

COURT OF APPEAL

CANADA
PROVINCE OF QUEBEC
MONTREAL SEAT

No.: 500-09-031427-255
(500-17-128547-240)

MINUTES OF HEARING

DATE: April 10, 2025

THE HONOURABLE PATRICK HEALY, J.A.

APPLICANT	COUNSEL
ATTORNEY GENERAL OF CANADA	Mtre MARIE-EMMANUELLE LAPLANTE Mtre BENJAMIN CHARTRAND Mtre STÉPHANIE LISA ROBERTS <i>(Justice Canada)</i>
RESPONDENT	COUNSEL
MOHAWK COUNCIL OF KAHNAWÀ:KE	Mtre ISABELLE BOISVERT-CHASTENAY <i>(O'Reilly, André-Grégoire & Associés)</i> Mtre KATICA GENEVIEVE SPILLANE <i>(Mohawk Council of Kahnawake)</i>
IMPLEADED PARTIES	COUNSEL

ATTORNEY GENERAL OF QUEBEC	Mtre MATHIEU JACQUES (<i>Bernard, Roy (Justice-Québec)</i>)
NORTHVOLT BATTERIES NORTH AMERICA INC.	Mtre ANNIE BERNARD (<i>Fasken Martineau DuMoulin</i>) By videoconference
BENOÎT CHARETTE , in his quality of Minister of the environment, the fight against climate change, wildlife and parks	ABSENT AND UNREPRESENTED

DESCRIPTION: Application for leave to appeal from a judgment rendered in the course of a proceeding on February 18, 2025 by the honourable **Andres C. Garin, district of Montreal** (Arts. 31 and 357 C.C.P.).

Clerk at the hearing: Mélanie Camiré	Courtroom: RC-18
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HEARING

9:56 Commencement of the hearing. Identification of counsel.
Preliminary remarks. Exchanges between the parties.

10 h 01 Submissions by Mtre Boisvert-Chastenay.

10 h 13 Submissions by Mtre Laplante.

10 h 27 BY THE JUDGE: Judgement will ben rendered on the minutes of the hearing
and will be sent to the parties when ready.
Conclusion of the hearing.

Mélanie Camiré, Clerk at the hearing

JUDGMENT

[1] The applicant seeks leave to appeal against a judgment by the Superior Court in the course of proceedings that dismissed its declinatory exception and application to dismiss.

[2] At the core of this matter is the proposed construction and operation of an industrial project. The respondent brought proceedings in the Superior Court for declaratory relief on the ground that the Government of Canada breached its duty to consult and accommodate the respondent with respect to this project.

[3] The applicant presented a declinatory exception and a motion to dismiss the respondent's action on the basis that the Federal Court has exclusive jurisdiction in such matters. The Superior Court dismissed these motions and affirmed its jurisdiction.

[4] The applicant seeks leave to appeal the decision of the Superior Court. It claims that the decision decides in part the dispute between the parties and causes a prejudice that could not be set aside in a final judgment. It claims also that the issue of jurisdiction is an important question of public law that must be resolved before any proceedings on the merits commence.¹

[5] The judgment of the Superior Court is apparently inconsistent with jurisprudence across Canada that affirms the exclusive jurisdiction of the Federal Court in matters relating to the duty of consultation and accommodation by the Government of Canada with indigenous communities. In this regard the proposed appeal has a reasonable chance of success, although I express no opinion on that point. Moreover, the general importance of the questions presented by the applicant is beyond question. It is also consistent with the guiding principles of procedure, notably the principle of proportionality. In short, I am satisfied that the present applications meet the conditions stipulated by article 31 C.C.P. and the jurisprudence.²

[6] Considering that the application for leave to appeal should be granted;

[7] Considering that the proceedings should be undertaken without briefs, with memoranda being filed;

¹ See *Droit de la famille – 212084*, 2021 QCCA 1638, para. 5.

² *Francoeur v. Francoeur*, 2020 QCCA 1748, para. 8.

[8] Considering ss. 13 and 58 of the *Regulation of the Court of Appeal of Quebec in Civil Matters* (“*R.C.A.Q.Civ.M.*”), which read as follows:

13. *Technological version.* The parties shall send to the Court office a technological version of the paper version of their pleadings, their briefs or memoranda, or any other document.

[...]

58. *Content and Format.* Subject to the second paragraph, sections 47, 48 and 51 to 56 of this regulation apply to memoranda.

Parts I to IV of the argument on the principal appeal shall not exceed ten pages, unless the Court or a judge orders otherwise. The same applies to the incidental appeal, if any.

[9] Considering the rule set out in art. 376 of the *Code of Civil Procedure*, which reads as follows:

376. The appeal lapses if the appellant does not file a brief or a memorandum within the time limit for filing. The appellate clerk issues a certificate of lapse of appeal, unless an appellate judge is seized of an application for an extension.

A respondent or any other party that does not make a timely filing of its brief or memorandum is precluded from filing and cannot be heard at the hearing unless so authorized by the Court of Appeal.

FOR THESE REASONS, THE UNDERSIGNED:

[10] **GRANTS** the application for leave to appeal;

[11] **GRANTS** leave to appeal;

[12] **ORDERS** a stay of the proceedings in first instance;

[13] **DEFERS** to the master of the role to fix the date for hearing for a duration of 2 h 00;

[14] **SETS** 9 July 2025 as the deadline for the notification and filing with the Court office of the appellants’ memorandum. The memorandum shall include a written argument not to exceed **25 pages** and three schedules (ss. 13 and 58 *R.C.A.Q.Civ.M.* and *Clerk’s Practice Direction No. 7*);

[15] **SETS 13 August 2025** as the deadline for the notification and filing with the Court office of the respondents’ memorandum. The memorandum shall include a written

argument not to exceed **25 pages** and, if necessary, elements in addition to those in the appellants schedules (ss. 13 and 58 *R.C.A.Q.Civ.M.* and *Clerk's Practice Direction No. 7*);

[16] **THE WHOLE**, with costs to follow the outcome of the appeal.

TIME GRANTED FOR ORAL ARGUMENT: Appellants: 60 minutes
Respondent: 60 minutes

PATRICK HEALY, J.A.