SUPREME COURT OF CANADA

CITATION: Riddle *v.* ivari, 2026 SCC 9

APPEAL HEARD: October 10, 2025
JUDGMENT RENDERED: April 10, 2026
DOCKET: 40986

BETWEEN:

Deborah Carol Riddle
Appellant

and

ivari
Respondent

OFFICIAL ENGLISH TRANSLATION

CORAM: Wagner C.J. and Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal, O'Bonsawin and Moreau JJ.

REASONS FOR JUDGMENT: (paras. 1 to 97)
Wagner C.J. (Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal, O'Bonsawin and Moreau JJ. concurring)

Deborah Carol Riddle *Appellant*

v.

ivari *Respondent*

Indexed as: Riddle *v.* ivari

2026 SCC 9

File No.: 40986.

2025: October 10; 2026: April 10.

Present: Wagner C.J. and Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal, O'Bonsawin and Moreau JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR QUEBEC

Status of persons — Absence — Declaratory judgment of death — Presumption of death — Return — Evidence — Life insurance company applying for annulment of declaratory judgment of death — Life insurance company filing evidence that person declared dead was still alive in another country — Application judge granting annulment — Whether application judge erred in determining applicable

legal framework for proving return of person declared dead — Civil Code of Québec, arts. 92, 97, 98.

Civil procedure — Procedural defect — Service — Failure to serve proceeding for annulment of declaratory judgment of death on person declared dead — Whether person declared dead must be served with third party's application relating to their return — Code of Civil Procedure, CQLR, c. C-25.01, art. 140.

I, who was originally from Iran, resided in Brossard, Quebec, with his spouse R. In 2006, he purchased a life insurance policy from an insurer. On February 17, 2008, he told the members of his family that he had to go to Toronto for business. He left his home but did not return. A police investigation revealed that he had never gone to Toronto. He was never seen by his family again.

In 2016, R went to court to obtain a judgment declaring I's death pursuant to art. 92 para. 1 of the *Civil Code of Québec*. The insurer opposed the pronouncement of a declaratory judgment of death, arguing that the circumstances surrounding I's disappearance suggested rather that he had fled. I's death was nonetheless declared, because the circumstances surrounding his disappearance could not prevent a declaratory judgment of death from being pronounced once the person who disappeared had been absent for seven years without giving news of himself.

The insurer applied, however, to the Superior Court for annulment of the judgment declaring I's death, pursuant to art. 98 *C.C.Q.*, but it failed to serve the

proceeding on him. The insurer presented new evidence indicating that I had gone to Iran, where he had resided ever since leaving Quebec. In light of that evidence, the trial judge annulled the declaratory judgment of death and found that the insurer had established, on a balance of probabilities, the "return" of the person declared dead. The trial judge also rejected R's argument that the application could not be heard in the absence of service on I. The trial judge's decision was substantially upheld by the Court of Appeal.

Held: The appeal should be dismissed.

In light of the particular circumstances of the case, especially the fact that I was not prejudiced by this irregularity, the procedural defect of absence of service did not entail the dismissal of the application for annulment of the declaratory judgment of death and the nullity of the subsequent decisions. Moreover, the trial judge, like the Court of Appeal, did not err in determining the applicable legal framework for proving the return of a person declared dead. Nor did the trial judge, in assessing the evidence that I was currently alive, make any palpable and overriding error warranting intervention by the Court.

The *Code of Civil Procedure* does not provide for any specific sanction for failure to serve an originating application in accordance with art. 140. The determination of the sanction that may be applicable to such a breach remains contextual: it must take into account the practical and foreseeable consequences of the failure, not only for the parties and third parties, but for the integrity of the judicial

process itself. It is only when the absence of service is such as to bring the administration of justice into disrepute — notably by depriving an interested person of the opportunity to participate in the legal debate — that a court may refuse to hear a proceeding for which notification has not been made or has been made irregularly.

The practical difficulties that may surround service, for example because an individual is far away or there is no known address, do not relieve a party of the obligation to bring to the attention of another party, or of any interested person, the existence of a proceeding that may affect their rights. However, an application for annulment of a declaratory judgment of death, normally a non-contentious proceeding, is an exception to the usual court proceedings in the sense that it does not require the person declared dead to make submissions or arguments. In this case, no ground raised by I could have changed the outcome of the application. The absence of service therefore did not prejudice I or compromise the integrity of the judicial process more generally, and it could not justify the dismissal of the application.

With regard to proving the return of a person declared dead, this can be proved through any contemporaneous manifestation that makes it more probable than not that the person who disappeared is currently alive. A declaratory judgment of death presumes an absentee's death; it does not establish it. This judgment is a fiction and must always yield where there is proof that the person who disappeared is currently alive. The *Civil Code of Québec* always contemplates the possibility of an absentee's return and provides for its effects. When an absentee returns after a declaratory

judgment of death has been pronounced, arts. 97 et seq. *C.C.Q.* set out the consequences of their return, which thus rebuts the presumption of death.

In arts. 97 et seq. *C.C.Q.*, the term "return" must be interpreted as referring to the reappearance of the person declared dead following the declaratory judgment, wherever they are in the world, or else the manifestation of the fact that they are currently alive. The term contains no geographical limit — the physical return of the person who disappeared to their domicile is not required — but does involve a temporal limit. Evidence of the absentee's reappearance must, at least in part, be subsequent to the declaratory judgment of death. Indeed, once the declaratory judgment of death is pronounced, it can be annulled only if there is evidence that the person declared dead is alive subsequent to the judgment. Nevertheless, it remains the case that evidence predating the declaratory judgment and showing that the person declared dead was alive may be relevant in the annulment proceeding, because it can help strengthen the demonstration of survival. Similarly, the concept of return does not require that evidence be completely contemporaneous with the filing of the originating application. Whether the evidence is sufficiently current is a question for the trial judge, who is in the best position to determine whether older evidence satisfies them that the person declared dead has actually returned.

The evidence that the person declared dead is currently alive must satisfy the court on a balance of probabilities. The *Civil Code of Québec* does not require a particular degree of proof to prove an absentee's return and, in civil matters, absent an

exception provided for by law, there is only one standard of proof prescribed by Quebec law, namely the balance of probabilities, as codified in art. 2804 *C.C.Q.* This is a high standard that requires clear and convincing evidence in all cases, particularly where the facts alleged seem improbable and the consequences at stake are serious. The evidence that a person declared dead has returned must therefore be clear and convincing, but no specific threshold of certainty is required. There is no intermediary standard of proof in civil matters when the facts to be proved are serious or especially improbable. Quebec's civil law of evidence does not allow the balance of probabilities standard to be adjusted according to the particular nature of the case. It is for the trial judge to decide, on the basis of common sense, and not on the basis of a legal rule, the extent to which it can be concluded from the circumstances and the context that the fact alleged is inherently improbable and the extent to which this conclusion will clarify the question of whether the fact alleged has been proved.

A declaratory judgment of death is not conclusive in character. Article 97 *C.C.Q.* states that its effects cease when the person declared dead returns, and the legislature has also expressly created a mechanism for reviewing a declaratory judgment of death in art. 98 *C.C.Q.* While the physical presence of the person declared dead will always be the best proof that they are currently alive, a judge may be satisfied with evidence establishing that the person is still living, particularly where the circumstances suggest that their disappearance or reclusion is voluntary.

In this case, the trial judge considered several pieces of evidence in finding, on a balance of probabilities, that I was still alive: in 2015, Iran's state census organization personally delivered a national identity card to a certain I; in 2018, Iran's computerized registers of civil status reported that this person was currently alive and contained no entry of death; since I's disappearance in 2008, this person had applied for two Iranian passports; between 2008 and 2017, this person left and entered Iran by airliner on at least 16 occasions, including three times after the declaratory judgment of death was pronounced; and in December 2018, this person registered for welfare in Iran. In light of this evidence, the trial judge was satisfied that the person appearing in those documents was indeed R's spouse and that I was therefore still very much alive. Since no error of law has been shown, no intervention is warranted.

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S.C.R. 235; *D.C.R. v. J.R.*, 2019 QCCS 282; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27; *Doré v. Verdun (City)*, [1997] 2 S.C.R. 862; *Montréal (City) v. Dorval*, 2017 SCC 48, [2017] 2 S.C.R. 250; *Fox v. Bishop of Chester* (1829), 1 Dow & Clark 416, 6 E.R. 581; *Orphan Well Association v. Grant Thornton Ltd.*, 2019 SCC 5, [2019] 1 S.C.R. 150; *R. v. Basque*, 2023 SCC 18; *R. v. Steele*, 2014 SCC 61, [2014] 3 S.C.R. 138; *R. v. Paré*, [1987] 2 S.C.R. 618; *Sommers v. The Queen*, [1959] S.C.R. 678; *Goldman v. The Queen*, [1980] 1 S.C.R. 976; *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39, [2015] 2 S.C.R. 789; *Banque Canadienne Nationale v. Mastracchio*, [1962] S.C.R. 53; *Rousseau v. Bennett*, [1956] S.C.R. 89; *Parent v. Lapointe*, [1952] 1 S.C.R. 376; *F.H. v. McDougall*, 2008 SCC 53, [2008] 3 S.C.R. 41.

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APPEAL from a judgment of the Quebec Court of Appeal (Marcotte, Hogue and Rancourt JJ.A.), 2023 QCCA 1111 (*sub nom. Re Imanpoorsaid*), [2023] AZ-51966489, [2023] J.Q. No. 8876 (Lexis), 2023 CarswellQue 13117 (WL), allowing in part an appeal from a decision of Narang J., 2021 QCCS 4977, [2021] AZ-51813307, [2021] Q.J. No. 28996 (Lexis), 2021 CarswellQue 18947 (WL). Appeal dismissed.

Molly Krishtalka and *William Colish*, for the appellant.

Pascale Caron, *Kim Tourigny* and *René Vallerand*, for the respondent.

English version of the judgment of the Court delivered by

THE CHIEF JUSTICE —

I. Overview

[1] Under Quebec civil law, the loved ones of a person who has disappeared are not obliged to indefinitely suffer the inconveniences associated with uncertainty about whether the person is currently alive. Since the reform of the *Civil Code of Québec* ("*C.C.Q.*"), any interested person may apply to a court, after seven continuous years of absence, to obtain a judgment declaring the absentee's death. This judgment produces the same effects as death: it extinguishes juridical personality, dissolves matrimonial bonds and regimes and permits the succession to open and the right to partition of the parental union patrimony to arise. The judgment thus lifts the paralyzing veil of uncertainty and allows life to move on. However, because the declaratory judgment of death is a fiction, it must always yield where there is proof that the person who disappeared is currently alive. The *Civil Code of Québec*, in the division entitled "Return", sets out the consequences of the reappearance of such an "undead person" in the quite rare cases where a person of whom there has been no news for several years resurfaces.

[2] The question that arises, however, is what is meant by the "return" of a person who has been declared dead and what degree of proof is required to establish this. Should it be necessary that the person physically return to their domicile, or does it simply have to be proved that the person is currently alive, particularly in a case where they are clearly trying to avoid notice?

[3] This is one of the questions raised by this case, which arises out of a seemingly mysterious disappearance.

[4] One morning, Hooshang Imanpoorsaid informed his spouse, Deborah Carol Riddle, that he had to go to Toronto for business. Driving his car, he left the Montréal suburb where he resided, taking a few pieces of luggage. This was perfectly normal for this insurance and mutual fund representative, who often travelled for work. However, Mr. Imanpoorsaid did not return. A police investigation revealed that he had never gone to Toronto. He disappeared, and he was never seen by his family again.

[5] After he had been absent for eight years, Ms. Riddle applied to the Superior Court to obtain a declaratory judgment of death for her husband, in accordance with the provisions of the *Civil Code of Québec* relating to the absence regime. The insurance company with which Mr. Imanpoorsaid had taken out insurance on his life, ivari, opposed the pronouncement of a declaratory judgment of death. It argued that the circumstances surrounding Mr. Imanpoorsaid's disappearance suggested rather that he had fled. Poirier J., who heard Ms. Riddle's application, nonetheless declared Mr. Imanpoorsaid's death, because the circumstances surrounding his disappearance could

not prevent a declaratory judgment of death from being pronounced once the person who disappeared had been absent for seven years without giving news of himself. The Court of Appeal stayed the appeal from Poirier J.'s decision and ultimately declared the appeal moot.

[6] In the meantime, ivari applied to the Superior Court for annulment of the judgment declaring Mr. Imanpoorsaid's death. That proceeding was not, however, served on him. Ivari presented new evidence indicating that he had gone to Iran, where he had resided ever since leaving Quebec.

[7] In light of that evidence, the trial judge annulled the declaratory judgment of death and found that ivari had established the "return" of the person declared dead. That decision was substantially upheld by the Court of Appeal.

[8] Ms. Riddle appeals to this Court. She argues that the trial judge and the Court of Appeal made two errors of law. First, Ms. Riddle contends that the courts below erred in finding that ivari's failure to serve the proceeding for annulment of the declaratory judgment of death on the main person concerned, Mr. Imanpoorsaid, did not entail the dismissal of its proceeding and the nullity of the subsequent decisions. Second, she takes the view that both the trial judge and the Court of Appeal erred in determining the applicable legal framework for proving the return of a person declared dead. Ms. Riddle argues that establishing the return of a person declared dead requires unquestionable, or certain, proof that the person is currently alive.

[9] Ivari, for its part, argues that the courts below properly held that the failure to effect service did not warrant the dismissal of its application, and that the trial judge and the Court of Appeal correctly interpreted the concept of return, for which a specific form or degree of proof is not required.

[10] I would dismiss this appeal. With respect to the failure to serve the proceeding on Mr. Imanpoorsaid, I consider it to be a breach of the guiding principles of our law that should not be trivialized. However, in the present case, this failure did not compromise the integrity of the judicial process, did not prejudice any party and should not warrant the dismissal of the proceeding and the nullity of the subsequent decisions. As regards the determination of the applicable legal framework for proving the return of a person declared dead, the trial judge, like the Court of Appeal, made no error in finding that this could be proved through any contemporaneous manifestation that makes it more probable than not that the person who disappeared is currently alive. The evidence must be clear and convincing so as to rebut the presumption of death, but no specific threshold of certainty is required. While the physical presence of the person declared dead will always be the best proof that they are currently alive, a judge may be satisfied with evidence establishing that the person is still living, particularly where the circumstances suggest that their disappearance or reclusion is voluntary. Proof of return therefore does not require a different standard of proof. In Quebec civil law, unless the legislature specifies otherwise, the standard of proof remains the balance of probabilities.

II. Background

A. *Facts*

[11] Mr. Imanpoorsaid was an insurance and mutual fund representative. Originally from Iran, he resided in Brossard, Quebec, with his spouse, Ms. Riddle. The couple had three children. He often travelled outside the province for his work. In 2006, he purchased a life insurance policy from the respondent, ivari, formerly Transamerica Life Canada.

[12] On February 17, 2008, Mr. Imanpoorsaid told the members of his family that he had to go to Toronto for business. The next day, he sent two of his children an email in which he stated that "things got out of hand and to fix it, drastic measures are necessary to be taken" (A.R., vol. VI, at p. 16; 2021 QCCS 4997, at para. 10). That was the last time his loved ones heard from him. He did not return to Montréal and was never seen by his family again.

[13] The circumstances surrounding his disappearance are troubling. Mr. Imanpoorsaid owed a great deal of money to several creditors. In the years preceding his disappearance, he forged his spouse's signature to obtain loans and fraudulently appropriated funds from her registered retirement savings plan account as well as from their joint account. He also embezzled several hundred thousand dollars from clients. In 2011, during his absence, he was found guilty of appropriation of funds and conflict of interest by the discipline committee of the Chambre de la sécurité financière, and he

was permanently struck off the roll. Shortly before he disappeared, Mr. Imanpoorsaid sold his clientele to Ms. Riddle and changed the designation on his life insurance policy to make his spouse the sole primary beneficiary. His children did not report his disappearance to the authorities until several months later.

[14] In 2016, after eight years of absence, Ms. Riddle went to court to obtain a judgment declaring Mr. Imanpoorsaid's death pursuant to art. 92 para. 1 *C.C.Q.* Anticipating that it would have to pay the insured sum of $550,000 under the life insurance policy, ivari opposed the pronouncement of a declaratory judgment of death. It believed that the suspicious circumstances surrounding his disappearance suggested that he had instead tried to flee his creditors.

[15] Despite those objections, Poirier J. of the Superior Court allowed Ms. Riddle's application and declared that Mr. Imanpoorsaid had died on February 20, 2015, seven years after his disappearance (2017 QCCS 6433). Poirier J. found that the suspicious circumstances surrounding Mr. Imanpoorsaid's departure that could have precluded a declaration of death before the expiry of the seven-year period could no longer do so once that period had elapsed. The meeting of the necessary conditions for pronouncing a declaratory judgment of death, that is, a person's absence from their domicile for more than seven years without giving news of themself, was sufficient, regardless of the circumstances surrounding the disappearance.

[16] Ivari appealed that decision and later filed a motion seeking authorization to present indispensable new evidence. Relying on new pieces of evidence, it claimed

to have found Mr. Imanpoorsaid. Supposedly, he had not died but had instead fled to Iran, where he reportedly still resided.

[17] On July 12, 2018, the Court of Appeal dismissed ivari's motion to file new evidence and invited it instead to apply to the Superior Court for annulment of the declaratory judgment of death pursuant to art. 98 *C.C.Q.* (2018 QCCA 1221). The Court of Appeal stayed the proceeding. Ivari then filed an application with the Superior Court to have Poirier J.'s decision annulled. That application was not served on Mr. Imanpoorsaid.

B. *Decisions Below*

(1) Quebec Superior Court, 2021 QCCS 4977 (Narang J.)

[18] The trial judge annulled the declaratory judgment of death. She found on a balance of probabilities, in light of the evidence filed by ivari, that Mr. Imanpoorsaid was still alive. The judge noted that because the presumption of death is a presumption of fact, it is not irrebuttable and can always be reversed by the absentee's return. She then distinguished "traditional judgments" from declaratory judgments. The latter have a specific review mechanism and can always be varied under art. 322 of the *Code of Civil Procedure*, CQLR, c. C-25.01 ("*C.C.P.*"), on the basis of "new facts sufficient" for that purpose.

[19] The trial judge specified that the concept of "return" in art. 98 *C.C.Q.* must not be narrowly interpreted as requiring the physical return of the person declared dead to the place where they were last seen, but must rather be understood as any manifestation serving to establish that the person is alive.

[20] In this case, the judge found that three "reliable signs" of life supported the conclusion that Mr. Imanpoorsaid was still alive. First, she noted that on November 7, 2015, more than eight months after the presumed date of death, Iran's "State Census Organization" — as that body was called in the English translation of the document filed by ivari — had personally delivered a national identity card to Hooshang Imanpoorsaid. That body had no record of his death. Second, an Iranian passport and immigration police department had issued two passports to Mr. Imanpoorsaid personally since his disappearance. The documents provided included three photographs of him, and the judge noted that Ms. Riddle, in her testimony, had not stated that he was not her husband. According to the information supplied by that government agency, Mr. Imanpoorsaid had made about 15 trips out of the country between October 2008 and December 2017. Lastly, he had apparently registered with the Iranian welfare organization in December 2018.

[21] The trial judge also rejected Ms. Riddle's argument that ivari's application could not be heard in the absence of service on Mr. Imanpoorsaid. She found that this argument amounted to "proceduralism", that is, a nitpicky application of procedural rules leading to absurd results that run counter to common sense. The judge was of the

view that, in any event, Mr. Imanpoorsaid's presence would simply have been the ultimate proof that he was alive and would not have changed the outcome of the application at all. The judge awarded legal costs against Ms. Riddle, including the fees of ivari's expert, Sadafi Charghooshi.

(2) Quebec Court of Appeal, 2023 QCCA 1111 (Marcotte, Hogue and Rancourt JJ.A.)

[22] The Court of Appeal upheld the trial judgment, aside from the award of expert fees, and, for the most part, dismissed Ms. Riddle's numerous grounds of appeal.

[23] With respect to the absence of service, the court was of the view that this procedural defect could be overlooked because Mr. Imanpoorsaid had not been prejudiced. If ivari's application had been served on him and he had intervened in the proceeding, his presence would have shown that he was alive, which would have led the trial court to allow the application for annulment of the declaratory judgment of death.

[24] As regards the concept of "return", the Court of Appeal rejected Ms. Riddle's argument that the annulment of a declaratory judgment of death requires "certain" proof that the absentee is alive, proof going beyond the balance of probabilities. The court found that the "return" of a person declared dead can also be shown through evidence establishing that the person is still alive, regardless of whether they have actually come back to their domicile. The court maintained that a narrow

interpretation of this concept would go against the legislature's objective of ensuring the truthfulness of acts of civil status and would lead to absurd results allowing for evasion of the law. The Court of Appeal did not decide the question of whether proof of return requires a degree of proof higher than merely the balance of probabilities, and it held that in this case the evidence adduced exceeded this threshold and showed that Mr. Imanpoorsaid was almost certainly alive.

[25] The Court of Appeal held that the trial judge had not exercised her discretion unreasonably and had not erred in law by dismissing Ms. Riddle's application alleging abusive procedural conduct and by awarding legal costs against her. The court ordered, however, that the parties each pay their own expert fees, given that ivari was required, under art. 98 *C.C.Q.*, to show that Mr. Imanpoorsaid was still alive in order to have the declaratory judgment of death annulled. The Court of Appeal found that because ivari had chosen to prove this by means of documents from the Iranian authorities, it would have had to incur those fees even if Ms. Riddle had never contested its application for annulment. The Court of Appeal also declared the appeal from the declaratory judgment of death to be moot, as the court was upholding the judgment annulling it.

III. Issues

[26] The appeal raises two questions:

1. Must the person declared dead receive notification of the application relating to their return?

2. What degree of proof is required of the party wishing to prove the return of a person declared dead?

A. *Must the Person Declared Dead Receive Notification of the Application Relating to Their Return?*

[27] First of all, we must consider the question of whether ivari's failure to serve or attempt to serve Mr. Imanpoorsaid with its proceeding for annulment of the declaratory judgment of death entailed, as Ms. Riddle contends, the dismissal of its application and the nullity of the subsequent decisions. Ivari argues that service of the proceeding was not necessary and that an opposite conclusion would lead to absurd results that would be contrary to the interests of justice and to the guiding principle of proportionality.

[28] In my view, ivari should have attempted to serve the proceeding on Mr. Imanpoorsaid, but, in light of the particular circumstances of the case, especially the fact that he was not prejudiced by this irregularity, the procedural defect does not entail the nullity of the trial judgment.

[29] Service is a cardinal rule of our procedural law. Under the *Code of Civil Procedure*, "[a]n originating application must be served on the defendant and the other

parties" (art. 140 *C.C.P.*), in other words, notified by bailiff (arts. 110 para. 2 and 139 para. 1 *C.C.P.*). The purpose of the notification of pleadings is to bring a document to the attention of the persons concerned (art. 109 *C.C.P.*). Notification embodies the principle [TRANSLATION] "of universal fairness" by which every person should be informed of proceedings that may affect their rights in order to give them an opportunity to be heard, that is, to present arguments and advance their interests (*Alliance des Professeurs Catholiques de Montréal v. Quebec Labour Relations Board*, [1953] 2 S.C.R. 140, at p. 154; see also J. S. Vaillancourt, "Article 109", in L. Chamberland, ed., *Le grand collectif: Code de procédure civile — Commentaires et annotations* (10th ed. 2025), vol. 1, at p. 873). Service gives effect to the *audi alteram partem* rule, which is a [TRANSLATION] "venerable principle" among the "fundamental principles of justice" and is entrenched in art. 17 *C.C.P.* in the chapter entitled "Guiding Principles of Procedure" (see D. Ferland and B. Emery, *Précis de procédure civile du Québec* (7th ed. 2025), vol. 1, at para. 1-157). Dickson J., referring to common law jurisprudence, described this rule as follows: "The tribunal must listen fairly to both sides, giving the parties to the controversy a fair opportunity 'for correcting or contradicting any relevant statement prejudicial to their views'" (*Kane v. Board of Governors (University of British Columbia)*, [1980] 1 S.C.R. 1105, at p. 1113, quoting *Board of Education v. Rice*, [1911] A.C. 179, at p. 182).

[30] The right to be heard cannot simply be disregarded by applying the principle of proportionality set out in art. 18 *C.C.P.* (*Sani-Terre Environnement inc. v. Villéco inc.*, 2021 QCCA 326, at paras. 3-7). This right is a rule of procedural fairness

that is of public order and that transcends the interests of the parties concerned, because it safeguards the nature and integrity of the judicial process itself (*Robillard v. Commission Hydroélectrique de Québec*, [1954] S.C.R. 695, at p. 699; *Gestion Bon Conseil inc. v. Guèvremont*, 2006 QCCA 109, at para. 197). The *Code of Civil Procedure* does not provide for any specific sanction for failure to effect service. Such a breach is not, however, without consequences. When the irregularity is so serious that it undermines the innate fairness of the trial and compromises the integrity of the judicial process, it may have significant procedural consequences, such as the peremption of the application and loss of jurisdiction by the court. This is the case where the failure to effect service prejudices a party by depriving them of a real and meaningful opportunity to present their submissions.

[31] That being said, every failure to effect service or other irregularity in service will not automatically lead to such consequences, where the integrity of the judicial process is not otherwise compromised. This is why Quebec jurisprudence recognizes that a party may not raise an irregularity in service if the party had knowledge of the proceeding brought against them and was not prejudiced by that failure (*Droit de la famille — 192513*, 2019 QCCA 2139, at para. 50). In such a context, the absence of prejudice makes it possible to conclude that the fairness of the trial and the integrity of the judicial process were preserved, given that the parties were able to know of the existence of the proceeding, assert their rights and make their submissions.

[32] The determination of the sanction that may be applicable to a breach of the obligation to effect service therefore remains contextual: it must take into account the practical and foreseeable consequences of the failure, not only for the parties and third parties, but for the integrity of the judicial process itself. As with the revocation mechanism set out in art. 345 *C.C.P.*, it is only when the absence of service is such as to bring the administration of justice into disrepute — notably by depriving an interested person of the opportunity to participate in the legal debate — that a court may refuse to hear a proceeding for which notification has not been made or has been made irregularly.

[33] The practical difficulties that may surround service, for example because an individual is far away or there is no known address, do not relieve a party of the obligation to bring to the attention of another party, or of any interested person, the existence of a proceeding that may affect their rights. Article 112 *C.C.P.* allows a court to authorize notification of a pleading by a special method when the circumstances so require. The court may then, in a discretionary manner, authorize any method of notification that makes it possible [TRANSLATION] "both to seize the court and to effectively inform [the recipient] of the content of the application made against [them]", including by technological means (art. 133 *C.C.P.*) or by public notice (art. 135 *C.C.P.*) (*S.A. Louis Dreyfus & Cie v. Holding Tusculum B.V.*, [1998] R.J.Q. 1722 (C.A.), at pp. 1728-29). However, the burden is on the applicant to show that they tried, though unsuccessfully, to locate the recipient.

[34] When the person sought to be served with a pleading resides in a foreign state, reference should be made to art. 494 *C.C.P.*, which establishes the rules applicable to international notification. The procedure varies depending on whether the state concerned is or is not a party to the *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*, Can. T.S. 1989 No. 2. If the state is a signatory, the methods of notification set out in the Convention apply. When the state is not a party to the Convention, as is the case for Iran, notification is made in accordance with the provisions of Book I of the *Code of Civil Procedure* or the law in force in the state where notification is to be made. In the latter case, the court may, under art. 494 para. 2 *C.C.P.*, authorize on request a different method of notification if the circumstances so require (F. Sabourin, "Les demandes intéressant le droit international privé", in D. Ferland and B. Emery, eds., *Précis de procédure civile du Québec* (7th ed. 2025), vol. 2, 389, at para. 2-958).

[35] Ivari had an obligation to serve its originating application on any person concerned, and primarily on Mr. Imanpoorsaid, whose juridical personality, and all rights flowing therefrom, were affected by the annulment judgment. If ivari believed that he was alive, it could have taken steps to try to inform him of the proceedings concerning him, especially since, under art. 98 para. 2 *C.C.Q.*, the cost of the application for annulment ultimately had to be assumed by Mr. Imanpoorsaid himself. Ivari did not do so, and this failure must be underscored. The absence of service is also surprising given that ivari had hired lawyers in Iran to find him and stated at trial that

it had obtained his telephone number. It is difficult to understand why ivari did not continue its efforts to locate him after having obtained that information.

[36] Contrary to what ivari argues, this is not a situation in which substance must prevail over form. Pleading failure to effect service is not what the trial judge described as "proceduralism", that is, applying procedural rules in a nitpicky way that would lead to a result contrary to common sense. The *Code of Civil Procedure* contains requirements of public order that relate to fairness, and it would be wrong to trivialize a breach of these standards under the pretext that it is an irregularity in form — which it is not — or under the cover of the principle of proportionality. However, I am of the view that, since Mr. Imanpoorsaid was not prejudiced, this breach did not undermine the integrity of the judicial process. It follows that this failure should not entail the nullity of the trial judgment and the Court of Appeal's decision.

[37] Procedural requirements must be contextualized in light of the substantive rights that they protect and that justify them (*Mohawk Council of Kanesatake v. Sylvestre*, 2025 SCC 30, at paras. 71-72). In most cases, failure to give a party an opportunity to present their arguments will be such a serious breach of the *audi alteram partem* rule that it will necessarily undermine the integrity of the judicial process. In this case, however, the imperatives related to preserving the adversarial process are of reduced importance. An application for annulment of a declaratory judgment of death, normally a non-contentious proceeding, is an exception to the usual court proceedings in the sense that it does not require the person declared dead to make submissions or

arguments. Proof of the return of a person declared dead is sufficient to have a declaratory judgment of death annulled under art. 98 *C.C.Q.* The presence of the "returnee" at the hearing simply facilitates such proof, but does not alter the outcome. In this case, no ground raised by Mr. Imanpoorsaid could have changed the outcome of the application. Ivari had no interest in not serving its proceeding on him and derived no benefit from not doing so. Paradoxically, the absence of service was even advantageous to Ms. Riddle, because the presence of the person declared dead would have bolstered ivari's evidence that he was currently alive. The absence of service therefore did not prejudice Mr. Imanpoorsaid or compromise the integrity of the judicial process more generally, and it could not justify the dismissal of the application.

[38] Consequently, as the Court of Appeal concluded, while it would have been preferable and prudent for ivari to attempt to notify the proceeding to Mr. Imanpoorsaid, this ground cannot justify intervention by this Court.

B. *What Degree of Proof Is Required of the Party Wishing to Prove the Return of a Person Declared Dead?*

[39] Second, this Court must determine whether the trial judge erred in law in finding that the concept of "return" of a person declared dead in art. 98 *C.C.Q.* can be interpreted as referring to the person being currently alive, and whether she applied the proper standard of proof for annulling the judgment declaring Mr. Imanpoorsaid's death.

[40] This Court had occasion a few years ago to explore the origins and nature of the modern absence regime in Quebec civil law in *Threlfall v. Carleton University*, 2019 SCC 50, [2019] 3 S.C.R. 726. Nevertheless, this case raises another aspect of the absence regime that has not yet been considered by this Court, namely the *return* of a person declared dead, as outlined in arts. 97 to 101 *C.C.Q.*, in a context where a declaratory judgment of death has already been pronounced.

[41] Ms. Riddle argues that the concept of return must be narrowly interpreted and that it requires certain and unquestionable proof that the person declared dead is currently alive. This concept must be considered in light of the imperative of certainty underlying the modern absence regime established by the *Civil Code of Québec*. Return can therefore be proved either by the physical presence of the person declared dead or by means of serious, precise and concordant presumptions that attest to the person being alive. Mere "signs of life" dating back several years are not sufficient to establish that the person declared dead has returned.

[42] Ivari, on the other hand, submits that the *Civil Code of Québec* does not impose any specific requirement for proving the return of a person declared dead. Since a declaratory judgment of death is based on a simple presumption, the presumption can be rebutted by any evidence that makes it more probable than not that the person declared dead is currently alive. Requiring the person's physical return, despite clear and convincing evidence of life, would lead to absurd results contrary to the spirit of the *Civil Code of Québec*.

[43] Ivari is correct. The concept of return must be interpreted broadly as referring as well to the reappearance of the person declared dead, wherever the person is in the world, and not only to the person's physical return to their domicile. I therefore agree with the interpretation adopted by the trial judge and the Court of Appeal to the effect that any contemporaneous manifestation of the fact that the person declared dead is currently alive can rebut the presumption of death and allow for the annulment of the declaratory judgment. I am also of the view that the evidence that the person declared dead is currently alive must satisfy the court on a balance of probabilities. This is a high standard that requires clear and convincing evidence in all cases, particularly where the facts alleged seem improbable and the consequences at stake are serious. In my opinion, Ms. Riddle is on the wrong track in asserting that the return of an absentee requires establishing their certain reappearance and imposes a degree of proof higher than the one prescribed by the legislature. In this case, the trial judge, in assessing the evidence that Mr. Imanpoorsaid was currently alive, made no palpable and overriding error warranting intervention by this Court.

[44] My analysis will be divided into four parts. First, I will focus on outlining the legal regime of absence and declaratory judgments of death, in light of its underlying principles and evolution. Second, this overview will enable me to interpret the concept of return. Third, I will then determine the standard of proof that must be met to prove the return of an absentee who has been declared dead. Fourth and last, I will consider, in light of the analytical framework previously identified, whether the trial judge erred in finding that Mr. Imanpoorsaid had returned and in annulling the

declaratory judgment of death. I note that Ms. Riddle's arguments are confined to questions of law. It is therefore not the role of this Court to determine the weight to be given to the various pieces of evidence considered by the judge (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at para. 23).

(1) Absence Regime

(a) *Presumptions of Life and of Death*

[45] The *Civil Code of Québec*, in the chapter "Absence and Death", which is in Book One, entitled "Persons", sets out the legal consequences of the disappearance of a person domiciled in Quebec. An absentee is defined in art. 84 *C.C.Q.* as "a person who, while he had his domicile in Québec, ceased to appear there, without giving news of himself, and without it being known whether he is still alive". The meeting of these four conditions (domicile, disappearance, absence of news and doubt about being currently alive) has two consequences: first, it permits, where necessary, the appointment of a tutor responsible for administering the absentee's property (art. 86 *C.C.Q.*); second, it fixes the starting point for the absence period on the basis of which, after seven years, a declaratory judgment of death can be obtained under art. 92 *C.C.Q.*

[46] This chapter thus covers the situation of persons who leave without warning where it is uncertain whether they are currently alive, as well as the situation of persons for whom the circumstances of their disappearance make their death nearly certain, even though it is not possible to locate them or identify their remains. This is

the case, for example, of shipwrecked persons lost at sea or victims of a natural cataclysm, an air disaster or an armed conflict (D. Goubau, *Le droit des personnes physiques* (7th ed. 2022), at para. 38). The *Civil Code of Québec* also provides for the situation of persons who are absent against their will by reason of superior force (like being kidnapped or kept away abroad) and for whom a tutor may be appointed, although their situation cannot be likened to that of absentees, because there is no doubt as to whether they are currently alive (art. 91 *C.C.Q.*).

[47] The absence regime is divided into two stages, based on the passage of time. This structure ensures that uncertainty about whether an absentee is alive does not continue indefinitely (*Threlfall*, at para. 61; É. Cloutier, "Origines et évolution du droit québécois de l'absence: de l'existence incertaine aux présomptions de vie et de mort" (2017), 63 *McGill L.J.* 247, at p. 276). First, an absentee is presumed to be currently alive for seven years following their disappearance, unless their death can be held to be certain before then (arts. 85 and 92 para. 2 *C.C.Q.*). This means that if the remains are, for example, found within seven years after the disappearance, the presumption of life is rebutted retroactively to the date of death and the registrar of civil status can draw up an act of death (*Threlfall*, at para. 46). In the meantime, the absentee retains their juridical personality and rights and is still required to perform their obligations, through their tutor or the person responsible for administering their property (art. 86 *C.C.Q.; Threlfall*, at para. 30). The absentee can also [TRANSLATION] "inherit and acquire rights" (*Commentaires du ministre de la Justice*, t. I, *Le Code civil du Québec — Un mouvement de société* (1993), at p. 66; see also art. 617 *C.C.Q.*;

Goubau, at para. 41; M. Ouellette, "Livre premier: Des personnes", in *La réforme du Code civil*, t. 1, *Personnes, successions, biens* (1993), 11, at para. 168). Absence does not dissolve a marriage or civil union, although a married spouse can apply for a divorce after a one-year separation (*Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.), s. 8(1) and (2)(a)) and a civil union spouse can require the dissolution of the union because of separation (art. 521.17 *C.C.Q.*) (Goubau, at para. 41; Cloutier, at p. 277).

[48] Second, after seven years of absence, the presumption of life ends. Any interested person may then apply to a court for a declaratory judgment of death, and the date of death will be fixed seven years after the day of the disappearance (art. 92 para. 1 *C.C.Q.*). The judgment may also be pronounced, exceptionally, before the expiry of the seven-year period where the death of the person who disappeared may be held to be certain (art. 92 para. 2 *C.C.Q.*). The declaratory judgment of death produces the same effects as death (art. 95 *C.C.Q.*): the succession opens, pension plans are liquidated, matrimonial bonds and regimes, as well as the parental union patrimony, are dissolved and insured sums under insurance policies can be paid out (Goubau, at para. 59). Once the declaratory judgment of death is pronounced, the *Civil Code of Québec* allows the date entered on the act of death to be disregarded only when the true date of death affects the date of dissolution of the matrimonial or civil union regime, the time at which the right to partition of the parental union patrimony arises and the date on which the succession opens, or when the person declared dead returns (arts. 96 to 101 *C.C.Q.*; *Threlfall*, at paras. 34 and 54; Goubau, at paras. 60-69; É. Gascon and

J. Gelfusa, "Absence et décès", in *JurisClasseur Québec — Collection Droit civil — Personnes et famille* (loose-leaf), fasc. 8, at Nos. 20-34).

[49] As this Court noted in *Threlfall*, the declaratory judgment of death is an innovation of the *Civil Code of Québec*. The provisions on absence represent a departure from the regime that existed under the *Civil Code of Lower Canada* ("*C.C.L.C.*"), which was characterized by the spectre of the absentee's ever-possible return and the weight of perpetual uncertainty about whether they were currently alive. From this perspective, the *Civil Code of Lower Canada* gave priority to preserving the interests of the absentee and their counterparties over those of the absentee's presumptive heirs, who were left in a precarious position for a long time:

> In Quebec, the *Civil Code of Lower Canada* contained a regime governing absence commencing in 1866. It was largely modelled on the *Code Napoléon* (Cloutier, at pp. 255 and 262; Commissioners appointed to codify the Laws of Lower Canada in Civil Matters, *Civil Code of Lower Canada: First, Second and Third Reports* (1865), at pp. 167 and 169). Under that regime, an absentee's continued existence was considered to be uncertain. An absentee was considered by the law to be neither living nor dead and could not inherit. After five years of absence, the absentee's presumptive heirs were allowed to take provisional possession of the absentee's property. That provisional possession had some inherent limits, given its uncertain character. Only after 30 years of absence were the presumptive heirs given absolute possession of the absentee's property, thus allowing them to alienate or hypothecate it (G. Brière, *Traité de droit civil: Les successions* (2nd ed. 1994), at para. 45; Deleury and Goubau, at para. 71; H. Roch, *L'absence* (1951), at pp. 27-34; F. Langelier, *Cours de droit civil de la province de Québec*, t. 1 (1905), at pp. 200 et seq.; G. Trudel, *Traité de droit civil du Québec*, vol. 1 (1942), at pp. 310 et seq.; Cloutier, at pp. 257-66).
>
> The absence regime in the *C.C.Q.* marked a fundamental shift in the traditional Quebec law on absence. No longer is an absentee considered to be neither alive nor dead (Ministère de la Justice, *Commentaires du*

> *ministre de la Justice*, vol. I, *Le Code civil du Québec — Un mouvement de société* (1993), at pp. 65-66). Nor is an absentee ignored if a succession opens (art. 617 para. 1 *C.C.Q.*; Deleury and Goubau, at para. 41; Ouellette, at para. 168; Cloutier, at pp. 276-77). Instead, an absentee is presumed to be alive for seven years and enjoys full juridical personality during this period.
>
> (*Threlfall*, at paras. 31-32)

[50] The legislature intended, through its reform, to put an end to the situation created by the nearly permanent effects — or rather the lack of effects — of absence, by reducing the length of time required for the absentee's succession to open and making it possible to declare the absentee's death. The modern Quebec law of absence, drawing inspiration from the German model, therefore favours [TRANSLATION] "solutions providing a reasonable degree of certainty in legal relationships with a person who has disappeared" (H. Corral Talciani and M. S. Rodriguez Pinto, "Disparition de personnes et présomption de décès: observations de droit comparé" (2000), 52 *R.I.D.C.* 553, at p. 565).

[51] It is true that the *Civil Code of Lower Canada* already provided, since the enactment in 1969 of the *Act respecting declaratory judgments of death*, S.Q. 1969, c. 79, that a person could be judicially declared dead on certain conditions. However, that procedure remained limited to those truly [TRANSLATION] "missing and believed dead", that is, persons whose death was nearly certain but for whom an act of burial could not be obtained because there were no remains or it was difficult to identify the remains (Cloutier, at pp. 267-68). Since the reform of the *Civil Code of Québec*, the declaratory judgment of death now serves to resolve the uncertainty surrounding the fate of any

person whose current life is in doubt, [TRANSLATION] "even where no new event sheds light on the fate of the person who has disappeared" (J. Auger, "Successible disparu: que faire?" (2009), 18:2 *Entracte* 5, at p. 5).

[52] The judgment presumes the absentee's death; it does not establish it. As Fournier C.J. stated in a judgment concerning Ms. Riddle's application to have ivari's application for annulment dismissed and declared abusive, [TRANSLATION] "[t]he judgment rendered under art. 92 C.C.Q. rests only on a presumption; it does not create certainty and therefore cannot definitively determine the person's status. Return nullifies the presumption of death" (*D.C.R. v. J.R.*, 2019 QCCS 282, at para. 17). Indeed, like the presumption of life established in art. 85 *C.C.Q.*, the presumption of death is merely a legal presumption and is not in itself proof of the presumed fact (arts. 2846 and 2847 *C.C.Q.*; *Threlfall*, at para. 45). The declaratory judgment of death is not a mode of proof of death, but rather a means of obtaining an act of death (J. Beaulne, *La liquidation des successions* (2nd ed. 2016), at para. 3). In these circumstances, the declaratory judgment of death represents an "essential cut-off point" that serves to remedy the inconveniences caused to rights holders by a prolonged absence and allows life to move on (*Threlfall*, at para. 54). The presumption, not being "a permanent source of entitlement", can always be rebutted when the person believed to be dead resurfaces (para. 48).

(b) *Return of an Absentee*

[53] The *Civil Code of Québec* always contemplates the possibility of an absentee's return and provides for its effects. When an absentee returns before their death has been declared, that is, while they are still presumed to be alive, they then take back their property, and any tutorship to the absentee that was put in place is terminated (art. 90 *C.C.Q.*). Life thus resumes as if it had never stopped. The absentee [TRANSLATION] "asserts their presence in the land of the living" (B. Teyssié, *Droit des personnes* (20th ed. 2018), at para. 331). In this context, the absentee's return does not rebut the presumption of life; it simply confirms it.

[54] When an absentee returns from the "land of the dead" after a declaratory judgment of death has been pronounced, the *Civil Code of Québec* sets out the consequences of this [TRANSLATION] "resurrection" (Teyssié, at para. 358) in the division entitled "Return", in arts. 97 et seq. *C.C.Q.* The marriage or civil union remains dissolved, and the spouse of the "returnee" retains the property obtained upon dissolution of the matrimonial regime as well as the advantages resulting therefrom (see art. 97 *C.C.Q.*; Goubau, at para. 65). The returnee recovers their property in its existing condition, in accordance with the modalities of restitution of prestations (art. 99 *C.C.Q.*). However, an apparent heir can retain possession of the property and acquire the fruits and revenues thereof even if they learn that the person declared dead is currently alive, until the person who has returned reclaims the property (art. 101 *C.C.Q.*). In these circumstances, the return of the person declared dead rebuts the presumption of death.

(2) Interpretation of the Concept of "Return" of a Person Declared Dead

[55] The legislature has not defined what is meant by the "return" of a person presumed dead in arts. 97 et seq. *C.C.Q.* It is therefore appropriate to interpret this concept. The trial judge and the Court of Appeal favoured a broad interpretation of this concept, finding that it refers to any manifestation of the fact that the person who disappeared is currently alive. Return can thus be understood as a person's active and physical reappearance in a particular place.

[56] I agree with that interpretation. When interpreted in accordance with the modern principle, in its "entire context and in [its] grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of [the legislature]" (*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21, quoting E. A. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87), the term "return" in arts. 97 et seq. *C.C.Q.* means not only the physical reappearance of the person declared dead in their domicile, but also manifestations of the fact that the person declared dead is currently alive. The term contains no geographical limit but does involve a temporal limit.

[57] This interpretation takes into account the nature of the *Civil Code of Québec*, which constitutes the foundation or [TRANSLATION] "conceptual framework" of Quebec law (F. Allard, "La *Charte des droits et libertés de la personne* et le *Code civil du Québec*: deux textes fondamentaux du droit civil québécois dans une relation d''harmonie ambiguë'", [2006] *R. du B.* (numéro thématique) 33, at p. 38). As this

Court has established, the *Civil Code of Québec* "must be interpreted broadly so as to favour its spirit over its letter", in a way that enables "the purpose of its provisions to be achieved" (*Doré v. Verdun (City)*, [1997] 2 S.C.R. 862, at para. 15; see also *Montréal (City) v. Dorval*, 2017 SCC 48, [2017] 2 S.C.R. 250, at para. 50; *Mohawk Council*, at para. 67). Aspiring to unity, the *Civil Code of Québec* establishes a rational, orderly and coherent system of closely interrelated provisions that must be interpreted as a whole, in light of the entire structure and all the premises underlying it (see J. Boulanger-Bonnelly, "Contributions civilistes à l'interprétation des lois constitutionnelles canadiennes" (2025), 70 *McGill L.J.* 203, at pp. 223-24; P.-A. Côté and M. Devinat, *Interprétation des lois* (5th ed. 2021), at para. 1070). The interpretation must also take into account the fact that its provisions, often drafted in flexible language, have a [TRANSLATION] "high level of abstraction" so that they can apply to situations not expressly contemplated by the legislature (Côté and Devinat, at para. 1070; *Mohawk Council*, at para. 67).

[58] In the strict sense, the term *return* means the [TRANSLATION] "[a]ction of returning" or the "fact of arriving, of being back at one's starting point" (*Le Grand Robert de la langue française* (electronic version), *sub verbo* "*retour*"). These definitions necessarily imply the physical presence in Quebec of the person presumed dead. However, return can also be understood as the act [TRANSLATION] "of returning . . . to one's usual state, an earlier state" (*ibid.*). From this perspective, return may imply the transition of the person who was believed dead to the state of being alive. If the person is found, wherever they are in the world, this means that they have returned. In

such a case, the term therefore refers rather to the idea that the person declared dead reappears in the land of the living.

[59] Articles 100 and 101 *C.C.L.C.*, which dealt with the legal consequences of an absentee's re-emergence, used terms evoking the concepts of "reappearance" of an absentee and "proof of his existence", not the term "return":

> **100.** If the absentee reappear, or if his existence be proved during the provisional possession, the judgment granting it, ceases to have effect.
>
> **101.** If the absentee reappear, or if his existence be proved, even after the expiration of the hundred years of life or of the thirty years of absence, as mentioned in article 98, he recovers his property in the condition in which it then is, and the price of what has been sold, or the property arising from the investment of such price.

[60] The French version of these provisions used the same terms:

> **100.** Si l'absent reparaît, ou si son existence est prouvée, pendant la possession provisoire, les effets du jugement qui l'a ordonnée cessent.
>
> **101.** Si l'absent reparaît, ou si son existence est prouvée, même après l'expiration des cent années de vie ou des trente ans d'absence, tel que porté en l'article 98, il recouvre ses biens dans l'état où ils se trouvent, le prix de ceux qui ont été aliénés, ou les biens provenant de l'emploi de ce prix.

[61] However, this terminological change cannot be taken to mean that the legislature intended to require the physical return of the person who disappeared to their domicile rather than simply their reappearance somewhere, or to require certain proof that they are currently alive, as Ms. Riddle argues. The reports of the Civil Code

Revision Office ("CCRO") and the Minister's commentaries do not reflect any intention to change the previous state of the law on this concept. The CCRO's *Draft Civil Code*, in the form it ultimately took, retained the verb "*reparaître*" in French, whereas the English version sometimes used the verb "return" (see *Report on the Québec Civil Code*, vol. I, *Draft Civil Code* (1978), at pp. 23 and 39). As for the Minister's commentaries, they equate the concept of "*retour*" in French (i.e., return) with the action of "*reparaître*" (i.e., reappearing) and do not specify any change in the meaning to be given to this concept (*Commentaires du ministre de la Justice*, at pp. 75-77). In particular, they indicate that art. 99 *C.C.Q.*, which deals with what happens to the property of "[a] person who has returned", essentially restates arts. 73 and 101 *C.C.L.C.*, which referred to a person who "reappears" or whose "existence be proved". In my opinion, the use of the term "*retour*" or "return" must instead be understood as an intention to subsume the concept of "proof of existence" under that of return. This change is in line with the desire expressed by the legislature to simplify the absence regime, and thus its vocabulary, without altering the possibility that reappearance or proof of current existence will be sufficient to rebut the presumption of death (CCRO, *Report on the Québec Civil Code*, vol. II, t. 1, *Commentaries* (1978), at pp. 73-74).

[62] This interpretation is also consistent with the objective of the legislature, which, through the reform of the *Civil Code of Québec*, sought to guarantee the integrity and reliability of the register of civil status. By creating the register of civil status, the legislature introduced an official centralized mechanism for attesting the status of persons (Goubau, at para. 377). The declaratory judgment of death is part of

this mechanism, because it requires the registrar of civil status to draw up an act of death (arts. 129 and 133 *C.C.Q.*). True to the spirit of the reform, acts of civil status must reflect the reality of people's legal and factual situation in order to fulfill their primary function, which is to accurately inform the public. This purpose reinforces the idea that the concept of return must be interpreted broadly in order to encompass the possibility that proof of modificatory facts may serve to harmonize the legal reality with the factual reality. An opposite interpretation, which would involve accepting that a person who has been declared dead but is known to still be alive abroad remains without juridical personality under Quebec law, would be contrary to the purpose of the absence regime as well as the essence of and rationale for the register of civil status.

[63] Finally, too literal an interpretation of the term could lead to absurd results, as the Quebec Court of Appeal so aptly pointed out in its reasons. A strict interpretation would make it possible to escape the undesired effects of the annulment of a declaratory judgment of death. Those holding rights through a person declared dead could, for example, continue to enjoy the entitlements that were conditional on the person's death, such as payment of a life insurance indemnity or a surviving spouse's pension, insofar as, because the returnee did not reappear in Quebec, their status could not be changed in the registers of civil status.

[64] Similarly, a person could try to flee their creditors and the police by hiding indefinitely outside the territory where they are being sought. Such an interpretation would condone a form of "fraud on the law" by making it possible for people to

circumvent the effects of the return mechanism and to frustrate the purpose of the provision (Côté and Devinat, at para. 1434, quoting *Fox v. Bishop of Chester* (1829), 1 Dow & Clark 416, 6 E.R. 581, at p. 586). As Professors Côté and Devinat explain, courts must require from every person [TRANSLATION] "real and genuine compliance with legislation, not simply formal compliance" (para. 1435).

[65] This interpretation is also consistent with the legislature's intention to adapt the absence regime to contemporary realities. Globalization and the speed of communications have profoundly transformed the conditions under which a person may disappear, be traced or reappear. This reality led the legislature, on the CCRO's recommendation, to reduce to seven years the period that must elapse before a person who has disappeared can be presumed dead, thereby departing from the 30-year period provided for in the *Civil Code of Lower Canada*. In its commentary on this point, the CCRO in fact stated that, "[c]onsidering the speed of modern communications, that period [of seven years] seemed sufficiently long to allow presumption that a person who has not been heard from is dead" (*Report on the Québec Civil Code*, vol. II, t. 1, at p. 74). As the trial judge noted, today a person who has disappeared is likely to reappear anywhere in the world. This reality magnifies the uncertainty surrounding a person's status and weighs in favour of a broader interpretation of the concept of return that excludes any geographical limit.

[66] A clarification is nevertheless in order regarding the temporality of return. Evidence of the absentee's reappearance must, at least in part, be subsequent to the

declaratory judgment of death. Indeed, as this Court explained in *Threlfall*, this judgment marks a cut-off point in the timeline of the life of the person who disappeared. After it is pronounced, the *Civil Code of Québec* crystalizes the presumption of life that applies for seven years following the disappearance. The goal is to ensure a measure of certainty for interested persons (*Threlfall*, at para. 54). For example, if it was discovered, following a judicial declaration of death, that the absentee had actually died three years after their disappearance, the *Civil Code of Québec* would not allow this fact to override the fictional date fixed by the judgment, unless that date affected the date of dissolution of the matrimonial or civil union regime, or the time at which the right to partition of the parental union patrimony arose and the opening of the absentee's succession (art. 96 *C.C.Q.*; Goubau, at paras. 59-62; Gascon and Gelfusa, at Nos. 20-34). Similarly, the *Civil Code of Québec* also does not permit reliance on evidence of life prior to the declaratory judgment of death in order to seek its annulment.

[67] This interpretation reinforces legal certainty. For example, a declaratory judgment of death for a person who disappeared eight years ago cannot be annulled solely because a witness claims to have seen the person two years after their disappearance, when there has been no news since then. At the time the declaratory judgment is pronounced, the person who disappeared is presumed to have been alive for seven years following their disappearance, and that person's appearance confirms, rather than rebuts, this presumption.

[68] Before a declaratory judgment of death is pronounced, any interested person may present evidence to the court showing that the conditions of the absence regime are no longer met. In this manner, the receipt of news or proof that the absentee is currently alive will change the absentee's situation to that of simply a *non-present person* (Goubau, at para. 73; Cloutier, at p. 256; H. Roch, *L'absence* (1951), at p. 31; F. Talandier, *Nouveau traité des absens* (1831), at pp. 8-9; A.-T. Desquiron, *Traité du domicile et de l'absence* (1812), at p. 162).

[69] It is important in this regard to distinguish the concept of absence in the legal sense from that of absence in the ordinary sense. The latter simply refers to a person being away from a particular place and corresponds, in academic commentary, to the situation of a "non-present person" (see B. Py, *La mort et le droit* (1997), at p. 15). The *Civil Code of Québec* does not address the situation of a non-present person in a specific and structured manner, contrary to the absence regime. The legal effects of non-presence vary depending on the subject matter. The *Civil Code of Québec* instead sets out, on a piecemeal basis, mechanisms that take into account the fact that a person is far away and make it possible, among other things, to extend certain time limits, facilitate the administration of family relations or impose procedural sanctions (Goubau, at para. 73). Characterizing a person as "non-present" thus serves to exclude the application of the legal regime of absence as long as there continues to be evidence of life.

[70] Once a declaratory judgment of death is pronounced, it can be annulled only if there is evidence that the person declared dead is alive subsequent to the judgment. An action for annulment therefore cannot be regarded as a disguised appeal from the declaratory judgment of death, since it is based on the production of new and current evidence establishing that the non-present person is currently alive.

[71] Nevertheless, it remains the case that evidence predating the declaratory judgment and showing that the person declared dead was alive may be relevant in the annulment proceeding, because it can help strengthen the demonstration of survival. Thus, evidence of trips taken in the years following the disappearance, as well as evidence of passports being issued and social insurance benefits being received, will support the evidence that the person declared dead is currently alive, even if it is not sufficient in itself to prove the person's return.

[72] Similarly, the concept of return does not require that evidence be completely contemporaneous with the filing of the originating application. Whether the evidence is sufficiently current is a question for the trial judge, who is in the best position to determine whether older evidence satisfies them that the person declared dead has actually returned. A spontaneous and distant sign of life will generally not suffice to rebut the presumption of death. However, an accumulation of corroborating evidence, including eyewitness testimony extending over a relatively recent period of time, photographs, letters or official documents, may persuade the court that it is more probable than not that the person was never dead.

[73] I note that, with most applications for annulment of a declaratory judgment of death under art. 98 *C.C.Q.*, the question of evidence of return and of whether it is sufficiently current will not raise any particular difficulties. The person declared dead will attend court themself, and a judge will see that they are currently alive. It is only in the very exceptional situation, like the one before us, where the "returnee" is not seeking to re-establish their juridical personality that the question of the contemporaneous nature of the evidence will actually arise. This situation can cover a multitude of individual cases and always requires, albeit for a variety of reasons, the annulment of the declaratory judgment of death.

[74] For example, a very reclusive person might be content with no longer being part of society after more than seven years without giving news of themself. They would, however, be in a very difficult position if they needed care in a public hospital without a health insurance card, and without any possibility of obtaining one. Similarly, as we have seen, a person might try to evade the law or their obligations by feigning their disappearance. In this situation, the person would have no interest in attending court to confirm their return. However, this absence could not prevent the person's creditors from exercising their recourses or force debtors to perform an obligation that depends on the person's death, when it is possible to establish that the person who fled is still alive. In short, the extinction of juridical personality has serious consequences, both for the person concerned and for third parties, and society has every interest in the annulment of a declaratory judgment of death that was wrongly pronounced. The probative force of the evidence, and hence its sufficiency, will be assessed by the judge

responsible for deciding the matter in light of the particular circumstances of the case, including the voluntariness of a disappearance.

[75] Before I conclude on the interpretation of the term "return", it is important to note that the concept of return as contemplated in arts. 97 et seq. *C.C.Q.* must be distinguished from the one in art. 90 *C.C.Q.*, which terminates tutorship to an absentee. The same word refers here to two distinct realities.

[76] In the context of termination of tutorship, the term "return" must be understood as the physical return of the absentee, who is still presumed to be alive, to their domicile, or at least their concrete ability to resume the administration of their property. The absentee's mere reappearance, on the other hand, does not make it possible to terminate tutorship to the absentee, because this dissolution would leave their property unprotected. This interpretation is the same one adopted by legal scholars (M. Beauchamp, in collaboration with C. Gilbert, *Tutelle, curatelle et mandat de protection* (2014), at pp. 169-71; Goubau, at para. 53; Roch, at p. 68; P.-B. Mignault, *Le droit civil canadien* (1895), vol. 1, at p. 266; G. Trudel, *Traité de droit civil du Québec* (1942), vol. 1, at p. 288) and by the CCRO, which wrote the following: "It was questioned whether provision should be made for termination of tutorship if the absentee is proven to be alive. Failing his return or his power of attorney, it was thought preferable to continue the tutorship in order to protect the property of the absentee" (*Report on the Québec Civil Code*, vol. II, t. 1, at p. 73).

[77] In contrast, as I have noted, the word "return" in arts. 97 et seq. *C.C.Q.* refers to the reintegration of the person presumed dead into legal life. Because this return occurs after the declaratory judgment of death, it does not have the same effects as the one contemplated by art. 90 *C.C.Q.* The returnee's patrimony, having been dissolved, no longer needs to be administered. The reappearance of the person presumed dead in a place that is not their domicile has no effect on their property, which remains in the possession of their apparent heirs until the person seeks its restitution (art. 101 *C.C.Q.*).

[78] These different interpretations of course displace the presumption of consistent expression, which normally requires that a word be given the same meaning when the legislature uses it in various places in the same statute (Côté and Devinat, at paras. 1142-50). As this Court has noted, it is difficult to accept that the legislature would use identical language in two closely related provisions and yet intend it to have different meanings (*Orphan Well Association v. Grant Thornton Ltd.*, 2019 SCC 5, [2019] 1 S.C.R. 150, at para. 84). This presumption also fits in with what Professor G. Cornu describes as the [TRANSLATION] "discipline" needed in legislative expression, which requires that, as a general rule, the same word not be used with different meanings in a statute (*Linguistique juridique* (3rd ed. 2005), at p. 105; *R. v. Basque*, 2023 SCC 18, at para. 59).

[79] However, this discipline is not absolute, even in the context of a civilian code that demands significant consistency imperatives. The presumption of consistent

expression may be rebutted when the purposes of the compared regimes and their contexts differ (see *R. v. Steele*, 2014 SCC 61, [2014] 3 S.C.R. 138, at para. 65; *R. v. Paré*, [1987] 2 S.C.R. 618, at p. 627; *Sommers v. The Queen*, [1959] S.C.R. 678, at p. 685; *Goldman v. The Queen*, [1980] 1 S.C.R. 976, at p. 999).

[80] In this case, even though tutorship to an absentee and the presumptions of life and death result from the absentee's disappearance, they have different purposes. Tutorship is meant to protect the absentee's patrimony while they are presumed to be alive, whereas the presumptions are meant to stabilize the legal situation of the person who has disappeared and ensure some measure of certainty for interested persons. This interpretation thus takes into account [TRANSLATION] "the textual environment" in which these terms appear and the entire context from which their true meaning can be established (Côté and Devinat, at para. 1147; see also paras. 1148-50).

[81] It bears reiterating that the 1978 *Draft Civil Code* did not use the term "*retour*" in its French version to refer to the reappearance of a person declared dead, preferring the term "*reparaître*", and did not structure the effects of return in a separate division as the current *Civil Code of Québec* does. The terms "*retour*" and "*reparaître*" therefore referred to two very distinct realities, and it was only in the final version of the *Civil Code of Québec* that these terms were merged, though each occurrence kept the meaning of the term initially used. This dual understanding of the word "return" therefore results not from historical hesitancy, but from a drafting change between the initial proposal and the final text.

[82] In arts. 97 et seq. *C.C.Q.*, the term "return" must therefore be interpreted as referring to the reappearance of the person declared dead following the declaratory judgment, wherever they are in the world, or else the manifestation of the fact that they are currently alive. In art. 90 *C.C.Q.*, the term "return" must instead be understood as referring to the absentee's physical return to Quebec.

(3) Proof of Return

[83] The question that now arises, a contentious one in this case, is the degree of proof required to prove an absentee's return. Ms. Riddle submits that the return of a person believed to be dead must be proved with certainty, in order to reflect the intention of the legislature, which, through its reform of the absence regime, wanted to prioritize legal certainty over accuracy once seven years had elapsed following the absentee's disappearance. She argues that it is only when certainty and accuracy converge again to prove the absentee's return that the declaratory judgment of death can be annulled. The Court of Appeal did not decide the question of the standard of proof required, finding that in this case the evidence adduced met the threshold, even hypothetical, of near certainty. However, I believe that a review on this point is appropriate.

[84] In civil matters, absent an exception provided for by law, there is only one standard of proof prescribed by Quebec law, namely the balance of probabilities, as codified in art. 2804 *C.C.Q.* (*Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center),*

2015 SCC 39, [2015] 2 S.C.R. 789, at para. 65; *Banque Canadienne Nationale v. Mastracchio*, [1962] S.C.R. 53, at p. 57; *Rousseau v. Bennett*, [1956] S.C.R. 89, at pp. 92-93; *Parent v. Lapointe*, [1952] 1 S.C.R. 376, at p. 380; C. Piché, *La preuve civile* (6th ed. 2020), at para. 168). Here, the *Civil Code of Québec* does not require a particular degree of proof to prove an absentee's return. The question of the degree of proof required therefore presents no real difficulty.

[85] In referring to the concept of certainty in order to construe a higher degree of proof, Ms. Riddle exaggerates the scope of the principles articulated in *Threlfall*. As this Court specified in that case, the certainty considered by the absence regime in the *Civil Code of Québec* contrasts with the philosophy that existed under the absence regime in the *Civil Code of Lower Canada*, where unrealistic time periods that were never stopped prevented the liquidation of matrimonial and inheritance regimes. The objective of certainty now affirmed is embodied in the absence regime's new mechanisms, like the presumptions of life and death and the declaratory judgment, but it cannot be interpreted as applying to the proof required to establish the return of the person declared dead. Such an interpretation would completely invent a standard of proof that the legislature has not itself prescribed.

[86] Ms. Riddle also ignores this Court's main teachings in *Threlfall*, which points out that the presumptions of life and death enshrined in the *Civil Code of Québec* are only simple presumptions, within the meaning of art. 2847 *C.C.Q.*, that can always be rebutted by proof to the contrary. As Fournier C.J. noted, [TRANSLATION] "[a]

judgment rendered pursuant to article 92 C.C.Q. is merely declarative of a death; it does not establish the fact thereof" (*D.C.R.*, at para. 29). At the risk of repeating myself, the Quebec legislature did indeed prefer a fiction to uncertainty, with the aim of protecting the interests of third parties and allowing life to move on, but it never wanted the fiction to prevail over reality.

[87] Contrary to what Ms. Riddle implies in her factum, there is no intermediary standard of proof in civil matters when the facts to be proved are serious or especially improbable. Our law of evidence does not allow the balance of probabilities standard to be adjusted according to the particular nature of the case. This debate is reminiscent of the one that took place before this Court on the standard of proof that applies in a civil case where criminal or morally blameworthy conduct is alleged (*F.H. v. McDougall*, 2008 SCC 53, [2008] 3 S.C.R. 41). In *McDougall*, this Court expressly rejected any idea of a gradation of probability in matters of civil proof. As Rothstein J. noted, "[t]o suggest that depending upon the seriousness, the evidence in the civil case must be scrutinized with greater care implies that in less serious cases the evidence need not be scrutinized with such care" (para. 45).

[88] A judge must always conscientiously assess the evidence adduced to determine whether the existence of a fact in issue is more probable than not. The inherent improbability of a fact does not require the application of a higher standard of proof. It is for the trial judge to decide, on the basis of common sense, and not on the basis of a legal rule, the extent to which it can be concluded from the circumstances

and the context that the fact alleged is inherently improbable and the extent to which this conclusion will clarify the question of whether the fact alleged has been proved (*McDougall*, at para. 48).

[89] Proving a fact on a balance of probabilities is not an easy task. The party alleging a fact, whether it be juridical or material, must provide clear and convincing evidence of its existence (art. 2803 *C.C.Q.*; *McDougall*, at para. 46). The fact sought to be proved must be not only possible, but probable (Piché, at para. 169). It is even more difficult for a party to discharge their persuasive burden when presumptions operate against them, as in this case.

[90] At the hearing, counsel for Ms. Riddle qualified her remarks. She specified that she was not putting forward a different standard of proof, but rather arguing that the party applying for annulment of a declaratory judgment of death must prove, on a balance of probabilities, that the person declared dead is *certainly* alive.

[91] With respect, Ms. Riddle is proposing circular reasoning and conflating the object of proof and the degree of proof required. Ivari had the burden of proving that Mr. Imanpoorsaid was currently alive, not that it was *certain* that he was currently alive. That was the object of its proof. The judge then had to decide, on the basis of the evidence adduced, whether she considered it more probable than not that he was currently alive. Ms. Riddle's argument has the effect of implicitly raising the standard of proof required. In reality, Ms. Riddle seems dissatisfied with the trial judge's assessment of the evidence. In her opinion, the judge did not have sufficient evidence

to find that Mr. Imanpoorsaid had returned. However, as I indicated earlier, without a palpable and overriding error being shown, it is not this Court's role to repeat that assessment.

[92] Ms. Riddle argues that by allowing a declaratory judgment of death to be annulled on a balance of probabilities, this Court is creating a hierarchy of court decisions and placing these judgments in an inferior category. She contends that these judgments are conclusive in character and have the authority of *res judicata*. Ms. Riddle's argument is not persuasive. A declaratory judgment of death is not conclusive in character. Article 97 *C.C.Q.* states that its effects cease when the person declared dead returns. The legislature has also expressly created a mechanism for reviewing a declaratory judgment of death in art. 98 *C.C.Q.*

[93] Ms. Riddle's final argument is that declaring a person alive when it has not been established with certainty that they are currently alive plunges the person, as well as rights holders, into a state of perpetual uncertainty — a situation that the *Civil Code of Québec* specifically sought to prevent. She fears that allowing a declaratory judgment of death to be annulled too easily will trigger a cycle of instability in which, in cases similar to the one before us, the person declared dead "returns" and immediately goes back to a state of absence (A.F., at para. 78; see also paras. 2-3). While it is not necessary, for the purposes of this appeal, to determine what becomes of Mr. Imanpoorsaid's rights and obligations or what comes next after the annulment of the declaratory judgment of death, a few remarks are necessary.

[94] First, the "returnee" and their heirs do not go back to square one merely because the former cannot be located. As stated earlier, the returnee's property is not left unprotected, because an apparent heir "retains possession of the property and acquires the fruits and revenues there of" until the person proved to be currently alive asks to recover it (art. 101 *C.C.Q.*). Second, a "returnee" who has still not approached their relatives does not become absent again solely because they are far away. It bears repeating that the absence regime applies only if the preconditions in art. 84 *C.C.Q.* are met. Consequently, a person whose current life is not in doubt but who has not returned to their domicile must instead be characterized as *non-present*. Finally, if it is established that the returnee has fixed their domicile outside the province, they can no longer be characterized as absent in Quebec. However, if their current life is called into question again, they can be declared absent in accordance with the laws of their domicile, and our courts can recognize a foreign judgment ruling on their personal status (Roch, at pp. 32-33). In such a case, it is the rules of Book Ten on private international law that will apply. In short, as Professor Teyssié explains, when a person who has not returned is proved to be currently alive, that person [TRANSLATION] "steps out of the position of presumed absentee . . . to step into that of a non-present person unable . . . to express their will" (para. 331).

(4) Application

[95] The trial judge, like the Court of Appeal, did not err in determining the applicable legal framework for proving the return of a person declared dead. This can

be proved through any contemporaneous manifestation that makes it more probable than not that the person declared dead is currently alive. The evidence must be clear and convincing so as to rebut the presumption of death, but no specific threshold of certainty is required. While the physical presence of the person declared dead will always be the best proof that they are currently alive, a judge may be satisfied with evidence establishing that the person is still living, particularly where the circumstances suggest that their disappearance or reclusion is voluntary.

[96] Ms. Riddle has not argued that the trial judge, in assessing the evidence, made a palpable and overriding error that would warrant intervention by this Court. Accordingly, since no error of law has been shown, our analysis should end here. However, I think it is relevant to mention the evidence that the trial judge considered in finding, on a balance of probabilities, that Mr. Imanpoorsaid was still alive. In 2015, several months after the presumed date of death, Iran's state census organization personally delivered a national identity card to a certain Hooshang Imanpoorsaid. On October 28, 2018, Iran's computerized registers of civil status reported that this person was currently alive and contained no entry of death. Since his disappearance in 2008, this same person had applied for two passports, the first of which was delivered to him a few months after he left Canadian soil. The passport application documents contain photographs of this person. Between 2008 and 2017, he left and entered Iran by airliner on at least 16 occasions, including three times after the declaratory judgment of death was pronounced. In December 2018, he registered for welfare in Iran. In light of this evidence, the trial judge was satisfied that the person appearing in those documents was

indeed Ms. Riddle's spouse and that Mr. Imanpoorsaid was therefore still very much alive.

IV. Conclusion

[97] For the reasons given above, I would dismiss the appeal with costs.

Appeal dismissed with costs.

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