



Solomiya Zakharchuk
416-238-5785
szakharchuk@litigate.com

July 20, 2021

The SCC Leave Project: Predictions for July 22, 2021

Here is a look at the leave application decisions that the Supreme Court of Canada will be releasing on July 22, 2021.

Each week, we will 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 will 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 does not 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 will not 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 six leave application decisions coming out on July 22, 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 provide predictions for all six cases.

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

Possible Contenders

Joshua Lee Ratt v Her Majesty the Queen

Following an altercation Mr. Ratt, an Indigenous man, was arrested and taken into police custody where he uttered threats at his arresting officers. At trial, Mr. Ratt was convicted of aggravated assault, obstructing police, and two counts of breach of probation. The trial judge acquitted Mr. Ratt of charges of threatening to cause bodily harm and death on the basis of absence of mens rea. On the charge of aggravated assault, Mr. Ratt was sentenced to 46 months imprisonment, but the sentence was reduced to 25 months, giving credit to time served. He received a concurrent sentence of three months for obstructing police, and 10 months for each count of breach of probation.

The Crown appealed the acquittal and the sentence length on the basis that the trial judge incorrectly balanced sentencing principles and placed too much weight on rehabilitation in sentencing, and not enough on protection of the public. The Court of Appeal allowed the appeal from acquittal and ordered a new trial for uttering threats. The Court of Appeal held that a fit sentence in the circumstances was five years and six months imprisonment, finding that protection of the public was indeed not given enough weight at trial.

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

RJH v Her Majesty the Queen

The appellant pleaded guilty to possessing and making available or distributing child pornography after police executed a search warrant and found images and videos of child pornography on the appellant's iPad. The appellant was

diagnosed with Paedophilic Disorder and was assessed as a moderate risk of reoffending. In addition to a 30-month sentence, the judge made orders under sections 161 (a)-(c) of the *Criminal Code* prohibiting the appellant from engaging in certain conduct or attending areas providing access to children under 16 for a period of 25 years. The Court of Appeal allowed the appeal in part and reduced the prohibition to 15 years. In reducing the prohibition period, the Court of Appeal examined the seriousness of the offence, the circumstances in which the offence took place, and the nature and extent of risk posed to children.

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

Floriano Daponte v Her Majesty the Queen

The respondents were charged with several drug trafficking offences, possession of proceeds of crime and the possession of a prohibited weapon. 30.5 months elapsed between the time the respondents were charged and the trial. The trial judge entered a stay of proceedings on the basis that this delay exceeded the presumptive 30-month ceiling established in *R v Jordan* to bring cases to trial on the basis that the Crown did not rebut the presumption of unreasonable delay. The Court of Appeal allowed the Crown's appeal. It held that the trial judge erred in finding that the Crown's *certiorari* application was not an exceptional circumstance. The Court of Appeal subtracted 3 months from net delay, set aside the stay of proceedings, and remitted the matter to trial.

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

Luc LeBlanc v Her Majesty the Queen

A couple was found with cocaine in their recreational vehicle (RV) at the US.-Mexico border. The couple, along with the registered owner of the RV eventually told authorities that Mr. LeBlanc had bought the vehicle and was the mastermind of the cocaine importing scheme. Mr. Leblanc was charged with conspiracy to import cocaine and the couple, along with the owner of the RV, testified against him. Additionally, in trial, the Crown entered evidence obtained from a different RV driven by Mr. Leblanc in Canada. Mr. Leblanc was convicted by a jury. The Court of Appeal dismissed the appeal.

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

Unlikely Contenders

Yochanan Ishakis also known as Jason Ishakis, et al v Janet Tutt

A group of sisters sold a business that they inherited from their father to a group of companies controlled by Gustav Kastner who then sold it to a group of companies controlled by Jason Ishakis (Fairfax). This sale included the assignment of three promissory notes to the sisters that were granted by Fairfax to Kastner's companies. In 2012, Kastner sued Fairfax for breach of the agreement of purchase and sale. Following a delay in the Kastner companies' lawsuit, the sisters brought a separate action against Fairfax for the payment of interest on the promissory notes. In response, Fairfax filed a motion to amend its statement of defence to include section 8 of the *Interest Act* to prevent the sisters from claiming interest on the promissory notes. The Master held that the 4-year delay between when Fairfax first issued its statement of defence and moved to amend their statement of defence was inexplicable and gave rise to a presumed prejudice that was not rebutted by the applicants. The Divisional Court upheld the Master's decision.

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

Long-Shots

Bergevin v Her Majesty the Queen

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

UPDATE ON JULY 22: WHAT HAPPENED THIS WEEK?

The Supreme Court did not grant leave to any cases this week, which is consistent with our model's predictions. The outcome was unsurprising as there were 3 possible contenders, 2 unlikely contenders, and 1 long-shot. There were no "Cases to Watch" this week (greater than 25% chance that leave will be granted).