

Citation: Alon-Shenker, Pnina, “‘Age is Different’: Revisiting the Contemporary Understanding of Age Discrimination in the Employment Setting” (2013) 17:1 CLELJ 225

Abstract: The author argues that the current test for age discrimination in Canada which is based on the Supreme Court of Canada’s decision in *R v Kapp* and which requires that discrimination be motivated by or perpetuate stereotyping or prejudice, has led adjudicators to fail to come to grips with wrongful ageism in the workplace. The fact that everyone ages, and that distinctions based on age may in the past have benefitted the same people who are now harmed by making those distinctions, has in the author’s view been given too much weight, thereby making discrimination against senior workers too easy to justify. She proposes that the legal test for age discrimination should focus on wrongs done in the present, and should not take account of any past or future benefits which may be attributed to a distinction drawn on the basis of age. On the basis of what the author calls the Dignified Lives Approach, she argues that an age-based distinction should be held to be discriminatory if it violates any of these five principles: people of all ages must be assessed on their merits, must be treated as equals, must have enough means to live lives of dignity, must be socially included, and must retain their autonomy. Using as examples four recent cases of alleged age-based discrimination in the employment context decided by Canadian courts and administrative tribunals, the author demonstrates how the Dignified Lives Approach would in her view be more sensitive to different types of age discrimination and would bring more just outcomes.