

ANALYSIS

Is mandatory retirement fair?

By JEFF SHINDER

Contradictory rulings from two provincial Supreme Court of Appeals has intensified the controversy surrounding the issue of forcing elderly professors to retire at the age of 65. The Canadian Association of University Teachers (CAUT) and the Ontario Confederation of University Faculty Associations (OCUFA), are planning to co-sponsor an appeal that will send the question to the Supreme Court of Canada. Before the Supreme Court's decision, the constitutionality of mandatory retirement will remain in question.

In Ontario, seven professors, three of them from the York community, and one librarian fought to declare mandatory retirement as being in violation of Section 15 of the charter of rights. Section 15 prohibits discrimination on the basis of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. Specifically, the professors attempted to prove the unconstitutionality of Section 9 of the provincial human rights code, as it restricts its coverage of age groups against discrimination to people over 18 and under 65. Legally, the discrepancy between the section of the human rights code and the charter can be overcome if the universities can prove that employment discrimination against persons over the age of 65 is "of sufficient importance to warrant overriding a constitutionally protected right or freedom."

During the Ontario court case, a number of pertinent questions were raised by the universities in defence of mandatory retirement. For example, the ruling cited reasons of demographics, pension plans, and human cognitive ability as a function of age, as all being related to the need for mandatory retirement. Especially important, in the context of a university, is the issue of increasing employment opportunities for new staff members. Maintaining accessibility for young faculty members will keep the university sensitive to new research trends. Expertise in certain fields may be limited to scholars with a recent degree, computer science being an obvious example.

The concern that the removal of mandatory retirement will impede on faculty renewal is not supported

by economic analysis. Studies conducted by the Conference Board of Canada suggest that repealing mandatory retirement will have only a marginal impact on the labour force. The study reveals that of the employees already 55 years of age, over 70% will probably leave their job before age 65 due to early retirement, death, and layoffs. In fact, the Ontario Ministry of Labour says that the labour force will only be increased by 0.4% if mandatory retirement is removed from the workforce. The controversy, and partly the reason for the discrepancy between the two court rulings, is about the applicability of these statistics to universities.

According to the Ontario Supreme Court of Appeal ruling "youth has a different meaning in the university context." They note that since academic careers usually start in a person's late 20s or early 30s they are confined to a span of only 30-35 years by a policy of mandatory retirement. Yet, the ruling does not cite career span limitations as an indicator that university professors may choose to remain at work past the age of 65. It does, however, raise Bovey Commission statistics that estimate that as much as \$24 million will be needed to meet the costs of repealing mandatory retirement.

Evidence cited at the Ontario trial attempted to make a connection between mandatory retirement and the university system of tenure. Tenure provides the professor with academic freedom by ensuring, through a performance system strictly linked to misconduct or failure to fulfill academic responsibilities, that academics will not be penalized for taking deviant or unpopular positions. The university has argued that without mandatory retirement "a stricter performance appraisal system will be needed." They add that enhanced strictness may necessitate the use of outside experts to judge the system. Consequently, according to the argument, removing mandatory retirement may lead to universities compromising the academic freedom of their staff.

The extreme nature of this conclusion is predicated on the assumption

that most professors will remain past the age of 65 if given the chance. The evidence to support this claim is fragmentary at best. In fact, in its defence of mandatory retirement, the University of British Columbia did not argue that a repeal of the policy will challenge the system of tenure. It is unclear how mandatory retirement has such an impact on the tenure system. Since the removal of mandatory retirement will only have a minimal effect on the size of the faculty labour force, stricter performance guidelines, that may threaten the tenure system, will not be needed.

Regardless, some re-evaluation of the performance criteria for elderly faculty may be required. The Ontario ruling noted that mandatory retirement "provides the employee with a dignified way of leaving employment without embarrassing assessments about his ability to perform the work." The administration of York University has called such procedures "inhuman." Such an approach cloaks mandatory retirement policy in a veil of compassion.

York University, interestingly, has introduced a flexible retirement policy that gives the faculty member the option of retiring after the age of 65. The university, however, for the purpose of administrative convenience plans to retain a "normal retirement date." Maintaining a form of mandatory retirement provides the employer the ability to draw up reasonably accurate financial and employment projections. To soften the impact of mandatory retirement, Carleton, Queen's, McMaster, Windsor, and UBC all provide special accommodations for teachers, in certain instances, to remain past the age of 65. These actions do not prejudice the universities pension plans. Indeed, don't decisions in these cases force the university to make subjective, potentially "inhuman" evaluations of performance capability?

Adding to the complexity of the issue was evidence brought before the British Columbia Supreme Court that discounted claims that performance deteriorates when the employee gets old. Conference Board of Canada statistics indicate

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Football: a bastion of socialism

By LORNE MANLY

As Super Bowl XXII rapidly approaches, it is imperative that good Americans and friends of freedom everywhere raise their voices in protest against the desecration of this hallowed institution.

A cancer is loose in our society, slowly eating away at its fabric, threatening to destroy everything we hold dear. This virus is socialism. Our universities, our government, and our culture are infested with this disease, and now the Communists have set their sights on the greatest sporting spectacle known to mankind—the Super Bowl.

22 men (not 24 as in the wimpy Canadian version), wearing only the bare necessities such as helmets and shoulder pads, are set to wage war Sunday in San Diego. But gloom has descended over what should be a joyous affirmation of American values, of freedom, liberty, and justice. The game itself has been poisoned and if we don't act quickly to destroy this menace, all will be lost.

Football used to symbolize the supremacy of the American ideal back when John Foster Dulles strode triumphantly on the world stage. Now we have the red-loving George Schultz controlling US foreign policy, and football no longer

holds the same lofty stature in our society.

The liberalism that has ruined our government has also wreaked havoc on our sporting scene. Nowhere has the damage been so extensive than in football.

First, they 'liberalized' the rules governing passing. Defensive players were forbidden to manhandle receivers downfield; they were only permitted to mug them within five yards. The passing game grew by leaps and bounds much to the detriment of the running game that is the essence of football. Striving desperately to gain that extra yard, wallowing in the mud, headbutting your opponent—that is real football, not like the namby-pamby passing stuff we see today.

Then the powers that be, in their infinite wisdom, decided to give even greater protection to the quarterback. Now, if the quarterback is in a defensive player's grasp, the whistle is blown immediately.

No other player on the field receives such preferential treatment. The equality this country stands for is slowly being eroded by these dangerous paternalistic tendencies exported by the Soviet Union. So what if quarterbacks were being seriously injured every week? Such a rule goes against one of our country's founding principles: If you can't stand the heat, get

out of the kitchen.

Next they will want to limit the team owners' freedom of movement from town to town. If an owner can extort more tax concessions from another group of politicians, then all the more power to him. All this sanctimonious talk about the owners' obligations towards the cities and the fans that support them smacks of socialism.

If these trends continue, the future of football and its crowning jewel, the Super Bowl, are in jeopardy. Artificial turf, a Communist invention, is already maiming our athletes. Now the socialist hordes are trying to sap the spiritual strength of our football players through rule changes, unions, and domed stadiums.

This year's Super Bowl, pitting the Denver Broncos against the Washington Redskins, may mark our last chance to stem the tide of Communism. The images conjured up by the two teams' names help us recall the moral strength of our founders.

If we regain some of the vision that guided the architects of Manifest Destiny, today's Redskins will be vanquished. America and football will once again reign supreme, but only if we act decisively and immediately. Liberty and freedom hang in the balance.

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