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Wednesday 23 November 2005

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Mercredi 23 novembre 2005

**Standing committee on
justice policy**

Ending Mandatory Retirement
Statute Law
Amendment Act, 2005

**Comité permanent
de la justice**

Loi de 2005 modifiant
des lois pour éliminer
la retraite obligatoire

Chair: Shafiq Qadri
Clerk: Katch Koch

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Wednesday 23 November 2005

Mercredi 23 novembre 2005

The committee met at 1006 in room 228.

ORGANIZATION

The Chair (Mr. Shafiq Qadri): Ladies and gentlemen, I'd like to call this meeting of the standing committee on justice policy to order. Good morning to everyone. There was, as you know, an informal meeting recently of the subcommittee, and I understand there's some business pertaining to that. Do I have any motions from the floor?

Ms. Jennifer F. Mossop (Stoney Creek): I move that a subcommittee on committee business be appointed to meet from time to time at the call of the Chair, or at the request of any member thereof, to consider and report to the committee on the business of the committee;

That the presence of all members of the subcommittee is necessary to constitute a meeting;

That the subcommittee be composed of the following members: Mr. Qadri as Chair, Mr. Flynn, Mr. Klees, and Mr. Kormos; and

That substitution be permitted on subcommittee.

The Chair: Thank you. Ms. Mossop has moved that a subcommittee on committee business be appointed to meet from time to time at the call of the Chair or at the request of any member thereof—

Mr. Gilles Bisson (Timmins–James Bay): Dispense.

The Chair: Thank you.

Is there any discussion on the motion? Seeing none, all those in favour? Those opposed? I declare the motion carried.

Are there any other motions from the floor?

Mr. Kevin Daniel Flynn (Oakville): I move that the standing committee on justice policy proceed as follows with respect to Bill 211, An Act to Amend the Human Rights Code and certain other Acts to end mandatory retirement:

That the committee meet for the purpose of holding public hearings in Toronto on Wednesday, November 23, 2005, and if necessary, on Thursday, November 24, 2005;

That the clerk of the committee, in consultation with the Chair, be authorized to post notice of the hearings on the Ontario Parliamentary Channel and on the Internet prior to the adoption of this motion;

That the clerk of the committee, in consultation with the Chair, be authorized to schedule all interested presenters on a first-come, first-served basis;

That the length of presentations for witnesses be 15 minutes for groups and 10 minutes for individuals;

That clause-by-clause consideration of the bill be scheduled for Thursday, November 24, 2005, upon completion of public hearings;

That the clerk of the committee, in consultation with the Chair, be authorized to commence making any preliminary arrangements to facilitate the committee's proceedings prior to the adoption of this motion.

The Chair: Thank you. Mr. Flynn has moved that the standing committee on justice policy proceed as follows—

Mr. Bisson: Dispense.

The Chair: Thank you. Is there any discussion on the motion?

Mr. Bisson: Just first of all, has there been any discussion with Mr. Kormos on this matter?

Mr. Flynn: Mr. Kormos was at the meeting.

Mr. Bisson: He was at the meeting.

Is that in the morning or the afternoon of next week that that's happening?

Mr. Flynn: It's tomorrow, November 24.

Mr. Bisson: Oh, that's right.

Mr. Flynn: And it's in the morning.

Mr. Bisson: Fine; that's good.

The Chair: Any further discussion on this motion? All those in favour? Any opposed?

I declare the motion carried.

ENDING MANDATORY RETIREMENT STATUTE LAW AMENDMENT ACT, 2005

LOI DE 2005 MODIFIANT DES LOIS POUR ÉLIMINER LA RETRAITE OBLIGATOIRE

Consideration of Bill 211, An Act to amend the Human Rights Code and certain other Acts to end mandatory retirement / Projet de loi 211, Loi modifiant le Code des droits de la personne et d'autres lois pour éliminer la retraite obligatoire.

The Chair: We'll now proceed with the consideration of Bill 211, An Act to amend the Human Rights Code and certain other Acts to end mandatory retirement. We will begin with the invitation of our first presenters. I'd remind all our presenters that they have approximately 15 minutes in which to make their remarks, and any time

remaining will be divided equally among the various parties for questions.

CHOICES IN RETIREMENT

The Chair: May I respectfully call to the front Professors David MacGregor and Thomas Klassen of King's University and York University.

Gentleman, if you might identify yourselves for the purposes of recording for Hansard, you have 15 minutes, starting now.

Mr. Tom Klassen: I'm Tom Klassen.

Mr. David MacGregor: I'm David MacGregor.

We are honoured to present our submission regarding Bill 211 to the standing committee on justice, and we wish to thank the committee for its kind invitation.

We congratulate the government of Dalton McGuinty and Ministers Steve Peters and Chris Bentley for this historic bill, which, if passed, extends human rights protection to workers age 65 and over and effectively eliminates mandatory retirement in the province of Ontario. The bill represents a significant step forward for the rights of older people and their families in this province. We thank in particular Kevin Flynn, parliamentary assistant to the Minister of Labour.

We wish to acknowledge the critical role played by Keith Norton and the Ontario Human Rights Commission, whose report in 2001 prepared the ground for Bill 211. The report showed unequivocally how the archaic practice of mandatory retirement, made possible by the limitations of the Ontario Human Rights Code, undermines the fundamental human rights, dignity and self-worth of older workers. Liberal MPP Mike Colle's private member's bill, twice introduced in the Legislature, rekindled the hopes of elders in Ontario to finally be accepted as equals in the workplace and civil society.

The government held consultations in 2004 prior to introducing Bill 211 in a successful effort to get the bill substantially right. We recognize the bill is not perfect. We regret the one-year delay in its application; we are also disappointed that it does not shelter employee health and dental benefits after 65. However, we are pleased the bill protects government of Ontario drug benefits and hospital care for those 65 and over, regardless of whether they remain employed.

As co-editors, along with Professor Terry Gillin at Ryerson University, we are contributors to *Time's Up! Mandatory Retirement in Canada*, which I happen to have here. It was published by Lorimer in 2005. We are impressed by the familiarity and sensitivity demonstrated by members of the Legislature with the issues surrounding the human rights of older workers and the practice of forced retirement at an arbitrary age. In our presentation, we will refer to eloquent statements made by members in the debate on second reading.

Bill 211 is not just for older persons of Ontario and their families. Labour Minister Steve Peters declared that this legislation is about choice for all workers in Ontario.

Bill 211 plants a tree that will shelter each person as they reach and surpass the age of 65.

There is no reason to believe that Bill 211 will damage pension rights or restrict the supply of jobs for the young. Manitoba and Quebec banished mandatory retirement almost 25 years ago without reducing employment prospects for younger people or harming pension plans. Indeed, far from cutting back on public pensions, Quebec dropped the pensionable age to 60, offering a model later copied by the Canada pension plan. Quebec is considering a proposal to allow workers to collect QPP at age 60 while continuing in their jobs.

Since the 1960s, the average retirement age in Canada has fallen from 66 to about 62. For most Canadian male workers, and 30% of female workers, retirement is involuntary—triggered by layoffs from work. MPP John Wilkinson argued during second reading that some employers believe they save money by dumping higher-paid, experienced workers. They ignore, he said, the terrible cost in human capital and collective experience. Every year thousands of workers in Ontario, and many more across Canada, are exiled from their jobs at age 65.

Ontario must adapt to a rapidly aging workforce. MPP Phil McNeely noted that employers ought to provide incentives for older workers, as recommended by the OECD and other authorities. A growing number of progressive employers welcome the end of mandatory retirement.

Compulsory retirement hardly exists in smaller businesses and is unknown among the self-employed. In the debate on second reading, MPP Maria Van Bommel noted that in agricultural communities many farmers do not wish to quit at 65; they enjoy their jobs and their time on the land. Equally, more than 20% of physicians and 26% of specialists in Ontario are over 65.

As some members of the Legislative Assembly observed, collective agreements that include mandatory retirement view older workers as second-class citizens for no reason other than chronological age. Veteran workers are banished not only by employer rules, but also in the eyes of their fellow employees. Forced exit means the retiree may never get another job under similar conditions in his or her own field ever again. The exiled employee is fortunate to find any kind of work, even at bottom-level wages.

Mandatory retirement falls very hard on groups we, as a society, should be doing more to protect, particularly women and recent immigrants to Canada. Members of these groups are likely to experience either a late start to employment or interrupted careers because of illness or family responsibilities. MPP Kathleen Wynne observed that women are particularly disadvantaged by forced retirement. For example, female teachers and professors are more likely to have inadequate or substantially lower pensions because of delayed or interrupted career paths. MPP Tony Wong mentioned the unfair punishment mandatory retirement imposes on immigrants, who find themselves at a disadvantage because of late entry to the workforce.

Involuntary retirement causes great economic and social hardship for many, a diminished and marginalized period of life, where socially isolated individuals are reduced to unhappy dependency. As MPP Bill Wilson mentioned, many Canadians have no company pension plan. Magnificent vistas of a leisured retirement float out of reach of most Canadians.

Some argue that compulsory retirement is a necessity for unskilled workers and others in arduous jobs. Speaking poignantly of his own father, MPP Jim Brownell revealed that manual workers love their work as much as anyone else. Instead of exiling older employees who may wish to continue to work, unions and employers should design affirmative action programs, including training and retraining, for veteran workers. Leisure should not be something that only comes at the end of work, but should be integrated throughout the worker's career.

Notwithstanding that some workers wish to work past 65, we recognize that the majority of workers will want to retire as soon as possible. The bill does not in any way impede this. Indeed, the bill will provide employers and unions with opportunities to design more flexible arrangements, which will benefit both workers wishing early retirement and those wanting to continue to work.

Abolishing mandatory retirement isn't about forcing workers to stay longer. It is about recognizing the basic citizenship rights of a growing minority in our society over the age of 65. It is about treating older workers the same as everyone else. Bill 211 is a magnificent contribution to restoring the link between older people and democratic civil society.

The name of the bill and much of the debate around it have highlighted one of the effects of the legislation; namely, the elimination of mandatory retirement. However, the bill is about an even more important issue: extending fundamental human rights under the Ontario Human Rights Code to a group that has until now been excluded from human rights protection.

We urge the members of this committee to return the bill to the House as soon as possible so that third reading and royal assent may occur before the new year. We hope, given the bill's role in extending fundamental human rights, it may receive unanimous support from the Legislature.

The Chair: Thank you, Professor MacGregor. Are there further remarks from Professor Klassen? Fine. We have about seven minutes to distribute evenly and we'll begin with the Tory caucus.

Mr. John O'Toole (Durham): Thank you very much for your presentation. It's a repeated message that I believe we're receiving. I'd also like to be on the record as saying that John Tory and the opposition are in support of this legislation, as well as the work that had been done by our government and previous governments on this issue; more importantly, Bill 68, as you mentioned in your presentation, from Minister DeFaria at that time.

In my case, I'm quite familiar with the issue, having worked, when I was assistant to the Minister of Finance,

on the pension surplus report. The reason I mention the pension surplus report in the overall context of early retirement and the lagging performance of many pension plans, as mentioned in this morning's article on pension fund shortfalls, is, is this a huge issue, of pensions not being as robust perhaps or there at all in many cases? It must be considered in the context of the security of persons who are living longer. That's one of the issues here, that people are living longer and perhaps want to work longer, and I may be included in that group.

1020

There's a bill before the House as well that you should be aware of, Bill 206, which is the OMERS pension fund bill. It's a huge issue. Most of the pensions in Ontario—not just General Motors, but Ford, Chrysler, Stelco, Air Canada, Bombardier, all the legacy company pensions—as you probably know, as academics, are in huge trouble. In that context, we're supportive that the option should be at the individual level and, in that case, it is a discriminatory item, so we would be supporting it.

If there are any questions or a response that you want to make to the issue of the pensions or the issue that we're technically discussing, the mandatory retirement age, I'd be happy to hear your comments.

Mr. Klassen: Just one comment, and it is related to pensions. It is very difficult for individuals to plan 20, 30 or 40 years into the future. What the bill is going to do is provide that flexibility for individuals.

Mr. O'Toole: I just want to comment, too. When I was doing the pension surplusing—

The Chair: Mr. O'Toole, if might. Mr. Bisson?

Mr. Bisson: Just as a follow-up to that, one of the things we're not dealing with in the context of all of this, and I'd like to hear your thoughts on it, is that we all know it's becoming more difficult to retire, with what's happening in the market as far as investments, for most of us who don't have pensions, who have RSPs or nothing at all. Here we are introducing a bill that's going to make it possible for people to work longer. I guess if you follow the argument, it says that if you can't afford to retire, at least you'll be able to keep on working to afford to live. Shouldn't we have an emphasis on trying to do something around the whole Ontario pensions act to say, how are we able to challenge ourselves in order to develop pension legislation that creates the opportunity for people to retire earlier?

For example, your thoughts on the whole issue of surpluses: When there's a surplus, an employer doesn't have to make contributions, which means to say that you can't build a better pension plan. The insurance on pension plans is only up to \$1,000 worth of benefits. There is no portability, and that's a huge issue in today's economy. Do you think we should be doing something on the other side if we're going to be opening up the floodgates on the over-65 issue?

Mr. Klassen: The fact that there's an aging population in Ontario is going to mean that we will have to look at other parts of work and retirement, yes.

Mr. Bisson: My specific question is, if you're going to do the elimination of age 65 as the mandatory retirement age, shouldn't we at the same time have an overall package? If you're going to give people the choice, as we say, in those places where they're now limited to work until age 65, shouldn't we have legislation that basically says, "Here's how we can create better pensions so that it's much easier for people to make a choice to retire before age 65"? I guess that's my question. Shouldn't we be doing both at the same time?

Mr. Klassen: I think it's important for individuals to have choice. Yes, do both.

The Chair: Are there any questions from the government side?

Mr. Flynn: I just wanted to express my appreciation for the input and advice that you've been able to provide us throughout this process. I know that your preference would probably be for more immediate implementation of the bill, but you're probably aware that some people were asking for it to even be retroactive, I believe, and others were asking for it to be stalled for as long as seven years. Do you think that, under the circumstances, perhaps the one year—I know you'd prefer it be shorter, but do you think one year is a reasonable amount of time, given the public input we've received?

Mr. Klassen: Yes, I think one year is reasonable. Clearly, we're concerned, because even with a one-year delay, we're telling people, "You don't have particular human rights for another year," and that's problematic. But it is reasonable.

Mr. Flynn: Thank you very much. That was the only question I had.

The Chair: Are there any further questions from the government side?

Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh): Not a question. I want to thank you for your presentation. I just wanted to go on record that, in your quotes, I do see "MPP Bill Brownell." Bill Brownell is my youngest brother. I am Jim, and I just wanted it recorded in Hansard.

Interjection.

Mr. Brownell: Anyway, good presentation.

The Chair: Thank you to the Brownell family and thank you to Professors MacGregor and Klassen for your very thorough deputation. If the Chair may keep one of your book copies, that would be appreciated as well.

ONTARIO CONFEDERATION OF UNIVERSITY FACULTY ASSOCIATIONS

The Chair: We now move to our next presenter, from the Ontario Confederation of University Faculty Associations, Dr. Michael Doucet and company. Dr. Doucet, if you might introduce yourself and your colleagues for the purposes of the Hansard recording. You have 15 minutes to make your deputation, as you've just seen ably demonstrated, beginning now.

Dr. Michael Doucet: Thank you very much, Mr. Chair, and good morning to members of the committee.

With me this morning are Mark Rosenfeld, who is the associate executive director of OCUFA, and Donna Gray, who is our research director.

On behalf of Ontario's 13,000 university professors and academic librarians, OCUFA is pleased to come before the standing committee on justice policy to show our support for Bill 211. But we also want to voice two concerns, shortcomings if you will, in terms of the proposed legislation.

On October 19, Mr. Kevin Flynn, parliamentary assistant to the Minister of Labour, recounted for the Legislature the true-life story of one Dr. Weixuan Li. During second reading of Bill 211, Mr. Flynn told us about the unrelenting tenacity and ambition of Dr. Li. Dr. Li was a self-taught math whiz who studied by night and pulled a cart in Chairman Mao's salt mines by day. We learned that Dr. Li spent his early adulthood engaged in manual labour six days a week. At night, he studied alone in order to learn, acquiring a multitude of foreign languages and working through the advanced theorems and algorithms of math textbooks and scholarly journals that he'd managed to procure. Dr. Li moved to Canada permanently in the 1990s and, later in his career, he eventually achieved status as a full-time mathematics professor. He continued to make a formidable contribution to academe in Ontario—until recently.

Near the end of his speech, Mr. Flynn informed the Legislature that after working for so many years in a part-time capacity, Dr. Li went without full benefits or a pension. On July 1 this year, Dr. Li was forced to retire as a full-time instructor at Carleton University, having turned 65 last November. Sadly, Dr. Li is only one of the many academics in Ontario who will face the same fate.

Bill 211, An Act to amend the Human Rights Code and certain other Acts to end mandatory retirement, changes the definition of age in the Human Rights Code to protect workers over 65 from being forced to retire. We applaud this government for bringing forward a long-overdue measure of justice for older Ontarians in the workforce. My colleague Mr. Rosenfeld is a marathon runner, and we feel we've all been marathon runners in bringing this legislation to its current state.

In our view, however, Bill 211 has two key flaws. You've heard these from Dr. MacGregor already, but we'd like to underscore their importance to us. Those flaws are that it takes too long to come into effect and it potentially fails to protect workplace benefits for workers once they turn 65.

OCUFA is concerned about the timeliness of Bill 211. The act does not come into effect until one year after it receives royal assent. While OCUFA appreciates the need for the government to give very careful consideration to the impact of Bill 211 on the business community, it should be understood that the business community has known legislation was on its way for at least two years. Meanwhile, not one but two cohorts of workers will be forced to retire at 65 before this bill comes into effect. Why, we ask, should thousands more Ontarians be forced into retirement only because of the

unfortunate timing of their 65th birthday? Bring Bill 211 into effect immediately after it receives royal assent. It makes no sense, in our view, to wait another year.

1030

Our second concern with Bill 211 is the possible cessation of workplace benefits for employees once they turn 65 years old. As it stands, the bill maintains and reinforces the benefit plan regulation under the Employment Standards Act, 2000, which allows employers to change or cancel the workplace benefits of workers aged 65 and up. As a result, older workers risk being stripped of benefits they were once entitled to before their 65th birthday.

OCUFA has sought a legal opinion on how other Canadian jurisdictions have dealt with the issue of benefit plans after mandatory retirement was abolished in those jurisdictions. None of the other jurisdictions has given carte blanche to employers to discriminate on the basis of age in benefit plans—none. The statutory approach preferred by the other provinces permits distinctions or preference only where they are part of a bona fide or genuine group insurance plan. This subsection in Bill 211 is unnecessarily discriminatory in light of the less restrictive alternatives adopted in other jurisdictions, and it is possible, we would argue, that the subsections dealing with benefit plans in the Workplace Safety and Insurance Act will not withstand a challenge that the law discriminates on the basis of age contrary to section 15 of the Canadian Charter of Rights and Freedoms.

OCUFA has been encouraged by the government's realization that there are certain employee groups that are currently disadvantaged by mandatory retirement, particularly women and immigrants. However, legislative short-sightedness has precluded the government from realizing that these same employee groups will feel the brunt of the cancellation of insured benefits upon turning 65.

Like Dr. Li, immigrants often arrive in the country at a later age and have not had the opportunity to secure a strong financial foothold nor a substantial pension. The same holds true for female workers who may have joined the workforce at a later stage of life due to child-rearing and/or family life commitments. Many of these women may not have had the chance to accumulate the significant amount of work time needed to secure a substantial pension past retirement age. Even though the bill is designed to give older employees the choice to work or retire, many of those persons will have no choice but to continue working without the benefits they once enjoyed.

Concerns regarding this provision have made their way on to university bargaining tables. University administrators are demanding that faculty who remain past 65 give up employment benefits. If your government turns a blind eye to this particular issue and its effect on faculty in the post-secondary education sector, not only would this create two classes of professors working in our universities, but it will undermine the benefits that some retirees currently receive as well.

Ontario universities are losing valuable people in the prime of their academic careers, particularly at a time when universities are experiencing record student enrolment. Again, OCUFA supports the government's commitment to end the archaic practice of forced retirement. However, we cannot afford to see another group of bright minds forced into retirement because of yet another year of delay, nor can we ignore the possible elimination of employee benefits after workers turn 65.

We urge your government to make the advised amendments and ensure quick passage of Bill 211.

The Chair: Thank you very much. We'll begin with the first series of questions from Monsieur Bisson.

Mr. Bisson: I understand the argument you make, which is that somebody who is 65 and can still contribute should have the opportunity to contribute. I understand philosophically where you're coming from, but it seems to me it creates an opposite problem at the other end. As it is now, in order to get hired by a university—it's fairly difficult to get on as a prof. I've got a number of nephews with Ph.D.s who have had to go to England and different places to get hired. I raise this as a question because let's say a majority of profs decide after 65 to work till they are 70, 72 or 73, whatever it is. The problem then becomes that those who are entering into university to take the place of the retiring profs are themselves older, which means they have less time to pay into a pension plan to retire at 65 if they so choose. How do you deal with that?

Dr. Doucet: That's a very good point. We're not dealing with this in isolation. As I'm sure members of the committee are well aware, Ontario in fact is coming fairly late to this game. We do have experience from other jurisdictions where they did away with mandatory retirement. In the case of Quebec, they did away with it in 1983. The evidence there is that something in the order of 2% to 4% of faculty at Quebec universities in fact are over 65. The same has held true in the US, where incidentally the mandatory retirement age was 69, not 65. The experience there is that the average age of retirement moves up, but only slightly. Currently, the average age of retirement for faculty is about 61 to 62.

Mr. Bisson: I guess my question is, should we be looking at a more comprehensive approach to this? If we're going to make this possible, how do we offset what is going to happen down the road? That question is in keeping with a question I had earlier with the other presenter. What you're going to end up with is that it's already difficult enough to get in as a prof in a university in Ontario. If you decide to stay longer, along with some of your other colleagues, that means it's slower for them to get in. How do you deal with the contributing time that they have within their pensions so they can get out?

Dr. Doucet: I think it's worth remembering that Ontario has the highest student to faculty ratio in the country. It's 24 to one. It was 18 to one 10 years ago in this province.

The Chair: We'll move to the government side now.

Mr. Flynn: Thank you for your presentation as well. As I asked a previous speaker, during the other pres-

entations there were groups that came forward and said, "I don't want you to end mandatory retirement at all." Some were saying they wanted it done and it should even be retroactive. Others—

Interjection.

Mr. Flynn: That's right. A group you'd be quite familiar with were saying we should wait seven years, I think. We came up with one year.

That seemed to have prompted some action within the university community. The University of Toronto came forward of its own volition. Can you give us any update on what may be happening at other universities along the same vein?

Dr. Doucet: Universities are moving forward to try to negotiate the end of mandatory retirement. I can't name them because some collective agreements are being ratified, but I believe we're now up to three universities that have done this.

Mr. Flynn: Two more quick questions, then. You said two cohorts will not fall under the legislation as it's proposed. Could you just explain that a little bit?

Dr. Doucet: Yes. The legislation was introduced in June, which caught last year's group, and if it doesn't come into effect until one year after royal assent, it will catch next year's group. The traditional retirement date for faculty is either June 30 or sometimes August 31.

Mr. Flynn: Would it be fair to say then—summarizing the presentation I've heard from you—that in your opinion the issue does not end here, but this is a significant step forward?

Dr. Doucet: It is a step forward, yes, a significant one.

Mr. Flynn: Very good. Thank you very much.

Mr. O'Toole: I really did appreciate the story of Dr. Li. I can also draw to mind Professor John Traill in my riding. He's a professor at U of T who has approached me and he's caught exactly in this timeline. If the legislation is delayed for a year, it is problematic for his own personal career. As you've said, and as I've understood, they're entering the most productive years in many aspects of their academic life and it's a really serious loss in that area. We're all aware of other workplace agreements where there's early retirement. There has been a real push, probably over the last 10 years, in certain sectors for freedom 55, which is completely unreasonable, technically, in my view. You're really just starting.

But then again, you look at the types of work that individuals are doing as a factor that I think will, in the collective arena, play its way out as, what is your probable life expectancy in the workplace? When you have security, tenure—as Mr. Bisson has brought up, I have two nephews, both with Ph.D.s from Canadian universities, who are in America. One's in California and one's in South Carolina. One's in biology and the other's in computer animation. They're hot-ticket items, but they can't get in. We're recruiting, and I know the double cohort and all these things affected some of the professors.

I have a question here. I agree with the two points, and I want to be on the record clearly that John Tory and the

opposition support this legislation. I think all parties had a chance to bring this forward since the ruling was made. I understand the one-year delay. There is some administrative need to advise and adjust these certain plans. The question I have is on the benefits one, which I believe, you're right, would be challenged eventually as another factor of discrimination.

If persons move employment, they can collect a Canada pension. In many cases, you could easily end up with a couple of pensions. Do you have any views on people double-dipping, as I would call it, because this could happen on the benefits side as well as getting Canada pension benefits that would accrue at 65, unless the feds change the rules? I don't get that. I don't think someone should double-dip. I don't care if you're in public office or wherever. I just don't agree with it.

Dr. Doucet: I think, as you suggested, it's perhaps up to the federal government to change some of the rules. Currently, I believe you have to start drawing your pension at age 69.

Mr. O'Toole: RRIFs and all these LIFs and all these other funds are—

The Chair: Thank you, Mr. O'Toole, and thank you as well to the deputation from the Confederation of University Faculty Associations.

POLICE ASSOCIATION OF ONTARIO

The Chair: We now invite our next presenter, I believe a veteran presenter here at the Legislature: Mr. Bruce Miller, chief administrative officer of the Police Association of Ontario. We welcome you for what is probably deputation number 25 from you, I think, but in any case, you and your colleagues are always welcome. You're welcome to introduce yourselves for the purposes of Hansard. Your time begins now.

Mr. Bruce Miller: Thank you, Mr. Chair. Actually, this is one of two deputations, because we're also appearing on OMERS autonomy later today.

With me are Karl Walsh, who is president of the Ontario Provincial Police Association, and Ron Middel, who is vice-president of the OPPA as well as a member of our board of directors. My name is Bruce Miller. I'm the chief administrative officer for the Police Association of Ontario. I was also a front-line police officer with the London Police Service for over 20 years prior to taking on my current responsibilities.

The Police Association of Ontario, or PAO, is a professional organization representing 30,000 police and civilian members from every municipal police association and the Ontario Provincial Police Association. We've included further information on our organization in our brief.

We appreciate the opportunity to appear before the standing committee today to discuss the merits of ending mandatory retirement. We also appeared before Mr. Flynn on two occasions when he held his province-wide consultation sessions on this important matter. We've copied our brief to him with this material.

We appreciate and strongly support the fact that the government has made it clear that any changes to legislation would be done “without undermining existing retirement rights—including entitlements to benefit and pension plans.” We strongly support this stand and applaud the government for affirming the importance of maintaining existing rights. As a result, our brief will not address this issue. Our comments on the proposed move to end mandatory retirement will focus solely on the potential impact on the policing profession and on community safety.

The Police Association of Ontario strongly believes that police personnel, both uniform and civilian, should be excluded from this legislation to end mandatory retirement. We believe this is in the best interests of both community and officer safety.

I think everyone realizes the challenges to community safety that police are dealing with across Ontario. Last week, we released an Innovative Research Group poll that included some of the following findings:

—Over half of Ontarians expect that they or a family member will have property stolen as a result of a break-in within the next five years.

—More Ontario residents than a year and a half ago feel that they or a family member will be physically attacked in the next five years. That was up six points to 32%.

—An overwhelming majority, 80%, say that gun violence has worsened in the past years.

—Finally, 80% of respondents agree that the role of police officers in society is distinct from other public servants.

These results demonstrate that members of the public believe public safety is a priority issue. Increasing crime, inadequate funding for police services and lax court and parole systems are all cited as key factors in people’s growing sense of unease in their communities. Ontarians believe that police personnel are vitally important in the effort to keep Ontario’s communities safe.

The need for early retirement for police officers is recognized under the federal income tax regulation for registered pension plans. Ontario’s police officers, both municipal and provincial, have pension plans based on a normal retirement age of 60, as opposed to 65 in other sectors.

It must be noted that the vast majority of police personnel in Canada and North America have pension provisions that allow for early retirement. These plans are in place to ensure that there will always be an opportunity for those who have worked in this very difficult profession to retire with dignity.

The Supreme Court of Canada has also recognized the unique nature of policing vis-à-vis mandatory retirement. In *Large v. the city of Stratford*, a police officer obliged to retire at age 60 filed a complaint with the Ontario Human Rights Commission alleging that mandatory retirement contravened the Ontario Human Rights Code on grounds of age discrimination. On appeal, the Supreme Court of Canada overturned the decision of the lower

court and reversed the original finding of the commission, holding that the mandatory retirement policy, while discriminatory, was justified as a bona fide occupational requirement.

As well, a recent human resources study of public policing in Canada undertaken by Human Resources Development Canada recognized the problem of aging within policing and stated, “The potential increase of incidences of chronic illness associated with advancing age may result in increased absenteeism or the duty to accommodate more officers whose conditions prevent them from performing regular patrol or other duties. If staffing levels remain limited, resulting additional pressures on the younger and more able-bodied may make it even more difficult to provide adequate policing levels for patrols in the coming years.”

The average entry age of police officers has risen dramatically over the past 10 years in Ontario, from 21 years of age to the current 29 years of age. Officers entering the profession at a later age might well try to take advantage of bettering their pension by staying past the mandatory retirement age. The numbers wishing to stay at work past mandatory retirement may be low on today’s date but would begin to quickly increase down the road. We believe that would not be in the best interests of community safety.

Police services employ both police and civilian members. Both groups perform equally important functions that are vital to community safety. Civilian members perform a wide variety of tasks, including the following: special constables responsible for court and jailhouse security and transportation, communicators in 911 emergency call centres, and clerks and records personnel.

All civilian employees deal with highly sensitive and confidential information. Special constables involved in court security and prisoner control deal with very dangerous individuals. Communicators, or dispatchers, are involved in highly stressful positions and deal with life-and-death matters on a daily basis.

The PAO has always believed that civilian police employees are distinct from comparable government or private sector positions due to the difficult and stressful nature of their employment. The PAO strongly believes that our civilian members should be treated the same as our police members. For this reason, we would argue that mandatory retirement provisions be maintained for both police and civilian personnel.

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Policing is a demanding profession, both physically and mentally. High stress and shift work contribute substantially to a need for an early retirement option. We need to ensure that front-line personnel have the youth and physical ability to perform their required duties. We would urge that mandatory retirement provisions remain in place for police and civilian members in order to help ensure community safety.

Finally, I’d like to thank the committee for the opportunity to appear before you once again. I would be prepared to answer any questions that you may have.

The Chair: Thank you, Mr. Miller. We'll move to the government side.

Mr. Flynn: How much time, approximately, do we have each?

The Chair: Two and a half minutes or so.

Mr. Flynn: Very good. Three quick questions: On page 18 of your report, you're saying that the entry age has changed from 20 to 29 years.

Mr. Miller: That's right.

Mr. Flynn: Do you know what the average exit age has changed to? It's fine if you don't know; it was just out of interest.

Mr. Miller: I don't know. It probably hasn't been reflected on the back end, because those people are working their way through their careers now. Ten or 15 years from now, we're going to see that the average exit age will be greatly higher.

Mr. Flynn: Do all police officers in Ontario belong to the same plan?

Mr. Miller: No. Municipal police association members belong to OMERS and the Ontario Provincial Police members are members of the Ontario Pension Board.

Mr. Flynn: In a typical plan for those members who would belong to municipal police services, is it age plus years of service that allows you to exit? Are there certain numbers?

Mr. Miller: It's either length of service or based on factors. But certainly, Ontario lags behind the rest of the provinces and North America, where all other jurisdictions provide for early retirement for police personnel.

Mr. Flynn: One final question, perhaps getting to the heart of the matter. You've made a few presentations to the committee, and I thank you for that, and you're doing the consultations. I thought they were very balanced and well done. You have asked for an outright exemption for police officers, and the proposed legislation seems to be saying that you should get caught up in the [inaudible] and that the bona fide occupational requirements should cover that off. Could you tell us why you think it would not cover that off?

Mr. Miller: I think the problem is that police associations, police employers, are going to spend a huge amount of money involved with litigation that will be going before the courts on these issues time and time again. So we think it's vitally important for police personnel to have a blanket exemption.

Mr. Flynn: Should there be an age of retirement for police officers that is standard throughout Ontario, in your opinion?

Mr. Miller: We believe it should be 65.

Mr. Flynn: Thank you very much.

Mr. O'Toole: Yes, thank you very much—quite an interesting presentation. I still think the most pertinent comment today was that individuals should have choice. While I recognize the Supreme Court decision, I still think that individual choice, as you've described it—I hope I'm not upsetting you. I'd be certain to say that we support this legislation as it is, but given the fact that the

Supreme Court decision will probably be challenged by various individuals—

As I understand the seniority thing—and I did work for 30 years in a highly unionized environment and I appreciate and respect the issue. Through seniority, over time, you often achieve a position of your liking and preference, often at the highest level of your lifetime income on the wage scale. There may be those who have achieved off-line duties—whether it's information systems or security information or other less onerous front-line duties—who want to stay, because they've taken training and courses and they like the work. Our society is going to need that experience as well, moving up, climbing ladders or wrestling with street issues. Do you understand what I'm saying? I believe most of these issues can be resolved in your collective agreements by having classifications that may be allowed to have choice.

Mr. Miller: I think what you're saying, Mr. O'Toole, would have been true 20 years ago in policing, even 15 years ago, but with civilianization now, police services have no place to put older officers in the so-called “inside jobs” that they did before. Our officers are out on the front lines. It's only been five years since I left the London Police Service. I can say, working in a downtown core area at 45 years of age five years ago, I was involved in physical confrontations of some nature almost every evening, and, frankly, we don't need 65-year-old police officers out there.

The other problem is not only for community safety but for officers' safety. If we have two officers showing up to a call, be it a fight or a domestic, and one officer is 65, it really poses some challenges in terms of officer safety.

Mr. O'Toole: I respect that. I just bring that up as something that in your negotiations of collective agreements and the method of classification of positions, whether they're civilian or non-civilian positions, that may over time be the best way to introduce this option of choice.

The Chair: Thank you, Mr. O'Toole. We'll now move to Monsieur Bisson.

Mr. Bisson: I certainly hate the buzzword “choice” because that could mean a whole bunch of things where I come from.

I just have to say I worry, like you, because in our communities all of us work with our police officers and fire services. We know what you guys go through and what the women go through. That's one of the issues that has been raised to me by some of the members of the Timmins force on this bill. They're saying exactly what you just said, and there's not a nice way to put it; that's the problem I find as a politician. A 65-year-old constable obviously has a lot of experience and probably has to put up his or her dukes far less than a 30-year-old constable. As we well know, there's a difference in approach that experience brings. But I know some of the older ones who have talked to me and who are now facing retirement don't want to go at 65, they want to go

before 65, and they're saying, "I can't do what I used to do when I was 30 years old." So I think your comments are well taken.

If you don't get the exemption, where does that leave you as far as the officer safety issue? I know that's one that has been raised with me by a couple of officers who are close to retirement, and they're retiring way before 65. Where does that leave you if you don't get the exemption?

Mr. Miller: As I said earlier, it's going to be a problem in terms of both officer and community safety. We have no place to put older officers now because of civilianization. Also, in Ontario right now we don't have early retirement for police personnel, unlike the rest of North America, and it's something that we will be addressing, obviously, this afternoon with regard to—

Mr. Bisson: Bill 206.

Mr. Miller: With 206.

Mr. Bisson: That brings me to the other point. The thing that I've learned in this Legislature after being here for four terms is that all governments try to do the right thing. I'm not going to argue for a second the government doesn't have its heart in the right place in trying to do this. But the problem is that we look at things in very narrow pigeonholes and we say, "Wouldn't the elimination of the mandatory retirement age be a great thing?" But we don't look at everything else that is affected by it. I guess my question is, should we, rather than come at this by saying we'll just eliminate the discrimination at age 65, from a broader perspective look at the changes that we have to make to the pension act, the Pension Benefits Act, all of the other legislation that's going to impact on this? Eliminating the retirement age is only one part of it. You're still going to have all kinds of problems—ripple effects. So should we have taken a more comprehensive view of this issue, if the train goes down this way?

The Chair: Briefly, Mr. Miller, if you might.

Mr. Miller: Very briefly, I think government has looked at a lot of these areas too and that's part of the Bill 206 discussions. They are looking at the broader picture on this issue and we certainly appreciate it.

The Chair: Thank you, gentlemen, for your deputations from the Police Association of Ontario. We wish you well on your second deputation today.

ONTARIO PROFESSIONAL FIRE FIGHTERS ASSOCIATION

The Chair: We now invite our next presenters, from the Ontario Professional Fire Fighters Association. Gentlemen, your written materials are now being distributed by the clerk of the committee and we'll invite Mr. Brian George, executive vice-president, and colleague to identify themselves. Gentlemen, your 15 minutes begins now.

Mr. Fred LeBlanc: Thank you, Mr. Chair and members of the committee. Good morning. My name is Fred LeBlanc and I'm the president of the Ontario Profes-

sional Fire Fighters Association. As identified, with me today is Brian George, our executive vice-president.

On behalf of the OPFFA we want to convey our appreciation for this opportunity to address you with respect to our concerns relating to the abolition of mandatory retirement as per Bill 211.

The Ontario Professional Fire Fighters Association represents over 9,700 professional full-time firefighters across Ontario. Our members perform a variety of functions within the delivery of fire protection services to the citizens of this province. Both Brian and I remain full-time firefighters today with the London and Kingston fire services, respectively. We know all too well the physical and mental requirements associated with the various roles within today's fire service.

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It has been, and continues to be, the policy of the OPFFA to encourage locals to negotiate a retirement age of 60 within their collective agreements for all firefighters. Firefighting has been widely recognized as an extremely dangerous occupation with a high incidence of job-related deaths and injuries. Our policy has been developed out of a genuine concern for the health and safety of not only firefighters, but the public. It is therefore viewed from an emergency service delivery and labour relations perspective to be in the best interests of the employer, employees and the public to identify age 60 as the mandatory retirement age for our sector. As a result, the vast majority of professional firefighters across Ontario have a mandatory retirement age of 60 recognized as a bona fide occupational qualification or requirement within their collective agreements.

To establish a BFOQ, as we know, it must be that the requirement has been imposed honestly and in good faith, that it is objectively necessary or required, and that the circumstances of the person cannot be accommodated without undue hardship considering the cost, outside sources of funding and, if any, the health and safety requirements.

Some background with respect to firefighting mandatory retirement and the Ontario Human Rights Commission: In 1982 the Supreme Court of Canada held that a municipality and a firefighters' association cannot essentially contract out of the Human Rights Code and reversed an Ontario human rights board of inquiry decision—this was *Commission v. Etobicoke*—which upheld mandatory retirement at age 60 because the decision was based solely on impressionistic evidence that was provided by those within the fire services, witnesses, to the effect that firefighting is a "young man's game." As a result, the courts required statistical and medical evidence based on observation and research on the question of aging.

Four years later, in 1986, a tribunal under the Ontario Human Rights Code exhaustively considered both impressionistic and medical evidence, as determined by the Supreme Court in the *Etobicoke* case, on the impact of aging on a firefighter's health and safety, and concluded that the retirement age of 60 was justified as a

BFOQ for firefighters. We supplied this case during the consultation phase to the Minister of Labour's staff. It was in excess of 100 pages; I didn't want to swamp you today. We rely on its extensive investigation regarding mandatory retirement within the fire service. We believe it is still relevant today.

The case combined allegations from firefighters of varying ranks within the fire service from across the province. The complainants were from St. Catharines, Waterloo and Windsor, and they worked as firefighters, lieutenants, captains, platoon chiefs and deputy chiefs. They all alleged the same charge of age discrimination.

What's important to note is that it was Professor John McCamus who was the individual who presided over this case. John McCamus is a professor of law and a former dean of Osgoode law school, and was also acknowledged in 2002 with the law society medal by the Law Society of Upper Canada. In his biography for this prestigious award, he was recognized as "a member and chair of the board of directors for the Canadian Civil Liberties Association, Professor McCamus has been instrumental in guarding the rights and freedoms of Canadians ... Professor McCamus has shown dedication to, and zeal for the rule of law, and the liberties of all."

In the McCamus decision it is clear that all relevant decisions in Ontario, Canada and the US were considered on the determination of when and how to apply a mandatory retirement age.

As previously mentioned, the decision gave extensive consideration, taking years to adjudicate to a wide range of firefighters from various fire departments. I will briefly focus on some of the details. It heard extensive impressionistic evidence from active firefighters from the various departments, and they provided testimony on job function. It also heard exhaustive statistical and medical evidence from physiologists, cardiologists and psychologists. Ironically, both the claimant's and the respondent's medical experts agreed on the fact that very few, if any, 60-year-olds possess the necessary aerobic capacity for firefighting, even if a regime of compulsory exercise was enforced throughout their career.

The decision went on to say, with respect to the increase of coronary artery disease, that, "I conclude that the employers have demonstrated that it is impractical to deal with employees on an individualized basis to determine whether a particular employee suffers from" cardiac artery disease or coronary artery disease "to such an extent that there is a substantial risk of a cardiac event occurring."

On this point, McCamus refers to the US Supreme Court decision where jurisprudence permits employers to err on the side of caution in cases such as this, where the consequences of employee failure have grave implications for public safety and the safety of fellow employees. This point is especially relevant, as firefighters typically work in pairs for safety reasons. When one firefighter's performance is affected, everyone turns their efforts to saving that firefighter, thus increasing the risk to fellow firefighters and the public.

As reported in this case, it was determined that the high threshold of all or almost all individuals identified in other cases was met. Firefighters over 60 would not possess the aerobic capacity necessary for firefighting, the incidence of coronary artery disease would increase with aging, and there are no methods of testing either aerobic capacity or the propensity for a heart attack of an individual firefighter that can safely be imposed as a substitute for compulsory retirement at age 60.

There are similar rulings across the country. In Saskatchewan, a board of inquiry was upheld by the Supreme Court of Canada in 1989, consistent with the McCamus board's conclusion that as a factual matter, individual testing was not feasible. In this respect, the board had stated:

"The safe and efficient performance of a firefighter's duties is imperative especially where a situation exists involving danger to the life of a member of the community or a fellow firefighter. It is my opinion that there is no reliable testing procedure that will accurately determine how an individual will react or be able to cope with an emergency situation."

Moreover, this decision was applied to a chief fire inspection officer on the ground. Although he had not in the past been required to fight fires, his duties required him to engage in active firefighting when called upon to do so by the fire chief. That's certainly relevant for Ontario in many of the smaller departments, where there are dual roles and they only have very few full-time firefighters. They may be providing fire inspection or training during the day, but if there's an emergency call, they'll be called upon to fight fires or engage in that emergency.

The provincial government's position was laid out by the minister in the House on April 27, 2004, when he said, "We want to make sure that we eliminate mandatory retirement, but do so in a way, however, that protects the rights of those who still wish to retire at a defined age such as 65." We recognize and appreciate the intent of this statement; however, the OPFFA strongly feels that the protection of the health and safety of the public and other firefighters also needs to be seriously considered in this consultation.

I just want to touch very briefly on occupational disease, which is on the last page. Besides lung and heart disease, which was focused on in the McCamus decision, a stark reality associated with our profession is the enhanced risk of cancers from our occupational disease and occupational hazards. A firefighter's life expectancy is typically years shorter than the average person. Currently, the Workplace Safety and Insurance Board has recognized various cancers related to our profession, and we are processing cancer claims for our members in astonishing numbers. Early retirement limits the exposure of our members to noxious substances and helps ensure that there will be a much deserved period of retirement prior to the shortened life expectancy of firefighters.

Given all of the above, the OPFFA believes that this government has the opportunity to act in a balanced

manner to address individual rights while protecting the health and safety of all firefighters and the public. So it's our recommendation that the government establish within any proposed amendments that all firefighters, as defined under part IX of the Fire Protection and Prevention Act, have a mandatory retirement age of 60. This could be accomplished by legislative recognition, through a deeming provision that the mandatory retirement of firefighters at age 60 is a bona fide occupational requirement.

We believe that the question of mandatory retirement for firefighters has already been litigated at length, with consistent rulings. Missing this opportunity to address this matter will force numerous municipalities, associations and individual firefighters to expend substantial resources and valuable time in needless litigation, and we'll be litigating this issue in perpetuity.

I'll conclude my presentation with that. Thank you again for the opportunity. We are certainly subject to any questions. That is our presentation.

The Chair: Thank you. We'll begin with the Tory caucus.

Mr. O'Toole: Thank you very much for your presentation. In the interests of time, I really have no comment. It's well documented. I think your comments from Professor McCamus are absolutely—you're trying to avoid future challenges, which was brought up by the police association. Thank you for your presentation.

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Mr. LeBlanc: Thank you, and as I said, the actual decision was supplied to the Ministry of Labour, if you require a copy.

The Chair: Thank you, Mr. LeBlanc. Now we move to Mr. Bisson.

Mr. Bisson: A couple of things: First of all, the industrial disease side of this I well know, because I started in politics doing epidemiology studies on lung cancer for gold miners, cancer of the pharynx, stomach etc.

The thing that always struck me when I would interview people—the widows and the families of the deceased miners—was that these guys worked until they died because they had no benefits. I don't have a nice way of putting this, but basically what happened was that people were forced to work because there were no benefits to sustain the family once the individual removed themselves from the workplace—it was either a sillicotic or a lung cancer patient etc.—and worked as long as humanly possible, and quite frankly worked until they dropped. That's kind of the problem I'm having.

I understand the argument that people who choose to work past 65 should have a right to do so; however, it is fraught with all kinds of problems. If we don't deal with those other issues—for example, we in the steel workers tried to lower the average retirement age in the mining divisions to be able to protect workers from themselves. We did a lot of advances on health and safety and making the mine cleaner, but the problem is, it's still a risky environment, as it is for firefighters. Your comments I understand full well, and that's one of the flags that we need to raise.

I have to leave for another meeting I have to go to, and my colleague Mr. Kormos will be here later. But on that particular point, is there anything that you think we should be doing to make sure that we don't open that sort of problem?

Mr. LeBlanc: I guess just to follow along about saving workers from themselves, that's why our encouragement is to have the legislation actually identify age 60 as a bona fide occupational requirement for firefighters as defined under the act. You talked about a risky and hazardous workplace: We, under the Occupational Health and Safety Act in Ontario, do not have the right to refuse. Regardless of the status of the workplace, we don't have the right to refuse going into that workplace.

Mr. Bisson: The whole caution I give to the government, very quickly: There are certain environments in the workplace that are more dangerous than others. If you extend the retirement age, there's an effect on people's health and safety. I think we need to incorporate that in the bill, at the very least. That's my point.

Mr. LeBlanc: Thank you.

The Chair: Thank you, Monsieur Bisson. We move to the government side.

Mr. Flynn: Thank you, Mr. LeBlanc—very clear presentation, very balanced. I just wondered if you could give me a bit of a snapshot of what firefighting is like in Ontario today. Have we, for all intents and purposes, established a retirement age of 60, or are there any—let me phrase that another way: Are there any major fire services that do not use 60 as the retirement age?

Mr. LeBlanc: The city of Toronto allows its firefighters to work until age 65, and I believe Richmond Hill and possibly one other, either Milton or Halton Hills. I just don't remember off the top of my head. So there are some out there that currently allow them to work to age 65. Certainly, if age 65 was removed, then there lies the other question. When you get into larger departments, it goes back to what Mr. O'Toole asked the previous presenter about having positions that people could go to to take them out of maybe an emergency situation. Larger departments may have those opportunities, but the vast majority of departments in Ontario are not that large.

Mr. Flynn: I would imagine you plan to make presentations on Bill 206 this afternoon?

Mr. LeBlanc: I have, actually, last week, yes.

Mr. Flynn: Wonderful. Does the passing of this proposed Bill 211—it wouldn't preclude the case continuing to be made that a retirement age should be established, but what you're saying is that we should seize this opportunity and do it now.

Mr. LeBlanc: We think that it has been fully litigated in the past, and a lot of the members' associations and municipalities accepted the McCamus ruling because it took firefighters from across the province and it took firefighters of various ranks. So that meant that you had different job responsibilities: one was even in management as deputy chief, down to a supervisor role of captain or lieutenant, right down to the front-line firefighter. It was deemed across that entire spectrum

through exhaustive statistical, medical and impressionistic evidence that age 60 was appropriate.

Everybody took that snapshot in 1986 and started moving to have both parties in the collective agreements recognizing the fact that it's a bona fide occupational requirement. So age 60 is the age in the vast majority of our locals and applied to the vast majority of firefighters in the province.

What we have right now is a challenge going on in London, two in Toronto, one in Hamilton, and we have a host of others that have given indication to their locals that should this legislation not have anything in it, they are also going to go through this. What I envision is—the BFOQ is applicable on an individual basis—if Brian and I wanted to challenge it or I wanted to challenge it and I was successful, then Brian comes through and then he could challenge it. We're going to have local associations and municipalities that just simply aren't going to expend the resources time in, time out.

The Chair: Thank you, Monsieur LeBlanc, for your presentation on behalf of the Ontario Professional Fire Fighters Association.

CANADIAN AUTO WORKERS

The Chair: I would now invite respectfully our next presenter, Mr. Tony Wohlfarth, from the Canadian Auto Workers. Gentlemen, your written deputation is being distributed by the clerk. As you know, you'll have 15 minutes in which to make your remarks; as well, any remaining time would be distributed amongst the parties afterward. Please begin.

Mr. Tony Wohlfarth: Thank you very much, Mr. Chairman, for the opportunity to present to your legislative committee on behalf of the Canadian Auto Workers union. My name is Tony Wohlfarth. I'm a national representative with the pension and benefits department of the CAW. I'm joined in this presentation by Mr. Al Moss. Al is on the executive of the retired workers from CAW Local 303. He's very active in our retired workers chapters.

You have just received a copy of our brief and you'll be glad to know, Mr. Chairman, I have no intention of reading it to the members of the committee. In fact, I look forward to having a good exchange in terms of questions and dialogue.

Just by way of introduction, our union is very well known to members of the Ontario Legislature. We obviously represent members in every riding around the province and, indeed, from coast to coast. We have also been very active as a union in pension policy—the first union to negotiate 30-and-out retirement provisions, the first union to negotiate pension indexing in the private sector. We are now very much engaged in the debate which I would encourage you, as members of the Legislature, to become involved in, and that is how we can ensure that more Canadians are covered by defined benefit pension plans. It has even been drawn to the attention of the governor of the Bank of Canada that the

advantage of defined benefit pension plans is that the risk is borne by the plan and that the plan is in a better situation to bear that risk than individual plan members. So the future of defined benefit pension plans is very much on the radar screen, and I invite members of the legislative committee to get involved in that debate.

I think it's well known to all members of the Ontario Legislature that CAW—Canada does not support Bill 211. I think you'd be surprised if I came here today with a different position.

Notwithstanding that, I think it's important that we use our brief time with you today to highlight some specific concerns with the legislation. The first specific concern that we've drawn to your attention is the impact on human resources policies. There is a growing body of evidence, obviously, that in the world of no mandatory retirement—in other words, a world in which employers don't know when an individual is going to retire, in that world—we are going to see massive change in human resources policies, including performance evaluations, appraisals, pressures on older workers to perform, and demotions and dismissals, including prior to age 65. So what we're obviously looking for from this legislative committee are protections. Given that we know that's going to happen, there need to be protections built into this legislation, which there are not right now, to guard against discrimination against older workers.

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I invite you later today in your hearings to put that question to the Ontario Human Rights Commission, how they intend to protect the rights of older workers. The problem I have with their position on this issue is that they're a protagonist in the debate. Long ago, they came out in favour of eliminating mandatory retirement, so they're kind of blinkered when it comes to looking at the side impacts, the employment and human resource impacts of the issue. I hope I'm wrong in that regard, but I think you should challenge them and challenge yourselves to come up with a series of legislative and regulatory proposals that will protect older workers.

The second issue that we're raising with you—obviously, it has already been discussed—is a broad exemption for workplace agreements. We obviously have many workplaces within our union where mandatory retirement is a new one, and it seems to me, based upon what's happened in other jurisdictions, that it's fairly simple, it's fairly straightforward to provide an exemption within the legislation. We don't see that broad exemption in there. We'd like to see that exemption in the legislation and indeed in the regulations.

Last but certainly not least, our biggest concern with the elimination of mandatory retirement is that we see this as the thin edge of the wedge for eliminating pension eligibility at age 65. I'm talking initially about public pension eligibility, but I'm also talking about private pension eligibility. Obviously, that's not the will of retirees. Retirees want to retire early, and they vote with their feet in numbers to retire early where they have an adequate pension and an ability to do so. We have seen

witnesses, including the Ontario Chamber of Commerce at the consultations that took place last year on the draft legislation, say that that's what next. Employers are quite open about it. That's the way they're going in that regard. We've seen Germany most recently go in that direction—age 67—as part of the government agreement with the new chancellor, Angela Merkel. And of course we've already seen the United States move in that direction. It would be nice to see political leadership coming from this committee and ultimately from the Premier of Ontario to say, "That's not where we're going. There are guarantees. We are not going to change public pensions."

So benefits are an issue, human resource policies are an issue, and public pension eligibility is an issue. Before I close off and ask for questions, I just want to reinforce the point I made a moment ago. Seniors are not in any way clamouring for this legislation, so don't get it in your heads that this is something that's coming from seniors. Our union is very active in seniors' organizations. One of the largest seniors' organizations is the National Pensioners and Senior Citizens Federation. They have a resolution on their books raising these very same concerns and opposing the elimination of mandatory retirement because of these very same concerns. I raise that so, first of all, you'll be aware of it, because it's a very recent development. Second of all, I encourage members of the legislative committee, when you talk to the Canadian Association of Retired Persons later today, to challenge them on that question. They were recently challenged at a Saskatchewan Human Rights Commission hearing in Saskatoon on that issue; they could not answer the question, so I encourage you to follow it up with them here today and ask them that question.

The final point—and I want to give Mr. Moss an opportunity to speak to you as well—I want to reinforce before questions is that there is this sort of myth out there that workers in Ontario, of their own volition, always choose the age and the date at which they're going to retire. In fact, given what's happening with workplace restructuring, given the rate of illness that happens among workers, given the rate of marriage breakdown, given the rate of family illness, that isn't the case.

Mr. Moss, as I've mentioned, comes out of CAW Local 303. For those who are fairly new to the Legislature, Local 303 represented workers at the General Motors plant in Scarborough that closed in 1990. There were literally hundreds of workers who, as a result of that plant closure, didn't choose to retire; they retired because they had no other alternative, given the fact that their workplace had closed.

On that note, I'm going to ask Alan to talk a bit about the experience they went through with the workplace closure of General Motors in Scarborough.

Mr. Alan Moss: I retired early. I retired when I was 63. That was before this plant closed. Most of the fellows I know had different views on it entirely, when they were going to retire and how, and then when the plant closed, they had no choices left. They could take early retirement or they could go to Oshawa or Windsor to different GM

plants and work there, but there they started at the bottom of the line. They had no seniority in the plants. Therefore, they got the early work positions, which are the toughest ones in the plants.

It would be very difficult for some guys who are 40, 45 or 50 years old to be retired at that age because it's hard for them to get another job, and it's difficult to get new training. If they've been there for 20 years and they're 45 years old, it's a whole change in lifestyle entirely. It makes it difficult for them. Then travelling: They had to have good cars to go to these different jobs or move their families to these different jobs.

For the most part, they made do one way or another. I haven't talked to too many who were right out of luck. They left the union. They felt betrayed by the union, really, because there was nothing for them. What could they do? They closed the plant and tore it down. Some of them were betrayed, or felt so. Some men were not at all satisfied with the arrangements, being made to go to other places because, as I say, they got the worst jobs. This would be 2,000 people; we had 2,000 ideas, and not all of them are the same.

Me, I was all right. I made up my own mind and worked my own way. It was satisfactory to me. I had outside investments that added to my pension plan, and that helped. My Canada pension plan was reduced by 12%, 6% a year for the two years until I reached 65.

That's about the end of my statement, I think. I'm not at all prepared.

The Chair: Thank you, gentlemen. We have a reasonable amount of time for both parties. We'll begin with Mr. Racco.

Mr. Mario G. Racco (Thornhill): I appreciate the comments that were made by Mr. Wohlfarth, and I understand you're asking a question. I'm not the minister, so I can't give you much assurance, but on a personal level I appreciate that 65 should be the year where people should be collecting a pension if they choose to.

The merit that I see in this legislation is that I believe people have the right to choose when they want to stop working. Of course, I always look at my situation, and I look at the Prime Minister of Canada. He certainly is older than 65, so hopefully you're not going to suggest that he, or she in the future, won't be able to continue working.

On a personal level, when I'm 65 my daughter will be 20 years old. Hopefully, she will be doing much studying after 20, and it would be very hard for her to continue her education, if she chooses to, if I were collecting a pension.

Having said that, I hope you will see the merit in allowing people to work longer if they want to, but I do appreciate the comments you made about being 65 and being able to collect.

Those were my comments.

Mr. Flynn: Mr. Wohlfarth, when you came, you said you thought I'd be surprised if you came with any other message. I'll tell you, I was very surprised at the outset of the debate with where the CAW landed on this. I come

from Oakville. Oakville is my riding, Local 707. The CAW's got a long, proud history—

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Mr. Wohlfarth: A long and proud history.

Mr. Flynn: Yes, and the UAW before that, I think, has always been very pro-human-rights, very ahead of the game on human rights. Jim Stanford, for example, is one of the economists you employ who I think give us an insight into the economy of our country, taking into account some things that aren't taken into account by the mainstream. I think he does a super job.

Your organization, I think, is top-notch. The message is one that I'm having a hard time understanding. Is your point that we should have better pensions in this country and that workers should be treated in a better manner when they choose to retire? That I can understand. But what you appear to be saying and the message I got throughout the hearings, is that you agree that people should be forced to retire at 65. Could you just separate the two?

Mr. Wohlfarth: You've made reference to the situation at Ford. I'll be happy to elaborate on what the situation is at Ford, at General Motors and also at DaimlerChrysler. In the collective agreements at the three major automakers and, indeed, many other workplaces, we have a letter of understanding which says that employees shall retire when they reach age 65. That hasn't been controversial. That was ratified at a membership meeting, and continues to be ratified at membership meetings, including, most recently, a couple of months ago.

You'll recall that a couple of months ago, we had some difficult issues we were dealing with at Ford. I don't want you to think that that's where the debate's at in the plant. If you think that's where the debate's at in the plant, go and talk to the workers. The workers are saying, "When can I get out? Age 48, age 49, age 50—"

The Chair: Thank you, gentlemen. I might suggest that you may want to continue your conversation post-committee. Mr. O'Toole from the Tory side.

Mr. O'Toole: Thank you very much for your presentation, and that would be both of you. I had 30 years working in General Motors, about 10 of it in personnel-labour relations. I'm very familiar with Local 222. I would say that I understand that negotiations on 30-and-out and other understandings are duly appropriated by those two parties working together, the employer and the employee, and I'm certain the contracts will be challenged.

I know there are tradespeople who like to stay beyond 65. Many of them are very innovative. I know a couple in my riding who actually have patents. These people are just at the productive stage of life. I like the idea of choice. I leave the rest to you to negotiate.

But I have a predetermined interest in the whole issue of pensions. I hope you've read the comments of the Office of the Superintendent of Financial Institutions this morning in the paper. It's quite interesting. When I was assistant to the Minister of Finance, I was fortunate to do

the consultations and the report on the distribution of pension surpluses. I attended the Monsanto hearings, I watched and listened to the debate, I have federal reports on it. I'm not an expert, I'm not an actuary, but I worked with the three top actuaries in the province, both from the legal community as well as the pension organizations.

There's something that's got to happen here. You said that transition in the workplace—and my community, which includes a lot of the General Motors employees who will be affected by the 4,000-plus layoffs, is just, in my way, the beginning of a new understanding of the workplace. The unions know that as well. Certainly, the CAW is diversifying its membership list to find other than institutional, industrial organizations, because our economy, as we know, in the last year or so has lost 65,000 in the industrial sector. It's changing. Globalization is changing it, not Dalton McGuinty, essentially, any more than anyone else—

The Chair: If you might wrap up, Mr. O'Toole.

Mr. O'Toole: With your indulgence, this is a huge issue. I put to you as a challenge, firstly, that in the negotiations with the reorganization in the workplace, pensions, for the most part, should first be negotiated, and secondly, in the future probably more defined benefit plans will be gone. Defined contribution plans will be the state of the future, where they're mobile, predictable and I'm responsible. I have a role to manage my life. I don't want to end up at the end of 30 years saying, "Where are my savings?"

The Chair: Thank you, gentlemen, and to the Canadian Auto Workers for your deputation and written submission.

ONTARIO HUMAN RIGHTS COMMISSION

The Chair: I would now invite our next presenters, from the Ontario Human Rights Commission, Evangelista Oliveira, chief commissioner, and Nancy Austin, executive director. If you have any written materials for distribution, please do present them to the clerk. Your time begins now.

Ms. Nancy Austin: Thank you very much. My name is Nancy Austin. I'm the executive director of the Ontario Human Rights Commission. I am appearing here today in place of chief commissioner Ivan Oliveira, who is unfortunately unable to be here and sends his regrets. With me are Lauren Bates, senior policy analyst at the commission, and Bill Noble, executive assistant to the chief commissioner.

The Ontario Human Rights Commission welcomes the opportunity to provide comments on Bill 211, the Ending Mandatory Retirement Statute Law Amendment Act, 2005. The commission commends the government for bringing forward this legislation and supports its broad intent. However, the commission has concerns about some provisions of Bill 211.

Mandatory retirement raises a host of complex social, economic and human resources issues. At its core, however, lies a fundamental issue of human rights. Older

persons are often subject to a host of negative stereotypes and assumptions about their worth, abilities and contributions to society. Older workers are often unfairly perceived as less productive, less committed to their jobs, less dynamic or innovative and less receptive to change. It is the experience of the commission that this agism is ingrained in societal structures and attitudes, and that it can serve to disempower and devalue older persons in important aspects of their lives. Agism and age discrimination have the same impact on those who experience them as unequal treatment based on other grounds of the Ontario Human Rights Code and should evoke the same sense of moral outrage and condemnation.

In 2000, the commission launched a province-wide public consultation on age discrimination. It received a tremendous response from the public. Many of the submissions that the commission received focused on the impact of mandatory retirement. This is an issue that profoundly affects the lives of thousands of Ontarians. The vast majority of those who made submissions on mandatory retirement were in favour of ending it. In its 2001 consultation report, *Time for Action*, the commission recommended that the code be amended to eliminate the blanket defence to mandatory retirement at age 65 and to extend protection against age discrimination to workers over age 65. The commission made this recommendation based not only on the strong expressions of public concern that we heard, but based on the fundamental human rights principles of participation, individualization and dignity.

Employment is central to an individual's opportunity to participate fully in society and to feel a part of the community. Not only does employment have a major impact on a person's economic status, it also promotes independence, security, self-esteem and a sense of contributing to the community.

Mandatory retirement involves imposing an employment decision based solely on age, not on a person's ability to do the job. Mandatory retirement embodies a set of assumptions about the worth and abilities of older workers. At the core of human rights is the entitlement to be considered as an individual first and not simply as a member of a group, and to be judged on one's individual skills and abilities. As a society, we would not find it acceptable if individuals were to be terminated from employment on the basis of any other ground of the code, such as race, sex or disability.

Mandatory retirement impacts on the dignity of older employees. Being told that one is no longer a valued employee, solely because of one's age, can have a profound psychological and emotional impact.

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As well, mandatory retirement may have a particularly serious and disproportionate impact on individuals belonging to vulnerable groups. Women who leave the paid workforce to raise children or care for family members do not receive income and cannot contribute to the Canada pension plan for the years they do not work outside the home. Moreover, when they do return to paid

work once they no longer have caregiving responsibilities, they may face retirement just as they reach the peak of their careers or earning capacity. Women who are part of the paid labour force but who tend to work in sectors where employer pension plans are not available, in part-time or temporary employment and in jobs that earn considerably less than men, face a different challenge. These women are unlikely to be able to accrue a large enough CPP, RRSP or private pension to allow them to retire with a decent standard of living. Women are therefore often at a real risk of being forced into poverty as a result of mandatory retirement.

Recent immigrants face many of the same difficulties. They may have shorter periods of employment in Canada upon which to build up a pension, and they, along with racialized persons and persons with disabilities, also tend to have more restricted access to the labour market, lower incomes and greater unemployment during their working lives. As a result, these groups also face serious consequences because of mandatory retirement.

The commission therefore believes that mandatory retirement is a serious form of age discrimination and commends the government for bringing forward legislation to end this practice. The commission supports the general intent of Bill 211. However, the commission has grave concerns about some aspects of Bill 211, specifically the provisions regarding access to benefits and to workers' compensation.

Bill 211 leaves intact the provisions of the Employment Standards Act and its regulations that permit employers to discriminate in the provision of benefits against employees who are age 65 and older. This includes medical and dental benefits, as well as life and disability insurance. Employers are not prohibited from providing lesser or no benefits at all to employees once they reach age 65. Essentially, the provision of benefits to employees over age 65 is at the discretion of the employers. There may be no difference whatsoever between the skills, abilities and job duties of an employee aged 64 and one aged 65, but one will have access to benefits and the other will not. Without amendments to Bill 211, employees who are denied benefits or who receive lesser benefits solely because of their age will not be entitled to file a human rights complaint on the basis of age discrimination.

Many of those who continue to work past age 65 do so because they cannot financially afford to do otherwise. As noted earlier, this may be particularly true for women, recent immigrants, racialized persons and persons with disabilities. These are among the most vulnerable of employees, for whom the denial of benefits will have a serious economic impact.

Permitting employers to arbitrarily cut off benefits to older workers, rather than making a determination on a rational basis, is both discriminatory and unfair. There are well-established principles in human rights law for dealing with benefits and insurance issues. For example, section 22 of the code creates a defence for insurance contracts—including life, accident, sickness and dis-

ability insurance—which permits them to make distinctions on grounds such as age, sex, disability and marital status where there are reasonable and bona fide grounds to do so. Similarly, regulation 286/01 under the Employment Standards Act permits life insurance and disability benefit plans to make distinctions on grounds such as age, sex and marital status, when such distinctions are made on an actuarial basis.

The Supreme Court of Canada has supported this kind of measured approach in its decision in *Zurich Insurance Co. v. Ontario* (Human Rights Commission), and the commission believes that it is preferable to the use of a general exemption. This approach recognizes both the importance and primacy of human rights principles, and the requirements of operating sustainable group insurance and benefits schemes. It puts the onus on employers and insurance providers to ensure that distinctions made on code grounds are rational and defensible, not just an across-the-board cut. It also permits human rights oversight where necessary. These kinds of defences have historically operated well and appropriately. The commission therefore recommends that Bill 211's sweeping and arbitrary exemption from benefits protection for persons aged 65 and over be replaced by a more circumscribed defence for employers and insurance providers, whereby distinctions in the provision of benefits are approached on a bona fide and reasonable basis, with the employer bearing the onus of demonstrating that the practice is justified in the circumstances.

The commission also has concerns regarding Bill 211's approach to workers' compensation issues. Bill 211 amends the Workplace Safety and Insurance Act, 1997, to add a primacy clause, stating that provisions of that act, the regulations under it and any decision or policy under it that requires or authorizes a distinction made because of age shall apply despite the provisions of the code. There are very few statutes that exempt the code in that way.

This is an extremely broad clause. It authorizes distinctions to be made not only on the basis of age 65, but any age. It essentially permits the workers' compensation scheme to be exempted from all the requirements of the code regarding age. It permits no challenge or oversight under the code. The commission believes that this exemption is overly broad, and not in keeping with the code's own primacy clause.

The commission has concerns regarding particular provisions of the WSIA that will now be shielded from review under this clause. For example, section 41 requires employers to re-offer employment to those employees who have been unable to work because of injury, and who have been employed by the employer for at least one year prior to the injury. This includes a duty to accommodate the employee, to the point of undue hardship. This entitlement lasts for two years from the date of injury, or one year from the date that the employee is able to do the essential duties of the job, or until the employee reaches age 65. The impact of the exemption contemplated by Bill 211 is that workers who

are injured when they are near, at or over age 65 lose one of their most important rights under workers' compensation legislation, regardless of their individual abilities and medical status and without any individualized assessment of their circumstances.

It's unclear why older workers should be considered ineligible for re-employment and accommodation based solely on their age. This is inconsistent with widely recognized rights under the code for employees with disabilities to be accommodated in the workplace, and with human rights principles of dignity, the right to participation and integration, and individualization.

The commission believes that Bill 211's approach to benefits and workers' compensation is inconsistent with the general intent of this legislation, which is to recognize the worth and contribution of older workers, to provide workers with the dignity of choice and to ensure that employees are assessed on their skills and abilities, not on their age. The provisions of Bill 211 respecting benefits and workers' compensation are a form of age discrimination. They send a message that older workers are essentially of lesser worth and value than their younger co-workers, and reinforce negative and ageist stereotypes and assumptions about the abilities and contributions of older workers. They fail to recognize the contribution of older workers to their workplaces or the importance of work to older workers. These provisions are offensive to dignity, and the commission believes they will be vulnerable to challenge under the charter.

Should the government choose not to amend sections of Bill 211 dealing with benefits and workers' compensation, the commission recommends that the legislation include a five-year sunset clause for these provisions. During those five years, the impact of the end of mandatory retirement on benefit schemes and workers' compensation could be reviewed with a view to determining the continued appropriateness, or lack thereof, of these exemptions.

In closing, the commission once again wishes to congratulate the government on undertaking this important legislation. This is an issue of human dignity, independence and self-determination. It is important that the practice of mandatory retirement be brought to an end. It is also important that this be done in a manner that respects fairness and principles of human rights. Older workers make valuable contributions to this province every day. Their contributions and their rights must be respected.

I thank you for the opportunity to comment on this legislation, and would now be pleased to respond to any questions you may have.

The Chair: Thank you very much. We begin with the government side.

Mr. Racco: I certainly appreciated most of the comments that you made, but I want to ask you a question on the issue of new Canadians, most importantly parents—mostly mothers, but also fathers—who stay home to raise their child for a specific time or year. In my opinion, it's the best thing that anybody could do, for social and moral

reasons, but also for economic reasons. A child who grows up under a stable situation is going to be much better for the nation, for the province, not just socially, but also economically.

Have you planned, or are you planning, to speak to the federal government—because they are responsible for it—especially now when they're giving money all over the place, considering there's an election coming up shortly? Are you planning to speak to them shortly to raise those two issues specifically?

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Ms. Austin: The Ontario Human Rights Commission's jurisdiction is generally Ontario. I can take your question back to the chief commissioner and ask what he would like to do with that.

Mr. Racco: Thank you. I would recommend that you do all you can to speak to them today or in the next month or so.

Mr. Flynn: Thank you for your presentation. I think what we all recognized during public consultations was that, despite all the details and opinions that were brought, this was essentially a human rights issue. That's what I think was driving everybody.

Under the current plan with the workers' safety insurance, they're entitled to two years' benefits over the age of 63. My understanding of the proposed legislation is that that will not change. Somebody who was 67 would get covered to 69. You're saying that you don't understand it that way.

Ms. Austin: I do not understand it that way. Do you want me to have Lauren Bates address that?

Mr. Flynn: Yes, if you could expand on that, I'd appreciate it.

Ms. Lauren Bates: I think we're talking about two separate provisions. I think you're referring to the loss of earnings benefits.

Mr. Flynn: Right.

Ms. Bates: As you indicated, they go from two years, whenever they began. If you're 67 when they start, you get two years, or if you're 63, you get two years.

The provision we're specifically speaking to here is the right to re-employment, which actually has a hard cut-off now at the age of 65. You have a right under workers' compensation legislation to essentially return to your workplace. There are some specific details around that, but you have the right to return for a period of two years. However, if you're age 64 when you're injured, you'll only get one year of that. If you're age 65, you'll get none of it. There is a hard cap at age 65 in section 41 of the Workplace Safety and Insurance Act, and that's going to be protected from any review or any complaint under this proposed legislation.

Mr. Flynn: My understanding is that any proposed changes we're intending to make through this legislation would not impact the duty to accommodate. Is your understanding different?

Ms. Bates: What it would impact on is a person's rights under workers' compensation schemes. So the rights with respect to disability should not be impacted.

However, it's unclear at this point what would happen if somebody was to file a complaint under the code saying, "I've been discriminated against on the basis of disability because my employer refused to return me to work when I was able to work. I am over 65." At the same time, we've protected workers' compensation from having to return somebody. It's incoherent.

Mr. Flynn: OK, so it's unclear. We're not sure which side it's on right now and it needs to be clarified. Would that be your point?

Ms. Bates: Yes.

Mr. Flynn: Very good. Thank you.

The Chair: Thank you for the deputation from the Ontario Human Rights Commission.

CANADA'S ASSOCIATION FOR THE FIFTY-PLUS

The Chair: We'll now invite our last presenters of this particular committee hearing, from CARP, the Canadian Association of Retired Persons, fifty-plus, William Gleberzon, director of government and media relations. Mr. Gleberzon, I remind you that you have 15 minutes in which to present. Your time begins now. Please go ahead.

Mr. William Gleberzon: Can I have a second to have these passed out? OK.

I obviously want to thank the committee for the opportunity to make this presentation on Bill 211, which will affect the lives of thousands of Ontarians. I preface my comments by saying that CARP supports this bill. Our presentation is about some of the concerns we have about the bill. These were expressed in a letter that we sent to Mr. Racco after we met with him on the bill. I'll just read you what we said in that letter.

The concerns we had, first, were about the transition period. The length of the transition period proposed in the bill is one year from the date of royal assent of the bill. This is far too long, and many people will be penalized because their 65th birthdays fall within this period.

This problem could be rectified in any of the following manners, and these are some suggestions: The period should be shortened to six months; those whose birthdays fall within this time frame should be protected through a grandfather clause, which is very appropriate in this instance, if they wish to continue working; the transition period should be based on a case-by-case determination by a tribunal appointed by the government for this purpose, rather than a blanket period of time. Nevertheless, after one year from the date of royal assent, the transition period should be completed for all companies.

Secondly, protection against age discrimination: The amendments to the Ontario Human Rights Code and the Ontario Employment Standards Act, 2000, should be amended to extend protection to workers 65, without any exceptions.

The one exception retained in the current bill regarding bona fide occupational qualifications or require-

ments must be revised. Ability, not age, must remain the touchstone for choice. Safeguards must be enacted to prevent using the bona fide occupational qualifications or requirements as a back door for the de facto continuation of mandatory retirement. Rather, employers should make accommodations for employees who reach 65 before they are forced to leave, assuming, of course, these people want to continue to work. For example, they could be reassigned to teaching, coaching, mentoring or other less onerous jobs.

Collective agreements: Unions and employers would still be able to negotiate voluntary retirement incentives—for example, early retirement packages—because that's consistent with the notion of choice. However, individual workers should retain the right to opt out of such agreements if they chose to continue working.

Benefits, pensions and insurance plans: Employees should continue membership in pension plans and accrue benefits past age 65; otherwise, of course, they continue to be discriminated against, which this bill is supposed to end. Existing services or contribution caps must be extended for the length of employment after 65. Moreover, the Employment Standards Act, 2000 should be amended to permit those who are forced to retire because of age to receive notice of termination and severance pay, as any employee would.

The Workplace Safety and Insurance Act, 1997, which was so ably presented by the previous speakers: The Workplace Safety and Insurance Act, 1997, and its predecessor, the Workers' Compensation Act, and all regulations, policies and decisions made under them should be amended to extend protection to workers over 65 in the same manner as those under 65, so that the choice is in no way hampered if people decide they want to continue to work.

The next paragraph just explains how the act currently works.

Those were the issues that we brought to Mr. Racco's attention when we met with him to discuss this issue. I want to add one other comment about the hearings themselves. While CARP supports the bill entirely and congratulates the government on bringing forward the bill, we must say that we're very disturbed by the way in which this particular hearing is being held and was made known.

CARP found out about this committee hearing only indirectly yesterday before noon. A CARP member just happened to call the labour ministry to ask about progress on the bill and was told about this committee hearing and to call the clerk of the committee if she wanted to make a deputation. She was not able to do so and immediately called CARP to ensure that we would be making a presentation. If she had not called us, we would not have known, although our interest in this legislation is well known. Fortunately, we had this letter to Mr. Racco available so we could use it as the basis for our presentation on such short notice.

We're also concerned that such an important bill is being reviewed by the committee on only one day for

two hours. We're aware that tomorrow you will be reviewing it clause by clause, but nevertheless, we think that this will not provide sufficient time for many others who want to make representations on this bill. Thank you very much.

The Chair: Thank you for your deputation. We'll begin with the government side.

Mr. Racco: I'd just like to answer some of your questions. First of all, I thank you for coming. Certainly, your letter is appreciated and has been sent to the minister for his consideration. Of course, the minister will take leadership on your suggestions to us. The parliamentary assistant is here, so again, I'm sure he will certainly bring it to the minister's attention.

With regard to the fact that you were not aware, unfortunately, I didn't know and I didn't have the opportunity to investigate. But we certainly want to hear from all the people interested in the matter. As you can see, our agenda is short; you are our last presenter. We normally spend more time, if there is interest. My conclusion is that there wasn't more interest in speaking on the topic. That's why it's so short. Therefore, I don't think you should blame us on the matter, but nonetheless, I apologize for your group not being aware of this opportunity to speak and I will certainly look into the matter to find out why.

We thank you for your presentation, for your letter, and for the fact that you came to see me so that your issue will be brought to the attention of the minister. They have been, and they will be brought again today and tomorrow. Thank you again.

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Mr. Flynn: Thank you again, Mr. Gleberzon, for coming today. I think CARP has made its views very well known. This proposed bill has had extensive public consultations throughout the province, probably unlike any other bill that I've seen come forward. That may have something to do with all members agreeing that this is a schedule that could be accommodated. The House is scheduled to rise in December at some point in time and there has certainly been an urgency expressed to me by those who support the passage of this bill to get on with it. The scheduling may have as much to do with getting on with it as it has to do with excluding any points of view or trying to delimit public input. My apologies if it put your organization in that position. It certainly was done, I think, by all three parties with the best of intentions.

That being said, I know there's an interest among your members in seeing this bill proceed. We were invited by the gentleman who spoke to us from the CAW to—you were just coming into the room, I think, when he was making a point. My understanding was that your ability to speak for those over the age of 50 or those over the age of 65 had been challenged in some other area of the country, in Saskatchewan specifically. Would you care to expand on that, just so we know where we stand on it?

Mr. Gleberzon: Sure. As you know, Saskatchewan is one of the three provinces that still retain mandatory

retirement. An individual who had been forced to retire at 65—she was a librarian, part of a union—challenged her forced retirement and CARP was invited to appear at the tribunal regarding that challenge. During the course of the hearing, the labour lawyer, the union lawyer, challenged how many people had actually contacted us regarding mandatory retirement. I explained to him that the nature of our office is such that we don't keep track of the exact numbers because we just get so many calls on so many issues. Over, say, the last two years, anywhere between 200 to 300 and more have contacted us, which may appear to be a small number, yet as you know, as a politician, each person who contacts you could represent 50 or more people who feel the same way and just don't bother to contact you. That was one bit of information.

The union lawyer was dissatisfied with that, but I could understand why: because we weren't saying what he wanted us to say, which was that mandatory retirement was a good thing. We think it's a bad thing; we think people ought to have choice and have the ability to retire at, before or after 65.

The other bit of information or evidence that I brought was that Stats Canada has done a number of studies and has asked people what their plans are regarding retirement. The figures are something to the order that 18% of those who responded, and therefore 18% of Canadians, according to Stats Canada, have no plans to retire, and another 12% have no idea when they're going to retire.

I just read over the weekend a study that has been done about retirement in different countries by AARP, which is the American Association of Retired Persons, which I'm told is the second-largest lobby group in the world, after the National Rifle Association. The AARP has 36 million members, which of course is more people than exist in Canada. Their study about retirement in Canada, according to the research they had done, which was done by a very reputable research firm, was that

approximately one third of Canadians believe that they will have to continue to work after 65, for the number of reasons that have been outlined, I'm sure, by many speakers etc. Also, in the introduction to the bill, the Ontario government estimated that over 4,000 people would continue to work over the age of 65. Personally, I think the numbers will be higher, and I certainly believe the numbers will be higher in the future, as there will be more people retiring or being forced to retire. But nationally, about 6% of Canadians over the age of 65 continue to work. In a sense, regardless of the number of people who contacted us, other reputable groups have done research on this to discover that large percentages of people want to, or have to continue to work, and therefore this bill is one that moves in the right direction.

The Chair: Thank you, Mr. Gleberzon.

Mr. Flynn: Can he do a very short summary, or are we out of time? Do we have 30 seconds?

The Chair: Please go ahead.

Mr. Flynn: In summary, would it be fair to say that your preference would be that we include all the amendments that you've suggested, and that your second choice would be that the bill pass ASAP and we continue to consider some of the amendments you've suggested?

Mr. Gleberzon: Well, if that's possible. There's no question that people are very concerned about seeing this bill passed. I will say, the issue about the transition period is extremely important, as are the issues you've heard from other people too. It's one of those balancing things, and you're damned if you do and you're damned if you don't; I understand that. But we would like to see these as part of the bill, if possible.

The Chair: Thank you, Mr. Gleberzon, for your deputation on behalf of CARP.

To advise members of the committee, this committee stands adjourned until 10 a.m. tomorrow, when we begin clause-by-clause consideration.

The committee adjourned at 1207.

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Mr. Bob Delaney (Mississauga West / Mississauga-Ouest L)
 Mr. Kevin Daniel Flynn (Oakville L)
 Mr. Frank Klees (Oak Ridges PC)
Mr. Peter Kormos (Niagara Centre / Niagara-Centre ND)
 Ms. Jennifer F. Mossop (Stoney Creek L)
Mr. Shafiq Qadri (Etobicoke North / Etobicoke-Nord L)
 Mr. Mario G. Racco (Thornhill L)
Mrs. Elizabeth Witmer (Kitchener–Waterloo PC)

Substitutions / Membres remplaçants

Mr. Gilles Bisson (Timmins–James Bay / Timmins–Baie James ND)
 Mr. John O'Toole (Durham PC)
 Mr. Jim Wilson (Simcoe–Grey PC)

Clerk / Greffier

Mr. Katch Koch

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