

Submission to the Minister of Finance – Ontario 2014

Pre-Budget Consultations

Prepared by the Canadian Intern Association

February 2014



Overview

The Canadian Intern Association requests that the 2014 budget address the proliferation of unpaid internships in Ontario. Unpaid internships are problematic for three reasons:

1. Unemployment – Unpaid internships contribute to youth unemployment and drive down wages. In 2013, 16-17% of Ontarians aged 15-24 were unemployed. This rate is notably higher than the Canadian average of 13.5 to 14.5%.¹
2. Inequality – Unpaid internships facilitate socioeconomic and intergenerational inequality.² Those without the economic means or connections to perform unpaid work are becoming barred from entering a variety of professions. Furthermore, internships are replacing paid entry-level jobs and making it difficult for young Canadians to gain meaningful work experience.
3. Illegality – An estimated 100,000 to 250,000 unpaid internships take place annually in Ontario.³ Between 50,000 to 100,000 of those internships are legal since they are part of a formal educational program. However, the remaining 75,000 to 150,000 internships do not comply with the *Employment Standards Act* and illegally deprive interns of their right to minimum wage.

To address issues surrounding unpaid internships in Ontario, our submission provides three recommendations for the Ministry of Labour:

1. Improve enforcement of Ontario's current laws related to internships
2. Create an expert committee to facilitate data collection and public education regarding internships
3. Perform a comprehensive review of employment standards exclusions permitting unpaid internships

These recommendations are made in an effort to enforce and improve the legal framework for internships while raising public awareness about employer obligations and interns' rights.

¹ Sean Geobey, "The Young and the Jobless: Youth Unemployment in Ontario" *Canadian Centre for Policy Alternatives* (27 September 2013) online: <<https://www.policyalternatives.ca/publications/reports/young-and-jobless>>.

² Andrew Stewart & Rosemary Owens, "Experience or Exploitation: The nature, prevalence and regulation of unpaid work experience, internships and trial periods in Australia" The University of Adelaide Law School – Report for the Fair Work Ombudsman, (January 2013) online: <<http://www.fairwork.gov.au/Publications/Research/UW-complete-report.pdf>>.

³ Andrew K Langille, "The Low End Theory: The Legal Regulation of the School-To-Labour Market Transition in Canada" Unpublished manuscript, Osgoode Hall Law School, York University, Toronto, Canada (2012).

About the Canadian Intern Association

The Canadian Intern Association is a federal not-for-profit organization that advocates against the exploitation of interns and aims to improve the internship experience for both interns and employers. We work on behalf of students, youth, and other Canadians affected by issues related to both paid and unpaid internships.

Founded in June 2012, the Canadian Intern Association spearheads campaigns that provide support to interns and educates the public about internship issues:

- Claim Back Your Pay – Interns who have worked unpaid are encouraged to file claims for unpaid wages with the Ontario Ministry of Labour. Our website provides interns with tips for before, during, and after their internship, and information about the laws surrounding internships in Ontario.
- Wall of Shame & Fame – Social media is used to name Canadian organizations that offer different kinds of internships. This campaign aims to draw attention to illegal or problematic internships, while praising organizations with paid or educational internship programs.
- Student Group Support – Members of the Canadian Intern Association Executive Team provide presentations at universities and colleges to educate students about their workplace rights and other internship issues.

More details on our campaigns can be found at www.internassociation.ca.

In addition to our campaigns, the Canadian Intern Association Executive Team raises awareness about internship issues by speaking with Canadian media:

- Television - *The Agenda with Steve Paikin, CBC's Lang and O'Leary Exchange*
- Radio - *Cross-Country Checkup with Rex Murphy, CBC Metro Morning, CBC Ottawa Morning, McLean in the Morning*
- Print/Online - *Toronto Star, Globe and Mail, the Huffington Post, CBC News*

The Canadian Intern Association welcomes this opportunity to participate in the Government of Ontario's 2014 Pre-Budget Consultations.

Recommendation 1: Improve enforcement of Ontario’s current laws related to internships

The Ministry of Labour has not taken sufficient measures to enforce the three exclusions related to interns in the *Employment Standards Act*. As a result, an estimated 75,000 to 150,000 unpaid internships in Ontario are operating illegally and should be providing interns with at least the minimum wage. We urge the Ministry of Labour to adopt strategies that will improve enforcement of existing employment standards and reduce the number of illegal internships in Ontario.

Current Laws

Under Ontario’s employment law regime, interns are considered to be employees and entitled to minimum wage unless they fall under one of the three exclusions listed in the *Employment Standards Act*. The first exclusion is for students who perform work under a program approved by a secondary school board, a college, or a university.⁴ The second exclusion targets students-in-training for certain listed professions.⁵ The third exclusion applies to any person considered a “trainee” based on them meeting each of the following six conditions:

1. The training is similar to that which is given in a vocational school
2. The training is for the benefit of the individual
3. The person providing the training derives little, if any, benefit from the activity of the individual while he or she is being trained
4. The individual does not displace employees of the person providing the training
5. The individual is not accorded a right to become an employee of the person providing the training
6. The individual is advised that he or she will receive no remuneration for the time that he or she spends in training.⁶

If an intern were found to fall within any of these three exclusions, he or she would not be considered an employee and is not entitled to the minimum wage in Ontario.

Current Enforcement Strategies

The Ministry of Labour currently relies on reactive enforcement and self-compliance strategies when it comes to the three intern-related exclusions in the *Employment Standards Act*. If an internship is illegal, an intern must submit an Employment Standards Claim to the Ministry of Labour for unpaid wages and sometimes will be heard before the Ontario Labour Relations Board. This system puts too heavy a burden on interns to enforce the law and hold non-compliant organizations accountable.

⁴ *Employment Standards Act*, RSO 2000, c 41 at s 3(5).

⁵ O Reg 285/01 at s 2(1)(e).

⁶ *Employment Standards Act*, RSO 2000, c 41 at 1(2).

In 2013 the Ministry of Labour agreed to invest an additional \$3 million annually to hire additional officers and staff to provide more proactive inspections. The funding was to be used to hire 20 new members of a dedicated enforcement team and eventually to conduct an additional 1,400 inspections a year.⁷ While this was a positive initiative, none of these Enforcement Officers are specifically allocated to internship issues. Furthermore, a very limited number of sectors were selected for inspection blitzes regarding vulnerable workers and unpaid wages.⁸

Also in 2013 Minister Naqvi tabled legislation that amends five workplace laws statutes to protect precarious workers including unpaid interns.⁹ If passed, it would increase the time limit allowed to file a complaint to the Ministry of Labour for unpaid wages from 6 months to 2 years. This would provide interns with the additional time to collect necessary documents, seek advice, and even secure another position before filing their claim. This legislation would also remove the unnecessary \$10,000 cap on unpaid wages and allow claimants to receive the full amount they are owed.

Recommended Enforcement Strategies

Despite these recent initiatives, the Ministry of Labour still fails to adequately address the prevalence of illegal unpaid internships in Ontario. We recommend that the Ministry of Labour perform more frequent inspection blitzes targeting high-risk employers who may be non-compliant in a variety of sectors. This can be done by partnering with student organizations, post-secondary institutions, and not-for-profit organizations.

Additionally, certain Enforcement Officers should be designated to internships and have a thorough understanding of the three exclusions and interns' rights. Interns should have the option of submitting complaints anonymously so they can assist with the enforcement process without risking their chances of getting a job or their reputation in an industry. Finally, enforcement strategies must adapt to the Internet age by addressing the advertising of illegal internships online and the growing practice of internships over the Internet.

⁷ Claire Seaborn "Our Response to a Letter from Minister Naqvi" *Canadian Intern Association* (July 2013) online: <<http://www.internassociation.ca/letter-from-ontario-minister-of-labour-yasir-naqvi/>>.

⁸ Ontario Ministry of Labour, *2013/14 Employment Standards Proactive Enforcement Plan* (May 2013) online: <http://www.labour.gov.on.ca/english/es/enforcementplan_1314.php>.

⁹ Bill 146, *Stronger Workplaces for a Stronger Economy Act*, RSO 2013.

Recommendation 2: Create an expert committee to facilitate data collection and public education regarding internships

The Ministry of Labour lacks sufficient organizational capacity and expertise to address emerging issues related to Ontario's youth labour market. We recommend it create an expert committee to deal with youth employment issues in the province, including unpaid internships. The committee would be responsible for collecting information, community engagement, and issuing an annual report on youth employment issues.

Data Collection

Currently Canada's provincial and federal governments do not collect data on the prevalence of internships or information about interns themselves. It is clear the lack of quantitative data on internships in Canada is one reason for a scarcity in political will for law and policy reform.

While Statistics Canada has a role to track unpaid internships nationally, the Ministry of Labour is also encouraged to collect labour market data regarding internships to assist them in creating targeted policies and improving enforcement programs. It should begin tracking the number of paid and unpaid internships, whether they are part of a formal educational program and which industries are more prevalent. Additionally, it may be helpful to collect data on the individual characteristics and socioeconomic backgrounds of interns in Ontario. In collecting this data, we recommend the Ministry of Labour partner with the Ministry of Education and the Ministry of Training, Colleges and Universities since many internships are related to educational programs.

Public Education

The Ministry of Labour provides very little public education on the legality of internships, employer obligations, and intern's rights.¹⁰ It is unsurprising that the public lacks understanding of this issue given the differences in employment law among the provinces and the complicated exclusions that exist.¹¹

We recommend the Ministry of Labour produce educational materials targeting interns and employers clarifying what qualifies as a legal unpaid internship. To disseminate this information it should make use of social media, attend college and university events, and provide information for employers and career counsellors.

¹⁰ "Are unpaid internships legal in Ontario?" Ontario Ministry of Labour (May 2013) online: <<http://www.labour.gov.on.ca/english/es/pubs/internships.php>>.

¹¹ Beaulne-Stuebing, Laura. "Canada's 'hodge podge' rules on unpaid internship leave growing trend unchecked: critics" *iPolitics* (11 June 2013) online: <<http://www.ipolitics.ca/2013/06/11/canadas-hodge-podge-of-rules-on-unpaid-internships-leaving-growing-trend-unchecked-critics/>>.

Recommendation 3: Perform a comprehensive review of employment standards exclusions permitting unpaid internships

It is time for the Ministry of Labour to do a comprehensive review of the three *Employment Standards Act* exclusions that permit unpaid internships in Ontario. We understand that modifying these laws would require expert opinions and consultations with the parties most affected. We recommend our own amendments for the three exclusions below.

Trainee Exclusion

We recommend removing the trainee exclusion from the *Employment Standards Act*.¹² This provision requires considerable interpretation, leaving employers and interns unclear about who is considered an employee in law. Although the Ontario Labour Relations Board has generally ruled favourably for claimants seeking wages, few interns are aware they can file a complaint to the Ministry of Labour or are unwilling to do so for fear of tarnishing their professional reputation. The six conditions in the trainee exception are unnecessarily complex and put too heavy a burden on interns to enforce employment laws.

The effect of removing this section would make Ontario's exclusions related interns very similar to those in British Columbia and Quebec; that is, interns are entitled to minimum wage unless they are part of a formal educational program or fall into a narrow professional exclusion.

Student Exclusion

We recommend the Ministry of Labour create most strict requirements for academic institutions to meet before an unpaid internship can fall into the student exclusion. For example, the six criteria found under the trainee exclusion could be applied to internships that are part of a formal educational program.

The Ministry of Labour could coordinate with the Ministry of Education and the Ministry of Colleges, Training, and Universities to develop some basic guidelines that educational institutions must follow in order to charge tuition to place students in unpaid internships. For example, certain programs could be limited to 125 hours of unpaid work per semester, which is roughly equivalent to one course. Any internship more than 125 hours up to full-time would have to be paid.

Professional Exclusion

We recommend removing some or all of the professional exclusions so that those entering one of the listed professions are entitled to the minimum wage.¹³ Removing basic employment standards from these professions makes it very difficult for individuals from all socioeconomic backgrounds to access these professions.

¹² *Employment Standards Act* s 1(2).

¹³ O Reg 285/01 at s 2(1)(e).