

# Drug suspects walk free as justice ruled delayed

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Delays in trying two accused cocaine traffickers within a reasonable time have resulted in them walking away from charges because their rights were violated.

B.C. Supreme Court Justice John Spencer, in a judgment this week, said Marbod Horst Kern and Dwayne Neil McLean were entitled to a judicial stay of proceedings. The judge noted defence lawyers in the case, Lewis Spencer for Kern, and Tony Serka for McLean, relied on a Supreme Court of Canada case that set the parameters of permissible delay.

According to the Charter of Rights and Freedoms, any person charged with an offence has the right, among other things, to be tried within a reasonable time.

When the Supreme Court of Canada first looked at the delay as a Charter right, its ruling resulted in hundreds of Ontario cases being dropped because of unreasonable time lapses. When the court of last resort revisited the matter, it decided that a period of up to about

20 months between the laying of a charge and a trial date was not unreasonable in a simple case.

Spencer, ruling in Kern's and McLean's favor, said their case did not fit a pattern where co-accused try to manipulate adjournments and trial dates to gain an unreasonable delay. "In such case, especially where many counsel changes take place, the court will look skeptically at the facts alleged," the judge said.

Before granting the judicial stays, Spencer looked closely at who was largely responsible for the delays — the Crown or the accused — that kept the matter from going to trial for almost three years.

The judge noted the Supreme Court of Canada in reviewing the Charter delay case (it was known as Askov) said delay has to be attributed to either the Crown, or the system of justice for which the Crown must accept responsibility, or to the accused.

Spencer noted part of the delay in the cocaine case, four months, was due to the fact Kern's lawyer chose to engage in a legal-aid strike. The judge said Kern could not be held responsible for that delay.