

We do not believe that the exception in the *Canadian Human Rights Act* that permits termination of employment at the "normal age of retirement" can be justified under section 1 of the *Charter*. If industry standards were accepted as a reasonable excuse for discrimination on a prohibited ground, the purpose of section 15 would be frustrated. The essence of section 15 is to protect members of vulnerable groups from being submerged by the values of the majority. It would be inconsistent with that purpose to allow a majority practice to dictate the limits of the rights of protected individuals. We therefore conclude that the "normal age of retirement" exception in the *Canadian Human Rights Act* cannot be supported under section 1 of the *Charter*.

6. We recommend that mandatory retirement be abolished by

(a) amending the *Canadian Human Rights Act* so that it is no longer a defence to a complaint of age discrimination that an employee who is forced to retire has reached the "normal age of retirement"; and

(b) amending the *Canadian Human Rights Act* so that it is no longer a defence to a complaint of age discrimination that an individual whose membership in an employee organization is terminated has reached the "normal age of retirement".

These recommendations accord with the position taken by the Canadian Human Rights Commission in its comprehensive brief to the Committee.

The effect of implementing these recommendations will be to make mandatory retirement a discriminatory practice in the majority of cases, capable of forming the basis of a complaint under the *Canadian Human Rights Act*. An employer will continue to be entitled, in appropriate circumstances, to raise the defence that an employment limitation tied to age or term of service is a *bona fide* occupational requirement for a particular job.

We believe that, as a general proposition, the retirement policies in the federal public sector should be subject to the *Canadian Human Rights Act*. It is evident that the usual mandatory retirement age of 65 in the public service will not qualify as a *bona fide* occupational requirement because the retirement age applies irrespective of the nature of the tasks a public servant might be performing. A *bona fide* occupational requirement must be job-specific. It is our opinion, therefore, that the general retirement age of 65 in the public service should be removed.

7. We recommend that those provisions of the Public Service Superannuation Regulations providing for mandatory retirement at age 65, as well as comparable regulations affecting public servants who do not contribute to the Superannuation Account, be revoked.

To ensure that all future government retirement policies, no matter what form they take, are subject to the *Canadian Human Rights Act*, the special limitations that put statute-based retirement rules beyond the scope of the Act should be eliminated.

8. We recommend that the *Canadian Human Rights Act* be amended so that it applies to all mandatory retirement policies embodied in legislation, regulations or orders.

We would anticipate that the mandatory retirement policies that apply to the RCMP, the Canadian Armed Forces and the holders of various federal offices would be considered, in due course, pursuant to the *Canadian Human Rights Act* to determine