



INVESTIGATION REPORT

This is Dr. Acton's Investigation Report commissioned by Dr. Troy Janzen, Deputy Registrar and Complaints Director, College of Alberta Psychologists. Although the report is marked DRAFT, it was produced by Dr. Janzen as the report he relied on in dismissing Ms. T's complaints. If there is some later report, Dr. Janzen failed to produce it. (see <https://sd5bc.info> for more)

On a complaint by Ms. [REDACTED] against Dr. Allan Mandel

Date of Report: Feb 15, 2022

ENGAGEMENT

On July 16, 2021, Dr. Troy Janzen, Complaints Director and Deputy Registrar, College of Alberta Psychologists (College), assigned Dr. Acton and his colleagues with Falcongate Ltd. to investigate complaints brought against Dr. Allan Mandel. Falcongate received a copy of the entire investigation file shortly thereafter.

SOURCES OF INFORMATION:

In preparing this report, this investigator has reviewed:

- The complaints from Ms. [REDACTED] dated January 27, 2021, received by the college via email January 28, 2021.
- The March 30, 2021, response via legal counsel from Dr. Allan Mandel, including:
 - Dr. Mandel's curriculum vitae
 - Communication from Ms. Cynthia Stuart, School District 5 (SD5), to Mandel & Associates Ltd., containing scanned documents including:
 - Letter of engagement with Dr. Kettner and a corresponding letter to Ms. [REDACTED]
 - A psychological report on Ms. [REDACTED] by Dr. Kettner
 - Various communications to Ms. [REDACTED] from Mandel & Associates
 - Ms. [REDACTED] clinical file including a signed consent form dated July 29, 2010, file notes, test results, a psychological report by Dr. Mary Westcott dated September 15, 2010,

- Communication from Ms. Stuart requesting assistance in understanding and interpreting three reports from three separate psychologists
 - An email from Dr. Mandel indicating he would assist Ms. Stuart as Dr. Westcott was on maternity leave.
 - A letter from Ms. Stuart asking Dr. Mandel to release the clinical file to Dr. Suffield for a review of the three assessments accompanying Ms. [REDACTED] consent to release the information.
 - A letter from Ms. [REDACTED] requesting Dr. Westcott to release her entire file to Dr. [REDACTED] Psychologist and subsequent notes and communications with Dr. [REDACTED]
 - Various communications from Ms. [REDACTED] to Mandel & Associates about her request to review and copy her clinical file.
 - Note of August 27, 2018, about Ms. [REDACTED] review of her file when accompanied by Dr. [REDACTED]
 - Various file notes by Dr. Mandel & Dr. Westcott
 - A letter to Ms. [REDACTED] from Dr. Westcott dated September 11, 2018
- The November 15, 2021, joint response from Dr. Allan Mandel, Dr. Mary Westcott, and Dr. Braxton Suffield.

INTERVIEWEES

The following people were interviewed during this investigation:

- Ms. [REDACTED] the complainant, refused an in person or zoom interview. Email correspondence attached as Appendix C.
- Dr. Allan Mandel in person on December 15, 2021, accompanied by Ms. Shayla Stein, legal counsel. The interview with Dr. Mandel was recorded and a transcript is available if required.
- Dr. Suffield, in person on December 13, 2021, accompanied by Ms. Shayla Stein, legal counsel. The interview was recorded, and a transcript is available if required.

SUMMARY OF THE ISSUES:

Background: Ms. [REDACTED] the complainant, was employed as a teacher in Cranbrook B.C. by School Division #5 in 2010. Questions pertaining to Ms. [REDACTED] ability as an effective teacher were brought forward by her employer to which Ms. [REDACTED] disagreed. She was subsequently requested to have an independent psychological assessment to help resolve the questions. The focus of this investigation is on the several allegations Ms. [REDACTED] has made against Dr. Mandel including that Dr. Mandel:

- failed to obtain informed consent.
- lacked sufficient professional knowledge and lacks competence.
- failed to maintain client records and release information to client.
- engaged in dual/multiple relationships.
- failed to provide adequate supervision.
- failed to report a colleague.
- failed to demonstrate diversity and cultural competence.

APPLICABLE STANDARDS OF PRACTICE

The psychological assessment conducted under the auspices of Mandel & Associates occurred in 2010 and the College of Alberta Psychologists' *Standards of Practice (2005)* were in effect at that time. The College of Alberta Psychologists' *Standards of Practice (2013)* are applicable to psychological services rendered from 2013 to 2019 when another version of the standards took effect and any services rendered after 2019 are subject to the 2019 standards.

Moreover, the Canadian Code of Ethics (Third Edition-2000) is applicable to the assessment time whereas Canadian Code of Ethics (Fourth Edition-2017) is applicable to any professional service rendered from January 2017 onward.

The following are components of the applicable standards and ethics guidelines in effect for the issues arising from Ms. [REDACTED] complaint.

Canadian Code of Ethics (2000)

Responsibility of the Individual Psychologist

5. To bring concerns about possible unethical actions by a psychologist directly to the psychologist when the action appears to be primarily a lack of sensitivity, knowledge, or experience, and attempt to reach an agreement on the issue and, if needed, on the appropriate action to be taken.

6. To bring concerns about possible unethical actions of a more serious nature (e.g., actions that have caused or could cause serious harm, or actions that are considered misconduct in the jurisdiction) to the person(s) or body(ies) best suited to investigating the situation and to stopping or offsetting the harm.

Informed Consent *Standards of Practice (2005):*

2(1) Psychologists shall obtain the informed consent of all persons who are competent to give such consent for psychological services provided to them except in circumstances of urgent need (e.g., disaster or other crisis). In urgent circumstances, psychologists may proceed in accordance with the expressed preferences of such persons and obtain informed consent as soon as possible.

2(2) Psychologists shall carry out informed consent processes with those persons who are legally responsible or appointed to give informed consent on behalf of persons not competent to consent on their own behalf, seeking to ensure respect for any expressed preferences of persons not competent to consent.

2(3) Psychologists shall provide, in obtaining informed consent, such information as a reasonable person would want to know to make a decision to consent to the service. The psychologist must relay this information in language that the persons understand (including providing translation into another language, if necessary) and will take whatever reasonable steps are needed to ensure that the information is understood.

2(4) Psychologists shall provide new information in a timely manner, whenever such information becomes available and is significant enough that it reasonably could be seen as relevant to the original or ongoing informed consent.

2(5) Psychologists shall take all reasonable steps to obtain consent that is not given under conditions of coercion or undue pressure.

2(6) Psychologists shall document the discussion held with their clients and whether informed consent was obtained.

Competence Standards of Practice (2005):

3(1) Psychologists shall limit practice and supervision to the areas of competence in which proficiency has been gained through education, training, or experience.

4(1) Psychologists shall maintain competency in the areas in which they practice through continuing education or consultation with their peers in conformance with current professional standards.

Records Maintenance Standards of Practice (2005):

10 Psychologists will afford their clients the right to request the correction of factual inaccuracies in their records. Such requests will be reviewed by the psychologist who will:

- a) correct the factual inaccuracies and, to the extent possible, notify all parties to the information; or
- b) write an amending letter or attachment to the record and, to the extent possible, notify all parties to the information; or
- c) notify the client if the psychologist is not in agreement that there were factual inaccuracies, or if the inaccuracies were trivial and correction would entail more effort than is justified by the error. In such cases, the psychologist will document his/her reasons for refusing to make the requested corrections.

11(1) Psychologists rendering professional services to a client or billing a third party for professional services shall maintain records that include the following:

- (a) appropriate identifying information;
- (b) the presenting problem or problems or the purpose of the consultation;
- (c) the fee arrangement;
- (d) the date and substance of each professional service, including relevant information on interventions from which the results were derived;
- (e) any test results...
- (f) notations and any results of formal consults with other service providers;
- (g) a copy of all test or other evaluative reports prepared as part of the professional relationship.

(2) Psychologists shall ensure that all data entries in their professional records are maintained for a period of not less than 10 years after the last date on which a professional service was rendered.

25 Psychologists shall limit access to their professional records to preserve confidentiality and shall ensure that all persons working under their authority comply with the requirement to keep information about clients confidential.

26 The duty of psychologists to maintain confidentiality under these Standards does not relieve any psychologist of the obligation to release confidential information in accordance with a court order or federal or provincial laws, rules or regulations.

27(1) When a Psychologist has control of a client's file, he/she shall provide access to, and shall, within 30 days of a request, permit the reproduction and release of confidential information about a client to the

client unless there is a significant likelihood that disclosure of the information would cause

- (a) a substantial adverse effect on the client's physical, mental or emotional health, or
 - (b) harm to a third party.
- (2) When a psychologist provides access to, or reproduction and release of confidential information about a client to the client, he/she shall take necessary measures to ensure that no confidential information is divulged about a third party.

Dual Relationships Standards of Practice (2005):

15(1) Psychologists shall not undertake or continue a professional relationship when they are aware or should be aware that they face a potentially harmful conflict of interest as a result of a current or previous professional, familial, social, sexual, emotional, financial, supervisory, political, administrative or legal relationship with the client or a relevant person associated with or related to the client.

Supervision Standards of Practice (2005):

16 Psychologists shall exercise appropriate supervision over supervisees, as set forth in the guidelines, rules and regulations of the College.

Reporting a Colleague Standards of Practice (2005):

44 In the event of awareness of an illegal practice or an apparent violation of these standards, psychologists are obligated to take action, including, if necessary, formal reporting to address or remedy the practice or violation, and any action must be undertaken within the bounds of confidentiality and respect, to the extent possible.

THE INTERVIEWS:

- Ms. [REDACTED] was offered a meeting via online video (e.g., Zoom) or a face-to-face meeting. She replied by email and declined indicating that her written submissions were adequate. While she offered to answer any questions via email, this investigation declined to engage in an email exchange as it could not be determined that Ms. [REDACTED] was author of her email communications.
 - Ms. [REDACTED] was asked via email if she had written the complaint and she indicated that she was the author. When asked about whether she had obtained help from a mental health professional in writing the complaint she indicated she had assistance from several individuals including:
 - Dr. [REDACTED]

- Dr. [REDACTED]
 - Dr. [REDACTED]
 - Dr. Joana Dabrowski
 - Dr. [REDACTED]
- Dr. Mandel was interviewed at his office on December 15, 2021, accompanied by Ms. Shayla Stein, legal counsel. Dr. Mandel answered all questions without difficulty and appeared to be cooperative.

THE PSYCHOLOGIST AND THE CLIENT

Dr. Allan Mandel is a Registered Psychologist #1881. The third-party client is Southeast Kootenay School District #5. Ms. [REDACTED] was initially assessed at "Mandel and Associates", by Dr. Mary Westcott, at the request of her employer, Southeast School District #5.

FINDINGS

ALLEGATION #1 - DR. MANDEL FAILED TO OBTAIN INFORMED CONSENT.

Pertinent Standards: Consent

See: College of Alberta Psychologists: An informed consent, hallucinations of an informed consent, and/or sweeping things under the rug (<https://sd5bc.info>)

Ms. [REDACTED] alleged that Dr. Mandel failed to obtain consent to discuss his findings with School Division #5 (the Client).

Dr. Mandel provided a copy of the Mandel and Associates consent form signed on July 29, 2010 by Ms. [REDACTED] allowing Dr. Westcott to conduct a vocational and psychological/disability assessment and to give the report to her employer.

Dr. Mandel did not engage in a patient relationship with Ms. [REDACTED] as he did not assess Ms. [REDACTED] but assigned the case in his office to Dr. Westcott. As Dr. Westcott was away on maternity leave at the time SD5 requested assistance concerning his willingness to suggest an independent psychologist to review three assessment, he spoke with Ms. Cynthia Stuart, based on Ms. [REDACTED] signed consent to release information to SD5.

ALLEGATION #2 - DR. MANDEL LACKS SUFFICIENT PROFESSIONAL KNOWLEDGE AND LACKS COMPETENCE.

Pertinent Standards: Competence

Ms. [REDACTED] alleges Dr. Mandel lacked sufficient professional knowledge, citing Standard of Practice 5.5, which does not exist in the 2005 Standards in place at the time. The 2019 Standards of Practice is apparently the document referenced and Section 5.5 reads “A psychologist shall not render an opinion about a person that has, or could have, implications for that person’s rights or personal interests without having direct and substantial professional contact with that person, including and informed consent process and formal or general assessment.”

The complaint refers to Dr. Mandel providing a remark to School Division #5 that Ms. [REDACTED] appears to be “shopping around” for a favourable assessment. Dr. Mandel acknowledged that he made that remark and that was his opinion at the time. This occurred after Ms. [REDACTED] sought another professional opinion, and subsequently sought opinions of others.

During this investigation’s interview with Dr. Mandel, he acknowledged that clients may seek other professionals’ opinions (i.e., shopping around) if an original opinion isn’t shared by the client. He noted that he has seen this happen frequently, and it is far from unusual to have two or more “experts” on opposite sides of findings.

Regarding competence, Ms. [REDACTED] relies on Standard 5.1 and 5.2 of the Standards of Practice (2013 and/or 2019) which were not in effect at the time of the assessment.

Regardless, Dr. Mandel provided a copy of his 21 -page Curriculum Vitae which provides evidence of his training and experience in this area.

ALLEGATION #3 - DR. MANDEL FAILED TO MAINTAIN RECORDS AND PROVIDE THOSE TO HIS CLIENT

Pertinent Standards: Records Maintenance

Ms. [REDACTED] alleged that Dr. Mandel failed to properly maintain records and then failed to release those records to her, upon request. In particular, he *“failed to maintain and to preserve a record of his ex-parte, without consent, communication with Ms. Stuart about Ms. [REDACTED] and about what to do with Dr. [REDACTED] Report.”*

Dr. Mandel communicated with Ms. Stuart given his belief that he had consent to do so (see Allegation #1).

Dr. Mandel addresses these allegations on pages 6 and 7 of his response, and cites Standard 11(1) of the 2005 edition, in effect at the time, which does not require documentation of every detail into a file. He also indicates *“When Dr. [REDACTED] attended with Ms. [REDACTED] on August 27, 2018 and requested a copy of her file, I did not withhold any information from Ms. [REDACTED] that she was entitled to.”*

Some of the concerns of Ms. [REDACTED] was that Dr. Mandel would not provide copyrighted test protocols to her and her agent, Dr. [REDACTED] as per College guidelines. Other than restricting Ms. [REDACTED] access to test protocols, he provided all other information.

ALLEGATION #4 - DR. MANDEL ENGAGED IN DUAL/MULTIPLE RELATIONSHIPS.

Pertinent Standards: Dual Relationships

Dr. Westcott at the time was on maternity leave, and as her supervisor, Dr. Mandel did the review, in which Ms. [REDACTED] claims bias. Dr. Mandel was Dr. Westcott's supervisor and responsible for her work. Dr. Mandel was also the "President and owner of Mandel & Associates Ltd. with a number of staff psychologists and neuropsychologists and, thus, had both reputational and financial interests in discrediting Dr. [REDACTED] Report and upholding the findings of Dr. Westcott's Report."

She also claimed there was a friendship with Dr. Suffield, and that is why he suggested Dr. Suffield to conduct a review of the entire matter.

Dr. Mandel replied to these allegations on pages 7 and 8 of his response documents, and he reported that he recommended three psychologists who he felt could conduct this review. Ms. Stuart's note confirmed the name of three psychologists, one of whom was Dr. Suffield. Dr. Mandel reported that he left it to SD5 to make their own choice.

Dr. Mandel confirmed he had previously socialized, and on a number of occasions, worked with Dr. Suffield, but their friendship ended in the late 1990's. Both Dr. Mandel and Dr. Suffield confirmed this timeline. Dr. Mandel confirmed he has no personal or business relationships with any of the three psychologists, although he noted that Dr. Suffield used an office in the same building complex as Mandel & Associates.

ALLEGATION #5 - DR. MANDEL FAILED TO PROVIDE ADEQUATE SUPERVISION.

Pertinent Standards: Supervision

See: Using outdated, obsolete, and irrelevant test data to make disparaging statements about a client's IQ, intelligence, ... (<https://sd5bc.info>)

Ms. [REDACTED] alleged that Dr. Mandel failed to provide adequate supervision of Dr. Westcott.

Dr. Mandel replied to the allegation by Ms. [REDACTED] of failure to provide adequate supervision to Dr. Westcott and staff at pages 8 and 9 of his response. In his response he listed several strategies he employed, and still does, to supervise his staff and employees. He also provided information as to his training methods used with Dr.

See: How many licensed psychologists does it take to locate a correct test manual? (<https://sd5bc.info>)

Westcott, and indicated she was promoted to a supervisory position within the firm a few years ago due to her expertise.

Ms. [REDACTED] alleges that Dr. Westcott inappropriately used the psychological tests in formulating his professional opinion of her. And, in this context, Ms. [REDACTED] believes that Dr. Mandel erred by not correcting Dr. Westcott during his supervision of her.

This matter has been extensively reviewed by three psychologists and two academics who have been both involved in this matter and been involved in Ms. [REDACTED] British Columbia Human Rights case.

- Dr. Braxton Suffield, Psychologist, was hired by the SD5 to review Dr. Kettner's psychological assessment report, Dr. Westcott's psychological assessment report and Dr. [REDACTED] report. Dr. [REDACTED] was hired by Ms. [REDACTED] to conduct an assessment after she was assessed by Dr. Westcott and Dr. Kettner.
- Dr. [REDACTED] Psychologist, was hired by Dr. [REDACTED] Professor, [REDACTED] and Ms. [REDACTED] advocate, to conduct another review of the reports of Dr. Westcott, Dr. Suffield and Dr. Kettner.
- Dr. [REDACTED] Ms. [REDACTED] Advocate, also produced a report reviewing Dr. Westcott's report (This PDF was provided to the College under a separate upload as it was too large to add to his report).
- Dr. [REDACTED] Professor [REDACTED] also provided a comment on the work of Drs. Westcott and Suffield (Appendix A).
- Dr. Mandel, in his written response to his complaint by Ms. [REDACTED] responded to the allegations of inappropriate use of psychological tests.

This investigation did not acquire any new information pertaining to Dr. Westcott's use of the WAIS-R, the GATB, or the MMPI-R.

These statistic and psychometric arguments along with the appropriateness of the test usage and interpretation is a highly complex and divisive issue that has been in both the academic literature and before the courts. An analysis of this complex issue is beyond the expertise of this investigation.

ALLEGATION #6 - DR. MANDEL FAILED TO REPORT A COLLEAGUE TO THE COLLEGE OF ALBERTA PSYCHOLOGISTS.

Pertinent Standards: Reporting a Colleague

Pertinent Ethics: Responsibility of the Individual Psychologist

See: Errors, falsehoods, and plagiarism in scoring and interpreting psychological tests: Minimally competent conduct? (<https://sd5bc.info>)

Ms. [REDACTED] asserted that Dr. Mandel was obligated to report Dr. Westcott for a breach of the 2019 Standard 17.1, which was not in effect at the time of the assessment. Ms. [REDACTED] asserts that since she believes that Dr. Westcott was acting inappropriately, Dr. Mandel should have noted this and reported Dr. Westcott to the College.

Dr. Mandel maintained he had no obligation or responsibility to report Dr. Westcott, (see page 9 of his response), in which he asserted *“there was nothing to suggest that Dr. Westcott had breached any Standards of Practice in conducting her assessment. I maintain that her report was completed in keeping with the Standards of Practice, and I deny that she had to be reported to the College.”*

Moreover, neither Dr. Suffield nor Dr. [REDACTED] believed that Dr. Westcott had engaged in misconduct that would require a report to the College.

ALLEGATION #7 - DR. MANDEL FAILED TO DEMONSTRATE DIVERSITY AND CULTURAL COMPETENCE.

Ms. [REDACTED] relies on Standard 19.1 of the 2019 Standards of Practice as the basis for this allegation, which were not in effect at the time. She alleged that “Dr. Mandel engaged in a conduct that promoted unjust discrimination that was prejudicial to Ms. [REDACTED] because of her average mental ability relative to the same aged Canadians. Moreover, she alleged that Dr. Mandel assisted SD5 to pursue their attempt to keep Ms. [REDACTED] from continuing her chosen career of elementary school teacher and did so with full knowledge that Ms. [REDACTED] intelligence and cognitive abilities were in average range relative to the same aged Canadians.

Ms. [REDACTED] further alleged that by claiming that Dr. Westcott’s findings were ‘very well reasoned and based on objective findings’, Dr. Mandel endorsed Dr. Westcott’s opinions that Ms. [REDACTED] a Canadian woman of average intelligence and cognitive abilities, was mentally disabled, was to pursue long-term disability, and was to pursue Canadian Pension Plan Disability Benefits.

Dr. Mandel replied on page 9 of his response and denied that he discriminated against Ms. [REDACTED] in any capacity. He replied that he acted ethically and in accordance with the Canadian Code of Ethics for Psychologists by advising Ms. Stuart to seek an independent assessment of both Dr. Westcott and Dr. [REDACTED] reports.”

It should be noted that Dr. Westcott’s report which Dr. Mandel supported makes no reference to Ms. [REDACTED] being “mentally disabled” and Dr. Westcott stated *“It is recommended that Ms. [REDACTED] explore financial supports available to individuals with disabilities as deemed appropriate. It is thought that she may qualify for long-term disability through her employers given the chronic and likely progressive nature of her underlying medical condition. She may also wish to explore her eligibility for Canada Pension Plan Disability Benefits. It is likely that she may qualify for such supports given [REDACTED] and her inability to return to work. More information about this program can be found on the Service Canada website (www.servicecanada.gc.ca).”*

ALLEGATION #8 - DR. MANDEL VIOLATED NUMEROUS ARTICLES OF THE CANADIAN CODE OF ETHICS (FOURTH EDITION) FOR PSYCHOLOGISTS.

Ms. [REDACTED] alleged that Dr. Mandel violated other articles of the Canadian Code of Ethics and provided no additional evidence pertinent to this allegation.

The Canadian Code of Ethics (third edition) was active at time of Dr. Westcott's assessment and the fourth edition active during subsequent interactions with Dr. [REDACTED] and Ms. [REDACTED].

No other evidence was apparent to this investigation concerning other areas of potential misconduct.

End

Thank you for the opportunity to review this matter. I hope this assists you in your deliberations about Ms. [REDACTED] allegations against Dr. Mandel.

Bob Acton, Ph.D., R.Psych.