

# COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Vandenbosch v. Rogers Communications  
Canada Inc.*,  
2026 BCCA 102

Date: 20260310  
Docket: CA50859

Between:

**Raelene Vandenbosch**

Appellant  
(Plaintiff)

And

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

Respondents  
(Defendants)

Before: The Honourable Mr. Justice Abrioux  
The Honourable Justice Winteringham  
The Honourable Justice Mayer

On appeal from: An order of the Supreme Court of British Columbia, dated  
June 27, 2025 (*Vandenbosch v. Rogers Communications Canada Inc.*,  
2025 BCSC 1199, Vancouver Docket S234439).

Counsel for the Appellant:

S. Lin  
A.S. Majidi  
P.J. Bates  
S. Cheong

Counsel for the Respondent, Rogers  
Communications Canada Inc.:

C. Spry  
E.H. Irving  
M. Power

Counsel for the Respondents, Match  
Transact Inc. dba WOW! Mobile Boutique,  
John Doe Mobile Clerk:

N. Lapper  
C. Yan

Place and Date of Hearing:

Vancouver, British Columbia  
January 9, 2025

Place and Date of Judgment:

Vancouver, British Columbia  
March 10, 2026

**Written Reasons by:**

The Honourable Mr. Justice Abrioux

**Concurred in by:**

The Honourable Justice Winteringham

The Honourable Justice Mayer

**Summary:**

*This appeal is primarily about whether the respondents should be granted a stay of proceedings in favour of arbitration despite amendments to the Business Practices and Consumer Protection Act, which void arbitration clauses in consumer contracts entered into before the enactment of the amendments. On the respondents' applications for stays of proceedings, the judge found that the amendments did not apply to the appellant's claim, which arose before the amendments came into force. The judge also exercised her discretion to extend the stay of proceedings to the Match respondents because the claims against Match and Rogers arose from the same factual matrix.*

*Held: Appeal dismissed. The judge was correct that the amendments were retrospective but not retroactive, and therefore did not apply to the appellant's claims which arose prior to the amendments being enacted. The appellant may not raise new arguments or revive abandoned arguments in this Court. The judge also did not err in extending the stay to the Match respondents.*

**Reasons for Judgment of the Honourable Mr. Justice Abrioux:**

**Introduction**

[1] The primary issue on this appeal is one of statutory interpretation to determine whether the chambers judge erred in granting a partial stay of proceedings in favor of arbitration. The question is whether amendments, in Bill 4, *Business Practices and Consumer Protection Amendment Act, 2025*, 1st Sess., 43rd Parl., British Columbia, 2025 (assented to 31 March 2025) (the "Amendments"), to the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 [BPCPA] rendered void an arbitration clause in a consumer contract entered into and for which a claim arose before the Amendments came into effect.

[2] In reasons for judgment indexed as *Vandenbosch v. Rogers Communications Canada Inc.*, 2025 BCSC 1199, Justice Chan held that the Amendments did not apply retroactively. Accordingly, the appellant was bound by the arbitration clause in her wireless services agreement, and her claim against Rogers was stayed in part, in favour of arbitration. The judge also exercised her discretion to extend the stay of proceedings to the Match respondents because the claims against Match and Rogers arose from the same factual matrix.

[3] The appellant challenges the order granting the stays on the grounds that the judge erred in: (1) her interpretation of the Amendments; (2) finding that the arbitration agreement had been brought to her attention, and was therefore *prima facie* established; (3) finding that her claims under the British Columbia *Privacy Act*, R.S.B.C. 1996, c. 373 and Ontario *Consumer Protection Act, 2002*, S.O. 2002, c. 30, Schedule A [*Ont. CPA*] were legally arbitrable; and (4) extending the stay to Match.

[4] In the alternative, the appellant submits that even if the judge did not make any reviewable errors, this Court should nonetheless lift the stay.

[5] The second ground raises a new issue on appeal and the third seeks to revive arguments that the appellant intentionally abandoned for strategic reasons during the hearing in the British Columbia Supreme Court.

[6] For the reasons that follow, I would dismiss the appeal. In doing so, I would not grant leave to the appellant to argue a new issue on appeal or revive in this Court arguments that had been abandoned below, nor would I order that the stays be lifted.

### **Background**

[7] The appellant, Raelene Vandenbosch, uses Rogers Communications Canada Inc. (“Rogers”) as the service provider for her personal cell phone. She has been a customer of Rogers since 2015. She alleges that the respondents Rogers and Match are liable for an unnamed hacker stealing bitcoins held in her cryptocurrency accounts, which were allegedly valued at \$534,529.87 at the time of the theft, and more than \$1 million shortly thereafter.

[8] Rogers provides the appellant with cellular and mobile data services pursuant to a wireless services agreement, which incorporates Rogers’ terms of service (the “Agreement”). The Agreement was provided to the appellant at least seven times between 2016 and 2021. It contains an arbitration clause, which provides:

**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 that arbitration. Any arbitration will be conducted in accordance with our Arbitration Protocol, which is available at **rogers.com/terms**.

[Emphasis in original.]

[9] Match operates mobile phone kiosks across Canada, and is an authorized dealer of Rogers products, such as cellular telephone plans. On June 30, 2021, a hacker allegedly gained access to the appellant’s Rogers account, personal information, and cryptocurrency account. The hacker allegedly gained access to that information through a scheme in which they called a mobile phone kiosk in Québec operated by Match. They pretended to be a Rogers technician, and the clerk at the kiosk gave them access to the compromising information. The appellant had never, herself, done any business with Match or its subsidiaries—her information was on its systems through Match’s dealings with Rogers.

### **Procedural background and the Amendments**

[10] The procedural background is relevant to the grounds of appeal.

[11] By way of a notice of civil claim dated June 19, 2023, the appellant initiated proceedings against Rogers, Match, a John Doe Mobile Clerk, and a John Doe Hacker.

[12] The appellant alleges that Rogers breached a series of federal, British Columbia, Ontario, and Québec statutes. Namely, the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, the *BPCPA*, the *Privacy*

*Act*, the *Ont. CPA*, the *Civil Code of Québec*, the *Québec Charter of Human Rights and Freedoms*, C.Q.L.R. c. C-12, and *An Act to amend the Act respecting the protection of personal information in the private sector*, S.Q. 2001, c. 73 (the “Statutory Causes of Action”). The appellant also pleads the common law causes of action of breach of contract, negligence, and negligent misrepresentation (the “Common Law Causes of Action”).

[13] On December 8, 2023, Rogers filed a notice of application (the “Rogers Stay Application”) seeking a stay in favour of arbitration of all the appellant’s causes of action except those under s. 172 of the *BPCPA*, which the parties agree is within the exclusive jurisdiction of the British Columbia Supreme Court and therefore not arbitrable.

[14] On May 14, 2024, Match also filed a notice of application seeking a stay of proceedings in favour of arbitration (the “Match Stay Application”, together with the Rogers Stay Application, the “Stay Applications”).

[15] On May 23, 2024, the appellant filed a response to the Rogers Stay Application in which she conceded, among other things, that: (1) the prerequisites for a court to grant a stay in favour of arbitration (including the existence of an arbitration agreement between the parties) had been met; and (2) the Common Law Causes of Action and some of the Statutory Causes of Action were indeed arbitrable (the “Concessions”).

[16] The hearing commenced on November 7, 2024. At the hearing, the appellant indicated she was abandoning the causes of action alleged in her notice of civil claim that were based on Québec laws—instead pursuing those causes of action before the Superior Court of Québec (the “Abandoned Causes of Action”).

[17] As a result of the Concessions and the Abandoned Causes of Action, the issues for determination with respect to the Rogers Stay Application were focused on whether the appellant’s claims under the *Privacy Act* and the *Ont. CPA* were arbitrable and should be stayed in favour of arbitration.

[18] Submissions were not completed, and a continuation of the hearing was set for April 11 and May 20, 2025.

[19] After the initial hearing but before the continuation, the Amendments came into force. On February 25, 2025, the Attorney General, the Honourable Niki Sharma introduced the Amendments in the Legislature. On March 31, 2025, they received royal assent.

[20] As a result of the Amendments, the *BPCPA* now contains the following provisions regarding dispute resolution clauses:

**Definitions**

**14.1** (1) In this Division:

...

**"consumer contract"** means a contract relating to a consumer transaction;

**"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.

...

**Dispute resolution and class proceeding term or acknowledgment prohibited — consumer**

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

(2) A dispute resolution 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.

...

**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.

[Emphasis added.]

[21] When the hearing continued on April 11, 2025, appellant's counsel advised the judge that the appellant was withdrawing her Concessions and her position on the Abandoned Causes of Action. In fact, she was abandoning all her arguments

and positions from November 7, 2024. She stated she was now opposing the Rogers Stay Application on a single basis, being that, as a result of the Amendments, the arbitration clause was void. Accordingly, she argued, Rogers had not met the first of the four technical prerequisites for a stay in favour of arbitration, as set out in *Peace River Hydro Partners v. Petrowest Corp.*, 2022 SCC 41 at para. 83 [*Peace River*]*—*whether an arbitration agreement exists.

[22] As her counsel advised the judge:

And the main point is the legislature has spoken. The clause that -- The arbitration agreement in question in this case, the legislature passed a law on March 31st that bans arbitration provisions. And I think that's the complete answer here. We don't need to look at any of the case law to arrive at the conclusion the plaintiff is looking for, that the arbitration clause is void.... We're not going to be repeating the arguments that we made, and, in fact, we're going to withdraw those, and we will also be withdrawing the concession we made as part of that argument. As part of the argument we've made some concessions on Quebec. We're withdrawing those at the same time. All we need is the two provisions in the BPCPA that my friend has been fully aware of for more than a month. We're ready to proceed.

And it's really just basic reading of a statute that we need to do.

THE COURT: All right. It sounds like you're changing your position quite considerably from when we first started, so I don't think it's as simple as you're going to read these two provisions and we're going to complete today.

CNSL S. LIN: Well, --

THE COURT: If you are going to be not relying on the previous arguments, withdrawing concessions, I think, in fairness, you need to put this in writing.

CNSL S. LIN: If necessary, we can just simply strike out everything in our application response and put the two provisions of the statute in there. Given the change in the -- very recent change in the law, March -- it was March 31st that it received Royal assent. I think we're -- I think it would be prudent to, of course, put it in the application response. We can certainly do that during the break. But in terms of completing today, I think the court should hear our argument.

[Emphasis added.]

[23] On April 14, 2025, in accordance with what her counsel had advised the court, the appellant filed an amended application response (the "Amended Response") to the Stay Applications. She added two sections to her arguments. One was titled "The BC Legislature Bans Arbitration Agreements". It explains the background to the Amendments. The other argues that, as a result of the

Amendments, the “Rogers’ Arbitration Agreement is Illegal and Void”. The Amended Response also contained substantial deletions in the Legal Basis section, including removals of sections entitled:

- “Claims Under BC Law are Only Partly Arbitrable”;
- “Statutory Claims Based on the *Ontario Consumer Act* are Not Arbitrable”;  
and
- “Non-Arbitrable Claims Must Proceed in Advance of Arbitrable Claims”.

**The chambers decision**

[24] In summary, the judge made four decisions relevant to this appeal:

- a) Rogers had met the technical requirements for the granting of the stay. In particular, an arbitration agreement existed, and the terms of service and wireless service agreement were provided to the appellant on each date she made changes to her account, several times between 2015 and the date of the alleged hack: Reasons for Judgment at paras. 60–69.
- b) The Amendments were intended to have a retrospective, but not retroactive effect: Reasons for Judgment at para. 55.
- c) The appellant had abandoned her arguments that her claims under the *BPCPA* and the *Ont. CPA* were not arbitrable: Reasons for Judgment at paras. 15, 64. Nonetheless, the arguments on these issues could be disposed of “summarily”: Reasons for Judgment at para. 65. In the judge’s view, those claims were arbitrable: Reasons for Judgment at para. 69.
- d) The stay should be extended to the Match defendants. The judge exercised her discretion on the basis that the claims arose from the same factual matrix. Therefore, multiple proceedings and the risk of inconsistent findings would be avoided by extending the stay: Reasons for Judgment at paras. 70–78.

[25] I shall consider the Reasons for Judgment further in relation to the various grounds of appeal.

**On appeal**

[26] The appellant frames the issues on appeal as being whether the judge erred:

- a) in her statutory interpretation analysis and by concluding that the Amendments did not have a retroactive effect;
- b) in finding a *prima facie* existence of an arbitration agreement when part of the wireless agreement was never brought to the appellant's attention;
- c) in finding that the appellant's claims under the *Privacy Act* and the *Ont. CPA* were arbitrable at law; and
- d) in extending the stay to Match.

[27] The appellant also raises a fifth issue: whether the stay should be lifted in any event.

[28] In its primary position, Rogers only substantively engages with the first issue. It submits that the judge gave effect to the Amendments as they were intended by the Legislature. It further argues that the second, third, and fifth issues are new on appeal and are contrary to the appellant's position before the judge. Specifically, once the Amendments came into force, the appellant amended her application response to abandon her claims that the wireless agreement was never brought to her attention, and that the *Privacy Act* and the *Ont. CPA* claims were not arbitrable. Rogers says she should not be permitted to revive those claims in this Court.

[29] Match adopts Rogers' arguments, and focuses on the fourth issue: whether the stay should be extended to it when it was not a party to the arbitration agreement. As a threshold issue, it argues that the appellant's abandonment of her claims included her claim that the stay should not be extended to Match. This is

therefore an impermissible new issue on appeal. In the alternative, it argues that the interests of judicial economy weigh towards extending the stay over Match.

## **Discussion**

### **Issue #1: Did the judge err in her statutory interpretation analysis?**

#### ***The legal framework***

[30] The standard of review regarding questions of statutory interpretation is correctness: *N.E.T. v. British Columbia (Attorney General)*, 2018 BCCA 380 at para. 23. The starting point must always be the words of the statute: *Manns v. Vancouver Island Health Authority*, 2024 BCCA 110 at paras. 15, 17.

[31] There is also the well-established modern principle of statutory interpretation, which provides that the interpretation exercise involves not only its text, but also its context and purpose: *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42 at para. 26 [*Bell ExpressVu*]. However, resort to external interpretive aids should be limited to cases where the statute itself exhibits “genuine ambiguity” as between multiple reasonable interpretations: *Bell ExpressVu* at para. 29; *Bennison v. Bennison*, 2025 BCCA 195 at para. 24.

#### ***The Reasons for Judgment***

[32] Having outlined the scope of the Amendments and the parties’ positions, the judge framed the question as:

[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.

[33] The judge then explained the difference between retroactive and 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.

[34] The judge noted that she considered “the key issue for determination” to be whether the legislation was retroactive or retrospective: Reasons for Judgment at para. 23. In her view, this case was about whether the Amendments applied retroactively (to disputes, like the appellant’s, arising before the Amendments came into force) or retrospectively (to contracts arising before they came into force, like the appellant’s contract with Rogers, but only for disputes arising after the Amendments came into force): Reasons for Judgment at para. 23.

[35] The judge then returned to *Lin v. Weng*, 2022 ONCA 367, to explain that there is a strong presumption that the Legislature does not intend for laws to apply retroactively: Reasons for Judgment at para. 24. While the overriding question remains the intention of the Legislature, a law will only apply retroactively where the Legislature has clearly stated so within the formulation of the law: Reasons for Judgment at para. 24, citing *Lin* at para. 29.

[36] The judge then addressed two points raised by the appellant as to the application of the presumption against retroactivity. First, she held that the existence of a transitional provision in legislation does not preclude the court from considering the presumption: Reasons for Judgment at paras. 29–34. Second, she found that the Amendments do not have a “clear nexus” with a risk to the public, and therefore do not fall into an established exception to the presumption, for laws made for the

purpose of public protection: Reasons for Judgment at paras. 35–38, citing *Tran v. Canada (Public Safety and Emergency Preparedness)*, 2017 SCC 50.

[37] The judge went on to consider several authorities cited by the parties to determine how they would assist in her analysis. Notably, she reasoned that *Dell Computer Corp. v. Union des consommateurs*, 2007 SCC 34 [*Dell*] was useful in this case, since it concerned the application of consumer protection legislation: Reasons for Judgment at paras. 40–42. The appellant had argued that *Dell* was distinguishable because there was no transitional provision in that case. With respect to the application of *Dell*, the judge held:

[42] ...[T]he 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.

[38] The judge distinguished the trial decision in *Smith Estate v. National Money Mart Co.* (2008), 57 C.P.C. (6th) 99, 2008 CanLII 27479 (Ont. S.C.J.) [*Money Mart ONSC*]. That case involved a class proceeding regarding payday loans. The defendant, Money Mart, brought a second motion for a stay of proceedings in favour of arbitration. The motion judge found that a prohibition against arbitration clauses in the *Ont. CPA* applied retroactively. In the alternative, he held that the principle of issue estoppel prevented the defendants from renewing their stay motion. On appeal, the Ontario Court of Appeal did not consider the statutory interpretation issue, instead upholding the motion judge’s decision on the basis of the estoppel issue, alone: *Smith Estate v. National Money Mart Company*, 2008 ONCA 746.

[39] The judge considered the applicability of *Money Mart ONSC*. She found that, “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”: Reasons for Judgment at para. 48.

[40] She then turned to the circumstances of this case, finding that the words of the transitional provision—“contracts entered into before, on or after the coming into

force” of the relevant portions of the Amendments—indicated that they were to apply retrospectively, not retroactively. That language was not sufficiently clear to indicate that the Legislature intended to apply the legislation retroactively, but it was sufficient to meet the less onerous threshold of applying retrospectively. Accordingly, she held that the Amendments apply to contracts entered into before March 31, 2025, but only to new disputes arising after March 31, 2025: Reasons for Judgment at para. 49.

[41] In reaching this conclusion, the judge observed:

- a) The transitional provision, as distinguished from the provision in *Barbour v. The University of British Columbia*, 2010 BCCA 63, does not contain any clear indication that the legislation is to apply retroactively. In fact, it does not reference retroactive application at all: Reasons for Judgment at para. 50.
- b) In the Hansard debates, the Amendments’ sponsor, the Honourable Attorney General Niki Sharma, stated “[i]t’s not retroactive; it’s retrospective”: Reasons for Judgment at paras. 51–53.
- c) The structure of the *BPCPA* shows that the intention of the Legislature is to make the transitional provision retrospective, rather than retroactive. There is no guidance in the Amendments for what will become of completed and ongoing arbitrations in consumer agreements. If the Legislature intended retroactive application, it would have provided a more comprehensive scheme. This militates towards retrospective, rather than retroactive application: Reasons for Judgment at para. 54.

***The parties’ positions***

[42] The appellant submits that the judge erred in law at the outset by failing to consider, or even state in her reasons, the modern approach to statutory interpretation. She argues the judge’s analysis must commence with the legislative text of ss. 14.3(2) and 203.001. In her submission, the text of s. 14.3(2) is clear that

arbitration agreements before March 31, 2025 are now void. She argues that the text speaks for itself, and the judge’s interpretation renders the transitional provision superfluous. She argues that the judge fell into error by proceeding directly to the presumption against retroactivity without first giving effect to a plain reading of the text of the transitional provision.

[43] She also says the judge’s interpretation creates an absurd consequence where the same agreement is now void for some situations but not others.

[44] Rogers agrees that the Amendments apply to consumer contracts entered before the Amendments came into force, and that the appellant’s contract was a “consumer contract”. It argues, however, based on the principles of statutory interpretation—specifically, applying the presumptions against retroactive and retrospective legislation—the intention of the provision is clearly to apply retrospectively, but not retroactively.

[45] Accordingly, Rogers submits the judge was correct in finding that the Amendments do not operate retroactively, but only retrospectively and that they do not apply to the appellant, whose dispute arose before March 31, 2025.

***Analysis***

[46] I will first address the appellant’s submission that the judge erred in law by not conducting or even stating the modern approach to statutory interpretation, but commenced her analysis by considering the presumption against retroactivity.

[47] In my view, the Reasons for Judgment, as is often the case, reflect the manner in which the issues were addressed by the parties. From my review of the transcript of the proceedings on April 11, 2025, it is evident that the appellant’s counsel used both “retroactive” and “retrospective” to describe the Amendments. In fact, counsel for Rogers noted this discrepancy at the hearing and stated that the appellant seemed to be changing her position on this issue.

[48] Be that as it may, the appellant’s counsel did submit that:

And this all goes to, really, the basic, I guess, principle of statutory interpretation. There's a presumption that a statute is not retroactive or not retrospective. And my point is twofold: One, that presumption is not even engaged in this scenario, in any event, but even if it is engaged, it is squarely rebutted according to what the legislature has said in the transitional provision.

[49] The appellant's counsel then referred the judge to Ruth Sullivan, *The Construction of Statutes*, 7th ed. (Toronto: LexisNexis Canada, 2022) at s. 25.07, to argue that the *BPCPA* was enacted with the purpose of public protection, and the presumption against retroactivity therefore does not apply.

[50] In summarizing the parties' positions, the judge stated:

**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.

[Emphasis added.]

[51] Later in her reasons the judge observed:

[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.

[Emphasis added.]

[52] I would not accede to the appellant’s initial critique of the judge’s reasoning. In light of the positions taken by the parties, the judge did not err in approaching the issue of statutory interpretation the way she did. That said, the judge is presumed to know the law as it relates to the modern approach to statutory interpretation: *Garcha v. 690174 B.C. Ltd.*, 2023 BCCA 376 at para. 29. There is nothing in the Reasons for Judgment to suggest that she did not adhere to the modern principle.

[53] The judge considered the text of s. 203.001, and found it was “not sufficiently clear to indicate the government intended the [Amendments] to apply retroactively”. Accordingly, the Amendments did not change the parties’ substantive rights for disputes that arose before March 31, 2025: Reasons for Judgment at para. 49.

[54] The appellant submits that s. 14.3(2) of the *BPCPA* is clear in that it provides that “[a] dispute resolution term or acknowledgment...in a consumer contract is void”. So too, she argues, are the words in the transitional provision, s. 203.001, clear—“entered into before, on or after” March 31, 2025.

[55] In my view, while s. 203.001 is clear to the extent that it has backwards-looking application, the section does not specifically provide, as it could have, that the Amendments apply to claims that had arisen before March 31, 2025. Therefore, it does not meet the high burden of applying retroactively.

[56] The judge—after having found that the transitional provision was unclear about the methodology in which it was backwards-looking—correctly considered the differences between retroactive and retrospective legislation. In doing so she referred to *Lin*, where the Ontario Court of Appeal discussed the presumption against retroactivity, and outlined the differences between retroactive and retrospective legislation. That case was also about whether a piece of backwards-looking legislation applied to a claim that arose before the amendments to that legislation came into force. Specifically, it was about an existing insurance policy in respect of a fire event that had occurred before relevant amendments to the *Insurance Act*, R.S.O. 1990, c. I.8, came into force.

[57] The Court held that the amendment contained no wording to suggest that it was to apply to claims for losses that had already occurred under existing contracts, or that it was to come into force on a date in the past: *Lin* at para. 31. The Court then considered whether there were any other indications that the Legislature intended the provision to apply retroactively, including the wording of the section and the meaning to be ascribed to the use of the term “claim”: *Lin* at para. 37. Ultimately, the Court concluded that the section did not apply retroactively, on the basis that if the Legislature had intended the section to be retroactive “it would have used clear language to so state”: *Lin* at para. 38.

[58] *Lin* was entirely in keeping with the *ratio* in *Dell*. The judge in this case also relied on *Dell* to come to her conclusion:

[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 [them] 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 acts 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.

[Emphasis added.]

[59] I agree with the judge that *Dell* is of assistance despite the absence of a transitional provision in that case. The transitional provision in s. 203.001 of the

*BPCPA* is ambiguous—this triggers the need to discern whether the Amendments are retroactive or retrospective. With respect to this second stage of analysis, when the claims arose in relation to the date the Amendments were enacted is similar to *Dell*:

116...All the facts of the legal situation had therefore occurred once Mr. Dumoulin notified Dell of his claim. Thus, all the facts giving rise to the application of the binding arbitration clause had occurred in their entirety before Bill 48 came into force.

[Emphasis added.]

[60] On this point, it bears repeating that the appellant had commenced the underlying proceeding in June 2023.

[61] The appellant argues that *Dell* can be distinguished on the basis that it concerned the application of certain provisions of the *Civil Code of Québec*. I disagree. When one reads *Dell* as a whole, the Court was considering the principles of statutory interpretation generally and was not restricting its analysis to the *Civil Code of Québec*.

[62] The judge also correctly instructed herself on the issue of retroactivity by considering *Barbour*, where the Legislature was found to have clearly and expressly stated an intention for the law to apply retroactively. In that case, the applicable transitional provisions provided that the amendments applied despite any pre-existing provisions, “despite any decision of a court to the contrary”, and that if a rule made under the former law would now be authorized under the new law, it was “conclusively deemed valid for all purposes.” The transitional provision in that case further provided that it was “retroactive to the extent necessary to give full force and effect to its provisions”: *Barbour* at para. 8.

[63] In *Barbour* at para. 22, this Court concluded that “the Legislature ha[d] done exactly that which courts say it must do in order to pass legislation with retroactive effect—express the intention clearly. We see no room for a contrary conclusion.”

[64] Returning to this case, the Amendments are not so certain to ground the same conclusion. There is nothing in the Amendments to suggest that the Legislature intended them to apply to disputes that pre-date them. Section 203.001 states only that it applies to “contracts entered into before, on or after” March 31, 2025 and s. 14.3(2) states only that arbitration clauses in consumer contracts are void. Contrary to the legislation at issue in *Barbour*, these provisions, in my view, simply provide that the legislation is backwards-looking *vis a vis* contracts that are already in existence. They do not state whether the Amendments should, or should not, apply to claims that have already arisen. That question is left to be determined by considering the intention of the Legislature within the context of the legal framework I have described.

[65] I agree with Rogers that if the Legislature intended the Amendments to apply in circumstances where a dispute had already arisen, it would have done so expressly. As it submits in its factum, “[t]he Legislature knows how to create retroactive legislation; it knows how to create legislation that applies as of a date prior to its coming into force; and it knows how to create legislation that applies to facts that have already occurred. *Barbour* is a clear example”. Indeed, the Legislature is presumed to know the law: *Laursen v. Director of Crime Victim Assistance*, 2017 BCCA 8 at para. 65. In my view, the Legislature would have used specific language, as they did in the legislation in *Barbour*, if the Amendments were intended to be retroactive.

[66] I would also agree with the judge that if the Legislature had intended the Amendments to be retroactive it would have provided guidance as to how they would affect completed arbitration hearings, or those which have already commenced: Reasons for Judgment at para. 54. The transitional provisions in the Amendments are materially different from those at issue in *Barbour*, in which there was no room for ambiguity as to a retroactive effect. As the judge correctly observed, unlike *Barbour*, “[t]he transitional provision does not reference retroactive application at all”: Reasons for Judgment at para. 50.

[67] In my view, the judge’s consideration of Hansard was appropriate and useful for the interpretative task at hand and did not afford undue weight to it: see *Li v. Rao* 2019 BCCA 265 at para. 65. She correctly observed that the Court in *Barbour* referenced Hansard for this same statutory interpretation purpose: Reasons for Judgment at para. 53. In performing this exercise, the judge explained:

[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.

[Underlining in original.]

[68] This Hansard excerpt supports the conclusion that the legislation was not intended to be retroactive. The question was put to the sponsor of the Amendments. The Attorney General explained the intention was to apply the legislation retrospectively, not retroactively. She referred to the “evil” that the Amendments were intended to address. After this clarification was provided to the Members of the Legislative Assembly, the Amendments were not modified as they went through the process to become law.

[69] I would add that the judge was correct in her assessment that there was no sufficient “nexus” to a risk to the public in order to remove the presumption against retroactivity: Reasons for Judgment at paras. 35–38. The public protection exception

only applies to very specific laws aimed at singular and identifiable risks to the public: *Tran* at para. 50. It does not apply to the broad legislation in this case, which applies to any number of allegedly predatory arbitration clauses.

[70] I do not find the appellant's reliance on *Money Mart ONSC* to be helpful. In contrast, *Lin*, which was decided by the Ontario Court of Appeal many years after *Money Mart ONSC*, is of assistance for the reasons articulated by the judge.

[71] I will briefly comment on an additional argument advanced by the appellant. She argues that s. 14.3(3) reinforces her submission that the Amendments were intended to have retroactive effect. That subsection provides:

(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.

[72] She argues that this section gives a consumer the right to choose whether their claim is arbitrated. As a result, individuals with claims that have already arisen may choose whether to continue arbitration or submit to the jurisdiction of the courts.

[73] I disagree. This subsection does no more than provide that if parties wish to arbitrate claims in the future they can agree to do so notwithstanding ss. 14.3(1) and (2).

[74] The appellant also submits that this Court should take into account the interpretation of s. 203 of the *BPCPA* from *Seidel v. Telus Communications Inc.*, 2007 BCSC 1092 at para. 17. She argues that the language in ss. 203(1) and (2) mirrors s. 203.001. Section 203 reads in part:

**203(1)** Subject to subsection (2), Parts 2 to 4 apply to contracts and consumer transactions entered into before, on or after the coming into force of those Parts.

(2) Subject to subsection (3), a contract or consumer transaction entered into before the coming into force of Parts 2 to 4 is not invalid or does not contravene this Act if the contract or consumer transaction complies with the provisions of a former Act or the *Cemetery and Funeral Services Act*.

[75] Section 203 was the transition provision to enact the whole of the *BPCPA*, replacing the former *Trade Practice Act*, R.S.B.C. 1996, c. 457, and portions of the former *Consumer Protection Act*, R.S.B.C. 1996, c. 69.

[76] Indeed, the language in s. 203(1) is similar to s. 203.001, which also applies to “contracts entered into before, on or after the coming into force” of the Amendments.

[77] The appellant is also correct that this provision was found to be “retroactive” in *Seidel*:

[17] ***Furthermore, s. 203(1) expressly states that the relevant portions of the BPCPA are retroactive as they are operative with respect to transactions that occurred prior to its enactment. Section 203(2) limits this retroactive effect, but it only applies when a pre-BPCPA transaction did not contravene the previous legislation; here the plaintiff claims that the pre-BPCPA transaction did contravene the previous legislation. In fact, s. 203(2) means that a particular transaction which was valid under the previous legislation is not made retroactively actionable under the BPCPA; the section operates as a defence and is not a basis for pursuing a claim.***

[Emphasis in original.]

[78] I do not agree, however, with the appellant that *Seidel* is of assistance in this case. With respect, the judge in *Seidel* uses the term “retroactive” imprecisely. He simply states that s. 203(1) applies to transactions that occurred prior to the enactment of the *BPCPA*. That feature applies to both retroactive and retrospective legislation: *Lin* at para. 27. I would add that even if para. 17 of *Seidel* was read literally, it is contrary to *Dell*, which contains a more detailed analysis and is binding on this Court.

### **Conclusion**

[79] In my view, the judge was correct in her statutory interpretation analysis. She did not err in concluding that the Amendments operated retrospectively, not retroactively. They do not apply to the appellant’s claims that were the subject of the Stay Applications. All the facts giving rise to the dispute occurred before the Amendments came into force and the Amendments apply only to disputes that arise

after March 31, 2025. These disputes include those which relate to contracts entered into before March 31, 2025.

[80] I would not accede to this ground of appeal.

**Issue #2: Did the judge err in finding a *prima facie* arbitration agreement?**

[81] Issues #2 and #3 on this appeal have in common whether this Court should consider grounds of appeal that are either new in this Court or were abandoned in the hearing before the judge in the British Columbia Supreme Court.

[82] Recently, in *Jin v. British Columbia (Director of Civil Forfeiture)*, 2026 BCCA 29, this Court reviewed the applicable framework for considering new issues on appeal:

[38] It is well-established this Court has authority to consider issues for the first time on appeal. The guiding principles are helpfully summarized in *Mills v. O'Connor*, 2025 BCCA 34:

[71] [The] discretion to entertain a new issue on appeal will generally be exercised in exceptional circumstances “where the interests of justice require it and where the court has a sufficient evidentiary record and findings of fact to do so”: *Quan v. Cusson*, 2009 SCC 62 at para. 37; *Athey v. Leonati*, 1996 CanLII 183 (SCC), [1996] 3 S.C.R. 458 at para. 51. As a general rule, a court of appeal should avoid considering new issues on appeal unless it is clear that, “had the question been raised at the proper time, no further light could have been thrown upon it”: *Performance Industries Ltd. v. Sylvan Lake Golf & Tennis Club Ltd.*, 2002 SCC 19 at para. 32, citing *Lamb v. Kincaid* (1907), 28 S.C.R. 516 at 539.

[72] The test for determining whether a new issue should be considered on appeal has three components, as framed by Saunders J.A. in *Gorenshtein v. British Columbia (Employment Standards Tribunal)*, 2016 BCCA 457 at para. 45. The court should consider whether:

- a) The issue is truly “new”;
- b) The evidentiary record is sufficient to decide the issue; and
- c) The interests of justice support granting an exception to the general rule against hearing new issues, considering the potential prejudice to the opposing party.

[83] This Court is also reluctant to permit a party to raise on appeal new arguments or arguments it has resiled from in the proceeding under appeal. The discretion to entertain new arguments on appeal should be exercised sparingly, and even more so when a party has deliberately resiled from a position below: 1052387 *B.C. Ltd. v. Forjay Management Ltd.*, 2024 BCCA 81, at paras. 63–64 [*Forjay*].

[84] In the Reasons for Judgment, the judge found that:

[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 appellant] each date she made changes to her account from 2016 to 2021.

[85] The appellant now seeks to challenge this finding on appeal on the basis that Rogers breached the Canadian Radio-television and Telecommunications Commission, *Telecom Regulatory Policy CRTC 2017-200* (Ottawa: CRTC, 2017) (the “Wireless Code”). The appellant argues that Rogers never disputed her contention that the Rogers arbitration protocol was not brought to her attention. She also argues that Rogers failed to provide a “permanent copy” of the arbitration protocol to her. She acknowledges she received Rogers’ terms of service in the Agreement, but says those terms of service merely provided a URL link to the arbitration protocol.

[86] The arbitration protocol, itself, is a document that sets out the procedures applicable to any arbitration initiated by a Rogers customer.

[87] The appellant argues that Rogers’ delivery of the arbitration protocol via URL contravened art. B(1)(i) of the Wireless Code. That article provides that the “service provider must give the customer a **permanent copy** of the contract and related documents, in the format of the customer’s choosing (electronic or paper), at no charge” (emphasis in original). This alleged contravention of the Wireless Code, she says, should void the arbitration agreement.

[88] The appellant acknowledges that this issue was not before the judge, and it is therefore a new issue on appeal. But she argues this Court should entertain the

question, nonetheless. She says that the record is sufficient to determine whether the Wireless Code was brought to her attention, and no prejudice will result if the legal effect of the Wireless Code is considered on appeal.

[89] Rogers submits that the arbitration protocol was hyperlinked in Rogers' terms of service, which were contained in the Agreement.

[90] It argues that in her initial response to the Rogers Stay Application, the appellant had conceded that the prerequisites for a stay were met, and in particular that an arbitration agreement existed. It was therefore unnecessary for Rogers to address any responding arguments or file any evidence on the issue. When the hearing continued on April 11, 2025, the appellant resiled from this concession. She elected to oppose the Stay Applications solely on the issues related to interpretation of the Amendments. In that regard, the only submission made as to the arbitration agreement itself was that it was void due to the retroactive nature of the Amendments.

[91] Rogers' position is that the appellant made the strategic decision not to make these arguments before the judge, and as a result, she should not be provided with the opportunity to do so now.

[92] This is not, in my view, one of those exceptional circumstances where it is in the interests of justice to have this issue considered for the first time on appeal. The issue of whether there was an enforceable agreement to arbitrate could have been argued before the judge.

[93] In fact, it was argued, until the appellant resiled from that position at the April 11, 2025 hearing. The appellant had the opportunity to include in this submission that the arbitration protocol was not brought to her attention (in purported violation of the Wireless Code) and therefore the arbitration agreement was void. Any arguments from the parties on this point could have included whether the appellant had agreed to receive an electronic copy of the arbitration protocol by accessing the hyperlink.

[94] In any event, notwithstanding the fact that submissions concerning the Wireless Code were not made to the judge, it was still open to her to conclude that Rogers had established an arguable case that an agreement to arbitrate existed between the parties. Even if those submissions had been made, she would still have been able to reach that conclusion.

[95] For these reasons, I would not accede to this ground of appeal.

**Issue #3: Did the judge err in finding that the *Privacy Act* and *Ont. CPA* claims were arbitrable at law?**

[96] In advancing this ground of appeal, the appellant seeks to resile from a strategic decision she made in the proceedings before the judge.

[97] As the judge noted at para. 64 of the Reasons for Judgment, the appellant, in opposing the Rogers Stay Application, had abandoned her other arguments with respect to the *Privacy Act*, the *Ont. CPA*, and her claims based on Québec legislation, seeking to rely only on the Amendments. Nonetheless, “for the sake of completeness” the judge chose to “deal with the plaintiff’s arguments summarily”: Reasons for Judgment at paras. 65–69.

[98] The judge referred to s. 4 of the *Privacy Act*, which provides that “despite anything contained in another Act, an action under this Act must be heard and determined by the Supreme Court”: Reasons for Judgment at para. 65.

[99] At the first day of the hearing on November 7, 2024, the appellant had argued that in *Douez v. Facebook, Inc.*, 2017 SCC 33 [*Douez SCC*], the Supreme Court of Canada held that the British Columbia Supreme Court had exclusive jurisdiction over claims under the *Privacy Act*, despite the operation of a forum selection clause. That being the case, she argued, these claims were not arbitrable.

[100] The judge did not accede to this argument. She noted that in *Douez SCC*, the Court held that s. 4 of the *Privacy Act* does not itself override forum selection clauses: Reasons for Judgment at para. 65, citing *Douez SCC* at para. 44. Rather, the judge held—as was the case in *Douez SCC* with respect to forum selection

clauses—s. 4 of the *Privacy Act* does not override contractual provisions: Reasons for Judgment at para. 66. In essence, the Court in *Douez SCC* refused to enforce the forum selection clause for reasons other than the application of s. 4 of the *Privacy Act*.

[101] The judge also expressed her view that the appellant’s claims under the *Ont. CPA* were arbitrable. Although s. 7 of the *Ont. CPA* bars arbitration of claims commenced in the Superior Court of Justice in Ontario, it does not bar arbitration of claims brought in the British Columbia Supreme Court: Reasons for Judgment at para. 67.

[102] The appellant submits that this Court should consider this ground of appeal even though she abandoned these arguments at the hearing before the judge. She says we should do so because the judge considered them in her reasons. She argues that the judge’s comments, albeit made in *obiter*, were so clearly wrong that the reasoning gives rise to a significant risk of creating a new line of authority about the arbitrability of these types of claims. Accordingly, she argues, it is in the interests of justice for this Court, on appeal, “to provide guidance as to how s. 4 of the *Privacy Act* operates”.

[103] Rogers takes the position that the judge made no reviewable error in finding that the appellant had not discharged her burden to prove that the arbitration agreement was void, citing *Hebdo Mag. Inc. v. 125646 Canada Inc.*, 22 B.L.R. (2d) 72, 1992 CanLII 1933 (B.C.S.C.). Rogers submits that regardless of the *obiter* nature of the comments, the judge’s assessment of the arguments was sound and should not be interfered with. In particular, with respect to the s. 4 *Privacy Act* claims, the judge properly considered and applied *Douez SCC* at para. 44 and *Douez v. Facebook, Inc.*, 2015 BCCA 279 at paras. 71–73 [*Douez BCCA*].

[104] Rogers also submits that even if Ontario law did apply, which it says it does not, the judge did not err. Section 7(2) of the *Ont. CPA* only prevents arbitration where it would bar a claim in the Ontario Superior Court of Justice. It does not and could not bar a claim in British Columbia.

[105] In my view, the real issue on this ground of appeal is whether the appellant should be granted leave to revive an issue that was abandoned in the Supreme Court.

[106] I would reach the same conclusion as I did with respect to the second ground of appeal. Bearing in mind that the court’s discretion should be “exercised sparingly”, this is not, in my view, one of those exceptional circumstances where it is in the interests of justice to have these issues considered: *Forjay* at para. 63.

[107] First, it bears emphasizing that these arguments—including the references to *Douez SCC* and *Douez BCCA*—were all specifically abandoned by the appellant in her amended application response.

[108] Second, I do not agree that the judge’s reasons, which were rendered only “for the sake of completeness” raise the significant and even dramatic precedential consequences advanced by the appellant.

[109] The comments were *obiter dicta*, no more no less. The extent to which they may influence judicial analysis in the future is speculative at best. In any event, in the absence of fulsome submissions on this point, it is not for this Court on this appeal and on the basis of the judge’s *obiter* comments, to provide “guidance” as to the proper interpretation and application of s. 4 of the *Privacy Act*.

[110] I would not accede to this ground of appeal.

**Issue #4: Did the judge err in the exercise of her discretion by extending the stay to Match?**

[111] This ground of appeal involves the exercise of the judge’s discretion in extending the stay of proceedings in favour of arbitration to Match.

[112] In *Barrie v. British Columbia (Forests, Lands and Natural Resource Operations)*, 2021 BCCA 322, Justice Dickson described the standard of review and appellate principles respecting discretionary decisions:

[86] ... As Justice Newbury explained in *Kish v. Sobchak Estate*, 2016 BCCA 65, an issue falls within a judge's discretion if its resolution depends on the judge's assessment, within set boundaries, of what is fair and just in a particular case given the facts and the law. As she also explained, the fact-finding process involves the exercise of judgment, not the exercise of discretion. As determined in *Housen v. Nikolaisen*, 2002 SCC 33 and its progeny, the well-established test for appellate review of factual findings is whether the judge made a palpable and overriding error, the finding was clearly wrong or there was no evidence to support the finding: *Kish* at paras. 33, 36–38.

[87] The standard of review applicable to discretionary decisions is also well established. Discretionary decisions are entitled to a high degree of appellate deference. This Court will not interfere with a judge's exercise of discretion simply because we might have exercised discretion differently. Rather, this Court will only interfere with a discretionary decision if, in exercising the discretion, the judge erred in principle, gave no or insufficient weight to relevant considerations, considered an irrelevant factor or made a decision that is so clearly wrong as to amount to an injustice: *Grewal* at paras. 13–15; *Kish* at para. 34. That said, where, as here, a discretionary decision deprives a defendant of the opportunity to defend an action on the merits, "the interests of justice are a heavy weight that must be considered in determining whether to interfere on appeal": *The Owners, Strata Plan LMS3259 v. Sze Hang Holding Inc.*, 2012 BCCA 196 at para. 30.

### ***The Reasons for Judgment***

[113] The judge summarized the appellant's claims against Match, observing that:

[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.

[114] The judge then reviewed the positions of the parties and concluded that the claims against Match should be stayed in favour of arbitration:

[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.

**Discussion**

[115] The appellant’s position is that the judge erred in extending the stay to Match because it was never a signatory to the Agreement. She argues that the judge made an extricable error in law; that is, she applied the wrong legal test in assessing whether to stay the claim against Match, as a non-party to the arbitration under the Agreement. Specifically on this point, she argues that there are only certain discrete instances where non-signatories can rely upon an arbitration agreement (*DNM Systems Ltd. v. Lock-Block Canada Ltd.*, 2015 BCSC 2014 at para. 77) but that the judge never applied this test.

[116] She further submits that—because, under s. 172 of the *BPCPA*, a partial stay of proceedings was at stake—the judge was required to undertake a different analysis. The appellant notes that the judge did not refer to *Davidson v. Lyra Growth Partners*, 2024 BCCA 133. In that case, this Court confirmed that in the case of a partial stay the judge of first instance must consider two issues: (1) whether the arbitrable and non-arbitrable issues are so intertwined that they must be heard together; and (2) whether the core of the claims concern non-arbitrable subject matter. The appellant contends the claims against Match and Rogers are based on distinct allegations, since Match and Rogers each had a responsibility to safeguard their own systems in different ways.

[117] On this point, Match argues that *Davidson* does not apply in this case. This is because the appellant appears to conflate the legal basis upon which the stays against Rogers and Match were granted. I agree with this submission.

[118] The stay against Rogers was ordered pursuant to s. 7 of the *Arbitration Act*, S.B.C. 2020, c. 2—a mandatory stay provision which required a distinct legal analysis. The stay against Match, on the other hand, was granted on a discretionary basis, the exercise of which included consideration of the principles of judicial economy and the avoidance of multiplicity of proceedings, within the context of a non-signatory defendant seeking a stay of proceedings from claims brought by a signatory plaintiff against both signatory and non-signatory defendants.

[119] Accordingly, the fact that the claim against Rogers under s. 172 of the *BPCPA* was excluded from the stay against Rogers did not render the stay against Match a partial stay. The relief sought in the Match application was a stay of the full proceedings against it. That was the relief granted. The respective stays were granted on separate legal grounds, after the judge applied distinct legal analyses.

[120] The issue then becomes whether the appellant has established that the judge erred in the exercise of her discretion in granting the stay to Match on the basis of judicial economy and the avoidance of a multiplicity of proceedings.

[121] In my view, she did not. There was ample evidence in the record from which she could conclude that the stay of proceedings against Match should be ordered.

[122] Even if I would have exercised the discretion differently (which is not the case), that is not a basis for this Court to intervene in an exercise of discretion: *Barrie* at para. 87. In my view, the appellant has failed to establish a reviewable error that the judge wrongly exercised her discretion within the framework to which I have referred.

[123] I would not accede to this ground of appeal.

**Issue #5: Should the stay be lifted in any event?**

[124] The appellant submits that Rogers and Match have caused inordinate delays in the proceedings and have shown no genuine intention to arbitrate. Accordingly, this Court should lift the stays.

[125] I would not accede to this submission. The judge was well aware of the procedural background when she rendered her decision on June 27, 2025.

[126] Furthermore, the appellant, Rogers, and Match have all diligently pursued and responded to the appeal in this Court.

[127] The appellant seeks to have the stays lifted in any event as of January 2026 due to the alleged delays caused by Rogers and Match throughout the course of the

litigation. That application should be brought in the British Columbia Supreme Court, not in this Court.

**Disposition**

[128] I would dismiss the appeal.

“The Honourable Mr. Justice Abrioux”

I AGREE:

“The Honourable Justice Winteringham”

I AGREE:

“The Honourable Justice Mayer”