

## COMPLAINT REVIEW COMMITTEE DECISION

### IN THE MATTER OF THE DISMISSAL OF THE COMPLAINT BY ██████████ REGARDING THE CONDUCT OF DR. J. BRAXTON SUFFIELD WHILE AN INVESTIGATED MEMBER OF THE COLLEGE OF ALBERTA PSYCHOLOGISTS

A request for a review of the dismissal of a complaint against Dr. J. Braxton Suffield (the “**Investigated Member**”) was made by ██████████ (the “**Complainant**”) by way of a letter received by the College of Alberta Psychologists (“**College**”) on October 27, 2022. The review is pursuant to section 68 of the *Health Professions Act* (“**HPA**”). The Complaint Review Committee (“**CRC**”) of the College met on August 14, 2023, by video conference to review the dismissal of the complaint.

Members of the CRC are:

Dr. Lorraine Breault, panel chair and registered psychologist  
Dr. Ali Al-Asadi, panel member and registered psychologist  
Mr. D ██████████ panel member and public member  
Ms. E ██████████ panel member and public member

Independent legal counsel to the CRC is Julie Gagnon

The CRC reviewed the following documents:

1. Letter of complaint of the Complainant, with attachments, received by the College on March 8, 2021;
2. Additional letter of complaint of the Complainant, received by the College on September 23, 2021;
3. Additional letter of complaint of the Complainant, received by the College on October 6, 2021;
4. Additional email received by the College on October 6, 2021 – October 14 to 21, 2021;
5. Response of the Investigated Member received by the College on May 16, 2021;
6. Additional response of the Investigated Member received by the College on May 24, 2021;
7. Supplemental response of the Investigated Member received by the College on November 1, 2021;
8. Curriculum Vitae of the Investigated Member;
9. Final Investigation Report received by the College on March 4, 2022;
10. Letter from Dr. Troy Janzen, Complaints Director, to the Complainant dismissing the complaint, dated September 27, 2022;
11. Redacted Report provided to the Complainant;
12. The Complainant’s request for review dated October 27, 2022;

13. Letter from counsel for the Investigated Member dated November 23, 2022, requesting that the review proceed by written submissions;
14. Email dated November 30, 2022 from the Complainant requesting that the review proceed by written submissions;
15. Cover letter from the Complaints Director dated December 7, 2022 to the Investigated Member and Report to the Investigated Member;
16. Cover letter from the Complaints Director dated December 7, 2022 to the Complainant and Redacted Report of the Complainant;
17. Report to the CRC from the Complaints Director dated December 7, 2022;
18. Letter dated January 12, 2023 from counsel for the Investigated Member regarding Complainant's request for extension of time;
19. Written Submissions of the Complainant's Agent regarding an extension of time received by the College on January 13, 2023;
20. Addition written submissions of the Complainant's Agent regarding an extension of time received by the College on January 20, 2023;
21. Report to the CRC from the Complaints Director re Corrections to the CD Report dated February 2, 2023, enclosing:
  - a. The Complainant's Complaint Reporting form dated December 30, 2021 with attachments;
  - b. Letter to the Investigator dated May 16, 2022 from counsel for the Investigated Member with attachments;
  - c. Review of Psychological Reports on the Complainant by Dr. Bob Uttli;
  - d. Poster "Average university students' IQ is no longer above average but merely average".
22. Written Submissions of the Complainant received by the College on June 4, 2023;
23. Written Submissions of the Investigated Member received by the College on July 5, 2023.

**Background:**

The Complainant made a complaint to the College against the Investigated Member. The Complaints Director dismissed the complaint by way of a letter dated September 27, 2022. The Complainant has requested a review of the decision to dismiss the complaint. The Complainant is assisted by a representative (the "Agent").

The Complainant and Investigated Member agreed the review would proceed by way of written submissions. The CRC agreed with this proposed procedure and timelines were set for the written submissions.

The Agent requested an additional 90 days beyond the timeline provided by the CRC to provide written submissions. Counsel for the Investigated Member objected to the request. The CRC considered the request and the objection by the Investigated Member and determined that the additional time for submissions would be granted. Both the Complainant and the Investigated Member provided written submissions.

The CRC has been provided with voluminous materials, consisting of several hundred pages of materials. While not every issue raised by the Complainant is necessarily addressed in this written decision, the CRC has reviewed all the materials provided and considered the Complainant's reasons for requesting the review and written submissions.

The Complainant has advanced complaints against two other regulated members. There is significant overlap in the issues and arguments advanced by the Complainant in the various complaints. While the CRC has reviewed each decision and request for review with respect only to merits of the issues regarding this Investigated Member, this overlap has resulted in some commonality of the reasons of the CRC as set out in this decision.

#### **Complaints Director's Dismissal of the Complaint:**

The Complainant was required by her employer, School District No. 5, to participate in a number of assessments, after being placed on leave. The assessments were in relation to the Complainant's ability to perform her role as an elementary school teacher. The assessments contained variable findings and the Investigated Member was retained by School District No. 5 to provide an independent expert opinion regarding the multiple expert assessments completed regarding the Complainant.

The decision of the Complaints Director to dismiss the complaint is dated September 27, 2022. In considering the matter, the Complaints Director considered the following allegations:

1. Did the Investigated Member lack objectivity or demonstrate bias in providing his expert opinion about the Complainant?
2. Did the Investigated Member fail to achieve the Complainant's informed consent for the work he completed?
3. Did the Investigated Member express opinions about the Complainant without having sufficient professional knowledge of the Complainant?
4. Did the Investigated Member fail to keep adequate records of his service?
5. Did the Investigated Member fail to demonstrate minimum competence to engage in this professional activity with you?

The Complaints Director considered a number of possibly relevant principles of the *Canadian Code of Ethics for Psychologists – Third Edition* (2000) (the "**2000 Code of Ethics**") and the *Standards of Practice* (2005) (the "**2005 Standards**") which were in effect at the relevant time.

#### **Submissions of the Complainant:**

The Complainant, through her Agent, sets out the following in her request for a review:

1. The Complaints Director failed to address, consider, and make a decision about the vast majority of the specific detailed allegations of unprofessional conduct in the complaints;
2. The Complaints Director used outdated standards of practice and outdated code of ethics to dismiss the allegations;
3. The Complaints Director failed to examine the facts, misapprehended facts, and dismissed allegations based on his misapprehension of clear and patently obvious facts;
4. The Complaints Director accepted the Investigated Member's false submissions as true, and failed to verify them and dismissed the allegations based on false submissions by the Investigated Member;
5. The Complaints Director failed to apply various applicable standards of practice and Code of Ethics;
6. The Complaints Director unreasonably misapprehended facts and failed to apply the Standards of Practice and Code of Ethics to those facts when he dismissed the allegations that the Investigated Member failed to obtain informed continuing consent for his various actions and numerous opinions, he disseminated about her;
7. The Complaints Director dismissed allegations that the Investigated Member failed to criticize that another psychologist (Dr. MW) misused norm-referenced testing;
8. The Complaints Director dismissed allegations that the Investigated Member lacked minimum competence;
9. The Complaints Director dismissed allegations that the Investigated Member misused and improperly relied on obsolete irrelevant test data;
10. The Complaints Director failed to understand the Flynn Effect;
11. The Complaints Director unreasonably dismissed allegations that the Investigated Member swore a false affidavit;
12. The Complaints Director unreasonably dismissed allegations that the Investigated Member took on multiple dual roles and placed himself in a conflict of interest.

The Complainant takes the position that her complaint against two other regulated members, Dr. MW and Dr. AM apply here. The Complainant submits that three psychologists were interdependent, not independent.

The Complainant submits that the Complaints Director summarized 40 detailed allegations from four complaints into 5 allegations, which the Complainant states are non-specific, not dated, and vague. The Complainant states that the Complaints Director has significantly misrepresented the Complainant's allegations.

The Complainant submits that the Complaints Director:

- 1) Failed to determine facts;

- 2) Failed to resolve conflicts in evidence;
- 3) Relied on patently false submissions made to him by the investigated Member and others;
- 4) Made no attempt to verify statements by the Investigated Member and others;
- 5) Displayed a lack of knowledge and skill to understand and to resolve basic psychometric, normative and assessment allegations;
- 6) Made numerous false statements; and
- 7) Lacked the competence to perform his legislated duties and to enforce the legislation.

The Complainant submits that the Investigated Member relied on irrelevant data and outdated tests and compared the Complainant's performance on a different test to outdated and irrelevant data. The Complainant criticizes the investigator and believes he lacked minimum competence.

The Complainant takes the position that the CRC is required to examine detailed allegations in the complaint, determine the facts, resolve the conflicts in evidence, verify the submissions made and apply the legislation.

#### **Submissions of the Investigated Member:**

The Investigated Member points to the findings of the Complaints Director and notes that the decision to dismiss the complaint is reasonable.

The Investigated Member notes that the Complainant's Agent attacks the investigator and the Complaints Director as lacking competence and states that the fact that the Agent, or another professional, disagrees with the opinions of the Investigated Member does not equate to unprofessional conduct on the part of the Investigated Member. The Investigated Member takes the position that the Agent's submissions make it clear that he believes that it was College's duty to "litigate" differences of opinion, and that any opinion other than his own is evidence of "incompetence".

The Investigated Member notes that the materials submitted by the Agent as part of the CRC review do not raise new issues and do not provide the basis upon which a finding can be made that the decision of the Complaints Director was unreasonable.

The Investigated Member's submissions note that the disciplinary process is a matter between the College and the Investigated Member. The Agent is not a party to the disciplinary process and is not entitled to dictate the complaint process. The rights of procedural fairness do not extend to the merits of the complaint or challenging the merits of the decision. The purpose of the CRC is to determine whether the decision was reasonable.

The Investigated Member points to the Court of King's Bench decision in *Tran v College of Physicians and Surgeons of Alberta*, 2017 ABQB 337, para. 23, as follows:

A person who complains to a professional regulatory body has the same interest as any member of the public: an interest in ensuring that members of the profession meet the standards set by the governing body. It is the role and the obligation of the professional regulator, not the complainant, to ensure that standard is met.

The Investigated Member also cites the Alberta Court of Appeal decision in *Makis v. College of Physicians and Surgeons of Alberta (Complaint Review Committee)*, 2020 ABCA 451.

The Investigated Member notes that the Complaints Director's role is to ensure that the Investigated Member is meeting the College's Standards of Practice and Code of Ethics and not to appease a person who complains or to litigate differences of opinion. The Complaints Director clearly turned his mind to the issues raised by the Complainant. In making the Decisions, the Complaints Director correctly considered the relevant provisions of the College's Standards of Practice and Code of Ethics. Further, he carefully considered the responses of the Investigated Member and the Investigation Report. The Complaints Director explained in his decision that the thorough and extensive investigation demonstrated insufficient or no evidence that the Investigated Member engaged in unprofessional conduct.

The Investigated Member takes the position that the standard of review in this matter is reasonableness. The standard of reasonableness shows deference to the first instance decision-maker. The HPA gives the Complaints Director broad discretion in dealing with complaints. The decision will be reasonable if it falls within a range of possible, acceptable outcomes that are defensible in terms of the facts and the law. No presumption against reasonableness arises simply because something more might have been said in the decision.

Further, in assessing reasonableness, the question is not whether the CRC would have reached the same conclusion or articulated the same reasons. If the decision was made based on sufficient investigation and consideration of the issues raised, and falls within the range of acceptable outcomes, then the decision is reasonable and cannot be disturbed.

#### **Decision of the CRC:**

Pursuant to section 68(5) of the HPA, the CRC, following a review may:

- a. refer the matter to the Hearings Director for a hearing;
- b. direct the Complaints Director to conduct or to appoint an investigator to conduct a further investigation and prepare a further report and submit it to the CRC for its consideration before acting under clause (a) or (c); or
- c. confirm that the complaint is dismissed if, in the opinion of the CRC, the complaint is trivial or vexatious or there is insufficient or no evidence of unprofessional conduct.

Ultimately the CRC will dismiss the complaint or refer it to a hearing. If the CRC directs a further investigation under section 68(5)(b) of the HPA, then the further investigation report will be provided to the CRC and the CRC must determine whether or not to refer the matter to a hearing or confirm that the complaint is dismissed.

In reaching its decision, the CRC applied a standard of review of reasonableness. A decision will be reasonable if it falls within a range of possible, acceptable outcomes which are defensible in terms of the facts and the law.

The CRC confirms the decision of the Complaints Director to dismiss the complaint on the basis that there is insufficient evidence of unprofessional conduct.

**Reasons for the decision of the CRC:**

The CRC has reviewed all the materials provided in the review and considered the submissions of the parties. The CRC was provided with voluminous materials as part of the review and has carefully reviewed these materials. However, not every submission is addressed in this decision. While not every submission is specifically addressed, the CRC did consider the entire submissions advanced on behalf of the Complainant in reaching its decision.

The Complainant takes the position that the CRC is required to examine detailed allegations in the complaint and determine the facts, resolve the conflicts in evidence, verify the submissions made and apply the legislation. However, the CRC is not established to resolve conflicts in evidence or verify submissions made by the parties. As made clear by section 68(5) of the HPA, the role of the CRC is to review the decision of the Complaints Director and determine if further investigation is required, or if the complaint should be dismissed or referred to a hearing.

The CRC considered that its role is not to engage in a fact-finding mission or to review the decision of the Complaints Director on the standard of correctness. Under a standard of correctness, no deference would be given to the Complaints Director's decision. That is not the standard applicable in a review by the CRC. The standard of review is reasonableness. The CRC reviews the decision of the Complaints Director and considers the submissions of the parties to determine if the decision of the Complaints Director is reasonable, in light of the information available to the Complaints Director. In addition, if the CRC believes that information should have been obtained as part of the investigation, it can direct a further investigation.

While the Complainant's Agent notes that he was not interviewed as part of the investigation, the CRC found this to be appropriate. The Complainant's Agent does not have firsthand knowledge of the facts. He is a representative and advocate for the Complainant. For the same reasons that the Investigated Member's counsel was not interviewed, it would not be appropriate to interview the Complainant's Agent. In addition, neither the Complainant nor her Agent has the right to dictate how an investigation is conducted.

As noted by the Alberta Court of Appeal in *Makis v. College of Physicians and Surgeons of Alberta (Complaint Review Committee)*, 2020 ABCA 451:

[6] A complainant should generally be given a reasonable opportunity to provide input. That opportunity would often be utilized by the complainant when the complaint is filed. In this case, the appellant provided extensive details in his complaints, and included backup documentation. By the time the review was done by the Complaint Review Committee, the appellant had provided over 900 pages of information. There is no indication on this record that the appellant was not given a fair opportunity to make his case on the review of the dismissal of his complaint.

[7] The requirements for a fair procedure vary with the context. The complainant in a professional disciplinary matter is only entitled to a low level of procedural fairness: *Mitten v College of Alberta Psychologists*, 2010 ABCA 159 at paras. 16-17, 26 Alta LR (5th) 102. That does not include the right to an oral hearing: *Tran v College of Physicians and Surgeons of Alberta, Complaint Review Committee*, 2018 ABCA 95 at para. 8, 66 Alta LR (6th) 30. The Complaint Review Committee was entitled to conduct the review based on the extensive written material provided by the appellant. The procedure met the level of fairness required by law.

[8] In this context, the right to procedural fairness does not extend to the merits of the complaint: *Mitten* at para. 18(d). In a professional disciplinary matter, the complainant is not entitled to dictate whether an investigation should be conducted, or how it should be conducted. The complainant is not entitled to challenge the merits of the decision. The appellant obviously disagrees with the conclusion that his complaints were without merit, but his complaints were dealt with in a procedurally fair manner.

The CRC considered whether further investigation or an expert report should have been obtained. The Complaints Director provided a detailed analysis of the matter. The CRC does not view that it will benefit from a further investigation or expert report prior to reaching its decision. The investigator's role is to collect information. The investigator does not need to be an expert in the subject matter. The Complaints Director did a thorough review of all of the information, including the test scores. The Complaints Director was able to assess the issues raised without the need for an expert report. There is no requirement that an expert report be obtained.

The CRC did not identify additional information that should have been gathered as part of the investigation. The CRC determined that it would not direct a further investigation pursuant to section 68(5)(b) of the HPA. As such, the CRC is left to determine whether to refer the matter to a hearing under section 68(5)(a) of the HPA or confirm that the complaint is dismissed pursuant to section 68(5)(c) of the HPA.

The CRC does not ask itself what it would have done if it was the Complaint's Director. That is not the role of the CRC. Rather, the CRC's role is to review the decision of the Complaints Director and determine if, on the basis of the information before the Complaints Director, the decision to dismiss was an acceptable outcome. If the decision is intelligible, transparent and justified on the basis of the facts and the law, then it will meet the threshold of reasonableness.

The CRC considered the letter of dismissal of the Complaints Director. The Complaints Director reviewed the complaint and addressed five issues. The Complainant takes issue with how the Complaints Director grouped the concerns raised by the Complainant. The Complaints Director has the discretion in reviewing a complaint to review and address allegations in the manner the Complaints Director determines is most appropriate. The allegations made were numerous and in some instances vague. It was open to the Complaints Director to group these into categories. The Complaints Director provided a detailed and thorough analysis of each of the issues. The CRC found that the Complaints Director grouped the issues in a logical and systematic way. The Complaints Director's approach to grouping the complaints into five categories was reasonable.

The Complaints Director gave detailed and specific reasons for the dismissal of the various complaints. The Complaints Director considered several aspects regarding allegations of bias or lack of objectivity by the Investigated Member. The Complaints Director considered that the Investigated Member consulted with a former staff person at the College and a practice advisor. The Complaints Director also found that the Investigated Member was applying his own critical thinking. The Complaints Director noted that when a psychologist is hired by a third party to provide an assessment, they are hired for an opinion but not what opinion they should hold. The Investigated Member took extra steps to hear the Complainant's perspective, to include her support person and to consider other background data in forming his opinion.

The Complaints Director provided detailed reasons for finding that there was sufficient informed consent, including noting that there were signed informed consent documents in the record, and that the Investigated Member's records met the standards.



The Complaints Director considered whether the Investigated Member had sufficient knowledge of the Complainant prior to expressing an opinion. The Complaints Director noted that the Investigated Member met the Standards of Practice in place at the relevant time. Members are held to standards in place at the time, and not standards enacted following the fact. This conclusion is reasonable. In addition, the Complaints Director provided a detailed analysis, consistent of several reasons why he was dismissing the allegations that the Investigated Member failed to demonstrate the minimum competence.

The decision of the Complaints Director is thorough and well reasoned. The CRC finds that the decision of the Complaints Director is reasonable. There is insufficient evidence to suggest that the Investigated Member breached the 2000 Code of Ethics or the 2005 Standards. There is insufficient evidence that the Investigated Member showed a lack of knowledge, skill or judgment in the provision of professional services. The Complaints Director obtained an investigation report and did a thorough review of the information regarding this matter. The information relied on by the Complaints Director to dismiss the Complaint was appropriate and complete.

The CRC was very mindful of its role to review the Complaints Director's decision for reasonableness and not for correctness. The CRC is also not a body that will engage in resolving conflicts in the evidence. The CRC was careful to consider the submissions made on behalf of the Complainant, noting the difference between facts and opinions. The submissions on behalf of the Complainant contain the opinion of the Agent regarding a number of issues; however, the opinion of the Agent regarding the competence and conduct of the Investigated Member is not a basis for intervening in the decision of the Complaints Director. Opinions vary and interpretation of tests and data may vary among professionals. That variation or divergence of professional opinion does not mean there is incompetence by one group of professionals. Psychologists use their knowledge and training in terms of test selection, interpretation, and rendering opinions. Competent psychologists may differ or disagree in their opinions.

The CRC considered the many technical arguments (for example, the Flynn Effect, Gottfredson's figures, and norm- vs criterion-referenced) advanced by the Agent as a cause and effect. The Agent takes the position that things are black or white. That is, the Agent argues that if the assessment is not done in a certain manner and interpreted in a certain way, then it is wrong. These technical arguments are presented and debated in academic settings and journal articles for consideration by professionals. In practice, professionals are called on to exercise their professional judgment. So long as this is done in a manner that meets the minimum standards, then that is sufficient for the purposes of the regulatory context and the legislation, including the HPA.

Also, through her Agent, the Complainant advances the technical arguments as noted above and takes the position that someone who does not agree with the Complainant's position is incompetent. Those who do not embrace, consider, or interpret the technical arguments in a specific manner advanced by the Complainant are viewed as incompetent. The written submissions of the Complainant advance opinions about the competence of the Investigated Member, the other psychologists complained of, the investigator, the Complaints Director and the CRC. However, these are the opinions of the Complainant's Agent. The CRC's role is to look at the decision of the Complaints Director and determine if it is reasonable. Whether the Agent views the various participants in the process as incompetent is not relevant to the ultimate question before the CRC.

Professionals will reach opinions and opinions may vary among professionals. That variation does not mean that there is incompetence. Professionals may exercise appropriate skill and judgment and comply with the Code of Ethics and Standards of Practice and still reach an opinion that will differ from that of their colleagues. Psychologists use their knowledge and training in terms of test selection, interpretation,

and rendering opinions that will fall within a spectrum. A difference of opinion is not evidence of unprofessional conduct. Opinions will be reached based on a review of a multitude of tests and a number of different sources of data. In a high-stakes assessment, the outcome may be very difficult for the person being assessed. There is room for disagreement with the outcome. However, if another psychologist acting reasonably would have done similar testing and if the opinion reached is justified based on the psychologist's review and assessment of the various data sources, then the conduct is not inappropriate or unprofessional.

The CRC noted that the request for review and written submissions of the Agent provide little substantive information and do not demonstrate that the Complaints Director's conclusions are unreasonable. The Complainant advances speculative propositions (for example that secretive communications occurred) that are not substantiated by fact. The written submissions of the Complainant advance accusations and conjecture and the submissions are diluted with irrelevant issues. The Complainant through her Agent advances conclusions that are not supported by the information before the CRC.

The CRC finds that the decision of the Complaints Director is reasonable. The Complaints Director obtained an investigation report, which was thorough, and performed a detailed review. The information relied on by the Complaints Director to dismiss the Complaint was appropriate and complete.

In considering what action to take, the CRC has specifically considered whether there is sufficient evidence that the Investigated Member has engaged in "unprofessional conduct" to warrant a hearing by a Hearing Tribunal. The term "unprofessional conduct" is defined in section 1(1)(pp) of the *Health Professions Act*.

In particular the CRC considered whether there is sufficient evidence of the conduct described in the following sections of the definition of unprofessional conduct:

- a. lack of knowledge, skill or judgment (section 1(1)(pp)(i)); and
- b. contravention of the HPA, the code of ethics, or standards of practice (section 1(1)(pp)(ii)).

The Complaints Director's decision is reasonable. There is insufficient evidence that the Investigated Member has shown a lack of knowledge, skill or judgment in the professional services he provided or that his conduct breached the HPA, the 2000 Code of Ethics or the 2005 Standards. There is insufficient evidence of unprofessional conduct by the Investigated Member.

For the reasons set out above, the CRC hereby confirms the decision of the Complaints Director to dismiss the complaint.

DATED this 12<sup>th</sup> day of March, 2024.

Signed by the Chair on behalf of the CRC



Dr. Lorraine Breault, Chair