



CANADIAN MANUFACTURERS & EXPORTERS  
(ONTARIO DIVISION)

**SUBMISSION TO THE MINISTRY OF LABOUR ON  
THE ELIMINATION OF MANDATORY  
RETIREMENT**

FRIDAY, SEPTEMBER 24, 2004

## Submission to the Ministry of Labour on the Elimination of Mandatory Retirement

CME appreciates the opportunity to meet with the Ministry to discuss the important and imminent issue of mandatory retirement elimination.

CME is a national not-for-profit organization with provincial offices across the country and a national office in Ottawa. Our member companies produce approximately 75% of Ontario's (and Canada's) manufactured output, and account for about 90% of our exports.

We continue to submit, as we have in the past, that CME supports the existing provisions of the Ontario Human Rights Code, which enables mandatory retirement. This position is expressed in the knowledge that an increasing trend to "early retirement" is occurring.

The expectation is that relatively few people would actually take advantage of working beyond age 65. However, the reality is that removing mandatory retirement as an option could have far reaching implications.

One premise, on which the government has based its decision to eliminate mandatory retirement, is that workers should have a right to decide when they retire. The rationale for this thinking is to allow workers who enjoy working to prolong that option, while also allowing the continuation of work for others that may need to supplement their income for whatever reason.

Currently, many workers do work beyond the age of 65. While some enter into an agreement with their employers, others take on temporary, contract or consulting work. The option to work beyond age 65 currently exists.

As the 2001 report by the Ontario Human Rights Commission states, recent immigrants and women may be unable to achieve financial security by age 65. Alongside this information, we are now also aware that Canada's seniors' population will double by 2028, while our proportion of young people aged 15 to 24 will fall from about 13 to 11 percent of the total population by the same time.

Based on this information, it appears that employers may need to employ seniors as much as possible in the upcoming two decades, and that these individuals may help to meet a skills need and contribute to the economy, particularly in such fields as teaching and nursing. For this reason, CME suggests the legislated changes are not required to ensure that those over 65 will still be able to participate, but that most employers will be vying for whichever individuals make themselves available to the workforce.

Contemplation of changes in retirement provisions requires attention to the broader social context. Society's view and treatment of persons aged 65 and older has become enshrined in numerous laws and public programs. For example, Employment Insurance, Old Age Security, other transfer payments, income tax and Registered Retirement Savings Plan regulations all have features that are directly related to

retirement age. Furthermore, subsidization of health care and prescription drugs, tax credits for municipal and sales taxes, and for services such as public transportation, is based on age. In the private sector, businesses such as retail stores, restaurants, theatres and banks and trust companies offer senior citizens discounts or other benefits, clearly created with a particular retirement age in mind. CME calls upon government to analyze and clarify the implications of a change in “normal retirement age” on all such laws and programs.

Once mandatory retirement is eliminated, a number of problems arise for employers. They involve issues such as succession planning, increased cost of benefits and pensions, collective agreements, termination and accommodation. Also, there is the challenge of educating workers, employers and others of these changes and their implications.

#### Succession Planning – Deferred Compensation

With a current set retirement age of 65, employers can plan for future financial obligations, especially for pensions and other benefits. If employers don't have a defined retirement date, they cannot plan operating budgets because they may have to maintain employees who would normally have otherwise retired.

With deferred compensation, retirement age may be built into the wage/salary structure for long-term workers, with younger workers being underpaid and wages increasing with seniority, over-compensating older workers. Arguably, employers need a cut-off date, e.g. age 65, to plan for such compensation. If employers cannot assume such a date, it will be unclear whether wage costs will exceed expectations, and the assumptions underlying wage negotiations will have to be revisited.

This need is especially true noting that the Employment Standards Act has no requirement for employees to give employers notice regarding resignation. In theory, with mounting numbers of seniors, many could decide to stay on at a workplace, causing unexpected costs in salaries to employers, who originally forecasted a removal from payroll of each employee turning 65.

#### Pensions

As per the Supreme Court decision in the case of McKinney v. University of Guelph, we agree that there must be a balance between protecting individuals from discrimination and giving employers and employees the freedom to agree on a date of termination considered beneficial to both. As the court found, the objectives of the section, namely to preserve the integrity of pension plans and to foster the prospects of younger workers by establishing an age maximum, were found to be pressing and substantial, and rationally connected to the restriction on the right, and to minimally impair the equality rights of older persons. In the court's section one analysis of this decision, also noted in the Discussion Paper, “Mandatory retirement was developed with the introduction of private and public pension plans and had a profound impact on the organization of the workplace and the structure of pension plans, on fairness and security of tenure in the workplace and on opportunities for others.”

Pension planning could now become a problem for employers. Under the Pensions Benefits Act, pension plans registered after January 1, 1998, are required to have a “normal retirement date” not later than one year after the attainment of age 65, under section 35(1).

Though the Act allows employees to continue employment after the “normal retirement date”, the amount of benefits which accrue to the employee under the plan may be fixed to a maximum number of years or a set maximum amount of benefits. Accordingly, the Act permits a pension plan to “cap” accrued benefits, even where an employee continues to be a member of the plan (and does not receive a pension) after the “normal retirement date”.

In Quebec, pensions are “capped” at age 65 and adjusted for the date the pension becomes payable if this occurs at a later age. In this way, the amount payable is actuarially equivalent to the pension that would have begun at normal retirement age, had the pension not been postponed.

Another potential problem is that employers will now have to review pension plans that don't allow employees hired on or after age 65 to enrol.

The government needs to review legislation in Quebec, Manitoba, PEI and the Yukon to determine how the legislation has been applied to the issue of pensions, following mandatory retirement elimination. It is essential that necessary limits and caps be included in any new system introduced in Ontario.

#### Old Age Security (OAS) and Canada Pension Plan (CPP)

If Canada decides to follow a U.S. model, gradually edging up OAS and CPP age requirements, the costs of benefits and overcompensating older employees may become serious issues with which employers will have to contend.

Conversely, if CPP and OAS age requirements do go up, companies may follow suit and raise the pension age requirements as well (for full pension). While this could be a cost savings to companies, it is doubtful that this action would create the effect the government is trying to achieve by allowing older workers who need to supplement their income to do so. As well, many workers who would otherwise have received a full pension will now have to work longer to receive it.

Finally under the Income Tax Act (Canada), a member of a pension plan cannot defer RRSP, RRIF, etc. from these plans beyond the end of the year in which the member attains age 69. Therefore, unless the Act addresses this issue, those who continue to be employed at age 69 will collect a salary and a pension at the same time.

#### Benefits

Older employees are expected to use more prescription medication and short- and long-term disability plans more often than younger workers. Some employers may therefore decrease the amount of benefits available to the workforce as a whole in order to finance the premiums for older workers. Also, costs related to absenteeism could rise, with reduced productivity and requiring replacement workers for staff on medical leave.

Extending group life insurance coverage to those over age 65 would dramatically increase costs as well.

Again, legislation in Quebec allows for exceptions to discrimination on the basis of age for the purposes of benefits, so that employees are not entitled to benefits after age 65, although this exception does not apply to prescription medication. In determining the effects (of eliminating mandatory retirement in Ontario) on benefits and life insurance for employees over the age of 65, the government must be mindful of how other provinces have dealt with such issues, once again, incorporating caps and limits.

#### WSIB Benefits

The Workplace Safety and Insurance Act (WSIA) incorporates age 65 in all of its legislation and policies. If the government removes this age limit from the Act regarding entitlement to benefits, the current unfunded liability could exceed its previous all-time high of \$11 billion. This is an additional cost burden to employers. CME proposes that the age requirements under the WSIA be kept at 65, and not be affected by the elimination of mandatory retirement.

#### Collective Agreements

Currently, collective agreements have mandatory retirement based on an age that is negotiated by the parties. There will be complicated processes involved in dealing with all the implications of a lengthy collective agreement with the elimination of mandatory retirement. A transition period is necessary to allow for collective agreement issues, education and to a new "bargaining environment".

#### Termination and Accommodation

CME is also concerned about performance appraisal and management. Until now, many employers have allowed different standards of performance for employees nearing retirement, as an opportunity for the employees to acclimatize to their changing work status, from employed to retired. This practice has historically seemed reasonable from both employer and employee perspectives, and has contributed to positive human relations and constructive company practices. With the elimination of mandatory retirement, employers will now have to prove cause for dismissal at or after age 65 or pay out large sums to older workers who would normally have already left. This requirement could create a burden on employers who will now have to continually assess the performance of their older workers and determine at what point they become incapable of performing their duties.

The Human Rights Commission stated in its Report, *Time for Action: Advancing Human Rights for Older Ontarians* (June 2001), that progressive performance appraisals, applied to all employees, will be a necessity if employers wish to terminate older employees without the risk of a human rights complaint.

Such requirements will cause administrative difficulties, the likely expense of more litigation and the increased requirement to pay termination and severance pay. As well, such appraisals could generate diminished morale among staff in general, as such appraisals will have to apply to all employees in order to avoid discrimination.

Related to such appraisals is the possible need for accommodation. Under the Human Rights legislation, older workers will now have to be accommodated to the point of undue hardship (for the employer). CME submits that this standard is too high for employers to be burdened with.

In summary, CME recommends that the government must carefully analyze and clarify the effects that the Elimination of Mandatory Retirement will have on all other laws and programs which currently have a set retirement age of 65 before the new Act takes effect.

It is essential that the necessary caps and limits mentioned above be included. A suitable transition period (perhaps 5 years) is also necessary. This will allow for the parties to deal with the transitional issues, and allow for an educational/awareness campaign to take place.

CME would be pleased to provide additional comments. You can contact either Ian Howcroft at 905-568-8300 Ext. 256 or Mena Falcone Johnstone at 905-568-8300 Ext. 255.