
ALAI COPYRIGHT: THE YEAR IN REVIEW

2025-2026

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1. Construction of the Copyright Act

[Nexus Solutions Inc. v. Krougly](#), 2026 ONCA 199

It is well established that the modern approach to statutory interpretation requires that the court examine the words of the provision ““in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the [Act](#), the object of the Act, and the intention of Parliament””: *Piekut v. Canada (National Revenue)*, [2025 SCC 13](#), 502 D.L.R. (4th) 1, at para. [42](#), citing *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998 CanLII 837 \(SCC\)](#), [1998] 1 S.C.R. 27, at para. [21](#).

Thus, the plain meaning of the text alone is rarely determinative, and the statutory interpretation analysis is therefore incomplete “without considering the context, purpose and relevant legal norms”: *R. v. Alex*, [2017 SCC 37](#), [2017] 1 S.C.R. 967, at para. [31](#).

The purpose of the [Act](#) is to strike a balance between “the public interest in the encouragement and dissemination of works of the arts and intellect and obtaining a just reward for the creator (or, more accurately, to prevent someone other than the creator from appropriating whatever benefits may be generated)”: *Théberge v. Galerie d’Art du Petit Champlain inc.*, [2002 SCC 34](#), [2002] 2 S.C.R. 336, at para. [30](#); see also *Society of Composers, Authors and Music Publishers of Canada v. Entertainment Software Association*, [2022 SCC 30](#), [2022] 2 S.C.R. 303, at para. [67](#).

[Hunt v. Canada](#), 2026 FCA 88

Today, however, we have a great deal of stability. A recent series of consistent Supreme Court cases deserves the credit. In the process of analyzing text, context and purpose, the text is “the anchor of the interpretive exercise”.

But where the language is clear and unambiguous and unaffected by considerations of context and purpose, it must be given its effect and the element of purpose “cannot be used to create an unexpressed exception to clear language” which was arguably the case in *Wilson*: see, e.g., *Placer Dome Canada Ltd. v. Ontario (Minister of Finance)*, [2006 SCC 20](#), [2006] 1 S.C.R. 715 at para. [23](#). And policy considerations “cannot be permitted to distort the actual words of the statute, read harmoniously with the scheme of the statute, its object, and the intention of the legislature, so as to make the provision say something it does not”: *TELUS Communications*, above at para. 79.

[Patel v. Dermaspark Products Inc.](#), 2025 FCA 145

[32] The general rule is that we are bound by an earlier decision on point—here *Mentmore*—and must follow it: *R. v. Sullivan*, [2022 SCC 19](#), [2022] 1 S.C.R. 460 at paras. [73-78](#); *Miller v. Canada (Attorney General)*, [2002] FCA 370, 220 D.L.R. (4th) 179. We can depart from an earlier decision only if asked to do so and only if there is “manifest error” in the sense that the earlier decision overlooked a relevant statutory provision or a case that ought to have been followed: *Miller* at paras. 10 and 22. And, in an exception not potentially relevant in this case, departures from past decisions in public law matters may be warranted where there are “evolving legislative and social facts” that add up to profound “social change” or there is a change in the circumstances or evidence that “fundamentally shifts the parameters of the debate”: *R. v. Comeau*, [2018 SCC 15](#), [2018] 1 S.C.R. 342 at para. [36](#); *Carter v. Canada (Attorney General)*, [2015 SCC 5](#), [2015] 1 S.C.R. 331 at para. [44](#); *Miller* at para. 22. As said above, the appellants have not raised any of these. But even if they had, they are not present here.

[33] I note that *Mentmore*, although decided nearly a half-century ago, continues to be applied without question in the Federal Court system: see, e.g., *Louis Vuitton Malletier SA v. Singga Enterprises (Canada) Inc.*, [2011 FC 776](#); *Biofert Manufacturing Inc. v. Agrisol Manufacturing*, [2020 FC 379](#) at

paras. [161-162](#); *Boulangerie Vachon Inc. v. Racioppo*, [2021 FC 308](#); *Trans-High Corporation v. Conscious Consumption Inc. et al.*, [2016 FC 949](#). Contrary to the views of some, precedents are never issued with a “best before” date stamped on them. And good wisdom is timeless. So absent demonstration of manifest error or some sort of epic change in social circumstances, old stuff binds us just as much as the new.

But see:

[Society of Composers, Authors and Music Publishers of Canada v. Bell Canada](#), 2012 SCC 36 (CanLII), [2012] 2 SCR 326

Théberge reflected a move away from an earlier, author-centric view which focused on the exclusive right of authors and copyright owners to control how their works were used in the marketplace: see e.g. *Bishop v. Stevens*, [1990 CanLII 75 \(SCC\)](#), [1990] 2 S.C.R. 467, at pp. 478-79. Under this former framework, any benefit the public might derive from the copyright system was only “a fortunate by-product of private entitlement”: Carys J. Craig, “Locke, Labour and Limiting the Author’s Right: A Warning against a Lockean Approach to Copyright Law” (2002), 28 *Queen’s L.J.* 1, at pp. 14-15.

[*Théberge* focused attention instead on the importance copyright plays in promoting the public interest, and emphasized that the dissemination of artistic works is central to developing a robustly cultured and intellectual public domain. As noted by Professor David Vaver, both protection and access must be sensitively balanced in order to achieve this goal: *Intellectual Property Law: Copyright, Patents, Trademarks* (2nd ed. 2011), at p. 60.

CCH confirmed that users’ rights are an essential part of furthering the public interest objectives of the [Copyright Act](#). One of the tools employed to achieve the proper balance between protection and access in the *Act* is the concept of fair dealing, which allows users to engage in some activities that might otherwise amount to copyright infringement. In order to maintain the proper balance between these interests, the fair dealing provision “must not be interpreted restrictively”: *CCH*, at para. 48.

[Fazio v. Altus Business Consultants Limited](#), 2026 CanLII 26537

Copyright is a statutory scheme; copyright legislation simply creates rights and obligations upon the terms and in the circumstances set out in the statute. The legislation speaks for itself and the actions of a party must be measured according to the terms of the statute (*Compo Co Ltd v Blue Crest Music et al*, [1979 CanLII 6 \(SCC\)](#), [1980] 1 SCR 357 at 372-373). The [Copyright Act](#), RSC, 1985, c C-42 [*Copyright Act*] sets out the conditions for the existence, ownership and enforceability of copyright.

[Contino v. Olymel L.P.](#), 2025 ONSC 7064

[43] The [Copyright Act, RSC 1985, c C-42](#) sets out the conditions for the existence, ownership and enforceability of copyright.

[45] The decisions in Federal Court surrounding copyright infringement should be given deference given the specialized role of Federal Court in intellectual property cases: [\(AOM\) NA Inc. et al v. Reveal Group](#), [2013 ONSC 8014 \(CanLII\)](#).

2. Subsistence, ownership of copyright and standing

a. Ownership and standing

McQuaig v. Enbridge Gas Inc., 2025 FC 1439

[17] An essential element of a claim for copyright arrangement is standing. Standing flows from being either the owner of the copyright in question, or “deriving any right, title or interest by assignment or grant in writing from the owner” (see [section 41.23](#) of the [Copyright Act](#), RSC 1985, c C-42). On this motion the key issue is whether Mr. McQuaig has standing to sue for copyright infringement. Stated differently, the key issue is whether the facts alleged in the Claim, which are assumed to be true, could result in Mr. McQuaig being the owner of the copyright in question. As explained below, the answer to that question is no...

[20] As noted above, a key question is whether the facts alleged in the Claim, which are assumed to be true, can result in the conclusion that Mr. McQuaig is the owner of the copyright in the EVC Prover software. Having regard to the evolution of the EVC Prover software as alleged in the Claim, there are three different versions or components of the software that need to be considered, which relate to three different time periods.

A. #1 - Original EVC Prover software, and modifications and enhancements prior to November 2019

[21] The first is the original EVC Prover software, and modifications and enhancements prior to November 2019 (Original Software). As the Claim asserts that Mr. McQuaig is the sole author, pursuant to action 13(1) of the [Copyright Act](#) he would be the first owner of copyright in the Original Software. The Claim alleges that subsequent to the incorporation of 108 Canada in October 2019, Mr. McQuaig assigned his copyright to 108 Canada. As a result, as per the facts alleged in the Claim (see paras 5, 7-11), 108 Canada is the owner of the copyright in the Original Software. Mr. McQuaig is not the owner of the copyright in the Original Software, and as a result, has no standing to sue for copyright infringement of it.

B. #2 - New Features – November 2019 until June 8, 2021

[22] The second is the “new features” that were incorporated into the EVC Prover software by Mr. McQuaig from November 2019 until he became an employee of Enbridge on June 8, 2021 (see paras 12 and 13). It is useful to repeat here paragraph 12 of the Claim which alleges that:

12. In or around November 2019, McQuaig signed a service contract with the Defendant to incorporate new features into the EVC Prover software on an independent contractor basis.

[24] Paragraph 12 of the Claim alleges that “McQuaig signed a service contract”. The Services Contract identifies the supplier as being 108 Canada. Specifically, it states the following on the first page (see page 39 of the Defendants Motion Record):

[26] Section 6.1.3 of the Service Contract provides, among other things, that “Enbridge shall own all intellectual and industrial property rights in the product of the Services”. However, it is not necessary to consider any impact that provision may have on the ownership of the copyright in the New Features. This is because there are no facts alleged in the Claim to suggest that any work done by Mr. McQuaig in connection with the New Features for the EVC Prover software was done other than as an employee of 108 Canada. As a result, he would not be the first owner of the copyright in the New Features (see [section 13\(3\)](#) of the [Copyright Act](#)).

[27] Read generously, there are no facts asserted in the Claim from which it is possible to conclude that Mr. McQuaig is the owner of the copyright in the New Features.

C. #3 – Enbridge Modifications – June 8, 2021 to May 3, 2023

[28] The third is the modifications, enhancements and new features done by Mr. McQuaig as an employee of Enbridge during the period June 8, 2021 to May 3, 2023 (see para 13). These are defined in the Claim as the Enbridge Modifications. Pursuant to [section 13\(3\)](#) of the *Copyright Act*, Enbridge, as the employer, is the owner of the copyright in the Enbridge Modifications. There is no allegation in the Claim of any agreement to the contrary. In addition, Enbridge’s ownership of the copyright in the Enbridge Modifications is admitted in paragraph 16 of the Claim.

V. Conclusion - Standing

[29] Assuming all of the facts in the Claim to be true, including the Services Contract incorporated by reference, it is plain and obvious that Mr. McQuaig is not the owner of any of the copyright in issue, and accordingly, has no standing to sue for copyright infringement. As a result, the Claim does not disclose a reasonable cause of action.

Matsumoto v. Canuck Eats Inc. 2025 FC 2017

[11] Pursuant to [subsection 13\(1\)](#) of the *Copyright Act*, RSC 1985, c C-42 [Act], the author of a work is the first owner of the copyright to the work.

[12] If copyright has not been registered, the presumptions respecting copyright and ownership under [subsection 34.1\(1\)](#) of the *Act* apply, such that copyright is presumed to subsist in the work and the author is presumed to be the owner of the copyright, unless the contrary is proven.

[13] The supplementary affidavit evidence from Chen states that he photographed and uploaded the images identified as images 3 to 13 in Schedule A to the JOC Blog and includes links to the images as posted. The affidavit links pages of the JOC Blog, including an “About” page that introduces Chen as the co-founder, photographer, and person responsible for all business operations on the JOC Blog. It also links to a “Permissions” page which states that Just One Cookbook [JOC] owns the copyright to all photographs on the site. The evidence shows that the bottom of each page of the JOC Blog includes a statement “© 2025 Just One Cookbook. All rights reserved.”

[14] In his first affidavit, Chen states that he owns the “copyright and all affiliated rights in his photographs by virtue of having created them and never having sold, waived, or assigned any rights to them, except for any licences referred to in [his] affidavit”. However, this is inconsistent with the information given to the public on the JOC Blog, which is cited by the Plaintiffs in their written representations on the motion, stating that JOC, not Chen, owns the copyright in all photographs on the site, which would include images 3 to 13 of Schedule A.

[15] The supplementary evidence raises the issue of whether Chen has standing to bring a claim for copyright infringement relating to images 3 to 13 if he does not own the copyright in these photographs.

[16] As recently stated by Associate Judge Cotter in *McQuaig v Enbridge Gas Inc.*, [2025 FC 1439](#) at paragraph [17](#), “An essential element of a claim for copyright infringement is standing. Standing flows from being either the owner of the copyright in question, or ‘deriving any right, title or interest by assignment or grant in writing from the owner’ (see [section 41.23](#) of the *Copyright Act*, RSC 1985, c C-42)”.

[18] In view of the outstanding issues as to the standing of Chen, I am unable to grant judgment for copyright infringement relating to images 3 to 13 of Schedule A.

[19] With respect to Matsumoto, the supplementary affidavit states that he photographed and uploaded the images identified as images 1 and 2 of Schedule A to the Matsumoto Blog and includes links to the images. The Matsumoto Blog includes a “Photography” page where Matsumoto claims copyright in the photographs included on the site and details regarding his offer to license the use of his photographs for commercial purposes. The bottom of each page of the Matsumoto Blog includes a statement “Copyright © 2024 Marc Matsumoto. All rights reserved.”

[20] Based on the evidence from Matsumoto, I am satisfied he is both the author and the owner of the copyright in images 1 and 2 of Schedule A. I will therefore restrict my analysis relating to copyright infringement to images 1 and 2 and will only consider Chen’s claims as they relate to moral rights.

Gold Line Telemangement Inc. v. Ereele GmbH, 2025 FC 904

Does copyright subsist in the Schedule C Works and is copyright enforceable against the Plaintiffs in Canada?

[25] The Plaintiffs have not asserted any of their own rights in the Schedule C Works and have not explained their relationship with TenTV or TenTV’s basis for reproducing the Schedule C Works. Instead, they rely on the fact that the works they were alleged to have infringed were produced in Iran and since Iran is not a signatory to the *Berne Convention*, copyright does not subsist in Canada in the Schedule C Works and cannot be enforced in Canada.

[26] The Defendants’ productions include the Defendants’ Licence Agreement, together with some 55 contracts which predate the Defendants’ Licence Agreement, and purport to evidence the assignment of the original copyright from third parties to Honar Aval. Regardless of whether or not as a matter of contract the Defendants own copyright in the Schedule C Works, copyright must be shown to subsist in the Schedule C Works to be enforceable in Canada. The subsistence and enforceability of copyright in Canada is wholly dependent on the ability of a party to satisfy the terms of the [Copyright Act](#), RSC 1985, c C-42 [[Copyright Act](#)] (*Fox Restaurant Concepts LLC v 43 North Restaurant Group Inc*, [2022 FC 1149](#) at para [24](#)), which I find the Defendants cannot do in this case for three reasons.

[28] Second, while the [Copyright Act](#) recognizes and protects copyright in works created overseas by foreign authors and makers, in the case of cinematographic works, this is expressly limited to works where: (i) the author was, at the date of the making of the work, a citizen or subject of, or a person ordinarily resident in, a country that is a member of a treaty country ([Copyright Act](#), s 5(1)(a)); (ii) the maker, at the date of the making of the cinematographic work, is headquartered in a treaty country (in the case of a corporation), or was a citizen or subject of, or a person ordinarily resident in, a treaty country (in the case of a natural person) ([Copyright Act](#), s 5(1)(b)); or (iii) the conditions in [paragraph 5\(1\)\(c\)](#) of the [Copyright Act](#) have been met in relation to a published work.

[29] It was the Defendants’ burden to prove on a balance of probabilities that the Schedule C Works meet one of the conditions of [subsection 5\(1\)](#) of the [Copyright Act](#) which they have failed to do. I note that there is some evidence in the May 12, 2020 email from Austrian counsel for Ereele that Ereele publishes all movies that it has licensed, not only in Iran but simultaneously in countries in the European Union. However, this mere mention in an email without more specific evidence from someone with direct knowledge of such publication does not meet the requisite evidentiary standard that could support a finding of publication of the Schedule C Works (*Lickerish, Ltd v airG Inc*, [2020 FC 1128](#) at paras [34](#), 48).

[30] I therefore find that copyright has not been shown to subsist in the Schedule C Works in Canada and the Plaintiffs are entitled to relief.

b. Assignments of copyright

Industrial Custom Equipment & Construction Limited et al. v. Industrial Commercial Equipment Manufacturing Ltd. et al., 2025 MBKB 121

Did ICEW commit any actions constituting passing off or a copyright infringement?

[99] I am rejecting the defence raised by the plaintiffs that ICEM assigned its interests in any right of action raised in ICEM’s counterclaim by virtue of the Stock Purchase Agreement (“SPA”) between ICEM and ICE U.S., dated November 4, 2016, and in particular Exhibit B (the Bill of Sale) of that agreement. In the Bill of Sale, ICEM assigns to ICE U.S. all right, title and interest in the assets listed in Exhibit 1, which includes ICEM’s intellectual property, name, logo and goodwill, as well as all job files for sales made by ICEM in 2015 and 2016. ICEM’s counterclaim relates to a claim of passing off, copyright infringement and a debt claim for unpaid receivables.

[100] The SPA was not a sale of the shares of ICEM. The claim relating to passing off and copyright infringement arose prior to the sale of ICE U.S. I find there are no “apt words” within the meaning of [s. 31\(1\)](#) of *The Law of Property Act*, R.S.M. 1987, c. L90, that evidence an assignment of a cause of action that arose prior to the SPA, nor is there a sufficient expression of the intent to assign any cause of action. In addition, there are no “apt words” in the SPA indicating an assignment of contract or debt claims...

c. Works created in the course of employment

Weed Pool Cannabis Co-operative Limited Weed Pool Processing Co-operative v Nexus Cannabis Solutions Inc., 2025 TMOB 115

[53] In its written representations, the Opponent further alleges that “the Applicant cannot claim ownership of each of the Opposed Marks, contrary to section 13 of the *Copyright Act*, because the infringing designs belong to a third party, Terroco Industries Limited – which has no relationship to the Applicant” [para 82]. The Opponent points to Mr. O’Connor’s admission that he was employed at Terroco Industries Limited at the time he created the designs of the Marks [O’Connor cross-examination, Q63-67] to support the allegation that the Marks presumptively belong, and still belong, to Terroco Industries Limited.

[54] The Applicant submits that this ground was not pleaded in the statement of opposition, and that it is improper for it to be raised at the written representations stage. I am inclined to agree that this objection, which does not specifically relate to the ownership of the Alberta Wheat Pool trademark and logo, does not fit within the scope of the ground of opposition as pleaded by the Opponent. Nonetheless, even if I were to consider it, I do not consider that the mere fact that Mr. O’Connor was employed by Terroco Industries at the time he designed the applied for Marks to mean that the Marks were created in the course of his employment at Terroco Industries.

Fazio v. Altus Business Consultants Limited, 2026 CanLII 26537

Claims for copyright infringement are within the jurisdiction of the Federal Court.

Pursuant to [subsection 13\(3\)](#) of the *Copyright Act*, where the author of a work was in the employment of some other person under a contract of service, and the work was made in the course of employment by that person, the employer is the first owner of copyright, subject to any agreement to the contrary.

In the Claim, the plaintiff alleges that she was an employee of Sparkrock Inc from October 2021 to May 2022, by Sparkrock Ltd from June 2022 to November 2022, and by Sparkrock Edsembl Inc from November 2024 to August 2025. There are no allegations in the Claim, the Rule 74 response, or the lengthy reply submissions that the plaintiff was ever an independent contractor or had any agreement with any of the defendants that she would be the owner of any copyright in any works...

The plaintiff has had multiple opportunities to articulate material facts that could give rise to a claim for copyright infringement and has not done so. The admission in the Claim that she was an employee of the defendants, without any facts that would vary or undo the presumption in [subsection 13\(3\)](#) of the *Copyright Act*, is fatal to any claim for copyright infringement. I am not satisfied that the plaintiff is able to plead a viable case in copyright infringement. The Claim is therefore ordered removed from the Court file, without leave to amend.

***Nexus Solutions Inc. v. Krougly*, 2026 ONCA 199**

The trial judge held that the purpose underlying the grant of copyright to an employer in works created by an employee had been correctly described by Lucie Guibault et al. in *Canadian Intellectual Property Law* (2025), [2022 CanLIIDocs 4489\[1\]](#), at pp. 62-63, as follows:

The basis for the attribution of the initial ownership of rights to the employer is that since the latter assumes the major financial, organizational, and associative risks involved in the creation, production and distribution of the work, they should have full control, including with respect to third parties, over the exploitation of that work. In these circumstances, the author receives compensation for their intellectual creation not in the form of an exclusive economic right in the work – which is presumed transferred to the employer, but in the form of a salary or any other form of agreed remuneration.

The trial judge found that in interpreting the scope of an employer’s rights under s. 13(3), it was relevant to consider the factors identified by the Intellectual Property Enterprise Court (a specialist court of the High Court of England and Wales) in *Penhallurick v. MD5 Ltd.*, [2021] EWHC 293 (IPEC), aff’d [2021] EWCA Civ 1770. *Penhallurick* holds, at para. 58, that the following circumstances may be considered in determining whether a work has been created “in the course of” a person’s employment:

- (i) the terms of the contract of employment;
- (ii) where the work was created;
- (iii) whether the work was created during normal office hours;
- (iv) who provided the materials for the work to be created;
- (v) the level of direction provided to the author;
- (vi) whether the author can refuse to create the work; and
- (vii) whether the work is “integral” to the business.

Taking into account the factors identified in *Penhallurick*, and guided by the purpose underlying the grant of proprietary rights to employers through s. 13(3), the trial judge was not persuaded on a balance of probabilities that Krougly had developed the Limedas software “in the course of his employment” by Nexus...

This appeal turns on the proper interpretation of [s. 13\(3\)](#) of the [Act](#), which must be considered alongside s. 13(1). The two provisions provide in relevant part as follows:

Ownership of copyright

13(1) Subject to this [Act](#), the author of a work shall be the first owner of the copyright therein.

...

Work made in the course of employment

13(3) Where the author of a work was in the employment of some other person under a contract of service or apprenticeship and the work was made in the course of his employment by that person, the person by whom the author was employed shall, in the absence of any agreement to the contrary, be the first owner of the copyright...

Thus, in order for an employer to hold copyright in a work created by an employee, three conditions must be satisfied:

- (i) the creator of the work must be, in law, an employee;
- (ii) the work must have been created “in the course of ... employment”; and
- (iii) there is no agreement to the contrary...

It is well established that the modern approach to statutory interpretation requires that the court examine the words of the provision ““in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the [Act](#), the object of the Act, and the intention of Parliament””: *Piekut v. Canada (National Revenue)*, [2025 SCC 13](#), 502 D.L.R. (4th) 1, at para. [42](#), citing *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998 CanLII 837 \(SCC\)](#), [1998] 1 S.C.R. 27, at para. [21](#).

Thus, the plain meaning of the text alone is rarely determinative, and the statutory interpretation analysis is therefore incomplete “without considering the context, purpose and relevant legal norms”: *R. v. Alex*, [2017 SCC 37](#), [2017] 1 S.C.R. 967, at para. [31](#).

The purpose of the [Act](#) is to strike a balance between “the public interest in the encouragement and dissemination of works of the arts and intellect and obtaining a just reward for the creator (or, more accurately, to prevent someone other than the creator from appropriating whatever benefits may be generated)”: *Théberge v. Galerie d’Art du Petit Champlain inc.*, [2002 SCC 34](#), [2002] 2 S.C.R. 336, at para. [30](#); see also *Society of Composers, Authors and Music Publishers of Canada v. Entertainment Software Association*, [2022 SCC 30](#), [2022] 2 S.C.R. 303, at para. [67](#).

On this basis, [s. 13\(1\)](#) of the [Act](#) provides that the author shall generally be the first owner of the copyright in works they create. This fulfills the broader purpose of the Act since it provides authors with

an incentive to create and disseminate works, while also benefitting the public by providing them with access to creative works that might otherwise never have come into existence.

What, then, is the purpose of s. 13(3), which provides an exception to the general rule set out in s. 13(1) and grants an employer first copyright in a work created by an employee in the course of their employment?

As Guibault et al. point out at pp. 142-44 of their text, this exception is justified by the fact that where the employer has paid for the development of the work (including through compensating the author(s) for their work in developing it), and assumed the risks associated in its development, the “just reward” should accrue to the employer rather than the individual author(s). Allocating reward to the entity that caused the work to be created is consistent with the principle that copyright should vest in the entity for whom the work was created and who paid for it.

This understanding of the purpose of the s. 13(3) exception, alongside the text of the provision and the surrounding context of copyright law and the scheme of the [Act](#), assists in understanding the proper meaning and scope of the phrase “in the course of ... employment”...

Simply put, the s. 13(3) exception is premised on the determination that the employer ought to hold copyright over works that were made by the employee as part of their responsibilities to the employer. The supporting rationale is that the employee was paid to make the work and did so in fulfillment of their agreed role with the employer.

This would likely be the case where the work was made under the employer’s instructions and using its resources. Conversely, where the employee made the work on their own time, using their own equipment, and not as part of their assigned duties or responsibilities, the making of the work would likely fall outside of the course of their employment, and copyright would vest in the employee.

There will inevitably be instances which are less clear cut, and the assignment of copyright in such cases will turn on the strength of the connection between the making of the work and the employee’s responsibilities. In assessing that nexus, the factors identified in *Penhallurick* will assist in the inquiry, but others may also be relevant. The overriding issue is whether the making of the work in question is something that the employee was asked or expected to do, either expressly or by necessary implication, as part of their employment responsibilities.

Of course, an employer and employee may agree that entitlement to copyright in works made by an employee should be determined on the basis of a different legal framework, which will then govern. This is because the “in the course of ... employment” rule set out in s. 13(3) applies only “in the absence of any agreement to the contrary”....

The trial judge did not err in holding that the fact that Krougly was not directed to create the Limedas software was a “critical determination” in denying Nexus’s copyright claim

The fact that an employer could require an employee to carry out a task is a necessary, but not a sufficient condition for that task to fall within the employee’s course of employment. Whether or not the task falls within the employee’s course of employment depends on whether the employer has actually assigned responsibility to the employee to carry out the task or perform the function in question. At the same time, the employer need not have specifically directed the employee to produce a particular work for that work to have been made in the course of employment. What is necessary, however, is that the employee’s actual (as opposed to potential) responsibilities included making the work.

This point can be illustrated through the following hypothetical scenario, adapted from an example set out in the respondents' written submissions. Suppose an employee is hired to write source code for a company's video games and is assigned to develop a particular game, Game A. The employee's responsibilities do not include independently developing or ideating new video games. During nonworking hours and using their home computer, the employee writes source code for a different video game, Game B, for their own profit, which is similar to, but not a copy of Game A.

On the appellant's theory, the employer would hold copyright over whatever source code the employee wrote for Game B, because writing source code for video games is the kind or class of work for which the employee was hired. But this result ignores what the employee was actually directed to do, which was to write source code for a particular video game – Game A – as opposed to develop video games in general. Nor should it matter that the employer could have asked the employee to produce new video games, such as Game B, given that the employer chose not to do so and instead limited the employee's actual responsibilities to work on Game A.

Not only does Nexus's interpretation of "in the course of ... employment" ignore the actual responsibilities of the employee, it runs counter to the purpose of s. 13(3). In the hypothetical scenario above, the employer did not expend any resources in support of the employee's development of Game B, since the employee used their own equipment and undertook the work on their own time and thus were not being paid by the employer when working on Game B. Moreover, the employer had no control over the development of Game B and assumed none of the attendant risks. For example, if Game B were to somehow cause loss or damage to a third party, the third party would have no recourse against the employer from the mere fact that Game B fell into the class or kinds of work that the employer could have assigned the employee to create.

Notice that the allocation of copyright in Game B to the employee does not depend on whether the employer was aware of the employee's work on Game B, nor whether Game B might be regarded as competitive with Game A.[2] If the creation of Game B was outside of the employee's assigned responsibilities, the video game was not made "in the course of ... employment" and the employee is entitled to copyright. Conversely, if the development of other games, such as Game B, was within the employee's assigned responsibilities, the employer would be entitled to copyright in the work, even if the employer was unaware of the fact that the employee was developing that specific game.

The trial judge did not err in taking account of the fact that Nexus did not "expend resources" or "bargain for" the development of Limedas in dismissing Nexus's copyright claim

In other words, because Krougly did not receive any increase in compensation when he began developing Limedas, and he undertook this work almost entirely on his own time and using his own equipment while still working full-time in his existing role with Nexus, Nexus did not fund the creation of Limedas by paying Krougly's salary or otherwise. Read in context, this is all the trial judge was attempting to convey in his "bargain for" comment.

McQuaig v. Enbridge Gas Inc., 2025 FC 1439

See above summary.

d. Pleading

[Toronto Regional Real Estate Board v. IMS Incorporated \(RESTATS\)](#), 2026 CanLII 34046 (FC)

[7] The purpose of pleadings in an action is to define the issues in dispute between the parties for the purposes of documentary and oral discovery and ultimately trial. More specifically:

This is the rule of pleading: all of the other pleading rules are essentially corollaries or qualifications to this basic rule that the pleader must state the material facts relied upon for his or her claim or defence. The rule involves four separate elements: (1) every pleading must state facts, not mere conclusions of law; (2) it must state material facts and not include facts which are immaterial; (3) it must state facts and not the evidence by which they are to be proved; (4) it must state facts concisely in a summary form. [*Leonard v. Canada*, [2022 FCA 195](#) at para. [34](#)]

[8] The [Federal Courts Rules](#), SOR 98-106 (the “Rules”) make references to the need for fulsome but precise pleadings. For example: (1) Rule 174 requires that every pleading contain a concise statement of the material facts but not the evidence by which those facts shall be proved; (2) Rule 183 requires a defendant to plead any version of facts it intends to prove that differs from the plaintiff’s version; and (3) Rule 181 requires a pleading to contain particulars of every allegation contained therein.

[9] The purposes of particulars of pleading are several and include to:

- A. Inform the opposite party of the case it has to meet;
- B. Focus the allegations and limit the generality of the pleadings;
- C. Limit the issues for discovery and trial;
- D. Tie the party pleading to the allegations made in the pleading, thus ensuring that nothing new will be raised at discovery or trial without leave;
- E. Enable the party opposite to know what evidence it will have to gather and present at trial; and
- F. Prevent surprise at trial. [*Throttle Control Tech Inc. v Precision Drilling Corporation*, [2010 FC 1085](#) at para. [11](#)].

[Fazio v. Altus Business Consultants Limited](#), 2026 CanLII 26537, affirmed, 2026 FC 480

A pleading for copyright infringement must set out: (a) a closed list of the works that are in issue; (b) the authors of each work; (c) whether the plaintiff’s claimed ownership in the works arises by operation of law or assignment (or both); and (d) how or where each of the copyrighted works are alleged to have been reproduced, in whole or in substantial part, by the defendants (*Fox Restaurant Concepts LLC v 43 North Restaurant Group Inc.*, [2022 FC 1149](#) [*Fox*] at para [32](#)).

In *Fox*, I concluded that, while there were shortcomings in the statement of claim, it should not be struck without leave to amend (para. 30). In that case, there was more than a scintilla of a cause of action for copyright infringement, and the defects could be cured by an amendment. That is not the case here. The plaintiff has admitted in the Claim that she was an employee of one of the defendants throughout the material time and has not asserted that there is an agreement as to the ownership of copyright that would overcome the presumptions in [subsection 13\(3\)](#) of the *Copyright Act*.

***Fazio v. Altus Business Consultants Limited*, 2026 FC 480**

[14] A.J. Horne acknowledged that Ms. Fazio advanced an intellectual property dispute, which she also asserts in this appeal. However, there continues to be fundamental material defects in the intellectual property claim that render it non-actionable. As noted by A.J. Horne, Ms. Fazio has not provided any list of works that are in issue, or any material facts, as required by pleadings for copyright infringement (*Fox Restaurant Concepts LLC v 43 North Restaurant Group Inc.*, [2022 FC 1149](#) at para [32](#))....

[15] Finally, Ms. Fazio has not provided any arguments disputing A.J. Horne’s determination that [subsection 13\(3\)](#) of the *Copyright Act* is fatal to any claim of copyright infringement, because the Defendants are presumed to be copyright owners of Ms. Fazio’s work during her employment.

***Contino v. Olymel L.P.*, 2025 ONSC 7064**

Does Olymel’s Counterclaim contain material facts to make out the constituent elements for breach of copyright?

[46] In *Adacel Technologies Ltd. v. Nav Canada*, [2006 FCA 227 \(CanLII\)](#), Pelletier J.A. stated, at para. 16, that “[s]ection 3 of the Act says that the copyright, in relation to a work, means “the sole right to produce or reproduce the work or any substantial part thereof in any material form whatever, ... if the work is unpublished, to publish the work or any substantial part thereof, and includes the sole right ... to produce, reproduce, perform or publish any translation of the work...”. To allege infringement is to allege that the defendant has reproduced a work or a substantial portion of a work without the consent of the owner. Thus, the material facts are the existence of the work, the ownership of copyright in the work, the existence of the infringing work and the absence of the owner’s consent to the production or reproduction of the work” (emphasis added).

[47] The Plaintiff claims that the Counterclaim contains only bald, conclusory statements and has not pled any details to show what “works” were infringed, how they classify as literary and/or artistic works protected by the *Copyright Act*, the author of each of the works and chain of title of ownership to each of the works.

[48] For the following reasons, I find that the claim for copyright should also be struck, as it fails to sufficiently plead sufficient material facts relating to the identity of the works subject to copyright, and to the ownership of those works.

1) *The existence of the work*

[49] The Court in *AOM* noted that copyright is a specific right attaching to a “work”. In striking the claim for copyright breach, Master MacLeod (as he then was) stated that the Plaintiff “must specify what it is that is covered by copyright and what it alleges has been done that gives rise to statutory remedies”. There, the pleading was found to be vague about what it was that was subject to copyright and the claim was struck.

[50] In *Dermaspark Products Inc. v. Prestige MD Clinic et al.*, an unreported decision of then-referred to Case Management Judge Trent Horne (Docket T:1194-20) dated June 6, 2022, the Associate Judge found reference to works published on a website was insufficient to identify what specific works were in issue in the copyright infringement claim. The works were not identified or particularized at all. In striking the copyright claims, Associate Justice Thorne stated, at para. 40:

The defendants should not be required to guess what literary or artistic works on the Pollogen website are alleged to have been reproduced by the defendants without authorization, and which ones are not...the defendants are entitled to know, before filing a defence, at least: the specific works that are in issue; the identity of the authors of each work; whether Pollogen's claimed ownership in the works arises by operation of law or assignment (or both); whether any of the works are licensed to Dermaspark,; and how or where the copyrighted works are alleged to have been misused.

[51] Olymel states that they have pled that the 466 files have been sufficiently described in its Counterclaim by function and significance: sales forecasts, pricing data, customer lists, product metrics and strategic plans. They rely on the Plaintiff's admission in his statutory declaration that he downloaded and retained the 466 files to show that he knew what works are at issue.

[52] I disagree. It is not clear from the pleadings whether all or part of the 466 files are covered by copyright. More particularity is needed to sufficiently claim what files are subject to copyright.

2) *The ownership of copyright in the work*

[53] The Defendant asserts that ownership of the works is not in issue. They state that the Plaintiff has admitted in his statutory declaration that the documents belonged to Olymel. They claim that there is no suggestion of assignment, transfer or third-party ownership and that the presumption of ownership in the employment context applies ([s. 13\(3\)](#) of the [Copyright Act](#)).

[54] I do not read s. 13(3) of the *Act* as creating a presumption of ownership for documents other than a document created by an employee in the course of their employment. The problem here is that Olymel's Counterclaim does not particularize whether any of the documents alleged to have been stolen were documents created by the Plaintiff, another employee, by Olymel, or by any third party. It does not particularize how ownership rights arose in respect to each of the works.

[55] Olymel claims that where there may be deficiencies in pleading in terms of chain of title, they can be cured by particulars if necessary. I do not agree that the cases referred to in the Defendant's factum stand for the broad proposition that chain of title need not be particularized in a pleading.

[56] In the case of [GE Renewable Energy Canada Inc. v. Canmec Industrial Inc., 2024 FC 887 \(CanLII\)](#), the Plaintiff had included an authors list in its Statement of Claim and the parties had had discoveries. The Court found that there had been sufficient particularization as to chain of title and to the extent there was any deficiencies, particulars could cure it.

[57] In [Abercrombie & Fitch Co. v. Giant Tiger Stores Limited, 2009 FC 492 \(CanLII\)](#), the Court found that identifying all the authors might be prejudicial due to the sensitive nature of the information at issue. That is not alleged here.

[58] I find that the Counterclaims fail to plead material facts as to the ownership of copyright in each of the works. Simply stating that Olymel is the owner of the copyright of each of the works fails to establish how the ownership rights arose and fails to establish chain of title.

***Bell Canada v. Millennium Funding, Inc.*, 2025 FCA 153**

[36] The FC judge determined that Bell’s pleading does not provide sufficient material facts with respect to copyright misuse. In particular, the pleading does not “set out ‘what’ the misuse is and ‘how’ the conduct complained of is contrary to public policy under the [Act](#)” (Decision at para. 46). The FC judge further explained (at para. 47) that the pleaded facts are deficient with respect to:

- how the CEP is set up to intimidate and harass alleged infringers and in turn to claim exorbitant amounts from ISPs (such as Bell);
- how the CEP is used to generate notices to members of the public who do not infringe or who are wrongfully accused of infringing; and
- the basis for asserting that the notices are unreliable and unlawful and what proportion of the notices the allegation relates to.

[37] The requirement for material facts was considered in depth by this Court in *Mancuso*. Justice Rennie, writing for the Court, described that “the pleading must tell the defendant who, when, where, how and what gave rise to its liability” (*Mancuso* at para. 19). This is the test that was applied by the FC judge.

[38] Bell submits that the FC judge made a legal error by effectively requiring evidence to be pleaded. I disagree. In general, the pleadings must “define the issues with sufficient precision to make the pre-trial and trial proceedings both manageable and fair” (*Mancuso* at para. 18). The FC judge found that the pleading did not provide a sufficient foundation for the allegations of improper conduct. Bell was required to succinctly plead what the improper conduct consisted of, and how this was contrary to the public policy in the [Act](#). Bell was not required to plead evidence showing how this foundation would be proved.

***MacDougall v. Northwest Territories*, 2025 FC 1062**

See also, claim of infringement not pleaded properly.

***Patrick Street Holdings Ltd. v. 11368 NL Inc.*, 2026 SCC 15**

Modern pleadings must contain a statement of the material facts on which a party relies to make out its claim for relief, rather than precisely identify all causes of action or rules of law pleaded (Jolowicz, at p. 301; see also [Alberta Rules of Court](#), Alta. Reg. 124/2010, r. 13.6(2)(a); [Court of King’s Bench Rules](#), Man. Reg. 553/88, r. 25.06; [Rules of Civil Procedure](#), R.R.O. 1990, Reg. 194, r. 25.06; [Rules of the Supreme Court, 1986](#), S.N.L. 1986, c. 42, Sch. D, r. 14.03; [Rules of Court](#), N.B. Reg. 82-73, r. 27.06(1)). This approach to pleadings is functional and favours the substance of what is pleaded over its form (Jolowicz, at p. 301). In this way, pleadings serve to define the points at issue in a proceeding and to give “opposing parties fair notice of the case to meet” (*Lax Kw’alaams Indian Band v. Canada (Attorney General)*, [2011 SCC 56](#), [2011] 3 S.C.R. 535, at para. 43). The overarching consideration when determining whether a matter has been properly pleaded is thus functional and seeks to ensure that parties are not taken by surprise.

3. Infringement

a. Primary infringement

Matsumoto v. Canuck Eats Inc., 2025 FC 2017

[21] [Subsection 27\(1\)](#) of the [Act](#) describes what is known as “primary infringement” (*Euro-Excellence Inc v Kraft Canada Inc*, [2007 SCC 37](#) at para [17](#)) or “direct infringement” of copyright. Primary infringement occurs when any person, without consent of the copyright owner, does anything that only the copyright owner has the right to do under the Act. [Subsection 3\(1\)](#) of the Act sets out the rights that a copyright owner possesses under the Act, which includes the right to produce or reproduce, perform, or publish the work. It also grants the sole right to authorize any such acts.

b. Website publishing

Archimed Studio inc. c. Man, 2025 QCCQ 4737

[21] The evidence reveals that Archimed is the author of the seven photos and that Mr. Man published them without right on the Centris website between February 19 and 26, 2024 in order to promote a condominium unit for sale.

[22] Contrary to Mr. Man's assertion, the photos were used for commercial purposes, even though the real estate broker's role is to provide support to clients. Nevertheless, the ultimate goal of publishing the photos is to close the sale of a property that will generate a commission for the broker.

[23] The Court therefore concludes that Archimed has discharged its burden of proving, on the balance of probabilities [\[9\]](#), that Mr Man infringed its copyright by publishing on the Centris website, for commercial purposes, seven photos that it produced.

c. Express or implied licenses

Wallace & Carey Inc. (Re), 2025 ABKB 750

There is a Non-Frivolous Dispute About Whether the Digiflex Software is Being Used under or in Breach of the Licence Agreement, or in Breach of Copyright

[95] In addition to relying on matters that pre-date the Digiflex Consent Order, Digiflex also relies on matters after the Digiflex Consent Order. For example, Digiflex points to further steps that have been taken to wind-down W&C, including SEC/SEDCC hiring 450 W&C employees, SEC/SEDCC employees using its software, Digiflex receiving emails from SEC/SEDCC email addresses, the wind-down of the W&C website and sign-in for customers, and the replacement of W&C logos on documents generated using or in conjunction with the software.

[96] The reality is that Digiflex’s Application is completely founded on its asserted position that W&C is no longer the one using the Digiflex Software, it is SEC/SEDCC. This is the foundation for its argument that there has been a breach of the Licence Agreement by W&C and a breach of copyright by SEC/SEDCC.

[97] The problem with Digiflex’s position, on the record before me, is that the question of which entity has been using the Software, and whether W&C remains operational, is in dispute and the record is not sufficient for me to fairly determine that issue in a final way in this summary process. Digiflex’s counsel, when asked, indicated it did not seek or require a finding of fact on this key issue.

[98] The Monitor, a court officer currently holding enhanced powers with respect to W&C's management, advises that W&C continues to operate under the TSA, and is legally the party using the Digiflex Software, through former W&C employees that are now SEC/SEDCC employees seconded back to W&C for that purpose. Again, I note that Digiflex did not question SEC/SEDCC, or seek an evidentiary process with the Monitor, to explore in a concrete way exactly where, by whom and how the Digiflex Software is being used.

[99] I find that the fact SEC/SEDCC employees seconded to W&C may be using the Digiflex Software to support SEDCC's business, that Digiflex is receiving emails from SEC/SEDCC email addresses, or that logos on documents have been changed, is insufficient to prove for the purposes of this summary process that W&C has breached the Licence Agreements or any copyright. The facts relied on by Digiflex are also consistent with W&C continuing to provide a portion of the logistics services to SEC as W&C has always done, as part of the continued provision of Services under the TSA (including as contemplated in the Digiflex Consent Order).

[100] I further understand that Digiflex has commenced an action in Federal Court against SEC and/or SEDCC for breach of Digiflex's copyright, which will raise this very same issue. My finding here is an interim finding based on a limited record, and is not intended to, and does not, create a binding decision on these disputed points. Based on the record before me, I find that Digiflex's assertions of Licence Agreement and copyright breaches are not frivolous.

[101] Whether the Companies and SEC/SEDCC have in fact operated beyond the scope of what was approved in the TSA, or in breach of the Licence Agreements or copyright, is a matter to be determined by settlement or a trial process, not this interim, summary [CCAA](#) application.

[Boyer v. Léonard](#), 2025 QCCQ 6240

The Licence reads as follows:

The photographer grants a "non-exclusive" license authorizing the licensee to use the photo(s) for the following purposes: **REPRODUCTION SUPPORT:** Professional brochure, Website www.leonardcoaching.com, Social media (including Linked in, Facebook, Twitter & any other) [13].

[20] The Court considers the Licence to be clear. Ms. Léonard has a limited use licence. It allows her to use or reproduce the Photograph in any personal brochure, on her professional website and on her own social media, regardless of which ones.

[21] Thus, the Licence does not allow Ms Léonard to give the Photograph to third parties so that they can use it on their own platforms.

[22] Ms. Boyer is correct in arguing that her copyright in the Photograph is infringed when Ms. Leonard continues to display it on her professional website and her Facebook and LinkedIn platforms after the expiry of the Licence.

[23] Here's why.

[24] In January 2024, due to personal events affecting Ms. Leonard, she failed to renew the License that allowed her to use the Photograph on some of her platforms.

[25] Ms. Leonard admits that she continues to use the Photograph without Ms. Boyer's permission after January 3, 2024, when the License has expired.

[26] For these reasons, the Court concludes that there is infringement and that Ms. Boyer's copyrights are violated by this use.

β[27] The Court reiterates that copyright infringement occurs when, without the consent of the copyright holder, an act is performed that only the copyright holder has the right to perform under the [Copyright Act](#). It is also an infringement to distribute or publicly display a copy of a work when the person performing the act knows or ought to know that it constitutes copyright infringement.

d. Authorizing/inducing infringement

[Salna Pictures, LLC v Salna.](#), 2025 FCA 131, summarized in Barry Sookman, [Copyright notice and notice: the Voltage Pictures Case](#)

Is a subscriber of an internet account liable for copyright infringement?

The court rejected that the proposed class action was the preferential procedure. The court followed the decision in [Voltage Holdings, LLC v. Doe #1](#), 2023 FCA 194 that without proof of direct infringement or a sufficient relationship between the subscriber and the infringer a claim for authorizing infringement cannot be made out. This meant that establishing infringement would be an individual and not a common issue in the litigation. As a result, the class proceeding was not the preferential procedure and certification of Voltage's class action was therefore denied.

ISP safe harbors clarified

In providing reasons for why the N&N regime was to be construed narrowly, the Court of Appeal also stated its concision was reinforced by the context of the N&N regime in the *Copyright Act*. Specifically, it stated that “in enacting the notice-and-notice regime in the [Copyright Modernization Act](#), Parliament at the same time insulated ISPs from liability for authorization in section 31.1 of the *Copyright Act*.”

This statement by the Court of Appeal is a significant judicial interpretation of the ISP safe harbours that were introduced in 2012 to insulate ISPs where they act as network service or hosting providers and information location tools e.g. search engines. Prior to the amendments made as part of the *Copyright Act*, under the Supreme Court of Canada decision in the [SOCAN Tariff 22 case](#), the court held that “copyright liability may well attach if the activities of the Internet Service Provider cease to be content neutral, e.g. if it has notice that a content provider has posted infringing material on its system and fails to take remedial action.” That statement was consistent with the liability of persons for other tortious activity such as defamation where a failure to take down or disable access on becoming aware of its delictual character can lead to liability, as recently illustrated in [I Buy Beauty LLC v Dong](#), 2024 BCSC 815.

[Boyer v. Léonard](#), 2025 QCCQ 6240

[28] The Photograph appears on the CC Corporate Coaching website between April 2021 and September 2024. This use is not authorized by the License.

[29] In addition, after the expiry of the Licence in January 2024, the Photograph appears on the Technologia website [\[14\]](#) and its Facebook, LinkedIn and YouTube pages as well as on the website of the Directory of the Order of Certified Human Resources Professionals.

[30] Ms. Léonard is a third party in relation to these companies. Ms. Boyer is not suing them.

[31] The Court must therefore determine whether Ms. Leonard infringes copyright by giving the Photograph to third parties for their use or whether she should know that they are using it, both during the term of the Licence and upon its expiry, thereby committing an infringement of the [Copyright Act](#) .

[32] Indeed, the fact that third parties also have a responsibility towards Mrs. Boyer does not release Mrs. Léonard from her own.

[33] In light of Ms. Leonard's testimony, the Tribunal concludes that she transmitted or permitted the Directory of the Order of Certified Human Resources Professionals and Corporate Coaching CC to use the Photograph.

[34] Indeed, Ms. Léonard acknowledges that she knows CC Corporate Coaching uses photography. She is aware of what goes on there since she is very involved in this organization. She is the one who set it up.

[35] As for the Directory of the Order of Certified Human Resources Professionals, Ms. Léonard also admits to having sent them the Photograph so that an image of her would appear with her name in the directory listing human resources professionals.

[36] Regarding Technologia and its platforms, Ms. Léonard testifies that she was unaware they used photography. She never checked how Technologia advertised the courses and services it offered on its platforms.

e. Contributory liability

Cox Communications, Inc. et al. v. Sony Music Entertainment et al., [607 U.S. ----- S.Ct. ----2026 WL 815823](#)

Per Justice [THOMAS](#) (delivered the opinion of the Court)

This Court has also recognized two categories of secondary copyright liability, which means liability for the copyright infringement of another. Those two categories are “contributory” liability and “vicarious” liability. *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913, 930, 125 S.Ct. 2764, 162 L.Ed.2d 781 (2005). This case concerns contributory liability.

The provider of a service is contributorily liable for a user’s infringement if it intended its service to be used for infringement. To establish that a provider intended its service to be used for infringement, a copyright owner must show one of two things. First, it can show that a party affirmatively “induc[ed]” the infringement. *Ibid.* Or, second, it can show that the party sold a service tailored to infringement. *Id.*, at 942, 125 S.Ct. 2764 (Ginsburg, J., concurring). Patent law, with which copyright law has a “historic kinship,” *Sony Corp. of America v. Universal City Studios, Inc.*, 464 U.S. 417, 439, 104 S.Ct. 774, 78 L.Ed.2d 574 (1984), tracks these two requirements. See 35 U.S.C. §§ 271(b), (c)...

“The Copyright Act does not expressly render anyone liable for infringement committed by another.” *Sony*, 464 U.S., at 434, 104 S.Ct. 774. Ordinarily, when Congress intends to impose secondary liability, it does so expressly. See *Central Bank of Denver, N. A. v. First Interstate Bank of Denver, N. A.*, 511 U.S. 164, 176–177, 114 S.Ct. 1439, 128 L.Ed.2d 119 (1994). Although our precedents have recognized specific forms of secondary copyright liability that predated the Copyright Act, we are loath to expand such liability beyond those precedents.

The provider of a service is contributorily liable for the user’s infringement only if it intended that the provided service be used for infringement. The intent required for contributory liability can be shown

only if the party induced the infringement or the provided service is tailored to that infringement. [Grokster](#), 545 U.S., at 930, 125 S.Ct. 2764; [Sony](#), 464 U.S., at 440–441, 104 S.Ct. 774.

A provider induces infringement if it actively encourages infringement through specific acts. [Grokster](#), 545 U.S., at 942, 125 S.Ct. 2764 (Ginsburg, J., concurring). For example, in [Grokster](#), we held that a jury could find two file-sharing software companies liable for inducement. [Id.](#), at 941, 125 S.Ct. 2764 (majority opinion). The companies promoted and marketed their software as a tool to infringe copyrights. [Id.](#), at 926, 125 S.Ct. 2764. The “principal object” of their business models “was use of their software to download copyrighted works.” [Ibid.](#) Other decisions have held providers liable for similar conduct. See [Kalem Co. v. Harper Brothers](#), 222 U.S. 55, 62–63, 32 S.Ct. 20, 56 L.Ed. 92 (1911) (finding liability where “[t]he defendant not only expected but invoked by advertisement the use of its films” for infringement of an author’s copyright); [Henry v. A. B. Dick Co.](#), 224 U.S. 1, 49, 32 S.Ct. 364, 56 L.Ed. 645 (1912) (finding liability because the sale was made “with the purpose and intent” that the object be used for patent infringement), overruled on other grounds, [Motion Picture Patents Co. v. Universal Film Mfg. Co.](#), 243 U.S. 502, 518, 37 S.Ct. 416, 61 L.Ed. 871 (1917).

A service is tailored to infringement if it is “not capable of ‘substantial’ or ‘commercially significant’ noninfringing uses.” [Grokster](#), 545 U.S., at 942, 125 S.Ct. 2764 (Ginsburg, J., concurring) (quoting [Sony](#), 464 U.S., at 442, 104 S.Ct. 774). In [Sony](#), copyright owners sued the maker and the retailers of the Betamax video tape recorder. [Id.](#), at 422, 104 S.Ct. 774. The tape recorder could be used to record copyrighted television programs for later personal viewing, which would not constitute infringement. [Id.](#), at 449, 104 S.Ct. 774. On the other hand, it could also be used to reproduce and sell copyrighted television programming, which would constitute infringement. [Ibid.](#) The lower court found the Betamax maker liable because the tape recorder was “not suitable for any substantial non-infringing use” and infringement “was either the most conspicuous use or the major use of the Betamax product.” [Id.](#), at 428, 104 S.Ct. 774 (internal quotation marks omitted). This Court reversed, concluding that “[t]he Betamax is ... capable of substantial non-infringing uses” – like personal use – so “sale of such equipment to the general public does not constitute contributory infringement.” [Id.](#), at 456, 104 S.Ct. 774.

These two forms of contributory infringement track patent law. See [Grokster](#), 545 U.S., at 942, 125 S.Ct. 2764 (Ginsburg, J., concurring). Under [35 U.S.C. § 271\(b\)](#), “[w]hoever actively induces infringement of a patent shall be liable as an infringer.” Such liability requires that the party express “an affirmative intent that the product be used to infringe.” [Grokster](#), 545 U.S., at 936, 125 S.Ct. 2764. Under [§ 271\(c\)](#), a party is liable when it sells a product used for infringement “knowing the same to be especially made or especially adapted for use in an infringement of such patent.”

This Court has repeatedly made clear that mere knowledge that a service will be used to infringe is insufficient to establish the required intent to infringe. In [Kalem Co.](#), the Court explained that “mere indifferent supposition or knowledge on the part of the seller” that the buyer will use the product unlawfully is “not enough” to make the seller liable for the buyer’s conduct. [222 U.S., at 62, 32 S.Ct. 20.](#) In [Sony](#), the Court explained that “[t]here is no precedent in the law of copyright” for liability based only “on the fact that [the defendant] has sold equipment with constructive knowledge of the fact that its customers may use that equipment to make unauthorized copies of copyrighted material.” [464 U.S., at 439, 104 S.Ct. 774.](#) And, in [Grokster](#), the Court confirmed that “a court would be unable to find contributory infringement liability merely based on a failure to take affirmative steps to prevent infringement.” [545 U.S., at 939, n. 12, 125 S.Ct. 2764.](#)

Thus, Cox is not contributorily liable for the infringement of Sony’s copyrights. Cox provided Internet service to its subscribers, but it did not intend for that service to be used to commit copyright infringement. Holding Cox liable merely for failing to terminate Internet service to infringing accounts would expand secondary copyright liability beyond our precedents.

Cox neither induced its users' infringement nor provided a service tailored to infringement. As for inducement, Cox did not "induce" or "encourage" its subscribers to infringe in any manner. [Id.](#), at 930, 125 S.Ct. 2764. Sony provided no "evidence of express promotion, marketing, and intent to promote" infringement. [Id.](#), at 926, 125 S.Ct. 2764. And, Cox repeatedly discouraged copyright infringement by sending warnings, suspending services, and terminating accounts. As for providing a service tailored to infringement, Cox's Internet service was clearly "capable of 'substantial' or 'commercially significant' non-infringing uses." [Id.](#), at 942, 125 S.Ct. 2764 (Ginsburg, J., concurring). Cox did not tailor its service to make copyright infringement easier. Cox simply provided Internet access, which is used for many purposes other than copyright infringement.

The Fourth Circuit found otherwise based only on its Circuit precedent establishing a new form of contributory liability. The court did not suggest that Cox induced its users to infringe. [93 F.4th at 235, n. 4](#). And, it did not deny that Cox's service was "capable of substantial lawful use and not designed to promote infringement." [Id.](#), at 236. Rather, the court held that "supplying a product with knowledge that the recipient will use it to infringe copyrights is ... sufficient for contributory infringement." [Ibid.](#); see also [BMG](#), 881 F.3d at 311–312. The Fourth Circuit's holding thus went beyond the two forms of liability recognized in [Grokster](#) and [Sony](#). It also conflicted with this Court's repeated admonition that contributory liability cannot rest only on a provider's knowledge of infringement and insufficient action to prevent it. See [Kalem Co.](#), 222 U.S., at 62, 32 S.Ct. 20; [Sony](#), 464 U.S., at 439, 104 S.Ct. 774; [Grokster](#), 545 U.S., at 939, n. 12, 125 S.Ct. 2764.

Per Justice [SOTOMAYOR](#) (with whom Justice [JACKSON](#) joins, concurring in the judgment)

The Copyright Act does not expressly provide for secondary liability. See [Sony Corp. of America v. Universal City Studios, Inc.](#), 464 U.S. 417, 434, 104 S.Ct. 774, 78 L.Ed.2d 574 (1984). Still, this Court has recognized that there are two types of secondary liability under the Copyright Act: vicarious and contributory liability. See [ibid.](#) The former attaches when a party has control over another's infringing activity and fails to stop it, and the latter attaches when a party materially contributes in some way to another's infringement. See [Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.](#), 545 U.S. 913, 930, 125 S.Ct. 2764, 162 L.Ed.2d 781 (2005); see also [Gershwin Publishing Corp. v. Columbia Artists Mgmt., Inc.](#), 443 F.2d 1159, 1162 (CA2 1971) (discussing vicarious and contributory liability). This case comes to the Court with only contributory liability remaining at issue.

As the majority explains, this Court's cases have held that contributory liability for copyright infringement may attach in at least two circumstances. The first is when a defendant distributes or provides a product or service that is incapable of "commercially significant non-infringing uses." [Sony](#), 464 U.S., at 442, 104 S.Ct. 774. In other words, the product or service must be " 'good for nothing else' but infringement." [Grokster](#), 545 U.S., at 932, 125 S.Ct. 2764. The Court applied that doctrine in [Sony](#), 464 U.S. 417, 104 S.Ct. 774, 78 L.Ed.2d 574, and held that Sony was not liable for copyright infringement for selling the Betamax, a tape-recorder device that enabled users to record television shows for later watching. [Id.](#), at 442, 104 S.Ct. 774. Regardless of whether the Betamax could be used to commit infringement, the Court reasoned, it was also capable of "commercially significant non-infringing uses," such as recording a show for personal viewing at home after it aired. [Ibid.](#)

The second circumstance in which contributory liability may attach is when a party induces another to commit infringement. The Court applied this rule in [Grokster](#), 545 U.S. 913, 125 S.Ct. 2764, 162 L.Ed.2d 781. There, the defendants distributed peer-to-peer file sharing software that had lawful uses but also enabled massive amounts of copyright infringement as users shared copyrighted materials with one another without authorization. [Id.](#), at 919–922, 125 S.Ct. 2764. Drawing from the common law, the Court held that a party can be liable for the infringements of another if it takes " 'active steps ... to encourage direct infringement,' such as advertising an infringing use or instructing how to engage in an infringing

use.” [Id.](#), at 936, 125 S.Ct. 2764 (citation omitted). The Court found that the software distributors had done just that by advertising their software to users of previous infringing services, declining to implement filters or other policies to weed out infringing content, and relying on a revenue model tied to high-volume use of their software. [Id.](#), at 939–940, 125 S.Ct. 2764.

I agree with the majority that neither of the two prior theories of secondary liability applied by this Court covers Cox’s conduct. See *ante*, at ———. The majority is wrong, however, that those are or should be the only two forms of secondary liability for copyright infringement. The majority’s artificial limiting of secondary liability is supported by neither precedent nor statute.

To determine whether Cox may be held liable, the majority starts by correctly explaining that “[t]he provider of a service is contributorily liable for the user’s infringement only if it intended that the provided service be used for infringement.” *Ante*, at ———; see *infra*, at ———. The majority, however, errs in the very next sentence. It asserts, with no meaningful explanation, that “[t]he intent required for contributory liability can be shown only if the party induced the infringement or the provided service is tailored to that infringement.” *Ante*, at ———. Because plaintiffs do not satisfy those theories of contributory liability, according to the majority, their claims cannot succeed.

The inflexible limit the majority imposes is nowhere to be found in either [Sony](#) or [Grokster](#), the only authorities that the majority cites, see *ante*, at ———. Beginning with [Sony](#), although that case acknowledged that the Copyright Act does not expressly provide for secondary liability, it also clarified that “[t]he absence of such express language in the copyright statute does not preclude the imposition of” secondary liability, such as vicarious and contributory liability, because both forms of liability are “imposed in virtually all areas of the law.” 464 U.S., at 434–435, 104 S.Ct. 774; see *id.*, at 436, 104 S.Ct. 774 (Contributory liability principles are “recognized in every part of the law”). Far from supporting the majority’s limitation of secondary liability, [Sony](#) teaches that the scope of secondary liability for copyright infringement should be defined by reference to other areas of the law. [Id.](#), at 435–437, 104 S.Ct. 774.

The Court reinforced this point in [Grokster](#). In that case, the Ninth Circuit attempted to limit contributory liability to the circumstances [Sony](#) confronted. This Court reversed, explaining that [Sony](#) neither “displace[d] other theories of secondary liability” nor “foreclose[d] rules of fault-based liability derived from the common law.” 545 U.S., at 934–935, 125 S.Ct. 2764. Instead, all [Sony](#) did was “limi[t] imputing culpable intent as a matter of law from the characteristics or uses of a distributed product.” 545 U.S., at 934, 125 S.Ct. 2764. “[N]othing in [Sony](#),” the Court said, “requires courts to ignore evidence of intent if there is such evidence.” [Ibid.](#)

Properly understood, [Sony](#) and [Grokster](#) preserved other forms of secondary liability derived from the common law. The majority, however, does not even mention that [Grokster](#) expressly held the door open to other common-law liability rules. Instead, all the majority offers is that it is “loath to expand [secondary] liability” further based on the general principle that “[o]rdinarily, when Congress intends to impose secondary liability, it does so expressly.” *Ante*, at ———. That principle, however, is irrelevant here because this Court held over 40 years ago that the Copyright Act impliedly provides for secondary liability. See [Sony](#), 464 U.S., at 434–435, 104 S.Ct. 774. *Stare decisis* requires this Court to apply that holding fairly, not ignore or artificially constrain it. Indeed, “*stare decisis* carries enhanced force when a decision ... interprets a statute.” [Kimble v. Marvel Entertainment, LLC](#), 576 U.S. 446, 456, 135 S.Ct. 2401, 192 L.Ed.2d 463 (2015). Whatever the majority may think of [Sony](#) and [Grokster](#), those decisions have “effectively become part of the [copyright] statutory scheme.” [Kimble](#), 576 U.S., at 456, 135 S.Ct. 2401. Whether that statutory scheme imposes liability under these circumstances must be decided according to what those cases said, not what the majority might wish they had said. Adhering to

precedent is even more important where, as here, Congress has legislated based on this Court's decisions....

Instead of artificially limiting secondary liability, the Court should have examined whether some other "rul[e] of fault-based liability derived from the common law" might hold Cox liable for copyright infringement committed on its network. [Grokster](#), 545 U.S., at 934–935, 125 S.Ct. 2764. Plaintiffs argue that Cox is liable because it materially contributed to infringement by servicing internet connections that it knew would be used to commit infringement. That argument is rooted in the common-law doctrine of aiding and abetting. That doctrine, however, requires plaintiffs to show that Cox intended to aid infringement, and the facts of this case foreclose that inference.

This Court has addressed common-law civil aiding-and-abetting liability twice in recent years. In both cases, it held that aiding-and-abetting liability requires proof that the defendant aided another with the intent of helping that other person succeed in committing wrongful conduct.

The first of this Court's recent cases is [Twitter, Inc. v. Taamneh](#), 598 U.S. 471, 143 S.Ct. 1206, 215 L.Ed.2d 444 (2023). There, the plaintiff alleged that social media platforms had aided and abetted a terrorist attack by ISIS because they knowingly hosted content, posted by ISIS and its followers, that was intended to spread ISIS propaganda, recruit members, and raise funds. *Id.*, at 481, 143 S.Ct. 1206. The platforms also allegedly promoted that content via their algorithms. *Ibid.* The plaintiffs asserted that the platforms had not done enough to "detect and remove a substantial number of ISIS-related accounts, posts, and videos." *Ibid.*

This Court held that the platforms could not be held liable as aiders and abettors based on the complaint's allegations. After surveying lower court cases and common-law sources, the Court identified the "conceptual core that has animated aiding-and-abetting liability for centuries: that the defendant consciously and culpably 'participate[s]' in a wrongful act so as to help 'make it succeed'." *Id.*, at 493, 143 S.Ct. 1206 (quoting [Nye & Nissen v. United States](#), 336 U.S. 613, 619, 69 S.Ct. 766, 93 L.Ed. 919 (1949)). Put another way, "the defendant has to take some 'affirmative act' 'with the intent of facilitating the offense's commission.'" 598 U.S., at 490, 143 S.Ct. 1206 (quoting [Rosemond v. United States](#), 572 U.S. 65, 71, 134 S.Ct. 1240, 188 L.Ed.2d 248 (2014)). The plaintiffs' claims did not plausibly meet this standard, however, because they failed to allege that pro-ISIS accounts or content received "any special treatment". 598 U.S., at 498, 143 S.Ct. 1206. Nor did they allege any other facts sufficient to overcome the "attenuated ... nexus" between the platforms' actions and the ISIS attack or establish that the platforms intended to aid that attack. *Id.*, at 506, 143 S.Ct. 1206.

Importantly, [Twitter](#) emphasized that "the concep[t] of aiding and abetting" does not "lend [itself] to crisp, bright-line distinctions", *ibid.*, but rather "should be understood in light of the common law", *id.*, at 497, 143 S.Ct. 1206. The common law, in turn, recognizes that intent can sometimes be inferred from what the defendant knew when he acted. The Second Restatement of Torts explains that this kind of knowledge-based intent can be found where "the actor knows that the consequences are certain, or substantially certain, to result from his act, and still goes ahead". [Restatement \(Second\) of Torts § 8A](#), Comment *b* (1963–1964). In these circumstances, the actor "is treated by the law as if he had in fact desired to produce the result". *Ibid.* For example, someone who gives a gun to another, knowing with certainty that the other person will shoot someone with it, could be found to have intentionally aided a shooting even if he did not desire for anyone to be shot. If the recipient shoots someone with that gun, then under the common law, the person who gave the shooter the gun could be held liable for aiding and abetting the shooting. See *id.*, § 876(b) and Comment *d* (1977); [Restatement \(Third\) of Torts: Liability for Economic Harm § 28](#), Comment *c* (2018).

This theory of intent requires a sufficiently specific showing of knowledge. In [Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos](#), 605 U.S. 280, 145 S.Ct. 1556, 221 L.Ed.2d 910 (2025), this Court rejected secondary liability for gun manufacturers whose guns were used by Mexican drug cartels to commit violence in Mexico due to insufficient allegations of intent. [Id.](#), at 291, 145 S.Ct. 1556. There, Mexico alleged that the gun manufacturers had aided and abetted the unlawful gun sales that routed guns to those cartels. [Id.](#), at 287–289, 145 S.Ct. 1556. As the Court observed, there was “little doubt that, as the complaint asserts, some [unlawful] sales take place—and that the manufacturers know they do.” [Id.](#), at 294, 145 S.Ct. 1556. Nonetheless, applying the principles of aiding-and-abetting liability discussed in [Twitter](#), the Court concluded that Mexico had not plausibly alleged that the gun manufacturers had “participate[d] in” the illicit sale of guns to the cartels such that they sought “by [their] action to make” those sales succeed. 605 U.S., at 294, 145 S.Ct. 1556 (second alteration in original). It observed that Mexico had “se[t] for itself a high bar” to clear because it did not “pinpoint, as most aid in-and-abetting claims do, any specific criminal transactions”. [Ibid.](#) Instead, Mexico “level[ed] a more general accusation: that all the manufacturers assist some number of unidentified rogue gun dealers in making a host of firearm sales in violation of various legal bars”. [Ibid.](#) The “systemic nature” of those more generalized allegations, the Court explained, required “plausible allegations of ‘pervasive, systemic, and culpable assistance.’” [Ibid.](#) (quoting [Twitter](#), 598 U.S., at 502, 143 S.Ct. 1206).

f. Territoriality and Territorial limitations

[Toronto Star Newspapers Limited v. OpenAI Inc.](#), 2025 ONSC 6217

Does the Ontario Court Have Subject Matter Jurisdiction Over the Asserted Claims?

[20] The starting point of the analysis of subject matter jurisdiction requires a review of what it is. The defendants appear to be expanding what has traditionally been considered subject matter jurisdiction.

[21] Subject matter jurisdiction is distinguishable from *in personam* jurisdiction (or jurisdiction *simpliciter*), the latter of which is sometimes also referred to as territorial jurisdiction. Subject matter jurisdiction flows from the concept that the superior courts generally have jurisdiction to hear a claim in Canada, unless it has been displaced by legislation or an arbitral agreement: see generally Paul M. Perell & John W. Morden, *The Law of Civil Procedure in Ontario*, 5th ed. (Markham: LexisNexis, 2024), at 2.219-2.242.

[22] On the other hand, *in personam* jurisdiction is “whether an Ontario court can properly assume jurisdiction over a matter, given the interrelationships among the matter, the parties and Ontario”: Perell & Morden, at 2.564. This is the question to which the “real and substantial connection test” is applied: *Club Resorts Ltd. v. Van Breda*, [2012 SCC 17](#), [2012] 1 S.C.R. 572, at para. [82](#).

[23] Typically, a subject matter jurisdiction motion is brought under r. 21.01(3)(a), which allows the defendants to seek an order staying or dismissing the action on the grounds that the court has “no jurisdiction over the subject matter of the action”.

[24] The “real and substantial connection test” does not apply when considering subject matter jurisdiction. A court either has jurisdiction, “so long as the facts pleaded in the statement of claim raise a claim cognizable in the Superior Court”, or it does not: see *TeleZone Inc. v. Canada (Attorney General)*, [2008 ONCA 892](#), 94 O.R. (3d) 19, at para. [109](#), aff’d [2010 SCC 62](#), [2010] 3 S.C.R. 585, at paras. [42-46](#)...

[26] The defendants have improperly attempted to expand what the court can and should consider when deciding the question of its subject matter jurisdiction. They ask the court to consider whether the Amended Statement of Claim in this case raises a reasonable cause of action, and assert that it does not

because there is no real and substantial connection to Ontario on which to ground the causes of action under the [Copyright Act](#). This argument is based upon an analysis of where the defendants' impugned conduct is alleged to have occurred, leading them to the assertion that even if it is possible that some websites or web-based applications were hosted in Ontario, and even if some data was transmitted from, to or through Ontario, the connection to Ontario is weak. On that basis, they ask the court to conclude that there is not enough to establish a real and substantial connection to Ontario to ground claims under the [Copyright Act](#).

[28] The subject matter jurisdiction question in this case, properly framed, should be: does the Ontario Superior Court have jurisdiction to hear the plaintiffs' claims (under the [Copyrights Act](#), for breach of contract, and for unjust enrichment), or has its jurisdiction been ousted by legislation or an arbitral agreement?

[29] Unlike an administrative tribunal or the Federal Court of Canada, this court always has inherent jurisdiction unless that jurisdiction is ousted. As the Court of Appeal stated in *Telezone*, at para. 109: "...so long as the facts pleaded in the statement of claim raise a claim cognizable in the Superior Court, that court has jurisdiction to decide the claim. This would occur in virtually all cases given that the Superior Court is a court of general jurisdiction."

[30] The defendants argue that the [Copyright Act](#) cannot apply because their alleged infringing activities did not occur within Canada, and the [Copyright Act](#) does not have a territorial reach over acts occurring outside of Canada. However, unlike the former [Labour Relations Act](#), R.S.O. 1990, c. L.2, s. 45(1) (now the [Labour Relations Act](#), 1995, S.O. 1995, c. 1, Sch. A, s. 48), which displaces the provincial court's jurisdiction to arbitrators, as in *Weber v. Ontario Hydro*, [1995 CanLII 108 \(SCC\)](#), [1995] 2 S.C.R. 929, at para. 9, or a contractual arbitration clause that a party is attempting to invoke, the [Copyright Act](#) does not "oust" the jurisdiction of the Ontario Superior Court of Justice..

[33] The defendants rely upon *Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers*, [2004 SCC 45](#), [2004] 2 S.C.R. 427 [*"SOCAN"*], at para. 56, in support of their assertion that Canadian copyright law does not apply beyond Canada's borders: "[c]opyright law respects the territorial principle, reflecting the implementation a 'web of interlinking international treaties' based on the principle of national treatment". Further, the defendants invoke the comments of Lebel J., dissenting in part, at para. 148: "The only question is whether Parliament intended the Act to have effect beyond Canada. The principle of territoriality operates at the level of a rebuttable presumption that Parliament does not intend the Act to operate beyond Canada's borders."

[34] *SOCAN*, at para. 60, imported into the intellectual property realm the "real and substantial connection test" from *Morguard Investments Ltd. v. De Savoye*, [1990 CanLII 29 \(SCC\)](#), [1990] 3 S.C.R. 1077, the case that preceded *Van Breda* in the Supreme Court dealing with *in personam* jurisdiction. What is important is that this was linked to the analysis of where the tort was committed (one of the presumptive connecting factors for *in personam* jurisdiction (jurisdiction *simpliciter*), later confirmed in *Van Breda*). This is consistent with the more recent analogy drawn by this court between common law torts and the statutory tort of copyright infringement in *Pourshian v. Walt Disney*, [2021 ONSC 4840](#) (Div. Ct.), (decided under r. 17), in which the Divisional Court held, at para. 52, that:

[i]t is a false dichotomy to say that *Van Breda* dealt with tort claims and *SOCAN* deals with claims for copyright infringement. Copyright infringement is essentially a statutory tort. One of the presumptive connecting factors established by *Van Breda* is whether the tort was committed in the jurisdiction where the action is brought. When dealing with a claim for copyright infringement, the analogous presumptive factor is whether the alleged copyright infringement

occurred in the jurisdiction where the action was brought. In my view, *SOCAN* assists in this analysis.

[35] The defendants also rely upon *Thumbnail Creative Group Inc. v. Blu*, [2009 BCSC 1833](#), at para. 23, for their assertion that “Canadian copyright law, which establishes a territorially declared right, cannot be infringed by an extraterritorial act”; however, that case was dealing with territorial competence under r. 14(6) of the former *Supreme Court Rules*, B.C. Reg. 221/90, [5] rather than true subject matter jurisdiction. In that case, Dickson J. interpreted the statutory tests in [ss. 3, 10-11](#) of the *Court Jurisdiction and Proceedings Transfer Act*, S.B.C. 2003, c. 28, which required a “real and substantial connection between British Columbia and the facts on which a proceeding is based”: at para. 13. *Thumbnail* centered, therefore, on “territorial competence”: at para. 11.

[36] Territorial competence/jurisdiction is part of jurisdiction *simpliciter*. Strathy J. (as he then was) analyzed in *Gould v. Western Coal Corporation*, [2012 ONSC 5184](#), 7 B.L.R. (5th) 19, at para. 326, the Ontario Superior Court’s jurisdiction to apply British Columbia’s oppression remedy, whose enabling legislation granted jurisdiction to the Supreme Court of British Columbia:

[326] In my view, *Van Breda* is not on point. The issue in *Van Breda* was territorial jurisdiction or jurisdiction *simpliciter*. The issue here is jurisdiction over the subject matter. The distinction was noted by the British Columbia Court of Appeal in *Conor Pacific Group Inc. v. Canada (Attorney General)*, [2011 BCCA 403](#), 343 D.L.R. (4th) 324 at para. 38:

It is important to appreciate the distinction between territorial jurisdiction and subject-matter jurisdiction. Territorial jurisdiction, known at common law as *jurisdiction simpliciter*, is concerned with the connection between the dispute and the court’s territorial authority. A Canadian court may only assume territorial jurisdiction over a proceeding where there is a real and substantial connection between the action and the territory over which the court exercises jurisdiction: *Morguard Investments Ltd. v. De Savoye*, [1990 CanLII 29 \(SCC\)](#), [1990] 3 S.C.R. 1077; *Hunt v. T&N plc*, [1993 CanLII 43 \(SCC\)](#), [1993] 4 S.C.R. 289. In contrast, subject-matter jurisdiction is concerned with the court’s legal authority to adjudicate the subject-matter of the dispute. For example, the Provincial Court does not have subject matter jurisdiction with respect to claims for libel, slander or malicious prosecution: *Small Claims Act*, R.S.B.C. 1996, c. 430, s. 3(2).

[37] In other words, territorial jurisdiction such as the defendants assert in respect of the *Copyright Act* claims is a question about whether there is a real and substantial connection, which is embedded in the *in personam* jurisdiction (jurisdiction *simpliciter*), *Van Breda* analysis. It is not a threshold subject matter jurisdiction question as the defendants contend. Accordingly, it will be addressed later in this endorsement in the section dealing with *in personam* jurisdiction (jurisdiction *simpliciter*).

[38] When considered in their proper context, the pleaded *Copyright Act* claims (infringement and circumvention of TPMs) do not oust this court’s jurisdiction. In contrast, the broader arguments raised by the defendants in relation to these claims can only be properly considered with the full contextual and merit-based determinations that would be invoked under r. 21. Since the defendants have not moved under r. 21 (presumably intentionally, to avoid attorning), those arguments are not properly before the court except insofar as they are relevant to the real and substantial connection test that will be considered when the court turns to the question of *in personam* jurisdiction (jurisdiction *simpliciter*).

[39] The defendants also contend that the plaintiffs have not made legally tenable claims for breach of contract and unjust enrichment because the *Copyright Act* is a complete code. The defendants invoke [s. 89](#), which provides that: “No person is entitled to copyright otherwise than under and in accordance with this Act or any other Act of Parliament”. The defendants assert that this ousts any claims for breach of contract and unjust enrichment that are predicated on the same alleged conduct constituting infringement of the *Copyright Act*.

[40] Copyright in Canada is a creature of statute and the rights and remedies it provides are exhaustive: see *Théberge v. Galerie d’Art du Petit Champlain Inc.*, [2002 SCC 34](#), [2002] 2 S.C.R. 336, at para. [5](#). The defendants essentially argue that to permit the plaintiffs to obtain equitable relief that it cannot obtain under the *Copyright Act* would defeat its purpose: see *Alberta v. Canadian Copyright Licensing Agency (Access Copyright)*, [2024 FC 292](#), 205 C.P.R. (4th) 324, at paras. [218-24](#). The defendants rely on these authorities in support of their assertion that the *Copyright Act* pre-empts the plaintiffs’ asserted claims for breach of contract and unjust enrichment. These claims are said to be ousted by the mutual exclusivity of the *Copyright Act* over the alleged misconduct upon which those claims are grounded.

[41] These are not questions relevant to the court’s determination of subject matter jurisdiction but are, rather, substantive arguments on the merits of the case and the legal feasibility of the asserted causes of action. The cases relied upon are dispositive decisions on the merits, not jurisdictional analyses.

[42] The arguments raised in respect of these causes of action are properly raised as a r. 21.01(1)(b) motion, under which the defendants could have sought an order striking the statement of claim or dismissing the action on the grounds that it discloses no reasonable cause of action. Motions under r. 21 are dispositive motions that examine the legal viability of a plaintiff’s claims and could give rise to arguments of *res judicata* or issue estoppel.

Did the Alleged Breach of Copyright Occur in Canada (or Ontario)?

[78] The defendants assert that the jurisdictional question that arises under the *Copyright Act* is concerned with whether there is a real and substantial connection between the alleged infringing conduct of each defendant and Canada (or, in this case, Ontario). The Supreme Court of Canada held in *Van Breda*, at para. [90](#), that a tort being committed in the province constitutes a presumptive connecting factor. The Divisional Court explained in *Pourshian*, at para. [51](#), that: “[w]hen dealing with a claim for copyright infringement, the analogous presumptive factor is whether the alleged copyright infringement occurred in the jurisdiction where the action was brought. In my view, *SOCAN* assists in this analysis”.

[79] The defendants first attempt to minimize their connections to Ontario by illustrating that only some of the servers that host the plaintiffs’ Works were/are located in Ontario (and Quebec) during the relevant period. The defendants acknowledge that there was a *small minority* of websites hosted in Canada, at least during the earlier years of the timeframe in issue (2015 to present) and acknowledge that it is *possible* (even if not likely) that the Cloudflare server is located in close proximity to a VPN in Toronto. However, the defendants maintain that what is relevant is not where the server is hosted. Rather, the defendants argue that where the request to queries was received and where the response transmitted from is what determines where the processes of data gathering (scraping and crawling) and model training take place.

[80] The Supreme Court of Canada confirmed in *SOCAN*, at para. [63](#): “[g]enerally speaking, this Court has recognized, as a sufficient “connection” for taking jurisdiction, situations where Canada is the country of transmission [(*Libman v. The Queen*, [1985 CanLII 51 \(SCC\)](#), [1985] 2 S.C.R. 178)] or the country of reception [(*Canada (Human Rights Commission) v. Canadian Liberty Net*, [1998 CanLII 818](#)

(SCC), [1998] 1 S.C.R. 626)]. This jurisdictional posture is consistent with international copyright practice.”

[81] Relying on *SOCAN*, the defendants maintain that their scraping and crawling activities are not enough to ground a claim for breaches of the *Copyright Act*, since those have predominantly taken place outside of Canada.

[82] The crux of the analysis under the territoriality of the *Copyright Act* is centered on what activities constitute the infringement and where that infringement occurred. As noted earlier in this endorsement, the defendants’ own evidence does not go so far as to say that none of the defendants’ impugned activities (conduct alleged to constitute the breaches) occurred in Ontario (or Canada, for purposes of the *Copyright Act*’s territorial reach). At its very highest, the defendants’ evidence, including the evidence of their experts (for example, set out in the June 13, 2025 report of Phil Isaak), is that it is *unlikely* that the transmission of data over the internet in most of the scenarios postulated by the plaintiffs would travel through or terminate in Ontario (*except one scenario that admittedly clearly does*). Likewise, the defendants emphasize that the use of accessed content for training the AI models occurs on specialized servers often called a “computer cluster” or “cluster” that are located in jurisdictions outside of Ontario, although their witnesses have testified that the use of accessed content for other purposes *mostly* occurs outside Ontario.

[83] To the extent that the infringing conduct includes the use of copyrighted material that is sent (transmitted) from or through Canada (through scraping or training) or sending copyrighted material back into Canada (through either reproduction of copyrighted material or if the model itself constitutes a breach through its unauthorized reproduction of the copyrighted content), then Ontario does have a real and substantial connection to the alleged breaches of the *Copyright Act*. The existence of the connection of these impugned activities to Ontario is a presumptive connecting factor. The strength of the connection, and the relative extent to which the activities or related activities are occurring outside of Canada are part of the rebuttal and forum conveniens analysis.

[84] The defendants take a different tack here, and argue that even if these activities occurred in Ontario, they are not the infringing activities that are alleged in the Amended Statement of Claim. They focus on the allegation that the infringing activity is the unauthorized reproduction arising from crawling and training activities that are associated with the development and training of models that power ChatGPT. They say that the model development and training occurs entirely outside of Canada. They insist that the only alleged infringing conduct is the use of that accessed content for training or other purposes for the AI models, conduct which occurs outside Ontario. On this narrow reading of the Amended Statement of Claim, the defendants say there is no copyright infringement in Canada.

[85] The defendants further contend that the Amended Statement of Claim does not expressly plead that the resulting models are themselves infringing reproductions, or that the outputs from the models that are then accessed and used by Ontario-based users of the GPT model are part of the alleged breaches of copyright so this case is not analogous to the *Equustek* case and the connecting factors fall short.

[86] The defendants’ reading of the Amended Statement of Claim is too narrow. The allegations (reproduced earlier in this endorsement) involve the following activities alleged to have commenced as early as 2015:

- a. Crawling and scraping content (including Works owned by the plaintiffs in Ontario) from the News Media Companies’ websites and web-based applications and/or the websites of their Third Party Partners, some of which may be stored on servers in Canada.

b. Obtaining content from other websites, such as Common Crawl (commoncrawl.org), which provides a free, open repository of web crawl data, regularly collected since 2008. Common Crawl data is stored on academic cloud platforms around the world, including in Canada.

c. Using that proprietary content to build, train, augment and operate its GPT models, including in response to user prompts, without consent or authorization.

d. Leveraging its GPT models, that were developed using the unlawfully obtained Works, to offer a variety of GPT-based products and services to individual consumers and businesses in Canada (including in Toronto), including ChatGPT Plus, ChatGPT Team, and ChatGPT Enterprise, and Azure OpenAI Service. OpenAI offers some of these GPT-based products and services (such as Azure OpenAI Service) to individual consumers and businesses in Canada (including in Toronto), through partnerships with third parties including Microsoft Corporation. These OpenAI products and services are sold in Canada, by Microsoft Corporation, through Microsoft Canada, which is headquartered in Toronto, Ontario, and are hosted on servers in Canada, including at the Azure Canada Central data center in Toronto, Ontario.

[87] These activities support the pleaded causes of action, that:

IV. Copyright Infringement:

52. Without any licence or permission from the News Media Companies, OpenAI has reproduced and continues to reproduce and exploit each of the Owned Works (or a substantial part thereof), contrary to [sections 3](#) and [27](#) of the *Copyright Act*.

53. By scraping and/or copying the Owned Works from the News Media Companies' Websites, the websites of their Third Party Partners, and/or the websites or data sets of other third parties for use as part of the Training Data and/or RAG Data [a process referred to as "Retrieval-Augmented Generation" or "RAG", through which its models are provided continuous access to an additional data set], OpenAI reproduced the Owned Works in their entirety (or in substantial part) and copied them into one or more datasets used to train and/or augment each version of the GPT model. The scraping and reproduction process engaged in by OpenAI commenced as early as 2015, and was for the ultimate purpose of developing for-profit, commercial products and services. The precise timing and circumstances of the scraping and reproduction is information within the knowledge of OpenAI and not the News Media Companies.

...

55. The scraping and reproduction process engaged in by OpenAI infringed, authorized, and/or induced the infringement of, the copyright of the News Media Companies in the Owned Works, including in the following ways:

- (a) The resulting GPT models have been and continue to be reproduced and hosted in Canada, including at the Azure Canada Central data center in Toronto, Ontario by OpenAI and/or by third parties at the instruction of OpenAI; and

(b) By offering its commercial products and services, including ChatGPT Plus, ChatGPT Team, ChatGPT Enterprise, and Azure OpenAI Service in Canada, OpenAI sanctions, encourages, and permits users in Canada (including in Toronto) to infringe the Owned Works.

Barry Sookman, [Ontario Court Refuses to Dismiss Copyright case against OpenAI](#), December 10, 2025.



Comments on the OpenAI decision

While the decision is an important one, it did not decide any of the substantive issues in the case. In fact, the decision made clear that it did not preclude OpenAI from raising the territorial principle in later proceedings to limit extra-territorial claims that fall outside the scope of the CCA. OpenAI would also not

be precluded from contesting whether the breach of contract and unjust enrichment claims are pre-empted as being in conflict with the CCA.

The court's findings on the carrying on business connecting factor was heavily influenced by purely virtual activities carried on by OpenAI and by the decisions in *Equustek*. However, the court did not refer to later decisions by the Supreme Court of Canada in *Chevron*^[ii] and *H.M.B Holdings*^[iii] where the court confirmed that carrying on business requires a physical and not merely a virtual presence.

The court's findings on the infringements in Ontario connecting factor was heavily influenced by its reliance on *SOCAN*. However, *SOCAN* applied the real and substantial connection test to the communication to the public right. Later decisions of the Federal Court in *Sirius* and *Maier Estate*,^[iv] which the court did not refer to, have held that that test does not apply to the reproduction right. These courts have held that the only relevant factor is the location in which copies of a work are fixed into some material form. The locations where source copies reside or acts of copying onto servers located outside of Canada, are not infringements according to those cases.

The court's finding that OpenAI may have been subject to the publishers' terms of use was made without any analysis of the general criteria for the enforcement of contracts. In particular, it did not address whether OpenAI was aware of the publishers' website terms having regard to, for example, the conspicuousness of those terms including to OpenAI's crawlers, whether the sites used any directives in robots.txt or HTTP response headers to signal that content must not be scraped or used for model training. It also did not analyze how scraping a site using autonomous agents constituted an objective manifestation of acceptance of the website terms, something required for contract formation.^[v] In *Century 21*, the court based its decision by applying to the facts of that case, the ordinary principles of offer and acceptance. According to that Court:

As noted in the authorities referred to above, the law of contract requires that the offer and its terms be brought to the attention of the user, be available for review and be in some manner accepted by the user. Such an analysis turns on the prominence the site gives to the proposed Terms of Use and the notice that the user has respecting what they are agreeing to once they have accepted the offer. To establish a binding contract consideration will also be given to whether the user is an individual consumer or a commercial entity and in addition a one-time user or a frequent user of the site.

The court also did not address other cases that have found browsewrap agreements to be problematic and unenforceable...

OpenAI is appealing the Ontario court decision. We can therefore expect that the decision will not be the last word on the issues in this case.

Proslide Technology Inc. v. Whitewater West Industries, Ltd., 2026 FCA 59

[40] As stated by the Federal Court, section 42 of the *Patent Act* identifies the rights exclusive to a patentee, and these include making and using the claimed invention. There is no dispute that WhiteWater's products in issue incorporate all of the essential elements of the asserted claims. There is also no dispute that it is WhiteWater's activities in Canada that are relevant for assessing infringement. The dispute is whether WhiteWater's activities in Canada amount to infringement.

[41] ProSlide argues that WhiteWater's activities described at paragraph 15 above amount to making and using the claimed invention. ProSlide asserts that WhiteWater's activities in Canada are not limited to research and development, and extend to testing, validation and detailed design of each of the many components that must be precisely manufactured and assembled to make a usable water slide as claimed.

ProSlide argues that the ready availability of sophisticated modern design software and digital communications tools has changed the product development process such that some principles followed in the jurisprudence regarding the threshold for making or using an invention should be scrutinized...

[44] ProSlide also relies on *SOCAN* at paragraph 58, citing *Libman v. The Queen*, [1985 CanLII 51 \(S.C.C.\)](#), [1985] 2 S.C.R. 178, which referred to fraudulent transactions that take place “both here and there” (meaning within Canada and without) such that “all that is necessary to make an offence subject to the jurisdiction of our courts is that a significant portion of the activities constituting that offence took place in Canada” [original emphasis]. This is the basis for the “real and substantial connection to Canada” test that ProSlide urges this Court to adopt for assessing patent infringement.

[45] As with *Théberge*, *SOCAN* concerned copyright and should therefore be approached with care when applied in the field of patents. *SOCAN* concerned music downloaded in Canada from servers located abroad using the internet. In this sense, the activities in question indeed took place “both here and there”. The activities that ProSlide argues constitute patent infringement in the present case are not analogous. Though WhiteWater’s product development activities took place in Canada and were a prerequisite to the making and using activities that ultimately took place abroad, it is not clear that any of these activities took place “both here and there” in the sense discussed in *SOCAN*. Rather, the activities that could constitute infringement (physically making, assembling and using) took place abroad, and the activities that took place in Canada did not constitute infringement...

I conclude that the Federal Court did not err in its analysis of the issue of infringement. Remedies for the unlicensed use of a patented invention outside Canada may be available based on corresponding patents that may be obtained in other jurisdictions.

***Rosenstein v. Queen Productions Limited*, 2026 CanLII 3372 (FC)**

The essence of the defendants’ argument on jurisdiction is that any allegedly infringing activities are not alleged to have occurred in Canada, and that based on the evidence on the motion, did not occur in Canada...

Leaving aside the “subject matter jurisdiction” label used by the defendants, the basis for their argument is that this Court has no jurisdiction because the allegedly infringing activities are not alleged to have occurred in Canada, and did not occur in Canada. However, if such activities are sited in Canada, then there may be a real and substantial connection, and further, such activities may fall within the ambit of the [Copyright Act](#), RSC 1985, c C-42 [Act, and any reference in this decision to a section is to those in the Act]....

As noted above, evidence may be considered for the purposes of Rule 221(1)(a) if the issue concerns a jurisdictional question (*Berenguer* at para 26). However, before dealing with the evidence, I will first address whether, on the facts alleged in the Claim, it is plain and obvious that there are no infringing activities alleged to have occurred in Canada...

Assuming the facts in the Claim to be true, including those referred to immediately above, on the issue of jurisdiction it is not plain and obvious that the Claim fails to disclose a cause of action for activities alleged to have occurred in Canada that would constitute:

- A. Copyright infringement of the reproduction and performance rights – As stated by the defendants (see the defendants’ written representations at para 45), the reproduction right is engaged when a user permanently downloads a file, and the performance right is engaged when a work is streamed on the Internet (relying on

Entertainment Software Association v Society of Composers, Authors and Music Publishers of Canada, [2012 SCC 34](#) at para [28](#); *Rogers Communications Inc. v Society of Composers, Authors and Music Publishers of Canada*, [2012 SCC 35](#) at paras [1 and 56](#)). Where Canada is the country of reception of an Internet transmission, this can be a sufficient connection for jurisdiction in copyright matters even when the transmission originates from outside of Canada (*Society of Composers, Authors and Music Publishers of Canada v Canadian Assn. of Internet Providers*, [2004 SCC 45](#) at paras [60-63](#)). On the performance right, the defendants are not arguing that there is no performance in Canada. The defendants' argument is not based on where the activities are taking place, but who, on the evidence, is engaged in those activities. This is addressed later in this decision. As a result, it is not plain and obvious that there is no reproduction or performance in Canada.

D. Moral rights infringement under section 28.1 – As per section 14.1(1), the right of association is tied to section 3 activities, in this case reproduction and performance. As it is not plain and obvious that there is no reproduction or performance in Canada, it follows that it is not plain and obvious that there is no moral rights infringement in Canada.

[Matsumoto v. Canuck Eats Inc.](#), 2025 FC 2017

[23] The Affidavit of Service provides two British Columbia addresses for the Defendant in an attached BC corporate profile report, one in Merritt, BC and the other in Burnaby, BC, and two addresses from a Google business profile, one in Nanaimo, BC and the other in Oshawa, ON. The Merritt, BC address matches the address retrieved from a Google search for the company, which lists the Canuck Eats Website as a “Menu” link. Merritt BC also appears as a tab on the screenshot of the Canuck Eats Website, along with the other locations identified through the Plaintiff’s corporate searches. This evidence is sufficient to establish a connection between the Defendant and the Canuck Eats Website and to support the *situs* of the content provider as located in Canada. Thus, the evidence establishes the Defendant has infringed copyright in images 1 and 2 of Schedule A in Canada.

g. Moral Rights

[Bachand v. Mural](#), 2025 QCCQ 3060

[1] Numerous murals adorn the exterior walls of buildings throughout the City of Montreal. Scattered across the city's streets, they celebrate the memory of prominent citizens, provide free access to contemporary art, amuse and move passersby, or simply add color to the daily lives of nearby residents. These works are part of the collective heritage that shapes urban life. They contribute to giving the City of Montreal its unique identity. For this contribution to the quality of their living environment, Montrealers are indebted to the artists who create them, as well as to the organizations and property owners who make them possible.

[2] Mr. Simon Bachand is one of these artists, who identifies as Stare. In 2018, he created a large-scale mural on the wall of a building located on Marie-Anne Street in Montreal. In 2024, he discovered that most of his mural was now inaccessible or destroyed due to the presence of a new building against the wall where it was located.

[4] In 2018, Mr. Ali Farasat owned the building on Marie-Anne Street on which the mural would later be painted. One of the building's walls faces a small parking lot, bordered by a sidewalk. This wall is thus

visible to passersby, without obstruction, along the entire height of the building. At that time, Mr. Farasat was not considering any real estate development on this parking lot.

[6] Subsequently, by means of a contract signed on May 31, 2018, Mural retained the services of Mr. Bachand to create this mural. Under the terms of this contract, Mural provided Mr. Bachand with the necessary equipment and materials (paint, brushes, scaffolding, etc.). It also paid him monetary compensation of \$1,500.

[7] During the discussions surrounding the signing of this contract, the contents of the agreement between Mural and Yuliv were not disclosed to Mr. Bachand. The May 14th contract contains a clause by which Mural and Yuliv agree to keep it confidential and not to disclose its terms. Specifically, Mr. Bachand was not informed that the protection of his work was limited to a period of one year. During his testimony at the hearing, he stated that he would have refused to create his mural had he been informed of such a short duration.

[9] At an unspecified time, the building was transferred to Yuliv, a company created in 2016 of which Mr. Farasat is a director and co-shareholder. Following the Covid-19 pandemic, the decision was made to construct a building in the parking lot in front of the wall on which the mural was painted. This three-story building was erected in 2024. It now obscures most of the mural, of which only the upper portion remains visible from a distance.

[15] The mural created by Mr. Bachand is an artistic work within the meaning of section [2](#) of the [Copyright Act \[3\]](#) . Under section 14.1 of that *Act* , Mr. Bachand enjoyed, as moral rights, the right to the integrity of his work:

14.1 (1) The author of a work has the right , subject to section 28.2, to the integrity of the work and, in respect of any act referred to in section 3, the right, having regard to reasonable uses, to claim authorship of the work, even under a pseudonym, and the right to anonymity.

(2) Moral rights are inalienable ; however, they may be waived, in whole or in part. [...]

[17] It is clear from these provisions that Mr. Bachand had a right to the integrity of the mural he created. This right was inalienable and was not waived by him, either in the contract signed with Mural or otherwise. Mr. Bachand did not authorize Yuliv to obscure his work by erecting a new building.

[18] The erection of the building, which obscures most of the mural and renders it permanently inaccessible in its entirety, undoubtedly represents a distortion, mutilation, or alteration of this work. As conceived and executed by Mr. Bachand, this work is now lost. Its integrity is definitively compromised by the presence of the new construction. The fact that a small portion is still visible from a distance provides only a meager idea of the original composition, its overall appearance, and the interplay of colors and forms that constituted its structure and essence. Mr. Bachand's characteristic signature, located at the bottom of the mural, has irretrievably disappeared.

[19] Mr. Bachand benefits from the presumption of prejudice established by [subsection 28.2\(2\)](#) of the [Copyright Act](#) since his mural constitutes a painting within the meaning of that provision. He is therefore exempted by this provision from the obligation to prove prejudice to his honour or reputation: the unauthorized deformation, mutilation, and alteration of his mural inherently harm his honour and reputation as an artist and creator, especially since they affect a work displayed in public view,

immediately accessible to all interested parties, and intended by its location to be contemplated continuously.

[20] All the conditions required by the [Copyright Act](#) to conclude that Mr. Bachand has violated his moral rights in respect of this mural are therefore present.

[30] Moral rights are by nature intangible, so it is impossible to precisely assess, in monetary terms, the harm resulting from their infringement. They are, however, of considerable importance to the author of the work. In *Théberge v. Galerie d'Art du Petit Champlain inc.* [5], the Supreme Court of Canada explained the nature of moral rights as follows:

[15] In contrast, moral rights stem from the civil law tradition. They enshrine a nobler and less mercantile conception of the link between an artist and their work . They treat the artist's work as an extension of their personality and attribute to it a dignity that deserves protection . They emphasize the artist's right (which they cannot assign, but which they can waive under s. 14.1(2)) to protect, for the duration of the economic rights (even when these have been assigned to a third party), the integrity of the work and its authorship (or the artist's anonymity if that is what they desire). [Underlining added]

[31] These words are weighty with meaning. In the case of a painting, they add to the presumption, established by [section 28.2 \(2\)](#) of the [Copyright Act](#) , that a distortion, mutilation or alteration of the work is deemed prejudicial to the honour or reputation of its author.

[32] Mr. Bachand has lost one of his works. For an artist, such a loss is profoundly significant. The artistic ideas, imagination, and intelligence put into creating this mural can no longer be seen or appreciated by his peers and art lovers in the concrete reality that housed it. The photographs that have been taken of it only imperfectly capture its original monumental context.

[33] Mr. Bachand has not presented any evidence of specific harm resulting from the infringement of his moral rights in relation to this mural that could justify the \$15,000 he is claiming. Exercising its discretion, the court sets the amount of compensation to which he is entitled at \$2,500.’

Rosenstein v. Queen Productions Limited, 2026 CanLII 3372 (FC)

Moral rights infringement under section 28.1 – As per section 14.1(1), the right of association is tied to section 3 activities, in this case reproduction and performance. As it is not plain and obvious that there is no reproduction or performance in Canada, it follows that it is not plain and obvious that there is no moral rights infringement in Canada.

h. Establishing Infringement

Governing Council of the University of Toronto v. Easy Group Inc. (Easy Education), 2025 FC 1728

[23] It is worth reproducing the Disputed Questions:

18 Match, element-by-element, the portions of the purportedly infringed document with portions of the purportedly infringing document; and

18 Provide the portion of the page, and of the document, the university asserts has been copied.

[24] The Defendants suggest that the Disputed Questions “ask the Plaintiffs to identify, factually, *what* material they say is infringed and *where* the Defendants copied it [original emphasis].”

[25] While the questions appear to be based on the hallmarks of factual inquiry (“who, what, when and where”), the true usefulness of any answer to the Disputed Questions lies in what the Plaintiffs say amounts to infringement, which calls for a legal position or argument. The Motions Judge was alive to the distinction between disguised fact and argument and appropriately referred to judicial authorities addressing this distinction. The authorities he cited note that what may look “on the surface like a mere collection of facts” is not, since the particular facts that will be relied upon are based upon a view of the law (*Apotex Inc v Pharmascience Inc*, [2004 FC 1198](#) at para [19](#) citing *Can-Air Services Ltd v British Aviation Insurance Co*, [1988] AJ No 1022 (Alta CA) at para 7 and *Kun Shoulder Rest Inc v Joseph Kun Violin and Bow Maker Inc*, [1997] FCJ No 1386 (FCTD) at paras 15-17). That is the case with the Disputed Questions.

[26] Nor do I find any palpable and overriding error in the manner in which the Motions Judge articulated and applied the test for infringement of copyright to the Disputed Questions. Absent in the Defendants’ paraphrasing of the first Disputed Question is the use of the word “elements”. In *Cinar Corporation v Robinson*, [2013 SCC 73](#) [*Cinar*], the Supreme Court of Canada approved the qualitative and holistic approach to assessing copyright infringement that the Motions Judge referred to and distinguished it from an approach which looks at isolated passages or “elements” in a piecemeal fashion (*Cinar* at paras 35-36).

[27] As for the Defendants’ suggestion that the Motions Judge erred in law in ignoring their fair dealing defence in determining the relevance of the Disputed Questions, the Defendants acknowledge that the Motions Judge was both alive to the law that requires relevance to be assessed in relation to all of the pleadings and he referred to the Defendants’ fair dealing defence elsewhere in his Decision. Moreover, as the Plaintiffs point out, the Defendants did not raise the relevance of the Disputed Questions to their fair dealing defence on their motion to compel, which means that the Motions Judge did not commit a palpable and overriding error in failing to consider a point of relevance that was not argued.

Conclusion

[28] I can therefore find no palpable and overriding error in the Motions Judge’s holding that the Disputed Questions call for a position on a legal issue or argument which are not proper questions on discovery. Accordingly, this motion is dismissed.

[Leguë Architecture inc. c. Boisclair](#), 2026 QCCQ 247

[1] The plaintiff, Leguë Architecture Inc. (Leguë), accuses the defendants, Simon Boisclair and Keven Demontigny, of having copied or plagiarized, without authorization, one of its house plans. It is claiming \$5,500 in damages.

[2] Messrs. Boisclair and Demontigny deny any wrongdoing. They place responsibility, if any, on the architectural technologists' firm from which they acquired the plans for the construction of their house.

[10] Nor is it disputed that the concept and plans made by Leguë constitute an original artistic work within the meaning of [sections 2](#) and [5](#) of the [Copyright Act](#) [\[4\]](#) , thus deserving the protection that this Act confers upon them [\[5\]](#) .

[11] According to subsection 27(1) of the [Copyright Act](#), “it is an infringement of copyright to do, without the consent of the copyright owner, an act which under this Act only the copyright owner has the right to do.” Subsection 3(1) of the same Act states that “copyright in a work includes the exclusive right to produce or reproduce all or a substantial part of the work in any material form [...]”.

[12] In this instance, although the Boisclair-Demontigny couple's house is not entirely identical to Leguë's plan E_181, the similarities are both significant and precise. The visual elements reveal a strong resemblance between the two houses and clearly demonstrate a case of plagiarism.

[13] The inescapable conclusion is that Leguë's copyright has been infringed. The question now is who is responsible.

[17] Messrs. Boisclair and Demontigny deny having provided the architectural technology firm with any images or plans originating from Leguë. They maintain that they acted in good faith in obtaining their plans from Nabi-Tek and believe that any infringement of Leguë's copyright, if any, is solely the responsibility of that firm.

[21] The burden of proving the allegations contained in the application therefore rests on Leguë, on a balance of probabilities. The Court must consider all the evidence presented by the parties to determine whether the existence of a fact is more probable than its non-existence.

[22] In the absence of a preponderance of evidence, the Court cannot consider it established that the owning couple made use of Leguë's work, as the latter presumes. The courts have long recognized that their decisions must be based on probabilities and not on mere possibilities, much less on hypotheses or conjectures [7].

[23] Consequently, the Court considers that the evidence is insufficient to conclude that Messrs. Boisclair and Demontigny themselves infringed Leguë's copyright by reproducing his work.

[24] The Court is also of the opinion that these gentlemen, acting in their personal capacity in connection with the construction of their principal residence, were not required to verify the origin of the plans. Indeed, the evidence does not demonstrate that they are in one of the situations of subsequent infringement provided for in [subsection 27\(2\)](#) of the [Copyright Act](#).

***Dermapark Products Inc. v. Ipince (Dreamlook Beauty)*, 2025 FC 946**

Claim 7: A Declaratory Order than Pollogen is the owner of Copyrighted Works.

[101] The Plaintiffs claim that the works it described as Images 1, 2, 3 and 4 in its Statement of Claim were authored by a Pollogen employee and that the copyright in those Images is owned by Pollogen. The evidence led on this motion is limited to a verbatim recitation of the exact words used in the Statement of Claim with respect to the copyright claims advanced.

[102] The baldness of the allegations of copyright ownership made in the Statement of Claim and their verbatim recitation in the affidavit evidence filed do not establish the Plaintiffs' claims. There is no evidence as to when the Images were created. There is no produced registration of copyright, no evidence of the date of first publication of the Images, and no evidence of any publication of the Images by either of the Plaintiffs at any time. More significantly, there is no evidence of the Images predating the Website, Facebook page and Instagram page screenshot dates.

[103] In these circumstances and given the absence of any evidence other than bald and insufficiently precise evidence regarding the Images, I must dismiss the Plaintiffs' claims of copyright ownership and copyright violation by the Defendant.

i. Liability of officer and directors

Patel v. Dermaspark Products Inc., 2025 FCA 145

[29] In this Court, the appellants also challenge the Federal Court's decision to make Ms. Patel personally liable along with the corporate appellant. Ms. Patel was only a director and shareholder of the corporate appellant which owned and operated the Balsam Day Spa. They say that there was no factual or legal basis to visit liability upon her.

[30] The leading case in this Court on the possible liability of directors and shareholders for a corporate liability is *Mentmore Manufacturing Co. v. National Merchandise Manufacturing Co.* (1978), [1978 CanLII 2037 \(FCA\)](#), 40 C.P.R. (2d) 164 (F.C.A.)...

[33] I note that *Mentmore*, although decided nearly a half-century ago, continues to be applied without question in the Federal Court system: see, e.g., *Louis Vuitton Malletier SA v. Singga Enterprises (Canada) Inc.*, [2011 FC 776](#); *Biofert Manufacturing Inc. v. Agrisol Manufacturing*, [2020 FC 379](#) at paras. [161-162](#); *Boulangerie Vachon Inc. v. Racioppo*, [2021 FC 308](#); *Trans-High Corporation v. Conscious Consumption Inc. et al.*, [2016 FC 949](#). Contrary to the views of some, precedents are never issued with a "best before" date stamped on them. And good wisdom is timeless. So absent demonstration of manifest error or some sort of epic change in social circumstances, old stuff binds us just as much as the new.

[34] In *Mentmore* (at p. 171), the Court recognized the "general rule" that officers, directors and shareholders of a corporation "enjoy the benefit of the limited liability afforded by incorporation". But the Court also noted that competing against that general rule is the "principle that everyone should answer for...tortious acts". The Court's legal test for personal liability must be a "balancing act" that leaves "room...for a broad appreciation of the circumstances of each case to determine whether as a matter of policy they call for personal liability".

[35] In *Mentmore* (at p. 174), this Court settled upon the following test:

...there must be circumstances from which it is reasonable to conclude that the purpose of the director or officer was not the direction of the manufacturing and selling activity of the company in the ordinary course of his relationship to it but the deliberate, wilful and knowing pursuit of a course of conduct that was likely to constitute infringement or reflected an indifference to the risk of it.

[36] The appellants did not raise the legal question whether the Federal Court's use of *Mentmore* was correct or whether *Mentmore* is still good law. Nevertheless, a quick review of the case law shows that *Mentmore* remains good law. Our Court has not modified or qualified *Mentmore* in any way. And *Mentmore* has not been overtaken by later Supreme Court authority. Indeed, *Mentmore* is consistent with the principles set out in the Supreme Court's decisions in *Kosmopoulos v. Constitutional Insurance Co.*, [1987 CanLII 75 \(SCC\)](#), [1987] 1 S.C.R. 2 and *Cinar Corporation v. Robinson*, [2013 SCC 73](#), [2013] 3 S.C.R. 1168.

[37] In *Kosmopoulos*, the Supreme Court affirmed, both in law and on the facts of that case, the "general rule" that a corporation is a legal entity distinct from its shareholders: *Salomon v. Salomon & Co.*, [1897]

A.C. 22 (H.L.). While it considered the law at that time to be following “no consistent principle”, it took a stab at the relevant test: when the *Salomon* principle would yield a result “too flagrantly opposed to justice, convenience or the interests of the Revenue”. *Mentmore* is consistent with that formulation and, helpfully, is more detailed.

[38] In *Cinar*, the Supreme Court (at para. 60) quoted the very passage above from *Mentmore*, with unequivocal approval, and cited no other case. We must conclude that *Mentmore* remains the governing authority and the Federal Court was right to apply it.

[39] The appellants attempt to distinguish *Mentmore* by honing into an isolated feature in *Boulangerie Vachon*, above. The appellants say that in *Boulangerie Vachon* there was incorporation for improper purposes. But in the present case, the incorporation was legitimate.

[40] True, that distinction is present. But on the point that is relevant to this case—when personal liability for a corporation’s liability can be visited upon a director, officer or shareholder of the corporation, *i.e.*, the *Mentmore* test—*Boulangerie Vachon* is exactly on point. The Federal Court (at para. 150) correctly so found.

[41] In no way can the Federal Court be said to have misunderstood the *Mentmore* test. And in its application of that legal test to the facts of this case—here a question of mixed fact and law suffused by facts—the Federal Court did not commit palpable and overriding error.

[42] The appellants say that it is not enough to visit personal liability upon an officer, director or shareholder merely because that person happened to be the one who triggered the corporation’s decision or merely because she is the directing mind of the corporation. For this proposition, they correctly cite *Boulangerie Vachon* at para. 121.

[43] But the Federal Court did not do that. It relied on an entire constellation of facts that are admissible under the *Mentmore* test (at para. 153). Ms. Patel was the “operator”, “sole shareholder” and “directing mind” of the corporation operating as the Balsam Day Spa. She operated the business of the corporation in a very “hands-on” manner. She made all the relevant decisions in this case, sometimes with her husband’s infrequent and minor help. She was the person who did all the investigations, activities and decisions leading up to the purchase of the counterfeit machine and products. She closed her mind to other alternatives and was indifferent to the risks arising from her conduct. No one else was involved. Indisputably, these facts trigger the potential consequence of personal liability under the *Mentmore* test.

j. Presumptions and proof of ownership

***Gold Line Telemanagement Inc. v. Ereele GmbH*, 2025 FC 904**

Does copyright subsist in the Schedule C Works and is copyright enforceable against the Plaintiffs in

[27] First, I agree with the Plaintiffs that given the Order striking the Defendants’ pleading, which put the existence of copyright in the Schedule C Works in issue, the Defendants are not entitled to the presumptions provided by [subsection 34.1\(1\)](#) of the [Copyright Act](#), which would have reversed the onus on this motion and required the Plaintiffs to disprove the Defendants’ copyright in the Schedule C Works.

***Hellboy Productions, Inc. v. Doe #1*, 2026 FC 317 reversing, 2025 FC 1766**

See below.

k. Copyright Misuse

Bell Canada v. Millennium Funding, Inc., 2025 FCA 153

Issue 1: Did the FC judge err in not interfering with the CM judge's decision to strike the copyright misuse pleadings?

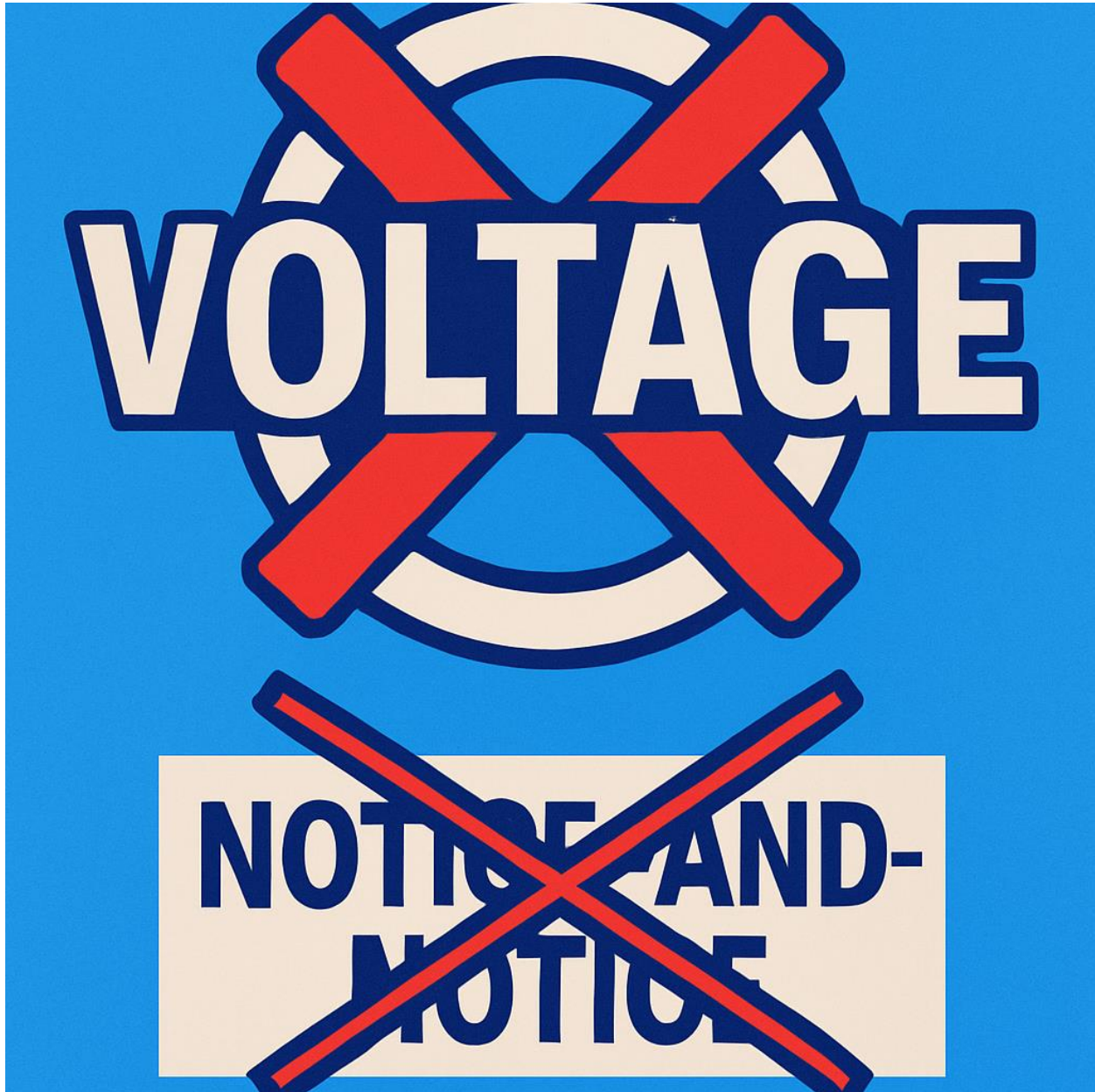
[31] Bell asserts that the CEP is a misuse and abuse of the notice and notice regime, and this constitutes copyright misuse by the respondents. Bell specifically alleges that the respondents used the notice and notice regime for improper purposes, namely, to harass and intimidate alleged infringers, and to make exorbitant claims against ISPs. Bell pleads that it should not be liable for statutory damages in these circumstances.

[32] The FC judge commented that the defence of copyright misuse has not yet been adjudicated under Canadian law, and is developing in the United States. The misuse is said to occur “when a copyright holder attempts to extend his copyright beyond the scope of his exclusive rights in a manner that violates antitrust law or the public policy embodied in copyrightlaw” (Decision at paras. 30-31, referring to *Euro-Excellence Inc. v. Kraft Canada Inc.*, [2007 SCC 37](#) at para. 98).

[33] As mentioned above, the FC judge disagreed with the CM judge as to whether copyright misuse could ever be pleaded as a defence to a section 41.26 action. The FC judge concluded that it could. However, the FC judge also concluded that the CM judge did not err in law or make a palpable and overriding error in striking the copyright misuse pleadings on the ground that insufficient material facts were pleaded. The FC judge explained that “[t]he pleading does not provide sufficient foundation for what constitutes the alleged improper behavior” (Decision at paras. 47-48).

I. Notice and Notice Procedure

[Voltage Pictures, LLC v. Salna](#), 2025 FCA 131, summarized in Barry Sookman, [Copyright notice and notice: the Voltage Pictures Case](#)



The Federal Court of Appeal released an important decision comprehensively reviewing the notice and notice regime in the [Copyright Act](#) (the “N&N regime”) in [Voltage Pictures v. Robert Salna](#) 2025 FCA 131. A central issue in the case was whether Voltage could use the N&N regime to serve certification notices under its proposed reverse copyright class action against Internet subscribers accused of sharing movies over BitTorrent. The Court of Appeal affirmed the certification judge’s opinion that notices of certification were not a notice of claimed infringement under the regime and internet service providers

had no obligation to forward them. In reaching this conclusion the court gave valuable guidance on what type of notices are subject to the N&N regime and which are not and on what types of content cannot be contained in a notice of claimed infringement. Further, in providing reasons for finding that the N&N regime provisions should be narrowly construed the Court of Appeal also stated that the effect of the 2012 amendments to the *Copyright Act* also insulated ISPs from liability for authorization.

Background

The NN regime was summarized by the Court of Appeal as follows:

[7] The notice-and-notice regime contained in the Copyright Act allows a copyright owner to require internet service providers (ISPs) and other digital service providers to forward notices to subscribers of a claimed online infringement of the owner's copyright in a work that subscribers share online. The notice-and-notice regime was adopted in 2012 via the [Copyright Modernization Act](#), S.C. 2012, c. 20 as part of a suite of amendments to the Copyright Act which sought to modernize the Canadian copyright regime to, among other things, "address the challenges and opportunities of the Internet" (Copyright Modernization Act, Summary).

[8] Under the notice-and-notice provisions, set out in sections 41.25 to 41.27 of the Copyright Act, copyright holders who believe that their copyright in a work has been violated via an online sharing may send a notice of the claimed violation to the ISP or other digital service provider that operates the network over which the violation is alleged to have occurred. Upon receipt of the notice, the service provider is required to forward the notice to the subscriber of the account identified by the copyright owner as being the account used to allegedly violate their copyright. The service provider must also retain information about the subscriber for six months after receipt of the notice from the copyright holder, or if litigation is commenced in respect of the alleged violation, for one year from receipt of the notice from the copyright holder...

Voltage commenced a reverse class action proceeding to certify a class action against BitTorrent users who allegedly infringed Voltage's rights in motion pictures. Rather than try to identify and serve class members with certification notices using information obtained in Norwich orders, Voltage had proposed to forward certification notices by sending them as "notices of claimed infringement" using the N&N regime. This was opposed by the defendant and by two sets of intervenors, internet service providers (ISPs) and CIPPIC, a public interest advocacy organization. The defendant, Robert Salina, and intervenors also argued that class certification was not the preferential procedure to advance the infringement claims. The court agreed with both arguments.

Purpose of the notice and notice regime

In reaching the conclusion that notices of certification were not notices that could be sent under the N&N regime the court gave valuable guidance on what types of notices ISPs (and others) could be required to forward. The court interpreted the regime using the modern principle of statutory construction by examining the text, context, and purpose of the regime including its legislative history. It concluded that the N&N regime must to be interpreted narrowly and in accordance with the purpose of the regime. In this regard, the court held that the primary purpose of the N&N regime was to deter infringement. It cannot be used as a litigation tool or as part of a process to enforce copyright claims or to obtain damages for copyright infringement. It was also not intended to be weaponized to further questionable mass litigation practices as seen in the United States. Given the function of class action certification notices and

the limited purposes of the N&N regime, the regime could not be used to serve certification notices as part of Voltage's class action.

What content cannot be included in notices

Section 41.25(3) of the Act prohibits the following content from being included in notices of claimed infringement:

Prohibited content

(3) A notice of claimed infringement shall not contain

(a) an offer to settle the claimed infringement;

(b) a request or demand, made in relation to the claimed infringement, for payment or for personal information;

(c) a reference, including by way of hyperlink, to such an offer, request or demand; and

(d) any other information that may be prescribed by regulation.

Voltage's draft certification notices proposed class members "should contact the respondent class lawyers to provide evidence of ceasing infringement by emailing them at [the email address for counsel] or by calling them at [the phone number for counsel]". The notice further warned that "if you do not contact class counsel this may be used as evidence against you in court". To comply with this request, putative class members would have had to reveal personal information, if only their email addresses or telephone numbers. In all likelihood, class counsel would also have wanted their names and additional contact information. The court held that this request in notices would have violated Section 41.25(3), even if the request was to provide personal information to third parties.

The court also held that Voltage's proposed class proceeding was also a request for payment of statutory damages. The description of the proceeding and inclusion of a hyperlink in the proposed notice through which proposed class members could obtain a copy of the pleadings, could "well constitute "a request or demand ... for payment", within the meaning of subsection 41.25(3) of the *Copyright Act*.

4. Remedies

a. Declarations

1395804 Ontario Ltd. (Blacklock's Reporter) v. Canada (Attorney General), 2026 FCA 56

In *Daniels*, the Supreme Court stated:

[11] This Court most recently restated the applicable test for when a declaration should be granted in *Canada (Prime Minister) v. Khadr*, [2010 SCC 3 \(CanLII\)](#), [2010] 1 S.C.R. 44. The party seeking relief must establish that the court has jurisdiction to hear the issue, that the question is real and not theoretical, and that the party raising the issue has a genuine interest in its resolution. A declaration can only be granted if it will have practical utility, that is, if it will settle a "live controversy" between the parties; see also *Solosky v. The Queen*, [1979 CanLII 9 \(SCC\)](#), [1980] 1 S.C.R. 821; *Borowski v. Canada (Attorney General)*, [1989 CanLII 123 \(SCC\)](#), [1989] 1 S.C.R. 342. [Emphasis added]

Although neither party referred to *Daniels* in their memoranda in this appeal, the Court at the hearing of this appeal raised the issue of whether the two declarations that were ultimately issued by the Federal Court lacked the requisite utility to justify the granting of these declarations. Both parties addressed this issue in oral argument at the hearing of this appeal...

Neither declaration settles a “live controversy” between the parties. The first declaration is inextricably linked to the factual findings concerning Parks Canada’s purchase of the subscription and access to and use of articles posted by Blacklock’s Reporter. Analyzing the conflicting testimony and reaching a decision on the facts related to the purchase of the subscription by Parks Canada would not resolve any “live controversy” between the parties. The copyright infringement action concerning Parks Canada’s access to and use of the articles has been discontinued. Therefore, there is no longer a “live controversy” with respect to Parks Canada’s purchase of the subscription or its access to or use of the articles posted by Blacklock’s Reporter.

The second declaration does not make any finding concerning whether a password is a TPM. It does not resolve any “live controversy” between the parties. The second declaration is also limited to “the licit acquisition and use of a password”. This is simply a generic statement that the authorized acquisition and use of a password by anyone (if the password is a TPM) does not constitute circumvention of a TPM for the purposes of the *Copyright Act*. If the acquisition and use is authorized, it would follow that such acquisition and use should not be prohibited. Such a generic statement does not settle any “live controversy”, let alone a “live controversy” between the parties...

As noted above, an appeal lies from the Judgment, not the reasons. Furthermore, the Federal Court Judge’s comments concerning whether the paywall is the TPM are not made in the context of an action for copyright infringement as that action was discontinued. They are only made in relation to a counterclaim for certain declarations, all of which are linked to the particular facts related to Parks Canada’s acquisition and use of the subscription and password.

***Gold Line Telemanagement Inc. v. Ereele GmbH*, 2025 FC 904**

[31] The Court agrees that it is appropriate to issue a declaration to the effect that the Defendants have not proffered evidence to establish that the Schedule C Works meet the conditions for subsistence of copyright in Canada and that copyright in these works is not enforceable against the Plaintiffs. Granting this declaration will have a practical effect in resolving the issues in the case (*SA v Metro Vancouver Housing Corp*, [2019 SCC 4](#) at para [60](#) and *Solosky v The Queen* (1979), [1979 CanLII 9 \(SCC\)](#), [1980] 1 SCR 821 at 822).

***Yelda Haber Ve Görsel Yayıncılık A.S. v. GLWiZ Inc.*, 2025 FC 1107**

[80] The parties agree that the actions of the Defendants contravened numerous provisions of the *Copyright Act*. Specifically:

- A. The Defendants infringed the Plaintiff’s copyright in each of the 2,974 works comprising the Programs by copying, downloading, uploading and making available the Programs on the GLWiZ Service, contrary to [sections 2.4\(1.1\), 3\(1\)\(a\), 3\(1\)\(f\) and 27\(1\)](#) of the *Copyright Act*.
- B. The Defendants authorized the communication and infringement of the Plaintiff’s copyright in the Programs and have induced those using its GLWiZ Service to infringe the copyright in the Programs.

- C. The Defendants distributed copies of the Programs which they knew or should have known infringe the copyright therein, in a manner that has prejudicially affected the Plaintiff as the copyright owner, contrary to [section 27\(2\)\(b\)](#) of the [Copyright Act](#).
- D. By way of trade, the Defendants distributed, exposed or offered for sale or rental, or exhibited in public, copies of the Programs which they knew or should have known infringe the copyright therein, contrary to [section 27\(2\)\(c\)](#) of the [Copyright Act](#).
- E. The Defendants possessed, for the purposes of doing those things referred to in [subsections 27\(2\)\(b\)](#) and [27\(2\)\(c\)](#) of the [Copyright Act](#), copies of the Programs which they knew or should have known infringe the copyright therein, contrary to [section 27\(2\)\(d\)](#) of the [Copyright Act](#).
- F. The Defendants infringed the Plaintiff's copyright in its communication signal for the Live Channel by retransmitting or rebroadcasting it to the public simultaneously with the Plaintiff's own broadcast of that communication signal, contrary to [section 21\(1\)](#) of the [Copyright Act](#).

[81] On the consent of the parties, declaratory relief reflecting the above will be issued, together with a declaration that the Plaintiff owns the copyright in the 2,974 episodes of the Programs.

b. Specific performance

[Ponesse, et al. v. Astoria Homes Inc., et al.](#), 2026 ONSC 541

As in *Tropiano*, the drawings for the plaintiffs' home already exist. They were filed with the Town in the permit application. The design of the home reflected the features and specifications they negotiated with Astoria. To avoid any issue regarding copyright infringement, the court can order Astoria to transfer the licence...

The easiest abatement of the purchase price is the adjustment for the deposits already made. The purchasers deposited a total of \$126,500, with the second one paid after the completion of the architectural plans. This fact is further relevant, because the plaintiffs have paid for the plans. The order for specific performance against Astoria should therefore include an assignment of a licence to use the plans to build the home...

For the reasons outlined above, I grant the plaintiffs' motion for summary judgment and make an order for specific performance against Riteland as the owner of the property, and against Astoria as the constructor, to transfer all rights and title to the lands and any licenses, permits, contracts and other instruments, short of requiring Astoria to complete the building. On closing, the plaintiffs shall pay Astoria the net amount of \$347,469.43.

c. Injunctive Relief

[9430-2684 Québec inc. \(B2B Pharma\) c. Bouchard \(Solutions Otomatik\)](#), 2026 QCCS 1278

At this stage, the plaintiff must establish that it would suffer serious or irreparable harm if the defendants Bouchard were free to operate the Otomatik website and attract customers.

As Justice Payette stated in *Daoud v El-Dabtie*, "The use of the plaintiffs' intellectual property and their 'software/platform' to compete with them, if it turns out to be true, would cause them irreparable harm right now" [\[2\]](#) .

The Court notes the case law according to which "[i]n matters of intellectual property, any infringement of copyright causes irreparable harm. The fact that this harm may even possibly be compensated in money does not change anything, otherwise a kind of license would be imposed on the copyright holder despite his refusal" [3] .

The Tribunal emphasizes that it is sufficient to establish serious damage, not necessarily irreparable damage [4] .

d. Norwich orders

***Hellboy Productions, Inc. v. Doe #1*, 2026 FC 317 reversing, 2025 FC 1766**

The main relief sought by the Plaintiff on this motion is a *Norwich* order compelling Cogeco to forthwith disclose to the Plaintiff the name and address of its subscribers who were associated with the IP addresses set out in the relevant schedules attached to the Statement of Claim pursuant to [paragraph 41.26\(1\)\(b\)](#) of the [Copyright Act](#), RSC 1985, c C-42 [*Copyright Act*]...

[14] In order to obtain a *Norwich* order, a plaintiff must show:

- (a) a *bona fide* claim exists against the alleged wrongdoer [First Element];
- (b) the person from whom discovery is sought is:
 - i. more than an innocent bystander, meaning that that person is in some way involved in the matter in dispute;
 - ii. the only practical source of information available to the plaintiff; and
 - iii. reasonably compensated for the expenses, including legal costs, arising out of compliance with the disclosure order [collectively, the Second Element]; and
- (c) the balancing of the public interests for and against disclosure of the information sought from that person favours disclosure [Third Element] [collectively, the *Norwich* order test].

(*Seismotech IP Holdings Inc v Ecobee Technologies ULC*, [2024 FCA 205](#) at para 6 [*Seismotech FCA*] citing *Rogers Communications Inc v Voltage Pictures, LLC*, [2018 SCC 38](#) at para 18 [*Voltage*]).

I find the First Element of the *Norwich* order test has been made out on a limited merits-based assessment of the Plaintiff's evidence, which supports a claim in copyright infringement against the Doe Defendants that is neither frivolous nor without justification (*Seismotech FCA* at paras [23](#), [18](#) and *Glaxo Wellcome PLC v MNR*, [1998 CanLII 9071 \(FCA\)](#), [1998] 4 FC 439 (FCA) at paras [24 and 44](#)). The Plaintiff has provided evidence showing the Plaintiff's assertion of ownership and the subsistence of copyright in the Work. The forensic evidence shows the unauthorized use of the Work by the unnamed Doe Defendants behind the IP addresses thereby providing the requisite "plausible basis for assuming that there was copyright infringement" by the Doe Defendants (*Seismotech FCA* at para [21](#), *Seismotech Ip Holdings Inc v John Doe*, [2023 FC 1649](#) at para [36](#) [*Seismotech FC*] aff'd *Seismotech FCA*).

The *bona fide* nature of the claim is supported by the Plaintiff's Statement of Claim, which provides a factual basis for the Plaintiff's claim to copyright in the Work and its infringement by the persons behind the identified IP addresses (*Seismotech FCA* at para [29](#)). The fact that the Statement of Claim has issued, bolsters the legitimacy of the Plaintiff's purpose in seeking the identity of the Doe Defendants (*BMG*

Canada Inc v John Doe, [2005 FCA 193](#) at para [34](#) [BMG]). Together, this evidence is sufficient to establish a non-frivolous claim (*Seismotech FCA* at paras [12, 23](#))....

screenshot of credits [Credits] that include the following statements:

**© 2024 HELLBOY PRODUCTIONS, INC.
ALL RIGHTS RESERVED**

**HELLBOY PRODUCTIONS, INC. IS THE AUTHOR AND CREATOR OF THIS MOTION
PICTURE FOR PURPOSES OF COPYRIGHT AND OTHER LAWS IN ALL COUNTRIES
THROUGHOUT THE WORLD.**

[17] The Plaintiff's written submissions relied on the presumption in [section 34.1](#) of the *Copyright Act* to assert that:

The Plaintiff is listed in the credits of the Work as owning the [copyright](#). Accordingly, [copyright](#) is presumed to subsist in the Work, the Plaintiff is presumed to be the maker of the Work, and is therefore presumed to be the owner of its [copyright](#).

On this motion, the Plaintiff is not required to prove the subsistence of copyright and its ownership of the Work (BMG at paras 15, 32, 34), proof of which might entail evidence of the maker and various legal agreements reflecting the chain of title to the Work. Nor is the Plaintiff required to make out a lesser standard of prima facie infringement, which would require evidence of facts that "on their face" could make out the Plaintiff's assertion of copyright in the Work (*Seismotech FC* at para 14). This means that in order to establish a bona fide claim for copyright infringement, something still less must be sufficient. In *Seismotech FC*, Justice Grammond held that this standard is made out based on "some evidence" showing that there is a legitimate or plausible basis for the proposed claim, as opposed to the mere assertion of a cause of action without any factual foundation (*Seismotech FC* at paras 14-16, *Seismotech FCA* at para 21).

The Plaintiff's revised evidence meets this standard: the Credits display the use of a copyright symbol and shows the Plaintiff's claim to be the author, creator and owner of the Work for the purposes of copyright, which satisfies the Plaintiff's purported and plausible standing to bring a claim for copyright infringement. Both Revised Law Clerk Affidavit and the Revised Forensic Affidavit identify the Work as a superhero film, a fact that supports the subsistence of copyright in the Work. The Revised Forensic Affidavit identifies the infringing activities, links those activities to the IP addresses and the appropriate ISP and justifies the need for the relief sought from Cogeco.

[41] Under the Third Element of the Norwich order test, the Court must consider whether the interests of justice favour the disclosure sought considering the interests of the Plaintiff, the Doe Defendants, the Non-Party Respondents and the administration of justice (*Seismotech FCA* at para 6, *Seismotech FC* at para 17 citing *1654776 Ontario Limited v Stewart*, 2013 ONCA 184 at para 77). Having found that the first two elements of the Norwich order test had not been made out, the Motions Judge did not consider this last element on the Plaintiff's original motion.

I find that the interests of justice favour the disclosure of the information sought at this stage of the Action after weighing the legitimate interests of the Plaintiff in the ability to quickly and effectively enforce its asserted rights in the Work (*Voltage* at para 46) against the legitimate privacy concerns of the persons sought to be identified. Without the requested identifying information from Cogeco, the Plaintiff will be left without recourse to protect its rights in the Work (BMG at para 35). I am also satisfied that the Doe

Defendants were given fair warning of the possibility that their personal information could be disclosed by Cogeco. Cogeco provided the Doe Defendants with first and second notices from the Plaintiff's counsel which asserted the Plaintiff's copyright in the Work and alleged infringement of the Work by the Doe Defendants. The first notice advised of Cogeco's obligation to retain records that will allow for the identification of the Doe Defendants and the second notice warned of the Plaintiff's ability to make a formal legal request to Cogeco to compel the Doe Defendants' identity.

I have also considered the interests of Cogeco as a Non-Party ISP and am satisfied that it will not be put to any undue inconvenience or expense given that the information being sought by the Plaintiff is the same information that Cogeco has already assembled and retained pursuant to its obligations under the Copyright Act. Moreover, Cogeco does not oppose the order sought and had input into the form of the order, which includes a provision for the payment of Cogeco's reasonable costs incurred to discern the subscribers' identities (BMG at para 36).

e. Statutory damages

Yelda Haber Ve Görsel Yayıncılık A.S. v. GLWiZ Inc., 2025 FC 1107

[297] Pursuant to [section 38.1](#) of the *Copyright Act*, a copyright owner may elect recovery of statutory damages in lieu of damages and profits. Pursuant to [paragraph 38.1\(1\)\(a\)](#) of the *Copyright Act*, if infringement is for commercial purposes (such as is the case here), statutory damages may be awarded “in a sum of not less than \$500 and not more than \$20,000 that the court considers just, with respect to all infringements involved in the proceedings for each work or other subject-matter”.

[298] Determining the appropriate quantum of statutory damages is not an exact science and must be considered on a case-by-case basis. It involves consideration of all relevant circumstances, with the aim of yielding a just result [see *Rallysport Direct LLC v 2424508 Ontario Ltd*, [2020 FC 794](#) at para [6](#) [*Rallysport*], aff'd [2022 FCA 24](#) [*Rallysport FCA*]; *Collett v Northland Art Company Canada Inc*, [2018 FC 269](#) at para [59](#) [*Collett*], citing to *Telewizja Polsat SA v Radiopol Inc*, [2006 FC 584](#) at para [37](#) [*Telewizja*]]. This includes consideration of the factors set out in [subsection 38.1\(5\)](#) of the *Copyright Act*..

[299] The Federal Court of Appeal has confirmed that statutory damages can be awarded even if no monetary damages are suffered by the copyright holder and no business is lost [see *Rallysport FCA*, *supra* at para [29](#)]. However, where actual damages can be quantified, they are a relevant factor in the analysis [see *Vidéotron*, *supra* at paras [80 and 84](#); *Rallysport FCA*, *supra* at para [28](#); *Maier Estate v Bulger*, [2024 FC 1267](#) at para [171](#)].

[300] This Court has acknowledged that there should be some relationship between actual damages and statutory damages [see *Pinto v Bronfman Jewish Education Centre*, [2013 FC 945](#) at para [195](#)]. The key term being “some” relationship. Actual and statutory damages must not be conflated. Statutory damages are not intended to be 1:1 proportional with provable “but-for” losses, as they incorporate additional considerations such as the need for deterrence [see *Rallysport*, *supra* at paras [8–9](#)]. If damages were limited to the cost of a licence (i.e., a plaintiff's actual losses), there would be no incentive for copyright infringers to abide by the law and to obtain such a licence. Instead, it would be in their interest to infringe copyright and run the risk of getting caught [see *Vidéotron*, *supra* at para [81](#)]. By way of example, in *Vidéotron*, Justice Grammond noted that his award of statutory damages for the TVA Sports channels was five times the approximate damages suffered by the plaintiffs, which he found not to be grossly out of proportion in the circumstances of that matter given the need for deterrence and denunciation.

[301] Thus, while a plaintiff's actual or probable damages is a relevant consideration, it is certainly not determinative and is but one of the many factors to be considered and weighed in determining the quantum of statutory damages that are fair and proportionate in all of the circumstances.

Innocent infringer

[304] First, pursuant to [subsection 38.1\(2\)](#) of the *Copyright Act*, the Court has the discretion to lower the amount of statutory damages per work for commercial purposes to less than \$500 CAD, but not less than \$200 CAD, where “the defendant satisfies the court that the defendant was not aware and had no reasonable grounds to believe that the defendant had infringed copyright”. As is evident from the wording of the provision, the burden of proof lies with a defendant to demonstrate that the reduction contemplated by the provision should be made.

[308] I will begin by considering whether the Defendants have established that they are innocent infringers, as contemplated in [subsection 38.1\(2\)](#) of the *Copyright Act*, as this was certainly the focus of the parties at the commencement of trial; although certainly not the focus of the Defendants' position (which focused heavily on the issue of proportionality) by the time the parties made their closing submissions.

[309] For subsection 38.1(2) to apply, the Defendants must establish that: (i) they were not aware they had infringed copyright; and (ii) they had no reasonable grounds to believe they had infringed copyright. The test is conjunctive.

[310] A defendant cannot rely on subsection 38.1(2) where they have received information that their activities could constitute copyright infringement and nonetheless carry on with their activities [see *LS Entertainment Group Inc v Formosa Video (Canada) Ltd.*, [2005 FC 1347](#) at para [62](#); *Century 21 Canada Ltd Partnership v Rogers Communications Inc*, [2011 BCSC 1196](#) at para [418](#) [*Century 21*]; *Nicholas*, *supra* at para [104](#); *Rallysport*, *supra* at paras [3 and 37](#)]. Even where a defendant believes that there is no merit to a notice of copyright infringement received, subsection 38.1(2) remains unavailable to them if they ignore the notice.

[311] As noted in *Century 21* at paragraph 416:

...the defendants' argument focuses on the legitimacy of the letters and ignores the fact of notice. Surely the point is that notice alerts them to a potential claim which may or may not be proven valid at a future date. To ignore a claim however is to run the risk of potential liability if breach of contract or ownership of copyright and its infringement is eventually proven.

[312] In *Century 21*, *supra*, the court went on to find that subsection 38.1(2) was not available to the defendants as a result of the notice of copyright infringement received.

[313] In *Mejia v LaSalle College International Vancouver Inc*, [2014 BCSC 1559](#) at paragraph [217](#), the British Columbia Supreme Court found that subsection 38.1(2) was unavailable to a defendant where, even if they may not have intended to infringe the plaintiff's copyright, there was no evidence that the defendant considered the possibility of its “legal obligation to refrain from conduct that might constitute” infringement.

[314] The Defendants acknowledge that there are precedents in the case law stating that a defendant who receives notice of infringement and ignores it cannot then claim to be “innocent”. However, the Defendants assert that that is not what happened here. Rather, the Defendants assert that the Plaintiff's notice of infringement was a “moving target” with notice of thirteen Programs in the 2019 Cease and

Desist Letter, a different nine Programs in the 2019 Warning Letter and three additional Programs complained of for the first time in the Statement of Claim. The Defendants assert that they made “robust” efforts to remove the Programs immediately upon receipt of each notice.

[315] The Defendants further assert that their “innocence” should be assessed on a program-by-program basis, such that Programs for which no notice was given, or that were immediately removed after notice was provided, should be treated differently than Programs that were not removed after notice was given.

[316] I find that there is no merit to the Defendants’ assertions and that they are not entitled to benefit from the innocent infringer exception in relation to any of the Programs or the Live Channel. The Defendants’ argument is premised on a misguided interpretation of the innocent infringer exception. The Defendants do not become innocent infringers if they immediately remove content upon being put on notice of copyright infringement. In order to benefit from subsection 38.1(2), the Defendants had to demonstrate that they had no reasonable grounds to believe that they had infringed copyright. The “reasonable grounds” certainly disappear once the Defendants were put on notice of infringement, but the Defendants still need to establish that they had “reasonable grounds” to believe that they were not infringing copyright prior to being put on notice. For the reasons set out below, I am not satisfied that the Defendants have established that they had no reasonable grounds to believe that they had infringed copyright in relation to any of the Programs, such that a Program-by-Program analysis is not required.

Special case

[305] Second, subsection 38.1(3) of the [Copyright Act](#), entitled “Special case”, provides for a reduction below \$500 CAD or \$200 CAD per work (as the case may be) in certain circumstances:

(3) In awarding statutory damages under paragraph (1)(a) or subsection (2), the court may award, with respect to each work or other subject-matter, a lower amount than \$500 or \$200, as the case may be, that the court considers just, if

(a) either

(i) there is more than one work or other subject-matter in a single medium, or

(ii) the award relates only to one or more infringements under subsection 27(2.3); and

(b) the awarding of even the minimum amount referred to in that paragraph or that subsection would result in a total award that, in the court’s opinion, is grossly out of proportion to the infringement.

[306] [Section 38.1\(3\)](#) of the [Copyright Act](#) recognizes that there are cases where the statutory minimum amount of \$500 CAD is not appropriate, as it would result in an excessive award not grounded in any reality [see *Vidéotron, supra* at para [85](#), citing *Louis Vuitton Malletier SA v Wang*, [2019 FC 1389](#) at para [153](#), and *Thomson v Afterlife Network Inc*, [2019 FC 545](#) at para [63](#)].

[385] The Defendants assert that an award of statutory damages at the statutory minimum of \$500 CAD per work would result in a total award that is grossly out of proportion to the infringement. Relying on [subsection 38.1\(3\)](#) of the [Copyright Act](#), the Defendants assert that the Court should reduce the per work amount to between \$200–\$300 CAD. While the Defendants rely on subsection 38.1(3), they provided no written submissions to demonstrate how the first criterion set out in subsection 38.1(3) is met, which is a burden that the Defendants bear [see *Nintendo, supra* at paras [146 and](#)

[149](#); *Rallysport, supra* at para [12](#)]. It must be recalled that subsection 38.1(3) has two criteria that must both be met — (i) that there is more than one work or other subject-matter in a single medium, or the award relates only to one or more infringements under subsection 27(2.3); and (ii) the awarding of even \$500 CAD per work would result in a total award that in the Court’s view is grossly out of proportion to the infringement [see *Rallysport, supra* at para [7](#)]. The Plaintiff similarly provided no written submissions on the first criterion and thus the Court was left only with the limited submissions made during the oral closing arguments.

[386] With respect to what constitutes a “single medium” (“même support matériel” in French), there has only been a handful of decisions from this Court and others that have considered this issue, the most comprehensive of which I have noted below.

[387] In *Trader v CarGurus, supra*, Justice Conway of the Ontario Superior Court of Justice held:

[57] Trader argues that the court cannot reduce the \$500 minimum pursuant to s. 38.1(3) because the Trader photos are not in “a single medium”. I reject that submission. The word “medium” is not defined in the Act and is used broadly throughout the statute. I see no reason why the term “medium” cannot encompass an electronic (as opposed to physical) medium, given that it is a means through which the user can access the photos. In both *Telewizja Polsat SA v. Radiopol Inc., supra*, and *Century 21 Canada Ltd. v. Rogers Communications Inc., supra*, the court reduced the statutory damages pursuant to s. 38.1(3) where the infringement was through a website, implicitly accepting that a website can be a “medium”.

[58] Trader also argues that there is no “single” medium because the Trader photos can be accessed through both a desktop and a mobile application. In my view, the medium in this case is the CarGurus website. The desktop and mobile application are simply two user interfaces for accessing that website. The Trader photos are therefore in a single medium, meeting the first condition for reduced statutory damages in s. 38.1(3).

[388] In *Vidéotron, supra*, Justice Grammond considered the meaning of a “single medium” and held:

[105] [...] I would point out that the purpose of this provision is to prevent a mechanical application of section 38.1 from leading to the awarding of disproportionate sums. It would be paradoxical if the purpose of this provision could be frustrated by interpreting it in a too technical or mechanical fashion. The concept of “medium” must be applied while taking into account the wide variety of types of works that can be subject to copyright and the growing diversity of technological means of reproducing or retransmitting these works. In my view, a pragmatic approach is called for.

[106] Moreover, I do not see anything in the wording of subsection 38.1(3) that requires works to be present simultaneously on a single medium, such as a hard drive or RAM. In my view, a “single medium” includes any technological infrastructure that makes it possible to reproduce, display or retransmit several works one after another. This is the situation in this case: the medium is Konek’s and Hill Valley’s network infrastructure, which makes it possible to retransmit several works one after another.

[107] There is little case law dealing with the application of subsection 38.1(3) to electronic means of communication, and there are no decisions that support a requirement of simultaneity. In *Trader Corp v CarGurus Inc*, [2017 ONSC 1841](#) at paragraphs [57–58](#), the court gave a broad interpretation to the concept of “single medium” and applied it to a collection of photographs available on a website. In *Thomson*, this Court applied subsection 38.1(3) to

obituaries reproduced on a website without there being evidence establishing the conditions under which this information was recorded. In *Telewizja Polsat*, this Court applied subsection 38.1(3) to the retransmission of television programs over the Internet. The plaintiffs are seeking to distinguish this case, pointing out that it concerned an on-demand retransmission system and that the defendant kept all the programs on its server. I am not convinced that such a distinction is relevant; indeed, following the plaintiffs' argument would lead to the conclusion that the defendant in *Telewizja Polsat* acquired the benefit of subsection 38.1(3) by retaining copies of the infringing works, which seems absurd to me.

[389] In *Maier Estate v Bulger*, *supra*, Justice Furlanetto held:

[175] I similarly find that subsection 38.1(3) of the Act (*i.e.*, the single medium provision) cannot be used to lower the statutory damage amount. The Defendants argue that “medium” as used elsewhere in the Act refers to a single category of medium (subsection 13(4) of the Act) as opposed to a single item. They assert that subsection 38.1(3) is not to be interpreted in a manner that is “too technical or mechanical”; nor one that would result in an “astronomical” damages award: *Vidéotron* at paras [85](#), [105](#). However, as noted by Justice Pallotta in *Patterned Concrete Mississauga Inc v Bomanite Toronto Ltd*, [2021 FC 314](#) [*Patterned Concrete*], “[i]t is the works, not the copies, that must be in a single medium in order for section 38.1(3) to apply” (at para 65). The provision was intended to apply to works like newspapers or anthologies, where multiple copyrights may exist in a single copied medium (*Nintendo of America Inc v King*, [2017 FC 246](#) [*Nintendo*] at para [148](#)), or to works that exist in an electronic medium like a website (*Trader v CarGurus*, [2017 ONSC 1841](#) at paras [57-58](#)).

[176] The situation is very different here. In this case, the works infringed are those embodied in the B&W Negatives. As set out in my earlier findings, the infringing acts do not extend to the hard drives. The images as contained in the negatives are each separate and may be separately copied. They are not in a single medium where multiple copyrights are infringed through a single copy. Accordingly, it is my view that subsection 38.1(3) does not apply and that the appropriate quantum of statutory damages should fall within the range specified by the Act; that is, between \$500 and \$20,000 per work.

[390] The Plaintiff asserts that, even on a conservative interpretation of a “single medium”, subsection 38.1(1) has no application here as the works are found on two mediums — namely, on-demand and the live broadcast channel. The Plaintiff further asserts that a proper interpretation of “medium” should focus on the means by which the work is made available by the infringer, which, in this case, involved a website, a set-top box and an app. On either interpretation, the Plaintiff asserts that the works at issue are not in a single medium.

[391] The Defendants rely on *Vidéotron* to assert that the works are in a single medium — namely, the Defendants' server — which is the technical infrastructure that makes it possible to reproduce, display or retransmit several works one after another.

[392] However, I need not make a determination as to whether the first criterion is met as, even assuming that the works at issue are in a single medium, I find that the Defendants have not demonstrated that an award of \$500 CAD per work would result in a total award that is grossly out of proportion to the infringement. At \$500 CAD per work (2,974 episodes of the Programs and the Live Channel), the total award would be \$1,487,500 CAD. While I agree with the Defendants that a \$44 million CAD statutory damages award as requested by the Plaintiff would be grossly disproportionate, I do not find that an award of \$1,487,500 CAD would be grossly out of proportion in all of the circumstances.

(3) The Appropriate Quantum of Statutory Damages

[397] In all of the circumstances, I am satisfied that an award of statutory damages of \$2,000 CAD per episode, of each of the Programs, is justified. In relation to the Live Channel, I find that a larger amount is warranted due to the heightened need for deterrence vis-à-vis these Defendants and the public at large. Accordingly, I award statutory damages of \$10,000 CAD in relation to the Live Channel. Therefore, the total amount of statutory damages awarded is \$5,958,000 CAD

Industrial Custom Equipment & Construction Limited et al. v. Industrial Commercial Equipment Manufacturing Ltd. et al., 2025 MBKB 121

¹[114] I find that as a result of ICEW’s unlawful passing off and infringement of ICEM’s copyright, ICEM suffered damages in the form of loss of reputation and goodwill and loss of revenue and profit through the misappropriation by ICEW, which ICEW used for its own benefit and for costs incurred to manufacture units ordered and subsequently cancelled by ICEW.

[115] The defendants are seeking general damages in the amount of \$20,000.00 which I find is appropriate. I find it is appropriate because of the agreement between the parties including the Non-Compete, and because ICEW used the ICEM name and logo on a number of occasions, and it is also apparent that customers were confused and called ICEM looking for assistance to units that ICEM had not, in fact, manufactured.

[116] Regarding the copyright claim, I find there is a breach of the copyright and I find ICEW did make money from those projects. I am awarding the maximum amount of statutory damages for the Clyborn and Division Condos project where an ICEM wiring diagram was used, and the Amble Ventures project where ICEM’s sequence of operations was used. I am awarding the maximum statutory damages on each of those two matters for a total of \$40,000.00.

f. Damages

Patel v. Dermaspark Products Inc., 2025 FCA 145

[27] And as a matter of law, the Federal Court correctly concluded that where the extent of infringement and the harm it caused is difficult to establish, lump sum damages (sometimes misdescribed as nominal damages), estimated as best as one can, may be appropriate. See *Penvidic Contracting Co. v. International Nickel Co. of Canada*, [1975 CanLII 6 \(SCC\)](#), [1976] 1 S.C.R. 267 at 279-280; *Lululemon Athletica Canada Inc. v. Campbell et al.*, [2022 FC 194](#); *Ragdoll Productions (UK) Ltd. v. Jane Doe*, [2002 FCT 918 \(CanLII\)](#), 2002 F.C.T. 918, [2003] 2 F.C. 120 (and see paras. 49-50 on the misdescription of these damages as “nominal”); *101100002 Saskatchewan Ltd. v. Saskatoon Co-operative Association Limited*, [2022 SKCA 12](#). Damages of this sort can only be awarded where there is “some evidence on which it can be concluded that the claimant sustained damage and some evidence as to the nature of the damage”: *0867740 B.C. Ltd. v. Quails View Farm Inc.*, [2014 BCCA 252](#) at para. [46](#); *Saskatoon Co-op* at para. 23. That standard is more than met here.

g. Loss of profits

Lakehead District School Board v. Mauro, 2026 ONCA 230

The defendant in a copyright infringement case bears the onus of proving any costs claimed as deductions from the revenues earned from selling goods that infringed copyright: [Copyright Act](#), R.S.C. 1985,

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c. C-42, s. 35(2). Ms. Mauro did not meet that onus by simply referring to categories of expenses without proving them by evidence. Although Ms. Mauro was self-represented at the summary judgment hearing, we are satisfied she was appropriately on notice that the calculation of damages was an issue, and of her onus to prove her expenses. She specifically gave an undertaking on discovery to provide a breakdown of her actual profits but did not fulfill it before the motion was heard. Her factum responding to the summary judgment motion listed damages as one of the issues to be decided and advanced her position that no profits were earned.

h. Punitive damages

Patel v. Dermaspark Products Inc., 2025 FCA 145

[45] The appellants also challenge the Federal Court’s decision to award punitive damages. Here again, they do not point to any legal error on the part of the Court. They could not do so. The Federal Court followed *Biofert*, above, which faithfully set out the Supreme Court’s principles for the awarding of punitive damages in *Hill v. Church of Scientology of Toronto*, [1995 CanLII 59 \(SCC\)](#), [1995] 2 S.C.R. 1130 at para. 196.

[46] Here again, the appellants seem to be trying to encourage this Court to reweigh the facts, a task which, under the standard of palpable and overriding error, it does not do.

[47] The appellants also suggest that the Federal Court’s decision might make it “become [the] norm to order punitive damages” in a case such as this, a result “which is contrary to Supreme Court’s jurisprudence”. But when one looks at the entire array of facts in this case—a rather unusual one—that is not so.

[48] In deciding to award punitive damages, the Federal Court relied on several findings of fact (at para. 146): Ms. Patel’s risky and reckless behaviour, her ignoring of “red flags” that should have tipped her off that she was buying a counterfeit machine, her knowledge of the respondents’ products and machine and their prices before she bought counterfeit items, the need for a real machine given that it was regulated by Health Canada for safety purposes and her “cavalier” attitude towards that as she used the counterfeit products and machine on her clients, the perpetuation of her conduct for two years, her denial of any trademark or copyright infringement until the hearing, and her testimony which was inconsistent, vague and evasive. It added (at para. 146) that her conduct could not be excused as naïve. Rather (at para. 146) she was “a business owner with responsibilities that she ignored”. Finally, the amount of statutory and compensatory damages awarded was “not sufficient to sanction [the] conduct” (at para. 146). All these findings were grounded in the evidentiary record. There is no palpable and overriding error.

5. Contempt

Bell Media Inc. v. Marshall Macciachera (Smoothstreams.tv), 2025 FC 1378

[75] In summary, the minimum sentence of six months requested by the Plaintiffs in the present case is broadly within the range of sentences imposed for contempt of court orders in the field of copyright infringement. Moreover, *PS Knight* is a precedent from this Court for an additional penalty of up to five years less a day to address ongoing non-compliance, by strongly encouraging that such non-compliance be cured. That penalty was subject to the proviso that it would be suspended if the defendants (i) purged their contempt by demonstrating compliance with the injunctive and mandatory terms of this Court’s judgment, and (ii) paid in full all damages, fines and costs owing under the initial judgment and Justice Pallotta’s penalty order.

[76] Additional examples where this Court ordered an additional period of imprisonment, beyond a stated minimum period, in the intellectual property law context to compel compliance with an order of the Court include *Trans-High Corporation v Hightimes Smokeshop and Gifts Inc*, [2015 FC 919](#) at para [38](#), and *Dursol-Fabrik Otto Durst GmbH & Co v Dursol North America Inc*, [2006 FC 1115](#) at para [112](#). This approach has also been adopted in other contexts: see e.g., *Warman v Canada (Human Rights Commission)*, [2012 FC 1296](#) at paras [35–36](#), aff'd *Tremaine*. This Court has also simply adopted the approach of ordering imprisonment for up to a stated maximum specific period of time to compel compliance with the Order in question: see e.g., *Canada (National Revenue) v Vallelonga*, [2013 FC 1155](#); *Canada (National Revenue) v Money Stop Ltd*, [2013 FC 133](#); *Canada (National Revenue) v Bélanger*, [2015 FC 35](#).

[1] It appears that some copyright pirates make calculated decisions to breach court orders, after assessing the pros and cons associated with doing so. Some of those pirates even brazenly continue their contemptuous actions after being found in contempt. In the face of such defiance of its orders, it behooves the Court to impose penalties designed to maximize the potential for instilling respect for its orders and the rule of law.

[2] These reasons concern the penalties to be imposed on the Defendants Marshall Macciachera and his father Antonio Macciachera for their contempt of certain provisions in an “Anton Piller” Order issued by Justice Vanessa Rochester (as she then was) on June 28, 2022 (the “Interim Order”). Considering the family relationship between these two Defendants, and not out of any disrespect, they will be referred to below solely by their first names.

[3] All parties have agreed that a penalty of incarceration is appropriate. Therefore, the central issue addressed in these reasons concerns the duration and parameters of such a penalty.

[4] In brief, the Plaintiffs request that the Court order Marshall and Antonio to be incarcerated until they comply with certain provisions of the Interim Order, which were extended by the Order of Justice Roger Lafrenière dated November 22, 2022: *Bell Media Inc v Macciachera (Smoothstreams.tv)*, [2022 FC 1602](#) (the “Interlocutory Order”). In any event, the Plaintiffs further request that the Court impose a period of incarceration of no less than six months on each of Marshall and Antonio.

[5] Marshall submits that he should only be incarcerated for one week for each of the “clear failures” to comply with the provisions of the Interim Order. He asserts that there are only three such failures, namely, his refusals to provide the password to his personal computer and to authorize the Hong Kong banks where two of the corporate Defendants have accounts, to disclose certain information to the Plaintiffs. Antonio maintains that he should only be incarcerated for 30 days of house arrest, or 30 days to be served on weekends, for his refusals to authorize two Canadian banks to disclose to the Plaintiffs the transaction histories of the accounts that he has at those institutions.

[6] Both Marshall and Antonio further maintain that they should be permitted to serve their respective penalties and then not face any further consequences in relation to their ongoing contempt.

[7] For the reasons that follow, Marshall will be ordered to be incarcerated for an initial period of six months for his non-curable failure to comply with the provisions of the Interim Order in respect of which he was found to be in contempt, including paragraph 20 thereof, as extended by paragraph 5 of the Interlocutory Order In addition, Marshall will be ordered to remain incarcerated until the earlier of (i) the date upon which his total period of incarceration (inclusive of the initial six months) reaches a maximum of five years less one day or (ii) the date upon which he fully complies with the Interim Order (as extended by the Interlocutory Order) by disclosing (i) the password to the computer that was copied during the execution of the Interim Order at 259 Dunlop Street, unit 202, Barrie, Ontario, (ii) any other

means necessary to access the contents of that computer, and (iii) all information pertaining to his assets, as described in these reasons further below.

[8] Likewise, Antonio will be ordered to be incarcerated for an initial period of four months for his non-curable failure to comply with paragraphs 30 and 37 of the Interim Order, by (i) refusing to provide access to his property and to the specified evidence therein that the persons enforcing the Interim Order had reasonable grounds to believe was located there, and (ii) otherwise refusing to assist the persons who attempted to enforce that Order, and to cooperate with those persons. In addition, Antonio will be ordered to be incarcerated for a further maximum period of five years less one day, or until he complies with the above-mentioned provisions of the Interim Order, by disclosing all information pertaining to his assets, as described further below. Once again, this maximum period of five years less one day shall include the initial period of four months' imprisonment.

[9] By failing to comply with the provisions of the Interim Order in respect of which they were found to be in contempt, Marshall and Antonio flagrantly disregarded that Order and frustrated a principal objective of the Interim Order, namely to prevent the destruction or removal of evidence, or the transfer of funds beyond the jurisdiction of the Court. By continuing their contempt, Marshall and Antonio have displayed blatant defiance of the Court's Orders and have prevented the Plaintiffs from advancing their underlying action for copyright infringement. This warrants a penalty that strongly encourages Marshall and Antonio to cure their ongoing contempt, that reflects the Court's denunciation and that deters such conduct in the future, particularly given the absence of any mitigating factors that merit significant weight in the present circumstances.