COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Trigon Pacific Terminals Limited v. Prince Rupert Port Authority,* 2025 BCCA 155

Date: 20250516
Docket: CA50224

Between:

Trigon Pacific Terminals Limited

Appellant
(Plaintiff)

And

Prince Rupert Port Authority

Respondent
(Defendant)

And

Ridley Island Export Facility Limited Partnership, by its general partner Ridley Island Energy Export Facility GP Inc.

Respondent
(Non-party)

FILE SEALED (IN PART)

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

On appeal from: An order of the Supreme Court of British Columbia, dated October 18, 2024 (*Trigon Pacific Terminals Limited v. Prince Rupert Port Authority*, 2024 BCSC 1914, Vancouver Docket S237527).

Counsel for the Appellant:	R.J.C. Deane D. Rossi B. Stang
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Place and Date of Hearing:	Vancouver, British Columbia February 20, 2025
Place and Date of Judgment:	Vancouver, British Columbia May 16, 2025

Written Reasons by:
The Honourable Mr. Justice Abrioux

Concurred in by:
The Honourable Justice Dickson
The Honourable Justice Winteringham

Summary:

The appellant, Trigon, appeals from an order denying its application for production of unredacted copies of certain commercial agreements between the respondents, the Prince Rupert Port Authority and Ridley Island Energy Export Facility Limited Partnership.

Held: The Appeal is dismissed. The judge did not err in concluding that he had discretion, under the Supreme Court Civil Rules, to deny an application for production of redacted documents where the redacted information is only of marginal or tangential relevance and where there is "good reason" for the redactions. Production orders are discretionary, including in the context of redactions to otherwise producible documents, and this discretion is guided by the principle of proportionality as it applies to the relevance of the redacted information and the strength of the reason for redaction. The judge also made no error in determining that the redacted information in question was ultimately irrelevant and that there was a "good reason" for the redactions. Nor did he err in failing to consider alternatives to redaction.

Reasons for Judgment of the Honourable Mr. Justice Abrioux:

Introduction

[1] This appeal raises the question of when a party may redact portions of otherwise discoverable documents within the context of the *Supreme Court Civil Rules,* B.C. Reg. 168/2009 [the *Rules*].

[2] In the order under appeal, Justice Giaschi denied the application of the appellant, Trigon Pacific Terminals Ltd. ("Trigon"), for the production of unredacted copies of certain commercial agreements between the respondents, the Prince Rupert Port Authority (the "PRPA") and Ridley Island Energy Export Facility Limited Partnership ("REEF")—the latter being a commercial competitor of Trigon.

[3] In reasons for judgment indexed as *Trigon Pacific Terminals Limited v. Prince Rupert Port Authority*, 2024 BCSC 1914, the chambers judge found that the redacted information was not relevant, or only marginally so, and that there were good reasons for non-disclosure. Trigon challenges the order on the grounds that: 1) the judge applied the wrong legal test in reaching his conclusions; 2) the judge's

application of that incorrect test undermined his analysis of the redactions' relevance; and 3) the judge failed to consider alternatives to redaction.

[4] For the reasons that follow, I would dismiss the appeal.

Background

[5] The dispute between the parties arises out of a breach of contract action brought by Trigon against the PRPA.

[6] Trigon leases space at the Port of Prince Rupert from the PRPA, and has done so, under various contractual instruments, since the early 1980s (the "Trigon Lease"). The dispute concerns the activities Trigon may undertake on the leased premises and whether the PRPA breached the terms of the Trigon Lease. Under this agreement, Trigon may only use the leased premises for certain specified purposes, unless it obtains the PRPA's written consent, which consent is not to be unreasonably withheld.

[7] In August 2015, the PRPA entered into a lease agreement with Vopak Development Canada Inc. (the "Vopak Agreement"). This agreement granted Vopak the exclusive right to ship and process liquified petroleum gas ("LPG") from the Port of Prince Rupert. REEF is a successor to Vopak under the Vopak Agreement and currently holds the exclusivity rights.

[8] In September 2023, Trigon requested the PRPA's consent to commence bulk handling and shipping of LPGs. The PRPA refused Trigon's request, stating that granting the request would conflict with its other commercial commitments, including its obligations to REEF under the Vopak Agreement. Trigon commenced the underlying action shortly thereafter. The PRPA counterclaimed, alleging that a November 2023 news release by Trigon constituted breaches of the lease agreement, the contractual duty of good faith, and a duty of care owed to the PRPA by Trigon. The issues before the judge and on this appeal relate only to Trigon's

claims. When the underlying action was commenced and at the time of the application before the chambers judge, REEF was a non-party, but has since been added as a defendant to the action: see *Ridley Island Energy Export Facility Limited Partnership v. Trigon Pacific Terminals Limited,* 2024 BCCA 398.

[9] To place the issues on appeal in their proper context, it is of assistance to briefly review the pleadings. Trigon claims that its lease agreement with the PRPA contained several implied terms, including that:

a) The parties would act in good faith;

b) They would not engage in post-contractual conduct to deny or deprive the other of benefits of rights under the Trigon Lease;

c) They would not act with a collateral or ulterior purpose in performing their obligations under the Trigon Lease; and

d) The PRPA would allow Trigon to use the leased lands to operate its commercial business as a bulk commodities marine terminal.

[10] Trigon also claims that the PRPA breached the terms of the Trigon Lease by unreasonably withholding consent for Trigon to begin shipping and processing LPGs, and by engaging in wrongful post-contractual conduct, namely, entering into the Vopak Agreement and several subsequent agreements with REEF.

[11] The PRPA denies these allegations. It claims that its lease agreement with Trigon contained only three implied terms, being that the parties would:

a) Act in good faith;

b) Exercise their discretion under the lease agreement in a manner consistent with the contractual purpose for that discretion; and

c) Not engage in post-contractual conduct "for the sole purpose of denying or depriving the other party of benefits that had been contracted for under the [Trigon Lease]".

[12] The PRPA asserts that the Trigon Lease did not provide Trigon with unlimited use of the leased lands, and that the lease specifically permitted PRPA to restrict which commodities were the subject of Trigon's business. It denies that it engaged in post-contractual conduct meant to deprive Trigon of its contractual entitlements by entering into the Vopak Agreement.

[13] The PRPA further claims, by way of its pleadings, that in denying Trigon's request, it informed Trigon that:

a) REEF held time-limited exclusivity rights regarding LPGs;

b) The REEF project had been in development for nearly ten years and had resulted, to date, in an estimated $70 million dollar investment;

c) The PRPA had acted to convey land use rights "to maximize the development utility and operational capacity of the Port" in support of Canada's trade agenda;

d) Granting Trigon's request would expose the PRPA to "intolerable legal risk"; and

e) That Trigon does not have an unfettered right to be granted the consent it sought.

[14] After being added as a party, REEF filed a response to Trigon's notice of civil claim, which largely mirrors the PRPA's positions on these matters.

The Disputed Redactions

[15] The dispute at issue in this appeal arose at the discovery phase of the litigation.

[16] In February 2024, Trigon brought an application in the Supreme Court for an order compelling the PRPA to deliver its list of documents (in accordance with Rule 7-1(1) of the *Rules*) within five days. An Associate Judge heard the application, and ordered, *inter alia,* that:

a) Within seven days the PRPA was to serve a list of documents listing the Vopak Agreement and any amendments, the Vopak lease and any amendments, and any records regarding the transfer, assignment, or amendment of the Vopak agreement to REEF; and

b) Within eight weeks, the parties were required to address, by agreement or application, any objections to the production of the ordered documents.

[17] PRPA ultimately objected to producing ten of the listed documents without redactions. REEF, while not yet a party, made submissions on Trigon's production application. The ten documents in question are commercial agreements between the PRPA and REEF.

The Chambers Decision

[18] In his decision, the judge classified the disputed redactions into three groups, which related to: (1) dollar values; (2) dates; and (3) information about the products to be handled at the REEF facility. REEF and the PRPA asserted that the redacted information is commercially sensitive, confidential, and irrelevant to the issues in the underlying action.

[19] The judge reviewed the parties' positions and the relevant case law, including the analytical framework set out in *North American Trust Co. v. Mercer International Inc.*, (1990) 71 B.C.L.R. (3d) 72 (S.C.). In *North American Trust Co.,* Lowry J. (as he then was) held that while it is generally the case that "the whole of a document is discoverable if any part of it relates to a matter in issue", redactions may be permitted where "the part withheld [is] clearly not relevant to the issues and, because of its nature, there has been good reason why that part should not be

disclosed": *North American Trust Co.* at paras. 10–11. The judge also referred to this Court's decision in *Este v. Blackburn,* 2016 BCCA 496, citing it for the proposition that "the court is required to balance the need to protect privacy interests in irrelevant materials against the need to ensure adequate discovery": at para. 46.

[20] Under the *Rules,* there are two "tiers", or stages, of documentary discovery: see generally Rule 7-1. At the second tier, the definition of relevance is broader than at the first. The judge noted two competing authorities—those being *0878357 B.C. Ltd. v. Tse,* 2012 BCSC 516 and *McCaw's Drilling & Blasting Ltd. v. Greenfield Construction Ltd.,* 2019 BCSC 2244—regarding whether the first- or second-tier definition of relevance applies to the question of redactions.

[21] In adopting the second-tier test for relevance, the judge observed that there is:

> [52] …no reason in principle why a demand for an unredacted copy of a document should not be treated in the same way as a demand for disclosure of additional documents. In both cases, the party is communicating a dissatisfaction with the documents produced by the other party. In both cases, the party is requesting additional disclosure from the other party.

[22] He found, furthermore, that to impose different tests for relevance based on whether a redaction was made at the first or second stages would be inconsistent with the *Rules*' objective of securing the "just, speedy and inexpensive determination of every proceeding on the merits", because this could encourage multiple successive applications for the production of redacted information: at para. 53.

[23] The judge also considered REEF's submission that redactions are permissible where the redacted material "is only of marginal relevance and its probative value is outweighed by interests of privacy, confidentiality and the protection of confidential information": at para. 54. Trigon's position—which it maintains on appeal—was that this exercise in balancing is only to be engaged in once it has been determined that the redacted information is irrelevant, and that

where a judge determines that the redacted information is relevant, there is no residual discretion to decline to order production of the information in question.

[24] The judge referred to *Park v. Mullin,* 2005 BCSC 1813, in which Dorgan J., describing what was then Rule 26(1), wrote, at para. 15, that:

> …the court has used its discretion to deny an application for the production of documents…where the documents sought do not have significant probative value and the value of production is outweighed by competing interests, such as confidentiality.
>
> [Emphasis added.]

[25] While the judge appreciated that *Park* did not deal with redactions specifically, he identified the case as an example of the more general point that "courts have always exercised a discretion to limit discovery of documents where the probative value of the document is outweighed by other considerations": at para. 57, citing *Cobalt Construction Inc. v. Parsons Inc.,* 2021 YKSC 31; see also at para. 58, citing *McCaw's Drilling* at para. 33. He went on to note that this balancing exercise is "an exercise in proportionality": at para. 57, citing Rule 1-3(2).

[26] The judge then applied the above-described framework to the redactions in question, which are described in further detail at paras. 67–69 of his reasons.

[27] He began his analysis by observing that "there are virtually no issues of fact raised by the pleadings. The main facts alleged in the NCC are admitted by PRPA in its response": at para. 71. In his view, resolving the legal issues raised by the pleadings would depend on the contractual and related obligations between Trigon and the PRPA, rather than those between the PRPA and REEF, "except in relation to the exclusive right granted to Vopak/REEF to handle and export LPG, which is not a disputed fact": at para. 73.

[28] The judge then reviewed the categories of documents in some detail, concluding that the redactions were not relevant. Insofar as the redactions to dollar

values are concerned, he concluded his discussion with the following paragraph, which has played a prominent role in this appeal:

> [80] Accordingly, in my view, the redacted dollar amounts are not relevant to the issues to be decided. At best, to the extent they relate to the amount invested in the project or disclose the magnitude of the risk to PRPA of breaching its agreements with Vopak/REEF, they are of very marginal or tangential relevance.
>
> [Emphasis added.]

[29] In my view, the judge's statement that the redacted dollar amounts had "at best…marginal or tangential relevance" was made in the alternative. Before making this observation, he concluded that the redacted dollar amounts were irrelevant: at paras. 77–79.

[30] The judge similarly found that the redactions to dates and to product information were irrelevant. As to the dates, the judge held that disclosure of the redacted dates would not assist Trigon in assessing the "intolerable legal risk" pleaded by the PRPA, because "that risk is a function of the size and duration of the project", and the specific, redacted dates were "simply not relevant to that risk": at para. 83. The judge also rejected Trigon's submission that the PRPA's pleaded limitations defense rendered the dates relevant, observing that "other than the fact that a limitation defence is determined by dates", the redacted dates bore no discernable relevance to the core legal issue of discoverability: at para. 85. As to the redacted product information, Trigon submitted that the redactions were relevant because the PRPA has pleaded that it granted Vopak/REEF exclusivity rights in respect of "Bulk Liquids". The judge noted, however, that "Bulk Liquids" was an unredacted term in the disputed agreements, that the issues in the action had nothing to do with non-LPG products, and that the redacted information also had nothing to do with LPGs: at paras. 87–89.

[31] Having found that the redacted information was irrelevant, the judge then considered whether there was a "good reason" for the redactions, in accordance

with the second aspect of the *North American Trust Co.* framework. He referred to two affidavits filed by REEF, described in further detail at paras. 33–39 of the reasons, and concluded that he was "more than satisfied that there is a good reason for the redactions in that disclosure would expose REEF's confidential information and harm its commercial interests and its dealings with third parties": at para. 91. In his view, disclosure of the redacted dollar amounts would give REEF's competitors a competitive advantage; the disclosure of schedules, milestones, and dates would provide REEF's competitors a "window" into its project management system and highly confidential information; and that disclosure of the non-LPG products over which REEF holds exclusivity rights would harm it in its negotiations with export partners: at para. 91. All of this was, in his view, "particularly significant since Trigon is currently a competitor [of] REEF": at para. 92.

[32] Accordingly, being satisfied that the redactions were irrelevant and that there was "good reason" for them, the judge dismissed Trigon's application.

Issues On Appeal and Standard of Review

[33] Trigon has raised the following issues on appeal, being whether the judge:

a) Identified and applied the correct legal test for when redactions are permissible in otherwise discoverable documents;

b) Erred in finding:

   i. That the redacted information was irrelevant or, at best, marginally or tangentially relevant; and

   ii. That there was a "good reason" for the redactions;

c) Erred in failing to consider whether measures short of complete redaction would be appropriate in the circumstances.

[34] The decision whether to order production of any document in the discovery process, including unredacted copies of otherwise producible documents, is discretionary. A judge's exercise of discretion is subject to a deferential standard of review and will only be overturned by an appellate court where the judge erred in principle, failed to consider all relevant circumstances or considerations, misapprehended the evidence, or made an order that results in a clear injustice: *British Columbia (Attorney General) v. Malik,* 2009 BCCA 201 at para. 19; *British Columbia (Minister of Forests) v. Okanagan Indian Band,* 2003 SCC 71 at para. 43.

Issue #1: The Legal Framework

[35] The rules governing the discovery and inspection of documents in civil matters are set out in Rule 7-1 of the *Rules.* The *Rules* provide a framework according to which parties exchange lists of relevant documents and, in the ordinary course, produce those documents to each other. On an application for compliance with a demand for production made pursuant to Rule 7-1(13) or otherwise, the court may, *inter alia,* excuse a party from compliance with a demand for additional documents, pursuant to Rule 7-1(14)(a).

The Two-Tier Approach and the Tests for Relevance

[36] The *Rules* set out a two-tier process for documentary discovery. The first contemplates those documents that are relevant in the sense of being capable of being used to prove or disprove a material fact. The second, based on the common law and the former Rule 26(11), contemplates those documents that are relevant in the sense of "relat[ing] to any or all matters in question in the action". This includes any document "which directly or indirectly may enable the party to advance his own case or destroy that of his adversary or which may fairly lead the party to a train of enquiry or disclose evidence which may have either of these consequences": *Compagnie Financiere et Commercial du Pacifique v. Peruvian Guano Co.* (1882), 11 Q.B.C. 55 at 62 (C.A.) (the *Peruvian Guano* rule), as cited in *Fraser River Pile & Dredge Ltd. v. Can-Dive Services Ltd.,* 2002 BCCA 219 at para. 12.

The Exercise of Discretion and Documentary Production

[37] A significant question in the case at bar is the existence, extent, and nature of a judge's discretion to permit the redaction of marginally or tangentially relevant information within otherwise producible documents.

[38] The default rule under Rule 7-1 provides that all documents that are relevant must be disclosed and must be disclosed in their entirety: *Este* at para. 19. Full disclosure is necessary for the fair and effective functioning of our adversarial system of civil litigation and is an essential prerequisite to the search for truth and the proper administration of justice through the legal process: *Marsh Canada Limited v. BFL Canada Insurance Services Inc.,* 2014 BCSC 1171 at para. 67.

[39] It is necessary to identify two nuances to this general rule. First, disclosure and production are distinct: as the Saskatchewan Court of Appeal observed in *Omorogbe v. Saskatchewan Power Corporation,* 2022 SKCA 116:

> [19] Taken together, these rules distinguish between the disclosure and production of relevant documents. This was explained in *Spencer v Canada (Attorney General),* 2000 SKCA 96, [2001] 7 WWR 476, as follows:
>
> > [13] …The obligation to disclose and the obligation to produce are two distinct obligations. The obligation to disclose is the obligation to make known the existence of a document. The obligation to produce is the obligation to make that document available to the adverse party *unless* a proper basis exists for withholding production.
>
> [Emphasis in original.]

[40] Second, and relatedly, the parties' general and mutual obligation to disclose the existence of all relevant documentation does not similarly oblige the *court* to order the *production* of all relevant documentation in every case. The court's powers to compel disclosure and production are discretionary. This is true at both the first and second "tiers" of document production: *Birring Development Co. Ltd. v Binpal,* 2022 BCSC 218 at para. 52. The *Rules* are clear on this point, with Rule 7-1(14)(a) providing that:

> (14) On an application under subrule (13) or otherwise, the court <u>may</u>

> (a) order that a party be excused from compliance with subrule (1), (3), (6), (15) or (16) or with a demand under subrule (10) or (11), either generally or in respect of one or more documents or classes of documents…
>
> [Emphasis added.]

[41] There are additional principles and considerations that inform the proper exercise of the courts' discretion to oversee the discovery process. One such principle is proportionality, which is codified in Rule 1-3(2) and "infuses and informs the application of the *Rules*" in their entirety: *Barrie v. British Columbia (Forests, Lands and Natural Resource Operations)*, 2021 BCCA 322 at para. 91.

[42] While the principle of proportionality in discovery often functions as a control on the volume of documentation that is exchanged between parties to a lawsuit, it also contemplates interests in privacy and confidentiality. Courts have routinely affirmed their discretion to relieve a party from further documentary production where disclosure would not advance the matters in issue in any meaningful way and where disclosure would injure significant interests in privacy and confidentiality, including but not limited to the interests of third parties: see, for example, *Hadani v. Hadani,* 2012 BCSC 1142 at para. 32, citing *Hyvarinen v. Burdett,* 2012 BCSC 1034 at paras. 18–20; *XY, LLC v. Canadian Topsires Selection Inc.,* 2013 BCSC 584 at paras. 34–35; *PowerBlock Holdings Inc. v. Fitness Town Inc.,* 2022 BCSC 456 at para. 32, citing *Chow v. Wichacz,* 2022 BCSC 9 at paras. 37–39; *Merit Interior Designs (Duncan) Ltd. v. Kapila,* 2023 BCSC 1528 at paras. 58–60.

[43] This Court has long rejected a rigid approach to questions surrounding the discovery process. In *United Services Funds v. Ward*, (1968) 5 B.C.L.R. (2d) 379 (C.A.), which concerned interrogatories, Seaton J.A. observed:

> [6] The appellant's position is that if evidence is relevant to an issue, the chambers judge is bound to require answers. I do not agree to that proposition. I think that there is an element of discretion in these matters. If, as here, the answer is only of minimal importance to the litigation and may constitute a serious invasion of the parties' privacy, I think it open to a chambers judge to decline to require that the questions be answered…

[Emphasis added.]

[44] In S*tephen v. McGillivray,* 2008 BCCA 472, Smith J.A. observed that "the extensive scope" of the common law *Peruvian Guano* rule creates the need for "reasonable limitations", which limitations Rule 26(1.2)—now Rule 7-1(14)(a)—may provide: at para. 45. He agreed with the respondent's position that "the legislative intent of [Rule] 26(1.2) was to provide an exemption…where reasons of time, cost, efficiency and marginal relevance make it impracticable" to order production: at para. 3. In reaching this conclusion, Smith J.A. reviewed several British Columbia cases that had considered Rule 26(1.2); some of these excused a party from production where the information sought was of "marginal relevance" (*Peter Kiewit Sons Co. of Canada v. British Columbia Hydro & Power Authority*, (1982) 36 B.C.L.R. 58 (S.C)) or ordered production because the information in question was *more* than marginally relevant (*Murao v. Blackcomb Skiing Enterprises Limited Partnership,* 2003 BCSC 558), while others, such as *North American Trust Co.* (central to the case at bar), referred to a requirement of "irrelevance": *Stephen* at paras. 41–45. As such, when I read the reasons in *Stephen* as a whole, it appears that *North American Trust Co.* was identified as being *part* of a more general rule that a party may, in appropriate circumstances, be excused from production where the information sought is of marginal relevance.

[45] In my view, the flexibility identified with Rule 26(1.2) in *Stephen* is maintained in the framework set out in Rule 7-1.

[46] Accordingly, it is well-established that the decision whether to order production or excuse a party from compliance with a demand for production is a discretionary one. Proportionality is an overriding consideration that informs the exercise of this discretion, and the assessment of whether production would be proportionate may, on a case-by-case basis, involve the consideration of interests in privacy and confidentiality. In the assessment of proportionality, courts in this

province have considered the fact that the information sought is of marginal relevance.

Redactions

[47] This appeal turns upon the test that applies when a party seeks to redact certain portions of an otherwise discoverable document. The interpretation and application of two cases are central to this appeal.

[48] The first is *North American Trust Co.* The question before Lowry J. was whether one party was entitled to disclose only part of an agreement that related to a matter in question in the action; this was a case of first instance for the courts in British Columbia. Justice Lowry wrote:

> [11] In the cases to which I have been referred, litigants have been relieved from disclosing the whole of a document related to a matter in question where, but only where, the part withheld has been clearly not relevant to the issues and, because of its nature, there has been good reason why that part should not be disclosed. With reference to the decisions of this court specifically, good reason is apparent in the private nature of the affairs of a company recorded in the minutes of its directors' meetings, or the personal sensitivity of a person's medical records, diary notations, or familial communications, and much the same can be said where expurgated disclosure of a document has been upheld in the cases cited from other jurisdictions…
>
> …
>
> [13] Under the rules of this court, a litigant cannot avoid producing a document in its entirety simply because some parts of it may not be relevant. The whole of a document is producible if a part of it relates to a matter in question. But where what is clearly not relevant is by its nature such that there is good reason why it should not be disclosed, a litigant may be excused from having to make a disclosure that will in no way serve to resolve the issues. In controlling its process, the court will not permit one party to take unfair advantage or to create undue embarrassment by requiring another to disclose part of a document that could cause considerable harm but serve no legitimate purpose in resolving the issues.
>
> [Emphasis added.]

[49] With this, and under the auspices of Rule 26(1.2), Lowry J. set out what has been sometimes referred to as the "good reason" test: a redaction may be permitted

where the redacted information is "clearly not relevant" and where there is a "good reason" why it ought not be disclosed.

[50] The second case central to this appeal is this Court's 2016 decision in *Este.* In *Este,* the appellant (defendant to the underlying action) sought a *Halliday* order permitting redactions to certain portions of a police interview transcript, in the interests of privacy. In summarizing the legal framework that applied, Newbury J.A. reviewed Lowry J.'s analysis in *North American Trust Co.* After citing the portions of *North American Trust Co.* I referred to above, she observed that:

> [21] It is clear that in making such a ruling, the court must 'balance' the need to protect privacy interests in irrelevant material on the one hand, and the need to ensure "adequate discovery as a facet of the administration of justice" on the other: see *Gorse v. Straker* 2010 BCSC 119 at paras. 25 - 34; *Frenette v. Metropolitan Life Insurance Co*. 1992 CanLII 85 (SCC), [1992] 1 S.C.R. 647 at 666; *M.(A.) v. Ryan* 1997 CanLII 403 (SCC), [1997] 1 S.C.R. 157 at para. 38. Where Halliday orders are concerned, the 'balance' is reflected in the principle that even where medical records are being sought in a personal injury action, the order is not granted as of right. It is not enough that the information may be "embarrassing" to a party, or that it contain material that is private or confidential. The onus – not a heavy one – is on the person seeking to limit disclosure, to adduce evidence that satisfies the court that the document in question is likely to be irrelevant to the proof of a material fact.
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> [Emphasis added.]

[51] This Court ultimately ordered that the documents be produced without the disputed redactions, with Newbury J.A. stating that "the balancing process [was] not particularly difficult" on the facts: at para. 22. The redactions were relevant (under both the first and second tiers of production) and the appellant's "assertion that his privacy should be protected by a *Halliday* order [was] not persuasive", given that he provided the information in question to the police as part of an interview and could not have expected that it would remain private: at para. 24.

[52] Notably, the *North American Trust Co.* iteration of the test does not refer to "balancing", but the *Este* iteration does. In support of the idea that rulings regarding redactions involve a "balancing" between "privacy interests in irrelevant material"

and “adequate discovery”, Newbury J.A. cited three cases: *Frenette, M.(A.),* and *Gorse*: at para. 21. In my view, these authorities—and *Este*—suggest that the determination of whether redactions are appropriate requires the courts to reconcile often-competing interests in full disclosure and privacy: see *Frenette* at 685–686; *A.(M.)* at para. 38; and *Gorse* at paras. 30–31. This is consonant with the broader approach to proportionality that has been adopted in this province regarding requests for production generally, which I discussed above.

[53] The appellant, however, says that this exercise in balancing is only appropriate once it has been established that the redacted information is irrelevant. I can appreciate this perspective given how the relevant inquiry was initially described in *North American Trust Co.* and has been described in several subsequent cases of the B.C. Supreme Court (including *Gorse,* above). However, in my view, the appellant’s view is overly strict or technical and does not accord with the general approach to documentary production that has developed in this province over time, nor with *Este.*

[54] While it is true that in *Este,* Newbury J.A. referred to the concept of privacy interests in “irrelevant” material, the appellant’s very strict view of the proper approach to redactions is contrary to her actual application of the “good reason” test. As outlined above, Newbury J.A. determined that the information was relevant and then went on to consider whether the privacy interests engaged were sufficient to ground an exception to the general rule of full disclosure: *Este* at para. 24. In my view, if the process involved a strict, two-step inquiry, which came to an end if the information was found to be relevant, there would have been no reason for her to consider the appellant’s privacy interests at all.

[55] In addition, a strict two-stage test requiring a finding of complete irrelevance would be conceptually inconsistent with the general approach to documentary production that has developed in this province, as well as with the discretionary nature of production orders. If a judge *must* make an order for the production of

unredacted copies of documents where the redactions are determined to contain only marginally relevant information, that judge does not actually have the discretion regarding production orders that is clearly afforded by the *Rules.* A blanket rule, such as that which is proposed by the appellant, would offend the object of the *Rules*—being the just, speedy, and inexpensive determination of disputes on their merits, consistent with the principle of proportionality—as well as the courts' ability to effectively control their own evidentiary processes in order to secure the proper administration of justice: for a discussion of the importance of such discretion, see *Imperial Oil v. Jacques,* 2014 SCC 66 at para. 82.

[56] Furthermore, I can see no principled reason why requests for production orders that do *not* concern redactions may be refused where the information in question is of marginal relevance—which, as I have observed, is clearly the law in this province—while the same would not also be true of redactions. As noted by the chambers judge in the case at bar, the situation is the same within and without the context of redactions: one party seeks information, and the court must decide whether to order its disclosure.

[57] In my view, the cases referred to above identify a framework for the exercise of the courts' discretion to permit or prohibit redactions on a case-by-case basis. The central considerations identified in *North American Trust Co.*—relevance and the presence or absence of a "good reason" for the redactions—guide the analysis. But I would conclude that there is no requirement that the redacted information be completely irrelevant. As the degree of relevance increases, so too must the strength of the reason for its redaction; outside the context of some established privilege, there may well be a point at which information is of a sufficiently high degree of relevance as to make it effectively un-redactable, regardless of the reason offered for its redaction—though I would leave this question for another day.

[58] Accordingly, I do not accede to the appellant's submission that the chambers judge erred in principle insofar as he allowed for the possibility of upholding redactions to information of merely marginal or "tangential" relevance.

[59] I wish to briefly comment on the judge's conclusion that "relevance" should be understood within the meaning of the broader, second "tier" of documentary discovery. I do not consider it necessary to decide this question to dispose of this appeal. I note that in *Este*, Newbury J.A. appears to have applied the first "tier" meaning of relevance when she held that the onus was "on the person seeking to limit disclosure, to adduce evidence that satisfies the court that the document in question is likely to be irrelevant to the proof of a material fact": at para. 21 (emphasis added).

[60] It does not appear that this statement was specifically drawn to the judge's attention. And it is also not clear to me that Newbury J.A. was, as a matter of law, deciding that the first tier test for relevance was to be applied as a matter of course in a judge's exercise of discretion in ordering, or refusing to order, the production of redacted information. In my view, it makes little practical or principled sense to subject redactions to different tests for relevance based on what "stage" of the process a request for production is made. I would note, consistent with this Court's observations in *Stephen,* that the broader the ambit of "relevance", the greater discretion must be afforded to judges to exempt parties from a demand for production: *Stephen* at para. 45. Be that as it may, as I will explain, even on the broader test the judge applied and that Trigon urges this Court to adopt, I see no reviewable error in his determination that there is no relevance in the redactions at issue in this case.

Issue #2: The Relevance of the Redactions

[61] In any event, even if the judge erred in his summary of the applicable legal framework, this error would not be a material one, as I would not accede to the

submission that the judge erred in determining that the redactions were ultimately irrelevant.

[62] As I noted above, I would accept for the purpose of this appeal, and without deciding the question, that the second "tier" test for relevance applies. The question then becomes whether the judge erred in finding that the impugned redactions were irrelevant in the sense of not "relat[ing] to any or all matters in question in the action", that is, in the sense of being information "which directly or indirectly may enable the party to advance his own case or destroy that of his adversary or which may fairly lead the party to a train of enquiry or disclose evidence which may have either of these consequences": Rule 7-1(11); *Fraser River* at para. 12; *Este* at para. 18; *Barrie* at para. 96.

[63] Some cases have held that to be considered relevant under the second tier of documentary production, the relevance of the information in question must be shown to go beyond a "mere possibility" or have an "air of reality": *Lewis v. WestJet Airlines Ltd*., 2024 BCSC 111 at para. 17; *Jiang v. Peoples Trust Company*, 2021 BCSC 2193 at para. 17. Accordingly, a claim of relevance based upon simple speculation will not suffice.

[64] When I consider the redactions at issue, I agree with the judge that relevance is to be determined with reference to the pleadings. As the judge correctly noted, the issues that arise on the pleadings are not, for the most part, factual in nature, since the PRPA admits to most of the facts alleged by Trigon in its Notice of Civil Claim: at para. 71. As framed by the Notice of Civil Claim and the PRPA's response (REEF's later-filed response largely endorsing the PRPA's), the legal issues between the parties concern:

a) The terms of the Trigon Lease, including the existence of several implied terms;

b) Whether the PRPA breached the terms of the Trigon Lease by unreasonably withholding consent for Trigon to begin shipping and processing LPGs; and

c) Whether the PRPA engaged in wrongful post-contractual conduct meant to deprive Trigon of the benefit of its entitlements under the lease, specifically by entering into the Vopak Agreement and entering into several subsequent agreements with Vopak/REEF.

[65] The judge reached a substantially similar conclusion as to the nature and scope of the issues raised in the pleadings: at para. 72. I agree with his conclusion that the resolution of these issues primarily concerns the legal relationship between the PRPA and Trigon, not the PRPA and REEF.

[66] Trigon submits that the redactions to dollar values are relevant "because PRPA itself pleads and relies on financial and contractual arrangements with REEF LP, including its alleged economic benefits as justification for its refusal of Trigon's LPG request". This submission might be persuasive if the PRPA had chosen to redact *all* dollar values from the agreements, but that is not actually what occurred. The PRPA has pleaded that the REEF project has received an estimated $70 million of investment in the ten years since it has been in development; that its conveyance of the exclusivity rights to REEF was consistent with its objective to secure "a significant capital investment in a greenfield development that will significantly expand and diversify the port complex"; and that consenting to Trigon's request would have exposed it to "intolerable legal risk". I can appreciate that the *total* amount that has been invested in REEF is relevant, given what the PRPA has pleaded; but in light of the pleadings, like the judge, I am unable to appreciate how the specific dollar values in question bear any sensible legal relationship to the issues that need to be decided.

[67] As an example to support its submission that the redacted dollar amounts are relevant, Trigon points to redacted rental amounts in the Vopak lease. It says:

> The amount that REEF LP is paying (or not paying), as compared to the amount that Trigon pays, is surely relevant to the Court's assessment of the reasonableness of PRPA's refusal of the LPG request, in the face of Trigon's pre-existing rights under the Revised Permitted Uses Clause.

[68] I disagree. The PRPA has not pleaded that its decision to deny Trigon's request had any relation to the rent REEF would pay, nor has Trigon itself, despite its attempt to establish the relevance of the redactions on this basis. It appears that the PRPA's position is that it denied Trigon's request because it had *already allocated* exclusivity rights regarding LPGs to REEF; the rent paid by Trigon and REEF is unrelated to that legal issue.

[69] As to Trigon's reference to its "existing rights" under the Revised Permitted Uses Clause, under this clause, Trigon expressly *does not have* any rights regarding LPGs, but rather has a right that the PRPA will not unreasonably withhold consent for expanded uses of the leased premises. Given the terms of the Trigon Lease, the legally-salient question is whether it was reasonable for the PRPA to refuse Trigon's request when the PRPA had already allocated the entitlement sought by Trigon to REEF. The size of the overall investment—which, again, has been pleaded—goes to the magnitude of the PRPA's liability were it to renege on its agreement with REEF, and so to the reasonableness of the PRPA's decision not to grant Trigon's request. Nothing in the pleadings indicates that disclosure of these redacted dollar values, including those that have to do with rent, would do anything to advance or impugn either party's case, or lead Trigon down a "train of enquiry" bearing any material connection to a point of fact or law that is actually in issue between the parties.

[70] I will turn, now, to the redacted dates. Trigon's main submission is that these are relevant insofar as they may show that the PRPA granted REEF:

> extensions, or otherwise failed to avail itself of the opportunity to free itself from the exclusivity obligations with which it had burdened itself…Information

> about deadlines and milestones, and whether and when PRPA has granted extensions, is relevant to whether PRPA had off ramps that could have ameliorated or entirely removed the "intolerable legal risk" pleaded by PRPA.

[71] I have great difficulty in understanding the relevance of this line of argument (and the relevance of the redacted information), given the pleadings. Trigon effectively argues that the dates may assist it in advancing the proposition that PRPA could have taken advantage of opportunities to extricate itself from obligations to REEF, notwithstanding the time and expense that had already been invested into the project, which might then have freed the PRPA to grant Trigon's requests to process LPGs. While there can be little doubt that Trigon might have *preferred* that the PRPA assiduously promoted its interests in this way, it has pleaded no possible legal basis to ground a positive obligation on the PRPA to do so. As the pleadings currently stand, I cannot see how this line of argument could further Trigon's claim in the absence of some kind of basis, in the pleadings, to assert that the PRPA was *obligated* to do its best to help Trigon expand into LPGs.

[72] I would also agree with the chambers judge that disclosure of the redacted dates will not assist Trigon in assessing the "intolerable legal risk" the PRPA has pleaded, because "that risk is a function of the size and duration of the project": at para. 83. Trigon also submits that the dates are relevant because the PRPA has pleaded a limitations defence. Whether the PRPA has established such a defence will turn, as the judge correctly noted, on the question of discoverability; the actual dates, timelines, and project milestones contained in the documents are irrelevant to that issue.

[73] Finally, I will consider the redactions to product information. Again, I do not see how this information could help Trigon establish its claim as pleaded.

[74] Trigon says that the redactions to product information are relevant because the PRPA has pleaded that the exclusivity rights it granted to REEF relate to "Bulk Liquids". It submits that:

> 75. … the overall subject matter of the dispute and this particular pleading put the types of products REEF LP may handle into issue.
>
> 76. The products subject to PRPA's grant of exclusivity, and whether the treatment of those products may change over time, is relevant to assessing whether PRPA reasonably exercised its discretion to refuse its consent to Trigon's LPG Request. At the very least, it cannot be said that such information clearly would not put Trigon on a relevant train of inquiry.

[75] I disagree. I can see no reviewable error in the judge's conclusion (at para. 89) that the redacted product information does not relate to LPGs, the only product at issue in the action.

[76] In conclusion, I can find no reviewable error in the chambers judge's conclusion that the impugned redactions are irrelevant to the issues raised in the underlying action. Trigon has not established a connection between the redactions and the matters at issue in the action that goes beyond speculation or a "mere possibility".

Issue #3: Whether There Is a "Good Reason" for the Redactions

[77] Trigon submits that the judge erred in finding that there was a "good reason" for the redactions, flowing from the commercial sensitivity of the redacted information. It makes four points in support of this position:

a) Mr. Keeshan and Mr. Toone (the affiants corresponding to the affidavits REEF filed in response to Trigon's application) already disclosed some of the redacted information in public *fora* (in an unrelated Federal Court proceeding and in certain public market disclosures, respectively);

b) The PRPA and REEF's evidence only goes to why the redacted information should be withheld from "non-parties to the litigation…[not] Trigon as the plaintiff";

c) Insofar as Mr. Keeshan has deposed that disclosure of the "output" of the VPM system would provide a "window" into the proprietary "VPM" system,

this link is speculative; "there is a stark difference between disclosing the VPM System itself, and disclosing certain discrete outputs"; and

d) REEF and the PRPA's concerns have been rendered "moot" by the fact that a final investment decision has now been made regarding the REEF project and by the fact that REEF has now been added as a party.

[78] These submissions also largely reiterate the arguments made to the judge.

[79] It is clear that the judge considered Trigon's first point, and ruled that the information had *not* already been made public:

> I have reviewed the affidavits filed by Trigon and simply do not agree that the redacted information has been made public. In particular, the versions of the project development agreement obtained through the access to information request are much more heavily redacted than the versions before me.
>
> [Emphasis added.]

[80] I see no reviewable error in this conclusion.

[81] I also would not accede to Trigon's submission that the PRPA and REEF's evidence as to the commercial sensitivity of the redacted information does not militate in favour of this information being kept from Trigon even if it should be withheld from non-parties to the litigation. Respectfully, it is difficult to understand this argument. The judge's decision to uphold the redactions was founded, in part, on the basis that disclosure of the redacted information, which he considered to be "highly confidential" (at para. 91), would provide REEF's competitors with a competitive advantage. He then observed that this consideration was "particularly significant since Trigon is currently a competitor [of] REEF": at para. 92. If redaction is warranted because disclosure would give REEF's competitors a window into highly confidential information, and if Trigon is a competitor, then it follows that the information ought not be disclosed to Trigon.

[82] Trigon also argues that the PRPA and REEF's concern that disclosure of the redacted information would provide a "window" into the proprietary VPM system is

"speculative", and that "there is a stark difference between disclosing the VPM System itself, and disclosing certain discrete outputs". I do not see how this argument is connected to any reviewable error by the judge. The 'outputs' of any system can reveal a great deal about its internal operations, especially when most other information about that system's potential 'inputs' is known, as the judge appears to have recognised: at para. 91.

[83] Finally, I would not accede to the submission that REEF and the PRPA's concerns have been rendered "moot" because a final investment decision has now been made regarding the REEF project and REEF has now been added as a party. The judge expressly considered this issue and found that "the redacted information remains highly confidential whether the [final investment decision] has been made or not": at para. 93.

[84] Similarly, REEF's having been added as a party since the judge rendered his decision does not render the concerns underlying the redactions "moot". The overarching rationales of irrelevance, commercial sensitivity, and the importance of not giving undue advantage to a direct commercial competitor through the operation of the courts' evidentiary processes still exist.

Issue #4: Alternatives to Redaction

[85] Trigon submits that the judge erred in failing to consider alternatives to redaction, such as a confidentiality order or a 'counsel's eyes only' order. The judge referred to these arguments and was thus mindful of such an order as an alternative remedy: at para. 41. That he chose not to exercise his discretion to make that order, without more, does not establish a reviewable error. I would not accede to this ground of appeal.

Conclusion

[86] Trigon has not identified any reviewable errors in the judge's analysis and conclusions.

[87] I would dismiss the appeal.

"The Honourable Mr. Justice Abrioux"

I AGREE:

"The Honourable Justice Dickson"

I AGREE:

"The Honourable Justice Winteringham"