Federal Court Cour fédérale

Date: 20260420

Docket: T-440-24

Citation: 2026 FC 527

Vancouver, British Columbia, April 20, 2026

PRESENT: Case Management Judge Kathleen Ring

BETWEEN:

CARTESIAN THEATRE CORP.

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

ORDER

[1] This is a motion in writing on behalf of the Applicant, Cartesian Theatre Corp. [the "Corporate Applicant"], for leave to allow Kip Warner, founder, director and shareholder of the Corporate Applicant, to represent it on this judicial review application, pursuant to Rule 120 of the *Federal Courts Rules* [*Rules*].

[2] The Corporate Applicant does not allege impecuniosity in this motion. Instead, it contends that the traditional test for leave under Rule 120 is "anachronistic, archaic, wasteful and prejudicial" (written representations, para 7), and this Court should amend it to reflect contemporary realities.

[3] The Corporate Applicant says that it neither wants nor needs a lawyer. It submits that Mr. Warner has intimate knowledge of the underlying facts at play in this Application and he is capable and incentivized to advocate the Corporate Applicant's interests on this Application. It is unlikely that the Corporate Applicant will need to provide live evidence in this Application and if it does, it undertakes to rely on legal counsel to argue that evidence if so ordered or directed by this Court.

[4] The Corporate Applicant relies on two affidavits in support of its motion, namely the Affidavit of Kipling Conrad Singh Warner affirmed on September 1, 2025 [Warner Affidavit #1] and the Affidavit of Kipling Conrad Singh Warner affirmed on January 16, 2026 [Warner Affidavit #2].

[5] The Respondent, the Attorney General of Canada, opposes the motion. He argues that the Corporate Applicant does not meet the test for an exemption from the application of Rule 120, nor do the Corporate Applicant's circumstances justify revising or departing from the well-established test under Rule 120 endorsed by the Federal Court of Appeal.

[6] Having considered the parties' respective motion materials, and for the reasons that follow, I conclude that the Corporate Applicant's motion for leave to allow Mr. Warner to represent it in this proceeding is dismissed.

I. **Background**

[7] On February 29, 2024, the Corporate Applicant filed a Notice of Application seeking judicial review of a decision of the Business Development Bank of Canada [BDC] dated January 30, 2024, rejecting its application for financing to the BDC's Seed Venture Fund program. The Notice of Application is signed by Mr. Umar A. Sheikh, of the law firm of Sheikh Law, as

solicitor for the Corporate Applicant. Thus, Mr. Sheikh became the solicitor of record for the Corporate Applicant under Rule 123(1).

[8] Various interlocutory motions were subsequently brought by both parties as well as an appeal by the Corporate Applicant of an interlocutory decision (*per* Aylen, J.). Apart from the present motion, Mr. Sheikh has represented the Corporate Applicant on the various motions before this Court and the appeal before the Federal Court of Appeal.

[9] On September 1, 2025, the Corporate Applicant tendered various documents for filing, including a Notice of Limited-Scope Representation and a motion record on behalf of the Corporate Applicant responding to the Respondent's motion for an abeyance. Shortly thereafter, the Registry referred the documents to the Court for directions as to filing under Rule 72.

[10] On September 3, 2025, the Court issued Rule 72 directions rejecting all of the submitted documents for filing. As regards the Notice of Limited-Scope Representation, the Court directed that it was rejected for filing "because its effect is to circumvent the requirements of Rule 120 of the *Federal Courts Rules*. Rule 120 provides that a corporation, such as the Applicant, Cartesian Theatre Corp., shall be represented by a solicitor in all proceedings, unless the Court in special circumstances grants leave to it to be represented by an officer of the corporation. Here, no Order has been sought or granted allowing the Applicant to have limited representation by a solicitor".

[11] The Court rejected the Corporate Applicant's motion record for filing as "the Written Representations are signed by Kip Warner, who claims he is an 'Authorized Representative for the Motion Respondent, Cartesian Theatre Corp.'. Again, the Motion Record in its present form

contravenes Rule 120, as this Court has not granted leave for Mr. Warner to represent the corporate Applicant under Rule 120".

[12] One week later, on September 12, 2025, Mr. Kip Warner tendered a letter dated September 12, 2025, purporting to be on behalf of the Corporate Applicant, objecting to the Respondent's reply affidavit submitted on their motion for abeyance, and seeking an order that the reply affidavit be struck or disregarded by the Court.

[13] On September 29, 2025, the Court issued Rule 72 directions that the Registry was to "reject the letter signed by Mr. Warner and to return it to him as this Court has not granted leave for Mr. Warner to represent the corporate Applicant in this proceeding. Accordingly, the letter contravenes Rule 120 of the *Federal Courts Rules*".

[14] On January 23, 2026, the Applicant's Motion Record on the present Rule 120 motion was tendered for filing by Mr. Warner, who identifies himself under his signature in the written representations as the "Authorized Representative for the Moving Party Cartesian Theatre Corp." Mr. Warner also submitted a Notice of Intention of Act in Person and other documents. These documents were also referred to the Court for directions under Rule 72.

[15] On January 29, 2026, counsel for the Respondent submitted a letter on behalf of both parties requesting a case management conference for the purpose of obtaining direction on the sequencing and scheduling next litigation steps, including the timelines and mechanisms for advancing the Corporate Applicant's Rule 120 motion. The letter indicated that the Respondent did not object to the Court providing leave under Rule 120 for the limited purposes of enabling

Mr. Warner to correspond, appear, and make submissions to the Court in respect of the case management conference.

[16] On January 30, 2026, the Court issued Rule 72 directions allowing the Notice of Intention and the Rule 120 motion to be accepted for filing. The Direction states, in part, that:

> 1. The Notice of Intention to Act in Person shall be accepted for filing, notwithstanding the deficiencies noted by the Registry, but on the understanding that the corporate Applicant has also filed a Rule 120 motion. **The corporate Applicant will only be able to act without a solicitor (*e.g.*, be represented by a corporate officer) if the Court grants the Rule 120 motion**.
>
> [Emphasis added]

[17] On February 11, 2026, the Court issued a scheduling Order for the filing of the remaining motion materials on the present motion. The Order provides that the parties are dispensed from taking further steps in the judicial review application pending the disposition of this motion.

II. Governing Legal Principles

[18] Rule 120 of the *Rules* provides that a corporation, partnership or unincorporated association must be represented by a solicitor in all proceedings, unless the Court, in special circumstances, authorizes the entity to be represented by an officer of the entity.

[19] The rationale behind Rule 120 has been addressed by the courts on several occasions. In *TPG Technology Consulting Ltd. v Canada*, 2011 FCA 345 [*TPG Technology*], the Federal Court of Appeal observed that one reason for the rule "which is particularly compelling is that those who have received the benefits of incorporation in the form of tax planning opportunities, immunity from liability in tort etc. should also bear the costs of incorporation, one of which is that the corporation must be represented before the courts by a solicitor" (para 8).

[20] More recently, in *Rooke v Canada (Health)*, 2019 FC 730, affirmed in *Rooke v Canada (Health)*, 2019 FC 765 at para 17, this Court held that the involvement of a solicitor provides minimal guarantees that the interests of litigants that come within Rule 120, such as corporations, will be protected. Case Management Judge Mireille Tabib explained at pages 5 and 6:

> … Solicitors are members of a regulated profession and are presumed to have the competence needed to adequately represent and protect their clients' rights. If a solicitor does act negligently and to the prejudice of its clients or the persons it represents, the professional liability insurance a solicitor is required to maintain is available to compensate the client or represented person for the losses suffered. These minimal guarantees are not available where the interests of a person are represented by a non-lawyer.

[21] In *SAR Group Relocation Inc. v Canada (Attorney General)*, 2002 FCA 99 at para 2 [*SAR Group*], the Federal Court of Appeal developed a test to assess whether leave should be granted under Rule 120 of the *Rules*. To succeed on the test, the moving party must demonstrate, by admissible evidence, that:

a) it cannot afford a lawyer;

b) the proposed representative will not be required to act as both advocate and witness;

c) the issues are not so complex to be beyond the proposed representative's capabilities; and

d) the proceeding can proceed in an expeditious manner.

[22] The courts have generally held that the ability of a moving party to pay for counsel is the most important factor to consider: *Macciacchera (Smoothstreams.tv) v Bell Media Inc.*, 2024 FCA

30 at 6 [*Macciacchera*], citing *Alpha Marathon Technologies Inc. v Dual Spiral Systems Inc.*, 2005 FC 1582 at para 5 [*Alpha*].

[23] Leave to allow an individual to represent a corporation under Rule 120 is not granted automatically or easily. The burden on the moving party is high and requires clear and unambiguous evidence of circumstances, which must be unusual, uncommon and exceptional, and the result of external forces as distinct from the voluntary acts of the plaintiff: *Canada v BCS Group Business Services Inc.*, 2020 FCA 205 at para 16; *Macciacchera* at para 4, citing *Glycobiosciences Inc. v L'Oreal Canada*, 2022 FC 1517; *Alpha* at para 4.

III. **Can this Court "Reform" the Law on Rule 120 on this Motion?**

[24] The Corporate Applicant argues at length that this Court *should* reform the law regarding Rule 120 and that it *can* do so on this motion.

[25] The Corporate Applicant submits that Rule 120 undermines the interests of small businesses in Canada, many of whom it alleges are run by small business owners who are sophisticated and capable of protecting their investments and interests. According to the Corporate Applicant, impecuniosity is not necessarily always the reason a corporation chooses to self-represent. Mr. Warner states that the Corporate Applicant operates in a highly competitive industry (computer software development) and disclosure of the Corporate Applicant's finances, for the purposes of this motion, could signal to one of its industry competitors or another interested person an opportunity to gain advantage (Warner Affidavit #2, para 44).

[26] Even if the Corporate Applicant were impecunious, which is not alleged on this motion, Mr. Warner asserts that it is offensive to be required "to submit to the humiliating public ritual, a

pauper's gatekeeping of sorts, of tendering intimate evidence of my venture's financial records to the Court" (Warner Affidavit #2, para 43). The Court Applicant submits that the default rule should be to allow corporations full access to the courts, as it does with respect to natural persons.

[27] In my view, it is not necessary to address the Corporate Applicant's arguments as to why, in its view, the law on Rule 120 should be reformed. For the purposes of this motion, the controlling issue is whether this Court can "reform" or "amend" the existing jurisprudence on Rule 120 on this motion. As I explain below, the answer to that question is no.

[28] As already noted, the Federal Court of Appeal established a legal test in *SAR Group* for determining whether a moving party can demonstrate that "special circumstances" exist warranting dispensation from Rule 120. A key feature of the legal test is whether the moving party can demonstrate that they cannot afford a lawyer.

[29] The legal doctrine of *stare decisis* requires that courts render decisions which are consistent with the previous decisions of higher courts. The values of certainty, predictability, finality and consistency underlie the doctrine of *stare decisis*: *Air Canada Pilots Association v Kelly*, 2012 FCA 209 at para 54; *Miller v Canada (Attorney General)*, 2002 FCA 370 at para. 8.

[30] While there are exceptions when a lower court may depart from a precedent established by a higher court, the threshold for revisiting a matter is a high one. This threshold is only met when a new legal issue is raised, or if there is a significant change in the circumstances or evidence: *Canada (Attorney General) v Bedford*, 2013 SCC 72 at para 42 [*Bedford*].

[31] Applying these principles to this case, unless one of the *Bedford* exceptions are made out by the Corporate Applicant, I am bound by the doctrine of *stare decisis* to apply the Federal Court

of Appeal's jurisprudence on the legal test for determining "special circumstances" on a Rule 120 motion.

[32] Having carefully considered the material before the Court, I am not satisfied that the Corporate Applicant has met the high threshold set out in *Bedford* for departing from established precedent. The Corporate Applicant has not raised a new legal issue, nor established a significant change in the circumstances or evidence. The mere fact that there may be some differences in the evidentiary records in this case and in the Federal Court of Appeal decisions cited earlier cannot justify this Court in departing from previous decisions of higher courts on the applicable legal test under Rule 120. If it did, every case would be binding only on the parties to that case since, with very few exceptions, no two cases are decided on the same evidentiary record.

[33] Similarly, the evolution of social policy over time on matters such as access to justice may justify the Federal Court of Appeal revisiting a particular issue, but it cannot justify a lower court failing to follow the rulings of the Federal Court of Appeal.

[34] The Corporate Applicant submits that this Court must interpret Rule 120 in accordance with Rule 3, so as to secure the just, most expeditious and least expensive outcome of every proceeding, and with consideration being given to the principle of proportionality. According to the Corporate Applicant, a "rigid impecuniosity interpretation of Rule 120" contravenes Rule 3 (written representations, para 89).

[35] I reject this argument as lacking merit. Rule 3 is a rule of interpretation. It cannot be used to ignore or modify a legal principle, such as *stare decisis*, which arises independently of the *Rules*: *Canada v Tk'emlúps te Secwépemc First Nation*, 2020 FCA 179 at para 47.

[36] Likewise, I reject the Corporate Applicant's argument that this Court is free to dispense with Rule 120 entirely pursuant to its powers under Rule 55. Rule 55 allows a Court to dispense with a rule in "special circumstances". The difficulty for the Corporate Applicant is that Rule 120 already allows a Court to grant leave to a corporate officer to represent a corporate litigant in "special circumstances", and there is well-established legal precedent on the factors that a Court is to consider in determining whether "special circumstances" exist. Rule 55 cannot be invoked in this context to effectively sidestep the doctrine of *stare decisis* and ignore the established legal test on a Rule 120 motion.

[37] For all of these reasons, this Court concludes that it is bound to apply the legal test established by the Federal Court of Appeal in determining whether Mr. Warner should be allowed to represent the Corporate Applicant in this proceeding. I will now turn to the application of that test to the facts of this case.

IV. **Has the Corporate Applicant Satisfied the Legal Test under Rule 120?**

A. ***Is the Corporate Applicant Impecunious?***

[38] As already stated, the most important factor for the Court to consider on a Rule 120 motion is the ability of the moving party to pay for legal representation: *Alpha* at para 5.

[39] The onus is on the moving party to put forward evidence of its alleged impecuniosity before the Court: *TPG Technology* at para 9.

[40] The demonstration that a corporation cannot afford a lawyer should usually be made by submitting "complete and clear financial information" concerning the corporation, preferably by

means of financial statements: *El Mocambo Rocks Inc. v Society of Composers, Authors and Music Publishers of Canada (SOCAN)*, 2012 FCA 98 at para 4 [*El Mocambo*].

[41] Further, to establish impecuniosity, the corporate party is required to show not only that it does not have sufficient assets itself, but also that it could not raise the necessary funds from its shareholders: *Source Services Corp. v Source Personnel Inc.* (1995), 105 FTR 42 at para 8.

[42] Here, the Corporate Applicant has provided no financial statements or other documentary evidence to the Court regarding its financial status to establish the corporation's impecuniosity. To the contrary, the Corporate Applicant plainly states that it "does not allege impecuniosity in this motion" (written representations, paras 2, 61 and 95). Indeed, the Corporate Applicant notes that it had a lawyer formally on the record in this proceeding for approximately two years.

[43] The Corporate Applicant's position on the requirement to demonstrate impecuniosity is that the Court can and should reform the law so that this is no longer a requirement under Rule 120. I have already explained why that is not a viable argument before this Court. As regards the Corporate Applicant's concern about "the inherently grave risks in disclosure of intimate financial records" (Reply, para 10), there are tools available in the *Rules* to address confidentiality issues.

[44] In the circumstances, I find that the Corporate Applicant has failed to discharge the burden upon it to demonstrate that it is truly unable to pay for a lawyer. The motion should therefore be dismissed on this ground alone: *Wang v Louis Vuitton Malletier S.A.*, 2019 FCA 199 at para 6; *Macciacchera* at para 5.

[45] While my finding on impecuniosity is sufficient to dispose of this motion, I also have some concern about the other factors relevant to an order under Rule 120 which I will address below.

B. ***Should Mr. Warner be permitted to act as both an advocate and a witness?***

[46] The Corporate Applicant acknowledges the general rule that counsel and witness cannot be one and the same. However, it argues that this rule only applies in circumstances where the witness will give *viva voce* evidence (*i.e.,* oral testimony), and it is highly unlikely that oral evidence will be required here as the judicial review application will proceed on the written record.

[47] I disagree with the Corporate Applicant's narrow interpretation of the rule. An affiant who proffers affidavit evidence on this Application is a witness in the proceeding.

[48] Given that Mr. Warner is the founder, director, officer and majority shareholder with a controlling interest in the Corporate Applicant, it is very likely that he will participate as an affiant on behalf of the Corporate Applicant for the purposes of proffering affidavit evidence in support of the Application pursuant to Rule 306. This militates against granting him leave to represent the Corporate Applicant as he would appear both as advocate and as witness during the course of the proceeding. This would likely complicate and delay the proceedings and place the other party and the Court in a difficult if not untenable position.

C. ***Are the Issues too Complex?***

[49] Mr. Warner acknowledges that he is not a lawyer. However, he contends that he has demonstrated his competence through his behind-the-scenes work on the Application and the appeal when the Corporate Applicant was still represented by legal counsel, and his preparation of the motion materials filed on behalf of the Corporate Applicant on this motion. He states that he held a Queen's Commission as an Infantry Officer of the rank of Second Lieutenant in the Royal Canadian Infantry Corps, and in that role, he received formal training in summary trials and other duties as an assisting officer.

[50] The Respondent submits that the issues raised in the Notice of Application are complex and beyond the scope of a lay litigant. According to the Respondent, the core of the proceeding – whether commercial financing decisions between a corporation and BDC is justiciable, and if so, what relief is available – is entirely novel and will establish precedent. The issues raised on the Notice of Application include the jurisdiction of the Court to evaluate the reasonableness of BDC's financing decision, the reasonableness of the financing decision, whether the decision was reached in a procedurally fair manner, and whether an order of *mandamus* requiring the BDC to correct publicly disseminated materials is an appropriate remedy.

[51] While I have no doubt that Mr. Warner believes that he is reasonably capable of representing the Corporate Applicant on this Application, I am not satisfied that is the case. Having considered the material before the Court, I am of the view that the Application raises complex and novel issues and may go "beyond the reasonable capabilities of the proposed representative": *El Mocambo* at para 3. This factor weighs against granting the motion.

V. **Conclusion and Next Steps**

[52] Taking into account the factors set out in appellate jurisprudence which is binding on this Court, and the material before the Court, and for the foregoing reasons, I am not satisfied that "special circumstances" have been established to justify Mr. Warner to act on behalf of the Corporate Applicant in this proceeding. Accordingly, the motion is dismissed.

[53] The Respondent seeks his costs of the motion. I see no reason to deviate from the general rule that a successful party is entitled to his or her costs on a motion. Accordingly, the Corporate Applicant shall pay costs of the motion to the Respondent, hereby fixed in the amount of $1000.00 inclusive of disbursements and taxes, in any event of the cause.

[54] The outcome of this motion undoubtedly has implications for the progress of the underlying judicial review application because the Corporate Applicant cannot act without representation. Accordingly, the terms of this Order will require the Corporate Applicant to appoint a lawyer to represent it within the deadline prescribed in this Order.

[55] I am also mindful that paragraph 5 of my Order dated February 11, 2026 provides that:

> 5. Within fourteen (14) days of the date of disposition of the Rule 120 Motion, the parties shall confer and submit a letter to the Registry setting out their dates and times of mutual availability for a case management conference which is intended to fix a schedule for the next steps in the proceeding.

[56] The above-noted provision will be rescinded by this Order and replaced by a new provision that accords with the other provisions in this Order.

THIS COURT ORDERS that:

1. The motion for leave to allow Kip Warner to represent the Corporate Applicant, Cartesian Theatre Corp., is dismissed.

2. The Corporate Applicant shall serve and file a Notice of Appointment of Solicitor in Form 124B of the *Rules*, along with proof of service, by no later than May 20, 2026.

3. The Corporate Applicant shall not take any further steps in this judicial review application, including the bringing of any motions, until it has complied with paragraph 2 of this Order. This provision shall not apply to the bringing of an appeal from this Order.

4. Costs of the motion, hereby fixed in the amount of $1,000.00, inclusive of disbursements and taxes, shall be paid by the Corporate Applicant to the Respondent in any event of the cause.

5. Paragraph 5 of the Order dated February 11, 2026 is hereby rescinded and replaced by paragraph 6 of this Order.

6. If the Corporate Applicant complies with paragraph 2 of this Order, the Corporate Applicant's appointed legal counsel shall confer with the Respondent's counsel and submit a letter to the Registry, within twenty-one (21) days of the date of filing a Notice of Appointment of Solicitor, setting out the parties' dates and times of mutual availability for a case management conference to fix a schedule for the next steps in the proceeding.

7. If the Corporate Applicant fails to comply with paragraph 2 of this Order within the prescribed deadline, the Court will conclude that the Corporate Applicant has abandoned its intention to proceed with this matter and the proceeding will be dismissed for delay without further notice to the Corporate Applicant.

"Kathleen Ring"
Case Management Judge