IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Trigon Pacific Terminals Ltd. v. Prince Rupert Port Authority,* 2025 BCSC 1260

Date: 20250708
Docket: S237527
Registry: Vancouver

Between:

Trigon Pacific Terminals Ltd.

Plaintiff

And

Prince Rupert Port Authority and Ridley Island Energy Export Facility Limited Partnership, by its General Partner, Ridley Energy Export Facility GP Inc.

Defendants

Before: Associate Judge Muir

Reasons for Judgment

Counsel for the Plaintiff:	D. Rossi B. Stang
Counsel for the Defendant, Prince Rupert Port Authority:	J.A. Jantzi N. Bond
Counsel for the Defendant, Ridley Island Energy Export Facility Limited Partnership, by its General Partner, Ridley Energy Export Facility GP Inc.:	M.A. Youden G. Matheson
Place and Date of Hearing:	Vancouver, B.C. May 15, 2025
Written Submissions of the Plaintiff:	May 26, 2025
Written Submissions of the Defendant, Prince Rupert Port Authority:	June 5, 2025
Written Submissions of the Defendant, Ridley Island Energy Export Facility Limited Partnership, by its General Partner, Ridley Energy Export Facility GP Inc.:	June 5, 2025
Place and Date of Judgment:	Vancouver, B.C. July 8, 2025

Table of Contents

Introduction

[1] This is an application by the plaintiff, Trigon Pacific Terminals Ltd. ("Trigon"), for an order that within seven days, the defendant, Prince Rupert Port Authority ("PRPA"), list and produce documents in the following categories:

1. All internal correspondence relating to Trigon's request for PRPA's consent for it to use liquified petroleum gas ("LPG") (the "LPG Request").
2. All correspondence between PRPA and any third parties, including (but not limited to) Vopak Development Canada Inc. ("Vopak"), AltaGas, or Ridley Island Energy Export Facility Limited Partnership by its General Partner, Ridley Island Energy Export Facility GP Inc. ("REEF LP") regarding the LPG Request.
3. All documents reviewed or considered by PRPA for the purposes of responding to the LPG Request.
4. All correspondence between PRPA and any third parties, including (but not limited to) Vopak, AltaGas, or REEF LP regarding Trigon's prior requests to expand its permitted uses.
5. All records and correspondence regarding PRPA's decisions to: (a) enter the agreement with Vopak (the "Vopak Agreement"); (b) extend the Vopak Agreement; and/or (c) transfer, assign or amend the Vopak Agreement.
6. All records and correspondence relating to PRPA's decision to grant exclusive rights to Vopak/REEF LP.
7. All records, pertaining to the lease with Vopak (the "Vopak Lease"), including any milestones or deadlines arising in respect of it.
8. All feasibility studies, economic forecasts, and supporting documents relied upon by PRPA to justify the purported grant of exclusivity to Vopak/REEF LP.
9. All records and correspondence regarding future possible uses of the Trigon terminal, the diversification of its business operations, or possible additional commodities to be exported from the terminal, generated in respect of the divestiture of Ridley Terminals Inc. by the Government of Canada to Trigon's current owners, including (but not limited to) correspondence between PRPA and the Canadian Development Investment Corporation, the Government of Canada, and Macquarie Group Limited.

[2] The application is brought under both Rules 7-1(10) and (11) of the *Supreme Court Civil Rules*. For the reasons that follow, I have concluded that Trigon's application should be dismissed.

Background

[3] Trigon, or its predecessor in interest, Ridley Terminals Inc., have operated a bulk commodities marine terminal on federal port lands on Ridley Island in Prince Rupert, BC, since entering a lease with PRPA dated December 18, 1981 (the "lease").

[4] Under that lease, Trigon was initially limited to the export of coal, but in 2009, that was expanded to include certain other permitted uses. In addition, the lease was amended to include a term that PRPA could not unreasonably withhold or delay its approval of any requests to further expand the permitted uses under the lease.

[5] On September 29, 2023, Trigon requested PRPA's consent to expand its permitted uses to include liquified petroleum gas, as defined above, the LPG Request.

[6] On November 6, 2023, PRPA refused Trigon's LPG Request. In its response to this application, PRPA indicates in its letter refusing Trigon's request that it advised as follows:

> a. REEF LP holds time-limited exclusive rights to export LPG from the Port;
>
> b. The REEF project has been in development for nearly 10 years with an estimated $70 million invested in the project development work to date, including a lengthy and costly federal regulatory review process supported by Crown consultation with Indigenous groups and other community stakeholders;
>
> c. PRPA's decision to convey land use rights for the REEF project, including the exclusivities provided to REEF LP, was reasonable given commercial and regulatory realities of the marketplace, potential economic benefits of the REEF project and PRPA's objective to secure REEF LP's significant capital investment in a greenfield development that would significantly expand and diversify the Port's operations in support of Canada's trade agenda;
>
> d. Consenting to Trigon's request would expose PRPA to intolerable legal risk that it has no duty to voluntarily assume; and

e. Trigon does not have a contractual right to be granted the consent, and doing so would be unreasonable for PRPA considering the commercial realities of the marketplace, the commercial interests of other entities at the Port, and the regulatory viability of other proposed works and undertakings within the Port.

[7] I note that Vopak is the predecessor of REEF LP.

[8] This action was commenced by Trigon on November 7, 2023, alleging that PRPA breached the lease by failing to approve the LPG Request.

[9] Since that time, REEF LP has been added as a defendant to this action.

Document Production

[10] Counsel for Trigon made an initial demand for production of documents by letter of November 16, 2023. That letter requested production of 13 broad classes of documents.

[11] The evidence of PRPA shows that it and its counsel immediately began assembling and reviewing documents, including ones in the categories set out in Trigon's November 16, 2023 letter.

[12] This evidence shows that PRPA went to considerable lengths to ensure that document production was complete and notes that:

a) PRPA provided its counsel with 510,631 documents for review,

b) Counsel engaged in a review of the documents, recording a total of 1,104 hours by seven associate lawyers, three partners, and two articling students,

c) Paralegals recorded a further 260.4 hours on the document review, and

d) PRPA ultimately listed and produced 5,026 documents.

[13] The first PRPA list of documents was provided on March 7, 2024, followed by four amended lists of documents, with the last being produced on March 26, 2025.

[14] By letter of October 23, 2024, Trigon demanded production of the nine categories of documents sought in this application.

[15] The demand is made "in accordance with Rule 7-1(10) or, alternatively, Rule 7-1(11)."

[16] Notably, each of the categories demanded in the October 23, 2024 letter had been previously demanded in the November 16, 2023 letter and, hence, each category had already been canvassed by PRPA and its counsel.

[17] The only difference being that the October 23, 2024 letter specifically notes Rules 7-1(10) and (11) as its basis, whereas the November 16, 2023 letter refers only to Rule 7-1.

[18] PRPA takes the position that all documents within the categories requested that satisfy its production obligation under Rule 7-1 and which are not privileged, have been produced.

[19] Trigon also sought production of agreements between PRPA and REEF LP. On February 29, 2024, those agreements were ordered produced by Associate Judge Robertson. PRPA produced the documents sought, but redacted certain dollar values, dates, project milestones, and products.

[20] Trigon brought an application to have the documents produced in unredacted form. That application was denied by Justice Giaschi on October 18, 2024 in reasons indexed as *Trigon Pacific Terminals Limited v. Prince Rupert Port Authority*, 2024 BCSC 1914 (the "redaction reasons").

[21] In the redaction reasons, Giaschi J., noted that:

> [71] I observe 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.
>
> [72] The main issue in the main action is whether PRPA breached the terms of its agreements with Trigon or acted in bad faith when it refused Trigon's request to expand the permitted uses to include receiving, handling, storing, and loading of LPG onto vessels in all areas of the Terminal lands. In particular, the issues to be decided are:
>
> > a) Do the terms of the Trigon/PRPA agreements give Trigon any rights in respect of LPG outside the Petroleum Handling Area and, if so, what are those rights?

> b) Do the terms of the Trigon/PRPA agreements or the duty of good faith limit or restrict the ability of PRPA to enter into contracts with third parties, in particular Vopak/REEF, for the exclusive rights to receive, handle, store, load and export LPG?
>
> c) Did PRPA breach the terms of the agreements or fail to act in good faith by refusing Trigon's request? In particular, did PRPA act unreasonably in refusing Trigon's request?
>
> [73] I observe that the resolution of these issues depends on the contractual and related obligations as between PRPA and Trigon. They do not concern the agreements as between PRPA and Vopak/REEF except in relation to the exclusive right granted to Vopak/REEF to handle and export LPG, which is not a disputed fact.
>
> [74] The issues in the counterclaim concern whether the Trigon news release dated November 10, 2023, contained untrue, misleading and inaccurate statements and whether the publication of the news release constituted a breach of the terms of the Trigon Lease, a breach of the duty of good faith, or a breach of a duty of care owed to PRPA. Again, the focus of the issues in the counterclaim relates to the contractual and related obligations as between PRPA and Trigon. These issues do not concern a consideration or interpretation of the contractual terms as between PRPA and Vopak/REEF.

[22] In the result, Giaschi J. refused to order production of the redacted portions of the documents.

[23] That result was appealed.

[24] At the hearing of this application, I was advised that the Court of Appeal was expected to hand down reasons on that appeal the next day—being May 16, 2025.

[25] I therefore granted leave for the parties to provide written submissions as to the impact on this application of the Court of Appeal's decision, which is indexed as *Trigon Pacific Terminals Limited v. Prince Rupert Port Authority*, 2025 BCCA 155 (the "appeal decision").

[26] All parties did so.

[27] In its written submissions, Trigon submitted that the appeal decision has no bearing on the issues before me, other than that its description of the issues between the parties is said by Trigon to support their application. Otherwise, Trigon asserts that the applications are different, with different legal tests. Trigon also points

out, as it did on its application, that the issue before the court did not include documents relevant to the counterclaim.

[28] Both PRPA and REEF LP take the position that the appeal decision supports their assertion that the documents sought are irrelevant to the matters at issue in the action.

[29] The Court of Appeal supported the findings of Giaschi J. and the appeal was dismissed. Findings and comments of Justice Abrioux, writing for the court, that are of interest on this application include the following:

> [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.

[Emphasis added.]

Positions of the Parties

Trigon's Position

[30] On this application, Trigon first advances the position that PRPA has failed to properly respond to its demand under Rule 7-1(11), as they say it did not address the specific documents requested and identify why they were not being produced.

[31] As to the categories of documents sought, Trigon submits each category of documents requested has relevance and should be produced:

1. All internal correspondence relating to the LPG Request

[32] These documents are said to go to whether PRPA's denial of the LPG Request was reasonable.

2. All correspondence between PRPA and any third parties, including (but not limited to) Vopak, AltaGas, or REEF LP regarding the LPG Request

[33] These are said to be relevant to PRPA's position that granting Trigon's LPG request would conflict with its having granted REEF LP exclusivity over LPG. It says such documents are likely to exist because PRPA previously sought the consent of others to expand Trigon's permitted uses.

3. All documents reviewed or considered by PRPA for the purposes of responding to the LPG Request

[34] These are said to go to whether PRPA's denial of the LPG Request was reasonable. Trigon says these may go to prove or disprove facts PRPA has pleaded in its response, including the amount of investment by REEF LP in the project to date.

4. All correspondence between PRPA and any third parties, including (but not limited to) Vopak, AltaGas, or REEF LP regarding Trigon's prior requests to expand its permitted uses

[35] These are said to be relevant to whether PRPA's assessment of the LPG Request was reasonable, that they would show PRPA's practice for assessing such requests, and would go to whether PRPA acted in good faith. Trigon notes that other documents indicate that PRPA sought the consent of others regarding expanding Trigon's permitted uses.

5. All records and correspondence regarding PRPA's decisions to: (a) enter the Vopak Agreement; (b) extend the Vopak Agreement; and/or (c). transfer, assign or amend the Vopak Agreement

[36] These are said to be relevant to PRPA's pleading that it assessed the LPG Request in light of "the commercial realities of the marketplace", "the commercial

interests of other entities", and the "regulatory viability of other proposed works and undertakings within the Port".

[37] Trigon submits that these documents may prove or disprove the commercial viability of REEF LP and whether PRPA could relieve itself of its contractual obligations to REEF LP without penalty—that is, whether PRPA had off ramps that it could have used to extricate itself from its obligation to REEF LP. As such, Trigon argues that these documents go to PRPA's reasonableness in denying the LPG request.

[38] It submits that there has been evidence produced in their *Access to Information Act*, R.S.C. 1985, c. A-1 requests that shows that such documentation exists and that there is affidavit evidence of Mr. Stephenson for PRPA acknowledging discussions leading up to entering into the Vopak Agreement. They assert that Trigon has pleaded that by entering into the Vopak Agreement that PRPA breached its lease with Trigon.

6. All records and correspondence relating to PRPA's decision to grant exclusive rights to Vopak/REEF LP

[39] Trigon argues these documents are relevant to PRPA's decision to grant exclusive LPG rights to Vopak/REEF LP and whether PRPA's subsequent denial of the LPG Request was reasonable. It says this is the crux of Trigon's allegation that PRPA has engaged in post-contractual conduct to deny or deprive Trigon of its rights and breached its duty of good faith.

7. All records pertaining to the Vopak Lease, including any milestones or deadlines arising in respect of it

[40] Trigon argues these documents are relevant because both Trigon and PRPA have pleaded facts relating to the Vopak Lease, such as the initial term and renewal term. It says documents pertaining to milestones and deadlines and any extensions thereof may show the commercial viability of the REEF project and the existence of the legal risk pleaded by PRPA and whether PRPA could relieve itself of its contractual obligations to REEF LP without penalty. It says that PRPA has amended

at least one deadline under the Vopak/REEF agreement after the commencement of this action and that it could therefore be argued that PRPA has failed to avail itself of off-ramps to mitigate the risk that it claims would have resulted from granting the LPG request.

[41] It says there is evidence that documents in this category exist, and that PRPA has failed to produce them. It is said that in response to an *Access to Information Act* request, PRPA disclosed correspondence with respect to deadlines and extensions arising from the Vopak/REEF agreement.

> **8. All feasibility studies, economic forecasts, and supporting documents relied upon by PRPA to justify the purported grant of exclusivity to Vopak/REEF LP**

[42] It is argued these documents should be produced because PRPA has pleaded that "(t]he commercial and regulatory realities of the marketplace and the potential economic benefits of the REEF Project reveal that PRPA has reasonably conveyed land use rights" to Vopak/REEF.

> **9. All records and correspondence regarding future possible uses of the Trigon terminal, the diversification of its business operations, or possible additional commodities to be exported from the terminal, generated in respect of the divestiture of Ridley Terminals Inc. by the Government of Canada to Trigon's current owners, including (but not limited to) correspondence between PRPA and the Canadian Development Investment Corporation, the Government of Canada, and Macquarie Group Limited**

[43] It is submitted that documents in this category may prove what PRPA represented to third parties about its obligations to Trigon and future potential uses of the Terminal, including for LPG.

[44] In general, Trigon points out that PRPA has not denied the existence of the documents sought.

[45] Lastly, Trigon points out that PRPA has not listed any privileged documents.

PRPA's Position

[46] PRPA argues that it has already produced all documents required under Rule 7-1 in the categories requested, other than privileged documents, and that Trigon has not identified any way in which this production is deficient.

[47] PRPA submits that Trigon has failed to comply with the requirements of Rule 7-1(10) or (11) in making its demand for production.

[48] It argues that Trigon generally has not indicated why they believe that the requested documents exist. And has not shown the documents sought are relevant. They rely on *Masjoody v. Burnaby Beacon*, 2023 BCSC 528, where Master Vos (now Associate Judge Vos) held:

> [9] Under Rule 7-1(10), a party who has received a list of documents, but believes the list omits documents or a class of documents that should have been disclosed, may, by written demand, require the party who prepared the list to disclose the omitted documents. A demand under Rule 7-1(10) is restricted to documents that should have been disclosed pursuant to the requirements of Rules 7-1(1) or (9). As only documents that exist can be produced, a party demanding documents pursuant to Rule 7-1(10) should indicate why they believe the requested documents exist and should be disclosed.
>
> [10] Rule 7-1(11) can be used when a party has received a list of documents but believes there are additional documents within the listing party's possession, power or control that relate to matters in question in the action. A party seeking documents pursuant to Rule 7-1(11) has to provide a written demand identifying the additional documents or classes of documents with reasonable specificity and indicate why the additional documents should be disclosed. The test for disclosure of documents under Rule 7-1(11) is wider than the test in Rule 7-1(1). It is whether the document or class of documents can reasonably be expected to contain information which may enable the party seeking the document to either advance their own case or damage their opponent's case, or which may fairly lead the requesting party on a train of inquiry in relation to either of those consequences: *Global Pacific Concepts Inc. v. Strata Plan NW 141*, 2011 BCSC 1752, paras. 8, 9.
>
> [11] An applicant seeking disclosure of documents under Rule 7-1(11) must provide some evidence of the existence and potential relevance of the additional documents: *More Marine Ltd. v. Shearwater Marine Ltd.*, 2011 BCSC 166 at para. 8. There are a number of ways to obtain the required evidence. The most obvious sources are examination for discovery testimony and documents that refer to other relevant documents.

[49] PRPA submits that there is absolutely no evidence that documents that should have been produced have not been.

[50] Further, the demand was made "in accordance with Rule 7-1(10) or, alternatively, Rule 7-1(11)" and it argues that is not appropriate.

[51] It relies on the decision of Justice Wilkinson, in *Ackert v. At Nature's Door Owner's Association*, 2021 BCSC 778, in support of its position:

> [19] A demand under Rule 7-1(11) requires the applicant to demonstrate a connection between the documents sought and the issues beyond a mere possibility. There must be an "air of reality" between the documents and the issues in the action: *Addison v. Whitefox Technologies Ltd*., 2014 BCSC 633 at para. 28.
>
> [20] As the Association points out, the intent of R. 7-1(11) is to inform the opposing party of the basis for the broader disclosure request with sufficient particularity so that there can be a reasoned answer to the request: *Balderson v. Aspin*, 2011 BCSC 730 at para. 29. Applicants who ignore the process risk having their application adjourned or dismissed: *Balderson* at para. 26.
>
> [21] It is not enough to claim a demand is made pursuant to Rule 7-1(10) and/or Rule 7-1(11). There is a clear process under these rules, starting with a demand made under Rule 7-1(10). The plaintiffs' failure to follow that clear process, the fact they bundled their demands, and supplemented their demands within the application materials themselves, make it very difficult for the court to adjudicate their document production application. No doubt, this is the same difficulty the Association faced in responding to the demands and which it tried to clarify with the plaintiffs.
>
> [Emphasis in original.]

[52] PRPA submits that Trigon's demand for production is simply a demand for bundles of documents of a certain type and that is improper. It relies on *Ackert*, where Wilkinson J. noted:

> [18] The plaintiffs' requests are very broad and they simply assert the documents are "relevant" to the claims. The only "specificity" or particularization the plaintiffs set out is that the documents are linked to particular allegations in the pleadings. This may be sufficient for first tier production under Rule 7-1(10). However, as noted, that "relevance" has now been diminished as some of the claims of relief originally sought by the plaintiffs have been dismissed and the relevant period of time with regard to the remaining claims has been limited.

[53] PRPA relies on *Yen v. Ghahramani*, 2023 BCSC 229, at para. 52, where Associate Judge Bilawich noted that:

> A blunt demand for all emails has the appearance of a fishing expedition.

[54] PRPA also argues that Trigon has not advanced any real evidence that there exist documents that should be produced under either Rule 7-1(10) or (11). It submits that for production to be ordered, there must be an “air of reality” between the documents sought and the issues in the action. It refers to *Ackert*, as set out above.

[55] PRPA notes that Giaschi J. in the redaction reasons and the Court of Appeal in the appeal decision have both determined that the factual issues between the parties are limited.

[56] PRPA points to the extensive efforts that it has made already to ensure proper disclosure is made, including in the categories requested, and says that granting an order to comply with the blanket demands of Trigon is simply disproportionate and would require essentially a repeat of the process already undertaken.

[57] PRPA also takes issue with the relevance of some of the categories sought.

[58] As to category 2, correspondence between PRPA and other parties regarding the LPG Request, PRPA points out that Trigon asserts that there is evidence that "correspondence between PRPA and third parties” regarding the LPG Request exists because Trigon previously sought consent from third parties to expand Trigon’s permitted uses other than for LPG.

[59] PRPA submits there is no evidence at all that any such correspondence exists with respect to the LPG Request. They point out that Trigon itself insisted on non-disclosure of its request, absent its consent.

[60] As to category 4, PRPA says that correspondence between PRPA and others regarding Trigon’s earlier requests for increased permitted uses has no relevance. It

points to the determination of Giaschi J. in his redaction reasons regarding redacted product information, “as the product information does not relate to LPG, it has no relevance to the issues in the action”: para. 89.

[61] As to categories 5 and 6, PRPA says that records and correspondence regarding PRPA entering the agreement with Vopak, are also clearly irrelevant. As Justice Giaschi noted at para. 84, “[t]his action is not a judicial review of PRPA’s decision to grant exclusivity rights to Vopak/REEF.”

[62] As to category 7, records regarding the Vopak Lease milestones or deadlines have already been determined to be irrelevant to this claim by Giaschi J. as they were not relevant to the “any of the issues in the action”. PRPA argues that this would result in a collateral attack on Giaschi J.’s order.

REEF LP’s Position

[63] REEF LP also opposes the application.

[64] It points out that most of the categories of documents sought relate to its commercial interests under its agreement with PRPA.

[65] Further, it notes that Trigon and REEF LP are direct competitors. They argue that the production sought would, at best, have marginal relevance to the action but would run the very real risk of disclosing REEF LP’s highly sensitive commercial information to Trigon. Such production, it argues, would be disproportionate in the circumstances.

[66] It argues that if any documents are ordered produced by PRPA, that REEF LP should have the opportunity to review them for commercially sensitive information and allow it to make redactions of same.

[67] REEF LP reiterates the arguments made by PRPA about the inadequacy of the Trigon demands, the irrelevance of the documents sought, and the lack of any evidence supporting either the existence or relevance of any documents that have not been produced.

Analysis and Conclusions

[68] Rule 7-1 provides the framework for additional document demands in sub-rules 10–12 as follows:

> **Party may demand documents required under this rule**
>
> (10) If a party who has received a list of documents believes that the list omits documents or a class of documents that should have been disclosed under subrule (1) (a) or (9), the party may, by written demand, require the party who prepared the list to
>
> (a) amend the list of documents,
>
> (b) serve on the demanding party the amended list of documents, and
>
> (c) make the originals of the newly listed documents available for inspection and copying in accordance with subrules (15) and (16).
>
> **Party may demand additional documents**
>
> (11) If a party who has received a list of documents believes that the list should include documents or classes of documents that
>
> (a) are within the listing party's possession, power or control,
>
> (b) relate to any or all matters in question in the action, and
>
> (c) are additional to the documents or classes of documents required under subrule (1) (a) or (9),
>
> the party, by written demand that identifies the additional documents or classes of documents with reasonable specificity and that indicates the reason why such additional documents or classes of documents should be disclosed, may require the listing party to
>
> (d) amend the list of documents,
>
> (e) serve on the demanding party the amended list of documents, and
>
> (f) make the originals of the newly listed documents available for inspection and copying in accordance with subrules (15) and (16).
>
> **Response to demand for documents**
>
> (12) A party who receives a demand under subrule (10) or (11) must, within 35 days after receipt, do one of the following:
>
> (a) comply with the demand in relation to the demanded documents;
>
> (b) comply with the demand in relation to those of the demanded documents that the party is prepared to list and indicate, in relation to the balance of the demanded documents,
>
> (i) why an amended list of documents that includes those documents is not being prepared and served, and
>
> (ii) why those documents are not being made available;
>
> (c) indicate, in relation to the demanded documents,

> (i) why an amended list of documents that includes those documents is not being prepared and served, and
>
> (ii) why those documents are not being made available.

[69] The demand provided by Trigon to PRPA was not a proper demand in accordance with these rules.

[70] The October 23, 2024 demand letter itself, for each of the broad headings set out, asserts that the documents are required because “they could be used to prove or disprove material facts at issue” in specific paragraphs of the notice of civil claim, response, counterclaim or response to counterclaim.

[71] As such, there is no demand made under Rule 7-1(11).

[72] The classes of documents sought are overly broad, overlapping, and generally lack the specificity required by the rules, including Rule 7-1(10).

[73] Further, the evidence of PRPA satisfies me that it and its counsel have already undertaken an extensive document review for and have produced all documents they considered captured by Rule 7-1 in the categories requested.

[74] There is no evidence that the review was flawed or failed to uncover documents or classes of documents that might properly be producible.

[75] There are no documents identified as existing and not produced.

[76] As is noted in the cases set out in PRPAs response, and many others, there must be some evidence that relevant documents that exist have not been produced. Even under Rule 7-1(10), there must be some basis for the party’s belief that additional documents exist.

[77] The rationale given for a belief that documents exist was generally that PRPA had not denied the existence of such documents—which is actually not true. PRPA has asserted that all documents in these categories that are properly producible under Rule 7-1, that are not privileged, have been produced.

[78] Next, Trigon asserts that no privileged documents have been listed by PRPA. That is not evidence of anything, it is simply a basis for suspicion.

[79] In categories 2 and 4, Trigon says the documents are believed to exist because PRPA sought input from others regarding expanding Trigon's permitted uses. That is not evidence that such documents exist regarding the LPG Request as set out in category 2, particularly as Trigon had insisted that request be kept confidential.

[80] As to category 4, that there might exist correspondence regarding the prior requests of Trigon for expanded uses is irrelevant. To say, as Trigon does, that such documents might show Trigon's standard procedure and, hence, that they might show that its procedure was not followed in this instance and thus they might be evidence of bad faith is total speculation. Such documents could not prove or disprove a material fact and thus must be a request under Rule 7-1(11). There is no proper request made pursuant to Rule 7-1(11), but it is such a stretch, that if there were I would expect that evidence such as from an examination for discovery would be required as a foundation for it.

[81] Categories 5, 6, and 8 all deal with the foundation for or reasonableness of entering into or continuing the lease with Vopak and REEF LP.

[82] As Giaschi J. noted in the redaction reasons, this is not a judicial review of PRPA's actions in contracting with Vopak and REEF LP. The reasonableness of PRPA's initial decision is irrelevant to the matters pleaded in this action.

[83] Nor does the financial viability of REEF LP have any relevance to the issues in this action.

[84] As to the pleading by PRPA of the "commercial realities of the marketplace", "the commercial interests of other entities" and the "regulatory viability of other proposed works and undertakings within the Port", this was dealt with by Giaschi J. He held:

> [79] The fact that PRPA pleaded the potential economic benefits of the REEF project, the commercial realities of the marketplace and the economic impact of a change in land use also does not render the redacted dollar amounts relevant. These are merely general factors PRPA pleads it was required as a port authority to take into account in assessing Trigon's request. The specific redacted dollar values are irrelevant to these general considerations.

[85] As to categories 5 and 8, documents dealing specifically with the Vopak Lease would not be relevant to this issue.

[86] The commercial viability of REEF LP and whether Trigon had "off ramps" it could have used was dealt with by the Court of Appeal in its appeal decision, as follows:

> [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.

[87] Justice Giaschi in the redaction reasons also dealt with the plea of "intolerable legal risk":

> [77] The fact PRPA pleaded that consenting to the Trigon request would have exposed it to "intolerable legal risk", does not render the redacted dollar values relevant. It is a well-known fact that projects of the sort in issue require many years of development and cost tens of millions of dollars, if not hundreds of millions of dollars and sometimes billions. I take judicial notice of

> this fact. The intolerable risk that is pleaded by PRPA is that granting Trigon's request would have required PRPA to breach its agreements with Vopak/REEF which, in turn, would have exposed it to a claim in damages. There is no necessity to assess what those damages would have been in this action. They would clearly be enormous.

[88] Based on these findings, I cannot see that the documents sought in these categories could be relevant, much less possibly prove or disprove a material fact.

[89] As to category 7, as noted in the redaction reasons at para. 1, PRPA has already provided over 450 pages of commercial agreements between PRPA and REEF LP. There is no evidence that anything relevant has been withheld.

[90] Whatever "all records pertaining to" the Vopak Lease might mean, it is clearly overbroad and overreaching. Justice Giaschi has held that the dates, timelines, and milestones are irrelevant at paras. 81–85 of his redaction reasons.

[91] Category 9 is so broad and general that, in my view, it is completely improper and likely impossible to comply with. Most, if not all, such documents would be completely irrelevant to the issues in this action.

Conclusion

[92] As a result, Trigon application is dismissed with costs to the defendants.

"Muir A.J."