

McMaster
University

MICHAEL G. DEGROOTE
SCHOOL OF BUSINESS



INNIS LIBRARY

JAN 17 2000

**RESEARCH AND
WORKING PAPER
SERIES**

**MANDATORY RETIREMENT AND THE
CANADIAN HUMAN RIGHTS ACT**

By

NARESH C. AGARWAL

Michael G. DeGroote School of Business
McMaster University
Hamilton, Ontario

Working Paper # 443

November, 1999

INNIS LIBRARY

NON-CIRCULATING

Innis

HB

74.5

.R47

no.443

McMASTER UNIVERSITY

1140 Main Street West
Hamilton, Ontario, Canada L8S 4M4
Telephone (905) 525-9140

**Mandatory Retirement and the
Canadian Human Rights Act**

Naresh C. Agarwal, Ph.D.
Professor of Human Resources
Michael G. DeGroote School of Business
McMaster University
Hamilton, Ontario

Prepared under a research contract from the Canadian Human Rights Act Review Panel

October 1999

Mandatory Retirement and the Canadian Human Rights Act

The topic of retirement policies for older workers has attracted considerable public attention in recent years in Canada. The question that has been debated is whether older workers should be mandatorily retired upon reaching a certain, pre-set age or be allowed flexibility in choosing their retirement date. The arguments put forward in this debate involve individual, group, and societal level considerations. Many employers have already proceeded to eliminate mandatory retirement of their workers while others still maintain it. Such diversity also exists at the public policy level. Mandatory retirement upon reaching a certain age is not required by law in any Canadian jurisdiction, but the degree to which it is legally permitted varies across jurisdictions. Human rights legislation in several jurisdictions permits mandatory retirement only under very narrowly defined conditions while such legislation in other jurisdictions takes a more permissive stance.

In April 1999, the federal government appointed a Panel to conduct a wide-ranging review of the Canadian Human Rights Act (CHRA) and the policies and practices of the Canadian Human Rights Commission. As part of its mandate, the Panel has been asked to make "a determination of the adequacy of the scope and jurisdiction of the Act, including an examination of its exemptions". The exemptions which are to be reviewed include those relating to mandatory retirement. As a first step in its deliberations, the Review Panel has put forward a Consultation Paper which identifies a series of questions arising out of its mandate. Through public hearings and commissioned studies, the Panel is attempting to seek input on these questions. The present study forms part of this input seeking process and focuses on the questions that have been raised concerning mandatory retirement.

The present study consists of four parts. Part I examines the key substantive issues involved in the debate on whether or not mandatory retirement policies should be eliminated and replaced by flexible retirement policies. The discussion of these issues draws upon the available theoretical and empirical literature in the field. Part II presents data on the incidence of mandatory retirement policies among organizations in the federal sector and the perceived impact of eliminating these policies. These data were collected through a survey of organizations, specially conducted for the present study. Part III provides an analysis of the current legal situation concerning mandatory retirement in Canada. This analysis covers two things. First, it includes an overview of those provisions of human rights legislation which specifically pertain to mandatory retirement. Based upon this overview, a comparison is made between the CHRA and other human rights legislation in Canada with respect to exceptions under which mandatory retirement is permitted. Second, the analysis provides a discussion of the leading court decisions handed in recent years on the legality of mandatory retirement. Finally, Part IV outlines some policy options for amending the CHRA's provisions concerning mandatory retirement and provides a brief commentary on these options.

Part I: Substantive Issues

Demographic and Labour Market Considerations

The demographic and labour market conditions are experiencing major shifts in Canada. These shifts are occurring in the United States and most other industrialized countries as well (Kinsella and Gist, 1995; OECD, 1995; Delsen and Reday-Mulvey, 1996; and The Economist, 1999). The key emerging demographic and labour market trends in the Canadian economy are as follows:¹

- **The Canadian population is getting older.** The median age of population increased from 26.2 years in 1971 to 36.0 years in 1998 and is expected to increase to 39.5 years by the year 2011. The aging index, i.e., number of persons aged 65 and over per 100 persons aged under 15, increased from 27.4 in 1971 to 60.8 in 1996 and is expected to increase to 81.6 by the year 2011. Also, the proportion of population aged 65 years and over increased from 7.8% in 1951 to 12.2% in 1996 and is expected to increase to 14.1% by the year 2011.
- **People are living longer.** The life expectancy at birth increased from 66.3 years to 75.7 years for men, and 70.8 years to 81.5 years for women over the 1951-96 period. It is expected to increase to 77 years and 84 years respectively for the two groups by the year 2011.
- **The Canadian labour force is growing at a slower rate.** The labour force grew by 18.2% over the decade 1979-88. However, the rate of growth declined to 10.5% over the next decade 1989-98.
- **The age-distribution of the Canadian labour force is changing in favour of the older groups.** The total number of youth (aged 15-24 years) in the labour force declined by 21.6% over 1979-98. Their proportion in the labour force fell from 27.2% in 1979 to 15.9% in 1998. Correspondingly, the number of those aged 25 and over increased by 55.3% and their proportion in the labour force rose from 72.8% in 1979 to 84.1% in 1998.
- **The labour market activity is declining among older workers.** For example, the labour force participation rate of those aged 55-64 years fell from 54.2% in 1979 to

48.8% in 1998. The decline in the rate was even sharper for men in this age bracket, i.e., from 78.4% to 59.6% over the same period.

- **The average retirement age is declining.** Only 51% of those retiring between 1976 and 1980 were under age 65. This figure rose to 71% over the 1991-95 time period. As a consequence, the median age of retirement fell from 64.9 years in 1976-80 to 62.3 years in 1991-95 (Gower, 1997). The trend of declining retirement age holds true for both genders. Over the period 1976 to 1996, the average retirement age decreased for men from 65 to 62 and for women from 64 to 61 (Statistics Canada, 1998b).

It is clear from the above data that the labour force in Canada is growing at a slower pace and getting older. Also, despite the fact that people are living longer, older people as a group are participating less actively in the labour market. Hence, retirement lasts much longer nowadays than was the case in the past. Given these trends which are projected to continue in the future, there are two important economic reasons why mandatory retirement policies may not be very appropriate. The first reason relates to the role that older workers can play in meeting labour shortages. Anticipating such shortages, the Federal Task Force on Labour Market Development in the 1980s noted the following:

"There emerges a pattern of an increasing pool of older persons fully capable of continuing their attachment to the labour force at a time when serious industrial adjustment can be expected to require the skills they have developed...

These findings suggest that the management of labour shortages in some highly skilled trades in the next decade will require employment strategies that either slow down the withdrawal of older workers from areas of highest productivity and growth in the economy or prevent the total loss of such vital skills and expertise in the post-retirement period. Removal of mandatory retirement legislation and adoption of

policies to encourage flexible work arrangements can facilitate employment for older workers" (Employment and Immigration Canada, 1981, p. 101).

The same conclusions were drawn for the 1990s in a survey study of respondents from over 400 public and private sector organizations in Canada (Towers Perrin and Hudson Institute Canada, 1991). The study found that even in the midst of widespread downsizing and layoffs, close to 60% of the respondents reported current difficulties in recruiting technical/technical support, supervisory/managerial and professional employees. And a greater proportion of respondents expected these difficulties to continue or become worse in the coming years. The study observed that in view of these recruiting difficulties "companies may be missing an opportunity to tap into an already existing and capable resource: their own aging employees" (p. 17). Similar conclusions concerning the current and expected shortages of skilled workforce are reported in more recent studies of local labour markets as well in Canada² and elsewhere (The Economist, 1999).

Thus, it is in the economic interest of employers to undertake human resource planning and assess their future occupational workforce requirement. If an array of shortages and surpluses is found, flexible rather than mandatory retirement policies would be more appropriate. "Making more selective use of early retirement incentives, as well as implementing delayed retirement incentives... may help many companies see through the skills and labour shortage crunch in the years ahead" (Towers Perrin and Hudson Institute Canada, 1991, p. 11).

The second economic reason why mandatory retirement policies do not seem appropriate in today's emerging demographic context is as follows. The aging of population and increased life expectancy are imposing a severe financial strain on Canada's public pension system which is funded on a pay-as-you-go basis. Such a system, which also exists in most other developed

countries, is very sensitive to the changing balance between beneficiaries and contributors, i.e., between older people who draw benefits from the system and working-age people who contribute into it. As a consequence of the changing age-composition of population in Canada, the number of working age people per each person aged 65 and over shows a declining trend. This number is expected to decline from five in the 1990s to three by the year 2030 (Banting and Boadway, 1997). Another demographic factor of relevance to the financial viability of the public pension plan is the increasing life expectancy of people in Canada. This means that once a person begins drawing from this plan, he/she would continue doing so for a much longer time than has been the case in the past.

Rising concern about the sustainability of Canada's public pension system has led to a consideration of measures needed to reform the system and put it on a sounder financial footing. A number of measures have been proposed by the federal government and many public policy analysts in the field (Battle and Torjman, 1995; Canada Department of Finance, 1996a and 1996b; and Battle, 1997). Many of these measures have been already implemented in other developed countries. These include: a) raising the retirement age at which full pension benefits become available, as evidenced in the United States and Germany (Simanis, 1994); b) introduction of phased-in or gradual retirement systems, as implemented in varying degrees in France, Germany, and Sweden (Reday-Mulvey, 1996; Schmahl, George and Oswald, 1996; and Wadensjo, 1996); and c) shifting the burden of pension costs from the government to the semi-private or private sector as witnessed in the United States and Great Britain (Laczko and Phillipson, 1991; and, Guillemand and Rein, 1993). There is some disagreement between economic thinkers and social gerontologists over the magnitude of the problem that the public pension system is facing and the relative virtues of various measures that have been proposed to address it (McDonald, 1997). However, one policy implication is obvious and

should be largely uncontroversial. And that is, it does not make much sense to force older people, who otherwise are able and willing to remain working, to retire and, as a consequence, force them to begin drawing benefits from the public pension fund instead of continuing to contribute into it.

Impact on Older Workers

Most western societies have become increasingly committed to democratic principles of equality and freedom. At the workplace, these principles imply that employment decisions affecting individuals ought to be made without any regard to their personal and demographic characteristics. Instead, such decisions should be based on work-related criteria such as *bona fide* occupational requirements and performance. Accordingly, it can be argued that mandatory retirement, by singling out age rather than individual productivity or competence, is contrary to the principles of equality that our society has embraced.

Sudden shock of forced retirement may often lead to impaired health and mental well-being. Studies have found that voluntary retirement at any age has no apparent adverse health effects. In contrast, involuntary retirement can be a stressful event due to poor timing, a lack of anticipation, a lack of control over the event, or potential economic problems (Herzog, House and Morgan, 1991; and Marshall and Clarke, 1996). It has also been found that voluntary retirees are more likely to be better satisfied than forced retirees (Beck, 1984; and Roadburg, 1985). Flexible retirement policies enable older workers to make retirement decisions that are most consistent with their economic and non-economic needs. This may explain why a large majority of Canadians in a recent national survey conducted by Statistics Canada indicated a strong preference for flexible retirement (Lowe, 1991). These preferences are also reflected in the widening of the age range within which people have

begun retiring in recent years. For example, in the 1960s and 1970s, most people retired at or around 65. But, retirement now occurs across an age span of 15 years or more, from the early fifties to the mid-sixties (Monette, 1996; and Schellenberg, 1996).

Mandatory retirement can also cause great economic hardship to many older workers. Before introducing legislation in 1978 prohibiting forced retirement at age 65 in the United States, public hearings were held by the House of Representatives on this subject. About the same time, in Canada, the Special Senate Committee on Retirement Age Policies also deliberated on this issue. According to the evidence presented before these bodies, mandatory retirement can cause severe economic difficulties to older workers having financial obligations. Such workers are likely to be among those who are employed in jobs that offer lower wages and retiree benefits. Forced retirement of these workers could well put them into poverty conditions. While the poverty rate among Canadians 65 years and older has steadily declined over the past two decades, 18.7% among them were still poor in 1997, the latest year for which poverty figures are currently available. The poverty rate was much higher, 45.0 percent, among unattached seniors, i.e., those living alone. They constituted over three-fourths of all seniors living below the poverty line in 1997 (National Council of Welfare, 1999; and Statistics Canada, 1999d). It is possible that the economic situation of older workers may become more vulnerable in the coming years. An emerging practice in industry is the increasing use of contingency employment contracts. These contracts generally provide lower job/income security, pension, and other benefits. As a result, many workers in future are likely to face more constrained retirement decisions (Chaykowski, 1995). There is also a mounting concern about the affordability of various retiree benefits plans. Faced with escalating health care costs of older workers, many employers in the United States have reduced health care benefits offered to retirees (Crown, 1996).

In Canada, these reductions could occur through cuts to basic benefits available through the Canadian health system and extended/supplemental benefits available through employer health care plans. Additionally, as discussed earlier, Canada pension and other old age income supplements too may become less generous in the future. Thus, it is conceivable that many older workers in future may have to stay longer in the labour force in order to avoid drastic cuts in their standard of living. Being forced to quit working due to mandatory retirement policies can cause major economic hardship to such workers. The hardship may be particularly severe for two groups of older workers, namely, women and immigrants. Their cases are discussed separately below.

Women: The available demographic data shows that women now comprise slightly over 50 percent of Canada's population.³ The labour market activity among women has increased significantly over the years and is fast catching up with their relative representation in the population. For example, their relative share in the labour force went up from 39.4 percent in 1979 to 45.4 percent in 1998. Over this twenty-year period, women accounted for 60.9 percent of the total growth in labour in Canada. These trends have resulted from the rising labour force participation rate among women. The rate went up from 49.0 percent in 1979 to 58.1 percent in 1998. As noted earlier in this study, women have about 6 years higher life expectancy at birth than men. It has been estimated that life expectancy at age 65 for women born in 1941 is 22.4 years, compared to 18 for men born the same year (Bourbeau, Legare and Emond, 1997). As a result of their higher life expectancy, women are forming an increasing part of the elderly population in Canada. For example, their proportion among those aged 65 and over was 57.5 percent in 1998.

The gender difference in the economic situation of elderly persons, however, runs markedly in the opposite direction. The available income distribution statistics show that considerably more women aged 65 and over than men in the same age bracket have income below Statistics Canada's Low Income Cut-offs, often referred to as the poverty line. The percentages of those with low income were 39.8 for women vs. 26.6 for men in 1980, and 24.0 for women vs. 11.7 for men in 1997. Another revealing fact is that women comprised 65.9 percent of all elderly people classified as being poor in 1980; this figure rose to 73.0 percent in 1997. The situation of unattached elderly women (i.e., those living alone) is even worse. In 1980, the incidence of poverty among this group was 71.6 percent, relative to 60.7 percent for comparable men; in 1997, the percentages were 49.1 for women and 33.3 for men. Women accounted for 75.6% of all unattached elderly persons living in poverty in 1980, and this figure rose to 80.8 percent in 1997 (Statistics Canada, 1999d). These trends lend further credence to the conclusion drawn some fifteen years ago by the National Council of Welfare that "Poverty in old age is largely a women's problem, and is becoming more so every year" (National Council of Welfare, 1984a, p. 24).

The income level of retirees is strongly affected by their career patterns in prior years. While women are approaching men in the rate of participation in labour force, their career patterns continue to be greatly different from those of men. These differences can help explain the higher incidence of poverty among women in their retirement years. First, women in the labour force tend to be disproportionately concentrated in retail trade and service sectors, in which the pension coverage is significantly lower than in the heavy industries sectors in which men are disproportionately concentrated. As a consequence, there were only about 915,000 women in the private-sector who belonged to occupational pension plans in 1997 compared to 1.8 million men (National Council of

Welfare, 1999). The 1994 General Social Survey, which included questions on retirement, also showed that only 34 percent of retired women were receiving benefits from such pensions plans, whereas the percentage was 55 for male retirees (Monette, 1996). Second, many women in the labour force have shorter and discontinuous careers because they leave a first job to raise children, spend three times longer than men between jobs due to family responsibilities, and tend to work in each job for a shorter time than men (National Council of Welfare, 1984b; Connelly and MacDonald, 1990; and McDonald, Donahue and Moore, 1997).⁴ Third, women are more likely to work in low paying jobs than men which is reflected in the earnings differential between the two groups. For example, in 1997, the average earnings of women working full-time, full year were 73 percent of what comparable men earned (Statistics Canada, 1999e). Retirement benefits accruing to workers from an employer or public pension plan are normally in proportion to their earnings and years of service while in the plan. Thus, the effect of shorter and interrupted careers, and lower wages that many women experience would be to depress their potential income in retirement years. Also, due to low earnings while working, many women are unable to contribute much to their personal registered retirement savings plans (RRSPs). The federal government initiated RRSPs to help workers fill the gaps in their occupational pensions, but these plans, in reality, are of not much help to those in lower income brackets (Novak, 1993; and National Council of Welfare, 1999).

Thus, it is reasonable to argue that many older women may need to continue working beyond age 65 for economic reasons. In order to overcome the pension disadvantage resulting from their shorter and interrupted careers, such women may delay retirement until they become eligible for full pension benefits. Research studies based on a life-course perspective have found that delayed career entry due to marriage and child rearing, and mid-career withdrawal from the labour force due to

other family responsibilities tend to push the desired retirement age among women beyond the conventional 65 (O'Rand and Henretta, 1982; Szinovacz, Ekerdt and Vinick, 1992; and McDonald, Donahue and Moore, 1997). For some older women, there may not be any real alternative except to continue working as long as their health and job performance allows them to. Their prior work history might be such that these women do not ever expect to receive sufficient pension income. In short, mandatory retirement policies can cause severe economic hardship to older women who need to continue working for one reason or another.

Immigrants: Immigrants make up a significant proportion of Canada's population.⁵ According to Census data, there were 4.3 million immigrants living in Canada in 1991, comprising 16 percent of the total population. The number rose to 4.97 million and the relative share in population to 17 percent in 1996. The annual flow of new immigrants has risen considerably in recent years. The average was around 125,000 in the 1980s and has been around 223,000 in the first eight years of the 1990s. The largest share of immigrants currently entering Canada are in the economic class consisting of business persons and skilled workers. For example, 43.4 percent of new arrivals in 1994 fell into this category; the figure in 1998 was even higher, 54.5 percent. As a consequence, immigrants have become a major component of Canada's labour force. At the time of the 1996 Census, they made up almost one-fifth (19 percent) of the labour force. Because immigrants tend to arrive in Canada while in their prime working years, they are 'older'⁶ and resultantly, skew the age-distribution of the total immigrant population upwards. According to the 1991 Census, the age-distribution of all immigrants living in Canada compared to those born in Canada was as follows: 15% vs. 39% under 25 years, 36% vs. 33% between 25 and 44 years, 31% vs. 18% between 45 and

64 years, and 18% vs. 10% in the 65 and over age category. As in the population born in Canada, women make up a majority of elderly immigrants. In 1991, 56 percent of immigrants aged 65 and over were women, as were 57 percent of seniors born in Canada.

The average income of immigrants living in Canada is higher than of those born in Canada, but the difference becomes negligible when the age differences between the two groups, as noted above, are taken into account. The economic situation of older immigrants aged 65 and over, however, is not as good. The incidence of low income among this group is higher than among their Canadian-born counterparts. According to the 1991 Census data, 22 percent of the aged immigrants had incomes below Statistics Canada's Low Income Cut-Offs, compared to 18 percent of seniors born in Canada (Citizenship and Immigration Canada, 1996). A factor that appears to have a major impact on poverty rates among the aged immigrants is the period when they first arrived in Canada. A large proportion of immigrants living in Canada today are relatively recent arrivals. For example, 62 percent of immigrants living in Canada at the time of the 1996 Census only arrived in the preceding 25 years – 21% between 1991 and April 1996, 22% between 1981 and 1990, and 19% between 1971 and 1980.⁷ Studies have found that the recency of arrival tends to be associated with higher incidence of poverty among senior immigrants (Wanner and McDonald, 1986; Boyd, 1989; and Brotman, 1998). A key reason for this is because many aged immigrants do not become eligible to receive full or even partial benefits from the federal income security and pension programs targeted at the elderly population.⁸ For example, no Old Age Security (OAS) pensions are paid to people who have lived less than ten years in Canada after age 18 unless they came from countries which have international social security agreements with Canada. After that pension is paid at a rate of 1/40th of the full benefit for each complete year of residency in Canada, i.e., full pension benefits

accrue only after 40 years of residency. Because most immigrants enter Canada in their prime working age, it is not surprising why many of them fail to meet this long residency requirement when they reach their old age. Similarly, benefits from the Canada/Quebec Pension Plans (C/QPP) are prorated from an allowable maximum according to the length of the period in which an individual has been a contributor to the plan and the amount of monthly contributions, up to a ceiling. Thus, elderly immigrants, who arrived in Canada in their mid-life would have their C/QPP pension prorated for the time spent in the Canadian labour force.

Another factor that appears to have a major impact on the poverty among the aged immigrants is the country of their origin. Changes in the Canadian immigration policy made in 1967 (which became effective in 1978) removed the "preferred nationalities" criterion of admissibility. Since then, there has been a dramatic shift in the number of immigrants coming from different countries. During the 1950s, for example, over 80 percent of all immigrants arriving in Canada each year were from Europe. In 1998, however, this figure was just 22 percent. In contrast, the share of immigrants coming from Asia has increased substantially, from under 5 to 48 percent over the same time period. Also, the proportion of immigrants coming from Africa, the Caribbean, and Central and South America has risen over the years. These sources contributed a total of about 25 percent of immigrants in 1998.⁹ The incidence of low income tends to be higher among seniors from those subgroups which include higher proportions of recently arrived immigrants. For example, studies have found that seniors from the Chinese, Black, and other visible minority immigrant communities experience higher incidence of low income than their counterparts from the European communities (Boyd, 1989; McDonald and Wanner, 1990; and Brotman, 1998). Limited access to federal programs such as the OAS and the C/QPP, lack of accrued public pensions from the country of origin and

lower post-immigration earnings in Canada¹⁰ are among the reasons that can help explain why people from certain immigrant sub-groups than others may face higher rates of poverty in their old age.

Thus, the economic issues faced by the older immigrants are essentially similar to those faced by older women. Shorter careers of immigrants in the Canadian labour force often result in restricted access to Canadian public pension programs. As a result, a large number of them end up receiving only partial benefits from these programs. Also, no accrued old age pension benefits from their country of origin may be available to immigrants, particularly those from the Third World countries, to supplement their low pension incomes in Canada. It is, therefore, possible that many older immigrants may need to continue working beyond age 65 in order to economically support themselves and avoid falling into poverty. This, indeed, was found to be the case in a study which, among other things, examined the employment behaviour of the aged immigrants (McDonald and Wanner, 1990). The study found that those immigrant groups which had a smaller proportion of their members receiving public pension benefits tended to have a greater proportion of their members working beyond age 65. This was more true for immigrants who originated from the Third World countries than those from countries in Europe. Forcing such individuals to quit working because they have reached the mandatory age for retirement can impose undue economic hardship on them.

Performance of Older Workers

Age-performance related issues are among the strongest rationalizations offered in favour of mandatory retirement. These rationalizations take essentially three interrelated forms. Firstly, it is argued that mandatory retirement enables older workers to "retire with dignity", i.e., a perception

that they retired because of a personnel policy applicable to all employees. If mandatory retirement is eliminated, there may be a social stigma to retirement because it may be perceived as an indication of performance or competence problems. Secondly, it is argued that mandatory retirement minimizes the need to monitor and assess the performance of older workers. It is claimed that workers nearing mandatory retirement age are generally permitted to continue their employment without careful review even if their performance deteriorates below the acceptable level. If mandatory retirement is eliminated, employers will be obligated to use more careful and demanding performance appraisal systems for older employees, and this might put undue emotional pressures on the workers. Thirdly, it has been suggested that eliminating mandatory retirement will cause serious pay inequities in the organization. It is argued that, because older employees tend to be overpaid relative to their performance, allowing them to stay beyond the mandatory age of 65 would be inequitable to both the employer and the younger employees in the organization (Ondrack, 1986).

The above arguments appear to rest on two assumptions: a) after workers reach a certain age, their job performance and age are negatively related, i.e., their performance declines as they get older, and b) this negative relationship between age and job performance is generalizeable across all older workers regardless of the occupational and organizational settings in which they work. Neither of these assumptions appears to have much support in the available literature. The age-performance relationship has been a subject of so many empirical research studies that review articles have periodically appeared attempting to summarize, interpret, and integrate the findings of these studies. Examples of such review articles are: Kelleher and Quirk (1973); Meier and Kerr (1976); Sonnenfeld (1977); Baugher (1978); Rhodes (1983); Waldman and Avolio (1986); McEvoy and Cascio (1989); and Forteza and Prieto (1994). Some of these review articles employed a qualitative

approach and others a more quantitative approach (e.g., meta analysis) to integrate, assess, and interpret the findings of the available studies on the age-performance relationship. The key conclusions that emerge from these review articles are summarized below.

First, some productivity decrements with age are observed in certain types of work, but not in others. In fact, in some work settings, studies show that older workers are more productive than younger workers. Also, studies using subjective assessment measures (e.g., supervisory ratings) tend to find a small negative relationship between age and performance, but those using more objective measures (e.g., production records) find a slight positive relationship. The overall finding seems to be that chronological age accounts for minimal differences in job performance. Second, far greater and significant variation in performance exists within age groups than between age groups. This suggests that individual differences in performances are much more important than group differences. Third, there is some decline in physical capacity of older workers, but a supportive work environment can overcome the effects of this change, and chronological age is not necessarily a limiting factor in physically demanding work even through the sixties. Fourth, there is some slowing down with age in reaction time and speed of performance, but older workers do as well as or better than younger workers on creativity, flexibility, information processing, accident rates, absenteeism, and turnover. Finally, some older workers may be more reluctant to undergo retraining, but with appropriate training methods and environment, they can generally learn as well as younger workers.

Thus, the existing literature does not point to any consistent or generalizeable relationship between age and performance. What it does show consistently is that large performance differences exist within each age group. This means that performance varies greatly among workers falling into

an older age group, as it does among workers falling into a younger age group. Some older workers, therefore, may be less productive than younger workers, while others may be more. There is simply no basis to assume that productivity of older workers as a group tends to decline after they attain a certain age. An important principle remains that job-related performance and potential rather than chronological age should guide all human resource decisions including those relating to retirement. Forcing otherwise productive older employees to retire just because they have reached a certain age is certainly not fair to those employees, but this may not even be in the best economic interest of employers and the society at large.

Other Organizational Level Considerations

Mandatory retirement is often justified on the ground that it permits the existence of deferred compensation schemes under which employees are underpaid in the first half of their career and overpaid in the second half such that the expected present value of the employee's productivity equals the expected present value of compensation. It is claimed that these schemes cannot exist without a pre-set mandatory retirement date. In the absence of such a date, employees can decide to postpone retirement. As a consequence, their compensation could exceed productivity for an indefinite period of time thereby causing economic losses to employers and inequity feelings among younger employees. Supporters of deferred compensation schemes argue that these schemes prevent employees from "shirking" on the job (Lazear, 1979). The threat of being fired and thereby losing substantial deferred earnings at the end of their career keeps older employees honest and working hard.

The above argument in favour of mandatory retirement as a means to preserve the existence of deferred compensation schemes does not appear to be particularly strong for two reasons. First, there are other, perhaps simpler and equally effective, ways than deferred compensation schemes to prevent older employees from shirking on the job. First, the use of fair and accurate performance measurement systems coupled with performance-based monetary and non-monetary rewards can serve as a more direct and effective strategy for motivating older workers to maintain their performance. Second, deferred compensation schemes pre-suppose a long-term career with the same employer. Then only can underpayment in the first half of an employee's career be compensated through overpayment in the second half of that employee's career. However, the assumption of a life-long career with the same employer is not borne out by facts. For example, one study, based on Statistics Canada's Labour Force Survey and Longitudinal Worker File databases, found that the average duration of a job started by a Canadian worker over the period 1981 to 1994 was only 3.7 years (Heisz, 1996). Similarly, a second study based on the same databases, found that the average job duration varied between 1.8 and 5.6 years across various industrial sectors over the period 1981 to 1996 (Heisz and Côté, 1998).

Another justification offered for mandatory retirement is that it facilitates organizational planning for recruitment, succession, and employee development. Without a fixed date of retirement, the number of upcoming retirees will become indeterminate, rendering such planning more difficult. These concerns, however, seem to be overstated. For example, even under mandatory retirement policies, retirement is not an entirely certain or predictable flow. As discussed earlier in this study, a large number of workers in Canada choose to retire prior to reaching the specified mandatory age of retirement, and the timing of such early retirement can vary from one

individual to another. Also, uncertainty is inherent in the normal running of most organizations. In the area of human resources specifically, turnover, absenteeism, disability and death are all uncertain, probabilistic flows that organizations have to cope with. General approaches, processes and techniques that are used by organizations to forecast these flows can be adapted to forecast the delayed retirements that may occur under flexible retirement policies.

Job Opportunities for the Youth

The issue of job opportunities for the youth is often raised in public discussions on whether mandatory retirement should be eliminated or not. An argument is made that mandatory retirement is needed to provide job opportunities for younger workers and lower their unemployment rate.

The above argument rests on two assumptions. First, it assumes that hordes of older workers would continue working if they were not forced to retire at a certain mandated age. There is very little empirical support for this assumption. As noted earlier in this study, a large number of Canadian workers retire much earlier than reaching the traditional mandatory retirement age of 65. The average age of retirement in Canada is currently around 61. A 1980 Conference Board of Canada study estimated that only one-tenth of one percent of the total workforce retired in any one year because they had reached a maximum age or term of service (Dunlop, 1980). Similarly, Statistics Canada's General Social Survey indicated that only 14 percent of the retirees in 1994 reported that they had retired because of mandatory retirement policies (Monette, 1996). Even for these workers, it cannot be assumed that they would have continued working if they had not been forcibly retired. In fact, there is evidence that a majority of workers who retire as a result of mandatory retirement are indeed happy with the timing of their retirement and prefer to retire at that

time (Ciffin and Martin, 1977; and McDonald and Wanner, 1990). The experience of jurisdictions and employers which do not have mandatory retirement also shows that a very small number of older workers choose to continue working beyond age 65, and those who do tend to retire within a year or two thereafter (Dunlop, 1980; Labour Canada, 1985; and Gibb-Clark, 1990). Second, the argument that mandatory retirement is needed to provide job opportunities for younger workers and lower their unemployment rate assumes the "lump-of-labour" fallacy, i.e., the mistaken notion that there exists a fixed number of jobs that must be allocated among competing workers (Pesando, 1979; and Krashinsky, 1988). This implies an entirely stagnant view of the economy. Jobs for new workers can be found without having to forcibly retire older workers. No study can be cited, which demonstrates that the termination of older workers because of mandatory retirement directly caused the hiring of younger workers. Given the high rate of early retirement and the small proportion of retirees who would have continued working without mandatory retirement, it does not appear that mandatory retirement policies would have much of an impact on job opportunities for younger workers or their unemployment rate.

Part II: Retirement Practices in the Federal Jurisdiction

The purpose of the Canadian Human Rights Act (CHRA) is to extend laws in Canada that proscribe discrimination to matters falling within the legislative authority of the federal parliament. Accordingly, in employment matters, the CHRA applies to the federal Crown as an employer as well as private sector employers that operate federally regulated undertakings such as banks and airlines. As part of this present study, evidence was collected on retirement practices existing among these two groups of employers. This evidence is presented in the following sections.

Evidence from Federally Regulated Employers

Evidence on retirement practices among the federally regulated employers was collected through a survey. It should be noted at the outset that this survey was not designed and executed strictly along scientific principles. Such a survey was not possible as it would have required considerably more resources and time than were available. The intention behind the present survey was to make a "quick and dirty" attempt to measure the incidence of mandatory retirement among employers covered under the CHRA and the perceived impact of eliminating it. A description of the survey and its findings are provided below.

A list of federally regulated employers who are covered under the CHRA could not be obtained. However, a list of such employers covered under the federal Employment Equity Act (EEA) was available and used for the present survey.¹¹ It should be noted that the EEA applies to those federally regulated employers who have 100 or more employees, but the CHRA applies to all employers regardless of the size of their workforce. Consequently, the use of the EEA list for the present survey imposed a limitation in that employers with less than 100 employees were excluded. (As it turned out, some of these small employers came to be included in the survey by happenstance. Slightly over 6 percent of the responding employers indicated that they had less than 100 employees. Presumably, due to downsizing and/or employee turnover, their workforce had fallen below 100 since the time these employers first got on the EEA list).

The EEA list included a total of 389 federally regulated employers grouped into financial, transportation, communication, and other industrial categories. For each employer, the list also identified the name of a contact person, typically a senior-level Human Resources functionary in the organization. The data for the present survey was collected in a telephone interview with these

contact persons. A semi-structured format was used for the interview wherein three sets of questions were asked. A common set of questions was asked of all employers, relating to size of workforce, union status, and type of retirement policy (mandatory or flexible) in existence. Employers with mandatory retirement policies were asked a second set of questions, seeking details of the retirement policies in effect. The third set of questions was targeted at employers with flexible retirement policies. These questions dealt with possible adverse impact of flexible retirement policies on employment opportunities for younger workers. In addition to the questions asked, the interview format allowed respondents to add qualitative comments as they considered appropriate.

Table 1 shows a description of the employers who responded to our survey and provided the information requested. Telephone calls were made to all 389 employers on the EEA list and, as shown in Table 1, data were successfully collected from 199 among them. This represents an overall response rate of 51.2 percent which is quite respectable for a survey of this kind. During the data collection phase, it became evident that some of the individual employers on the EEA list belonged to a common parent/holding organization and as such were governed by centralized human resource policies including those relating to retirement. For example, seven individually listed employers in the communication sector turned out to be part of a common overall organization and had uniform human resource policies. It was decided to combine such employers and record them as a single entry in our database. This resulted in 159 truly separate employer records which form the sample for the present survey. Table 1 provides some descriptive information about this sample. As can be seen, the sample has good representation from all four industrial sectors and includes employers across various size categories, including fortuitously, some in the under 100 employees category. It is worth noting that most of the major employers operating in the federally regulated financial,

TABLE 1

Sample Description

Descriptive Items	Industrial Sector				Total
	Financial	Transportation	Communication	Other	
Number of employers on the EEA List	22	196	112	59	389
Number of employers responding	15	90	57	37	199
Response rate	68.2%	45.9%	50.9%	62.7%	51.2%
Number of separate employer records entered in database (Sample)	15	78	33	33	159
Size distribution of sample employers:					
Under 100 employees	2 13.3%	6 7.7%	2 6.1%	—	10 6.3%
100-499	3 20.0%	44 56.4%	10 30.3%	14 42.4%	71 44.7%
500-999	2 13.3%	13 16.7%	8 24.2%	5 15.2%	28 17.6%
1000-4999	3 20.0%	10 12.8%	9 27.3%	11 33.3%	33 20.8%
5000 to 50000	5 33.3%	5 6.4%	4 12.1%	3 9.1%	17 10.7%
Union status of sample employers					
Unionized	4 26.6%	49 62.8%	20 60.6%	26 78.5%	99 62.3%
Non-unionized	11 73.3%	29 37.2%	13 39.4%	7 21.2%	60 37.7%
	15 100.0%	78 100.0%	33 100.0%	33 100.0%	159 100.0%

transportation and communication sectors did participate in the present survey.¹² Also, the survey participants included both unionized as well as non-unionized employers.

The survey had two primary purposes. The first purpose was to measure the incidence of mandatory vs. flexible retirement policies among employers operating in the federal jurisdiction. Table 2 shows the results obtained. Overall, the incidence of mandatory retirement appears to be quite low among the employers surveyed. Only 26.4 percent among them have organization-wide mandatory retirement policies whereas 64.2 percent do not (instead, they have organization-wide flexible retirement policies). The remaining 9.4 percent of employers have mixed policies, i.e., mandatory retirement for some groups of employees while flexible retirement for others. Across industrial sectors, the incidence of some kind of mandatory retirement is relatively higher among employers in the financial and transportation sectors. However, organizational size and unionization factors cannot be the explanation for this higher incidence of mandatory retirement as employers in these two sectors have contrasting profiles on these variables. Table 1 shows that 53 percent of employers in the financial sector have more than 1000 employees and even a greater number (75 percent) among them are non-unionized. In contrast, close to three-fourths of employers in the transportation sector have less than 500 employees and over 60 percent among them are unionized. Perhaps the nature of industry and the long established practice may be more plausible explanatory factors for relatively higher incidence of mandatory retirement in the financial and transportation sectors. Finally, it should be noted that many employers that do have mandatory retirement policies commented that a large number of their employees tend to retire before reaching the age at which they would be required to retire. For example, a major bank participating in the survey indicated that

the mandatory retirement age for its employees is 65, but the actual retirement age averages around 63.

TABLE 2

Incidence of Mandatory vs. Flexible Retirement Policies

Type of Retirement Policy	Industrial Sector				Total
	Financial	Transportation	Communication	Other	
Mandatory retirement policy (all employees)	6 40.0%	19 24.4%	9 27.3%	8 24.2%	42 26.4%
Flexible retirement policy (all employees)	9 60.0%	47 60.3%	24 72.7%	22 66.7%	102 64.2%
Mixed policy: Mandatory and flexible retirement policies for selected employee groups	—	12 15.4%	—	3 9.1%	15 9.4%
	15 100.0%	78 100.0%	33 100.0%	33 100.0%	159 100.0%

The second major purpose of the present survey was to assess the perceived impact of abolishing mandatory retirement. Here, the focus was on finding out from employers with flexible retirement policies if the presence of such policies was associated with a large number of older employees continuing to work thereby resulting in reduced job opportunities for younger workers. While nearly 40 percent of these employers report having some workers over the age of 65, such workers represent a very small proportion of the organizational workforce.¹³ For employers with

flexible retirement policies, there is little sense that the absence of a pre-set age of retirement would adversely affect employment opportunities for younger workers. Over 90 percent of employers do not consider this to be a problem. Some employers cite a general trend among older workers to take early retirement, periodic buyout packages/incentives offered to older workers, and organizational growth/expansion as reasons why they do not perceive lack of employment opportunities for younger workers due to delayed retirement of older workers to be an issue in their own specific contexts.

In short, only a small proportion of private sector employers operating federally regulated undertakings have mandatory retirement policies for their workers. Employers with or without such policies indicate that many older workers retire much earlier than the traditional retirement age of 65. Responses from employers that have flexible retirement policies suggest that the existence of such policies is unlikely to cause any major adverse effect on employment opportunities for younger workers. These findings are consistent with the conclusions that emerge from the macro labour market trends and research evidence discussed in Part I of the present study.

Evidence from Federal Public Sector

A substantial number of people work in the federal public sector, though the number has declined in recent years as a result of various workforce reduction initiatives implemented by the federal government (Treasury Board of Canada Secretariat, 1998). In 1998, a total of 220.2 thousand persons were working in the federal public administration,¹⁴ including 14,861 Royal Canadian Mounted Police (RCMP) uniformed personnel.¹⁵ In addition, there were 91,970 military personnel serving in the Canadian Armed Forces in 1998.¹⁶

The status of retirement policies in the federal public sector was reviewed in depth in the Report of the Parliamentary Committee on Equality Rights issued in October 1985. The Committee found that mandatory retirement was the norm in the federal public sector, though the standard retirement age varied depending upon the category of service. At that time, the standard retirement ages in effect for various key service groups were as follows: 65 years for public servants, as specified in the Public Service Superannuation Regulations; 56 to 62 years for the RCMP uniformed personnel depending upon their rank or after 35 years of service, as specified in the RCMP Superannuation Regulations; 55 years for the military personnel or could be as early as 37 years after 20 years of service depending upon their rank, occupation and date of enlistment, as specified in the Queen's Orders and Regulations; and 75 years for judges of the Supreme Court of Canada and 70 for other judges, as fixed by statute; and 75 years for superior court judges and senators, as fixed by the Constitution. Three major developments concerning retirement policies in the federal public sector have occurred since the Parliamentary Committee issued its Report in 1982. These are discussed below.

First, the Public Service Superannuation Regulations were amended in 1986 removing the mandatory retirement requirement for federal public servants. Repeated attempts were made to obtain data from the Treasury Board Secretariat on what effect, if any, this change in policy has had on the retirement behaviour of older federal public service workers. The primary purpose behind these attempts was to find out if the abolition of mandatory retirement has produced delayed retirement decisions on the part of these workers, which in turn could possibly have a negative effect on job opportunities for younger workers in the federal public service. Unfortunately, these attempts to obtain hard data were not successful.¹⁷ However, from whatever published data is available, it

does not appear that older federal public servants, in general, are working past age 65 now that they are no longer forced to retire at that age. In recent years, the federal government has implemented a number of programs offering early retirement incentives and buyout packages to its older employees, and these programs have been quite successful. For example, between April 1, 1995 and March 31, 1997, as many as 7577 individuals left the federal public service under the Early Retirement Incentive Program (Treasury Board of Canada Secretariat, 1998).

Second, the RCMP Superannuation Regulations were amended a few years ago to make the standard age of retirement the same for all uniformed personnel.¹⁸ It is currently set at 60 years. The retirement age is extendible on an exceptional basis. Requests for extension for one year at a time can be made by individual police officers. Decisions on such requests are taken based on organizational needs. Over the past five years, approximately 30 requests for extension of retirement age have been made and two of these have been granted. The policy of mandatory retirement in the RCMP has also been challenged by the affected personnel in recent years. Between 1987 and 1996, eight separate complaints against this policy were filed with the Canadian Human Rights Commission. These complaints were all considered together by the Commission. In its defence against the complaints, the employer did not raise the issue of mandatory retirement being a *bona fide* occupational requirement. Instead, it presented data comparing the standard age of retirement in the RCMP with retirement ages in other police forces in Canada. Finding no major difference between the two groups of retirement ages, the Commission dismissed the complaints under Section 15(1)(c) of the Canadian Human Rights Act (CHRA) which stipulates that it is not a discriminatory practice if "an individual's employment is terminated because that individual has reached the normal age of retirement for employees working in positions similar to the position of that individual".

Third, some interesting developments have occurred in recent years concerning mandatory retirement of military personnel. In 1992, the Canadian Human Rights Tribunal heard a complaint filed by ten army officers, claiming that the mandatory retirement policy of the Canadian Armed Forces was discriminatory. In its ruling issued in August 1992, the Tribunal disallowed the employer's claim that mandatory retirement of military personnel was a BFOR as stipulated in Section 15(1)(a) of the CHRA.¹⁹ Immediately following the Tribunal's decision and while this decision was under appeal in the courts, the Queen's Orders and Regulations were amended. Effective September 1992, a new clause was inserted at the end of Article 15.17 which sets out in detail the terms of the mandatory retirement policy applicable to army officers. The new clause, 15.17 (10) states that "This article is a regulation made for the purpose of paragraph 15(1)(b) of the *Canadian Human Rights Act*". According to this section of the CHRA, it is not a discriminatory practice if "employment of an individual is refused or terminated because that individual has reached... ..the maximum age, that applies to that employment by law or under regulations, which may be made by the Governor in Council for the purposes of this paragraph". As a result, the Canadian Human Rights Commission began dismissing complaints based on mandatory retirement which occurred post-September 1992, i.e., subsequent to the date when the Queen's Orders and Regulations were amended.²⁰

In summary, mandatory retirement is no longer the norm in the federal public sector. Federal public servants, who form the majority of the workforce in the federal public sector, are not forced to retire at age 65. Mandatory retirement policies still exist in certain selected occupational groups such as the uniformed personnel in the RCMP and the Canadian Armed Forces, but such policies are increasingly being challenged by those affected.

Part III: Current Legal Situation

Applicable Legislation

Mandatory retirement is a form of age discrimination in employment. In Canada, there is no specific legislation which prohibits discrimination in employment against older workers. Any protection for such workers is subsumed in more general and broader legislation granting basic rights and freedoms.²¹ The Canadian Charter of Rights and Freedoms (Section 15) guarantees that: "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability". Section 1 of the Charter goes on to state that these rights and freedoms are "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society". Thus, under the Charter, age is a protected category without any upper age limit such as 65 years. Consequently, mandatory retirement is illegal in those sectors to which the Charter applies directly unless it can be justified as a reasonable limit/exception. As defined in Section 32(1), the Charter applies to all matters "within the authority" of the federal parliament and provincial legislatures. While the applicability of this criterion is obvious in some sectors (e.g., government ministries/departments, and laws), it is open to interpretation in others (e.g., universities, hospitals and community colleges).

In sectors not covered by the Charter, the human rights legislation is the appropriate law in respect to mandatory retirement. In general, human rights legislation in all jurisdictions prohibits age discrimination in employment including mandatory retirement, except under certain circumstances. These circumstances are summarized in Table 3. In this regard, three points of similarity or dissimilarity among jurisdictions are worth noting. First, the human rights legislation

in four jurisdictions, namely British Columbia, Newfoundland, Ontario, and Saskatchewan provides protection against age discrimination only up to age 65. As such, mandatory retirement at age 65 or beyond is legally permitted in these jurisdictions. No such limitation on protection from age discrimination exists in other jurisdictions. Second, the human rights legislation in all jurisdictions permits mandatory retirement if it can be justified as a *bona fide* occupational requirement. Third, the human rights legislation in the federal jurisdiction, namely the Canadian Human Rights Act (CHRA), provides for two additional exceptions which permit mandatory retirement (i) if it is based on a maximum age applicable to "that employment by law or under regulations, which may be made by the Governor in Council for the purposes of this paragraph" [Section 15(1)(b)]; and (ii) if it is based on "the normal age of retirement" for employees in similar positions [Section (1)(c)]. These exceptions have the effect of making the CHRA the most permissive legislation with respect to mandatory retirement, compared to all other human rights legislation in Canada. This is so because, under these two exceptions, employers can raise a complete defence for their policies of mandatory retirement not only at age 65 but also at even lower ages. Two instances of such employer defence were noted earlier in Part II of this study. The first case concerns the Canadian Armed Forces (CAF) which requires military personnel to retire at ages ranging between 37 and 55 depending upon rank and seniority. After this policy was struck down by a federal Human Rights Tribunal in August 1992, the CAF was able to restore the policy a month later by having the Queen's Orders and Regulations amended by the Governor in Council to satisfy Section 15(1)(b) of the CHRA. Since then, the CAF has succeeded in having the complaints of discrimination against its policy of mandatory retirement dismissed by the Canadian Human Rights Commission by simply citing Section 15(1)(b) of the CHRA. The second case relates to the RCMP which has been able to

TABLE 3
Mandatory Retirement and Human Rights Legislation in Canada

Jurisdiction	Legislation	Legal Status of Mandatory Retirement (MR)
<u>Federal</u>	Canadian Human Rights Act	MR <u>illegal</u> unless a) based on a maximum age by law, or b) at the normal age for retirement for employees in similar positions, or c) justified as a <i>bona fide</i> occupational requirement
<u>Provincial:</u>		
Alberta	Human Rights, Citizenship and Multiculturalism Act	MR <u>illegal</u> unless can be justified as a BFOR or allowed under the Act as a reasonable and justifiable exception in the circumstances
British Columbia	Human Rights Code	MR <u>legally permitted</u> at age 65; <u>illegal</u> at lower ages unless justified as a BFOR
Manitoba	Human Rights Code	MR <u>illegal</u> unless justified as a BFOR
New Brunswick	Human Rights Act	MR <u>illegal</u> unless justified as a BFOR
Newfoundland	Human Rights Code	MR <u>legally permitted</u> at age 65; <u>illegal</u> at lower ages unless justified as a BFOR
Nova Scotia	Human Rights Act	MR <u>illegal</u> unless established as a <i>bona fide</i> plan, scheme or practice of retirement, or justified as a BFOR, or allowed as a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society
Ontario	Human Rights Code	MR <u>legally permitted</u> at age 65; <u>illegal</u> at lower ages unless justified as a BFOR
Prince Edward Island	Human Rights Act	MR <u>illegal</u> unless established as part of a <i>bona fide</i> retirement plan or justified as a BFOR
Quebec	Charter of Human Rights and Freedoms	MR <u>illegal</u> unless justified as a BFOR
Saskatchewan	Human Rights Code	MR <u>legally permitted</u> at age 65; <u>illegal</u> at lower ages unless justified as a BFOR
<u>Territories</u>		
Northwest Territories	Fair Practices Act	MR <u>illegal</u> unless justified as a BFOR
Nunavut	Not Applicable	Not Applicable
Yukon	Human Rights Act	MR <u>illegal</u> unless justified as a BFOR

successfully defend its policy of mandatory retirement of uniformed personnel at age 60 against complaints of discrimination by merely pointing to similar policies in existence in other police forces in the country. This defence is acceptable under Section 15(1)(c) of the CHRA and was indeed the basis upon which the Canadian Human Rights Commissions dismissed eight complaints filed by the RCMP uniformed personnel between 1987 and 1996 against their employer's mandatory retirement policy.

Two interesting legal questions arise from the above analysis. As stated earlier, the Charter applies to all matters that fall within the authority of the federal and provincial legislatures. It means that the human rights laws enacted by these legislatures come within the scope of the Charter and, therefore, are subject to its scrutiny. Table 1 above listed the exclusionary conditions limiting protection from age discrimination in the matter of mandatory retirement. The questions that arise then are: whether these conditions constitute a violation of equality rights granted in Section 15 of the Charter, and if so, whether such a violation can be deemed under Section 1 of the Charter as being a "reasonable" and "demonstrably justified" limit to equality rights. These issues have indeed been raised in recent cases on mandatory retirement and have been ruled upon by the courts, including the Supreme Court of Canada. These cases, along with the court rulings issued, are discussed below.

Legal Decisions: Mandatory Retirement and Equality Rights

While the Canadian Charter of Rights and Freedoms was proclaimed on April 17, 1982, the equality rights of Section 15 were not to come into force until three years later. One purpose of this delay was to give governments time to review and seek amendments to any laws on their books

which failed to meet Section 15's safeguards against discrimination.²² So, it was only after April 17, 1985 that court cases began addressing the Charter issues relating to mandatory retirement. The Supreme Court of Canada ruled on the first four such cases in December 1990. These cases had been earlier decided by the lower courts and managed to reach the Supreme Court of Canada through the various steps in the appeal process. The cases involved universities, a hospital, and a community college, i.e., the very sectors where the applicability of the Charter is open to interpretation. Thus, the first issue that the Supreme Court was asked to rule upon was whether the Charter applied to these sectors or not. These four cases also originated in Ontario and British Columbia – two of the four jurisdictions whose existing human rights laws afford protection against age discrimination only up to age 65. Thus, the second issue that the Supreme Court was asked to rule upon was whether such limited protection against age discrimination violated the requirements of Section 15 of the Charter.

The first case involved eight professors and one librarian employed at four Ontario universities. In its landmark decision issued in December 1990, the Supreme Court of Canada upheld the previous rulings by the lower courts.²³ In doing so, the Supreme Court provided detailed reasons for its decision which were later used by the Court in making decisions in the other three mandatory retirement cases before it at that time. In examining the applicability of the Charter to universities, the Supreme Court acknowledged the following characteristics of universities: being creatures of statute carrying out an important public service, extremely dependent on government funding, and subject to important limitations and controls exercised by government over their powers, objects, activities and governing structures. Despite these characteristics, the Court held that universities were legally autonomous and enjoyed independence from government in all internal

matters. Hence, their decisions in internal matters including retirement were not government decisions. For this reason, the Court ruled that the Charter did not apply to universities. However, it went on to say that, if the Charter did apply to universities, their mandatory retirement policies would violate Section 15, but that this violation would be justified as a reasonable limit under Section 1. The Court viewed objectives behind universities' mandatory retirement policies to be substantial. These objectives were: a) to enhance their capacity to seek and maintain excellence by permitting flexibility in resource allocation and faculty renewal, and b) to preserve academic freedom and the collegial form of association by minimizing intrusive modes of performance appraisal. The Court held that these substantial and pressing objectives outweighed the minimal impairment of rights of older workers. The Court then turned to the issue of whether Section 9(a) of the Ontario Human Rights Code, protecting only persons of up to age 65 against discrimination, violated Section 15 of the Charter. The Supreme Court ruled that Section 9(a) of the Code did violate Section of the Charter but that such violation was justified under Section 1 as being a reasonable limit. Section 9(a) of the Code, which has the effect of legalizing mandatory retirement policies after age 65 represented a response of the Ontario legislature to a complex sociol-economic problem. On one hand, the legislature wanted to protect individuals against age discrimination. On the other, it wanted to preserve integrity of pension plans and foster job opportunities for young workers. Thus, in passing Section 9(a), the Ontario legislature attempted to strike a compromise or balance between these competing goals. In these circumstances, the Court held that legalizing mandatory retirement minimally impaired the equality rights of older workers. The Court, also, was of the view that just because other jurisdictions had taken a different position, i.e., of abolishing

mandatory retirement, proved only that "the legislatures there adopted a different balance to a complete set of competing values".

The second Charter case on mandatory retirement which the Supreme Court of Canada was asked to rule on related to one faculty member and one staff employee employed at the University of British Columbia.²⁴ This case had gone through the British Columbia (BC) court system about the same time, involving the same issues as the Ontario case discussed above. However, the outcomes at the provincial level had been somewhat different in the two cases. The BC Court of Appeal agreed that the Charter did not apply to the University, but it (in contrast to the Ontario Court of Appeal) found that Section 1 of the BC Human Rights Act restricting protection from age discrimination to those between the ages of 45 and 65 was an unreasonable violation of Section 15 of the Charter. Thus, it ruled that the mandatory retirement policy of the University was unconstitutional. In the end, however, the Supreme Court of Canada overturned this ruling of the BC Court of Appeal using the same reasons which it gave in the Ontario universities' case.

The third Charter case on mandatory retirement in which the Supreme Court of Canada ruled, related to 14 physicians and the Vancouver General Hospital in British Columbia.²⁵ In accordance with Regulation 5.04, of the Vancouver General Hospital Act, the Hospital retired (or discontinued hospital privileges of) the physicians in question after they reached age 65. The physicians filed a case arguing that Regulation 5.04 violated the Charter and was contrary to the BC Human Rights Act. In this case, the BC Court of Appeal upheld the lower court's decision that the Charter applied to the Hospital and that its mandatory retirement policy violated the Charter, and further, that this violation was not reasonable. On further appeal, however, the Supreme Court of Canada reversed the decision of the lower courts. It ruled that Regulation 5.04 was not a delegated legislation but

rather a rule and a directive pertaining to internal management of hospitals. The Court held that, despite a significant degree of government control over its activities and governance, the Vancouver General Hospital enjoyed independence in exercising daily and routine control including decisions regarding mandatory retirement. Accordingly, the Supreme Court ruled that the Charter did not apply to the Hospital's mandatory retirement policy, and, that even if it did, the violation of the Charter by this policy would be justified as being a reasonable limit on the equality rights of the older physicians. The reasoning applied in this case was the same as in the Ontario universities' case.

The fourth Charter case in which the Supreme Court of Canada was asked to make a decision related to two faculty members employed at a community college in British Columbia, namely Douglas College.²⁶ In accordance with Article 4.04 of the collective agreement, the College retired the two faculty members after they reached age 65. In this case, the BC Court of Appeal upheld an arbitration decision that the Charter applied to Douglas College and that the mandatory retirement provision in the collective agreement violated Section 15 of the Charter. The only issue under dispute in this case was the applicability of the Charter on which the Supreme Court of Canada was asked to rule upon. The Supreme Court upheld the BC Court of Appeal's decision and drew the following distinction between Douglas College and the universities involved in the Ontario and BC cases. While both are dependent upon government funding, universities enjoy freedom from government in managing their internal affairs, but a community college does not. A community college is like a Crown Agency through which the government operates a system of post-secondary education. Its internal affairs are therefore managed and controlled rather directly by government.

The net effect of this ruling was that the earlier declaration in this case by the BC Court of Appeal that the Douglas College's mandatory retirement policy was unconstitutional remained intact.

Subsequent to the first four decisions issued in December 1990, the Supreme Court of Canada ruled on another important case on mandatory retirement in September 1992. The case related to a female faculty member employed at the University of Alberta who was forced to retire at the age of 65 in accordance with the mandatory retirement clause of the collective agreement between the University and its academic staff. The clause reflected the provisions of the Universities Academic Pension Act of 1978 requiring faculty members to retire at age 65. This case was brought under Alberta's human rights legislation, i.e., at the time called the Individual Rights Protection (IRP) Act. While Section 7(1) of this Act provides protection against age discrimination to those aged 18 years or older, Section 11.1 of the Act allows for contraventions deemed "reasonable and justifiable in the circumstances". In October 1988, the Alberta Court of Queen's Bench upheld an earlier decision by a Human Rights Board of Inquiry that the University of Alberta's mandatory retirement policy violated Section 7(1) of the Alberta IRP Act and that this violation was not justified as a reasonable limitation under Section 11.1 of the Act. The Court ruled that, while the objectives of the mandatory retirement policy, i.e., to preserve tenure, ensure faculty renewal, protect retirement with dignity, and facilitate staff planning taken together may be sufficient to override a protected right, the University did not prove that mandatory retirement was a necessary means to achieve them. This decision was further appealed by the employer. The Alberta Court of Appeal delayed hearing the appeal until after the Supreme Court of Canada handed down its decision in December 1990 in the Ontario universities' case discussed above. Basing its reasoning on this decision, the Alberta Court of Appeal overturned the lower court's decision. It concluded that the

mandatory retirement policy of the University of Alberta was a reasonable and justifiable limitation under Section 11.1 of the Alberta IRP Act. This decision was finally appealed to the Supreme Court of Canada because, technically, its ruling in the Ontario universities' case could not be used to determine the outcome of this case. In the Ontario universities' case, the issue was the constitutionality of a government's decision through the human rights legislation to limit the prohibition against age discrimination up to age 65. In the University of Alberta's case, the issue was the constitutionality of a private employer's decision to impose a similar limitation. In a split 4-3 decision issued in September 1992,²⁷ the Supreme Court of Canada narrowly upheld the Alberta Court of Appeal's decision allowing mandatory retirement as "reasonable and justifiable in the circumstances". The reasoning used in the majority opinion was essentially the same as used in the Ontario universities' case. Two of the dissenting judges held that the mandatory retirement clause in the collective agreement was not necessarily the result of freely conducted negotiations; it was rather proscribed by the Universities Academic Pension Act. While agreeing that the objectives of the University were pressing and substantial, these two judges maintained that the University failed to prove that a mandatory retirement policy was a necessary means to achieve those objectives. They argued that forced retirement at age 65 could have devastating effects on workers, which could far outweigh benefits to employers. This might be particularly true for working women who tend to have lower paying jobs, are less likely to have pensions, and often interrupt careers to raise families. "These sociol-economic patterns, combined with private and government pension plans which are calculated on years of participation in the workforce, in some ways make mandatory retirement at age 65 as much an issue of gender as of age discrimination" wrote Judge L'Heureux-

Dubé in her dissenting opinion. Thus, the University of Alberta case on mandatory retirement served to widen the issue to include both age, as well as, sex discrimination.

In short, the Supreme Court of Canada has heard since 1990 four cases involving the issue of mandatory retirement and equality rights of older workers. In all these cases, the Court ruled that mandatory retirement did violate the equality rights of older workers, but that this violation was justified as being reasonable in the specific circumstances of the employers in question. Interestingly, the employers involved in these four cases were universities and a public hospital. These organizations are heavily dependent on government funding and have experienced major funding cuts in recent years. Considering the specific circumstances of these organizations, the Supreme Court accepted the employers' argument that mandatory retirement was essential to permit flexibility in resource allocation, promote employee/organizational renewal, and protect job opportunities for the young workers. The Supreme Court is yet to rule on a similar argument made by a private sector employer.

Legal Decisions: Mandatory Retirement and *Bona Fide* Occupational Requirement

Human rights laws in all jurisdictions in Canada allow a *bona fide* occupational requirement (BFOR) as a specific limitation to the equality rights granted under such legislation. A number of recent cases have dealt with the issue of mandatory retirement as a BFOR. The leading case on this issue concerned two Etobicoke (Ontario) firefighters who had been compulsorily retired at age 60.²⁸ The Board of Inquiry hearing the case found that the evidence presented by the employer was "impressionistic" and noted that the general assertions of the witnesses to the effect that firefighting was a "young man's game" was inadequate to establish that being under age 60 was a BFOR for

firefighters. Accordingly, it decided that the employer's mandatory retirement policy was not a BFOR, and as such it constituted a violation of the Ontario Human Rights Code. The decision was overturned by the Divisional Court and Ontario Court of Appeal, but was fully restored by the Supreme Court of Canada in a landmark decision rendered in February 1982. As part of this decision, the Supreme Court established the following test comprising both a subjective and an objective element for a BFOR defence:

"To be a *bona fide* occupational qualification and requirement a limitation, such as mandatory retirement at a fixed age, must be imposed honestly, in good faith, and in the sincerely held belief that such limitation is imposed in the interests of the adequate performance of the work involved with all reasonable dispatch, safety and economy, and not for ulterior or extraneous reasons aimed at objectives which could defeat the purpose of the *Code*. In addition it must be related in an objective sense to the performance of the employment concerned, in that it is reasonably necessary to assure the efficient and economical performance of the job without endangering the employee, his fellow employees and the general public." [(1982), 132 D.L.R. (3d) 14 S.C.C., at 19-20]

Subsequently, two other cases concerning mandatory retirement as a BFOR for firefighters were heard by the Supreme Court of Canada, but in these cases the Court decided differently than it did in the Etobicoke firefighters' case. These two cases originated in Saskatchewan under its Human Rights Code. The first case involved a City of Saskatoon firefighter who had been retired at age 60 as per the existing policy. The complainant claimed that his mandatory retirement violated Section 16(1) of the Saskatchewan Human Rights Code, granting protection against age discrimination up to age 65, and that this could not be justified as a BFOR under Section 16(7) of the Code. In 1985, the Board of Inquiry established to hear this case ruled against the complainant. Based on the evidence presented, the Board concluded that a) firefighting was a strenuous occupation, b) the risk of failure by a firefighter endangered the firefighter, his/her colleagues, and

the public, c) ability to perform the tasks of a firefighter decreased with age, and (d) there was no reliable test to accurately determine how an individual firefighter would be able to cope in an emergency situation. Thus, the Board of Inquiry ruled that the mandatory retirement policy at age 60 was a BFOR for firefighters. Through the various layers of the appeal process, the case eventually reached the Supreme Court of Canada. In its ruling handed down in December 1989,²⁹ the Supreme Court upheld the initial decision given by the Board of Inquiry. The Supreme Court issued simultaneously the same ruling in another case involving a firefighter employed by the City of Moose Jaw (Saskatchewan).³⁰

Mandatory retirement was also accepted as a BFOR in another recent case. This involved a Stratford (Ontario) police officer who had been forced to retire at age 60. The complainant argued that his forced retirement was a violation of the Ontario Human Rights Code, which protects individuals against age discrimination up to age 65 and further that forced retirement did not justify as a BFOR. In November 1990, the Board of Inquiry hearing this case ruled in favour of the complainant. It held that the employer failed to establish that at the time of adopting the policy of forced retirement at age 60, it believed that such a policy was reasonably necessary for adequate job performance. The Board further ruled that the policy of forced retirement was unreasonable because the increased risk of non-performance due to age-related heart disease and lack of aerobic capacity could be avoided by making accommodation and adjusting the work of officers in the high risk category. Thus, the Board decided that the policy of forced retirement at age 60 in this case did not justify as a BFOR. This decision of the Board was subsequently upheld by the Ontario Court (General Division) in June 1992 and by the Ontario Court of Appeal in December 1993. However, upon further appeal, the Supreme Court of Canada overturned this decision in October 1995.³¹ The

Court found that the forced retirement policy in question was established as a result of negotiations between the employer and the union acting in good faith and without any ulterior motive. The Court also ruled that in assessment of a BFOR, there is a requirement on the employer to show that there is no reasonable alternative to a discriminatory work rule such as the one, forcing everyone to retire at 60, but individual accommodation is not one of the possibilities that need be considered. In the case at hand, the Supreme Court pointed out that the employer had shown (which the Board of Inquiry hearing the case had accepted) that individual testing was not feasible to enable the employer to identify those police officers over 60 who were not in the high risk category and could continue in their jobs without endangering themselves, their fellow employees, and the general public. Thus, it ruled that the City of Stratford's policy of requiring its police officers to retire at age 60 was a BFOR.

In contrast to the above cases, there is one recent case in which mandatory retirement was not accepted as a BFOR. This case, filed under Section 15(a) of the Canadian Human Rights Act in the federal jurisdiction, involved ten officers of the Canadian Armed Forces who had been forced to retire at various ages of retirement prescribed by the Queen's Orders and Regulations. According to these policies, military personnel cannot continue in the forces past age 55, and can be forced to retire as early as age 37 after 20 years of service depending upon their rank, occupation, and date of enlistment.. In August 1992, the Human Rights Tribunal hearing the case disallowed the employer's position that compulsory retirement ages constituted a BFOR. Specifically, it rejected the employer's claim that the compulsory retirement ages were needed to achieve organizational effectiveness, and safety and medical goals of the Armed Forces. In relation to the first goal, the employer argued that mandatory retirement policies were needed to produce a steady flow of

personnel to ensure organizational renewal and career progression opportunities for officers in the lower ranks. However, based on the evidence before it, the Tribunal found that a 10% turnover in personnel was necessary to achieve these organizational effectiveness objectives, but the turnover attributable to mandatory retirement policies was only 1%, and further that of this only a small fraction would choose to stay on if mandatory retirement policies were abolished. In relation to the medical and safety goals, the Board rejected the employer's claim that mandatory retirement was needed to ensure a proper level of physical fitness and to diminish the risk of sudden incapacitation caused by coronary artery diseases and strokes. Based on the evidence presented, the Tribunal concluded that age was a poor predictor of these conditions and that more direct fitness tests and standards must be employed as predictors instead. This decision of the Tribunal was subsequently upheld by the Federal Court Trial Division in January 1994 and by the Federal Court of Appeal in March 1997.³²

Part IV: Conclusions and Policy Implications

Discussions of mandatory retirement and age discrimination generate controversy because of the need to balance the rights of older workers with those of the employers and the broader community at large. Fortunately, considerable evidence has become available in recent years, which sheds important light on the nature and magnitude of various trade-offs that must be considered in the balancing process. This evidence was reviewed in detail in Parts I and II of the present study. The following general findings emerge from the review.

First, mandatory retirement may cause major economic and non-economic hardship to those older workers who would have continued working if they had not been required to quit their jobs

upon reaching a certain age. The adverse economic impact is particularly severe for two groups of older workers, women and recent immigrants. Because of their prior career history, many of these workers may not have sufficient retirement income from public and employer pension plans, and personal RRSP's. If forced to retire, such workers face the prospects of falling into poverty. Second, the labour force in Canada is growing at a slower pace and increasingly consisting of older workers. Also, despite the fact that older workers are living longer, they are tending to leave the labour force earlier. Given these trends, it would be in the economic interest of the employers and the society at large to not force retirement on those older workers who otherwise want to continue working, and even encourage other older workers to remain in the labour force. This would help meet the current and expected labour shortages in many occupational categories and also ease-off the growing financial pressures on our public pension and old age assistance plans. Third, empirical studies do not reveal a consistent relationship between age and job performance. Some studies have found that job performance decreases with age while others have found the opposite. However, there is one consistent finding, that is, far more significant performance differences exist within individual age groups than between different age groups. Fourth, elimination of mandatory retirement is not likely to render organizational human resource planning more difficult. Removing a fixed age of retirement would not cause the estimates of future retirement flows needed for organizational planning to become any more uncertain than what they already are. Even under mandatory retirement policies, the evidence indicates that a large number of workers choose to retire before reaching the age at which they are required to retire. Estimating the likely number of early-retirees is as difficult and uncertain, if not more, than what the case would be with estimating the likely number of those who may delay retirement under flexible retirement policies. If the available

evidence is any indication, the number of older workers opting to take early retirement is likely to far exceed the number of those opting for delayed retirement. Fifth, eliminating mandatory retirement would not have much of an impact on employment opportunities for younger workers. Experience of employers and jurisdictions that do not have mandatory retirement shows that only a very small number of older workers decide to delay retirement beyond age 65 and those who do stay on for only a short period of time. Finally, mandatory retirement is not the norm in the federal sector. As the survey of organizations in the federal sector conducted for this study shows, only about one-fourth of the federally regulated, private sector organizations still have mandatory retirement policies for all their employees. The same holds true for the federal public sector workforce. No mandatory retirement policy exists for public servants who form the largest component of the workforce. Only certain selected occupational groups such as uniformed personnel in the RCMP and the Canadian Armed Forces are still subject to mandatory retirement.

The overall conclusion that can be drawn from the above findings is that the potential costs of eliminating mandatory retirement in the federal sector are likely to be relatively minor and transitory. In contrast, the potential benefits of such an action would be significant to those older workers who need to continue working for economic reasons and, if forced to retire, may face poverty conditions. Thus, one can conclude that mandatory retirement should be eliminated in the federal sector. This conclusion, however, needs to be qualified in one respect. Empirical literature, although voluminous, does not show a consistent, generalized relationship between age and job performance. It does not preclude the possibility that, in certain specific occupational contexts, performance may decline as the worker becomes older and that, after a certain age, the decrements in his/her job performance may be significant. Where this situation has been proven to exist,

continuation of mandatory retirement would be justified as an occupational requirement to ensure efficient, economical, and safe job performance.

The approach taken in the human rights legislation in Canada toward mandatory retirement is generally consistent with the above conclusion, the legislation in some jurisdictions being more so than in others. Under such legislation, mandatory retirement is regarded as a form of age discrimination and, therefore, is deemed to be illegal. However, mandatory retirement is permitted under certain exceptional conditions. As discussed earlier in Part III, the only exception allowed in a majority of jurisdictions is mandatory retirement as a *bona fide* occupational requirement. This is entirely consistent with the conclusion drawn in the preceding paragraph above. The human rights legislation in a minority of jurisdictions including the federal jurisdiction allows for some additional exceptions under which mandatory retirement is permitted. While the exceptions permitting mandatory retirement vary in content and magnitude across jurisdictions, they all must satisfy the overall standard for exceptions as set out in Section 1 of the Charter, i.e., these exceptions must be viewed as being "reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society".

The Canadian Human Rights Act (CHRA) provides for the following three exceptions under which mandatory retirement is permitted:

Section 15(1): It is not a discriminatory practice if

- (a) any refusal, exclusion, expulsion, suspension, limitation, specification or preference in relation to any employment is established by an employer on a *bona fide* occupational requirement;
- (b) employment of an individual is refused or terminated because that individual has not reached the minimum age, or has reached the maximum age, that applies to that

employment by law or under regulations, which may be made by the Governor in Council for the purposes of this paragraph;

(c) an individual's employment is terminated because that individual has reached the normal age of retirement for employees working in positions similar to the position of that individual.

The first of the above three exceptions allowed in the CHRA presents no problem. This exception permitting mandatory retirement as a *bona fide* occupational requirement (BFOR) is allowed in all other human rights legislation in Canada. In its landmark decision issued in 1982 in the Etobicoke (Ontario) case involving two firefighters who had been mandatorily retired, the Supreme Court of Canada established the test, consisting of both a subjective and an objective element, that employers must be met in putting forward a BFOR defence for a discriminatory policy. This test requires employers to show subjectively and objectively that a discriminatory policy such as mandatory retirement at a fixed age is needed to ensure efficient, economical, and safe performance of the job. Subsequent rulings of the Supreme Court have further clarified how this test is to be interpreted and applied. In two Saskatchewan cases concerning firefighters who had been compulsorily retired, the Supreme Court in 1989 upheld the proposition that if individualized testing is feasible, a group standard discriminating rule such as mandatory retirement cannot be regarded as a BFOR. In another case concerning an Ontario police officer who had been mandatorily retired, the Supreme Court ruled in 1995 that there is no duty to accommodate once a BFOR is proven to exist.³³ However, the Court modified its position on this issue in a case it decided in September 1999, and in doing so, it added a third element to the test for a BFOR defence developed in the Etobicoke case. The Court ruled that in order to show that a discriminatory standard is a BFOR, it must be demonstrated that it is impossible to show accommodation without imposing undue

hardship on the employer.³⁴ It should be noted here that while the Supreme Court rulings over the years have developed and revised the standards to be applied in establishing a defence under the BFOR exception allowed in the CHRA and all other human rights legislation in Canada, the constitutional validity of this exception itself has never been challenged. Also, this exception appears to fall squarely within the meaning of reasonable and justified exceptions allowed in Section 1 of the Charter.

The same, however, cannot be said about the other two exceptions allowed in the CHRA under which mandatory retirement is currently permitted in the federal jurisdiction. As pointed out earlier in Part III, these two exceptions are not allowed in any other human rights legislation in Canada, thereby making the CHRA potentially the most permissive legislation in the matter of mandatory retirement. Under these exceptions, an employer can raise a complete defence for its policy of mandatory retirement not only at age 65 but also at even lower ages. The constitutional validity of these two exceptions is also an open question. The exception allowed under Section 15(1)(b) of the CHRA was challenged in a recent court action. Lance Olmstead, who had been compulsorily retired from the Canadian Armed Forces, filed a Statement of Claim in the Federal Court of Canada in February 1998, alleging that Section 15(1)(b) under which his discrimination complaint was dismissed by the Canadian Human Rights Commission was contrary to Section 1 of the Charter. The employer filed a motion for summary judgment claiming that Olmstead was barred from bringing this action because of a prior voluntary agreement entered into by him, according to the terms of which he had been retired. In its decision issued on October 22, 1999, the Court granted the employer's motion but did acknowledge that the issue raised by the plaintiff, if properly brought

before the Court, would be a "genuine issue to be tried, an issue that deserves consideration by the trier of fact at a future trial" (Federal Court of Canada, Trial Division, Docket: T-126-98, page 10).

The exception allowed under Section 15(1)(c) of the CHRA could be potentially even more problematic. According to this provision, mandatory retirement at a particular age does not constitute a discriminatory practice if that age is generally accepted as the "normal age of retirement" in a given line of work. In its report, the Parliamentary Committee on Equality Rights noted that "If industry standards were accepted as a reasonable excuse for discrimination on a prohibited ground, the purpose of section 15 [of the Charter] would be frustrated. The essence of section 15 is to protect members of vulnerable groups from being submerged by the values of the majority. It would be inconsistent with that purpose to allow a majority practice to dictate the limits of the rights of protected individuals. We therefore conclude that the 'normal age of retirement' exception in the *Canadian Human Rights Act* cannot be supported under section 1 of the *Charter*".³⁵ One might also suggest that a defence based on this exception may be easier to put forward than a defence based on a BFOR. This, indeed, appears to have been the case with respect to the eight human rights complaints filed by the RCMP officers against mandatory retirement between 1986 and 1996. As pointed out earlier in Part II, these complaints were dismissed by the Canadian Human Rights Commission because the employer was able to show that the standard age of retirement of RCMP officers fell within the range of retirement ages for officers in other police forces in Canada. It is interesting that the employer did not put up a BFOR defence for its mandatory retirement policy when such a defence had, indeed, been successfully put up in a prior court case by another employer in the same industry. This case related to a Stratford (Ontario) police officer and was discussed earlier in Part III.

Thus, based on the above analysis, it can be argued that the exemptions from prohibition against age discrimination granted under Section 15(1), sub-sections (b) and (c) of the CHRA should be removed. If this indeed was done, then mandatory retirement would be legally prohibited in the federal sector, except in those cases where it is established by the employer as being a BFOR. A policy question then is whether any additional exception should be allowed under the CHRA. The Parliamentary Committee on Equality of Rights held the view that "There might be some relatively narrow classes of exceptions, in addition to that for *bona fide* occupational requirements, that may be necessary to avoid undue hardship as a result of the general prohibition of mandatory retirement".³⁶ If this recommendation is to be accepted, two potential alternatives for implementing it are as follows. One alternative is to exempt specific sectors/employers (e.g., the Canadian Armed Forces) and list those exempted in the CHRA. This approach is rather problematic for two reasons. First, it would require a thorough analysis of the undue hardship situation confronting each of the employers being considered for exemption before deciding which one of these would be actually named in the legislation. Second, the circumstances causing undue hardship can well change over time. As a consequence, periodic revisions to the exemption list may be required as some employers previously listed may no longer be deemed appropriate for the exemption or some new ones may become worthy of being exempted. The other alternative would be to include a generic exception in the CHRA leaving the onus on the individual employer to raise a successful defence based on undue hardship against complaints of discrimination. Such an exception can be modelled on Section 1 of the Charter. Indeed, the Human Rights, Citizenship and Multiculturalism Act of Alberta (Section 11.1) and the Human Rights Act of Nova Scotia [Section 6(f)(ii)] use this approach.

Finally, if one or both sub-sections (b) and (c) of Section 15(1) of the CHRA are repealed, it may be advisable to develop some transitional rules in order to minimize any disruptions that might result in the short run from implementing these changes. For example, many existing collective agreements in the federal sector may have mandatory retirement provisions. A transitional rule may be developed, allowing the effect of such provisions in a collective agreement to be preserved until the expiry of that agreement. Perhaps, a better alternative might be to allow all employers affected by the changes in the CHRA's provisions concerning mandatory retirement an adjustment period to get ready for the changeover. Thus, the changes could become effective two or three years from the date of their promulgation.

In summary, the following four policy options emerge from the above discussion of the CHRA's current provisions concerning mandatory retirement.

Option 1: Maintaining status quo (Retaining all three current exceptions)

Retaining the BFOR exception [(Section 15(1)(a))] presents no problem. This exception is allowed in all other human rights legislation in Canada and its constitutional validity is well established. But the situation is not the same with respect to the other two exceptions permitted in the CHRA [Section 15(1)(b) and (c)]. These two exceptions do not exist in any other human rights legislation in Canada. Also, the constitutional validity of these exceptions is an open question.

Option 2: Retaining the BFOR exception and eliminating the other two exceptions

This option would certainly make the CHRA's provisions concerning mandatory retirement consistent with those of the other human rights legislation. However, one might argue that the

general prohibition of mandatory retirement, except as a BFOR, may cause undue hardship to certain, albeit a few, employers.

Option 3: Retaining the BFOR exception but replacing the other two exceptions

This option would help overcome the potential problem associated with the preceding option. One approach here could be to identify in advance those employers who would suffer undue hardship as a result of a general prohibition of mandatory retirement, except as a BFOR, and individually list these employers in Section 15(1) of the CHRA as being exempted from such prohibition. The other approach could be to replace the two exceptions in question with a generic exception clause modelled after Section 1 of the Charter and leaving the onus on the individual employer to raise a successful defence under that exception.

Option 4: Eliminating/replacing the two exceptions along with transitional rules

Transitional rules may be needed to minimize any disruptions that might result in the short run from implementing changes in the CHRA provisions as per Options 3 or 4 outlined above. One rule, for example, could be to let the effect of mandatory retirement provisions in a collective agreement to be preserved until the expiry of that agreement. Another and a more general transitional rule could be to allow an adjustment period before the changes to the CHRA provisions concerning mandatory retirement become effective.

Footnotes

1. The data in this section are taken or adapted from Statistics Canada (1993), (1994), (1998a), (1999a), (1999b) and (1999c).
2. See "Skilled labour crunch" in the Hamilton Spectator, May 30, 1996, p. B10; and "Jobs are going begging", in the Hamilton Spectator, June 13, 1996, p. C16.
3. Adapted from sources listed in footnote 1.
4. According to the 1994 General Social Survey almost two-thirds (62%) of all women who had ever worked had left their paid employment for six months or more. In contrast, just over one-quarter (27%) of men had done so. Between 1990 and 1994, 43% of women in their early twenties who had ever worked experienced their first interruption. For more details, see Statistics Canada (1998c).
5. The demographic data in this section are taken or adapted from Statistics Canada (1998d) and Citizenship and Immigration Canada (1996 and 1999).
6. For example, 49 percent of all immigrants arriving in Canada in 1998 were between 25 and 44 years of age. The figure was 55.4 percent among immigrants in the economic class.
7. Adapted from sources listed in footnote 5.
8. For a detailed description of the various federal and provincial old age income security programs, see National Council of Welfare (1999).
9. These data were computed or adapted from sources listed in footnote 5.
10. A recent study (Hurn and Simpson, 1998) using Statistics Canada's Survey of Labour and Income Dynamics (SLID) database showed that visible minority immigrant workers, particularly men, tend to suffer a wage disadvantage in the labour market, compared to the Canadian-born workers.
11. The EEA list was obtained through Mr. Jim Hendry, Research Director of the CHRA Review Panel.
12. These included Bank of Montreal, Canadian Imperial Bank of Commerce, Bank of Nova Scotia, Air Canada, Canadian Airlines International, Canadian Pacific Railways, Arrow Transportation, Laidlaw Transportation, Federal Express, United Parcel Service, Canadian Broadcasting Corporation, Rogers Communications, Ontario Power Generation, and Loomis Armoured Service. The preceding is not an exhaustive list of major employers who participated in the survey.

13. Forty-three percent of employers with flexible retirement policies report having some workers over the age of 60, but 80 percent of employers estimate the population of such workers to be under 5 percent of the organizational workforce.
14. Source: Statistics Canada's Internet site, <http://www.statcan.ca/english/pgds/state/government/govt18.htm>; retrieved 10/6/99.
15. Source: Statistics Canada's Internet site, <http://www.statcan.ca/english/pgds/state/government/govt16a.htm>; retrieved 10/6/99.
16. Source: Jain, Singh and Agocs (1999).
17. Initial request for data was made to Ms. Jill Udle of the Pension Department, Treasury Board Secretariat by phone and e-mail on September 21, 1999. This was followed by a reminder call a week later and an e-mail reminder on October 4, 1999.
18. The information presented in this paragraph was obtained October 4, 1999 in a telephone interview with Sergeant Keith Copeland, Human Rights Analyst, Official Languages and Diversity Branch, Royal Canadian Mounted Police.
19. This case is discussed in greater detail in Part III of this study.
20. A copy of the Queen's Orders and Regulations, and the information about how the complaints concerning mandatory retirement filed with the Commission are being handled were provided by Ms. Rosemary G. Morgan, Assistant Senior Legal Counsel, Canadian Human Rights Commission.
21. In the United States, the Age Discrimination in Employment Act (ADEA) of 1967 defines and prohibits age discrimination in hiring, firing, and compensation of older persons. Initially, the ADEA covered workers aged over 40 and up to 65. The upper age limit was raised to 70 in 1978 and removed altogether in 1986, thus virtually eliminating mandatory retirement in the United States. The ADEA does permit the use of age criterion in employment decisions where it is a *bona fide* occupational requirement.
22. For example, Alberta amended its Individual's Rights Protection Act in April 1985 to change the definition of age from "45 years or more and less than 65 years" to "18 years of age or older".
23. For a full discussion of this case, see McKinney v. University of Guelph, Canadian Human Rights Reporter, Vol. 13, Decision 29, March 1991, D/171-D316.
24. For a full discussion of this case, see Harrison v. University of British Columbia, Canadian Human Rights Reporter, Vol. 13, Decision 30, April 1991, D/317-D/337.

25. For a full discussion of this case, see *Stoffman v. Vancouver General Hospital*, Canadian Human Rights Reporter, Vol. 13, Decision 31, April 1991, D/337-D/394.
26. For a full discussion of this case, see *Douglas/Kwantlen Faculty Association v. Douglas College*, Canadian Human Rights Reporter, Vol. 13, Decision 34, May 1991, D/403-D/433.
27. For a full discussion of this case, see *University of Alberta v. Alberta (Human Rights Commission)*, Canadian Human Rights Reporter, Vol. 17, Decision 8, February 1993, D/87-D/89.
28. For a full discussion of this case, see *Ontario Human Rights Commission et al v. The Borough of Etobicoke*, Canadian Human Rights Reporter, Vol. 3, Decision 164, May/June 1982, D/781-D/784.
29. For a full discussion of this case, see *Saskatchewan (Human Rights Commission) v. Saskatoon (City)*, Canadian Human Rights Reporter, Vol. 11, Decision 22, March 1990, D/204-D/217.
30. For a full discussion of this case, see *Saskatchewan (Human Rights Commission) v. Moose Jaw (City)*, Canadian Human Rights Reporter, Vol. 11, Decision 23, March 1990, D/217-D/222.
31. For a full discussion of this case, see *Large v. Stratford (City) Police Department*, Canadian Human Rights Reporter, Vol. 24, Decision 1, January 15, 1996, D/1-D/21.
32. For a full discussion of this case, see *Martin et al. v. Department of National Defense and Canadian Armed Forces and Canadian Human Rights Commission*, Canadian Human Rights Reporter, Vol. 21, Decision 27, February 8, 1995, D/373-D/400; and *Canadian Human Rights Reporter*, Not-Published Decisions Supplementary Binder, December, 1997.
33. All three cases cited in this paragraph are discussed in detail in Part III of the present study.
34. For more details see: *British Columbia (Public Service Employee Relations Commission) v. British Columbia Government and Service Employees' Union*, SCJ No. 46, 1999.
35. Source: Equality for All, Report of the Parliamentary Committee on Equality Rights, October 1985, p. 22.
36. Source: Equality for All, Report of the Parliamentary Committee on Equality Rights, October 1985, p. 23.

References

- Banting, K.G. and R. Boadway, "Reforming Retirement Income Policy: The Issues", in K.G. Banting and R. Boadway (eds.), Reform of Retirement Income Policy: International and Canadian Perspectives. (Kingston, ON: Queen's University, 1997), pp. 1-26.
- Battle, K., "A New Old Age Pension", in K.G. Banting and R. Boadway (eds.), Reform of Retirement Income Policy: International and Canadian Perspectives. (Kingston, ON: Queen's University, 1997), pp. 135-190.
- Battle, K. and S. Torjman, How Finance Re-formed Social Policy. (Ottawa, ON: Caledon Institute of Social Policy, 1995).
- Baughner, D., "Is the Older Worker Inherently Incompetent?", Aging and Work, Vol. 1, No. 4, 1978, pp. 243-250.
- Beck, S.H., "Retirement Preparation Programs: Differential Opportunity and Use", Journal of Gerontology, Vol. 39, No. 5, 1984, pp. 596-602.
- Bourbeau, R., J. Legare, and V. Emond, New Birth Cohort Life Tables for Canada and Quebec, 1801-1991. (Ottawa, ON: Statistics Canada, 1997).
- Boyd, M., "Immigration and Income Security Policies in Canada: Implications for Elderly Immigrant Women", Population Research and Policy Review, Vol. 8, No. 1, 1989, pp. 5-24.
- Brotman, S., "The Incidence of Poverty Among Seniors in Canada: Exploring the Impact of Gender, Ethnicity and Race", Canadian Journal on Aging, Vol. 17, No. 2, 1998, pp. 166-185.
- Canada Department of Finance, An Information Paper for Consultations on the Canada Pension Plan: Released by the Federal, Provincial and Territorial Governments. (Ottawa, ON: Minister of Public Works and Government Services, 1996a).
- _____, The Senior's Benefit: Securing the Future. (Ottawa, ON: Minister of Public Works and Government Services, 1996b).
- Chaykowski, R., "Workforce Transition and the Older Worker", in A. Joshi and E. Berger (eds.), Aging Workforce, Income Security, and Retirement: Policy and Practical Implications. (Hamilton, ON: McMaster University, Gerontological Studies, 1995), pp. 9-13.
- Ciffin, S. and J. Martin, Retirement in Canada: When and Why People Retire. (Ottawa, ON: Health and Welfare Canada, SWP-7804, 1977).

Citizenship and Immigration Canada, A Profile of Immigrants in Canada, 1996, Statistics Canada's Internet site at <http://www.statcan.ca>, extracted October 5, 1999.

_____, Facts and Figures 1998: Immigration Overview. (Ottawa, ON: Minister of Public Works and Government Services Canada, 1999).

Connelly, M.P. and M. MacDonald, Women and the Labour Force. (Ottawa, ON: Minister of Public Works and Government Services Canada, Cat. No. 98-125, 1990).

Crown, W.H., "The Political Context of Older Workers Employment Policy" in W.H. Crown (ed.), Handbook on Employment and the Elderly. (Westport, CT: Greenwood Press, 1996), pp. 391-404.

Delsen, L. and G. Reday-Mulvey (eds.), Gradual Retirement in the OECD Countries; (Aldershot, England: Dartmouth, 1996).

Dunlop, D.P., Mandatory Retirement Policy: A Human Rights Dilemma. (Ottawa, ON: The Conference Board of Canada, 1980).

Employment and Immigration Canada, Labour Market Development in the 1980s. (Ottawa, ON: 1981).

Forteza, J.A. and J.M. Prieto, "Aging and Work Behavior", in H.C. Triandis, M.D. Dunnette and L.M. Hough (eds.), Handbook of Industrial and Organizational Psychology. (Palo Alto, CA: Consulting Psychologists Press Inc., Second Edition, Vol. 4, 1994), pp. 447-483.

Gibb-Clark, Margot, "Managers Applaud Decision", Globe & Mail, December 7, 1990, p. B3.

Gower, D., "Measuring the Age of Retirement", Perspectives on Labour and Income, Statistics Canada, Vol. 9, No. 2, 1997, pp. 11-17.

Guillemard, A. and M. Rein, "Comparative Patterns of Retirement: Recent Trends in Developed Societies", Annual Review of Sociology, Vol. 19, 1993, pp. 493-503.

Heisz, A., "Changes in Job Tenure", Perspectives on Labour and Income, Vol. 18, No. 4, 1996, pp. 31-35.

Heisz, A. and S. Coté, "Job Stability", Perspectives on Labour and Income, Vol. 10, No. 4, 1998, pp. 24-29.

Herzog, A.R., J.S. House, and J.M. Morgan, "Relation of Work and Retirement to Health and Well-Being in Older Age", Psychology and Aging, Vol. 6, No. 2, 1991, pp. 202-211.

- Hum, D. and W. Simpson, Wage Opportunities for Visible Minorities in Canada. (Ottawa, ON: Statistics Canada, The Income and Labour Dynamics Working Paper Series, Product No. 75F0002M, 1998).
- Jain, H.C., P. Singh, and C. Agocs, Recruitment, Selection and Promotion of Visible Minorities and Aboriginals in Selected Canadian Police Services. (Hamilton, ON: McMaster University, Michael G. DeGroote School of Business Working Paper #435, 1999).
- Kelleher, C.H. and D.A. Quirk, "Age, Physical Capacity and Work: An Annotated Bibliography", Industrial Gerontology, Vol. 1, 1973, pp. 80-98.
- Kinsella, K. and Y.J. Gist, Older Workers, Retirement, and Pensions. (Washington, DC: U.S. Department of Commerce, 1995).
- Krashinsky, M., "The Case for Eliminating Mandatory Retirement: Why Economics and Human Rights Need Not Conflict", Canadian Public Policy — Analyse de Politiques, Vol. XIV, No. 1, 1988, pp. 40-51.
- Labour Canada, An Industrial Relations Perspective on Mandatory Retirement. (Ottawa, ON: 1985).
- Laczko, F. and C. Phillipson, Changing Work and Retirement. (Philadelphia, PA: Open University Press, 1991).
- Lazear, E.P., "Why is There Mandatory Retirement?", Journal of Political Economy, Vol. 87, No. 6, 1979, pp. 1261-1284.
- Lowe, G.S., "Retirement Attitudes, Plans and Behaviour", Perspectives on Labour and Income, Vol. 3, No. 3, 1991, pp. 8-17.
- Marshall, V.M. and P.J. Clarke, Health and the Transition from Employment to Retirement. (Hamilton, ON: McMaster University, IESOP Research Paper No. 6, 1996).
- McDonald, P.L., "The Link Between Social Research and Social Policy Options: Reverse Retirement as Case in Point", Canadian Journal on Aging/Canadian Public Policy Supplement, 1997, pp. 90-113.
- McDonald, P.L., P. Donahue, and B. Moore, Widowhood and Retirement: Women on the Margin. (Hamilton, ON: McMaster University, IESOP Research Paper No. 17, 1997).
- McDonald, P.L. and R.A. Wanner, Retirement in Canada. (Toronto, ON: Butterworths, 1990).

- McEvoy, G.M. and W.R. Cascio, "Cumulative Evidence on the Relationship Between Employee Age and Job Performance", Journal of Applied Psychology, Vol. 74, No. 1, 1989, pp. 11-17.
- Meier, E.L. and E.A. Kerr, "Capabilities of Middle-aged and Older Workers: A Survey of Literature", Industrial Gerontology, Vol. 3, 1976, pp. 147-156.
- Monette, M., Canada's Changing Retirement Patterns: Findings from the General Social Survey. (Ottawa, ON: Minister of Industry, Cat. No. 89-546-XPE, 1996).
- National Council of Welfare, Sixty-five and Older. (Ottawa, ON: Minister of Supply and Services, Cat. No. H68-11/1984E, 1984a).
- _____, A Pension Primer. (Ottawa, ON: Minister of Supply and Services, 1984b).
- _____, A Pension Primer. (Ottawa, ON: Minister of Supply and Services, 1999).
- Novak, M., Aging and Society: A Canadian Perspective. (Toronto, ON: Nelson Canada, 1993).
- OECD, The Labour Market and Older Workers. (Paris, France: Organization for Economic Co-Operation and Development, 1995).
- O'Rand, A.M. and J.C. Henretta, "Delayed Career Entry, Industrial Pension Structure and Early Retirement in a Cohort of Unmarried Women", American Sociological Review, Vol. 47, No. 3, 1982, pp. 365-373.
- Ondrack, D., "The Case for Mandatory Retirement", Human Resources Management in Canada, July 1986, pp. 50501-50511.
- Pesando, J., The Elimination of Mandatory Retirement: An Economic Perspective. (Toronto, ON: Ontario Economic Council, 1979).
- Reday-Mulvey, G., "Gradual Retirement in France", in L. Delsen and G. Reday-Mulvey (eds.), Gradual Retirement in the OECD Countries. (Aldershot, England: Dartmouth, 1996), pp. 45-68.
- Rhodes, S.R., "Age-Related Differences in Work Attitudes and Behaviour: A Review and Conceptual Analysis", Psychological Bulletin, Vol. 93, No. 2, 1983, pp. 328-367.
- Roadburg, A., Aging: Retirement, Leisure and Work in Canada. (Toronto, ON: Methuen Publications, 1985).

- Schellenberg, G., "The Road to Retirement" in A. Joshi and E. Berger (eds.), Aging Workforce, Income Security, and Retirement: Policy and Practical Implications. (Hamilton, ON: McMaster University, Gerontological Studies, 1995), pp. 14-17.
- Schmahl, W., R. George, and C. Oswald, "Gradual Retirement in Germany", in L. Delsen and G. Reday-Mulvey (eds.), Gradual Retirement in the OECD Countries. (Aldershot, England: Dartmouth, 1996), pp. 69-93.
- Simanis, J.G., "Worldwide Trend Toward Raising the Retirement Age", Social Security Bulletin, Vol. 57, No. 2, 1994, pp. 83-84.
- Sonnenfeld, J., "Dealing with the Aging Workforce", Harvard Business Review, Vol. 78, No. 6, 1978, pp. 81-92.
- Statistics Canada, Population Aging and the Elderly. (Ottawa, ON: Minister of Supplies and Services, Cat. No. 91-533E Occasional, 1993).
- _____, Population Projections for Canada, Provinces and Territories, 1993-2016. (Ottawa, ON: Minister of Trade, Cat. No. 91-520 Occasional, 1994).
- _____, Report on the Demographics Situation in Canada 1997. (Ottawa, ON: Minister of Trade, Cat. No. 91-209-XPE, 1998a).
- _____, Labour Force Update: Older Workers. (Ottawa, ON: Minister of Trade, Cat. No. 71-005-XPB, 1998b).
- _____, "Key Labour and Income Facts", Perspectives on Labour and Income, Vol. 10, No. 1, 1998c, pp. 45-48.
- _____, "Key Labour and Income Facts", Perspectives on Labour and Income, Vol. 10, No. 2, 1998d, pp. 53-63.
- _____, Annual Demographic Statistics 1998. (Ottawa, ON: Minister of Trade, Cat. No. 91-213-XPB, 1999a).
- _____, Historical Labour Force Statistics 1998. (Ottawa, ON: Minister of Trade, Cat. No. 71-201-XPB, 1999b).
- _____, Labour Force Annual Averages 1998. (Ottawa, ON: Minister of Trade, Cat. No. 71-220-XPB, 1999c).
- _____, Income Distribution by Size in Canada 1997. (Ottawa, ON: Minister of Trade, Cat. No. 13-207-XPB, 1999d).

- _____, Earnings of Men and Women, 1997. (Ottawa, ON: Minister of Trade, Cat. No. 13-217-XPB, 1999e).
- Szinovacz, M., D.J. Ekerdt, and B.H. Vinick (eds.), Families and Retirement. (Newbury Park, CA: Sage Publications, 1992).
- The Economist, "Aging Workers: A Full Life", The Economist, Vol. 352, No. 8135, September 4-10, 1999, pp. 65-68.
- Towers Perrin and Hudson Institute Canada, Workforce 2000. (Ottawa, ON: 1991).
- Treasury Board of Canada Secretariat, Employment Statistics for the Federal Public Service, April 1, 1996 to March 31, 1997. (Ottawa, ON: Treasury Board, 1998).
- Wadensjo, E., "Gradual Retirement in Sweden", in L. Delsen and G. Reday-Mulvey (eds.), Gradual Retirement in the OECD Countries. (Aldershot, England: Dartmouth, 1996).
- Waldman, D.A. and B.J. Avolio, "A Meta-Analysis of Age Differences in Job Performance", Journal of Applied Psychology, Vol. 71, No. 1, 1986, pp. 33-38.
- Wanner, R.A. and P.L. McDonald, "The Vertical Mosaic in Later Life: Ethnicity and Retirement in Canada", Journal of Gerontology, Vol. 41, No. 5, 1986, pp. 662-671.

Faculty of Business
McMaster University

WORKING PAPERS - RECENT RELEASES

416. J. Rose, "Immediacy and Saliency in Remediating Employer Opposition to Union Organizing Campaigns", July, 1996.
417. Roy J. Adams and Parbudyal Singh, "Worker Rights Under NAFTA: Experience With the North American Agreement on Labor Cooperation", September, 1996.
418. George Steiner and Paul Stephenson, "Subset-Restricted Interchange for Dynamic Min-Max Scheduling Problems", September, 1996.
419. Robert F. Love and Halit Uster, "Comparison of the Properties and the Performance of the Criteria Used to Evaluate the Accuracy of Distance Predicting Functions", November, 1996.
420. Harish C. Jain and Simon Taggar, "The Status of Employment Equity in Canada", December, 1996.
421. Harish C. Jain and Parbudyal Singh, "Beyond The Rhetoric: An Assessment of the Political Arguments and Legal Principles on Strike Replacement Laws in North America", January, 1997.
422. Jason Schwandt, "Electronic Data Interchange: An Overview of Its Origins, Status, and Future", March, 1997.
423. Christopher K. Bart with John C. Tabone, "Mission Statement Rationales and Organizational Alignment in the Not-for-profit Healthcare Sector", November, 1997.
424. Harish C. Jain, Michael Piczak, Işık Urla Zeytinoğlu, "Workplace Substance Testing - An Exploratory Study", November, 1997.
425. S. Suarga, Yufei Yuan, Joseph B. Rose, and Norman Archer, "Web-based Collective Bargaining Support System: A Valid Process Support Tool for Remote Negotiation", January, 1998.
426. Pawan S. Budhwar and Harish C. Jain, "Evaluating Levels of Strategic Integration and Development of Human Resource Management in Britain", March, 1998.
427. Halit Üster and Robert F. Love, "Application of Weighted Sums of Order p to Distance Estimation", April, 1998.

428. Halit Üster and Robert F. Love, "On the Directional Bias of the ℓ_{bp} -norm", April, 1998.
429. Milena Head, Norm Archer, and Yufei Yuan, "MEMOS: A World Wide Web Navigation Aid", October, 1998.
430. Harish C. Jain and Parbudyal Singh, "The Effects of the Use of Strike Replacement Workers on Strike Duration in Canada", February, 1999.
431. Parbudyal Singh and Harish C. Jain, "Strike Replacements in the United States, Canada and Mexico: A Review of the Law and Empirical Research", February, 1999.
432. John W. Medcof and Jeremy Boyko, "Reinforcing, Revising and Reconciling Attributions in the Employment Interview", March, 1999.
433. Norm Archer, "World Wide Web Business Catalogs in Business-to-Business Procurement", March, 1999.
434. Diwakar Gupta and Saifallah Benjaafar, "Make-to-order, Make-to-stock, or Delay Product Differentiation? - A Common Framework for Modeling and Analysis", April, 1999.
435. Harish C. Jain, Parbudyal Singh and Carol Agocs, "Recruitment, Selection and Promotion of Visible Minorities and Aborigines in Selected Canadian Police Services", April, 1999.
436. Harish C. Jain and Angus Bowmaker-Falconer, "Employment Equity/Affirmative Action Codes of Practice and Best Practices in USA, Britain, Canada and Other Selected Countries", May, 1999.
437. Diwakar Gupta, Yavuz Günalay, and Mandyam M. Srinivasan, "On the Relationship Between Preventive Maintenance and Manufacturing System Performance", June, 1999.
438. Jinliang Cheng, George Steiner, and Paul Stephenson, "A Fast Algorithm to Minimize Makespan for the Two-Machine Flow-Shop Problem with Release Times", June, 1999.
439. Jinliang Cheng, George Steiner, and Paul Stephenson, "A Fast Algorithm to Minimize Maximum Lateness for the Two-Machine Flow-Shop Problem with Release Times, June, 1999.
440. Norm Archer and Yufei Yuan, "Electronic Commerce and the Business-to-Business Customer Relationship Life Cycle", August, 1999.
441. Halit Üster and Robert F. Love, "Calculation of Confidence Intervals for Estimated Distances", August, 1999.
442. George O. Wesolowsky, "Detecting Excessive Similarity in Answers on Multiple Choice Exams", October, 1999.

Innis Ref.

HB

74.5

R47

no. 443