

# Helpful Legal Information for MAHCP Members

## Retiring Any Time Soon?

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For many of us the recent economic turmoil means we may have to work a few years longer than we intended because of the depletion of our investments. To work longer may not be our first choice but the alternative could be even worse. What if you didn't have the choice as to when you were going to retire? In Manitoba we have taken for granted that we will not be forced to retire at any given age, particularly at age 65. After all, 65 is the new 50.

This freedom of choice has not always been there. Until the early 1980s, employers in Manitoba were assumed to have the right to arbitrarily dismiss ("retire") an employee when they reached the age of 65, like it or not. To do that today violates the Manitoba Human Rights Code and the Canadian Charter of Rights and therefore not be done as a matter of policy. Some other provinces in Canada have only recently taken action on this issue and for those regulated by the Canadian Human Rights Code, employers maintain the right to retire employees when they attain the age of 65.

There was a recent arbitration case in Manitoba involving mandatory retirement. (CKY-TV v. C.E.P., Local 816 Arbitrator Peltz) A federally regulated company dismissed an employee working in Manitoba for the sole reason that the employee had reached the age of 65 years. The employer did not rely on unsatisfactory job performance, medical or capacity-related grounds. The evidence established that the grievor was perfectly able and wanting to continue to do work at his job when he was terminated.

In this case the employer had for many years followed a policy where it dismissed any employee when they attained the age of 65. The collective agreement in place between the employer and the union allowed for mandatory retirement. The

employer was a large corporate entity that had over time taken over many smaller companies across the country. Whenever it took over a smaller company, whether that company had a policy of mandatory retirement or not, the policy was imposed on the new company's employees.

The employer stated that mandatory retirement is justified on three principal grounds: (1) because it has done so for many years; (2) it facilitates staff turnover; and (3) it allows for a better retirement package for retiring employees if everyone retires at 65.

The employer provided an expert witness testimony who stated that "mandatory retirement was an integral part of the seniority system whereby workers receive increasing wages and benefits throughout their careers" (para 65 of CKY-TV arbitration). The expert further provided that mandatory retirement promoted equity and efficiency in the workplace and that friction and resentment could occur if retirement was not mandated because more senior employees would be seen to be "blocking" younger workers from getting the benefits of seniority.

The Union provided expert evidence that essentially stated that a persons employment is often very closely tied to the employees self worth and esteem. It should not be terminated on the basis of an arbitrary reason such as the attainment of a certain age.

The arbitrator hearing the case upheld the grievance and ordered the employer to compensate the employee for his termination without cause. The arbitrator stated "I cannot find that there

is a reasonable basis for believing that the employment regime of pensions, job security, good wages and reasonable benefits requires the maintenance of mandatory retirement at age 65 or a predominant age." (para 219 of CKY-TV arbitration)

Whether by reason of the drop in an investment portfolio or that you just want to continue to work because of the intrinsic self worth the job provides, employees in Manitoba can continue to work so long as they can properly do the job. Employees don't have to fear their employment being terminated because of the occurrence of a 65th birthday.

*This paper is intended as an introduction to the topic and not as legal advice. If you require specific advice with respect to your situation, you should contact a lawyer.*

**This series of articles will continue in future editions of the MAHCP News. If there is a topic that you would be interested in, please contact Wendy at 772-0425.**