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May 4, 2021

# The SCC Leave Project: Predictions for May 6, 2021

Here's a look at the leave application decisions that the Supreme Court of Canada will be releasing on May 6, 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 25 leave application decisions coming out on May 6, 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 be providing a prediction on all 25 cases.

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

### Possible Contenders

*Sa Majesté la Reine c Mélanie Ste-Marie*

This is an application for leave to appeal by the Crown in a criminal matter involving four accused. The accused were charged with conspiracy to launder proceedings of crime, laundering proceeds of crime, and commission of an offence for a criminal organization. The respondents moved for a stay under s 11(b) of the *Charter* for unreasonable delay; that stay was denied by the Court of Quebec. The Quebec Court of Appeal quashed the convictions and ordered a stay of proceedings.

- **Our Model's Prediction:** This case has a 23% chance of getting leave.

*Lloyd's Underwriters (as insurer of SNC-Lavalin Inc, formerly doing business as Terratech Inc and SNC-Lavalin Environnement Inc, and Alain Blanchette) v Lise Deguise and Christian Yard*

This application involves a series of cases relating to liability of various parties in respect of pyrrhotite, a compound that can cause damage to concrete. In the series of cases below, the defendants were found liable and apportioned liability between them. The case raises various issues of Quebec insurance law, including whether certain provisions of the Quebec Civil Code have the effect of limiting the erosion of the total coverage available in Quebec under liability insurance towers.

- **Our Model's Prediction:** This case has a 18% chance of getting leave.

*0799701 B.C. Ltd v Canex Investment Corporation*

This is a commercial dispute. The applicant defendants were found to have acted oppressively by taking out a mortgage on certain properties and paying out the proceeds of that mortgage to the personal defendants. The British Columbia Court of Appeal dismissed the defendants' appeal, and allowed a cross-appeal by the plaintiffs and awarded punitive damages.

- **Our Model's Prediction:** This case has a 17% chance of getting leave.

*Daniel Theodore v Her Majesty the Queen*

The accused were tried in front of a jury and convicted of first-degree murder. The accused were indigenous. Potential jurors were not challenged for cause or otherwise screened for racial bias, and the jury charge did not include an instruction about the need to set aside biases against indigenous persons. The Saskatchewan Court of Appeal dismissed the appeals.

- **Our Model's Prediction:** This case has a 15% chance of getting leave.

*L'Agence du revenu du Québec c Philippe Custeau*

This case raises issues under the general anti-avoidance rule in income tax law. The respondents had been successful in vacated notices of assessment by the Agence du Revenue du Quebec that had added a deemed dividend of almost $500,000 to each of the respondents. The Quebec Court of Appeal dismissed an appeal by the ARQ.

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

## Unlikely Contenders

*Vimal Chandra Iyer v Her Majesty the Queen*

The accused was convicted of 33 counts of fraud over $5,000 as a result of using investors' funds intended to be used for real estate development on personal luxury items. The Alberta Court of Appeal dismissed his appeal.

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

*Restaurant Le Relais de Saint-Jean inc c Agence du revenu du Québec*

The applicant was a restaurant that had been the subject of a tax audit by the Agence du Revenu du Quebec. That gave rise to a notice of assessment imposing additional tax liability, and the Canada Revenue Agency issued a notice of assessment as well. Those notices of assessment were eventually set aside by the Tax Court of Canada. The applicant restaurant then commenced a civil claim against the ARQ and the CRA. The action was dismissed by the Superior Court, finding that the claims were prescribed and that the defendants were not at fault. The Quebec Court of Appeal concluded that the claims were not prescribed, but dismissed the appeal in any case on the basis that the defendants were not at fault.

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

*Phat Steven Dong (a.k.a Steven Dong) v Royal Pacific Real Estate Group Ltd*

The applicant, Mr. Dong, was a real estate agent licensed to act as a representative by the respondents. The respondents were concerned about how Mr. Dong was using the respondents' trade names, and that consumers would confuse some of Mr. Dong's services as being endorsed by Royal Pacific. The British Columbia Supreme Court allowed an action for passing off against Mr. Dong, and the British Columbia Court of Appeal dismissed Mr. Dong's appeal.

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

*3295036 Canada Inc v Agence du revenu du Québec*

This case involves the use of a tax planning technique called the "Quebec shuffle". The applicant numbered company unsuccessfully sought to appeal a tax reassessment that disallowed a carry-forward of a net capital loss. The Quebec Court of Appeal dismissed a further appeal.

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

*Harinderdeep Singh Brar v Her Majesty the Queen*

The applicant was charged and convicted with a single count of fraud against TD Canada Trust. Among the evidence relied on for his conviction were still photos from ATM and branch surveillance cameras that had been admitted pursuant to section 29 of the *Canada Evidence Act*. The Alberta Court of Appeal dismissed an appeal by the accused.

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

*Benjamin Mossman v Her Majesty the Queen*

The applicants were charged with contraventions of both provincial and federal environmental legislation arising from a discharge of mine waste into the environment. The accused alleged that some of the observational evidence gathered from the site had been obtained in breach of the accused's *Charter* rights. One of the defendants was convicted, and the other acquitted. On appeal to the British Columbia Supreme Court, a new trial was ordered. The British Columbia Court of Appeal dismissed an application for leave to appeal.

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

*Louis-Pierre Lafortune c Sa Majesté la Reine; Roberto Amato c Sa Majesté la Reine*

These are two related leave to appeal applications arising from the same Court of Appeal decision. The applicants were each convicted by a jury of economic offences, including conspiracy to launder proceeds of crime. At trial, the accused brought motions for direct verdicts, and the trial judge granted those motions in part. Both the accused and the Crown appealed to the Quebec Court of Appeal, and both appeals were dismissed.

- **Our Model's Prediction:** These cases have a 2% chance of getting leave.

## Long-Shots

*Daniel Lorne Snooks c Procureur général du Canada*

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

*Justin Germa c Procureur général du Canada*

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

*Robert Anthony Paul c Procureur général du Canada*

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

*Wallace Platt v Canada Revenue Agency*

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

*Bobbie Mann v Her Majesty the Queen*

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

*Mahbubur Rahman v Minister of Citizenship and Immigration*

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

*Balraj Shoan v Attorney General of Canada*

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

*Ahasanullah Chowdhury v City of Toronto*

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

*Volodymyr Hrabovskyy v DAS Legal Protection Inc*

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

*Volodymyr Hrabovskyy v Chubb European Group SE*

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

*Volodymyr Hrabovskyy v University of Montréal*

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

*Shu He Huang v Ancieto M. Braga*

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

**UPDATE ON MAY 6: WHAT HAPPENED THIS WEEK?**

In its May 6, 2021 decisions, the Supreme Court of Canada granted leave to appeal in *Sa Majesté la Reine c Mélanie Ste-*

*Marie*, while dismissing all of the other leave applications. Our model had put *Ste-Marie* as the highest likelihood case to get leave, at 23%. We would not have been surprised with no leave applications granted, and we equally would not have been surprised with any one of a handful of cases being granted leave. Leave being granted in *Ste-Marie,* but not in other cases is very much consistent with the expectations of our model.

This outcome further confirms the utility of our model as a helpful screening device for leave applications. Since we launched our model, no case that our model has predicted to have less than a 10% chance has gotten leave. Of course, 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. The fact that outcomes are, on average, in line with our model's predictions show the value of this type of data-driven approach.