after it was delivered orally on April 28, 2026

Before:	The Honourable Anne M Richard
Date of Hearing:	April 28, 2026
Date of Ruling:	April 28, 2026
Appearances:	Nelson Peters for the applicant / accused *Daniel Bard*
	Chris Ryan and Andrew Pollabauer for the respondent *His Majesty the King*

Orally

INTRODUCTION

[1] I have my ruling in the present matter. I am going to deliver my reasons orally.

[2] I will begin by giving some background followed by an overview of the case. I will set out some legal principles before I conclude with my ruling.

[3] As a reminder, the accused, Daniel Bard who is the applicant is charged with various offences under the *Criminal Code of Canada* («*Code*»). They consist of 5 indictable offences related to fraud over $ 5000 contrary to section 380(1)(a); 5 of theft over $ 5000 contrary to section 334(a), 1 allegation of attempt to commit fraud of a value exceeding $ 5000 and one of attempt to steal more than $ 5000 both contrary to section 463(b). In addition, there are 6 counts alleging possession of property valued at more than $ 5000 obtained by crime contrary to section 355(a) of the *Code*. Finally, Mr. Bard is charged with an offence related to money laundering contrary to section 462.31(1)(a). There are 6 alleged victims.

[4] The Crown has proceeded by way of indictment on all counts. All the offences are alleged to have occurred in Moncton, NB between January 1, 2016, and December 31, 2020. Charges against Mr. Bard were laid on July 4, 2022. Mr. Bard's has had 6 trial dates set. One trial commenced on April 22, 2025, and concluded with a mistrial on June 3, 2025.

[5] The current trial was prosecuted from January 20, 2026, to February 13, 2026, when Crown closed its case. On February 17, 2026, this Court issued rulings on 2 crown applications – the first on a cross-count similar fact application and the other on a *Bradshaw* application. March 5, 2026, after Defence counsel abruptly went on holiday for almost 10 days with little to no forewarning, Defence counsel advised that it was presenting no evidence at trial.

OVERVIEW OF THE APPLICATION

[6] I turn now to an overview of the current application by Daniel Bard.

[7] At the outset, it is important to mention that this is the second *Jordan* application filed by Daniel Bard. Mr. Bard applies again for a stay of proceedings, arguing that his right to be tried within a reasonable time, as guaranteed by s. 11(b) of the *Canadian Charter of Rights of Freedoms* (the («*Charter*») has been infringed. The previous one was filed on August 19, 2025, with a hearing lasting 3.5 days from September 15 to 17, 2025 and October 3, 2025. That application was dismissed on October 15, 2025, with detailed reasons including the long procedural history of this case.

[8] On March 13, 2026, defence counsel, Nelson Peters, on behalf of Mr. Bard filed the current second *Jordan* application. An affidavit in support from Mr. Bard was filed on March 17, 2026. A supplementary affidavit was filed on April 23, 2026, with a USB key labelled *Court DB*. It is to be noted that the Court hesitantly accommodated the dates

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previously requested by defence for filings of both the post-trial written submissions and the supplementary affidavit on *Jordan*. Defence did eventually provide a 75-page post-trial submissions late by email on April 17, 2026.

[9] A request by defence for an extension to May 12, 2026, to file Daniel Bard's supplemental affidavit in support of the current application was made and denied on April 21, 2026.

[10] Both Mr. Bard as Applicant and the crown as Respondent submitted written representations in various forms and oral submissions on this application. I have considered all of this.

EVIDENTARY RECORD

[11] The record for this application consists of 2 affidavits from Daniel Bard – one filed March 16, 2026, and the other with a USB key filed April 23. 2026 as well as exhibit R-1. Mr. Bard appears also to be asking that most if not all the trial evidence and certain *Bradshaw voir dire* evidence also form part of the record. More on this last affidavit and the USB key in a moment.

POSITION OF THE PARTIES

[12] Crown argues that Daniel Bard's application should be dismissed outright solely based on its untimeliness. Alternatively, Crown argues that this second *Jordan* application be summarily dismissed based on the methodology discussed in *R v Haevischer*, 2023 SCC 11 since it does not raise a material change warranted for the Court to revisit its previous *Jordan* ruling of last year.

[13] Mr. Bard argues first that there is fresh evidence that was not available at the previous *Jordan* application filed in 2025. The main evidence being the occurrence of the trial itself in 2026 and some testimony by law enforcement officers given in the *Bradshaw voir dire*. He criticizes what he perceives as lack of diligence from another judge of this Court for not scheduling *voir dires* earlier in the 2025 trial which led to a mistrial. He debates the necessity of the *voir dires* themselves including the *Bradshaw* application by the Crown. Daniel Bard asserts that Crown preparation and its failure to narrow trial issues, the assigning of a unilingual crown prosecutor, the relevance of certain witnesses from his previous employer 3+ corporation and the negligence to its mind to adequately prepare witnesses all created delays that should be attributed to the Crown. Finally, it reargues the issue of waiver of delay that was already imputed in this Court's previous ruling.

[14] Daniel Bard seeks a stay of proceedings based on a recalculation of the total delay which would exceed the 18-month ceiling under the *Charter*.

[15] For the reasons outlined in the present ruling, this second *Jordan* application by Daniel Bard is dismissed. I conclude that this application is devoid of any legal foundation.

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THE RELEVANT LEGAL PRINCIPLES

[16] I turn to the relevant legal principles that apply in the present instance. First, it is important to review the appropriateness of the affidavits submitted by Daniel Bard. In *The New Brunswick Rules of Provincial Court Practice*, rule 3.06(1) dictates that:

> ***An affidavit shall be confined to a statement of facts within the personal knowledge of the deponent or to other evidence that the deponent could give if testifying as a witness in Court; but the affidavit may contain statements as to information and belief of the deponent with respect to facts which are not contentious, if the source of the deponent's information and belief therein are specified in the affidavit.***

[17] It is trite law that affidavits should generally not contain legal arguments, opinions or conclusions unless by a duly qualified expert. Daniel Bard's supplementary affidavit filed on April 23, 2026, specifically says the following:

> ***1. I am the Applicant. I submit this affidavit in support of my* Jordan *application filed March 6, 2026, to supplement my affidavit previously filed.***
>
> ***2. This Affidavit is being submitted by my solicitor on short notice, with quotes from the trial based on AI transcription of audio recordings reviewed by him and myself.***

[18] These averments are surprising on many levels. First, Daniel Bard's application is dated March 13, 2026. In his application, line 4 states that *affidavit of Daniel Bard to be filed by Tuesday March 17, 2026.* On line 5, it states *supplementary affidavit of Daniel Bard within one week of filing trial submissions* – this is April 23, 2026. These timelines were unilaterally announced by Daniel Bard through his counsel and not the Court. However, in the spirit of fairness, this Court allowed them. Daniel Bard and his counsel have had since at least March 13, 2026 (5 weeks), to prepare what was to be filed on top of the already filed initial affidavit. It is misleading to say that there was short notice when through an email defence counsel late in the evening of April 17, 2026, attempts to dictate that any supplementary documents will not be filed until May 12, 2026. The court convened a management conference on April 21 and denied that extension request.

[19] The second concern relates to this supplementary affidavit itself. It's unauthorized and inappropriate use of AI transcription is highly problematic. Daniel Bard deposes in his affidavit what purports to be excerpts of court proceedings from this trial. It begs the question of whether court proceedings in this case were recorded surreptitiously by him or someone else. The preparation of court transcript is governed by the *Recording of Evidence Act*, S.N-B, R-4.5 and certified by a court stenographer. There is no other mechanism by this Court, nor should it try to authentic those excerpts to avoid dangers of AI hallucinations, errors or incomplete extracts. In addition, the speakers in the passages are not identified or clearly set out. A USB key is provided with no indication

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as to what the Court is supposed to do with it. For these reasons, I give the supplementary affidavit no weight.

[20] One of Daniel Bard's argument for delay is how the Crown presented it case including the use of language interpreters for a minority of witnesses that preferred testifying in the French language. The fact is Daniel Bard requested an English trial not a French trial nor a bilingual trial. That was his choice. There is no evidence that this prolonged the trial. While anecdotally, it is often mentioned that language translation doubles the length of a trial, proof of this is not before this court.

[21] Another contention is how the prosecution presented its case. Lawyers be it crown or defence have ethical duties as officers of the court. For the crown, its duty is different than defence. It has recently been framed in the following manner in *Ontario (Attorney General) v. Clark*, 2021 SCC 18

> ***One of the critical dimensions of a prosecutor's independence that is protected by immunity is, in fact, independence from the police. The police role is to investigate crime. The Crown prosecutor's role, on the other hand, is to assess whether a prosecution is in the public interest and, if so, to carry out that prosecution in accordance with the prosecutor's duties to the administration of justice and the accused. Police and Crown prosecutors are expected to "act according to their distinct roles in the process, investigating allegations of criminal behaviour, and assessing the public interest in prosecuting, respectively" (Regan, at para. 87; see also Smith, at para. 72).***

[22] See also generally the classic case of *Boucher v. The Queen*, [1955] S.C.R. 16 related to prosecutorial discretion. In the Court's *Bradshaw* ruling, there was no mention by this Court that that application had been frivolous. While the Crown was unsuccessful in the remedy it was seeking, one cannot draw the conclusion that it was not a live issue to be adjudicated. Ultimately, it falls on the court to determine based on all the evidence whether the Crown has met its legal burden to prove beyond a reasonable doubt the essential elements of each offence in this trial. This is not a civil trial.

[23] The current application states that the affidavits of Daniel Bard filed in 2025 for the previous *Jordan* and its record and most of the current trial evidence are to form part of the present application as already mentioned. What appears to be asked is to reopen this Court's past ruling. In *R v. R.V.*, 2018 ONCA 547 affirmed on appeal by the Supreme Court of Canada in 2019 SCC 41 at para. 75, the Ontario Court of Appeal reiterated what the law requires for a judge to reconsider a prior ruling (see paras 98-103). Given that the goal must be one of finality and clarity, a ruling or order cannot be varied or revoked unless the circumstances that were present when it was made have materially changed. Furthermore, such *change must relate to a matter that justified the*

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making of the order in the first place. (See para.30 per Sopinka J, in *R v Adams*, [1995] 4 S.C.R. 707)

[24] I have reviewed *R v H.B*. 2026 ONCA 160 and *R v Qureshi* 2026 ONCA 20 cited by defence. The factual matrix differs from the present case and are of little assistance. Therefore, I find no material change that warrants revisiting this Court's prior ruling on *Jordan* that was pronounced in October 2025. Most of what is being argued in this second application was known or out to have been anticipated in the normal course of a trial.

[25] Finally, as the saying goes, *Timing is everything*. The Supreme Court of Canada recently in *R v JF*, 2022 SCC 17. observed that the *Jordan* framework emphasizes a prospective approach given the wording of section 11(b) of the *Charter.* The rule appears to be that an accused should generally bring such applications before the trial is held for obvious reasons and not mid trial or after (see para 30-34). Chief Justice Wagner's comments at paragraph 35 to 37 are insightful on this point.

> ***[35] It is generally recognized that an accused who raises the unreasonableness of delay after trial (R. v. Rabba (1991), 64 C.C.C. (3d) 445 (Ont. C.A.)), and particularly after conviction (R. v. Warring, , 347 C.C.C. (3d) 391, at para. 11; R. v. C.D., 588 A.R. 82), is not acting in a timely manner. In K.G.K., Moldaver J. interpreted the prospective approach adopted in Jordan as "encourag[ing] pre-trial s. 11(b) applications" (para. 43 (emphasis added). The defence is in fact encouraged to act before the start of the trial, since the Jordan framework allows "the parties to know 'in advance, the bounds of reasonableness so proactive measures can be taken to remedy any delay'" (K.G.K., at para. 43, quoting Jordan, at para. 108 (emphasis in original)).***
>
> ***[36] In short, a duty to act proactively also rests on the accused. As a result, the accused must indicate that their right to be tried within a reasonable time has not been respected and, where the circumstances require, bring a motion for a stay of proceedings in a timely manner. As a general rule, this means before the trial is held. By the time the trial dates are set, the parties are generally in a position to know whether the trial delay will exceed the applicable presumptive ceiling, and the defence can raise any concerns it may have. However, it is not out of the question that, exceptionally, an infringement of the s. 11(b) right will reveal itself only once the trial has begun. In such a case, the accused must also act proactively.***
>
> ***[37] If a s. 11(b) motion is considered late when filed after the end of a trial, only exceptionally will an accused be able to raise this issue for the first time on appeal.***

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[26] In *Haevischer*, the Supreme Court of Canada reiterated the underlying values at play: trial efficiency and trial fairness. Charter applications must be *manifestly frivolous* to be summarily dismissed. The purpose is to weed out those applications that will necessarily and obviously fail. That is why it is a high threshold to meet. It has been characterized as a blunt tool. It *removes those applications that would never succeed and which would, by definition, waste court time. At the same time, it also protects fair trial rights by ensuring that those applications which might succeed, including novel claims, are decided on their merits.* (see *R. v. Patel*, 2026 ONCJ 200 at paragraph 34). There cannot be any reasonable prospect of success for the application. A judge's power to summarily dismiss is ongoing (see *R v DMS*, 2025 MBCA 16). This is in line with the Court's gatekeeping role. In *R v Cody*, 2017 SCC 31, our highest court set out in detail what is understood to be illegitimate conduct by defence that prolongs delay.

[27] If the Court assumes the facts alleged by Mr. Bard as true and take his arguments at their highest as the *Haevisher* framework requires and the unequivocal pronouncements of *Cody,* I conclude that this second *Jordan* application would fail.

[28] In summary, I find that there is no material change justifying this Court to revisit its previous ruling, that the application is unreasonably tardy and amounts to illegitimate conduct as contemplated in *Cody* and the evidence in support is clearly lacking. Consequently, the application is dismissed. This matter is adjourned to May 29, 2026, at 1h30pm for verdict.

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Anne M Richard
Judge of the Provincial Court of New Brunswick

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