March 30, 2021

The SCC Leave Project: Predictions for April 1, 2021

Here's a look at the leave application decisions that the Supreme Court of Canada will be releasing on April 1, 2021.

Each week, we'll be providing a short blog post that summarizes some of the upcoming cases and gives a prediction of the probability that leave will be granted. These predictions will be based on our proprietary machine learning model and dataset of every leave application decision released by the Supreme Court of Canada from January 1, 2018 onward.

Each week, we'll group cases into four categories:

- **Cases to Watch** – These are cases where our model predicts greater than a 25% chance that leave will be granted. These cases have a much better than average chance that leave will be granted. While this doesn't mean that all of them will get leave, they are worth watching as strong candidates.
- **Possible Contenders** – These are cases where our model predicts between a 5% and 25% chance that leave will be granted. These cases have an average to somewhat above-average chance of getting leave. While most cases in this category won't get leave, on average, we expect to see a healthy minority of cases in this category being granted leave.
- **Unlikely Contenders** – These are cases where our model predicts between a 1% and 5% chance that the case will get leave. The safe bet is against leave being granted in these cases, but we do expect to see it from time to time.
- **Long-Shots** – These are cases where our model predicts a less than 1% chance that the case will get leave. Although it will happen from time to time, it would be an outlier for our model for these cases to be granted leave. We will not be providing summaries for these cases.

If this is your first time reading our weekly SCC leave predictions blog, have a look at an explanation and caveats about our model here.

THIS WEEK'S CASES

There are 15 leave application decisions coming out on April 1, 2021, all of which we will be giving a prediction for this week. Our model only predicts the probabilities of successful leave applications in cases where leave was sought from the Court of Appeal. We will not comment or provide a prediction on cases where leave was sought directly from a Superior Court decision or on cases in which we are involved.

You can find a detailed summary of all of the cases that are up for leave decisions this week here.

Possible Contenders

Media5 Corporation c Banque Laurentienne du Canada

This is an insolvency case in which the Laurentian Bank of Canada, a creditor of Média5 Corporation, applied for the appointment of a receiver under s. 243(1) of the *Bankruptcy and Insolvency Act* (the *"BIA*"), which they subsequently amended so as to have an interim receiver appointed under s. 47 of the *BIA*. The amended application was dismissed by the Superior Court. The Court of Appeal dismissed the appeal in part and referred the matter back to the Superior Court to have another judge rule on the application for appointment of a receiver under s. 243(1) of the *BIA*. The leave application raises the question of whether Quebec Court of Appeal jeopardized judicial balance and gave undue advantage to Laurentian Bank of Canada.

- **Our Model's Prediction:** This case has a 21% chance of getting leave.

J.A. v Her Majesty the Queen

This is a decision with respect to an application for judicial interim release ("bail") on the basis of a material change in circumstances. The Superior Court of Justice granted bail pending trial, having found there was a material change of circumstances due to COVID-19 amongst other reasons. A majority of the Court of Appeal for Ontario overturned this decision, and set aside the order granting bail pending trial.

- **Our model's prediction:** This case has a 19% chance of getting leave

Attorney General of British Columbia v Council of Canadians with Disabilities

This case relates to the test for public interest standing. The Council of Canadians with Disabilities commenced an action with two individual co-plaintiffs, who ultimately discontinued their

claims. The underlying action raised claims that mental health legislation in British Columbia that allows nonconsensual psychiatric health care treatment is unconstitutional and infringes ss. 7 and 16 of the *Charter of Rights and Freedoms*. The action was dismissed following a successful summary judgment motion by the Attorney General of British Columbia, who argued the test for public interest standing was not made out where the Council of Canadians with Disabilities had sought to continue the litigation without the individual co-plaintiffs. The British Columbia Court of Appeal allowed the appeal and remitted the matter of public interest standing for reconsideration.

- **Our Model's Prediction:** This case has a 13% chance of getting leave.

Les Agences Robert Janvier Ltée c Société québécoise des infrastructures

This is a contracts case relating to the law on eligibility criteria in a public call for tenders. The applicant claimed damages as the result of a contract alleged to have been improperly awarded to a competitor. The Quebec Superior Court found for the applicant, but this was overturned at the Quebec Court of Appeal where the appeal was allowed, and the originating application was dismissed.

- **Our Model's Prediction:** This case has a 13% chance of getting leave.

Independent Contractors and Business Association v Ministry of Transportation and Infrastructure

This relates to a judicial review of a requirement imposed on a construction project by the British Columbia's Minister of Transportation and Infrastructure which required all workers on the project to be members of one of the affiliated unions. It raises questions relating to the exclusive jurisdiction rule in *Weber v Ontario Hydro*.

- **Our Model's Prediction:** This case has a 12% chance of getting leave.

Gregory Thomas Edwards v Her Majesty the Queen

This is a criminal case pertaining to the application of the test for willful blindness.

- **Our Model's Prediction:** This case has a 6% chance of getting leave.

Lawyers' Professional Indemnity Company v Her Majesty the Queen

This is a tax case concerned with the interpretation of a "public body performing a function of government in Canada" for the purposes of the exemption under paragraph 149(1)(d.5) of the *Income Tax Act.*

- **Our Model's Prediction:** This case has a 6% chance of getting leave.

Unlikely Contenders

Independent Jewish Voices v Attorney General of Canada

This case relates to the Federal Court of Appeal's dismissal of applications for leave to intervene in a pending Federal Court of Appeal case involving how the Canadian Food Inspection Agency applied domestic labelling requirements in legislation to imported wine.

- **Our Model's Prediction:** This case has a 4% chance of getting leave.

Iberville Developments Limited v Her Majesty the Queen

This is a tax case relating to the computation of adjusted cost base of a partnership interest received in exchange for transferred property in the context of a subsequent internal reorganization resulting in partnership assets being owned by affiliated corporations.

- **Our Model's Prediction:** This case has a 4% chance of getting leave.

Swat Emeraldmine and Marketing Inc and Muhammad Aslam Khan v Surinder Chaba a.k.a Sam Chaba

This case pertains to the dismissal of a counterclaim seeking damages for fraudulent misrepresentation and inducing breach of contract and an appeal as to costs of same.

- **Our Model's Prediction:** This case has a 4% chance of getting leave.

David Carmichael v GlaxoSmithKline Inc

This case pertains to the limitation period pursuant to the *Limitations Act*. It concerns the capacity of an individual to commence a proceeding in respect of a claim in the context of

an underlying psychological condition.

- **Our Model's Prediction:** This case has a 3% chance of getting leave.

Rosa Donna Este v Mina Esteghamat-Ardakani

This case relates to a mandatory injunction in the context of a dispute between tenants in common of a property. Following a fire which required the residence to be demolished, one party wished to rebuild and one party wished to sell the property without rebuilding the residence. The chambers judge issued a mandatory injunction compelling the respondent to cooperate in the rebuilding of a residence on the property. This order was set aside by the Court of Appeal.

- **Our Model's Prediction:** This case has a 2% chance of getting leave.

Long-Shots

William John Leopold Lubecki v Ville de Granby

- **Our Model's Prediction:** This case has less than a 1% chance of getting leave.

Vito Auciello v CIBC Mortgages Inc

- **Our Model's Prediction:** This case has less than a 1% chance of getting leave.

Tariq Rana v Teamsters Local Union No. 938

- **Our Model's Prediction:** This case has less than a 1% chance of getting leave.

UPDATE ON APRIL 1: WHAT HAPPENED THIS WEEK?

Our model's predictions were consistent with the outcome of the leave applications yet again this week.

The Supreme Court granted leave to only one case this week, *Attorney General of British Columbia v Council of Canadians with Disabilities*. This decision was one of the cases that our model had identified as a Possible Contender, with a predicted probability of 13%. Of our predictions, this case was predicted to have the third highest chance of getting leave.

Recall that this week, our model did not identify any cases in the Cases to Watch category, meaning of the leave decisions this week, the Possible Contender cases had the highest probability of being granted leave. None of the cases that our model had identified as relatively low likelihood cases were granted leave.

As a reminder, all our model does is predict probabilities and we shouldn't expect that the cases that get leave are always the ones that our model predicts as having the highest probability.

Here is the full list of leave application decisions this week.