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**Background Paper**

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## **Mandatory Retirement**

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This background paper will briefly outline the history of mandatory retirement, its status in Canada and developments in British Columbia. It will also discuss arguments for and against mandatory retirement, and identify the potential implications for employers in jurisdictions where mandatory retirement is newly banned.

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## I. INTRODUCTION

Mandatory retirement is a practice once taken for granted but now increasingly restricted in Canada. Lobby groups for the 50-plus demographic label it discriminatory and, in the face of skilled labour shortages, the policy has also been called bad business. But some unions cringe at the prospect of a ban, saying it removes pressure to hire and train younger workers.

Last year, Ontario became the latest province to restrict mandatory retirement. Here in British Columbia, the [Premier's Council on Aging and Seniors' Issues](#) will review the practice this summer as part of a larger mandate. Age discrimination is also a potent international issue, as fall 2006 marks the deadline for European Union members to adopt protections for mature workers.

This background paper will briefly outline the history of mandatory retirement, its status in Canada and developments in British Columbia. It will also discuss arguments for and against mandatory retirement, and identify the potential implications for employers in jurisdictions where mandatory retirement is newly banned.

## 2. BACKGROUND

The debate over ending mandatory retirement has been called one of the most “misunderstood discussions in the area of labour and social policy.”<sup>1</sup> The confusion stems from the common misperception that mandatory retirement is based on a government law or regulation telling workers to step down at 65. Instead, it is the result of an individual employer’s policy or collective agreement, often relating to a pension plan. The government either bans or allows the practice, but the decision about whether to implement mandatory retirement is left to collective agreements or individual employer policies.<sup>2</sup>

Germany is often credited as the first country to equate age 65 with retirement. The Germans set 70 in 1889 as the age when pension payments began, but later reduced the benchmark to 65.<sup>3</sup> But U.S. Depression-era social policies giving older Americans a pension were arguably far more influential in establishing age 65.<sup>4</sup> At the time, elderly people were often the first laid off in order to preserve jobs for workers with children. The U.S. *Social Security Act* encouraged retirement by providing a pension and establishing a ‘usual’ age.<sup>5</sup> Congress operated under the assumption that 65 was the age that “workers tend to lose the ability to keep up with the technological advances of industrial society, are frequently subject to ill health and disability, and are less productive under difficult work conditions.”<sup>6</sup> Private pension plans established after World War II set 65 as age benefits began and “naturally enough, the clear implication of this was that the individual would also retire at 65.”<sup>7</sup> In Canada, the *Old Age Pension*

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<sup>1</sup> Morley Gunderson, *Banning Mandatory Retirement: Throwing Out the Baby with the Bathwater* (Toronto: C.D. Howe Institute, 2004), 1.

<sup>2</sup> Ibid.

<sup>3</sup> Martin Lyon Levine, *Age Discrimination and the Mandatory Retirement Controversy*, (Baltimore: Johns Hopkins University Press, 1988), 23.

<sup>4</sup> Canada, Parliament, Senate, *Retirement Without Tears: A Report of the Special Senate Committee on Retirement Age Policies* (Hull, Que.: The Committee, 1979), 21.

<sup>5</sup> Lyon Levine, 23.

<sup>6</sup> Lyon Levine, 24.

<sup>7</sup> *Retirement Without Tears*, 21.

Act of 1927 initially set 70 as the age to begin receiving benefits, but it was eventually lowered to 65 during the sixties.<sup>8</sup>

Despite the Americans' influence in establishing 65 as a kind of 'universal' retirement age, the United States has since outlawed mandatory retirement. The practice is also banned in New Zealand and Australia.

### 3. MANDATORY RETIREMENT IN CANADA

Mandatory retirement in Canada is generally guided by human rights legislation and judicial opinion.<sup>9</sup> The rules also vary by jurisdiction. Mandatory retirement was banned in Quebec<sup>10</sup> and Manitoba during the eighties. The federal civil service also banned mandatory retirement for its employees during that period. Other provinces have restricted mandatory retirement, but allow the practice under certain conditions (for example, if it is part of a pension plan or a bona fide occupational requirement, discussed below).<sup>11</sup> British Columbia is one of the few provinces that still specifies in its human rights legislation an upper age limit, 65, on protection against age discrimination in employment. Newfoundland and Saskatchewan are the others.<sup>12</sup> Until recently, Ontario also included an age cap in its human rights code, but legislators removed the limit in 2005.

There are also certain professions where workers are required by law to retire at a certain age due to a "bona fide occupational requirement." A B.F.O.R. is an employment requirement or qualification that is considered necessary because of the profession's demands. For example, airline pilots, bus drivers and firefighters have been subject to these rules.<sup>13</sup>

Mandatory retirement is arguably "primarily a phenomenon of the large-scale organization," stated a 1980 report by the Human Rights Commission of British Columbia.<sup>14</sup> Typically, people who continue working are entrepreneurs or farmers, David Baxter, a Vancouver-based demographer, told *Maclean's* magazine in 2004. People who retire early are teachers, nurses, and other public servants, he said.<sup>15</sup> Further, the mere existence of such a policy in a workplace does not mean all employees will leave work at 65, economist Morley Gunderson wrote in a 2004 [report](#) for the C.D. Howe Institute. People quit or retire early, he wrote. "Others may continue with the

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<sup>8</sup> Ibid.

<sup>9</sup> M. Shannon and D. Grierson, "Mandatory Retirement and Older Workers," *Canadian Journal of Economics* 37, no. 3 (2004): 529.

<sup>10</sup> Quebec is the exception to the rule in terms of legislation impacting mandatory retirement. Instead of human rights legislation, mandatory retirement is banned in the province under its employment standards legislation.

<sup>11</sup> Morley Gunderson, "Age Discrimination in Canada," *Contemporary Economic Policy* 21, no. 3 (2003): 321.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid., 324.

<sup>14</sup> Human Rights Commission of British Columbia. *Mandatory Retirement in British Columbia: A Review of Issues, Practices and Attitudes*, John Herzog, (Victoria: Human Rights Commission of British Columbia, 1980), 3.

<sup>15</sup> Ken MacQueen, "The Dawn of a New Old Age," *Maclean's* 117, Iss. 21/22 (2004) CBCA Business (15 June 2006).

same employer under a different contractual arrangement, work for another employer, or become self-employed.”<sup>16</sup>

#### 4. DEVELOPMENTS IN BRITISH COLUMBIA

British Columbia was the first province to include age as a type of discrimination in legislation with its *Fair Employment Practices Act* in 1964.<sup>17</sup> The statute was eventually replaced by the *Human Rights Code of British Columbia*. When first introduced in 1973, the code specified workers between the ages of 45 and 65 would be protected from age discrimination. One MLA questioned the upper age limit on protection. “I would have assumed that it should have been completely open-ended at the top end,” opined Liberal MLA David Anderson. He then asked why there was “no objection to discrimination against a person because of youth.”<sup>18</sup> The labour minister responded that the only demographic encountering “problems in terms of discrimination in employment opportunity is that age group which is between 45 and 60.”<sup>19</sup>

In 1980, the Human Rights Commission of British Columbia released a report recommending the abolition of mandatory retirement. It included the observation that “British Columbia employees are increasingly challenging the rules.”<sup>20</sup> The commission’s report included the results of a survey testing B.C. employer attitudes toward mandatory retirement. The questionnaire was sent to more than 3,200 organizations and approximately 2,200 (67 per cent) usable surveys were returned. The report claimed 56 per cent of respondents felt mandatory retirement should be banned, while 33 per cent wanted to keep the practice.<sup>21</sup> The report’s author acknowledged the practice was widespread in British Columbia and that there was no proof it would soon be eliminated.<sup>22</sup> Nonetheless, he predicted the issue would not disappear.

Ten years later, British Columbian workers generated two of three major challenges that went to the Supreme Court of Canada. The 1990 rulings, which upheld forced retirement, were so significant that they have been called the “trilogy of mandatory retirement cases.”<sup>23</sup> In Harrison vs. University of British Columbia, faculty members fought the university’s forced retirement policy.<sup>24</sup> Meanwhile, a group of B.C. doctors challenged their employer’s similar practice in Stoffman vs. Vancouver General Hospital.<sup>25</sup> The high court’s landmark ruling on the third case – McKinney vs. University of Guelph – acknowledged mandatory retirement constituted age

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<sup>16</sup> Gunderson, *Banning Mandatory Retirement: Throwing Out the Baby with the Bathwater*, 2.

<sup>17</sup> Walter Surma Tarnopolsky, *Discrimination and the Law*, Vol. 1 (Scarborough, Ont.: Thomson Professional Publishing Canada, 2004): 7-1.

<sup>18</sup> David Anderson, “Human Rights Code of British Columbia Act,” In British Columbia, Legislative Assembly, *Legislative Debates (Hansard)*, 30<sup>th</sup> Parl., 3<sup>rd</sup> Sess. (November 6, 1973) (Online) Available: [http://www.leg.bc.ca/hansard/30th3rd/30p\\_03s\\_731106z.htm#01348](http://www.leg.bc.ca/hansard/30th3rd/30p_03s_731106z.htm#01348) [22 June, 2006].

<sup>19</sup> W.S. King, “Human Rights Code of British Columbia Act,” In British Columbia, Legislative Assembly, *Legislative Debates (Hansard)*, 30<sup>th</sup> Parl., 3<sup>rd</sup> Sess. (November 6, 1973) (Online) Available: [http://www.leg.bc.ca/hansard/30th3rd/30p\\_03s\\_731106z.htm#01348](http://www.leg.bc.ca/hansard/30th3rd/30p_03s_731106z.htm#01348) [22 June, 2006].

<sup>20</sup> Human Rights Commission of British Columbia, 17.

<sup>21</sup> *Ibid.*, 6.

<sup>22</sup> *Ibid.*, 16.

<sup>23</sup> Gunderson, “Age Discrimination in Canada,” 322.

<sup>24</sup> Tarnopolsky, 7-45.

<sup>25</sup> Tarnopolsky, 7-46.

discrimination, but upheld the practice as “demonstrably justified.”<sup>26</sup> The two B.C. rulings supported the principle and the so-called trilogy “set the pace for age discrimination cases for at least the following decade.”<sup>27</sup> But in 2001, a [B.C. Court of Appeal ruling](#) called on the Supreme Court of Canada to reconsider the McKinney ruling. “The demographics of the workplace have changed considerably, not only with respect to the university community, but also in the workplace at large,” wrote Madam Justice Jo-Ann Prowse.<sup>28</sup> However, the union involved in the case did not attempt to take its case to the Supreme Court of Canada. Thus, the McKinney case has remained the “latest word” from the Supreme Court of Canada on mandatory retirement under the Charter.<sup>29</sup> However, Gunderson noted that specific cases of forced retirement have been overturned since then.<sup>30</sup>

Mandatory retirement has come back under the microscope in British Columbia. In September 2005, Premier Gordon Campbell said in a [speech](#) to the Union of B.C. Municipalities that “maybe it's time to let people work as long as they want, as long as they can.”<sup>31</sup> The Premier’s Council on Aging and Seniors’ Issues will consider the issue as part of its mandate and is expected to report back in the fall. Liberal North Vancouver MLA Katherine Whittred put forward a [motion](#) in March 2006 calling for legislation to abolish mandatory retirement and B.C. Attorney General Wally Oppal was quoted in *Business in Vancouver* as saying: “If a person doesn’t want to collect their pension and wants to work, it should be up to them.” But the issue is complex, he said, and “you’ve got to examine both sides.”<sup>32</sup>

## 5. ARGUMENTS SUPPORTING MANDATORY RETIREMENT

Several key arguments have been used to justify mandatory retirement. They are outlined below:

### 5.1 Creates Work for Youth

Supporters of mandatory retirement rationalize that it helps to clear the way for younger workers who would otherwise struggle for employment. Labour leader Buzz Hargrove articulated this view in the *Globe and Mail* after then prime minister Paul Martin called for a debate on the practice in December 2003. “Such agreements help considerably in ensuring orderly employee turnover, and providing the opportunity to allow younger to replace older workers,” Hargrove wrote. “They provide a certain degree of job-security protection for younger workers, especially during periods of economic downturn.”<sup>33</sup>

### 5.2 Retiring with Dignity

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<sup>26</sup> Gunderson, “Age Discrimination in Canada,” 322.

<sup>27</sup> Tarnopolsky, 7-46.

<sup>28</sup> *GVRD Employees Union v. GVRD*, [2001] BCCA 435.

<sup>29</sup> Tarnopolsky, 7-57.

<sup>30</sup> Gunderson, “Age Discrimination in Canada, 322.

<sup>31</sup> Ian Bailey, “B.C. Liberals Ponder End to Mandatory Retirement,” *Province*, 5 October 2005, p. A16.

<sup>32</sup> Glen Korstrom, “Mandatory Retirement Up for Review,” *Business in Vancouver*, Iss. 821, July 19-25, p. 14.

<sup>33</sup> Buzz Hargrove, “Should retirement be mandatory?” *Globe and Mail*, 29 December, 2003, p.A17.

Proponents also suggest mandatory retirement lets older workers who have become less productive after putting in years of good service retire with dignity, rather than be subjected to uncomfortable evaluations and monitoring.<sup>34</sup> Along these lines, some respondents to the B.C. Human Rights Commission's survey felt that any productivity gains from banning mandatory retirement "would be more than offset by higher personnel costs."<sup>35</sup>

### 5.3 Deferred Compensation

Mandatory retirement has also been linked to the idea of deferred compensation. Under this arrangement, workers are "underpaid" when they are younger and "overpaid" the longer they remain with an organization. Mandatory retirement provides an end date for the overpayment, "enabling an equilibrium compensation arrangement where the expected present value of the overpayment period is equal to the underpayment time."<sup>36</sup> The practice is believed to foster worker commitment and decrease turnover.

### 5.4 Consensual Agreement

It has been argued that mandatory retirement is acceptable when it is consensual, meaning that it was negotiated as part of a collective agreement.

### 5.5 Union Perspectives

The Canadian Labour Congress passed a [resolution](#) in 2005 committing to fight the elimination of mandatory retirement. The resolution asserted that "unions have fought hard for the rights of workers to retire with adequate retirement income." It also summed up the labour umbrella group's position that a ban would not solve labour shortages, would not fix poverty among seniors, and would hinder the recruitment of younger workers.<sup>37</sup>

One labour leader expanded on his concerns about mandatory retirement during a 2004 [presentation](#) to the Ontario Ministry of Labour before the law change in that province. Mandatory retirement policies were compared to child labour laws by Wayne Fraser, director of the United Steelworkers of America District 6. He argued the provisions of the Canada Pension Plan and *Old Age Security Act* demonstrated historical acknowledgement that "that beyond a certain age, workers should be entitled to retire from employment and receive pension benefits which will allow them to retire with dignity."<sup>38</sup> Fraser said his union worried governments would "delay age-based qualification requirements for certain social service benefits, including government pensions."<sup>39</sup> He suggested that raising the age of entitlement for benefits would generate income for governments by forcing people to pay taxes longer and by pushing back the

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<sup>34</sup> Gunderson, *Banning Mandatory Retirement: Throwing Out the Baby with the Bathwater*, 3.

<sup>35</sup> Human Rights Commission of British Columbia, 11.

<sup>36</sup> Gunderson *Banning Mandatory Retirement: Throwing Out the Baby with the Bathwater*, 3.

<sup>37</sup> "Resolution No. GR-26", *Canadian Labour Congress*, 2005 < <http://canadianlabour.ca/updir/gr26En.pdf> > [22 June 2006].

<sup>38</sup> Wayne Fraser, "Steelworker Submission to the Ontario Government on Mandatory Retirement," *Steelworkers District 6*, September 2004 < <http://www.usw.ca/program/content/1658.php> > [15 June 2006].

<sup>39</sup> *Ibid.*

date that workers receive full benefits. Further, those people would receive benefits for a shorter period. He noted older impoverished women are particularly vulnerable to pressure to keep working, adding that it was better to combat “systemic factors” causing poverty than to enable prolonged work lives. Eliminating mandatory retirement could also increase discrimination against older workers, he said, as “employers will use testing and performance evaluations to get rid of older workers who wish to continue working past age 65, but who may be perceived by their employers as less productive.”<sup>40</sup>

## **6. ARGUMENTS FOR BANNING MANDATORY RETIREMENT**

A number of arguments are also commonly used to discredit mandatory retirement policies. They are outlined below:

### **6.1 Ageism**

Critics argue that mandatory retirement unfairly discriminates against older workers. “The most pernicious aspect of ageism is that it becomes systematic, built into the organization of our lives and taken for granted, as if these social arrangements were natural,” wrote C.T. Gillin in *Time’s Up! Mandatory Retirement in Canada*.<sup>41</sup> He noted that denying employment based on race, gender or religion is not acceptable, although the practice was once commonplace.

### **6.2 Harms Later Workforce Entrants**

Later entrants to the workforce, frequently women and recent immigrants, are said to be particularly disadvantaged by mandatory retirement. Women might begin working later after raising families and adults immigrants start their jobs after arriving in Canada. They may not have accrued sufficient retirement income through pension plans and retirement savings plans by 65, stated the Canadian Human Rights Review Panel in its 2000 [report](#). “Forced retirement may result in poverty for these groups of workers,” stated the report.<sup>42</sup>

### **6.3 No Proof Youth are More Productive**

There is “very little empirical evidence” for generalizations about a relationship between age and negative job performance wrote the [Human Rights Review Panel](#). “There may be some decline in physical capacity ... but older workers do as well as or better than younger workers in terms of creativity, flexibility, and information processing with lower accident rates, absenteeism and turnover.”<sup>43</sup> The typical pattern, wrote Jonathan Kesselman in a [report](#) for the C.D. Howe Institute, was for workers’ productivity to level off over the last 10-15 years of their career, but “there is no

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<sup>40</sup> Ibid.

<sup>41</sup> C.T. Gillin, “Introduction: The Context of Mandatory Retirement,” *Time’s Up! Mandatory Retirement in Canada* (Toronto: James Lorimer and Company Ltd., 2005), 14.

<sup>42</sup> Canada, Department of Justice, “Chapter 18a: Mandatory Retirement” In *Report of the Canadian Human Rights Review Panel* (Online), [Ottawa], 2000. Available: <http://www.justice.gc.ca/chra/en/frp-c18.html#a> [22 June 2006].

<sup>43</sup> *Report of the Canadian Human Rights Review Panel*.

evidence that this occurs abruptly at 65 or as early as 65 in most occupations.”<sup>44</sup> He also noted there is no evidence of expensive new worker monitoring processes being introduced after mandatory retirement was banned in Canadian jurisdictions.<sup>45</sup>

#### 6.4 Few Takers

It has been argued that it is unlikely that changing age rules will drastically increase the number of employees choosing to work past 65 and therefore disadvantage younger workers. For example, although the federal government banned forced retirement in 1986, the number of people working past 65 has been small.<sup>46</sup> It also appears that a relatively small number of workers in Manitoba and Quebec actually took advantage of the opportunity to work longer after mandatory retirement was banned in their provinces.<sup>47</sup> A recent OECD report noted that allowing mandatory retirement has not fixed youth unemployment problems.<sup>48</sup> The argument that mandatory retirement protects younger workers is also flawed, wrote Kesselman, because it ignores the problem with slotting less experienced workers into spots left by experienced and skilled older employees.<sup>49</sup>

#### 6.5 Curbing the Skilled Labour Shortage

Letting people work longer could help to curb a predicted skilled labour shortage, or, as the president of the Workers’ Compensation Board called it, a “significant brain drain.”<sup>50</sup> It is estimated that 25 per cent of the B.C. workforce is over the age of 49 and that a large number of that group will retire over the next decade.<sup>51</sup> The size of the near-retirement group is so significant that a “conservative estimate of the impact of potential retirees postponing their retirement is an increase of the size of the labour force by two to three per cent of each additional year worked,” according to a 2005 *Infoline Report* from B.C. Statistics.<sup>52</sup> The shortfall of young workers starting jobs compared to retirees would be about eight per cent. “Thus, a one-year increase in the average age of retirement would go a long way in reducing that gap.”<sup>53</sup>

But others caution a ban on mandatory retirement can’t be relied on to solve the labour shortage problem, pointing to the low number of people who have taken advantage of it in areas where it is illegal. “Banning mandatory retirement in the jurisdictions where it remains legal is unlikely to do much to alleviate possible future skill shortages or to be of much aid in financing health care or public pension

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<sup>44</sup> Jonathan R. Kesselman, *Mandatory Retirement and Older Workers: Encouraging Longer Working Lives* (Toronto: C.D. Howe Institute, 2004), 8.

<sup>45</sup> *Ibid.*, 9.

<sup>46</sup> *Report of the Canadian Human Rights Review Panel*.

<sup>47</sup> Shannon, 550.

<sup>48</sup> Stephen Tobin, *Aging and Employment Policies: Canada*, (Paris: Organization for Economic Co-operation and Development, 2005), 91.

<sup>49</sup> Kesselman, 7.

<sup>50</sup> Korstom, 14.

<sup>51</sup> British Columbia, B.C. Statistics, “The Impact of Upcoming Retirements on the B.C. Labour Supply,” *Infoline Report*, Iss. 05-11 (Victoria: B.C. Statistics, 2005): 1.

<sup>52</sup> *Infoline Report*, 3.

<sup>53</sup> *Ibid.*

programs,” concluded the authors in the previously mentioned study comparing Manitoba and Quebec to the rest of Canada.<sup>54</sup>

Employers hoping to retain older workers in an effort to stem the brain drain may take heart from a 2004 Statistics Canada [report](#). The study showed about 25 per cent of people who retired between 1992 and 2002 would have been willing to stay if they’d had the option of trimming their work week without their pensions being impacted.<sup>55</sup> Interestingly, only 12 per cent said a removal of mandatory retirement restrictions would have impacted their decision to keep working. It suggested that employers hoping to retain workers past typical retirement age will have to find ways to make working later more appealing. Possibilities include flexible hours, voluntary work time reductions, and adjusting vacation and leave policies.<sup>56</sup> For example, a U.S. firm, Lincoln Financial Services Company, has attempted to appeal to its mature workers by creating a paid time off bank that provides more flexibility than traditional sick and holiday time.<sup>57</sup>

## 7. FURTHER IMPLICATIONS FOR EMPLOYERS

What changes should be anticipated if a ban on mandatory retirement is lifted? In Ontario, employers were given one year – until December 2006 – to [restructure employment policies and benefit programs](#). For example, collective agreements are no longer allowed to require retirement except in the case of a bona fide occupational requirement.<sup>58</sup>

While it is still early for generalizations about how the province will be impacted, some anecdotal predictions are available. One human resources administrator interviewed at the time of the law’s passage predicted the changes would affect her company “on all fronts,” ranging from succession planning to policies on employee physicals. She also thought there could be “severe” extra costs for employers related to continued benefits, although Ontario’s legislation does not require extending benefits to workers over 65.<sup>59</sup> (This exemption led to speculation that it would be only a matter of time before an employer offering fewer benefits to older workers would be taken to court.<sup>60</sup>) However, others have suggested that the “fear factor” of higher benefit costs is overblown, predicting that most people will still choose early over later retirement.<sup>61</sup>

What happened in other jurisdictions where forced retirement was banned? Thomas R. Klassen asserted that “no labour market or workplace dysfunctions” were reported in New Zealand, Australia or the United States after mandatory retirement was

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<sup>54</sup> Shannon, 550.

<sup>55</sup> Canada, Statistics Canada, “Study: Retaining Older Workers,” *The Daily*, (Online), [Ottawa], 26 October 2004, Available: <http://www.statcan.ca/Daily/English/041026/d041026d.htm>, [15 June 2006].

<sup>56</sup> Kesselman, 15.

<sup>57</sup> Lynne Morton, *Managing the Mature Workforce: Implications and Best Practices* (New York: The Conference Board, 2005), 14.

<sup>58</sup> Ontario, Ministry of Labour, “Ending Mandatory Retirement: What It Means to You,” (Online), [Toronto], 8 December 2005, Available: <http://www.labour.gov.on.ca/english/news/2005/05-141b.html> [21 June 2006].

<sup>59</sup> Carly Foster, “End of Forced Retirement Poses HR Nightmare for Companies,” *Metroland Durham Division*, 22 December 2005, 1.

<sup>60</sup> David Petras, “End to Forced Retirement Has Many Implications,” *The Record*, 26 April 2006, C1.

<sup>61</sup> Shannon Klie, “Ending Mandatory Retirement Not a Benefit Worry, Experts Say,” *Canadian HR Reporter*, Vol. 18, Iss. 18 (2005), 1.

banned.<sup>62</sup> In terms of participation levels, [one academic argued](#) that the end of the practice pushed up the number of U.S. workers aged 65 to 70 in the labour force by 10 to 20 per cent during the 1980s.<sup>63</sup> Meanwhile, Australian “older workers and employers commonly hold expectations that older workers should retire by 65, or earlier,” observed a 2001 [report](#).<sup>64</sup> As discussed earlier, the examples of Manitoba and Quebec suggest that a ban on forced retirement impacted only a minority of workers. Anecdotally, a 2002 [forum](#) heard that only a dozen or so academics out of 800 professors at Concordia University in Montreal, where mandatory retirement is illegal, were older than 65.<sup>65</sup> Also, it was reported in 2000 that only a small number of workers had taken advantage of the ban on forced retirement in the Canadian public service.<sup>66</sup>

Prior to the law’s passage, writers for *Canadian Employment Law Today* made predictions about other kinds of changes that Ontario employers could anticipate. They foresaw newly heightened sensitivity to age discrimination in hiring and a need for detailed and accurate evaluation processes of all employees. They also suggested employers would need to be more accommodating of physical ailments associated with aging and incorporate flexible work schedules.<sup>67</sup>

## 8. CONCLUSION

More than 25 years have passed since the Human Rights Commission of British Columbia predicted the mandatory retirement controversy was unlikely to disappear. A predicted skilled labour shortage, discrimination concerns, and a larger number of mature workers with a stake in the issue have again brought the issue to the forefront. Supporters and critics of the policy will be sure to watch closely for clues to its future in the report of the Premier’s Council on Aging and Seniors Issues, expected in fall 2006.

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<sup>62</sup> Klassen, 87.

<sup>63</sup> Till von Wachter, “The End of Mandatory Retirement in the U.S.: Effects on Retirement and Implicit Contracts, Working Paper No. 49,” *Center for Labor Economics* (Online) [Berkeley]: March 2002, 34. Available: <http://emlab.berkeley.edu/users/cle/wp/WP49VonWachter.pdf> [22 June 2006].

<sup>64</sup> Libby Brooke, *Age Limits: Age Related Discrimination in Employment Affecting Workers Over 45*, (Melbourne: Victorian, South Australian and Western Australian Equal Opportunities Commission Equal Opportunities Commissions and the Australian Employers Convention, 2001), 20.

<sup>65</sup> Howard Fink, “Quebec Universities Without Mandatory Retirement: Policies and Experiences,” in *Redesigning Retirement: Proceedings of a Joint Forum Presented by the University of Toronto Faculty Association and the Retired Academics and Librarians at the University of Toronto Innis Town Hall, Saturday 5 April 2002*, University of Toronto Faculty Association website, 5 April 2002, < <http://www.utfa.org/currentissues/1/Ralut-UTFA-Redesigning-Retirement.pdf> > [21 June 2006].

<sup>66</sup> *Report of the Canadian Human Rights Review Panel*, 118.

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