Expert Report Prepared for the Canadian Human Rights Tribunal

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Biography

Dr. Ellie Berger is an Associate Professor in the Department of Sociology at Nipissing University. She is also Leader of the Aging and Paid Work Thematic Committee, part of the Social Sciences and Humanities Research Council of Canada, Population Change and Lifecourse Strategic Knowledge Cluster. She received a PhD in Sociology from McMaster University, a Master of Science degree in Public Health Sciences from the University of Toronto, and an Honours BA in Gerontology and Sociology from McMaster University. Her current research focuses on ageism, older workers, age and gender discrimination, and retirement and pensions. She has conducted interviews with employers and older workers about their views on ageism in the workforce. Dr. Berger has received research grants from Social Sciences and Humanities Research Council of Canada, Human Resources and Skills Development Canada, and the National Initiative for the Care of the Elderly, Networks of Excellence. She has published in the *Gerontologist*, the *Canadian Journal on Aging*, the *Journal of Aging Studies, Workplace: A Journal for Academic Labor,* and *Encounter: Education for Meaning and Social Justice*, and has written a book chapter in the *Age Matters: Re-Aligning Feminist Thinking.* Dr. Berger has provided her expertise to the House of Commons' Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities, the National Seniors' Council, and Statistics Canada. She is a member of various professional organizations including the Canadian Association on Gerontology, the Gerontological Society of America, the Canadian Sociological Association, Ontario Interdisciplinary Council for Aging and Health, Council of Ontario Universities, the National Initiative for the Care of the Elderly, and the Canadian Coalition for Seniors' Mental Health.

The Older Worker in a Post Mandatory Retirement World

Mandatory retirement was prohibited in the United States before it was in Canada. Nevertheless jurisdiction after jurisdiction in Canada has repealed exemptions for mandatory retirement in their human rights legislation.

Provincially, the repeal of legislation permitting mandatory retirement of older workers started in the 1980s. Ontario enacted this legislation on December 12, 2006 and the last

province to prohibit the use of mandatory retirement was Nova Scotia on July1, 2009. After many years, during which the existence of a political consensus supporting repeal was widely publicized, and following a phase in period, mandatory retirement was prohibited at the federal level effective December 16, 2012.

Many employers believed that mandatory retirement was an acceptable avenue for employee renewal and saw the legislative exemptions as support for an assumption that older workers are less capable and had to be terminated without individual assessment of capacity. While employers have had years to prepare for the end of mandatory retirement, some are still having difficulties navigating the workplace within the current context of the aging of the workforce.

Another more recent change to public policy involves raising the age of Old Age Security (OAS) pension and the Guaranteed Income Supplement (GIS) from 65 to 67 (phased in since 2013). These two changes in public policy – the elimination of mandatory retirement and the raise in age of pension eligibility – serve to keep older workers in the labour force longer which is seen to be in line with long term policy objectives for the country's economy. For example, there is some evidence that the Canadian Government now recognizes the needs of older workers as a growing priority and has been trying to encourage them to remain in the labor force longer through various policy changes. In addition to the two aforementioned changes, the Expert Panel on Older Workers suggested creating an awareness campaign to educate employers about the value of older workers. Further, the Targeted Initiative for Older Workers is a government-funded program that offers employment assistance services to unemployed workers aged 55-64 in smaller towns experiencing high unemployment rates. These programs are encouraging, but more still needs to be done to help older workers retain employment in the current post mandatory retirement context in Canada.

Government employment and pension policies that encourage and compel older workers to remain in the labour force longer, when many already have a difficult time securing employment, may only serve to heighten the difficulties that they already face.

With the aging of the population and the push to keep older workers employed longer, there will be an increasing number of older workers in the labour force. Feeling compelled to retain them may cause employers, who already had negative attitudes towards older workers, to view them even more negatively than in the past and as a result engage in ageist workplace practices which may not have been as evident formerly.

The Disadvantaged Position of the Older Worker in the Workforce

Changes in the Canadian economy have led to the need for workers to be geographically, occupationally, and industrially mobile as well as invest more heavily in job searches, training, and education. Older workers who become displaced may face the most challenges due to their lack of mobility, education, and training and due to ageism from employers.

In fact, older workers take considerably longer than younger ones to find work once unemployed due in part to the existence of ageism. As age increases, so does the average duration of unemployment for working-age Canadians. Individuals aged 15-24 spend an average of 11.1 weeks unemployed after losing a job, those aged 25-54 spend 22.6 weeks unemployed, aged 55-64 spend an average of 28.7 weeks unemployed, and aged 65+ spend 32.2 weeks unemployed (Statistics Canada, 2012). This finding is similar in the United States, where individuals aged 16-24 spend an average of 23.3 weeks unemployed, those aged 25-54 spend 30.3 weeks unemployed on average, and those aged 55+ spend 35.5 weeks unemployed (Sok, 2010).

The Organisation for Economic Co-operation and Development (OECD) has recognized that age is a barrier in the hiring process in Canada and has recommended that more research be done to investigate these barriers and determine why many older workers are reluctant to file claims based on ageist practices (OECD, 2012). It is more than plausible that the extent of ageism in the workplace is much higher than reported in the statistics due to the fear in reporting these claims, the costs associated with filing them, and the subtle (though equally disturbing) nature of the claims that make them difficult to prove.

According to a survey of 1,502 individuals aged 45-74 done by the American Association of Retired Persons (AARP), 64% of individuals have experienced age discrimination in the workplace and 58% believe this starts occurring in the 50s (AARP, 2013). An earlier AARP study indicated that older workers' perceptions about age-related barriers to reemployment are a reality due to the increasing number of complaints about age discrimination made to the Equal Employment Opportunity Commission (AARP, 2002). The number of age discrimination cases filed in the U.S. is likely higher due to the Age Discrimination in Employment Act (ADEA) that has been in existence since 1967. In my opinion, the number of complaints is lower in Canada, not because of the lack of existence of ageism, but due to the slower development of anti-ageism legislation in Canada.

Pervasive Negative Attitudes Amongst Employers Towards Older Workers

Although research suggests positive attitudes toward older workers on certain dimensions (knowledge, experience, honesty, dependability, work ethic, mentoring, and stability; Berger, 1999), they are perceived negatively in many other areas. For example, studies indicate that employers believe older workers are less flexible, in poorer health, less creative, less interested in technological change, and less trainable than are younger workers (Chiu et al., 2001). In addition, older workers are seen as being more prone to accidents and staying with the company for a shorter period of time as compared with younger workers. Older workers are also viewed by employers as less productive and less able to engage in physically demanding work than younger workers (Henkens, 2005). Although most of these stereotypes have been disproved in the literature, employers continue to believe many of them and often make their workplace decisions accordingly. Overall, negative attitudes are real and widespread.

Butler (1969) coined the term ageism to describe discriminatory attitudes, behaviours, and policies against people because of their age. The Ontario Human Rights Commission (OHRC) (2001) has indicated that ageism can lead to barriers for older persons. These barriers are often tied to socially constructed notions of age in our society and do not always correspond to chronological age. The report indicates that negative stereotypes about aging and the failure to develop practices to support or accommodate older individuals are forms of ageism. It also cites the importance of addressing these stereotypes in the workplace as a major human rights concern and encourages employers to make their workplaces free of these biases that restrict individuals' opportunities.

Employers' stereotypical attitudes have been linked to poor opportunities for training, promotion, and retention of older workers (Henkens, 2005; Chiu et al., 2001). Discrimination in hiring was also found to be a direct result of negative attitudes and stereotypes about older workers (Gringart, Helmes, & Speelman, 2005).

Park (2012) notes that older workers are far more likely to perceive barriers to training than younger workers. Canduela et al. (2012) found that compared to younger workers, older workers are less likely to be offered training and participate in training programs. The group of workers least likely to be offered training programs by employers was men over age 50. This unequal access to training was found to be due in large part to negative employer attitudes. It should be noted that age alone does not translate to shorter duration with any given employer. In fact, research indicates that older workers have the lowest rate of job turnover in Canada (Picot, Heisz, & Nakamura, 2001). This suggests that costs associated with training older workers may be more valuable than employers expect.

According to Alon-Shenker (2013), age discrimination is recognized more often when it is tied directly to age. Employers often justify their *in*direct ageist practices by citing the perceived higher costs and overqualification of older workers. Employers have been found to replace older workers with younger ones to avoid higher costs associated with pensions and salaries (Roscigno, Mong, Byron, & Tester, 2007).

Evidence from My Research

My research that will be published in a forthcoming book by the University of Toronto Press, *Ageism at Work: Negotiating Age, Gender, and Identity in the Discriminating Workplace*, uses original data from four studies (both qualitative and quantitative) I have done with employers and older workers over 16 years spent in the aging and work field. The first study, involves data collected from 559 Canadian employers who responded to a national employer survey. The study uncovers employers' attitudes toward older workers and determines the factors influencing these attitudes. Results from my this study indicate that employers' attitudes toward older workers vary significantly according to company size, employers' age, and employers' gender, with older female employers from smaller companies displaying the most positive attitudes (Berger, 1999).

The second study, explores whether employers' attitudes were actually reflected in practice. This study contains data from interviews with 30 older workers between the ages of 45 and 65. The third study presented in my book involves a follow-up qualitative survey of older workers, three years after their initial interviews. In this research (Berger, 2006; 2009; McMullin & Berger, 2006), older workers heard comments relating to being considered "over-qualified" or "too experienced", that someone more "junior" was hired, or that the organization was too "fast-paced" for them. Through these comments, employers (not so) subtly communicated to older workers that they are too old for the job. While comments such as these have been used as evidence in lawsuits against employers, it is often a challenge to prove the existence of age discrimination on the basis of these comparatively subtle types of comments (OHRC, 2002). A reliable indicator of the existence of ageism and negative stereotypical attitudes towards older workers is the differential treatment or failure to accommodate them that occurs in workplaces.

Older workers in my study felt that employers used various mechanisms to discriminate against them that reflect negative stereotypes with respect to skills, training, adaptability or flexibility, and financial costs. They also believed that employers examined their résumés in a discriminatory fashion (i.e., choosing candidates to interview based on the year their degree was received or the number of years of experience they had), that the job interview was a mechanism for employers to assess the age of job candidates, and that ageist language was used during the hiring process. These ageist attitudes and stereotypes create negative experiences for candidates that lead them to feel the need to conceal their age whenever possible by changing their appearance (hair dye was used by many women and men and men discussed shaving facial hair or purchasing toupees to cover baldness in an attempt to appear younger), revising their résumés, and using language that they believe reflects a younger age.

The older individuals in my study also discussed taking courses or attending workshops whenever possible to update their skills and avoid being classified as out-of-date by employers (Berger, 2009). However, there was the strong sense that employers were reluctant to train them. They discussed the idea that employers did not want to invest the money and time in training older workers. For example:

> *They look at a person and — this has been told to me point-blank by human resources people — they look at people as a monetary investment. They invest a certain amount of time and effort in training a new recruit — the higher level of the recruit, the more expensive the time in training. And they expect to get back ten times their investment, or else it isn't worth it to them to hire them. So if they spend a year acclimatizing me, training me, getting me integrated into the system, then they would expect to get ten years of profitable time out of me. Now, if I am 50 years old, they look at me as a poor prospect.*

Finally, the fourth body of research that will be included in my book explores employers' attitudes about the aging of the workforce and the elimination of mandatory retirement, taken from qualitative interviews with 26 employers. I believe that it is only through these face-to-face interviews that one can assess the "unofficial" mechanisms that

employers use to discriminate against older workers. In fact, this more recent study demonstrates that ageism is not merely perceived on the part of older workers – it is often the reality. Further, the nature of the remarks I found suggest that ageist ideologies are so deeply ingrained that employers either do not even recognize they are being ageist or do not believe that their ageist beliefs and practices are problematic. Perhaps this will change in the future with the enforcement of anti-ageism legislation and a greater awareness on the part of employers about both the overt and subtle forms of discrimination in the workplace. While the elimination of mandatory retirement in Canada removes a common overt ageist practice, more needs to be done to highlight the subtle and indirect nature of ageism that is still very present in the workplace. Therefore, it is not entirely surprising that employers in my study were quite open about their negative attitudes toward older workers. In some cases, the ageist comments were more general in nature or came across when discussing hiring. For example, one employer said:

> *If you're looking at an individual… how many productive years do they have left for your particular organization? So, it's a matter of investing your time and training … And the other thing, the older you get, the more set in your ways you become.*

This comment reflects various stereotypes about older workers surrounding job turnover, productivity, training potential, and inflexibility. Many employers conveyed the idea that older workers do not respond well to change or are inflexible. For example, another one stated:

> *The older workers are set in their ways; it's hard to make them change. They want to do the same routine even though you might have a different method*.

When asked about older workers and technology another employer replied simply, "they don't get it." When pressed to comment on the possibility of hiring older workers he stated, "Generally I go younger because of technology and they (younger workers) adapt to it easily." Overall, employers were quick to note that in an era of increasing technological advances, older workers found it difficult to accept new technology and thus were clinging to outdated ways. There was surprisingly little self-awareness amongst employers that the long-term and generally older worker is often dependent upon the employer for the training necessary to remain current.

Other ageist comments came out with respect to training opportunities provided to older workers. For example, one employer said:

> *They (older workers) need more training … because … they're not as ambitious and their retention of information just isn't there because they just don't really care about technology.*

Another employer said:

> *Older workers take longer to train and require extra training when learning something new, especially if it involves technology*.

These quotes seem to reflect employers' perceptions regarding lack of interest and ability with respect to technology and training. If older workers are not given the same training opportunities – their lack of current skills cause them to be disadvantaged at their current workplace and especially if they become unemployed. So, to a large extent, employers are contributing to their own stereotypes about older workers not having up-to-date skills.

As discussed earlier in this report, eliminating mandatory retirement may cause employers to find other ways to remove older workers from their organizations and lead to fears about rising costs. Some evidence of this was found in my research. For example:

> *Some of the folks, especially at senior levels, are pulling in tremendous bucks and it's a blessing sometimes when they're done in terms of your budgets, you know. These are the realities.*
>
> *The only issue for me in lifting the mandatory retirement is going to be the benefit issue to the companies who are left holding that bag right now… There's a burden of having that cost back on the company.*

Another employer described his concern having to hold on to an employee who chooses not to retire:

> *But if somebody's at the age where they should be retiring because they don't want to be there anymore, it's really tough for the employer, because then you're really kind of, stuck with that person.*

Fear of being "stuck" with what are perceived to be older and unproductive employees was a common finding in my research. Another employer said:

> *When we were talking about mandatory retirement being lifted, people talk about will people be able to perform after 45, should there be some kind of merit system put in… those kinds of things. So I think people start to worry about one's competencies you know.*

In summary, my research suggests that there are clearly structural barriers to employment (i.e. ageism) in existence at many workplaces. These barriers are both perceived (by older workers) and real, since many ageist views were disclosed by employers I interviewed. While employers value older workers in some areas (loyalty, dedication, reliability, etc.) they also had many ageist attitudes that were reflected in their practices – with respect to training, retaining, and hiring older workers. My research concludes that irrespective of the motivation or ideologies held by employers, they need to be held more accountable for their ageist practices. Both subtle and explicit forms of ageism need to be assessed and monitored.

Impact of Ageism in the Workplace

My research indicates that once older workers perceive they have been labelled "old" by others (i.e. employers) they begin to define themselves as "old" (Berger, 2006). Experiencing ageism and barriers to advancement and employment in the workplace can

then lead to degradation in identity. Ageism can also lead to a decline in psychological and emotional health, and financial difficulties due to employment being placed in jeopardy, with prospects of re-employment poor relative to other age groups (OHRC, 2001). Finally, not only does ageism lead to financial hardships; it can also lead to isolation and oppression for older workers (Alon-Shenker, 2013). Older workers are generally good judges of when the differential treatment to which they are being subjected is based on negative attitudes and stereotypical thinking. They can feel threatened and experience high anxiety due to treatment that places their livelihoods at risk.

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Note

This report is based on my reading of the academic literature and my own research on the aging of the workforce. I am familiar with the literature and have conducted considerable independent research in this area, as indicated in this report. I also rely on the academic literature and cite references from peer reviewed journal articles and reports where I adopt the conclusions of these researchers. Due to the scope of this report, I am not able to cite all literature in this area, but to my knowledge there is no significant evidence that contradicts the findings put forth in this report. The conclusions I draw herein are consistent with the majority of academic literature in this area.

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