



# **Submission to the Labour Program Stakeholder Consultation**

**Prepared by the Canadian Intern Association  
September 2018**



## EXECUTIVE SUMMARY

The Canadian Intern Association thanks the Labour Program for the opportunity to submit a written response to the Stakeholder Consultation on Labour Standards for Interns in Federally Regulated Workplaces under Part III of the *Canada Labour Code*. The purpose of this submission is to discuss how and why student interns should be granted certain workplace standards.

### **Part I: Verification Requirement**

- 1.1 Require educational institutions to review and verify internship learning plans
- 1.2 Include information about rights and duties in the verification requirement

### **Part II: Regulations**

- 2.1 Extend minimum wage standards to student interns
- 2.2 Limit hours of work per semester and prohibit overnight hours
- 2.3 Grant student interns the right to a modified work schedule
- 2.4 Grant student interns the right to notice and leaves
- 2.5 Extend all other labour standards proposed in the *Stakeholder Consultation Paper* (i.e. general holidays, protection against generic discrimination, protections against prohibited reprisals, and workers' compensation for work-related illness and injury) to student interns
- 2.6 Extend record keeping requirement rights to student interns

### **Part III: Implementation**

- 3.1 Develop and distribute public education materials
- 3.2 Develop materials specifically for educational institutions
- 3.3 Conduct targeted proactive enforcement blitzes

### **About the Canadian Intern Association**

The Canadian Intern Association is a national not-for-profit organization that advocates for intern rights. Founded in June 2012 and incorporated in July 2013, the Canadian Intern Association has consistently worked with Federal and Provincial governments to enact legislative and regulatory reforms that provide greater protections for interns. As Canada's primary advocacy organization for interns, we regularly hear from interns and students whose workplace rights are violated.

Our mission is to work with governments, employers, charities, educational institutions, and interns to improve internship experiences. We are a resource for interns to learn their rights and for employers to run fairer and better internship programs.

## PART I - VERIFICATION REQUIREMENT

### **1.1 Require Educational Institutions to Review and Verify Internship Learning Plans**

The proposed verification requirement lacks a sufficient accountability mechanism to ensure that employers offer student interns a meaningful learning experience. Requiring educational institutions to review and verify an employer-proposed “Student Internship Learning Plan” will help to ensure that the primary purpose of internships – learning – is realized *in practice*.<sup>1</sup>

In the *Stakeholder Consultation Paper’s* proposed model, no actor has the explicit obligation to verify that what an employer offers is of educational merit. Interns are merely required to provide a “Confirmation of Internship Requirement” issued by an educational institution; employers are then required to verify that the institution is covered by the new provisions.

The need for an accountability mechanism is driven by reports of interns performing menial tasks like photocopying, fetching coffees, and running errands.<sup>2</sup> In rare cases, employers have required interns to scrub toilets.<sup>3</sup> Interns perform these tasks in the hopes of obtaining a reference, meaningful work in the future, or paid employment. Interns reluctantly perform menial tasks because they do not want to “rock the boat”. However, these menial tasks do little to further interns’ skills and knowledge. Requiring employers to submit a “Student Internship Learning Plan” for review and verification by an educational institution would help mitigate this problem.

The student internship learning plan should include the following: (1) a description of the student internship; (2) student intern duties and obligations; (3) employer duties and obligations; and (4) learning outcomes like knowledge, skills, and competencies. Educational institutions could reject the learning plan or request revisions to ensure that the internship learning plan reasonably provides for a meaningful learning experience; timelines for the plan would be tied to the educational institution’s course calendar. The initial “Confirmation of Internship Requirement” should also state the educational institutions duties and obligations. *In short, each relevant actor – the employer, the student intern, and the educational institution – would have clearly defined obligations and duties set out in a written agreement.*

*An accountability mechanism is particularly important if minimum wage standards are not adopted. For clarity, the Canadian Intern Association is not suggesting that a learning plan is a sufficient replacement. As discussed in the section on regulations, minimum wage is necessary for gender equality, health and safety, socioeconomic equality, and fairness. However, if minimum wage standards are not adopted, the additional benefits of a “Student Internship Learning Plan” are at least twofold: (1) the plan serves a proactive function that will help reduce instances where employers unintentionally or negligently breach labour standards by offering internships that are not primarily for the purpose of learning; and (2) the plan would be useful to labour inspectors in the event of a labour complaint.*

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<sup>1</sup> The *Stakeholder Consultation Paper* identifies learning as the primary purpose of internships. *Labour Standards for Interns in Federally Regulated Workplaces under Part III of the Canada Labour Code* [Stakeholder Consultation Paper] (1 August 2018) at 10.

<sup>2</sup> Leslie Regan Shade and Jenna Jacobson, “Hungry for the job, gender, unpaid internships, and the creative industries” (2015) 63:1 *The Sociological Review* 188; Thomas F Corrigan, “Media and cultural industries internships: a thematic review and digital labour parallels” (2015) 13:2 *tripleC: Communication, Capitalism & Critique* 336.

<sup>3</sup> Sheryl Smolkin, “Unpaid intern's low point? Cleaning the toilet”, *Toronto Star* (26 July 2012).

If the primary purpose of an internship is learning, then there must be an accountability measure to ensure that the primary purpose is actually met in practice. Otherwise, interns will continue to perform menial tasks that offer little-to-no educational merit.

### **1.2 Include Information about Rights and Duties in the Verification Requirement**

Student interns are typically new to the labour market and, as such, may be unaware or uncertain of their employment rights.<sup>4</sup> Since the verification requirement must already be reviewed by all relevant parties, it offers an effective and cost-efficient way to inform interns of their rights and employers of their corresponding duties. A brief summary of the law in the form of a factsheet with a link to additional information is a good starting place to prevent contraventions; the factsheet should cover intern rights under the *Canada Labour Code*, the *Canadian Human Rights Act*, and workers' compensation legislation in the province or territory of residence of the student intern.

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<sup>4</sup> [James Atfield and Isabelle Couture, "An investigation into the status and implications of unpaid internships in Ontario", \(Master's Thesis, University of Victoria, 2014\) \[Unpublished\].](#)

## PART II – REGULATIONS

### **2.1 Extend Minimum Wage Standards to Student Interns**

Interns should be granted minimum wage for four reasons: (1) gender equality; (2) health and safety; (3) socioeconomic equality; and (4) fairness. Together, subsections 167 (1.1) and (1.2) provide that Part III of the *Canada Labour Code* does not apply to student interns, subject to that which is “specified or described in the regulations”. As such, there is no legislative reason for why minimum wage standards could not be adopted under the regulations just as other basic standards are currently being considered. As set out below, extending minimum wage standards is prudent.

#### ***Justification 1: Gender Equality***

Failing to extend minimum wage protections to student interns would perpetuate gender inequality. In Ontario, 73% of unpaid and underpaid (*i.e.* paid below the minimum wage) interns are female.<sup>5</sup> This figure is consistent with other jurisdictions like the United States, where 77% of unpaid interns are female.<sup>6</sup>

The number of young women undertaking unpaid internships is tied to industry norms. Unpaid internships pervade the creative industries.<sup>7</sup> As the *Stakeholder Consultation Paper* confirmed, telecommunications – a key node in the creative economy – is one of the main sectors in which unpaid internships occur.<sup>8</sup> In their research on young women interning in the creative industries in Toronto and New York, scholars Leslie Regan Shade and Jenna Jacobson found that “[t]here is a palpable recognition that unpaid internships are a gender issue and a continuation of the devaluation of women’s work.”<sup>9</sup>

“The intern before me was a woman, the intern after me was a woman...”

- Talia, Intern

Gender inequality is also reflected in student programs. Internships in male-dominated programs like engineering and computer science receive paid remuneration more than internships in female-dominated programs like communications and the arts, health care, education, and the humanities.<sup>10</sup> Long-term policy strategies that aim to get more women into the engineering and computer science are commendable, but do not address current labour market inequalities. Further, while internships in some of these programs fall under provincial jurisdiction, *many internships fall squarely in the federal jurisdiction to regulate telecommunications and broadcasting.*

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<sup>5</sup> *Ibid.*

<sup>6</sup> [Intern Bridge, \*The Debate Over Unpaid College Internships\* \(2010\).](#)

<sup>7</sup> [Greig de Peuter, Nicole Cohen, and Enda Brophy, “Introduction”, \*tripleC: Communication, Capitalism & Critique\*, 13\(2\), 329.](#)

<sup>8</sup> *Stakeholder Consultation Paper*, *supra* note 1.

<sup>9</sup> *Shade and Jacobson*, *supra* note 2.

<sup>10</sup> [The Canadian Press, “Unpaid interns mostly female: upcoming study claims”, \*CBC\* \(1 May 2014\); \*Attfield and Couture\*, \*supra\* note 4; for a division of programs by gender, see \[Statista, \\*Enrollment of Postsecondary Students in Canada by Gender and Field of Study\\*.\]\(#\)](#)

### **Justification 2: Health and Safety**

Failing to extend minimum wage protections to student interns poses health and safety risks. The proposed regulations on hours of work would only limit the number of hours within a given internship. This proposal leaves a significant loophole; the proposed regulations do not account for the fact that interns often undertake paid work *in addition to* unpaid internships to cover basic living costs.

Students are faced with a dilemma: “do I sacrifice basic living needs or do I risk my own safety?” Regarding basic needs, 39% of students in Canada experience moderate to severe food insecurity.<sup>11</sup> Nearly one quarter of food-insecure students report that food insecurity negatively affects their physical health. Rates are particularly high among Indigenous students, racialized students, and students who rely on government assistance.<sup>12</sup> The main reason that students face food insecurity is because of financial barriers; government grants and loans are insufficient to cover necessary living costs plus tuition. Students who work internships, but receive no pay, are thereby vulnerable to food insecurity.

Regarding safety, two students, Mr. Aaron Murray and Mr. Andy Ferguson, died because they fell asleep at the wheel after working unpaid overnight shifts.<sup>13</sup> To support themselves through school, both students were also working paid positions. Limiting the number of hours that an unpaid intern can work is a step in the right direction, but fails to account for the fact that interns must often work multiple jobs, which together, may exceed the proposed limit.

“He was taken advantage of... If this hadn’t happened the way it happened, it might be easier to deal with.”

- Matt Ferguson, Andy Ferguson’s Brother

Students should not have to sacrifice food or sleep to gain experience.

### **Justification 3: Socioeconomic Inequality**

The alternative to sacrificing food or sleep is foregoing an unpaid internship. This, however, raises the question, “who can afford to work for free?” Youth from low-income backgrounds cannot afford to work an unpaid internship because they lack the necessary financial support; those who work unpaid internships typically depend on their parents or guardians for support. One could work an unpaid internship, but then they would face the aforementioned dilemma – “do I sacrifice basic needs or sleep?”

“... it [an unpaid internship] lets certain people rise in industries that many people want to rise in and other people don’t have access to...”

- Simone, Intern

Foregoing an unpaid internship can stifle one’s career prospects; one forfeits experience and connections. Research shows that those who undertake work-integrated learning fare better at

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<sup>11</sup> [Drew Silverthorn, \*Hungry for knowledge: Assessing the prevalence of student food insecurity on five Canadian campuses\*, \(Toronto: Meal Exchange, 2016\).](#)

<sup>12</sup> *Ibid.*

<sup>13</sup> [Kathy Tomlinson, “Intern’s death after overnight shift sparks outcry”, CBC \(9 September 2013\);](#) [Zoe McKnight, “College student dies after Hwy. 7 crash near Peterborough”, \*Toronto Star\* \(10 April 2014\).](#)

securing a job after graduation than their counterparts.<sup>14</sup> As award-winning author Naomi Klein put it, “today’s interns are tomorrow’s managers, producers and editors.”<sup>15</sup> With research showing that unpaid internships in Canada are “more likely to be taken by those who are from high income, non-visible minority backgrounds...”<sup>16</sup>, Canada is losing out on human capital simply because some youth cannot afford to work for free.

#### ***Justification 4: Fairness – Internships are Work***

Learning and working are not mutually exclusive. In fact, that is the point of an internship – to gain experience and knowledge *by working*. Simply requiring that unpaid internships are tied to a formal school program does not solve this problem; interns are still completing work that financially benefits employers. Fairness dictates that they are remunerated for their work.

One of the most common complaints that the Canadian Intern Association hears is that unpaid interns are completing work that would otherwise be paid. The fact that unpaid internships are effectively replacing entry-level positions supports this point.<sup>17</sup> What was once paid is no longer.

Each publicist was supposed to be responsible for writing their own press releases, and yet by the time I left I was writing almost all of them... I felt I deserved to be paid for these tasks, since I was doing the work that others were being paid for, but I completed the internship for fear of getting blacklisted in the industry.

- Roselyn, Intern

Just as employees are paid for on-the-job training so too should interns. While student interns are newer to the labour market, that is why they are *only asking for the minimum*. Interns are not asking for much. They are asking for a wage that reflects they are both working and learning – a minimum wage. As former Dean of Osgoode Hall Law School, Harry W. Arthurs stated in a report on Federal Labour Standards, minimum wage is:

... an issue of fundamental decency that no modern, prosperous country like Canada can ignore. Fortunately, a minimum wage can be established with few, if any, negative consequences on employment in the federal sector.<sup>18</sup>

Most Federal sector employers can afford to pay minimum wage. They are primarily large corporations in sectors like road transportation and telecommunications – the two sectors in which the majority of unpaid internships take place.<sup>19</sup> For those who may need help keeping up, like small businesses or not-for-profits, the federal government offers internship subsidies under the Youth Employment Strategy.<sup>20</sup> Even so, employers benefit from hiring student interns because it allows them to bring in new talent and skills, pre-screen potential hires, increase

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<sup>14</sup> [Peggy Sattler and Julie Peters, \*Work-Integrated Learning in Ontario's Postsecondary Sector: The Experience of Ontario Graduates\*, \(Toronto: The Higher Education Quality Council of Ontario, 2013\).](#)

<sup>15</sup> Naomi Klein, *No logo: Taking aim at the brand bullies* (Toronto: Knopf Canada, 2000).

<sup>16</sup> *Attfield and Couture*, *supra* note 4.

<sup>17</sup> Guy Standing, “The Precariat: The New Dangerous Class”, (London: Bloomsbury Academic, 2011) at 76.

<sup>18</sup> [Harry W Arthurs, \*Fairness at Work: Federal Labour Standards for the 21st Century\* \(Ottawa: Human Resources and Skills Development Canada, 2006\) at xvi.](#)

<sup>19</sup> *Stakeholder Consultation Paper*, *supra* note 1.

<sup>20</sup> [Canada, \*Youth Employment Strategy\*.](#)

productivity and service development, and manage short-term pressures. Most importantly, employers derive a financial benefit from student interns who work for them. Basic fairness dictates remuneration for this work.

The Canadian Intern Association wants to underscore one point here. Interns are only asking for a wage that reflects their contribution. They are only asking for wage that reflects they are both working and learning – a *minimum* wage.

## **2.2 Limit Hours of Work per Semester and Prohibit Overnight Hours**

The Canadian Intern Association has two concerns regarding hours of work: (1) issues concerning hours of work cannot be neatly separated from minimum wage; and (2) regulations should prohibit overnight hours.

As previously noted, regulating hours of work for student internships does not address the fact that many students must work paid jobs in addition to unpaid internships. Extending minimum wage to student interns would resolve this issue; it would also address current gender and socioeconomic inequalities. If the regulations do not extend minimum wage standards to student interns, then they must account for the fact that many interns work paid jobs to support themselves while they are also undertaking an unpaid internship. *Specifically, student interns undertaking unpaid internships should be limited to no more than 120 unpaid hours per semester and prohibited from working overnight hours.* Limiting student internships to a maximum of 120 hours (*i.e.* the equivalent of one course per semester) provides for sufficient time to gain experience.<sup>21</sup>

More importantly, limiting student internship hours per semester will address health and safety issues arising from the fact that students often work paid and unpaid positions at the same time. The deaths of Mr. Andy Ferguson and Mr. Aaron Murray underscore the importance of limiting hours of work in a student internship. Mr. Ferguson was required to complete a four-month unpaid broadcasting internship in order to graduate from Northern Alberta Institute of Technology.<sup>22</sup> Mr. Ferguson was also putting in hours as a paid employee above his student hours. Text messages show that he did not want to work the overnight shift; while Mr. Ferguson worked overnight shifts three nights prior, his manager threatened that he would not receive academic credit if he did not also work that night. Unfortunately, Mr. Ferguson fell asleep at the wheel and crashed his vehicle while driving home the next day. Likewise, Mr. Murray was driving home from an overnight shift when he crashed his vehicle at 5:30 a.m.<sup>23</sup> The day before the crash, Mr. Murray “had slept for a few hours after his overnight shift before heading to an afternoon shift at a Trenton McDonald’s, where he is a manager. After a short break in the evening, he made the hour’s drive back to Peterborough to check in for 9 p.m.”<sup>24</sup> These incidents highlight the hardships students face by the need to complete mandatory placements, while also earning an income to support themselves.

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<sup>21</sup> 120 hours assumes students perform 40 hours of schoolwork per week for fifteen weeks (*i.e.* an academic term including class and exams) while enrolled in full-time studies (*i.e.* five courses).

<sup>22</sup> Tomlinson, *supra* note 13.

<sup>23</sup> McKnight, *supra* note 13.

<sup>24</sup> *Ibid.*

### **2.3 Grant Student Interns the Right to a Modified Work Schedule**

The Canadian Intern Association supports the proposal for a right to a modified work schedule. However, the language in the *Stakeholder Consultation Paper* must be modified to ensure that student interns have the right, not merely the freedom, to a modified work schedule. As law professors Judy Fudge and Eric Tucker note, there is an important distinction between freedoms and rights in the context of labour law:

Privileges, which are also referred to as freedoms and liberties, are legal permissions to act or to refrain from acting in a certain manner without being liable to damage to others and without others being able to summon state action to prevent those actions... By contrast, a right is a claim that requires another person to act in a certain manner in relation to the rights' holder and this claim is enforceable by the state.<sup>25</sup>

The *Stakeholder Consultation Paper* phrases the right to a modified work schedule in the language of a freedom: "a student intern *would be allowed*, on an individual basis, to establish a modified work schedule in agreement with the employer" [emphasis added].<sup>26</sup> The problem with the proposed phrasing is that student interns already have the freedom to establish a modified work schedule. Student interns need the right.

A corresponding obligation on employers is missing from the language regarding modified work schedules in the *Stakeholder Consultation Paper*. Put differently, employers should have the obligation to make reasonable efforts to cooperate with a modified work schedule for students. Specifically, student interns should have the right to a modified work schedule for educational commitments (e.g. tests, midterms, exams, and classes).

### **2.4 Grant Student Interns the Right to Notice and Leaves**

The Canadian Intern Association submits that student interns should be entitled to the additional standards of leaves and notice upon termination. Given the Canadian Intern Association's position on minimum wage standards and the interpretation of interns under the *Canada Labour Code* (as described in section 2.5), it is appropriate to provide student interns with pay in lieu of notice upon termination.

With respect to leaves, while the length may be a concern for employers, the reality is that leaving student interns without the ability to take a protected sick leave, compassionate care leave, maternity leave, parental leave, critical illness leave, or leave for a death or disappearance of a child, places them in a tremendously vulnerable situation. If one of these situations arises, it is not necessarily the case that an intern would require the entire amount of time away from their employment. Interns must, however, be treated the same as any other employees faced with these circumstances. The well-documented precarious nature of internship work<sup>27</sup> often means that student interns face pressure to come into work ill for fear of losing their position, which is further compounded if they are not entitled to notice of termination under the *Canada Labour Code*. Interns should be provided with the job protected ability to "call-in sick" if they need to. One practical solution is to incorporate a pro-rated time for these leaves in accordance with the shorter duration of student interns' work terms.

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<sup>25</sup> [Judy Fudge and Eric Tucker, \*The Freedom to Strike in Canada: A Brief Legal History\*, at 5.](#)

<sup>26</sup> *Stakeholder Consultation Paper*, *supra* note 1 at 11.

<sup>27</sup> [Amanda Margison, "How do students live on unpaid internships?" CBC \(30 March 2017\).](#)

## **2.5 Extend Other Proposed Labour Standards to Student Interns**

Student interns should be granted the following standards, as proposed in the Stakeholder Consultation Paper: general holidays, protection against generic discrimination, protections against prohibited reprisals, and workers' compensation for work-related illness and injury.

The *Canada Labour Code* is a mechanism for conferring minimum benefits and standards to protect the interests of federal sector employees. In *Rizzo & Rizzo Shoes*, the Supreme Court of Canada found that the (analogous) Ontario *Employment Standards Act* for provincial employees was of a similar nature. The court held that this form of "benefits conferring legislation" must be interpreted in a broad and generous manner.<sup>28</sup> Any revisions to the *Canada Labour Code* for student interns should similarly occur in accordance with the nature and purpose of this legislation. Interns are just as deserving of these minimum standards and benefits as other employees.

## **2.6 Extend Record Keeping Requirement Rights to Student Interns**

Record keeping requirements should be extended to student interns for two reasons. First, these records may be helpful to labour inspectors in the event of an investigation. Employers would thereby be deterred from negligently or purposely misclassifying interns because there would be records to help determine the merit of an intern's claim upon inspection. Second, records will be of assistance if future employers or educational institutions request an intern's confirmation of a placement. The only concern for the Canadian Intern Association is the manner in which record keeping mechanisms will occur in terms of compliance with federal privacy and human rights legislation. Employers must be required to keep these student intern records private in the same manner as other employees.

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<sup>28</sup> [Rizzo & Rizzo Shoes Ltd. \(Re\) \[1998\] 1 SCR 27 at para 36.](#)

## PART III – IMPLEMENTATION

### **3.1 Develop and Distribute Public Education Materials**

To ensure that interns know their rights and employers know their obligations, the federal government should develop and distribute public education materials in both official languages. While some employers may knowingly break the law, others may be unaware or uncertain, especially given the recentness of the changes. Further, interns who do not know their rights are unable to protect themselves against wage theft and unfair working conditions. Public education materials are imperative given the prevalence of unpaid internships in federal sectors (especially telecommunications and road transportation industries) and the forthcoming reforms to labour regulations.

One cost-effective option is to develop an online factsheet on federally regulated internships. Materials should cover intern rights under the *Canada Labour Code*, the *Canadian Human Rights Act*, and workers' compensation legislation in the province or territory of residence of the student intern.

### **3.2 Develop Materials Specifically For Educational Institutions**

Educational institutions will now play a larger and more direct role in sanctioning unpaid and paid internships. They are also the first point of contact for students seeking an internship and are most proximate to students. There is a need, and great benefit, to creating materials tailored for educational institutions. In particular, these materials should make clear that internships can be for wages and still qualify for course-credit – a fact that may not be appreciated or understood by all educational institutions. These materials should also speak to common challenges faced by interns, such as pressure by employers to carry out duties outside of student interns' educational objectives, being unreasonably denied leave, and being put in situations that compromise health and safety, including sexual harassment. Educational institutions should also be provided with information concerning recourse available for reporting misconduct, requesting an inspection, and filing complaints against employers.

Educational institutions should be made aware of these challenges and provided with the tools to respond on behalf of student interns by reporting illegal conduct. But, more importantly, educational institutions themselves should be able to file complaints or speak to the Labour Program on behalf of students without having to identify the student intern. The power dynamic between student interns and their employers cannot be overstated. Student interns need to know that their educational institutions will advocate for their workplace protections without jeopardizing their academic record and future employment opportunities.

### **3.3 Develop a Proactive Enforcement Strategy**

The federal government should develop a targeted proactive enforcement strategy to reduce employee misclassification and workplace standards violations. Interns may be hesitant to file a complaint or inform employers of their rights because it could hurt their professional reputation or chance of receiving a positive reference. Proactive enforcement is necessary to address the power difference between interns and employers. Following Ontario's inspection blitz model<sup>29</sup>, we recommend that the federal government conduct annual inspection blitzes that target federally regulated employers who employ interns and students.

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<sup>29</sup> [Ministry of Labour, Blitz Results: Internships.](#)