

Crown Gets Second Shot to Justify 23-Month OHS Trial Delay



In May 2016, the Crown charged 3 mining company officials, including the safety director, for a millwright's cyanide poisoning at the Detour Lake Mine. Separate OHS and C-45 charges were laid against the company. The cases are complex and by the time the Crown is ready to prosecute the officials, 23 months have passed, 5 months over the the so called *Jordan* (after the Canadian Supreme Court case *R. v. Jordan*) 18-month rule after which a delay is presumed to be unreasonable. The trial court ruled the Crown didn't rebut the presumption justifying the delay and the appeals court agreed. But now the high court, the Ontario Court of Appeal, has reversed citing the complexity of the case and the need to deal with the important questions of administration of justice they raise [*Ontario (Labour) v. Nugent*, 2018 ONCA 1014 (CanLII), Dec. 11, 2018].

Editor's Note: *The ruling just means the Crown can appeal the dismissal of the case. To secure a conviction it must still win the appeal and then prove the OHS charges in the lower court. Bottom Line: This case is far from over.*