

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Lowndes, Drosdick, Kantor & Reed, P.A. v.
Hirji,*
2026 BCSC 289

Date: 20260224
Docket: S259143
Registry: Vancouver

Between:

Lowndes, Drosdick, Kantor & Reed, P.A.

Petitioner

And

Zia Hirji

Respondent

Before: The Honourable Justice Loo

Reasons for Judgment

Counsel for the Petitioner:

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Place and Date of Hearing:

Vancouver, B.C.
January 9, 2026

Additional Written Submissions:

February 6, 2026

Place and Date of Judgment:

Vancouver, B.C.
February 24, 2026

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Introduction

[1] The petitioner seeks an order pursuant to s. 53 of the *Evidence Act*, R.S.B.C. 1996, c. 124, requiring the respondent to be examined before a commissioner in the manner and form requested by a letter rogatory made on November 17, 2025, by the Circuit Court of the Ninth Judicial Circuit, in and for Orange County, Florida (the “Letter Rogatory”).

[2] Many of the original disputes between the parties have been resolved by agreement. These reasons deal with the relevance of certain document categories and deposition topics.

Factual context

[3] The underlying action in Florida (the “Florida Action”) is advanced by MyApps Corp. (“MyApps”) and Telecure Technologies, Inc. (“Telecure”) against a law firm, Lowndes, Drosdick, Doster, Kantor & Reed, P.A. (“Lowndes”). Lowndes is the petitioner herein.

[4] MyApps was a health technology company and was incorporated in Florida. Telecure is incorporated in British Columbia.

[5] In December 2020, Telecure, MyApps and a wholly owned subsidiary of Telecure entered into an arrangement agreement under British Columbia law, pursuant to which Telecure agreed to purchase 100% of MyApps' stock through a reverse merger transaction. The merger closed on August 11, 2021, and MyApps became the operating business of Telecure.

[6] Concurrent with the merger, Telecure conducted financing to raise capital. Shortly after the merger closed, Telecure became publicly traded on the Canadian Stock Exchange (“CSE”). Ultimately, the Telecure business failed.

[7] One of the allegations in the Florida Action is that Lowndes aided and abetted fraud and breaches of fiduciary duties on the part of MyApps, and in particular, MyApps' former CEO, Adnah Malik, when, during the course of due diligence on

behalf of MyApps, the firm allegedly failed to disclose: (1) a civil theft claim to which Mr. Malik was a party; and (2) accurate information about MyApps' finances, revenues, and customers. Telecure seeks to recover, among other relief, damages arising from the loss of its business.

[8] The Florida Action is ongoing, with the trial period set to begin on June 1, 2026.

[9] The respondent Zia Hirji is an investment advisor employed by Research Capital Corporation, formerly known as Mackie Research Capital Corporation ("Mackie"). Mackie is a firm of financial advisors, investment bankers, institutional sales representatives, and research analysts. Mr. Hirji worked for Mackie as an investment advisor at the time of the merger and financing which led to Telecure being publicly listed on the CSE.

[10] Lowndes has previously obtained a letter rogatory to depose a representative of Mackie and for document disclosure. Lowndes acknowledges that Mackie's document disclosure is complete. The deposition of Mackie's representative, Jovan Stupar, is ongoing.

[11] Lowndes submits that Mr. Hirji was closely involved in the subject transactions. It alleges that Mr. Hirji identified MyApps as a target for acquisition and introduced MyApps to Telecure, that Mr. Hirji procured a Letter of Intent for the acquisition of MyApps by Telecure, that Mr. Hirji "appears to have been closely involved in Telecure's due diligence of MyApps, including its financial documentation", and that he remained involved in an advisory capacity regarding the merged entity.

[12] Lowndes submits that Mr. Hirji's involvement appears to have been in his personal capacity, rather than as an employee of Mackie. It submits that Mr. Hirji's involvement was separate from his role at Mackie and, for that reason, Lowndes seeks testimony and documents from him individually.

[13] Mr. Hirji denies being involved in the due diligence process. Mr. Hirji has voluntarily produced some documents in response to the Letter Rogatory, but Lowndes is not satisfied with the extent of this production.

Issues

[14] At the hearing of the petition, counsel for Mr. Hirji commenced his oral submissions by stating his client was not refusing to cooperate with the Letter Rogatory. Rather, his primary submission was that the requests in the Letter Rogatory were overbroad. Since then, as stated, many of the initial disputes between these parties have been resolved by agreement.

[15] By means of a joint letter, dated January 22, 2026 (the “Joint Letter”), counsel advised that certain categories of document production and deposition topics had been agreed to, and that other categories and topics continued to be disputed. I will set out the complete lists of agreed and disputed categories and topics below.

[16] This Court’s task is to determine which categories of documents must be produced, and which topics may be canvassed in the deposition of Mr. Hirji.

Legal principles

[17] Section 53 of the *Evidence Act*, authorizes this Court to make an order requiring a person within its jurisdiction to attend for an examination and to produce documents upon proper process being issued by a foreign court.

[18] Rule 7-5(1) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [*Rules*] provides:

Order for examination

7-5 (1) If a person who is not a party of record to an action may have material evidence relating to a matter in question in the action, the court may

(a) order that the person be examined on oath on the matters in question in the action...

[19] In *Monster Energy Company v. Craig*, 2016 BCCA 290 [*Monster Energy*], Justice Fenlon, writing for the Court of Appeal, held:

[11] In responding to a letter of request, the starting point is the presumption that the request from the foreign court will be granted unless it would be contrary to Canadian public policy to do so or would otherwise be prejudicial to Canadian sovereignty or to Canadian citizens: *R. v. Zingre*, 1981 CanLII 32 (SCC), [1981] 2 S.C.R. 392; *EchoStar Satellite Corporation v. Quinn*, 2007 BCSC 1225.

[12] *Halsbury's Laws of Canada, Extradition and Mutual Legal Assistance* (2015 Reissue) describes letters rogatory and their purpose this way:

Letters rogatory are letters submitted by a court seeking the assistance of a foreign court. The enforcement of letters rogatory is a matter within the discretionary power of the courts and is based upon international comity or courtesy proceeding from international law. Inherent in the idea of international comity is a mutuality of purpose and power: *Westinghouse Electric Corp. v. Duquesne Light Co.*, [1977] O.J. No. 2287, 16 O.R. (2d) 273 at 290 (Ont. H.C.) ("[a]s a matter of principle Courts of justice of different countries are in aid of justice under a mutual obligation consistent with their own jurisdiction to assist each other in obtaining testimony upon which the rights of a cause may depend; so generally are individuals under a duty to give their testimony to Courts of justice in all inquiries where it may be material. Courts in Canada recognize, and have often said, that, in the interests of comity, judicial assistance should whenever possible be given at the request of Courts of other countries"). See also *Gulf Oil Corp. v. Gulf Canada Ltd.*, [1980] S.C.J. No. 41, (S.C.C.); *National Telefilm Associates Inc. v. United Artists' Corp.*, [1958] O.J. No. 275, 14 D.L.R. (2d) 343 (Ont. H.C.).

[Emphasis in original.]

[20] In *Monster Energy*, Justice Fenlon cited with approval a list of factors identified by Justice L. Smith in *EchoStar Satellite Corporation v. Quinn*, 2007 BCSC 1225 at para. 38 that inform the analysis of whether to give effect to letters rogatory. Those factors to be considered by this Court are:

1. Relevance;
2. Whether the evidence is necessary for trial and will be adduced at trial if admissible;
3. Whether the evidence is otherwise obtainable;
4. Whether the order sought is contrary to public policy;

5. Whether the documents sought are identified with reasonable specificity; and
6. Whether the order sought is unduly burdensome having in mind what the witness would be required to do and produce were the action to be tried locally.

[21] In *Liu v. Zhi*, 2019 BCCA 427 at para. 14, Justice Griffin quoted with approval from the decision of the Ontario Superior Court in *Aker Biomarine AS v. KGK Synergize Inc.*, 2013 ONSC 4897, wherein that Court held:

[14] ...

[27] ...

- Relevance generally is determined having regard to the issues in the underlying litigation, and whether it would be unfair to require the applicant to proceed to trial without the desired and requested evidence. See *Friction Division Products Inc. v. E.I. du Pont de Nemours & Co.*, *supra*, at paragraph 29.
- In considering letters rogatory issued by American courts and their indications of relevance, it is important to remember that the scope of what is discoverable in the United States generally is much broader than in Canada. In the United States, if there is "*any possibility* the information sought may be relevant to the case, it is discoverable; information is not discoverable only if it is clear that "the information sought can have *no possible bearing* on the claims or defence of a party". In Canada, the scope of discovery is much narrower, due to our interpretation of what is "relevant". In Ontario, evidence must be relevant to matters actually in issue, and this does not include evidence sought only because it "may" be relevant, or relate to matters that "could" be in issue. See The Sedona Conference, "*Sedona Canada Commentary on Enforcing Letters Rogatory Issued by an American Court in Canada*", June 2011, at pp. 5-6.
- Without an adequate showing of relevance according to our domestic interpretation of that term, the Ontario court may be sanctioning a "fishing expedition" and requiring one of its citizens to participate in a process that may be of no assistance to the foreign litigation. See *Presbyterian Church of Sudan v. Rybiak*, *supra*, at paragraph 31.
- Courts generally should be loathe to enforce a letter of request requiring an Ontario citizen who is not a party to a foreign proceeding to produce large numbers of

documents, and to be examined under oath, with respect to issues over which there is considerable uncertainty as to whether they properly form part of the issues in the foreign proceeding. See *Pecarsky v. Lipton Wiseman Altbaum & Partners*, [1999] O.J. No. 2004 (S.C.J.), at paragraph 10.

[22] Further, in *Liu*, Justice Griffin held:

[15] Relevance and the burden on the witness are related factors. For example, the more specific and narrow the request, and the stronger the apparent link between the requested evidence and the issues in the litigation, the greater the argument in favour of enforcing the letter of request, such as in *Monster Energy*.

...

[20] The mere fact that the foreign court issued an order in the form necessary to support letters of request, does not on its own prove that the underlying requirements for enforcing the request exist. The court receiving the request is entitled and indeed obliged to look beyond the mere form of the foreign letters of request: *Fecht*. The court should look beyond a supporting affidavit that simply offers hearsay opinions and bald conclusions: *Aker Biomarine* at paras. 16, 26; *Cytozome* at para. 47.

[23] Similarly, in *Duryea v. Matsumoto*, 2023 BCSC 2061, Justice Ker held:

[45] The decision in *Boards of Pharmacy* at para. 15 makes it clear that an enforcement application is not simply a rubber stamp exercise. A court that is asked to enforce a letter of request issued by a foreign jurisdiction must engage in a substantive analysis of the request as guided by the factors set out in *EchoStar Satellite Corporation v. Quinn*, 2007 BCSC 1225 at paras. 38, 46 [*EchoStar*].

[24] In *B.I. Incorporated v. Au*, 2017 BCSC 2476, cited with approval in *Club Exploria, LLC v. Moore*, 2021 BCSC 816 at para. 12, this Court also held that:

[19] ... the proper role of this Court is to be satisfied that there is some probative value to the proposed evidence and that the areas to be canvassed during the examination are relevant to the [foreign] proceedings.

[25] In *Liu*, the Court of Appeal held that it was a reversible error for the chambers judge to have granted letters rogatory without meaningfully considering whether the subject matter of the evidence sought was relevant: para. 60.

Application to this case

[26] The document categories and deposition topics agreed to, and the disputed categories and topics, as set out in the Joint Letter, are as follows:

Document categories agreed to

- 1) Documents, including related communications, that mention or concern MyApps' due diligence responses or due diligence of MyApps by Telecure or Mackie.
- 2) Documents, including related communications, that mention or concern MyApps' financial statements or financial condition.
- 3) Documents, including related communications, that mention or concern the business outlook (including projected costs and revenue) of the proposed merged entity.

Deposition topics agreed to

- 1) Mr. Hirji's knowledge and understanding of MyApps' pre-merger business, financial records, financial position, and merger objectives, Telecure's own business objectives with respect to entering into the transaction with MyApps, and the business and consolidated financial outlook, or proposed outlook, of the merged entities.

Document categories not agreed to by Mr. Hirji, but which Lowndes continues to seek

- 1) All communications between/among Mr. Hirji and (1) Amandeep Parmar, (2) Harwinder Parmar, (3) Eli Dusenbury, (4) Josh Rosenberg, (5) Adnan Malik, and (6) Afsheen Somji that mention or concern MyApps, a transaction or proposed transaction between MyApps and Telecure (formerly Livecare), due diligence of MyApps, MyApps' financial records or condition, the brokered private placement conducted by Mackie the merger transaction between MyApps and Telecure, Telecure's listing on the CSE, the termination of Malik, Kashif Akram, and Dr. Muhammad Shaukat, and/or the current business of MyApps.
- 2) Documents, including related communications, that mention or concern:
 - a) Mr. Hirji's identification of MyApps as a target for the reverse merger and/or involvement in the transaction;
 - b) The formation, execution, and assignment to Telecure of the letter of intent governing the transaction, including the engagement of Segev LLP for that purpose;
 - c) Any financial information presented in the preliminary prospectuses or the final prospectus filed by Telecure with the BCSC.
- 3) Communications about MyApps or Telecure to prospective or existing investors of MyApps or Telecure.
- 4) Communications related to advisory contracts.

Deposition topics not agreed to by Mr. Hirji, but which Lowndes continues to seek

- 1) Mr. Hirji's documents and his process of review and disclosure of same in response to Lowndes' requests.
- 2) The transaction between MyApps and Telecure, Telecure's or Livecare's first special warrant offering on a non-brokered private placement basis, the brokered private placement, and Mr. Hirji's communications with investors or potential investors regarding the same.
- 3) The origins of the relationship(s) between MyApps, K2 Capital Inc., and Telecure (or Livecare, as the case may be, and its officers/directors at the time) prior to the proposed transaction, and Mr. Hirji's knowledge of same and role in bringing the entities together, if any.
- 4) The origin of the letter of intent with K2 Capital Inc. and its subsequent assignment to Telecure, including retention of and communications with Segev LLP.
- 5) Mr. Hirji's knowledge of Telecure's prospectuses, and filing of same with the BCSC, and ultimate receipt by the BCSC and listing on the CSE.
- 6) The merged entities' advisory contracts

[27] Following the Court's receipt of the Joint Letter, I invited counsel to provide brief submissions regarding each of the disputed categories, and I have now received and reviewed those submissions.

[28] The outstanding disputes primarily focus on whether the contested document categories or deposition topics are relevant to the allegation that Lowndes failed to disclose accurate information about MyApps' finances, revenues and customers. I will refer to this allegation as the "financial condition allegation" and to the state of MyApps' finances, revenues and customers as the "financial condition".

[29] Further, Lowndes submits that some of the evidence sought is relevant to a causation issue: whether Telecure would have proceeded with the merger transaction even if it had been advised of the facts that Lowndes is alleged to have failed to disclose. I will refer to this as the "causation argument".

[30] I will address the disputed categories and topics in turn.

Disputed document categories

1) All communications between/among Mr. Hirji and (1) Amandeep Parmar, (2) Harwinder Parmar, (3) Eli Dusenbury, (4) Josh Rosenberg, (5) Adnan Malik, and (6) Afsheen Somji that mention or concern MyApps, a transaction or proposed transaction between MyApps and Telecure (formerly Livecare), due diligence of MyApps, MyApps' financial records or condition, the brokered private placement conducted by Mackie, the merger transaction between MyApps and Telecure, Telecure's listing on the CSE, the termination of Malik, Kashif Akram, and Dr. Muhammad Shaukat, and/or the current business of MyApps.

[31] Lowndes submits that these categories of documents are relevant to the causation argument, and that “this argument requires establishing the manner in which the transaction came to be, and the relationships and incentives of the key players behind the transaction”. Mr. Hirji submits that he has already agreed to produce all of the documents in his position concerning the financial condition of MyApps, and that the request is otherwise overbroad.

[32] In my view, the answer to this dispute lies somewhere between the positions of the parties. I agree with Lowndes that communications between Mr. Hirji and the persons listed (who are said to be “key players behind the transaction”) concerning the proposed transaction between MyApps and Telecure or the merger transaction between MyApps and Telecure (which I understand to be the same thing) are relevant to the causation argument. Those documents are not captured within the document categories already agreed to, and ought to be produced.

[33] I am not prepared to make an order for the production of the documents in the other sub-categories. Production of communications concerning the due diligence of MyApps and MyApps' financial records or condition are already agreed to. The request for communications among this group of people that mention or concern MyApps is too broad. Further, it is unclear how communications regarding the brokered private placement, Telecure's listing on the CSE, the termination of Mr. Malik, Kashif Akram, and Dr. Muhammad Shaukat, or the current business of MyApps are relevant to the issues in the Florida Action. In my view, Lowndes' submissions do not demonstrate that these documents are sufficiently relevant to warrant their compelled production from Mr. Hirji.

2) Documents, including related communications, that mention or concern (a) Mr. Hirji's identification of MyApps as a target for the reverse merger and/ or involvement in the transaction

[34] Again, Lowndes submits that this category of documents is relevant to the causation argument: that Telecure was motivated to enter into the transaction by factors other than the financial condition of MyApps or Mr. Malik's involvement and therefore would not have been deterred by the financial information had the financial information been disclosed by Lowndes.

[35] Mr. Hirji submits that he has already agreed to produce documents that concern or mention due diligence responses and MyApps' financial statements or financial condition, and that any additional documents encompassed within this request are overly broad and irrelevant to the issues in the litigation.

[36] In my view, in light of the causation argument described by Lowndes, documents concerning "Mr. Hirji's identification of MyApps as a target for the reverse merger" are sufficiently relevant and not captured within the categories agreed to; therefore, they must be produced.

[37] It is unclear whether the request seeks additional documents. To the extent that Lowndes seeks an order requiring production of any documents concerning Mr. Hirji's "involvement in the transaction", the request is too broad.

2) Documents, including related communications, that mention or concern (b) the formation, execution, and assignment to Telecure of the letter of intent governing the transaction, including the engagement of Segev LLP for that purpose

[38] Lowndes submits that Mr. Hirji negotiated the letter of intent, which is the document which brought MyApps and Telecure together. It submits that information about how the relationship between the two companies formed and their understanding of key, material terms at the inception "will have bearing on causation, not least because it will provide context for understanding the relationship between key players, including Mr. Hirji, and whether the parties' conduct complied with the key terms".

[39] In my view, Lowndes' submission on this issue does not demonstrate that this category of documents is sufficiently relevant to warrant its compelled production from Mr. Hirji. A document does not meet this threshold simply because it provides "context" to the issues in the underlying action.

2) Documents, including related communications, that mention or concern (c) any financial information presented in the preliminary prospectuses or the final prospectus filed by Telecure with the BCSC.

[40] Lowndes submits that this category of documents is relevant because "key players' knowledge of MyApps' financial information, and what Telecure and persons associated with Telecure considered important within that information, goes directly to issues of causation". Mr. Hirji submits that he was not involved in the preliminary or financial prospectuses.

[41] The request does not seek documents relating to the preparation of the prospectuses. Rather, it seeks documents that mention or concern any financial information set out in the prospectus. This category appears to be more relevant to the financial condition allegation than to the causation argument but, in any event, it is not necessary for the Court to make an order requiring the production of these documents, because the request falls within a category of documents that Mr. Hirji has already agreed to produce. Any relevant documents in this category will fall within the "Documents, including related communications, that mention or concern MyApps' financial statements or financial condition."

3) Communications about MyApps or Telecure to prospective or existing investors of MyApps or Telecure.

[42] Lowndes submits that this category of documents is relevant to the causation argument. Mr. Hirji submits that these documents are irrelevant to the financial condition of My Apps.

[43] For the same reason that I found the request regarding category 1 to be justified in part, it is my view that, in light of the causation argument advanced by Lowndes, this category of documents is sufficiently relevant to warrant production to

the extent that the documents concern the merger transaction. Those documents are not captured within the categories agreed to, and therefore must be produced.

[44] I note that to the extent that documents in this category concern MyApps' financial condition, Mr. Hirji has already agreed to produce them.

4) Communications related to advisory contracts.

[45] Lowndes submits that "communications about advisory contracts will establish what the incentives of the stakeholders were" to enter into the transaction. Mr. Hirji submits that Lowndes has already admitted that the advisory contracts themselves are not relevant and that communications relating to these contracts are not relevant.

[46] In my view, the communications about advisory contracts are relevant to the extent that they deal, if at all, with Telecure's or MyApps' reasons for entering into the transaction. The document request is granted to that extent. The petitioner's demand that all communications about advisory contracts be produced is too broad.

Disputed deposition topics

1) Mr. Hirji's documents and his process of review and disclosure of same in response to Lowndes' requests.

[47] Lowndes submits that Mr. Hirji ought to be required to give evidence regarding these matters "so that Lowndes and the Florida Court can be confident that Mr. Hirji understood and complied with the order".

[48] I am not prepared to permit this deposition topic. Although this Court may permit counsel on examinations for discovery or at trial to examine a party regarding its compliance with document production obligations, I have not been provided with any authority which indicates that these types of questions are permissible in respect of a third party witness, particularly when that witness' evidence is being obtained by letters rogatory. Further, the Letter Rogatory does not specifically seek deposition of Mr. Hirji regarding the process of document production.

2) The transaction between MyApps and Telecure, Telecure’s or Livecare’s first special warrant offering on a non-brokered private placement basis, the brokered private placement, and Mr. Hirji’s communications with investors or potential investors regarding the same.

3) The origins of the relationship(s) between MyApps, K2 Capital Inc., and Telecure (or Livecare, as the case may be, and its officers/directors at the time) prior to the proposed transaction, and Mr. Hirji’s knowledge of same and role in bringing the entities together, if any.

4) The origin of the letter of intent with K2 Capital Inc. and its subsequent assignment to Telecure, including retention of and communications with Segev LLP.

5) Mr. Hirji’s knowledge of Telecure’s prospectuses, and filing of same with the BCSC, and ultimate receipt by the BCSC and listing on the CSE.

6) The merged entities’ advisory contracts

[49] I will address the remaining deposition topics together because, in my view, they ought to be dealt with similarly.

[50] With respect to deposition category 2, Lowndes submits that “understanding the transaction (including merger and fundraising) between MyApps and Telecure, including the interests of Telecure and the persons involved (including Mr. Hirji), is critical for Lowndes’ defence”. Lowndes submits that deposition categories 3–6 are relevant to the causation argument.

[51] I observe, first, that Mr. Hirji’s evidence is not necessary for Lowndes to “understand the transaction”. One of the criteria set out in *Monster Energy* for the enforcement of letters rogatory is whether the evidence is otherwise obtainable. In my view, evidence regarding the transaction generally would be available from other participants in the transaction and from Mackie.

[52] Second, it is important to reiterate that Mr. Hirji has agreed to be deposed with respect to:

Mr. Hirji’s knowledge and understanding of MyApps’ pre-merger business, financial records, financial position, and merger objectives, Telecure’s own business objectives with respect to entering into the transaction with MyApps, and the business and consolidated financial outlook, or proposed outlook, of the merged entities.

[Emphasis added.]

[53] As set out in the preceding paragraph, Mr. Hirji has agreed to provide whatever oral evidence he is able to give relevant to the merger objectives of MyApps and Telecure (which relate to the causation argument), or to the financial condition of MyApps. In my view, Lowndes has not established that deposition topics 2–6 are otherwise relevant to the issues in the Florida Action, or that there is a sufficient link between the requested evidence and the issues in the litigation to warrant an order compelling Mr. Hirji’s testimony regarding those broader topics.

[54] Therefore, I am not prepared to order that Mr. Hirji shall be deposed in respect of deposition topics 2–6. To the extent that he has evidence relating to these topics that also concerns the merger objectives of MyApps and Telecure, or the financial condition of MyApps, Mr. Hirji has already agreed to give that evidence.

Conclusions and costs

[55] Mr. Hirji is required to produce documents and to submit to a deposition on the topics as set out in these reasons.

[56] In my view, success on this application is divided, as Mr. Hirji has resisted providing evidence in circumstances where such resistance was unjustified, but Lowndes has sought the production of evidence which was overbroad.

[57] Accordingly, the parties shall bear their own costs of this application.

“Loo J.”