

THE RIGHT TO RETIRE

**Response
by the
Ontario Federation of Labour**

to the

**Ministry of Labour's
Consultation Paper
Concerning
Mandatory Retirement**

September, 2004

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Introduction

The Ontario Federation of Labour (OFL) welcomes this opportunity to present its views on people's right to retire and on needed legislative changes to improve the entitlements of older workers. This submission is in response to the Ministry of Labour's *Providing Choice: A Consultation Paper On Ending Mandatory Retirement* (August 2004).

The OFL is a province-wide federation of affiliated unions encompassing approximately 650,000 members. Our members include public sector employees, construction workers, teachers and manufacturing workers plus a growing number of private service sector employees. The vast majority of our members participate in employer-sponsored and jointly trustee pension plans and like all members of the workforce, unionized and non-unionized, depend upon the provisions of adequate public pensions.

Mandatory Retirement: What's Behind the Change?

Let us be clear from the outset: there is no major demand from union members affiliated to the Ontario Federation of Labour to work beyond 65 years of age. The overwhelming majority of our members, like the public at large, want to know how to retire **before 65**. Early retirement is the desire of increasing numbers of workers. The issue for them is whether or not they can **afford** to retire. So while some workers wish to retire after 65, the majority of our members seek to retire before that time.

When the Ministry of Labour talks about a person's "right to choose when they want to retire", they totally omit any reference to pensions and the desires and needs of all employees to have adequate pensions so as to retire in dignity. As Ontario Federation of Labour President Wayne Samuelson, stated in a press release of August 18, 2004: "People need to have the financial ability to retire. When pension

plans are inadequate and government support falls short, people are not in a position to ‘choose’ to retire.”

In actual fact, there is no law in Canada that provides for mandatory retirement per se outside of the Ontario Public Service. Mandatory retirement, beyond laws and government policies for specific occupations, such as airline pilots and firefighters, is a matter of human resource policies established by employers or negotiated between employers and unions.

Nonetheless, there is polling evidence that the closer people get to retirement, the more they feel they should not be compelled to retire. The demographics of Ontario’s population with its increase in seniors has, therefore, seen a rise in concern about mandatory retirement. This is particularly the case for non-union workers without a private pension and some professionals such as academics.

Yet there is more to the move to ‘individual choice’ and ‘flexibility’ in retirement than is first evident. A number of writers and pundits have speculated on the reasons for moves to end retirement at 65, citing: pension plan inadequacy – yet actuaries tell us that the Canada Pension Plan (CPP) is in good shape; others cite demographic changes – yet while the so-called ‘baby boomers’ are retiring over the next few years, the impact of this on labour shortages and pension plans is now considered to be exaggerated¹; still others argue that the *Human Rights Code* is discriminatory in its definition of age and should be changed – yet distinctions of age can also be associated with positive social policy and the Supreme Court of Canada has upheld this distinction in such a positive light. In our view, mandatory retirement legislation serves a similar function to the requirement that one has to be 16 years of age to drive a vehicle or to legislation prohibiting child labour.

There is also a “big picture” and, at the same time, a less obvious scenario to consider. The trend to end mandatory retirement has already made headway in a number of countries around the world, including the United States, Britain, New Zealand and Australia. Provinces across Canada such as Quebec, Manitoba and

Alberta have already prohibited mandatory retirement. As the Ministry of Labour's consultation paper notes "ending mandatory retirement is reflective of a global trend."

Unfortunately, this trend is part of a retreat by the government and state from its traditional role and functions as exemplified by the crises we have all witnessed in health care, public education and public infrastructure such as water, roads and more. From the mid-1970s, as neo-liberal policies and a dedication to 'free markets' took hold, the role of government and spending on social programs has been regarded with considerable suspicion.

At the same time, the work lives of millions of workers have changed as they experienced jobs in the growing private service sector with its low level compensation and pension benefits (and not un-coincidentally low levels of unionization), and the growth of casual work, informal work, self-employment, contract employment and other forms of what are bundled together today and termed 'contingent work'. These forms of employment have become integral to today's more 'flexible' pro-market work world.

It is in this larger context, no doubt despite the intentions of the government's initiative, that we see 'flexibility' introduced in the form of an end to mandatory retirement. The issue of pension adequacy – a collective or societal issue – is bypassed and downgraded to one of 'individual choice' and one's 'right to choose'. This, even when the reality of work life today, strongly suggests that the real individual choice involved will be made by the employer. It is employers who will have the flexibility to decide who works and who does not, circumscribed only by the provisions of a collective agreement where such is in place.

Such a policy change has led to a further step in some other jurisdictions: for example the phase-in of public pension access in the United States from 65 years to 67 years of age. As this phase-in continues, more American workers will be compelled to work longer in order to qualify for their public pension. The British government has just released a consultation paper suggesting a "default" retirement age of 70. The plan is that by October 2006, 'discrimination' against older workers will be outlawed and workers will be able to work until they are 70.²

In Ontario, we need to be aware that such a policy change is possible, even though the notion of raising the eligibility age has been rejected in the past and CPP is able to fund early retirement and retirement at 65. In a recent *National Post* article (August 19, 2004) entitled, "People shouldn't have to work until their heart stops beating, retirement change threat to pensions," David Dodge, Governor of the Bank of Canada, says the "CPP should be more flexible to allow people to work after 65 if they want to".

A recent report from the Chief Actuary's office concludes that the early retirement provisions of the CPP are "too generous". The Chief Actuary considers this "a disadvantage to the plan", even though beneficiaries receive an actuarially reduced pension if they claim it between age 60 and 65. While the CPP plan is still viable, the report continues, policymakers may want to adjust the actuarial assumptions or modify "certain plan provisions" to encourage older workers to stay at work longer. Still others in the pension industry speak of a benefit formula that could be used to discourage early retirement. A number of companies that sponsor plans are also in the mix suggesting they may also reduce early retirement incentives to cope with worker shortages and enhance incentives for later retirement.

Once Ontario ends mandatory retirement, the door might well be re-opened for the provinces and the federal government to raise the issue of increasing the eligibility age of public pension benefits.

Recommendations:

Recommendation 1: Given the aforementioned concerns, the OFL strongly recommends that Premier Dalton McGuinty make a public commitment to the people of Ontario that he will use Ontario's vote to veto any attempt to raise the age of eligibility for CPP.

Recommendation 2: The Government should re-affirm that the "normal age of retirement" under the *Pension Benefit Act* (PBA) will remain at 65 and early retirement provisions will not be altered.

Recommendation 3: Should the government move to end mandatory retirement, it needs to ensure that current collective bargaining rights are protected; specifically the *right for workers through their union and employers to negotiate mandatory retirement*.

Recommendation 4: A *just cause* provision needs to be added to the *Employment Standards Act* to protect workers' choice as to when to retire. Without such a provision, there exists a very real danger that employers in non-union workplaces will have the final say on this important issue with very little recourse on the part of the employee.

Recommended Reforms to Public Pensions:

As we age as a society, the financial issues for seniors such as income, pensions and poverty will become even more important. Real freedom of choice for working people in Ontario will come when reforms are implemented, so that all Ontarians can afford to retire, instead of having to work beyond 65 due to inadequate pension support.

The conventional wisdom about seniors' incomes is that Canada has solved the problem of poverty among seniors through its public pension system. It is true that Canada has reduced poverty in the over-65 population significantly since the public pension system was introduced. This country is recognized internationally for its efforts to reduce poverty among seniors over the last quarter-century.

Canada's public pension system includes a universal Old Age Security Pension (OAS), supplemented by a means-tested Guaranteed Income Supplement (GIS) and Spousal Pension Allowance, and the earnings-based Canada Pension Plan (CPP)/Quebec Pension Plan (QPP) to which workers make contributions over the course of their working lives. In addition, the government defers payment of taxes for Registered Retirement Savings Plans (RRSPs) until the individual cashes them in at retirement.

Despite the success of the OAS/GIS and CPP/QPP in reducing poverty among older Canadians however, there are still about 600,000 Canadians aged 65 and over who still live below the Statistics Canada low income cut-offs.

To improve this situation, the Ontario Federation of Labour would recommend the following:

Recommendation 5: The total OAS/GIS pension be increased to ensure the base amount lifts all seniors above the poverty line. There are various means by which this could be accomplished, including calculating an extra housing allowance amount for low-income seniors who don't own their own house.

Recommendation 7: The federal government should provide credits for CPP/QPP contributors for periods away from work for home care (care of the elderly) as is now available for child-raising years. By so doing people, mainly women, who now drop out or cut back on work hours to care for older relatives would not lose out on the final amount of their CPP/QPP benefits.

Recommendation 8: The Federal Government (and the Quebec Government) should allow employers and/or employees, as well as the self-employed who do not have a private pension plan, to contribute extra amounts to the CPP/QPP. This would save smaller employers from having to establish their own plan and allow those without a plan to contribute extra monies in lieu of their own plan.

Recommendation 9: OAS/GIS full pensions should remain available at age 65. Both the provincial and the federal government should publicly commit themselves to not raising the eligibility age.

Recommended Reforms to Ontario Legislation:

Recommendation 10: Amend the *Pensions Benefit Act* (PBA) to require the indexing of all pensions.

Recommendation 11: Amend legislation so as to end gender-based wage inequalities and penalties against women who leave work to raise a family.

Recommendation 12: Amend the PBA so as to make pension portability mandatory and improve survivor benefits.

Recommendation 13: Increase the provincial income supplement for low-income seniors – Guaranteed Annual Income System (GAINS) – in Ontario.

Recommendation 14: Any changes to the current system of retirement would need amendments to the *Workplace Safety and Insurance Act* such that Loss Of Earnings (LOE) and Future Economic Loss (FEL) benefits would continue for the life of the claimant. In our view, the Loss of Retirement Income provisions should be eliminated. The LOE or FEL benefits should be transferred to the survivors if the worker's death was significantly contributed to by the compensable injury or disease.

Recommendation 15: A range of alternatives to having people work longer should any "skill shortages" arise need consideration. These include increased training needs, immigration reforms, ending low-wage strategies such as contracting-out, raising and enforcing employment standards including the minimum wage, improving recognition of international education and employment credentials of immigrants.

Conclusion:

Finally, to significantly improve the protection of working people, we need both pension improvements and a government committed to full employment. Some considerable time has elapsed since Ontario had such a public policy commitment. Such a commitment would necessitate government intervention in the economy with fiscal and monetary policies, enforced regulations and strategic public ownership.

In essence, such a direction would entail the reversal of the neo-liberal, pro-market, pro-privatization, low-wage direction of the last several decades. It would mean putting people – their standard of living, their communities and their pensions – before profits. Unemployed and under-employed people with low incomes are unable to contribute adequately to pensions, should they be fortunate enough to have one, far less retire in dignity.

A Government full employment policy and far reaching pension reform could well make the difference and provide a genuine right to retire for all who so desire.

Respectfully submitted,

Ontario Federation of Labour

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Endnotes

1. The CPRN report on labour force ageing concludes that the alleged skills shortages will neither be widespread nor pervasive, but rather occur in specific industries, occupations and locations. See “Labour Force Ageing and Skill Shortages in Canada and Ontario,” *Canadian Policy Research Networks*, research Report W/24, page iv.
2. “Unions today rejected the prospect of a raised retirement age of 70, which they believe would be used by the government to force people to work longer before getting their pension.” *The Guardian*, Monday, September 13, 2004.