



## **Providing Choice:**

A Consultation Paper

On Ending Mandatory Retirement



**Ministry of Labour**

**August 2004**



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An Open Letter to the People of Ontario:

The McGuinty Government is committed to giving Ontario workers the right to choose when they want to retire. However, the government wants to achieve this objective without undermining existing retirement rights or entitlements to benefit and pension plans.

As a first step towards meeting this commitment, I am pleased to release our consultation paper: *Providing Choice: A Consultation Paper on Ending Mandatory Retirement*.

Ending mandatory retirement will require changes to the Ontario *Human Rights Code* as well as other provincial legislation. We need your input on how best to change the law.

In conjunction with the release of this paper, we will also be holding public consultations in September. The consultations are designed to seek input from the public on how to end mandatory retirement in a fair and balanced way.

Following the public consultations, the McGuinty Government intends to introduce legislation to end mandatory retirement.

This is an opportunity for you to help shape the future of Ontario. Your views are important to us and I hope you will participate in this process. The consultation paper outlines how to submit your comments by fax, mail or e-mail.

I look forward to hearing from you on this important issue for all Ontarians.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher Bentley".

Christopher Bentley  
Minister

## INTRODUCTION

The Ontario government is committed to ending mandatory retirement and giving Ontario workers the right to choose when they want to retire. The government wants to achieve this objective without undermining existing retirement rights or entitlements to benefit plans and pension plans.

Ending mandatory retirement will require changes to several pieces of Ontario's legislation. In particular, the definition of age in the Ontario *Human Rights Code* must be amended.

We are asking for your comments, input and suggestions on how best to end mandatory retirement in a fair, balanced and responsible way. Ending mandatory retirement may affect various sectors throughout Ontario differently. In addition to this consultation paper, we will be holding public consultation sessions and special meetings with experts in the fall. This is your opportunity to help shape the way to end mandatory retirement in Ontario.

## BACKGROUND

### Mandatory Retirement in Ontario

Workplace policies, practices or collective agreements that require employees to retire at age 65 or older are currently lawful in Ontario. Although the Ontario *Human Rights Code* prohibits discrimination in employment on the basis of "age," it defines "age" in *employment* as being 18 years and older, but less than 65. As a result, if an individual is forced to retire because he or she has turned 65 years of age or older, that individual cannot file a complaint on the basis of age discrimination under the *Human Rights Code*.

In June 2001, the Ontario Human Rights Commission (OHRC) released the paper, *Time for Action: Advancing Human Rights for Older Ontarians*. The OHRC paper argued that mandatory retirement policies undermine older workers' dignity and sense of self-worth and impose financial hardship. The OHRC called for ending mandatory retirement by changing the *Human Rights Code's* definition of age in employment.

## **Mandatory Retirement Outside of Ontario**

The Ontario government's objective of ending mandatory retirement is reflective of a global trend. In particular, the United States, New Zealand and Australia have all prohibited mandatory retirement, with certain specified exceptions.

A number of jurisdictions in Canada, including Alberta, Manitoba, Quebec, Yukon, NWT, and Prince Edward Island, have also made mandatory retirement unlawful, except in limited circumstances. For example, if an employer in these jurisdictions can demonstrate that age is a reasonable and *bona fide* requirement of the job or occupational requirement (a "BFOR"), a mandatory retirement policy may be permissible. Currently, the BFOR exemption can also be used to justify policies in Ontario that require employees to retire *before* age 65, provided that the employer can satisfy all elements of the test for the BFOR exemption which was developed by the Supreme Court of Canada.

## **Why is Mandatory Retirement an Important Issue Today?**

Generally speaking, people are living longer, staying healthier and are remaining independent.

Like many countries, Canada has an aging population. According to Statistics Canada, the number of Canadians aged 65 and over is expected to double from nearly four million in 2000 to over eight million by 2028. Seniors will account for approximately 22 per cent of Canada's population by 2028, compared with about 13 per cent in 2000.

At this time in Ontario, there are approximately 1.5 million seniors. This number is expected to increase to 3.2 million by 2028. Over the same period, the proportion of young people aged 15 to 24 will fall from about 13 per cent of Ontario's population to approximately 11 per cent by 2028.

Many older Ontarians want to continue to be active and productive in both their individual pursuits, including paid employment, and their community involvement. Mandatory retirement takes the choice away from older Ontarians who want to continue to work.

The 2001 report by the Ontario Human Rights Commission also found that mandatory retirement imposed financial hardships on certain groups, including recent immigrants and women. A significant portion of Ontario's population is made up of recent immigrants, some of whom enter the Ontario workforce later in their careers and, as a result, may be unable to achieve financial security by age 65.

Many women face similar challenges. Whether women entered the paid workforce after carrying out parental responsibilities, or whether they withdrew from the workforce temporarily for family or other reasons, the result is that many women lack adequate funds to retire at age 65.

For these reasons and others, it is important that we give people the choice, given their own personal situations, about when to retire.

## **ENDING MANDATORY RETIREMENT: A DISCUSSION**

We are seeking your comments, suggestions and input about the issue of mandatory retirement and how best to change the current laws permitting mandatory retirement.

We have a number of questions to help organize your comments and suggestions and to help us review your answers. The questions are organized around:

- A. Economic Impacts;
- B. Labour Market Issues;
- C. Employment Issues;
- D. Pensions and Benefits;
- E. Social and Human Rights Issues; and
- F. Occupational and Sector Specific Issues.

The following questions are meant to encourage, not limit, discussion. We would like your comments and suggestions on the issue of ending mandatory retirement to enable us to best provide for Ontario's needs.

## **A. ECONOMIC IMPACTS**

The government wants to assess the potential impact of ending mandatory retirement on Ontario's overall economy and the cost of doing business. The impact on individuals and families, including personal finances, must also be explored.

It is also important to identify any possible ripple effects for those sectors of the economy that may be particularly affected by ending mandatory retirement. If ending mandatory retirement results in increased numbers of older people working, this may have an effect on sectors such as volunteer and non-profit organizations, as well as tourism.

### **What we want to know:**

- How do you think ending mandatory retirement would affect Ontario's economy, productivity or competitiveness? Would it make Ontario more or less attractive for investment?
- What is the potential impact of ending mandatory retirement on volunteer and non-profit organizations?
- Which other sectors of the economy would be particularly affected? How?
- How would ending mandatory retirement affect the personal finances of individuals and their families?

## **B. LABOUR MARKET ISSUES**

Decisions regarding the ending of mandatory retirement need to take into account current and forecasted labour market trends, existing and projected skills shortages, labour force participation by older workers and its effect on younger workers, and education and training considerations.

### **What we want to know:**

- How do you think ending mandatory retirement may affect decisions by workers about staying at work or beginning work in Ontario?
- What is the potential impact on young workers or newly trained workers seeking to enter the workforce?
- Would ending mandatory retirement help deal with skills shortages in jobs like nursing, teaching, or skilled trades? How?
- What issues, if any, would be raised about promotions or career progression opportunities if mandatory retirement is ended? How could these issues be addressed?
- What impact, if any, would ending mandatory retirement have on training programs and policies?

## C. EMPLOYMENT ISSUES

The government wants to determine what impact ending mandatory retirement would have on the terms and conditions of employment in Ontario workplaces, and on the relationship between employers, employees and unions.

### **What we want to know:**

- Would ending mandatory retirement have an impact on terms and conditions of employment in non-unionized workplaces?
- Would ending mandatory retirement affect the negotiation or operation of collective agreements in unionized workplaces?
- Would there be any costs to employers in either unionized or non-unionized workplaces? If so, what would they be and how would they arise?
- Would there be any costs to unions?
- What impact would ending mandatory retirement have on human resources practices, procedures, and policies?
- What is needed to help employers, employees and unions adjust or transition to the removal of mandatory retirement?



## D. PENSIONS AND BENEFITS

Many disability, dental, health, life insurance and other benefits plans sponsored by employers or purchased privately assume retirement at age 65. As well, age 65 is the most frequent retirement age for many pension plans.

Further, age is an element of the workplace insurance system, because a number of provisions in the *Workplace Safety and Insurance Act, 1997*, which provides compensation and health care benefits, are associated with age 65. Certain provisions in the former *Workers' Compensation Act*, which apply only to injuries that occurred before January 1, 1998, are also associated with age.

It is important to understand the potential impact of ending mandatory retirement on these plans and policies.

### **What we want to know:**

#### *Employer-Sponsored or Private Plans*

- What would be the impact of ending mandatory retirement on pension plans? Would different types of pension plans be impacted differently?
- What would be the impact of ending mandatory retirement on other benefit plans, including dental, drug, supplementary health, life insurance or disability plans sponsored by employers or privately purchased? Will there be an impact on the cost of such plans to employees or employers?
- Are there any actions the government should take to address the potential impact on pension or benefit plans?
- Should pension or benefits plans be able to differentiate between workers older and younger than 65 or be unavailable to older workers? If so, which ones and why?
- Should some flexibility be built into pension or benefit plans for workers 65 years and older if they choose to continue to work?

#### *Workplace Insurance System*

- What impact would ending mandatory retirement have on the workplace insurance system? Are there any actions that the government should take to address these impacts?
- Should the workplace insurance system be able to differentiate between workers older and younger than age 65 or be unavailable to older workers? (e.g., should the re-employment obligation continue to end when the worker reaches 65?)

## E. SOCIAL AND HUMAN RIGHTS ISSUES

As found by the Ontario Human Rights Commission, blanket mandatory retirement is discriminatory and undermines the dignity of older Ontarians. The proposed change to the *Human Rights Code* would allow workers aged 65 and over to file complaints with the Ontario Human Rights Commission if employers force them to retire, refuse to employ them or change their terms and conditions of employment because of their age.

The government wants to assess the broad social implications of ending mandatory retirement. It also wants to consider the potential impact of the change to the *Human Rights Code* on the rights of individuals to benefits provided under municipal, provincial or federal government social assistance programs such as the Ontario Drug Benefit Plan. It is important to understand the potential impact of ending mandatory retirement on these programs and policies.

### **What we want to know:**

- What social pressures or benefits may result from ending mandatory retirement?
- If people choose to continue to work longer, are there certain workplace characteristics, conditions, policies or practices that need to be re-considered? If so which ones and how should they be changed?
- What would be the impact of ending mandatory retirement on vulnerable groups? What actions should be taken to address these impacts?
- What quality of life issues may arise as a result of ending mandatory retirement?
- What impact would ending mandatory retirement have on families?
- What impact would ending mandatory retirement have on the right of individuals to benefits provided under municipal, provincial or federal social benefits and assistance programs and policies?
- What educational/informational initiatives would be appropriate to prepare the community for change? Who should deliver these initiatives and to whom should they be targeted?

## **F. OCCUPATIONAL AND SECTOR SPECIFIC ISSUES**

It is important for government to understand the unique effect that ending mandatory retirement may have on certain occupations (such as the skilled trades, firefighting, tenured instructors at universities, or the police) or in certain sectors of the economy (such as education and health care).

### **What we want to know:**

- What would be the impact of ending mandatory retirement on occupations/sectors such as colleges and universities, fire, police, education, and health?
- Are there occupations or sectors that may need an exception or special treatment? Which ones and why? What type of special treatment would they need?
- What actions may be required to help some occupations or sectors adjust to a removal of mandatory retirement?

## **How to Respond to this Consultation Paper**

If you are interested in responding to this paper with your comments, ideas and suggestions, please contact the Ontario Ministry of Labour by:

Fax: (416) 314-5855; Attention: Mandatory Retirement Project

Mail: Mandatory Retirement Project, 400 University Avenue, 12<sup>th</sup> floor, Toronto, Ontario, M7A 1T7

E-mail: [mandatoryretirement@mol.gov.on.ca](mailto:mandatoryretirement@mol.gov.on.ca)

**Please provide your response by September 30, 2004.**

Please note that public consultations on this issue will be held in the fall. Details of the dates and locations for the consultation hearings will be available on the Ministry of Labour website (<http://www.gov.on.ca/LAB/english/T>) or by phoning 1-866-400-8355.

Your input will help us end mandatory retirement in a balanced, fair and responsible way. Thank you for taking the time to participate.