

**IN THE MATTER OF A COMPLAINT PURSUANT THE RINGETTE ALBERTA CODE OF
CONDUCT and COMPLAINTS AND DISCIPLINE *POLICY***

BETWEEN:

**Ryan Devlin,
on behalf of the Board of Directors of Ringette Alberta**

Complainant

And

David Whiteley

Respondent

Complainant represented by: Michelle Kropp
Sport Law and Strategy Group Inc., Toronto

Respondent represented by: Alex Norris
Carbert Waite LLP, Alberta

Panel: Jillian D'Alessio

Decision Date: January 9, 2024

Decision and Reasons

1. This matter arises from allegations of bullying and harassment, as well as a breach of confidentiality filed by the Complainant, Ryan Devlin on behalf of the Board of Directors of Ringette Alberta, against David Whiteley, parent of an athlete on Team White AA Ringette Calgary ringette team.

2. I was appointed Panel and declare that I have no conflicts with this matter. A case conference was held with the Parties and their legal representatives on May 15, 2023. It was decided that this matter would be heard as a hybrid, in that, the Parties would have the opportunity to prepare written submissions, and submit witness statements, as well as attend an oral hearing. The Parties agreed that the witness statements would act as the examination of chief of each witness. The virtual two-day oral hearing took place on August 16 and 17, 2023. Oral closing submissions were heard August 18, 2023. A virtual hearing was held due to the location of the representatives and Panel in Alberta, Toronto, and Nova Scotia.

3. Ryan Devlin is the current President of the board of Ringette Alberta ("RAB"), and advises he was president at all material times. Mr. Myers, was the executive director at all material times, and left this position in or around January 2023.

4. This is was a document heavy complaint. The record includes:
 - a. An original complaint filed on March 24, 2023;
 - b. Decision of Case Manager, Kate Scallion to accept the Complaint dated April 5, 2023;
 - c. Respondent response statement with attachments of Tabs A-T received June 1, 2023;
 - d. Complainants reply statement received June 19, 2023;
 - e. Complainants witness statements:
 - i. Ryan Devlin (original complaint and reply statement); and
 - ii. David Myers;
 - f. Respondents witness statements:
 - i. David Whiteley with Tabs A-U;
 - ii. Jody Lacusta;
 - iii. Stephen Miller;
 - iv. James Proudfoot; and
 - v. Paula Munoz.

5. The relevant policies in this matter were the ***Ringette Alberta Discipline and Complaints Policy*** (the “*Policy*”), along with the ***Ringette Alberta Code of Conduct*** (the “*Code*”). There was no disagreement on the relevant policies.

6. Section **14.2** of the *Code* states that the Code applies to “all Ringette Alberta members, participants and employees. Applicability includes all interactions and discourse between members and participants and also includes member and participant interactions with Ringette Alberta employees. The policy applies to discourse and interactions in person, by telephone and electronically via email or social media platforms.” As such, I find the *Code* applies to Mr. Whiteley in his capacity as a parent of a Calgary AA Team White athlete.

7. There was no dispute of the evidentiary record. Each of the witnesses were cross examined at the video hearing. Their written statements were accepted as the *Examination in Chief*.

8. As a preliminary matter, the Parties agreed to an Exclusion Order to apply to all witnesses, aside from the named Parties.

9. Additionally, I invited the Parties to provide submissions on whether this decision would remain public or be considered private, as was enumerated in **Section 20.4.10.2** of the *Policy*. The discretion remains with the Panel. However, I was interested in hearing from the Parties. I set out my decision on this issue below.

I. Procedural Background

10. On March 24, 2023, the Complainant Ryan Devlin filed a complaint on behalf of the Board of Directors of Ringette Alberta against the Respondent.

11. On April 5, 2023, Case Manager, Kate Scallion, issued a decision whereby she accepted the Complaint. Pursuant to **20.4.4.1** of the *Policy* the decision to accept the complaint cannot be appealed. As such, the Parties were informed at the outset of the hearing, I would not be revisiting the issue.

12. Further, Ms. Scallion determined that if the allegations are proven, they constitute a major infraction. As such, this matter is being dealt with as a major infraction in accordance with sections **20.4.8** to **20.4.11** of the *Policy*.

13. On May 15, 2023, the Parties attended a case conference. Both were represented by their legal counsel. Michelle Kropp for the Complainant, and Alex Norris for the Respondent. In accordance with the *Policy*, the Parties were given notice, had the opportunities to provide written submissions, and had the opportunity to testify and cross examine witnesses.

14. I thank the Parties and their counsel for the prompt delivery of documents and adherence to agreed-to timelines. Due to several personal factors, I acknowledge the delivery of this decision to the Parties was significantly delayed.

II. Issues

15. The primary issue is whether the Respondent, Mr. Whiteley has breached the *Code* with his conduct towards Mr. Devlin, the RAB Board of Directors and former staff between November 2022 and January 2023.

16. The Complainant alleges that Mr. Whiteley breached the following seven provisions in the Code of Conduct:

14.4.1 which requires Mr. Whiteley to maintain the dignity and self-esteem of others in certain ways, specifically:

14.4.1.2 Focussing comments or constructive critique appropriately and avoiding public criticism of athletes, team staff, officials, organizers, volunteers, Ringette Alberta employees, and other participants;

14.4.1.3 Consistently demonstrating the spirit of sportsmanship, leadership, and ethical conduct and practices;

14.4.1.4 Acting, when appropriate, to prevent or correct practices that are unjustly discriminatory.

14.4.1.5 Interacting with others in a way that enables all individuals to maintain their dignity and respect;

14.4.1.6 Consistently treating individuals fairly and reasonably.

14.4.5 which states “Members, participants and employees will refrain from any behaviour that constitutes harassment, where harassment is defined per Alberta Occupational Health and Safety legislation or could include directed towards an individual or group which is offensive, abusive, racist, sexist, degrading, or malicious, and includes verbal aggression, yelling, spreading malicious rumours or use of derogatory terms.”

Workplace Harassment which is defined at **14.5 e)** as “Any single incident or repeated incidents of objectionable or unwelcome conduct, comment, bullying or action by a person that person knows, or ought reasonably to know, will or would cause offence or humiliation to a worker, or adversely affects the worker’s health and safety. It includes conduct, comment, bullying or action because of race, religious beliefs, colour, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status, gender, gender identity, gender expression and sexual orientation and a sexual solicitation or advance.”

17. Additionally, the Complainant alleges that Mr. Whiteley breached the confidentiality clause contained in the *Policy* at section **20.4.13**.

18. There are key communications and events that will be addressed in this decision. These include:

- a. The Coach Niro Complaint which was initiated with an interim suspension of Coach Vince Niro (“Coach Niro”) on November 18, 2022;
- b. Communications by the Parents of Calgary AA Team White athletes to Mr. Myers between November 18, 2022 and November 22, 2022.
- c. Team White Letter #1 sent to RAB by the Respondent, David Whiteley on November 20, 2022.
- d. Team White Letter #2 sent to RAB by the Respondent, David Whiteley on December 9, 2022.
- e. A Conflict of Interest Complaint filed by David Whiteley on December 9, 2022 against Mr. Myers, which was heard by the RAB board on January 9, 2022.

III. Background

19. This matter arises from a series of communications addressed to Ringette Alberta from Mr. Whiteley between November 2022 and January 2023. These communications were in relation to a separate disciplinary matter involving Calgary AA Team White Coach, Vince Niro (“Coach Niro”), who received an interim suspension, on or about November 17, 2022, following the submission of an anonymous complaint to Ringette Calgary, Ringette Alberta (the “Coach Niro Complaint”).

20. Following his suspension, Coach Niro disclosed to Team White that he was suspended and disclosed the complaint was anonymous. Ringette Alberta took the allegations, if proven to be true in the complaint, to be serious. As such, pursuant to the *Policy* a complaint process was initiated.

21. Mr. Whiteley disagreed the suspension and the anonymous complaint brought against the Niro. His daughter played for Team White. Mr. Whiteley wrote several emails and made multiple calls to Ryan Devlin, President of RAB regarding the suspension, merits of the complaint and complaint process.

22. In and around November 19, 2022, Mr. Myers requested that Team White parents streamline communications regarding the Coach Niro Complaint as they received more than 15 emails following the interim suspension. Mr. Whiteley put himself forward to be a Team White spokesperson on the issue, and the team of parents agreed.

23. RAB intended to have an information session on the material on November 21, 2022, but chose to cancel this session due to a judgement call that was based on the behaviour of the Team White parents over the preceding three days.

24. In an email on November 21, 2022, Mr. Whiteley wrote to David Myers setting out questions the Team White parents were concerned with and were requesting answers. Mr. Myers had specifically noted in his email setting out the information session that the session was not going to be a debate about the process or complaint.

25. Mr. Myers had concerns that the parents would not respect the parameters of the meeting which was intended to review the process and not enter the details of the Coach Niro Complaint.

26. On November 20, 2022, Mr. Whiteley sent a letter to David Myers, copying the President of RAB at the time, Jeffrey Raphale, and Robert McDonald. The letter is four pages long. I will not repeat the entirety of the contents here, but it is necessary to set out some portions of the letter.

... I am also the former President of the Calgary Patriots Swim Club and was a former Board Member for over 6 years. I mention this as I believe it makes me qualified to address matters concerning Complaints and Discipline Policy – Ringette Alberta allegations as I have not only written the Patriots Code of Conduct, but also dealt with allegations concerning coaches, athletes, and parents during my tenure at this club...

Based on what we have observed we believe Coach Niro subscribes to and adheres to all the following:

- Ringette Alberta Coaches Pledge – Code of Conduct
- Ringette Alberta – Code of Conduct Policy 14
- Calgary AA – Code of Conduct Policy 2

...

If any of these avenues did not provide proper response and or address the situation all Parents are aware we can then address concerns using AA Ringette Calgary Foundation (2013) Policy 10 Complaints, Discipline and Appeals which stipulates the following:

....

Anonymous Letter / Complaint

We find it quite surprising that Ringette Alberta seems to be deviating from its own policies and procedures regarding an anonymous letter without considering any verification or collaborative statements from people closest to the situation. Further, the immediate suspension seems extreme given the allegations as we understand them do not meet any definition of Major Infraction (see para 20.4.8 Complaints and Discipline Policy – Ringette Alberta).

...

As a Parent Group we have not seen or witnessed any such behaviours which supports, or warrants, an allegation of a minor infraction (ref. 20.4.7 Complaints and Discipline Policy – Ringette Alberta), or the necessity of filing a Complainant (ref 20.1 Definitions Complaints and Discipline Policy – Ringette Alberta). As a Parent group we are unaware that anyone requested or directed another Member or Participant to file a Complaint on our behalf to Ringette Alberta, or to U14AA Calgary Ringette.

Recommendations to Case Manager and Executive Director

Based on these facts and observations from the Parents of Team White **we request the immediate action and follow-up** from either Case Manager and/or the Executive Director which includes the following: **[Emphasis added]**

1. That this letter, and the other Team White parent emails on behalf of Coach Niro to Ringette Alberta be taken as true, accurate, and complete record of Coach Vince's behaviours as the Head Coach of Team White in 2022 season.
2. Based on these written facts that Ringette Alberta acknowledges that the Team White Parents are not making any allegation or complaint as to the actions or behaviours of Coach Niro. That we have no allegation which would detrimentally impact the overall well-being of any athletes of Team White, or have put any athlete at risk.
3. That the anonymous complaint should be rejected as frivolous, unfounded and without merit (as per section 20.4.1.2 Complaints and Discipline Policy – Ringette Alberta).
4. That any future follow-up, if any, to the anonymous letter should advise such person(s) that they need to follow and respect the Ringette Alberta and the U14AA Calgary Ringette Policies and Procedures for complaints especially when suspension was contemplated.
5. Finally that Coach Niro be reinstated effective immediately without any Sanctions (ref. 20.4.11 Complaints and Discipline Policy – Ringette Alberta) and without any written record to this frivolous claim concerning his performance as a Ringette Coach and/or Parent of a Ringette Athlete.

If any of these matters or accounts are unclear I ask that the Case Manager contact myself, the Assistant Coaches, or our General Manger directly at the following...

27. On December 9, 2022, Mr. Whiteley emailed what is referenced as Team White Letter 2 to David Myers and Mr. Devlin. This letter is marked "Without Prejudice". This letter states as "fact" that the anonymous complaint against Coach Niro "has been demonstrated not to involve any parent from Team White players."

28. The letter goes on to state:

Team White Parents have provided numerous letters, cooperated with requests for interviews, provided documentation and video and responded to every request from an appointed investigator. All of these actions further support our letter (see letter dated November 20, 2022 to Executive Director) as to the professional and exemplary conduct of Coach Niro, and further refute any alleged unprofessional or unethical behaviour of Coach Niro.

Neither the Case Manager, nor any representative of RAB has provided any timeline or status of the investigation to the representatives, or the Parents of Team White.

We believe that in light of the overwhelming evidence to the contrary of the anonymous letter – including that there has been no breach of a Duty of Care in the allegation to any child that we request immediate action, including but not limited to the following:

1. A commitment by one member of the RAB Board to communicate a timeline; and
2. That a preliminary conclusion about the suspension be delivered to Team White Parents (or designated representative by 12 noon MST December 16, 2022 (either written emails, or via video conference).

Parents are now starting to receive communications from people in and peripheral to the "ringette community" asking about why this matter is taking so long and are now questioning the "seriousness" of the matter. Consequently, the parents of Team White have increasing concerns to an already stressful situation involving our children. As such, the Team White Parents have now retained legal counsel from Bennett Jones. We have consulted with our legal advisor and will continue to assess future actions should we not receive what we consider reasonable responses to our requests....

Respectfully, on behalf of Team White Parents

David C. Whiteley

Team White Parent

29. Also on December 9, 2022, Mr. Whiteley delivered a letter by way of email to the RAB Board of Directors. The letter was a complaint presented on behalf of the Team White parents. It alleges that David Myers, Executive Director of RAB, violated the Conflict of Interest Policy. As remedies for this violation the letter reads as follows on page 5 of 6:

Mr. Myers has clearly put his private interest and his disagreement with Mr. Niro above his overarching duty to Ringette Alberta and we respectfully submit that immediate and decisive action be taken, including but not limited to the following:

1. Mr. Niro's interim suspension should be immediately rescinded. Further, Mr. Myers should be suspended from all matters regarding the investigation involving Mr. Niro;
2. Mr. Myers should be removed from any matters regarding Appeals of this Suspension which has been currently filed. Consideration should be given to suspending his duties regarding any further allegations for any coach or stakeholder of Ringette Alberta until a proper education program on Complaints and Discipline, as well as the Duty and Standard of Care owed by Sports Associations, has been duly completed;

3. Oversight of Mr. Myers prior activities regarding this matter needs to be investigated. Specifically as to why Mr. Myers circumvented RAB policies including two other association policies and RAB's recommended chain of command communication policy; and
4. If it is found that Mr. Myers acted in a conflict of interest was in fact true, then removal and/or temporary suspension of Executive Director duties needs to be considered given the severity of his actions and conflict which as led to improperly suspending a coach with no basis or without proper due process.

30. According to the testimony, Mr. Proudfoot assisted Mr. Whiteley with preparing this complaint with the help of "Paul". Despite being presented on behalf of Team White Parents, Mr. Whiteley drafted the correspondence and carried forward with the complaint.

31. On December 13, 2022, at 6:29pm Mr. Whiteley wrote to Mr. Devlin with the following:

...
Also – if the Duty of Care is really being applied and it is our children athletes which are the greatest concern here (hence why this process commenced) it appears to us that some **basic communication** to our parents is respectfully owed. For your information, to date not one person from RAB has even contacted any of our parent's group, or even inquired about our athletes (children) to ask them how they are dealing with this matter. It appears us, a lot of time as being spent on protecting and an anonymous whistle blower versus the children involved.

Thank-you in advance

David C. Whiteley
PwC | Partner, Capital Markets Accounting Advisory Services

32. On December 13, 2022, at 8:31 pm Mr. Devlin wrote to Mr. Whiteley as follows:

...
The matters you are referring to below are private and confidential pending the outcome of the Case Manger. I am sure that was explained to you by the Case Manager. If you have questions about why no one has responded you need to ask the Case Manager. They will have the answer.

Thank you - Ryan

33. Mr. Whiteley wrote a further email to Mr. Devlin on December 13, 2022, at 11:16 pm. The email states as follows:

3. Re: your comment on communications "... you have questions about why no one has responded. You need to ask the Case Manager. They will have the answer."

I have asked for some communication – now 3 times – asking for two simple things: a) a timeline for this process b) if anything else is required from Team Parents so as to expedite the process efficiently, to which we have received:

- Mr. Myers has declined to comment at all.
- The Case Manager – Mr. [removed] has written to me saying "I advised you that it is not appropriate for you to be communicating with me any further on this matter."

Hence my email to you with our request.

I am happy to have a call to the first matter – but perhaps some basic communication guidelines/instructions to Mr. [removed] would be a reasonable request."

Thanks
David C. Whiteley
PwC | Partner, Capital Markets Accounting Advisory Services

34. I highlight here that Mr. Whiteley was also writing to the Case Manager in the Coach Niro Complaint who told him it was *not appropriate for him to be communicating* with the Case Manger on the matter.

35. The Coach Niro initial decision was completed on December 19, 2022.

36. The RAB board heard and dismissed the Conflict of Interest complaint on January 9, 2023.

37. On February 16, 2023, Ann Peele issued her decision on the Appeal of the Coach Niro Complaint.

38. In March 2023, Mr. Whiteley again made a demand of the RAB Board to disclose the confidential Investigation report of the Coach Niro Complaint.

IV. Testimony and Credibility of the Parties

39. The Complainant submitted statements on behalf of two witnesses, Ryan Devlin, and David Myers. I set out my views on both witnesses and provide some of their evidence below.

Ryan Devlin

40. Mr. Devlin is President of the Ringette Alberta. He was direct with his responses and appeared to answer questions in a thoughtful manner. Overall, I found him to be a credible witness.

41. Mr. Devlin testified that Mr. Whiteley's behaviour of using his corporate email address was to use his authority and credibility as an accountant and Partner at a professional workplace to intimidate he, the RAB board, and Mr. Myers in his communications. He stated that it was very uncommon for him to receive correspondence from parents where they used their corporate email accounts.

42. Mr. Devlin testified that he understood at the time of the suspension that the Team White parents may be confused and wanted more information which led to the creation of the Powerpoint presentation explaining the discipline and complaints process which was delivered by email to the Team White parents on November 22, 2022.

David Myers

43. I found Mr. Myers to be credible in his evidence as his testimony aligned with the evidentiary record. He acknowledged that he left his position as Executive Director with RAB, one he held for 17 years (not consecutive years), in part because of the communications received from Mr. Whiteley, and the final straw was the submission of the Conflict of Interest Complaint against him. He had never had a previous complaint raised against him prior to Mr. Whiteley's.

44. Following the Coach Niro suspension, he received approximately 15 emails from Team White. Between November 19 and 22, 2022, Mr. Whiteley sent Mr. Myers eight emails.

45. Mr. Myers testified that Mr. Whiteley was harassing him in the totality of his actions which included: looking up his profile on LinkedIn, starting a complaint questioning his integrity, morals

and ethics, instigating parents and coordinating parents to send emails questioning his ethics and responsibility, and continued emailing demanding answers about the Coach Niro Complaint despite being told that because Mr. Whiteley was not a Party, he was not entitled to additional information.

46. Mr. Myers testified that he created a Powerpoint presentation to explain the RAB discipline and complaints process due to the number of emails and calls he had received from the Team White Parents. The last point of the Powerpoint under "What's Next" does not invite further questions as it explicitly states that everyone who is not a Party had to wait for the outcome of the Coach Niro Complaint due to the confidentiality provision in the *Policy*.

47. Mr. Myers testified that he originally planned to host an information night to virtually present the Powerpoint to Team White parents. Mr. Myers explained in email to the Team White parents that the session was not to debate the merits of the Coach Niro Complaint. Within hours of the session, he received emails from Mr. Whiteley demanding answers to many specific questions relating to the complaint. Due to the correspondence received from Mr. Whiteley just prior to the session, he cancelled the session out of concern that the information session would devolve into further questions about the merits of the Coach Niro Complaint. The Powerpoint presentation was delivered the following day to Team White parents.

48. The Respondents called Mr. Whiteley and four additional witnesses.

David Whiteley

49. Mr. Whiteley presented as pleasant, however, I observed him to be a difficult witness on cross examination. He rarely answered a question in a direct and forthright manner. I interjected at times requesting he tighten up his responses and requested that he stop evading the answers posed by Ms. Kropp.

50. At times, Mr. Whiteley did not agree with his own witnesses, for instance, despite sitting through the entire hearing and listening to his witnesses and their evidence that the parents were *angry* about Coach Niro's suspension, he refused to characterize the parents as being *angry*, he only characterized the group as 'confused' and 'wanting answers'.

51. Further, on testimony, he disagreed with his own written record. When asked to confirm that he had written policies before in the course of his role as President of the Calgary Patriots (swim club) he stated in a convoluted way that when the policies were being revised he was part of the drafting, but yet in Team Letter 1 he drafted to Mr. Myers on November 20, 2022, he states unequivocally, "I am also the former President of the Calgary Patriots Swim Club **not only did I write** to the Code of Conduct...." [emphasis added].

Jody Lacusta

52. Jody Lacusta demonstrated an inability to answer questions directly, had a poor recollection of events, and often avoided answering questions or provided vague responses. In general, I did not find her to be credible and gave little to no weight to her evidence.

Stephen Miller

53. Stephen Miller was direct in his responses, and I found him to be credible. Mr. Miller explained that he took over the role of Head Coach of Team White, a role he shared with Heather MacDonald.

54. Following the announcement of the suspension of Coach Niro by RAB, Mr. Miller stated he held a meeting with the Team White parents and athletes. Mr. Miller and Ms. MacDonald were asked by Calgary AA ringette President to step in as head coaches, while Coach Niro was suspended, and the complaint process proceeded.

55. Mr. Miller testified that James Proudfoot was an on-ice helper, and he became an assistant coach when Mr. Miller and Ms. MacDonald moved into the role of co-head coaches. Mr. Miller testified that given the seriousness of the allegations against Coach Niro, he agreed that it needed to be and investigated, although he argued it should have been more efficient.

56. Mr. Miller explained that the Team White parents sent two letters as a response to RAB stating they were receiving too many emails from individually from parents and requested that the correspondence from the parents be more streamlined as they could not manage the correspondence. He testified that Mr. Whiteley volunteered to be 'spokesperson' for Team White as he had previous Board experience on a swim club.

57. Mr. Miller also testified that he was not part of any of the Team White parent meetings, and he was not aware of what the parents were doing while he was on the ice with the athletes. Later in his testimony he stated parents were meeting 5-6 times a week during practices and games.

58. Mr. Miller stated parents were frustrated that the Coach Niro Complaint was 'moving too slowly'. He admitted to knowing the hearing date of the Coach Niro Complaint. He further admitted to reading the Policy, but still felt that 'time was of the essence' and the frustration for the team was that the suspension was 'indefinite' in nature.

James Proudfoot

59. James Proudfoot was direct with his responses, I found him to be a credible witness. Mr. Proudfoot also did not agree with the RAB disciplinary process. He testified that the parents had a meeting and selected Mr. Whiteley to be the spokesperson.

60. According to Mr. Proudfoot, the purpose of the Conflict of Interest complaint against David Myers was to attract the attention of the Ringette Board of Directors to the Coach Niro Complaint.

61. Mr. Proudfoot was under the impression that the complaint and suspension was issued by the Executive Director, David Myers. Mr. Proudfoot acted on the assumption that the Coach Niro Complaint skipped over AA Calgary management and did not think that RAB had the authority to suspend a coach.

62. Mr. Proudfoot testified that he reviewed the Conflict of Interest policy and sent the policy to Mr. Whiteley and another person, "Paul" for review as a possible approach to triggering a further review of the Coach Niro Complaint. He stated the foundation of the Conflict of Interest was based on speculation. He had no direct knowledge of any interactions between Coach Niro and David Myers with respect to the Pursuit of Excellence initiative which was the basis of the complaint.

63. Mr. Proudfoot testified that he read the confidentiality clause in the *Policy*, and claims to not have understood its contents.

Paula Munoz

64. Paula Munoz testified that the anonymous complaint was unjustified, and she disagreed with the Discipline Panel's original finding, and the Appeal Panel's findings against Coach Niro. She based her beliefs on the fact that her daughter had no issue with Coach Niro's coaching, and according to Ms. Munoz, anyone Ms. Munoz spoke to also expressed no issue with the coaching style.

65. To Ms. Munoz, because the complaint was anonymous, she assumed and concluded it was an outsider and not a member of the Team White directly. While Ms. Munoz was likely honest and direct in her responses, I find her assumptions and conclusions to be without reasoning and little weight have been given to her evidence.

V. Argument

66. Ringette Alberta takes the position that it is the totality of the electronic correspondence from Mr. Whiteley, the demands contained in what I describe as Team White Letters, the phone calls to David Myers and Ryan Devlin, and the submission of the Conflict-of-Interest complaint against Mr. Myers constitute both separately and together multiple breaches of the *Code*.

67. At all times material, David Myers, was the Executive Director at Ringette Alberta. Mr. Myers resigned from this position in January 2023. Mr. Myers was in this position for 17 years. Ringette Alberta is a Provincial Sport Organization or (PSO) serving all of Alberta. On November 18, 2022, the day after the interim suspension was filed, Mr. Myers received approximately 15 emails/letters from Team White parents. Mr. Myers requested that the correspondence come through one individual as he was overwhelmed with emails and questions.

68. Mr. Whiteley argues that he was a spokesperson on behalf of the AA Calgary Team White parents who all sought a response from Ringette Alberta to questions posed by the parents, as parents disagreed with the Coach Niro suspension. Importantly, Mr. Whiteley testified that he thought the parents were entitled to information regarding the Coach Niro Complaint and demanded a timeline.

69. Mr. Whiteley and witnesses for the Respondent: Jody Lacusta and Paula Munoz each testified that this was a perpetually 'confusing time', as they allege that they were not receiving enough information from Ringette Alberta.

70. The Complainant argues that the Respondent and Team White parents were notified by Calgary AA about the interim suspension, had a meeting the following day to make arrangements for coaching during the interim suspension so there was no disruption to Team White Practices, were notified of an ongoing investigation, and were advised when the initial decision was distributed. They argue that the Team White parents received clear communication about the process and clearly told what information they were not entitled to have on multiple occasions.

71. Mr. Whiteley's evidence regarding Team Letter 1, was that the intent was to seek answers because 'no one is talking to us'. In his view, it was opening or inviting a conversation with Ringette Alberta. Mr. Whiteley testified that he did not agree that the letter could be read or viewed

as intimidating. He went on to testify that the letter was self-explanatory that it was inviting a conversation.

72. The letter requests “immediate action” and essentially assumes “facts”, sets out observations, determines that the allegations in the complaint are without merit, and sets out recommendations to the Case Manager for the Coach Niro complaint. According to the Complainant, the letter is a clear demand to have Coach Niro exonerated of the complaint, on the basis that all Parents have supported the letter.

73. Counsel for the Complainant argued that this is a document where Mr. Whiteley is inserting himself into the discipline process in the Coach Niro Complaint and demanding a response from the case manager.

74. In signing off on Team White Letter 1, Mr. Whiteley used his Price Waterhouse Coopers signature indicating he is a partner. Mr. Whiteley also has a personal email address, but acknowledged he used his corporate email address issued by his employer Price Waterhouse Coopers (“PwC”) for this correspondence.

75. Team White Letter 2 was sent from Mr. Whiteley’s PwC email address. This email also included Team White Letter 1. Mr. Whiteley testified that this letter was a “plea for someone to communicate with us”.

76. The Complainant argues this letter was sent on December 9, 2022, and the Team White parents had received a Powerpoint on November 22, 2022, setting out the discipline and complaints process which explicitly states that everyone would have to wait for the outcome of the decision. They also note that the Conflict of Interest Complaint was delivered the same day which is further evidence of harassment of both the RAB board and Mr. Myers to change the process of the Coach Niro Complaint process.

77. Mr. Whiteley maintained that it was a confusing time, and the Team White parents wanted a clear time line to be communicated regarding the Coach Niro complaint.

78. The allegations in the Conflict-of-Interest complaint revolved around the Pursuit of Excellence initiative. It alleged that Coach Niro and David Myers did not agree with the program. The subject of this complaint is not material to the matter at hand, however, the Complainant argues that it was delivered on December 9, 2022 prior to the issued decision in the Coach Niro Matter. Given the complaint included confidential information, the Complainant argues that Mr. Whiteley breached the confidentiality provision in the *Policy*.

79. On January 18, 2023, Ryan Devlin delivered a decision on behalf of the RAB Board of Directors in response to the Conflict-of-Interest Policy. Portions of the decision reads as follows:

In considering its decision, the Board relied heavily on the Arbitrator’s decision in the Appeal of Mr. Niro’s interim suspension. In her written decision, the Arbitrator vindicated Mr. Myers and determined his issuance of the interim suspension to be justified. The Arbitrator dismissed Mr. Niro’s Appeal.

...

Furthermore, the Board is very disappointed in Mr. Whiteley’s presentation of baseless accusations, and irrelevant, and random information that did not relate to a conflict on interest allegation. Upon submitting the Complaint to our counsel, we became aware that this Complaint disclosed private and confidential information regarding a Complaint currently in proceedings. This is a very serious violation of the confidentiality requirement found within the Complaints and Discipline Policy.

The Board also determined this Complaint to be frivolous and vexatious. The Board strongly believes this Complaint to be an attempt to interfere with and gain favour in an on-going, separate matter.

VI. Analysis and Findings

80. Mr. Whiteley is responsible for the leadership and communications written on his own behalf and on behalf of Team White parents at all material times. Mr. Whiteley is responsible for putting himself forward as spokesperson after holding himself out to the parents as having previous experience on a board. The Team White Parents relied on him to be the spokesperson. Mr. Whiteley chose to send certain correspondence from his professional corporate email with the signature, notably at the bottom of both Team White parents.

81. With leadership comes responsibility. An individual cannot put themselves in the place of leadership, guide a group in decision making, allow the group to rely on the guidance, and then attempt to hide behind that group when the leadership fails. In this case, Mr. Whiteley will not hide behind the guise of writing on behalf of 'Team White' parents to avoid consequences. He was the operating mind and the key drafter of correspondence and prepared the Conflict of Interest complaint. He set the tone and chose to send replies and responses on his own accord.

82. Mr. Whiteley's characterization of the tone and contents of the Team White Letters 1 and 2 as being 'informative' and 'inviting conversations' is not accepted. A reasonable person reviewing the content of these letters to be setting out several demands which escalated to threats of contacting legal counsel would understand these letters to be demand letters with ultimatums. I agree with the Complainant that these letters were intended to intimidate and to pressure RAB to circumvent their own policies and procedures which escalated to threat of legal action.

83. Writing these letters from his PwC corporate email address compounded the messaging and tone. I believe a reasonable person reading these letters would read them to be intimidating and aggressive in nature. I am a practicing litigation lawyer, and that is the tone in which I read these letters. These were not letters providing constructive critique.

84. I do not accept the defence I heard repeatedly in the hearing from the Respondent and his witnesses, that it was a "confusing time". Not one of the emails or letters or complaint sent by Mr. Whiteley expresses confusion. The correspondence is a series of statements and demands with set out consequences. It goes without saying these Letters were not respectful in nature.

85. The Complainant also alleges that Mr. Whiteley breached the confidentiality provision of the *Policy* when he included details of an ongoing complaint in his Conflict of Interest Complaint. In response, Mr. Whiteley argued that many details about the Coach Niro Complaint were largely known and therefore it was not a breach. The confidentiality provision at **20.4.13.1** of the *Policy* requires as follows:

The discipline and complaints process is confidential involving only the Parties, the Case Manager and the Panel. Once initiated and until a decision is released, none of the parties will disclose confidential information relating to the discipline or complaint to any person not involved in the proceedings.

86. This is not a confusing provision. It clearly states that, the process is confidential to:

- a. The Parties;
- b. The Case Manager; and
- c. The Panel

Until a decision is released.

87. I find that the contents of Conflict of Interest Complaint delivered before the disclosure of the Coach Niro Complaint decision on December 19, 2022 is a breach of the confidentiality provision of the *Policy* as it contained specifics of a confidential complaint that was in progress at the time.

88. Additionally, I find that this Conflict of Interest Complaint was frivolous and meritless in nature and I find that it was brought in bad faith. Mr. Proudfoot admitted he had no evidence for the allegations in the complaint and that the complaint was meant to trigger a response from the Board to the Coach Niro Complaint.

89. Mr. Myers did have the authority to suspend Coach Niro on an interim basis pursuant to section **20.4.6** of the *Policy*. Additionally, Mr. Myers testified that he did not have any specific issue with Coach Niro based on his views of the Pursuit of Excellence Program. He stated there were some proponents for and against the program and he had no difficulties with those against the program. It is significant that both Mr. Proudfoot and Mr. Whiteley testified that he had never witnessed any interaction between Mr. Myers and Coach Niro regarding the Pursuit of Excellent Program, whether positive or negative.

90. It is evident that Mr. Whiteley cared little of the impact to Mr. Myers by submitting the callous and frivolous Conflict of Interest Complaint knowing he had no evidence to support the allegations. Mr. Myers was a paid staff member. This complaint was significant to raise against Mr. Myers. While it was dismissed, the claim contains false and malicious allegations that was circulated through at least Team White parents, as they approved the contents of the complaint.

91. I find that it unethical for Mr. Whiteley to raise an unfounded complaint against a paid employee in order to continue to harass the RAB board for responses to questions he and Team White were not entitled to, and had been told they were not entitled to, in order to continue his effort to intervene and interfere with the Coach Niro Complaint process. It was blatantly unfair to Mr. Myers to be the subject of such a complaint.

92. Mr. Whiteley and Team White was advised of the interim suspension, knew a Case Manager was appointed, knew there was an investigation, as he was a witness, and knew there was a panel appointed to adjudicate the Coach Niro decision. He also knew the approximate timeline for the Appeal. It appears to me that he had full knowledge of a meaningful timeline, regardless of how it was acquired.

93. Based on this knowledge, I can only conclude that the purpose of numerous emails and letters were to harass RAB and Mr. Myers to the degree of interfering with and disrupting the complaints process in the Coach Niro Complaint. My conclusion is supported by a plain text review of the demands contained in both Team White Letters.

94. I further find the totality of the emails, letters, phone calls and complaint against Mr. Myers amounts to harassment of RAB board and staff by Mr. Whiteley by virtue of his leadership role as spokesperson for Team White.

95. RAB was inundated with at least 15 emails from Team White parents as soon as the suspension was announced, and communication continued with emails, phone calls, and letters sent by Mr. Whiteley. Mr. Devlin and Mr. Myers graciously responded to emails, fielded calls, and

prepared documentation explaining the process and procedure. In their testimony, both Mr. Devlin and Mr. Myers understood the parents would be concerned about the suspension and had questions but explained that RAB was guided by the policies and procedures set out in the *Policy*. RAB shared what they could, and explained clearly what they could not disclose.

96. Further, because of the number of e-mails and tone of the e-mails and the submission of the Conflict of Interest Complaint, Mr. Myers, Executive Director for Ringette Alberta for 17 years resigned from his position. I find that Mr. Myers was subject to workplace harassment based on the unwelcome conduct of Mr. Whiteley.

97. I find the defence of 'being confused' not only glosses the issues but is completely in contradiction with the written language in the two Team White Letters and the Conflict of Interest complaint. Throughout the process the parents clearly were provided with the following information from Ringette Alberta. They were told:

- a. There was an interim suspension;
- b. Immediately the assistant coaches were made co-head coaches and held a meeting to explain the transition to the athletes and parents;
- c. When the hearing would take place; and
- d. When the decision would be issued.

98. I do not accept that the Team White parents were told nothing. Revisionist history is not accepted as a defence.

99. RAB is the Provincial Sports body for Ringette in Alberta, and the Team White AA ringette parents went on an obsessive crusade to harass this body to bend it its' will, while ignoring all policies and procedures and attempts by RAB to provide specific information related to process.

100. There was a suggestion in the hearing that the Team White was doing well and winning many games at the time of the suspension. The need to win cannot overshadow poor behaviour or conduct by a coach. I find it surprising that each of the Respondent's witnesses who were parents to a Team White athlete blindly believed that Coach Niro could not have done anything he was accused of *before* they had even received any details of accusations.

101. The discipline and complaints processes are not democracies. The court of public opinion does not oversee the process and thank goodness it does not. RAB had a robust Code of Conduct and *Policy* in keeping with SafeSport trends in Canada, and these policies were posted online and effective to keep members in sport, safe. The policies set expectations and are the checks and balances to behaviour of members.

102. Following a process and procedure takes time. It takes time of those that are case managers, those that are investigating, those that are witnesses, those that are members of the panel, those that are representing the parties, and the parties themselves. The process can only move as quickly as the schedules permit as each of those individuals have independent lives.

103. For Mr. Whiteley to argue that the process was too slow, both ignores and insults the individuals who were involved in the Coach Niro Complaint. Mr. Whiteley does not know better than those involved. He read the policies and either failed to understand them or ignored them. He put his own needs and wants ahead of the policies and procedures of a Provincial Sports body, which is offensive behaviour. In fact, he threatened legal action should the Provincial Sports body

not bend to the demands and caused anxiety to a staff member who ultimately left his position, in part, because of his behaviour.

104. There were seven allegations of breaches of the *Code* raised by Ringette Alberta. I find that Mr. Whiteley has breached six provisions of the *Code* as summarized below:

- **Section 14.4.1.2** for his failure to focus comments or constructive critique appropriately and avoiding public criticism of Ringette Alberta employees and volunteers;
- **Section 14.4.1.3** for his failure to consistently demonstrate the spirit of leadership and ethical conduct and practices;
- **Section 14.4.1.5**, for failing to interact with others in ways that enables all individuals to maintain their dignity and respect; Specifically in bringing a frivolous Conflict of Interest complaint against Mr. Myers without evidence and in bad faith;
- **Section 14.4.1.6** for failing to consistently treat Mr. Myers, Mr. Devlin and RAB fairly and reasonably with the number of emails, phone calls, and issuing two Team White Letters that contained demands to circumvent RAB Policies and Procedures on threat of legal action;
- **Section 14.4.5** for his harassment of Mr. Myers with the meritless, frivolous, and bad faith Conflict of Interest Complaint which was degrading, malicious, and arguably spread malicious rumours about Mr. Myers and
- **Section 14.5 e)** for unwelcome conduct towards Myers who was an RAB staff member, humiliating him, causing him anxiety, and offending him with the content of the Conflict of Interest Complaint. I would be remiss to omit mentioning that Mr. Myers left the position he held for a total of 17 years at RAB (while not consecutive years) in January 2023 at least in part because of the behaviour of the Team White parents, Mr. Whiteley's conduct, and what he called the 'straw that broke the camel's back' the Conflict of Interest Complaint.

105. These breaches are in addition to his breach of the Confidentiality provision at section **20.4.13.1** of the *Policy*.

VII. Confidentiality Order

106. David Whiteley submitted that this decision should be sealed as a result of the potential harm and impact to his daughter and to his career. RAB argues that this decision should be published as that is consistent with all Ringette Alberta jurisprudence to date.

107. I have given considerable thought to this issue. I empathize with Mr. Whiteley in relation to any potential adverse impact that may fall on his daughter. I am then reminded of the RAB Code of Conduct which applies to the parents, coaches and athletes, among others. Should any athletes be subject to harm due to this decision, the perpetrators will be subject to the Code and sanctions.

108. Additionally, Mr. Whiteley volunteered himself to be a spokesperson as he purported to have previous experience which Team White parents could rely on. While Mr. Whiteley had input and parents signed his letters, he chose the tone and content of these letters. Such a role has consequences. As noted above, an individual cannot step into the lead and then hide behind the group when the leadership fails. There are reputational challenges that comes with these decisions to lead. Mr. Whiteley chose to send emails from his corporate account, that choice may also have consequences, which indeed would be unfortunate.

109. This will be a public decision in keeping with previous Ringette Alberta jurisprudence.

VIII. Sanctions

110. The Complainant has recommended the following sanctions:

- a. A 2-3 year suspension from all ringette activities beginning on August 1, 2023;
- b. A requirement to take a course in Keeping Girls in Sport;
- c. A course on governance in Sport;
- d. Completion of Safe Sport Training;
- e. A statement of apology to David Myers, including the frivolous complaint; and
- f. A statement of apology to the entire RAB Board of Directors for frivolous Complaint.

111. In the circumstances and pursuant to section **20.4.11** of the *Policy* I make the following Order with respect to sanction:

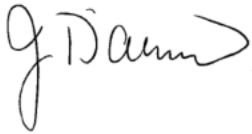
- a. Because on a balance of probabilities the Conflict of Interest complaint filed against David Myers was meritless and based on rumour and speculation, and made in bad faith; and
- b. Because on a balance of probabilities the leadership role of Mr. Whiteley as the spokesperson for Team White Parent was the operating mind in drafting and sending emails and Letters on behalf of Team White parents, of which letters contained demands for RAB to circumvent their own policies and procedures; and
- c. Because on a balance of probabilities Mr. Whiteley breached the Confidentiality provision in the *Policy*; and
- d. Because on a balance of probabilities, the emails, phone calls, letters and filing the Conflict of Interest Complaint against Mr. Myers in its' totality arises to Workplace Harassment; and
- e. Because on a balance of probabilities, the contents of the emails, the number of phone calls, issuing demand letters threatening legal action and filing a frivolous Conflict of Interest Complaint, Mr. Whiteley did not focus comments or constructive critique appropriately avoiding public criticism of RAB staff and Mr. Whiteley did not demonstrate the spirit of sportsmanship, leadership and ethical conduct and practices, and Mr. Whiteley caused humiliation and anxiety to Mr. Myers;

112. Effective August 2023, the Respondent is suspended from participating in all Ringette Alberta activities until the close of the 2025 Ringette Season. There shall be no family exclusion from this suspension, except specifically with regard to his daughter registered to play ringette whom he may drive to, but not accompany at any ringette activities. He is explicitly prohibited from entering any venue at which ringette activities are taking place. In addition, he may not participate in any Team White communications, including the team chat channels.

113. Mr. Whiteley is to work with RAB to determine a Governance in Sport program to enrol in and complete at his own expense prior to any return to Ringette activities. Proof of completion of the program must be provided to the Executive Director of RAB and/or the President of the Board of Directors prior to his return to Ringette activities.

114. Mr. Whiteley is to complete a Keeping Girl in Sport program by April 1, 2024, and will provide proof of completion to the Executive Director of RAB and/or the President of the Board of Directors.
 115. Mr. Whiteley will complete Safe Sport Training for 2024 and 2025 Ringette seasons and will provide proof of completion to the Executive Director of RAB and/or the President of the Board of Directors before the end of each season.
 116. Mr. Whiteley will issue a statement of apology to Mr. Myers, including an apology for the frivolous Conflict of Interest Complaint by 5pm on February 1, 2024. He will provide this statement to Ryan Devlin; and
 117. Mr. Whiteley will issue a statement of apology to Ryan Devlin and the RAB Board of Directors for his conduct, content of correspondence, tone and behaviour during the Coach Niro Complaint. This statement of apology will be delivered to Ryan Devlin by 5pm on February 1, 2024.
118. This decision may be appealed further to section **20.4.14.1** of the Discipline *Policy*.

Signed this 9th day of January, 2024



Jillian E. D'Alessio
Panel