

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Hayden AI Technologies, Inc. v. Kerr*,
2026 BCSC 1068

Date: 20260610
Docket: S00393
Registry: Port Coquitlam

Between:

Hayden AI Technologies, Inc.

Petitioner

And

Debbie Kerr

Respondent

Before: The Honourable Justice Fowler

Reasons for Judgment

Counsel for the Petitioner:

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Place and Date of Hearing:

Port Coquitlam, B.C.
June 1, 2026

Place and Date of Judgment:

Port Coquitlam, B.C.
June 10, 2026

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Introduction

[1] The petitioner, Hayden AI Technologies Inc. (“Hayden”) has applied for an order enforcing a request for international judicial assistance to the Supreme Court of British Columbia, the Letter Rogatory¹, issued by the Honourable Judge James R. Cho of the United States District Court for the Eastern District of New York (the “New York Court”) on December 22, 2025 (the “Request”).

[2] The Request seeks assistance to obtain deposition testimony and documents from the respondent Debbie Kerr (“Ms. Kerr”), who, between November 2016 and April 2024, was employed by Seon Design Inc., a subsidiary of Safe Fleet Holdings LLC (“Safe Fleet”) as an executive assistant to Tom Gill (“Mr. Gill”), who was then the Senior Vice President at Safe Fleet. Beginning in 2023 Ms. Kerr was also an assistant to Daniel Pulskamp (“Mr. Pulskamp”) who was a Vice President at Safe Fleet. Seon Design, Safe Fleet, Tom Gill and Daniel Pulskamp are among the defendants in an action commenced in the New York Court by Hayden alleging patent infringement and trade secret misappropriation.

[3] Ms. Kerr resides in Coquitlam, B.C. Her employment with Safe Fleet ended in April 2024.

[4] Ms. Kerr opposes the application to enforce the Request on the basis that Hayden has failed to show the evidence sought from her is necessary, relevant or otherwise unobtainable from the defendants. Ms. Kerr submits that the order sought is excessively broad and amounts to a fishing expedition, as such an order compelling her to submit to attend for examination and provide documentary disclosure would be unduly burdensome for her.

¹ As noted by Madam Justice Ker in *Duryea v. Matsumoto*, 2023 BCSC 2061 the jurisprudence uses the terms “letters rogatory” and “letters of request” often interchangeably to mean the same thing. In addition, as was the case in *Duryea*, the terms can often be used in the singular, for example Letter Rogatory. In the present petition the petitioner has used the term Letters Rogatory and Letter Rogatory interchangeably. The more common terminology in more recent cases is letters of request: *Liu v. Zhi*, 2019 BCCA 427 at para. 6 and *International Wood Products, LLC v. CLG Enterprises, Inc.*, 2026 BCSC 100 at para. 1.

Overview to the Granting of the Letter of Request in the US Proceedings

[5] Hayden is a technology company that designed and developed a proprietary Automated Bus Lane Enforcement (“ABLE”) system that automates the identification and processing of traffic violations. Hayden owns several US patents related to the ABLE system.

[6] On May 8, 2023, Hayden commenced the *Hayden AI Technologies Inc. v. Safe Fleet Holdings LLC et al* action (the “US Action”) before the New York Court. I understand that Hayden amended its pleadings with the Fourth Amended Complaint being filed on February 26, 2025 (the “FOAC”).

[7] The defendants to the US Action are:

- a. Safe Fleet Holdings LLC and its subsidiary Safe Fleet Acquisition Corporation (“Safe Fleet”);
- b. Seon Holdings Corp. and its subsidiary Seon Design Inc. (together “Seon”);
- c. Rear View Safety, Inc. (“RVS”), an affiliate of Seon and Safe Fleet; and
- d. Several employees, directors and officers of Safe Fleet, Seon and RVS, including Tom Gill and Daniel Pulskamp.

(Collectively the “US Defendants”).

[8] In the US Action, Hayden alleges that the US Defendants infringed two of Hayden’s patents and misappropriated Hayden’s trade secrets, which were then used by the US Defendants to create and sell a lower priced competing product.

[9] Hayden alleges that the US Defendants engaged in product espionage in 2020 and 2021 during a test of the ABLE system on select New York City buses in violation of a confidentiality agreement signed by the US Defendants.

[10] Secondly, Hayden alleges that the US Defendants improperly obtained Hayden's confidential Series A Investors Deck (the "Deck" or "Presentation"). The Deck is a 28-page PowerPoint that is prominently marked 'confidential' and includes detailed information about Hayden's market and pricing strategies.

[11] The deadline for fact discovery in the US Action is currently set for June 25, 2026.

[12] On March 5, 2025, Hayden made an application by letter to the Honourable Judge Cho of the New York Court to issue a letter of request seeking assistance from the Supreme Court of British Columbia to obtain Ms. Kerr's evidence. Judge Cho was told that the US Defendants did not oppose the issuance of the Request. I understand that Ms. Kerr was not provided notice of the Request.

The Evidence in Support of the Letters of Request

[13] Accompanying the application for a letter of request was a declaration² from counsel of record for Hayden, Andy LeGolván (the "LeGolván Declaration"). In addition to the exhibits to the declaration discussed below, paragraph 6 of the LeGolván Declaration provides evidence from an email from US Defendants' counsel that:

Debbie Kerr's employment was terminated on April 23, 2024. Ms. Kerr's inbox was maintained under a license for a former employee that lapsed. During the transition in IT staff that resulted from the Safe Fleet family of companies' acquisition by Clariance Technologies, that license inadvertently lapsed and went unpaid. Further, the vendor through which Safe Fleet manages email has a policy of deleting any inboxes for which licenses have not been paid for more than 30-days. Safe Fleet/Seon investigated several avenues to try and revive Ms. Kerr's email boxes, including by reaching out to external vendors to see if they had backups, but thus far have unfortunately been unsuccessful. To address this, Safe Fleet/Seon have gathered all emails that were either sent to or sent from Ms. Kerr from the email boxes of all Safe Fleet employees and we are running the search terms against those emails. This search should catch all of Ms. Kerr's email with the exception of any emails by Mr. Kerr to third-parties that did not include another Safe

² The LeGolván Declaration is not sworn before a commissioner for taking oaths, or the equivalent, but I accept that it is intended to be the substantive equivalent of an affidavit. For example, in the last paragraph the declarant states, "I declare under penalty of perjury that the foregoing is true and correct."

Fleet/Seon person. As Ms. Kerr was an executive assistant, it was not within her job to confer separately with third-parties on substantive issues. We are also requesting that each identified custodian check their personal email to determine if there are any emails from or to Ms. Kerr that relate to the issues in this case, so that would catch any emails between Ms. Kerr and a custodian that do not include a Safe Fleet/Seon email address. We believe that this will catch any relevant emails.

[14] Attached to the LeGolván Declaration were four exhibits:

1. A zoom meeting request for January 25, 2022, from Ms. Kerr to Mr. Gill and one other US Defendant bearing the subject “Review Haydn [sic] Deck”.
2. An email from Mr. Pulskamp to Ms. Kerr and Mr. Gill sent January 14, 2022, with the subject “RE: Transit Pricing” and containing a pdf attachment from a Finance Committee meeting on March 25, 2019, and an excel spreadsheet titled “ABLE \$ COMPARE”. The body of the email refers to the Presentation.
3. An email from Mr. Pulskamp to Ms. Kerr sent May 23, 2023, with the subject “NYMTA³ Public Notices – Hayden”. The email mentions that Ms. Kerr had previously found some “pricing gems for Hayden” from NYMTA board meeting notes and from a WMATA⁴ presentation. Mr. Pulskamp is asking Ms. Kerr to find something similar. The email ends with “Happy Hunting”.

On May 24, 2023, Ms. Kerr email replied that she had “sifted through my Sent emails and Dropbox” and located some “interesting stuff” about Hayden’s 2021 business model from the Deck, some “city stats, but pre-NY” from a “Hayden Technology brochure” and the “Open Book total contract amount, hardly news.” Ms. Kerr advises that she will review further NYMTA minutes.

Mr. Pulskamp responds “Awesome – you’re the best!”.

³ New York Metropolitan Transportation Authority.

⁴ Washington Metropolitan Area Transit Authority.

4. On June 2, 2023, Ms. Kerr sent an email to Mr. Pulskamp bearing the subject “Hayden AI Deck” and attaching a pdf of the Deck, writing:

“Is this what you were looking for, their business plan? According to attached, they anticipated and/or sold to shareholders an expectation of 100 NY tickets month x \$100 average fine x 5,825 buses = \$582M new annual City revenue and from that, Hayden SaaS annual revenue of [redacted] from NY (p.10-11). I tried going through all the online MTA board notes/meetings but could not find any further references to the Hayden contract.”

[15] It is not clear from my review of the materials filed on this petition what, if any, other evidence was considered by Judge Cho.

[16] Hayden submitted in their letter to Judge Cho that the letter of request should be granted for the following reasons:

First, the requested discovery is relevant to at least the trade secret claims alleged in Hayden’s Fourth Amended Complaint. Ms. Kerr is a former employee of Defendant Safe Fleet. Until her employment was terminated on April 23, 2024, Ms. Kerr served as an “executive assistance” to the team within Safe Fleet that is alleged to have misappropriated Hayden’s trade secrets, and based on documents produced to date, it appears that she helped facilitate the transmission, storage, and recollection of one of the trade secret documents at issue, and she set up meetings for certain individual Defendants to discuss the trade secret document.

Specifically, Defendants Pulskamp and Schechter conspired in April 2021 to obtain Hayden’s Series A Investor Presentation, and Defendant Schechter did ultimately obtain the presentation by presenting himself as a “potential Hayden investor.” It is unclear at this time if Ms. Kerr was involved in the activities between Defendants Pulskamp and Schechter in April 2021. However, thereafter, in December 2021 and January 2022, Ms. Kerr was integral to facilitating the transmission and use of the Series A presentation. For example, on December 22, 2021, after Defendants Gill and Pulskamp lamented that Hayden “outperformed [Defendants] in every aspect during [New York MTA] certification testing,” Gill instructed his team: “We need to go through their deck and see what we can add to the model.” Presumably prompted by discussion between Gill and Ms. Kerr, that same day (Dec. 22, 2021) Ms. Kerr then circulated Hayden’s investor deck to Defendants Pulskamp, Gill, and Thompson⁵.

Thereafter, on January 13, 2022, Ms. Kerr set up an invitation for a Zoom call with Defendants Brodsky and Gill with the subject line, “Review Hayd[e]n Deck,” and with the “Hayden AI Series A Deck V3.2.pdf” presentation

⁵ I note here that this portion of the submission appears to be referring to an email attached as exhibit 4 to the LeGolian Declaration. The email does not support the submission that Ms. Kerr forwarded the Deck to Mr. Pulskamp, Mr. Gill and Mr. Thompson on December 22, 2021, only that she sent it to Mr. Pulskamp on June 2, 2023.

attached to the invite⁶. On January 14, 2022, Ms. Kerr was also on the email chain referenced in paragraph 163 of the FOAC in which Puskamp identifies certain financials from Hayden's Series A presentation as relevant to determining pricing strategy for municipality customers⁷. Lastly, thereafter in May and June 2023, Ms. Kerr reminded Puskamp by emailing the financial information in the Hayden Series A investor presentation when Defendants were considering competitive pricing for New York MTA⁸.

Thus, as a central figure with first-hand knowledge of several instances of potential misappropriation regarding Hayden's investor presentation, Ms. Kerr is a relevant source of evidence in this case.

Second, as of the date of this request, the information Hayden seeks may not be fully available through party discovery. See *Fishon v. Peloton Interactive, Inc.*, 336 F.R.D. 67, 69 (S.D.N.Y. 2020) ("One of the factors that goes to undue burden is whether the requested information can be obtained from the parties themselves."). On February 24, 2025, Defendants notified Hayden that, following Ms. Kerr's termination of employment, her email box was inadvertently deleted, and thus far, sources of potential recovery have been unsuccessful⁹. Thus, Hayden's need for discovery directly from Ms. Kerr is heightened by the deletion of her emails within Defendants' possession.

Lastly, the requested discovery is sufficiently specific and narrowly tailored. The requested information is limited to Ms. Kerr's knowledge, and documents and communications in her possession, relating only to this lawsuit, Hayden, and Hayden's documents.

[Citations and references in the original have been omitted.]

Letter of Request

[17] On December 22, 2025, Judge Cho issued the Request. The reasons for issuing the Request are set out in a section of the Request titled Summary of this Action:

The nature of this case from which this Letter of Request stems is a lawsuit commenced by Hayden AI Technologies, Inc. ("Plaintiff" or "Hayden") against Defendants Safe Fleet Holdings LLC, Safe Fleet Acquisition Corp., Seon Holdings Corp., Seon Design (USA) Corp., Rear View Safety, Inc., Daniel Puskamp, Tom Brodsky, Tom Gill, Joseph Schechter, Matthew Thompson, Julian Jimenez, and Steven Kwan (collectively, "Defendants"), alleging, *inter alia*, claims of patent infringement and trade secret misappropriation. The dispute centers on Hayden's proprietary Automated Bus Lane Enforcement (ABLE) system, which employs sensors (i.e., cameras) attached to public service vehicles (i.e., buses), artificial intelligence and machine learning, to automatically detect traffic violations involving vehicles driving and parking in

⁶ Exhibit 1 to LeGovan Declaration.

⁷ Exhibit 2 to LeGovan Declaration – this also refers to the Deck.

⁸ Exhibits 3 and 4 to LeGovan Declaration.

⁹ Paragraph 6 of the LeGovan Declaration quoted in full above.

dedicated bus lanes and bus stops. Hayden's complaint asserts that the accused product, Defendants Safe Fleet's and Seon's "ClearLane ABLE system" infringes two patents owned by Hayden, U.S. Patent Nos. 11,003,919 and 11,164,014. Hayden further alleges that Defendants Safe Fleet and Seon knowingly and willfully infringed these patents by offering the ClearLane ABLE system for sale and providing it to municipal transit agencies in direct competition with Hayden.

Additionally, Hayden alleges that Defendants engaged in trade secret misappropriation, breach of contract, and other unfair competitive conduct in violation of the Defend Trade Secrets Act (DTSA), New York common law, and the Racketeer Influenced and Corrupt Organizations Act (RICO). Specifically, Hayden alleges that Defendants used improper means to obtain Hayden's confidential materials, including Hayden's Series A Investor Deck (confidential demonstratives provided to Hayden's Series A investors), which Defendants then allegedly used to gain an unfair advantage in competing with Hayden. Further, Hayden alleges that Defendants engaged in industrial espionage by taking photographs of Hayden's installed ABLE Systems, which Defendants then allegedly used to improve their own competing ABLE technology. As a result of these actions, Hayden claims significant economic harm, including lost revenue and business opportunities, and seeks damages, injunctive relief, and other remedies to prevent further unauthorized use of its patented technology and trade secrets.

At issue is non-party witness Ms. Debbie Kerr, who was employed by one of the named defendant entities (or their subsidiary) for over eight years as an "Executive Assistant" for senior engineering and management staff. Hayden asserts that discovery to date has revealed that Ms. Debbie Kerr was likely a central figure for updating the named individual Defendants on Hayden's activities, distributing certain Hayden documents (claimed trade secrets in this case) and coordinating meetings among the individual Defendants to discuss use of Hayden's documents. Defendants¹⁰ maintain that Ms. Debbie Kerr had access to sensitive information concerning the pricing and functionality of Hayden's ABLE System, and on several occasions, distributed that information to the named individuals Defendant. Moreover, Defendants recently informed Hayden that Ms. Kerr's employment was terminated on April 23, 2024 and that certain of her internal emails within Defendants' email repository were deleted. Thus, the need for Ms. Debbie Kerr's cooperation in discovery is further heightened by the loss of certain of her work-related emails.

[18] Based on Hayden's assertions that "discovery to date" shows Ms. Kerr "was likely a central figure" who had access to sensitive information concerning the pricing and functionality of the ABLE system, and distributed that information to the US Defendants, as well as arranged meetings for the US Defendants to discuss "use of

¹⁰ I am satisfied from the context that the reference to Defendants is a typographical error, and it should read the Plaintiff or Hayden.

Hayden's documents", Judge Cho issued the Request for Ms. Kerr to be deposed and produce documents on the following:

1. All documents and communications concerning Hayden;
2. All documents and communications concerning this Action; and
3. All documents and communications concerning Hayden's documents, including Hayden's Series A Investor Deck.

[19] The scope or breadth of the Request is confirmed by the addition of definitions. For example, document is defined expansively to include drafts, non-identical copies and electronically stored information; and communication is defined to mean "the transmittal of information (in the form of facts, ideas, inquiries or otherwise". In addition, the terms "and" and "or", "including" and "all" are defined to leave little doubt about the full expanse of the discovery being sought of Ms. Kerr.

Evidence in Support of the Enforcement of the Request Petition

[20] Hayden filed an affidavit from Mr. LeGolván sworn April 2, 2026, in which Hayden's counsel summarised the FOAC, the parties and the Request. Given that this is an affidavit of counsel, self evidently its substance is almost entirely hearsay.

[21] Mr. LeGolván confirms that the US Action is in the fact discovery phase, which is currently set for completion by June 25, 2026, and that no other depositions have yet taken place. He also confirms that the US Defendants have not filed a response to the US Action because they filed a motion to dismiss on July 25, 2025, that has not yet been heard.

[22] The Petitioner attached the US Defendant's Memorandum of Law in Support of Defendant's Motion to Dismiss Hayden's FOAC to its supplemental submissions for the hearing of the petition. The US Defendants do not seek to dismiss counts I and II of the claim, being allegations of patent infringement by Safe Fleet and Seon and only seek partial dismissal of counts V and VI, counts alleging trade secret

misappropriation by all the US Defendants. The memorandum includes the submission that:

Hayden's Counts V-XVI assert every possible claim Hayden could dream up based on alleged misuse of alleged Hayden trade secrets, including RICO claims against individual employees. Hayden, however, has not identified any trade secrets. To date, Defendants have produced over 850,000 pages of documents and hundreds of pages of interrogatory responses in response to Hayden's demands. Hayden has pushed for expansive deposition discovery. Defendants request that Hayden's FAC¹¹ be simplified so as not to impose such unnecessary expense on the Corporate Defendants and hardship on the Individual Defendants being personally brought into a corporate dispute.

[23] In support of the enforcement of the Request, Mr. LeGolván states that Hayden's US Action "identified Ms. Kerr as having distributed the Presentation, which contained sensitive information concerning the pricing targets of Hayden's ABLE System." Similarly, Mr. LeGolván attests that "document discovery in the US Action has shown that Ms. Kerr played a central role in updating US Defendants on Hayden's activities, including distributing Hayden's claimed trade secrets in this case (specifically, the Presentation) to the individual US Defendants on multiple occasions."

[24] Aside from references to the content of the FOAC, Mr. LeGolván attaches as an exhibit the LeGolván Declaration of March 5, 2026, including the four exhibits that were before Judge Cho in the Letters of Request application, summarised earlier in these reasons.

[25] In addressing factors relevant to enforcement of the Request, Mr. LeGolván states in his affidavit:

1. Ms. Kerr's evidence is relevant to Hayden's core claim that the US Defendants had access to and misappropriated Hayden's trade secrets because there is evidence that Ms. Kerr distributed the Presentation, played a "central role" in updating the US Defendants on Hayden's activities, and organized meetings to discuss the Presentation;
2. Ms. Kerr's evidence is necessary because she has "first-hand knowledge" of topics that are central to the trade secret claims in dispute;

¹¹ FAC and FOAC both refer to fourth amended complaint.

3. Ms. Kerr's evidence is not otherwise obtainable from other sources. In support of this point Mr. LeGolván refers to the loss of Ms. Kerr's emails and confirmation from Ms. Kerr, during a telephone conversation between Mr. LeGolván and Ms. Kerr on March 5, 2025, that she had been texting her former boss, Mr. Gill about the US Action;

4. Mr. LeGolván also asserts that the documents sought are identified with reasonable specificity and that the examination and discovery of documents is not unduly burdensome.

[26] Ms. Kerr filed an affidavit in support of her application to dismiss the enforcement petition.

[27] Ms. Kerr provides the following direct evidence that is relevant to this enforcement application:

1. Between November 2016 and April 2024, she was employed by Seon Design a subsidiary of Safe Fleet.

2. Primarily she was an administrative assistant to Mr. Gill, requiring her to maintain his calendar and email inbox, schedule meetings, create expense reports and arrange his travel. Starting in around 2023 she also provided assistance to Mr. Pulskamp.

3. When scheduling a meeting she would attach documents to the meeting link as directed. She did not herself attend these meetings.

4. If directed to do so by either Mr. Gill or Mr. Pulskamp, she would collect documents to provide to them by saving them in a secure Safe Fleet Drop Box. At times she would also conduct public searches for documents related to Safe Fleet's competitors, for example materials publicly available from transportation authorities.

5. While employed Ms. Kerr used a Safe Fleet email account that she lost access to when her employment ended in April 2024. She confirms that she did not use a personal email account for any work-related matters.

6. Ms. Kerr confirms that she has reviewed her records and she does not possess copies of “any emails I sent or received from the Safe Fleet email account or any documents from Seon Design or Safe Fleet related to this petition or the US Action.”
7. Ms. Kerr confirms that she did not obtain the Presentation. To the best of her recollection, the Presentation was sent to her or added to the Dropbox by Mr. Gill, Mr. Pulskamp or someone else at Safe Fleet.
8. Ms. Kerr contradicts Mr. LeGolván’s recollection of their phone call in March 2025; she does not agree that she told Mr. LeGolván that she had been exchanging test messages with Mr. Gill about the US Action.
9. To ensure the accuracy of her affidavit, Ms. Kerr reviewed her text message history with Mr. Gill and located a single message exchange from October 11, 2022, that could relate to Hayden. In this message exchange she confirms that she had emailed Mr. Brodsky [another US Defendant] a copy of a document, “NY Hayden AI contract details – 3 year 19.7M”. She agrees to send it to others. Mr. Gill describes her as a ‘bloodhound’.

Applicable Law

[28] Section 53 of the *Evidence Act*, R.S.B.C. 1996, c. 124 and s. 46 of the *Canada Evidence Act*, R.S.C. 1985, c. C-5 provide the authority of the Supreme Court to enforce letters rogatory or letters of request received from foreign courts. Both provisions require the exercise of judicial discretion: *GST Telecommunications, Inc. et al v. Michael Provenzano*, 2000 BCSC 72 at para. 15.

[29] 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...

[30] There is a presumption that the request from the foreign court will be granted unless it would be contrary to Canadian public policy or would be prejudicial to Canadian sovereignty or to Canadian citizens: *Monster Energy Company v. Craig*, 2016 BCCA 290 at para. 11. “[I]n the spirit of international comity, considerable weight is to be given to the foreign court’s issuance of letters of request. The foreign court is entitled to respect. It is presumed to have acted reasonably and responsibly”: *Liu v. Zhi*, 2019 BCCA 427 at para. 18.

[31] However, a Canadian court will not automatically approve and enforce letters rogatory: *Liu* at para. 20:

[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.

[32] In *Duryea*, Madam Justice Ker, relying on Justice Skolrood’s (as he then was) decision in *The National Association of Boards of Pharmacy v. Solaris Pharmaceuticals Inc.*, 2022 BCSC 1237 at para. 45, summarised the role of the court in an enforcement action as “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*].”

[33] Furthermore, in *Boards of Pharmacy* at para. 15, Justice Skolrood citing *Presbyterian Church of Sudan v. Rybiak*, 2006 CanLII 32746, which was also relied upon by Griffin J. in *Liu* at para. 17, observed that the law in Ontario does not differ significantly from BC.

[34] In *EchoStar*, L. Smith J. summarized the factors to be considered in determining whether to give effect to letters rogatory, at para. 38:

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.

[35] In respect of the first factor, relevance, the analysis of Justice Leach in *Aker Biomarine AS at al v. KGK Synergize Inc.*, 2013 ONSC 4897 was relied on in *Liu*:

[27] In relation to demonstration of “relevance”:

- 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.
- Numerous courts in Ontario have held that they have no power to narrow the request contained in letters rogatory to relevant information, and that if the requested documentation or any part of it is not relevant, the letters rogatory should be denied in their entirety. In other words, if the request for documentary production is of such a sweeping nature that significant portions of it are irrelevant or at best of marginal relevance, the letters rogatory should not be enforced. See *Scholnik v. Bank of Nova Scotia* (1987), 59 O.R. (2d) 538 (H.C.J.), at p.543; *Coats Co. V. Bruno Wessel Ltd.* (1990), 46 C.P.C. (2d) 316 (Ont.Gen.Div.), at p.320; and *Fecht v. Deloitte & Touche*, at first instance, supra, at paragraph 44, aff'd, supra. However, there is some authority indicating that a court's discretion may be exercised to narrow the overbroad scope and language of letters rogatory, consistent with considerations of mutual deference and respect between courts; see *Pecarsky v. Lipton Wiseman Altbaum & Partners*, supra, at paragraph 39.

[36] Relevance and whether the order would be unduly burdensome have been described as related factors:

[15] [...] 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*.

[...]

[17] On the other hand, the more general and wide the request, and the weaker the link between the requested evidence and the issues in the litigation, the less compelling the argument in favour of enforcing the letter of request [...]

Liu at paras. 15 and 17 (citations omitted).

[37] As to whether an order would be unduly burdensome, courts have compared the burden of being examined on a deposition to the burden of being required to attend a trial locally to give evidence: *Monster Energy* at para. 28 and *Liu* at para.11.

[38] Given the comments of Leach J. in *Aker Biomarine*, that Ontario Courts have shown a great reluctance to narrow letters of request, comments that are referred to by Griffin J. in *Liu* at para. 14, I propose to review the approach taken by the Court in British Columbia to narrowing the scope of a letter of request.

[39] In *GST*, Davies J. held that the court has the power to narrow the scope of the intended examination in a letter of request arising from s. 53(1)(c) of the *Evidence Act*, which allows this Court on an enforcement hearing to “give directions regarding ... all other matters connected with the examination that appear reasonable and just.”

[40] Multiple decisions from British Columbia have adopted this approach. For example, in *Maverick LNG Holdings Ltd. v. Teekay Shipping (Canada) Ltd.*, 2009 BCSC 1538 at paras. 55–60, Madam Justice Russell exercised her discretion to decline to enforce the letter of request with respect to some documents being sought. In *Quanta Services, Inc. v. Rokstad Power Corporation*, 2017 BCSC 1858 at para. 43, Mr. Justice Smith was satisfied that the letters rogatory should be honored, but the resulting depositions should be limited.

[41] Further examples of cases that have narrowed or limited what was originally requested in a letter of request include *International Wood Products, LLC v. CLG Enterprises, Inc.*, 2026 BCSC 100 at para. 37 and *Lowndes, Drosdick, Kantor & Reed, P.A. v. Hirji*, 2026 BCSC 289.

[42] I further observe that the comments of Leach J. in *Aker Biomarine* are now superseded by the Ontario Court of Appeal’s decision in *Perlmutter v. Smith*, 2020 ONCA 570 wherein the court held that:

[50] As the jurisprudence of this court has made clear for many years, it is open to the Ontario court to narrow a request for international judicial assistance if the supporting material sustains only a more circumscribed request: *Fecht* (C.A.), at p. 419 O.R.; *Presbyterian Church*, at para. 45. In *Presbyterian Church*, this court observed that in related Alberta litigation the application judge had only given effect to a small number of the discrete topics described in the letter of request. The Alberta judge did so because, in his view, the materials did not demonstrate the information on the other topics was relevant or necessary for trial: *Presbyterian Church of Sudan v. Talisman*

Energy Inc., [2005] A.J. No. 1808, 2005 ABQB 920, [2006] A.W.L.D. 945 (Q.B.), at paras. 51-69, cited in *Presbyterian Church*, at paras. 38-40. For Ontario cases where the court reduced the scope of the letter of request, see *AstraZeneca LP v. Wolman*, 2009 CanLII 69793 (ON SC), [2009] O.J. No. 5344, 2009 CarswellOnt 7787 (S.C.J.), at paras. 52, 54 and 59; *Pecarsky v. Lipton Wiseman Altbaum & Partners*, [1999] O.J. No. 2004, 96 O.T.C. 178 (S.C.J.), at para. 41. [page202].

Analysis

[43] I intend to consider the petitioner's application for enforcement of the Letter of Request by reference to the factors set out in *EchoStar*, as affirmed by the Court of Appeal in *Liu* and *Monster Energy*.

Relevance

[44] When considering relevance, it is not my role to decide if the "requesting court was wrong in finding that the evidence sought is relevant": *Boards of Pharmacy* at para. 25. Rather, as observed by Ker J. in *Duryea* at para. 48, my role is to satisfy myself that there is some probative value to the proposed evidence.

[45] In this assessment, "considerable weight must be given to the foreign court's issuance of the letters of request. The foreign court is entitled to respect. It is presumed to have acted reasonably and responsibly": *Liu* at para. 18.

[46] As set out earlier in these reasons, the US Court's determination of relevance is set out in the section of the Request titled "Summary of this Action". This section refers to Hayden's claims, assertions, and allegations against the US Defendants. In respect of Ms. Kerr specifically, Hayden:

"[A]sserts that discovery to date has revealed that Ms. Kerr was **likely** a central figure for updating the named individual Defendants on Hayden's activities, distributing certain Hayden documents (claimed trade secrets in this case) and coordinating meetings among the individual Defendants to discuss use of Hayden's documents. Plaintiff¹² maintains that Ms. Kerr had access to sensitive information concerning the pricing and functionality of Hayden's ABLE System, and on several occasions, distributed that information to the named individual Defendants."

¹² See footnote 10 above. I have replaced Defendant with Plaintiff in this portion of the quote.

[Emphasis added.]

[47] This language stands in marked contrast to the circumstances in *Duryea*, wherein the requesting court’s determination of relevance was made after a thoroughly contested application, which included “documents and deposition testimony presented to the court.”

[48] Aside from the FOAC, I am satisfied that the only other information before Judge Cho on this uncontested application for the Request was the LeGolván Declaration, which largely “offers hearsay opinions and bald conclusions”: *Liu* at para. 20 and *Aker Biomarine* at paras. 16 and 26.

[49] There was very little “first-hand evidence of the conduct alleged in the [US Action], filed in support of the BC petition to enforce the letters of request”: *Liu* at para. 40. Certainly, Ms. Kerr’s evidence that is before this Court was not considered by Judge Cho.

[50] Considering the record I have reviewed, “it cannot be assumed that the [New York Court] delved into the issues of relevance in any depth”: *Liu* at para. 45. This is despite, at least according to the US Defendants’ motion to dismiss filed June 5, 2025, the Defendants having already produced over 850,000 pages of documents and hundreds of pages of interrogatory responses to Hayden’s demands, almost none of which was referred to in the Request application or this petition.

[51] Despite this volume of disclosure, which undoubtedly is even greater now, the petitioner placed before Judge Cho three brief email chains from or including Ms. Kerr, that ultimately corroborate her affidavit evidence that she was responsible for arranging meetings, forwarding documents, and conducting some limited document research from publicly available sources.

[52] Based on this very limited evidentiary record, the petitioner submits in their supplemental written submissions and their additional supplemental written submissions, that Ms. Kerr’s evidence is highly relevant, albeit that they now

concede that the breadth of the Request ought to be considerably narrower than what was sought in the petition.

[53] The petitioner states that Ms. Kerr’s admission that she collected publicly available information on Hayden, which I note becomes overstated as “frequent collection of publicly available information” in the petitioner’s supplemental written submissions, “is directly relevant to: the US Defendants’ identification of Hayden as a competitor; whether Hayden’s trade secrets were known to the US Defendants; and whether Hayden’s trade secrets were readily accessible through proper means”.

[54] The petitioner now seeks enforcement of the Request on a very limited basis: Ms. Kerr’s involvement in **discovering and/or distributing information regarding Hayden for Safe Fleet employees from 2020 to April 23, 2024**, because it can be used to prove or disprove the following allegations in the US Action:

- a) That the US Defendants “used a series of improper means to acquire and use [Hayden’s] ABLE [Automated Bus Lane Enforcement] Trade Secrets to compete (unfairly and unlawfully) with [Hayden] in the ABLE system market”;
- b) The US Defendants “discovered Plaintiffs entry into the ABLE market and recognized the Hayden ABLE System as a threat to Defendants’ competitive standing ... [the US Defendants’] fear of Plaintiffs success grew to the point that Defendants no longer wanted to compete fairly and on the merits of their respective products”;
- c) The misappropriated trade secrets were not generally known to the US Defendants;
- d) The misappropriated trade secrets were not “readily ascertainable through proper means”; and
- e) The US Defendants have used the misappropriated trade secrets to “improve their own ABLE system and go-to-market strategy.

[55] In addition, the petitioner is no longer requesting widespread document discovery or disclosure but rather is only seeking documents related to this one topic.

[56] Ms. Kerr responds that the petitioner, even in its now considerably narrowed request, has failed to show that there is “some probative value to the proposed evidence”. In addition, Ms. Kerr submits that this is effectively now a new request, not a narrowing of the Request.

[57] Relevance has been described as having two components: materiality and probative value. Materiality is determined by reference to the circumstances of the dispute before the court: for example, the indictment in a criminal case or the pleadings in a civil case. Probative value refers to the extent to which the evidence has a “tendency to make the existence or the non-existence of any fact that is material to the determination of the case more probable or less probable than it would be without the evidence.” [Sopinka, Lederman & Bryant, *The Law of Evidence in Canada* 4th Edition, paragraphs 11.42 – 11.47].

[58] Materiality arises from the issues raised in the FOAC, which are, as acknowledged by the petitioner in the allegations stated above, the alleged acquisition by the US Defendants and subsequent use of Hayden’s trade secrets.

[59] The petitioner’s arguments that Ms. Kerr can provide relevant testimony are largely unsupported by evidence and mostly based on unfounded suppositions. For example, the petitioner states that “Hayden’s Complaint identified Ms. Kerr as having distributed the Presentation, which contained sensitive information concerning the pricing ABLE System (*sic*).” The implication here is that Ms. Kerr was deciding for herself who to send the Presentation to, when what she was doing was forwarding documents to a small number of people at the request of her employer.

[60] There is a modicum of evidence that Ms. Kerr reviewed the Presentation and may have extracted some information from it that she then forwarded to other US Defendants. I see no evidence that she did anything more with the Presentation.

[61] The petitioner further submits that “discovery in the US Action has revealed that Ms. Kerr likely played a central role updating the US Defendants on Hayden’s activities” by distributing the Presentation. Other than forwarding the Presentation at the request of her employer, there is no evidence that Ms. Kerr played a central role doing anything. I agree with submissions of the respondent that this is simply a bald assertion, which conflicts with extensive details in the FOAC about how the US Defendants obtained access to the Presentation.

[62] Having carefully considered the evidence and submission on this petition, I have concluded that I can ascribe only very minimal probative value to any possible evidence from Ms. Kerr. I fail to understand how the directions she followed in respect of organizing meetings, collating and distributing to other US Defendants documents that were provided to her by others, and searching publicly available sources for information about Hayden, has a tendency to make the existence or non-existence of a material fact, the use and acquisition of trade secrets, more or less probable.

Whether the Evidence is Necessary for Trial and Will Be Adduced at Trial if Admissible

[63] In *Duryea*, Ker J. thoroughly canvassed the principles governing letters of request made at the discovery stage:

[56] The issue of whether the evidence is necessary for trial and will be adduced at trial if admissible has evolved over the past few decades. Justice Davies comprehensively reviewed the evolution of the jurisprudence on the extent to which letters rogatory should be enforced in the pre-trial discovery period in *GST Telecommunications* at paras. 16–30. Historically, letters rogatory were only enforced for the purposes of the taking of evidence for the trial. The principles of international comity and reciprocity have modified that approach such that letters rogatory will be enforced where there is also a significant exploratory or discovery element to the evidence sought. Indeed, as Justice Lyster noted in *Club Exploria* at para. 13, citing *Maverick LNG Holdings Ltd. v. Teekay Shipping (Canada) Ltd.*, 2009 BCSC 1538 at paras. 28–29 [*Maverick*], the fact that the evidence is, at this stage, for discovery purposes is not an impediment to the enforcement of letters rogatory. Notably, in *Maverick* at para. 27, Justice Russell observed that the Supreme Court of Canada decision in *Zingre* indicated “...that even where evidence is sought by letters rogatory for discovery purposes, the letters could still be enforced.”

[64] And further:

[60] In *Maverick*, Justice Russell made the following observations:

[27] ... In *Campbell Estate v. Stenhouse*, [1995] B.C.J. No. 2304 at paras. 10 and 11, Saunders J., as she then was, stated:

... the question of whether the examination proposed is “for a discovery or trial purpose is one factor, but not necessarily the determining factor in the exercise of the court’s discretion.”

... It is not a complete answer for respondents to an application such as this to say the purpose of the deposition is discovery of the deponents.

[28] In *GST Telecommunications Inc. v. Provenzano*, 2000 B.C.S.C. 72, 73 B.C.L.R. (3d) 133, Davies J. adopted this more flexible approach with the following comments, at para. 29:

In my view, the approach which must now be taken to the enforcement of letters rogatory which may contain a discovery component is preferable to the earlier more restrictive approach. It will not only foster international comity but will focus upon the competing considerations of burden and prejudice from the perspective of the proposed deponent. Such an approach will generally result in a useful enquiry into the importance of the evidence sought and allow consideration of competing public policy interests. In my view, that inquiry better serves the purposes of international comity than does the mere categorization of the nature or purpose of the evidence sought.

[29] It seems apparent that in any examination which occurs before trial, there must be some element of the examination which is discovery, for the reason that all the evidence is not known at the point at which this examination takes place.

[65] Given my conclusion in respect of other factors, it is not necessary to consider this factor in any detail. Clearly the law has developed beyond limiting enforcement of letters of request to the taking of evidence for trial. The enforcement of letters of request during the discovery stage is not uncommon.

Whether the Evidence is Otherwise Obtainable

[66] As stated by Madam Justice Wilkinson in *N2 Packaging Systems LLC v. Nitrofin, Inc.*, 2020 BCSC 1719 at para. 11, “This factor considers whether evidence of the same value as that sought from the witness to be examined can be obtained by other means: *Aker Biomarine* para. 29”.

[67] This point was confirmed by Justice Kirchner in *International Wood Products*:

[29] For this court to give effect to the Request, the petitioner must establish that the evidence sought is “not otherwise available”. It must show that evidence of the same value sought by Mr. Cheng cannot be obtained by other means. This serves to ensure that the person from whom the information is sought, who is not a party to the proceeding in the foreign jurisdiction, is not unduly burdened by being drawn unnecessarily into the foreign litigation [...]

[Citations omitted.]

[68] It is important to recall that Ms. Kerr has provided evidence for this petition hearing, that is not contradicted, that she conducted research, or what she describes as “conducting public searches for documents related to Safe Fleet’s competitors ..., **at the direction of Mr. Gill or Mr. Pulskamp.**” (Emphasis added.)

[69] The petitioner argues that only Ms. Kerr knows what searches she did do, and only she knows what information she chose to provide to the other US Defendants. The Petitioner suggests that the “judgment calls about what information Ms. Kerr did or did not find during her searches”, and “her judgment calls about what to pass on to the Defendants” are relevant and not available from other sources.

[70] Important to my analysis is that Ms. Kerr has attested that she was an “executive assistant” to two of the US Defendants, and that her searches for documents were at the direction of her employer, Mr. Gill and Mr. Pulskamp.

[71] There is no evidence that Mr. Gill or Mr. Pulskamp have been deposed or answered interrogatories.

[72] It is my view that what is possibly relevant in this case is what Mr. Gill and Mr. Pulskamp asked Ms. Kerr to look for. It is their “judgment calls” that are relevant, not the mindset or judgment calls of Ms. Kerr, their executive assistant.

[73] There is no evidence that the mindset or intentions of the US Defendants who directed Ms. Kerr are not available. There is no evidence therefore that the evidence the petitioner seeks from Ms. Kerr is not unavailable from at least these two US Defendants.

[74] The circumstances before the Court are markedly different from the facts in *Duryea*, where, although the letter of request was also directed at a non defendant, there was considerable evidence obtained during the discovery phase of the litigation¹³ that the subject of the letter of request, Mr. Matsumoto, was directly involved in a process of de-anonymization of pork processor data that facilitated a price fixing scheme. The petitioners provided direct evidence from a deposed witness of Mr. Matsumoto's involvement in the process of de-anonymizing data, and that the witness could not explain how Mr. Matsumoto did it.

[75] In addition, the petitioner in *Duryea*, submitted during the contested hearing for the issuance of the letter of request, that they have "exhausted all other possible sources of discovery."

[76] The other basis for the claim that the evidence is otherwise unobtainable is that Ms. Kerr's emails are no longer discoverable. However, as the record on this application shows, Ms. Kerr's emails are available from the email accounts of the US Defendants.

[77] The petitioner responds that they do not just want to know what Ms. Kerr was asked to do by the US Defendants, and which of the US Defendants she was communicating with, they want to know who else she communicated with.

[78] Based on the evidence I have reviewed, I fail to see how any other people Ms. Kerr communicated with, who are not otherwise US Defendants, could be in anyway relevant. This has the hallmarks of a fishing expedition.

[79] I can find no evidence in the record to support the conclusion that Ms. Kerr's evidence is otherwise unobtainable.

[80] The comments of Goudge J. in *Presbyterian Church* at para. 41 are instructive:

¹³ During the discovery phase, plaintiff's counsel reviewed nearly four million documents and took or defended over 150 dispositions.

Turning to whether the evidence sought from the appellant is otherwise obtainable or necessary (in the sense that he alone possesses it), here too the respondents fall short. The request itself does no more than recite the American court's acceptance of counsels' representations to that effect. The only other material the respondents can look to is the affidavit of New York counsel. While it sets out six areas of knowledge that the appellant has, it does not claim that he alone has that information.

Whether the Order Sought is Unduly Burdensome to Ms. Kerr

[81] The burden of being examined on a deposition is comparable to the burden, if a trial was local, of being required to attend trial and give evidence: *Liu* at para. 11 and *Duryea* at para. 73.

[82] Arguably the burden of being examined on a deposition pursuant to the enforcement of a letter of request is less than being *subpoenaed* to court because it is not uncommon for courts to attach conditions to a letter of request order limiting the length and scope of the examination, the payment of legal fees and other costs: *Duryea* at para. 79; *International Wood Products* at paras. 57 – 63; and *Boards of Pharmacy* at para. 44.

[83] The Request, particularly the narrower version proposed by the petitioner, would not have been unduly burdensome.

Other Factors

[84] Given my assessment of relevance and whether the evidence is otherwise unobtainable, it is not strictly necessary to consider the other factors. However, for completeness I observe that the respondent has not contended that the order sought would be contrary to public policy.

[85] The respondent made submissions about the scope of the documentary disclosure sought by the petitioner. The petitioner appears to have acknowledged these concerns in the narrowing of the Request set out in their Additional Supplemental Written Submissions.

Conclusion

[86] The petition as originally filed sought deposition evidence and the discovery of documents from Ms. Kerr, as follows:

1. All documents and communications concerning Hayden.
2. All documents and communications concerning this Action.
3. All documents and communications concerning Hayden's documents, including Hayden's Series A Investor Deck.

[87] The evidence filed on this petition falls woefully short of supporting an order in these terms. As Griffin J. held in *Liu*, at para. 17, "the more general and wide the request, and the weaker the link between the requested evidence and the issues in the litigation, the less compelling the argument in favour of enforcing the letter of request."

[88] The petitioner has responded by very significantly limiting its request. While I accept that a court at a hearing to enforce a letter of request can narrow the scope of the request, there comes a point at which the request is narrowed so significantly that for all intents and purposes it is a different request.

[89] I need not decide whether a court's jurisdiction to focus or narrow a letter of request is as broad as what is being proposed by the petitioner in this case, because I am satisfied that the petitioner has failed to establish that Ms. Kerr can give relevant evidence. In addition, I am satisfied that the petitioner has failed to establish that whatever Ms. Kerr could testify about, leaving aside my concerns about relevance, is not otherwise obtainable from other sources.

[90] The petition seeking a judgment recognizing the Request is dismissed with costs to Ms. Kerr.

"The Honourable Justice Fowler"