

**MEETING STATUS: PUBLIC**

**LEGISLATIVE ASSEMBLY**

**SESSION: 2/62**

**PRINCE EDWARD ISLAND**

**Motion No: 6**

**Year: 2005**

**VERBATIM TRANSCRIPT OF  
HOUSE COMMITTEE PROCEEDINGS**

---

**COMMITTEE: STANDING COMMITTEE ON SOCIAL DEVELOPMENT**

**Thursday, September 8, 2005**

**SUBJECT(S) BEFORE THE COMMITTEE:**

Consideration of Motion No. 6 re Mandatory Retirement Age Referred to Committee

---

**NOTE:**

This Transcription has **NOT** been edited nor subsequently compared with the original tape. It is intended to provide an indication of Committee discussion only and is **NOT** certified by the Legislative Assembly to be a true copy of the discussion.

---

**COMMITTEE MEMBERS**

**PRESENT:**

Wayne Collins, Chair  
Dr. David McKenna  
Jim Bagnall replacing Wilbur MacDonald  
Hon. Elmer MacFadyen  
Hon. Robert Ghiz

**ABSENT:**

Beth MacKenzie  
Carolyn Bertram  
Hon. Kevin MacAdam

**GUEST:**

George Kells, Human Rights Commission

**STAFF:**

Marian Johnston, Committee Clerk



**Standing Committee on Social Development**  
**Thursday, September 8, 2005**  
**10:00 a.m.**

**Guest: George Kells, Human Rights Commission**

**Wayne Collins (PC)Chair:** I'm going to open up the meeting of the Social Development Committee and once again welcome to all members and apologies to our special presenter this morning and our member of the media for a delay in the start of our meeting right now but we're glad to be here and we are here because of a resolution of the Legislation Assembly resolving that the issue of mandatory retirement be forwarded for study and consultation to this committee and we're pleased to be able to do that on this important issue.

I think as was outlined in debate on the resolution in the Legislature, Canada, Prince Edward Island included, has seen some dramatic changes in demographics over the years to 2020 and 2030 we're seeing fewer people in the workplace supporting those who are retired and we're seeing more people at an older age continuing to be active in the Canadian workforce and all of that has led to the idea that maybe now is the right time to consult with Prince Edward Islanders and get their feelings on this issue of mandatory retirement which is of wide discussion I know in the province of Ontario and different provinces have different ways in which they handle this issue and we are pleased to be able to, as a committee, to be able to consult with Islanders on this and we look forward to some productive dialogue in the weeks to come.

So having said that, you see on our agenda this morning that we are going to have a presentation by Chairman George Kells of the Prince Edward Island Human Rights Commission. We will review - I believe we have a draft ad as well that we'll be looking at and we'll also then make up a work plan to solicit public input. And with that said, Mr. Kells, I want to welcome you, Sir, and thank you for your patience this morning and we appreciate your being here and we look forward to your presentation because I think even from discussion in the House on this resolution and informal discussions I've had with committee members in recent days there appears to be some confusion regarding where mandatory retirement fits in in terms of government policy and where it fits in in

terms of employer, employee formalized relationships and we look forward to hearing your perspective from the Human Rights Commission on this issue, Sir. So I'll turn the floor over to you and we'll look forward to your remarks.

**George Kells:** I was always taught that you should never start a presentation with an apology so I'll start with two. First of all I heard Mr. Harper on TV last night say that politicians don't wear shirts and ties during the summer so I took it upon myself to follow that advice and I see I was partially supported by the Chair but everybody else is properly dressed.

Secondly, what you're seeing in front of you is a result of what we discussed partially the last time I was in here and that was the arbitrary unannounced cutback to our Human Rights Commission budget in the last go round of monies which means that you're going to have to listen to me instead of one of our more knowledgeable lawyers because they're all tied up with a hearing that's going on this week and next and it also means that the Human Rights Commission office is closed this week because everybody, the four remaining members of the staff are all tied up. But I know you didn't want to hear about that so I'll drop it there. The fact is we're in trouble down there and the fact is we'll have run out of money by about the middle of December for this annual year.

But to get back to what we're here to talk about, the subject of mandatory retirement, Prince Edward Island *Human Rights Act* does not permit mandatory retirement. Thank you very much. But naturally all things to deal with law and life is never as simple as it seems because there are always exceptions. And the exception is genuine occupational requirement may allow mandatory retirement at whatever age.

In PEI we've only really dealt with this in one case in the Human Rights Commission and that was long before my time, it was back in '92, and it dealt with the case of a school bus driver who was being forced to retire at age 65 and the then

school board presented a case which, in the opinion of those people in the hearing, actually justified the compulsory retirement of school bus drivers at age 65 in PEI. And that's never been questioned and it still applies. So when I say there are always exceptions the exceptions are not easy to come by and they generally only apply if public safety is involved so that you'll find across the country, for instance airline pilots, police services, fire services, military, do have compulsory retirement and it has been accepted by various human rights agencies and the lower courts across the country for those particular . . . and things like that.

So even though you got me instead of a lawyer I do have some experience in this background because in a former life I once spent about two weeks arguing with Federal Human Rights Commission and a group of lawyers from the Justice Department about why we needed compulsory retirement for the military. And like all good things Canadian it came out as a compromise but I actually had to convince some of those people that 65 year old infantries were not much use to us and I am now 68 so I have some feeling for them. But we did compromise and we were able to maintain compulsory retirement. What we had to do was put everybody in the same boat. So that whether you're a private or a general you retire at age 55 or that's as long as you can serve in our military.

It's a complicated system and it ultimately ends up being a personal contract almost with every individual. And I'll just touch on it briefly because it gives you an idea how difficult it might be to justify this. But when a person first joins they're in on what they call an initial engagement which is up to nine years. And at the end of that period or before the end of that period both the individual and the military decide whether they want to keep this guy on or not. And if he's been satisfactory and he wants to stay then he'll get signed on for another engagement which is called the interim engagement which will take him up to 20 years of service. Oh, I should have said if he doesn't stay on at the end of nine years he gets a return of his pension contributions and that's it. If he does stay on and he's signed up for an interim period of service -IPS- it takes him up to 20 years service. Towards the end of that again an agreement is made between he and the military as to whether he should stay on or get out at the end of 20 years

service. And the military has the upper hand. If they say, no, we don't want you then this guy has no option but to take his 20 year pension and go. And then if you're accepted beyond that you're accepted up to age 55 and at 55 everybody goes with the exception of the surgeon general and the chaplain general and I have no idea how that came in but that's a red herring.

Anyway I just brought it out because what you have here in effect is dealing with every individual as an individual as opposed to a blanket thing. And so when the guy signs on he knows he's only guaranteed up to nine years, all other things being equal. And when he signs on again he's only guaranteed up to 20 years, all other things being equal, and then he signs on again he knows he has to go at age 55. That's a lot of paper work and a lot of administration and it's more than the small average company or even larger company is able to deal with, I think. And we spend a lot of time dealing with that particular aspect in the military.

So, how do we deal with this in PEI? Well, the PEI *Human Rights Act* says no mandatory retirement. It also says unless there is a good and bonafide reason that you can present. It's not easy to present it and when the school board did this for the school bus drivers they brought in two expert witnesses from the United States who both were doctors and both dealt with aging in various degrees. And they were able to convince the board at the time that yes, indeed, when a guy reaches 65 he probably shouldn't be driving a school bus because of physical and/or mental capabilities that may have deteriorated. And believe me they tend to do that towards that stage of your life.

Now, under the province's human rights legislation it is legal however as part of a pension or insurance program to require that someone attain a certain age before qualifying for pension benefits. But insofar as legislation sets a mandatory retirement age it would be contrary to our *Human Rights Act*. Public and private employers, large and small, are not allowed to retire someone at the age of 65 or any other age, for that matter. But they may set ages for qualifications for benefits. Now, whether incentives for retirement, such as a reduction of benefits after a certain age, would be considered a genuine retirement or pension plan under

section 11 of the Act is uncertain and it's uncertain because it hasn't been tested. The provisions of the Act relating to discrimination in relation to age do not affect the operation of any genuine retirement or pension plan or any genuine group of employee insurance plan.

Now, what the really boils down to is, if you join up to one of these organizations and you know that at age 65 you get full pension and full medical coverage or whatever's in your contract and that is authorized - and that is allowed under our *Human Rights Act* - but there's nothing in the *Human Rights Act* that authorizes you to force a person to go out at age 65 or any other age. So if you have an incentive that might encourage this person to leave, like dropping his salary or dropping some benefits or hiring him only part time or something, that has never been tested in PEI. But it has in other areas and I guess you could say that in most provinces now, well Quebec is probably the most extreme example in that they don't allow compulsory or mandatory retirement under any circumstances, period. And it's causing trouble, for instance in some of the universities in Quebec, or they claim they are having trouble because nobody wants to leave a university apparently at age 65 and it's being plugged up and they mentioned Loyola and McGill and Bishops I think were the three that seem to be having the most trouble.

How does it apply to those persons who knowingly sign on to this contract knowing that they have to go at 65, take all the perks and benefits that accumulate and then at age 65 apply and say, well, I don't want to leave and you're discriminating against me. That has not really been tested here other than for a bonafide occupational requirement (indistinct). My guess is that if you live in accordance with our Act and it were to come in front of one of our boards that they would uphold the individuals right not to retire. That would be my guess.

Now, where does PEI stand on this. I think PEI stands exactly where it should, in our opinion at least, in accordance with the Charter. The Charter makes allowances for special cases, as you do or as we do. And there are those options where if you're worried, specially if you're worried about public safety or that sort of thing there are ways of forcing the person to retire. But if it's not about a question of public safety and it's only a question of

convenience or planning then I don't think that will fly. And I think that's the way most jurisdictions will end up. Ontario is going in that direction, I think, and I don't see anything wrong with it personally even though I argued on the other side of it for a long time and it was right for the military but I don't think it's right.

You mentioned to me that you wished that you knew when the next session of the Legislature would start because it would make your planning easier. And I know that employees, maybe the university for instance, would like to know that all their profs are going to retire at age 65 so they can plan the progression of- recruit new ones and so on. So it's inconvenient but on the other hand you've got to remember - and this would be the argument the university of someone else would make - that it's more than inconvenient. It makes life impossible in your planning and it plugs up the system and you don't get any new blood in the system and blah, blah.

I don't know what your experience has been in your recent cutback in the public service about how willing people are to take early retirement. But from what I heard or read, you know, it sounded to me like even if you never allowed any kind of mandatory retirement most people are going to go when their pension is up. Not everybody wants to work beyond 65. In fact I suggest very few will want to work especially if they've got a reasonable pension to look forward to. If they have no pension at all or no perks at all and they want to continue to work I think you'd be hard pressed to enforce any kind of mandatory retirement.

That was a very cursory look at the way we look at it but our bottom line is I don't think you should do anything in PEI to change what you've got. You've got it right and most people are coming around to that. I think it's right that there should be an exception if you can prove a genuine occupational requirement. I think it's also right that if you can't do that you have no right to make people stop working. There are other methods of doing that. I mean if the person is incompetent or he's lost his memory more than most of us have at that age, then you know you have to deal with it as an individual and you have to say I'm sorry, you're not able to do the job, you're on six months notice or you're gone. We all know that can be messy too but it's usually not a human rights issue at that

stage. But from a human rights point of view I think PEI has it right and you should stick with what you've got.

I'll try and answer questions but I don't pretend to be the expert.

**Wayne Collins (PC)Chair:** I'm going to keep a questioner's list here so any member who wishes to pose a question just indicate to me and we'll start with Robert. Go right ahead.

**Honourable Robert Ghiz (L):** If I understand correctly, then under the Charter which you say we're pretty much following here on Prince Edward Island, if it's a job where because of age your ability will no longer allow you to continue on then it's okay to have mandatory retirement. Like you said, the military, firefighters, police officers.

**George Kells:** Those are the easy ones.

**Honourable Robert Ghiz (L):** Yes, the easy ones. How did the federal government get around with the senate of Canada? Do you know? Because they have to go at 75.

**George Kells:** Yes - they have to go to 75? No, they have voluntary retirement before that I think. I don't know.

**Honourable Robert Ghiz (L):** They do have to leave at 75.

**George Kells:** The federal government-I didn't mention it-but in fact the federal human rights act does allow this. They identify -as do several provinces-they identify the ages of between 18 and 65 you shall not discriminate with the implication being that beyond that on either end you can discriminate all you like. And that's the way some of the acts read. But I don't think they're right. That doesn't make them right just because. . . that's more or less what the federal human rights act does. So I don't know that it ever was fought as a charter issue at that level. I don't know.

**Honourable Robert Ghiz (L):** In PEI, how long have you been with the Human Rights Commission?

**George Kells:** Nine years.

**Honourable Robert Ghiz (L):** And have you seen

any cases?:

**George Kells:** One, but it never came to a hearing. It had to do with a fireman, volunteer fireman in -oh, it doesn't matter where- who had reached the compulsory retirement age and he didn't want to go. Now, that's probably an even more difficult situation because he's volunteered. It's not like you . . . and the way it was finally settled was they found him a job as a dispatcher or something. He knew that he wasn't physically capable of carrying out all the duties that a fireman might be required to do but he didn't want to give up his position in the fire department and they found another job for him. That's the only one we've had.

**Honourable Robert Ghiz (L):** So right now you think PEI is on the right track and I see here from the motion and it says -whereas the province of Ontario has decided, following public consultations, to introduce legislation and mandatory retirement. So does it look like there's more provinces saying PEI has it right or let's move towards what we have.

**George Kells:** Yes, that's the way we're looking at it is that everybody's coming towards this. And I think the other thing that might be driving it is what you mentioned at the beginning, Mr. Chair, the fact that we're getting short of workers. We will require people to work, well it would be nice if people would work beyond 65 because we need them out there and PEI may be a prime example of that, you know, where we tend to lose a lot of our younger people.

**Honourable Robert Ghiz (L):** Well, you see it in our health care too. Right off the bat if we had every doctor over the age of 60 retire we would be in a crisis.

**George Kells:** Agreed. And we're in a crisis in some cases anyway.

**Dr. David McKenna (PC):** Just two points. One clarification there, Mr. Kells, you said an employer who has an employee who's over 65 and he doesn't want that employee around any more he can cut the benefits, you say. Is that what you said? Or he could make it difficult for the employee to stay around and still be okay?

**George Kells:** I didn't say that. I said that is done

in some jurisdictions. In other words, say okay you can stay after 65 but we're going to drop your salary or we're going to cut out some of your benefits. And sometimes that's agreeable. I mean it's not so much necessary that that person at age 65 is out to get more money. It may be just that his interest is still there and he feels he can still do something useful but not as much as he was doing before. Maybe like the fireman I was talking about. He still has all the knowledge that he ever had but . . . no, I didn't say that that would float but it's a possibility. It hasn't come in front of us so I can't rule in a vacuum really. We'd have to hear the details.

Now the other thing is, part of any discrimination hearing is the complainant usually says I've been discriminated against and the respondent says, yes, maybe but I had to do this because it was too expensive for me not to do it. If I didn't do that then it's going to cost me this, that and the other thing. Maybe our group medical insurance rates are all going to go up for everybody, you know, and that doesn't make my unions happy. But on the other hand if you have older employees you're going to have less requirement for a local daycare centre in your factory, I guess, you know. There are pluses and minuses. I can't rule in a vacuum that says if you do this you might get away with doing this. You might, you know, and it might be reasonable. And if it's reasonable then you might think that somebody sitting on the board would agree that it's reasonable because if you don't do that then, you know, it costs the small employer so much money to accommodate this that- to accommodate not doing it- that you put him out of business or cost him a lot of money. And that's a legitimate factor too.

**Dr. David McKenna (PC):** Just another comment, just getting back to the universities and I know you mentioned Quebec. I know there's a recent case in Manitoba in the *Globe and Mail* a few weeks ago . . .

**George Kells:** And the guy was 73.

**Dr. David McKenna (PC):** Yes. I guess, like you say he signed on knowing he had to retire probably at 65. I think it was a he-I can't remember that-in that case. And yet he took it to . . . in Quebec there was no mandatory retirement. But yet the university, why would the university be allowed to do that. Of course you say it's a . . .

**George Kells:** You mean why did they keep him on for eight more year? I don't know. I saw the same article but it didn't - in fact I got a copy here. Which reminds me, I've got a copy of various bits and pieces on this subject that I could leave with you and maybe you could, if they want to look at it a little bit further. Yea, I don't know why. And he seems like he's quite ready to carry on. And is there a problem? I don't know. It seems to me those are the kinds of things you have to deal with on an individual basis.

**Dr. David McKenna (PC):** But when you said the only reason they can, if they can come up with a cause that he should be retired, how do you determine? I mean, who's that jury to decide that in some cases, I guess?

**George Kells:** I don't know.

**Dr. David McKenna (PC):** It's a tough call.

**George Kells:** It's a tough call. That's why I said it's very tough to prove a genuine occupational requirement. Whether it's too expensive or too difficult for the employer to actually go along with or whether it's actually physical requirements.

I also have a copy of the case that I mentioned that took place here which was a full hearing or at least the full findings and it illustrates the kind of difficult situation it is to adhere to-this is for the bus driver- and the extent that the board had to go to to sort of prove that, you know, bus drivers shouldn't be driving beyond age 65 based on all this evidence.

**Jim Bagnall (PC):** It seems to be accepted.

**George Kells:** I guess so. It was never appealed beyond the Human Right Commission.

**Wayne Collins (PC)Chair:** Mr. Bagnall, I'm going to go to Mr. MacFadyen here before the question, please.

**Honourable Elmer MacFadyen (PC):** I may have the same question as you have, Jim. I know that I have friends that are bus drivers, some of them are 65 and they had to retire. They're as able bodied as somebody who is 60. I guess my question would be - why would the school boards be allowed to have a policy forcing people to retire when in fact in PEI, there's no mandatory

retirement?

**George Kells:** Because in the opinion of the Human Rights hearing at the time that this was done in 92, they proved conclusively that people over 65 started to lose facilities that made them, that may impact on the safety of the public.

**Honourable Elmer MacFadyen (PC):** But would that not be on a case-by-case basis?

**George Kells:** Well, as I said, it can be. Then let me see, yes, I mean ideally it should be. All human rights issues are individual issues. So ideally, it should be. They won this case. It's never been appealed to courts or anything like that so it applies. But it's the only situation in PEI that I know of that has been formally approved by anybody.

**Honourable Elmer MacFadyen (PC):** So if a bus driver felt that he was capable of performing the tasks of a bus driver and the school board said that he had to retire, if the bus driver, he or she, appealed that decision then based on medical evidence, Human Rights would have to rule in favour of a bus driver?

**George Kells:** I can't say, I can never say how they're going to rule because it would also depend on whatever evidence you had on the other side.

**Honourable Elmer MacFadyen (PC):** I know, but I'm saying that. . .

**George Kells:** I know, but I can't give you an answer that says, yes, we will support him.

**Honourable Elmer MacFadyen (PC):** But it seems like. . .

**George Kells:** He's allowed to submit a claim, certainly.

**Honourable Elmer MacFadyen (PC):** But it seems like all bus drivers have been categorized into one specific case to say that all bus drivers fall into the same category.

**George Kells:** I think once you've seen the hearing paper and you see the evidence from these two expert witnesses, these doctors from the states who deal with aging, it gives you a little broader picture of why they would rule that way.

But you know, I agree with you. I know people that on the surface at least are just as fit as anybody who's 55, who have run marathons or stuff like that, but as a group, they've done it with police. They've done it with firefighters. They've done it with airline pilots because there is statistical proof out there that they have lost some facility whether it's reaction time, whether it's strength, whether it's mental ability, you know. You start losing it at about age 55 in fact.

**Honourable Elmer MacFadyen (PC):** I guess we all lost it then.

**Richard Brown (L):** Not us all.

**George Kells:** No, I'm reminded of it quite constantly. I'm stuck for words I find like I never used to be.

**Honourable Elmer MacFadyen (PC):** The other question I have is in relation to benefits that a person is able to receive because it seems like in Prince Edward Island as in other provinces that the magic age of 65 is required to receive, say, Old Age Security or retirement benefits or whatnot that's under federal legislation, even though as the honourable leader said, that the retirement in federal is at 75. You said that earlier, did you not?

**Honourable Robert Ghiz (L):** That's what happens in the senate.

**George Kells:** Only in the senate.

**Honourable Elmer MacFadyen (PC):** But the difficulty is, is that some programs that employers receive benefits for cease at age 65 as well.

**George Kells:** Like medical coverage perhaps.

**Honourable Elmer MacFadyen (PC):** Medical coverage or benefits in regards to wage loss. A person who has been injured on the job, say early in life, that when they reach age 65, they're not entitled to receive workers benefits, let's say because. . .

**George Kells:** To my knowledge, we haven't seen any case like that in front of us. That's not to say it doesn't exist. And that sounds to me like discrimination. But to the extent that it's set off by the Old Age Pension or the supplementary

benefits or whatever, maybe that's. . . I'm sure because it's been around a long time that it must have been dealt with somewhere along the line and it must have been approved. But that's not always true. I mean sometimes you'd be amazed at things that have existed forever have never been questioned.

**Honourable Elmer MacFadyen (PC):** Because it's been the norm.

**George Kells:** Sorry?

**Honourable Elmer MacFadyen (PC):** Because it has been the norm.

**George Kells:** I guess, yes.

**Honourable Elmer MacFadyen (PC):** And nobody has challenged it.

**Wayne Collins (PC) (Chair):** Mr. Bagnall.

**Jim Bagnall (PC):** No, Elmer asked my question.

**Wayne Collins (PC) (Chair):** I have a question for you, Mr. Kells. On the island, as you mentioned, some of these school bus drivers that have been so far stated the bona fide reasons for their mandatory retirement. Regarding UPEI, I'm taking that there has been no complaint lodged with the commission regarding mandatory retirement to that institution. Must that be challenged then in order for that, for any change to . . . ?

**George Kells:** You can't quote me on this. We've certainly had inquiries. I don't think we've got a complaint yet. But I suspect there will be shortly.

**Wayne Collins (PC) (Chair):** Now given, as Dr. McKenna posed the question there, how does one assess the suitability of someone over the age of 65 to teach in a university setting. What would be and I'm not asking you to prejudge this, maybe I am, but I mean, what would be the likely outcome of such a complaint?

**George Kells:** Well the university would have to put forward an argument to prove that people over 65 had lost whatever capabilities the university had hired them for or tend to, as a group, that make them less employable. And I think I said earlier that in some universities the way they overcome

this is to make them less employable by giving them less to do or cut off their research grants and say, okay, you're not going to do anymore research but you can stay on as a lecturer. But how - but in theory according to our act, they'd have to put together a heck of an argument to keep it from becoming a discriminatory reason that and we would find against them in theory unless they put together such a good argument that. . .

**Wayne Collins (PC) (Chair):** It's not a question of public safety?

**George Kells:** But it hasn't been - I don't think so. But I know and I'm sure you probably do too, I know several recently retired professors from UPEI who are not particularly interested in doing anything other than what they're doing. Or they maybe involved with Seniors College or whatever and they're quite satisfied with the way it is. As I didn't say, I guess, but I am, too, with the way it works for the military. I firmly believe you can't have - military is not an old man's game. It's a young man's game and they should be forced to retire.

Now when I retired at age 55, I felt I had most of my abilities and I could have served another ten years. Well, maybe, but when I left, it opened up a hole for somebody else which brought them in at the bottom and if you don't offer promotions, it makes your recruiting that much more difficult. So the university may use those kinds of arguments too, saying we need new blood at the bottom because you know, this guy's worn out. He hasn't learned anything; he hasn't taught anything new in 20 years or whatever. And I think we've run into people like that in our own universities.

**Wayne Collins (PC) (Chair):** Do you have any further questions?

**Dr. David McKenna (PC):** Yes, you listed some occupations that for sure, there is mandatory retirement like police, airline pilots and we have the school bus drivers here. Are there any other occupations out there that are listed that are also sort of like that, that we should be looking at or that are talked about? I look at something like a surgeon.

**George Kells:** Like a what?

**Dr. David McKenna (PC):** A surgeon, I don't

think there's any mandatory retirement for a surgeon.

**George Kells:** No, I don't think so.

**Dr. David McKenna (PC):** Not that I'm aware of in this province or anywhere.

**George Kells:** I know at least one surgeon here who is well into his 70's and still operating.

**Dr. David McKenna (PC):** Yes, and I guess I don't know. . .

**Honourable Robert Ghiz (L):** If you ask people, they say what they want, they want that. . .

**George Kells:** Some of them do and on the other hand, some of them don't anymore.

**Dr. David McKenna (PC):** But I mean I guess, is that something that's in other provinces? Are you aware of any limitation of age for surgeons?

**George Kells:** I don't think there is.

**Dr. David McKenna (PC):** There isn't any. I can certainly see some type of microsurgery, whether it's plastics or something that's very. . .

**George Kells:** I'm not aware.

**Dr. David McKenna (PC):** . . . not aware of any.

**George Kells:** And I'm sure it's never been raised to us, at least not in my nine years.

**Honourable Robert Ghiz (L):** They would have to have medical insurance, right? So wouldn't they have to pass some sort of tests? Like wouldn't there be within their own medical. . .

**George Kells:** Yeah, within their own community, they have a way of dealing with that sort of thing. Well I don't know. You're closer to that community than I am.

**Dr. David McKenna (PC):** Well I know we did a case a few years ago where there was a surgical assist that was well into his years but because of a Human Rights, we didn't have any mandatory retirement, he was still working into a ripe old age.

**Honourable Robert Ghiz (L):** But that could be used (Inaudible).

**Dr. David McKenna (PC):** That's what I wondered but someone has to make that statement, I guess and no one did.

**George Kells:** We know that the medical community is sort of a pretty closed shop and we don't always hear all the things that they do to police themselves.

**Dr. David McKenna (PC):** And the younger ones will get older themselves someday so they may want to be in that same position, you know.

**George Kells:** I know.

**Wayne Collins (PC) (Chair):** Minister MacFadyen.

**Honourable Elmer MacFadyen (PC):** I believe, this is just a statement, but I believe that some people or some employers have a policy whereby if you work to the age of retirement supposedly here in the province and if it's 65 and somebody retires, they can't remain with that employer because they can't receive a salary while they receive a pension. Is that the way they go?

**George Kells:** I don't know, it could be.

**Honourable Robert Ghiz (L):** (Indistinct) what Wilbur is doing.

**Honourable Elmer MacFadyen (PC):** You can't work for government.

**Dr. David McKenna (PC):** He's got no mandatory retirement.

**Honourable Robert Ghiz (L):** No, but he can draw a salary and a pension at the same time.

**Honourable Elmer MacFadyen (PC):** Yeah, but that's only because of the position that he's in. But if he was a public servant, he couldn't.

**George Kells:** Well I think it varies.

**Honourable Robert Ghiz (L):** I'd argue that then. I'd say, look, the MLA can do it, why can't someone else do it?

**Honourable Elmer MacFadyen (PC):** Because I guess there's rules that govern public service pensions.

**George Kells:** Well there's double dipping rules but they're funny rules. For instance, I could have gone to work for DVA after I retired from the military and still continue to draw my full pension. But I couldn't have gone to work as a public servant in D&D and do the same thing. I could become a senator and continue to draw my full pension but a Member of Parliament, I don't think can do that. I think he loses his pension if he becomes a senator. I don't know that that's human rights. I just think it's bureaucracy gone wild.

**Jim Bagnall (PC):** In the service, you could have drawn your pension and gone in the reserves, correct, and drawn a salary?

**George Kells:** To some extent.

**Jim Bagnall (PC):** Eighty-five per cent of your salary.

**George Kells:** Yeah, it depends on your rank and your age and a lot of other things. In theory, yes.

**Jim Bagnall (PC):** You still can do that too. They're still doing it, I know.

**Wayne Collins (PC) (Chair):** If there are no further questions, I want to thank you, Mr. Kells for your presentation today.

**George Kells:** Okay, and I'll leave these papers with the clerk.

**Wayne Collins (PC) (Chair):** And we look forward to reading them in our deliberations. We appreciate your attendance today, as always and we wish you and the commission. . .

**George Kells:** Well maybe next time, you'll get a lawyer and it'll make it clearer.

**Wayne Collins (PC) (Chair):** No, no, we enjoyed hearing you today.

**George Kells:** But I knew there were no lawyers going to be present so I didn't feel so badly.

**Wayne Collins (PC) (Chair):** Thank you very much, Mr. Kells.

**George Kells:** You're welcome.