

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Jiang v. Peoples Trust Company*,
2026 BCCA 185

Date: 20260501
Docket: CA51310

Between:

Ying Jiang

Appellant
(Plaintiff)

And

**Peoples Trust Company, Peoples Card Services Limited Partnership,
Peoples Card Services Ltd., Vancouver City Savings Credit Union, and
Citizens Bank of Canada**

Respondents
(Defendants)

And

**InComm Canada Prepaid, Inc., Blackhawk Network (Canada) Limited,
Payment Source Inc., MasterCard Prepaid Management Services Limited,
DCR Strategies Inc., Swift Prepaid Solutions, Inc., Wex Health, Inc.,
EML Payments Canada, Ltd., formerly Store Financial Canada, Ltd.,
EnStream LP, Galileo Financial Technologies LLC,
formerly Galileo Processing Inc., and Fidelity National Information
Services, Inc., formerly eFunds Corporation formerly Wildcard Systems Inc.**

Respondents
(Non-Party Record Holders)

Before: The Honourable Mr. Justice Butler
(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated
December 29, 2025 (*Jiang v. Peoples Trust Company*, 2025 BCSC 2559,
Vancouver Docket S147229).

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Place and Date of Hearing:

Vancouver, British Columbia
April 16, 2026

Place and Date of Judgment:

Vancouver, British Columbia
May 1, 2026

Summary:

The appellant applies for leave to appeal an order made in chambers by the case management judge in this certified consumer class action. The appellant applied to obtain financial documents held by extra-provincial and foreign non-parties, and to subpoena or depose representatives of those parties. The applications were brought pursuant to Rule 7 and s. 5 of the Subpoena (Interprovincial) Act. The chambers judge dismissed the application after determining the appellant was using Rule 7 deposition processes in aid of pre-trial examination and discovery of documents.

Held: (1) Leave to appeal is required. The authority for the orders was Part 7 of the Supreme Court Civil Rules. Letters of request are limited appeal orders. While it is within the inherent jurisdiction of the court to issue letters of request, that power is fully within Rule 7-8 and takes its procedural character from that Rule. Subpoenas issued via the SIA are not an independent authority for extra-provincial subpoenas. Their authority comes through the SCCR; and (2) The application for leave is dismissed. The appeal is not of significance to the practice or the action. While the grounds of appeal are not frivolous, they do not have high merit. Discretionary orders by a case management judge are owed considerable deference. The appeal would likely hinder the progress of the proceeding in the court below.

Reasons for Judgment of the Honourable Mr. Justice Butler:

[1] The appellant applies for leave to appeal an order made in chambers by the case management judge (the “Order”) in this certified consumer class action. The appellant is the plaintiff in the class proceeding and I will refer to her as the applicant. The applicant sought to obtain financial documents held by extra-provincial and foreign non-parties, and to depose those parties. The relief was sought, at least in part, pursuant to Rule 7-8 of the *Supreme Court Civil Rules* [SCCR]. The chambers judge, who has case managed the proceeding for several years and is assigned to be the trial judge, dismissed the application in reasons indexed as *Jiang v. Peoples Trust Company*, 2025 BCSC 2559 [RFJ].

[2] The respondents, including Peoples Trust Company and Peoples Card Services Ltd. (referred to as “Peoples Trust”), and the extra-provincial and foreign non-parties, oppose the application for leave. For convenience, I attach a schedule to these reasons identifying the non-parties and the basis for the application against them.

[3] For the reasons that follow, I dismiss the application for leave to appeal.

Background

[4] The underlying action, commenced by the applicant in 2014, relates to the use of prepaid purchase cards issued by various financial institutions. The applicant alleges the sale of the prepaid purchase cards is contrary to the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 [*BPCPA*].

[5] I will briefly summarize the procedural history relevant to this application. A more detailed summary can be found in the decision indexed at *Jiang v. Peoples Trust Company*, 2022 BCCA 40 at paras. 3–23 (Chambers) [*Jiang BCCA 2022*].

[6] In 2018, Justice Bowden certified the common issues in the decision indexed at 2018 BCSC 299, upheld in this Court in 2019 BCCA 149, as follows:

1. Are the reloadable or non-reloadable prepaid cards (together, the “Prepaid Cards”), or both, issued and/or sold by the Defendants, “prepaid purchase cards” as defined in s. 56.1 of the *BPCPA*?
2. Does the *BPCPA* apply to the Prepaid Cards issued and/or sold by each of the Defendants to consumers in British Columbia?
3. Does the *BPCPA* apply to the Prepaid Cards issued and/or sold by each of the Defendants to consumers outside of British Columbia?
4. Did the Defendants charge any fees in relation to any of the Prepaid Cards contrary to s. 56.3 of the *BPCPA*?
5. Did the Defendants issue Prepaid Cards that have expiry dates contrary to s. 56.2 of the *BPCPA*?

[7] The respondents served their list of documents on the applicant in January 2020. Some of these documents provided only descriptions of classes of documents for which privilege from production was claimed without any detail on individual documents.

[8] In August 2020, the applicant brought an application seeking additional documents from all respondents. One of the categories included information and documents related to the number and value of prepaid cards sold during the class period, including fees charged and balances “seized” (the “Financial Documents”). The application was opposed.

[9] On November 9, 2021, the case management judge—the same judge who made the Order—granted the orders sought by the applicant, in reasons indexed as *Jiang v. Peoples Trust Company*, 2021 BCSC 2193, finding that the additional documents demanded satisfied the “low” requirements of Rule 7-1(11) of the *SCCR*. The judge was satisfied the plaintiff had “shown an air of reality and more than a mere possibility that the Financial Documents are relevant and they relate to the common issues and other issues raised in the pleadings”: at para. 39.

[10] The case management judge also noted that just because the Financial Documents held possible relevance to the potential remedy of aggregate damages—which was not certified as a common issue—did not mean they were irrelevant for the purposes of the certified common issues.

[11] After considering proportionality under Rule 1-3 of the *SCCR*, the judge found that a broad scope should apply to document discovery given the substantial damages claimed, the important issues raised, and their factual and legal complexity. She found it appropriate to require the respondents to disclose the requested documents after weighing the burden of producing the demanded documents against their materiality and probative value.

[12] The judge ordered the production of the documents demanded but did not determine whether any document was in possession or under control of any of the respondents. She held that should issues around specific documents arise, they would be best determined after the respondents provided an amended list of documents: *Jiang BCCA 2022* at para. 23.

[13] In the application giving rise to the Order, the applicant sought the following orders which are the subject of this leave application: RFJ at para. 10. It is agreed that the documents sought from each of the non-parties are Financial Documents as described in the earlier applications:

- a) Applying the court’s seal to certificates compelling a representative of each of Blackhawk (Canada) Network Ltd., Payment Source Inc.,

DCR Strategies Inc., EML Payments Canada Ltd. and EnStream LP to produce documents prior to the common issues trial, and to testify at trial pursuant to the *Subpoena (Interprovincial) Act*, R.S.B.C. 1996, c. 42 [SIA] (the “Subpoena Orders”); and

- b) Issuing letters of request for a representative of each of MasterCard Prepaid Management Services Limited, Swift Prepaid Solutions, Inc., Wex Health, Inc., Galileo Processing Inc., and Fidelity National Information Services, Inc. to produce certain documents to the plaintiff before the common issues trial, to be examined under oath or affirmation, and to provide directions that the plaintiff may apply to the appropriate jurisdiction to enforce the letter of request (the “Letters of Request Orders”).

[14] The judge conducted the following analysis before denying the relief sought by the applicant:

[39] It is clear that because of answers given by the nominee of Peoples Trust at her examination for discovery, which were to the effect that the non-party program managers, not Peoples Trust, potentially had the information and documents sought, the plaintiff is now pursuing answers and information directly from the program manager entities. In other words, this application results directly from the examination for discovery of the nominee of Peoples Trust. Considering that, I find it apparent that the true character of this application is aiding pre-trial examination of non-party witnesses.

[40] I also find that the essential relief sought in the application vis-à-vis the Non-BC Companies and the Foreign Companies is first and foremost, that they produce specified documents to the plaintiff before the common issues trial. The certificates and letters of request requiring a representative to produce documents or to testify, or to be summoned for deposition, appears to be secondary to the central relief of pre-trial production of documents and examination of non-party witnesses.

[41] When the relief sought in the plaintiff’s application is considered for what it really is, and not strictly as set out in the form of the certificates or the letters of request, it is plain that the plaintiff seeks to utilize the subpoenas and letters rogatory as a process in aid of pre-trial discovery of documents and/or non-party witnesses, which is not provided for by our law: *USF*, at p. 8; *Araya v. Nevsun Resources Ltd.*, 2019 BCSC 260 at para. 55.

[42] In my view, because the notice of application makes clear that the plaintiff is seeking to employ the Rule 7-8 deposition and letters rogatory process in aid of pretrial examination and discovery of documents, which our

law does not permit, that justifies denying the relief sought in paragraphs 2-21 of part 1 of the application.

[Emphasis added.]

[15] On January 22, 2026, the applicant filed a notice of appeal against the Subpoena Orders and the Letters of Request Orders. She subsequently filed an application for an order granting leave to appeal, if leave is required.

Applicable Law

Limited Appeal Orders

[16] Pursuant to s. 13(2) of the *Court of Appeal Act*, S.B.C. 2021, c. 6, an appeal does not lie to this Court from a “limited appeal order” without leave of a justice. Rule 11 of the *Court of Appeal Rules* defines limited appeal orders. Orders made under Part 7 of the *SCCR*, except for Rule 7-7(6), are limited appeal orders from which leave to appeal is required. Part 7 deals with the procedures for ascertaining facts including discovery and inspection of documents, Rule 7-1, and depositions, Rule 7-8.

[17] The purpose of Rule 11 is to provide certainty as to when leave is required: *Bentley v. The Police Complaint Commissioner*, 2012 BCCA 514 at para. 5 (Chambers). This Court interprets the Rule 11 categories of “limited appeal orders”, and the former Rule 2.1, restrictively. However, the judge below should state—correctly—the jurisdictional basis on which the order is granted: *TELUS Communications Inc. v. Telecommunications Workers Union*, 2024 BCCA 403 at paras. 18, 25 (Chambers).

Does the Applicant Require Leave to Appeal?

[18] The first issue is whether leave to appeal is required for the Subpoena Orders and the Letters of Request Orders.

[19] To determine if leave is required, I must consider both the authority for and the substance of the judge’s decision. The first step in determining the relevant authority involves considering if the order sought falls within one of the categories of

limited appeal orders listed in Rule 11: *The Owners, Strata Plan VR29 v. Kranz*, 2021 BCCA 32 at paras. 41, 52–53. The relevant portion of Rule 11 provides:

Limited appeal orders

11 For the purposes of the definition of “limited appeal order” in section 1 of the Act, the following orders are prescribed as limited appeal orders:

(a) an order granting or refusing relief for which provision is made under any of the following Parts or rules of the Supreme Court Civil Rules:

...

(iii) Part 7 [*Procedures for Ascertaining Facts*], other than Rule 7-7 (6) [*application for order on admissions*];

[20] The applicant’s notice of application specifically invokes Rules 7-1(18) (document production from non-parties); 7-8(1), (3), (8), and (10); and s. 5 of the *SIA*.

[21] Section 5 of the *SIA* provides:

5 (1) If a party to a proceeding in any court in British Columbia causes a subpoena to be issued for service in another province in Canada, the party may attend on a judge of the Supreme Court, who must hear and examine the party or the party’s counsel, if any, and must sign a certificate if satisfied that the attendance in British Columbia of the person subpoenaed as a witness

(a) is necessary for the adjudication of the proceeding in which the subpoena is issued, and

(b) in relation to the nature and importance of the proceeding, is reasonable and essential to the administration of justice in British Columbia.

(2) The certificate must be in the form set out in Schedule B or in a similar form.

(3) The judge must cause the certificate to be impressed with the seal of the court.

(4) The certificate must be either attached to or endorsed on the subpoena.

[22] Relevant provisions of Rule 7 include:

Rule 7-1 — Discovery and Inspection of Documents

...

Documents not in possession of party

(18) If a document is in the possession or control of a person who is not a party of record, the court, on an application under Rule 8-1 brought on notice to the person and the parties of record, may make an order for one or both of the following:

- (a) production, inspection and copying of the document;
- (b) preparation of a certified copy that may be used instead of the original.

...

Rule 7-8 — Depositions

Examination of person

(1) By consent of the parties of record or by order of the court, a person may be examined on oath before or during trial in order that the record of the examination may be available to be tendered as evidence at the trial.

...

Grounds for order

- (3) In determining whether to exercise its discretion to order an examination under subrule (1), the court must take into account
- (a) the convenience of the person sought to be examined,
 - (b) the possibility that the person may be unavailable to testify at the trial by reason of death, infirmity, sickness or absence,
 - (c) the possibility that the person will be beyond the jurisdiction of the court at the time of the trial,
 - (d) the possibility and desirability of having the person testify at trial by video conferencing or other electronic means, and
 - (e) the expense of bringing the person to the trial.

...

Subpoena

- (5) If the court makes an order under subrule (1) entitling a party to examine a person under this rule, the party may, by serving on the person to be examined a subpoena in Form 25, require the person to bring to the examination,
- (a) if the person is not a party or record or a representative of a party of record, any document in the person's possession or control relating to the matters in question in the action, and

...

Application of rule outside British Columbia

(8) So far as is practicable, this rule applies to the examination of a person residing outside British Columbia, and the court may order the examination of a person in the place and the manner the court considers appropriate.

...

If person not willing to testify

(10) If the person whose examination is ordered under subrule (8) is unwilling to testify, or if for any other reason the assistance of a foreign court is necessary, the order under subrule (8) must be in Form 29 and the letter of request referred to in the order must be in Form 30.

[23] The applicant concedes that applications brought under the authority of Rule 7 are limited appeal orders but argues that she relied on three different sources of authority for the orders sought and that only one of those sources is dependent on Rule 7. The three sources of authority alleged are:

- i. The application for letters of request which applies only to the foreign non-parties is sought pursuant to Rule 7-8. She concedes that an order made pursuant to that Rule is a limited appeal order;
- ii. The applicant says her application is also based on the inherent jurisdiction of the court to issue letters rogatory to courts of foreign jurisdictions. Accordingly, she submits that her application to both the Canadian and foreign non-parties is based on the court's inherent jurisdiction. In effect, the applicant submits it is an alternative authority to the issuance of a letter of request under Rule 7-8. She notes that the power to issue letters rogatory has always existed as part of a superior court's inherent jurisdiction. The judge referred to "letters rogatory" and "letters of request" interchangeably in the reasons but, according to the applicant, failed to appreciate the different source of authority for each. She submits that her application for an order granting the issuance of letters rogatory to the Canadian and foreign non-parties does not fall within the definition of a limited appeal order; and
- iii. The application for the Subpoena Orders for the Canadian non-parties outside of British Columbia is sought under the authority of s. 5 of the *S/A*. She claims this power is statutory as the court must sign the certificate for a subpoena if the criteria are met and submits the

authority for the order sought is independent of the SCCR and Rule 7-8. Accordingly, she argues the order appealed from is not a “limited appeal order”.

[24] Finally, referring to *Su v. Atom Holdings*, 2024 BCCA 386 (Chambers), the applicant submits that the authority to issue letters rogatory and letters of request overlaps or is intertwined, and that it is in the interests of justice that leave be granted so that all issues can be heard together.

[25] I am not persuaded by the applicant’s submissions. What matters to the analysis is the true substance of the order being appealed, not its mere form: *Kranz* at para. 34, citing *Tri-City Capital Corp. v. 0942317 B.C. Ltd.*, 2016 BCCA 407 at paras. 22–24 (Chambers). Further, as stated in *Teal Cedar Products Ltd. v. Mashari*, 2021 BCCA 353 (Chambers), “where a particular rule of the Supreme Court of British Columbia addresses the process, the procedure provided by that rule applies for purposes of identifying its character as a limited appeal order”: at para. 20.

[26] In my view, the chambers judge correctly identified the substance of the applications before her. As noted above, at paras. 39 and 40, she found “it apparent that the true character of this application is aiding pre-trial examination of non-party witnesses” and the “essential relief sought” is that the foreign and non-British Columbia companies “produce specified documents to the plaintiff”. The applicant wanted discovery of documents in possession of the non-parties. While Rule 7-1(18) establishes a procedure for obtaining such documents, the court lacks jurisdiction to directly compel production of documents from extra-provincial Canadian and foreign non-parties.

[27] The applications are the applicant’s attempt to use other procedures for ascertaining facts—subpoenas and letters of request—to obtain the documents from non-parties who are not subject to the jurisdiction of the court. Both procedures allow a party or court to direct a witness to appear and produce evidence—such as records, documents, or data—when they attend court. The ability to issue a subpoena requiring the production of evidence—a subpoena *duces tecum*—was

established in the common law and is now provided for in the *SCCR* (including Rules 7-5(5), 7-8(5) (subpoenas in Form 25), and 12-5(31) (subpoenas at trial)), as well as in the *SIA*. Letters of request may also require production of documentary evidence, if the order provides so. In any event, it is clear the applicant was attempting to use the application to ascertain facts—through document production—before trial or for use at trial.

[28] In *Mashari*, the application concerned leave to appeal an interlocutory interim injunction. The applicants took the position that the authority for the injunction was the court’s inherent jurisdiction, not Rule 10-4 of the *SCCR*, which deals with injunctions. Neither the application, nor the order, identified the Rule considered and applied. The justice rejected the applicant’s position that the order was not a limited appeal order. While the applicants were correct that the court had inherent jurisdiction in respect of interlocutory injunctions, “at the same time the rules of the Supreme Court of British Columbia ... establish the comprehensive framework for litigation in the court”: *Mashari* at para. 13. Justice Saunders reasoned:

[20] I consider that the correct question in such cases is not whether the order invoked the inherent jurisdiction of the court but whether it came through the *Supreme Court Civil Rules*. In my view, where a particular rule of the Supreme Court of British Columbia addresses the process, the procedure provided by that rule applies for purposes of identifying its character as a limited appeal order. On this view, and consistent with the approach applied in *Bacon*, a judge must identify the rule, or rules, it came through to resolve the application of R. 2.1 of the *Court of Appeal Rules*. This approach has the benefit of consistency in the application of R. 2.1, takes the appealability of an order away from the vagaries of draftsmanship of applications and orders where the authority for the order sought or obtained may be omitted, and avoids a search for inherent jurisdiction as to which, as I have explained, the Supreme Court’s processes naturally invoke.

[21] I would decline, therefore, to follow the approach of the disclosure cases. Here we have an application for an order that is fully within a rule listed in R. 2.1 of the *Court of Appeal Rules*. For purposes of process in this court it takes its procedural character from R. 10-4. I conclude leave to appeal the order is required.

[Emphasis added.]

[29] The applicant’s suggestion that the Letters of Request Orders dismissing the application for “letters rogatory” is not a limited appeal order must fail. First, applying

Mashari, while it is within the inherent jurisdiction of the court to issue letters rogatory—letters of request—that power is fully within Rule 7-8 and takes its procedural character from that Rule. An order made under that Rule is a limited appeal order and the fact that the inherent jurisdiction of the court may provide another basis for issuing a letter of request does not change the procedural character of the relief sought.

[30] Second, the argument that the application was brought pursuant to the inherent jurisdiction of the court is a new argument on appeal that I would not consider, especially as it is lacking in merit. The notice of application makes no reference to the court’s inherent jurisdiction and does not seek an order for letters rogatory. The judge specifically noted, at para. 42, that the applicant was “seeking to employ the Rule 7-8 deposition and letters rogatory process in aid of pre-trial examination and discovery of documents” and denied the relief based on that Rule.

[31] The applicant argues that the chambers judge mistakenly referred to Rule 7-8 and the letters rogatory process “interchangeably” in the reasons, when they are distinct processes. I disagree. The fact the judge used the term in her reasons merely reflects the fact that the two terms—letters rogatory and letters of request—are used interchangeably. However, they refer to the same procedural mechanism that was historically found to be part of the superior court’s inherent jurisdiction but is now dealt with in statutory regimes: *First Majestic Silver Corp. (Re)*, 2015 BCSC 1517 at para. 6.

[32] In short, the Letters of Request Orders are limited appeal orders. The applicant does not have a right to appeal those orders without leave.

[33] The applicant’s arguments concerning the *SIA* have more merit. The notice of application identified the *SIA* as the basis for the application for the issuance of subpoenas to the extra-provincial non-parties. She argues that the order sought does not depend on the *SCCR* and that it is the sole authority for the order sought.

[34] Peoples Trust and the non-party respondents submit that the *SIA* is not an independent authority for the issuance of subpoenas to non-party witnesses. They contend that the order in question takes its procedural character from the *SCCR* and through Rule 7-8. They submit that an order for a subpoena to a witness (subrule (5)) who is a person residing outside of British Columbia (subrule (8)) can only flow from an ordered examination under subrule (1). On this analysis, they argue that the *SIA* certification process is an adjunct; the operative part of the relief sought was for document production by non-parties outside British Columbia under Rule 7-8. They submit that no certification is possible absent a subpoena.

[35] The parties were unable to refer me to authority to support their position. However, when I consider both the authority for and substance of the orders, I agree with the respondents that the *SIA* is not a separate and independent authority for issuance of extra-provincial subpoenas. I am of the view that the Subpoena Orders “come through” the *SCCR* and the Rules providing for the issuance of subpoenas in Rule 7-8. Further, there is no doubt that the substance of the orders concerns the procedures for ascertaining facts; the very matters covered by Part 7 of the *SCCR*. I conclude that leave is required to appeal from the Subpoena Orders.

[36] While the power to issue subpoenas undoubtedly originated at common law, Rule 12-5 of the *SCCR* now states that a party of record may prepare and serve a subpoena which must be in Form 25: subrules (31) and (32). As I have noted above, Rule 7-8 also provides that a party who obtains an order under subrule (1) may serve a subpoena in Form 25 on the witness (subrule (5)). For orders related to Rule 7-8(8), Form 27, or Form 29 are used, depending on if the person is willing to testify (9) or not willing to testify (10). However, the authority remains the *SCCR*.

[37] On first blush it could be said that s. 5 of the *SIA* and Rules 7-8(1), (5) and (8) provide alternate sources of authority to issue subpoenas to witnesses outside of British Columbia. However, this ignores that the actual authority to issue a subpoena in the first place is the *SCCR*.

[38] The *SIA* does not provide for the issuance of subpoenas, nor does it mandate the form to be used. It merely states that if “a party to a proceeding in any court in British Columbia causes a subpoena to be issued for service in another province in Canada” a judge of the Supreme Court may sign a certificate if the criteria under subsections (a) and (b) are met: *SIA*, s. 5 (emphasis added). To determine when and how a party “causes a subpoena to issue”, a litigant in that court must look to the *SCCR* and Forms. The *SIA* does not mandate the form of a subpoena, merely the form of the Certificate attached to or endorsed on the subpoena.

[39] The purpose of the *SIA* is not to establish procedures for the issuance of subpoenas in British Columbia. It is reciprocal legislation intended to establish a statutory mechanism by which subpoenas issued here (or in other Canadian provinces) can be recognized in and enforced by those other jurisdictions. It addresses the structural limitations of provincial authority and allows this Court or a court in a province with similar legislation to compel attendance or document production from a witness in another province.

[40] In summary, the specific authority for issuance of the subpoenas sought is the *SCCR* and, in particular, Rule 7-8. Further, the substance of the Subpoena Orders falls unquestionably within Part 7: the applicant is invoking procedures for ascertaining facts through deposition and discovery of documents.

[41] I conclude that the authority for both the Subpoena Orders and the Letters of Request Orders was Part 7 of the *SCCR*. Accordingly, the order is a limited appeal order and leave to appeal is required.

Should Leave to Appeal Be Granted?

[42] The test for whether leave to appeal from a limited appeal order should be granted is well established. In *Goldman, Sachs & Co. v. Sessions*, 2000 BCCA 326 (Chambers), Justice Saunders outlined it as follows:

[10] The criteria for leave to appeal are well known. As stated in *Power Consolidated (China) Pulp Inc. v. B.C. Resources Investment Corp.* (1988), 19 C.P.C. (3d) 396 (C.A.) they include:

- (1) whether the point on appeal is of significance to the practice;
- (2) whether the point raised is of significance to the action itself;
- (3) whether the appeal is prima facie meritorious or, on the other hand, whether it is frivolous; and
- (4) whether the appeal will unduly hinder the progress of the action.

See also *Chavez v. Sundance Cruises Corp.* (1993), 77 B.C.L.R. (2d) 328 (C.A.).

[43] The criteria for leave should be “considered under the rubric of the interests of justice”: *Vancouver (City) v. Zhang*, 2007 BCCA 280 at para. 10 (Chambers); *Hanlon v. Nanaimo (Regional District)*, 2007 BCCA 538 at para. 2 (Chambers). Even where the four criteria have been met, leave may still be denied where it would not be in the interests of justice to grant leave: *Movassaghi v. Aghtai*, 2010 BCCA 175 at para. 27 (Chambers).

Significance to the Practice

[44] The applicant argues that the appeal is significant to practice as it pertains to the issue of compelling documents from third parties outside of British Columbia for use at trial—an issue likely to continue to arise before the Supreme Court. She claims the decision “forecloses” the ability to obtain evidence from third parties outside of British Columbia prior to the commencement of trial. It is therefore of significance to the practice and requires appellate guidance.

[45] This submission overstates the legal significance of this application. The orders in question merely determined whether, in the circumstances before the Court, subpoenas or letters of request should be issued. Where an order under appeal depends on the specific circumstances of the action, its significance to the practice generally is diminished: *Gulamani v. Chandra*, 2009 BCCA 206 at para. 15 (Chambers). Here, the case management judge undertook a fact-specific assessment of the grounds for the respective Letters of Request Orders and the Subpoena Orders, following prior discovery-related proceedings and applications. As part of this discretionary assessment, she had to consider the nature of the evidence

sought, who it was sought from, its purpose, and the necessity of using the procedure to obtain the evidence.

[46] While the decision was based in part on the judge’s determination that the essential relief sought under both applications was to require production of documents by non-parties before trial, the decision did not foreclose the ability to obtain evidence from third parties outside of British Columbia. Rather, it precluded the use of depositions—whether through subpoenas or letters of request—as a means to obtain pre-trial production of documents and examination of non-party witnesses in the circumstances before the court. In doing so, the chambers judge applied the *SCCR* and related jurisprudence, which I have considered in my discussion on the merits below. In my view, the significance of the appeal to the practice is limited.

Significance to the Action

[47] The applicant’s position is that the issues on appeal are significant to this consumer class action because they impact the ability to secure the Financial Documents which were found to be relevant to the common issue proceeding by this Court in *Jiang BCCA 2022*: at para. 50. The applicant argues that if she is unable to secure these documents there is a serious risk that the resolution of the common issues will be hindered.

[48] The respondents take issue with the applicant’s assessment of the significance of the proposed appeal. They note that at the hearing of the application below, the applicant took the position that the common issues trial would proceed regardless of the outcome of the production application. They also argue, as in earlier document applications, that the Financial Documents are most significant to determination of aggregate damages, an issue which has not been certified and will not be decided at the common issues trial.

[49] I accept that the Financial Documents sought are relevant to the common issues trial and that the applicant views them as having some significance. Points that are significant to the parties may be considered significant to the action, but that

will almost invariably be the case on applications for leave to appeal: *Stanway v. Wyeth Canada Inc.*, 2013 BCCA 256 at para. 16 (Chambers). I also accept that the Financial Documents may well be relevant to the determination of aggregate damages which will not be considered at the common issues trial.

[50] While the orders in question have some significance to the action, I have difficulty giving extensive weight to this factor on the application. The chambers judge would have been acutely aware of the potential significance of the orders sought and the role the requested documents would play in the common issues trial but declined to make the orders. The common issues trial could evidently proceed regardless of the outcome of the impugned application. It also appears that there may be further opportunities for findings of fact and law on individual issues. In my view, these considerations, alongside the fact that the notice of application emphasises the materials' relevance for potential aggregate damages, attenuate the weight given to this criterion.

Merits of Proposed Appeal

[51] Where the appeal is from a discretionary order, as in the present case, the merits test is more stringent for the applicant: *Liu v. Du*, 2021 BCCA 221 at para. 48 (Chambers). In *Hagwilneghl v. Canadian Forest Products Ltd.*, 2011 BCCA 478 (Chambers), Justice Hinkson, as he then was, framed the merits test in these terms:

[31] ... Where an application for leave to appeal relates to a discretionary order, the applicable test on the merits is whether there is an arguable case that the Chambers Judge erred in principle, made an order that is not supported by the evidence, or whether the order appealed will result in an injustice.

[52] The applicant argues the chambers judge erred in her reasoning that the “true character” of the application was pre-trial discovery of documents from non-parties rather than deposition examinations. The applicant asserts that an application to obtain documents does not become “part of the pre-trial discovery process” simply “because the plaintiff learned that the [financial documents] were in the hands of a third-party through the pre-trial discovery process”. That may be so, but I have already found that the chambers judge accurately described the substance or true

character of the applications. Her characterization of the applications as attempts to obtain documents from non-parties outside of the jurisdiction before trial was available to her and must be afforded deference in light of her lengthy involvement with and knowledge of the action.

[53] The applicant maintains that the judge’s decision would foreclose applications to obtain necessary and relevant documents from non-parties outside of British Columbia until the commencement of trial, which she maintains would be “clearly wrong and lead to an absurdity”.

[54] Finally, the applicant claims that the chambers judge wrongly held that letters rogatory cannot be used as a process in the aid of discovery, asserting that the chambers judge incorrectly relied on *United Services Funds (Trustees of) v. Richardson Greenshields of Canada Ltd.* (1988), 23 B.C.L.R. (2d) 1, 1988 CanLII 2960 (B.C.C.A.) [USF]: RFJ at para. 41. She argues that it would be “anomalous” for a British Columbia court to enforce foreign letters rogatory even when the evidence is sought primarily for discovery, while being unable to issue comparable letters rogatory of its own, referring to *Duryea v. Matsumoto*, 2023 BCSC 2061 at para. 56.

[55] First, I note that letters of request and *SIA* certifications are factually based, discretionary orders owed considerable deference when assessing the merits. The evaluation of the merits of a discretionary order becomes even more stringent when undertaken by a case management judge: *Robak Industries Ltd. v. Gardner*, 2006 BCCA 395 at paras. 12–13 (Chambers); *Jiang BCCA 2022* at para. 36. The case management judge here was well-positioned to assess and rule on the applications.

[56] An application for deposition is not guaranteed to succeed. It is a tool for recording evidence before trial, used when examination for discovery is either impossible, or where a witness is unavailable to testify at trial: John Fiddick and Cameron Wardell, “The CanLII Manual to British Columbia Civil Litigation” (2020) at Rule 7-8 — Depositions, online: Canadian Legal Information Institute [CanLII Manual]. Under Rule 7-8 the applicant “must establish that the evidence

proposed to be taken by deposition is directly material to the issues”: *Malii v. British Columbia*, 2025 BCSC 1567 at para. 6, citing *Lomax v. Weins*, 2003 BCSC 396 at paras. 14–15; CanLII Manual at Rule 7-8 — Depositions.

[57] The *SIA* process similarly maintains a high threshold which requires the judge be satisfied not only that attendance of a witness is “necessary” to adjudication of the issues at trial, but that it is also reasonable and essential to the administration of justice to require their attendance in British Columbia: *Pakenham v. Maley*, 2016 BCSC 1744 at paras. 12, 14–15, 23; *Howard v. Marsh* (1984), 54 B.C.L.R. 125 at para. 8, 1984 CanLII 867 (B.C.S.C.).

[58] In the present case, the materials submitted by the applicant appear to have significant shortcomings. As noted by the chambers judge, no witnesses had been identified to testify or attend at trial. The letters of request instead sought a “representative” of each respective non-party: RFJ at para. 36. The material in the application also lacks evidence fully addressing the many factors the court must consider to determine whether to exercise discretion under Rule 7-8 or *SIA*. This includes the convenience of the person sought to be examined, the possibility a person may be unavailable to testify, the possibility a person will be beyond the jurisdiction of the court, and the expense of bringing the person to trial. As the chambers judge noted, “the certificates and letters of request requiring a representative to produce documents or to testify ... appears to be secondary”: RFJ at para. 40.

[59] Further, the judge’s interpretation of the application as an attempt at “pre-trial discovery” aligns with the jurisprudence. Historically, the court has ruled that the predecessor to Rule 7-8 cannot be used in aid of discovery: CanLII Manual at Rule 7-8 — Depositions; *USF* at paras. 18–19; *Peoples Trust Co. v. Midland Mortgage Corp.* (1995), 14 B.C.L.R. (3d) 396 at paras. 7–9, 15–16, 1995 CanLII 2325 (B.C.S.C.); *Pacific Concessions, Inc. v. Weir and Weir*, 2005 BCSC 432 at para. 19.

[60] Recent case law considering Rule 7-8(11), while limited and less explicit, still maintains adherence to the historical view that letters of request are not intended for pre-trial examination: *Araya v. Nevsun Resources Ltd.*, 2019 BCSC 260 at paras. 54–55 (Chambers), aff'd 2019 BCCA 205; *The UA Full-Time Salaried Officers v. UA of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry, Local 170*, 2020 BCSC 422 at para. 106; *Rintoul v. Granger*, 2008 BCSC 1852 at paras. 17–25. The *SIA* has likewise been held not to apply to pre-trial proceedings: *Howard* at paras. 7–12; *Miramichi Investments Ltd. v. La Galerie*, 1990 CanLII 1820 (B.C.S.C.). The chambers judge was alive to the jurisprudence when assessing the materials to ensure the use of Rule 7-8 was respected.

[61] Finally, the applicant's argument that letters rogatory should be enforced when evidence is sought for discovery relies on cases where a British Columbia court recognizes and enforces foreign discovery letters. In *Duryea*, cited by the applicant, Justice Ker is not addressing Rule 7-8 when she states that "[a]s the authorities make clear, it is not my function to determine if the requesting court was wrong" that the evidence sought is relevant: at para. 54. While I understand the reasoning that our laws should be able to issue comparable letters rogatory as an attempt to question the requirement, that is simply not provided for in Rule 7-8.

[62] In summary, while the proposed appeal is not frivolous, the merits are not high.

Unduly Hinder Progress of the Action

[63] The applicant submits that granting leave to appeal would not hinder the progress of the proceeding in the court below even though the long-awaited common issues trial is set to commence on November 9, 2026. If leave is granted, she asks that the Court make directions for the filing of appeal documents to accommodate an early appeal date.

[64] I am not persuaded that the hearing of the proposed appeal could be accommodated in a fashion that would allow the scheduled trial date to proceed in November. It is doubtful the appeal could be heard before the summer recess or that

a decision of this Court would be delivered in advance of the scheduled trial date. Further, even if a decision were to be rendered before the trial date, there would remain much work to do to arrange and conduct the depositions or examinations of the witnesses and to produce the relevant documents.

[65] The proceeding was commenced in September 2014, and has a very lengthy history in both courts. After two appeals from the certification applications, the notice of trial for the common issues trial was issued in July 2025. It is anticipated that further proceedings may be required to deal with individual issues after the common issues trial. Any further delay to these proceedings would not be in the interests of justice. In these circumstances, the timing considerations weigh heavily against granting leave. After consideration of the relevant criteria, I conclude that it is not in the interests of justice to grant leave to appeal.

Conclusion

[66] The orders in question are limited appeal orders requiring leave. The application for leave to appeal is dismissed.

“The Honourable Mr. Justice Butler”

SCHEDULE "A"

	Application Type	Non-party's Jurisdiction
Blackhawk Network (Canada) Limited	<i>SIA</i>	AB
Payment Source Inc.	<i>SIA</i>	ON
Mastercard Prepaid Management Services Limited	Letter of Request	UK
DCR Strategies Inc.	<i>SIA</i>	ON
Swift Prepaid Solutions Inc.	Letter of Request	USA (Illinois)
Wex Health, Inc.	Letter of Request	USA (Maine)
EML Payments Canada, Ltd., formerly Store Financial Canada, Ltd.	<i>SIA</i>	NS
Enstream LP	<i>SIA</i>	ON
Galileo Financial Technologies LLC, formerly Galileo Processing Inc.	Letter of Request	USA (Utah)
Fidelity National Information Services, Inc., formerly eFunds Corporation, formerly Wildcard Systems Inc.	Letter of Request	USA (Utah)