

Federal Court



Cour fédérale

Date: 20250828

Docket: T-1742-24

Citation: 2025 FC 1439

Toronto, Ontario, August 28, 2025

PRESENT: Associate Judge John C. Cotter

BETWEEN:

ADAM MCQUAIG

Plaintiff

and

ENBRIDGE GAS INC.

Defendant

JUDGMENT AND REASONS

UPON motion by the defendant dated August 12, 2025, and filed on that date as part of the motion record of the defendant [Defendant's Motion Record], for:

- a) An Order striking the plaintiff's Statement of Claim, in its entirety, without leave to amend;
- b) dismissing the action;
- c) Costs of this motion; and

- d) Such further and other relief as the Defendant may request
and this Honourable Court may allow.

AND UPON reviewing and considering:

- a) the Defendant's Motion Record;
- b) the motion record of the plaintiff, Adam McQuaig [Mr. McQuaig];

AND UPON hearing the submissions of the parties at the hearing of the motion by video conference on August 26, 2025, and reserving a decision;

AND UPON considering:

I. Background

[1] This is a claim for copyright infringement in a computer software program. The statement of claim [Claim] was issued on July 4, 2024. At that time there were two plaintiffs and they were represented by counsel. The two plaintiffs were Mr. McQuaig and 11684108 Canada Inc. [108 Canada]. The Claim states that Mr. McQuaig is the sole officer and director of 108 Canada, a company he incorporated in October 2019 (paragraphs 2 and 10 of the Claim).

[2] In May 2025 the claim by 108 Canada was discontinued in its entirety, with the result that Mr. McQuaig was and is the only remaining plaintiff. Around the same time, Mr. McQuaig ceased to be represented by counsel and is now self represented.

[3] The Claim asserts that the defendant, Enbridge Gas Inc [Enbridge], infringed the copyright in a computer software program, which is referred to in the Claim as the EVC Prover software.

II. Plaintiff's responding motion materials

[4] In response to Enbridge's motion, Mr. McQuaig submitted a record entitled "RESPONDING NOTICE OF MOTION OF THE PLAINTIFF" [Plaintiff's Motion Record]. Two components of Plaintiff's Motion Record are problematic: the responding notice of motion; and the affidavit of Mr. McQuaig. Each is discussed below.

A. *Plaintiff's Responding Notice of Motion*

[5] Mr. McQuaig seeks the following relief in his responding notice of motion:

1. An order dismissing the Defendant's motion to strike the Statement of Claim;
2. In the alternative, leave to substitute or reinstate 11684108 Canada Inc as co-plaintiff;
3. An order compelling the Defendant to serve and file its Affidavit of Documents immediately (previously promised for July 31, 2025);
4. Costs of this motion; and
5. Such further relief as this Honourable Court deems just.

[6] Pursuant to a Direction dated August 25, 2025, I indicated that the Plaintiff's Motion Record could be accepted for filing and that:

To the extent it responds to the defendant's motion it will be considered as such. The Court will hear submissions from the parties on August 26, 2025, at the hearing of the defendant's motion, as to whether the plaintiff's motion should be heard by the Court.

[7] The parties made submissions on that issue on August 26, 2025. I indicated at that time that Mr. McQuaig's motion would not be heard, but the arguments made in the Plaintiff's Motion Record would be considering in deciding Enbridge's motion.

[8] Mr. McQuaig cannot, in response to Enbridge's motion, attempt to defeat that motion by bringing his own motion (see *ViiV Healthcare Company v Gilead Sciences Canada, Inc.*, 2020 FC 11 at para 26; *Odyssey Television Network Inc v Ellas TV Broadcasting Inc.*, 2018 FC 337 at para 42). However, this does not mean that Mr. McQuaig is precluded from raising some of these matters in response to Enbridge's Motion:

- a) Regarding the relief sought in paragraph 1 of McQuaig's notice of motion, he does not need to bring his own motion to seek a dismissal of Enbridge's motion. In responding to Enbridge's motion, Mr. McQuaig is free to argue for its dismissal.
- b) Regarding the relief sought in paragraph 2 of McQuaig's notice of motion, the Court can, in dealing with Enbridge's motion, consider whether any defect in the Claim could potentially be cured by amendment (*Besse v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 1003 at paras 36-41). As discussed below, there is an issue as to whether this particular relief is an amendment and if so, one properly considered on a motion to strike.

- c) Regarding the relief sought in paragraph 3 of McQuaig's notice of motion, if the action is not dismissed, a deadline for Enbridge's affidavit of documents is more appropriately dealt with by the parties first attempting to agree on a schedule for next steps. In any event, I note that the email relied on by Mr. McQuaig is a proposed timetable. There is nothing in the affidavit evidence indicating that the parties agreed to that timetable (leaving aside any issues regarding the affidavit evidence).
- d) Regarding the relief sought in paragraph 4 of McQuaig's notice of motion, Mr. McQuaig is free to make whatever arguments he considers appropriate on costs for Enbridge's motion.

[9] In addition, Mr. McQuaig did not serve and file the notice of motion within the time period provided for in Rule 362(1) (any reference in this Order to a Rule is to those in the Federal Courts Rules). However, having regard to the conclusions set out above regarding Mr. McQuaig's motion, it is not necessary to decide whether that time period should be abridged. That comment also applies to the affidavit of Mr. McQuaig to the extent it is relied on in support of his motion.

B. *Affidavit of Mr. McQuaig*

[10] As discussed below, affidavit evidence is generally not considered on a motion to strike. As a result, the affidavit of Mr. McQuaig will not be considered on Enbridge's motion to strike. In any event, to the extent that the affidavit essentially states facts that are alleged in the Claim,

such facts are assumed to be true for the purposes of determining whether the Claim discloses a reasonable cause of action.

C. *Additional Comments*

[11] To the extent that Mr. McQuaig's notice of motion or affidavit includes any statements that can be considered as arguments related to whether the Claim discloses a reasonable cause of action, I have considered them in deciding the motion by Enbridge.

III. Applicable Rule and Principles on a Motion to Strike

[12] Enbridge is seeking to strike out the statement of claim pursuant to Rule 221(1)(a) as disclosing no cause of action, on the basis that Mr. McQuaig has no standing.

[13] The applicable rule on a motion to strike out a statement of claim on the ground that it fails to disclose a reasonable cause of action is Rule 221(1)(a), which along with Rule 221(2) provide as follows:

Motion to strike

221 (1) On motion, the Court may, at any time, order that a pleading, or anything contained therein, be struck out, with or without leave to amend, on the ground that it

(a) discloses no reasonable cause of action or defence, as the case may be,

Requête en radiation

221 (1) À tout moment, la Cour peut, sur requête, ordonner la radiation de tout ou partie d'un acte de procédure, avec ou sans autorisation de le modifier, au motif, selon le cas :

a) qu'il ne révèle aucune cause d'action ou de défense valable;

[...]

[...]

Evidence**Preuve**

(2) No evidence shall be heard on a motion for an order under paragraph (1)(a).

(2) Aucune preuve n'est admissible dans le cadre d'une requête invoquant le motif visé à l'alinéa (1)a).

[14] The Federal Court of Appeal in *Brink v Canada*, 2024 FCA 43 stated the following regarding the general principles on a motion to strike out a statement of claim under Rule 221(1)(a) on the basis that it does not disclose a reasonable cause of action:

[43] [...] a statement of claim should not be struck unless it is plain and obvious that the action cannot succeed, assuming the facts pleaded in the statement of claim to be true: *Hunt v. Carey Canada Inc.*, 1990 [1990] 2 S.C.R. 959, [1990] S.C.J. No. 93 at 980; *Pro-Sys Consultants Ltd. v. Microsoft Corporation*, 2013 SCC 57 at para. 63. In other words, the claim must have no reasonable prospect of success: *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at para. 17.

[44] The onus is on the party who seeks to establish that a pleading fails to disclose a reasonable cause of action: *La Rose v. Canada*, 2023 FCA 241 at para. 19; *Edell v. Canada*, 2010 FCA 26 at para. 5. The threshold that a plaintiff must meet to establish that a claim discloses a reasonable cause of action is a low one: *Brake v. Canada (Attorney General)*, 2019 FCA 274 at para. 70.

[45] Pleadings must, moreover, be read generously, in a manner that accommodates any inadequacies in the allegations that are merely the result of deficiencies in the drafting of the document: see *Operation Dismantle Inc. v. The Queen*, 1985 [1985] 1 S.C.R. 441, [1985] S.C.J. No. 22 at 451.

[46] Motions judges should not delve into the merits of a plaintiff's argument, but should, rather, consider whether the plaintiff should be precluded from advancing the argument at all: *Salna v. Voltage Pictures, LLC*, 2021 FCA 176 at para. 77. Recognizing that the law is not static, motions judges must also err on the side of permitting novel, but arguable claims to proceed to trial: *R. v. Imperial Tobacco*, above at paras. 19-25; *Mohr v. National Hockey*

League, 2022 FCA 145 at para. 48, leave to appeal to SCC refused, 40426 (20 April 2023).

[47] That said, it must also be recognized that there is a cost to access to justice in allowing cases that have no substance to proceed. The diversion of scarce judicial resources to such cases diverts time away from potentially meritorious cases that require attention: *Mohr*, above at para. 50; *Coote v. Lawyers' Professional Indemnity Company*, 2013 FCA 143 at para. 13.

[15] Although the plaintiff was represented by counsel at the time the Claim was filed, he is currently self represented. Justice Pentney considered the application of the principles on a motion to strike where the plaintiff is self-represented in *Fitzpatrick* and explained:

[19] The Court generally shows flexibility when a party is self-represented, but this does not exempt the party from complying with the rules set out above: *Barkley v Canada*, 2014 FC 39 at para 17. The reason for this is simple – it is not fair to a defendant to have to respond to claims that are not explained in sufficient detail for them to understand what the claim is based on, or to have to deal with claims based on unsupported assumptions or speculation. Neither is it fair to the Court that will have to ensure that the hearing is done in a fair and efficient manner. A court would have difficulty ruling that a particular piece of evidence was or was not relevant, for example, if the claim is speculative or not clear. This will inevitably lead to “fishing expeditions” by a party seeking to discover the facts needed to support their claims, as well as to unmanageable trials that continue far longer than is appropriate as both sides try to deal with a vague or ever-changing set of assertions.

[20] A degree of flexibility is needed to allow parties to represent themselves and to have access to the justice system; but flexibility cannot trump the ultimate demands of justice and fairness for all parties, and that is what the *Rules* and the principles set out in the cases seek to ensure.

[16] An exception to the rule against evidence on a motion to strike under Rule 221(1)(a) is when a document has been incorporated by reference into a pleading (see *Suss v Canada*, 2024

FC 137 [*Suss*] at para 4). As will be seen below, this exception comes into play in this case for one document.

IV. Analysis

[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.

[18] It is useful to reproduce here the allegations in the Claim relating to the creation of the EVC Prover software, and ownership of it:

THE PLAINTIFFS’ RIGHTS IN THE EVC PROVER SOFTWARE

5. The Plaintiffs own copyright in the computer software program entitled EVC Prover. The EVC Prover software is an original literary work that was created between 2013 and 2014. McQuaig is the sole author of the EVC Prover software and was, at the time of its creation, and at all relevant times, a citizen of and ordinarily resident in Canada. Copyright subsists in the EVC Prover software pursuant to section 5(1) of the *Copyright Act*.
6. The EVC Prover software is used in the accreditation of natural gas meters.
7. As the sole author of the EVC Prover software, McQuaig is the first owner of copyright in the EVC Prover software pursuant to section 13(1) of the *Copyright Act* and is the

owner of moral rights in the EVC Prover software pursuant to section 14.1(1) of the *Copyright Act*.

8. Beginning in late 2013, McQuaig was engaged as an independent contractor by a natural gas industry consulting firm called C.R. Wall & Co. (“**C.R.**”) to develop what became the EVC Prover software for Union Gas Limited (“**Union Gas**”) to use in its meter accreditation program.
9. Between late 2013 and January 2019, McQuaig provided support and made various modifications and updates to the EVC Prover software as a service to Union Gas on an independent contractor basis. During this time, McQuaig granted a license to Union Gas to install copies of the software onto computers used by its employees.
10. McQuaig extended this license to the Defendant and continued to modify and update the EVC Prover software for the Defendant and after the Defendant acquired Union Gas in January 2019.
11. McQuaig incorporated 108 Canada in October 2019 and subsequently assigned all of his copyright in EVC Prover software to 108 Canada.
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.
13. On June 8, 2021, McQuaig was hired as an employee of the Defendant. During his employment with the Defendant until May 3, 2023, McQuaig made modifications and enhancements and added new features to the EVC Prover software (the “**Enbridge Modifications**”) at the Defendant’s request.
14. When the Defendant terminated McQuaig’s employment in May 2023, McQuaig terminated the license he had granted to the Defendant to use the EVC Prover software. McQuaig proposed that the Defendant purchase the EVC Prover software from McQuaig or else remove the EVC Prover software from its computers. The Defendant refused to do either.

[Emphasis in original]

[19] It is important to note that what is assumed to be true on a motion to strike such as this is the facts alleged in the Claim. Legal conclusions are not assumed to be true (*Lafrenière v Canada (Attorney General)*, 2020 FCA 110 at para 53). Two examples will serve to illustrate the point:

- a) The Claim alleges in paragraph 7 that Mr. McQuaig is “the sole author of the EDC Prover software”. This is a factual allegation that is assumed to be true. That paragraph goes on to allege that Mr. McQuaig “is the first owner of copyright in the PVC Prover software pursuant to section 13(1) of the Copyright Act”. As asserted in the Claim, this is a legal conclusion which flows from the fact that Mr. McQuaig is the sole author. It is for the Court to draw the legal conclusions.
- b) The Claim alleges in paragraph 5 that “The Plaintiffs own copyright in the computer software program entitled EVC Prover”. This is a legal conclusion and is not assumed to be true.
- c) Paragraph 19 of the Claim alleges that Enbridge has infringed copyright in the EVC Prover software. This is a legal conclusion and is not assumed to be true.

[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.

[23] In response to a request under Rule 206 for the “service contract” referred to in paragraph 12 of the Claim, the document that is Exhibit “E” [Service Contract] to the affidavit of Christina Vincent affirmed August 12, 2025, was provided by the plaintiffs to Enbridge’s counsel. The Service Contract is incorporated by reference into the Claim and may be considered on this motion to strike (as noted above, see *Suss* at para 4). The Services Contract is dated November 8,

2019, and is titled “GENERAL TERMS AND CONDITIONS ACKNOWLEDGEMENT FORM”.

[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):

Supplier Name: 11684108 Canada Inc.

[25] Notably, paragraph 12 does not allege that Mr. McQuaig was a party to the Services Contract. The Services Contract is signed by Mr. McQuaig (as alleged in paragraph 12) and it is signed under “Authorized Signature”. When paragraph 12 and the Services Contract are read together there is no inconsistency. Paragraph 12 alleges that “McQuaig signed a service contract”, which he did for 108 Canada, the identified “Supplier”.

[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.

VI. Can the defects in the Claim be cured by amendment?

[30] In order to strike a pleading without leave to amend, the defect must be one that cannot be cured by amendment (*Collins v Canada*, 2011 FCA 140 at para 26; *Simon v Canada*, 2011 FCA 6 at para 8). A statement of claim that shows a scintilla of a cause of action will not be struck out if it can be cured by amendment; but “there must be that scintilla” (*Al Omani v Canada*, 2017 FC 786 at paras 33-35).

[31] Mr. McQuaig relies on Rules 3 and 75 and seeks leave to substitute or reinstate 108 Canada as a plaintiff.

[32] In deciding whether to strike the Claim without leave to amend, I must consider whether the copyright infringement claim by Mr. McQuaig can be cured by amendment. It is not appropriate in this context to consider whether some other person or corporation that is not a party might have a claim. Adding 108 Canada as a plaintiff (even if that was considered to be an amendment) does nothing to give Mr. McQuaig standing. It does not cure the fundamental defect with the Claim, that there are no facts alleged from which it is possible to conclude that Mr. McQuaig is the owner of the any of the copyright in issue.

[33] In addition, amending a pleading and adding a party should not be conflated. While adding a party will sometimes also include amendments to a pleading, these are two different things. Mr. McQuaig is attempting to cure the defect in the Claim, not by amendment, but by adding a party. As explained in the previous paragraph, adding 108 Canada as a party does nothing to give Mr. McQuaig standing.

[34] On the issue of whether or not leave should be granted to add 108 Canada as a plaintiff, Enbridge made various arguments regarding the impact of the discontinuance by 108 Canada. Having regard to the conclusions set out above, it is not necessary to decide what impact, if any, the discontinuance by 108 Canada had on its ability to assert a claim for copyright infringement.

[35] To be clear, in reaching the conclusions set out in this Order I am not making any findings on whether or not a claim by 108 Canada, if asserted based on the facts alleged in the Claim, would disclose a reasonable cause of action for copyright infringement.

VII. Moral Rights

[36] Mr. McQuaig alleges in paragraph 7 of the Claim, among other things, that he is the owner of moral rights in the EVC Prover software. Enbridge argues that Mr. McQuaig has not asserted any infringement of moral rights. Mr. McQuaig had no response to that argument. Reading the claim generously, there is no infringement of any moral rights alleged. As there is no such claim alleged, it is not necessary to consider whether leave should be granted to amend on this point.

[37] To be clear, as no claim for moral rights was alleged, there is no claim for moral rights to strike out, and I make no finding as to whether or not Mr. McQuaig has a claim for moral rights infringement.

VIII. Conclusion and Costs

[38] The defect in the Claim which has resulted in it being struck, namely a lack of standing, is not one that can be cured by amendment. As a result, it will be struck without leave to amend.

[39] When a statement of claim such as this is struck out without leave to amend, it is not possible for the action to continue, and the action can be dismissed pursuant to Rule 168 (*Suss* at para 59). As a result, this action will be dismissed.

[40] Regarding costs, and in particular, quantum:

- a) Enbridge submitted that the appropriate quantum for costs of the motion was \$2,800, and if it was successful in having the claim struck out without leave to amend, \$3,500 for costs of the action including the motion.
- b) Mr. McQuaig had no submissions on quantum.

[41] Having regard to Rules 400 and 401(1), including the factors articulated in Rule 400(3), and Tariff B, and having regard to the success of Enbridge on this motion, costs are awarded to Enbridge, fixed in the total amount of \$1,000, to be paid by Mr. McQuaig.

JUDGMENT in T-1742-24

THIS COURT'S JUDGMENT is that:

1. The statement of claim is struck out without leave to amend.
2. This action is dismissed.
3. Costs are awarded to Enbridge, fixed in the amount of \$1,000, to be paid by the plaintiff,
Adam McQuaig, to Enbridge.

"John C. Cotter"
Associate Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1742-24

STYLE OF CAUSE: ADAM MCQUAIG v. ENBRIDGE GAS INC.

PLACE OF HEARING: THE MATTER WAS HELD BY WAY OF
VIDEOCONFERENCE

DATE OF HEARING: AUGUST 26, 2025

JUDGMENT AND REASONS: COTTER A.J.

DATED: AUGUST 28, 2025

APPEARANCES:

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FOR THE PLAINTIFF
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