Citation: R v Edwards, 2024 MBCA 27
Date: 20240321
Docket: AR22-30-09844

IN THE COURT OF APPEAL OF MANITOBA

Coram: Madam Justice Holly C. Beard
Madam Justice Diana M. Cameron
Madam Justice Lori T. Spivak

***B E T W E E N**:*

	)	***E. J. Roitenberg, K.C.** and*
	)	***S. Brand***
HIS MAJESTY THE KING	)	*for the Appellant*
	)	
Respondent	)	***C. English** and*
	)	***J. A. Hyman***
- and -	)	*for the Respondent*
	)	
DARRYAN RESHAUN EDWARDS	)	*Appeal heard:*
	)	***November 24, 2023***
(Accused) Appellant	)	
	)	*Judgment delivered:*
	)	***March 21, 2024***

On appeal from *R v Pierpoint*, 2022 MBQB 117 [*Pierpoint*]

SPIVAK JA

[1] The accused was convicted of conspiring with others to commit the indictable offence of trafficking in a controlled substance contrary to s 5(1) of the *Controlled Drugs and Substances Act*, SC 1996, c 19, arising out of an investigation of a high-level drug network called Project Highland (the Project). He appeals the trial judge's decision dismissing his application for a stay of the charge on the basis of a breach of his right to be tried within a reasonable time pursuant to s 11 (b) of the *Canadian Charter of Rights and*

Freedoms, s 7, Part 1 of the *Constitution Act*, *1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [the *Charter*].

[2] The accused's motion for a stay of proceedings was brought because his trial was set for a date over the presumptive ceiling for matters to be tried in the superior court as established in *R v Jordan*, 2016 SCC 27 [*Jordan*]. The accused appeals on the grounds that the trial judge erred in finding that the delay was justified on the basis of exceptional circumstances—either by the discrete event of the Covid-19 pandemic or, alternatively, by the complexity of the case.

[3] For the following reasons, I would dismiss the accused's appeal.

Background

[4] The accused was arrested on December 18, 2019, along with nine other individuals, as part of the "takedown" in the Project. The Project commenced in April 2019 and targeted a group of high-level interprovincial drug traffickers whose primary criminal activities involved transporting cocaine, opioids and other items into Winnipeg for further distribution.

[5] During the course of the investigation, numerous judicial authorizations were obtained, which included authorizations to intercept private communications, general warrants for covert entries into residences and luggage, general warrants for video installations into residences, tracking warrants for vehicles, transmission data recorder warrants, and tracking and ping warrants for cellular devices. Over 45,000 intercepted communications were collected (the wiretap evidence) and extensive physical and electronic surveillance was conducted.

[6] Disclosure for the Project was provided to the accused primarily through a hard drive, which was continuously updated. The first hard drive went out to the accused in March 2020 and was updated several times until August 21, 2020. The hard drive ultimately contained 91.2 GB of data and 3,597 files. The disclosure included a 111-page narrative of the covert video surveillance of Scotland Avenue, which summarised the observations and contained imbedded screenshots. In November 2020, the accused's counsel requested the full raw video footage from the covert surveillance camera at Scotland Avenue. This was sent on a separate hard drive on February 3, 2021.

[7] The Crown sent a detailed resolution proposal to the accused's counsel in September 2020. In January 2021, the Crown told the accused's counsel that, if matters were not resolved in the Provincial Court, a direct indictment would be sought, charging both the accused and a co-accused, Stephen Pierpoint (S. Pierpoint), jointly, with the offences arising from the Project. In April 2021, the accused advised that he was not yet ready to discuss resolution as he had not yet reviewed all the disclosure. The Crown indicated that, due to the complexity of the matter and the fact that this would be a multi-week trial, she would be seeking a joint direct indictment for the accused to be tried with S. Pierpoint. The direct indictment was filed in the Court of Queen's Bench on May 27, 2021, with the accused voluntarily appearing on June 3, 2021.

[8] A pre-trial conference took place on July 14, 2021 (the first pre-trial conference). The accused advised that he would be seeking to exclude the wiretap evidence pursuant to s 8 of the *Charter*. He also indicated that he would be challenging the admissibility of his statement on the bases of voluntariness and a breach of s 10(b) of the *Charter*. As well, the accused

noted that he was contesting the expertise and admissibility of the Crown's expert evidence. *Voir dire* dates were set for April 19 to 20, 2022, and the trial was scheduled for September 12 to 30, 2022—some 33 months and 13 days after the accused's arrest.

[9] A further pre-trial conference took place on November 30, 2021, wherein counsel for the accused advised that he was considering a motion for delay. He also raised an issue with the contents of Pre-trial Conference Memorandum (No 1), asserting that, at the first pre-trial conference, June 2022 trial dates were offered but the Crown was unavailable. The pre-trial judge responded in Pre-trial Conference Memorandum (No 2), advising that her notes did not reflect that alternative dates were offered but did show that the Crown was unavailable in June 2022 as he was involved in a lengthy trial in a related matter. In fact, at a separate, earlier pre-trial conference on July 14, 2021, a jury trial had been set for June 6 to 24, 2022, for another co-accused, Curtis Hibbert (C. Hibbert), from the Project, who was indicted separately.

[10] In December 2021, the accused confirmed that he would be filing a motion to dismiss the charge for delay. On February 1, 2022, C. Hibbert's matter was resolved and the Crown requested that his June dates be used for the accused's trial. Counsel for the accused responded that, while he had been available in June at the time of the first pre-trial conference, he had since scheduled other matters on those dates.

The Delay Application

[11] At the hearing of the application for dismissal for delay, the accused argued that, as the trial date was three months and 13 days beyond the

30-month ceiling established in *Jordan*, the delay was presumptively unreasonable and there were no exceptional circumstances justifying the unreasonable delay. The Crown filed evidence regarding the number of trials adjourned in both the provincial and superior court as a result of the Covid-19 pandemic and submitted that the pandemic was a discrete exceptional circumstance that warranted a reduction of five months from the total delay, which would bring the net delay below the presumptive ceiling. (This represented two 2.5-month periods in which the courts were closed, from mid-March to the end of May 2020 and from mid-November 2020 to the end of January 2021.) Alternatively, the Crown asserted that exceptional circumstances were established by the complexity of the case, which justified the delay beyond 30 months.

The Trial Judge's Decision

[12] The trial judge noted that the 30-month ceiling for superior court proceedings, as provided in *Jordan*, was exceeded since the anticipated time from the date of the charge to the end of trial was 33 months and 13 days. He acknowledged that the delay was presumed to be unreasonable unless the Crown could rebut the presumption on the basis of exceptional circumstances. He accepted that the Covid-19 pandemic was a discrete exceptional circumstance that merited a deduction of five months because of court closures. In doing so, he rejected the accused's position that the Crown failed to establish that the delay in this case was caused by the Covid-19 pandemic (as opposed to merely being a coincidental event) and declined to follow cases that required evidence of that direct causal connection.

[13] The trial judge found, in the alternative, that the delay was justified by the complexity of the case. He stated that he had "no difficulty in coming to the conclusion that this [was] a complex case giving rise to exceptional circumstances justifying any delay that [exceeded] the 30-month presumptive ceiling" (*Pierpoint* at para 22). In his view, "[t]he hallmarks of a complex evidentiary case set out in ***Jordan*** [were] present in this case" (*Pierpoint* at para 22) [emphasis in original] and "[t]he proactive steps taken by the Crown . . . to avoid and address delay . . . demonstrates a reasonable response to the complexity presented" (*ibid* at para 23).

The *Jordan* Framework

[14] *Jordan* established a ceiling beyond which delay is presumptively unreasonable. For cases tried in the provincial courts, the ceiling is 18 months. For cases proceeding to trial in the superior courts, it is 30 months (*ibid* at para 5).

[15] Determining the period of delay involves first "calculating the total delay from the charge to the actual or anticipated end of trial" (*R v Cody*, 2017 SCC 31 at para 21 [*Cody*], citing *Jordan* at para 60), and then deducting any delay attributable to the defence. If the resulting delay exceeds the presumptive ceiling, that delay is presumptively unreasonable. The burden then falls on the Crown to show that the delay is reasonable on the basis of exceptional circumstances. If the Crown fails to establish an exceptional circumstance that rebuts the presumption of unreasonableness, a stay of proceedings will follow (see *Jordan* at paras 47, 68).

[16] In *R v MS*, 2023 MBCA 90 at paras 11-12 [*MS*], this Court summarized exceptional circumstances as outlined in *Jordan* as follows:

> As stated in *Jordan*, exceptional circumstances are those that "lie *outside the Crown's control* in the sense that (1) they are reasonably unforeseen *or* reasonably unavoidable, *and* (2) Crown counsel cannot reasonably remedy the delays emanating from those circumstances once they arise" (at para 69) (emphasis in original). These circumstances generally fall into two categories: (1) discrete events, and (2) particularly complex cases (see para 71). . . .
>
> Delay caused by any discrete exceptional circumstances must be subtracted from the total period of delay in determining whether the presumptive ceiling has been exceeded. However, "any portion of the delay that the Crown and the system could reasonably have mitigated may not be subtracted" (*Jordan* at para 75).
>
> [emphasis in original]

[17] Particularly complex cases are those where the nature of the evidence or the nature of the issues require an inordinate amount of trial or preparation time. As explained in *Jordan* (at paras 77-78):

> . . . As for the nature of the evidence, hallmarks of particularly complex cases include voluminous disclosure, a large number of witnesses, significant requirements for expert evidence, and charges covering a long period of time. Particularly complex cases arising from the nature of the issues may be characterized by, among other things, a large number of charges and pre-trial applications, novel or complicated legal issues, and a large number of significant issues in dispute. Proceeding jointly against multiple co-accused, so long as it is in the interest of justice to do so, may also impact the complexity of the case.
>
> . . . [I]f an inordinate amount of trial or preparation time is needed as a result of the nature of the evidence or the issues such that the time the case has taken is justified, the complexity of the case will qualify as presenting an exceptional circumstance.

[18] *Jordan* instructs that, in deciding whether a case is sufficiently complex to comprise an exceptional circumstance, the trial judge should

consider whether the Crown, having initiated a complex prosecution, developed and followed a concrete plan to minimize the delay occasioned by such complexity. "Where it has failed to do so, the Crown will not be able to show exceptional circumstances, because it will not be able to show that the circumstances were outside its control" (*ibid* at para 79).

[19] As clarified in *Cody*, unlike discrete events, case complexity requires a qualitative—not quantitative—assessment. "[W]here the net delay exceeds the presumptive ceiling, the case's complexity as a whole may be relied upon to justify the time that the case has taken and rebut the presumption that the delay was unreasonable" (*ibid* para 64).

[20] Finally, if the "trial judge finds that the case was particularly complex such that the time the case has taken is justified, the delay is reasonable and no stay will issue. No further analysis is required" (*Jordan* at para 80).

Standard of Review

[21] The standard of review of a decision on a s 11(b) application was recently outlined in *MS* (see paras 14-15). The correctness standard applies to the trial judge's characterization of periods of delay and to the ultimate determination of whether the delay was unreasonable. Deference is owed to a trial judge's underlying findings of fact. Trial judges are generally in the best position to determine whether exceptional circumstances exist. This determination is entitled to deference absent legal error.

[22] As such, the jurisprudence has recognized that the application of the particularly complex case exception is factual in nature and the judge's

decision is reviewable on the palpable and overriding error standard (see *R v Pastuch*, 2022 SKCA 109 at para 155; *R v Way*, 2022 ABCA 1 at para 9; *Ontario (Labour) v Nugent*, 2019 ONCA 999 at para 28 [*Nugent*]). As summarized in *R v Morash*, 2021 ONCA 335 [*Morash*], "[d]ecisions of a judge of first instance on matters such as complexity, the existence of a reasonable plan, and the way the Crown implemented the plan and attempted to minimize delays, are subject to deference" (at para 35). Both *Cody* and *Jordan* also note that the determination of whether the delay is reasonable in view of the case's overall complexity is "well within the expertise of the trial judge" (*Cody* at para 64; *Jordan* at para 91).

Analysis and Decision

[23] Since the projected delay from the date of the charge to the end of trial exceeded the presumptive 30-month ceiling and there was no delay attributable to the defence, it fell to the Crown to establish exceptional circumstances in the form of either a discrete event or the particular complexity of the case. The Crown relied upon both categories of exceptional circumstances. As previously mentioned, the trial judge found that the Covid-19 pandemic was a discrete exceptional event that warranted deduction of five months from the total delay. Alternatively, he found that the complexity of the case justified the delay over the *Jordan* ceiling. Thus, the issue on this appeal is whether the trial judge erred in finding that the Crown had discharged its burden of rebutting the presumption of unreasonable delay by establishing exceptional circumstances.

[24] The accused argues that the trial judge erred in concluding there was no s 11(b) breach in respect of both categories:

- Firstly, regarding a discrete event, in finding that the Covid-19 pandemic was an exceptional circumstance in the absence of evidence that it actually caused the delay in this case. The accused says this is not a case where, but for the pandemic court closures, earlier dates would have been obtained and that none of the delay was caused by the pandemic notwithstanding its coincidental timing.

- Secondly, regarding complexity, in finding, in any event, that the delay over the presumptive ceiling was justified by the complexity of the case when this case did not fall into that category and the Crown did not have a reasonable plan to prosecute this matter.

[25] It is undisputed that, to succeed on this appeal, the accused must establish that the trial judge erred in finding exceptional circumstances in both categories. Therefore, in my view, it is not necessary to address whether the trial judge erred in finding that the Covid-19 pandemic was a discrete event that warranted deduction from the overall delay. This is because, regardless of that determination, there is no basis to interfere with the trial judge's finding that the delay was justified by the particular complexity of the case, as I will shortly explain. In addition, while I decline to decide if the trial judge erred in finding that the Covid-19 pandemic was a discrete event that caused delay, this decision is not to be taken as an endorsement of the trial judge's conclusion in this regard. Accordingly, I turn to whether the trial judge erred in finding that the delay was justified by the complexity of the case.

Did the Trial Judge Err in Finding That Complexity Was an Exceptional Circumstance That Justified the Delay?

[26] As I explained earlier, in order to fall within this exception, the case must be sufficiently complex to comprise an exceptional circumstance and the Crown must have developed and followed a concrete plan to minimize the delay occasioned by such complexity. While the accused does not concede that this case meets the test of complexity as contemplated in *Jordan*, the focus of his submission is that the trial judge erred in concluding that the Crown took proactive steps to avoid and address delay in response to the complexity of this case.

Complexity

[27] In the trial judge's view, the hallmarks of a complex evidentiary case, as set out in *Jordan*, were present in this case. He explained as follows (*Pierpoint* at para 22):

> . . . These include the numerous varieties of warrants applied for and obtained, an investigation that included a number of accused from two different jurisdictions, voluminous disclosure, the necessity of expert testimony, and the complexity of the charges themselves, involving multiple co-conspirators, [as] some of the most apparent complexities associated with this investigation and the trial preparedness necessary for the prosecution of this matter.

[28] As I noted earlier, case complexity requires a qualitative—not quantitative—assessment. Further, "[w]hen determining whether a case's complexity is sufficient to justify its length, trial judges should consider whether the net delay is reasonable in view of the case's overall complexity" (*Cody* at para 64). To reiterate, complex cases are cases in which, because of

the nature of the evidence or the nature of the issues, an inordinate amount of trial or preparation time is required such that the delay is justified (see *Jordan* at para 77).

[29] In my view, the record supports the trial judge's finding that this was a particularly complex case because of the nature of the evidence and the related issues. There were many different judicial authorizations obtained (wiretap, general warrants, tracking warrants, transmission data recorder and search warrants) that resulted in voluminous disclosure. This included the final updated hard drive containing 3,597 files that contained 2,169 pages of surveillance notes and reports, 45,000 intercepted communications, a 111-page narrative summarizing the covert video, 725 pages of the information to obtain, and 598 pages of court warrants and authorization packages. The disclosure occurred in six waves over a period of time. The disclosure provided by the Crown in February 2021 (the covert video), at the accused's prior request, required considerable time for the accused to review. (More will be said later about the pace of disclosure when I address whether the trial judge erred in finding the Crown had a reasonable plan.)

[30] It is true that voluminous disclosure does not automatically make a case complex (see *Cody* at para 65). However, this investigation was inter-jurisdictional in nature; the Crown proceeded jointly against the accused and S. Pierpoint, and separately against eight other accused on related charges from the same investigation. Therefore, the charges involved multiple co-conspirators and the co-conspirators exception to the hearsay rule was engaged. There were also challenges to the admissibility of the accused's statement, the wiretap evidence and the expert evidence that were scheduled

for a *voir dire* prior to trial. Additionally, the trial involved 23 witnesses, including experts, and three weeks needed to be scheduled for the trial.

[31] Given the totality of the above, it was open to the trial judge to find that this case, as a whole, bore all the hallmarks of a particularly complex case as described in *Jordan*. His assessment of the complexity of the case is entitled to deference. However, that does not end the matter. As the trial judge recognized, if the case is complex, the court must then consider whether the Crown developed and followed a concrete plan to minimize the delay occasioned by the complexity. I will now address that issue.

Reasonable Plan

[32] The accused argues that the trial judge erred in finding that the Crown took proactive steps to avoid and address delay in response to the complexity of this case as the evidence does not support such a conclusion. I do not agree. In my view, the trial judge's conclusion—that the Crown's plan was reasonable—is supported by the evidence.

[33] The trial judge was entitled to accept the Crown's submission that it had a reasonable plan to respond to the complexity of this case which included:

- timely and organized disclosure;
- Crown-initiated resolution discussions; (A detailed offer to resolve the accused's and S. Pierpoint's matter was made in September 2020. The Crown resolved the proceedings against the seven other accused associated with the Project in the

Provincial Court and resolved the C. Hibbert matter in the Court of Queen's Bench.)

- seeking a direct indictment and asking counsel to agree to a consent committal to avoid delay; and

- arranging for pre-trial conferences, meeting imposed deadlines and contacting the court for permission to move the trial date to June as soon as the C. Hibbert matter was resolved and those dates became available.

[34] The thrust of the accused's position is that the trial judge erred as the Crown failed to develop a reasonable plan to minimize delay because it delayed disclosure, delayed preferring a direct indictment and did not take reasonable steps to assign enough Crown attorneys to the Project. I will deal with each of these claims.

[35] Delays resulting from deficiencies in Crown disclosure must be considered in context (see *Morash* at para 20; *R v Bulhosen*, 2019 ONCA 600 at para 84 [*Bulhosen*]). The Crown's position, that it adopted a reasonable approach to hand over voluminous evidence in a usable, manageable and searchable form, is understandable. Substantial disclosure related to the accused's charges was provided by the Crown in March 2020, approximately three months after his arrest, with ongoing updates to the hard drive thereafter. The Crown, on its own motion, provided the affidavits and authorizations issued by the Court of Queen's Bench. I add that disclosure was largely prepared and disclosed during the first wave of the Covid-19 pandemic. The accused highlights that the covert video was not provided until February 2021. While true, a 111-page narrative report summarizing the covert video,

including imbedded screenshots, was prepared and provided in the initial disclosure in March 2020 as, according to the Crown, it would have been unreasonable to simply hand over the voluminous raw video on its own. Furthermore, the covert video was not requested by the accused until November 2020 and was still being reviewed by him as of April 2021, such that he could not respond to the Crown's previous offer to resolve the matter made in September 2020. When the covert video was provided, it included instructions and screenshots to assist defence counsel.

[36] The trial judge was not prepared to accept that the pace of disclosure was inconsistent with the existence of a reasonable Crown plan and this finding is entitled to deference.

[37] As for the circumstances of the Crown preferring a direct indictment, the accused argues that this is not indicative of a reasonable plan because the direct indictment was not filed until May 2021, some 17 months after the charge and four months after the Crown first advised it was intending to seek a direct indictment. In this respect, I point out the following.

[38] To begin with, the jurisprudence has recognized that the Crown's decision to prefer a direct indictment is a matter of prosecutorial discretion and is reviewable only for abuse of process (see *Bulhosen* para 88). Furthermore, the use of a direct indictment is an appropriate means to ensure the *Jordan* presumptive ceiling is not exceeded (see *R v Burg and Khan*, 2021 MBCA 77 at para 56; *Bulhosen* at para 90; *R v CMM*, 2017 MBCA 105 at para 14; *R v Manasseri*, 2016 ONCA 703 at para 376, n 5).

[39] Before the trial judge, the Crown submitted that the timing and circumstances of preferring the direct indictment had to be considered in the

context of how this proceeding unfolded, particularly in regard to the resolution discussions and the accused's request for the covert video in November 2020, which the Crown says was late and untimely.

[40] To recap events, the Crown provided a detailed resolution proposal to the accused and S. Pierpoint in September 2020 that was rejected by S. Pierpoint. The accused requested further disclosure—the covert video—in November 2020. In January 2021, the Crown first advised that, if matters were not resolved, it would apply for a direct indictment to try the accused and S. Pierpoint in the Court of Queen's Bench. The Crown and the accused's counsel had further communications that proceeded into April 2021, wherein the Crown sought to ascertain the accused's position on resolution, as this would affect how the matter would be indicted. The Crown further indicated that, due to the complexity of the matter and the length of the trial, the matter was better suited for the Court of Queen's Bench. The accused advised that he was not in a position to discuss resolution as he had not yet completed his review of the disclosure (the covert video was provided in February 2021). Subsequently, after receiving no response regarding the accused's position on consenting to a trial in the Court of Queen's Bench and foregoing a preliminary hearing if it meant earlier trial dates, the direct indictment was filed in the Court of Queen's Bench in May 2021. All this to say, it is understandable that the trial judge did not fault the Crown for waiting to see if the accused would be accepting its resolution proposal given its view that, failing resolution, the accused and S. Pierpoint should be charged jointly by way of direct indictment.

[41] While the Crown could have proceeded to a direct indictment earlier, given how this matter unfolded, this does not compel the conclusion

that the Crown's timing was unreasonable or negate the existence of a concrete plan to minimize delay as the accused contends.

[42] The accused also submits that the Crown did not take reasonable and necessary steps to assign enough Crown attorneys to the Project to prosecute this case within the *Jordan* timeline. He notes that the Crown was able to schedule a trial for C. Hibbert within 30 months and contends that it was therefore possible to prosecute this matter within the presumptive ceiling. He also points out that a new Crown attorney was assigned to this matter in February 2022 and argues that this should have been done earlier so that this matter could have been tried in June 2022.

[43] The evaluation of the steps taken by the Crown is on the standard of reasonableness—not perfection. The court should not parse various steps and, in effect, micromanage the Crown's management (see *Nugent* at paras 43, 45). As noted in *R v Saikaley*, 2017 ONCA 374, *Jordan* does not require "the Crown to take any and all steps proposed by the defence to expedite matters" (at para 47). So long as the Crown acts reasonably and consistently with its duties, it should not be denied the benefit of the complex case exception (*ibid*).

[44] As for the claim that this matter could have been brought to trial within the presumptive ceiling with an additional Crown attorney, there is a dispute as to whether the court offered a three-week trial in June for this matter at the first pre-trial conference in July 2021 as the accused contends. However, irrespective of that, the reasonableness of a plan to address a particularly complex case is not to be assessed by reference to how close the Crown could have brought a case to the presumptive ceiling. It is to be assessed having regard to the nature of the evidence and the issues in the case.

A plan to minimize the delay caused by a particularly complex case is neither undermined nor rendered inadequate because it did not aim to conclude a case within the presumptive ceiling. As stated in *Nugent*, "[t]he trial judge must consider whether the Crown developed and followed a concrete plan to minimize the delay occasioned by the complexity – not whether the Crown developed and followed a concrete plan to attempt to bring the trial to a conclusion within the presumptive ceiling" (at para 31; see also para 35).

[45] The test to be applied is whether the Crown's plan for dealing with this particularly complex case, considered as a whole, reasonably attempted to minimize delay occasioned by such complexity (*ibid* at para 46). The trial judge's finding, that the Crown's plan was reasonable, is entitled to deference.

Conclusion

[46] In summary, the trial judge's conclusion—that the delay to the projected end of the trial was reasonable in light of the particular complexity of this case—is without reviewable error. I add that, aside from the factors already discussed, my view is further reinforced because, unlike the lengthier delays in *Cody* and *Jordan*, the delay in this case was three months and 13 days beyond the presumptive ceiling (see e.g., *R v Lafond and Morrison*, 2017 MBQB 189 at para 25). The trial judge's finding that the case was sufficiently complex to justify its length is to be assessed in that context. As well, "[t]he reasonableness of a period of time to prosecute a case takes its colour from the surrounding circumstances" (*Jordan* at para 103). Consequently, that this prosecution took place during the Covid-19 pandemic is also a relevant contextual circumstance in assessing whether the delay here was justified given the complexity of the case.

Disposition

[47] For these reasons, the accused has not demonstrated any basis warranting appellate intervention, and I would dismiss his appeal.

Spivak JA

I agree: Beard JA

I agree: Cameron JA