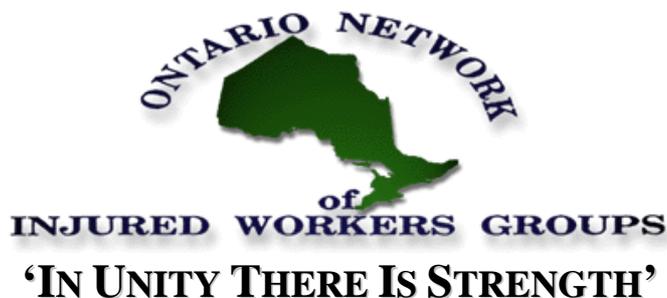


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**Law Commission Reports Workers' Compensation Age Limits
Undermine the Worth and Dignity of Older Adults**

<http://www.lco-cdo.org/older-adults-final-report.pdf>

(Hamilton) On July 11th, 2012, the Law Commission of Ontario (LCO) released its Final Report on the Law as it Affects Older Adults. It is based on extensive research and public consultation. The report notes that "Despite the end of mandatory retirement as a widespread practice, the assumption that age 65 remains a marker for withdrawal from the workforce remains common in the law."(p.118)

The Report notes that one Ontario law that retains older age-based restrictions on benefits is the workers' compensation legislation. When the provisions of the Ontario Human Rights Code protecting mandatory retirement policies were removed, the Workplace Safety and Insurance Act (WSIA) was amended to protect the age distinctions from complaints under the Code.

The LCO report describes two provisions terminating benefits for older workers. While the WSIA places a limited duty on employers to re-employ injured workers, this duty ends at the point when a worker reaches age 65. The legislation also places age 65 limits on loss of earnings benefits. Workers who experience an income loss due to a work related accident are entitled to loss of earnings benefits until the day on which the worker reaches age 65 years of age, if the worker was less than 63 years of age at the time of the injury; or two years after the date of the injury if the worker was 63 years or older at the time of the injury.

"These provisions ignore the importance to older persons of having the choice to continue to participate in the workforce" says the Law Commission. "Age-based rules regarding workforce participation, such as the limitation on the duty to re-employ, make age a central, overriding factor in assessing the needs and abilities of workers, ignoring the diversity of experiences and circumstances among older workers." (p.126)

"Given the aging population, increasing diversity in life cycles, and the shift towards service work and non-standard jobs (and the subsequent decline in the number of workers who have access to employer sponsored pension plans), older workers are increasingly economically vulnerable, uncertain about the future, and unable to afford retirement. The assumption of a single standard age for withdrawal from the workforce is increasingly tenuous. The use of age 65 as the sole marker for the end of protections and benefits under the WSIA therefore raises concerns."(p.128)

"These age-based distinctions on the ability of older workers to continue in the workforce and to continue to equally access workplace protections and benefits undermine the fundamental dignity and worth of older adults. Its time to change the law" says Peter Page, President of ONIWG.

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See also conference paper: <http://www.lco-cdo.org/ccel-papers/3A%20-%20John%20McKinnon.pdf>