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**From
Research to Legislation:
Challenging Public Perceptions and
Getting Results**

**CASE STUDY OF THE
ONTARIO HUMAN RIGHTS COMMISSION**

***Prepared for the
International Symposium on Age Discrimination
London, England
September 5, 2005***

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Introduction

This paper, prepared by the Ontario Human Rights Commission (Canada), is for presentation at a panel session of the International Symposium on Age Discrimination being held September 5, 2005 in London, England. The theme of the session is “Beyond legislation – achieving cultural and attitudinal change” and has as its objectives:

To examine the strategies which have been adopted in different territories to drive cultural and attitudinal change amongst employers, service providers and wider society, and

To seek to identify the mechanisms which are most successful and the relationship between legislation and compliance, campaigning and support to individuals.

The paper gives a brief legislative and non-legislative context and describes a six year journey that the Ontario Human Rights Commission (the Commission) undertook to bring the issue of age discrimination and ageism to the forefront of public discourse and address some of the fundamental issues affecting the lives of older Ontarians and their families. It highlights both compliance and promotion functions exercised by the Commission under its mandate to effect change in public beliefs, policies and practices and advance human rights for older persons. The Commission's efforts have ultimately resulted in a change in law that will now increase opportunity and choice for Ontarians over 65 in the area of employment.

The Ontario Human Rights Commission is the oldest and, by some measures, the largest statutory human rights agency in Canada. It is an arm's length agency of the government, accountable to the Legislature of Ontario through the Attorney General. Its responsibility is bounded by the physical boundaries of the province of Ontario and the jurisdiction of the provincial government as set by law. The Commission's principal functions are set out in the Ontario *Human Rights Code* (the “Code”) and include the promotion and advancement of human rights and the investigation, mediation, settlement and litigation of complaints.

Human Rights Legislation

Ontario is one of fourteen jurisdictions in Canada with anti-discrimination legislation. This includes the federal government, ten provinces and three territorial governments. In Ontario, the *Human Rights Code* (the ‘Code’) protects against discrimination on the ground of age in relation to accommodation (housing), goods, services and facilities, employment, contracts and membership in vocational associations. All other Canadian jurisdictions provide protection for discrimination on the basis of age in employment¹. With the exception of three

provinces², all Canadian jurisdictions also provide the protection in relation to housing, goods and services generally available to the public.

Although the first human rights code in Ontario was enacted in 1962, it was not until 1972 that age was added as a ground of protection. An extremely limited definition of “age” was first employed, focusing on the protection of workers between the ages of thirty-nine and sixty-five. This was because, at the time, many middle-aged workers were not being hired or were being replaced by employers seeking younger workers who would be willing to accept lower wages and would not place so many demands on costly benefit schemes.

In 1982, following an extensive public consultation and review of the *Code* and substantial amendments, the definition of “age” was broadened to what it is now. It is interesting to note that in the final report on that consultation, the issue of “mandatory retirement”, or the absence of laws prohibiting the firing of people sixty-five years or older, was raised³. It seems, however, that the legislators did not consider the issue important enough to merit inclusion in the amendments at that time.

Also, in 1982, Canada’s *Charter of Rights and Freedoms* was enacted along with the patriation of its Constitution. The *Charter* affirms the equality before and under the law of every individual without discrimination because of age, among other grounds. It also allows for laws, special programs or activities designed to ameliorate disadvantage for older persons⁴.

The term “age” is defined by the legislation⁵. In Ontario, there is no upper limit on age in the areas of housing, goods, services and facilities, contracts and vocational associations. However, in employment there is a maximum age for discrimination, namely 65⁶. In other words, in employment only, the *Code* does not protect against discrimination on the basis of age where the individual is 65 years of age or more. The age 65 cap has been affirmed by the Supreme Court of Canada in the case of *McKinney v. University of Guelph*⁷. That is not to say that persons 65 or over do not receive the protection of the *Code*; they are able to complain about discrimination in employment on the basis of any ground other than age.

In addition to direct, intentional discrimination, the *Code* recognizes that a requirement, qualification or factor that is neutral and non-discriminatory on its face may nonetheless exclude, restrict, or prefer some persons because of age. This is often called “adverse effect”, or “constructive” discrimination. The *Code* allows an employer to justify a standard, factor, requirement or rule that has an adverse effect because of age by showing that it is a “*bona fide* or reasonable” requirement. For example, a requirement that job applicants be “recent graduates” of a program may have the effect of excluding older candidates who are less likely to have completed their studies recently. However, in such a case, the employer would have to show a justifiable reason for this requirement.

At the same time, the *Code* allows for preferential treatment of persons sixty-five or older. Common examples include seniors' residences, seniors' discounts for goods and services, reduced rates for public transit, "golden age" passes and other benefits.

Government Programs for Seniors

The Federal, Provincial and Territorial Governments, often working in partnership, have a number of programs specifically directed at seniors. Some of these programs are highlighted here:

National Framework on Aging: The Federal/Provincial/Territorial Ministers Responsible for Seniors established a National Framework on Aging (NFA) in 1994, to assist all levels of government in Canada in responding to the needs of this demographic. Designed as a voluntary Framework, it has as its core, a shared Vision Statement and Principles endorsed by seniors and governments across Canada.⁸

The National Advisory Council on Aging: The National Advisory Council on Aging is a national organization with a mandate to assist and advise the federal Minister of Health on all matters related to the aging of the Canadian population and the quality of life of seniors.

Seniors Policy and Programs Database: A collaborative Federal / Provincial / Territorial initiative has established a comprehensive database of policies and programs of which seniors are the primary beneficiaries. It also provides demographic data on the status of older persons in Canada including information on employment, gender issues, health, housing, income, religion, technology, volunteerism and culture, leisure and travel, and crime victimization.⁹

Income Security Programs: Almost all Canadian seniors receive income through Canada's Public Pension Program. Basic financial support is also available to survivors and individuals who become too disabled to work and their children. These are made available through the Old Age Security (OAS) program and the Canada Pension Plan (CPP).

Ontario Seniors' Secretariat: The provincial secretariat assists the Minister responsible for Seniors to ensure other sectors of government, government-funded agencies and the public are sensitized to the needs and concerns of Ontario's 1.5 million seniors, and to the challenges to government and society posed by a rapidly aging population.

Assistive Devices Program (Ministry of Health and Long Term Care): Financially assists Ontario residents with long term physical disabilities to obtain basic, competitively priced, personalized assistive devices appropriate for the individual's needs and essential for independent living.

Day Programs for Seniors: May range from community based social activities, exercise classes and educational courses to assistance with personal care and meals. Actual activities offered vary from region to region according to the needs and interests of seniors.

Community Care Access Centres: There are 42 community care access centres in the province of Ontario. These organizations provide a simplified point of access to long-term care for seniors, for example, arranging visiting health and personal support services in peoples' homes; arrange access to long-term care homes; and, provide information and referrals to the public about other community agencies and services.

In-Home And Community Supports: For seniors with moderate care needs who wish to “age in place”, home and community support services provide flexible and practical solutions. These services are available in the home or at other locations within the community. Services can be obtained individually or in combination.

Long Term Care Facilities: In Ontario, three main types of residential settings provide both accommodation and care for seniors: supportive housing, retirement homes and long-term care homes. Each setting offers different types of accommodations and varying levels of service.

Non-Government Advocacy

A broad spectrum of non-governmental organizations in Canada also play a significant role in driving cultural and attitudinal change towards older persons.

One of the more prominent of these is CARP: Canada’s Association for the Fifty-Plus, which has worked very closely in collaboration with the Commission on several age-related initiatives. CARP is a non-profit, non-governmental organization with a membership of over 400,000 people across Canada. CARP’s mandate is to promote the rights and quality of life for older Canadians. It publishes a bi-monthly newsmagazine “FiftyPlus” and a newsletter “CARP Action”. CARP also publishes a variety of reports and studies on issues that affect seniors such as health care, homecare, financial planning and frauds and scams. It also advocates on behalf of older Canadians with government and other public institutions. CARP’s Web site¹⁰ has a large amount of information of value to seniors.

The Canadian Centre for Activity and Aging: This is an organization that is affiliated with the University of Western Ontario. Its goal is to develop, encourage and promote an active, healthy lifestyle for Canadian adults that will enhance the dignity of the aging process.¹¹

The Ontario Coalition of Senior Citizens’ Organizations: The mission of this organization is to improve the quality of life for seniors by offering education programs, policy and research, information, referral, counselling, research

materials, outreach and support, self-help and volunteer programs. This provincial network includes organizations representing seniors, ethnocultural, health, native, recreational, retiree, disability and women's organizations¹².

Compliance and Promotion through the Human Rights Commission

Human rights commissions, established in almost all jurisdictions in Canada, typically have broad mandates to enforce and promote human rights. The purpose of promotion activity is to inform and educate in order to create awareness and impart knowledge of human rights. Protection of rights depends on people knowing about the rights they have and available mechanisms to enforce them, as well as knowing and accepting their obligations to uphold those rights. Human rights promotion supports prevention of violations, encourages a culture of human rights and ultimately is empowering for individuals and groups.

The Ontario Human Rights Commission has broad functions and powers under its mandate that can be used to enforce as well as promote and advance human rights for older persons and others on the basis of age. Policy development is a particularly important and beneficial aspect of the Commission's work in this regard as it also helps to support other functions of the Commission including receiving or initiating and investigating complaints, mediation and settlement, and litigation as well as inquiring into matters, speaking out publicly and undertaking public education.¹³

Investigating Complaints, Mediation and Litigation

The major portion of the Commission's resources are committed to fulfilling its compliance function. Under the *Code*, the Commission is required to receive all complaints filed by individuals claiming an infringement of their rights. However, the Commission can decide not to deal with a complaint based on time limitations, appropriateness or jurisdictional reasons or because the complaint may be frivolous, vexatious or made in bad faith. The *Code* obliges the Commission to try to settle all complaints; so parties in a complaint are referred to the Mediation Office where they are offered the option of mediation. Complaints that cannot be mediated are referred to the Investigation Office. An investigation officer conducts an impartial investigation, which includes interviewing witnesses and gathering documentary evidence. Investigation officers also attempt conciliation during the investigation process. Parties may reach a settlement at any stage of the process and the complaint will then be considered completed and closed.

If there is no resolution through mediation or investigation and the Commission believes there is sufficient evidence of discrimination and the procedure is appropriate, the complaint is referred to the Human Rights Tribunal of Ontario for a hearing. The Human Rights Tribunal is completely independent from the Commission.

In litigation, the Commission is responsible for presenting evidence about the complaint to the Tribunal, though it does not represent either the complainant or the respondent. Tribunal decisions may be appealed by any party (complainant, respondent or the Commission) to a higher court. Human rights complaints are sometimes appealed to the Supreme Court of Canada.

Over three quarters of the complaints received by the Commission occur in the workplace and, consequently, most of the age complaints are work-place related. Some recent examples of complaints received by the Commission are:

- Five women in their 50s from the same company were let go as part of an organizational downsizing. Some of the criteria used in determining who would be let go could be euphemisms for “age”. For instance, one criteria was “potential for growth”.
- A 60-year-old man was passed over for a promotion. The company said that they were looking for someone who would be in line to be president in 10 years and told the complainant that, since he only planned on working 5 more years, he had not been successful.
- Young people applying for tenancy in rental accommodation are rejected because they do not meet minimum income criteria. The Tribunal determines that such criteria discriminate against young people because in their employment history, they have not had the chance to increase their income to the levels required for tenancy approval.

A quick review of the number of complaints received by the Commission over the past five years reveals that age is cited as a ground of discrimination in approximately 7-9% of cases¹⁴. However, it is very likely that many incidents of age discrimination, particularly in the areas of job seeking and accessing services such as health care, remain unreported.

Public Inquiry

Public consultations and inquiries provide opportunities for experts and key stakeholders, as well as the general public, to contribute to the work of the Ontario Human Rights Commission and to the advancement of human rights in general. The Commission has undertaken a number of inquiries and consultations over the years on a variety of important human rights issues including accessible education for students with disabilities, racial profiling, and discrimination faced by older persons.

In 1999, the General Assembly of the United Nations observed the International Year of Older Persons and was celebrated by all sectors of society, in all corners of the globe.¹⁵ In recognition of that event and in response to growing concerns about discrimination experienced by older persons despite well established legislative protections, the Commission undertook to develop a multi-year initiative to inquire into human rights issues in relation to aging in the areas of employment, housing and goods and services¹⁶. The initiative involved a broad

public consultation and culminated in a policy document on the rights of older persons¹⁷ as well as two major public awareness campaigns.

Whenever the Commission embarks on a policy-setting initiative, an extensive amount of research and public consultation is involved. This process is educative both for the Commission and the general public. Initially, a research/discussion paper is prepared, followed by a gathering of public opinion through response to a consultation paper by individual submissions and public hearings or focus groups. Then a consultation report is produced which presents the Commission's conclusions as well as recommendations for government and community action along with commitments for action on the part of the Commission. Each segment in the Commission's multi-year initiative on ageism and age discrimination will now be discussed in turn.

In May of 2000, the Commission released a discussion paper intended to identify trends and critical issues related to age and make recommendations to promote the human rights of older persons. Some of the issues identified as problematic for older persons in the paper included: stereotyping and negative attitudes, income, employment, housing, health care, institutions and services, elder care, elder abuse and neglect. It also raised questions about the intersectional impact of age and gender as well as age and disability¹⁸.

Response to the original discussion paper was positive and led the Commission to launch a broader public consultation on human rights issues facing older persons. As a framework for the consultations, the Commission, in September 2000, released a consultation paper¹⁹ comprised of thirteen questions concerning issues raised in the earlier discussion paper. These questions referred to areas such as employment, housing, health care, elder care, elder abuse, how public education should be conducted and whether special distinctions based on age, such as seniors' discounts or seniors' housing, should be allowed. Over 100 written submissions were received in response. Additionally, a Commission panel, chaired by the Chief Commissioner, held public consultation sessions in four centres across the Province of Ontario in which a number of oral submissions were made. Public response to the issues exceeded the Commission's expectations.

Findings

In June 2001, the Commission released its consultation report, *Time for Action: Advancing Human Rights for Older Persons*. It contains a broad examination of issues which may have an impact on the dignity and worth of older adults and which may affect the enjoyment of equal rights and opportunities. It dealt with such topics as employment, housing, health care, elder abuse and elder care and puts forward twenty-nine recommendations for government and community action, including a recommendation to amend legislation and end mandatory retirement at age 65.

The Commission also outlined several measures it would take to address age discrimination, including developing a public policy statement and launching a broad public awareness campaign.

The report notes that ageism persists as a problem in services and facilities. Myths and stereotypes impact on the level and quality of service available to older persons, for example service providers may prefer not to take on older clients because of a perception that they take up more time. Also, ageism results in the real needs of older persons not being taken into account, for example by designing public transit services without considering the needs of older users.

The Commission also reported hearing that there is more social tolerance for age discrimination today than there is for discrimination on other grounds such as race or sex. Older workers in particular often face stereotypical attitudes. These include assumptions that they are less ambitious, hardworking and dynamic and that they are more resistant to, or are unable to cope with, technological change. Such attitudes place older workers at an increased risk for discriminatory treatment. Medical decisions about certain types of treatment may also be based on a patient's age and the amount of time an older person would have to benefit from a particular type of intervention, for instance joint or organ replacement. In many cases, age discrimination is treated as permissible on the basis that it has social utility.

Remarkably, almost 30 years earlier, in a seminar sponsored by the Ontario Human Rights Commission, similar observations were made:

As you have doubtless observed, age discrimination does not seem to invoke the same sense of moral outrage at the community level as is the case with discrimination based on race, creed and national origin. Nevertheless, the consequences of age discrimination are no less severe in the economic sense, in the social sense and in the psychological sense. The victims are crippled in equal measure by age discrimination.²⁰

Persistent myths and stereotypes about the physical and intellectual characteristics of aging workers also act as ongoing barriers to their full participation in the workplace and are an often-used rationale to support mandatory retirement. Two such stereotypes are: one, that after a certain age job performance begins to decline and continues to do so over time, and; two, it is possible to generalize this decline across all older workers regardless of what they do, the setting in which they work or their individual capability.

These myths and stereotypes are addressed in the Commission's consultation report²¹ which draws the conclusion that, though they are possibly grounded in some reality, there is no significant and consistent curtailment of ability. Furthermore, the Ontario *Human Rights Code* requires that employers provide accommodation where older workers are unable to perform the essential duties of the job.

The interest generated by the consultation and the ensuing Report helped to strengthen the Commission's call for legislative changes as well as establish partnerships for public education. The Report, itself, has been referenced in other reports and by media, both nationally and internationally.

Policy Development

The Commission's development and use of policies and guidelines is an integral means to bring cohesion to the regulatory and voluntary aspects of its mandate to enforce and promote human rights.²² Policies prepared by the Commission integrate research and public consultation and set out standards for how individuals, employers, service providers, policy makers and governments should act to ensure compliance with human rights legislation.

Following the report on its public consultation, in 2002, the Commission released a new *Policy on Discrimination Against Older Persons Because of Age*. This Policy is based on the research on age discrimination, the input of individuals and organizations during the consultation process, principles and recommendations developed by the United Nations to guide countries in the promotion of the rights of older persons, cases that have come before the Commission and the tribunal as well as court decisions.

Since the majority of human rights complaints about age discrimination occur in the area of employment, the Policy places particular focus on workplace issues. It addresses myths and stereotypes about older workers and provides guidance for distinguishing age discrimination from legitimate, non-discriminatory decisions in key employment matters, such as hiring, workplace reorganization and termination. It also clearly identifies the responsibility of employers to create workplaces that are inclusive of older persons and to provide accommodation in circumstances where discrimination occurs.

The Policy also explains rights and obligations under the *Code* when it comes to housing. For example, it provides guidance as to the legality of housing projects aimed only at older persons and emphasizes the duties of persons responsible for housing to accommodate the special needs and capabilities of older adults. The Policy also states that the duty to accommodate special needs also arises in the area of receiving services and accessing facilities.

Advising Government and Other Institutions

As part of its mandate, the Commission has the ability to advance human rights issues through provision of advice to government, employers, and the general public on *Code*-related issues.

Following the release of the Policy, the Commission continued to be active in advancing the issue of age discrimination. In May 2003, the Chief Commissioner issued a press release regarding the introduction of a bill that would provide older workers with more flexibility and choice in the area of retirement. He also wrote to

the new government in January 2004, encouraging them to reintroduce legislation that would eliminate the requirement for workers to retire at age 65 and provide them with human rights protections in the workplace.

In September 2004, the Commission made submissions to the provincial Ministry of Labour's public consultations on mandatory retirement. The submission outlined human rights concerns that mandatory retirement:

- is a form of age discrimination because it involves making an employment decision solely on the basis of age, and not the person's ability to do the job;
- undermines older Ontarians' independence, participation, and ability to make choices, which is contrary to the values of the *Code*; and,
- can have serious financial impacts on certain groups, such as older women, recent immigrants, racialized communities and persons with disabilities.

At the time of writing, the Government of Ontario has introduced an Act to end the practice of mandatory retirement but it is still in the process of consultation and amendment prior to being brought back to the legislature for second reading.

Public Education and Partnerships

In recent years, the Commission has extended its practice of working in partnership with other government agencies, non-governmental agencies and, in some cases, businesses. There are a number of benefits to be derived from the practice of partnering, such as, access to readily defined markets and to specialized knowledge and information bases, cost-sharing on projects that would be beyond the fiscal capacity of many public agencies and also, increased "acceptability" of messages as the partnership may have more public credibility together than accorded individually to the partners.

Following the release of its consultation report on age discrimination, and in keeping with its findings, the Commission decided to develop a public awareness campaign to increase public sensitivity and influence public policy and practices with regard to the rights of older persons.

Many of the Commission's activities associated with age discrimination have been undertaken in partnership with organizations with a great deal of experience in dealing with older adults.

Poster Campaigns

Beginning in June 2002, the Commission, in partnership with CARP, took its first step at implementing a broad public awareness campaign on ageism and age discrimination.

The province-wide campaign was meant not just to combat ageism but also to empower those experiencing ageism to recognize what it is and how to respond.

It targeted Ontario's seniors, employers, educators, service providers and the general public. The goal of the campaign was to spotlight issues that were raised in the consultation report. The first phase focused on employment and transit services and was launched to coincide with that year's Seniors' Month activities. The second phase was conducted later that Fall and emphasized health care and housing issues faced by older persons.

The centerpiece of the campaign was a series of posters featuring persons with stickers on their foreheads stating a "Best Before" age with a tag line, "Nobody has a shelf life. Stop age discrimination now. It's illegal, and it's just plain wrong." The message was intended to serve as a reminder that people's skills, abilities and contributions do not diminish simply because they reach a certain age and that negative attitudes about aging should not stand in the way of equal opportunity and participation in employment, transit services, health care and housing for older persons.

By challenging myths and stereotypes the Commission sought, through this campaign, to increase awareness among employers, housing and service providers and older adults about responsibilities and rights under the *Code* and to encourage the elimination of discriminatory practices in each of these areas.

The posters were widely distributed by both CARP and the Commission. They were also published in CARP's bi-monthly newsmagazine. A great deal of interest was received from community health agencies.

A year following the first campaign, for a two-week period from July to August 2003, a Canada-wide chain of pharmaceutical stores also participated by displaying the Commission's "Best Before" posters in their stores across the country reaching approximately two million persons during the that time period. The drugstores also distributed a new leaflet on age discrimination to develop a better understanding by the public of ageism and its effects. CARP was also a partner in this campaign.

Internet-based seminar

In September of 2003, the Commission, in partnership with the Human Resources Professionals Association of Ontario (HRPAO), presented a Web-based seminar on preventing age discrimination in the workplace. This seminar was one of a series of partnership projects that the Commission and HRPAO have cooperated on dealing with human rights issues in the workplace. This seminar had a large number of participants who logged on and also had the opportunity to ask questions via e-mail at the end of the forty-five minute presentation. An archived copy of the presentation was available for six months after the original presentation. HRPAO has over 14,000 members across the province and, as such, allows the Commission to reach a wide variety of medium to large-sized employers.

Monitoring and Reporting on Results

It is important for human rights commissions to monitor and report back on the impact of their activities and recommendations in terms of media and general public reaction as well as holding government and non-government stakeholders accountable for addressing issues raised.

Monitoring and public reporting can help guide other functions of the commission, particularly systemic investigations, policy development, advisory statements or further recommendations, drive public awareness and education campaigns, as well as help mobilize resources, cooperation and partnerships.

The Ontario Human Rights Commission has a number of strategies at its disposal to monitor and report on results of its initiatives. Some of these are: follow-up inquiry letters and meetings, press releases and press conferences, annual reports, as well as speaking engagements and public education campaigns.

Media

While the intent of the Commission's multi-year initiative was to draw attention to the full range of issues associated with ageism and age discrimination, the media almost exclusively paid attention to the Chief Commissioner's comments about mandatory retirement. At the Chief Commissioner's annual news conference on the release of the Commission's Annual Report, the media focussed on his comments about mandatory retirement almost to the exclusion of all other issues raised by the commission that year. Debate within the media took both sides of the issue – some supported the notion that mandatory retirement policies are for the greater good of society, while others saw it as a barrier to older individuals' ability to achieve a minimum quality of life, especially women and persons recently having immigrated to Ontario.

Government

Two successive provincial governments have proposed legislation to remove the age cap of 65 in the *Code*. In the first instance, the legislation did not pass before the government was defeated in an election. The current Liberal government has proposed *Bill 211, Ending Mandatory Retirement Statute Law Amendment Act*, which will amend the *Human Rights Code*. This bill has passed first reading and the Ministry of Labour has conducted public consultations across the province. It is expected that the bill will proceed through the legislature once the government resumes sitting in the fall. The proposed legislation, while amending the age provisions in the *Code*, specifies that certain benefits, including worker's compensation benefits will not be affected. It remains to be seen whether the *Code* amendment will have any impact on the other acts which regulate these benefits.²³

It has also been reported that the government of British Columbia is also investigating the repeal of laws allowing mandatory retirement (CARP newsletter)

Other initiatives undertaken by the government include a recent move to freeze the rates of long term care homes at affordable levels.

Non-Government

CARP, Canada's Association for 50 Plus, continues to actively lobby for government action on a number of ageism issues raised by the Commission's public consultation, including mandatory retirement. This organization regularly credits the work of the Commission in their publicity. For instance, the following excerpt from the CARP newsletter attributed to Lillian Morgenthau, founder and president:

*Mrs. Morgenthau applauded the government for recognizing the importance of providing protection for older workers and choice about when to retire, based on ability, not on age – before, at or after 65! She also acknowledged Chief Commissioner Keith Norton of the Ontario Human Rights Commission for giving CARP and others the tools to put the issue of mandatory retirement on the political agenda. His Report called Time for Action: Advancing Human Rights for Older Ontarians can be viewed at www.ohrc.on.ca.*²⁴

Conclusion

A human rights commission with a broad mandate is well placed to promote and protect the human rights interests of older persons and others because of age, especially groups who are particularly vulnerable, marginalized and hard to reach, because it can rely on a full range of compliance and promotion functions and powers in a manner not available to government and non-government institutions.

At the same time, it is recognized that other democratic institutions also have responsibility and an important role to play in the protection and promotion of human rights, including government, the judiciary, law enforcement, and civil society organizations as well as the general public. The independent and neutral nature of a human rights commission affords it a unique and vital role in encouraging cooperation among such institutions, organizations and individuals, both domestically and internationally.

The receptivity of the general public to the Commission's comments on mandatory retirement is largely influenced by demographics: a significant proportion of Ontario's population is entering their 50s and 60s. The issue was no doubt ready to be raised and, in many ways, the Commission was a catalyst through its research, consultation, policy development, education campaigns, monitoring and public reporting. Non-governmental organizations, such as CARP, frequently refer to the Commission's reports and recommendations and, as a result, governments and civil society are responding with positive change. The general public has a better understanding of the issues. Meanwhile,

individuals who continue to experience discrimination because of their age can still rely on the Commission's complaints mechanism to help resolve matters.

The Ontario Human Rights Commission's multi-year initiative to address ageism has successfully drawn public attention to cultural and attitudinal barriers and consequences underlying the prevalent myths around the notion of aging. The Commission's approach has initiated positive public debate as well as legislative change and non-legislative action, and hopefully has helped to begin to reverse the discrimination that limits the ability of older citizens to fully enjoy the opportunities available to other individuals in the province.

ENDNOTES

¹ The discussion of the age discrimination provisions in Canadian jurisdictions is from R.W. Zinn & P.P. Brethour, *The Law of Human Rights in Canada: Practice and Procedure* (Aurora: Canada Law Book, 1999).

² Alberta, British Columbia and Newfoundland.

³ *Life Together: A Report on Human Rights in Ontario* (Toronto: Ontario Human Rights Commission, July 1977), p. 66

⁴ See the *Charter of Rights and Freedoms* section 15 <<http://laws.justice.gc.ca/en/charter/>>

⁵ There is no consistent definition of age in the various Canadian jurisdictions. Some define age by setting a maximum age. In British Columbia, Newfoundland and Saskatchewan, as in Ontario, the maximum age limit for a claim in employment on the basis of age is 65. In Saskatchewan only, the maximum limit also applies to other areas of discrimination (e.g. services). In all cases, the maximum is set at 65 years of age which, following a long history, has become a standard retirement age in several jurisdictions and is also the age when various retirement benefits commence.

⁶ Definition of 'age' in s. 10(1) of the Code.

⁷ In 1989, eight professors and one librarian employed at four Ontario universities filed a complaint with the Commission after they had been required to retire by their employers. The commission did not deal with the complaint as the ages of the complainants were above 64 and, thus, the commission lacked jurisdiction. The complainants then challenged the definition and the commission decision, ultimately to the Supreme Court of Canada (SCC). The SCC determined that mandatory retirement policies violated the equality rights section of the *Charter of Rights and Freedoms* (section 15), but that the objectives behind mandatory retirement policies significantly outweighed the impairment of the rights of older workers. For this reason the limited definition of age in employment has been allowed to stand for 15 years.

⁸ See the Framework document at <http://www.hc-sc.gc.ca/seniors-aines/nfa-cnv/pdf/aging_e.pdf>

⁹ <<http://www.sppd.gc.ca/sppd-bdppa/sppd-bdppa/english/stats.jsp>>

¹⁰ <www.50Plus.com>

¹¹ <<http://www.uwo.ca/actage/centre/about.htm>>

¹² <http://www.web.net/~ocscs/about_us_main.shtml>

¹³ This is in keeping with the UN Paris Principles which call on human rights commissions to monitor human rights matters, promote research and examine legislation, advise government, publicize findings, work with other organizations responsible for human rights and engage in human rights education.

¹⁴ During the period April 2000 to March 2005, the Commission received an annual average of 2167 complaints with an average 190 of those complaints citing the ground of age (see *Annual Reports* of the Commission <<http://www.ohrc.on.ca/english/publications/index.shtml>>)

¹⁵ See the United Nations Web site: <<http://www.un.org/esa/socdev/iyop/>>

¹⁶ OHRC News Release July 27, 2000 <http://www.ohrc.on.ca/english/news/e_pr_age.shtml>

¹⁷ The *Policy on Discrimination Against Older Persons Because of Age* was released by the Commission in March of 2002. <<http://www.ohrc.on.ca/english/publications/age-policy.pdf>>

¹⁸ This paper may be viewed on the Commission's Web site at <http://www.ohrc.on.ca/english/consultations/age-discussion-paper.pdf>.

¹⁹ *Discrimination and age: Human rights issues facing older persons in Ontario* <<http://www.ohrc.on.ca/english/publications/index.shtml>>

²⁰ Opening remarks of G.A. Brown, 'The Older Worker in Today's Economy and Community', *Report of Proceedings of First Seminar on Age Discrimination and the Age Discrimination Act of Ontario* (Toronto: 4 June 1970) [unpublished].

²¹ *Time for Action*: p. 39.

²² Specifically, subsection 29(a) of the Code requires the Commission to:

- promote an understanding and acceptance of and compliance with this Act (ss.29(b))
- develop and conduct programs of public information and undertake, direct and encourage research... (ss.29(d))
- examine and review any statute or regulation, and any program or policy made by or under a statute and make recommendations... (ss.29(e))

²³ The Ministry of Labour has provided the following explanation with respect to age definitions in other acts: *Currently, under the Employment Standards Act, 2000, employers are prohibited from discriminating on the basis of age in providing benefits to employees aged 18 to 64. This provision would remain in place following the coming-into-force of legislation to end mandatory retirement. and Entitlements under the Workplace Safety and Insurance Act, 1997, would not change. Injured workers aged 63 or more at the time of injury would continue to be able to receive loss of earning benefits for up to two years. Workers injured at an age less than 63 would cease to receive loss of earning benefits at age 65.* <<http://www.gov.on.ca/LAB/english/news/2005/05-71b3.html>>

²⁴ "Retiring Mandatory Retirement", *CARP Action*, August 2005, p. 6.