

**CANDACE SMITH, Applicant v SASKATCHEWAN GOVERNMENT AND GENERAL EMPLOYEES' UNION, Respondent and REGINA TRANSITION HOUSE, Respondent**

LRB File Nos. 090-24, 223-24 & 006-25; May 20, 2025

Chairperson, Kyle McCreary (sitting alone pursuant to subsection 6-95(3) of *The Saskatchewan Employment Act*)

Citation: *Smith v SGEU*, 2025 SKLRB 23

For the Applicant, Candace Smith:

Self-Represented

For the Respondent, Saskatchewan Government and  
General Employees' Union:

Andrea Johnson

For the Respondent, Regina Transition House:

Alyssa Phen

**Pre-Hearing Production of Documents – Applications very broad and relate to grievance more than duty of fair representation – Applications dismissed**

**REASONS FOR DECISION**

**Background:**

**[1] Kyle McCreary, Chairperson:** Candace Smith has filed a duty of fair representation complaint against the Saskatchewan Government and General Employees' Union ("SGEU" or the "Union") in relation to her termination from the employer Regina Transition House ("RTH"). The Board previously dismissed an application by SGEU for summary dismissal in *Saskatchewan Government and General Employees' Union v Candace Smith and Regina Transition House*, 2024 CanLII 77316 (SK LRB). Ms. Smith has now filed applications seeking pre-hearing production from both respondents.

**[2]** Ms. Smith filed an application for pre-hearing production against RTH in LRB File No. 223-24 on November 14, 2024 (the "First Application"). In the First Application Ms. Smith seeks production of:

*Complete Employee Personnel File:*

*Including all records, dates of amendments, and any updates made to the file, specifically those that RTH claims were provided to SGEU*

*Investigation Notes for Harassment Grievance:*

*All notes, documents, and materials related to the harassment grievance overseen by Stephanie Taylor, as referenced in RTH's recent response*

*Employee Complaints Regarding Candace Smith:*

*Copies of all complaints or records related to Candace Smith, specifically: official complaints filed by employees. Complaints documented by RTH without a formal employee complaint. Details on how Regina Transition House attributed fault to Candace Smith in these interactions, including any rationale they claim was previously shared with SGEU.*

*FOIP Request Documents, including Stephanie Logan's Police Statement: Complete copies of all documents received by RTH through their FOIP request, including the police officer's report and the typed statement from Stephanie Logan. RTH received these documents through email, and they should be readily accessible.*

**[3]** Ms. Smith filed an application against SGEU for pre-hearing production in LRB File No. 006-25 on January 14, 2025 (the "Second Application"). In the Second Application Ms. Smith seeks production of:

*Complete Employee Personnel File*

*All records related to my employment, including dates of amendments and updates, as RTH claims were provided to SGEU*

*Investigation Notes for Harassment Grievance*

*All notes, documents, and materials related to the harassment grievance overseen by Stephanie Taylor.*

*Employee Complaints Regarding Candace Smith*

*Copies of all complaints or records related to my interactions with co-workers, specifically: Official complaints filed by employees. Complaints documented by RTH without formal employee submissions. Any rationale provided to SGEU attributing fault to me*

*FOIP Request Documents, including Stephanie Logan's Police Statement  
Complete copies of all documents received by RTH through their FOIP request, specifically the police officer's report and Stephanie Logan's typed statement.*

**[4]** RTH and SGEU oppose the First Application and the Second Application. RTH argues that the documents are not relevant. SGEU argues that the application is a fishing expedition, the documents are irrelevant, and some of the documents do not exist.

**Relevant Statutory Provisions:**

**[5]** The Board's authority for pre-hearing production is in Section 6-111(1)(b) of *The Saskatchewan Employment Act*, SS 2013, c S-15.1 ("the Act"), which reads:

***Powers re hearings and proceedings***

**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 to do so before or during a hearing or proceeding;*

### **Analysis and Decision:**

**[6]** When considering an application for pre-hearing production, the Board applies the test for production as articulated by the Canada Industrial Relations Board in *Air Canada Pilots Association v Air Canada et al.*, [1999] CIRBD No. 3 [*"Air Canada"*]:

- 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.*

**[7]** The *Air Canada* test is a discretionary test and depends on the facts of each case: *Saskatoon Co-operative Association Limited v United Food and Commercial Workers*, 2019 CanLII 76933 (SK LRB) at para 30.

**[8]** In this case, Ms. Smith is seeking identical production orders from both respondents. Both requests are very broad, which is very concerning to the Board that the application is in the nature of a fishing expedition. The concern that the pre-hearing production applications amount to a fishing expedition is amplified by Ms. Smith's wording in the Second Application. As stated at paragraph 16:

*Compelling both SGEU and RTH to produce the requested documents ensures transparency, accountability, and a full examination of the evidence. This approach prevents either party from withholding materials that could reveal flaws in the grievance process or undermine their respective defenses.*

**[9]** Ms. Smith responded to the SGEU allegation that she was engaged in a fishing expedition in the following way in her written reply submissions:

1. *SGEU claims that I am conducting a fishing expedition. While my broad request for documents may appear to be a fishing expedition, it only mirrors this since SGEU has been opaque with the actual evidence they used in most of their assertions. I must make a broad request to blanket all documents used by SGEU and RTH due to both parties being secretive about actual evidence used.*
2. *SGEU indicates certain documents I asked for do not exist. I obviously do not request non-existent documents to be submitted. However, I would like them to name the imaginary documents as part of the document disclosure request. This will allow the labour board to properly identify aspects of my case where SGEU relied upon no tangible evidence to support the employers and their own claims.*

**[10]** Ms. Smith's submissions misapprehend the purpose of production applications before the Board. The distinction between the Board's approach to disclosure and the Courts was discussed in *Lapchuk v Saskatchewan Government and General Employees' Union*, 2014 CanLII 16077 (SK LRB)

*[8] In Service Employees International Union (West) v. Saskatchewan Association of Health Organizations, et.al, (2012) 210 C.L.R.B.R. (2nd) 229, 2012 CanLII 18139, LRB File Nos. 092-10, 099-10 & 105-10, this Board reviewed its jurisprudence with respect to the production of documents at various stage of proceedings before the Board and made the following comments with respect to requests such as that made by Mr. Lapchuk for pre-hearing production of documents:*

*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, nor does it desire to replicate[15], the kind of discovery procedures or production of documents obligation commonly seen in a judicial setting.*

[11] As was noted in the footnote from *Service Employees International Union (West) v Saskatchewan Association of Health Organizations*, 2012 CanLII 18139 (SK LRB) at note 15, “the timely resolution of outstanding labour relations disputes is of real importance in maintaining an amicable labour-management relationship. Because time is of the essence, our procedures must promote efficiency and speed in the resolution of labour relations disputes.”

[12] The purpose of pre-hearing production is to ensure that parties have the documents necessary to present their case and respond to the opposing party. Ms. Smith is seeking documents on a speculative basis searching for theoretical flaws in the grievance process, this is far beyond what is generally required before the Board. This is tantamount to a fishing expedition and is not necessary for a procedurally fair hearing.

[13] The Board may consider Board applications for disclosure if a probative nexus can be shown, that is can it be shown that the documents are likely to prove or disprove a material fact. The First Application and the Second Application have a minimal probative nexus between the documents sought and the duty of fair representation. The documents sought are clearly relevant to a potential grievance, it is unclear what relevance the documents have to the question before this Board of whether SGEU breached s. 6-59 of the Act.

[14] The Board does not sit in appeal of a Union’s decision: *Saskatchewan Government and General Employees’ Union v Lapchuk*, 2025 SKKB 53 (CanLII) at paras 98-105. The Board is assessing whether the Union met its duty in assessing and deciding how to proceed with a potential grievance. The focus is on the Union’s decision making and not the underlying merits of the grievance. The First and the Second Application focus not on SGEU’s duty but on the merits of the underlying case. Ms. Smith has not established a sufficient probative nexus between the documents sought and SGEU’s duty of fair representation to justify the breadth of the request.

[15] Ms. Smith argues that allowing the broad disclosure applications will prevent procedural redundancy by preventing Ms. Smith from having to file multiple specific applications. Broader disclosure may prevent applications, but it would also impose increased burdens on parties coming before the Board and decrease the efficiency of the Board’s process. The Board requires specificity in disclosure to ensure its process remains as efficient as possible.

[16] The Board dismisses the applications for pre-hearing production. The applications are overbroad and not clearly relevant to the issues before this Board. The First Application and the

Second Application are found to be fishing expeditions considering their breadth and the limited relevance to the matters before the Board. This dismissal is without prejudice to Ms. Smith seeking further production that is necessary and relevant to the issue of whether SGEU breached its duty of fair representation.

**[17]** As a result, with these Reasons, an Order will issue that the Applications for Pre-Hearing Production in LRB File Nos. 223-24 and 006-25 are dismissed.

**[18]** The Board thanks the parties for the helpful submissions they provided, all of which were reviewed and considered in making a determination in this matter.

**DATED** at Regina, Saskatchewan, this **20th** day of **May, 2025**.

**LABOUR RELATIONS BOARD**

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Kyle McCreary  
Chairperson