

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *R. v. Imperial Metals Corporation*,
2026 BCSC 1021

Date: 20260604
Docket: 37207-21
Registry: Vancouver

Rex

v.

**Imperial Metals Corporation, Mount Polley Mining Corporation and
Wood Canada Limited / Wood Canada Limitée**

Corrected Judgment: The cover page of the Ruling was amended on June 15, 2026
to reflect the removal of the publication ban

Before: The Honourable Justice Maisonville

Ruling Re Severance Application of the Defendants

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Place and Dates of Hearing:

Vancouver, B.C.
May 4–5, 2026

Place and Date of Judgment with Written
Reasons to follow:

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June 4, 2026

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INTRODUCTION

[1] The accused, Imperial Metals Corporation (“IMC”) and Mount Polley Mining Corporation (“MPMC”) (together, the “Applicants”), bring an application for severance from the co-accused, Wood Canada Limited / Wood Canada Limitée (“Wood Canada”).

BACKGROUND

[2] The Applicants together with Wood Canada are charged with 15 counts under the *Fisheries Act*, R.S.C. 1985, c. F-14, relating to a failure of the Mount Polley Mine Tailing Storage Facility (the “TSF”) in central British Columbia during the night of August 3, 2014 and into the early morning of August 4, 2014. This failure resulted in the deposit of approximately 21 million m³ (21 billion litres) of mine effluent and sediment into bodies of water near the Mount Polley mine. Wood Canada, while not seeking severance on this application, made submissions supporting IMC and MPMC’s position.

[3] On March 2, 2026, I ordered that Wood Canada's then counsel, McCarthy Tétrault, be disqualified from acting for them as a result of their prior representation of two engineers, Mr. Steven Rice and Ms. Laura Fidel, who worked on the TSF as the senior engineer and the engineer of record, respectively.

[4] Following that ruling, Wood Canada retained other counsel at Borden Ladner Gervais (“BLG”), who subsequently withdrew from the file.

[5] Mr. Scott Fenton is now counsel for Wood Canada. While not seeking severance, he made submissions on the application outlining his position.

[6] Difficulties arose when Mr. Fenton sought to obtain McCarthy Tétrault’s file due to the Crown’s position that Mr. Fenton could not have any communication with McCarthy Tétrault nor receive any portion of the work product from the firm’s file. The Crown initially set out this position in a letter to BLG, the previous counsel for Wood Canada. However, it maintained this position after Mr. Fenton began acting for Wood Canada, explaining that, in their view, anything received from McCarthy

Tétrault would be tainted as a result of that firm's prior representation of Mr. Rice and Ms. Fidel. The Crown asserted that Mr. Fenton would essentially have to start the file "from scratch" to avoid a conflict. In response, Mr. Fenton asserted that the Crown's position was at odds with his professional obligation to seek the files, excepting and excluding anything that related to or could contain confidential information received from, the two engineers.

[7] As a consequence of the developments following the disqualification of McCarthy Tétrault and the difficulty of subsequent counsel for Wood Canada in receiving the file, IMC and MPMC take the position on this severance application that their trial is now being "held hostage" by the expected delay if Mr. Fenton must now re-start work on the file, including a number of already filed applications.

POSITIONS OF THE PARTIES

[8] IMC and MPMC seek to be tried separately from their co-accused, Wood Canada.

[9] The main thrust of IMC and MPMC's application is that, in light of the conflict issues that are unresolved related to the representation of Wood Canada, their trial will be delayed and their s. 11(b) *Charter* rights infringed by a joint trial. In particular, IMC and MPMC say this is the case because the Crown has taken a strict position on contact between McCarthy Tétrault and Wood Canada's new lawyer, Mr. Fenton. The Applicants argue that the inability of counsel for Wood Canada to receive the file from McCarthy Tétrault is, in effect, holding IMC and MPMC "hostage" and delaying their trial.

[10] It is important to set out the positions of Mr. Fenton and the Crown with respect to the file transfer from McCarthy Tétrault,

[11] In a letter dated March 18, 2026, the Crown wrote to BLG, then the lawyers for Wood Canada, addressing in relevant part, the transfer of files from McCarthy Tétrault. In that letter, the Crown took the position that "there should be no communications with Wood's former counsel [McCarthy Tétrault]" nor should there

be any sharing of “any part of any of their ‘criminal’/civil/disciplinary files”. Further, the Crown took the position that there should be no disclosure between Wood’s former and current counsel, nor should there be any direct or indirect communications between them.

[12] By letter dated April 16, 2026, Mr. Fenton wrote to the Crown addressing the Crown’s March 18, 2026 correspondence with BLG and the file transfer issue. In that letter, Mr. Fenton took the position that the Crown’s stance was inconsistent with the Law Society Code of Professional Conduct for British Columbia, Rule 3.4-20 and Commentary, as well as unduly restrictive of Wood Canada’s right to make full answer and defence. Mr. Fenton proposed a way to address confidential information that had passed to conflicted counsel for Mr. Rice and Ms. Fidel. He wrote:

[...] In our view, after former counsel has been disqualified from acting for client A due to a conflict of interest with client B, former counsel has a duty upon a request being made by new counsel for client A, to transfer their entire file subject only to taking reasonable measures to ensure that there will be no disclosure to new counsel of client B’s confidential information. (Rule 3.4-20(b)(ii) and Commentary). Translated to our situation, upon a direction and authorization from Wood, [McCarthy Tétrault] has a duty to transfer its entire file in acting for Wood to Fenton Law Barristers, subject to taking reasonable measures in compliance with Rule 3.4-20 to ensure that there is no disclosure to our firm of any confidential information related to [McCarthy Tétrault’s] prior representation of Ms. Fidel and Mr. Rice in the disciplinary proceedings brought before the APEGBC.

In order to permit [McCarthy Tétrault] to properly fulfill its obligations under Rule 3.4-20, we would first need to communicate with counsel at [McCarthy Tétrault] and inquire as to whether they are capable of taking take reasonable measures to ensure that there will be no disclosure to our firm of any confidential information related to [McCarthy Tétrault’s] prior representation of Ms. Fidel and/or Mr. Rice. Assuming that [McCarthy Tétrault] responds affirmatively, we would then ask [McCarthy Tétrault] to provide written confirmation that they have taken those reasonable steps before providing us with their files in the manner requested.

The Crown’s position that “there should be no communications with Wood’s former counsel regarding this matter and related matters” is unnecessary, overly restrictive, and wholly inconsistent with the requirements of Rule 3.4-20. Indeed, it would prevent any form of professional inquiry by our firm as to whether [McCarthy Tétrault] can satisfy the applicable professional standards for effecting a file transfer to successor counsel.

[13] Finally, Mr. Fenton indicated that he would be bringing an application to the court to clarify the options for receiving the work product files of McCarthy Tétrault.

[14] In a letter dated April 17, 2026, the Crown continued to take the position that any file transfer and communications between McCarthy Tétrault and Mr. Fenton was unworkable.

[15] Mr. Fenton responded to the Crown on April 23, 2026, outlining fourteen categories of documents he would be seeking from McCarthy Tétrault as part of an initial transfer of the file. These categories, he suggested, would not raise any issue of the transfer of confidential information pertaining to Mr. Rice and Ms. Fidel.

[16] The Crown responded on May 3, 2026, saying:

The transfer of the [McCarthy Tétrault] files pertaining to this case is a matter between you, as new counsel for Wood, and [McCarthy Tétrault]. The Crown's "consent" is not required. Indeed, "consent" is not an apt term in this context, as the [McCarthy Tétrault] files do not involve the Crown.

In your letter dated May 1, 2026, you express assuredness that the [McCarthy Tétrault] files you intend to seek contain no protected confidences of Mr. Rice or Ms. Fidel, nor any other confidential information you should not receive.

The Crown has no specific information about the [McCarthy Tétrault] files sought or their organization, beyond the limited details provided in your correspondence.

As new counsel for Wood, it is for you to determine whether the [McCarthy Tétrault] files you seek and their transfer comply with the law regarding conflict of interest and your applicable professional obligations. [...]

[17] While Mr. Fenton initially indicated in his letters that he would bring an application to clarify the course of action he could take, on reflection and during the course of this application, he indicated that he would instead be communicating directly with McCarthy Tétrault and seeking the files with the provisos noted above, namely, to exclude any information that could contain confidential information received from Mr. Rice and Ms. Fidel. He indicated to the Court that it was his absolute professional responsibility to seek the files from McCarthy Tétrault, save and except for those files relevant to the prior representation of the two engineers

and the regulatory proceedings before the engineering regulatory body. His position is that, without the files, he cannot prepare for the already filed applications.

[18] During the course of this hearing, the Crown's position also shifted. Initially, the Crown indicated that their position was as set out in their letters—an absolute prohibition on contact between McCarthy Tétrault and Mr. Fenton to transfer work product from the file. However, by the end of the application before me, the Crown's position was that, while it was hoped there would not be any issue arising, they were not going to preclude Mr. Fenton from contacting McCarthy Tétrault to obtain the files that he needed, particularly, with respect to outstanding applications that had already been filed.

[19] With this background in mind, I turn now to the application to sever.

THE LAW

[20] Section 591(3) of the *Criminal Code*, R.S.C. 1985, c. C-46, outlines as follows:

Severance of accused and counts

(3) The court may, where it is satisfied that the interests of justice so require, order

[...]

(b) where there is more than one accused or defendant, that one or more of them be tried separately on one or more of the counts.

[21] In *R. v. Last*, 2009 SCC 45, the Supreme Court of Canada set out what the interests of justice are. In severance of the accused, the critical factors are:

1. the general prejudice to the accused;
2. the complexity of the evidence;
3. the possibility of inconsistent verdicts;
4. the desire to avoid a multiplicity of proceedings;
5. the length of the trial having regard to the evidence to be called;

6. the potential prejudice to the accused with respect to the right to be tried within a reasonable time; and
7. the existence of antagonistic defences as between co-accused persons.

[22] The court must weigh the *Last* factors in determining whether granting a severance application is in the interests of justice. That weighing exercise requires striking a reasonable balance between the risk of prejudice to the accused and the public interest in a single trial: *Last* at para. 17.

[23] There are strong policy considerations in support of joint trials generally.

[24] In *R. v. Jacques-Taylor*, 2026 SCC 20, Justice Côté, writing for the majority at the Supreme Court of Canada, held at para. 4 (in part):

[4] [...] [J]oint trials should be held wherever it is in the interests of justice to do so. This will be the norm rather than the exception, as joint trials are an essential component of any well-oiled criminal justice system. Notably, they reduce the overall number of trials, mitigate the risk of contradictory verdicts, and obviate the need for witnesses to testify in multiple proceedings relating to the same set of facts. These advantages increase systemic efficiency, which, in turn, leads to shorter trial delays across the entire criminal justice system. In short, joint trials are indispensable and play a key role in guaranteeing the right of *all* accused persons to a trial within a reasonable time.

[Emphasis in original.]

[25] Justice Côté noted that joint trials have their own set of “unique challenges” (para. 5) including scheduling but stressed that all counsel must proactively collaborate. Indeed, the court stressed all counsel have a “duty to work together so that the accused’s right to a trial within a reasonable time is respected”.

[26] Furthermore, concerning the importance of joint trials to the criminal justice system, Côté J. held as follows:

C. The Role of Joint Trials in Ensuring an Efficient Criminal Justice System

[47] Joint trials, it cannot be overstated, play a crucial role in attaining the objective of efficient criminal justice. The strong preference for joint trials in our criminal justice system therefore closely aligns with *Jordan*’s purpose.

[48] It has long been recognized that where two or more accused are alleged to have committed a crime together, they should be jointly charged and jointly tried (*Phillips v. The Queen*, [1983] 2 S.C.R. 161, at p. 169; *R. v. Chow*, 2005 SCC 24, [2005] 1 S.C.R. 384, at para. 10; *R. v. S.J.L.*, 2009 SCC 14, [2009] 1 S.C.R. 426, at para. 50). The presumption in favour of joint trials is strong. So strong, in fact, that severance will not be ordered unless proceeding jointly will work an injustice to one of the accused (*R. v. Crawford*, [1995] 1 S.C.R. 858, at para. 31; *Chow*, at para. 47). Accordingly, joint trials are the rule, while severance is the exception (*[R. v.] Sciascia*, [2017 SCC 57] at para. 33; *Chow*, at paras. 10 and 47).

[49] This preference for joint trials is entirely unsurprising. Proceeding jointly promotes the proper and efficient administration of justice, which is a compelling policy consideration (*Sciascia*, at para. 33). Joint trials promote the proper and efficient administration of justice in several ways.

[50] Firstly, joint trials ensure that already scarce judicial resources are used as efficiently as possible. Proceeding jointly means that fewer judges and fewer Crown prosecutors are needed to try the charges. Likewise, fewer juries need be empanelled, and the disruption occasioned to witnesses is lessened. Hence, proceeding jointly limits costs not only to the criminal justice system, but also to society more broadly. That is not all, however. In addition, procedural matters and similar or identical evidentiary issues can be streamlined and dealt with conclusively in a single trial, rather than repeatedly and inefficiently across multiple trials. This has the added advantage of diminishing the possibility of contradictory verdicts. Moreover, the more efficient distribution of resources throughout the system in turn enables the judiciary to serve a greater number of worthy litigants and to do so more quickly. In this respect, one must not lose sight of the fact that the interests of justice encompass not only the rights of the accused to a fair trial, but also “society’s interest in seeing that justice is done in a reasonably efficient and cost-effective manner” (*R. v. Last*, 2009 SCC 45, [2009] 3 S.C.R. 146, at para. 16; see also *R. v. Cowan*, 2021 SCC 45, [2021] 3 S.C.R. 323, at para. 63).

[51] Secondly, joint trials better serve the court’s truth-seeking function. When several persons are accused of an offence, particularly where it is alleged that they conspired or engaged in a joint criminal enterprise, “it is undeniable that the full truth about an incident is much more likely to emerge if every alleged participant gives his account on one occasion” (*Crawford*, at para. 30, citing D. W. Elliott, “Cut Throat Tactics: the freedom of an accused to prejudice a co-accused”, [1991] *Crim. L. Rev.* 5, at p. 17; see also *R. v. Jaser*, 2024 ONCA 448, 172 O.R. (3d) 1, at paras. 155-56). The same can be said in respect of witness and complainant testimony. Memories are fallible. Over time, details become blurry, are forgotten, or are even misremembered. Requiring witnesses to testify repeatedly increases the risk that testimony will be less consistent with the truth, even in the case of a witness who endeavours to testify as truthfully as possible.

[52] Thirdly, joint trials safeguard public confidence in the judicial process. Joint trials reduce delays, which makes a stay of proceedings less likely. Ensuring that justice is done quickly and in accordance with the *Charter* can only increase confidence in the justice system. Furthermore, by reducing the

number of proceedings, joint trials help to alleviate the various burdens that are placed on all of the actors involved in prosecutions, thereby bolstering public confidence in the criminal justice system. The legal costs associated with being forced to participate in multiple criminal proceedings are often ruinous for the ordinary person. For witnesses and complainants, being continually forced to relive highly traumatic events, while also being subjected to the rigours of cross-examination, can be a shattering experience. Trying multiple accused jointly limits these side effects.

[53] To summarize, joint trials ensure systemic efficiency. They reduce trial delays across the board, reduce costs, enhance the truth-seeking function of criminal trials, and limit the burdens that are borne by complainants, witnesses, and, importantly, accused persons. Therefore, joint trials play an important role in safeguarding public confidence in the administration of justice. Of course, I hasten to note that proceeding jointly is not always appropriate (*R. v. Vassell*, 2016 SCC 26, [2016] 1 S.C.R. 625, at para. 10). This was noted by the Court in *Jordan*, where it highlighted that severance may be desirable under limited circumstances (para. 129). Notwithstanding, in the vast majority of cases, proceeding jointly will be in the interests of justice and, accordingly, severance will not be appropriate.

[27] Where there may be substantial delay, it may be that severance is required. The Crown is also under a continual obligation to reassess whether a joint trial remains in the interest of justice. In *R. v. Singh*, 2025 ONCA 843 at para. 17, the Court held:

[17] At the same time, [*R. v.*] *Jordan*, [2016 SCC 27] reconciles this strong policy preference with an accused's right to be tried within a reasonable time. The "interests of justice" analysis accommodates both considerations, and the Crown remains obliged to take reasonable steps to move the case forward and to mitigate joint-trial delay. In some circumstances, this may require severance - particularly where a joint trial unduly complicates the proceeding, causes substantial delay, or effectively holds an accused who wishes to proceed promptly hostage to the delays of co-accused: *Jordan*, at paras. 77, 79; *R. v. Manasseri*, 2016 ONCA 703, 429 C.C.C. (3d) 55, at paras. 323, 367-75, leave to appeal refused, [2016] S.C.C.A. No. 513; *R. v. Gopie*, 2017 ONCA 728, 140 O.R. (3d) 171, at paras. 138-42, 171.

[28] In *R. v. Manasseri*, 2016 ONCA 703, Justice Watt warned against the Crown becoming overly reliant on a joint trial, without given enough attention to the need to protect each co-accused's s. 11(b) rights. A joint trial is not "a magic wand the Crown can wave to make a co-accused's s. 11(b) rights disappear. The 'right' to a joint trial only prevails to the extent that such a proceeding is in the interests of justice both pre and post-*Jordan*": para. 373; see also *R. v. Rai*, 2019 BCCA 377.

However, the Supreme Court of Canada in *Jacques-Taylor* underscores the importance of proceeding with a joint trial of accused, emphasizing that joint trials are the rule, while severance is the exception.

ANALYSIS

[29] While the Applicants advanced an argument about the possibility of inconsistent verdicts where is a joint trial situation and denied there will be antagonistic defences, the core of this application is the delay they say will result if severance is not granted.

[30] While there is the possibility of delay, for the reasons set out below, I find that, at present, it is not in the interests of justice to order severance.

[31] There is no question that there is a legal and factual nexus between the counts and the co-accused. The co-accused were in a contractual relationship as it related to the operation and management of the TSF and, the Crown alleges, they frequently acted in concert with respect to the TSF. Nor can the potential defences of the co-accused be considered in a vacuum.

[32] The parties filed materials on this application which originated in the civil action between the co-accused, i.e., the Applicants (IMC and MPMC) and Wood Canada. It is clear from those materials that antagonistic defences were going to be advanced in the civil action in that IMC and MPMC looked to blame the two engineers from Wood Canada for the TSF failure.

[33] While the argument was made on this application that, in fact, the co-accused are working together as a team and thus the implication that antagonistic defences would not be advanced, I note that we are now at the applications phase and not at trial. The considerations on applications, the admissibility of evidence, and other like issues that have to be determined by the Court in advance of the trial are not the same as addressing the factual issues and possible due diligence defences that may be raised at trial.

[34] In *R. v. Susack*, 2000 CanLII 5630 (O.N.C.A.), 141 C.C.C. (3d) 449, Justice Doherty held at para. 88:

[88] Separate trials where co-accused are blaming each other for the crime raise not only the danger of inconsistent verdicts, but also a real concern that the truth will not be discovered at either trial. It is axiomatic that the truth of an allegation is best tested through a process which requires the accuser to confront the accused with the allegation and gives the accused a chance to respond to the allegation. If co-accused who are blaming each other for a crime are allowed to do so in separate trials, neither jury will have the benefit of that process. If the accused are tried separately, it is highly unlikely that either jury will hear the complete story. As Professor Elliot said in “Cut Throat Tactics: the freedom of an accused to prejudice a co-accused”, [1991] Crim. L.R., 5 at 17:

... it is undeniable that the full truth about an incident is much more likely to emerge if every alleged participant gives his account on one occasion. If each alleged participant is tried separately, there are obvious and severe difficulties in arranging for this to happen without granting one of them immunity. In view of this, on all but exceptional cases, joint trial will be resorted to, despite the double bind inevitably involved...

[35] Here, the only available information to consider in this regard are the positions taken by the parties from the notice of civil claim and response filed with the court. In those documents, it was clear that antagonistic positions were going to be taken between the co-accused. At this time, while counsel for IMC and MPMC indicate that there is no likelihood of this given their position that their defence will be that the TSF event was unforeseeable, it is still a matter that may emerge at, or closer to, the trial. There is a risk of inconsistent verdicts due to possible antagonistic defences arising in this matter, though there is not enough information at this point in the process. I find that that is not a relevant consideration at this stage and, rather, it may emerge at trial from the evidence.

[36] Moving now to the desire to avoid a multiplicity of proceedings, I note that this trial will be complex and involve dozens of witnesses who will be required to testify against both co-accused. The question becomes whether there are similarities in the facts, whether the evidence is “interwoven”, the commonality of evidence, and the cost of the administration of justice to accommodate two trials where those

similarities of fact would be “considerable”. The efficient use of resources in this case favours a joint trial.

[37] While IMC and MPMC suggested that an Agreed Statement of Facts could significantly reduce the number of witnesses called by the Crown, no Agreed Statement of Facts has yet been finalized. A potential streamlining of the evidence required for trials is still only hypothetical.

[38] I come now to the crux of IMC’s and MPMC’s argument on this application, namely, that their s. 11(b) rights are being infringed due to ongoing disclosure problems between Wood Canada’s former and current counsel as a result of the disqualification ruling. The Applicants say this prejudice is significant and that delay will result if the trial proceeds jointly. The context surrounding the file transfer issue and the positions of Mr. Fenton and the Crown are set out above.

[39] Severance, however, is not a “panacea” when delay arises in the multiple-accused trial: *R. v. Singh*, 2016 BCCA 427 at para. 81. In *Singh*, the BC Court of Appeal noted respecting co-accused in conspiracy charges in *R. v. Koruz* (1992), 72 C.C.C. (3d) 353 at 419 (Alta. C.A.), *aff’d R. v. Schiewe*, [1993] 1 S.C.R. 1134:

[81] [...]

Moreover, if the suggestion is that every time a number of defendants are charged with conspiracy, the Crown should be required to sever charges if and when timing problems arise, the implications for prosecuting these kinds of cases could be profound. Although the right to trial within a reasonable time is an individual right, one cannot ignore the practicalities of what is involved in the Crown’s prosecution of a conspiracy case. The mere fact that an accused has been charged with conspiracy does not confer upon him some inherent advantage in asserting a claim for a s. 11(b) breach if and when one of his co-defendants causes a delay in the proceedings. To suggest severance as a simple solution ignores the very real cost to the Crown and the public involved in prosecuting separate actions: *R. v. McNamara (No. 1)* (1981) 56 C.C.C. (2d) 193 (O.C.A.), *affirmed* (1985) 19 C.C.C. (3d) 1 (S.C.C.). In the end, this kind of approach will only serve to contribute to further delays in the administration of justice.

[40] Furthermore, the Supreme Court noted in *Jacques-Taylor* at paras. 54–56 that there are necessary trade offs between the individual s. 11(b) rights of co-

accused and the major systemic efficiencies that result from joint trials. Justice Côté wrote:

[54] It is an unfortunate but unavoidable fact of the trial process that jointly prosecuting multiple co-accused may lead to proceedings that are lengthier than would normally be the case for a person who is tried individually. However, perfect solutions do not exist and, as with anything, there are necessary trade-offs. Even though a given prosecution may be prolonged as a result of the joint trial, major systemic efficiencies are nonetheless created elsewhere. These gains in efficiency ensure better protection of the s. 11(b) right throughout the criminal justice system.

[55] Section 11(b) also encompasses a broader societal interest in speedy trials. An individual's trial does not take place in a vacuum. In some jurisdictions, hundreds of people may be tried weekly. Severance cannot be ordered simply to gain a few days or weeks here or there, all the while creating a series of knock-on effects that cause worse delays elsewhere. Courts cannot simply order severance in the name of protecting one accused's s. 11(b) right without accounting for the delays that such an order would occasion elsewhere. At the very least, severance entails assigning a new judge and new Crown counsel, and attempting to allocate a new set of trial dates that, evidently, cannot be used for other trials. Someone else will have to bear these delays: other accused persons. But they, too, have the right to be tried within a reasonable time.

[56] Endorsing an approach that, in effect, raises the bar for joint trials would run counter to *Jordan's* spirit and fail to strike the appropriate balance between the competing rights of accused persons across the criminal justice system. Building a more efficient criminal justice system ensures better outcomes for everyone. We must therefore avoid solutions that merely contribute to systemic delays. Requiring the Crown to consider severance as a routine (or even occasional) means of protecting an accused's right to a trial within a reasonable time would put undue strain on the system by simply creating delays elsewhere. This cannot be the solution. Rather, the *Jordan* framework must be able to account for the clear advantages that are conferred by joint trials and the need to balance the s. 11(b) right of multiple accused persons throughout the criminal justice system (*Crawford*, at paras. 33-34; *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835, at p. 877).

[41] There is not yet any indication that this matter will not proceed and conclude within the timeframe of *R. v. Jordan*, 2016 SCC 27. It is also not apparent on the record that every step has been taken to shorten the trial given that the admissions sought by the Crown have not been agreed to by the Applicants. The fact that IMC and MPMC have added numerous admissions and the Crown has not agreed to those should have been a matter of exploration by counsel to see what could lead to possible acceptance of those admissions by the Crown. No such steps have been

taken until this matter emerged at this severance application. In short, IMC and MPMC are not advancing this matter as quickly as possible. There remain outstanding issues related to the Agreed Statement of Facts, as well as the timely advancement of applications.

[42] Importantly, and as noted above in some detail, Mr. Fenton has taken steps for Wood Canada to obtain the file from McCarthy Tétrault and while it may be that an adjournment is required at a later time, at this point, no adjournment is currently being sought by Wood Canada. During the course of this application, Mr. Fenton indicated his intention to proceed with the transfer of Wood Canada's file at McCarthy Tétrault to his office, in line with his professional obligations and without further input of Crown or the Court. As a result, it is difficult to continue to describe the situation as IMC and MPMC being held "hostage" by the situation with new counsel for Wood Canada.

CONCLUSION

[43] At this point, the application for severance on the basis that there may be delay is premature. The application is dismissed.

"Maisonville J."