

EQUITY IN THE WORKPLACE

A Better Environment for Everyone

FAUW President Catherine Schryer reports on the recent CAUT conference entitled, "Gender Equity – From Graduate Student to Professor Emerita," organized by the CAUT Status of Women Committee. Panel discussions covered issues such as mentoring, parental leave policies, transparent hiring practices, the difficulties faced by new faculty and problems associated with attracting women into the sciences and engineering. (Page 3)

OCUFA DISCUSSION PAPER ON MANDATORY RETIREMENT

The OCUFA Board of Directors has begun a study of mandatory retirement in order to obtain information about 1) salaries of members before and after the age of 65, 2) the potential introduction of post-tenure performance review and 3) the impact on planning and replacement procedures within programs. The first draft discussion paper is reprinted in this issue, beginning on Page 7.

LETTERS TO THE EDITOR

Responding to Roydon Fraser's letter (*Forum*, October 2002) Paul Calamai of Systems Design also asks why UW could not have adapted a "Made in Waterloo" software system in place of SISF. Alastair Farrugia, a graduate student in Mathematics, raises ethical concerns about UW investments. Christopher Essex of the University of Western Ontario replies that "counting hands" is not an academic way to resolve the global warming dispute.

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PRESIDENT'S MESSAGE

*By Catherine Schryer
Department of English Language and Literature*

Reflections and Projections

One of the consequences of working in a university setting is that we experience the double, or in our case the triple, New Year phenomenon. In a sense the beginning of each term feels like a time of new possibilities and challenges, and the end of a term has that feeling of completion, of endings.

However, the end of the Fall term and the beginning of the Winter term has a particular salience. For one thing, most of us are busy completing our year end reviews in preparation for submission in the New Year. A number of years ago a senior academic colleague advised me to start a file called the "Brag Bag." He started one at the beginning of each year and as he completed some noteworthy task or agreed to sit on some committee, he would toss a note into his Brag Bag file to remind himself of his accomplishments. Over the years I have followed his advice because I tend to forget the day-to-day tasks that I should be including in my year end review.

The FAUW Board also has its Brag Bag of accomplishments this year. This year the Board can look back with pride on developing new articles to govern program redundancy, financial exigency and lay-offs and a new policy that will make pregnancy leaves (Policy 14) more possible for women faculty and spousal leaves more possible for all faculty. The Board has been proactively pursuing the grade changing issue through advocating collegial processes in all faculties. We have also been developing a more active approach to issues related to equity by providing support for faculty members with disabilities and by making the Status of Women Committee more active. In fact, the Status of Women and Inclusivity Committee now has a new name – the Status of Women and Equity Committee – and new terms of reference, terms of reference that encourage that committee to have a more active role on campus. Our concern for equity has also extended to our colleagues, the academic librarians, and we have actively supported their request that they be included in our Memorandum of Agreement. The Hagey

Lecture by John Stanford also occupies a place in our Brag Bag file. As a board, we were pleased to see the return of that committee to active duty. We are proud, too, of the role that the Academic Freedom and Tenure Committee has been playing. This committee has quietly and without fanfare been resolving many serious and potentially serious problems that our academic colleagues have faced this year. The Pensions and Benefits Committee also works behind the scenes to maintain the security nets that we all enjoy. Finally, we are justifiably proud of the way our office works efficiently and graciously – thanks to our administrator, Pat Moore.

In the next year, we hope to add to our Brag Bag. Most importantly, we hope to encourage more participation from our members. We hope to provide more infrastructure for our various committees by providing them with more administrative support. These plans mean expanding our administrative staff, an expansion that is long overdue. Finally, we plan on continuing our efforts at all levels to improve the work environment at the University of Waterloo for all faculty and librarians.

So as I close the Brag Bag for this year and open the Brag Bag for next year, I would like to wish everyone Season's Greetings and a Happy New Year!

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A BETTER WORKING ENVIRONMENT FOR EVERYONE

Report on CAUT Conference on Gender Equity

by Catherine Schryer
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Between October 24 and October 26 of this year, the Canadian Association of University Teachers (CAUT) hosted a conference entitled "Gender Equity – From Graduate Student to Professor Emerita". Organized by CAUT's Status of Women Committee, the conference aimed to bring together faculty women from across the disciplines and across the generations to discuss issues of particular relevance to women faculty. The various panels covered issues such as mentoring, parental leave policies, transparent hiring practices, the difficulties faced by new faculty, the problems associated with attracting women into the sciences and engineering, and the negative effects of the Canada Research Chair program on women faculty. As the title of the conference suggests, each panel was designed to reflect the experiences of women from different levels of the academia – from Professor Emerita to the newest faculty member. I was privileged to attend not only as a delegate from Waterloo, but as an invited speaker on the panel dedicated to mentoring.

The conference began with a joyful but poignant address by Dr. Ursula Franklin and her lawyer, Mary Eberts. Dr. Franklin reported on the successful conclusion of a lawsuit which she, Phyllis Grosskurth, Blanche van Ginkel and Cicely Watson had launched against the University of Toronto regarding the miserly state of their pensions. Each of these women had developed splendid careers at Toronto. Dr. Franklin, for example, had been promoted to full Professor in Physics, had over 60 scholarly papers published, held NSERC grants, was a member of both the National Research Council and the Natural Sciences and Engineering Council, and was inducted into the Order of Canada and into the Royal Society of Canada. However, at the time of her retirement in 1987, she was given a yearly pension of \$24,084.00 per annum, a pension well below the pension bestowed on her male colleagues. Each of the other women had careers that paralleled Dr. Franklin's in terms of excellence, low pay, and miserable pensions.

In their suit Franklin *et al.* were able to demonstrate that each initially had been hired at a rate of pay substantially lower than their male colleagues. Throughout their careers at Toronto, this original inequity made it impossible for them to match their male colleagues' salaries. Also because of the secrecy and lack of transparency around salaries they were never able to discover this discrepancy. Consequently, despite their brilliant curriculum vitae, they wound up their careers with pensions just above the poverty line.

In the first iteration of their suit, Franklin *et al.* attempted to launch a class action suit against the University of Toronto, not only for themselves, but for the over 100 other women who had experienced the same kind of discrimination. The class action nature of the suit was not successful, but the response of the Ontario Superior Court to their arguments made it clear that the court would entertain an action launched by Franklin and her associates on their own.

Consequently, they initiated another suit against the University of Toronto. Of course, the legal actions themselves generated a great deal of negative publicity for the University. For decades Dr. Franklin, in particular, has been an advocate for women's rights, and her many friends and acquaintances (some of whom were on the Board of Governors at Toronto) began to advocate on her behalf. To make a long story short, the University of Toronto agreed to a settlement before the Court finished hearing the case.

The terms of the Franklin *et al.* settlement are confidential. However, one important item is known. Dr. Franklin and her three colleagues insisted that all the women originally involved in the suit should receive the same settlement as they were receiving. Consequently, Franklin and her colleagues received a monetarily lower settlement, but a settlement rich in integrity and natural justice.

Dr. Franklin's address was both joyful and poignant because, although she and her colleagues achieved a

modified version of their goal, they had to launch years of legal action to address a clearly inequitable situation.

The rest of the conference reflected the tone of Dr. Franklin's address. Yes, there have been some real advances in terms policy development across Canada to deal with parental leaves. But other research indicates that many faculty women, especially in the Sciences, have been hesitant to take the leaves because of the effects such absences could have on their ability to achieve tenure. Yes, more women seemed to be achieving administrative positions in universities. But the hiring rates (27-30% approximately) for women remained well below that of men despite the fact that more women (over 60%) than men are graduating from university every year. This situation is certainly one that all universities must attend to in order to avoid a decline in the total number of graduate students willing to enter into the professoriate. And yes, women researchers are making important contributions in all areas of academic life. But the Canada Research Chair program, in particular, could have a serious negative impact on much of the research being conducted by women. To date only about 15% of the Chairs have gone to women researchers while the program itself could divert research funding away from the majority of women

researchers.

Of course, the conference also provided some proactive ways to address some of the issues facing women faculty. For example, several universities, including Wilfrid Laurier, are experimenting with an Academic Women's Colleague program. This program gives female faculty members one or two course releases a year to act as an ombudsperson and organizer for equity issues. A group of women researchers is also investigating alternative ways to teach mathematics and engineering concepts to young women in order to attract them to these disciplines. Their preliminary results suggest that these alternative ways, in fact, improve the test scores of all the students, both men and women. Other universities are creating much more proactive equity policies in order to attract junior faculty to their campuses. They have discovered that creating equitable policies for women tends to create a better working environment for everyone.

In my view, Dr. Franklin's address with its emphasis on natural justice and integrity of action challenged us all to think about ways that we could make our own campuses more equitable for everyone. It was a conference well worth attending.

CAUT RECIPROCAL AGREEMENTS

The Canadian Association of University Teachers has negotiated reciprocal agreements with national academic staff unions in other countries to provide individual CAUT members with rights and privileges when they are visiting faculty in those countries. Currently CAUT has reciprocal agreements with:

- Australia - National Tertiary Education Union (NTEU)
- Ireland - Irish Federation of University Teachers (IFUT)
- New Zealand - Association of University Staff of New Zealand (AUS)
- United Kingdom - Association of University Teachers (AUT)

Contact CAUT for information on these agreements.

LETTERS TO THE EDITOR

Why not a “WATSISP”?

Isn't it interesting that at a time when staff are being encouraged to “do less” (see recent *Gazette*) a system (SISP) is being imposed on them that forces them to do more. Ask the dedicated staff in the Graduate Studies Office (GSO) and our graduate secretaries about their recent experiences with computing our own students' averages (from their SISP-generated transcripts) that are required for their NSERC PGS A applications and their OGS scholarships. This, at the best of times, was a tedious task but it has been made worse by our “improved” SISP-generated transcripts. While you are at it, ask GSO staff about their concern regarding the determination of NSERC PGS B eligibility. To be eligible students must not be beyond their third year of full-time studies. Problem is, and this is truly hard to believe, that the SISP-generated graduate student transcripts do not indicate which terms are full-time and which are part-time! The old graduate student transcripts did. The old transcripts also included course instructor names – the new ones don't (usually). This is a problem in Engineering since graduate students are restricted from taking more than 50% of their required courses from their supervisor(s).

Bravo to Professor Roydon Fraser for making public the concerns that are shared by many (October *FAUW Forum*, Letters to the Editor). I too would suggest a “Made in Waterloo” solution. Surely a University that engaged in the New Oxford English Dictionary project – a tremendous success by all accounts – has the talent, expertise and will to tackle this formidable project.

Let's stop the grumbling (and whining) and do something about this!

*Paul H Calamai, Graduate Officer
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Ethical concerns about university investments

Few people on campus are aware that UW has invested its money in companies like Talisman and Rio Tinto. Why does it matter anyway?

Rio Tinto is a mining company heavily criticised for its environmental and human rights record, that includes dumping 40 million tons of toxic waste in a river in West Papua, support for the apartheid regime, and involvement in the deaths of 22 civilians near a gold mine in Indonesia.

Talisman is an oil company that may be familiar to Canadians because of the controversy surrounding its operations in Sudan. The concerns of civilians being killed to clear space for oil pipelines were serious enough to prompt critical reports by the Canadian government in January 2000 and by Amnesty International, and contributed to Talisman selling its Sudan operation in October. The Harker report concluded that “Sudan is a place of extraordinary suffering and continuing human rights violations ... and the oil operations in which a Canadian company is involved add more suffering”. Amnesty said that “massive human rights violations by Sudanese [government and opposition] forces are clearly linked to foreign companies' oil operations” and it was “concerned that there is little evidence that [Talisman] has taken effective action in its area of operations to protect human rights of civilians as well as to prevent violations”.

UW's \$700 million fund consists mostly of faculty and staff pension money, along with donations and endowments. Its portfolio is in large part a representative sample of the Toronto Stock Exchange and Standard & Poor 500. One might think it would be a simple matter to put in criteria excluding companies like Talisman and Rio Tinto from the portfolio.

The Federation of Students and the Church Colleges do have such criteria for their own investments of a couple of million dollars; the University's much larger fund does not. In part this is because a pension fund has a duty to ensure that its members receive a good pension when they retire, so it is legally required to make financial return a priority. In practice, the exclusion of companies with poor environmental or human rights records often has minimal effect on returns (as attested by a CEO from Invesco – one of UW's investment managers, and people involved with Conrad Grebel and St. Jerome's investments) or even improves financial results, but this cannot be guaranteed.

There is still room for change. UW could vote for human rights motions (e.g. a motion by Sears shareholders that the company investigate sweatshop allegations). And donors (as opposed to pension plan members) can be given the option of putting their money in a socially responsible fund. The university has not taken either of these measures, and has not disclosed its statement of investment principles or the list of companies it invests in. Where to draw a line on company behaviour is not a trivial matter; UW rightly makes the effort to vet every human research proposal for ethical concerns, and I hope it would also put in the effort to draw up acceptable

guidelines on company behaviour.

A call for change is being circulated (www.math.uwaterloo.ca/~afarrugia/sri-prop.html) before being formally presented to the University. The staff union (CUPE 793) is actively discussing this, and its president is very supportive. Students' Council and Grad Students Council will probably consider the issue in December. The Faculty and Staff Associations, however, have decided not to back the changes. It is my hope that the FAUW and University will change their opinion on this matter.

The Harker report and the two Amnesty International reports cited in the letter can be found at:

http://www.woek.de/pdf/sudan_harker_jan_2000.pdf
<http://web.amnesty.org/ai.nsf/Index/AFR540042000>
<http://web.amnesty.org/ai.nsf/Index/AFR540102001>

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Global warming – counting hands is not enough

Jeffrey Shallit seems to have misunderstood my article (*Scientific Confusion, Forum*, October 2002). It was not in favour of any petition for or against global warming. Counting hands is normally not an effective way to resolve factual issues, i.e., “All in favour of the eight times table say, ‘Aye!’” Academics should need no reminding of this.

Furthermore his revelation about another spice girl name, Geri Halliwell, having been on the Oregon petition

before it was removed, has little relevance. My reference in the article to Ginger Spice not making it onto the list was only by way of illustration of the willful and malicious attitude that some people have in this debate. Observing that the name Geri Halliwell was also removed only reinforces my point. In the end there were credible scientists who did sign it, pranks or not. I, however, did not sign.

As to the Nobel Laureates, their embarrassment was not caused by pranksters but by their own hand, which is a very different matter. That they didn't know what they were signing demonstrates that they were not thinking for themselves but responding to what others told them.

And that is precisely the issue. It's not good enough for Shallit to simply conclude that “the vast majority of environmental scientists do believe....” How does he know what they think? Or does he just accept what he reads in the newspapers?

In the end it doesn't really matter what his definitions are or what the count is. What matters is that people start to think for themselves on this and ask questions that test the positions of all sides in this discussion. That's how we do it in academia after all. People must not accept things at face value on this issue, because the distortion on this subject is truly global.

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FAUW FORUM

The FAUW Forum is a service for the UW faculty sponsored by the Association. It seeks to promote the exchange of ideas, foster open debate on issues, publish a wide and balanced spectrum of views, and inform members about current Association matters.

Opinions expressed in the Forum are those of the authors, and ought not to be perceived as representing the views of the Association, its Board of Directors, or of the Editorial Board of the Forum, unless so specified. Members are invited to submit letters, news items and brief articles.

If you do not wish to receive the Forum, please contact the Faculty Association Office and your name will be removed from the mailing list.

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OCUFA MANDATORY RETIREMENT DISCUSSION PAPER

Stemming from discussion at the June 2002 Board meeting, the OCUFA Board decided to undertake a study of mandatory retirement to obtain further information about 1) salaries of members before and after the age of 65; 2) the potential introduction of post-tenure performance review; and 3) the impact on planning and replacement procedures within programs. Special regard was to be made to obtain information about the experiences of university faculty associations in provinces where there is no mandatory retirement legislation (Quebec, Manitoba, Alberta and New Brunswick). This is the first draft discussion paper in response to the Board motion. Further data with regard to the specific questionnaires submitted by universities in Alberta, Manitoba, Quebec and New Brunswick will be forthcoming.

Introduction

Under the current Ontario Human Rights Code, an employee's right to be free from discrimination because of age is limited to people between the ages of 18 and 65. For faculty and academic librarians the impact of this is that, unless a faculty association has been able to negotiate extended employment rights, the decision as to their right to remain resides exclusively with their university administration.

OCUFA has a long standing policy position opposing mandatory retirement. In fact, OCUFA was one of the principals in a landmark case on mandatory retirement. In June of 1985, the OCUFA Board members passed a motion to pursue test cases on mandatory retirement in conjunction with CAUT and the other provincial faculty associations. The test case, involving seven university professors in a case known as *McKinney et al.*, was pursued all the way to the Supreme Court. In a decision dated December 6, 1990, the justices stated that universities were beyond the terms of reference of the Charter. Notwithstanding, while all the justices agreed that mandatory retirement fundamentally violates the Charter, five of the seven ruled that the violation was a "reasonable limit" on an individual's rights. The two dissenting justices were women, who argued that mandatory retirement was particularly unfair to women and other underprivileged groups who often start their academic careers later

in life.

It needs to be pointed out that the courts have supported the mandatory retirement of individuals even where the human rights code prohibits discrimination on the basis of age. A significant case in this regard was that of Olive Dickason who was a tenured full professor at the University of Alberta and was forced to retire at the age of 65 because of a mandatory retirement clause in the collective agreement between the university and its academic staff. The province of Alberta did not at that time (and still does not) have mandatory retirement legislation in place. Ms. Dickason filed a complaint with the Alberta Human Rights Commission alleging that her forced retirement was in violation of the *Individual's Rights Protection Act* by discriminating against her on the basis of her age. There is a section in that Act which allows discrimination if the employer can demonstrate that the breach was reasonable and justifiable in the circumstances. A board of inquiry was appointed to hear Ms. Dickason's complaint and decided in her favour. The Court of Queen's Bench upheld that decision, but it was overturned by the Alberta Court of Appeal.

The Supreme Court judgement, published in 1992, upheld the decision on the grounds that the discrimination on the basis of age was reasonable and justifiable. In the ruling the Justices found that:

It was the total package and trade-offs found in the collective agreement that made the subject rule reasonable and justifiable. In Dickason, a faculty member was required to retire at a certain age, but that the same faculty member had benefited from security of tenure and a pension scheme. Therefore, the Dickason case can be distinguished on its facts. There was no trade-off of any other benefits for the excluded group. In fact, having been excluded from the Buyout payment, if they returned to work it would not have been in the same condition of employment as when they left. The returning Complainants would be subject to the across the board wage reduction and limited scheduling structure as part-time employees that arose out of other terms of the Buyout Program.

The objectives of mandatory retirement were stated to be the preservation of tenure, the promotion of academic renewal, the facilitation of planning and resource management and the protection of "retirement with dignity" for faculty members. Like the objectives put forward in McKinney, in which they are subsumed, they are of sufficient significance to justify the limitation of a constitutional right to equality. The impugned retirement practice is rationally connected to the objectives cited. The retirement of faculty members at the age of 65 ensures that the university may readily predict the rate at which employees will leave the institution and that positions are opened for new faculty. Mandatory retirement also allows the university to renew its faculty by introducing younger members who may bring new perspectives to their disciplines. It provides a means of remedying the twofold problem of limited funding and a "bulge" in the age distribution of professors. As well, the policy supports the existence of a tenure system which creates barriers to the dismissal of faculty members thereby enhancing academic independence. In the university setting, mandatory retirement also withstands the minimal impairment test. No obvious alternative policy exists which would achieve the same results without restricting the individual rights of faculty members. Finally, the effects of the prima facie discrimination are proportional to the legitimate objectives served.

Recent events have brought mandatory retirement to the forefront of the public policy agenda. The Ontario Human Rights Commission in a paper published in June 2001 entitled "Time for Action: Advancing Human Rights for Older Ontarians" argues that mandatory retirement should be revisited as a public policy issue.

Also, there was a recent decision by British Columbia's Court of Appeal which determined that mandatory retirement policies of public bodies must be justified on a case by case basis. The majority of the B.C. Court of Appeal stated that the Supreme Court of Canada case, *McKinney et al.*, was not definitive of the constitutionality of all retirement policies in the private sector, and does not relieve the employer of the responsibility to establish that its policy of mandatory retirement is justifiable under the Charter. However, the judgement also notes that the *McKinney* judgement was upheld only because of its context within the university sector.

Current Canadian Context

The situation with regard to mandatory retirement in those provinces where it has not been legislated by the government is complex. Despite the lack of a legislated retirement date, many of the universities have negotiated mandatory retirement policies, which are part of faculty collective agreements, and which are strictly adhered to. The New Brunswick Human Rights Commission provides an interesting example of the mixed messages surrounding mandatory retirement. The Commission's *2000-2001 Annual Report* notes that the courts have stated that it is not possible to avoid human rights laws through contracts or collective agreements, and that the human rights laws prevail over any other law that conflicts with them unless it expressly says otherwise. However, the Human Rights Act itself contains exceptions. The most notable in the context of this paper is that mandatory retirement is allowed when it is provided for by a pension plan. Despite the provincial legislation in New Brunswick, the University of New Brunswick, St. Thomas University, as well as Mount Allison University, all have collective agreements or stated university policies which specify the normal retirement date for professors and academic workers as 65.

The Universities of Alberta, Athabasca and Lethbridge all participate in the Universities Academic Pension Plan and have a normal retirement age of 65. The situation with Manitoba universities is similar, where the legislature has passed a law which notes that academic staff would be the only group who could be subject to the age discrimination inherent in compulsory retirement, if it were negotiated at the university level. In most cases the universities provide the opportunity for faculty members to continue teaching in some, usually part-time, capacity after retirement, but they are no longer considered or paid at the same level as prior to retirement.

In Quebec, the universities have generally not negotiated mandatory retirement into their collective agreements with faculty and academic staff. Here the situation is viewed with frustration by the universities who feel they have a lack of control over finances with respect to hiring. To varying degrees, the Boards of Governors at McGill, Concordia and Bishop's Universities have offered early retirement packages to try to entice older, higher-earning professors to retire, and have articulated their frustration with the fact that universities are constantly challenged by a shrinking budget. It is interesting that Quebec seems to be the lone province that has

no legislated mandatory retirement, but where the universities have not found a way around the provincial mandate through the collective agreements.

US Context

A federal law mandating the elimination of mandatory retirement in the United States was passed in 1987. The implementation date of the legislation was January 1994, though a recent study shows that less than one quarter of academic institutions waited until 1994 to officially end mandatory retirement. At that time, some of the academic community feared that voluntary faculty retirements would slow and that this would decrease the opportunities for academic institutions to make new faculty appointments, and would also increase the institutions' salary costs. Recent studies of the experience of US academic institutions since the abolition of mandatory retirement have found that there has been little effect on the probability that faculty retire prior to normal retirement age. What has been demonstrated is that a substantial fraction of faculty members who would have been constrained by the law to retire at a specific age now appear to be postponing their retirements to later ages.

In 2000 the Committee on Retirement of the American Association of University Professors conducted a *Survey of Changes in Faculty Retirement Policies* of a large national sample of colleges and universities. The statistics and information about the American experience with the elimination of mandatory retirement presented here are from this AAUP study, as well as a subsequent TIAA-CREF Institute publication citing the same survey. The goal of the 2000 survey was to glean information on the characteristics of regular retirement programs for tenured faculty, the existence and nature of retirement incentive programs and phased retirement programs for tenured faculty members, on institutional policies relating to retired faculty, and on institutions' perceptions of the impact of the end of mandatory retirement on their faculty. The survey became a joint effort of the AAUP, the American Council on Education, the College and University Professional Association for Human Resources, the National Association of College and University Business Officers, and the TIAA-CREF Institute.

The issue of early retirement or financial incentive to retire is an important one. The survey found that 46.2% of the responding institutions had one or more financial incentive programs instituted since the abolition of

mandatory retirement in 1994 which encouraged tenured faculty members to retire prior to age 70. In slightly more than half of the cases in which buyouts were available, all tenured faculty members were automatically eligible for the buyout if they met the age and/or years of service and/or age plus years of service requirement for eligibility.

Some faculty members find the prospect of abruptly ending their academic careers very distasteful, and this is likely to induce them to postpone retirement. With regard to the gradual transition into retirement, the survey found 27% of responding institutions had formal programs to permit tenured faculty members to retire gradually by working part-time for a number of years before they formally retire. Institutions with defined contribution pension plans are twice as likely as institutions with defined benefit pension plans to have such programs. The study found that almost all of the institutions permitted their retired faculty to teach after retirement on a part-time basis, although about half of the institutions indicated that only some retired faculty were permitted to teach. Most of the institutions reported that retired faculty members teaching part-time were paid similarly to other part-time faculty, which is to say less than their salary as a tenured professor.

Many faculty members contemplating retirement would like to continue to teach on a part-time basis after they retire. Slightly less than half of the institutions indicated that they provide office space to retired professors, though a huge majority of doctoral institutions indicated that they provide such office space. Two-thirds indicated that they would provide retirees with access to computer systems and parking. Despite being of particular concern to active research scientists, only 11% of the American universities surveyed indicated that they routinely assign lab space to retired professors.

The survey found that only 22% of the institutions that responded indicated that the number of tenured faculty members continuing in full-time employment after age 69 was greater than prior to the institution's elimination of mandatory retirement. Most respondents reported that they did not believe that the abolition of mandatory retirement has caused more tenured faculty members to remain in their positions until a later age.

Some final points from the US survey demonstrate that the proportion of faculty staying on beyond age 70 was most likely to have increased at institutions which grant

doctoral degrees. This would have significant impact on Ontario's public university system where the majority of university level academic institutions are equipped to grant doctoral degrees. For public institutions in the US, the study found that those which made contributions to retired faculty members' health insurance and/or have a phased retirement program were more likely to have reported that an increasing share of their faculty are now staying on beyond the normal retirement age of 70.

References

"The Survey of Changes in Faculty Retirement Policies." Ronald G. Ehrenberg for American Association of University Professors. 2000.

"Faculty Retirement Policies after the End of Mandatory Retirement". Ronald G. Ehrenberg and Michael J. Rizzo. *Research Dialogue*; TIAA-CREF Institute. Issue no.69; October 2001.

"Student Enrolment and Faculty Recruitment in Ontario: The Double Cohort, the Baby Boom Echo, and the Aging of University Faculty." Byron. G. Spencer, McMaster University. Revised March. 2002.

"Time for Action: Advancing Human Rights for Older Ontarians." Ontario Human Rights Commission. June 2001.

MANDATORY RETIREMENT: BACKGROUND AND CURRENT ISSUES

Background

A number of recent events has caused OCUFA to re-visit the issue of employee determined retirement (often referred to in public policy discussions as "ending mandatory retirement"). Although OCUFA has been extremely active on this issue in the past, it has been more than ten years since our policy position has been considered by the OCUFA Board. In March, the Board will be asked whether it wishes to develop a more current policy on the issue. At its meeting of February 8, the Collective Bargaining Committee will be given an opportunity to provide direction to the Board on this issue, as it has collective bargaining, as well as legislative, implications.

Recently, a number of faculty associations in Ontario have either been approached by individual members concerning their ability to maintain their employment past the normal age of retirement, or the bargaining committee of the faculty association has sought advice on negotiating extended or employee determined retirement into the collective agreement.

Under the current Human Rights Code, in employment, the right to be free from discrimination because of age is limited to people 18 years and older but less than 65 years. As a result, an employer can have a mandatory retirement policy, but the law does not require them to do

so. A faculty association is free to negotiate a retirement age other than 65, but if the employer refuses to do so, it will not be guilty of age discrimination under the Code. However, the issue of mandatory retirement as discrimination has recently been examined by the Ontario Human Rights Commission in a paper published in June 2001 entitled *Time for Action: Advancing Human Rights for Older Andirons*, which argues that mandatory retirement should be revisited as a public policy issue.

OCUFA has argued that not only is mandatory retirement a discriminatory practice, but the economic and labour considerations that have traditionally been arguments upholding mandatory retirement policies must be seriously reconsidered. Economically, it is more beneficial to society for workers to contribute tax revenues, rather than having those forcibly retired workers drawing income from the state. On the labour front, the long standing arguments that mandatory retirement was necessary to allow new, younger workers access to jobs is no longer valid. The post-secondary education sector is one of many currently experiencing a drastic labour shortage, and which perfectly demonstrates the impracticality of forcing qualified, willing professors to retire when they are so desperately needed. The labour shortage in all sectors is predicted to increase as the baby-boom generation retires. Since court challenges to mandatory retirement in Ontario have been unsuccessful, it is necessary to amend the Ontario Human Rights Code in

order to make it illegal for workplaces to discriminate on the basis of age.

A recent decision by British Columbia's Court of Appeal determined that mandatory retirement policies of public bodies must be justified on a case by case basis. The majority of the B.C. Court of Appeal stated that the Supreme Court of Canada case, *McKinney et al.*, was not definitive of the constitutionality of all retirement policies in the private sector, and does not relieve the employer of the responsibility to establish that its policy of mandatory retirement is justifiable under the Charter. The judgement also notes that the *McKinney* judgement was upheld only because of its context within the university sector.

Historical Involvement

Ontario's university professors have long had an interest in changing public policy in Ontario to allow university professors to determine their own retirement date. In June of 1985, Board members passed a motion that OCUFA would pursue test cases on mandatory retirement in conjunction with CAUT and the other provincial faculty associations. The test case involving seven university professors known as *McKinney et al.*, was pursued all the way to the Supreme Court. In a decision dated December 6, 1990, the justices stated that mandatory retirement was a legitimate infringement of the Charter of Rights and Freedoms, and was justified because the practice benefits society as well as the majority of employees. All of the justices agreed that mandatory retirement fundamentally violates the Charter, but five of the seven ruled that the violation was a "reasonable limit" on the individual's rights. The two dissenting justices were women, who argued that mandatory retirement was particularly unfair to women and other underprivileged groups who often start their academic careers later in life. In April of 1991 the Board moved to continue lobbying the provincial government for amendments to the Ontario Human Rights Code which would end mandatory retirement.

In 1987 OCUFA made a submission to the Ministry of Labour Task Force on Mandatory Retirement outlining OCUFA's concern with overall retirement policies, and maintaining that mandatory retirement was unjustified and unjustifiable discrimination on the basis of age. The Task Force's report advocated that should the government decide to end mandatory retirement, university faculty members should be exempt on the basis of the tenure system and the need to make way for

younger academics. OCUFA sent a letter of rejection to the Minister of Labour.

In light of OCUFA's submission to the Task Force, as well as the motion passed by the Board to continue lobbying the provincial government to amend the Code in favour of voluntary retirement, current OCUFA policy endorses flexible retirement policies, including the right of professors to continue working past the normal retirement age.

Collective Bargaining Approaches to Ending Mandatory Retirement

In the mid-1980's, three Ontario faculty associations were successful in negotiating an extension to the normal retirement date. CUASA first negotiated an extension to mandatory retirement in 1985. The collective agreement allowed an employee to continue working until the age of 71 at the employee's discretion. However, under intense pressure from the employer, concessions to the language were negotiated in subsequent rounds of bargaining, and the clause was abandoned entirely in 1996. YUFA negotiated a flexible retirement policy in 1987, but had mandatory retirement imposed by the employer in the strike of 1996 (limited extended retirement rights still exist for low income faculty). OISE Faculty Association negotiated similar provisions to CUASA and YUFA, and were also forced to concede the language in the mid 90's. Since then, no faculty association has been successful in bargaining an extension to the normal retirement date.

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