

Date Issued: May 2, 2024

File: CS-000390

Indexed as: Kimball (by Kuebler) v. Kelowna Actors Studio Inc., 2024 BCHRT 136

IN THE MATTER OF THE *HUMAN RIGHTS CODE*,
RSBC 1996, c. 210 (as amended)

AND IN THE MATTER of a complaint before
the British Columbia Human Rights Tribunal

BETWEEN:

Michelle Kuebler on behalf of Maurice Kimball IV

COMPLAINANT

AND:

Kelowna Actors Studio Inc.

RESPONDENT

CONSENT ORDER

Tribunal Member:

Andrew Robb

Counsel for the Complainant:

Jim Boyle and Sarah Ewart

Counsel for the Respondent:

Sean T. Pihl, KC

Date of Order:

May 2, 2024

I INTRODUCTION

[1] The Complainant, Maurice Kimball IV, is a neurodivergent performer. On December 15, 2017, Mr. Kimball's mother, Michelle Kuebler, PsyD, filed a complaint [the **Complaint**] with the British Columbia Human Rights Tribunal on behalf of Mr. Kimball, a minor at the time of the filing, alleging that the Respondent, Kelowna Actors Studio Inc., discriminated against Mr. Kimball in the area of employment on the basis of disability contrary to s. 13(1) of the *Human Rights Code*.

[2] The Complainant and the Respondent have reached a settlement regarding Mr. Kimball's Complaint. They have co-operated in agreeing to the terms of this decision to resolve all matters relating to Mr. Kimball's Complaint.

[3] The Tribunal did not hold a hearing but the Complainant and the Respondent advised the Tribunal that they agree about the background facts and the remedies set out below, and they requested that the Tribunal enter those facts and remedies in a consent order. I am satisfied the order is consistent with the *Code* and I am prepared to make the requested order under s. 17(2) of the *Administrative Tribunals Act*.

II BACKGROUND

[4] The Respondent is a theatre company located in Kelowna, British Columbia.

[5] In early 2017, the Respondent hired Mr. Kimball, a teenager who was 14-years-old at the time, to play the lead role of Billy Elliot in their upcoming production of *Billy Elliot – The Musical* [the **Musical**].

[6] Mr. Kimball is an experienced and accomplished musical theatre and dance performer. Prior to his start date with the Respondent, he had performed as Billy Elliot in two unrelated productions of *Billy Elliot – The Musical*. The Respondent's production of *Billy Elliot – The Musical* was to be the third time Mr. Kimball would play the lead role of Billy Elliot.

[7] Mr. Kimball has been diagnosed with certain disabilities that are considered neurodivergent conditions, including Sensory Processing Disorder, Central Auditory Processing Disorder, and the

DSM-5 Specific Learning Disorders in math, writing and reading (also commonly known as Dyscalculia, Dysgraphia and Dyslexia).

[8] On June 3, 2017, Mr. Kimball attended his first rehearsal for the Musical.

[9] On June 22, 2017, the Respondent emailed Dr. Kuebler to terminate Mr. Kimball's employment and his role in the Musical. The Respondent acknowledges that it did not meet its legal obligation to accommodate Mr. Kimball's disabilities up to the point of undue hardship before terminating his employment.

[10] These events had a significant impact on Mr. Kimball's mental health. They also impacted his desire to perform, future career plans, and education.

III ORDER LIMITING PUBLICATION

[11] On October 5, 2020, at the request of the Complainant and consent of the Respondent, the Tribunal made an order limiting publication of personal information regarding the complaint, pursuant to Rule 5(7) of the Tribunals *Rules of Practice and Procedure* [the **Anonymization Order**].

[12] The parties agree by consent to an order that the Anonymization Order be lifted for all purposes, including the publication of this Consent Order.

IV REMEDY

[13] The Respondent accepts that terminating Mr. Kimball's employment without accommodating his disabilities to the point of undue hardship is discriminatory conduct under s. 13(1) of the *Code*. Having agreed that Mr. Kimball's complaint is justified, the parties agree to an order by consent of the following remedies under s. 37 of the *Code*.

A. DECLARATION

[14] Pursuant to s. 37(2)(b) of the *Code*, the conduct complained of is discriminatory contrary to s. 13(1) of the *Code*.

B. CEASE CONTRAVENTION

[15] With respect to a remedy under s. 37(2)(a) of the *Code*, the Respondent agrees to cease the contravention and refrain from committing the same or a similar contravention of s. 13(1) of the *Code*.

C. AMELIORATE THE EFFECTS OF DISCRIMINATORY PRACTICE

[16] With respect to a remedy under s. 37(2)(c) of the *Code*, the Respondent agrees to take the following steps to ameliorate the effects of the discriminatory practice:

- a. implementing and maintaining sensitivity training and educational programs on persons with learning disabilities and sensory disabilities in theatre programs, classes, activities, and performances;
- b. implementing and maintaining a policy for persons with learning and sensory disabilities in theatre programs, classes, activities, and performances; and
- c. adopting and implementing an employment equity program or other special program to ameliorate the conditions of persons with learning disabilities and sensory disabilities, related to accommodating them in theatre programs, classes, activities, and performances.

D. LOST WAGES

[17] With respect to a remedy under s. 37(2)(d)(ii) of the *Code*, the Respondent will pay to Mr. Kimball the sum of \$1,200 for wages lost because of the discrimination.

E. INJURY TO DIGNITY

[18] With respect to a remedy under s. 37(2)(d)(iii) of the *Code*, the Respondent will pay to Mr. Kimball the sum of \$35,000 for injury to his dignity, feelings, and self-respect.

F. EXPENSES ARISING FROM BREACH OF THE *CODE*

[19] With respect to a remedy under s. 37(2)(d)(ii) of the *Code*, the Respondent will pay to Mr. Kimball the sum of \$18,998 for expenses incurred as a result of the Respondent's discriminatory conduct. These expenses include the cost of therapeutic counselling sessions, naturopathic appointments and treatments, and expenses incurred in respect of obtaining expert assessments, reports, and opinions for use at hearing.

G. INTEREST

[20] The Respondent will pay to Mr. Kimball pre-judgement interest on the wage loss amount of \$1,200 and expenses incurred amount of \$18,998 until paid in full, based on the rates set out in the *Court Order Interest Act*.

[21] The Respondent will pay to Mr. Kimball post-judgement interest on the wage loss, expenses and injury to dignity amounts until paid in full, based on the rates set out in the *Court Order Interest Act*.

H. TIMELINE

[22] The Respondent will comply with the remedies ordered under s. 37(2)(c) of the *Code* and will provide the Complainant with information respecting the implementation of the remedies ordered thereunder within 120 days following the date of this Consent Order.

[23] The Tribunal will remain seized for 180 days following the date of this Consent Order with respect to the remedies ordered under s. 37(2)(c) of the *Code*.

Andrew Robb,
Tribunal Member