

## **THE CHANGING FACE OF ONTARIO Discrimination and our Aging Population**

### **Consultation Paper**

#### **OBJECTIVES**

One of the objectives of this consultation is to solicit your views on a range of human rights issues faced by persons as they age. The Discussion Paper *Discrimination and Age: Human Rights Issues Facing Older Persons in Ontario* (the "Discussion Paper") contains a detailed discussion of these issues and identifies priorities for further action by the Ontario Human Rights Commission (the "Commission") in areas that fall within its mandate under the Ontario *Human Rights Code* (the "Code").

This Consultation Paper focuses on the specific issues on which input is being sought. It is the starting point for the Commission's consultation on human rights issues facing older persons. There are two ways to participate in the consultation:

- Individuals and organizations may make written submissions by **November 1, 2000** about some or all of the issues identified below or on other human rights issues related to aging;
- Those who are interested in making a presentation at the public consultation sessions must submit written comments by the November 1, 2000 deadline. The Commission will invite a cross-section of those interested individuals and organizations to make presentations at one of the November sessions.

Further information about participation in the consultation is available at the end of this paper.

#### **ISSUES AND QUESTIONS**

##### **Stereotypes and Negative Attitudes**

A number of stereotypes about aging and the abilities of older persons appear to exist and may give rise to discriminatory treatment.

**What can the Commission do to raise public awareness about human rights issues related to aging and to combat these attitudinal barriers?**

## **Age and Other Grounds of Discrimination**

The Commission is examining discrimination based on intersecting or overlapping grounds as important for understanding how persons experience unequal treatment. With respect to age discrimination, the Commission has identified two particular groups that appear to experience significant disadvantage because of a combination of historical and social factors: (1) elderly women and (2) elderly persons with disabilities.

The paper identifies several policy initiatives that can help to address the needs of all seniors and these two groups in particular:

- Encouraging community-based services and supports to help address some of the socio-economic problems faced by seniors, and especially senior women and seniors with disabilities;
- Promoting public transit accessibility and access to para-transit services through the review of public transit accessibility being conducted by the Commission;
- Maintaining a high standard of ‘undue hardship’ in the Commission’s *Guidelines on Assessing Accommodation Requirements for Persons with Disabilities*. This would mean that employers, service providers and others would have significant responsibilities with respect to meeting the needs of elderly persons with disabilities;
- Encouraging the government to continue to support community-based care, rehabilitation, chronic care and complex continuing care; and
- Recognizing the implications of age in combination with other grounds of discrimination and integrating these principles into future policy work.

**Do you have any comments about any of these policy initiatives?**

**Based on your experience or the experience of your organization, are there other groups of older persons who experience human rights issues that you would like to tell us about?**

**Are there other issues related to elderly women and older persons with disabilities that you would like to draw to our attention?**

## **Specific Issues Facing Older Persons**

### ***Employment***

The Discussion Paper identifies a number of problems facing older workers. These include assumptions that older workers are less ambitious, hardworking and dynamic and are resistant to, or unable to cope with, technological change. Other major employment issues include the dismissal of older workers, targeting older workers in workplace reorganization (sometimes with 'offers' of early retirement and sometimes simply through termination or lay-off), difficulties faced by older workers in gaining employment and of course, mandatory retirement at age 65. Please note, the Commission does not oppose early retirement incentives that are truly voluntary.

**The Discussion Paper recommends that the Commission develop tools to distinguish legitimate downsizing or performance issues from those that are related to age discrimination. What kinds of tools could assist the Commission in this regard?**

**The Discussion Paper also recommends that the Commission advocate for the extension of human rights protections on the basis of age to persons who are not subject to mandatory retirement and who continue to work past age 65. Do you have any comments on this proposal?**

**Currently, the law allows employers to implement mandatory retirement at age 65. Do you feel it is time for this issue to be revisited? If so, how should the retirement age for a worker be established?**

### ***Housing***

In addition to the need for affordable housing, seniors need housing that is safe, accessible, adaptable and barrier-free.

**The Commission is proposing to examine the recommendations of the National Advisory Council on Aging and other organizations with respect to barrier-free design in order to incorporate the recommendations into policy work in the area of housing. Are there other policy initiatives the Commission can pursue to address the special housing needs of seniors?**

***Health Care, Institutions and Services***

The needs of the aging population must be a critical consideration in the provision of health care services. Some of the specific concerns in relation to health care include:

- Difficulties faced by seniors in accessing health care services, e.g. problems in finding a family physician and a lack of treatment for particular medical conditions;
- Limited benefits coverage of the health care system which may result in seniors having to pay for some medically-related and dental services;
- Inadequate facilities and services for long-term care, complex continuing care and rehabilitation; and
- Inadequate community-based health care.

Despite an increase in the use of community-based health care, the need for adequate nursing home care is predicted to increase. There is also a need for facilities which address the needs of particular seniors, e.g. gay and lesbian seniors or seniors with specific cultural or religious needs.

In addition to health related services, another significant service for seniors is public transit.

**The Commission has suggested two initiatives in relation to health care and institutional services:**

- (1) communicating with the Ministry of Health and Long-term Care to inquire about investment in chronic care, complex-continuing care and rehabilitation services and facilities; and**
- (2) communicating with the College of Physicians and Surgeons, the Ontario Medical Association and the Canadian Medical Association to advise that differential access to medical treatment could constitute discrimination on the basis of age and, in many cases, disability.**

**Are there other organizations or bodies that should be included in this type of outreach? Are there other problems of discrimination against seniors in the provision of health care or institutional services?**

**The Commission is planning to incorporate the principles in the Discussion Paper into its report on public transit accessibility in Ontario. Are there any issues in relation to access to public transit that the Commission can address?**

## **Elder Abuse and Neglect**

Elder abuse occurs in large part due to negative attitudes towards the elderly or their economic and social vulnerability. The Ministry of Citizenship, Culture and Recreation and the Ontario Seniors' Secretariat have established the Round Table for Ontario's Elder Abuse Strategy to develop a comprehensive provincial plan to combat elder abuse.

**The Commission will monitor the proceedings and outcomes of the Round Table for Ontario's Elder Abuse Strategy. It is hoped that the Commission's efforts to raise public awareness around 'ageism', in part through this consultation process, will help to combat the attitudes that contribute to elder abuse.**

**Do you have any comments with respect to any aspect of this issue that falls within the Commission's jurisdiction?**

## **Elder Care**

Increasing numbers of Canadians are caring for aging or ailing family members. Although elder care is not about age discrimination, it is an issue that is important to both older persons and younger persons alike, particularly in light of the aging population and an increased emphasis by governments on home care.

The Commission's publication *Human Rights at Work* recognizes the issues raised by elder care and notes that the *Code* ground of "family status" includes elder care given to a parent. In addition, the grounds "marital status" and "same-sex partnership status" may cover elder care between same-sex partners and spouses. The Ministry of Labour is proposing to add a new family leave entitlement to the *Employment Standards Act* which would give employees, in workplaces with 50 or more employees, up to 10 days of unpaid, job-protected leave per year to deal with family crisis, personal or family illness or death. Any obligations under the *Code* would be separate from any obligations under a revised *Employment Standard Act*, and would require employers to accommodate the family related needs of employees up to the point of undue hardship.

**The Commission plans to develop a public policy statement on elder care, supported by community consultation, as it relates to grounds in the *Code*. It is also encouraging the Ministry of Labour to include provisions related to elder care in any revisions to employment standards legislation.**

**Should the prohibition against discrimination on the basis of “family status”, “marital status” and “same-sex partnership status” include situations where workers care for aging or ailing parents, spouses or same-sex partners? What is the extent of the employer’s duty to accommodate these employees? What should a Commission policy statement on elder care contain?**

### **Permissible Distinctions on the Basis of Age**

There are some exceptions within the *Code* which permit distinctions to be made on the basis of age. For example, in certain circumstances, pension plans can make distinctions on the basis of age (s. 25(2)) and preferential treatment for persons over the age of sixty-five years is permitted (s. 15).

There may be situations where preferential treatment is aimed at persons who have not yet reached the age of 65 (therefore, the s. 15 defence does not apply). Examples include discounts for persons over 55 years of age, increased vacation time for employees who reach a certain age and other programs related to the transition into retirement.

These may be permissible under s. 14 of the *Code*, which deals with special programs, provided they meet all the requirements. Alternatively, following the Supreme Court of Canada’s decision in *Law v. Canada (Minister of Employment and Immigration)*, they may be upheld on the basis that they are not discriminatory as they do not violate the essential human dignity and freedom of those who are too young to qualify.

**How should the Commission evaluate claims of age discrimination by persons who are too young to qualify for programs that give benefits to individuals under the age of 65?**

## WRITTEN SUBMISSIONS AND PUBLIC CONSULTATION SESSIONS

We welcome your comments on some or all of the questions we have asked. Submissions should focus on issues that are within the Commission's jurisdiction.

You can mail, e-mail or fax your comments to:

**Ontario Human Rights Commission**  
**"Age Consultation"**  
**Policy and Education Branch**  
**180 Dundas Street West, 8<sup>th</sup> Floor**  
**Toronto, Ontario**  
**M7A 2R9**

**Fax: (416) 314-4533**

**E-mail: [ageconsultation@ohrc.on.ca](mailto:ageconsultation@ohrc.on.ca)**

If you wish to participate in the public consultation sessions, you must provide a written submission no later than **Wednesday, November 1, 2000**. Please fill out and return the attached response form along with your submission.

Public sessions will be held in:

London	November 14, 2000	(English)
Toronto	November 15, 2000	(English)
Toronto	November 16, 2000	(English)
Ottawa	November 28, 2000	(English & French)
Sudbury	November 29, 2000	(English)
Thunder Bay	November 30, 2000	(English)

*Please indicate on the response form if you are interested in attending one of the above sessions and whether you have any special needs. Details of times and locations will be provided.*

*As well, please let us know if you would like to have the opportunity to make a presentation. Please note that only a cross-section of interested individuals and organizations who provide written submissions will be invited to make presentations. Further details will be provided to those who have been invited to make presentations.*

## ONTARIO HUMAN RIGHTS COMMISSION

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All documents related to this consultation, including the Discussion Paper, are available on our Web Site at [www.ohrc.on.ca/age](http://www.ohrc.on.ca/age). You may also contact the Commission at (416) 314-4513 or 1-800-387-9080 to request copies of these materials or if you have any questions about the consultation process.

Information provided during the consultations is subject to the requirements of the *Freedom of Information and Protection of Privacy Act*. The information obtained during the consultation will form part of a report which may be made public. Services are available in French. If there is insufficient participation, a session may be cancelled.

*Ce document est aussi disponible en français.*

**IF YOU WISH TO MAKE A PRESENTATION AT THE PUBLIC CONSULTATION  
SESSIONS, YOU MUST PROVIDE A WRITTEN SUBMISSION BY  
NOVEMBER 1, 2000.**

**ALL WRITTEN SUBMISSIONS WILL RECEIVE EQUAL CONSIDERATION.  
HOWEVER, ONLY A CROSS SECTION OF THOSE WHO PROVIDE WRITTEN  
SUBMISSIONS WILL BE SELECTED TO MAKE A PRESENTATION AT THE PUBLIC  
CONSULTATION SESSIONS.**