The Labour Relations Board
Saskatchewan

SEIU-West, Applicant v. ATRIA MANAGEMENT CANADA, ULC, ATRIA RETIREMENT CANADA, VENTAS CANADA RETIREMENT III, LP, CALGARIAN RETIREMENT GROUP LTD., PRIMROSE CHATEAU RETIREMENT GROUP LTD., Respondents

LRB File Nos. 093-16 & 094-16; October 13, 2016
Vice-Chairperson, Graeme G. Mitchell, Q.C.; Members: Jim Holmes and Allan Parenteau

For the Applicant Union: Drew Plaxton
For the Respondent Employer: Trevor Lawson

PRACTICE AND PROCEDURE – Applicant Union brings successorship and common employer applications – Board issues a pre-hearing order for the production of documents relating to the Respondents' corporate structure – Respondents deliver documents to the Applicant – Applicant applies for an order sanctioning the respondent for non-compliance with the Board's production order.

PRACTICE AND PROCEDURE – Board reviews jurisprudence respecting pre-hearing disclosure of documents – Board reviews its jurisdiction to make orders compelling recalcitrant parties to comply with its orders, including the power to cite for contempt.

PRACTICE AND PROCEDURE – Board finds no basis to cite the Respondents for contempt – Board concludes that the Respondents have substantially complied with the terms of the Board's production order – Board orders Respondents to produce a list of corporate officers and key personnel for the Respondents' various corporate entities.

Saskatchewan Employment Act, ss. 6-103; 6-104, and 6-111

REASONS FOR DECISION

OVERVIEW:

[1] SEIU-West [the "Union"] is certified as the bargaining agent for "all employees of Calgarian Retirement Group Ltd. operating the Primrose Chateau Retirement Residence in Saskatoon, Saskatchewan, except the managers and co-managers".[1] There is no dispute that on or about August 19, 2014, Calgarian Retirement Group Ltd. relinquished ownership of Primrose Chateau Retirement Residence ["Primrose Chateau"].

[1] LRB File No. 357-96 dated April 11, 1997.

[2] On April 26, 2016, the Union commenced two (2) applications relating to the ownership and operation of Primrose Chateau. The first is an application for employer successorship brought pursuant to section 6-18 of *The Saskatchewan Employment Act*, SS 2013, c S-15.1 [the "*SEA*"], and names Ventas Canada Retirement III, LP, Atria Management Canada ULC and Atria Retirement Canada [referred to collectively as the "Employer"] as the successor employer. Calgarian Retirement Group Ltd. is named as the predecessor employer. The second is an application for an order of common employer brought pursuant to section 6-20 of the *SEA*. This application, too, names the Employer as the respondent and Calgarian Retirement Group Ltd. as the second respondent.

[3] On September 7, 2016, the Union initiated an application seeking from the Board an order compelling the disclosure of a wide range of documentation pertaining to the inter-connectedness of the corporate entities comprising the Employer.

[4] This application came before this panel of the Board on September 13, 2016, a regular Motions Day. At that time, the Board heard oral submissions from both Ms. Heather Jensen, counsel for the Union and Mr. Trevor Lawson, counsel for the Employer. After reserving on this application, the Board issued an order on September 14, 2016 directing that the Employer disclose certain relevant documentation to the Union. In its Order, the Board expressly stipulated that it remained seized with the application and would make itself available to address any disputes respecting its operations.

[5] On October 4, 2016, the Union initiated a second application asserting that the Employer had failed to comply with the terms of the Board's Order. The same panel of the Board re-convened on October 7, 2016 and heard submissions by way of telephone conferencing from Mr. Plaxton for the Union and Mr. Lawson respecting whether the Employer had complied with the Board's Order. The Board reserved its decision at the conclusion of this hearing.

[6] The Board has carefully reviewed the various documents provided to us by both parties in light of the oral submissions made by counsel. We have concluded that the Employer has substantially complied with our Order dated September 14, 2016, save in one aspect which we outline below. These Reasons for Decision explain why we came to this conclusion.

PROCEDURAL HISTORY OF THIS APPLICATION

[7] The genesis of this disclosure dispute is found in the Union's application dated September 7, 2016. The substantive aspects of this application read as follows:

> *An order that that the respondents be required to disclose and produce the following documents and information as follows:*
>
> 1. *Any and all documents relating to the acquisition of Primrose Chateau Retirement Community located at 310 Cree Crescent, Saskatoon, Saskatchewan, by Ventas Inc. or any subsidiary of Ventas Inc. on or about August 19, 2014.*
> 2. *Any and all documentation related [to] any management, operation, labour supply or other contract with Atria Management Canada ULC to manage and operate the Primrose Chateau Retirement Community located at 310 Cree Crescent, Saskatoon, Saskatchewan.*
> 3. *Any and all documentation relating to the relationship between Primrose Chateau Retirement Ltd. and Ventas Canada Retirement III LP.*
> 4. *Any and all documentation relating to the relationship between Atria Retirement Canada and Ventas Canada Retirement III LP in relation to the operation of Primrose Chateau Retirement Community located at 310 Cree Crescent, Saskatoon, Saskatchewan, or the employment of employees at the Primrose Chateau Retirement Community.*
> 5. *Any and all documentation relating to the relationship between Atria Retirement Canada and Atria Management Canada ULC in relation to the operation of Primrose Chateau Retirement Community located at 310 Cree Crescent, Saskatoon, Saskatchewan, or the employment of employees at the Primrose Chateau Retirement Community.*
> 6. *Any and all documents relied on by the respondents in relation to LRB File Nos. 093-16 and 094-16, to support the assertions set forth in the respondents' reply.*
>
> *The applicant relies on the following grounds:*
>
> 1. *The above-noted disclosure and production of documents and information is necessary for the applicant to properly prepare and receive a fair hearing in LRB File Nos. 093-16 and 094-16.*
> 2. *The applicant has requested the above-noted production of documents and information from the respondents. The respondents initially indicated a willingness to voluntarily produce the requested documentation, but have neglected or refused to produce same.*
>
> *The application relies on the following provisions of The Saskatchewan Employment Act:*
>
> 1. *The applicant relies on the inherent power of the Board together with sections 6-103, 6-104 and 6-111.*

[8] On September 12, 2016, in response to this application and in anticipation of the hearing scheduled for the following day, Mr. Lawson sent a letter to Ms. Jensen stating that the Employer was prepared to consent to an order requiring the disclosure of the following documents and information relating to the common employer issue:

> 1. *A document(s) which establishes that Ventas Inc. is a real estate investment trust.*
> 2. *A document(s) which established that on or about August 19, 2014, Ventas Inc., indirectly acquired certain retirement properties owned and operated in Canada by Holiday Canada Management ULC and its affiliates (e.g. an agreement of purchase and sale, redacted to protect any confidential and proprietary information of the parties thereto).*
> 3. *A document(s) which establishes that The Calgarian Retirement Group Ltd. is an indirect, wholly–owned subsidiary of Holiday Canada management ULC and that The Calgarian Retirement Group Ltd., previously operated The Primrose Chateau Retirement Community.*
> 4. *A document(s) which establishes that, at the time of the closing of the Ventas acquisition on or about August 19, 2014, Holiday Canada Management ULC managed the Community.*
> 5. *A document(s) which establishes that, concurrent with the closing of the Ventas acquisition, Primrose Chateau Retirement Ltd., an indirect, wholly-owned subsidiary of Ventas Inc., as the registered owner of the Community, engaged in Atria Management Canada ULC (c.o.b. as Atria Retirement Canada) as an independent contractor to operate and manage the Community (e.g. the management agreement, redacted to protect any confidential and proprietary information of the parties thereto).*
> 6. *A document(s) which relate to Ventas Canada Retirement III., LP's employment of the bargaining unit employees represented by SEIU-West in relation to their employment at the Community from and after December 28, 2014.*

[9] As stated earlier, the Board heard oral submissions on September 13, 2016. The next day – September 14 – the Board issued the following Order pursuant to sections 6-20, 6-103 and 6-111(1)(b) of the *SEA*:

> 1. *THAT the Respondent disclose and produce the following to the Applicant:*
>
> (a) *Relevant documents reasonably related to the acquisition of Primrose Chateau Retirement Community ("Primrose Chateau"), located at 310 Cree Crescent, Saskatoon, Saskatchewan by Ventas Inc. or a subsidiary of Ventas Inc. on or about August 19, 2014;*
> (b) *Relevant documents reasonably needed to demonstrate that Ventas Inc. is a real estate investment trust;*
> (c) *Relevant documents reasonably needed to establish the relationship between Primrose Chateau Retirement Ltd. And Ventas Canada Retirement III LP;*

> *(d) Relevant documents reasonably needed to demonstrate the relationship between Atria Retirement Canada and Ventas Canada Retirement III LP in relation to the operation of Primrose Chateau;*
> *(e) Relevant documents reasonably needed to demonstrate the relationship between Atria Retirement Canada and Atria Management Canada ULC in relation to the operation of Primrose Chateau, and*
> *(f) All documents referred to in the letter dated September 12, 2016 from Respondent's counsel to Applicant's counsel, not otherwise included in subparagraphs 1(a) to (e).*
>
> *2. THAT all confidential and proprietary information contained in the documents disclosed and produced to the Applicant may be redacted by the Respondent;*
>
> *3. THAT all documents, subject to this Order, shall be delivered to the Applicant on or before September 30, 2016, and;*
>
> *4. THAT this panel of the Board remains seized with this application and any dispute respecting the terms of this Order may be brought before the Board on three (3) days' notice to all parties.*

[10] On September 26, 2016, counsel for the Employer delivered a large package of documents to counsel for the Union. This package of documents was shared with the Board at the most recent hearing.

[11] On October 4, 2016, the Union invoked paragraph 4 of the September 14, 2016 Order and asked that the Board re-convene to consider an application alleging non-compliance by the Employer with the terms of that Order. In a document entitled "Particulars of Documents the Union says are properly and necessarily producible pu**r**suant to the Labour Relations Board's Order Dated 14 September 2016", the Union asserts:

> *The union submits the respondents should be obliged to provide at least the following documentation in relation to the following paragraphs of the Board's order.*
>
> *1.(a) The document provided appears to show that Ventas Inc. is not the purchaser, no documents have been provided to establish whether any of the other parties are a subsidiary of Ventas Inc.*
>
> *Further as noted in other documents filed with the Board, the document provided appears to be dated 23 May 2014 and does not disclose any connection with the transaction occurring on or about 19 August 2014. The respondents need to produce the documents described.*
>
> *1.(b) Although the respondents have provided some documents in relation to Ventas Inc.'s status in the United States of America, they should be obliged to provide documentation to establish Ventas Inc. is a real estate trust recognized in Canada.*

1.(c) The respondents in their reply filed with the Board claim Primrose Chateau Retirement Ltd. is a wholly owned subsidiary of Ventas Canada Retirement III LP. No documents have been provided to establish this connection. The least the respondents should provide are corporate organizational charts, corporation registry documents, list of shareholders (and percentages of holdings) and directors and key personnel of both corporations and any intermediary corporations as well as parent or subsidiary corporations for the last five (5) years and all and any agreements between the two corporations, direct or indirect, concerning their business dealings, including copies of all contracts, leases, agreements or other understandings whereby one corporation supplies labour and/or management services to the other, as well as accounting payroll or office services.

1.(d) The least the respondents should supply is all and complete management or other agreements between Atria Retirement Canada and Ventas Canada Retirement III LP relating to Primrose Chateau Retirement Ltd. This would include the central agreements together with all collateral and subsidiary agreements or documents disclosing same in relation to the operation of the Primrose Chateau. The least the respondents should provide are corporate organizational charts, corporation registry documents, list of shareholders (and percentages of holdings) and directors and key personnel of both corporations and any intermediary corporations as well as parent or subsidiary corporations for the last five (5) years and all and any agreements between the two corporations, direct or indirect, concerning their business dealings, including copies of all contracts, leases, agreements or other understandings whereby one corporation supplies labour and/or management services to the other, as well as accounting payroll or office services.

1.(e) The least the respondents should supply is all and complete management or other agreements between Atria Retirement Canada and Atria Management Canada ULC relation to Primrose Chateau Retirement Ltd. This would include the central agreements together with all collateral and subsidiary agreements or documents disclosing same in relation to the operation of the Primrose Chateau. The least the respondents should provide are corporate organizational charts, corporation registry documents, list of shareholders (and percentages of holdings) and directors and key personnel of both corporations and any intermediary corporations as well as parent or subsidiary corporations for the last five (5) years and all and any agreements between the two corporations, direct or indirect, concerning their business dealings, including copies of all contracts, leases, agreements or other understandings whereby one corporation supplies labour and/or management services to the other, as well as accounting payroll or office services.

1.(f) The respondents should be ordered to specifically provide the documents listed in Mr. Lawson's 12 September 2016 correspondence.

By way of overview, the union submits the respondents should be ordered to produce all documents properly producible in their original from without any redactions. The respondents have not complied with the direction concerning redaction and have produced only portions of a few documents, which are of very little value.

[12] On October 7, 2016, the panel of the Board that issued the September 12, 2016 Order re-convened to hear counsel's oral submissions respecting the Union's application. At its conclusion, we reserved our decision.

RELEVANT STATUTORY PROVISIONS

[13] The Board finds the following subsections of the SEA to be the most relevant to the matter before us:

> ***6-100*** *The members of the board have the same privileges and immunities as a judge of the Court of Queen's Bench.*
>
> *. . . . . .*
>
> ***6-103****(1) Subject to subsection 6-97(3), the board may exercise those powers that are conferred and shall perform those duties that are imposed upon it by this Act or that are incidental to the attainment of the purposes of this Act.*
> *(2) Without limiting the generality of subsection (1), the board may do all or any of the following:*
> *(a) conduct any investigation, inquiry or hearing that the board considers appropriate;*
> *(b) make orders requiring compliance with:*
> *(i) this Part;*
> *(ii) any regulations made pursuant to this Part; or*
> *(iii) any board decision respecting any matter before the board;*
> *(c) make any orders that are ancillary to the relief requested if the board considers that the orders are necessary or appropriate to attain the purposes of this Act [.]*
>
> *. . . . .*
>
> ***6-104****(2) In addition to any other powers given to the board pursuant to this Part, the board may make orders:*
> *. . . . .*
> *(b) requiring any person to do any of the following:*
> *(i) to refrain from contravening this Part, the regulations made pursuant to this Part, or an order or decision of the board or from engaging in any unfair labour practice;*
> *(ii) to do anything for the purpose of rectifying a contravention of this Part the regulations made pursuant to this Part or an order or decision of the board[.]*
>
> *. . . . . .*
>
> ***6-111****(1) With respect to any matter before it, the board has the power:*
> *. . . . . .*
> *(b) to require any party to produce documents or things that may be relevant to a matter before it and do so before or during a hearing or proceeding;*
> *(c) to do all or any of the following to the same extent as those powers are vested in the Court of Queen's Bench for the trial of civil actions:*
> *. . . .*

> *(iii) to compel witnesses to produce documents or things;*
>
> . . . . .
>
> *(j) to conduct any hearing or proceeding using a means of communication that permits the parties and the board to communicate with each other simultaneously[.]*

ANALYSIS

A. <u>Relevant Board Jurisprudence</u>

[14] In recent years, the Board has had the opportunity to consider its' jurisdiction to make orders respecting the production of documents in matters pending before it. To date, all of these authorities have been decided under section 18(b) of *The Trade Union Act*, RSS 1978, c T-17. See especially: *Service Employees International Union (West) v Saskatchewan Association of Health Organizations*, 2012 CanLII 18139, 210 CLRBR (2d) 229 (SK LRB) ["*SAHO*"]; *Lapchuk v Saskatchewan Government and General Employees' Union*, 2014 CanLII 16077 ["*Lapchuk*"], and *Prairie Arctic Regional Council of Carpenters, Drywallers, Millwrights et al. v EllisDon Corporation et al.*, 2014 CanLII 76048 ["*Prairie Arctic*"].

[15] The history of the Board's authority to order document production was outlined briefly in *SAHO* as follows:

> *[35] Until the Act was amended in 2005, this Board relied upon the general powers of a commissioner under The Public Inquiries Act, R.S.S 1978, c. P-38, to compel the attendance of witnesses to give evidence and production documents and things in proceedings before the Board. In 2005, the Act was amended [by The Trade Union Amendment Act, 2005, S.S. 2005, c. 30, s. 5 which came into force on May 27, 2005] to give express authority to the Board to order production of documents (and things) and, in doing so, clarified that the Board could do so either prior to or during a hearing. Arguably, this amendment to the Act was intended to cure the limitations in the Board's authority identified by the court in Pyramid Electric Corporation v. International Brotherhood of Electrical Workers, Local 529, 1999 SKQB 114 (CanLII), 185 Sask. R. 82 (Q.B.) regarding pre-hearing production of documents.*

[16] We pause to observe that the text of section 18(b) of *The Trade Union Act* is identical to section 6-111(b) of the *SEA*. As a consequence, we accept that the various Decisions of the Board interpreting section 18(b) apply with equal force to the interpretation of section 6-111(b).

[17] In these authorities, the Board made it clear that as an administrative tribunal we must resist emulating the more formalized pre-trial discovery procedures common in the civil

courts. The over-arching public policy objective that the Board seeks to achieve is to resolve industrial relations disputes in as expeditious and fair a manner as possible. Yet, extensive pre-trial discovery regimes sometimes may sacrifice expedition with little to no obvious benefit to achieving a fair and timely resolution of such disputes which is the Board's ultimate goal. Accordingly, we endorse the following statement from *Prairie Artic*, *supra*:

> *[50] As this Board clearly stated in Service Employees International Union (West) v. Saskatchewan Association of Health Organizations, (2012)210 C.L.R.B.R. (2d) 229, 2012 CanLII 18139 (SK LRB), LRB File Nos. 092-10, 099-10 & 105-10, even if we had greater authority, it would not be our intention to replicate the kind of pre-hearing discovery processes utilized in a judicial setting. Labour relations boards were established to provide an alternative to the formalistic procedures of our courts. While pre-hearing discovery and production of documents may be the norm in civil litigation, such procedures are not the norm in proceedings before the Board. Simply put, this Board has no desire to replicate the kind of discovery procedures commonly seen in a judicial setting. While we have the authority to compel respondents to provide much of the information desired by the applicant trade unions in these proceedings, in our opinion, doing so, would begin the process of replicating the type of pre-hearing discovery processes that we seek to avoid.*

[18] In *SAHO*, the decision referred to in the above-quoted passage, the Board took the opportunity to provide an overview of its prior practice respecting document production. In relation to pre-hearing disclosure requests, former Vice-Chairperson Schiefner stated at paragraph 37:

> ***Pre-hearing production:*** *A party to proceedings before the Board can now seek production of documents prior to the commencement of the hearing. Such applications are typically heard by the Board's Executive Officer. The Board's Executive Officer has delegated authority to grant Orders of production and typically does so based on broad and general principles of relevancy. Generally speaking, an applicant seeking pre-hearing production of documents must merely satisfy the Board's Executive Officer that the desired documents are arguably relevant and/or that there is some probative nexus between the documents or information sought and the matters in issue arising out of proceedings before the Board. However, the greater the number of documents sought, the stronger the probative nexus expected by the Board's Executive Officer, particularly so if considerable expense, time and effort is required to locate and produce the desired documents. In this regard, it is important to note that labour relations boards were established to provide an alternative to the formalistic procedures of courts of competent jurisdiction. While pre-hearing discovery and production of documents may be the norm in civil litigation, such procedures are not the norm in proceedings before tribunals, such as this Board. To which end, while a certain degree of "fishing" is permissible in a request for pre-hearing production of documents (i.e.: to seek out evidence in support of an allegation under the Act), it has not been the practice of this Board to grant broad-spectrum, non-specific or infinite production Orders to in essence, compel the kind of pre-hearing discovery of documents that occurs in civil courts. Similarly, s. 18(b) of the Act (as was the case with its predecessor provision) does not include authority to compel a party to "create" documents or things in response to a production request, such as a*

> *statement as to documents. See: Pyramid Electric Corporation v. International Brotherhood of Electrical Workers, Local 529, 2001 SKQB 216 (CanLII), 208 Sask. R. 118 (Q.B.). Simply put, the Board does not have the authority to invoke, 2012 CanLII 18139 (SK LRB) 18 nor does it desire to replicate, the kind of discovery procedures or production of documents obligation commonly seen in a judicial setting.*
>
> *It should also be noted that in a pre-hearing request for the production of documents, the Board's Executive Officer does not generally concern him/herself with issues of confidentiality or privilege; as the more common practice has been for disputes as the production of documents upon which a privilege is claimed to be resolved by a panel of the Board (either prior to or at the commencement of the hearing). In other words, parties are expected to locate and produce the documents set forth in any production Order of the Board's Executive Officer, save any documents upon which privilege may be claimed. Responsive documents upon which privilege are claimed are delivered to the Board (either the panel seized to hearing the proceedings or another) to determine whether or not production of the disputed documents is appropriate. This practice enables the parties to make representations to the Board on the claims asserted and enables the Board to have the benefit of viewing the disputed documents in rendering its decision. This practice was employed by the parties and the Board in International Brotherhood of Electrical Workers, Local 529 v. Sun Electric (1975) Ltd., et. al., [2002] Sask. L.R.B.R. 362, LRB File No. 216-01, and in subsequent proceedings, [2002] Sask. L.R.B.R. 698, LRB File No. 216-01.*

[19] When making the determination about a pre-hearing request for production of documents and information under section 6-111(b) of the *SEA*, this Board has, at least since *International Brotherhood of Electrical Workers, Local 529 v Sun Electric (1975) Ltd., Alliance Energy Limited and Mancon Holdings Ltd.*, [2002] SLRBR 362, LRB File No. 216-01, adopted and applied criteria first identified by the Canada Industrial Relations Board in *Air Canada Pilots Association v Air Canada et al.*, [1999] CIRBD No. 3 ["*Air Canada*"]. See also: *Industrial Wood and Allied Workers of Canada, Local 1-184 v Edgewood Forest Products Inc. and C & C Wood Products Ltd.*, 2012 CanLII 51715 (SK LRB) at para. 12 *per* Chairperson Love.

[20] The *Air Canada* criteria are six-fold and provide as follows:

> 1. *Requests for production are not automatic and must be assessed in each case;*
> 2. *The information requested must be arguably relevant to the issue to be decided;*
> 3. *The request must be sufficiently particularized so that the person on whom it is served can readily determine the nature of the request, the documents sought, the relevant time-frame and the content;*
> 4. *The production must not be in the nature of a fishing expedition; that is, the production must assist a complainant in uncovering something to support its existing case;*
> 5. *The applicant must demonstrate a probative nexus between its positions in the dispute and the material being requested;*

> *6. The prejudicial aspect of introducing the evidence must not outweigh the probative value of the evidence itself, regardless of any possible "confidential" aspect of the document.*

[21] Subsequently, the Board's adoption of these criteria received the imprimatur of the Saskatchewan Court of Queen's Bench in *Saskatchewan Regional Council of Carpenters, Drywall, Millwrights and Allied Workers et al. v Saskatchewan Labour Relations Board et al.*, 2011 SKQB 380; 210 CLRBR (2d) 35, at para. 144 *per* Popescul J. (as he then was).

B. The Union's Application Alleging Employer Non-Compliance

[22] When crafting our September 14, 2016 Order, the Board took into account these general principles and relevant factors. In our view, the Order that emerged appropriately balanced the Union's request for further but comprehensive information respecting the inter-relatedness of the various corporate entities involved with the sale of Primrose Chateau against the Employer's interests in moving this matter forward to a timely resolution. As mentioned earlier, after our Order was issued the Employer forwarded a large package of documentation to the Union's counsel. The Board has had an opportunity to review the various materials disclosed to the Union.

[23] Nevertheless, the Union now asserts that the Employer has failed to comply with the terms of the September 14, 2016 Order and should be found in contempt of both "the letter and the spirit" of the Order. Although Mr. Plaxton initially asked the Board to cite the Employer for contempt of the Board's Order, he appeared to back away from this request as the hearing progressed. Instead, he urged the Board to order the Employer to produce various classes of documents which the Union asserts the Employer failed to disclose and which it claims it requires in order to prosecute its case. The descriptions of these required categories set out in the Union's application dated October 4, 2016 are reproduced in paragraph 11 above. Furthermore, the Union asserts that none of these documents should be redacted.

[24] The Employer maintains it has complied with the terms of the Board's Order. During the hearing, Mr. Lawson took the Board through the package of documents that had been disclosed and indicated how each document related to a particular paragraph or paragraphs in the Order. He submitted that this demonstrated compliance with the Order. He submitted further that if the Union persuaded the Board to direct further disclosure it would require a new

production order in light of the fact that the Employer had complied with the September 14th Order.

[25] This application is somewhat unusual as the Board is being asked to review compliance with an Order for the production of documents and not for the issuance of the production order, itself. The jurisprudence canvassed in the previous section relate to applications seeking the issuance of a production order. Counsel did not refer us to any case law on the questions of enforcing a production order, as opposed to the question of whether to issue such an order, and our own research did not uncover any such authority.

[26] To begin, the Board acknowledges that it has the power to enforce its orders up to and including the power to cite recalcitrant parties or witnesses for contempt. The Board's contempt power was canvassed briefly in *Lucyshyn v Amalgamated Transit Union*, Local 615, 2011 CanLII 32698, LRB File No. 035-09 ["*Lucyshyn*"]. *Lucyshyn* involved a duty of fair representation claim. It was alleged there that the Respondent Union had failed to comply with an Order compelling the Union to disclose its internal grievance report to the Applicant. The Union conceded it had failed to comply with the Board's Order but argued it should not be cited for contempt.

[27] Chairperson Love declined to make any finding of contempt, however. He reviewed the jurisdiction of the Board to make such an order and concluded at paragraphs 12 to 14 as follows:

> *[12] The Board has previously determined in its decision in Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Temple Gardens Mineral Spa Inc.[2006 CanLII 62957] that it had, pursuant to [The Trade Union Act], as a minimum, the power of contempt in the face of the tribunal (contempt in facie). However, the contempt in this case was contempt out of the face of the tribunal (contempt ex facie) and the power to cite for contempt in such cases has normally been found to reside only in superior courts.*
>
> *[13] The Board in Temple Gardens, supra, outlined a compelling case for the Board to also possess the power to cite for contempt out of the face of the tribunal, but in the final result, restricted itself to the power to cite for contempt only in the face of the tribunal. However, even in that case, the Board declined to cite the witness for contempt and chose an alternative remedy.*
>
> *[14] In this case, the Board finds it unnecessary to consider further its power to cite for contempt. Citing the Respondent Union for contempt in these proceedings, whether the power to do so exists or not, does not advance the situation here. There are outstanding grievances with respect to which the Respondent Union continues to fail to properly represent the Applicant. It is that failure that needs to be addressed.*

[28] In this matter, the Board concludes that there is no basis in law for finding the Employer in contempt of our September 14, 2016 Order. We carefully reviewed the various documents produced by the Employer and measured them against the paragraphs of our Order. This exercise persuaded us that the Employer has substantially complied with its terms. Mr. Plaxton advanced numerous criticisms about the inadequacy of these materials including the lack of information disclosed, the extent of the documents' redaction, and the many lines of further relevant inquiry those documents engendered.

[29] The Board agrees with Mr. Lawson that the kinds of questions and concerns raised by Mr. Plaxton in the course of the conference call are more appropriately lines of inquiry to be pursued at the oral hearing of these applications.

[30] Turning to the various categories of documents set out in paragraph 11 above and for which the Union seeks disclosure, the Board declines to make such a production order for two (2) reasons. First, the request is over-broad and disproportionate. Second, it lacks particularization. We will deal with each flaw in turn.

[31] The requests seek the production of a voluminous amount of documentation and for an extended period of time – namely the past five (5) years – the relevance of which we must question. Various labour relations tribunals such as the Canadian Industrial Relations Board in *Air Canada*, *supra*, at paragraph 29, and this Board in *SAHO*, supra, at para. 44 – to cite but two examples – have ruled that the greater the number of documents for which disclosure is sought the greater the restrictions on a party's right to unlimited pre-hearing discovery.

[32] The Union has failed to persuade us that the large volume of documentation it asserts must be produced in order to comply with the September 14, 2016 Order is necessary, let alone relevant. For example, when asked by the Board Mr. Plaxton was unable to provide us with a reason why documentation for the past five (5) years, a time frame which pre-dates the sale of Primrose Chateau, should be disclosed. He stated only that he believed it was the relevant time-frame.

[33] A sufficient probative nexus between the Union's claims and the material for which disclosure is sought – the fifth *Air Canada* criterion – has also not been demonstrated. The Union's submissions raised the possibility that the documentation may have some peripheral

relevance; however, any such connection is tenuous at best, and not sufficient for this Board to order further production by the Employer of a broad spectrum of documentation.

[34] In view of the scope of documentation requested, it is incumbent on the Union to particularize with some precision the kinds of documents it seeks – the third *Air Canada* criterion. This, the Union has failed to do. It has simply provided a laundry list of categories of documents which it asserts are "the least the [Employer] should supply".

[35] That said, after reviewing the documents disclosed by the Employer, the Board has determined that the disclosure of one (1) further document or set of documents is warranted in further compliance with paragraphs 1(b), (c), (d) and (e) of the September 14, 2016 Order, namely a list of the key personnel and officers of the respondents named in the Union's applications.

[36] In *Prairie Arctic*, *supra,* a successorship and common employer application in the construction industry, the Board commented on the intricate corporate relationships that can arise in that sector. The Board stated at paragraph 76:

> *[76] On the other hand, there is no doubt that successorship and common employer applications tend to involve complicated fact situations, particularly so in the construction sector where enterprises often operate as groups of interconnected companies. Furthermore, the majority of the most probative evidence in these cases tends to be in the sole possession of employers. Furthermore, while employers are understandably reluctant to make public their inner working, often the most probative evidence does not tend to be controversial; the legal significance of that evidence (in terms of the application of Saskatchewan's labour relations regime) is often in dispute; but the evidence, itself, is generally not in dispute. In this regard, there are certain categories of evidence that tends to expedite preparation for hearings and for which it makes little sense to require an applicant to wait until its counsel has its first opportunity to cross-examine the employer's witnesses before it can obtain access to this information. In our opinion, the routine provision of certain information by employers in successorship/common employer cases in the construction sector will tend to expedite hearings, will tend to avoid pre-hearing delays, will tend to assist the parties in preparing their cases, and will generally promote a more efficient use of this Board's scare [sic] resources.*

[37] After hearing the submissions of counsel and reviewing the documentation provided, the Board is of the view that the observations it made in *Prairie Arctic* are apposite here.

[38] Accordingly, we direct the Employer to disclose to the Union a listing of the key personnel and officers of the companies identified as the named respondents in LRB File Nos. 093-16 & 094-16 on or before November 1, 2016. For clarity, these companies are:

- Ventas Canada Retirement III, LP
  110 King St. W., Suite 4400
  Toronto ON

- Atria Management Canada ULC
  1212 – 1175 Douglas Street
  Victoria BC

- Atria Retirement Canada
  1212 – 1175 Douglas Street
  Victoria BC

[39] In all other aspects, however, the Union's application for further compliance by the Employer with our September 14, 2016 Order is dismissed.

[40] This is a unanimous decision of the Board.

DATED at Regina, Saskatchewan, this **13th** day of **October, 2016.**

LABOUR RELATIONS BOARD

Graeme G. Mitchell, Q.C.
Vice-Chairperson