Unofficial English translation of the Judgment of the Court

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| Moniz c. Procureur général du Canada | 2023 QCCA 1109 |
| COURT OF APPEAL |
| CANADA |
| PROVINCE OF QUEBEC |
| REGISTRY OF | MONTREAL |
|  |
| No.: | 500-09-700167-232 |
|  (550-17-012284-210) |
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| MINUTES OF HEARING |
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| DATE: September 1, 2023 |  |
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| CORAM: THE HONOURABLE | MARTIN VAUCLAIR, J.A. |
|  | STEPHEN W. HAMILTON, J.A. |
|  | PETER KALICHMAN, J.A. |

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| APPELLANTS |  |
| SILVIA MONIZMAGALIE cHARLESBOIS-CHAURETKARINE LAVOIENICOLE JOLLYNADINE VILLENEUVEJULIE POIRIER | ABSENT AND UNREPRESENTED |
| RESPONDENT | COUNSEL |
| ATTORNEY GENERAL OF CANADA | Mtre VIRGINIE HARVEYMtre MARIÈVE SIROIS-VAILLANCOURT(*Department of Justice Canada*)Absent |

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| On appeal from a judgment rendered on April 28, 2023, by the Honourable Carole Therrien of the Superior Court, District of Gatineau. |

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| DESCRIPTION: | **Application to dismiss an appeal** (article 365 of the *Code of Civil Procedure*) |

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| Court Clerk: René Gutknecht | Room: Pierre-Basile-Mignault |

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| HEARING |

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|  | **Continuation** of hearing of August 28, 2023. The parties were dispensed from being present at court.**BY THE COURT: Judgment – see page 3.** |
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| René Gutknecht, Court Clerk |

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| JUDGMENT |

1. The appellant and five of her colleagues, all federal public servants, instituted an action in 2021 to have the *Policy on COVID-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police* declared inapplicable to federal public servants whose duties allow them to work remotely.
2. Originally, the appellants were co-plaintiffs and were represented by counsel. Their counsel ceased to act on February 20, 2023. After the appellants were put on formal notice to appoint another lawyer or indicate their intention to represent themselves, the appellants amended their application to affirm that they were appointing the appellant Moniz to act on their behalf. She signed the pleading as mandatary for the group, without being represented by counsel.
3. The respondent contested this manner of proceeding, and in a judgment dated April 28, 2023, Carole Therrien J. of the Superior Court, District of Gatineau, agreed.[[1]](#footnote-1) The judge concluded that a mandate under article 91 C.C.P. allowed the appellant to act on behalf of the group, but it did not go so far as to authorize her to represent the group before the Court. Article 87 C.C.P. requires that a mandatary be represented by a lawyer. Accordingly, the judge gave the appellant, as mandatary, ten days to appoint a lawyer, failing which she gave the mandators ten days to file a notice of their intention to represent themselves or appoint a lawyer themselves, failing which she would declare the originating application to be void with respect to the mandators. She found that the appellant had sufficiently indicated her intention to represent herself.
4. The notice of appeal was filed by the appellant as mandatary for the six mandators.
5. The respondent has presented an application to dismiss. He asks for the appeal of the five other mandators to be dismissed on the ground that it was improperly initiated and presents no reasonable chance of success. The result would be to dismiss the application with respect to the five other mandators. The appellant would continue alone.
6. Setting to one side the questions of whether leave is required and whether the appellant, as mandatary, may alone sign the notice of appeal as she did, the application to dismiss the appeal should be granted because it presents no reasonable chance of success and could even be legally destined to fail. The judge was right to conclude that article 87 C.C.P applies to a mandatary appointed under article 91 C.C.P. and that such a mandatory must therefore be represented by a lawyer, because that is what this Court has previously decided.[[2]](#footnote-2)
7. In any event, appellant Moniz’s proceeding, which is declaratory in nature, would have the same legal effect on all the parties. In other words, the appellant may proceed as the sole plaintiff, and if she is successful, the declaratory judgment will benefit all [translation] “federal public servants whose duties allow them to work remotely”.

**FOR THESE REASONS, THE COURT:**

1. **GRANTS** the application to dismiss the appeal, with legal costs;
2. **DISMISSES** the appeal, with legal costs.

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|  | MARTIN VAUCLAIR, J.A. |

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|  | STEPHEN W. HAMILTON, J.A. |

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|  | PETER KALICHMAN, J.A. |

1. *Charlebois-Chauret c. Procureur général du Canada*, 2023 QCCS 1364. [↑](#footnote-ref-1)
2. *Burdet c. Carleton Condominium Corporation No. 396,* 2018 QCCA 1192 at para. 11, citing *Bibaud v. Québec (Régie de l’assurance maladie)*, 2004 SCC 35, [2004] 2 S.C.R. 3, 2004 SCC 35 at para. 11; see also *Carle c. CBC/Radio Canada*, 2019 QCCS 3166 at paras. 28–32 and *Sigouin-Doré c. Champoux*, 2023 QCCS 2349. [↑](#footnote-ref-2)