Saskatchewan
Labour Relations Board

SASKATCHEWAN GOVERNMENT AND GENERAL EMPLOYEES' UNION, Applicant v VALLEY HILL YOUTH TREATMENT CENTRE INC., Respondent and MNP LLP, Respondent

LRB File No. 185-24 and 235-24; September 8, 2025
Chairperson, Kyle McCreary; Board Members, Linda Dennis and Don Ewart
Citation: *SGEU v Valley Hill Youth Treatment Centre*, 2025 SKLRB 40

Counsel for the Applicant, Saskatchewan Government and General Employees' Union: Lindsay Hjorth

Counsel for the Respondents, Valley Hill Youth Treatment Centre Inc and MNP LLP: Gordon Hamilton

Application for Pre-Hearing Production – Application Dismissed as Document Sought is Protected by Public Interest Immunity – Public Interest in Minister receiving advice outweighs interest of administration of justice as relates to these documents

REASONS FOR DECISION

Background:

[1] Kyle McCreary, Chairperson: This decision is a follow-up to the Board's decision in *SGEU v Valley Hill Youth Treatment Centre*, 2025 SKLRB 11. Saskatchewan Government and General Employees' Union (the "Union") has applied for pre-hearing production from Valley Hill Youth Treatment Centre Inc. (the "Employer") in LRB File No. 235-24 in relation to the Union's unfair labour practice in LRB File No. 185-24 ("the ULP Application").

[2] The ULP Application relates to an allegation that the Union and the Employer signed a Memorandum of Agreement on a new collective agreement on or about May 31, 2024 (the "MOA"). The Union subsequently ratified the MOA, but the Employer failed to ratify. On August 29, 2024, the Minister of Health ("the Minister") appointed MNP LLP (the "Administrator") as the Administrator of Employer pursuant to s. 24 of *The Residential Services Act, 2019*, SS 2019, c R-21.3. The Administrator has not ratified the MOA.

[3] The Union seeks pre-hearing production of a report prepared by the Administrator for the Minister. The Board has ordered production of the report for its review, the document is dated November 8, 2024, and is titled: Valley Hill Youth Treatment Centre, Needs & Capacity Assessment Prepared for the Saskatchewan Ministry of Health (the "Report").

[4] The Union seeks production of the Report on the basis that it has been requested and refused and that the Employer's refusal to produce the Report interferes and undermines the Union's ability to represent its members. The Union's ability to negotiate and have input on the Employer's operations are also impacted.

[5] The Employer raises numerous objections to the disclosure, the Employer contests the Board's jurisdiction, claims privilege over the Report and disputes the relevance of the Report.

Analysis and Decision:

Does the Board Have Jurisdiction in Relation to the Administrator?

[6] The Employer has asserted that the Board lacks jurisdiction to order disclosure from the Administrator on the basis of s. 24 of *The Residential Services Act, 2019*. The Board disagrees that this provision ousts the Board's jurisdiction pursuant to s. 6-111(1)(b)-(c) of *The Saskatchewan Employment Act*, SS 2013, c S-15.1 ("the Act").

[7] The Board has the explicit power under s. 6-111(1)(b) of the Act to order pre-hearing production from parties and under s. 6-111(1)(c) to compel the production of documents. The Administrator is named as a respondent in the ULP Application, and the Board has explicit authority under s. 6-111(a)(b) to direct parties to provide pre-hearing production: *SEIU-West, Applicant v. Atria Management Canada*, 2016 CanLII 74281 (SK LRB).

[8] Section 24 of *The Residential Services Act, 2019* is a provision limiting the liability of administrators. It is not a non-compellability provision which would oust the Board's jurisdiction. An example of a non-compellability provision is s. 73 of *The Child and Family Services Act*, SS 1989-90, c C-7.2. Section 24 contains none of the language respecting compellability that are present in *The Child and Family Services Act* provision.

[9] The Board will leave the interpretation of the scope of the limitation of liability and the degree of immunity it does or does not grant as an issue to be determined after full argument at the hearing of this matter on the merits.

Is the Report Protected by Public Interest Immunity?

[10] The Employer has claimed privilege over the Report generally and has specifically claimed litigation privilege and common interest privilege. The Board considers the most applicable category of privilege to be public interest immunity.

[11] The Supreme Court of Canada set out the test for the application of public interest immunity in *Carey v. Ontario*, 1986 CanLII 7 (SCC), [1986] 2 SCR 637:

> *79. The foregoing authorities, and particularly, the Smallwood case, are in my view, determinative of many of the issues in this case. That case determines that Cabinet documents like other evidence must be disclosed unless such disclosure would interfere with the public interest. The fact that such documents concern the decision-making process at the highest level of government cannot, however, be ignored. Courts must proceed with caution in having them produced. But the level of the decision-making process concerned is only one of many variables to be taken into account. The nature of the policy concerned and the particular contents of the documents are, I would have thought, even more important. So far as the protection of the decision-making process is concerned, too, the time when a document or information is to be revealed is an extremely important factor. Revelations of Cabinet discussion and planning at the developmental stage or other circumstances when there is keen public interest in the subject matter might seriously inhibit the proper functioning of Cabinet government, but this can scarcely be the case when low level policy that has long become of little public interest is involved.*
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> *80. To these considerations, and they are not all, one must, of course, add the importance of producing the documents in the interests of the administration of justice. On the latter question, such issues as the importance of the case and the need or desirability of producing the documents to ensure that it can be adequately and fairly presented are factors to be placed in the balance. In doing this, it is well to remember that only the particular facts relating to the case are revealed. This is not a serious departure from the general regime of secrecy that surrounds high level government decisions.*

[12] The level of decision making supports some protection of the document, as it is advice to the Minister under a statutory authority. The Minister is entitled to receive some confidential advice in making decisions. This need for protection is lower than the protection that would be entitled to Cabinet discussions, but there is some public interest in protection of the Minister's advice.

[13] The nature of the policy supports disclosure as it relates to operational matters and the governance structure of the Employer and not broad Government policy.

[14] The contents of the Report supports non-disclosure. The Report contains advice on the Employer's operations and governance. There is a public interest in the Minister receiving advice of this nature without disclosure.

[15] The timing of the documents supports non-disclosure. The documents are recent having been produced in November 2024. The timing also undermines the relevance to the ULP Application.

[16] The Report is not necessary to produce in the interest of the administration of justice. The document postdates the events in dispute by several months. Further, the content of the document does not discuss the MOA, nor does it discuss the ratification of the MOA. These are the matters at issue in the ULP Application, and as the Report does not address these issues, the production of the Report is not necessary for the ULP Application to be fairly determined.

[17] Balancing the public interest in the Minister receiving advice from the Administrator against the public interest in disclosure, the Board finds that the public interest favours non-disclosure of the Report and that the Report is protected from disclosure by public interest immunity.

[18] As the Board finds that at this time the public interest favours non-production, the Union's application for pre-hearing production is dismissed. This is without prejudice to the Union's ability to seek production at the hearing if evidence can be adduced at the hearing to demonstrate that disclosure of the Report is necessary in the administration of justice.

[19] As a result, with these Reasons, an Order will issue that the Application for Pre-Hearing Production in LRB File No. 235-24 is dismissed.

[20] 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 **8th** day of **September, 2025.**

LABOUR RELATIONS BOARD

Kyle McCreary
Chairperson