

Alberta Alpine Complaint, Case 78498 Before Discipline Panel: Brad Areheart

PARTIES TO THE DISPUTE

Complainant: Ainsley Gray, Parent of Former Red Deer Ski Club Skier
(on behalf of Jessa Davidson), *self-represented*

Respondent: Red Deer Ski Club,
represented by Michael C. Kwiatkowski, McLeod Law LLP

STATEMENT OF COMPLAINT

Ms. Gray's child, Jessa Davidson ("Jessa" or "the student"), was a skier during the 2023/24 season with Red Deer Ski Club ("the Club"). Jessa is autistic. During the 23-24 season, Complainant said that student was bullied and harassed by coaches in the Club.

After that season, the bylaws were changed so that anyone who wants to join the Club must be approved by a vote of the board.

On August 16, 2024, Complainant applied on behalf of her student for the 2024/25 ski season. RDS 40.06-.14.

On August 29, 2024, Ms. Corpateux (the Registrar) wrote to Complainant, Ainsley Gray, requesting a report with respect to the student's diagnosis. RDS 28. She observed that the Club wanted to "provide Jessa with a rewarding and positive experience" and requested a copy of a "psychoeducational/neuropsychological assessment; behavioral or adaptive behavioral assessment for Jessa." According to Darcy Mykytyshyn, President of the Club, this request for an assessment came from the Board and was based upon a recommendation from a clinical therapist. Mykytyshyn Test. At 2:14.

Mr. Mykytyshyn testified that the information sought was intended to elicit medical information Ms. Gray may already have in her possession. Mr. Mykytyshyn testified that more information was sought because the approach taken by the club in the past had not been successful in helping Jessa thrive. There had been "confrontation" and "conflict" around her involvement in the Club.

On August 30, 2024, Ms. Gray responded by email that she could not provide the information requested but would provide a different assessment. RDS 28.02.

On September 3, 2024, Ms. Gray responded again by email that she had spoken to the president of Alberta Alpine. She complained that the pending request was "overboard and borderline abusive." RDS 54.

On September 5, 2024, the Registrar sent a follow-up email clarifying a request for information. RDS 28.02. She noted that the Club was not requesting a new assessment

and would “accept the recommended accommodations offered by the clinician who completed the most recent version of that assessment for Jessa.” On the same day, Ms. Gray provided (in person) part of a copy of an adolescent sensory profile report. Gray Test. At 1:54:30. Ms. Gray provided the parts that she believed were “appropriate to share.” Mr. Mykytyshyn said that what the Club was provided was more in the vein of a “self-assessment” and not very useful. Mykytyshyn Test. At 2:19:50.

On September 11, 2024, Mr. Mykytyshyn wrote to Complainant seeking more information. He recounted that Ms. Gray had told him that the student had autism spectrum disorder. He noted that the Club had previously requested information concerning the student’s diagnosis. He also noted that the adolescent sensory report provided by an occupational therapist was deficient; it did not tell the Club how to work with a child.

The letter then outlined what the Club had determined would meet student’s needs. This included that the student is not yelled at and is not asked to do multiple tasks at once. From the sensory report, the Club extracted (among other things) that the child needed to be presented with calm, familiar and consistent instruction, and that 1:1 interactions would benefit the child.

Mr. Mykytyshyn sought Ms. Gray’s confirmation that this outlined understanding was correct. He wrote: “Once we receive your confirmation, or adjustments, we will be meeting with the Program Director and appropriate members of the Coaching team to discuss these requirements and determine our capacity to provide the necessary support. The Red Deer Ski club will then be able to make a decision about your family’s participation in the Ski Club.” Ms. Gray’s confirmation was sought by September 14, 2024.

On September 11, 2024, Ms. Gray emailed her response to the letter. She asked the Club to remove the recommendation regarding 1:1 interactions because she felt that would be too burdensome. She also sought to provide more factual context and asked for an immediate response. RDS 40, Appendix N.

A memorandum dated September 15, 2024 was provided to the Board of the Club. (The name of the author was redacted.) The memo features a decision matrix and all of the relevant considerations related to making a decision on Ms. Gray and Jessa’s applications. RDS 40.

On September 20, 2024, the Club wrote to Ms. Gray concerning her application. They noted they did not approve her application for membership. The reasons provided were as follows:

- Multiple instances, both documented and observed, of difficulty in adhering to the Club’s Code of Conduct.
- A pattern of accusatory, argumentative, and aggressive behavior, verbal and written, that contributes to the fostering of a psychologically unsafe environment for coaches and parents.

- Ongoing difficulties resolving conflict constructively, including situations where athletes, coaches, and/or parents are blamed when addressing behavioral concerns of the student.

RDS 29.

Ms. Gray alleges that she was the only current member of the club whose application was denied. She claims that the application was not approved because other parents and Club officials did not like her. There was also a disputed issue of fact regarding whether Ms. Gray was a member of Alberta Alpine and whether this impacted consideration of the student's application.¹

On September 27, 2024, Mr. Mykytyshyn wrote to Patrick Gillespie, CEO of Alberta Alpine, detailing the reasons the Club was rejecting the membership application of Ainsley Gray and her daughter, Jessa Davidson. RDS 45. They also requested a meeting between Mr. Gillespie and the Club's board of directors.

Finally, there were various contentions (both in writing and later during the evidentiary hearing) regarding whether Ms. Gray behaved appropriately as a parent within the club, whether she violated any code of conduct, and whether there was animosity between Mr. Mykytyshyn and Ms. Gray. These matters are not set out in great detail since they do not bear much on the ultimate outcome.

PROCEDURAL MATTERS

Initial Complaints

On September 21, 2024, the Complainant Ainsley Gray made two complaints to Alberta Alpine's Independent Third Party (ITP) regarding (1) Geoff Beuerlein (a coach at the Club) and (2) Red Deer Ski Club. ITP is an entity separate from Alberta Alpine. ITP has been engaged to oversee Alberta Alpine's complaint mechanism. The ITP is responsible for administering all of Alberta Alpine's complaint and discipline process.

On December 23, 2024, the Complainant indicated she was withdrawing the complaint against Mr. Beuerlein.

Scope of the Complaint

On January 10, 2025, counsel for the Club, Mr. Mike Kwiatkowski, wrote to the Panel, seeking information regarding Ms. Gray's precise claim against the Club. He noted that knowing that information might streamline the hearing. He also sought information regarding what remedy Complainant was now seeking since she has already moved to a different ski club in Edmonton.

¹ During the hearing Mr. Mykytyshyn noted that Ms. Gray was not a member of Alberta Alpine and the Club, which made the student's involvement impossible (since any student member of the Club would need a legal guardian to also be accepted in Alberta Alpine and the Club). Ms. Gray countered that she is in good standing with Alberta Alpine and always has been.

On January 13, 2025, Ms. Gray responded to Mr. Kwiatkowski's request. She noted that the Club had sought medical and psychological reports from student, and this violated Jessa's human rights. She also noted that she was seeking a public apology and for the members who sought Jessa's medical information to be excluded from further involvement with Alberta Alpine or the Club. She also sought economic damages (race fees, gas money) for having to join another club which was more than an hour away from Red Deer. She also wants members of the Club to be required to take a course on inclusivity offered by Sports Canada.

There is also a parallel proceeding for this same matter which, as of January 15, 2025, was pending with the Alberta Human Rights Commission (but not yet set for hearing). That matter seems to center on the claims for discrimination and exclusion from the club, while the ITP proceeding ended up as focused on a narrower question: whether the Club violated Jessa's human rights by seeking medical information regarding her condition.

The Evidentiary Hearing on January 15, 2025

The Discipline Panel met with Complainant and Respondent virtually on January 15, 2025. During the hearing, Respondent sought to confirm the scope of the complaint. Complainant did confirm at this point that the complaint was "100% about the request for medical information."

At the hearing, Complainant and Respondent gave opening statements. Presentation of the Complainant's case included testimony from Jessa and Jenn Holm (who is a coach at the Club and also works as a nurse at the same organization as Ms. Gray).

Respondent's case included testimony from Ms. Gray and Mr. Mykytyshyn. The parties both gave closing arguments. During Complainant's closing, she further narrowed down the remedies she is seeking to a public apology and for Mr. Mykytyshyn to resign.

All arguments and testimony were thoughtfully considered. The Discipline panel has also reviewed all of the documentary evidence, including multiple witness statements, various policies, and related email correspondence.

ISSUE

The issues complained about have evolved. They started out broad, ranging from bullying and discrimination to exclusion from the club to seeking student's medical information. At the actual hearing, the issue had been distilled to this: Did the ski club violate the student's human rights by seeking medical information regarding her condition?²

² No such information was actually provided by Ms. Gray so there is no possible claim for invasion of privacy.

ANALYSIS

Ms. Gray is clear in her claim that the Club violated Jessa's rights by seeking medical information regarding her condition. What is less clear is the basis for this claim. During the hearing, I asked Ms. Gray whether there was a certain law or ordinance or regulation that prohibits requesting medical information for purposes of disability-related accommodations. She reiterated her opposition to providing said information, but did not provide any legal or regulatory basis for her objection. Respondent's counsel followed up on this question and asked her if there was an external basis for her opposition (such as a law or code of conflict) or if that was just her opinion. She did not provide any objective basis for her opposition to the request for a psychoeducational/neuropsychological assessment.

Many jurisdictions, including Canada, provide that persons with disabilities are entitled to certain modifications from employers and other public accommodations. This is so that these public accommodations might be accessible to all who are qualified to participate.

However, public accommodations (whether clubs, employers, or governmental services) are entitled to learn the physiological basis for a person's claim for disability accommodations. Organizations are entitled to seek a doctor's diagnosis and related medical information for several reasons:

- (1) to ensure the organization provides an accommodation that meets the need;
- (2) to ensure the person seeking the accommodation is qualified to participate in the activity; and
- (3) to ensure the organization is acting consistently as between those who seek an accommodation.

This has long been the relationship between privacy and accommodations: that an individual relinquishes privacy to secure a change or modification in the workplace or organization to which they would otherwise not be entitled (as a non-disabled person).³

³ In 2012, I published a law review article in which I commented explicitly on the tension between privacy and accommodation. I wrote this:

Disclosure of private information may be preferable to silent subordination. The best example of this is found in the [Americans with Disabilities Act]'s doctrine of reasonable accommodation. A disabled employee whose illness or condition is exacerbated by current working conditions has two choices: to stay quiet about her disability (and thus preserve privacy if her employer has no knowledge of the condition) or to voluntarily approach the employer, disclose the condition, and suggest a reasonable accommodation that would allow her to remain able to perform the essential functions of the job. In such a situation a tension exists between privacy and the need to ameliorate one's subordinating situation. Yes, the ADA's emphasis on reasonable accommodation implies that self-disclosure of one's disability is worth the loss of privacy.

Bradley A. Areheart, *GINA, Privacy, and Antisubordination*, 46 *GEORGIA LAW REVIEW* 710, 714-15 (2012). While this dispute is different in a couple of critical respects (including that admission to a private club, and not employment, is the concern here), the same logic holds. For the Club to accommodate Jessa, they

Ms. Gray testified that whenever she registers Jessa for anything (whether camp, swim lessons, or rodeo), she always indicates that her daughter has autism and that she can explain further. Here, Ms. Gray claims that the Club responded by requiring Jessa to be evaluated by a medical professional associated with Alpine ski racing. She claims this request violated her daughter's human rights.

There is no legal basis for the claim that the Club violated the student's human rights by seeking information regarding her medical condition.

Ms. Gray also testified that she does not think her daughter was rejected due to her disability. Rather, she believes that her daughter was excluded because Mr. Mykytyshyn does not like Ms. Gray.⁴ The rejection letter seems to indicate that her application was rejected due to her argumentative behavior with coaches and other parents. RDS 29.

A private club may use its discretion to exclude certain people as long as they do not do so on the basis of protected traits (e.g., race, sex, age, religion, or disability). An organization does not need documentation or a clear evidentiary basis to exclude someone. It can do so "at will" (assuming they are following their bylaws and/or policies); this is legally permissible. Here, Ms. Gray has not alleged that her or her daughter's protected traits (such as disability or sex) are the reason for the student's exclusion.

Accordingly, I do not find the Club violated a law, ordinance, or policy in requesting medical information or in choosing to deny Complainant's application.

This matter is dismissed with no consequence to the Club.

Discipline Panel:

A handwritten signature in black ink that reads "Bradley A. Areheart". The signature is written in a cursive style with a horizontal line extending to the right.

Bradley A. Areheart
Date: 10 Feb 2025

needed to understand the exact contours of her medical condition. And for Jessa, she stood to gain accommodation through relinquishing some amount of privacy.

⁴ As further proof that exclusion was really about the Club's disdain for Ms. Gray, Complainant alleges that following her application the Club did not follow up with coaches about her daughter's condition.