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The SCC Leave Project: Predictions for May 13, 2021

Here's a look at the leave application decisions that the Supreme Court of Canada will be releasing on May 13, 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 two leave application decisions coming out on May 13, 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 two cases.

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

Possible Contenders

Ashley Suzanne Barendregt v Geoff Bradley Grebliunas

This is an application for leave to appeal by the claimant mother in a family law matter. The trial judge granted the mother primary residence of the parties' two children, allowing her to relocate. One of the main considerations in the decision was the parties' financial situation. The respondent father appealed and sought to adduce new evidence about his financial situation. The Court of Appeal allowed the new evidence and overturned the trial decision. It held, *inter alia*, that it was in the interests of justice to hear the new evidence because it displaced the trial judge's concerns about the parties' financial positions.

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

Unlikely Contenders

Rollingson Racing Stables Ltd v Horse Racing Alberta

This is an application for leave to appeal by the respondent to a complaint before the Board of Stewards. The complainant unsuccessfully alleged disqualifying interference regarding the winning horse of the 2017 Canadian Derby. The complainant appealed to the Horse Racing Alberta Appeal Tribunal, which found the winning horse was disqualified; however, of the two members who heard the appeal, one member had her appointment rescinded while the decision was under reserve. The respondent sought judicial review, on the basis that the Appeal Tribunal did not reach a quorum. The Queen's Bench found it was reasonable to find a quorum was reached, and the

Court of Appeal dismissed the appeal.

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

UPDATE ON MAY 13: WHAT HAPPENED THIS WEEK?

The Supreme Court granted leave to one case this week. A Possible Contender, *Ashley Suzanne Barendregt v Geoff Bradley Grebliunas* was granted leave despite having only a 7% chance according to our model. This case should provide clarity on when new evidence is admissible in the context of a family law appeal. While this is our lowest probability prediction case that has been granted leave since our model went live, we expect that some cases with less than a 10% chance should get leave sometimes. As we have noted before, cases with a 5% chance of getting leave should get leave, on average, 5% of the time.

Finally, an Unlikely Contender, with our model giving it only a 5% chance, *Rollingson Racing Stables Ltd v Horse Racing Alberta* was not granted leave. With this outcome, it seems as though the results of the 2017 Canadian Derby are finally official.