June 15, 2021

The SCC Leave Project: Predictions for June 17, 2021

Here's a look at the leave application decisions that the Supreme Court of Canada will be releasing on June 17, 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 eight leave application decisions coming out on June 17, 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. That leaves eight cases in which we'll give a prediction.

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

Possible Contenders

BJT v JD

In this family law case, a couple separated after less than a year of marriage. Unbeknownst to the father, the mother was pregnant. Shortly after the child was born, the applicant grandmother came to reside with the mother and child. When the child was four years of age, he was apprehended by the Director of Child Protection. He was eventually placed in the care of the applicant grandmother. The grandmother and father submitted competing parenting plans, with the trial judge awarding custody to the grandmother and the appellate judge to the father. At issue is whether there is a legal presumption favouring a "natural parent," how the "natural parent" factor should be considered when determining the best interests of a child, and when an appellate court can intervene in determining the best interests of a child, among other issues.

- **Our Model's Prediction:** This case has a 20% chance of getting leave.

Seattle Environmental Consulting Ltd, Mike Singh also known as Manoj Singh v Workers' Compensation Board of British Columbia

In 2012, the respondent, the Workers' Compensation Board filed a petition, seeking an injunction restraining the applicants from contravening the *Workers Compensation Act*. When the petition came for a hearing, the applicants sought an adjournment and consented to an interim injunction restraining their business in the asbestos abatement industry until the petition was heard. Later, the applicants were found in contempt of the interim injunction and 21 breaches of the *Workers Compensation Act* and its regulations. The judge granted an injunction prohibiting the applicants from carrying on their business for an indefinite period or until further order of the

court. The Court of Appeal dismissed the applicants' appeal.

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

Stevan Utah v Attorney General of Canada, Darryl Zelisko

The applicant, Mr. Utah, brought an action for abuse of public office, alleging that a federal government officer failed to process his 2007 request for refugee protection in a timely manner, causing him injury. The respondent brought a summary judgement motion, on the ground that the relevant limitation period expired before Mr. Utah started his action. The Federal Court dismissed the motion for summary judgment, but this was reversed by the Federal Court of Appeal. At issue is the correct method for interpreting the limitation period.

- **Our Model's Prediction:** This case has a 7% chance of getting leave.

Caliber Midstream GP LLC, Caliber Midstream Partners, LP v Bidell Equipment LP

In this contract dispute, the plaintiff Bidell Equipment LP won a bid to manufacture units for Caliber Midstream GP LLC and Caliber Midstream Partners, L.P. The plaintiff commenced work but the order was cancelled before the work was completed. The plaintiff commenced an action for unpaid amounts because of the cancellation, among other fees. The trial judge awarded over $11 million and the Court of Appeal dismissed an appeal.

- **Our Model's Prediction:** This case has a 7% chance of getting leave.

Tiffany Jo Kreke v Amro Abdullah M Alansari

In this family law case, the parties separated after ten years of marriage. They had one child together and the applicant had two children from a previous marriage. At first instance, joint custody of the one child was awarded, with primary care to the applicant who was allowed to relocate within the province. The decision was overturned on appeal and a new trial was ordered on the issues of custody, access, primary care and relocation.

- **Our Model's Prediction:** This case has a 7% chance of getting leave.

Unlikely Contenders

Gilbert Paul Robinson v Her Majesty the Queen

In this trial for murder, the applicant applied for a mistrial based on the failure of the Crown to disclose documents to the defence relating to the Crown witnesses' claims for restitution. The application for a mistrial was dismissed.

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

6075240 Canada Inc v Minister of National Revenue

The applicant, a taxpayer, failed to file an income tax return in 2010 and 2012. The Minister of National Revenue therefore made an estimated assessment for those years. Years later, the applicant tried to file the missing income tax returns, which the Minister of National Revenue refused to process on the basis that they could not make a reassessment after the "normal reassessment period" defined in the *Income Tax Act*. The judicial review was dismissed at first instance and at the Court of Appeal.

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

Ferdinando Polla v Zvonimir Josipovic, Stephen P Kovacevic, Stanko Bingula, Anton Jurincic, Mato Menalo, Ante Mimica, Ignac Radencic, Joe Sertic, Retford & Bates LLP

The applicant commenced an action to recover lost investment in the Croatian (Toronto) Credit Union Limited, alleging common law and statutory misrepresentation and negligence. At trial, the applicant was unsuccessful in amending its statement of claim, as the amendment asserted a new claim for statutory misrepresentation that was statute-barred and the respondents would be irreparably prejudiced if the amendment were permitted. The applicant's action was dismissed at first instance and on appeal.

At issue in this leave to appeal is what is necessary to establish a claim for misrepresentation under s. 82(3) of the *Credit Unions and Caisses Populaires Act* and the relationship between common law negligent misrepresentation and the right of action contained in s. 82(3) of the same *Act*.

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

UPDATE ON JUNE 17: WHAT HAPPENED THIS WEEK?

This week, the Supreme Court of Canada granted leave to appeal for two out of the eight cases it released leave decisions in. Both were family law cases.

- *BJT v JD* – this was our model's most likely contender this week. Our model predicted this case had a 20% chance of getting leave.
- *Tiffany Jo Kreke v Amro Abdullah M Alansari* – our model predicted this case had a 7% chance of getting leave.

To date, no Long-Shots have been granted leave and only one Unlikely Contender.