

Citation: Shilton, Elizabeth, “Family Status Discrimination: Disruption and Great Mischief or Bridge over the Work-Family Divide?” (2018) 14 JL & Equality 33

Abstract: This article examines a distinctive Canadian approach to alleviating work-family conflict: human rights laws that prohibit employment discrimination based on family status. These laws challenge management’s historic right to organize the workplace without regard to workers’ family care responsibilities; properly applied, they should require employers to change or adjust work rules that create unnecessary impediments to family care. However, Canadian adjudicators have been largely persuaded that applying human rights law in this fashion would cause “disruption and great mischief”. To avoid this outcome, they have developed legal tests that protect employers from having to justify conventional workplace practices against standard human rights principles. Such tests operate to limit findings of family status discrimination to the most egregious individual cases. They also impede systemic change and reinforce gender hierarchies in workplaces and families, ignoring the links between work-family conflict and women’s economic, social, and cultural subordination. Under these circumstances, proactive policy approaches to work-family conflict are desirable, but litigation still has a role in promoting gender-inclusive systemic change. There are a number of strategies for family status litigation that are relatively unexplored, in particular the possibility that systemic complaints could circumvent the high *prima facie* thresholds that operate as barriers to invoking the duty to accommodate, offering opportunities both to develop new legal tests that expose the discriminatory impact of many family-unfriendly work rules and to craft more effective and gender-equal remedies.