

Federal Court of Appeal



Cour d'appel fédérale

Date: 20251218

Docket: A-157-25

Citation: 2025 FCA 231

**CORAM: GLEASON J.A.
BIRINGER J.A.
PAMEL J.A.**

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Appellant

and

CARTESIAN THEATRE CORP.

Respondent

Heard at Vancouver, British Columbia, on December 16, 2025.

Judgment delivered at Ottawa, Ontario, on December 18, 2025.

REASONS FOR JUDGMENT BY:

PAMEL J.A.

CONCURRED IN BY:

**GLEASON J.A.
BIRINGER J.A.**

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REASONS FOR JUDGMENT

PAMEL J.A.

[1] The Attorney General of Canada (AGC) appeals the interim order of the Federal Court issued on April 8, 2025 (*per* Aylene J.) in which the Federal Court, on motion in writing pursuant to Rule 369(1) of the *Federal Courts Rules*, SOR/98-106 (Rule), by the Cartesian Theatre Corp. (Cartesian) to correct the name of the respondent pursuant to Rule 76, substituted the AGC for

the Business Development Bank of Canada (BDC) as the respondent in the underlying application for judicial review.

[2] In its reasons, the Federal Court noted that subsection 18.1(2) of the *Federal Courts Act*, R.S.C. 1985, c. F-7 (Act), confers upon the Court the jurisdiction to extend the 30-day time limitation for commencing an application for judicial review, even after it has expired. The Federal Court also cited the Court's decisions in *Canada v Hennelly*, (1999), 167 FTR 158, 1999 CanLII 8190 [*Hennelly*] and *Whitefish Lake First Nation v. Grey*, 2019 FCA 275, which set out the test for an extension of time and ultimately determined that it was in the interests of justice that the extension be granted.

[3] Before us the AGC concedes that he should have been the proper respondent in the underlying application when it was initially filed; it is also not disputed that the AGC was properly served with the proceeding pursuant to Rule 304(1) and he concedes there is no evidence he suffered any prejudice arising from Cartesian's delay in bringing the motion. However, the AGC argues that although ultimately a discretionary decision, the Federal Court failed to encapsulate its reasoning for the exercise of its discretion in the application of the test in *Hennelly* and as such committed a reversible error of law.

[4] I cannot agree with the AGC. The underlying application commenced by Cartesian alleges, rightly or wrongly, that the BDC is purportedly the tribunal in respect of which the application is brought. Consequently, as the proceeding is presently drafted, under Rule 303(1),

the BDC could not be named as the respondent. In the absence of any other party directly affected by the application, by virtue of Rule 303(2), the AGC is to be named as the respondent.

[5] As such, it was open to Cartesian to bring a motion to correct the name of the respondent at any point pursuant to Rule 76. As stated by Justice Stratas in *Gittens v. Canada (Attorney General)*, 2019 FCA 256 at para. 15, this is only a technical issue, in particular, I would add, where there is no dispute as to the AGC being the proper respondent in the first place. Under the circumstances, it was unnecessary and incorrect for the Federal Court to have required that Cartesian satisfy the test in *Hennelly* before making the substitution, however that error is not determinative of the matter.

[6] That said, I make no determination as to whether the BDC is a “federal board, commission or other tribunal” whose actions are amenable to judicial review under sections 18 and 18.1 of the Act nor as to whether the matters challenged in the underlying application are amenable to judicial review. Nor did the Federal Court rule on these matters in the Order under appeal. These issues remain open ones and require a more fulsome record for determination than the one before this Court in this appeal.

[7] I also note that the AGC has incorrectly included the BDC as a respondent in this appeal. Accordingly, the style of cause should name only Cartesian as the respondent in accordance with Rule 303 and should be so amended.

[8] I would therefore dismiss the present appeal, with costs payable by the AGC in favour of the respondent fixed by way of agreement in the all-inclusive amount of \$7,500.00 and amend the style of cause to remove the BDC as a respondent.

"Peter G. Pamel"

J.A.

"I agree.
Mary J.L. Gleason"

"I agree.
Monica Biringer"

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-157-25

STYLE OF CAUSE: THE ATTORNEY GENERAL OF
CANADA v. CARTESIAN
THEATRE CORP.

PLACE OF HEARING: VANCOUVER, BRITISH
COLUMBIA

DATE OF HEARING: DECEMBER 16, 2025

REASONS FOR JUDGMENT BY: PAMEL J.A.

CONCURRED IN BY: GLEASON J.A.
BIRINGER J.A.

DATED: DECEMBER 18, 2025

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