

**11TH SESSION OF THE OPEN-ENDED WORKING GROUP ON AGEING
RIGHT TO WORK AND ACCESS TO THE LABOUR MARKET**

Response by Canada

1. What are the legal provisions and policy frameworks in your country that recognise the right to work and access to the labour market by older persons?

Canada's domestic framework includes legal protections for older workers in Canada's Constitution under the Canadian Charter of Rights and Freedoms (Charter), and in the *Canadian Human Rights Act*, and similar provincial and territorial anti-discrimination legislation.

In particular, the Charter guarantees to both younger and older workers freedom of association (s. 2(d)) and mobility rights (s. 6), including the right to enter, remain in and leave Canada, and to take up residence and earn a living in any province. Furthermore, s. 15(1) of the Charter guarantees the right to equality before and under the law, the right to equal benefit and protection of the law without discrimination on grounds enumerated in s. 15(1) or those analogous to them. Age is an enumerated ground of prohibited discrimination under s. 15(1) of the Charter. The Charter also protects against discrimination based on an intersection of grounds, such as age and disability or age and sex. The protections in the Charter apply to legislation and actions of the federal government, provincial and territorial governments and municipal governments, and extend to a full range of governmental entities and activities, such as hiring practices and the provision of public services.

Governments in Canada – federal, provincial and territorial – have adopted anti-discrimination legislation prohibiting discrimination on various grounds regarding employment matters, the provision of goods, services and facilities customarily available to the public, and accommodation. Age is also a prohibited ground of discrimination under the *Canadian Human Rights Act*, which extends protection to older persons who are either employed by the federal government or who work in the private sector in areas that are regulated by the federal government. Each province and territory also has similar human rights legislation that prohibits discrimination on the basis of age in employment.

2. What are the challenges faced by older persons for the realization of their right to work and access to the labour market in your country?

Much has been accomplished in Canada in recent years to remove disincentives and increase incentives to work. Over the past decade, the federal government, in collaboration with provinces and territories, has taken significant action towards revising the retirement income system, developing skills training initiatives, and providing workplace accommodations to promote longer working lives and gradual transitions from employment to retirement. However, barriers to employment remain for older Canadians that could prevent them from remaining employed or that could push them to retire.

Ageism in the workplace has been identified by the federal as well as provincial and territorial governments as a challenge. It may be expressed through hiring practices when employers could have a bias or even consciously give preference to the hiring and/or professional development of younger workers. As older workers are disproportionately affected by disability, ageism can also be coupled with stigma and discrimination on the basis of disability.

Lack of education and access to training for older workers is also challenging, as formal credentials may no longer be fully recognized or meet current standards for employment in a given firm or sector. Many older workers also face difficulty in finding and applying for jobs due to a lack of access to information about employment opportunities that match their skills set or that offer appropriate workplace accommodations. In addition, some older individuals lack the computer skills required to conduct a job search, while others have limited or no experience in searching for a job.

Certain features of the Canadian retirement income system and tax rules may create a disincentive for some older workers to stay in the labour market. In addition, health issues and disabilities, as well as competing family responsibilities such as caregiver activities, coupled with limited workplace accommodations and transportation challenges, may pose additional challenges.

3. What data, statistics and research are available regarding older persons engaged in informal work, particularly older women, including conditions of their work and economic value?

Informal work is not well-captured in standard measures of employment. Also, national statistics on older persons engaged in informal work as defined by the OECD (workers working in informal sector enterprises as well as workers who hold informal jobs) are not available in Canada. A recent Bank of Canada (2019) study titled “The Size and Characteristics of Informal (“Gig”) Work in Canada” found that, overall, under one-third (30 percent) of Canadians participated in this type of work and that the highest rate of participation is among youth. Seniors (defined as aged 55 and above in the context of that document) accounted for about 26 percent of the share of respondents participating in ‘gig’ work and were more likely than people aged 18 to 24 and people aged 25 to 54 to report participating for fun.

4. What steps have been taken to ensure the access of older persons to the labour market including through physical accessibility, access to information about employment opportunities, training and the provision of appropriate workplace accommodations?

The *Accessible Canada Act* came into force on July 11, 2019. The Act is one of the most significant advances in federal disability rights law in over 30 years. Working within federal jurisdiction, its purpose is to benefit all persons, especially persons with disabilities, through the realization of a Canada without barriers by

proactively identifying, removing and preventing barriers to accessibility in priority areas such as the built environment and employment.

The Enabling Accessibility Fund supports community and work-based projects across Canada that improve accessibility, remove barriers, and enable Canadians with disabilities to participate in and contribute to their community and the labour market. The Workplace Accessibility stream supports projects that improve accessibility and safety in workplaces across Canada in which job opportunities could be created or maintained for people with disabilities.

The Office of Literacy and Essential Skills (OLES) aims to help low skilled adult Canadians, including older persons, improve their literacy and essential skills. In partnership with provincial and territorial governments, employers and community organizations, OLES provides them with the tools and resources they need to improve these essential skills. Essential skills are the skills needed for work, life, and learning and include digital skills as well as numeracy, oral communication, and working with others. In addition, digital skills are increasingly relevant both to access information about employment opportunities, as well as to perform in the workplace. The Digital Literacy Exchange Program supports initiatives that teach fundamental digital literacy skills to Canadians who would benefit from participating in the digital economy. The program focuses on under-represented groups, including seniors.

The national Job Bank, maintained by the federal government and used as the principal online job matching service by most provinces and territories, has introduced functionality targeted to help older workers find employment with employers that self-identify as open to hiring mature job seekers.

Through Workforce Development Agreements and Labour Market Transfer Agreements, the federal government transfers funding to provinces and territories to support them in their design and delivery of skills training and employment supports (e.g. wage subsidies, self-employment support, job search assistance, etc.). Funding can be used flexibly by provinces and territories to support interventions for a broad range of clients including those facing multiple barriers to labour market participation, such as older workers.

Other government initiatives focusing on training include the Skills Boost pilot, which offers student grants for eligible full-time students who have been out of high school for at least 10 years. Coupled with recent Employment Insurance (EI) measures which allow eligible EI claimants who have lost their job to ask for permission to continue receiving their EI benefits while taking a full-time course or training program, it provides valuable support to older persons who lost their job and might need to acquire new skills to find employment.

Amendments made to the Canada Labour Code in 2017 and 2018 are expected to help older employees receive the accommodations they need to thrive in federally regulated workplaces. These changes include creating a right to request flexible work arrangements, expanding medical leave, entitling employees to

unpaid breaks whenever necessary for medical purposes, and creating new paid and unpaid personal leave which employees can access for a variety of reasons, including to help them manage family responsibilities and/or other urgent matters related to them or their families.

5. What steps have been taken to ensure the availability of specialised services to assist and support older persons to identify and find employment?

The national Job Bank, maintained by the federal government and used as the principal online job matching service by most provinces and territories, supports older workers to find employment with employers open to hiring mature job seekers through a self-identification functionality tailored to support older persons seeking employment. Online private recruitment organizations also exist, such as BoomersPlus, Retiredjob.ca, and Retired Worker, that specialize in connecting older workers and employers, wherein employers are able to find experienced individuals and older workers are able to find employers that offer flexible work arrangements.

6. What good practices are available in terms of ensuring the older persons' enjoyment of their right to work and their access to the labour market?

As discussed under question 4, amendments made to the Canada Labour Code in 2017 and 2018 illustrate good practices aimed at addressing the unique challenges faced by older persons at work. These measures are expected to improve older employees' enjoyment of their ability to work in the federally regulated private sector. Because older workers are more likely to experience disabilities, have increased medical needs and voluntarily choose to work part-time, they are expected to benefit disproportionately from recent changes giving employees the right to request flexible work arrangements from their employer. These arrangements might include changes to their work schedule (e.g. fewer hours), changes to their location of work (e.g. work from home) and/or changes to other terms and conditions of their employment (e.g. job sharing). Employers are required to respond within a set timeframe, and can only refuse for defined reasons. This change is expected to help older employees in the federally regulated private sector work with their employers to find working arrangements that are most effective for them. Additionally, as older persons are overrepresented in part-time work, they are also expected to benefit more from new equal wage provisions that prohibit employers in the federally regulated private sector from paying two employees performing the same work at different wage rates based solely on their employment status.

7. What protections are available to ensure older persons enjoy just and favourable conditions of work, including fair wages and equal remuneration for work of equal value, safe working conditions, both in the formal and informal sector?

Older workers face unique barriers in the labour force, including age discrimination. Canada's legal protections for older workers as described under question one, help to combat age discrimination, and to promote the labour force participation of older individuals.

In Canada, provincial and territorial labour standard legislation apply to 94 percent of the Canadian workforce (92.2 percent in the case of occupational health and safety legislation), and the remaining workforce is federally regulated (e.g. inter-provincial or international transportation, postal service, banking). Provinces and territories establish and enforce their own employment standards and the federal government enacted and upholds the Canada Labour Code. In 2018, the Canada Labour Code was amended to prohibit employers in the federally regulated private sector from paying two employees performing the same work at different wage rates based solely on their employment status (e.g. part-time, contract, casual, etc.), subject to exceptions. Given older workers' overrepresentation in part-time work, this measure is expected to enhance their access to equal remuneration for work of equal value.

Occupational health and safety legislation is enacted and enforced by provinces, territories and the federal government, and outlines the general rights and responsibilities of the employer, the supervisor and the worker. All jurisdictions generally have the same basic elements, such as health and safety laws, workplace resolution bodies, and workers' compensation boards with return to work programs.

Other organizations such as the Canadian Center for Occupational Health and Safety also support safe working conditions for all Canadians, including seniors. The Centre is a federal department corporation, governed by a tripartite Council—representing government, employers and labour—that provides voluntary information, training, education, management systems and solutions that support health, safety and wellness programs across Canada. A section of their website is designated for aging workers and offers resources for organizations, including fact sheets, courses, posters, podcasts, promotional items and webinars.

8. In your country, is age one of the prohibited grounds for discrimination in relation to work and access to the labour market, including older age?

Age is an enumerated ground of prohibited discrimination under s. 15(1) of the Canadian Charter of Rights and Freedoms and under the *Canadian Human Rights Act*, as described under question one.

In 1990, the Supreme Court of Canada considered the rights of older workers in the context of mandatory retirement laws. While the Court concluded that the provision of the Ontario Human Rights Code that permitted mandatory retirement was an aged-based violation of s. 15(1) of the Charter, the violation was found by the Court to be justified as a reasonable limit under s. 1. In 2012, the Federal Court of Appeal upheld a similar provision allowing for mandatory retirement at “the normal age of retirement” in the Canadian Human Rights Act. However, in late 2011, Canada’s Parliament repealed a number of mandatory retirement provisions in a number of federal laws, including this provision in the Canadian Human Rights Act. Since then, employers who wish to maintain mandatory retirement policies must establish that the policies are based on bona fide occupational requirements and are reasonably necessary in their context.

9. What mechanisms are necessary, or already in place, for older persons to lodge complaints and seek redress for denial of their right to work and access to the labour market?

In Canada, various modes of redress for human rights violations are available, depending on the nature of the right infringed and the form of remedy sought. The courts have jurisdiction to determine whether there have been violations of the Charter, including civil claims alleging Charter violations. If a challenge based on the Charter is successful, the courts may declare a law of no force and effect or provide an appropriate and just remedy to anyone whose Charter rights have been infringed or denied.

The primary means of enforcing human rights codes and legislation is through the human rights commissions or tribunals established under the legislation. With some variations, the general model for processing complaints is as follows: the human rights commission enquires into the complaint and tries to obtain a settlement between the parties; if a settlement cannot be reached, the commission may dismiss the complaint or refer it to a human rights tribunal or board of inquiry, which holds a public hearing. Human rights commissions carry the complaint before a tribunal or board of inquiry at no cost to the complainant. In some jurisdictions, individuals may apply to a human rights tribunal or court directly, without the assistance of a commission.

If the commission or tribunal concludes that a person or entity has engaged in a discriminatory practice, it may make an order, which is enforceable through the courts. The person or entity who has engaged in the discriminatory practice may be ordered to cease such practice, to take measures to reverse the effects of discrimination, such as rehiring the victim, to pay compensation and/or to adopt an affirmative action program. Decisions of commissions or tribunals are subject to judicial review by the courts. The common law also contains remedies for violations of some human rights – for example, damages including compensation may be sought for wrongful dismissal from employment.