

Citation: Osborne-Brown, Sheila, “The ‘Right to Sue’ as Access to Justice: Discrimination in Employment before the Courts in Canada and California” (2014) 18:1 CLELJ 291

Abstract: This paper provides a comparative analysis of the Canadian and US approaches to the adjudication of discrimination claims arising from employment. The author presents an overview of the main structural elements of the U.S. system (focusing on the state of California) as compared to the Canadian system, having regard to causes of action, forums, the type and extent of remedies, costs awards, and participants in the process. She then considers the impact of those contrasting structural elements on a complainant’s ability to access a court process, rather than an administrative process alone, and on the scope of individual monetary remedies that may be available in addition to systemic ones. Weighing on the advantages and disadvantages of the Canadian and US approaches, the author asks whether the system in Canada, with its pronounced “public” character, could not coexist with a more “private” system in which claims could be pursued in court, in a way that would benefit both individual complainants and society as a whole. At the same time, the author suggests that enhancing the quantum of individual remedies, whether in an administrative forum or in court, could well prove to be an effective tool for encouraging complainants to come forward and to enable them to secure effective legal representation in prosecuting their complaints.