

Submission
by the
Canadian Labour Congress
to
ESDC Consultation
on the Regulation of Educational
Internships under the
Canada Labour Code

September 2018



CLC Submission to Employment and Social Development Canada Consultation on the Regulation of Unpaid Educational Internships under the Canada Labour Code

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Internships, placements, co-operative education, and other forms of work-integrated learning are increasingly widespread in secondary and post-secondary education in Canada, and a familiar element of the school-to-work transition. However, in many cases, the regulation of work-integrated learning in Canada is uneven, slight, or ambiguous.

In January 2015, the Conservative government consulted labour groups before moving in May 2015 to legislate amendments to Part II and III of the *Canada Labour Code* (Economic Action Plan 2015, No. 1). After Employment and Social Development Canada consultations with unions in July 2015, regulations accompanying Part II health and safety protections for interns were published in August 2015 and subsequently brought into force. Additional amendments to Part III of the Code permitting unpaid internships outside of accredited educational programs were also legislated, but did not enter into force.

During the 2015 election campaign, the Liberal Party committed to putting in place “clear standards around internships [that] will help safeguard legitimate opportunities for young workers while protecting them from exploitation.”¹ In January 2016, the new government consulted with labour groups, which opposed the amendments to Part III of the Code permitting open-market unpaid internships. The government listened to these concerns, and in its second 2017 budget implementation bill (Bill C-63) introduced in October, the federal government removed the previous government’s exemption from Part III of the Code for interns not enrolled in a secondary or post-secondary educational institution or a vocational school. The Government of Canada is currently consulting on regulations pertaining to unpaid internships in the federal sector, offered within a recognized educational program.

An internship can be described as “any arrangement for the performance of work within a business or organization, a primary purpose of which is to gain experience, skills and/or contacts that will assist the worker to gain employment or other work opportunities in the future.”² Internships can be distinguished from apprenticeships (systematic, long-term vocational training combining workplace and classroom

¹ Canadian Intern Association, “Federal Election 2015 Questionnaire on Intern Rights Issues,” August 17th, 2015.

² A. Stewart et al, *The Regulation of Internships: A Comparative Study*, Employment Working Paper no. 240, Employment and Labour Market Policies Branch (Geneva: ILO, 2018).

instruction, with a paid-work component) and volunteering (unpaid work performed altruistically for another's benefit or in the service of a cause or belief, rather than intended to gain experience, skills or contacts that could improve employability). Internships can also be distinguished according to whether they involve actual, productive work that benefits the host organization, or whether they are limited primarily to observation or simulated work situations.

Domestic and international research suggests that not all internships enhance the subsequent employment prospects of young people.³ Furthermore, on average, internships appear to have only a modest effect on the medium-term integration of young people into paid work.⁴ However, there are certain regulatory measures that can increase the likelihood of good outcomes.

Paid or Unpaid Internships?

The CLC believes the internships should be approached from the principle of equal pay for work of equal value. Work performed, especially for commercial gain or the benefit of the employer, should not be unpaid. This applies to work that is performed outside of an accredited educational program, but also one within.

There are additional reasons why internships should be paid. While relatively little reliable evidence exists with respect to the impact of internships on the later labour-market outcomes of students, two recent ILO studies find “overwhelming evidence” that paid internships lead to better post-internship outcomes in the short-run.⁵ There are several reasons why this might be the case.

First, by relaxing the financial constraint on potential applicants, paid internships attract a larger and more diverse pool of candidates, improving the quality of participants. Unpaid internships are likely to dissuade and exclude highly-qualified candidates with socio-economic disadvantages who are unable to participate for financial reasons.⁶ This inequity is compounded by the fact that student interns are expected to pay tuition fees in order to gain access to unpaid work-integrated learning opportunities, a situation that is inherently problematic as well as unfair to otherwise qualified candidates who lack the financial means to make these sacrifices.

³ A. Stirling et al., *What is an Internship? An Inventory and Analysis of “Internship” Opportunities Available to Ontario Postsecondary Students*, (Toronto: Higher Educational Quality Council of Ontario, 2014).

⁴ Niall O’Higgins and Luis Pinedo, *Interns and outcomes: Just how effective are internships as a bridge to stable employment?* Employment Working Paper no. 241, Employment and Labour Market Policies Branch (Geneva: ILO, 2018).

⁵ O’Higgins and Pinedo, *ibid.*, p. 25. The following discussion draws on O’Higgins and Pinedo and Stewart, *op. cit.*

⁶ E.g., Angus Holford, “Access to and Returns from Unpaid Graduate Internships,” *IZA Institute of Labour Economics*, Discussion Paper No. 10845, June 2017.

Second, paid learning opportunities may allow interns to concentrate on their internships by removing the need to find a second, paid job, or other source of income. Paid work also motivates interns to invest greater effort in their internships, and get more out of them in the form of developing skills and competencies. By the same token, students who need to supplement unpaid internships and classroom instruction with paid hours of work are less able to focus their energies on deriving the maximum benefit from their internship. They may also be at higher risk for accidents, injuries and illness resulting from time stress.

Third, paying interns frequently goes hand-in-hand with other features comprising a more structured program, which together tend to enhance impact and chances of success. Host organizations that take internships seriously pay interns but are also committed to providing high quality and effective internships, leading to better acquisition of work-related skills by interns. This is especially likely insofar as employers use internships as recruitment vehicles and employment trials.

According to the stakeholder consultation paper, four in five internships in 2015 in federally-regulated workplaces were paid. The federal government should encourage the commitment to high-quality internships by requiring the payment of interns and extending federal labour standards protections to interns under Part III of the *Canada Labour Code*.

Recommendation 1: Require internships to be paid and include interns under all wage-related labour standards in Part III of the Canada Labour Code.

Regulating Educational Internships to Prevent Exploitation

If the Government of Canada proceeds with unpaid internships in the context of educational programs, it must ensure that regulation and compliance enforcement are carefully designed and implemented to prevent abuses and encourage positive outcomes. There is strong pressure from business, on the one hand, and universities, colleges, polytechnics and institutes, on the other, to expand student work placements and internships.⁷ Educational institutions, particularly for-profit providers, may have an incentive to offer internships that bring in tuition fees while minimizing instruction costs and the need to provide facilities. Unscrupulous employers may have parallel interests in exploiting free and vulnerable labour. The risks also extend beyond Canada's borders, as educational institutions offering student exchanges may promote and facilitate internship opportunities in other countries. The ILO points out that global fee-

⁷ Business/Higher Education Roundtable, "Group of 25 Cross-Country Organizations Calls for National Work-Integrated Learning Strategy," Ottawa, September 5, 2018.

based agencies have arisen to broker international internships promising both entry into foreign labour-markets and access to citizenship in the host country.⁸

Canada's current 'regulation by exclusion' – expressly excluding interns from certain employment standards application – has been inadequate in this respect.

In recommending removing the exclusion for a “person receiving training” under s. 1(2) of the ESA, Special Advisors Michael Mitchell and John Murray wrote,

Individuals categorized as “persons receiving training” are unlikely to understand their rights or to complain when the exclusion is misused. They may be anxious to obtain references and work experience that could lead to paid employment.

They therefore become vulnerable to being misclassified by employers seeking to benefit from free labour. The current provision thus ‘opens the door to evasion of the law.’⁹

For this reason, the Special Advisors recommended that s. 1(2) be removed from the *Employment Standards Act*, an amendment that Bill 148, the *Fair Workplaces, Better Jobs Act*, subsequently enacted. However, it preserved s. 3(5), which continues to exempt from the Act:

1. A secondary school student who performs work under a work experience program authorized by the school board that operates the school in which the student is enrolled.
2. An individual who performs work under a program approved by a college of applied arts and technology or a university.
 - 2.1 An individual who performs work under a program that is approved by a private career college registered under the *Private Career Colleges Act, 2005* and that meets such criteria as may be prescribed.

In order to encourage successful outcomes and protect interns against possible abuse, the Higher Education Quality Council of Ontario published guidelines for ensuring the educational quality of post-secondary work-integrated learning. These include encouraging educational institutions and host organizations to:

1. Deliberately structure the work-integrated learning (WIL) program;
2. Empower the learner in the structured work experience;

⁸ Stewart et al., *op. cit.*

⁹ C. Michael Mitchell and John C. Murray, *The Changing Workplaces Review: An Agenda for Workplace Rights*, Final Report, (Toronto: Ontario Ministry of Labour, 2017), p 275.

3. Provide students with relevant challenges in the workplace;
4. Consider the learning environment;
5. Work in partnership with students and the workplace organization; and
6. Ensure continual assessment of student learning and evaluation of the WIL program.

However, given the risk of abuse and the potential for a negative experience, it is doubtful that vague guidelines are sufficient. In this context, robust regulation is needed to ensure high-quality internships, and Canada should draw on comparative experience in this regard.

For instance, **France's** 2011 Cherpion law requires each internship's learning objectives to be identified and set out in advance.¹⁰ The state regulates minimum levels of supervision of interns by both the educational institution and the host organization, and every internship is required to be undertaken under a tripartite agreement between intern, host and educational institution.

Interns enjoy workplace protections that include limits on daily and weekly working hours. Also, the duration of an internship is expressly limited to six months, and interns are entitled to compensation for any arrangement exceeding two months. Employers are prohibited from using an internship to cope with temporary needs such as an increase in business activity, to fill a seasonal position, or to replace an absent or suspended employee. Following the end of an internship, the host organization is allowed to introduce a new intern in the same role only after a break equivalent to a third of the length of the previous internship.

In both vocational training and higher education, **Australia** has a system not only for accrediting educational courses and host organizations, but also for conducting compliance audits. However, audits occur irregularly and students are largely dependent on their educational institution or host organization to ensure the internship is of a high quality.

Although intended for open-market internships, the **European Union's** Quality Framework for Traineeships (QFT) consists of several requirements and safeguards, including:

- A mandatory prior written agreement, detailing the educational objectives and duration of the arrangement, working conditions, whether the trainee is to be paid or otherwise compensated, and the parties' rights and obligations;

¹⁰ The following draws on Stewart et al., *op. cit.*

- Encouraging that a supervisor be designated;
- Ensuring that, where applicable, any limits set by national or EU laws on working time and rest periods are respected, together with holiday entitlements;
- Encouraging host organizations to clarify whether they offer health and accident insurance, as well as sick leave;
- Ensuring a reasonable duration for internships not exceeding six months, save circumstances in which a longer duration can be justified;
- Clarifying the conditions under which a traineeship may be extended or renewed;
- Encouraging agreements to clarify the circumstances in which an internship may be terminated;
- Promoting the recognition, assessment and certification of the knowledge, skills and competences acquired during an internship; and
- Promoting transparency, by encouraging advertisements and other information to specify both the terms and conditions of an internship, and the number of interns typically recruited into ongoing employment.

Best practices from France, Australia, the European Union and other jurisdictions should be utilized in order to strengthen ESDC's proposals for regulating unpaid internships in federally-regulated workplaces. Under ESDC's proposed *confirmation of internship requirement*, several details will be included:

- Name of the educational institution;
- Confirmation of enrolment in a program requiring an internship; and
- Details of the required internship such as duration (or number of hours) and tasks to complete.

In the CLC's view, these commitments are necessary but insufficient. The regulations pertaining to the *confirmation of internship requirement* should require details regarding the objectives of the internship, supervision, working conditions, termination, and whether an internship can be extended and under what conditions. Protections similar to France's framework should be integrated into the proposed federal approach, including stipulations prohibiting employers from providing internships to address temporary increases in business activity, to fill a seasonal

position, or to replace an absent or suspended employee. In practice, coverage for work-related illness or injury is commonly unclear; the confirmation of internship requirement should clearly indicate whether the educational institution, provider, or a third entity is responsible for this coverage. The confirmation should also clarify the rights of each of the parties, and the recourse mechanism available if those rights are infringed. Under no circumstances should the intended finite and short-term duration of educational internships be left as guiding principles as opposed to detailed requirement.

Recommendation 2: Strengthen the confirmation of internship requirement by requiring details concerning the objectives of the internship, supervision, working conditions, termination, and whether an internship can be extended and under what conditions.

Finally, unpaid educational internships should be closely monitored and evaluated within two years of the regulations coming into force.¹¹

Record Keeping

The proposed guidelines for record keeping contemplates “basic records” that would include: name, address, job title, and sex of the intern for identification purposes, and the age of the intern if younger than 17 years old. The start and end date of the internship would also be required with any other applicable records for student interns, for instance, the dates of any leave taken. However, no requirement is contemplated for setting out the details of the internship, including goals and learning objectives, supervision, feedback and progression, duration of the internship, termination procedures, whether the internship is paid or unpaid and whether health and accident insurance is provided. Detailed records including these provisions could be important in the event of disagreement regarding the terms of the internship. For this reason, we recommend that the record-keeping guidelines extend beyond “basic records” to include the terms listed above.

Recommendation 3: The guidelines for record keeping should specify a detailed list of important terms and conditions of the internship, including those listed above.

¹¹ As recommended in the final report of the Expert Panel on Youth Employment, *13 Ways to Modernize Youth Employment in Canada: Strategies for a New World of Work* (Ottawa: ESDC, 2017), p. 29.

Conclusion

Paid internships should remain the standard for educational internships in the federal jurisdiction. In the event that it proceeds with unpaid educational internships, the federal government should work with provincial governments and educational institutions to develop financial support and tuition-rebate measures to facilitate access to internships for disadvantaged students. The Labour Program should also design guidance, information materials and other instruments to help providers, interns, and educational institutions understand their obligations and rights. It should also make available a set of ingredients for an internship that, based on comparative research, together comprise the best practice for ensuring internships are worthwhile and valuable for students.

The timing for the introduction of new regulations on interns should be determined so that student interns, at particularly high risk with respect to sexual violence and harassment in the workplace, are protected by the coming into force of Bill C-65, an Act to amend the Canada Labour Code (harassment and violence). As well, *Canada Labour Code Part III* protections for interns should be consistent with the set of Part III amendments anticipated in fall 2018.

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