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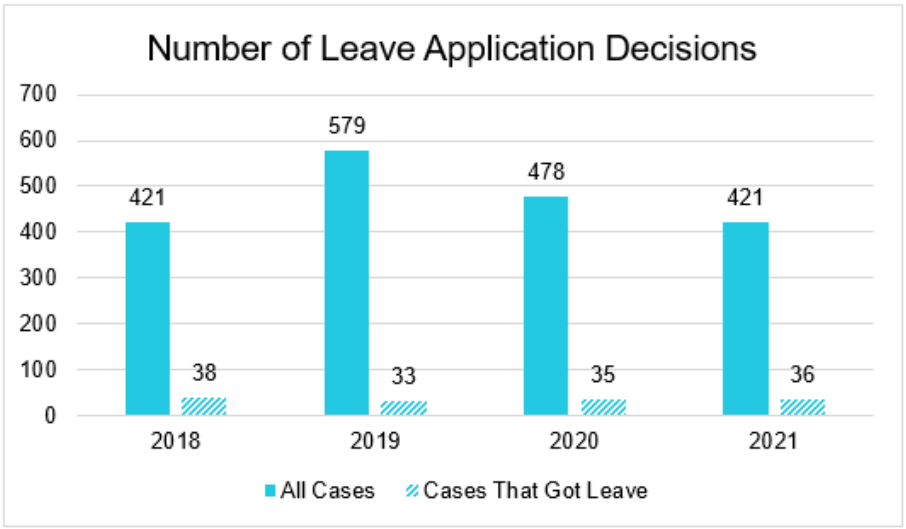
Getting Leave to the Supreme Court of Canada: 2021 by the Numbers

Many of you have seen our weekly blog posts that provide predictions as to how likely it is that particular cases will get leave to the Supreme Court of Canada. Those predictions are based on a dataset of every Supreme Court leave application decision from January 1, 2018 to the present. While those predictions are one use of our data, it's not the only use. Here we present another: a quantitative year in review of leave applications decided by the Supreme Court of Canada in 2021.

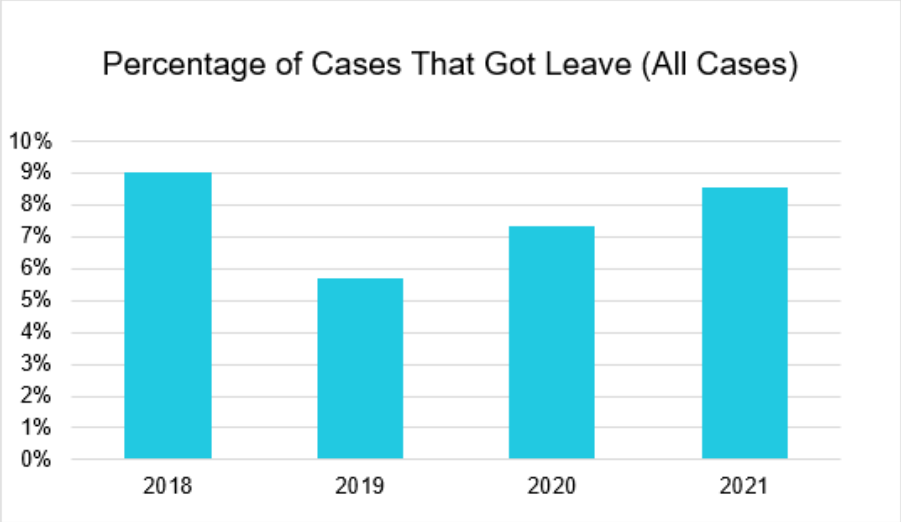
While our Supreme Court of Canada leave application dataset allows us to slice and dice the data in various ways, this blog post presents the high level trends in leave applications in recent years. While 2021 is similar to prior years in many respects, there were some surprising changes in the pattern of leave decisions last year.

Leave Rates Overall

2021 saw the Supreme Court decide a total of 421 leave applications. This number was slightly lower than in 2020 or 2019, but identical to the number it decided in 2018. Of those applications, the Supreme Court of Canada granted leave to appeal in 36 cases. This is roughly on par with the number of cases in which leaves have been granted in recent years.

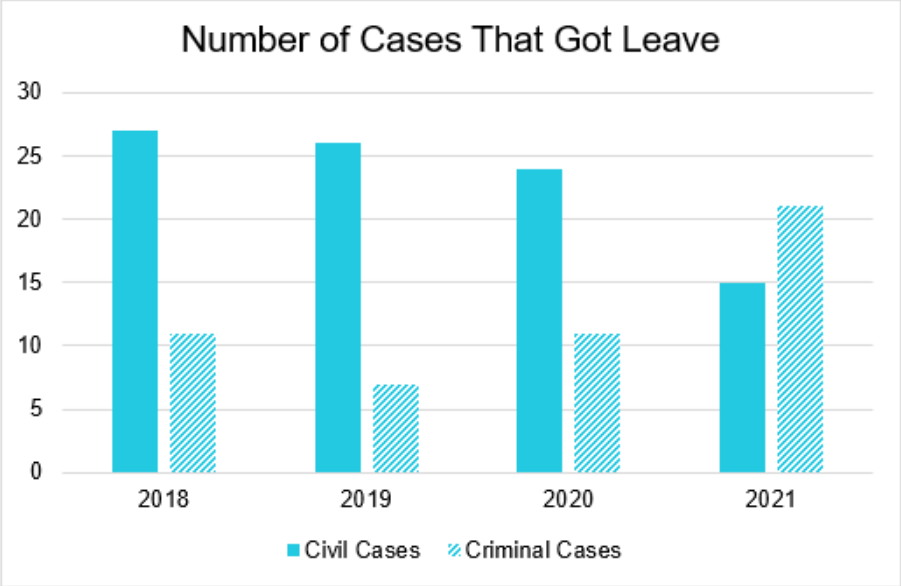


Looking at the data in terms of the percentage of successful leave applications tells a similar story. In 2021, the Supreme Court of Canada granted leave to appeal in approximately 8.5% of the leave applications it decided. This was a slightly higher percentage than in 2019 or 2020, driven primarily by the lower number of leave applications in 2021 compared to those earlier years.

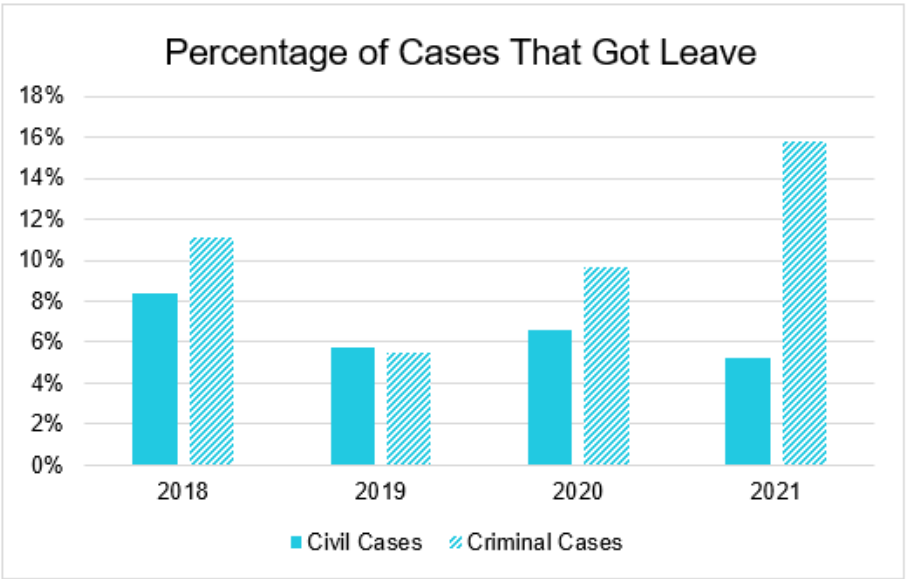


The Types of Cases Getting Leave

2021 saw an interesting reversal in the types of cases that were granted leave. In each year from 2018 through 2020, the Court granted leave to substantially more civil cases than criminal cases (always more than twice as many civil cases were granted leave as criminal cases). In 2021, this trend flipped: the Court granted leave to more criminal cases than civil cases. (By criminal cases, we mean *Criminal Code* prosecutions, any prosecutions under other federal statutes, and prosecutions under provincial statutes. By civil cases, we mean all cases other than criminal cases.)

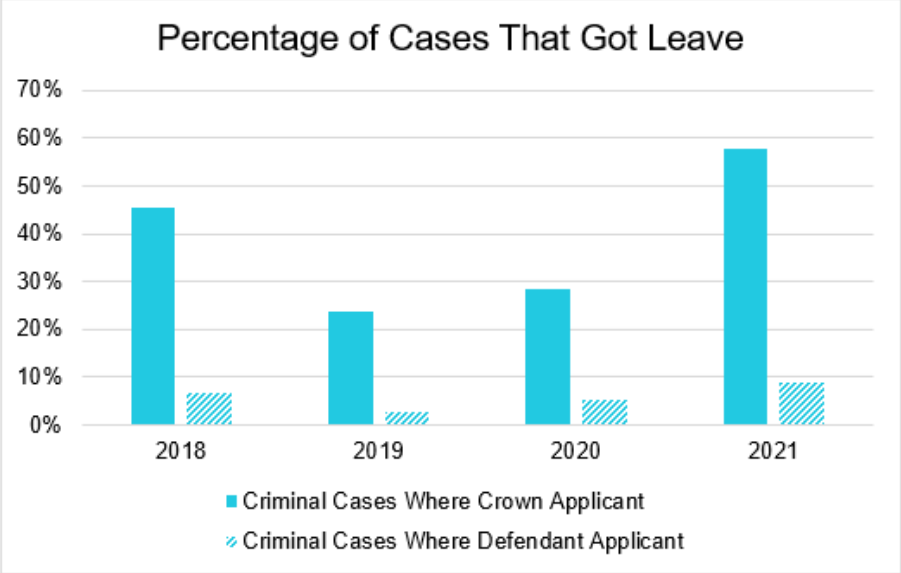


This reversal coincides with a substantial increase in applicants' success rate at getting leave in criminal cases and a decrease in the success rate for applicants seeking leave in civil cases. In 2021, just 5.2% of civil cases were granted leave to appeal, while 15.8% of criminal cases were granted leave to appeal. It is not unusual that a greater percentage of criminal cases get leave compared to civil cases: in 2018, 2020, and 2021, a noticeably higher percentage of criminal cases in which leave was sought were granted leave than civil cases, while in 2019 the percentage was essentially identical. However, the magnitude of the difference in leave rates between civil and criminal cases was markedly higher in 2021 than in any of the previous years in our data.



That being said, among criminal cases, there is a stark divide in success rates in getting leave between cases where the Crown

is the applicant and cases where the defendant is the applicant. In 2021, the Crown got leave in over half of the criminal law cases in which it sought leave, while criminal law defendants got leave in just under 9% of cases which they sought leave. While the numbers vary year over year, this is a fairly consistent pattern. Indeed, over the last four years, there have been roughly as many successful applications for leave by both Crowns and defendants, yet six times as many leave applications have been filed by defendants as by the Crown.



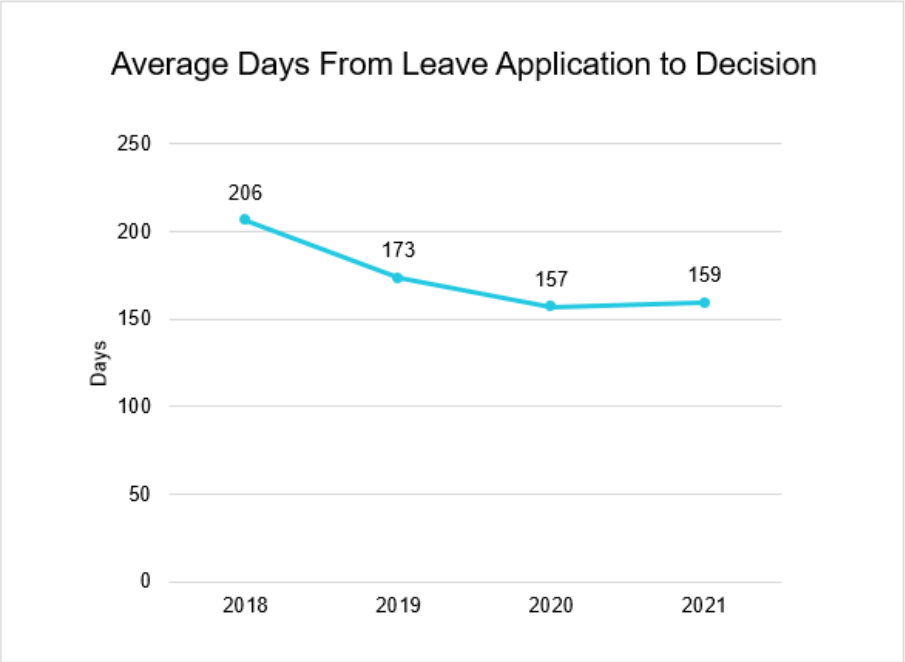
Ultimately, this data adds substantial nuance to the conventional wisdom that the Supreme Court is primarily interested in criminal appeals. The key takeaways are:

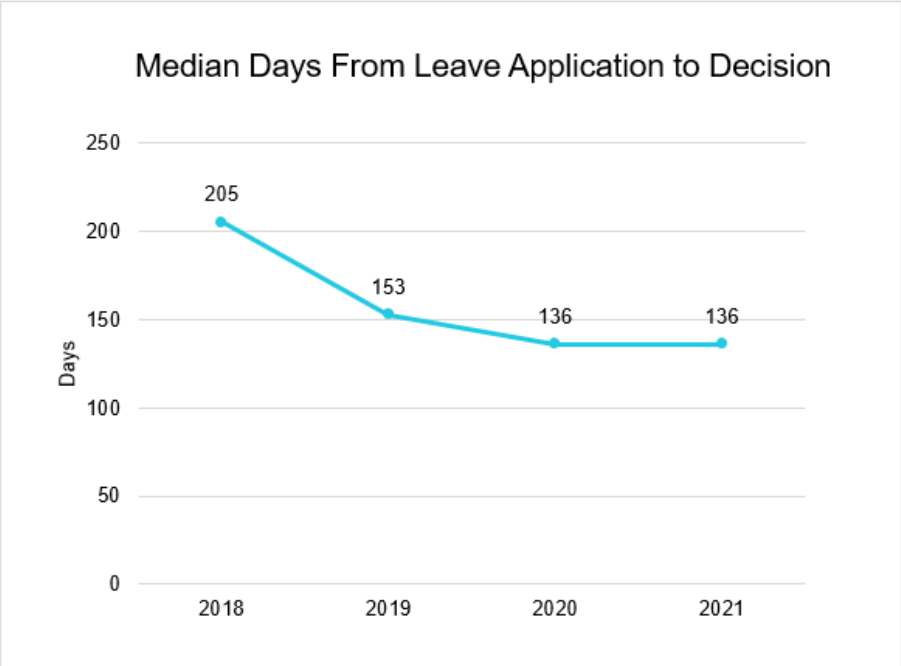
- In general, the Supreme Court has tended to grant leave to appeal to more civil cases than criminal cases annually in absolute numbers, though 2021 was an outlier. Whether this trend continues remains to be seen.
- The percentage of criminal cases in which the Supreme Court grants leave is generally higher than the percentage of civil cases in which the Court grants leave. This has been true for several years, and continued to be true in 2021.
- Crown appeals are a primary driver of the higher likelihood of leave being granted in criminal cases. The primary reason for the increasing number of criminal cases being granted leave in 2021 was a substantial increase in the rate at which Crown appeals in criminal matters were granted leave. In each year, the rate at which the Crown was granted leave to appeal was substantially higher than the rates at which defendants

were granted leave to appeal. While criminal defendants were granted leave at a slightly higher rate than applicants in civil cases in 2021, they are relatively similar on average over the last four years.

The Timeline for Leave Application Decisions

One additional noteworthy trend is that the Supreme Court has been able to keep down the timeline for leave decisions. The average timeline from leave application being filed to the Court rendering a decision was just over five months, while the median timeline was approximately four and a half months. These numbers are essentially the same over 2020, though they represent substantial drops from 2018 and 2019.





The fact that the median timeline from application to decision is lower than the average timeline reflects the fact that there is a relatively small number of cases that take substantially more time than the average to be decided.

Conclusion

The analysis presented in this blog post only scratches the surface of the data in our leave application database. Yet it still shows interesting trends in leave applications at the Supreme Court of Canada.