# When Getting to Court Takes Too Long: R v MacPherson

*This article was written by a law student for the general public.*

**Introduction**

When a person is accused of a crime, section 11(b) of the *Canadian Charter of Rights and Freedoms* protects his or her right to a trial within a reasonable time. Quick trial dates help ensure that the accused is treated "humanly and fairly" because an accused need not spend an unreasonably long time in custody before a trial takes place and evidence linking the accused to the crime is as fresh as possible.[1] They can also reduce the stigma of being exposed to criminal proceedings when one is not guilty and can often reduce an accused person's anxiety.

However, scheduling trials quickly can be difficult because of limited court resources. In *R v MacPherson*, the Alberta Court of Appeal had to consider whether an institutional delay breached the accused's right to be tried within a reasonable time. The Court balanced limited resources with making sure accused persons do not spend unreasonably long periods of time in custody before trials take place.

**Facts**

In 2012, Mr. MacPherson was charged with 11 offences related to armed robberies. The Crown decided to proceed with two of these charges. However, the Crown and defence counsel couldn't find mutually compatible times to meet during available court times. This delayed Mr. MacPherson's hearings from fall 2012 to fall 2013. Mr. MacPherson remained in continuous custody during the delay, which grew lengthier because of packed court schedules. The time between Mr. MacPherson's arrest and the expected end date for sentencing ended up being more than 20 months.[2]

**Case History**

The trial judge found that Mr. MacPherson's section 11(b) *Charter* right to be tried within a reasonable time had been infringed.[3] The Crown appealed this decision to the Alberta Court of Appeal.

**Issue**

Does the 20-month delay between arrest and sentencing breach Mr. MacPherson's section 11(b) *Charter* right to be tried within a reasonable time? At what point does institutional delay become unreasonable?

**Decision**

The Alberta Court of Appeal agreed with the trial court and decided that Mr. MacPherson's right to be tried within a reasonable time had been violated. The period of institutional delay was unreasonable because of its length. Further, Mr. MacPherson suffered substantial prejudice because of the delay, which he had no part in causing.

**Analysis**

In *R v Morin*, the Supreme Court of Canada decided that a total of 14 to 18 months is considered acceptable institutional delay when a case is before a Provincial Court.[4] However, the Courtacknowledged that this guideline is merely a suggestion and should not be considered a rigid formula when determining whether a period of delay is reasonable in every case.[5] Therefore, it highlighted four factors that should be considered to determine the reasonableness of institutional delays:[6]

1) the length of the delay

2) periods of time waived by the accused

3) the reasons for the delay

4) any prejudice caused to the accused because of the delay

Accordingly, the Court in *MacPherson* relied on the *Morin* decision and considered these four factors to determine whether Mr. MacPherson's period of delay was reasonable. First, it decided that the acceptable delay in this case should be less than the suggested 14 to 18 months considered acceptable in *R v Morin*. This was because, unlike the facts in the *Morin* case, Mr. MacPherson did nothing to cause any part of the delay, and his actions "were consistent with a desire for an early trial date."[7] Therefore, the court decided the delay was caused by institutional issues, rather than any fault of Mr. MacPherson's. Finally, Mr. MacPherson experienced substantial prejudice while in pretrial custody.[8] He remained in custody during the entire period of delay and, as a result, was unable to work or eat what he wanted.[9] Therefore, the Court decided his *Charter* right to be tried within a reasonable time was violated.[10]

**Conclusion**

In *R v MacPherson*, the Alberta Court of Appeal acknowledged that institutional delays can happen because of "the court system's inability to accommodate parties."[11] However, the Court also noted that, even when they are the result of this inability to accommodate parties, delays are not always justifiable. In addition to protecting the rights of the accused, there is a clear and important societal interest in making sure that people accused of breaking the law do not spend a long time in pretrial custody, as this merely offsets the strain on resources from courts to remand centres.[12] This case reaffirms the importance of trial within a reasonable time – both from the perspective of the accused and from the perspective of society as a whole.

[1] *R v MacPherson,* 2015 ABCA 139 at para 15 .

[2] *Ibid* at para 11.

[3] *Ibid* at para 15.

[4] *Ibid* at para 30.

[5] *R v Morin,* [1992] 1 SCR 771 at 797.

[6] *Ibid* at787-788.

[7]*MacPherson, supra* note 1at para 24.

[8] *Ibid* at paras 30-31.

[9] *Ibid* at para 24; *Ibid* at para 32.

[10] *Ibid* at para 37.

[11] *Ibid* at para 27.

[12] *Ibid* at para 37.