CITATION: Rogers Communications Inc. v. Glentel Inc. et al., 2026 ONSC 1280
COURT FILE NO.: CV-25-00734196
DATE: 20260303

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: ROGERS COMMUNICATIONS INC., Applicant

AND:

GLENTEL INC. and BCE INC., Respondents

BEFORE: Schabas J.

COUNSEL: Matthew P. Gottlieb and M. Paul Michell, for the Applicant

Eric Brousseau and Eric Block, for Glentel Inc.

Kiran Patel, Christopher DiMatteo and Andrew Irwin, for BCE Inc.

HEARD: In writing

REASONS ON MOTION TO SEAL/REDACT THE RECORD

Overview

[1] Rogers Communications Inc. ("Rogers") is appealing an arbitration award rendered by the Honourable Kathryn Feldman (the "Arbitrator") on December 6, 2024 (the "Award"). That arbitration arose from a dispute between Rogers and BCE Inc. ("Bell") relating to the sale, distribution, marketing and/or promotion of a Rogers-branded Mastercard at stores owned and operated by Glentel Inc. ("Glentel"). Glentel is owned equally by Rogers and Bell, which each have substantively identical Distribution Agreements with Glentel (the "Distribution Agreements"). The dispute centres on whether the marketing by Glentel of a Rogers Mastercard breaches the Distribution Agreement between Rogers and Glentel.

[2] The arbitration was confidential by agreement between Rogers and Bell. Although Rogers and Bell had initially sought recourse to this Court when the dispute first arose, those proceedings terminated when the parties agreed to resolve their issues at a private arbitration. Rogers is now pursuing an appeal to the Court, where proceedings are presumptively public, including all records filed. Rogers seeks a sealing order permitting documents to be filed under seal or redacted such that large portions of the record before the Court will not be accessible to the public although the judge hearing the appeal will be able to review everything.

[3] Rogers identifies three categories of documents that it seeks to have sealed and/or redacted:

(i) The Distribution Agreements;

(ii) Documents or portions of documents, including the entire transcript of the arbitration hearing and much of the Award, where there are references to the Distribution Agreements; and

(iii) Rogers' documents dealing with training and marketing programs (the "Training Documents") related to its Mastercard, which Rogers provided to Glentel staff, and which were provided to Bell in the arbitration pursuant to an agreement that they be maintained on a "counsel's-eyes-only" basis.

[4] The respondents, Bell and Glentel, do not oppose the motion, which has been brought in writing and was forwarded to me for consideration on February 17, 2026. The appeal is scheduled to be heard on April 9, 2026. After receiving the motion in writing, I directed Rogers to provide notice to the media of its request, which was done using the Court's media notification procedure on February 19, 2026. No response was received from any media.

[5] Accordingly, I considered the motion based on the written materials filed by Rogers. Those materials include the proposed redacted record, an affidavit in support of the sealing motion, and a factum. I have not been provided with the material that Rogers says should be kept from the public record.

[6] For the reasons that follow, the motion is dismissed. Sealing orders or other orders limiting public access to court documents are exceptional and are not to be readily granted. The fact that the order is unopposed is irrelevant. A party seeking such orders must satisfy the Court that the test in *Sherman Estate v. Donovan*, 2021 SCC 25, [2021] 2 S.C.R. 75 is met. Rogers has failed to do so here.

[7] The evidence provided on this motion goes no further than telling me that the Distribution Agreements have a confidentiality clause and the parties treat them confidentially, although Rogers and Bell have access to each other's agreements as the interpretation of terms in them was the focus of the arbitration. This is not sufficient to support sealing the Distribution Agreements, the transcripts, or the portions of the Award which refer to them.

[8] The motion to seal the Training Documents is also dismissed. There is no evidence that the Training Documents formed part of the record before the Arbitrator and therefore do not appear to be necessary for the appeal. Accordingly, there is no necessity for a sealing order. Should Rogers wish to refer to any of them at the hearing, counsel can raise that with the judge hearing the appeal. The record before me did not establish on a balance of probabilities that it is necessary to permit them to be sealed in the court record.

The legal framework

[9] There is a strong presumption that court proceedings are public and transparent. Indeed, it may be described as a fundamental principle of our judicial system. As Dickson J. (as he then was) stated in *A.G. (Nova Scotia) v. MacIntyre*, [1982] 1 S.C.R. 175 at p. 185:

> It is now well established…that covertness is the exception and openness the rule. Public confidence in the integrity of the court system and understanding of

> the administration of justice are thereby fostered. As a general rule the sensibilities of the individuals involved are no basis for exclusion of the public from judicial proceedings.

[10] The "openness principle", as it has become known, serves several purposes. They include ensuring an effective evidentiary process, and that courts and parties behave fairly, appropriately and with integrity. Public proceedings also permit the community to learn about the law and the justice system make informed comment on it. The openness principle ensures that courts and litigants are accountable and can be evaluated. In *Vancouver Sun (Re)*, 2004 SCC 43, [2004] 2 S.C.R. 332, at para. 24, Iacobucci and Arbour JJ. quoted Jeremy Bentham with approval: "Publicity is the very soul of justice. It is the keenest spur to exertion, and the surest of all guards against improbity" (citation omitted).

[11] The openness principle is well-recognized as an aspect of freedom of expression, which is constitutionally protected by s. 2(b) of the *Canadian Charter of Rights and Freedoms*. As the Supreme Court observed in *Canadian Broadcasting Corp. v. New Brunswick (Attorney General)*, [1996] 3 S.C.R. 480, at para. 23:

> The principle of open courts is inextricably tied to the rights guaranteed by s. 2(*b*). Openness permits public access to information about the courts, which in turn permits the public to discuss and put forward opinions and criticisms of court practices and proceedings. While the freedom to express ideas and opinions about the operation of the courts is clearly within the ambit of the freedom guaranteed by s. 2(*b*), so too is the right of members of the public to obtain information about the courts in the first place

[12] In an earlier decision, the Supreme Court stated that "freedom of expression 'protects listeners as well as speakers'. That is to say as listeners and readers, members of the public have a right to information pertaining to public institutions and particularly the courts": *Edmonton Journal v. Alberta (Attorney General)*, [1989] 2 S.C.R. 1326 , at p. 1339.

[13] In short, the importance of the open court principle cannot be understated. As Fish J. stated in *Toronto Star Newspapers Ltd. v. Ontario*, 2005 SCC 41, [2005] 2 S.C.R. 188 at para. 1: "In any constitutional climate, the administration of justice thrives on exposure to light – and withers under a cloud of secrecy."

[14] Nevertheless, it is also well-recognized that there must be exceptions to the openness principle. Subsection 137(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, relied on by the applicant in this case, provides the Court with the authority to order that any document filed in a civil proceeding be treated as confidential, sealed, and not part of the public record.

[15] This discretionary power to seal court records, or otherwise limit public access to court proceedings, is subject to a strict test, most recently stated by the Supreme Court of Canada in *Sherman Estate*, at para. 38:

> The test for discretionary limits on presumptive court openness has been expressed as a two-step inquiry involving the necessity and proportionality of the proposed

> order. Upon examination, however, this test rests upon three core principles that a person seeking such a limit must show. Recasting the test around these three prerequisites, without altering its essence, helps to clarify the burden on an applicant seeking an exception to the open court principle. In order to succeed, the person asking the court to exercise discretion in a way that limits the open court presumption must establish that:
>
> (1) court openness poses a serious risk to an important public interest;
>
> (2) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
>
> (3) as a matter of proportionality, the benefits of the order outweigh its negative effects.
>
> Only where all three of these prerequisites have been met can a discretionary limit on openness - for example, a sealing order, a publication ban, an order excluding the public from the hearing, or a redaction order - properly be ordered. This test applies to all discretionary limits on court openness, subject only to valid legislative enactments. [Citations omitted.]

[16] The burden is on the party seeking a limit on openness. The party seeking to limit court openness must show that there is an important public interest that warrants limiting court openness. The party must also demonstrate that court openness would pose a risk to that important public interest and that the risk is "serious" and "well grounded in the evidence": *Sherman Estate*, at para. 102. In *R. v. Mentuck*, 2001 SCC 76, [2001] 3 S.C.R. 442, the Court emphasized at para. 34 that limits on openness are not to be granted as matters of convenience or to provide a benefit to a party: "it is a serious danger sought to be avoided that is required, not a substantial benefit or advantage to the administration of justice sought to be obtained."

[17] Further, the order must be necessary to prevent the serious risk, having canvassed the availability of reasonable alternatives to a sealing order. I emphasize the word "necessary", as it was also given emphasis by Lamer C.J.C. in first establishing the test in *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835, at p. 878. It is also well-established that any limit on openness must be narrowly tailored and no more than necessary to protect the important public interest. As stated in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, [2002] 2 S.C.R. 522, at para. 57, "the phrase "reasonably alternative measures" requires the judge to consider not only whether reasonable alternatives to a confidentiality order are available, but also to restrict the order as much as is reasonably possible while preserving the commercial interest in question."

[18] Even when the first two parts of the test have been satisfied, the court must engage in a balancing of interests and must be satisfied that the benefits of limiting public access outweigh the negative effects on the open court principle and its objectives.

[19] *Sierra Club* dealt with civil litigation and, particularly, commercial interests. There, the court stated at para. 55 that an "'important commercial interest'…cannot merely be specific to the

party requesting the order; the interest must be one which can be expressed in terms of a public interest in confidentiality." An example of this might be where exposure of information would cause a breach of a confidentiality agreement with a third party, as "the commercial interest can be characterized more broadly as the general commercial interest of preserving confidential information": para. 55. However, the Court was also clear that merely arguing that the exposure of a particular contract would cause a company to lose business does not give rise to an important public interest.

[20] *Sherman Estate* also arose in the civil context. It dealt with individual privacy claims. Addressing this issue, Kasirer J. observed at para. 33 that a privacy claim may satisfy the test of an "important public interest" where "it transcends the interests of the individual and, like other public interests, is a matter that concerns society at large." Commercial interests must be assessed in the same way.

Application of the *Sherman Estate* test

The Distribution Agreements and Arbitration Documents

[21] In addressing the first branch of the test, the Supreme Court stated in *Sierra Club* at para. 54 that "the risk in question must be real and substantial, in that the risk is well grounded in the evidence, and poses a serious threat to the commercial interest in question."

[22] In my view, the applicant has failed to meet this test with respect to the Distribution Agreements. The evidence of the applicant is, in effect, that the Distribution Agreements have a confidentiality clause, they have always been treated as confidential by the parties, and were treated that way in a confidential arbitration "attended only by counsel for the parties, representatives of the parties, and the arbitrator herself".

[23] I accept that preserving confidential agreements is a public interest that can meet the first branch of the test; however, the Supreme Court has warned that "courts must be cautious in determining what constitutes an 'important public interest'": *Sierra Club*, at para. 56. In *Sierra Club*, for example, there was evidence in the record that demonstrated on a balance of probabilities that disclosure of the information would harm proprietary, commercial, and scientific interests: para. 60. There is no such evidence here with respect to the contents of the Distribution Agreements.

[24] More is required than simply saying the agreements are confidential or that the parties have treated them as confidential. The party seeking the order must establish on a balance of probabilities not only that the information is of a "confidential nature", but also that the party's commercial interest, or the commercial interests of others, could reasonably be harmed by the disclosure of the information: *Rogers v. TELUS Communications Inc.*, 2023 ONSC 5398, at para. 111. As Kimmel J. stated in *Royal Bank of Canada v. Distinct Infrastructure Group Inc*., 2022 ONSC 5878, at para. 26:

> Parties should not assume that, just because they include a confidentiality clause or agreement to seek a sealing order in their agreements (whether they be settlement

> or other agreements), the Court will automatically grant a sealing order in any circumstance in which the agreements need to be referred to in legal proceedings.

[25] In short, the public interest in protecting confidentiality must be addressed. This includes evidence of the confidential nature of the records, and why disclosure will pose a "serious" or "real and substantial" risk of harm to the parties or to others.

[26] In *Rogers v. Telus*, Osborne J. (as he then was) granted a redaction order where the exposure of information sought to be sealed would have caused a breach of confidentiality obligations in roaming agreements with other wireless carriers which included strict confidentiality provisions and would have breached confidentiality obligations set by the Government of Canada's wireless licencing body. To similar effect is the recent decision in *Inter Pipeline Ltd v Teine Energy Ltd*, 2024 ABKB 740, at para. 43, in which Feasby J. found there were "genuine third-party confidentiality interests at stake."

[27] Here I do not have such evidence. The Distribution Agreements – one between Bell and Glentel, the other between Rogers and Glentel – are "substantially identical" and are known to one another. There is no evidence that making these agreements public will cause either party to be in breach of confidentiality or other agreements with non-parties, nor is there evidence that the disclosure of the agreements will cause commercial harm to the parties. There is no evidence that the agreements contain sensitive or proprietary information.

[28] Rogers' factum asserts that "the Distribution Agreements are protected by contractual obligations in a Consent Agreement entered into between Rogers, Bell and the Commissioner of Competition following the review of the acquisition of Glentel by Rogers and Bell in 2015." Rogers and Bell are, of course, two of the largest wireless providers in Canada, and are competitors. The Consent Agreement, which I have reviewed, prevents Bell and Rogers, in respect of the Glentel business, from exchanging information in respect to pricing, promotions or other marketing plans of one carrier to the other.

[29] However, there is no evidence of how disclosure of the Distribution Agreements, which are known to each of the carriers, will breach the Consent Agreement. The affidavit in support of the motion does not explain this, nor does it assert, describe, or refer to any contents of the agreements that would disclose "pricing, promotions or other marketing plans of one carrier to the other." Indeed, if the agreements did contain such information, they could not be shared and known to each of Bell and Rogers without breaching the Consent Agreement.

[30] Accordingly, Rogers has not satisfied the first branch of the *Sherman Estate* test with respect to the Distribution Agreements. The evidence falls well short of establishing a serious risk to an important public interest. The confidential nature of the information cannot be expressed in terms that transcend the parties, as *Sierra Club* and *Sherman Estate* require, nor is there evidence before me that Rogers will suffer any commercial harm from the disclosure of their Distribution Agreements.

[31] Although it is not necessary for me to address the second and third parts of the *Sherman Estate* test, I also have concerns with the third branch dealing with proportionality.

[32] The underlying dispute between Rogers and Bell concerns the application of their "parallel distribution agreements"; in particular, whether Glentel can market the Rogers-branded Mastercard in a bundle with Rogers' wireless services under the Distribution Agreements. In appealing the Award, Rogers' Notice of Application submits that the Arbitrator erred in her interpretation and application of Rogers' Distribution Agreement.

[33] The practical effect of sealing the Distribution Agreements is that it will lead to an almost completely private hearing. Much of the Arbitrator's Award would need to be redacted, as seen in the proposed redacted Application Record. Rogers submits that the entire transcript of the arbitration would also need to be sealed, stating that "the transcript of the arbitration hearing contains so many references to the Distribution Agreements that it has not proven possible to partially redact it, or at least to do so in a way that would render the remaining portions comprehensible." This contrasts starkly with the situation in *Rogers v. Telus* in which, as Osborne J. noted, the material to be sealed was discrete and limited such that "the gist of the issues would remain available to the public."

[34] In effect, then, the balance would be all one way. Rogers' own commercial interest would result in a virtually complete denial of the openness principle. This will be a benefit to Rogers, but a private benefit that has little, if any, public interest associated with it. Indeed, the lack of evidence of harm to Rogers if the Distribution Agreements are placed on the public record suggests there is little if any harm to Rogers. Yet this would come at a very high cost to the open court principle. Any private benefit to Rogers is clearly outweighed by the public interest in openness.

[35] There is also a broader context to this case. Rogers and Bell initially came to the Court for relief, but then chose a private arbitration process, as they had every right to do. One benefit of that process to them is confidentiality. Rogers is unhappy with the result and now comes back to the Court. However, to the extent Rogers relies, as it seems to, on the fact that the arbitration was private to justify a sealing order in its appeal to the Court, its position has no merit. Courts are public institutions and operate under different rules than private arbitration. Just because parties may choose to arbitrate privately does not mean the Courts will consider appeals from arbitrations effectively in private. If parties to arbitrations want to have an appeal, as Rogers and Bell negotiated here, but be assured of privacy on their appeal, they can agree to a private appeal process and avoid the Courts altogether.

[36] As Feasby J. stated in *Inter Pipeline* at para. 53 when faced with a similar argument, "[t]he legislature's use of the public courts for arbitration enforcement and appeal proceedings means that the default is that the open courts principle applies and that the usual standards for restricted court access orders apply."

[37] Accordingly, the motion to seal the Distribution Agreements and the transcript of the hearing, and to redact the Award to remove references to the Distribution Agreements, is dismissed.

The Training Documents

[38] The Training Documents are somewhat different. They are described in the affidavit as "Rogers' documents used to train Glentel staff in the summer of 2024 with respect to the Rogers Mastercard at Glentel locations." The affiant asserts that these documents are "proprietary to Rogers and contain sensitive and confidential information. Their disclosure would likely be harmful to Rogers in several ways." The affiant then elaborates that the Training Documents "include competitively sensitive information about how Rogers positions and sell[s] its products in the marketplace" and that if it were shared with competitors this "could give them a competitive advantage." Glentel is not permitted to share this information with Bell and, it is stated, disclosure to Bell would "undermine" the commitments made in the Consent Agreement with the Competition Bureau.

[39] Additionally, the affiant states that the Training Documents contain detailed information about Rogers' internal systems, including accessing personal customer information, competitively sensitive information about price plans and discounts, and steps agents should follow to detect and prevent money laundering and other suspicious transactions. Making this information public, it is stated, "would make it easier for malicious actors to bypass these systems and controls, harming both Rogers and the public generally."

[40] Rogers also notes that the Training Documents were produced in the arbitration to Bell on a "counsel's-eyes-only basis", but otherwise kept confidential. The parties agreed that any of the Training Documents could be provided to the Arbitrator; however, there is no evidence that any of them were provided to her.

[41] This evidence meets the first branch of the *Sherman Estate* test. Failing to protect this information will cause commercial harm to Rogers, and to others, including potentially, customers and the public at large. It will also undermine, if not breach, the Consent Agreement. There is, therefore, a "serious risk to an important public interest."

[42] It is unclear, however, why these Training Documents are proposed to be part of the record before the Court. In the portion of the Award left unredacted in the record before me, the Arbitrator described the record before her as consisting of three affidavits – one from Rogers, a responding one from Bell, and a reply affidavit from Rogers. These affidavits do not attach the Training Documents and the affiants were not cross-examined.

[43] Although I only have a redacted copy of the Arbitrator's Award, I see no reference to the Training Documents in the Award. The Award addressed two issues – the interpretation and application of the Distribution Agreements and "whether Glentel sales representatives can be paid incremental commissions in connection with the Rogers Mastercard."

[44] The second issue is discussed in five paragraphs at the end of the Award, four of which have been redacted in the record before me. The only basis provided for redacting the Award is that it refers to the Distribution Agreements. Just as there is no evidence of what, if any, portions of the Training Documents were provided to the Arbitrator, there is no evidence that the Award makes any reference to them.

[45] It is not clear to me, therefore, why the Training Documents, which are over 200 pages in length, are to be filed on this Application. The were not part of the record before the Arbitrator as described in her Award. Rogers's factum seems to acknowledge this, describing the first two categories of documents it seeks to seal as the "Distribution Agreements and Arbitration Documents", which do not include the Training Documents which are addressed separately.

[46] Further, if any of the Training Documents were provided to the Arbitrator, those should have been identified, and those specific documents been the subject of a motion to seal. Instead, Rogers seeks to seal a large tranche of records which may be unnecessary for its appeal.

[47] Accordingly, in the absence of some explanation of the necessity of the Training Records, or some portion of them, for the appeal, Rogers' request fails the second branch of the *Sherman Estate* test – the records are not necessary and therefore a sealing order is not necessary. If, at the hearing of the appeal, Rogers wishes to refer to the Training Documents, or some portion of them, it can raise the issue of whether and how that should be done with the judge at that time.

Conclusion

[48] The motion for a sealing order and for leave to file a redacted public record is dismissed. As the motion was unopposed, it is unnecessary to address costs.

Paul B. Schabas J.

Date: March 3, 2026