



Workplace Legislation Feedback  
c/o Workplace Policy and Legislation  
Alberta Labour  
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Edmonton, AB T5K 0G5  
**By Email:** [LBR.Review@gov.ab.ca](mailto:LBR.Review@gov.ab.ca)

April 18, 2017

Dear Sir, Dear Madam,

**Re: *Employment Standards Code Review***

It is our pleasure to submit the following to your review of Alberta's *Employment Standards Code* (the “Code”) on behalf of the Canadian Intern Association (the “Association”). The Association is a non-profit organisation that advocates against intern exploitation and for quality, paid learning experiences.

Approximately 300,000 Canadians work as unpaid interns in positions that should legally be qualified as paid jobs, and an additional 200,000 work as unpaid interns as part of an academic program.<sup>1</sup> The rise of precarious and unpaid work has left thousands of interns subject to exploitation. Internships are frequently employment relationships in disguise. They often require recent university graduates to work full-time for months or years without remuneration.

You are likely familiar with the tragic death of NAIT student Andy Ferguson in 2011, who was killed in a car accident after working a 16-hour, unpaid shift at a local radio station. His story is an extreme example of youth exploitation that is rampant across Canada. In a challenging job market, young people often feel they have no other choice but to gain work experience however possible.

Unpaid internships have many deleterious effects, as they:

- Limit access to meaningful industries (journalism, politics, design, the arts) to young people who are wealthy enough to work for free for months on end;
- Incentivize employers to eliminate entry-level positions and to replace them with “free” labour provided by interns; and

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<sup>1</sup> Andrew K. Langille, “Why Canada Needs Better Labour Market Data and the Canadian Internship Survey”, Youth and Work Blog (2013) online: <<http://www.youthandwork.ca/2013/10/why-canada-needs-better-labour-market.html>>.

- Disproportionately disadvantage women, who are over-represented in industries where unpaid internships are prevalent.

Your review of the *Code* and the *Employment Standards Regulation* (the “*Regulation*”) represents a long-awaited opportunity to explicitly protect young people from exploitation by extending to them the basic workplace protections that previous generations of Albertans took for granted. Ambiguities in the *Code* and the rapidly changing nature of workplaces mean that employers often avoid their obligations with impunity. Labelled as “interns”, young people perform valuable labour to large and profitable employers, yet their entitlement to minimum wage, maximum hours of work, protection from discrimination and harassment, and the right to refuse unsafe work are all unclear.

Below, please see our recommendations for changes to the *Code*. We hope that, following this review, Alberta will emerge as a leader in creating safe and fair workplaces. Although most legislation directly affecting interns is contained in the *Code*, we have also submitted brief comments on the *Labour Relations Code* review currently being undertaken by Mr. Andrew Sims, Q.C.

We have also attached a copy of previous submissions made by Mr. Andrew Langille, our general counsel, during a previous employment standards review in 2014. As changes were not made in Alberta after that review, his recommendations and analysis remain relevant.

## A) Substantive Recommendations

### 1. Define “interns” in the *Code* and clarify that they are employees

**Problem:** The *Code*'s definition of “employee” is ambiguous. In s. 1(1)(k) of the *Code*, an employee is defined as “an individual employed to do work who receives or is entitled to receive wages and includes a former employee.” Although an intern is not able to contract out of the *Code*'s protections,<sup>2</sup> the fact that the *Code* includes a mention of wages often confuses interns who agree, out of desperation or vulnerability, to work without pay. Because they have agreed to work without wages, they often believe they have no recourse under the *Code*.

**Recommendation:** *Explicitly include interns in the Code's definition of “employee”.*  
*We recommend that Alberta amend the definition of “employee” to include, at the end of the current s. 1(1)(k), the phrase: “and, without limiting the generality of the foregoing, includes a person completing an internship.”*

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<sup>2</sup> S. 4 of the *Code*.

2. Remove the for-credit exemption from the *Regulation*

**Problem:** The *Regulation* currently exempts certain for-credit internships from minimum wage entitlements. S. 8(g) of the *Regulation* exempts from the minimum wage students engaged in a formal course of training approved by the Director of Employment Standards; students engaged in an off-campus education program provided under the *School Act*; and students working in a work experience program approved by the Ministers of Education or Human Services.

The Association believes that anyone performing work in an employer-employee relationship deserves to be paid the minimum wage. If a student is providing labour to an employer, the fact that their experience is approved by the Director, a minister, or under the *School Act* in no way takes away from the value of the work they are providing. The Association receives complaints from young people who are asked to do work that would traditionally be accepted as an entry-level job (e.g. clearing tables at an upscale restaurant<sup>3</sup>), and exemptions such as this invite abuse.

**Recommendation:** *Repeal s. 8(g) of the Regulation. Ensure all employees are paid the minimum wage, regardless of whether their labour is approved by a government official or under the School Act.*

3. Remove the “professional exemption” from basic employment standards.

**Problem:** Students and learners in certain fields are exempt from basic employment standards. S. 2(2) of the *Regulation* currently exempt certain fields of work from record keeping, hours of work, overtime limits, and overtime pay requirements. Although many of those exempted were traditionally perceived as holding secure employment (e.g. articling students, student accountants, engineers in training), that is no longer the case.

Precarious work, low wages, higher living costs, and explosive tuition fees have combined to put extreme pressure on professional students. It is not uncommon, for example, to see for-profit firms and companies “hire” students-at-law without pay, at times for up to a year, or for health professionals exempted under the *Regulation* to face extreme workloads that put their patients and personal well-being at risk.

**Recommendation:** *Repeal s. 2(2) of the Regulation. If professionals are in an employment relationship, they deserve the fundamental protections set out in the Code.*

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<sup>3</sup> CBC, “Unpaid bus person internship offered at Vancouver hotel” (2013) online: <<http://www.cbc.ca/news/canada/british-columbia/unpaid-bus-person-internship-offered-at-vancouver-hotel-1.1705150>>.

4. Provide interns with more than one year to claim back their pay

**Problem:** The *Code* only allows an employee to complain to the Employment Standards branch for wages owing up to six months after their employment is terminated.<sup>4</sup> In addition, no award for wage theft can be granted more than one year after employment terminates or, if employment continues, after wages were owing.<sup>5</sup> In our experience, interns often do not realize they were entitled to minimum wage until a significant time has passed. Interns often return from an internship to intense schooling or work searches. As a result, employers often face no consequences for egregious failures to pay wages owed.

**Recommendation:** Amend ss. 82(2) and 90(1)(a) of the *Code* and provide workers with up to two years to claim back their pay. Alberta recognizes a two-year limitation period for most torts,<sup>6</sup> the precarious and vulnerable nature of interns' workplaces justify at least as much time to claim back stolen wages.

5. Explicitly protect interns from workplace discrimination

**Problem:** The *Alberta Human Rights Act (AHRA)* only prohibits discrimination in the work context by employers.<sup>7</sup> It is unclear if unpaid interns working under an existing exemption (e.g. the for-credit exemption) would be covered under the *AHRA*. In addition, the language of "employer" confuses interns, who are often uncertain whether they are in an official employment relationship.

**Recommendation:** Although not part of the *Code*, we believe the *AHRA* is so closely connected to workplace protections as to be relevant to this review. We recommend that the word "employer" in s. 7 *AHRA* be substituted for "person", as is currently the case in BC<sup>8</sup> and other provinces.

## **B) Code Enforcement Recommendations**

6. Make enforcement proactive, random, and consequential

**Problem:** Alberta's enforcement system requires vulnerable employees to complain before action can be taken. As a result, few infractions of employment standards are addressed and employers have little motivation to comply with the *Code*. Interns are often in precarious and

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<sup>4</sup> S. 82(2) of the *Code*.

<sup>5</sup> S. 90(1)(a) of the *Code*.

<sup>6</sup> S. 3(1)(a) of the *Limitations Act*.

<sup>7</sup> S. 7 of the *Alberta Human Rights Act*.

<sup>8</sup> See s. 13(1) of BC's *Human Rights Code*.

short-term work environments that make filing a complaint appear too difficult and time-consuming. Systematic abuses of the *Code* are not identified.

**Recommendation:** *Adopt proactive, random, and consequential enforcement mechanisms. Rather than relying on complaints, Alberta’s Employment Standards Branch should be mandated to inspect workplaces for suspected Code violations proactively and without prior notice.*

*A recent example in Ontario was that province’s “enforcement blitz” on industries that are known to rely heavily on unpaid interns.<sup>9</sup> The proactive approach relieves vulnerable (often unpaid) interns from having to make a complaint against an employer from whom they often require a positive reference.*

#### 7. Raise awareness of intern rights

**Problem:** Employers, interns, and educational institutions are unfamiliar with the law surrounding internships. Different legislation in different provinces make information sources from other jurisdictions unhelpful or misleading.

**Recommendation:** *Alberta Labour should create straightforward fact sheets that explain why most internships are unlawful (subject to any exemptions the Legislature chooses to maintain). These should be available online.<sup>10</sup> Social media outreach should be used to promote awareness of employer obligations when hiring “interns”.*

We are grateful for the opportunity to make submissions for this historic and much-awaited legislative review. Please feel free to reach out to Jacob Schweda, our Prairie Director, should you require clarification or additional information.

Sincerely,



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<sup>9</sup> Ontario, “Internships Focus of Autumn Blitz”, Ministry of Labour (2015) online: <<https://www.labour.gov.on.ca/english/es/inspections/internship20151014.php>>.

<sup>10</sup> For an example from Ontario, see “Are Unpaid Internships Legal in Ontario?”, Ministry of Labour (2011) online: <<https://www.labour.gov.on.ca/english/es/pubs/internships.php>>.