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The SCC Leave Project: Predictions for June 10, 2021

Here's a look at the leave application decisions that the Supreme Court of Canada will be releasing on June 10, 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 four leave applications decisions coming out on June 10, 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 will provide predictions for all four cases.

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

Possible Contenders

Caisse Desjardins de Limoilou c Procureur général du Canada

Section 227(4.2) of the *Income Tax Act* exempts creditors holding an immovable hypothec from the Crown's deemed trust for payroll deductions, but only up to the amount of the prescribed security interest calculated in accordance with section 2201 of the *Income Tax Regulations*. The creditor, Caisse Desjardins, challenged the validity of section 2201 of the *Income Tax Regulations*, and argued that its prescribed security interest did not take into account the amount of its suretyship, thereby increasing the amount of its priority claim over the Crown's deemed trust. Caisse was successful at first instance. The Quebec Court of Appeal allowed the appeal, in part, and deducted the amount of the suretyship from the prescribed security interest.

- **Our Model's Prediction:** This case has a 10% chance of getting leave.

Ralph Abdel Deyab v Her Majesty the Queen

A taxpayer was reassessed under section 152.4 of the *Income Tax Act* to include substantial sums in his income that were paid to him from his company in previous years, as well as penalties for gross negligence. The notices of reassessment were issued after the expiration of the normal reassessment period for several of the years in issue. The taxpayer's appeal from the reassessments was dismissed by the Tax Court of Canada. The Federal Court of Appeal allowed the appeal in relation to the gross negligence penalties, but dismissed the appeal in relation to the amounts included in income in all previous years.

- **Our Model's Prediction:** This case has a 9% chance of getting leave.

Peace River Hydro Partners v Petrowest Corporation

Petrowest's court appointed receiver commenced an action against Peace River, claiming amounts allegedly owed under agreements that included mandatory arbitration clauses. The Court of Appeal held that the arbitration clauses were inoperable because the receiver was not a party to the arbitration agreements. Accordingly, the *Arbitration Act* was not engaged, the stay motion was dismissed, and the action was permitted to go ahead in court.

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

Long-Shots

Noella Hébert v Bruce Wenham

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

UPDATE ON JUNE 10: WHAT HAPPENED THIS WEEK?

Peace River Hydro Partners v Petrowest Corporation was granted leave to appeal to the Supreme Court of Canada; the three other applications were dismissed. This appeal will give the Supreme Court the opportunity to build on their recent jurisprudence in two important areas: the interpretation of arbitration clauses and the powers of court-appointed receivers in the insolvency context.

Although our model predicted that *Petrowest* had only a 6% chance of getting leave, this case demonstrates that low probability doesn't mean no chance– even the 6% case will get leave some of the time.