

Pregnancy Discrimination in Canada Remains an Ongoing Workplace Issue

Authors: Kali Faingold

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From Bliss to Brooks and Beyond: A Contemporary Analysis of Pregnancy Discrimination in Canada



We are pleased to share that Kali Faingold’s article, “From Bliss to Brooks and Beyond: A Contemporary Analysis of Pregnancy Discrimination in Canada,” has been published in the *Canadian Journal of Human Rights* (Volume 14, Issue 1).

The article examines how Canadian law has evolved to recognize pregnancy discrimination as a form of sex discrimination and explores how pregnancy discrimination continues to arise in workplaces across the country.

The discussion begins with two landmark Supreme Court of Canada decisions. In *Bliss v. Canada (Attorney General)*, decided in 1978, the Court refused to recognize **pregnancy discrimination** as a form of sex discrimination. More than a decade later, in *Brooks v. Canada Safeway Ltd.*, the Court reversed course and confirmed that discrimination based on pregnancy is discrimination based on sex under Canadian human rights law. That decision remains a cornerstone of pregnancy discrimination jurisprudence in Canada.

The article then examines the current legal landscape. Today, federal, provincial and territorial human rights legislation protects employees from discrimination related to pregnancy and childbirth. Despite these protections, pregnancy discrimination continues to appear before **human rights tribunals** across the country.

Key Themes Emerging from Recent Tribunal Decisions

Drawing on more than 40 human rights decisions from 2018 to 2023, the article identifies common situations in which pregnancy discrimination allegations arise, including:

- Termination shortly after a pregnancy is disclosed

- Refusal to hire or promote pregnant employees
- Reduced hours, altered working conditions or other forms of adverse treatment related to pregnancy
- Failure to accommodate pregnancy-related needs in the workplace

The article also highlights several themes that emerge from recent tribunal decisions. In many cases, direct evidence of discrimination is unavailable, requiring tribunals to examine the surrounding circumstances and draw reasonable inferences from the facts. Timing often plays a significant role, particularly when adverse employment action closely follows a pregnancy announcement. The decisions also demonstrate that tribunals frequently consider the employee's length of service and the broader workplace context when assessing discrimination claims.

Pregnancy Discrimination Remains a Persistent Workplace Challenge

Ultimately, the article concludes that while Canadian law has made significant progress since *Brooks*, pregnancy discrimination remains a persistent workplace issue. The decisions reviewed suggest that pregnant employees continue to face barriers and adverse treatment connected to pregnancy, maternity leave and workplace accommodation.

The full article provides a detailed review of the history of pregnancy discrimination law in Canada, the current legislative framework and recent trends in human rights jurisprudence. Readers interested in learning more are encouraged to read the complete article, **From Bliss to Brooks and Beyond: A Contemporary Analysis of Pregnancy Discrimination in Canada**.

Kali Faingold is part of the TDS Labour & Employment. To learn more about Kali and her practice, visit their website bio at tdslaw.com/lawyers/kali-faingold.

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