

**Thematic Report on Ageism and Age Discrimination by the United Nations Independent Expert on the Enjoyment of Human Rights of Older Persons For the 48<sup>th</sup> Human Rights Council**  
**Report by International Longevity Centre Canada**

Submitted : April 13, 2021



**Human Rights do not have a best before date**  
**Support a U.N. Convention on the Rights of Older Persons**

## Acknowledgement

Margaret Gillis and Kiran Rabheru of the International Longevity Centre Canada would like to thank the Life Research Institute at the University of Ottawa and the following writers and researchers:

Caroline Bergeron

Linda Garcia

Louise Bélanger-Hardy

Martine Lagacé

Myra Yazbeck

# **Thematic Report on Ageism and Age Discrimination by the United Nations Independent Expert on the Enjoyment of Human Rights of Older Persons For the 48<sup>th</sup> Human Rights Council**

## **Report by International Longevity Centre Canada**

### **Introduction**

The International Longevity Centre (ILC) Canada is a human rights based organization dedicated to the needs of older persons, we are part of the International Longevity Centre Global Alliance made up of sixteen countries. ILC Canada has partnered with the Life Research Institute at the University of Ottawa for this Report.

The founder of the International Longevity Centre Global Alliance, Dr. Robert Butler, coined the term ageism back in 1969 and combatting ageism has been a cornerstone of the work of the International Longevity Centre of Canada since our inception. We are grateful for the opportunity to respond to the request from the United Nations Independent Expert on the Enjoyment of Human Rights of Older Persons to highlight the negative impact that ageism has on the human rights of older Canadians.

As the following Report details, ageism is rampant in Canada and around the Globe, impacting negatively on the lives of older persons in the workplace, in healthcare, in Long Term Care and in access to technology and other services, to name a few. This discrimination continues in Canada, a country with a strong human rights history and with age discrimination legislation at both federal and provincial levels. Clearly more needs to be done.

ILC Canada has been leading the call for United Nations Convention on the Rights of Older Persons in Canada. We see a Convention as a method to address ageism transforming the lives of older people by addressing stereotypes and inequities and by shining a light on the need for real societal change. We deliver the following Report as evidence of systemic ageism and discrimination and call once again for a legally binding document that addressed the gap in United Nations Human Rights Legislation, in regard to older persons.

**Thematic Report on Ageism and Age Discrimination by the United Nations Independent Expert on the Enjoyment of Human**

**1. What forms does age discrimination affecting older persons take and which ones are the most prevalent? Where available, please provide concrete examples and collected data including in employment, education, social protection, and health, financial and social services.**

The last three decades of research on age discrimination targeting older adults shows that such type of discrimination is rampant among multiple social arenas, including work and employment as well as health and health care. More so, the social and economic costs of age-based discrimination, both at the individual and collective level, are well documented.

While age discrimination entails ageist practices and behaviours, these in turn, often stem from stereotypical representations of ageing and older adults. The workplace is one social arena whereby ageist stereotypes are the most prevalent, impacting, in turn, employers *and* older workers' attitudes and behaviours in regard to hiring, retention, participation and professional development. In regard to stereotypes, findings from studies are convergent, revealing that employers generally perceive older workers as possessing soft skills (i.e., interpersonal skills), as being loyal and reliable workers. On the other hand, older workers are depicted as not being able to adapt to a fast pace changing work environment (including to new technologies), as less capable of learning, less competent and generally less productive than their younger peers (Harris, Krygsmann, Waschenko & Laliberte Rudman, 2018; Posthuma & Campion, 2009).

Notwithstanding the fact that these stereotypes have been disproved (Posthuma and al., 2009), they nonetheless often translate into discriminatory workplace practices on the part of employers, and impact older workers' sense of engagement, self-esteem and intentions to remain (or retire). In the latter case, studies show that Canadian older workers who perceive to be the target of negative age-based stereotypes have low levels of engagement and self-esteem and more so, contemplate professional exit as a form of defense mechanism (Lagacé, Tougas, Laplante & Neveu, 2010). In the former case, findings from studies suggest that, in general, Canadian employers have very few, if none, measures to attract and retain older workers although being aware of major labour shortages and turnover issues (namely in the healthcare and education sectors) (Armstrong-Stassen & Cattaneo, 2010). In fact, when asked how to manage such issues as well as an ageing workforce, Canadian employers are focusing on how to

better support older workers in planning their retirement, as such, discarding avenues related to professional development (Clarke & Ritter, 2019). Older workers are also clearly at a disadvantage when it comes to training and lifelong learning as managers consider the return on investment as too low (Lössbroek, & Radl, 2019), here again on the simple basis of the age of the worker. These few examples demonstrate that employers still rely (consciously or unconsciously) on ageist stereotypes to guide their decision making, putting at risk older workers' health but also the whole economy, paving the way for systemic ageism in the workplace.

Health and healthcare are other domains whereby ageist stereotypes and age-based discrimination targeting older adults are rampant. Health professionals' stereotypes about older adults as lacking agency, as being frail, depressed, irritable and dependent often translates in the use of patronizing communication and "elder speak" type of language (Atkinson & Sloan, 2016; Keaton & Giles, 2016) as well as inaccuracy in the screening and treatment of acute or chronic, physical and mental illness (Bergeron et al., 2017; Bodner et al., 2018; Canadian Mental Health Association, 2010). Patronizing communication often results in lowering older patient's self-esteem and sense of empowerment, while increasing depression and withdrawal from social interactions (Lagacé, Tanguay, Lavallée, Laplante & Robichaud, 2012).

Ageist stereotypes are present as well in health research. In Health Canada's clinical trials database, only three types of study populations are present: pediatric, adult male, and adult female (Government of Canada, 2021a). Combined with the adult population, the older age group (65+) remains underrepresented in clinical trials, resulting in an omission of key information on the benefits and harms of a treatment, especially for patients with comorbidities (Abbasi, 2019). Consequently, older patients may also have less access to potentially effective therapies compared to younger age groups (Witham & McMurdo, 2007). With the ageing of the Canadian population, Canadian researchers are also increasingly concerned about representation of the oldest old in Canada (85 + years).

Other sectors are also hit by age discrimination. In the education sector, national postsecondary enrolment data by age group stops at age 40 and over, leaving it unknown how many people ages 65 and older engage in postsecondary education at Canadian universities (Statistics

Canada, 2021). In very rare instances, cases like Prince Edward Island's, Olive Bryanton, an 81-year-old PhD student who fought against age discrimination to complete her doctoral program, are brought to light (CBC, 2020; Dragicevic, 2020).

**2. Please provide information and data collected about the causes and manifestations of ageism in society, both for younger and older generations, and how it translates into discriminatory practices.**

Ageism stems from biased social representations of age that translate into mostly negative stereotypes. In turn, such stereotypes pave the way to age-based discrimination (Bodner, Palgi & Wyman, 2018). Although like other forms of discrimination, the unique nature of ageism is that it is transversal to all social groups. In other words, every person, notwithstanding its gender or cultural background, may be the target of ageist stereotypes and discrimination. Nelson (2005) captured this unique and complex nature of ageism when referring to “prejudice against our future self”.

Ageism is the most tolerated type of social discrimination in Canada (Revera Inc & International Federation on Ageing, 2013). It impacts both younger and older generations and is rampant in many domains of society, including work and employment, education, health and healthcare. It can be expressed in a subtle and implicit way or through hostile and overt stereotypes and prejudice. Younger Canadians report being victims of age discrimination, primarily in the labour force when they are seen as “too young” or “not experienced enough” (Express Employment Professionals, 2020; Harvard Business Review, 2020). On the other hand, compassionate ageism (or “benevolent ageism”) is one example of subtle manifestations of ageism targeting older adults. Beliefs and stereotypes that ageing is mainly a process of decline and that older adults are fragile and needy can indeed reinforce paternalistic language and disempowering behaviours. On the other hand, hostile and overt ageism is expressed through hateful and demeaning language around ageing and older adults and by denying one's basic human rights. The COVID-19 pandemic has revealed that hostile and overt ageism is still alive and well: the dehumanizing hashtag “Boomer Remover” that circulated on multiple social media platforms in the first weeks of the crisis is undoubtedly an expression of hostile age-based language,

targeting older adults. The COVID-19 pandemic has also led to discriminatory behaviour and practice within the same age group. For example, healthy 70+ years old (the “in-group”) attempted to distance themselves from the frail and vulnerable older adults who were more at-risk of contracting the virus (the “out-group”) (Fraser & al., 2020; Levy & Banaji, 2002; Perdue et al., 1990). This disassociation of “us” versus “them” was used as a mean of protection against societal ageism (Fraser et al., 2020; Perdue et al., 1990).

As well, the catastrophic situation of long-term care facilities where older adults account for about 80% of all COVID-19 deaths in Canada (Royal Society of Canada, 2020) has been largely accounted to negligence, not only in terms of lack of infection prevention and control plans for COVID-19, but also in regards to the lack of government actions in addressing issues related to long-term care facilities in Canada (and documented through numerous official reports, i.e., lack of resources, staffing, training and poor quality of life of residents, including abuse).

Identifying the root causes of ageism remains a challenge but as age and ageing are very much culturally and socially constructed, some studies suggest that youth-centric and individualistic values position, *de facto*, older adults as main targets of ageism (North & Fiske, 2015). More so, these values are often conveyed by collective channels such as the media, the governments and the research community that in turn, partly shape individual experiences of ageing (Lagacé, Nahon-Serfaty & Laplante, 2015), generating anxiety about ageing and death (Bodner et al., 2015; Cooney et al., 2021; Dollinger, 2001; Donizzetti, 2019). Studies also point to limited knowledge about the ageing process (Cherry et al., 2016; Cooney et al., 2021; Donizzetti, 2019; Intrieri & Kurth, 2018), lack of knowledge and awareness of ageism (Fraser et al., 2020), constant exposure to implicit and explicit ageism (Chopik & Giasson, 2017; Levy & Banaji, 2002) and limited intergenerational interactions (Smith et al., 2016) as potential causes of the prevalence of ageism.

Socially accepted overt manifestations of age discrimination toward older people may include referring to the silver tsunami (Barusch, 2013) rather than the silver dividend (Matsukura et al., 2018), associating a brief memory lapse to having a “senior moment” (Bonnesen & Burgess, 2004; Gendron et al., 2016), sharing a “funny” birthday card about dependence in old age (Gendron et al., 2016), using terms of endearment such as “dear” (Ryan et al., 1986), insinuating

that someone is “too experienced” for a job, and speaking to the caregiver or family member rather than speaking directly to the older individual (Wyman et al., 2018). Ageist manifestations can then translate into discriminatory practices such as being denied employment or forced to retire, being denied access to health services and treatment (Witham & McMurdo, 2007), and being invisible in research.

Data availability is an important hurdle. Most of the labour force survey data available do not allow researchers to focus on older populations because sample sizes become too small to allow for any meaningful analysis. Furthermore, researchers are often compelled to group all age groups above 65 to investigate questions related to an older population. As a result, stratification by gender, ethnicity or socio-economic status is also not possible. It is important to highlight that some data on the health of the older population is collected in Canada, primarily through the Canadian Longitudinal Study on Ageing, however the access is limited. Interested researchers must submit a detailed application at pre-determined deadlines and pay a fee before getting access to the data. Furthermore, applications are not guaranteed automatic access to the data and must be approved beforehand.

**3. From an intersectional perspective, are there specific factors that aggravate ageism and age discrimination and how? Please provide concrete examples and collected data where available.**

Studies on age discrimination have noted the additional jeopardy of marginalization experienced by older adults from diverse identity factors. The intersection of age and gender for example have led to the coining of the term “gendered ageism” (Clarke & Griffin, 2008). According to researchers in British Columbia, while older men believe to be immune to it (Hurd Clarke & Korotchenko, 2016; Ojala et al., 2016), older women are more at risk of experiencing both ageism and sexism especially around concepts of beauty (Clarke & Griffin, 2008). A Canadian report on LGBTQ seniors revealed that this population also experiences double discrimination based on sexual orientation or gender identity and age (Employment and Social Development Canada, 2018). Older individuals who identify as gay have highlighted the important role the body plays in their identity (Employment and Social Development Canada,



2018) and the discrimination faced when accessing health services (McMaster University, 2018). Older adults with disabilities have been harmed by the concept of successful ageing, which promotes older adulthood without functional limitations (Angus & Reeve, 2006). In general, older adults with disabilities report having access to fewer resources than younger adults living with disabilities (Kane et al., 2007).

The intersection of age and migration has resulted in economic difficulties, poorer health, limited welfare and limited access to services for older immigrants (Dolberg et al., 2018). In Canada, older immigrants are more at risk of being financially dependent on their families because they may have no employment history in Canada making them ineligible for the Canada Pension Plan or the Quebec Pension Plan, and they may be ineligible for Old Age Security and the Guaranteed Income Supplement (National Institute on Ageing, 2020).

#### **4. What international, regional and national legal instruments are in place to combat ageism and age discrimination?**

At the international level, Canada is a signatory of the Universal Declaration of Human Rights. The country has ratified seven UN human rights conventions and covenants, (including the *International Covenant on Economic, Social and Cultural Rights*, and the *Convention on the Rights of Persons with Disabilities*) and is a party to several multilateral human rights treaties (including the *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women* and the *Optional Protocol to the Convention on the Rights of Persons with Disabilities*). However, these instruments do not contain legally binding obligations pertaining specifically to older adults. For instance, the UN Convention on the Rights of Persons with Disabilities offers protection only to older persons living with disabilities, not to others.

In Canada, human rights are protected by the *Canadian Charter of Rights and Freedoms* and by federal (national), provincial and territorial human rights laws. While these instruments do not address ageism per se, they do aim to provide legal protection against discrimination and harassment based on age.

Of note, Canada does not have laws directly addressing the human rights of older persons.

**5. Please also note any action plans or policies to raise awareness and combat ageism (including anti-ageism in school curricula) and to move toward a more age-friendly and inclusive society.**

At the macro level, the adoption and development of more than 1,400 age-friendly communities throughout Canada illustrate an important interest at all levels of government to combat ageism (Government of Canada, 2016). While all eight domains of age-friendly communities are meant to help seniors age in place, enjoy good health, and stay involved which, taken together, help to address age discrimination (Government of Canada, 2016), the domain of respect and social inclusion primarily focuses on attitudes and behaviours toward older adults (Public Health Agency of Canada, 2015).

At the provincial and territorial level, several strategies and action plans have included the need to address ageism and to promote respect for older people. (See Annex A.) For example, the Government of New Brunswick's Aging Strategy promotes intergenerational opportunities to enhance understanding and compassion between different generations (Province of New Brunswick, 2017). In the Government of Quebec's 2018-2023 Action Plan entitled *Quebec for All Ages*, the Seniors Secretariat and its partners aim to further promote positive aspects of ageing and recognize older adults' value and contribution to society (Gouvernement du Québec, 2018).

At the micro level, anti-ageism education curricula have been developed to move toward a more age-friendly society. Researchers at the Ontario Institute for Studies in Education developed the BIAS Free Framework to help researchers, practitioners and policy makers uncover underrepresentation or exclusion of groups based on characteristics such as age (Eichler & Burke, 2006). Another example is the Ontario Ministry of Education with the Ontario Human Rights Commission, which developed the Supporting Bias-Free Progressive Discipline in Schools to teach school-aged children about ageism and other forms of discrimination (Ontario Ministry of Education & Ontario Human Rights Commission, 2013).

**6. At the national level, please outline the legal protections available against age discrimination and indicate whether age is explicitly recognised as a ground for discrimination? If so, are there specific areas for which equality is explicitly guaranteed? Are there any areas where differential treatment based on older age is explicitly justified?**

In Canada, there are two sources of protection against age discrimination: the *Canadian Charter of Rights and Freedoms*, and federal (national), provincial and territorial human rights laws (codes). In both instances, age is explicitly recognised as a ground of discrimination.

***Canadian Charter of Rights and Freedoms***

The *Canadian Charter of Rights and Freedoms*, which has been part of Canada’s Constitution since 1982, protects the fundamental freedoms (e.g., religion, expression), as well as the democratic, mobility, legal, and equality rights of all Canadians. The equality rights provisions of the *Charter*, outlined in section 15, protect against discrimination on various grounds, including age. The *Charter* applies to federal, provincial and territorial governments.

Three important limits must be noted about the *Charter’s* application. First, the *Charter* applies only to governmental actions and laws and *not* to private individuals, businesses, or other organizations. Consequently, *Charter* challenges against private actors (for instance, a private long-term care residence) are not possible unless the claim is focussed on the unconstitutionality of a law or regulation. Second, Canadian courts have been largely unwilling to interpret the *Charter* as imposing *positive* obligations on governments to implement social programs (e.g., for older persons) or to take positive action to protect equality and other rights (Jackman & Porter, 2017). Thirdly, section 1 of the *Charter* states that *Charter* rights can be limited by law so long as those limits can be shown to be “reasonable in a free and democratic society”. For example, legislation or regulations imposing a lockdown during a pandemic may infringe various rights but could very well be considered reasonable in the context of a major health crisis.

Older Canadians who believe their *Charter* rights have been infringed must start a civil action before Canadian courts, a very costly and time-consuming process with no guarantee of success.

## ***Human Rights Legislation***

Apart from the *Charter*, in Canada, human rights are protected by federal, provincial and territorial laws. These acts focus only on equality rights and protect Canadians from harassment and discrimination based on several grounds including age.

At the *federal level* (national), the *Canadian Human Rights Act* applies to federally regulated private companies (e.g., banks, airlines), to individuals who work for or receive services/benefits from the federal government and to First Nations governments.

At the regional level, each province and territory in Canada has its own human rights legislation (e.g. *Alberta Human Rights Act*, RSA 2000, c A-25.5; *Ontario Human Rights Code*, RSO 1990, c H.19; *Quebec Charter of Rights and Freedoms*, CLRQ c C-12; *Nunavut Human Rights Act*, S.Nu. 2003, c 12.), and all of them offer protection based on age. These laws apply to the provision of goods, services, facilities (including schools and hospitals), employment, and housing within the province or territory. Older Canadians who believe their rights have been infringed can complain before specialized human rights tribunals. While there is no cost per se to file a complaint and self-representation is possible, the process has been criticized as very costly, daunting, and long drawn (Pinto, 2012). The hurdles associated with complaints are compounded for older adults, especially if they are at-risk or marginalized due to disability, low-income, immigration status or other issues (Law Commission of Ontario, 2012).

However, human rights commissions can play a role in addressing systemic inequalities through the inquiry process. For instance, in mid-March 2021, the Advocacy Centre for the Elderly, the Ontario Council of Hospital Unions and the Ontario Health Coalition made a formal request to the province's Human Rights Commission asking for an inquiry into systemic discrimination based on age against older adults in relation to hospital and long-term care in Ontario. The Commission has the power to conduct such an inquiry if it believes it is in the public interest to do so. This seems a foregone conclusion when one considers the COVID-19 pandemic's horrendous impact on Canada's older persons. It remains to be seen if the Commission will agree.

### ***Justification of differential treatment based on older age***

The Canadian *Charter of Rights and Freedoms* does not explicitly set out differential treatment based on older age. Section 15 sets out the right to equal protection and equal benefit of the law without discrimination based on age – without specifying an age range. Of note, however, is that under section 1 of the *Charter*, *Charter* rights are subject to “reasonable limits” as can be “demonstrably justified in a free and democratic society”. For instance, there are cases where Canadian courts, including the Supreme Court of Canada, have relied on section 1 to conclude that mandatory retirement provisions were permissible (e.g. *Dickason v University of Alberta*, a case dealing with mandatory retirement at 65 years old pursuant to a collective agreement). However, cases such as *Talos v Grand Erie District School Board*, where the loss of employee benefits at age 65 was found discriminatory by Ontario’s Human Rights Tribunal despite the section 1 *Charter* limit, confirm that legal dispositions can be interpreted in favour of claimants.

For their part, human rights laws (federal and regional) provide that age is a prohibited ground of discrimination. However, under these laws, differential treatment based on older age is justified in some circumstances, notably in the context of employment. For instance, human rights statutes (at all levels of government) provide that age-related job requirements or qualifications will not be considered discriminatory if they constitute a bona fide occupational requirement (BFOR), i.e., if accommodation on the basis of age would impose undue hardship on the person who would have to accommodate those needs (considering health issues, safety and cost) (*Canadian Human Rights Act*, sections 15(1)(a) and (2); Thornicroft, 2016). As well, employers can provide differential treatment when it comes to the provision of certain benefits and insurance plans (Hudson, 2017).

**7. Do the existing legal protections against age discrimination allow for claims based on intersectional discrimination, that is discrimination which is based on the intersection of age and other characteristics such as race, ethnicity, gender, disability, sexual orientation or other status?**

In Canada, the *Canadian Charter of Rights and Freedoms*, and federal (national), provincial and territorial human rights law all provide that equality claims can be based on a number of grounds race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability. While in theory at least, claims can be framed as intersectional discrimination, when based on multiple grounds of discrimination they have proven to be quite challenging, and so far, the highest court in the country has not adjudicated specifically on the matter. However, there are indications that multiple grounds claims could be considered, as shown in *Falkiner v Ontario (Minister of Community and Social Services)*, where discrimination was found to exist regarding a single mother on social assistance. Notably, the claim established one ground at a time, rather than in an interactive fashion (Majury, 2002). This points to the conceptual challenges of understanding how to deal with the cumulation of enumerated grounds (Gilbert, 2003). Importantly, so far, there has been very little discourse, both in the literature and before the courts, on the intersectionality of age and other grounds on which a finding of discrimination could be based (Canadian Center on Disability Studies, 2018). It may be that better data will provide the necessary tools to assist policy makers, service providers and legal actors to better understand the barriers linked to the intersectionality of age and other social categories (Statistics Canada, 2019)

## **8. What legal and other measures have been taken to address and protect from racism, sexism, ableism or other similar forms of discrimination that might be useful models for addressing ageism?**

There is no doubt that the adoption of the Canadian *Charter of Rights and Freedoms*, in 1982, has enhanced the protection of rights in several contexts in Canada, particularly in relation to criminal law (Rosenberg, 2009) and the protection against discrimination on the basis of sexual orientation (Pettinicchio, 2011). The extent to which these positive developments provide guidelines on how ageism could be addressed in Canada is challenging to assess, in part because there are few cases dealing with age discrimination *Charter* challenges.

However, in terms of useful models, the UN *Convention on the Rights of Persons with Disabilities* (CRDP) is often cited as a possible framework from which to draw in addressing issues around ageism and age discrimination (Kanter, 2009). Canada's first CRDP implementation report, in 2014, highlighted governmental efforts to comply with the Convention through, for example, the creation of dedicated programs and various information tools, training modules, measures to facilitate accessibility to certain services, financial support for mental health programs in Indigenous communities, services to increase employment opportunities, and others. While the UN response (Committee on the Rights of Persons with Disabilities, 2017) highlighted many areas in need of improvement, scholars have noted that “despite the lack of explicit implementation of the CRPD in domestic Canadian law and policy, it seems the Convention has helped to facilitate a larger shift in social and cultural paradigms of mental health and disability.” (Hoffman et al., 2016).

The extent to which the adoption of the CRDP has been the impetus for change in Canada is not negligible. For instance, in 2019, the Canadian federal government enacted the *Accessible Act Canada* which provides for the identification and removal of barriers, and the prevention of new barriers, in various areas including employment, transportation, and the delivery of programs, among others. The Preamble to the *Act* specifically refers to the CRDP and to the fact that, as a State Party to the Convention, Canada “has agreed to take appropriate measures respecting accessibility and to develop and monitor minimum accessibility standards”. Some of the provinces had already started to adopt similar legislation (e.g. *Accessibility for Ontarians with*

*Disabilities Act; Accessibility for Manitobans Act; Nova Scotia Accessibility Act*). This seems to confirm that, to some extent at least, the CRPD has had an impact on disability policy at both the federal and provincial levels (Law Commission of Ontario, Disability). In sum, Canada's experience following the adoption of the CRPD shows promise regarding the eventual implementation of a Convention on the rights of older persons in the country. Inclusion of such a convention will not only go a long way in creating tools that recognize the rights and needs of older adults but will also contribute to changing societal perceptions of age and the impact of ageist attitudes.

**9. Please indicate if there are institutional or complaints mechanism to address inequalities or grievances related to ageism and age discrimination. If so, please provide statistics on cases and types of cases received?**

In Canada, two types of mechanisms exist to address age discrimination: 1) complaints under the federal, provincial and territorial human rights laws, and 2) legal action under the *Canadian Charter of Rights and Freedoms*.

For claims based on human rights legislation (at the federal, provincial and territorial levels), enforcement is achieved through a complaint process to human rights commissions or tribunals. These are independent bodies responsible for receiving and adjudicating complaints, raising awareness, and generally advancing human rights through education, policy, and so on.

Statistics are provided by each tribunal in their respective annual reports. For instance, the federal Canadian Human Rights Tribunal reports that in 2019, about 3.5% of the complaints received dealt with discrimination on the basis of age (11 cases in 2018 and 6 cases in 2019) (Canadian Human Rights Tribunal – Annual Report, 2019). At the provincial and territorial levels, for example, 14% of applications to the Ontario Human Rights Tribunal were based on the ground of age in 2019-2020 (Ontario Human Rights Tribunal – Annual Report, 2020), while in Alberta, in 2018-2019, 5% of complaints mentioned age as a ground of discrimination (Alberta Human Rights Commission, Annual Report, 2020). In Quebec, the statistics provided for 2018-2019 indicate that 9% of the files opened mentioned age as a ground of complaint (Commission des droits de la personne et des droits de la jeunesse, 2019), and in the territory of Yukon, 8%



of complaints in 2018-2019 were based on age (Yukon Human Rights Commission, 2019). The lack of uniformity in reporting makes comparison difficult, but statistics clearly show that, in Canada, age discrimination does not form the basis of complaints before human rights tribunals as often as other grounds of discrimination (Vickers, 2018).

In terms of legal actions based on *Charter* claims, statistics are more difficult to gather as there is no official compilation of the number of such actions, let alone the number of challenges mounted on behalf of older Canadians based on age discrimination. A search of the Supreme Court of Canada database confirms that, over the last 40 years, there have been only 12 cases directly pertaining to age discrimination practices and older adults, and all of them raised issues pertaining to employment.

In sum, Canadian statistics reveal that older adults are unlikely to complain before administrative tribunals or start legal actions before the courts to voice their concerns about discrimination based on age. While access to justice is a serious problem in Canada – for all Canadians and in relation to a myriad of topics – this lack of accessibility for older adults is very concerning, especially given that, at least a portion of such older adults have fixed incomes, lower than average literacy and educational levels, face the onset of health and activity limitations, experience cognitive disabilities, live in environments that reduce their autonomy and community inclusion, and deal with physical, financial or other forms of abuse.

### **Conclusion:**

Ageism and age discrimination remain an issue for Canadians. As this paper has described ageism permeates all aspects of the lives of older persons, in employment, in access to health care, in Long Term Care, and in media marginalization to name a few. Moreover, current legal remedies for ageism and age discrimination do not adequately protect older people. International Longevity Centre Canada calls upon the Canadian government and all Member States to move quickly to enhance the rights of older people by supporting a United Nations Convention on the Rights of Older Persons.

## References

Accessible Canada Act, SC 2019, c 10.

Accessibility for Ontarians with Disabilities Act, 2005, SO 2005, c 11.

Accessibility for Manitobans Act, SM 2013 c 40, CCSM c A1.7.

Abbasi, J. (2019). Older Patients (Still) Left Out of Cancer Clinical Trials. *JAMA*, 322(18), 1751. <https://doi.org/10.1001/jama.2019.17016>

Alberta Human Rights Commission. (2020). Annual Report 2019- 2020. [https://www.albertahumanrights.ab.ca/about/Documents/25473%20HR%20Annual%20Report%2018\\_19%20online.pdf](https://www.albertahumanrights.ab.ca/about/Documents/25473%20HR%20Annual%20Report%2018_19%20online.pdf)

Armstrong-Stassen, M., & Cattaneo, J. (2010). The effect of downsizing on organizational practices targeting older workers. *Journal of Management Development*, 29(4), 344–363. <https://doi.org/10.1108/02621711011039150>

Atkinson, J.L., & Sloan, R.G. (2016). Exploring the Impact of Age, Race, and Stereotypes on Perceptions of Language Performance and Patronizing Speech, *Journal of Language and Social Psychology*, 36(3), 287-305.

Angus, J., & Reeve, P. (2006). Ageism: A Threat to “Aging Well” in the 21st Century. *Journal of Applied Gerontology*, 25(2), 137–152. <https://doi.org/10.1177/0733464805285745>

Barusch, A. (2013). The aging tsunami: Time for a new metaphor?. *Journal of Gerontological Social Work*, 56(3), 181–184. doi:10.1080/01634372.2013.787348.

Bergeron, C. D., Goltz, H. H., Szucs, L. E., Reyes, J. V., Wilson, K. L., Ory, M. G., & Smith, M. L. (2017). Exploring sexual behaviors and health communication among older women. *Health Care for Women International*, 38(12), 1356–1372.

**Thematic Report on Ageism and Age Discrimination by the United Nations Independent Expert on the Enjoyment of Human**

Bodner, E., Palgi, Y., & Wyman, M.F. (2018). Origins of ageism at the individual level. In Ayalon, L., & Tesch-Römer, C. (Ed.). *Contemporary perspectives on ageism* (pp. 241-262). Doi: 10.1080/07399332.2017.1329308

Bodner, E., Palgi, Y., & Wyman, M. F. (2018). Ageism in mental health assessment and treatment of older adults. In L. Ayalon & C. Tesch-Römer (Eds.), *Contemporary Perspectives on Ageism* (Vol. 19, pp. 241–262). Springer.

Bodner, E., Shrira, A., Bergman, Y. S., Cohen-Fridel, S., & Grossman, E. S. (2015). The interaction between aging and death anxieties predicts ageism. *Personality and Individual Differences*, 86, 15–19. <https://doi.org/10.1016/j.paid.2015.05.022>

Bonnesen, J. L., & Burgess, E. O. (2004). Senior moments: The acceptability of an ageist phrase. *Journal of Aging Studies*, 18(2), 123–142. <https://doi.org/10.1016/j.jaging.2004.01.008>

Canadian Center on Disability Studies. (2018). *Understanding the Intersectional Forms of Discrimination Impacting Persons with Disabilities Final Project Report*.  
<http://www.disabilitystudies.ca/assets/ccds-int-dis--151110-final-report-en-full.pdf>

Canadian Charter of Rights and Freedoms, s 8, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.

Canadian Human Rights Act, RSC 1985, c H-6.

Canadian Human Rights Tribunal. (2019). Annual Report. <https://www.chrt-tcdp.gc.ca/transparency/AnnualReports/2019-ar/2019-ar-en.html>

Canadian Mental Health Association. (2010). *Mental Health and Addictions Issues for Older Adults: Opening the Doors to a Strategic Framework*. [https://ontario.cmha.ca/wp-content/uploads/2010/03/cmha\\_ontario\\_issues\\_for\\_older\\_adults\\_full\\_report\\_201003.pdf](https://ontario.cmha.ca/wp-content/uploads/2010/03/cmha_ontario_issues_for_older_adults_full_report_201003.pdf)

CBC. (2020). *Never Too Old*. <https://www.cbc.ca/cbcdocspov/episodes/never-too-old>

**Thematic Report on Ageism and Age Discrimination by the United Nations Independent Expert on the Enjoyment of Human**

- Cherry, K. E., Brigman, S., Lyon, B. A., Blanchard, B., Walker, E. J., & Smitherman, E. A. (2016). Self-Reported Ageism Across the Lifespan: Role of Aging Knowledge. *The International Journal of Aging and Human Development*, 83(4), 366–380.  
<https://doi.org/10.1177/0091415016657562>
- Chopik, W. J., & Giasson, H. L. (2017). Age Differences in Explicit and Implicit Age Attitudes Across the Life Span. *The Gerontologist*, 57(suppl\_2), S169–S177.  
<https://doi.org/10.1093/geront/gnx058>
- Clarke, L. H., & Griffin, M. (2008). Visible and invisible ageing: Beauty work as a response to ageism. *Ageing and Society*, 28(5), 653–674. <https://doi.org/10.1017/S0144686X07007003>
- Commission des droits de la personne et des droits de la jeunesse. Québec. Rapport d'activités et de gestion 2018-2019.  
[https://www.cdpcj.qc.ca/storage/app/media/publications/RA\\_2018\\_2019.pdf](https://www.cdpcj.qc.ca/storage/app/media/publications/RA_2018_2019.pdf), at p 29.
- Committee on the Rights of Persons with Disabilities. (2017). Concluding observations on the initial report of Canada, CRPD/C/CAN/CO/1, 8 May 2017.
- Cooney, C., Minahan, J., & Siedlecki, K. L. (2021). Do Feelings and Knowledge About Aging Predict Ageism? *Journal of Applied Gerontology*, 40(1), 28–37.  
<https://doi.org/10.1177/0733464819897526>
- Dolberg, P., Sigurðardóttir, S. H., & Trummer, U. (2018). Ageism and Older Immigrants. In Liat Ayalon & C. Tesch-Römer (Eds.), *Contemporary Perspectives on Ageism* (Vol. 19, pp. 177–191). Springer International Publishing. [https://doi.org/10.1007/978-3-319-73820-8\\_12](https://doi.org/10.1007/978-3-319-73820-8_12)
- Dollinger, L. A. H., Stephanie. (2001). Participation in a course on aging: Knowledge, attitudes, and anxiety about aging in oneself and others. *Educational Gerontology*, 27(8), 657–667.  
<https://doi.org/10.1080/036012701317117893>

Donizzetti, A. R. (2019). Ageism in an Aging Society: The Role of Knowledge, Anxiety about Aging, and Stereotypes in Young People and Adults. *International Journal of Environmental Research and Public Health*, 16(8), 1329. <https://doi.org/10.3390/ijerph16081329>

Dragicevic, N. (2020). When did aging become a problem? Why this 82-year-old took up the fight against ageism. <https://www.cbc.ca/cbcdocspov/features/when-did-aging-become-a-problem-82-year-old-activist-fights-against-ageism>

Eichler, M., & Burke, M. A. (2006). The BIAS FREE Framework: A New Analytical Tool for Global Health Research. *Canadian Journal of Public Health*, 97(1), 63–68. <https://doi.org/10.1007/BF03405218>

Employment and Social Development Canada. (2018). Social isolation of seniors—Supplement to the social isolation and social innovation toolkit: A Focus on LGBTQ seniors in Canada. <https://www.canada.ca/en/employment-social-development/corporate/seniors/forum/social-isolation-lgbtq.html>

Express Employment Professionals. (2020). 8 out of 10 say ageism exists in hiring. <https://www.globenewswire.com/news-release/2020/02/12/1983924/0/en/8-Out-Of-10-Say-Ageism-Exists-in-Hiring.html>

Fraser, S., Lagacé, M., Bongué, B., Ndeye, N., Guyot, J., Bechard, L., Garcia, L., Taler, V., CCNA Social Inclusion and Stigma Working Group, Andrew, M., Bayly, M., Bethell, J., Chasteen, A., Elliot, V., Herron, R., Itzhak, I., Kortzman, A., Maxwell, C., McGilton, K., ... Tougas, F. (2020). Ageism and COVID-19: What does our society's response say about us? *Age and Ageing*, afaa097. <https://doi.org/10.1093/ageing/afaa097>

Gendron, T. L., Welleford, E. A., Inker, J., & White, J. T. (2016). The Language of Ageism: Why We Need to Use Words Carefully. *The Gerontologist*, 56(6), 997–1006. <https://doi.org/10.1093/geront/gnv066>

Gilbert, D. (2003). Time to Regroup: Rethinking Section 15 of the Charter. *McGill L.J.* Vol 48, p 627.

**Thematic Report on Ageism and Age Discrimination by the United Nations Independent Expert on the Enjoyment of Human**

Gouvernement du Québec. (2018). Un Québec pour tous les âges: Le Plan d'action 2018-2023. <https://publications.msss.gouv.qc.ca/msss/fichiers/ainee/F-5234-MSSS-18.pdf>

Government of Canada. (2016). Age-Friendly Communities. <https://www.canada.ca/en/public-health/services/health-promotion/aging-seniors/friendly-communities.html>

Government of Canada. (2021a). Clinical trial search. <https://health-products.canada.ca/ctdb-bdec/index-eng.jsp>

Harris, K., Krygsman, S., Waschenko, J., Laliberte Rudman, D. (2018). Ageism and the Older Worker: A Scoping Review, *The Gerontologist*, Volume 58 (2), <https://doi.org/10.1093/geront/gnw194>

Harvard Business Review. (2020). Am I old enough to be taken seriously? <https://hbr.org/2020/11/gg-ascend-pub-11-11-how-old-is-old-enough>

Hoffman, S. J., Sritharan, L. & Tejpar, A. (2016). Is the UN Convention on the Rights of Persons with Disabilities Impacting Mental Health Laws and Policies in High-Income Countries? A Case Study of Implementation in Canada. *BMC Int Health Hum Rights*. Vol. 6, 28. <https://doi.org/10.1186/s12914-016-0103-1>

Hudson, D. (2017). *The Golden Years: The Aging Workforce and Human Rights Matters*, Queen's University IRC.

Hurd Clarke, L., & Korotchenko, A. (2016). 'I know it exists ... but I haven't experienced it personally': Older Canadian men's perceptions of ageism as a distant social problem. *Ageing and Society*, 36(8), 1757–1773. <https://doi.org/10.1017/S0144686X15000689>

Intrieri, R. C., & Kurth, M. L. (2018). Racial differences in attitudes toward aging, aging knowledge, and contact. *Educational Gerontology*, 44(1), 40–53. <https://doi.org/10.1080/03601277.2017.1388962>

Jackman, M., & Porter, B. (2017). Social and Economic Rights. In P. Oliver, P. Macklem & N. Des Rosiers (Ed.), *The Oxford Handbook of the Canadian Constitution* (Oxford Handbooks Online).

**Thematic Report on Ageism and Age Discrimination by the United Nations Independent Expert on the Enjoyment of Human**



[affects-older-adults-advancing-substantive-equality-for-older-persons-through-law-policy-and-practice/](#)

Law Commission of Ontario. Disability and the Law in Ontario. <https://www.lco-cdo.org/en/our-current-projects/the-law-and-persons-with-disabilities/ii-disability-and-the-law-in-ontario/>

Levy, B. R., & Banaji, M. R. (2002). Implicit Ageism. In T. D. Nelson (Ed.), *Ageism: Stereotyping and Prejudice against Older Persons* (The MIT Press).

Lössbroek, J., & Radl, J. (2019). Teaching older workers new tricks: workplace practices and gender training differences in nine European countries. *Aging & Society*, 39, 2170-2193. doi:10.1017/S0144686X1800079X

Majury, D. (2002). The Charter, Equality Rights, and Women: Equivocation and Celebration. *Osgoode Hall Law Journal*, Vol. 40, p. 297.

Matsukura, R., Shimizutani, S., Mitsuyama, N., Lee, S. H., & Ogawa, N. (2018). Untapped work capacity among old persons and their potential contributions to the “silver dividend” in Japan. *The Journal of the Economics of Ageing*, 12, 236-249.

McMaster University. (2018). Are we equal in the face of aging? Challenges faced by LGBTQ2 older adults. <https://www.mcmasteroptimalaging.org/blog/detail/blog/2018/04/11/are-we-equal-in-the-face-of-aging-challenges-faced-by-lgbtq2-older-adults>

National Institute on Ageing. (2020). *National Seniors Strategy*. [https://nationalseniorsstrategy.ca/the-four-pillars/pillar-1/addressing-ageism-elder-abuse-and-social-isolation/#\\_edn47](https://nationalseniorsstrategy.ca/the-four-pillars/pillar-1/addressing-ageism-elder-abuse-and-social-isolation/#_edn47)

Nelson, T.D. (2005). Ageism: Prejudice Against Our Feared Future Self. *Journal of Social Issues*, 61(2), 07-221. <http://dx.doi.org/10.1111/j.1540-4560.2005.00402.x>

*Nova Scotia Accessibility Act*, SNS 2017, c 2.



Ojala, H., Pietilä, I., & Nikander, P. (2016). Immune to ageism? Men's perceptions of age-based discrimination in everyday contexts. *Journal of Aging Studies, 39*, 44–53.

<https://doi.org/10.1016/j.jaging.2016.09.003>

Ontario Human Rights Tribunal. (2019-2020). Annual Report.

[https://tribunalsontario.ca/documents/TO/Tribunals\\_Ontario\\_2019-2020\\_Annual\\_Report\\_EN.pdf](https://tribunalsontario.ca/documents/TO/Tribunals_Ontario_2019-2020_Annual_Report_EN.pdf)

Ontario Ministry of Education, & Ontario Human Rights Commission. (2013). *Supporting Bias-Free Progressive Discipline in Schools: A Resource Guide for School and System Leaders*.

<http://www.edu.gov.on.ca/eng/policyfunding/supportresguide.pdf>

Perdue, C. W., Dovidio, J. F., Gurtman, M. B., & Tyler, R. B. (1990). Us and them: Social categorization and the process of intergroup bias. *Journal of Personality and Social Psychology, 59*(3), 475–486. <https://doi.org/10.1037/0022-3514.59.3.475>

Pettinicchio, D. (2011). Public and Elite Policy Preferences: Gay Marriage in Canada. *International Journal of Canadian Studies/Revue internationale d'études canadiennes*.

<https://doi.org/10.7202/1002175ar>

Pinto, A. (2012). *Report of The Ontario Human Rights Review 2012*; online:

[https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/human\\_rights/](https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/human_rights/)

Posthuma, R., & Campion, A. M. (2009). Age stereotypes in the workplace: common stereotypes, moderators, and future research direction. *Journal of Management, 35*(1), 158-188. <https://journals.sagepub.com/doi/pdf/10.1177/0149206308318617>

Province of New Brunswick. (2017). *We are all in this together: An Aging Strategy for New Brunswick*. <https://www2.gnb.ca/content/dam/gnb/Departments/sds/pdfs/Seniors/AnAgingStrategyForNB.pdf>

Public Health Agency of Canada. (2015). *Age-Friendly Communities Evaluation Guide: Using Indicators to Measure Progress*. <https://www.canada.ca/content/dam/phac-aspc/migration/phac-aspc/seniors-aines/alt-formats/pdf/indicators-indicateurs-v2-eng.pdf>

Revera Inc, & International Federation on Ageing. (2013). *Revera Report on Ageism*. <https://ifa.ngo/wp-content/uploads/2013/03/Revera-IFA-Ageism-Report.pdf>

Rosenberg, M. (2009). Twenty-five years later: The impact of the Canadian Charter of Rights and Freedoms on the Criminal law. *Supreme Court Law Review*, Vol. 45. [https://www.ontariocourts.ca/coa/en/ps/publications/twenty-five\\_years\\_later.htm](https://www.ontariocourts.ca/coa/en/ps/publications/twenty-five_years_later.htm)

Royal Society of Canada (2020). Restoring Trust: COVID-19 and The Future of Long-Term Care, A Policy Briefing by the Working Group on Long-Term Care. [https://rsc-src.ca/sites/default/files/LTC%20PB%20%2B%20ES\\_EN.pdf](https://rsc-src.ca/sites/default/files/LTC%20PB%20%2B%20ES_EN.pdf)

Ryan, E. B., Giles, H., Bartolucci, G., & Henwood, K. (1986). Psycholinguistic and social psychological components of communication by and with the elderly. *Language & Communication*, 6(1–2), 1–24. [https://doi.org/10.1016/0271-5309\(86\)90002-9](https://doi.org/10.1016/0271-5309(86)90002-9)

Smith, M. L., Bergeron, C. D., Cowart, C., Ahn, S., Towne, S. D., Ory, M. G., Menn, M. A., & Chaney, J. (2016). Factors associated with ageist attitudes among college students: Ageist attitudes among college students. *Geriatrics & Gerontology International*. <https://doi.org/10.1111/ggi.12894>

Statistics Canada. (2021). *Postsecondary enrolments, by credential type, age group, registration status, program type and gender*. <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3710001501&pickMembers%5B0%5D=1.1&pickMembers%5B1%5D=2.1&pickMembers%5B2%5D=5.7&pickMembers%5B3%5D=6.1&cubeTimeFrame.startYear=2014+%2F+2015&cubeTimeFrame.endYear=2018+%2F+2019&referencePeriods=2014010>

Statistics Canada. (2019). Centre for Gender, Diversity and Inclusion Statistics. [https://www.statcan.gc.ca/eng/topics-start/gender\\_diversity\\_and\\_inclusion](https://www.statcan.gc.ca/eng/topics-start/gender_diversity_and_inclusion).

**Thematic Report on Ageism and Age Discrimination by the United Nations Independent Expert on the Enjoyment of Human**

- Thornicroft, K. (2016). The Uncertain State of Mandatory Retirement in Canada. *Labor Law Journal*, 67(2), 397-414.
- Vickers, L. (2018). Comparative Discrimination Law: Age as a Protected Ground. *Brill Research Perspectives in Comparative Discrimination Law*. Vol. 2(1).
- Witham, M. D., & McMurdo, M. E. T. (2007). How to Get Older People Included in Clinical Studies: *Drugs & Aging*, 24(3), 187–196. <https://doi.org/10.2165/00002512-200724030-00002>
- Wyman, M. F., Shiovitz-Ezra, S., & Bengel, J. (2018). Ageism in the Health Care System: Providers, Patients, and Systems. In Liat Ayalon & C. Tesch-Römer (Eds.), *Contemporary Perspectives on Ageism* (Vol. 19, pp. 193–212). Springer International Publishing. [https://doi.org/10.1007/978-3-319-73820-8\\_13](https://doi.org/10.1007/978-3-319-73820-8_13)
- Yukon Human Rights Commission. (2019). *A Year in Review – Annual Report 2018-2019*. <https://yukonassembly.ca/sites/default/files/inline-files/sp-34-3-21-report.pdf>

## **Court Decisions**

- Falkiner v Ontario (Minister of Community and Social Services)*, 2002 CanLII 44902 (ON CA).
- Dickason v University of Alberta*, [1992] 2 SCR 1103.
- Talos v Grand Erie District School Board*, 2018 HRTO 680 (CanLII).

## **Annex A**

- Northwest Territories strategic framework “Our Elders: Our Communities”: one of their guiding principles is respect and dignity.
- Nunavut Elder Program Strategy 2010-2014: one of their action items was to promote respect for elders – celebrating contributions of elders.

- Alberta’s 2010 Aging Population Strategy Framework: In 2017, the Minister of Seniors and Housing’s mandate letter stated three areas of focus, including overcoming ageism.
- Government of Quebec: *Quebec pour tous les âges*
- New Brunswick’s 2017 “We are all in this together: An Aging strategy for New Brunswick”: NB encourages age-friendly communities that embrace contributions of seniors, celebrate cultural diversity, overcome ageism and reduce inequities.
- Prince Edward Island’s 2018 Promoting Wellness, Preserving Health: A Provincial Action Plan for Seniors, Near Seniors, and Caregivers Living on Prince Edward Island: one of the pillars of the plan is to “address ageism and support active aging”.

### *Conclusion*

1. *Ageism is alive and well in Canada – especially in employment and in health services*
2. *Ageism affects both young and old in Canada*
3. *Intersectionality expresses itself in age x gender and sexual orientation and x immigration status – these factors aggravate ageism*
4. *We have legal tools in place in the way of rights commissions but nothing for older adults specifically. There is some provision to not discriminate based on age.*
5. *Collection of data based on age is not readily available. We need to further look at this – especially unwrapping the different age groups within the 65+*
6. *Canada does have protection based on age but the process is onerous and not age friendly. There are several examples of how the application of these rights can be skewed against older Canadians.*
7. *We might wish to add in the conclusion that older adults themselves may not be recognizing their rights.*