

Federal Court



Cour fédérale

Date: 20260727

Docket: T-440-24

Citation: 2026 FC 1009

Ottawa, Ontario, July 27, 2026

PRESENT: Mr. Justice McHaffie

BETWEEN:

CARTESIAN THEATRE CORP.

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

REASONS AND ORDER

I. Overview

[1] Rule 120 of the *Federal Courts Rules*, SOR/98-106, requires a corporation to be represented by a solicitor in all proceedings, unless the Court in “special circumstances” grants it leave to be represented by an officer. The test for leave under Rule 120, long established by this Court and the Federal Court of Appeal, requires a company to show they are unable to pay for a lawyer, among other things. Cartesian Theatre Corp argues this test can and should be changed to remove this requirement. It asks the Court to grant it leave to be represented by its founder and principal, Kip Warner, even though it has not shown it cannot pay for a lawyer.

[2] In an order cited as 2026 FC 527, Associate Judge Ring, sitting as Case Management Judge, rejected these arguments and refused to grant leave. She found she was bound by the Court of Appeal's statement of the test for leave under Rule 120. Cartesian Theatre did not meet that test since it had not established, or even alleged, that it could not afford a lawyer.

[3] Cartesian Theatre appeals the Case Management Judge's order. Its main argument on appeal is that Rule 120 was not promulgated in compliance with a *Cabinet Directive on Regulation* that came into force on September 1, 2018, and that this renders Rule 120 unreasonable or, at least, justifies ignoring or reconsidering the existing jurisprudence on the Rule. Cartesian Theatre alleges the Case Management Judge erred in failing to engage with these arguments and in finding herself bound by the Court of Appeal's decisions. It also raises a number of other alleged errors on the part of the Case Management Judge.

[4] As explained further below, I am wholly unpersuaded by Cartesian Theatre's arguments. Its arguments based on the *Cabinet Directive on Regulation*, largely raised for the first time on this appeal, are unsupported and premised on a misunderstanding of the directive, its nature, and its effect on promulgated regulations. Any purported non-compliance with the *Cabinet Directive on Regulation* in the development and promulgation of the *Federal Courts Rules* can have no effect on the validity of Rule 120 and provides no basis for this Court to ignore the binding jurisprudence of the Federal Court of Appeal. Nor has Cartesian Theatre identified any other grounds on which to disturb the Case Management Judge's decision.

[5] The appeal is therefore dismissed, with costs.

II. Issues and Standard of Review

[6] The various issues raised by Cartesian Theatre’s appeal are conveniently addressed within the following three main questions:

- A. What is the test for obtaining leave under Rule 120 of the *Federal Courts Rules* as set out in the current jurisprudence?
- B. Does the *Cabinet Directive on Regulation* that came into force on September 1, 2018, provide a basis on which to reconsider or decline to follow the current jurisprudence requiring a corporation to show it is unable to afford a lawyer to obtain leave under Rule 120?
- C. Did the Case Management Judge err in her analysis of other aspects of the Rule 120 test?

[7] As the parties agree, an appeal of a decision of an associate judge under Rule 51 of the *Federal Courts Rules* is undertaken on the usual appellate standards of review. Questions of law, including those extricable from questions of mixed fact and law, are reviewed on the correctness standard, while questions of fact and mixed fact and law are reviewed on the “palpable and overriding error” standard: *Housen v Nikolaisen*, 2002 SCC 33 at paras 8, 10, 19, 36; *Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, 2016 FCA 215 at paras 66–69, 79; *Immigration Consultants of Canada Regulatory Council v College of Immigration and Citizenship Consultants Corp*, 2021 FC 726 at paras 12–15.

III. Analysis

A. *Rule 120 and the current jurisprudence*

(1) The Rule and its predecessor

[8] Rule 120 of the *Federal Courts Rules* sets out a general rule that a corporation must be represented in proceedings, but allows the Court in special circumstances to grant the corporation leave to be represented by an officer:

**Corporations or
unincorporated associations**

120 A corporation, partnership or unincorporated association 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, partner or member, as the case may be.

**Personne morale, société de
personnes ou association**

120 Une personne morale, une société de personnes ou une association sans personnalité morale se fait représenter par un avocat dans toute instance, à moins que la Cour, à cause de circonstances particulières, ne l'autorise à se faire représenter par un de ses dirigeants, associés ou membres, selon le cas.

[9] Given the nature of some of Cartesian Theatre's arguments, it is worth placing Rule 120 in its historical context. The original *Federal Court Rules*, SOR/71-68, made when the Federal Court of Canada was created in 1971, included Rule 300(2), which provided that "[e]xcept as expressly provided by or under any enactment," a corporation required a lawyer to begin or carry on a proceeding. On this narrower formulation of the rule, the Federal Court of Appeal doubted there was room for the Court to grant leave on a discretionary basis: *Father Don's Natural Products Ltd v McKenzie*, [1986] FCJ No 97 (CA) at paras 1, 6.

[10] In 1990, Rule 300(2) was amended to expressly allow the Court, in special circumstances, to grant leave to the corporation to be represented by an officer, rather than a lawyer: *Federal Court Rules, amendment*, SOR/90-846. When substantial revisions to the rules were implemented through the *Federal Court Rules, 1998* (now titled the *Federal Courts Rules*), Rule 300(2) was carried forward into Rule 120 in the same language (partnerships and unincorporated associations were also added to Rule 120 in 1998). The rule has remained unchanged since that time.

(2) The test for leave under Rule 120

[11] Since its introduction in 1990, the Federal Courts have interpreted the need for “special circumstances” in Rule 300(2) to include a requirement that the corporation demonstrate that it is unable to pay for a lawyer: *Source Services Corp v Source Personnel Inc*, [1995] FCJ No 1658 at paras 12–14; *Kobetek Systems Ltd v Canada*, 1998 CanLII 7265 (FC), citing *I*AM Institute of Applied Methodology v Canada*, 1991 CanLII 14197 (FC), [1991] 1 CTC 226, *NsC Diesel Power Inc (Officer of) v Canada (Superintendent of Bankruptcy)*, [1995] FCJ No 806, and *Sharpe’s Tropical Shell Co v Canada*, [1995] FCJ No 1084.

[12] As noted, Rule 300(2) became the new Rule 120 with the adoption of the new *Federal Court Rules, 1998*. Shortly thereafter, the Federal Court of Appeal confirmed the approach to Rule 120 in *SAR Group Relocation Inc v Canada (Attorney General)*, 2002 FCA 99. Citing this Court’s decisions in *Source Services*, *NsC Diesel*, and *Kobetek*, the Court of Appeal stated that to grant leave to corporations under Rule 120, the Court “must be satisfied that the corporations are truly unable to pay for a lawyer and that the person sought to be allowed to represent them has

indeed been authorized by the corporations to represent them” [emphasis added]: *SAR Group* at para 2. It was also relevant to consider whether the proposed representative would also be a witness, given the concern about counsel appearing in cases where they are also a witness: *SAR Group* at para 2.

[13] This approach has been confirmed by the Federal Court of Appeal and this Court on many occasions in the 24 years since *SAR Group*. The relevant test is now generally expressed as a requirement that the corporation show: (a) it cannot afford a lawyer; (b) the representative will not be required to be both advocate and witness; (c) the issues are not so complex as to be beyond the proposed representative’s reasonable capabilities; and (d) the matter can proceed in an expeditious manner: *Macciachera (Smoothstreams.tv) v Bell Media Inc*, 2024 FCA 30 at para 3, citing *Glycobiosciences Inc v L’Oreal Canada*, 2022 FC 1517 at para 25 and *UBS Group AG v Yones*, 2022 FC 487 at paras 7–10; *El Mocambo Rocks Inc v Society of Composers, Authors and Music Publishers of Canada (SOCAN)*, 2012 FCA 98 at paras 3–5.

[14] The Court of Appeal has noted that the ability to pay for legal representation is “without a doubt the most important factor for the Court to consider”: *Macciachera* at para 6, citing *Alpha Marathon Technologies Inc v Dual Spiral Systems Inc*, 2005 FC 1582 at para 5. Indeed, the Court of Appeal has gone further, stating that to obtain leave, a corporation must demonstrate it cannot afford a lawyer: *1443900 Ontario Inc v Canada*, 2013 FCA 113 at para 3; *SAR Group* at para 2. Thus, the Court of Appeal has on many occasions dismissed requests for leave under Rule 120 solely on grounds that the company has not shown that it was impecunious or unable to afford a lawyer, making it unnecessary to address other factors: *Macciachera* at paras 5, 9;

1443900 Ontario at para 3; *TPG Technology Consulting Ltd v Canada*, 2011 FCA 345 at paras 8–9; *Wang v Louis Vuitton Malletier SA*, 2019 FCA 199 at paras 5–6.

[15] The purpose of Rule 120 can be readily understood from its context. In this regard, I reject as preposterous Cartesian Theatre’s argument that neither this Court nor the Federal Court of Appeal can draw any conclusions regarding the purpose or objective of Rule 120 in the absence of a Regulatory Impact Analysis Statement [RIAS] or evidence from a member of either the Rules Committee or the Cabinet at the time of the rule’s enactment or continuation. I note too that Cartesian Theatre’s argument in this regard conflicts with its own submissions to the Case Management Judge, which claimed the rule was “predicated on the assumption that it is inconceivable for a non-lawyer to learn or argue the law.”

[16] As this Court and the Federal Court of Appeal have recognized, the purpose of the rule is more nuanced than Cartesian Theatre’s simplistic formulation. It stems from the fact that a corporation is a distinct legal entity from its shareholders: *Kosmopoulos v Constitution Insurance Co*, 1987 CanLII 75 at para 12, citing *Salomon v Salomon & Co*, [1897] AC 22 (HL). This results in certain benefits, such as shielding shareholders from liability for the company’s debts or other obligations. However, it also means that representing a company in court involves providing legal advice to a third party, an act generally restricted by provincial statutes regulating the legal profession see, *e.g.*, *Legal Profession Act*, SBC 1998, c 9, s 15; *Law Society Act*, RSO 1990, c L.8, s 26.1(1); *Act respecting the Barreau du Québec*, RSQ, c B-1, s 128; *Atlantic Chemicals Trading of North America Inc v Morizon Holdings Ltd*, 2005 BCCA 456 at paras 3–4. Thus, in *TPG Technology*, Justice Pelletier noted that the benefits created by the

corporate distinction also attracted costs, including the need to be represented by counsel: *TPG Technology* at para 8. Similarly, in *UBS Group*, I noted that the requirements of Rule 120 were not merely procedural hoops but “reflect a balance between important principles underlying regulation of the legal profession, the public interest in effective access to the Court through efficient and timely Court proceedings, and the need for access to justice”: *UBS Group* at para 10, cited in *Macciachera* at para 3.

[17] Not surprisingly, these descriptions of the purpose of Rule 120 parallel those found in the jurisprudence in Ontario regarding a similar rule in the *Rules of Civil Procedure: Rules of Civil Procedure*, RRO 1990, Reg 194, Rule 15.01(2); *GlycoBioSciences Inc (Glyco) v Industria Farmaceutica Andromaco, SA, de CV (Andromaco)*, 2024 ONCA 481 at para 7 [*Glyco v Andromaco*]; *Scarangella v Oakville Trafalgar Memorial Hospital*, 2024 ONSC 5518 at para 10. (On this point, I again reject Cartesian Theatre’s argument, made with misplaced reliance on the *Reference re Securities Act*, 2011 SCC 66, that the Court cannot consider the purpose of Rule 120 in light of similar provisions in provincial regulations: see, e.g., *Westmount (City) v Rossy*, 2012 SCC 30 at para 31.) The Ontario Court of Appeal has described the purpose of the Ontario rule in the following terms, which in my view similarly reflect the rationale underlying Rule 120 as discussed in Federal Court jurisprudence:

The rationale for the rule requiring representation by a lawyer is plain. A non-lawyer who is closely tied to the corporation granted leave under r. 15.01(2) is akin to a self-represented party, but the separate legal personhood of the corporation means, in effect, that the non-lawyer is providing legal services to another person, contrary to s. 26.1(1) of the *Law Society Act*, R.S.O. 1990, c. L.8. Moreover, non-lawyers are not bound by the *Rules of Professional Conduct*, nor are they subject to the personal financial consequences associated with cost orders that self-represented litigants face [...]. Permitting a non-lawyer to act also risks

creating an undue burden on the respondents and the court. These considerations must be balanced with any concerns that may arise about access to justice [...].

[Emphasis added; citation omitted; *Glyco v Andromaco* at para 7.]

[18] The concern about access to justice referred to in the decisions above is reflected in the recognition that a corporation that cannot afford a lawyer—and might therefore be unable to pursue or defend proceedings—may be granted leave to be represented by an officer. However, Cartesian Theatre does not allege that it cannot afford a lawyer or will be unable to pursue its case if required to hire one. Rather, it asserts that Rule 120 denies it the “right to directly [*i.e.*, without a lawyer] take its case to this Court.” Contrary to Cartesian Theatre’s assertions, there is no such general “right” granted to a corporation to pursue litigation without a lawyer.

[19] Having referred to the Ontario jurisprudence, I will note that the Federal Courts’ approach *requiring* a corporation to demonstrate it cannot afford a lawyer appears to be a more stringent approach than that applied in Ontario, where the decision to grant leave is discretionary and “made having regard to all relevant circumstances in a particular case,” including the company’s financial situation and ability to afford a lawyer: *Glyco v Andromaco* at paras 8–12; *Stayside Corporation Inc v Cyndric Group Inc*, 2024 ONCA 630 at para 8; *Goldentrust Development Inc v Chen*, 2025 ONSC 1670 at paras 13–21, citing *Extend-A-Call Inc v Dmitri Granovski et al*, 2009 CanLII 33047 (ON SC) at para 19.

[20] Be that as it may, in this Court, the binding appellate jurisprudence is clear that in the Federal Courts, a company must demonstrate its inability to afford a lawyer to be granted leave. The Case Management Judge referred to this Federal Court of Appeal authority and the

governing legal principles in her decision. Cartesian Theatre does not allege that she erred in her statement of these principles. Rather, as discussed further below, it argues that they should not be treated as binding or determinative in light of the *Cabinet Directive on Regulation*. Before addressing those arguments, it is worth putting them in their procedural context.

(3) Context to this motion and appeal

[21] Cartesian Theatre describes itself in this proceeding as an independent software vendor engaged in research and development of artificial intelligence powered music discovery technology, among other activities. It brought this application for judicial review in February 2024, seeking to challenge a decision by the Business Development Bank of Canada [BDC] not to invest in Cartesian Theatre through its Seed Venture Fund program. The notice of application originally named BDC as a respondent and made a request for certain materials from BDC pursuant to Rule 317 of the *Federal Courts Rules*.

[22] On receipt of the notice of application, BDC initially served a notice of appearance, but then took the position that the Attorney General of Canada should be named as respondent. In February 2025, Cartesian Theatre brought a motion to substitute the Attorney General of Canada for BDC as respondent to the application for judicial review, in accordance with Rule 303. The Attorney General opposed the motion, on grounds that it amounted to a request to extend the time to commence a judicial review, and that the underlying application was defective since BDC's decision not to invest was not subject to judicial review. Over these objections, Justice Aylen of this Court granted the motion to substitute the Attorney General as respondent, noting that the reviewability of BDC's decision was not a matter for determination on the motion.

[23] The Attorney General appealed Justice Aylen's order. The Federal Court of Appeal dismissed that appeal at the end of 2025: *Canada (Attorney General) v Cartesian Theatre Corp*, 2025 FCA 231. Justice Pamel for the Court of Appeal similarly noted that he was making no determination regarding the reviewability of BDC's decision in the underlying application. That issue, and associated disputes regarding Cartesian Theatre's Rule 317 request, remain outstanding.

[24] While the appeal of Justice Aylen's order was ongoing, Cartesian Theatre tendered a number of documents for filing, including certain documents purporting to identify Mr. Warner as its "Authorized Representative." After these documents were rejected for being non-compliant with Rule 120, Cartesian Theatre filed a written motion in January 2026 seeking leave under Rule 120 to have Mr. Warner represent it. Mr. Warner was granted leave to represent Cartesian Theatre in presenting the Rule 120 motion (and later, this appeal).

[25] On its motion for leave under Rule 120, Cartesian Theatre did not file evidence demonstrating that it was unable to pay for a lawyer, and did not even allege that it could not. Rather, it argued that Mr. Warner was competent and suitable to represent Cartesian Theatre, and that the Court should and could reform the current law regarding leave under Rule 120 so as to remove the requirement for a company to show that it cannot afford a lawyer.

[26] As described at the outset, the Case Management Judge dismissed Cartesian Theatre's motion seeking leave under Rule 120: *Cartesian Theatre Corp v Canada (Attorney General)*, 2026 FC 527. On this appeal from that decision, Cartesian Theatre defines six issues or grounds

of appeal. Three of them relate to the *Cabinet Directive on Regulation*, while the remainder address two aspects of the test for leave and broader principles of equity. Within these issues, Cartesian Theatre makes a variety of different arguments. I will first address the grounds that rely on the *Cabinet Directive on Regulation* before turning to the other grounds.

B. *The Cabinet Directive on Regulation does not provide a basis to reconsider the jurisprudence*

(1) The Cabinet Directive on Regulation

[27] The *Cabinet Directive on Regulation* came into force on September 1, 2018, replacing an earlier *Cabinet Directive on Regulatory Management*, dated April 1, 2012. A revised version of the directive was published in 2024 (catalogue number BT22-212/2024E-PDF), which is the version in the record that I will refer to.

[28] As set out in its “Purpose” section, the *Cabinet Directive on Regulation* sets out the Government of Canada’s “expectations and requirements” in the development, management, and review of federal regulations. It states that it applies to all regulations that are or will be registered as such under section 6 of the *Statutory Instruments Act*, RSC 1985, c S-22, made by or with the approval of the Governor in Council, the Treasury Board, or a minister of the Crown. Other regulation-making authorities in respect of other regulations are “strongly encouraged” to follow and apply the directive to the greatest extent possible.

[29] The *Cabinet Directive on Regulation* states that in fulfilling their duties in making regulations, “departments and agencies” are to be guided by four principles, namely:

(1) regulations protect and advance the public interest and support good government; (2) the regulatory process is modern, open, and transparent; (3) regulatory decision-making is evidence-based; and (4) regulations support a fair and competitive economy. The directive goes on to describe a “regulatory life cycle approach” requiring departments and agencies to examine and analyze regulations through all stages of their life cycle, including the development of regulations, regulatory management, and “review and results.” During each of these stages, they must seek opportunities to engage stakeholders, pursue regulatory cooperation, and coordinate with all levels of government. The directive then provides details on each of these stages.

(2) Cartesian Theatre’s arguments

[30] Cartesian Theatre argues that the *Federal Courts Rules*, and specifically Rule 120, do not comply with the *Cabinet Directive on Regulation*. In particular, it contends that (a) the directive is binding on the Federal Courts’ Rules Committee, established by section 45.1 of the *Federal Courts Act*, RSC 1985, c F-7; and (b) promulgation of the *Federal Courts Rules* did not follow the directive’s requirements of engaging and consulting with public stakeholders (including, in particular, small businesses and Indigenous peoples); conducting a Regulatory Impact Analysis [RIA]; publishing a RIAS; or minimizing burden on businesses, specifically small businesses: *Cabinet Directive on Regulation*, ss 4.1.1, 4.1.2, 5.1.4, 5.2, 5.2.4, 5.3. It argues that neither the Federal Courts’ Rules Committee nor the *Federal Courts Rules* themselves are immune from judicial review, and that Rule 120 is unreasonable because the Rules Committee failed to account for the constraints set out in the directive: *Auer v Auer*, 2024 SCC 36 at paras 50, 59–60, 63. On this basis, it argues that the current jurisprudential approach to Rule 120 can and should

be reconsidered, as it did not account for the fact that the Rule was made in non-compliance with the *Cabinet Directive on Regulation*.

[31] Cartesian Theatre further argues that the Case Management Judge erred in failing to engage with its “central” arguments regarding the administrative requirements of the *Cabinet Directive on Regulation*; in finding herself bound by the Federal Court of Appeal’s jurisprudence on Rule 120 through a misapplication of the principles of *stare decisis* set out in *Canada (Attorney General) v Bedford*, 2013 SCC 72; and in failing to consider the lack of evidence of meaningful public consultation before Rule 120 was promulgated.

[32] As explained in the following paragraphs, Cartesian Theatre’s arguments based on the *Cabinet Directive on Regulation* are wholly unpersuasive. Its arguments on the merits of the directive are based on a misunderstanding of its nature and effect, while its arguments regarding purported errors on the part of the Case Management Judge are based on unjustified recharacterizations of the submissions it made to the Case Management Judge.

(3) The Case Management Judge did not fail to address a central argument

[33] I begin with Cartesian Theatre’s argument that the Case Management Judge failed to engage with its “central” argument on the *Cabinet Directive on Regulation*. The short answer to this is that the arguments Cartesian Theatre now relies on were not at all central to the written motion it presented to the Case Management Judge. There was no reason for the Case Management Judge to directly address the *Cabinet Directive on Regulation* in her decision given the nature of the arguments presented.

[34] The issue that Cartesian Theatre presented to the Case Management Judge, as defined in its written argument, was whether it was in the interest of justice that it be “barricaded from this courthouse, lest it refuse to retain the services of an external contractor it does not require or desire.” In support of its argument that it was not in the interest of justice to deny leave, Cartesian Theatre made “multiple disparate submissions” (its own description, which is a fair one). These included submissions regarding Mr. Warner’s involvement in the drafting of materials to date; his competence in conducting legal research and preparing materials; his suitability as a representative; the safeguards in place; the “problem of advocacy and witness”; and the Attorney General’s conduct.

[35] Cartesian Theatre then presented eight paragraphs under the heading “Rule 120 public consultation is enigmatic.” Two paragraphs in that section included reference to the *Cabinet Directive on Regulation* and its requirements of meaningful public engagement, evidence-based regulation making, and consultation with “indigenous stakeholders.” Two subsequent paragraphs refer to the absence of evidence of public consultation regarding Rule 120, before turning to criticisms of the composition of the Rules Committee. While this section of Cartesian Theatre’s submissions refers to the *Cabinet Directive on Regulation*, it contains no argument that non-compliance with the *Cabinet Directive on Regulation* affects either the validity of Rule 120 or its interpretation. Nor does such an argument appear anywhere else in Cartesian Theatre’s written argument. At no point did Cartesian Theatre argue before the Case Management Judge, as it does now, that Rule 120 was invalid, unreasonable, *ultra vires*, or should be reinterpreted on the basis of the *Cabinet Directive on Regulation*. Notably, as discussed below, Cartesian Theatre directly

raised an argument that the Case Management Judge should and could reform the law on Rule 120, but it did not refer to the *Cabinet Directive on Regulation* in making that argument.

[36] Similarly, Mr. Warner’s affidavit filed in support of the motion (which itself often crosses the line between evidence and argument), contains only a single reference to the *Cabinet Directive on Regulation*, citing it as the basis for his understanding that “the Government of Canada has pledged that all of the *Rules* were supposed to be created, maintained, and reviewed in an open, transparent, and inclusive way that meaningfully engages the public and stakeholders early on.”

[37] A motions judge is not obliged to address every single issue or line of argument raised or that could have been raised by a party: see, e.g., *Red Pheasant First Nation v Whitford*, 2023 FCA 29 at para 74; *Calleja v Ahmadi*, 2022 ONCA 106 at para 3; *Maio v Kapp Contracting Inc*, 2022 ONCA 196 at para 12; *Hersey v Hersey*, 2016 ONCA 494 at para 13. Much depends on the context, including the nature of the matter, the issues raised, and the submissions made: *Canada v Long Plain First Nation*, 2015 FCA 177 at para 143; *Red Pheasant* at para 74.

[38] Here, only a few paragraphs in Cartesian Theatre’s 100-paragraph factum of “multiple disparate submissions” and one paragraph in Mr. Warner’s 65-paragraph affidavit even mentioned the *Cabinet Directive on Regulation*. As noted, none of those paragraphs makes the argument that Cartesian Theatre now claims was “central” to its motion. Indeed, I consider Cartesian Theatre’s submission that it “tendered extensive submissions before the Motion Judge

that Rule 120 was adopted and continues to be maintained contrary to administrative requirements set out in the [*Cabinet Directive on Regulation*] which are binding on this Court's Rules Committee" to be a considerable overstatement, if not misstatement, of the submissions it made to the Case Management Judge.

[39] Given the brevity of Cartesian Theatre's passing submissions on the *Cabinet Directive on Regulation* and the absence of any argument connecting them to its submissions regarding the interpretation of Rule 120, I see no error in the Case Management Judge's silence on the issue of the directive.

(4) The Case Management Judge did not misapply *Bedford*

[40] The same observations lead me to dismiss Cartesian Theatre's argument that the Case Management Judge misapplied the governing law regarding the doctrine of *stare decisis*, as set out in the Supreme Court of Canada's decision in *Bedford*.

[41] The doctrine of *stare decisis*—the principle that lower courts must follow the binding decisions of higher courts and their own prior jurisprudence—is fundamental to the Canadian legal system: *Carter v Canada (Attorney General)*, 2015 SCC 5 at para 44; *R v Comeau*, 2018 SCC 15 at para 26; *Janssen Inc v Canada (Attorney General)*, 2021 FCA 137 at paras 67–68. While *stare decisis* is not a “straitjacket that condemns the law to stasis,” its importance is such that lower courts may reconsider settled rulings of higher courts in only two situations, set out in *Bedford*: (1) where a “new legal issue” is raised; or (2) where there is a change in

circumstances or evidence that “fundamentally shifts the parameters of the debate”: *Bedford* at para 42; *Carter* at para 44.

[42] The threshold for revisiting a matter is not an easy one to reach: *Bedford* at para 44. This is particularly true in respect of the obligation to apply binding jurisprudence of higher courts, known as vertical *stare decisis*. Subject only to “extraordinary exceptions,” a lower court must apply the decisions of higher courts to the facts before it: *Comeau* at para 26.

[43] Before the Case Management Judge, Cartesian Theatre argued that the Court *ought* to reform the law on Rule 120 and that it *could* do so. Its argument about why the Court *ought* to reform the law focused on questions of anachronism, policy, and access to justice. This included submissions regarding the historical context of incorporation (and of security for costs), the bar’s self-interest and resistance to change, the “paternalistic notion that lawyers are the only ones capable of understanding the law,” the impact on small business and those who own them, and the importance of self-represented litigants requiring access to justice and fair treatment.

[44] Its argument about why the Court *could* reform the law on Rule 120 raised five issues: (i) certain 2021 amendments to the *Federal Courts Rules* regarding limited-scope representation mandates; (ii) access to justice and the Canadian Judicial Council’s *Statement of Principles on Self-represented Litigants and Accused Persons*, adopted in September 2006; (iii) section 3 of the *Federal Courts Act* (an unclear reference that the Case Management Judge understood to refer to Rule 3 of the *Federal Courts Rules*, but appears to have been intended to invoke the Court’s equitable jurisdiction, now found in section 4 of the *Federal Courts Act*); (iv) Rule 55 of

the *Federal Courts Rules*, which was said to leave the Court free to dispense with Rule 120 entirely; and (v) the “changing social, moral and economic fabric of the country.” While Cartesian Theatre cited *Bedford*, it did not explain how any of these represented a “new legal issue” justifying a departure from binding precedent or a change in circumstances that “fundamentally shifts the parameters of the debate,” as required by *Bedford*.

[45] Faced with these submissions, the Case Management Judge was not satisfied that the high threshold set out in *Bedford* had been met, noting that Cartesian Theatre had “not raised a new legal issue, nor established a significant change in the circumstances or evidence.” She noted in particular that 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.” The Case Management Judge went on to specifically reject Cartesian Theatre’s submissions based on Rules 3 and 55 of the *Federal Courts Rules*. The Case Management Judge therefore concluded that she was bound by the Federal Court of Appeal’s jurisprudence and applied it to find that Cartesian Theatre had not satisfied the test for leave under Rule 120.

[46] On appeal, Cartesian Theatre now argues that the Case Management Judge erred in not recognizing that its reliance on the *Cabinet Directive on Regulation* was both a new legal issue and a change in legal circumstances that fundamentally shifted the parameters of the debate with respect to Rule 120. In doing so, Cartesian Theatre asserts that it explicitly raised the *Cabinet Directive on Regulation* as a new legal issue opening the door to reconsideration under *Bedford*. Again, however, this considerably overstates, and indeed misstates, the submissions made to the

Case Management Judge. Cartesian Theatre did present a direct and specific submission regarding *Bedford* in its written representations, but it did not mention the *Cabinet Directive on Regulation* at all in doing so. As noted above, the passing reference to the *Cabinet Directive on Regulations* in Cartesian Theatre's submissions was unconnected to its submissions on *Bedford*.

[47] In oral submissions on appeal, Mr. Warner effectively argued that since his submissions referred to the *Cabinet Directive on Regulation* and also made arguments regarding *Bedford*, the Case Management Judge ought to have understood that Cartesian Theatre was relying on the *Cabinet Directive on Regulation* as being a new legal issue or change in circumstances justifying a reconsideration of the Federal Court of Appeal's case law. I reject this contention as being unsupported by the nature of the representations that Cartesian Theatre presented to the Case Management Judge on its written motion.

[48] Cartesian Theatre also argues that the Case Management Judge erred in failing to recognize that "the historical, international, and jurisprudential landscape that begot societal and judicial expectations that litigants would retain counsel has changed," and that this warranted a departure from *SAR Group* and other Federal Court of Appeal case law on Rule 120: *Saskatchewan Federation of Labour v Saskatchewan*, 2015 SCC 4 at paras 32 and 75. I disagree. Cartesian Theatre pointed to no change in the "jurisprudential landscape" akin to the changes in the scope of paragraph 2(d) of the *Charter* identified in *Saskatchewan Federation of Labour*. Indeed, as pointed out above, the jurisprudential landscape in respect of Rule 120 has remained remarkably uniform since the Rule's amendment in 1990.

[49] Nor did Cartesian Theatre point to any change in historical or social circumstances that could be considered to “fundamentally shift” the parameters of the debate on Rule 120. Notably, Cartesian Theatre’s discussion of the historical context of corporations and references to Medieval England are irrelevant in considering whether there has been a fundamental change in circumstances since the Federal Court of Appeal jurisprudence at issue, whether one considers the jurisprudence of *SAR Group* in 2002 or the more recent restatements of the test such that in *Macciachera* in 2024: see *Comeau* at para 36.

[50] I agree with the Case Management Judge’s conclusion that while it may be open to the Federal Court of Appeal to consider the evolution of social policy on matters such as access to justice in deciding whether to revisit an issue—it might also be considered in contemplating potential amendments to the *Federal Courts Rules* or provincial statutes regulating the legal profession if raised in the proper forum—this does not permit this Court to disregard the Court of Appeal’s jurisprudence.

[51] I conclude that the Case Management Judge did not err in concluding that none of the issues identified by Cartesian Theatre gave her license to rewrite the Federal Court of Appeal’s jurisprudence on the test for leave under Rule 120.

- (5) The *Cabinet Directive on Regulation* does not invalidate Rule 120 or the jurisprudence

[52] As noted, Cartesian Theatre’s primary argument on this appeal is that its arguments concerning the *Cabinet Directive on Regulation* amount to a “new legal issue” justifying a

departure from the current jurisprudence on Rule 120. For the reasons given above, I consider this an argument that is largely, if not entirely, raised for the first time on appeal.

[53] This Court will not generally entertain new issues on an appeal from an associate judge: *Carreau v Canada (Attorney General)*, 2025 FC 1318 at para 68, citing *Quan v Cusson*, 2009 SCC 62 at paras 36–38; *Grillone v B Riley Farber Inc*, 2025 FC 1696 at paras 19–21. However, before the Case Management Judge, Cartesian Theatre did raise the *Cabinet Directive on Regulation*, and it did assert that the Federal Court was not bound by the existing jurisprudence on Rule 120 in light of *Bedford*. Cartesian Theatre’s current arguments now essentially seek to connect the two, relying on purported non-compliance with the *Cabinet Directive on Regulation* as a basis to depart from the prior jurisprudence. I am prepared to accept that it amounts simply to a new argument on an existing issue rather than an entirely new issue: *Nova Chemicals Corporation v The Dow Chemical Company, Dow Global Technologies Inc and Dow Chemical Canada ULC*, 2020 FCA 141 at paras 84–87; *Canada (Attorney General) v Medline Canada Corporation*, 2026 FCA 74 at para 41. On this basis, and since the Attorney General had fair notice of the argument, I will address it.

[54] That said, Cartesian Theatre has not persuaded me that the *Cabinet Directive on Regulation* is a basis for this Court to ignore the test for leave under Rule 120 as established in cases such as *SAR Group* and *Macciachera*. The reason for this is threefold: (a) the existence of the *Cabinet Directive on Regulation* is not a “new legal issue” or fundamental change in circumstances that could trigger the application of *Bedford*; (b) regardless of whether it is a new legal issue, any purported non-compliance with the directive does not have the effect of

invalidating either the Rule or the jurisprudence interpreting it; (c) as an additional but non-determinative matter, Cartesian Theatre has not demonstrated that there was non-compliance with the *Cabinet Directive on Regulations*.

- (a) *The Cabinet Directive on Regulation is not a new legal issue within the meaning of Bedford*

[55] As set out above, the threshold for revisiting jurisprudence is a high one: *Bedford* at para 44. It is not every new legal argument that a litigant may come up with that justifies a lower Court ignoring appellate Court jurisprudence. In *Bedford*, the Supreme Court referred to challenges based on different *Charter* provisions or “new legal issues [...] raised as a consequence of significant developments in the law” [emphasis added] as examples that might allow a judge to reconsider jurisprudence: *Bedford* at para 42; see also *Carter* at paras 44–46; *Canada (Attorney General) v Confédération des syndicats nationaux*, 2014 SCC 49 [CSN] at para 24. However, simply raising new arguments as to a *Charter* provision that had previously been raised “did not convert this argument into a new legal issue”: *Bedford* at para 46. As the Supreme Court confirmed in CSN, where “the legal issue remains the same and arises in a similar context, the precedent still represents the law and must be followed by the courts”: CSN at para 24. These examples give an indication of the type and nature of “new legal issues” that might justify a departure from prior jurisprudence.

[56] Cartesian Theatre’s arguments based on the *Cabinet Directive on Regulation* are effectively arguments that Rule 120, and the *Federal Courts Rules* more broadly, were not made in accordance with certain administrative requirements pertaining to consultation, the conduct of

an RIA, and the publication of a RIAS. These arguments do not arise as a consequence of significant developments in the law. Rather, they are largely procedural arguments going to the process by which the *Federal Courts Rules* were developed and promulgated. While these may be arguments that have not been advanced before, I do not view them as being of the nature of the new legal issues described in *Bedford*.

[57] Further, as this Court has recently observed, for a new legal issue to cause the reconsideration of a settled higher court ruling, it must demonstrably impact upon the legal framework or analysis underpinning that otherwise binding jurisprudence: *Canadian Immigration Lawyers Association v Canada (Citizenship and Immigration)*, 2026 FC 617 at para 75, citing *Carter* at paras 44–46. Cartesian Theatre’s arguments regarding the *Cabinet Directive on Regulation* do not impact the legal framework or analysis that underpins the Federal Court of Appeal’s jurisprudence interpreting Rule 120, as set out in cases such as *TPG Technology* at para 8. Cartesian Theatre’s criticisms of the rationale set out in that case amounts to no more than an argument that it was wrongly decided, which does not give this Court the ability to rewrite the jurisprudence.

[58] Nor can the *Cabinet Directive on Regulation* be considered a change in circumstances or evidence that fundamentally shifts the parameters of the debate: *Bedford* at para 42; *Carter* at para 44. Nothing about the introduction of a new government approach to regulation making “fundamentally shifts” the parameters of debate on the purpose of Rule 120, the circumstances in which it was introduced into the *Federal Courts Rules*, or the circumstances in which it has been interpreted by this Court and the Federal Court of Appeal.

- (b) *Any purported non-compliance with the Cabinet Directive on Regulation does not affect the validity of Rule 120 or its jurisprudence*

[59] In any event, Cartesian Theatre's arguments regarding the *Cabinet Directive on Regulation* do not establish either that Rule 120 is invalid or that it ought to be reinterpreted.

[60] As an initial but important matter, it is worth noting that the subject matter of the *Cabinet Directive on Regulation* is, of necessity, the making of regulations, not the jurisprudence that interprets those regulations. Cartesian Theatre's arguments regarding the *Cabinet Directive on Regulation* are therefore, at their highest, directed at Rule 120 itself. Yet Cartesian Theatre does not seek on its motion any form of declaration that Rule 120 is *ultra vires* or otherwise invalid for failing to comply with the directive. To the contrary, it seeks leave pursuant to Rule 120, a request that is only comprehensible if Rule 120 is valid and remains in force. As Rule 120 remains in force as it is written, and nothing in the *Cabinet Directive on Regulation* purports to say anything whatsoever about how a regulation is interpreted by the common law, the directive can have no possible bearing on, and certainly cannot displace, the jurisprudence of the Federal Court of Appeal.

[61] In any event, contrary to Cartesian Theatre's submissions, any purported failure to comply with the *Cabinet Directive on Regulation* does not and cannot impact the validity of Rule 120 or the *Federal Courts Rules* more generally. The directive is not a statutory or regulatory instrument that can have such an effect. Rather, as it says on its face, it is a statement of the "expectations and requirements" of the Government of Canada in the development, management, and review of federal regulations.

[62] Cartesian Theatre was unable to point to any authority for its submission that the *Cabinet Directive on Regulation* is binding on either the Federal Courts or the Rules Committee created by section 45.1 of the *Federal Courts Act*. Nor was it able to point to any jurisprudence indicating that a regulation that has been made by or with the approval of the Governor in Council was rendered invalid, or could be reinterpreted, based on non-compliance with the *Cabinet Directive on Regulation*, or any other cabinet directive. As discussed below, the jurisprudence points to the opposite conclusion.

[63] Cartesian Theatre relies on the statement in the *Cabinet Directive on Regulation* that it applies to all regulations that are or will be registered as such under section 6 of the *Statutory Instruments Act*, made by or with the approval of the Governor in Council. There is no dispute that the *Federal Courts Rules* are a regulation made with the approval of the Governor in Council: *Federal Courts Act*, s 46(1); *Statutory Instruments Act*, s 2(1) (“regulation”). However, the broad statement of scope in the *Cabinet Directive on Regulation* does not mean that the directive is binding on the Rules Committee in the performance of its statutory task under section 45.1 of the *Federal Courts Act*, in the sense that a failure to comply with it might render any resulting rule or rules invalid.

[64] In oral submissions, Cartesian Theatre submitted that the *Cabinet Directive on Regulation* is binding because it is a “statutory instrument” within the definition in the *Statutory Instruments Act*. I note that this submission is contradicted by Cartesian Theatre’s own written representations, which assert that the *Cabinet Directive on Regulation* “is issued under the executive’s prerogative authority to govern its own regulation-making process. It is not a

creature of the *Statutory Instruments Act*, but is distinct from it” [emphasis added]. While Mr. Warner repeated this latter submission in his oral representations, he simultaneously argued that the *Cabinet Directive on Regulation* is a statutory instrument within the meaning of the *Statutory Instruments Act*.

[65] I do not agree with Cartesian Theatre that the *Cabinet Directive on Regulation* is a statutory instrument. While the directive may be considered a rule, order, or direction, it is not one made or established “in the execution of a power conferred by or under an Act of Parliament” or “by or under the authority of the Governor in Council, otherwise than in the execution of a power conferred by or under an Act of Parliament”: *Statutory Instruments Act*, s 2(1)(“statutory instrument”).

[66] The *Cabinet Directive on Regulation* is a directive of the federal Cabinet, but this does not mean that it is made by or under the authority of the Governor in Council. The Governor in Council and the Cabinet are sometimes considered or treated as being effectively the same, a shorthand that in many cases may be practical and justified: see, *e.g.*, *Quebec (Attorney General) v Moses*, 2010 SCC 17 at para 19; *References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11 at para 299 *per* Brown J, dissenting. However, as a constitutional and statutory matter the two are distinct. The Governor in Council is the Governor General of Canada acting on the advice of the King’s Privy Council for Canada, of which the federal Cabinet is the only active part: *Interpretation Act*, RSC 1985, c I-21, s 35(1) (“Governor General in Council or Governor in Council”); *Constitution Act, 1867*, ss 11–13; *Angus v Canada*, 1990 CanLII 7938, [1990] 3 FC 410 (CA) at pp 423–424 *per* MacGuigan JA, and pp 431–432 *per* Décary JA,

concurring, each citing PW Hogg, *Constitutional Law of Canada*, 2nd ed (Toronto: Carswell, 1985) at pp 195–196. As the *Cabinet Directive on Regulation* notes, since 2003, advice to the Governor in Council on behalf of the King’s Privy Council has been provided by the Treasury Board, a committee of the Cabinet: *Parker v Canada (Attorney General)*, 2023 FC 1419 at paras 23–24.

[67] Since the *Cabinet Directive on Regulation* was not made by or under the authority of the Governor in Council, and was similarly not made in the execution of a power conferred by or under an Act of Parliament, it is not a statutory instrument within the definition of the *Statutory Instruments Act*.

[68] This conclusion accords with that of Justice Zinn of this Court, who addressed the nature of a cabinet directive in *Syncrude Canada Ltd v Canada (Attorney General)*, 2014 FC 776. There, the applicant challenged the validity of certain regulations made under the *Canadian Environmental Protection Act, 1999*, SC 1999, c 33, including on the grounds that they had been made in non-compliance with a *Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals: Syncrude* at paras 101(2), 119–120. Justice Zinn rejected the argument that the directive was binding as a “regulation” within the meaning of subsection 2(1) of the *Interpretation Act* on the following grounds:

First, this Cabinet Directive is an administrative policy of general application, passed under the authority of Cabinet, not the Governor in Council, as is required by the Interpretation Act. Justice Scarth dealt with a cabinet directive, passed by the provincial Cabinet, in the case of *Independent Contractors and Business Association of British Columbia v British Columbia*, [1995 CanLII 3302 (BC SC)] at para 14. To paraphrase Justice Scarth’s analysis into the Federal sphere, a cabinet directive does

not purport to have been enacted in execution of a power conferred under an Act, nor is it suggested that it was made by or under the authority of the Governor in Council, or that any Order-in-Council was approved by the Governor General, acting on the advice of the Cabinet. This Cabinet Directive is merely a policy issued by Cabinet, and does not fall under the definition of “regulation” under section 1 of the *Interpretation Act*.

[Emphasis added; secondary citations omitted; *Syncrude* at para 122.]

[69] It is worth noting that in the *Independent Contractors* case cited by Justice Zinn, the British Columbia Supreme Court found that a cabinet directive that was inconsistent with a regulation resulted in the cabinet directive—not the regulation—being invalid: *Independent Contractors* at paras 13–14, 38, 47–53, 59.

[70] Non-compliance with the administrative processes described in the *Cabinet Directive on Regulation* may result in Cabinet refusing to advise the Governor in Council to make or approve a regulation: see F Houle, *Consultation During Rule-Making: A Case Study of the Immigration and Refugee Protection Regulation* (2010), 28:2 Windsor YB Access Just 395, 2010 CanLII Docs 22, at p 396. However, any such non-compliance does not affect the validity, applicability, force, or effect of a promulgated regulation. As noted, Cartesian Theatre was unable to point to any jurisprudence in which failure to comply with a cabinet directive—either the *Cabinet Directive on Regulation* or any other cabinet directive—has rendered any statutory or regulatory provision inoperative, unreasonable, or *ultra vires*.

[71] Cartesian Theatre’s arguments relying on the *Cabinet Directive on Regulation* are therefore premised on a misunderstanding of the nature and legal effect of the directive. Any

asserted non-compliance with the directive in the making or continuance of the *Federal Courts Rules* cannot affect the validity of that regulation. It follows that any such asserted non-compliance cannot affect the extent to which this Court is bound by the Federal Court of Appeal's jurisprudence in respect of the *Federal Courts Rules*.

(c) *Lack of demonstrated non-compliance with the Cabinet Directive on Regulation*

[72] While the foregoing is sufficient to dismiss Cartesian Theatre's arguments regarding the *Cabinet Directive on Regulation*, I consider it worth noting my conclusion that Cartesian Theatre has not demonstrated any non-compliance with the *Cabinet Directive on Regulation*. In this regard, Cartesian Theatre's arguments are premised on its assertion that Mr. Warner—assisted by the Library of Parliament's Information Service and the Vancouver Courthouse Library Information Services—was unable to locate any public record of any deliberations or discussions regarding Rule 120 in particular, or any record of the Rules Committee of the Federal Courts having consulted with anyone who might be affected by the rule, such as a “town hall, a poll, a door knocking campaign, a letter to a chamber of commerce, or any other meaningful form of public consultation.” From this, Cartesian Theatre argues that the consultation requirements set out in the *Cabinet Directive on Regulation* were not met. It also contends that the absence of an RIA or a RIAS in the making of the *Federal Courts Rules* is not in compliance with the *Cabinet Directive on Regulation*.

[73] These submissions cannot be accepted, for several reasons.

[74] First and foremost, the various provisions of the *Cabinet Directive on Regulation* that Cartesian Theatre relies on as not having been met are expressly directed only to “departments and agencies.” This includes the requirements to be guided by the four principles described at paragraph [29] above (s 3.0); to examine and analyze regulations through all stages of their life cycle (s 4.0); to identify stakeholders impacted by regulations and meaningfully consult with them (ss 4.1.1, 5.1.4); to conduct an RIA and develop a RIAS (ss 5.2, 5.3), and to minimize burden on business (s 5.2.4). Although Cartesian Theatre contends that these sections were not complied with in the making of the *Federal Courts Rules*, each of the sections sets out only what is required of “departments and agencies.”

[75] The Federal Courts are not a “department or agency” of the Government of Canada. They are part of the judicial branch of government, established by Parliament as Courts for the better administration of the laws of Canada pursuant to section 101 of the *Constitution Act, 1867*, and sections 3 and 4 of the *Federal Courts Act*: *Lee v Canada (Correctional Service)*, 2017 FCA 228 at paras 8, 12; *Windsor (City) v Canadian Transit Co*, 2016 SCC 54 at paras 14–15. Any direction to or requirement imposed upon “departments and agencies” in the *Cabinet Directive on Regulation* is not given to or imposed upon the Federal Courts or their Rules Committee. The fact that the Attorney General is statutorily a member of the Rules Committee in no way changes this: *Federal Courts Act*, s 45.1(d).

[76] Second, the consultative process required in the making of the *Federal Courts Rules* is set out in the *Federal Courts Act*. Paragraph 46(4)(a) of the *Federal Courts Act* provides that the Rules Committee must, before amending, varying, or making any rules that are “additional to the

general rules and orders first made under this section and published together” (i.e., those made in 1970), give notice of the proposal by publishing it in the *Canada Gazette* and inviting interested persons to make representations. The Rules Committee can then implement the proposed amendment as published or revised in such manner as it deems advisable having regard to any representations made to it: *Federal Courts Act*, s 46(4)(b). While the *Cabinet Directive on Regulation* states that publication in the *Canada Gazette* “is not a substitute for early consultation,” this cannot override the statutory requirements of the *Federal Courts Act* in a manner that would undermine the validity of the *Federal Courts Rules*.

[77] Third, Mr. Warner’s evidence makes no mention of the consultation processes that were actually engaged in the making and amendment of the *Federal Courts Rules*, including during the amendment of Rule 300(2) of the old *Federal Court Rules*, the adoption of the *Federal Court Rules*, 1998, or the global reviews of the rules in 2012 and 2024. It is worth noting that the 1990 amendments to the *Federal Court Rules* that first introduced the current rule were published through an amending regulation that specifically referred to publication in the *Canada Gazette* and invitation to make submissions: SOR/90/846. That regulation was published with an “explanatory note” stating, among other things, that “[t]he rule on representation by solicitors has been revised. Corporations may now be represented by officers of the corporation with leave in special circumstances.”

[78] Contrary to Cartesian Theatre’s submissions, neither the *Cabinet Directive on Regulation* nor any other governing obligation on consultation requires a town hall, poll, door-knocking campaign, or letter to a chamber of commerce as part of its process. Nor does it require specific

or pro-active consultation on each individual section or subsection within a particular regulation. Mr. Warner's evidence appears to focus only on evidence of specific and directed consultation on Rule 120 in particular, rather than the consultative processes surrounding both amendments to and ongoing review of the *Federal Courts Rules*, which have gone well beyond publication in the *Canada Gazette*. In the 35 years since Rule 120 was introduced into the *Federal Courts Rules* in its current form, there have been multiple opportunities for any interested party, including any corporation, small business, group of small businesses, or any organization representing corporations or small businesses, to make submissions on the impact of the rule or to propose changes to it. The fact that there have apparently been—based on this record—no such submissions from any of the “over a million affected persons” Cartesian Theatre asserts to exist does not demonstrate a lack of adequate consultation.

[79] This latter point also disposes of Cartesian Theatre's argument that the Case Management Judge did not address the absence of evidence of consultation as supporting a finding of non-compliance with the *Cabinet Directive on Regulation*. As discussed above, the *Cabinet Directive on Regulation* was not the central issue raised before the Case Management Judge, such that she was not required to address either the directive or the evidence speaking to it. In any case, the contention that the absence of evidence with respect to specific consultations on Rule 120 in particular—as opposed to the *Federal Courts Rules* as a whole—somehow demonstrates a lack of adequate consultation or compliance, or that this imposed a “justificatory burden” on the Attorney General, is untenable. I reach this conclusion even leaving aside the apparent consultation that occurred in advance of the specific amendment to Rule 300(2) in 1990, mentioned above.

[80] Fourth and finally, I think it worth specifically addressing Cartesian Theatre's reliance on the aspects of the *Cabinet Directive on Regulation* that address consultation with Indigenous peoples and the impact of Rule 120 on private businesses with majority Indigenous ownership. Mr. Warner does not assert that he is Indigenous and Cartesian Theatre does not contend that it has Indigenous ownership. There is also no evidence before the Court of any specific or adverse impact of Rule 120 on corporations with majority Indigenous ownership. Even leaving aside the obvious concern about Cartesian Theatre's standing to raise such arguments (see *Brandon v Canada*, 2026 FCA 57 at paras 23–26), they provide no basis for a conclusion of non-compliance with the *Cabinet Directive on Regulation*.

(6) Conclusion

[81] I therefore conclude that Cartesian Theatre has given no sound basis on which this Court might conclude either that Rule 120 is *ultra vires* or otherwise of no force and effect, or that it can disregard or reconsider the Federal Court of Appeal's jurisprudence on the application of that rule.

[82] Cartesian Theatre does not allege that it meets the requirements for granting leave pursuant to the existing jurisprudence. I see no error in the Case Management Judge's conclusion that leave should not be granted on the basis that Cartesian Theatre has not demonstrated that it cannot afford a lawyer.

[83] Although this is sufficient to dispose of the appeal, I will also briefly address the remaining three alleged errors raised by Cartesian Theatre.

C. *Cartesian Theatre has not identified any other grounds on which to disturb the Case Management Judge's decision*

[84] The Case Management Judge's finding that Cartesian Theatre was unable to pay for a lawyer was determinative of the motion before her in light of the Federal Court of Appeal jurisprudence. She nonetheless also addressed other factors relevant to granting leave, indicating that she had concerns about the complexity of the matter and the potential that Mr. Warner would have to act as advocate and witness. Cartesian Theatre alleges that she erred in each respect. It further argues that in any event, the Case Management Judge erred in neglecting the Court's equitable jurisdiction. I disagree.

(1) The Case Management Judge did not err in her complexity and capability analysis

[85] As noted, one of the factors relevant to the leave analysis is the complexity of the issues in play and whether they are beyond the proposed representative's reasonable capabilities. The Case Management Judge considered Mr. Warner's evidence regarding his behind-the-scenes work on the application, the appeal of Justice Aylen's order, and the Rule 120 motion, as well as his involvement in summary trials as a Second Lieutenant in the Royal Canadian Infantry Corps. She also considered the Attorney General's submission that core issues in the proceeding—namely, whether financing decisions by BDC are subject to judicial review and, if so, what remedy is available—were novel and precedential. The Case Management Judge had “no doubt that Mr. Warner believes that he is reasonably capable of representing” Cartesian Theatre but was not satisfied that this was in fact the case. In her view, the application raises complex and novel issues that could go beyond Mr. Warner's reasonable capabilities: *El Mocambo* at para 3.

[86] Cartesian Theatre raises three main arguments as to why it says the Case Management Judge erred in this analysis. None is persuasive in demonstrating either an error of law or a palpable and overriding error of fact or of mixed fact and law.

[87] First, Cartesian Theatre notes that in her recitation of the background to the motion, the Case Management Judge mistakenly referred to Cartesian Theatre, rather than the Attorney General, as having brought the appeal of Justice Aylen. The Case Management Judge's reference to "an appeal by the Corporate Applicant of an interlocutory decision (*per* Aylen, J.)" was an error. However, this error in the Case Management Judge's statement of the procedural background facts is trivial. It is certainly not palpable and overriding, as it had no effect on the Case Management Judge's analysis.

[88] Cartesian Theatre contends that the Case Management Judge must have concluded that it was Cartesian Theatre that lost the appeal, and that this must in turn have affected her analysis of Mr. Warner's capabilities. There is no merit in this argument. There is no indication that the Case Management Judge misunderstood who was successful on the appeal. In any event, success or lack of success on the appeal formed no part of the Case Management Judge's analysis of complexity and capability. Her only reference to the appeal in addressing Mr. Warner's capability was to note his statement that he performed behind-the-scenes work on the appeal. She did not dismiss that work on the basis that Cartesian Theatre was not successful on the appeal, which itself would be a questionable basis on which to assess legal acumen. Cartesian Theatre's efforts to attribute implicit reasoning to the Case Management Judge in order to show a palpable and overriding error based on a minor misstatement of background facts must be rejected.

[89] The same is true of Cartesian Theatre’s criticism of the Case Management Judge’s statement that it was represented by Umar Sheikh of Sheikh Law during the appeal. Cartesian Theatre alleges this shows “procedural unfamiliarity” with the appeal, as the appeal itself was argued by another lawyer, Polina H. Furtula of Westpoint Law Group. I see no error in the Case Management Judge’s observation, which was simply that “Mr. Sheikh has represented the Corporate Applicant on the various motions before this Court and the appeal before the Federal Court of Appeal.” This is true. Mr. Sheikh was counsel of record on the appeal before the Federal Court of Appeal, signing both a notice of appearance and Cartesian Theatre’s memorandum of fact and law. While Ms. Furtula filed a notice of limited-scope representation for the purpose of attending and arguing the appeal, this made her the solicitor of record only in respect of those aspects of the appeal: *Federal Courts Rules*, Rules 123(2), 124. It does render the Case Management Judge’s general statement that Mr. Sheikh represented Cartesian Theatre on the appeal incorrect. In any event, the Case Management Judge’s identification of counsel in reciting the background facts again had no bearing whatsoever on her complexity and capability analysis.

[90] Second, Cartesian Theatre makes arguments distinguishing certain cases the Attorney General relied on before the Case Management Judge. The distinguishability of these cases is immaterial, since the Case Management Judge did not refer to or rely on those cases in her decision. Nor does the Attorney General rely on them on this appeal.

[91] Third, Cartesian Theatre contends that the Case Management Judge erred in not explaining why it had cited Mr. Warner’s military background, which it says was for the purpose

of demonstrating that the Court had considered lesser military qualifications as being “sufficient to meet the capability factor” in another case, namely *Hajar Properties Inc v Canada (Attorney General)*, 2023 FC 944 at para 20. This submission is again without merit.

[92] The Case Management Judge clearly understood Mr. Warner’s submissions regarding his military experience, noting that it was put forward to demonstrate his competence and capability in handling legal matters. The fact that Mr. Warner’s rank and military qualifications may have been greater than those of Mr. Hajar is wholly immaterial. The Court in *Hajar Properties* did not purport to set out a particular level of military experience that is sufficient to meet the capability requirement in respect of all cases. The assessment of capability is necessarily an individualized one, done in the context of the particular issues at play in a proceeding. The Court in *Hajar Properties* noted that the issues in that case, unlike those in the present application, were “straightforward”: *Hajar Properties* at para 20. Given this, Justice Turley was satisfied that the issue was within Mr. Hajar’s capabilities, noting that he had “some court experience as a former military police officer”: *Hajar Properties* at para 20. Mr. Warner’s comparison of his own rank and military experience to those of Mr. Hajar does not assist the assessment that was before the Case Management Judge, which was whether Mr. Warner is reasonably capable of addressing the complex and novel legal issues in the present case.

[93] Cartesian Theatre also relies on *Hajar Properties* to argue that the Case Management Judge should have explained why the Attorney General did not commit an abuse of process by adopting “contradictory posturing” in opposing its request under Rule 120 when it did not do so in *Hajar Properties*. However, Cartesian Theatre did not allege an abuse of process before the

Case Management Judge, such that there was no reason for her to address such an allegation. To the contrary, Cartesian Theatre recognized in reply submissions that the Attorney General was permitted to oppose the motion. In any case, Cartesian Theatre's argument that the Attorney General is somehow estopped from opposing its Rule 120 motion because it did not oppose a Rule 120 motion in *Hajar Properties*—a different case, involving different facts, different legal issues, and a record that established that the applicant could not afford a lawyer—is legally untenable, regardless of any comparison of the military qualifications of Mr. Hajar and Mr. Warner.

[94] The remainder of Cartesian Theatre's arguments with respect to the complexity and capability analysis essentially involve a repetition of its submissions that Mr. Warner is reasonably capable and a request that this Court conclude that he is. Such submissions do not demonstrate a palpable and overriding error on the part of the Case Management Judge. I do consider it worth adding, however, that I find that Mr. Warner's submissions on this motion have included misunderstandings of legal issues and jurisprudence, internal contradictions, wholly unmeritorious and misplaced arguments, and overstatements and misstatements of what was argued before the Case Management Judge. Such submissions do not assist in demonstrating Mr. Warner's capabilities to represent Cartesian Theatre in this proceeding.

- (2) The Case Management Judge did not err in her reasons regarding Mr. Warner acting as advocate and witness

[95] The test for leave under Rule 120 requires the applicant to show that the representative will not be required to act as both witness and advocate. Cartesian Theatre made two

submissions to the Case Management Judge on this issue, namely that Mr. Warner would not be giving *viva voce* evidence on this application for judicial review, and that lawyers are permitted to file evidence “on behalf of personal law corporations” on bills of costs. The Case Management Judge responded to the former by noting that the limitation in the test for leave under Rule 120 is not limited to *viva voce* evidence. While not directly addressing the question of evidence on costs submissions, the Case Management Judge noted that it was very likely that Mr. Warner would participate as an affiant for the purposes of proffering affidavit evidence in support of the application, which militated against granting leave and would likely complicate and delay the proceedings.

[96] Cartesian Theatre contends that the Case Management Judge erred in law in not responding to its argument about lawyers filing evidence on costs, not addressing Mr. Warner’s undertaking to engage counsel if he had to give *viva voce* evidence, and treating the advocate/witness factor as determinative. It also submits that the purported concern about Mr. Warner having to file evidence in the application for judicial review stems from BDC’s refusal to produce a certified tribunal record in response to its request for documents under Rule 317, and that this should not be held against him. Again, none of these arguments is persuasive.

[97] Cartesian Theatre’s arguments about lawyers presenting evidence on costs are ill-founded, to the extent that there was no need for the Case Management Judge to address them. I begin by noting that in most cases, costs awards do not involve counsel seeking a “compensatory grand prize,” as Cartesian Theatre contends. Costs awards are made to parties and not to counsel,

to partially compensate the party for the legal costs they incurred in the conduct of the proceeding. In any event, costs submissions and any evidence filed in support of them are independent aspects of a proceeding that do not go to the merits of the case. The ability of a lawyer, or indeed any party, to file evidence in respect of costs does not undermine in any way the general concern about maintaining the distinction between advocates and witnesses.

[98] There was similarly no need for the Case Management Judge to directly address Mr. Warner's undertaking. The Case Management Judge's finding that the rule against an advocate acting as witness was not limited to *viva voce* evidence rendered the undertaking irrelevant. In this regard, the Case Management Judge is clearly correct. The concern about an advocate not appearing as witness goes beyond *viva voce* evidence, as is clear from the general rule that solicitors shall not both depose to an affidavit and present argument based on it: *Federal Courts Rules*, Rule 82.

[99] With respect to whether the advocate/witness factor is determinative, one can certainly read the Federal Court of Appeal jurisprudence as indicating that it is a requirement, rather than simply a factor, despite the contrary conclusion in some decisions of this Court: see *Macciachera* at para 3; *Alpha Marathon* at para 4. In any event, however, there is no indication that the Case Management Judge treated it as a determinative factor. Rather, she referred to it as a "general rule" and stated that the fact that Mr. Warner will most likely be providing evidence "militates against" granting leave.

[100] In the circumstances, I can see no error in law in the Case Management Judge's decision or any palpable and overriding error in her appreciation of the evidence or application of the law.

[101] Finally, I cannot accept Cartesian Theatre's submission that the only reason Mr. Warner would need to file a substantive affidavit in this proceeding is because BDC has to date refused to transmit a certified tribunal record, which should not be held against Cartesian Theatre. This argument was again not presented to the Case Management Judge. It also appears contrary to affidavits filed by Mr. Warner with respect to the merits of the proceeding to date, which have included statements regarding matters that are unlikely to be found in any certified tribunal record. These include Cartesian Theatre's understanding and asserted reliance on public statements by BDC, the contents of meetings with BDC, and steps taken by Cartesian Theatre after BDC's decision. I also consider it worth noting that Mr. Warner's affidavits, including those presented on this motion, raise concerns about his ability to distinguish between evidence and argument, which is of concern in considering whether he ought to be permitted to take on a dual role as witness and advocate.

- (3) The Case Management Judge did not err by neglecting the Court's equitable jurisdiction

[102] Cartesian Theatre's final ground of appeal is that the Case Management Judge erred in neglecting the Court's equitable jurisdiction. It makes four arguments, none of which can be accepted.

[103] First, Cartesian Theatre relies on the Federal Court of Appeal's statement that the Court cannot utilize its rules of practice to escape its "equitable duty" arising from the equitable jurisdiction of the Court vested in it by what is now section 4 of the *Federal Courts Act*: *Nu-Pharm Inc v Canada (Attorney General)*, 1999 CanLII 9369 (FCA) at paras 3–4. In my view, Cartesian Theatre has not demonstrated any inequity or injustice arising from either Rule 120 or the binding jurisprudence that has applied it. Cartesian Theatre's desire not to pay a lawyer, and Mr. Warner's views that he can reasonably take on the role of advocate and should be allowed to do so, do not establish an injustice or inequity. In any event, neither the Court of Appeal's observation in *Nu-Pharm* nor this Court's equitable jurisdiction allows it to ignore Court of Appeal jurisprudence on the application of a rule.

[104] Second, Cartesian Theatre argues that the Case Management Judge failed to consider that the Attorney General was only in a position to oppose its Rule 120 motion because Cartesian Theatre had provided "courtesy notice" of the motion (at the time, the Attorney General had not yet filed a notice of appearance). I see no basis on which this procedural history could affect the analysis of whether Cartesian Theatre had met the test for leave under Rule 120. Cartesian Theatre appears to assume that if it had not given notice to the Attorney General, its motion would have proceeded without such notice, and that this would have increased its chances of obtaining leave. I am not willing to make such assumptions, either with respect to whether the Court would have required notice to be given to the Attorney General or whether a lack of opposition would have resulted in leave being granted: *Macciachera* at para 9.

[105] Third, Cartesian Theatre argues that the Attorney General should be estopped from taking inconsistent positions. The inconsistent positions in question, it is said, are the Attorney General referring to Cartesian Theatre as a “sophisticated party” in submissions to the Federal Court of Appeal and in requesting case management, while submitting that the issues in the proceeding are too complex for a lay representative such as Mr. Warner to address. I see no inconsistency. A party may be sophisticated in the business sense (clearly the nature of the Attorney General’s reference, which refers to the business activities of Cartesian Theatre) without being reasonably capable to address complex legal issues. Again, given the lack of merit in this argument and the “multiple disparate submissions” made by Cartesian Theatre, I see no reviewable error in the Case Management Judge not specifically addressing this argument.

[106] Finally, Cartesian Theatre argues that the Case Management Judge erred in concluding that Rules 3 and 55 could not be applied “so as to correct an injustice” in the operation of Rule 120. I disagree. Leaving aside whether Cartesian Theatre has established an injustice, I entirely agree with the Case Management Judge that neither Rule 3 nor Rule 55 permits this Court to ignore the principle of *stare decisis* or the established legal test on a Rule 120 motion: *Canada v Tk'emlúps te Secwépemc First Nation*, 2020 FCA 179 at para 47; *Governor and Company of the Bank of Scotland v Nel (The)*, 1998 CanLII 9120, [1999] 2 FC 417 (TD) at p 429. I note that since Rule 120 itself contains an exception permitting leave in special circumstances, invocation of Rule 55, which permits the Court to vary a rule or dispense with compliance in special circumstances, adds nothing to the analysis.

IV. Conclusion

[107] For the foregoing reasons, none of Cartesian Theatre's numerous arguments, including those invoked for the first time on appeal, persuade me that the Case Management Judge made any legal error or palpable and overriding error in dismissing Cartesian Theatre's request for leave to be represented by Mr. Warner under Rule 120. Its appeal motion is therefore dismissed.

[108] Cartesian Theatre sought costs from the Attorney General if successful on the motion but asked that costs not be awarded against it if unsuccessful. I see no reason not to award costs against Cartesian Theatre as the unsuccessful party. In this regard, I note that Cartesian Theatre does not even allege an inability to pay costs. Further, I disagree with Cartesian Theatre that either this motion or this proceeding involves "public interest litigation" that engages issues whose importance extends beyond the immediate interests of the parties: *Harris v Canada*, [2002] 2 FC 484, 2001 FCT 1408 at para 222(a). Simply invoking, as Cartesian Theatre does, the fact that what the Rules Committee does "affects everyone who has ever used or will use this Court" does not turn a corporation's attempt to overturn established precedent to allow it not to be represented by counsel into public interest litigation. Nor does the fact that Cartesian Theatre does not seek damages on this application mean that it has no proprietary or pecuniary interest in the outcome of the proceeding: *Harris* at para 222(b). Its application is clearly directed at seeking a redetermination of a request for funding from BDC, a matter of clear pecuniary interest to Cartesian Theatre.

[109] The Attorney General sought costs in the amount of \$500, with reference to the Federal Court of Appeal's decision in *Wang*, in which that amount was awarded in costs on an unsuccessful written motion under Rule 120: *Wang* at paras 11–13. While this motion, which was argued orally and raised numerous arguments, might have merited a higher award, I will simply award the amount requested by the Attorney General.

ORDER IN T-440-24

THIS COURT ORDERS that

1. The applicant's motion appealing the decision of Case Management Judge Ring dated April 20, 2026, is dismissed with costs fixed in the amount of \$500.00.

"Nicholas McHaffie"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-440-24

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

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: JUNE 9, 2026

REASONS AND ORDER: MCHAFFIE J.

DATED: JULY 27, 2026

APPEARANCES:

Kip Warner	FOR THE APPLICANT
Arnav Patel	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT
--	--------------------