IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Lambda Solutions Inc. v. Moodle Pty. Ltd.,*
                           2022 BCSC 2280

Date: 20221230
Docket: S207964
Registry: Vancouver

Between:

Lambda Solutions Inc.

Plaintiff

And

Moodle Pty. Ltd.

Defendant

Before: The Honourable Mr Justice Crerar

Reasons for Judgment

Counsel for the Plaintiff:	P.L. Rubin A. Kavanagh
Counsel for the Defendant:	J. Zeljkovich
Place and Dates of Hearing:	Vancouver May 16–18, 2022
Written Submissions:	June 29, 2022
Place and Date of Judgment:	Vancouver December 30, 2022

I.   INTRODUCTION

[1]   The defendant Moodle Pty. Ltd., based in Perth, Western Australia, provides the world's most widely used learning management system ("**LMS**"), used to administer, document, track, report, and automate educational courses and programmes, by educational institutions, businesses, and other organisations that use e-learning products for training and education. Approximately 305 million users at 184,000 sites around the world use the Moodle LMS. Moodle advertises itself as "*the world's most customizable and trusted online learning solution*".

[2]   The Moodle LMS itself is available free of charge to the public. It is open source software: deliberately designed to permit third-party programmers to modify and incorporate its source code into their own projects. Many third-party providers offer "plug-ins": flexible software add-ons that allow the user to adapt and use the base Moodle LMS with different computer applications (including the providers' own applications) and in different contexts. Provision of the plug-ins in turn promote use and purchase of those developers' own products, which may be free or may generate revenue for those developers and companies.

[3]   Moodle encourages the creation and promotion of plug-ins. Voluntarily and free of charge, Moodle lists and makes available for download such plug-ins on a page on its website: the Moodle directory. The Moodle directory is the primary international source of Moodle LMS-based plug-ins, and an important (but not sole) marketing avenue for producers of Moodle LMS plug-ins. As of December 2021, Moodle had published over 1900 plug-ins on the Moodle directory.

[4]   The defendant subjects every plug-in submitted for listing on the Moodle directory to a technical and quality review, conducted by a combination of Moodle employees and non-employee Moodle users.

[5]   The defendant does not require that all Moodle LMS-related plug-ins be listed on its directory; many plug-in developers market and provide their plug-ins on their own websites and through other avenues. That said, the Moodle directory is a highly desirable marketplace for Moodle LMS-related plug-ins. Further, many institutional purchasers of LMS products and plug-ins rely upon the quality assurance represented by the Moodle directory review; some forbid the installation on their servers of a plug-in, or a product reliant on a plug-in, that has not been approved for the Moodle directory.

[6]   The defendant receives no royalties for third-party use of its open-source LMS. The defendant receives most of its revenue by certifying certain third-party developers and companies as credible and preferred providers of Moodle LMS-based products: certified partners are in turn permitted to market their services and products in conjunction with the Moodle trademarks. A third-party entity that wishes that designation and license enters into a Moodle Partner Certification Agreement ("**Partner Agreement**"), paying the defendant royalties based on its revenue generated in relation to the Moodle LMS. That said, partnering with Moodle is not a pre-requisite for publication on the Moodle directory; the majority of plug-ins published on the Moodle directory are from entities that do not have a formal contractual relationship with Moodle. And, again, a developer need not be a certified partner to use the open-source Moodle LMS in developing and marketing products or plug-ins.

[7]   The Vancouver-based plaintiff, Lambda Solutions Inc., is one of the third-party developers integrating the Moodle LMS into its products. From 2009 to 2017, under a series of Partner Agreements, the plaintiff paid the defendant an annual fee and royalties, approximating 10 percent of its revenue generated from "Moodle Partner Certified Services".

[8]   The plaintiff hoped and expected that its plug-ins for its Moodle-LMS based product, Zoola Analytics, would be listed on the Moodle directory, allowing for wider application, use, and marketing of its product. Zoola Analytics provides cloud-based, real-time access, reporting, visualisation, and analytics capabilities for educational technology system data. Its main strength is in generating reports, charts, and dashboards, based on educational data, to assist and inform a learner, educator, or administrator. As examples, Zoola can generate graphic and numeric reports on teacher evaluations, student feedback, average grades, and course engagement, on one hand, and reports for teachers on student submissions, attendance, grades, and the like, on the other.

[9]   The plaintiff's product may be used not only with the Moodle LMS, but also with many other LMS products, including Blackboard, Canvas, Cornerstone, Docebo, and Totara Learning (the last aimed more at corporate users).

[10]   The plaintiff claims that from 2013 to 2017, it invested approximately $4 million developing its Zoola Analytics product, with another $1 million since.

[11]   Although its product, like most such technology, has been in constant refinement, the plaintiff has been able to market its earlier Zoola iterations, through avenues other than the Moodle directory, from 2018 onwards. Zoola product revenues to 2021 totalled some $1.048 million: $112,789 (2018); $321,154 (2019); $381,270 (2020); and $232,787 (2021).

[12]   In late August 2016, relations began to break down between the parties, through an exchange of disharmonious emails. Growing acrimony and distrust has led to near-constant

litigation between these parties, and correspondence between their legal counsel, on two continents, since 2018.

[13]   For its part, in late August 2016, the plaintiff advised the defendant that it would not renew its Partner Agreement unless the parties switched from a royalties-based agreement based on revenues to an annual subscription. The plaintiff also advised that its focus would be moving away from Moodle and towards the commercialisation of its own Zoola product. On April 28, 2017, the plaintiff provided formal notification that it would not renew the Partner Agreement, effective July 31, 2017.

[14]   For its part, in late August 2016, the defendant began questioning whether the plaintiff had complied with the Partner Agreement in remitting the required royalties based on its revenues generated in relation to Moodle Certified Services: specifically, whether the plaintiff's self-reported revenue data were accurate and complete. In July 2017, the defendant invoked its audit powers under the Partner Agreement; a dispute about the accuracy and completeness of disclosed documents and data ensued. In April 2018, the defendant commenced an action[1] in this Court to enforce its audit rights; that matter settled just before the scheduled September 2019 summary trial, with the plaintiff agreeing to the audit. The defendant eventually alleged that the plaintiff owed it some $1 million in unpaid royalties. In November 2020, after the start of this action in August 2020, Moodle commenced its own proceedings against Lambda in the Supreme Court of Western Australia, for the allegedly unpaid royalties.

[15]   In the middle of these burgeoning disputes, in January 2018, the plaintiff submitted to the defendant two Zoola plug-ins for listing on the Moodle directory. Despite having been a Moodle certified partner for over eight years, the plaintiff had never before submitted any plug-ins for the directory.

[16]   The plaintiff expected its application to be reviewed along the lines set out on the defendant's website. Specifically, the plaintiff expected that if its plug-ins complied with the defendant's technical requirements, it would be listed on the Moodle directory. The plaintiff further anticipated that the review process would take roughly the same time as the median review time listed on the defendant's website: 37.5 days.

[17]   A plug-in applicant may review the progress and status of its application through updates to the defendant's tracking pages: the source of most of the communications set out below. Such communications are not made directly to the applicant.

[18]   On March 23, 2018, the defendant assigned review of the plaintiff plug-ins to a non-employee Moodle contributor. That reviewer identified a technical problem with the plug-ins, which the plaintiff

claims to have later fixed. In September 2018, a business development manager for the defendant raised trademark concerns with respect to the plaintiff plug-ins. The plaintiff claims that the basis for this concern was unclear, and that, to the best of its knowledge, its plug-ins do not violate any of the defendant's trademark policies. On October 3, 2018, the assigned reviewer wrote on the tracking pages that he had been "*asked by Moodle HQ not to approve this plugin at this moment*."

[19]   Demands from the plaintiff and its legal counsel prompted a February 2020 communication from the defendant that the plaintiff plug-ins would be returned to the "*standard queue*" for technical review. On August 11, 2020, the defendant raised two technical issues with the plaintiff plug-ins. On August 16th, the defendant raised another concern, which the plaintiff claims to have rectified by August 29th. On September 4th, the defendant's reviewer indicated that he would review the plaintiff's revised plug-ins.

[20]   In March 2021, another reviewer stated that there may be a privacy issue with the plaintiff plug-ins. That same day, the Moodle reviewer indicated that the defendant was waiting to hear from its legal counsel before taking any further action on the approval of the plaintiff plug-ins. In May 2021, the plaintiff submitted a further revised version of the plug-ins. On May 15, 2021, another reviewer commented on the tracking pages that "*I believe we are still waiting on Moodle HQ to tell us know the review process can continue*".

[21]   The plaintiff claims that it has reviewed the Moodle directory guidelines against its submitted plug-ins and can identify no outstanding technical deficiencies. Nor has the defendant provided any further details of the technical or other deficiencies on which its refusal to publish is based, in response to the plaintiff's formal demand for particulars in this action. To date, the defendant has not listed the plaintiff plug-ins on the Moodle directory, almost five years after their original submission.

[22]   The plaintiff proposes an ambitious objective for the Court. First, apply the law of Western Australia to this proceeding, which it itself has filed in the Supreme Court of British Columbia, after successfully applying (in June 2021) to stay the defendant's own Western Australia action against the plaintiff.[2] Alternatively, if the Court finds the applicable law to be that of British Columbia, be the first court in Canada to apply the doctrine of promissory estoppel as an equitable cause of action: a sword rather than a shield, contrary to such authorities as *Combe v. Combe*, [1951] 2 KB 215 (CA); *Costco Wholesale Canada Inc. v. Cazalet*, 2008 BCSC 952 at para. 30; and *Skibinski v. Community Living British Columbia*, 2010 BCSC 1500 at paras. 135–137. In the further alternative, the plaintiff argues that the defendant is liable under negligent misrepresentation.

[23]   The plaintiff claims damages of $8.1 million for lost opportunity to market its plug-ins on the Moodle directory. The plaintiff also seeks a permanent mandatory injunction requiring the defendant

to publish its plug-ins on the Moodle directory so long as the defendant continues to publish that directory. Finally, the plaintiff seeks an award of punitive damages based on what it claims to be the defendant's capricious and oppressive abuse of its market dominance of the LMS industry.

[24]   The Court declines the plaintiff's proposal. This case turns on a simple factual finding: the decision of whether or not to list the plaintiff's plug-ins on the directory was wholly and solely at the defendant's discretion. Moodle provides listing on its directory wholly gratuitously, with no charge to the plaintiff or other plug-in developers. There was no contract between the parties. Nor was there any representation that would instill in the plaintiff a reasonable belief that it had a legally enforceable right to have its plug-ins marketed on the defendant's website, especially during and in light of the ongoing disputes over royalties and contract renewal, but also at any time prior.

[25]   The plaintiff has not provided any authority or factual precedent that would require a retailer to sell or advertise the product of a potential supplier in circumstances such as the present. Just as Amazon, Apple, or Walmart may decline to carry an aspirant supplier's product for any reason, even a capricious reason, notwithstanding published supplier submission policies, so may this defendant. To employ a phrase evoked several times during trial, the defendant was entitled to say, "it's my ball; it's my game; I can go home if I wish". There was no obligation on the defendant in the circumstances to be fair or reasonable, or to negotiate in good faith: *Concord Pacific Acquisitions Inc. v. Oei*, 2019 BCSC 1190 at para. 371, aff'd 2022 BCCA 16, leave to appeal to SCC ref'd, 40089 (18 August 2022); *Martel Building Ltd. v. Canada*, 2000 SCC 60 at para. 73; *Bilfinger Berger (Canada) Inc. v. Greater Vancouver Water District*, 2013 BCSC 2324 at para. 69. Whether based in negligent misrepresentation or promissory estoppel, the claim fails.

II.   DISCUSSION AND DECISION

A.   Is the matter suitable for summary trial?

[26]   The parties agree that the matter is suitable for summary determination under Rule 9-7. The Court agrees: there are no material conflicts of evidence or other matters that render this dispute inappropriate for determination on a summary trial: *Gichuru v. Pallai*, 2013 BCCA 60 at paras. 30–31.

B.   Does Australian law govern the relationship between the parties?

[27]   The defendant argues that the central claim (but not all claims) in this proceeding is governed by Western Australian law, based in part on the Partner Agreements, which have all contained an explicit choice of law and forum clause in favour of that antipodean jurisdiction.[3] The final Partner Agreement, for example, read:

   19. Applicable Law

> This Agreement will be governed and interpreted under the laws of the State of Western Australia without regard to its conflict of laws principles. Any and all disputes arising out of or in connection with this Agreement will be subject to the exclusive jurisdiction of the courts of the State of Western Australia and may only be brought within a court of competent jurisdiction within the State of Western Australia.

[28]   In the course of argument, in reply, the plaintiff resiled from its original position, and conceded that the Partner Agreement no longer strictly governed the choice of law question for this specific claim; instead, the agreement reflected and engendered a reasonable mutual expectation that any dispute would be determined according to the law of Western Australia. That said, to test that expectation, one must consider the potential applicability of article 19 to "any and all disputes arising" between the parties.

[29]   Article 19 does contain standard language that "*[a]ny and all disputes arising out of or in connection with this agreement*" will be within the exclusive jurisdiction of the courts of Western Australia. Case law has consistently interpreted this phrase to have broad meaning: see, for example, *Sarabia v. Oceanic Mindoro (The)* (1996), 26 BCLR (3d) 143 (CA) at paras. 25–27; *Meta4Hand Inc. v. Research in Motion Ltd*., 2017 ABQB 23 at para. 59.

[30]   These authorities also establish that these clauses, despite their inclusion in contracts, may also bring causes of action in tort within their scope. But, this principle is not to be interpreted so widely as to capture every dispute between the parties. As recently confirmed by our Court of Appeal in *Medicane Health Incorporated v. Bar Tal*, 2022 BCCA 95:

> [20]   A forum selection clause does not govern a dispute simply because the agreement containing the clause is part of the commercial interchange that forms the factual context of the plaintiff's claim. ***It is not sufficient for a litigant invoking a forum selection clause to point to some connection, no matter how remote, between the agreement containing the clause and the dispute before the courts. The case before the court must concern the interpretation or implementation of the agreement in question***: *2249659 Ontario Ltd. v. Sparkasse Siegen,* 2013 ONCA 354 at paras. 46–47.
>
> [emphasis added]

[31]   Further, and in any case, the broad "*arising out of*" language refers only to the forum selection of the courts of Western Australia. There is no such broad and categorical language with respect to the first sentence in that article, concerning choice of law. In other words, while the Partner Agreement "*will be governed and interpreted under the laws of the state of Western Australia*", it is not the case that "*[a]ny and all disputes arising out of or in connection with this agreement will be subject to the exclusive*" application of the "*laws of the state of Western Australia*".

[32]   There are immediate difficulties with the plaintiff's reliance on the Partner Agreement and its provisions concerning choice of law and forum. First, the plaintiff did not submit any plug-ins until

after the plaintiff itself terminated (or, more precisely, elected not to renew) that agreement: all of the defendant's actions about which the plaintiff now complains occurred after the contract had ended. Further, while the amended notice of civil claim advances a breach of contract claim, the plaintiff does not pursue that claim in this summary trial, either in its notice of application or its voluminous argument. Still further, it does not lie well in the plaintiff's mouth to rely upon the choice of law clause in this British Columbia proceeding, after the plaintiff itself has started this British Columbia proceeding, and after the plaintiff itself has successfully applied to stay the defendant's royalties action (which proceeding actually does arise directly from the Partner Agreement), in Western Australia.

[33]   The plaintiff's breach of contract claim—pleaded, yet not advanced—alleges that the Partner Agreement "… *expressly or impliedly contains the Zoola Plugin Provisions* …", and that "*Moodle has breached the Partner Agreement by failing to abide by [those] provisions*". The pleading claims that the Partner Agreement contained the following implied terms, imposing obligations on the defendant that survived the termination of that agreement. Specifically, the plaintiff asserts that the defendant had a continuing obligation to:

> (a) review and publish plugins relating to Zoola which comply with the Guidelines to the Moodle Directory within a reasonable time;
> (b) not refuse such review and publication unreasonably, in bad faith, or for extraneous reasons or considerations; and
> (c) not treat the review and publication of plugins relating to Zoola on a lesser footing than others in the industry.

[34]   The present dispute neither arises out of nor is connected with the Partner Agreement. That agreement concerns the bestowal of a licence on a Moodle certified partner to use the "*MOODLE PARTNER Mark on or in connection with [the] Partner's goods or services …*" (article 3(a)), in exchange for license fees (article 4). It emphasises that the defendant continues to own its intellectual property (article 6), and protects the confidential information and trade secrets of both parties (article 7). The "Background" preamble describes the purpose and scope of the agreement:

> Moodle desires to license the MOODLE PARTNER Mark to goods and service providers that meet the requirements of the Moodle Partner Standards to convey to the marketplace of the goods or services of Moodle Partners adhere to Moodle's high quality standards. Partner and Moodle agree to enter into this Certification Agreement (hereafter "Agreement") so that Partner may comply with the Moodle Partner Standards and license the MOODLE PARTNER Mark consistent with the terms of this Agreement.

[35]   Pointedly, the Partner Agreement makes no mention of the Moodle directory. The "Background" section does make passing reference to Moodle plug-ins: "*[a]s open-source software, Moodle Software is invariably extended and customised according to needs, and so the definition of Moodle Software includes all branded distributions and derivations including but not limited to*

Totara, ELIS, Moodlerooms, Joule, CobaltLMS, and all Moodle plugins." But this reference seeks only to describe the business of Moodle, and does not purport to define or establish rights between the parties.

[36]   The Partner Agreement specifically does not deal with the development, submission, review, approval, or hosting of plug-ins on the Moodle directory, directly or by implication. More specifically, it does not provide any guarantees that the defendant would publish, list, or host any and all plug-ins submitted by the plaintiff, or by anyone else, upon bare technical compliance or otherwise. On the contrary, as indicated by the quotation above, the agreement implicitly acknowledged that developers may freely create, distribute, and market their plug-ins generally in the marketplace, outside of the directory. And, again, a plug-in developer need not be a Moodle certified partner to submit and have published a plug-in: there is no connection between the agreement and the review and publication process about which the plaintiff now complains.

[37]   Even if the plaintiff were to sustain its breach of contract claim, it has not attempted to establish that any of the terms were or ought to be implied in the Partner Agreement. None of the preconditions for that judicial exercise, as set out in *M.J.B. Enterprises Ltd. v. Defence Construction (1951) Ltd.*, [1999] 1 SCR 619 at para. 27, apply here:

> (1) based on custom or usage;
>
> (2) as the legal incidents of a particular class or kind of contract; or
>
> (3) based on the presumed intention of the parties where the implied term must be necessary "to give business efficacy to a contract or as otherwise meeting the 'officious bystander' test as a term which the parties would say, if questioned, that they had obviously assumed."

[38]   A court should not imply a term unless it is necessary to do so. As stated in *Athwal v. Black Top Cabs Ltd.*, 2012 BCCA 107:

> [48]   There is a presumption against adding an unexpressed term to a contract by implication unless: (i) it is necessary to do so in order to give the contract business efficacy (this does not include a test of reasonableness for the contract); (ii) to correct an obvious oversight for which there is "no dispute" that the parties intended to include such a term in the contract (i.e. the implied term "goes without saying"); (iii) the term can be clearly and precisely formulated; and (iv) the term will not conflict or be inconsistent with an express term of the contract. ***However, a term of a contract may only be implied where it is necessary to give legal effect to the parties' presumed intention, as expressed in the contract, and to give business efficacy to the contract. The onus is on the party seeking to establish an implied term of a contract. …***
>
> <div align="right">[emphasis added]</div>

[39]   In summary, the plaintiff has failed to establish that the defunct Partner Agreement, expressly or by necessary implication, imposes any obligation on the defendant with respect to the review and publication of the plaintiff plug-ins for the Moodle directory. Nor has the plaintiff established that

the defunct Partner Agreement, expressly or by necessary implication, imposes Western Australian law on this dispute.

[40]   In the alternative, the plaintiff argues that the law to be applied is that of the law of the obligation, citing *Dicey and Morris on the Conflict of Laws*, 12th ed (London: Sweet & Maxwell, 1993) at 1471, as applied in *Minera Aquiline Argentina SA v. IMA Exploration Inc. and Inversiones Mineras Argentinas S.A.*, 2006 BCSC 1102 at para. 185:

> (a) If the obligation arises in connection with a contract, its proper law is the law applicable to the contract;
>
> (b) If it arises in connection with a transaction concerning an immovable (land) its proper law is the law of the country where the immovable is situated (*lex situs*); and
>
> (c) If it arises in any other circumstances, its proper law is the law of the country where the enrichment occurs.

[41]   The applicability of subrule (a) has been dismissed above. Subrule (b) has no application.

[42]   Subrule (c) would also not appear to apply: the defendant has not been enriched by its decision not to list the plaintiff plug-ins on its directory. Indeed, it is arguably depriving itself by that decision, as the Moodle directory is less rich and varied due to the absence of the plaintiff plug-ins. The plaintiff's primary theory of its claim under promissory estoppel, in its pleadings, evidence, and arguments, focusses on the plaintiff's deprivation of the opportunity to list its plug-ins on the Moodle directory.

[43]   Perhaps to address this difficulty, the plaintiff alleges that the defendant somehow obtained an enrichment or benefit from the plaintiff's direct competitor, Intellibord, by not listing the plaintiff plug-ins on the Moodle directory. But in bringing this summary trial application for final judgment, the plaintiff provides no evidence in support of this allegation, let alone any evidence that the defendant was enriched by any such hypothetical arrangement. The plaintiff argues that the defendant "*has not provided any evidence on this application to challenge the suggestion that it has profited from its exclusion of the Zoodle Plugins from the Moodle Directory*". But that argument ignores the fact that Lambda, as plaintiff and applicant, bears that persuasive burden.

[44]   Nor do the other factors suggested in *Minera* at para. 200 point to a more clearly applicable law:

- where the transaction underlying the obligation occurred or was intended to occur;
- where the transaction underlying the obligation was or was intended to be carried out;
- where the parties are resident;
- where the parties carry on business;
- what the expectations of the parties were with respect to governing law at the time the obligation arose; and

- whether the application of a particular law would cause an injustice to either of the parties.

[45]   Both parties carry on multinational technological online businesses transcending borders. While the defendant is a Western Australian company, the review process for the Moodle directory is itself international, with reviewers around the globe.

[46]   The plaintiff points to the final listed consideration. It argues that an injustice would arise if it is unable to apply the laws of Western Australia and put forward its claim in promissory estoppel as a cause of action.

[47]   The ready response to that assertion is that the plaintiff has not once but five times affirmatively avoided the more natural application of the laws of Western Australia by the courts of Western Australia. First, the plaintiff started this claim in British Columbia. In its notice of civil claim endorsement, the plaintiff, in order to serve the foreign defendant, reassured this Court that it could appropriately assume jurisdiction over the dispute as:

> … the proceeding concerns:
> a) contractual obligations to be performed, to a substantial extent, in British Columbia;
> b) restitutionary obligations that, to a substantial extent, arose in British Columbia;
> c) a tort committed in British Columbia; and
> d) a business carried on in British Columbia.

[48]   The plaintiff elected not to bring its own claim as an independent claim, or as a counterclaim to the defendant's own proceeding based on the law of Western Australia, in the Supreme Court of Western Australia. Instead, the plaintiff successfully applied to stay the defendant's Western Australia action pending resolution of this dispute by the British Columbia courts. Finally, and parenthetically, the plaintiff did not assert that the laws of Western Australia applied, or challenge the jurisdiction or forum of the British Columbia Supreme Court, in response to Moodle's 2018 audit proceedings in this Court, brought directly under the Partner Agreement, with its Article 19.

[49]   The plaintiff's emphasis on the final listed *Minera* consideration raises a further concern arising from the plaintiff's baroque interjurisdictional strategy. The plaintiff does not in fact propose that the law of Western Australia govern all aspects of the relationship and dispute between the parties. Rather, the plaintiff proposes only that the Western Australian doctrine of promissory estoppel apply, with British Columbia law governing all else. The plaintiff *de facto* seeks to straightjacket this Court into only applying that discrete aspect of Western Australia law, in isolation from all other aspects of Western Australia law. As the plaintiff acknowledges in its argument, it has only provided foreign expert opinion, in the form of Dr Silink's affidavit, on that narrow issue. In the absence of proof of foreign law on the other issues in this proceeding, the plaintiff argues that the

law of British Columbia, as the *lex fori*, will apply.

[50]   This raises the spectre of the plaintiff cherry-picking discrete and favourable aspects of a foreign law for application by a Court that has not been provided the full social and jurisprudential background of that law, and the full social and jurisprudential balances and perhaps deficiencies that may have prompted the rise of promissory estoppel as a cause of action in Australia. It also raises the spectre of the application of a Frankenstein hodgepodge of Western Australian and British Columbia law that may unfairly privilege the party seeking only the advantageous aspects of each. These spectres arise in the context of a plaintiff seeking the advantage of litigating domestically all the while seeking to selectively import foreign laws.

[51]   This Court appreciates that this concern will often arise in those (relatively rare) instances where a domestic court is asked to apply a foreign law. But for the reasons above, the court should approach such a task guardedly, especially where the plaintiff has orchestrated its choice of law position in such a convoluted and tactical manner that smacks of the forum shopping frequently condemned in modern private international law jurisprudence: *Éditions Écosociété Inc. v. Banro Corp.*, 2012 SCC 18 at paras. 36 and 49; *Tolofson v. Jensen; Lucas (Litigation Guardian of) v. Gagnon*, [1994] 3 SCR 1022 at 1052; *Amchem Products Incorporated v. British Columbia (Workers' Compensation Board)*, [1993] 1 SCR 897 at 912; *British Columbia (Workers' Compensation Board) v. Figliola*, 2011 SCC 52 at para. 36; *RS v. PR,* 2019 SCC 49 at paras. 36, 49, 69; *Vale Canada Limited v. Royal & Sun Alliance Insurance Company of Canada*, 2022 ONCA 862 at para. 156.

[52]   In a typical choice of law dispute, the domestic party that elects to bring the dispute in its domestic courts typically is the party opposing the defendant's application to transfer the proceedings or to apply foreign laws. The plaintiff, through its tactical litigation steps on two continents, has created the present topsy-turvy looking glass scenario. If the British Columbia Court declines to apply Western Australia law, the plaintiff is lying in a tangled bed of its own making.

[53]   As set out above, neither the law of British Columbia nor the law of Western Australia has a clearly closer and more real connection to the relationship between the parties or the dispute, as per *Minera* at paras. 195, 197. That said, again, the plaintiff's claim focuses on the plaintiff's expectations, reliance, and deprivations: all of which occurred in British Columbia. By analogy to the law of negligent misrepresentation -- the plaintiff's alternate claim -- the appropriate law is that of the plaintiff's domestic jurisdiction, as "*the core of the tort of negligent misrepresentation is that the misrepresentation is received and acted upon…*": *Central Sun Mining Inc. v. Vector Engineering Inc.*, 2013 ONCA 601, at paras. 30, 34; *Air Canada v. McDonnell Douglas Corp.*, [1989] 1 SCR 1554 ("*The locus of a failure to warn is the place at which the warning ought to have been received, and that place may be either where the user is located or where the goods are used…*"); *Thorne v. Hudson*, 2016 ONSC 5507 at paras. 31-34, aff'd *Thorne v. Hudson Estate*, 2017 ONCA 208.

[54]   Further, again, this British Columbia-based plaintiff elected to bring a claim in British Columbia, and elected to vigorously resist any claims being adjudicated in Western Australia. In such circumstances, it is appropriate and indeed prudent for the domestic court chosen by the plaintiff to apply its domestic law, consistent with the general proposition that unless a party (again, almost always the defendant) raises an issue about choice of law, the domestic law, the *lex fori*, will apply: *Pettkus v. Becker*, [1980] 2 SCR 834 at pp. 853-54; *Old North State Brewing Co. v. Newlands Services Inc.* (1998), 58 BCLR (3d) 144 (CA) at para. 39.

[55]   A final important consideration: private international law considers not only binary relationship between the litigants, but also the issue of respect between courts of different nations and jurisdictions, as well as the efficient and just adjudication of multijurisdictional disputes. In this, this Court takes comfort that the Supreme Court of Western Australia has already, in a judicial act of grace and comity, stayed the defendant's proceeding there and deferred the primary decision of this dispute to the courts of British Columbia.

C.   Does the Western Australian doctrine of promissory estoppel render it unconscionable for the defendant not to list the plaintiff plug-ins on the Moodle directory?

[56]   Even if this dispute were governed by the law of Western Australia, and the plaintiff could wield promissory estoppel as a sword rather than a shield, the plaintiff's claim would fail under that doctrine. It would also fail as the first Canadian application of promissory estoppel as a sword and not a shield.

1.   The doctrine of promissory estoppel

[57]   Both parties accept Dr Silink's identification of the decision of Justice Brennan of the High Court of Australia in *Waltons Stores (Interstate) Ltd v. Maher*, [1988] HCA 7 at para. 34 [*Waltons*], as setting out the test for promissory estoppel:

> (1) the plaintiff assumed that a particular legal relationship then existed between the plaintiff and the defendant or expected that a particular legal relationship would exist between them and, in the latter case, that the defendant would not be free to withdraw from the expected legal relationship;
>
> (2) the defendant has induced the plaintiff to adopt that assumption or expectation;
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> (3) the plaintiff acts or abstains from acting in reliance on the assumption or expectation;
>
> (4) the defendant knew or intended him to do so;
>
> (5) the plaintiff's action or inaction will occasion detriment if the assumption or expectation is not fulfilled; and
>
> (6) the defendant has failed to act to avoid that detriment whether by fulfilling the assumption or expectation or otherwise.

[58]   While the above considerations guide the promissory estoppel enquiry, the overarching

question is whether the defendant's words or actions would render unconscionable its insistence on strict legal rights and its refusal to fulfill the promise assumed by the plaintiff to be binding. As stated in *Wilson v. Arwon Finance*, [2020] WASCA 137 [*Arwon*], identified by Dr Silink as a leading and recent Western Australia authority:

> 82. **The doctrine of equitable promissory estoppel operates to prevent a party** (who we will refer to as the 'charged party') **unconscientiously departing from an assumption or expectation which it has induced another party** (who we will refer to as the 'claimant') **to adopt and to act in reliance on to its detriment.** This court has previously approved the following summary of the principle:
>
>> [F]or there to be an equitable estoppel there must be the creation or encouragement of an assumption that a contract will come into existence or a promise be performed, and reliance upon that promise **in circumstances where departure from the assumption by the [charged party] would be unconscionable**.
>
> 83. Equitable estoppels (promissory and proprietary) are distinguished from common law estoppels by the circumstance that **equitable estoppel is concerned with conscience - in particular with the prevention of unconscionable insistence on strict legal rights**. Thus it is said that the equitable doctrines result in new rights between the parties when it is unconscionable for a party to rely on his or her strict legal rights. Nettle J has explained that the **'foundational principle on which equitable estoppel in all its forms is grounded is that equity will not permit an unjust or unconscionable departure from an assumption or expectation of fact or law, present or future, which that party has caused another party to adopt for the purpose of their legal relations'.**
>
> 84. **Equitable estoppel has its basis in unconscionable or unconscientious conduct - and preventing the suffering of detriment occasioned thereby - rather than making good assumptions or expectations or bringing about the enforcement of promises. It is grounded in the body of equitable doctrine that prevents unconscientious assertion of claimed legal rights.** The fundamental object of equitable estoppel is to protect a claimant against unjust detriment which would flow from the charged party's change of position if the charged party were permitted to depart from an assumption or expectation held by the claimant as induced by the charged party's representation or conduct. **It is the action or inaction of the claimant as induced by the charged party which is the foundation for equitable intervention as '[i]t is not the breach of promise, but the promisor's responsibility for the detrimental reliance by the promisee, which makes it unconscionable for the promisor to resile from his or her promise'.** So understood, detriment is relevant both in establishing the basis for the estoppel and in determining the appropriate relief. It also demonstrates that, while distinct concepts, there is a relationship between detriment and unconscionability.
>
> [emphasis added]

[59]   Recognising that promissory estoppel subverts the defendant's otherwise enforceable legal rights and is invoked by equity only to avoid unconscionability, *Arwon* sets out a stricter approach to the first *Waltons* consideration, focussing on the objective reasonableness of the plaintiff's assumption:

> 145.   In short, **if it is not reasonable (ie if it is unreasonable) for the claimant to rely on the meaning he or she attributes to the representation or conduct, then it cannot be unconscionable for the charged party to deny responsibility for the detriment that**

the claimant sustains because of that unreasonable reliance.

….

163.   …   *The representation or conduct must be capable of conveying to a reasonable person the meaning that the claimant asserts by way of assumption or expectation. The representation or conduct must be such that it is capable of creating the assumption or expectation in question.*

…

177.   *The existence of a present intention which does not exclude the possibility of a future change of mind will seldom be adequate to found an effective estoppel. A mere 'hope' or 'confident expectation' that a person who has given assurances will do the proper thing is insufficient to give rise to an equitable estoppel. The conduct must be such as to induce an assumption or expectation affecting legal relations which is binding and irrevocable; it is to be treated between the parties as something that the charged party is unconditionally bound to do* – or in this case – not to do.

[emphasis added]

[60]   *Tipperary Developments Pty Ltd v. The State of Western Australia*, [2009] WASCA 126, cited by Dr Silink, also confirms that the plaintiff's putative assumption must be objectively reasonable:

135   To establish an equitable estoppel the plaintiff must act to his detriment in reliance on the assumption or expectation relating to existing or potential legal relations. *The doctrine has no application to an assumption induced by a promise which is not intended by the promisor and understood by the promisee to affect their legal relations*: *Waltons Stores* (421) (Brennan J).

[emphasis added]

[61]   With respect to the second consideration, *Arwon* emphasises that the defendant's acts or communications must be so acute and profound as to make rejection of a legally enforceable right unconscionable:

93.   … However, the importance of the second criterion ought not be overlooked. Since *Thompson v Palmer* and *Grundt v Great Boulder Pty Gold Mines Ltd* it has been well understood that the justice of an estoppel depends not only on the fact that a state of affairs has been assumed as the basis for action or inaction and departure therefrom would occasion detriment. The justice of an estoppel depends also on the manner in which the assumption has been occasioned or induced: *the charged party must have played such a part in the adoption of the assumption that it would be 'unfair or unjust' (ie unconscionable) if he or she were left free to ignore it (although the concepts of fairness and justice are not at large).* Whether a departure by the charged party from the assumption or expectation should be considered unconscientious (or unjust) depends on the part taken by the charged party in its adoption by the claimant. *The charged party must have played such a part in the adoption of, or persistence in, the assumption or expectation that he or she would be guilty of 'unjust or oppressive' conduct if he or she were to depart from it.*

[emphasis added]

[62]   Where an alleged equitable estoppel is grounded in a representation, the statement must be

'clear', 'unequivocal', or 'unambiguous' before it can found a promissory estoppel: *Arwon* at para. 96.

2. Did the defendant, by its words or actions, induce in the plaintiff a reasonable expectation that it would have a legally enforceable right to list its plug-ins on the Moodle directory?

[63]   The plaintiff argues that general and specific statements and actions by the defendant induced and allowed it to assume a legal relationship between the parties, such that the defendant would not be free to withdraw from that legal relationship (*Waltons* considerations one and two). Specifically, the plaintiff says it reasonably assumed that the defendant had a continuing obligation to:

> (a) publish plug-ins relating to the plaintiff product that comply with the technical guidelines to the Moodle directory, within a reasonable time;
>
> (b) not refuse such publication unreasonably, in bad faith, or for extraneous reasons or consideration; and
>
> (c) not treat the publication of plug-ins relating to the plaintiff product on a lesser footing than others in the industry.[4]

[64]   In her affidavit, Ms Bat-Sheva "Shevy" Levy, Chief Executive Officer of the plaintiff, avers to her subjective belief in these assumptions.

[65]   The plaintiff argues that the defendant's general and specific communications with respect to eligibility for the Moodle directory reassured the plaintiff that technical competency was the sole criterion and only potential bar to publication on the Moodle directory.

[66]   It is uncontroversial that the defendant has never overtly represented to the plaintiff that it considered itself legally bound to publish the plaintiff plug-ins, or every technically compliant plug-in, on its directory, within any time parameters, or at all. Instead, the plaintiff relies upon inferential direct and indirect communications.

[67]   The plaintiff emphasises the opposite proposition: that Moodle, in its direct and indirect communications, never provides a disclaimer that it might not publish plug-ins that nonetheless meet technical guidelines, or that Moodle retained the right to refuse to publish plug-ins at its sole and absolute discretion. With respect, this negative option construction of legally enforceable rights ignores the fact that the Moodle directory is Moodle's directory: in fact and in law, it has no obligation to affirmatively reserve its right to exercise its discretion over its own website.

[68]   The plaintiff argues that statements by the defendant directly to the plaintiff and on the tracking pages, reviewed above in the introduction to these reasons, furthered the reasonable expectation that if alleged technical problems were fixed, listing on the Moodle directory would be automatic and guaranteed.

[69]   On the contrary, the statements do not deprive, directly or by implication, the owner of the directory of its rights to decide what it lists. Indeed, the tracking pages statements of "*waiting on Moodle HQ*" and "*asked by Moodle HQ not to approve this plugin at this moment*" served as affirmative reminders that technical compliance was not the sole criterion for publication on the Moodle directory, and that at the end of the day, Moodle itself may confirm or reject publication. Publication is not automatic on technical compliance, but, rather, remains ultimately at Moodle's discretion.

[70]   The plaintiff places great weight on a flowchart on the defendant's website setting out, step-by-step, the "*Workflow of contributing a plugin into the Moodle plugins directory*". That diagramme indicates that a plug-in guardian and facilitator will "Check the plugin record", "Test the function of functionality", and "Review the code", before determining whether a plug-in should either be approved or reverted back to the submitter as needing more technical work.

[71]   The plaintiff overstates the purpose and importance of that flowchart, which exists solely to describe the technical submission and review process for plug-ins. It provides technical guidance to programmers and developers, not legally-binding representations to executives and lawyers. That the flowchart describes technical processes and approvals, rather than an overarching legal or corporate decision to list a given plug-in or all technically compliant plug-ins on the Moodle directory, is reflected in the section heading ("Sharing code in the Plugins directory") and the technical verbiage accompanying that flowchart:

> **Before you start**
>
> Before submitting your work to the Plugins directory, you should make sure you have all required and recommended resources available.
>
> - **Plugin type** – Different plugin types are best suited for certain types of functionality. It is important to choose the appropriate plugin type to implement the desired features.
> - **Plugin name** – See the Frankenstyle page for details.
> - **Repository** – You are expected to have the plugin code published and shared in a way that facilitates collaboration on further development. Ideally, you should have the code available in a public Git repository. Most developers found Github (https://github.com) a good place to host their code on. The #Repository section below provides more details.
> - **Tracker** – You are expected to have a system where users can report issues, bugs and feature requests for the plugin. Again many developers use Github issues (https://guides.git hub.com/features/issues/) happily these days. You can also use the Moodle tracker if you prefer. See #Tracker section for more details.
> - **Documentation** – The plugin should have a good documentation available. See Plugin documentation for options.
> - **Screenshots** – Prepare good screenshots that illustrate your plugin's essential features.

[72]   Nowhere in that flowchart, nor in the section of the defendant's webpage on which it appears ("Plugin contribution"), nor anywhere on the defendant's website, nor in any other communications, does the defendant indicate that it will guarantee publication on the Moodle directory if a given plug-in meets technical demands, regardless of all other factors, including the strained relationship between the parties. Needless to say, at no point did Moodle indicate, overtly or by implication, that it considered itself under a legal obligation to publish the plug-in.

[73]   While the plaintiff's thesis may appear tentatively attractive with respect to its own plug-ins, it cannot be the case that technical compliance is the sole criterion for publication, or that a reasonable person would interpret the flowchart as establishing a legally enforceable right that would deprive the defendant of the final say of what it lists on its own directory. Could a third-party developer expect, and legally require, publication on the Moodle directory of its plug-in allowing the defendant's LMS to enable its pornographic or fascist themed product? Could it require Moodle to list a plug-in with an obscene or racist name? Would the defendant be required to list the plug-ins or products of a direct competitor that would undermine its own market share? Or a third-party product that denigrated the defendant's LMS in its product description (e.g. "this plug-in will assist to counteract blatantly serious and stupid deficiencies in the Moodle LMS")? Or the plug-ins of a company, such as the plaintiff, with whom it is embroiled in a $1 million royalties dispute and whom it accuses of providing inaccurate sales data?

[74]   The defendant recites the logical implications of the plaintiff's CEO's asserted subjective expectations. Those purported expectations would require the defendant to:

a) effectively enact the plaintiff's marketing initiative by "assuredly" publishing and hosting the plaintiff's products on a website directory it owned;

b) without any payment from plaintiff;

c) continuously throughout "the lifespan of Zoola on the market";

d) without any restriction to plaintiff's "access to and opportunity with the large market of Moodle users";

e) "… in the same manner as other third-parties…"

[75]   The Court agrees it would be unreasonable for the plaintiff to expect to impose such obligations on the defendant based on its gratuitous provision of the Moodle directory.

[76]   Nor does the plaintiff satisfy the second *Waltons* consideration: the defendant has not induced the plaintiff to assume or expect guaranteed directory listing. The analysis above confirms that the defendant's direct and indirect communications to the plaintiff did not induce, and did not

seek to induce, the plaintiff to assume a right to publish its plug-ins on the Moodle directory.

[77]   On the contrary: the defendant emphasises repeatedly that, just as a developer need not be a certified partner, the plaintiff need not advertise its plug-ins or products on the Moodle directory. The Moodle directory is not the only channel through which the plaintiff may provide its plug-ins. The plaintiff can, and does market its plug-ins on its own website. It also markets and provides its plug-ins on other sites.

[78]   In the same Moodle website "Plugin contribution" flowchart document cited by the plaintiff above, Moodle expressly recognises that a developer is under no obligation to list its plug-ins on the Moodle directory:

> You are encouraged to share your plugin with the community. **But firstly, to be clear and honest, you do not necessarily need to submit your plugin into the Plugins directory.** Maybe it is a custom plug-in that solves one particular site's needs and you do not really want to share it with others**.. Remember you can always simply host your plugin on your own site and let users download it manually from there.**
>
> [emphasis added]

[79]   The plaintiff cites passages from the Moodle website in which the defendant sets out the benefits of publication on the Moodle directory. These include the reassurance of Moodle review and approval, greater ease of installation and update, and reservation of a unique name for the third-party developer's plug-in. Those statements do not, however, equate to a legally enforceable guarantee of publication on the Moodle directory, overriding the discretion of the owner of that directory. Further, this recitation itself emphasises that third-party developers are not required to list their plug-ins on the Moodle directory, and that there are other avenues available to such a developer to advertise and market a plug-in designed for the Moodle LMS.

[80]   Nor does the plaintiff satisfy the third *Waltons* consideration: the plaintiff did not reasonably rely or act on the purported assumption or expectation.

[81]   The plaintiff claims that it has spent roughly $5 million developing the Zoola product. Ms Levy asserts in her affidavit that the plaintiff would never have done so except on the understanding that the Zoola plug-ins would be listed eventually on the Moodle directory:

> … Had I known that Moodle would eventually refuse to publish the Zoola Plugins in the Moodle Directory, Lambda would not have expended such a significant amount of time, money and effort on the development of Zoola.

[82]   As with the first two *Waltons* considerations, any reliance by the plaintiff is tempered by the concept of reasonableness: the reliance must have been reasonable: Dr Silink's affidavit at para. 5.36; *Arwon* at paras. 136–145. As set out above, it would not have been reasonable for the plaintiff to infer that the defendant's words and actions would create, or were intended to create,

legally enforceable obligations. Similarly, and accordingly, it would not be reasonable for the plaintiff to have acted in the manner it claims to have done based on those expectations.

[83]   In any case, however, Ms Levy's assertions of *sine qua non* reliance on the defendant's directory are not borne out by reality. As set out above, the plaintiff product is not only compatible with the defendant's LMS: it can be used with a variety of other LMSes, including Totara Learn and Blackboard. Further, the plaintiff has been able to market earlier iterations of its product, via channels other than the defendant's directory, and has enjoyed, as stated in Ms Levy's affidavit, "some success" in that regard.

[84]   Further, again, while the Moodle directory may be the most efficient and effective way for the plaintiff to market and sell its plug-ins and thus promote its product, the plaintiff already markets its plug-ins and products through a variety of avenues apart from the defendant's directory. As stated in its argument, the plaintiff generates revenue through direct client sales, resellers, or through bundling Zoola with other plaintiff's products, with no need for plug-ins. It markets its products through its own website, third-party websites, resellers, and other typical marketing activities. Again, the 2018 application for the two plaintiff plug-ins was the first time the plaintiff sought to avail itself of the Moodle marketing avenue.

[85]   Indeed, in August 2016, 17 months before the plaintiff submitted its plug-ins, Ms Levy explained to Mr Dougiamas, the defendant CEO, that the plaintiff would be moving away from its reliance on the defendant's platform:

> About a year ago we had a discussion on Lambda's change in focus for 2016 onwards, moving from Moodle services into a product-focused business around learning analytics. Since then we have gained traction with Zoola and continue to develop our global market in the space. While Moodle will continue to be a solution that will be offered, it is no longer our primary product. As a result the value of the Moodle Partnership for our business does not have the same weight as it used to.

[86]   In Ms Levy's April 28, 2017 letter formally advising that the plaintiff would not renew the Partnership Agreement, she reiterated that her company would "*focus for 2016 onwards, moving from Moodle services into a product-focused business around Learning Analytics…*".

[87]   In November 2017, a representative of the plaintiff similarly downplayed the importance of listing the plaintiff plug-ins on the Moodle directory, in response to an enquiry from potential customer, Catalyst, about the lack of a listing:

> We have plans, but right now as the plug-ins are useless without a Zoola subscription and a subscription is required.
>
> …
>
> No one has asked us to submit it, and combined with the fact that we do not have a free/trial plan, the plug-in is useless to anyone without a subscription, so the task is lower

priority for us right now.

We will get to it, just not sure when…[5]

[88]   These 2016 and 2017 communications also speak to the fourth *Waltons* consideration, the defendant did not know that the plaintiff would rely to the extent alleged on its statements, much less that the plaintiff intended to do so. These communications would further disabuse the defendant of any understanding that the plaintiff considered listing its plug-ins on the Moodle directory to be critical to its business. Indeed, again, the defendant understood that the plaintiff had happily operated its business without once seeking to have its plug-ins listed on the Moodle directory from 2009 to 2018. In any case, at no point did the plaintiff advise the defendant that it was expending considerable time and money developing its product and plug-ins in reliance on an understanding of a guaranteed directory listing, and that such listing would make or break its success.

[89]   With respect to the fifth and sixth *Waltons* considerations, again, the plaintiff has continued to develop and market its product and plug-ins irrespective of listing on the Moodle directory, albeit not to the full extent it would wish.

[90]   In summary, at no point could the plaintiff have harboured a reasonable expectation that the defendant would voluntarily waive all discretion in the decision of whether to list a given, otherwise technically-compliant, plug-in on its gratuitously provided directory, regardless of the content of the product, the defendant's own circumstances, or whether it was engaged in multiple disputes with, as here, the submitting developer.

D.   Did the defendant's communications constitute negligent misrepresentation?

[91]   Reflecting the factual conclusions above, the plaintiff's alternative argument, based on the Canadian law of negligent misrepresentation, also fails.

[92]   The parties both accept the *Queen v. Cognos Inc.*, [1993] 1 SCR 87 at 110, recitation of the plaintiff's required proof to establish a claim in negligent misrepresentation:

> a. There must be a duty of care based on a "special relationship" between the representor and the representee;
> b. The representation in question must be untrue, inaccurate or misleading;
> c. The misrepresentor must have acted negligently in making said misrepresentation;
> d. The representee must have relied, in a reasonable manner, on said negligent misrepresentation; and
> e. The reliance must have been detrimental in the sense that damages resulted.

[93]   The Court accepts that a duty of care existed based on a special relationship between the

representor and the representee: the parties were contractually involved since 2009, and it was clear that the plaintiff desired to have its plug-ins listed on the Moodle directory. But, as set out above, at no point did the defendant, through its words, actions, or otherwise, negligently or deliberately convey a guarantee that the plaintiff plug-ins would be listed on the Moodle directory solely on the criterion of technical compliance, and that the publication decision would not ultimately rest on the owner of the Moodle directory. As per the analysis above, any reliance on such a subjective inference would also be unreasonable.

III. CONCLUSION

[94]   As indicated, on June 2, 2021, the Supreme Court of Western Australia granted the plaintiff's application to stay the defendant's royalties action in that jurisdiction until such time as there was "*removal, cessation, or strike out*" of the portions of the present British Columbia action "*concerning the Partner Agreement*".

[95]   In this summary trial application for final judgment, the plaintiff has not pursued its Partner Agreement claims, but instead has resiled from its reliance on that agreement; nor has it provided any evidence to support those allegations. The plaintiff's action is dismissed in its entirety. Through these reasons, this Court confirms to the Supreme Court of Western Australia that those pleadings, and the British Columbia action in general, are at an end.

[96]   The defendant has been successful and is presumptively entitled to its costs of this proceeding, at Scale B. If either party wishes to make submissions to dislodge that presumption, it shall advise the other within 20 days of these reasons, and schedule a date for the hearing of the matter as soon as feasibly possible.

[97]   Counsel are commended for their zealous advocacy and thorough submissions on behalf of their respective clients.

<div align="center">"Crerar J"</div>

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[1]   *Moodle Pty. Ltd. v. Lambda Solutions Inc.,* Vancouver Reg. S184833.

[2]   *Moodle Pty Ltd v. Lambda Solutions Inc*, [2021] WASC 166.

[3]   That said, the plaintiff has only adduced expert evidence of Australian law in relation to the plaintiff's claim based in equitable promissory estoppel, as a cause of action: the affidavit of Dr Allison Silink, a New South Wales barrister and senior lecturer at the University of New South Wales Faculty of Law.

[4]   These asserted expectations mirror the terms the plaintiff pleaded were implicit in the Moodle Partner Certification Agreement.

[5]   These quotations come from two separate emails between the individuals.