

The End Of Mandatory Retirement And Beyond

By: Thomas R. Klassen

While Canadians retire, on average, around the age of 61, they want the right to choose when they must retire. Thomas R. Klassen, a York University professor, examines some of the facts about ending mandatory retirement.

The Ontario government is expected to introduce legislation in early 2005 that will end the practice of compulsory retirement in the province, with several other provinces and the federal government likely to follow.

Although the average age of retirement today for Canadians – 61.2 – is lower than ever before, more and more employees are interested in the option of working past the normal retirement age. Very few will work past this age, but having the choice is symbolically important.

Celebrating a 65th birthday is increasingly seen as a poor marker for the start of retirement. Our political leaders, often slow to reflect trends in the larger society, are setting the example. Canada's prime minister is 66 years old. Our governor-general is 65 and our head of state, Queen Elizabeth II, is 78. All are in no hurry to retire and, fortunately for them, they don't face mandatory retirement policies.

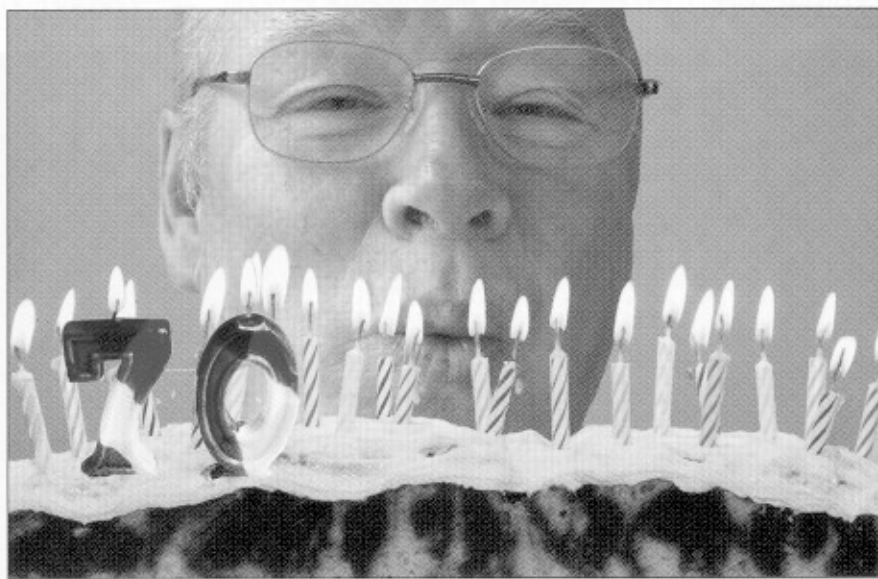
The greying of our leaders mirrors the aging of Canada's population. The baby-boom generation – currently between 45 and 64 years of age – accounts for one-quarter of Canada's total population. As shown in *Chart 1*, this group will continue to grow by an astounding 30 per cent between 2001 and 2011.

Natural Outgrowth

The concern by governments, employers, and employees over mandatory retire-

ment is a natural outgrowth of an aging population. As more and more of the baby-boomers reach their 50s, their awareness of the transition from work to retirement grows. In planning for retirement in the 21st Century, forced retirement at an arbitrary age, first instituted by German Chancellor Otto von Bismarck in the 1880s, is increasingly incongruous.

Mandatory retirement is usually not the outcome of laws directly addressing the



age at which an employee must terminate work. Rather, compulsory retirement is the result of practices embodied in pension plans and collective agreements, within the context of human rights or other legislation.

In Ontario, the *Human Rights Code* currently does not apply to employees 65 and over, thereby making it legal – although not a requirement – for employers and unions to implement mandatory retirement. The lack of legal protection for workers 65 and

over also means that employers may legally discriminate against these employees with respect to promotions, training opportunities, and so forth. It is this law that the Ontario government will amend so that workers 65 and over are protected from workplace discrimination. As a result, employers and unions will no longer be able to use age as a criterion for determining retirement.

Workers 65 and over have always been able to work and seek employment, but employers have not had to hire them or to treat them in an equal manner to those 64 and younger. It is not uncommon for retired workers 65 and over to be hired back by the same employer to do the same work, but at less pay, with no benefits or security. This practice will also end once the human rights law is amended such that workers 65 and older must be treated the same as those who are under this age.

No Discernable Impact

What will be the impacts of the legislative amendment for employers and employees? These can be predicted quite accurately as numerous jurisdictions have already eliminated forced retirement. Quebec and Manitoba banished this practice in the early 1980s and the United States in the late 1980s. New Zealand and Australia did so in the 1990s. In all cases, there was no discernable impact because nearly all employees continued to retire as before.

Furthermore, when employees remained at work past the normal retirement age, they did so for only a short time period, usually less than two years. Jon Kesselman, one of Canada's foremost economists, has estimated that if all workers in Canada who wanted to work past the normal retirement age did so, the average working life would increase by only one to four months.¹

The impact on employees of not facing an arbitrary retirement age will be limited to a small group of workers. This group is composed of two types of individuals. The first are those who love their jobs and for whom employment has become a deep part of their personality.

The second group is individuals who must, for financial reasons, continue to earn employment income. Canadians live less simple lives today than was the case in the past. Divorce, blended or second families, later child birth, extended periods of education, and interrupted careers can result in people in their 60s having considerable financial obligations for family members such as university tuition for children.

Both groups of employees – those who want to work for personal satisfaction and those who must do so because of financial need – will be composed primarily of highly motivated and performing individuals. Workers who no longer wish to be employed will retire as soon as they can financially, as is the case today. Regardless, employers will continue to be responsible for monitoring and evaluating the work of employees of all ages. Furthermore, eliminating retirement at an arbitrary age will not require the elimination of *bona fide* occupational requirements, though it will undoubtedly sharpen the analysis of them.

Some employers will be more affected than others. For instance, organizations that tend to hire older workers (who have had to engage in long periods of education and training) into jobs with considerable autonomy involving long-term projects, may find that more workers wish to work past age 65. As such, pharmaceutical companies and other research intensive establishments, legal firms, and universities may find more employees – but still no more than 10 per cent – want to continue to work for an additional period of time.

On the other hand, fewer employees in jobs that are physically demanding, such as construction or assembly lines, will want to work longer than the normal retirement age. In most occupations, as has been the case in other provinces and countries, the removal of forced retirement will not impact retirement patterns.

In many workplaces, salary, benefit, and pension policies, as well as collective agreements, will have to be reviewed and amended to reflect that a very small number of employees will remain employed after their 65th birthday. Yet, this is a normal development that has not proven problematic in other jurisdictions. Again, the issue is a minor one as the vast majority of employees will not work any longer than is presently the case.

Ending compulsory retirement may also ensure that some professionals – such as scientists, highly trained technicians, and medical doctors – will remain in Ontario rather than seek work in locations without mandatory retirement. In this regard, it may relieve some skills shortages, although the impact will be very small as the average retirement age will not shift appreciably once the human rights legislation is amended.

As mandatory retirement is eliminated, governments will also have to review laws such as the *Pension Benefits Act* (Ontario), the *Income Tax Act*, and rules under the Canada Pension Plan and other income support programs. Yet, this too is a natural and necessary process, especially when demographic conditions change.

The end result of these various adjustments to private and public pension plans will be greater flexibility for employees to

eliminating mandatory retirement will result in longer working lives for those who do not want it is a valid one. Retirement – whether forced or not – with an adequate pension income is a 20th Century development, one that unions and employees fought hard for. Removing mandatory retirement must not be allowed to threaten or shorten the retirement period of workers. Fortunately, the experience in Quebec, which operates its own Quebec Pension Plan, shows that no such trend has occurred so far.

Potential Danger

The potential danger of removing mandatory retirement provisions is outweighed by two benefits.

First is that older workers continue to pay income and other taxes, as well as contribute to pension plans. With the number of older Canadians increasing, and proportionally the

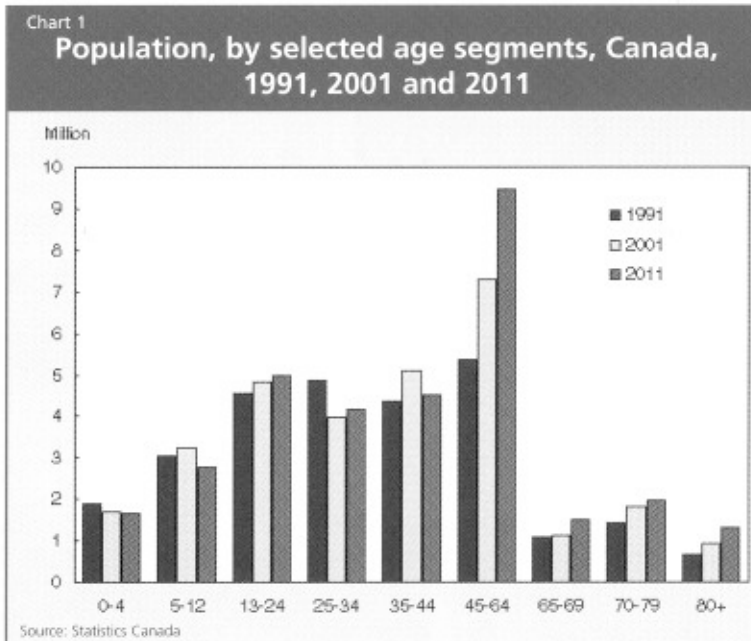
number of younger workers in decline, it seems only reasonable to allow those who wish to remain employed to do so.

Second, the removal of mandatory retirement is another step in the elimination of discrimination in the workplace. The stereotype of older workers in Canada is a largely negative one. Often older workers are seen as less productive, slower to learn, less flexible, and unable to keep pace. Yet, this stereotype is sadly out of date as Paul Martin, Adrienne Clarkson, and the Queen, among many other Canadian workers, show. More than a 300,000 Canadians, many self-employed and therefore not subject to

mandatory retirement, continue to work past their 65th birthday.

Abolishing mandatory retirement will, in fact, have little impact on most employers and employees as the vast majority of workers will continue to retire as soon as they can. The most significant impact will be to recognize that decisions about employment must be made on the basis of performance, not arbitrary characteristics. ■

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exit the workforce after the normal age of retirement. In the past two decades, private and public pension plans have granted considerable flexibility to retire before age 65 which has contributed to the decline in average retirement age from 65 in the 1970s to 61.2 today. What has been missing is that same flexibility in retirement planning for workers 65 and over.

Are there pitfalls that might be encountered as more jurisdictions in Canada move to ban forced retirement? The labour movement points to the chief danger. If all workers can continue to be employed past age 65, will governments and employers not act to restrict eligibility for pensions? Unions point to the United States which gradually – over the span of decades – is increasing the age of entitlement for full benefits from Social Security from 65 to 67.

The concern of workers' groups that

1. Jon Kesselman, *Mandatory Retirement and Older Workers: Encouraging Longer Working Lives*. Toronto: C.D. Howe Institute, Commentary #200, (June 2004), 21 pages.