

**Brief to the Province's Standing Committee on Social Development
on the issue of Mandatory Retirement
by Dr. Wayne Peters, Associate Professor, UPEI and President, UPEI Faculty Association
November 3, 2005**

The University of Prince Edward Island Faculty Association (UPEIFA) is the recognized exclusive certified bargaining agent for approximately 325 full-time and part-time academic staff at UPEI, including faculty members, librarians, clinical nursing instructors, sessional instructors and professional veterinary service providers. The terms of employment for UPEI's academic staff are governed by collective agreements negotiated with the UPEI Board of Governors.

The UPEIFA appreciates the opportunity to participate in the public hearings on the issue of mandatory retirement in PEI, and the opportunity to address the Standing Committee on Social Development. It is my privilege to make this presentation on behalf of the UPEIFA and its members.

At the outset, the UPEIFA wishes to acknowledge the Province's current position on this issue as expressed in its Human Rights Act, that is, that mandatory retirement is not permitted in this Province. Accordingly, the UPEIFA supports the ideals of the Act in regards to the issue of mandatory retirement and will present today with the intention to re-enforce the position that mandatory retirement should not be permitted in this Province.

Notwithstanding this position, the academic staff at UPEI finds itself in a curious situation. Presently, mandatory retirement at the age of 65 applies to UPEI's academic staff, having recently accepted it at the Employer's insistence in our collective bargaining process.

In the past decade or so of mandatory retirement at UPEI, it is my understanding that the Employer's position on this has never been challenged before the Province's Human Rights Commission, at least not until very recently. I understand that there is now a complaint before the Commission. I have confidence that the Commission will conclude that human rights are being violated at UPEI. Notwithstanding this process, however, the UPEIFA is seeking to eliminate this requirement at the bargaining table during our current negotiations for a second collective agreement and is exploring other avenues of recourse.

Plain and simple, it is our position that mandatory retirement at any age and for any reason is discrimination. It is inherently discriminatory to make a general statement that one cannot continue to be productive and contributory to society, and, more specifically, to a university, simply because one has reached the arbitrarily chosen age of 65. On this basis alone, it should not be permitted. With the exception of "genuine occupational qualifications", the Province's Human Rights Act confirms this to be the case. To my knowledge, the only case of an accepted "genuine occupational qualification" that justifies mandatory retirement in this Province is in the case of our school bus drivers, a case won by arguments made over a decade ago.

As I proceed with this presentation, I will use the UPEI context to demonstrate why mandatory retirement should not be permitted. Being an employee group on PEI that finds itself in an exceptional situation with respect to mandatory retirement, UPEI's academic staff has a keen interest in the outcome of these discussions. The UPEIFA sees a need to lobby on behalf of its membership on this issue to ensure its interests are considered. Some of the points made will be applicable to the labour force in general, however, many of my comments today will necessarily address issues and myths specific to the university scenario.

Points for consideration.

Simply Put, It's Discrimination

- Mandatory retirement at any age and for any reason is discrimination. Indeed, its application across this country has been somewhat selective. For example, we can elect a Prime Minister who is beyond the age of 65. Again, it is inherently discriminatory to make a general statement that one cannot continue to be productive and contributory to society, and, more specifically, to a university, simply because one has reached the arbitrarily chosen age of 65. Certainly, there are many examples in history that prove otherwise. A classic example would be Albert Einstein. Where would we be if he had been forced to retire at an early age? Quite simply, there is no evidence to suggest that university faculty members experience age-related declines in productivity or ability, and certainly not at the arbitrarily chosen age of 65.

Supporting the Knowledge-Economy

- The economy of PEI, as is elsewhere, is now “knowledge-based”. Mandatory retirement represents a tremendous loss of human capital in terms of both knowledge and experience. These are assets that must be retained to ensure that this economy continues to grow. In this context, it is difficult to imagine the “genuine occupational qualification” that a University would need to prove to justify the forced retirement of a productive mind in both teaching and research.

The Economic Disadvantage of the University Professor's Career Path

- Mandatory retirement provides an economic disadvantage to those who would have continued working if they had not been required to terminate their employment because of age. This is especially true for those who start a career and begin contributing to retirement savings much later in life. Case in point, typical university professors often do not start faculty careers until they are in their thirties. Becoming a professor is a much longer process than that seen in other professions and other areas of the labour force which results in careers of less than 35 years typically. When combined with low starting salaries and a period of 25-30 years of employment before reaching maximum salary, the end result is much lower overall career earnings and retirement savings.
- This disadvantage is significantly further exacerbated if one is a woman who commits to family obligations before entering and during a faculty career. Additionally, this concern applies to those immigrating to Canada in search of a faculty career. As we are very aware, the proportions of women and immigrants to this country are becoming significantly growing segments of the professorate.
- In short, mandatory retirement fails to recognize the shortened career path of university faculty.

What is the Connection to Tenure?

- One of the biggest confusions in this discussion is the linkage between mandatory retirement and the tenure system. The myth is that the existence of a tenure system justifies the discriminatory practice of mandatory retirement for dealing with potential “problem cases”. The fact is that there is no link between the two. Then, what is tenure? Tenure refers to a faculty appointment without term and the right of a faculty member not to be dismissed except for “just cause”. At its very essence, tenure protects academic freedom, a principle upon which universities are built. Academic freedom is about a faculty member's right to teach, to investigate, to speculate and to publish without deference to prescribed doctrine or institutional censorship. It is about the right to freely criticize and to state views on matters related to your discipline. This tenet is very similar to “freedom of the press”.

- Tenure is not a “job-for-life”. It does not give protection from dismissal for “just cause”. University managers currently have the tools to address under-performance, including “dismissal for cause” should an individual fail to carry out their recognized duties and responsibilities. The tenure system does not justify the discriminatory practice of mandatory retirement. Any suggestion that it does is a misrepresentation of the tenure system.

Mandatory Retirement as Quality Control

- Building on the confusion around tenure, university administrators argue that the elimination of mandatory retirement would necessitate the abolishment of the tenure system, presumably because stricter performance evaluation processes would be needed. There is no evidence that this would be the case. In fact, in those jurisdictions where mandatory retirement has been rigorously eliminated such as Quebec and the United States, the tenure system has not been compromised or challenged.
- The fact is that, with current tenure systems, university faculty members are already subject to the most stringent, frequent and comprehensive system of performance evaluation of any occupation in the country. A 5 year probationary period precedes any consideration for tenure. The tenure review process itself is rigorous and requires the demonstration of satisfactory performance in a number of areas. During and after the probationary period, performance reviews and course evaluations are carried out on a frequent and regular basis. The use of mandatory retirement as a means of quality control to deal with a small number of potential problem cases is not seen as good management practice.

Academic Renewal through Mandatory Retirement

- The hiring of new faculty members is not dependent on the practice of mandatory retirement. Maintaining a balanced faculty complement requires planning and foresight, as well as adequate funding. Current predictions are that we will be facing a shortage of qualified faculty members as aging “baby boomers” leave the profession, whether by voluntary or forced retirement. The elimination of mandatory retirement would, in fact, help universities to deal with the potential faculty shortage in the coming years. The reality today is that much academic renewal involves recruitment of mid-career and senior level scholars. As academic recruiting becomes increasingly global, mandatory retirement policies are serious obstacles to recruiting and retaining these more senior scholars. It is no longer a case of the old making way for the young.

On behalf of the UPEI Faculty Association and its academic staff members, I would like to thank the Committee for today’s opportunity to speak to you. On closing, I would like to ask the Committee to consider the points that I have made while it deliberates on this issue. I would like to re-iterate, though, that the position of the UPEI Faculty Association is that mandatory retirement should not be permitted in this Province. Again, I do recognize that the Province’s Human Rights Act does not permit this practice. I would ask the Committee, however, to continue to confirm this ideal and to also consider removing any such provisions in the Act that now allow mandatory retirement to be implemented.