

Federal Court



Cour fédérale

Date: 20260710

Docket: T-1062-21

Citation: 2026 FC 929

Ottawa, Ontario, July 10, 2026

PRESENT: Madam Justice McDonald

BETWEEN:

**MILLENNIUM FUNDING, INC., OUTPOST
PRODUCTIONS, INC., BODYGUARD
PRODUCTIONS, INC., HUNTER KILLER
PRODUCTIONS, INC. AND RAMBO V
PRODUCTIONS, INC.**

Plaintiffs

and

BELL CANADA AND BELL ALIANT

Defendants

ORDER AND REASONS

I. Overview

[1] On this Motion, the Plaintiffs seeks to strike broad portions of the Defendants' Further Amended Statement of Defence and Counterclaim (Further Amended Defence), filed on December 8, 2025.

[2] The Further Amended Defence was filed following the Federal Court of Appeal (FCA) decision in *Bell Canada v Millennium Funding, Inc*, 2025 FCA 153 [*FCA Appeal*], which granted the Defendants leave to amend.

[3] On this Motion, the Plaintiffs contend that the Defendants' amendments go beyond what was granted in the *FCA Appeal*. They seek to strike much of the Further Amended Defence under Rule 221 of the *Federal Courts Rules*, SOR/98-106.

[4] For the reasons that follow, I largely dismiss this Motion. First, I do not accept the Plaintiffs' submissions that the FCA narrowly confined the Defendants' right to amend on the copyright misuse issue. Second, the Plaintiffs have not met the high threshold for striking pleadings under Rule 221(1)(a), as it is not plain and obvious that the claims in the Further Amended Defence have no reasonable prospect of success. Finally, the Plaintiffs' arguments, that the Defendants' Further Amended Defence withdrew admissions or advanced contrary positions from earlier pleadings, lack merit.

II. Procedural background

[5] The Notice of Action and Statement of Claim was filed in 2021, claiming copyright infringement and alleging that the Defendants failed to forward notices to potential copyright infringers as required under the *Copyright Act*, RSC 1985, c C-42 [*Copyright Act*].

[6] The Plaintiffs, who I will also refer to as “Millennium”, are six film production companies, each claiming copyright in a motion picture. They use forensic software to detect online activity that allegedly infringes their copyright. The software identifies the IP [Internet Protocol] address associated with the internet connection used by the alleged infringer. The Plaintiffs then send a warning notice (Notice) to the internet service provider (ISP) under the “Notice Regime” provided in sections 41.25 and 41.26 of the *Copyright Act*. In this case, Bell, as the ISP, was required to forward the Notice to the person associated with the IP address.

[7] In the Statement of Claim, the Plaintiffs allege that the Defendants, who I will also refer to as “Bell”, failed to forward Notices to identified IP addresses and retain subscriber information, contrary to their obligations as an ISP under the Notice Regime. The Plaintiffs seek statutory damages under the *Copyright Act*, subsection 41.26(3) of almost \$400 million.

[8] Bell filed an Amended Statement of Defence on October 28, 2021, stating that it complied with the Notice Regime. Further, Bell contends that it had no obligation to forward deficient, duplicate, or improper Notices. Bell further claimed that the Plaintiffs’ use of the Notice Regime amounts to “copyright misuse”. In their Amended Statement of Defence, Bell

counterclaimed against Millennium and its counsel, Aird & Berlis LLP, alleging that their use of the Notice Regime constituted several torts, including abuse of process and unlawful means conspiracy.

[9] Millennium brought a Motion to strike Bell's Amended Statement of Defence which was heard by the Case Management Judge (CMJ). In *Millennium Funding, Inc v Bell Canada* (23 June 2022), T-1062-21 (FC) [*CMJ Order*], the CMJ struck Bell's pleadings and denied them leave to amend. Bell appealed the *CMJ Order* to the Federal Court.

[10] The Federal Court dismissed Bell's appeal in *Millennium Funding, Inc v Bell Canada*, 2023 FC 764 [*FC Appeal*]. The Court found that the CMJ did not err in striking Bell's pleadings, nor in denying Bell leave to amend its pleadings. Bell appealed to the FCA.

[11] In the *FCA Appeal*, the FCA partially granted Bell's appeal. The FCA found the Federal Court erred by upholding the CMJ's decision to deny Bell leave to amend. However, the FCA otherwise upheld the striking of Bell's pleadings.

[12] Following the *FCA Appeal*, Bell amended its pleadings and filed a Further Amended Statement of Defence on December 8, 2025.

III. Motion relief sought

[13] On December 19, 2025, Millennium filed this Motion, seeking to strike broad swaths of the Further Amended Defence, as depicted by highlighting in Schedule 1 to their Notice of

Motion. At the hearing of this Motion, I granted the Plaintiffs leave to amend Schedule 1 to add paragraphs 45-47 to the list of paragraphs they seek to strike.

[14] Specifically, the Plaintiffs seek:

- to strike out the following paragraphs of the Further Amended Defence: 7-10, 31(a)-(g), 32, 34, 42-49, 54, 56, 57, 61-64, 70-76, 86-88, 90-96, 98, 104, 112, 114-116, 118-130, 133, 137, 138, and 140-147.
- to strike portions of the following paragraphs of the Further Amended Defence: 3, 18, 24, 30, 33(d), 35(f)/(m)/(n), 40, 41, 52, 53, 59, 60, 65(c)(i)/(e), 67(a), 69, 97(b), 117 (a)/(b), 131, 132, 134, 136, 139, 161(d)/(e)/(g), and 162.
- to strike out the entirety of the Amended Counterclaim, which is outlined in paragraphs 165-167.
- to strike the corresponding entries in the Table of Contents as well as the headings preceding those paragraphs throughout the Further Amended Defence.

[15] Finally, in their Notice of Motion, they seek an extension of time to serve and file the Plaintiffs' Reply and Defence to Counterclaim (if any) until 30 days following the final decision in this matter, including any appeals.

IV. Issues

[16] The issues for determination on this Motion are:

- A. Applicable legal principles

- B. Did the FCA limit the scope of pleading amendments?
- C. Does the Further Amended Statement of Defence make claims that have no reasonable prospect of success?
- D. Did Bell withdraw previous admissions?
- E. Does Bell advance contrary positions?
- F. Does Bell improperly refer to third parties?
- G. Should Bell's Counterclaim be struck?

V. Analysis

A. *Applicable legal principles*

[17] The Court's power to strike pleadings arises from Rule 221(1), which allows a pleading to be struck that:

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| (a) discloses no reasonable cause of action or defence, as the case may be, | a) qu'il ne révèle aucune cause d'action ou de défense valable; |
| (b) is immaterial or redundant, | b) qu'il n'est pas pertinent ou qu'il est redondant; |
| (c) is scandalous, frivolous or vexatious, | c) qu'il est scandaleux, frivole ou vexatoire; |
| (d) may prejudice or delay the fair trial of the action, | d) qu'il risque de nuire à l'instruction équitable de l'action ou de la retarder; |
| (e) constitutes a departure from a previous pleading, or | e) qu'il diverge d'un acte de procédure antérieur; |
| (f) is otherwise an abuse of the process of the Court | f) qu'il constitue autrement un abus de procédure. |

[18] The threshold for striking pleadings under Rule 221(1)(a) is high. Pleadings should only be struck where “it is plain and obvious”, assuming the facts pled to be true, that the claim has no reasonable prospect of success (*R v Imperial Tobacco Canada Ltd*, 2011 SCC 42 at para 17). Relevant to this case, the Court should be cautious when asked to strike a statement of defence or a novel claim (*FC Appeal* at paras 21-22).

[19] It is helpful to outline the general principles applicable to pleadings. In *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 [*Mancuso*], the FCA said that the requirement to plead material facts is essential and applies to all claims (at paras 20–21). Parties are also required to plead each constituent element of the cause of action with sufficient particularity (*Collins v Canada*, 2011 FCA 140 at para 33).

[20] Relatedly, Rule 174 requires that the pleading contain a concise statement of the material facts relied upon, but not the evidence by which those facts are to be proved. As noted by Justice Roy, Rule 174 requires “a modicum of story-telling” and pleadings must explain the “who, when, where, how and what” (*Al Omani v Canada*, 2017 FC 786 at paras 14, 17)

[21] The purpose of pleadings is to give notice to the opposing party and define the issues in such a way that it can understand how the facts support the various causes of action. As noted in *Mancuso*, “[i]t is fundamental to the trial process that a plaintiff plead material facts in sufficient detail to support the claim and relief sought” (at para 16).

[22] Pleadings may still proceed despite being “far from models of legal clarity” (*Manuge v Canada*, 2010 SCC 67 at para 23). But it remains that adequate material facts must be pled.

Parties cannot make broad allegations in their statement of claim in the hope of later going on a “fishing expedition” to discover the facts (*Painblanc v Kastner*, 1991 CanLII 14420 (FCA) at p 503).

[23] With these principles in mind, I now turn to the paragraphs of the Further Amended Defence the Plaintiffs seek to strike.

B. *Did the FCA limit the scope of pleading amendments?*

[24] The FCA granted Bell leave to amend their pleadings. The first issue in this Motion is what was the scope of leave granted by the *FCA Appeal*.

[25] The Plaintiffs argue that Bell only had leave to amend their pleadings in relation to: (1) “extracting disproportionate and unjustified settlements from innocent parties”; and (2) using “the notice and notice regime for improper purposes, namely, to harass and intimidate alleged infringers, and to make exorbitant claims against ISPs”. In support of this position, they point to the following paragraphs in the *FCA Appeal*, as cited in the Plaintiffs’ Memorandum of

Argument:

64. [...] I would grant Bell leave to amend the ASODCC to rectify the defects noted in these reasons.

50. [...] Bell should be granted leave to amend the pleading relating to the copyright misuse.

42. [...] Bell pleads that the CEP [Copyright Enforcement Program] “is used for the purpose of extracting disproportionate and unjustified settlements from innocent parties.” It was not a palpable error for the FC judge to require more justification for this assertion. It was open to the FC judge to conclude that this was necessary in order to make the proceedings manageable and fair.

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. [Emphasis in original].

[26] In my view, the Plaintiffs misconstrue the *FCA Appeal* by reading the above paragraphs out of order and without the surrounding context.

[27] The directions on the amended pleadings are outlined in the following paragraphs of the *FCA Appeal* (paras 49-50):

[49] An examination of Bell’s pleading shows that Bell raises a viable defence of copyright misuse based on allegations of using the notice and notice regime for improper purposes. The FC judge determined that the pleading does not provide sufficient detail to support these allegations, but it is not plain and obvious that these defects cannot be cured.

[50] I conclude that this part of the FC judge’s decision should be set aside, and Bell should be granted leave to amend the pleading relating the [*sic*] copyright misuse.

[28] Paragraph 49 discusses Bell’s copyright misuse defence as relating to “using the notice and notice regime for improper purposes” and paragraph 50 grants leave to amend the pleading relating to that defence. I note that these are two of the final paragraphs in the FCA’s analysis on

granting Bell leave and therefore can be fairly characterized as providing the FCA's final conclusions on this point.

[29] As such, I do not read the *FCA Appeal* decision as limiting or curtailing the scope of Bell's ability to plead to the issue of copyright misuse.

C. *Does the Further Amended Statement of Defence make claims that have no reasonable prospect of success?*

[30] Despite the FCA granting leave to Bell to amend, Millenium still asserts that Bell's claims of copyright misuse should be struck. They rely upon the *FCA Appeal*, which states that the defence of copyright misuse applies to situations where "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 copyright law" (*FCA Appeal* at para 32, citing *FC Appeal* at paras 31-32, citing *Euro-Excellence Inc v Kraft Canada Inc*, 2007 SCC 37 at para 98 [*Euro-Excellence*]).

[31] This passage noted in the *FCA Appeal* decision (and in the *FC Appeal* decision) is from the Supreme Court's decision in *Euro-Excellence* at paragraph 98, where the court expressly stated that "this is not to comment on the possible application of this doctrine in Canada; a determination on that issue is best left for another day".

[32] Based upon this, neither the Supreme Court nor the courts below, in quoting that passage, intended to narrow the scope of copyright misuse before the issue had been fully considered.

[33] Further the *FCA Appeal*, when discussing Bell’s leave to amend, described Bell’s defence as “a viable defence of copyright misuse based on allegations of using the notice and notice regime for improper purposes” (at para 49) and the *FC Appeal* found that “[t]he allegation of copyright misuse is based on a recognized doctrine in the [United States] that has found application where a copyright owner violates the public policies underlying copyright law” (at para 45). These statements indicate that, at least for the purposes of this Motion to strike, Bell should be allowed to argue a broader scope for its copyright misuse defence.

[34] I would further add that the copyright misuse defence does not appear to have been yet tried in Canada, and therefore this Court should hesitate to strike a novel defence based on “responsible, incremental extension of legal doctrine” especially when that doctrine has persuasive support in United States jurisprudence (*Paradis Honey Ltd v Canada (Attorney General)*, 2015 FCA 89 at para 117; *Merck & Co, Inc v Apotex Inc*, 2012 FC 454 at para 24).

[35] Given the recognized novelty of the defence, the broad scope for policy-based arguments provided in the *FCA Appeal*, and the high burden for striking a defence, Millennium has not met its significant burden in demonstrating that these defences have no reasonable prospect of success.

[36] First, Millennium seeks to strike Bell’s claims that sending Notices that are non-compliant with the *Copyright Act* constitutes copyright misuse. Bell’s Further Amended Defence states that contrary to the *Copyright Act*, Millennium’s Notices included: (1) the address of

Millennium's solicitors rather than Millennium's own address; (2) an offer to settle; and (3) a request for personal information

[37] Millennium argues that none of its conduct violates the policy of the *Copyright Act*. First, the purpose of the address requirement in the Notice Regime is to allow alleged infringers to contact the copyright owner. This purpose is satisfied by including the address of Millennium's counsel. Further, Millennium insists that its Notices do not include an offer to settle or a request for personal information.

[38] In response, Bell claims that the address must be that of the claimant, noting the specific use of "claimant" in subsection 41.25(2), and other sections of the *Copyright Act* that explicitly provide when a legal representative may act for a copyright holder.

[39] The viability of Bell's pleadings on this issue will ultimately come down to statutory interpretation and findings of fact made at trial. These issues are beyond the scope of a Motion to strike, and I therefore decline to strike paragraphs 65(e), 70(b)/(c), 74, and 167.

[40] Millennium also challenges the claims made in paragraphs 70(c)/(f) of the Further Amended Defence, that initiating copyright infringement proceedings before sending a Notice and obtaining *Norwich* orders, is copyright misuse. Millennium argues that there is no requirement to use the Notice Regime before resorting to litigation, therefore they argue that the claims made in these paragraphs have no prospect of succeeding.

[41] On this topic, the FCA stated that paragraph 41.26(1)(b) of the *Copyright Act* “contemplates that litigation will be commenced after a notice of claimed infringement is provided” (*Voltage Pictures, LLC v Salna*, 2025 FCA 131 at para 75). As such, it is not “plain and obvious” that resorting to litigation before providing a Notice of infringement is not contrary to the policies of the *Copyright Act*.

[42] The next argument raised by Millennium is that Bell’s reliance on section 31.1 of the *Copyright Act* is doomed to fail, because the exemption of ISPs from liability for the infringing acts of their subscribers applies in limited circumstances. In support, they rely on the Supreme Court’s decision in *Rogers Communications Inc v Voltage Pictures, LLC*, 2018 SCC 38 at para 27. The relevant portion of that paragraph held that, despite the broad liability exemption provided by section 31.1, ISPs can be liable for failure to meet obligations under the Notice Regime.

[43] In the Further Amended Defence at paragraphs 71-72, Bell refers to section 31.1 and claims that Parliament intended to largely shield ISPs from liability for acts of infringement by their customers. Bell pleads that Millennium’s action in effect contravenes that policy by allowing Millennium to sue Bell for alleged infringement by Bell customers. They relate this position to the claimed copyright misuse defence. At this stage and recognizing the novelty of this defence, I cannot conclude that this position is doomed to fail.

[44] Next, Millennium seeks to strike Bell’s claims at paragraphs 95-96, that Millennium’s forensic software is problematic because it fails to account for reasonable defences to copyright

infringement, namely fair dealing under section 29 of the *Copyright Act*. Millennium makes three arguments on this point: (1) that downloading or uploading can never be fair dealing; (2) that Bell is not being accused of infringement, and therefore lacks standing to raise this defence; and (3) that Bell has failed to plead material facts relating to any single instance of an alleged infringer raising this defence.

[45] One or more of these arguments may ultimately be successful at trial, but I do not find they are a sufficient basis to argue that the position advanced by Bell has no reasonable prospect of success. First, Millennium provided no authority that for its claim, that fair dealing does not apply to uploading or downloading. Second, I do not read Bell's Further Amended Defence to raise fair dealing as a defence. Rather, they argue that Millennium's software is deficient because it does not account for this defence. I acknowledge that is a nuanced position, but it is not plain and obvious that Bell has no standing to raise this as a defence. Finally, while Bell's failure to plead material facts of an instance of an alleged infringer, raising this defence may affect the persuasiveness of this argument. In my view, it is not a sufficient ground to strike the claims.

[46] Finally, Millennium challenges paragraph 34 of Bell's Further Amended Defence, in which Bell alleges that sending Notices to businesses offering public internet access is contrary to the policies of the *Copyright Act*. Bell argues that because the alleged infringement is committed by the businesses' customers, sending Notices to the businesses would not deter infringement.

[47] This is largely a policy argument and, in light of paragraph 41.26(1)(a) of the *Copyright Act*, it appears weak. That provision requires that a Notice be forwarded to “the person to whom the electronic location identified by the location data specified in the notice belongs”. However, given the novelty of the copyright misuse defence, I cannot conclude that Bell’s position is bound to fail. I therefore find Millennium’s arguments for striking Bell’s copyright misuse allegations as outside the scope of that defence largely unpersuasive. As the moving party, Millennium bears the onus of showing that these pleadings are insufficient, and it has not met that burden. I decline to strike the paragraphs.

[48] Finally, as an alternative, Millennium argues that Bell’s claims of copyright misuse in the Further Amended Defence are not *Mancuso*-compliant, contain improper legal argument, and fail to meet Bell’s pleadings burden. Millennium’s entire written submissions on this point states:

66. Millennium seeks to strike the following paragraphs of the [Further Amended Defence] for not pleading sufficient material facts:

Notice of Motion, Sch. 1 at paras. 7, 9, 10, 25, 35(n), 49, 63, 70–74, 75, 76, 78, 81, 87, 88, 90–94, 112, 114, 115, 116, 117, 118, 121, 124 (including heading), 125, 126, 136, 137, 138, 139

...

73. None of these allegations fall within the broad definition of copyright misuse, as none of them extend an exclusive copyright into another domain. Even if they did, there are no *Mancuso*-compliant pleadings of material facts in respect of these allegations. They are replete with legal argument and other forms of improper pleading.

[49] As the moving party, Millennium bears the burden of showing that Bell's pleadings are improper. Rather than identifying specific deficiencies, Millennium advances generalized assertions, which are insufficient on a Motion to strike. I decline to strike Bell's pleadings on this basis.

D. *Did Bell withdraw previous admissions?*

[50] The Plaintiffs argue that Bell's amendments to the Further Amended Defence withdrew admissions for which leave of the Court was required. This relates to Further Amended Defence paragraphs 9, 18, 24, 29-32, 35(m), 40, 42-49, 54, 56 31(d), 40, 63, 64, 78, 79, 86, 117, 123, 125-130, 144-147, and 161, and the headings before paragraphs 29 and 42.

[51] An admission is an "unambiguous deliberate concession to the opposing party" (*Griffiths v Canaccord Capital Corporation*, 2005 CanLII 42485 (ON SCDC) at para 19).

[52] There can be "formal" admissions and "informal" admissions. Formal admissions are those "made for the purpose of dispensing with proof at trial and are conclusive to the matters admitted" (*Apotex Inc v Astrazeneca Canada Inc*, 2012 FC 559 at para 19 [*Astrazeneca*]). They can arise from: (1) a statement in a pleading; (2) a reply to a request to admit; (3) an oral statement by counsel at trial; and (4) certain statements said by counsel on discovery when "said expressly for the purpose of trial" (*The Dow Chemical Company v Nova Chemicals Corporation*, 2016 FC 706 at para 13 [*Dow*]). Formal admissions of fact cannot be withdrawn without leave of

the Court (*Astrazeneca* at para 19). In contrast, informal admissions do not bind the party making it, if it is overcome by later evidence (*Astrazeneca* at para 22).

(1) Proper Notices

[53] Millennium argues that Bell had admitted that some of Millennium's Notices were proper, based on:

- Bell's Amended Defence, which stated: "Bell denies that it has breached the Act and denies that it has failed to deliver any proper notices from the Plaintiffs which comply with the Act, and which it was possible to deliver"; and
- Bell's submissions on the previous Motion to strike, addressed by Case Management Judge Kevin Aalto, state "[h]owever, Bell has not pleaded that every notice sent or that every order sought by the Plaintiffs was improper." [Emphasis in original.]

[54] As noted above, a binding admission must be an "unambiguous concession to the other party". I do not read Bell's Amended Defence as admitting that any Notices were proper. Rather, Bell denied failing to deliver proper Notices. That denial does not imply that the Notices were "proper" for Millennium's purposes.

[55] Bell's written submissions on the 2021 motion to strike state that not "every" Notice was improper. I do not accept that a statement in a memorandum of argument on a Motion was

meant to dispense with evidence at trial. This does not fall into any of the categories of formal admission provided in *Dow*.

[56] Regarding the Notices, there was no “admission” as alleged and the evidence does not support Millennium’s contention that Bell made a formal admission regarding the properness of Millennium’s Notices.

(2) Duplicate Notices

[57] Millennium also claims that Bell had previously admitted that Millennium could unintentionally send two separate Notices from one alleged act of copyright infringement but resiled from that position in the Further Amended Defence. Bell’s Amended Defence states:

40. However, IP addresses can sometimes change over time (sometimes without a user’s knowledge and without the user taking any action or, for example, when a router or computer is restarted). Consequently, an individual could begin downloading or uploading copyrighted work using one IP address, then their IP address could change, while they continued to download or upload the same copyrighted work. To the Plaintiffs, this would appear as two separate IP addresses being used to download the same work. The Plaintiffs would therefore incorrectly, albeit unintentionally, send two separate notices in respect of a single act of alleged copyright infringement by a single customer. [Emphasis added.]

[58] In the Further Amended Defence, Bell removed the “albeit unintentionally” in paragraph 40 and Millennium argues that this is taking an inconsistent position.

[59] I do not read Bell’s removal of “albeit unintentionally” from this paragraph as materially changing the pleadings. Both the Amended Defence and the Further Amended Defence indicate

that Millennium may have, without intent, sent duplicate Notices due to shifting IP addresses. While the inclusion of “albeit unintentionally” in the Amended Defence makes this more explicit, I do not find this change justifies striking Bell’s pleadings.

(3) Notice Regime and legal proceedings

[60] Millennium claims that Bell admitted that legal proceedings against alleged copyright infringers are part of the Notice Regime. They point to paragraph 25 of Bell’s Amended Defence, which states:

The Notice and Notice Regime was intended as a first step in a process by which rights owners can notify individuals of alleged copyright infringement and, where appropriate, bring proceedings against those alleged infringers. If used properly, the Notice and Notice Regime is an important tool to educate the public and combat online copyright infringement. [Emphasis added.]

[61] Bell counters that this paragraph merely indicates that the Notice Regime was the first step in a process that could lead to litigation. It is not an admission that litigation is necessarily part of the Notice Regime.

[62] I agree with Bell. The Amended Defence paragraph indicates that the Notice Regime was a first step in a process that could lead to litigation. It is this larger process that could include both the Notice Regime and litigation, and not the Notice Regime itself including litigation.

[63] As such, I do not find the admission, as claimed by Millennium, existed.

(4) Undertaking 222

[64] Still related to the issue of proper Notices, Millennium argues that Bell withdrew admissions made at discovery via Undertaking 222, concerning why Bell considers Millennium's Notices improper. Bell provided Undertaking 222 at Discovery in November 2024 and amended it in December 2025. Millennium submits that it was entitled to rely on those answers for the purposes of trial.

[65] Millennium's submissions fail to recognize that even if such an admission had been made, answers on discovery can be "qualified, enlarged upon or even contradicted upon notice to the opposite party" (*Astrazeneca* at para 21). Rule 245(1) requires a person examined for discovery to provide a corrected or completed answer if they find their original answer was no longer correct or complete. Here, although the amended answer has been provided one year after discovery, I do not see any prejudice to Millennium as there is no upcoming trial date. Further, I note that an amended answer to a discovery question was provided two weeks before trial and accepted in *Astrazeneca* (at paras 15-16, 23).

(5) Uploading and downloading

[66] Millennium claims that Bell admitted that uploading and downloading a film is copyright infringement. They point to paragraph 40 of Bell's Amended Defence:

40. However, IP addresses can sometimes change over time (sometimes without a user's knowledge and without the user taking any action or, for example, when a router or computer is restarted). Consequently, an individual could begin downloading or uploading copyrighted work using one IP address, then their IP

address could change, while they continued to download or upload the same copyrighted work. To the Plaintiffs, this would appear as two separate IP addresses being used to download the same work. The Plaintiffs would therefore incorrectly, albeit unintentionally, send two separate notices in respect of a single act of alleged copyright infringement by a single customer.

[67] In the Further Amended Defence, Bell reworded this paragraph as follows:

40. However, IP addresses can sometimes change over time (sometimes without a user's knowledge and without the user taking any action or, for example, when a router or computer is restarted). Consequently, an individual could infringe copyrighted work using one IP address, then their IP address could change, while they continued to infringe the same copyrighted work. To the Plaintiffs, this would appear as two separate IP addresses being used to infringe the same work. The Plaintiffs would therefore incorrectly send two separate notices in respect of a single act of alleged copyright infringement by a single customer. It is entirely proper for Bell, which is able to determine where multiple IP addresses were used by the same account holder for the same act of claimed infringement, to forward only one notice of claimed infringement. [Amended changes underlined.]

[68] Contrary to Millennium's submissions, I do not read paragraph 40 of the Amended Defence as admitting that uploading or downloading are infringement. At most, it notes that uploading and downloading are acts of "alleged copyright infringement". In any event, an admission that an activity constitutes infringement is not a factual admission and therefore would not require leave of the Court to withdraw.

(6) Copyright in the Millennium movies

[69] In the Further Amended Defence, Bell asserts at paragraphs 43, 63, 127, and 128-130 that Millenium does not own the copyright in its films. According to Millennium, this is contrary to the following positions taken in Bell's Amended Defence:

2. Bell has no knowledge of the allegations contained in paragraphs 9-17 of the Statement of Claim.

...

35. Through the Copyright Enforcement Program, the Plaintiffs and other Aird & Berlis Clients have assigned the beneficial interest in their copyrights to Aird & Berlis for the purposes of enforcement.

[70] Contrary to Millenium's position, I do not read paragraph 2 of the Amended Defence as an admission—Bell states it has no knowledge—which is not an admission.

[71] As for paragraph 35, I do not read it as an admission of copyright ownership. Rather, it reflects a factual recognition of an assignment. In any event, neither paragraph 2 nor paragraph 35 can be read as an “unambiguous” concession. Accordingly, the position taken on this issue in the Further Amended Defence does not resile from an earlier admission.

E. *Does Bell advance contrary positions?*

[72] Millennium argues that Bell's amendments are contrary to positions taken in prior legal proceedings and should therefore be struck.

[73] Specifically, Millennium points to a demand letter, dated July 20, 2021. Millennium claims that Bell's position in this letter is that "Millennium's notices have always been proper and as a result Bell consistently cooperated, 'as it always has' with Millennium's copyright enforcement efforts".

[74] As noted in the *FC Appeal*, the Court can only strike under Rule 221(1)(e) for departure from a prior pleading (at para 40). The Bell demand letters are obviously not "pleadings" and therefore cannot be used as a basis to strike Bell's pleadings under Rule 221(1)(e).

[75] Millennium also claims that Bell has taken "diametrically opposed" positions in this proceeding and the *Norwich* order motions that arose after the first motion to strike hearing before the CMJ, in which Bell claimed that Millennium was misusing the Notice Regime. The most recent of these orders was from August 2022.

[76] I disagree. Bell explicitly took no position in those proceedings. Taking "no position" cannot now be called taking a "diametrically opposed" position for the purpose of this Motion.

[77] Additionally, it is unclear what Rule would support striking any portions of the Further Amended Defence on this ground. Rule 221(1)(e) allows the Court to strike for departure from a prior pleading. It is unclear, and Millennium does not explain, how this Rule would apply. Further, I do not find these circumstances to be "scandalous, frivolous or vexatious" or an abuse of process, and therefore not within the scope of Rule 221(1)(c) or (f).

F. *Does Bell improperly refer to third parties?*

[78] In the Further Amended Defence, Millennium seeks to strike references to its legal counsel, Aird & Berlis. Bell initially pursued a counterclaim against Aird & Berlis but abandoned it after the *FCA Appeal*. The Further Amended Defence contains references to Aird & Berlis and their clients that Millennium seeks to strike. The relevant paragraphs are 41, 125 and 3.

[79] At paragraph 41, Bell pleads that “[t]he Plaintiffs and their legal counsel Aird & Berlis have represented to this Court that under the CEP copyright owners do not send duplicate notices to alleged infringers within less than a week”. This paragraph does not explain in what capacity Aird & Berlis made that representation to the Court, or how it relates to the position taken by Bell in their copyright misuse allegations. It appears to be a bald assertion without any context or material facts in support. In the circumstances, I agree that paragraph 41 should be struck out.

[80] Paragraph 125 of the Further Amended Defence states: “[f]or example, in the reverse class action litigation against Mr. Robert Salna in the Federal Court where Aird & Berlis (counsel for Voltage, another CEP [Copyright Enforcement Program] Member, in that case) stated in its written submissions to the Court (Reply Factum at para. 25) that ‘a notice is largely ineffective’ without litigation”. I cannot see the relevance of relying upon written submissions in other litigations as providing material facts in support of the allegation made in this paragraph. This sentence will therefore be struck from paragraph 125.

[81] Paragraph 3 lists Aird & Berlis clients who also enforce copyright in a “substantially similar” manner through Aird & Berlis’ Copyright Enforcement Program. Although Bell argues that these paragraphs are necessary to provide the facts that support their claims, I do not read the paragraph as providing facts to support the position taken by Bell, but rather risks complicating this litigation. Accordingly, the names of all other entities who are not parties to this claim are not relevant and shall be struck.

G. *Should Bell’s Counterclaim be struck?*

[82] Millennium argues that Bell failed to plead material facts to support their counterclaims for the torts of abuse of process and unlawful means conspiracy. I note that, at the hearing of this Motion, Bell agreed to withdraw the ‘unlawful means conspiracy’, so that allegation need not be addressed.

[83] Millennium also argues that there are no grounds for the declaratory and injunctive relief sought.

[84] The Amended Counterclaim is outlined in paragraphs 165 to 167.

(1) *Abuse of process*

[85] Millennium argues that Bell failed to plead material facts in support of its claim for abuse of process. An abuse of process claim requires Bell to establish (*Harris v GlaxoSmithKline Inc*, 2010 ONSC 2326 at para 48):

(1) the plaintiff is a party to a legal process initiated by the defendant; (2) the legal process was initiated for the predominant purpose of furthering some indirect, collateral and improper objective; (3) the defendant took or made a definite act or threat in furtherance of the improper purpose; and (4) some measure of special damage has resulted...

[86] Millennium claims that Bell fails to provide material facts in support of the last three elements.

[87] On the second element, Bell argues that it pled material facts stating that Millennium used the Notice Regime to knowingly send out false claims to expand the scope of their copyrights. Specifically, they plead that Millennium knew they did not own Canadian copyright to the Millennium Movies but still sent Notices and pursued *Norwich* orders to expand their copyright beyond its statutory limits.

[88] On the third element, Bell pleads that Millennium took several actions to improperly expand its copyright, including: (1) sending Notices they know to be false, or based on inaccurate/unreliable information and thus likely to be false; (2) demanding unjustified or exaggerated damages from customers and ISPs; and (3) misrepresenting the nature of their copyright claims.

[89] Finally, Bell pleads that they suffered “special damages”, in the form of damaged relationships with their customers. According to Bell, relationships with their customers are damaged because: (1) Bell customers who receive Notices think that Bell is monitoring their

internet activities and invading their privacy; and (2) customers associate Millennium's duplicate and unreliable Notices with Bell.

[90] Overall, I am satisfied that Bell has pled sufficient material facts in support of this claim. The purpose of pleadings is to give notice to the opposing party and define the issues in such a way that it can understand how the facts support the various causes of action. The counterclaim achieves this objective.

(2) Declaratory and injunctive relief

[91] Millennium also seeks to strike Bell's request for declaratory and injunctive relief on the grounds that the pleadings are merely recitations of fact.

[92] The *FCA Appeal* upheld the striking of Bell's prior claims for injunctive and declaratory relief in the Amended Defence because it was "simply statements of fact" and did not indicate what additional value or certainty it would provide (*FCA Appeal* at paras 58-60). In the Further Amended Defence, more detail is provided so these deficiencies appear to have been addressed. Whether this relief is available in the novel defence of copyright misuse remains to be determined; but at this point, it is not plain and obvious that these remedies are unavailable for copyright misuse.

[93] I decline to strike Bell's claims for declaratory or injunctive relief.

VI. Conclusion

[94] This Motion is granted in part as follows:

- a. Paragraph 41 is struck out in its entirety. The following sentence will be struck from paragraph 125:

“For example, in the reverse class action litigation against Mr. Robert Salna in the Federal Court where Aird & Berlis (counsel for Voltage, another CEP Member, in that case) stated in its written submissions to the Court (Reply Factum at para. 25) that ‘a notice is largely ineffective’ without litigation”.

- b. In paragraph 3 the following shall be struck out:

“ including Voltage Pictures, LLC (Voltage) and its affiliates; Cell Film Holdings LLC; Clear Skies Nevada, LLC; Cobbler Nevada, LLC; Criminal Productions, LLC; Dallas Buyers Club, LLC; Eve Nevada LLC; Fathers & Daughters Nevada, LLC; Fallen Productions, Inc.; Glacier Entertainment S.A.R.L of Luxembourg; Glacier Films 1, LLC; HB Productions, Inc.; Headhunter, LLC; I.T. Productions, LLC; LHF Productions, LLC; ME2 Productions, Inc.; Morgan Creek Productions, Inc.; POW Nevada, LLC; PTG Nevada, LLC; TVB Productions, LLC; Wind River Productions LLC; and WWE Studios, LLC (collectively, the “CEP Members”).

- c. In paragraph 167 the phrase “and an unlawful means conspiracy” shall be struck.

[95] Both parties seek costs. In my view, costs shall be in the cause.

ORDER IN T-1062-21

THIS COURT ORDERS that:

1. The Motion is granted in part.
2. The Defendants shall file a Further Amended Defence and Counterclaim by the Defendants consistent with paragraph 94 above, within 15 days of the date of this Order;
3. The Plaintiffs shall file their Reply and Defence to Counterclaim within 30 days of the filing of the Further Amended Defence and Counterclaim by the Defendants.
4. Costs shall be in the cause.

"Ann Marie McDonald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-1062-21

STYLE OF CAUSE: MILLENNIUM FUNDING, INC. ET AL V BELL
CANADA ET AL

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 25, 2026

ORDER AND REASONS: MCDONALD J.

DATED: JULY 10, 2026

APPEARANCES:

Kenneth R. Clark
Lawrence Veregin

FOR THE PLAINTIFFS

Fiona Legere
Kendra Levasseur

FOR THE DEFENDANTS

SOLICITORS OF RECORD:

AIRD & BERLIS LLP
Toronto, Ontario

FOR THE PLAINTIFFS

McCarthy Tétrault LLP
Toronto, Ontario

FOR THE DEFENDANTS