themselves of a broader scope of document production under Rules 7-1(11) to (14), applicants need to be specific about their needs and provide at least some evidence that the additional documents sought actually exist and are potentially relevant: *Eastern Platinum Ltd. v. Cameron*, 2019 BCSC 1515 (Master).

In an application under Rule 7-1(14), counsel should consider adducing only such evidence as is admissible in a chambers application. In *Bains v. Hookstra*, 2012 BCSC 1707 (Master), an affidavit sworn on information and belief that failed to disclose the sources of information and belief was held not to be admissible and the application was dismissed.

b. Demands for Further Production Must Engage Rule 7-1(1) and Rule 7-1(11) [§2.20]

In demanding further production of documents from an opposing party, it is vitally important to phrase the demand in the manner required by the Rule, so as to engage the requirements of the Rule. The court has stated in a number of cases that it is important for the parties to have a "back and forth" dialogue concerning what should be produced under what Rule so that, when the application proceeds to court, the issues between the parties have been defined, narrowed, and (hopefully) simplified for the court. Interestingly, in *The Insurance Corp. of British Columbia v. Teck Metals Ltd.*, 2022 BCSC 340 (Chambers), the applicant did not comply with the Rules by first making a demand for production of documents and allowing the opposing party the opportunity to address or respond to the demand before bringing an application to court seeking an order for compelled production. While such a fault is typically considered fatal to the success of the application, the court stated at paras. 7 and 8:

> In many cases the court would be permitted and indeed expected to dismiss a premature document production application on this basis alone.
>
> However, in the unique circumstances of this case, I would say that Westcan's failure [to] make a written demand for production and wait for a response before filing an application in court should not be treated as fatal to its position.

In this case, the "unique circumstances" included a case management order that contemplated that the defendants would avoid bringing duplicative applications or making duplicative demands. Also,

another defendant had previously made a document demand for the production sought, which the plaintiff refused (para. 9).

Lit v. Hare, 2012 BCSC 1918, a family case, involved consideration of Rule 9-1(8), the Supreme Court Family Rule equivalent of Rule 7-1(11). The court stated at paras. 65 and 66:

> Compliance with R. 9-1(7) and (8) of the SCFR (and its equivalent in the SCCR, R. 7-1(10) and (11)), is not optional and failure to observe its requirements will not readily be forgiven.
>
> …
>
> Further, I do not accept the applicant's contention that requests for documents made in the context of examinations for discovery or the filing of the application itself should be regarded as sufficient substitutes for compliance with the terms of the Rule itself.

The court in *Lit* noted further that Rule 7-1 was designed to promote dialogue and informal resolution of contentious issues (at para. 67):

> The Rule is designed to promote dialogue between the parties, informal resolution of document production disagreements where that is possible and, where it is not, targeted litigation that focuses on those well-defined issues that remain contentious. The Rule operates to restrain the impulse to litigate document production issues as a course of first resort where those issues might be resolved through discussion, including by requiring the parties to articulate and defend their respective adjudicative process by narrowing the issues and argument and particularizing, to the extent possible, the documents or categories of documents sought before an application is made.

The application in *Lit* was made broadly and non-specifically under Rule 9-1 (the equivalent of Rule 7-1 in the SCCR) and relied on requests made to produce certain documents on examination for discovery. The court commented at para. 68:

> In my view the applications are premature and framed in overly broad and vague terms. The lack of specificity which characterizes this application is fatal to its success. In addition to the challenges faced by the respondents as a consequence of the manner in which the applications have been framed, it is difficult for the court to adjudicate on a document production application where what is sought are "all documents not yet produced" in broadly defined categories. That the application

> lacks sufficient particularity is very likely a function of the failure to observe the procedure contemplated by the Rules. That failure cannot, in this case, be attributed to mere oversight. Had the written demand process mandated by the Rules been followed, I think it reasonable to suppose that many of the difficulties associated with this application would not have arisen. Moreover, had the procedure mandated by the Rules been observed, I think it is unlikely that it would have been necessary to file the volume of material that accompanied these applications.

In *Parise v. Adelson*, 2021 BCSC 891 (Master), the court (in referring to *Lit* as "the leading case on this issue") stated (at para. 26): "compliance with Rule 9-1(7) [equivalent to SCCR 7-1(10)] and (8) [equivalent to SCCR 7-1(10)] is not optional". The court stated that, after the opposing party has prepared a list of documents under Rules 9-1(1), 9-1(7), and (8) enables the party to determine if the opposing party ought to disclose documents not listed. The court remarked that a demand under Rule 9-1(7) is restricted to documents that should have been disclosed under Rule 9-1(1); and that the demand process should indicate why they believe the documents exist and why they should be disclosed (para. 9).

The court further remarked (at para. 10) that Rule 9-1(8) [equivalent to SCCR 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. That party must 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 applicant seeking disclosure under Rule 9-1(8) must provide some evidence of the existence and potential relevance of the additional documents. A party who receives such a demand must, within 35 days after receipt, respond by either providing the requested documents or by indicating why the documents are not being made available. If the responding party does not comply with the demand within 35 days, the demanding party may apply for an order of disclosure.

The court further remarked (at para. 13) that the provisions are designed to counteract speculative demands for documents and to clearly identify the existence of the documents and their connection to the issues between the parties.

Similarly, in *Vuk (iPhoenix Builder Developers) v. Alto Construction Ltd.*, 2021 BCSC 1176 (Master), the court stated that Rule 7-1 requires that a demand for additional documents be accompanied by an argument with reasonable specificity as to the basis on which the demand is made (at para. 7). The court stated that such a demand may give rise to a dialogue, which would narrow and define the issues but, in this case, "the parties should have continued to engage in the dialogue process. What the plaintiff has failed to do in that dialogue process is to set out a rationale for each of the different categories of documents sought, or to group the categories of documents sought, with a specific rationale for why they need to be produced". The court dismissed the plaintiff's application, with liberty to reapply. *Vuk (iPhoenix Builder Developers) v. Alto Construction Ltd.*, 2022 BCSC 440 (Master) summarizes the legal test for disclosure of second-tier documents under Rule 7-1(11).

According to *Ackert v. At Nature's Door Owners' Association*, 2021 BCSC 778, the process starts with an application under Rule 7-1(10). The court stated (at para. 21):

> [i]t 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 plaintiff's 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 [responding party] faced in responding to the demands in which it tried to clarify with the plaintiff's.

In the result, the court dismissed the plaintiff's application based on noncompliance with the rules. The court agreed with the defendant Association that sufficient dialogue between the parties, as contemplated in the Rules, did not take place before the plaintiffs brought their application. As in *Vuk*, the court granted leave to the plaintiffs to make a further application for document production after first complying with the applicable rules.

Rule 7-1(11) requires that any written demand for additional documents, or classes of documents, must identify them with "reasonable specificity". The lack of specificity in the request for further production was fatal to the applicants' requests in *Addison v. Whitefox Technologies Ltd.*, 2014 BCSC 633 (Master) at para. 28 and *Alderbridge Way GP Ltd. (Re)*, 2023 BCSC 2298, leave to appeal