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| cid:image001.jpg@01D72252.19B69DE0**SUPREME COURT OF CANADA** |
| **Citation:** R. *v.* Lai, 2021 SCC 52 |  | **Appeal Heard:** December 8, 2021**Judgment Rendered:** December 8, 2021**Docket:** 39577 |
| **Between:****Alan Teck Meng Lai**Appellantand**Her Majesty The Queen**Respondent |

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| **Coram:** Wagner C.J. and Moldaver, Karakatsanis, Côté, Brown, Rowe, Martin, Kasirer and Jamal JJ. |
| **Judgment Read By:**(paras. 1 to 5) | Moldaver J. |
| **Majority:** | Wagner C.J. and Moldaver, Karakatsanis, Brown, Rowe, Martin, Kasirer and Jamal JJ. |
| **Dissent:** | Côté J. |
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Alan Teck Meng Lai Appellant

v.

Her Majesty The Queen Respondent

**Indexed as: R. *v.* Lai**

2021 SCC 52

File No.: 39577.

2021: December 8.

Present: Wagner C.J. and Moldaver, Karakatsanis, Côté, Brown, Rowe, Martin, Kasirer and Jamal JJ.

on appeal from the court of appeal for british columbia

 *Constitutional law — Charter of Rights — Right to be tried within reasonable time — Transitional exceptional circumstance — Assessment of delay caused by re‑election as of right of another mode of trial — Accused applying for stay of proceedings on basis that right to be tried within reasonable time guaranteed by s. 11(b) of Canadian Charter of Rights and Freedoms infringed — Trial judge finding that total delay exceeded Jordan ceiling but was justified by parties’ reliance on state of law pre‑Jordan and dismissing application — Accused convicted of sexual assault causing bodily harm and administering stupefying drug — Majority of Court of Appeal concluding that trial judge erroneously characterized and deducted as discrete exceptional circumstance delay occasioned by accused’s re‑election of another mode of trial that caused loss of trial date but upholding dismissal of stay application on basis of transitional exceptional circumstance — Convictions upheld.*

**Cases Cited**

 **Referred to:** *R. v. Cody*, 2017 SCC 31, [2017] 1 S.C.R. 659.

 APPEAL from a judgment of the British Columbia Court of Appeal (Newbury, Willcock and Butler JJ.A.), [2021 BCCA 105](https://www.bccourts.ca/jdb-txt/ca/21/01/2021BCCA0105.htm), 402 C.C.C. (3d) 1, 466 D.L.R. (4th) 421, 482 C.R.R. (2d) 315, [2021] B.C.J. No. 441 (QL), 2021 CarswellBC 642 (WL), affirming the convictions entered by Schultes J., 2018 BCSC 1838, [2018] B.C.J. No. 3499 (QL), 2018 CarswellBC 2877 (WL). Appeal dismissed, Côté J. dissenting.

 *Eric Purtzki* and *Michael Sobkin*, for the appellant.

 *Lauren A. Chu* and *Lesley A. Ruzicka*, *Q.C.*, for the respondent.

 The judgment of the Court was delivered orally by

[1] Moldaver J. — *R. v. Cody*, 2017 SCC 31, [2017] 1 S.C.R. 659, at para. 32, states as follows:

 Defence conduct encompasses both substance and procedure — the decision to take a step, *as well as the manner in which it is conducted*, may attract scrutiny. To determine whether defence action is legitimately taken to respond to the charges, the circumstances surrounding the action or conduct may therefore be considered. [Emphasis in original.]

[2] In this case, the appellant, Mr. Lai, had the statutory right to re‑elect when he did — but he waited 15 months to re‑elect after his trial dates were set in Provincial Court. This was despite being informed by Crown counsel that he could preserve his trial dates by re‑electing earlier. Nonetheless, he waited 7 months after that warning to exercise his right to re‑elect. This conduct had the direct result of losing the trial dates that were set in Provincial Court and causing an additional delay of 13 months.

[3] The trial judge rejected Mr. Lai’s explanation regarding the re‑election (2018 BCSC 867). Based on the trial judge’s own findings and conclusions, the re‑election was not done legitimately to respond to the charges. To that extent, the trial judge erred in not characterizing the delay as defence delay and deducting it as such.

[4] For these reasons, a majority of the Court would dismiss the appeal.

[5] Justice Côté is dissenting. She would have allowed the appeal substantially for the reasons of Butler J.A.

 *Judgment accordingly.*

 *Solicitors for the appellant: Melville Law Chambers, Vancouver; Michael Sobkin, Ottawa.*

 *Solicitor for the respondent: Attorney General of British Columbia, Vancouver.*