April 27, 2021

The SCC Leave Project: Predictions for April 29, 2021

Here's a look at the leave application decisions that the Supreme Court of Canada will be releasing on April 29, 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 14 leave applications decisions coming out on April 29, 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 provide a prediction in all 14 cases.

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

Cases to Watch

Her Majesty the Queen v Peter Ernest Edward Beckett

This case raises issues about jury instructions on fabrication, in a circumstantial case in which the alleged fabrication of a police statement is the main pillar of the Crown's case. The appellant was convicted by a jury of a first-degree murder after his wife drowned when they were boating. The Court of Appeal found that the trial judge erred in providing an instruction on fabrication. The Crown appeals on the question of whether it is required to adduce independent evidence demonstrating the implausibility of an exculpatory statement before the jury can consider whether it was fabricated.

- **Our Model's Prediction:** This case has a 42% chance of getting leave.

Sa Majeste la Reine c Pierre-Luc Berube-Gagnon

This case raises issues about the application of sentencing ranges and the principle of parity. The accused was an 18-year-old charged with aggravated assault. The trial judge based his sentence on a consideration of sentencing ranges for this type of offence. The Court of Appeal intervened on appeal, shortening the sentence, taking into account the accused's youth and lack of prior record.

- **Our Model's Prediction:** This case has a 29% chance of getting leave.

Possible Contenders

984274 Alberta Inc v Her Majesty the Queen

This is an appeal of a tax reassessment. The Minister determined that a rollover of land to the numbered company

was invalid and that the capital gain reported afterwards would be treated as business income for the parent company. After a settlement with the parent company, the Minister then issued a further reassessment purporting to implement the terms of the settlement and recover part of the refund granted to the numbered company. The Tax Court determined that the reassessment was not validly issued, but the Federal Court of Appeal allowed the Crown's appeal.

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

Hoegh Autoliners AS v Darren Ewert

This case arises from an application to dismiss a class action for want of jurisdiction. The defendants allegedly participated in a global price-fixing conspiracy relating to the marine transport of foreign vehicles to British Columbia. Neither defendant provided the services in BC, but it was alleged that they were part of the conspiracy that raised prices in BC. The courts found that the pleadings established a sufficient connection to BC.

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

Unlikely Contenders

Loan Oak Properties Ltd v Clayton Baille

This case is about the enforceability of a restrictive covenant which allegedly prevented the construction of a shed. The shed was built, but the parties disagreed as to whether the applicant had the requisite approval. The courts determined that the covenant was unenforceable.

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

Yowan Guillemette-Lamontagne c Sa Majeste la Reine

This is a defence appeal of a dangerous driving conviction, asking whether the trial judge's corrective instructions were sufficient where the Crown made erroneous comments about its burden of proof and about the right to silence.

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

Deng Garang v Her Majesty the Queen

The accused argues that he was pressured into a guilty plea when his request for a mid-trial adjournment was refused. The accused had repeatedly retained and discharged different counsel, including in the middle of trial.

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

Bernard Tremblay v Ordre des ingénieurs du Québec

This is an appeal of an order dismissing monetary claims in an employment dispute. The appellant is a project manager who was dismissed from two large construction contracts where he worked for contractors hired by the Minister. The Courts found no fault on the part of the Minister, and the Court of Appeal determined that the appeal had no reasonable chance of success.

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

Long-Shots

Victor Cantore v Nemaska Lithium Inc. (Formerly Nemaska Lithium Inc., Nemaska Lithium Whabouchi Mine Inc., Nemaska Lithium Shawinigan Transformation Inc., Nemaska Lithium P1p Inc. and Nemaska Lithium Innovation Inc.)

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

HE, in her quality as liquidator of the succession of FK v André Gabbay et associés
inc

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

Brian Shenker v Nemaska Lithium Inc

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

Martin Cousineau v Gino Villeneuve, in his capacity as Syndic of the Ordre des audioprothésistes du Québec, Attorney General of
Quebec

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

Nabil Edward Fanous v Steven Lapointe

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

Bernard Tremblay v Attorney General of Quebec

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

UPDATE ON APRIL 29: WHAT HAPPENED THIS WEEK?

Once again, our model's predictions were consistent with the outcome of this week's decisions. The Court dismissed all 14 of the leave applications this week, meaning none of the cases that our model had identified as having a relatively low probability of success were granted leave.

Our model had identified two Cases to Watch this week, both of which were Crown appeals: *Her Majesty the Queen v Peter Ernest Edward Beckett* and *Sa Majeste la Reine c Pierre-Luc Berube-Gagnon*. These cases will not always be granted leave, despite the higher probability of success on such an application. For instance, our prediction that Beckett had a 42% chance of getting leave means that a case like this would be granted leave approximately two out of five times. This week, neither of the Cases to Watch was granted leave.