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Note: Due to legislative changes, the reference to s. 36 and s. 42 of the PBA, 1987 should now read s. 35 and s. 41 of the PBA, R.S.O. 1990. Information concerning the Canada Pension Plan and Old Age Security was accurate at the time of publication. Readers may wish to contact the applicable federal government department to determine current practices.

Mandatory Retirement: The Pension Perspective

A recent Supreme Court of Canada majority decision upholding the constitutionality of mandatory retirement has focused the attention of employees and employers on retirement and pension issues. Interestingly, the decision has no direct impact on current provincial pension legislation; however, it may influence future policy making from the standpoint that people should be able to retire with an adequate income. This is an especially important topic in relation to women and the nature of their employment.

The Pension Benefits Act, 1987 (the "PBA, 1987") is clear. It does not specify mandatory retirement at a fixed age. Normal Retirement Age is defined in section 36 of the PBA, 1987 as no later than age 66. However, this provision is intended to facilitate early and normal retirement with pensions; it is not a requirement that a member must retire. Rather, it gives the member the right to receive a pension at age 65, if the member so chooses.

The vast majority of pension plans in Ontario will allow postponed retirement at the employee's option; only a handful of plans specifically prohibit postponed retirement. No data is available on how many members remain employed after age 66.

Section 42 of the PBA, 1987 does mandate an early retirement age. A pension plan member is allowed to take early retirement up to ten years prior to Normal Retirement Age. However, the amount of pension received would be actuarially reduced based on the number of years the member retired before Normal Retirement Age.

The Canada Pension Plan (CPP) has a similar provision. It permits someone age 60 or older to receive payments. For each month prior to age 65 that payments were received, they would be reduced by 1/2 a percent per month. (For example, if a person decided to retire at age 60, five years, or 60 months prior to age 65, this would result in a 30 per cent reduction in monthly payments.)

A pension plan is permitted under the PBA, 1987 to establish a maximum number of years of service and a maximum amount that can be paid by a pension plan. These provisions, set out in subsection 36(4), allow a plan to set limits in accordance with the limitations that are specified in Revenue Canada's *Income Tax Act*.

The former *Income Tax Act* set a limit of 35 years on membership. The new Act has removed this 35 year service provision in keeping with its new "maximum annual accrual" approach. The effect is that a member may remain in the plan indefinitely. Other recent amendments to the Act place a limit on tax-assisted savings of 18 per cent of an individual's earnings. This limit applies to contributions by both the individual and the employer. It also caps the total of contributions to all types of registered savings plans including employer-sponsored pension plans and Registered Retirement Savings Plans ("RRSP"s). Furthermore, members in a defined benefit plan will be subject to additional reduction of available room for their RRSP contributions.

Women face greatest hardship

The segment of workers most affected by mandatory retirement are women and workers not covered by employer-sponsored pension plans. Workers with no such plans may be forced to retire with only the basic Old Age Security and Canada Pension Plan coverage.

In 1988 one in four, or 25 per cent, of elderly women in Canada were poor. For single elderly women the incidence of poverty was 46 per cent.

Many working women qualify for very small Canada Pension Plan benefits or none at all. This is because CPP is an earnings-related program and homemakers and other women who are not in the paid labour force do not qualify for benefits.

Part-time and very low income earners, primarily women, who are required to save for retirement by contributing to the CPP, may be disqualified from eligibility for assistance under the federal Guaranteed Income Supplement and/or Ontario's Guaranteed Annual Income Supplement leaving them no better off than people who have not saved for their retirement years.

CPP offers survivor benefits for widowed spouses who are 65 or older. These are usually women because women in Ontario live an average of 80 years while men live an average of 73 years. However, these benefits are only 60 per cent of the pension benefit paid to the member spouse. This may mean a very low income for women whose husbands were low earners. While divorced women can claim half of the pension credits accrued during the marriage, benefits are not paid until the women reach age 65 and no survivor benefits are paid if the ex-spouse dies.

While the federal Spouse's Allowance program provides assistance to the non-earning spouse in low income families, no similar supplement exists to address poverty among single women.

Immigrants who have been in Canada for fewer than 10 years are not eligible for federal Old Age Security ("OAS") benefits. Those who have been in Canada for more than 10 years but less than 40 years receive 1/40th of the OAS pension for every year spent in Canada. As a result of these residency requirements, older immigrant women who have been sponsored by their families, in part to assist with child care, may not qualify for OAS benefits, but would receive Guaranteed Income Supplement. Immigrants may be working in jobs that are not covered by employer- sponsored pension plans. The Pension Commission of Ontario is working on a multicultural project to promote the importance of retirement planning to ethno-cultural communities. This pilot project is initially targetting the four largest ethno-cultural groups in Ontario: the Italian, Chinese, Greek and Portuguese communities.