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The SCC Leave Project: Predictions for June 24, 2021

Here's a look at the leave application decisions that the Supreme Court of Canada will be releasing on June 24, 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 nine leave application decisions coming out on June 24, 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, that leaves predictions for eight of the nine cases.

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

Possible Contenders

City of Saskatoon v Brandt Properties Ltd.

This is a municipal taxation case that calls into question the validity of a taxation assessment model which was based on allegedly arbitrary distinctions made between adjacent locations in the City. The owners brought a proceeding before the City's Board of Revision but were unsuccessful. Their appeal to the Saskatchewan Municipal Board Assessment Appeals Committee was also dismissed. On appeal, the Court of Appeal, determined that the Appeals Committee erred by failing to address arguments that the assessment model was not based on value-driving characteristics as demanded by *The Cities Act*, and remanded the matter back. The City now seeks leave to appeal that decision. We at the SCC Leave Project find this leave application particularly interesting because a data-based model is essentially on trial.

- **Our Model's Prediction:** This case has a 22% chance of getting leave.

Abdulaziz Egal v Her Majesty the Queen

The accused was tried jointly with three co-accused. Counsel for one co?accused cross?examined a witness on something the witness said during a police interview that, if believed, was prejudicial to Mr. Egal. The charge to the jury included instructions on the mental element of second-degree murder. The jury convicted Mr. Egal of second-degree murder. The Court of Appeal dismissed his appeal.

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

AC, et al. v Her Majesty the Queen in Right of Alberta (Alta.)

This leave to appeal raises questions about the application of the test for interlocutory injunctions, and in particular the factors to be considered at the balance of convenience stage in an action that alleges *Charter* violations. The applicants were receiving benefits under Alberta's Support, Financial Assistance program when a new regulation lowered the upper age of eligibility from 24 to 22 years of age. The applicants commenced this action alleging breaches of fiduciary duty and of the *Charter* and brought a motion for an interlocutory injunction to stay the coming into force of the regulation pending trial. The motions judge granted the injunction, but it was overturned on appeal.

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

Télébec, société en commandite v 9238-0831 Québec inc. faisant affaires sous le nom de Caféier-Boustifo

This is a leave to appeal a decision by the Quebec Superior Court (appeal dismissed by the Quebec Court of Appeal) to certify a class action. The class action is brought against a telecommunications company (Telebec) providing telephone and Internet services. The class alleges abusive business practices based on an automatic renewal clause and a cancellation penalty clause in the agreement. The telecommunications company (applicant for leave) asserts that the CRTC has exclusive jurisdiction to hear this dispute.

- **Our Model's Prediction:** This case has a 5% chance of getting leave.

Unlikely Contenders

André Duchesneau v Ordre des podiatres du Québec

This is an application for leave to appeal a motion for leave to appeal to the Quebec Court of Appeal. The underlying proceeding was one in which the applicant was charged in March 2016 by the Ordre des podiatres du Quebec with violating the Quebec Professional Code. In March 2019 he filed a motion for a stay of proceedings for unreasonable delay. The Quebec Superior Court dismissed the motion having concluded that the net delay was less than 18-months, and the Quebec Court of Appeal refused leave to appeal. The applicant was an unrepresented person and raises issues in his application relating to whether unrepresented persons can make informed

decisions to waive their right to contest delay without having been advised in advance of the consequences of that acceptance or silence.

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

David Palombi v Angela Elizabeth Van

This is a family law dispute, raising some jurisdiction and procedural questions. The parties separated and obtained a final order from the Ontario Superior Court addressing custody, access, child support and related matters. The applicant filed an appeal in the Divisional Court and, later, a motion to transfer his appeal to the Court of Appeal. The Divisional Court dismissed his appeal for want of jurisdiction, and dismissed his motion. The Court of Appeal refused leave to appeal.

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

Houston Thomas Engio v Neilas (799 College St) Inc, et al

This is an appeal from a motion to enforce a settlement agreement brought by the respondent, and granted by the Ontario Superior Court. The applicant brought an appeal to the Court of Appeal and a motion to adduce fresh evidence. Both were dismissed.

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

Long-Shots

Éric Masson, et al v Telus Mobilité, et al

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

UPDATE ON JUNE 24: WHAT HAPPENED THIS WEEK?

Annapolis Group Inc v Halifax Regional Municipality was granted leave to appeal to the Supreme Court of Canada; the eight other applications were dismissed. This appeal will give the Supreme Court the opportunity to address the question of what constitutes a *de facto* expropriation.

As Lenczner Slaght is counsel to Annapolis Group on this appeal, we did not provide a prediction on this case getting leave. With respect to the other cases, that none of them were

granted leave is consistent with our model's predictions: there were no "Cases to Watch" this week (greater than 25% chance that leave will be granted).