Novel privacy claims and the limits of class action certification: RateMDs Inc. v. Bleuler, 2025 BCCA 329

October 02, 2025

On Sept. 22, 2025, the British Columbia Court of Appeal in *RateMDs Inc. v. Bleuler*, 2025 BCCA 329 issued its appeal decision setting aside the certification of a class action granted by the court below.[1] Central to its decision were the Court of Appeal's findings that the pleadings, which included a novel claim of violation of privacy, did not disclose a cause of action under the British Columbia *Privacy Act*.[2]

More broadly, this decision provides helpful commentary on how the torts of violation of privacy and unauthorized use of an individual's name — particularly in the context of online review platforms that publish unsolicited professional profiles and patient reviews — may or may not be pleaded within the parameters of current privacy law.

Background

RateMDs.com is a review platform where patients can rate, comment on, and view rankings of health professionals. Users can create practitioner profiles without the practitioner's consent. Each profile displays the practitioner's name, specialty, contact information, individual reviews, and aggregated ratings.

In 2019, the plaintiff, a physician who practises medicine in British Columbia, discovered a profile about herself on RateMDs.com. She launched a proposed class action on behalf of health professionals in British Columbia, Saskatchewan, Manitoba, Québec, and Newfoundland and Labrador.

The plaintiff alleged that RateMDs's operation of its website violated the B.C. *Privacy Act* and privacy legislation in the other provinces[3] in two respects:

- it violated her privacy under s. 1 of the B.C. *Privacy Act*; and
- it constituted an unauthorized use of a name for commercial purposes under s. 3(2) of the B.C. *Privacy Act*.

The chambers judge certified the action, finding that the pleadings disclosed causes of action under ss. 1 and 3(2) of the B.C. *Privacy Act*. RateMDs appealed that finding.

Decision of the Court of Appeal

The Court of Appeal allowed the appeal and set aside the certification order, holding that the pleadings did not disclose a cause of action under either ss. 1 or 3(2) of the B.C. *Privacy Act*. In doing so, the Court made the following key findings.

The right to control the use of information cannot, on its own, establish a violation of privacy under section 1

Section 1 of the B.C. *Privacy Act* creates a tort of wilful violation of privacy. The plaintiff's s. 1 claim was that RateMDs's hosting and posting of reviews on its website without her consent constitutes a violation of privacy. Central to this is the plaintiff's right to control her personal information, including when, how, and to what extent that information is communicated. The plaintiff maintained that the content of the reviews is not material to her claim.

Under the certification criteria in s. 4(1)(a) of the *Class Proceedings Act*,[4] the pleadings must disclose a cause of action. There was no dispute that the plaintiff's pleaded violation of privacy claim — based on a right to control the use of information without consideration of the content of that information — is novel. The Court clarified that while novel claims may be certified, novelty alone is insufficient. A novel claim must also have a reasonable prospect of success. The point of contention in the current case was whether the Plaintiff's novel claim constituted a viable cause of action under s. 1 of the B.C. *Privacy Act* or was doomed to fail.

Here, it was plain and obvious the plaintiff's novel claim disclosed no such cause of action. The Court rejected the plaintiff's theory that the lack of consent to RateMDs's use of her information, without more, created a privacy right, and warned that allowing such a theory to proceed "turns the right to privacy on its head."[5] Privacy rights under the B.C. *Privacy Act* require that the underlying information itself attract a reasonable expectation of privacy.

Similarly, the protection of an individual's control over personal information under s. 8 of the *Charter of Rights and Freedoms* depends on the individual's privacy interest in the information. Relying on s. 8 *Charter* and recent B.C. *Privacy Act* jurisprudence, the Court clarified that where a privacy claim is based on an individual's right to exercise control over the use of their personal information, the reasonable expectation of privacy analysis requires consideration of the content of the information.

While the plaintiff did not plead that she had an expectation of privacy in the content of the reviews, the Court nevertheless went on to note that health professionals cannot reasonably expect that information about their services is private or that they can exercise control over which websites may publish it.

Reviews on RateMDs.com do not constitute commercial exploitation under section 3(2)

Section 3(2) of the B.C. *Privacy Act* creates a tort for unauthorized use of a person's name or portrait for the purpose of advertising or promoting the sale of property or

services. This codifies the common law tort of misappropriation of personality, which applies when a person's identity is intentionally exploited for commercial gain.

The Court emphasized that s. 3(2) is intended to protect against commercial exploitation of a person's name or likeness. To help explain the scope of s. 3(2), the Court adopted the "sales vs. subject" distinction applied in cases discussing the common law tort of misappropriation of personality. This approach distinguishes cases where the plaintiff's identity is being used primarily to endorse sales from cases where the plaintiff is simply the subject of the work or enterprise. Only cases in the "sales" category, where the primary purpose of using the individual's portrait or name is commercial exploitation, fall within the ambit of s. 3(2).

The Court held that RateMDs.com fell into the "subject" category. The website provides information about health professionals, as subjects of posted reviews, to assist the public in making informed decisions. While RateMDs operates for profit, the Court held that a defendant's profit motive does not automatically convert such content into "advertising" or "promotion" for s. 3(2) purposes. Instead, the profiles and reviews on RateMDs.com provide information of value to the public about professionals offering public services. The Court held that it was plain and obvious that the plaintiff's name and the names of the class members were not being commercially exploited to promote sales. Accordingly, the Court found the claim had no reasonable prospect of success.

Key takeaways

- The fact a claim is novel and may involve complex questions of law is not a reason to allow it to proceed to trial if the claim has no reasonable prospect of success.
- The right to control personal information cannot establish a violation of privacy claim under s. 1 of the B.C. *Privacy Act* without regard to the plaintiff's privacy interest. This necessarily involves an analysis of whether the content of the personal information attracts a reasonable expectation of privacy.
- The tort of unauthorized use of a name or portrait under s. 3(2) of the B.C. *Privacy Act* protects against commercial exploitation. It does not capture uses where the plaintiff is simply the subject of reviews, commentary, or reporting. Being the subject of a profile or review, even on a for-profit platform, does not meet this standard.

Contact us

For any questions about this case or on B.C.'s class action legislation, please contact one of our Vancouver office Class Actions team members below.

Footnotes

[1] *Bleuler v. RateMDs Inc.*, 2024 BCSC 755.

[2] *Privacy Act*, RSBC 1996, c 373.

[3] The chambers judge's finding that the *Privacy Act*, RSS 1978, c P-24 (Saskatchewan), the *Privacy Act*, CCSM c P125 (Manitoba), and the *Privacy Act*, RSNL 1990, c P-22 (Newfoundland and Labrador) are sufficiently similar to the B.C. *Privacy Act* was not before the Court of Appeal. The plaintiff did appeal the chambers judge's finding that the pleadings did not meet the criteria for including Québec residents as part of a multi-jurisdictional class action, but the Court of Appeal declined to decide the issue, having allowed the appeal for other reasons.

[4] *Class Proceedings Act*, RSBC 1996, c 50.

[5] At para. 90.

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