

Can the Onerous Accommodation Obligation put you at risk?

How comfortable would you be if you found out that while your doctor was a med student he/she was found to be unsuitable for continued medical training by 10 experienced doctors? Based upon the *UBC v. Kelly* case, it would appear that your answer may not matter!

Even though the *UBC v. Kelly* case was not employment-related, its outcome will definitely impact employment-related human rights matters.

In a nutshell, Kelly was a medical student at UBC who was expelled from the Program after the University concluded that he would be unable to both complete the program and practice successfully in the future due to his lifelong ADHD and learning disorder. UBC's decision was made by a panel of 9 qualified and experienced doctors, many of whom had direct and ongoing interactions with Kelly, based upon a report prepared by the Program's director, also a qualified physician. The report concluded that despite the accommodations already provided to Kelly by UBC which included moving him to a different hospital where he would get more supervision, lengthening his rotation and hiring a preceptor to provide intensive supervision and training and even if the new accommodations suggested by one doctor who assessed Kelly were implemented, Kelly just would not be able to succeed in the Program or in practice.

Kelly brought a human rights complaint arguing UBC's decision to dismiss him from the Program constituted discrimination based upon his disability. The BC Human Rights Tribunal concluded that even though it was not clear whether or not Kelly would have succeeded if the additional accommodations were provided, which as UBC argued, would have had a negative impact on the entire Program, they were still required to try, and dismissing him from the Program was a breach of Kelly's human rights.

In the context of accommodation, the Tribunal seems to have given significantly more weight to the one physician who assessed Kelly, and very little weight to the expert opinion of the Program's director and the 9 other doctor's that recommended Kelly be dismissed!



The Tribunal awarded Kelly significant damages - \$385,194.70 for lost wages and \$75,000.00 (will likely be reduced as a result of an appeal) for injury to dignity, feelings and self-respect. The latter award was double the previous high of \$35,000!!

If you have any questions about accommodation or any other human rights matter please speak with an e2r Advisor.

