April 13, 2021

The SCC Leave Project: Predictions for April 15, 2021

Here's a look at the leave application decisions that the Supreme Court of Canada will be releasing on April 15, 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 7 leave application decisions coming out on April 15, 2021. 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. This week, we'll give a prediction on all 7 cases.

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

Cases to Watch

Sa Majesté la Reine c J.D. (*Her Majesty the Queen v J.D.*)

This is an application for leave by the Crown in a criminal case relating to the law of evidence for continuation of proceedings in criminal trials. During the trial, the first judge fell sick, and the case was transferred to a new judge under s 669.2 of the Criminal Code. The parties agreed that the transcripts of a previous witness' testimony would be given to the new judge. The new judge convicted the accused of 9 counts of sexual offences committed against minors. The Court of Appeal ordered a new trial on 7 of the 9 counts and set aside the sentences on those counts because the trial judge who continued the trial should not have accepted the witness' testimony for filing without ensuring that the consent of the accused was free, informed, and unequivocal and that the filing of the testimony would not affect the fairness of the trial.

- **Our Model's Prediction:** This case has a 41% chance of getting leave.

Possible Contenders

Gordon Schembri v Al Way

This is a civil dispute between real estate developers. There were two actions between the parties. The applicant brought a motion for summary judgment against the respondent to dismiss one of the two actions. The motion was granted but overturned on appeal. The case raises issues about the test for summary judgment articulated in *Hryniak* and whether there is a single test for both partial and full summary judgment motions.

- **Our Model's Prediction:** This case has an 8% chance of getting leave.

Unlikely Contenders

Gestion Tasa Inc. (aussi appelée La Plaza Sami Fruits ou Plaza Sami Fruits) c Ville de Montréal

This is a civil dispute arising in Quebec dealing with the contravention of a municipal by-law relating to the retail operation of retail space. The case raises issues about whether the by-law is consistent with the object and purpose of the enabling legislation.

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

Carole McSween c Ordre des psychologues du Québec

This case arises from a regulatory proceeding in Quebec dealing with the applicant's unauthorized practice as a psychotherapist. The issue in this case is whether the Court of Appeal erred by denying leave to appeal the conviction.

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

Long-Shots

Daniel Rousseau c Agence du revenu du Québec

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

A.A. v R.A.

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

Mohd Ali Hirji, also known as Mohamedali Hirji Mohamed Lalani v Owners Strata Corporation Plan VR 44

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

UPDATE ON APRIL 15: WHAT HAPPENED THIS WEEK?

Great results again this week from our model's predictions. The Supreme Court granted leave to appeal for the one case we identified as a Case to Watch: *Sa Majesté la Reine c J.D.* (*Her Majesty the Queen v J.D.*). The rest of the cases were

dismissed.

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