

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Vandenbosch v. Rogers Communications
Canada Inc.*,
2025 BCSC 1199

Date: 20250627
Docket: S234439
Registry: Vancouver

Between:

Raelene Vandenbosch

Plaintiff

And

**Rogers Communications Canada Inc.,
Match Transact Inc. dba WOW! Mobile Boutique, John Doe Mobile Clerk,
and John Doe Hacker**

Defendants

Before: The Honourable Justice Chan

Reasons for Judgment

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Place and Dates of Hearing:

Vancouver, B.C.
November 7, 2024
April 11, 2025
May 20, 2025

Place and Date of Judgment:

Vancouver, B.C.
June 27, 2025

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Introduction

[1] Raelene Vandenbosch uses Rogers Communication Canada Inc. (“Rogers”) as the service provider for her personal cell phone. She first signed up with Rogers in December 2015 and continued to be a Rogers customer. On June 30, 2021, her personal information was hacked when someone pretending to be a Rogers technician called into a retail mobile kiosk in Quebec City owned by Match Transact Inc. (“Match”). The hacker asked a clerk at the kiosk to enable screen sharing and the hacker gained access to Rogers’ customer database, including the plaintiff’s personal information. The hacker performed a SIM swap on the plaintiff’s Rogers’ account and quickly gained access to her phone number, phone and internet accounts, including the plaintiff’s cryptocurrency account. Within a few minutes of the SIM swap, the hacker withdrew the plaintiff’s bitcoins from her cryptocurrency account. A few hours later, the hacker gained access to a second cryptocurrency account and withdrew additional bitcoins. The plaintiff alleges the lost bitcoins were valued at approximately \$534,530 at the time of the theft and were valued at approximately \$1 million shortly after.

[2] The plaintiff started an action on June 19, 2023, against Rogers, Match, the unknown mobile clerk who allowed the screensharing and the hacker. As the plaintiff is based in British Columbia, Rogers is headquartered in Ontario, and the unauthorized screen sharing occurred at a mobile kiosk in Quebec, the plaintiff sued under the laws of these three provinces.

[3] As against Rogers, the plaintiff claims damages under the laws of British Columbia for breach of privacy under s. 1 of the *Privacy Act*, R.S.B.C. 1996, c. 373; breach of contract, negligence and negligent misrepresentations; and statutory causes of action under ss. 171 and 172 of the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 [*BPCPA*].

[4] In Ontario, the plaintiff claims against Rogers under the Ontario *Consumer Protection Act*, 2002, S.O. 2002, c. 30, Sched. A [*Ont. CPA*].

[5] In Quebec, the plaintiff claims against Rogers under three Quebec statutes: the *Civil Code of Quebec*, CQLR c CCQ-1991 [CCQ]; the *Quebec Charter of Human Rights and Freedoms*, CQLR c C-12 [Quebec Charter]; and *An Act Respecting the Protection of Personal Information in the Private Sector*, SQ 2001, c 73 [Protection of Personal Information Act].

[6] As against Match, under B.C. law the plaintiff claims for breach of privacy under s. 1 of the *Privacy Act* and damages for negligence. In Quebec, the plaintiff claims against Match under the *CCQ*, *Quebec Charter*, and the *Protection of Personal Information Act*.

The Stay Application

[7] Rogers brings an application pursuant to s. 7 of the *Arbitration Act*, S.B.C. 2020, c. 2 for a stay in favour of arbitration of all of the plaintiff's claims, except for her claims under s. 172 of the *BPCPA*. Match also seeks a stay of the plaintiff's claims. To support its position, Match argues that it acted as agent for Rogers, or, in the alternative, that the claims against it are so interwoven with the claims against Rogers that if the court were to grant a stay for Rogers, it would be in the interests of justice for it to also grant a stay for Match.

The Arbitration Clause

[8] Rogers seeks to enforce the arbitration clause included in its wireless services agreement and its terms of service, which provides as follows:

To the extent permitted by applicable law, unless we agree otherwise, any claim or dispute, whether in contract or tort, under statute or regulation, or otherwise, and whether pre-existing, present or future, arising out of or relating to the following items will be determined by final and binding arbitration to the exclusion of the courts:

- i. An Agreement;
- ii. the Services or Equipment;
- iii. oral or written statements, advertisements or promotions relating to an Agreement, the Services or Equipment; or
- iv. the relationships that result from an Agreement.

Where applicable, the arbitration will be conducted in the province in which you reside, on a simplified and expedited basis by 1 arbitrator under the current

laws and rules relating to commercial arbitration in the province or jurisdiction in which you reside on the date of the notice. Rogers will pay all reasonable costs associated with the arbitration. Any arbitration will be conducted in accordance with our Arbitration Protocol, which is available at rogers.com/terms.

[9] The “Agreement” refers to the wireless services agreement and Rogers’ terms of service; the “Services” are the provision of cellular and mobile data services; and “Equipment” is defined as any device or equipment used to access the “Services” or used with the “Services”.

[10] The terms of service state that the “Agreement” is governed by the laws of Canada and the applicable laws of the province where the plaintiff’s billing address is located.

[11] The “Arbitration Protocol” provides that the arbitration shall be conducted where the customer resides, and that unless the arbitrator orders otherwise, Rogers will pay all reasonable fees or expenses associated with the arbitration. While costs may be awarded against Rogers if the customer is successful, the customer will generally not be ordered to pay costs if they are unsuccessful unless the arbitrator concludes the customer acted unreasonably, improperly or in bad faith.

The Hearing of the Stay Application

[12] The stay application began on November 7, 2024. Submissions were made by Rogers that the four prerequisites for a stay in favour of arbitration as recognized in the jurisprudence had been met: *Peace River Hydro Partners v. Petrowest Corp.*, 2022 SCC 41 [*Peace River*] at para. 83. Match adopted those submissions.

[13] The plaintiff conceded some of her claims against Rogers were arbitrable but maintained others were not, and did not agree any claims against Match were arbitrable. The hearing did not conclude on that day and continuation dates were set in April and May 2025.

[14] On March 31, 2025, the B.C. legislature passed amendments to the *BPCPA* prohibiting dispute resolution clauses, including arbitration clauses, in consumer

contracts (the “*BPCPA Amendments*”). When this hearing continued on April 11, 2025, the plaintiff advised she was hence withdrawing any concessions she had made about certain claims being arbitrable. She advised she was no longer relying on any of her previous arguments, but would rely solely on the *BPCPA Amendments*. Her position is the *BPCPA Amendments* make clear arbitration clauses are void in consumer contracts and the *BPCPA Amendments* apply to contracts like hers entered into before the *BPCPA Amendments* came into force. As such, the plaintiff argues there can be no arbitration as Rogers’ arbitration clause is now void.

[15] As the plaintiff is abandoning her other arguments against a stay and focusing solely on the *BPCPA Amendments*, I will address first the effect of the *BPCPA Amendments*.

The *BPCPA Amendments*

[16] As a result of the *BPCPA Amendments*, which came into force on March 31, 2025, the *BPCPA* now contains the following prohibition on dispute resolution clauses in Division 4 of Part 2:

Definitions

14.1 (1) ...

“dispute resolution term or acknowledgment” means a term or acknowledgment in a contract that requires or has the effect of requiring that a dispute in relation to a matter arising out of the contract be submitted to arbitration or another dispute resolution process.

(2) For certainty, a reference to a dispute resolution term or acknowledgment in relation to a contract includes a reference to an arbitration agreement, as defined in section 1 of the Arbitration Act, relating to a matter arising out of the contract.

Dispute resolution and class proceeding term or acknowledgment prohibited — consumer

14.3 (1) A supplier must not include a dispute resolution term or acknowledgment or a class proceeding term or acknowledgment in a consumer contract.

(2) A dispute resolution term or acknowledgment or a class proceeding term or acknowledgment in a consumer contract is void.

(3) Subsections (1) and (2) do not prevent the parties to a consumer contract from agreeing, after a dispute arising out of the contract arises,

to submit the dispute to arbitration or another dispute resolution process.

[17] A transitional provision applying to s. 14.3 was added:

Transitional — prohibited contract terms

203.001 Division 4 of Part 2 applies to contracts entered into before, on or after the coming into force of that Division.

The Plaintiff's Position on the *BPCPA Amendments*

[18] The plaintiff argues the B.C. government has spoken and determined the outcome of this stay application. She argues there cannot be a stay of these claims in favour of arbitration as the arbitration clause is now void. The transitional provision makes clear the prohibition on arbitration clauses applies to contracts entered into before March 31, 2025, the day the prohibition came into force. This includes the plaintiff's agreement with Rogers. The plaintiff argues there is no ambiguity and no need to resort to the principles of statutory interpretation. She argues whether the *BPCPA Amendments* are retroactive or retrospective is irrelevant, as the effect is the same. Arbitration is no longer possible as the arbitration clause has been rendered void.

Rogers' Position on the *BPCPA Amendments*

[19] Rogers' position is the transitional provision must be interpreted using the principles of statutory interpretation. The presumption is against retroactive legislation, and there must be clear intent to override the presumption. Rogers argues the *BPCPA Amendments* do not operate retroactively, but only retrospectively, and do not apply to the plaintiff.

Analysis of the *BPCPA Amendments*

[20] The arbitration agreement in this case was entered into when the plaintiff first signed up for services with Rogers in December 2015. Her dispute with Rogers occurred when she lost her bitcoins in June 2021. The *BPCPA Amendments* prohibiting arbitration clauses in consumer contracts came into force in March 2025. The question is: do the *BPCPA Amendments* affect Rogers' ability to arbitrate the

plaintiff's dispute? This is a question of statutory interpretation in which the court must determine the intent of the legislature.

[21] To answer this question, I will first set out the meaning of retroactive vs. retrospective legislation and the presumption against retroactivity. Next, I will discuss the plaintiff's arguments that where there is a transitional provision, the court need not resort to the presumption against retroactivity. I will discuss her argument that legislation designed for public protection is an exception to the presumption against retroactivity. I will next discuss a few analogous cases cited by the parties. Finally, I will set out my view on how the *BPCPA Amendments* apply.

Retroactive vs. Retrospective Legislation

[22] In *Lin v. Weng*, 2022 ONCA 367 [*Lin*], the Ontario Court of Appeal clarifies the distinction between retroactive and retrospective legislation:

[26] In a nutshell, a retroactive law is one that applies a new law to an event that happened in the past and to which the old law applied before the new law was enacted: see Elmer A. Driedger, "Statutes: Retroactive Retrospective Reflections" (1978), 56 Can. Bar. Rev. 264, at pp. 268-269; Ruth Sullivan, *Statutory Interpretation*, 2nd ed. (Toronto: Irwin Law, 2007), at p. 254.

[27] In contrast, a retrospective law is one that has an effect for the future on a set of facts that occurred in the past: Driedger, at pp. 268-69; Sullivan 2007, at p. 254. As an example, the amendment in s. 129.1 clearly applies prospectively to events that cause losses in the future under new insurance policies entered into after the date of the amendment. However, for a court to find that the amendment has retrospective effect, it would apply to existing insurance policies entered into before the amendment, but for events that happen in the future.

[23] In my view, the key issue for determination is if the *BPCPA Amendments* apply retroactively or retrospectively. Two separate questions arise: Do the *BPCPA Amendments* apply retroactively to the parties' dispute which arose when the plaintiff lost her bitcoins in June 2021? If so, then Rogers' arbitration clause in the parties existing agreement is void, since the new law applies. Second, do the *BPCPA Amendments* apply retrospectively, to create a new effect for future disputes after March 2025 on the parties' existing contract? If the *BPCPA Amendments* apply retrospectively, the new law would only apply for disputes that occur after the *BPCPA*

Amendments came into force and Rogers' arbitration clause would still cover the plaintiff's dispute.

Presumption against Retroactivity

[24] There is a presumption in statutory interpretation that legislatures do not intend for legislation to apply retroactively. The court in *Lin* explained this principle as follows:

[29] I turn, then, to the rules governing whether legislation has retroactive effect. In interpreting legislation, there is a strong presumption that the legislature does not intend its law to apply retroactively. Indeed, the presumption against retroactivity is more difficult to rebut than the presumption against retrospectivity: Pierre-André Côté, *The Interpretation of Legislation in Canada*, 4th ed. (Scarborough: Carswell, 2011), at pp. 143-44. Normally, where the legislature intends a law to apply retroactively, it will say so either within the formulation of the law, or by having it take effect as of a date in the past. The question for the court is to discern the intention of the legislature: Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed. (Markham: LexisNexis Canada, 2014), at paras. 25.51-25.53.

[25] In *Barbour v. The University of British Columbia*, 2010 BCCA 63, at issue was the university's ability to collect fines for violations of its parking regulations. The university had conceded at trial that it did not have the power pursuant to the *University Act*, R.S.B.C. 1996, c. 468 to enact the parking regulations which resulted in the fines; therefore, the fines were illegal. The court found that the class members were entitled to restitution from the university accordingly. After trial and before the hearing of the appeal, the government enacted legislation which empowered the university's board of governors to impose and collect fines for parking violations. The amending legislation contained transitional provisions which stated that the amendments applied to the time period before the amendments, despite any court ruling to the contrary, that no refunds would be given for fines collected, and that the legislation was retroactive to the extent necessary to give full force and effect to its provisions: *Barbour* at para. 8.

[26] The issue on appeal was whether the legislative amendments applied to the parking fines collected before the legislation came into force. The Court of Appeal discussed three principles raised by the respondents for the interpretation of amendments and transitional provisions: the presumption against the retroactive

application of legislation; the presumption against interference with vested rights; and the presumption against interference with pending litigation: *Barbour* para. 16. The Court of Appeal found these presumptions were tools of statutory interpretation which could be overcome by the clear intent of the legislature: *Barbour* paras 18–19.

[27] The Court of Appeal held in *Barbour* that, properly interpreted, the amending legislation did apply retroactively:

[18] The presumptions the respondent refers to in argument are tools of statutory interpretation. As the respondent acknowledges, if the effects referred to in these presumptions are clearly intended, the legislation will be effective. Again we may refer to *British Columbia v. Imperial Tobacco Ltd.* There Justice Major approved at para. 69 the statement of Professor P.W. Hogg in *Constitutional Law of Canada* (loose-leaf ed.), vol. 2. at p. 48-29:

Apart from s. 11(g) [of the *Charter*], Canadian constitutional law contains no prohibition of retroactive (or ex post facto) laws. There is a presumption of statutory interpretation that a statute should not be given retroactive effect, but, if the retroactive effect is clearly expressed, then there is no room for interpretation and the statute is effective according to its terms. Retroactive statutes are in fact common.

[19] The same may be said as to the other presumptions referred to. Subject to constitutional limitations, the Legislature may enact whatever laws it considers advisable, and provided the legislation is clear in requiring the application at issue, it will be given full effect.

[20] The respondent says the legislation does not displace the presumption against its being applied to this case. We do not agree; the amendments and transitional provisions are clearly intended to apply here.

[28] Thus, the government needs to clearly express its intention to rebut the presumption against retroactive legislation, which has been described as a strong presumption: *Lin* at para. 29.

Should the court consider the presumption against retroactivity where there is a transitional provision?

[29] The plaintiff argues the transitional provision in this case makes it clear it was intended to apply to her situation, as it states the prohibition against arbitration clauses applies to contracts entered before the *BPCPA Amendments* came into force. In effect, the plaintiff argues that the government made it clear that arbitration clauses in

old contracts are now void. The plaintiff posits that, with this transitional provision, it cannot be said there is any ambiguity that the prohibition is to be applied retroactively.

[30] The plaintiff argues there is no need to rely on general principles of statutory interpretation, thus no need to consider if the presumption against retroactivity has been rebutted. Her position is that where there is a transitional provision, the court need not go further and consider any other principles of statutory interpretation. She relies on *R. v. Dineley*, 2012 SCC 58 to argue that where there are transitional provisions, the general principles of statutory interpretation do not apply.

[31] In *Dineley*, the Supreme Court of Canada was considering if amendments to legislation which limit the evidence an accused can adduce to raise doubt about the reliability of breathalyzer test results apply to the accused. The amendments came into force during a pause in the trial. The amendments did not come with transitional provisions. The plaintiff relies on the following paragraph:

[3] There are no transitional provisions that provide express guidance as to whether the Amendments apply retrospectively, that is, to conduct which occurred before the Amendments came into force. Resort must be had to general principles and to the effect of the Amendments...

[32] The plaintiff also relies on *In the Matter of the Insurance (Vehicle) Act and the Commercial Arbitration Act and S.A.*, 2019 BCSC 1655 at para. 31, citing *Dineley* for the same proposition. That is, the plaintiff's position is where there are transitional provisions, the court ought not to resort to general principles of statutory interpretation and the presumption against retroactivity is therefore inapplicable.

[33] In my view, *Dineley* does not stand for that proposition. In *Dineley*, there were no transitional provisions, so the court resorted to general principles of statutory interpretation. *Dineley* does not say that when there *are* transitional provisions, the court is not to consider the general rules of statutory interpretation including the presumption against retroactivity. The statement in *In the Matter of the Insurance (Vehicle) Act and the Commercial Arbitration Act and S.A.* that it is only where there are no transitional provisions that the court must look to general principles is, in my view, a misinterpretation of *Dineley*.

[34] I find further support for my view in *Barbour*. In *Barbour*, there were detailed transitional provisions. The court still considered the general principles of statutory interpretation including the presumption against retroactivity: *Barbour* at paras. 18–20.

Is the presumption against retroactivity inapplicable as the *BPCPA Amendments* are for public protection?

[35] In the alternative, the plaintiff relies on the public protection exception to the presumption against retroactivity. If the presumption against retroactivity is to be considered even where there is a transitional provision, the plaintiff argues where legislation is for public protection, legislation will be given retroactive effect.

[36] However, the public protection exception only applies where there is a clear nexus between the legislation and the risks to the public associated to the prior conduct: *Tran v. Canada (Public Safety and Emergency Preparedness)*, 2017 SCC 50 at paras. 47, 52 [*Tran*]. In *Tran*, immigration officers had started administrative proceedings to determine if the appellant was inadmissible due to serious criminality. Mr. Tran, a permanent resident, had been convicted of a marijuana grow operation in 2012 and received a 12-month conditional sentence order. At the time of the offence in 2011, the maximum sentence for production of marijuana was seven years. In 2012, the maximum had been increased to 14 years. A permanent resident is inadmissible on grounds of serious criminality for having been convicted of an offence punishable by a maximum term of imprisonment of at least 10 years: s. 36(1)(a) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27. One of the issues at the Supreme Court of Canada was how to interpret the “maximum term”, and if the presumption against retroactivity applies. The Minister argued the maximum term was 14 years, as the presumption against retroactivity did not apply since the new legislation was designed to protect the public.

[37] However, the Supreme Court of Canada held the public protection exception cannot apply to all legislation that can be said to be broadly aimed at public protection, and is “only triggered where the design of the penalty itself signals that Parliament has

weighed the benefits of retrospectivity against its potential for unfairness”: *Tran* at para. 50. There needs to be something more than broad based legislation to trigger the public protection exception to the presumption against retroactivity. As held by the Court at para. 47:

[47] ...To interpret the public protection exception as inclusive of *all* legislation that can be said to be *broadly* aimed at public protection would ignore the purpose underlying the presumption against retrospectivity.

[Emphasis in original.]

[38] In my view, consumer protection legislation is not captured by the public protection exception to the presumption against retrospectivity. Consumer protection legislation is broadly aimed at public protection, with no clear nexus between the legislation and the risks to the public. The provisions in consumer protection legislation are thus not sufficiently specific in relation to public safety risks to invoke the public protection exception to the presumption against retroactivity: *Tran* at para. 47.

Analysis of similar cases

[39] I find the following cases to be instructive, as they deal with situations where there is a pre-existing contract, a dispute, and amending legislation. The results in the cases differ according to the chronology of those events.

***Dell Computer Corp. v. Union des consommateurs*, 2007 SCC 34**

[40] *Dell Computer Corp. v. Union des consommateurs* [*Dell*] is very similar on the facts and concerns consumer protection legislation in Quebec. Dell had posted incorrect lower prices for its computers and refused to honour a consumer’s order. A class action was started against Dell. Dell tried to enforce its arbitration clause. The Quebec government passed legislation prohibiting arbitration clauses, which came into effect in December 2006, the day after the hearing of the appeal at the Supreme Court of Canada. This new legislation did not contain any applicable transitional provisions: *Dell* at paras. 8, 112. The issue was whether the new legislation applied retroactively to the case.

[41] The Supreme Court of Canada noted at paras. 113 and 118 that retroactive operation of a statute is highly exceptional. Where a law is ambiguous and can have two interpretations, the one that does not give it retroactive effect is to be preferred: at para. 118, citing *Ford v. Quebec (Attorney General)*, [1988] 2 S.C.R. 712 at 742–45. The majority in *Dell* found the new legislation did not apply retroactively:

119 Second, I find it highly unlikely that the legislature intended that s. 2 should apply to *all* arbitration clauses in force before December 14, 2006. For example, neither a consumer who is a party to an arbitration that is under way nor a consumer whose claims have already been rejected by an arbitrator should be able to rely on s. 2 and argue that the arbitration clause binding him or her and the merchant is invalid in order to request a stay of proceedings or to have the unfavourable arbitration award set aside. Failing a clear indication to the contrary, when a dispute is submitted for a decision, the decision maker must apply the law as it stands at the time the facts giving rise to the right occurred.

[42] The plaintiff seeks to distinguish *Dell* on the basis that there was no transitional provision in that case. She argues the transitional provision in the case at bar makes it clear the *BPCPA Amendments* apply to her situation. However, in my view, the transitional provision in the *BPCPA Amendments* can support both a retroactive and a retrospective application, as both deal with a contract entered into before the coming into force of the *BPCPA Amendments*. The transitional provision in this case does not clearly support that the *BPCPA Amendments* were intended to apply retroactively.

Griffin v. Dell Canada Inc., 2010 ONCA 29

[43] In *Griffin v. Dell*, the plaintiff purchased in 2003 a computer from Dell. Legislation came into force in 2005 that prohibited arbitration clauses (*Ont. CPA*). The plaintiff's computer failed in 2007. The court found that “as not all the facts giving rise to the claim arose until after the effective date of the legislation, the legislation governs, even though the contract was concluded prior to the effective date”: at para. 38. Arbitration was therefore unavailable to Dell.

Lin v. Weng, 2022 ONCA 367

[44] In this case, the homeowners purchased a residential property and insured it in December 2014. In 2015, the homeowners rented out the residence to tenants. The

tenants caused a fire in March 2016 due to an illegal grow operation. The insurance company denied coverage due to an exclusion clause for illegal activity. The homeowners started an action in March 2018. In April 2018, amendments to the *Insurance Act*, RSO 1990, c I.8, came into force, making exclusion clauses for illegal activity applicable only to the person who caused the loss or who consented to it. The issue was whether the amendments applied to a claim for a loss that occurred before the amendments came into force.

[45] As the insurance policy and the fire both occurred prior to the amendments coming into force, for the amendments to have applied they must have been retroactive: at para. 28. The Court found the amendments did not apply retroactively, as there was no clear language in the legislation to so indicate: at para. 38.

Smith Estate v. National Money Mart Company, 2008 CanLII 27479 (ON SC)

[46] This was a class proceeding in Ontario against Money Mart commenced by payday loan borrowers. The complaint against Money Mart was the payday loans were illegal contracts with criminal rates of interest. Money Mart had tried to enforce its arbitration clause but was unsuccessful, and the action was certified as a class proceeding in January 2007.

[47] Money Mart in 2008 again brought a motion for a stay in favour of arbitration, arguing that two recent Supreme Court of Canada cases had changed the law in Ontario. In July 2005, the Ontario legislature proclaimed into force the *Ont. CPA*, which made arbitration clauses in consumer contracts invalid. The plaintiffs argued this prohibition applied retroactively. Justice Perell found the prohibition on arbitration clauses to apply retroactively: at para. 101. Alternatively, he held that the defendants were estopped from renewing their stay motion under the doctrine of issue estoppel: at paras. 180–182.

[48] On appeal, Perell J.'s ruling was upheld on the basis of issue estoppel. The Court of Appeal held Money Mart was precluded from relitigating the issue of whether the action should be stayed in favour of arbitration: 2008 ONCA 746 at para. 55. The

Ontario Court of Appeal did not comment on the issue of statutory interpretation, specifically on whether the amendments were retroactive. While the plaintiff relied on this decision to support her position the *BPCPA Amendments* apply retroactively, I find the fact that it was upheld on the ground of issue estoppel and not retroactivity limits the jurisprudential value of the decision to the plaintiff's position.

Do the *BPCPA Amendments* apply to the Plaintiff's case?

[49] Properly interpreted, the question before the court is: Do the *BPCPA Amendments* prohibit arbitration in the plaintiff's case? In my view, the *BPCPA Amendments* do not apply to the plaintiff's case. I interpret the transitional provision, where it is stated the *BPCPA Amendments* apply to contracts entered into before the coming into force of the *BPCPA Amendments*, to indicate they apply retrospectively, and not retroactively. The *BPCPA Amendments* apply to new disputes that arise under contracts entered into before March 2025, such that for those new disputes, the supplier can no longer seek to arbitrate. However, in my view, the language of the transitional provision is not sufficiently clear to indicate the government intended the *BPCPA Amendments* to apply retroactively, thus changing the parties' substantive rights under old contracts for disputes arising before March 2025. I come to this conclusion for three reasons:

[50] First, the transitional provision does not have any of the clear indication that the legislation is to apply retroactively, unlike in *Barbour*. The transitional provision does not reference retroactive application at all.

[51] Second, this interpretation is consistent with the government's explanation during the committee stage of the *BPCPA Amendments*, as recorded in Hansard, 1st Session, 43rd Parliament. On March 13, 2025, Steve Kooner, a member of the opposition, raised the potential impact of s. 203.001, asking the Attorney General Niki Sharma if "this clause is proposing retroactivity. Is it proposing retroactivity, meaning that valid contracts that were entered into pursuant to the current state of the law will be facing these new provisions under this particular section".

[52] The Honourable Niki Sharma responded:

There's a nuanced qualification of the question. It's not retroactive; it's retrospective. What that means is it doesn't reach back in time and say that the law was always this way. It says that the law is as of now this way, and any contracts that existed before...If you have a contract that you've entered into before the act is enforced, but it contains...And that's another important part. It's the exploitive provisions.

It's qualified by division 4 of part 2 that, in this context, a bad actor couldn't claim that the old contract is just going to keep rolling over and be renewed and bind the consumer into that. So it gives the ability of the law to apply to those types of situations to protect the consumer.

[Emphasis added.]

[53] I note in *Barbour* the Court also referenced *Hansard* debates as an aid in determining the intent of the legislature in statutory interpretation of the new legislation.

[54] Third, I find if the legislature had intended the *BPCPA Amendments* to be retroactive, it would have provided more guidance as to how those amendments would affect completed arbitration hearings, ongoing or in-process arbitrations, or arbitrations where the consumer was unsuccessful. Retroactive application has the potential to upset many completed arbitrations. It is unclear if the arbitration clause will be void only for arbitrations that have been started but not completed, or if retroactive application means all prior arbitrations are now set aside. If the legislature intended to make arbitration clauses void for disputes that occurred before the *BPCPA Amendments* came into force, the legal effect of completed arbitrations will be uncertain. Should those arbitration awards be set aside? Should the parties seek now to litigate the issues in a court proceeding? Consumers may face potential limitation issues if they have failed to commence actions at the relevant time. If the legislature had intended these effects, in my view, it would have laid out a more comprehensive scheme.

[55] For the reasons above, I find the *BPCPA Amendments* do not apply to the plaintiff's situation, as her dispute occurred before the *BPCPA Amendments* came into force. In other words, the *BPCPA Amendments* operate retrospectively, not retroactively. They apply to new disputes after March 31, 2025, where if a supplier had

a pre-existing contract that had an arbitration clause, the parties are no longer bound to arbitrate.

Has Rogers shown it has met the technical prerequisites for a stay?

[56] Rogers applies pursuant to s. 7 of the *Arbitration Act* for a stay of all of the plaintiff's claims, except her claim under s. 172 of British Columbia's *BPCPA*, in favour of mandatory arbitration. Rogers concedes that, as a consequence of the decision of the Supreme Court of Canada in *Seidel v. TELUS Communications Inc.*, 2011 SCC 15, claims under s. 172 of the *BPCPA* may be pursued in court notwithstanding the existence of a mandatory arbitration clause. For this reason, the defendants do not seek to stay the claim for relief under the s. 172 of the *BPCPA*.

[57] Section 7 of the *Arbitration Act* provides in part as follows:

Stay of court proceedings

7 (1) If a party commences legal proceedings in a court in respect of a matter agreed to be submitted to arbitration, a party to the legal proceedings may, before submitting the party's first response on the substance of the dispute, apply to that court to stay the legal proceedings.

(2) In an application under subsection (1), the court must make an order staying the legal proceedings unless it determines that the arbitration agreement is void, inoperative or incapable of being performed...

[58] The framework for determining if a stay should be granted in favour of arbitration has two components. First, the court must determine if the party seeking the stay has shown an arguable case they have met the technical prerequisites for the granting of a stay in favour of arbitration: *Peace River* at paras. 76, 84. In *Peace River* at para. 83, the Supreme Court of Canada set out the technical prerequisites for granting of a stay in favour of arbitration:

- an arbitration agreement exists;
- court proceedings have been commenced by a party to the agreement;
- the court proceedings are in respect of a matter that the parties agreed to submit to arbitration; and

- the party applying for a stay in favour of arbitration does so before taking any step in the court proceedings.

[59] The second step is to assess whether the party seeking to avoid arbitration has shown on a balance of probabilities that one or more of the statutory exceptions to arbitration apply, such as whether the arbitration clause is “void, inoperative or incapable of being performed”: *Peace River* at para. 87. If not, the court must grant a stay: *Peace River* at paras. 86–88. The mandatory nature of stay provisions across jurisdictions in Canada reflects the presumptive validity of arbitration clauses: *Peace River* at para. 88.

Does an arbitration agreement exist?

[60] Rogers has an arbitration clause at s. 10(a) of its terms of service, which is incorporated into the wireless service agreement. The terms of service and the wireless service agreement were provided to the plaintiff each date she made changes to her account from 2016 to 2021.

Has a court proceeding been commenced by a party to the agreement?

[61] The plaintiff started this action against Rogers on June 19, 2023.

Are the claims in respect of a matter the parties agreed to submit to arbitration?

[62] The plaintiff’s claims for damages arise from the alleged unauthorized screenshare which allowed the hacker access to her personal account information. These matters fall under the arbitration agreement as they are claims that arise from the parties’ agreement, services or equipment which is defined as any device or equipment used to access Rogers’ services.

Has Rogers applied for a stay before taking any steps in the court proceedings?

[63] Rogers has not taken any steps other than filing this application for a stay in favour of arbitration.

[64] The second part of the test is whether the arbitration agreement is void, inoperative or incapable of being performed. As earlier noted, the plaintiff advised she has abandoned her other arguments and sought to only rely on the *BPCPA Amendments*. The plaintiff had in her original response to the application raised issues with respect to her claim under the *Privacy Act*, her claims under the *Ont. CPA*, and her claims based on Quebec legislation, arguing these claims were not subject to the mandatory arbitration clause. Due to the change in her position, the court no longer needs to consider her arguments that these claims cannot be arbitrated. The onus is on the plaintiff to establish the arbitration agreement is null, void, inoperative or incapable of being performed. She has chosen not to do so.

[65] In any event, for the sake of completeness, I will deal with the plaintiff's arguments summarily. The plaintiff argued that a claim under the *Privacy Act* cannot be stayed due to s. 4 of the *Privacy Act*, which states "despite anything contained in another Act, an action under this Act must be heard and determined by the Supreme Court". The plaintiff relies on the Supreme Court of Canada's decision in *Douez v. Facebook, Inc.*, 2017 SCC 33 at para. 107, arguing only the Supreme Court of British Columbia has exclusive jurisdiction over claims under the *Privacy Act*. However, at issue in *Douez* was a forum selection clause in Facebook's terms of use, which stated that disputes had to be resolved in Santa Clara County according to the law of California. The Supreme Court of Canada stated that nothing in s. 4 of the *Privacy Act* suggests it was intended to override the parties' forum selection clauses in their contracts, and that if the legislature had intended to override forum selection clauses, it would have done so explicitly: *Douez* at para. 44.

[66] Ultimately, the Supreme Court of Canada did not enforce the forum selection clause not because claims under the *Privacy Act* had to be litigated in this court, but due to gross inequality of bargaining power and the quasi-constitutional privacy rights in the claim: *Douez* at para. 76. *Douez* did not hold that s. 4 of the *Privacy Act* overrides the parties' contractual provisions. In my view, *Douez* supports Rogers' position and not the plaintiff's position; as such, any claims under the *Privacy Act* are arbitrable.

[67] The plaintiff's claims under the *Ont. CPA* ignore the term of the Rogers agreement that any dispute is governed by the laws in which the plaintiff's billing address is located, which is B.C. She did not address why the forum selection clause should not be enforced. She relies on *Tahmasebpour v. Freedom Mobile Inc.*, 2024 BCSC 726 at para. 37, and argues that unlike in *Tahmasebpour*, where the court found the *Ont. CPA* did not apply to any of the claims advanced, she *has* advanced claims under that Ontario provincial legislation. However, s. 7 of the *Ont. CPA* bars arbitration of claims commenced in the Superior Court of Justice in Ontario. It does not prevent arbitration of claims brought in the B.C. Supreme Court.

[68] The plaintiff had originally advised the court need not rule on her Quebec claims, as she will not be proceeding with the Quebec claims in B.C. She has since then resiled from that position, and advised she was relying on the *BPCPA Amendments* to prevent arbitration for all her claims. In any event, the agreement with Rogers states that disputes are to be governed by the jurisdiction where the consumer resides, i.e. in B.C. I have not been given any reason not to enforce the arbitration clause for the Quebec claims.

[69] I find the claims against Rogers should be stayed in favour of arbitration, with the exception of the claims pursuant to s. 172 of the *BPCPA*.

Should the claims against Match also be stayed?

[70] The plaintiff argues the claims against Match should not be stayed, as the plaintiff does not have an arbitration agreement with Match. Match is not a party to Rogers' arbitration agreement. The plaintiff argues her claims against Match are independent of her claims against Rogers and that she alleges different wrongdoings against Match than as against Rogers. Further, the plaintiff argues Match filed its jurisdictional application more than 30 days after it filed a Form 108 Jurisdictional Response, failing to comply with Rule 21-8(5) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009.

[71] Match operates a chain of mobile device and accessory kiosks with retail locations across Western Canada, Ontario and Quebec. The kiosks work in

conjunction with a number of national wireless carriers, including Rogers, to service the mobile device and service plan needs of customers. The plaintiff's claims against Match are identical to the claims she makes against Rogers: breach of privacy contrary to Quebec statutes; breach of s. 1 of British Columbia's *Privacy Act*; negligence; and vicarious liability for the actions of the unknown mobile clerk. The plaintiff has some additional claims against Rogers.

[72] Match argues the principles of judicial economy and avoidance of multiplicity of proceedings favour a stay of the entire action where a stay is granted in favour of arbitration for one party, provided the claims are sufficiently intertwined: *Canadian Mortgage Experts Inc. v. Dominion Lending Centres Inc.*, 2022 BCSC 911 at para. 24; *Ts'kw'aylaxw First Nation v. Graymont Western Canada Inc.*, 2018 BCSC 2101 at paras. 31–35. In determining whether claims against parties and non-parties to an arbitration agreement are sufficiently intertwined to warrant a global stay of proceedings, courts have looked to whether the claims arise from the same factual matrix and conduct: *Kwon v. Vanwest College Ltd.*, 2021 BCSC 545 at para. 50.

[73] The plaintiff argues the decisions of *TELUS Communications Inc. v. Wellman*, 2019 SCC 19 [TELUS] and *3-Sigma Consulting Inc. v. Ostara Nutrient Recovery Technologies Inc.*, 2023 BCSC 100 [3-Sigma] have changed the analysis.

[74] The plaintiff argues TELUS says parties who have not agreed to an arbitration agreement cannot be kept out of court: TELUS at para. 102. However, I note the Supreme Court of Canada in TELUS was dealing with legislation that prohibited arbitration clauses for consumer contracts, with no such prohibition for business contracts. As such, in TELUS, the consumer customers could avoid arbitration while the business customers in the class action could not. In my view, TELUS does not deal with factual scenarios where a non-signatory to an arbitration agreement can nonetheless use the arbitration clause due to the factual intertwining of the claims between signatory and non-signatory parties, where there is no applicable legislation prohibiting arbitration.

[75] The court in *3-Sigma* went on and considered this issue, namely whether non-signatories can be bound by arbitration in certain circumstances: *3-Sigma* at para. 30. The court in *3-Sigma* considered whether the non-signatories can be a party to the arbitration agreement by being a nominee of a party, by agency or by a finding that the defendants' business was inextricably interwoven: *3-Sigma* at para. 32. If the plaintiff is arguing that the court ought not to consider whether the parties' claims are sufficiently interwoven, then I do not find either *TELUS* or *3-Sigma* to assist her.

[76] In my view, the claims against Match arise from the same factual matrix as against Rogers. All the claims the plaintiff has advanced against Match she has also advanced against Rogers. While she argues her theory of liability is different as between Match and Rogers, that may be addressed by the arbitrator. If the claims against Match are not stayed, there will be multiple proceedings and the possibility of inconsistent findings. Match may need to pursue a third-party claim against Rogers.

[77] While the plaintiff argues Match did not file its application for a stay within 30 days after it filed its jurisdictional response and has not complied with R. 21-8(5), it is unclear if the rule sets out a 30-day timeline. As I read R. 21-8(5), it provides the party disputing the court's jurisdiction a grace period of 30 days to file an application for a stay and provides that the party will be deemed not to be attorning to the court's jurisdiction if it does so. In any event, if an extension of time is required for Match, I grant the extension with respect to its filing of its jurisdictional application. It is clear on the record the plaintiff was advised both Rogers and Match will be seeking a stay in favour of arbitration. I have not been referred to any prejudice to the plaintiff to grant this extension.

[78] The claims against Match ought to be stayed in favour of arbitration.

Should there be a referral to the regulator or the attorney general of B.C.?

[79] The plaintiff sought at the hearing that the court refer this matter to Consumer Protection BC and/or the provincial Crown. As I understand it, the plaintiff argues the defendants ought to be investigated for not complying with the *BPCPA Amendments* and not abandoning this stay application.

[80] I have found against the plaintiff on the issue of interpretation of the *BPCPA Amendments*. There will be no referral.

Conclusion

[81] Rogers and Match’s application for a stay in favour of arbitration is granted, with the exception of the claims pursuant to s. 172 of the *BPCPA*.

“Chan J.”