



Considerations for Youth Employment

Submission to the Changing Workplaces Review

About the Child & Youth Network

The Child and Youth Network (CYN) is composed of over 170 agencies and individuals that span the education, health, recreation and social services sectors. The CYN supports happy, healthy children and youth today...caring, creative, responsible adults tomorrow.

The CYN is dedicated to helping build strong families and breaking down the barriers that put our children, youth and families at risk. We do this by collectively planning, facilitating collaboration, building awareness, providing education and improving access to services. Our strategic areas of focus are ending poverty, making literacy a way of life, healthy eating and healthy physical activity and creating a family centred service system.

In 2008, the community identified Ending Poverty as a priority for London's children, youth, and families. At that time, there were many impactful statistics that illustrated the impact of poverty in London, but there was one that crystallized the issue; 1 in 5 London children will experience poverty during their childhood. This was, and is, intolerable.

The Ending Poverty team is actively implementing strategies to meet basic needs in London neighbourhoods through innovative programming at the neighbourhood and city-wide level. With our community partners, we have developed London's Food Charter, a document outlining the principles of a "food secure" London. We are creating policy papers that advocate for systems-level change to achieve income security, and we are providing small loans and business development training to London entrepreneurs who cannot access traditional forms of credit. With our literacy priority group, we are working with young people to develop and support programming aimed at increasing high school graduation rates in priority neighbourhoods.

We are doing all this, and more, by utilizing the collective energy and talent of community partners to create opportunities that seek to reduce the impact and break the cycle of generational poverty in London.

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INTRODUCTION

Recognizing that employment opportunities for young people in our community are critical to breaking the cycle of poverty, the Child & Youth Network endorsed a policy paper on youth employment this October. It is estimated that the provincial and federal government spent at least \$10.4 billion last year, directly focused on issues of poverty and high youth unemployment is contributing to this cost. This is a loss equal to 10.8-16.6% of the entire provincial budget (Ontario Association of Food Banks 2008). It is further estimated that poverty in Ontario costs every household between \$2299 and \$2895 each year (Ontario Association of Food Banks 2008). Youth unemployment sets the foundation to perpetuate future cycles of poverty, and as such, is critical to addressing poverty in our community.

Considering the significant impact poverty has on our society, it is imperative that young people are prepared for successful careers. For young people in Ontario, post-secondary education has been framed by society as the key to future employment success. Unfortunately this is increasingly not the case for many of Ontario's young people. There will need to be new and creative ways to prepare young people for an ever diversifying labour market.

There is no doubt that London, along with the rest of Ontario, is experiencing a tough economic position. With a decrease in manufacturing jobs and a large student population, in addition to high youth unemployment rates, critical steps need to be taken in order to reduce the number of low-income young people to break the cycle of poverty in London. As of July 2016, for the third month in a row, London continued to rank among the top three cities with the highest youth unemployment. In May 2016, London's young people faced the second highest youth unemployment rate in the province and the third highest in Canada. Underemployed young people pay off debts at a slower rate, delay major financial purchases like homes and vehicles, and earn less over the course of their lifetime (Canadian Centre for Policy Alternatives 2015). Canada's work force is becoming increasingly characterized by 'precarity,' a term developed that reflects employment relationships that do not have security or benefits found in more traditional employment relationships. Further, if precarious employment is becoming a normal characteristic of the Canadian economy, it is critical to implement better strategies to protect young workers and ensure they receive proper benefits and health and safety assurances. It is essential to move away from temporary, part-time, precarious employment situations and provide meaningful opportunities that provide income security and a greater quality of life.

The recommendations made by Youth Employment Trends paper align with the employment outcomes of the CYN Youth Framework (www.londoncyn.ca):

- Young people have relevant experiences, tools and resources
- Young people have opportunities for meaningful employment
- Young people have the skills necessary to build a successful career
- Young people have jobs related to training and education

The following are the recommendations that were made by the Child & Youth Network that are directly connected to the Changing Workplaces Review:

Recommendation 8: Extend the rights of an employee in the Employment Standards Act to include all employees regardless of their relationship to the employer. All employees should be eligible to apply under the ESA for the protection of their rights.

Recommendation 9: The Ministry of Labour should continue to crack down on unpaid internships through random blitzes and hold employers accountable for breaking the law and continuing to offer

unpaid employment opportunities. Employers in contravention with this law should be made public in an effort to deter others from continuing to offer and create new illegal internships.

Recommendation 10: The provincial government should conduct a thorough review of the exemptions currently offered by the Employment Standards Act to determine the impact of these exemptions on young people.

Recommendation 11: Place a time limit of no more than 90 days with no period of renewal for unpaid internships offered under special exemption in the Employment Standards Act. After 90 days is complete, the job must be filled with a paid employee; regulations should be put into place to make certain special exemptions are not over utilized to replace the position of an otherwise paid employee.

Recommendation 12: Following the changes proposed in Bill 64, the provincial government should create an Advisory Council on Work-Integrated Learning. This advisory council would consult with the ministry on opportunities to create more paid work-integrated learning opportunities and to recommend ways to reduce the number of unpaid opportunities.

Recommendation 13: The Employment Standards Act should be amended to protect high school and post-secondary co-op students and afford them the rights of all other employees, whether paid or unpaid.

Recommendation 14: The Ministry of Labour should create an anonymous, third party complaint system so young people feel comfortable coming forward with concerns about potentially illegal unpaid internship opportunities. Currently to make a complaint to the Ministry of Labour, you must provide your identity and this deters many young Ontarians from exercising their rights for fear of reprisal from the employer.

Recommendation 15: The government should work alongside employer groups and relevant stakeholders to address the societal need for more long-term employment opportunities..

Building on the recommendations of the CYN in relation to youth employment, this submission makes several recommendations to the Changing Workplaces Review from the perspective of young people. This submission is organized by the headings of the Special Advisor's Interim Report and selected options from this report based on the Youth Employment Recommendations paper endorsed by the CYN.

5.2 SCOPE AND COVERAGE OF THE ESA

5.2.1 Definition of “employee”

As noted in the Changing Workplaces Review, “workers who are employees under the ESA definition are sometimes “misclassified” by their employers – intentionally or unintentionally – as independent contractors not covered by the ESA.” The employment relationship is particularly convoluted when it comes to the classification of young people because of all the special rules and exemptions which can apply to young people. In order to improve the employment outcomes of young people and create a classification system that is much easier for all parties to understand, the following changes should be made to the Employment Standards Act:

- the burden of proof to establish on a balance of probabilities that the person is not an employee should be on the employer
- Provide in the ESA that in any case where there is a dispute about whether a person is an employee, the employer has the burden of proving that the person is not an employee covered by the ESA and/or has an obligation, similar to section 1(5) of the LRA in relation to related employers, to adduce all relevant evidence with regard to the matter

5.2.1 Exemptions, Special Rules and General Process

One of the most pressing and negative trends for youth employment is the rise in temporary and precarious employment opportunities, often characterized by a lack of benefits and job security (Zizys 2011). Unfortunately, young people are particularly vulnerable to precarious employment situations (Foster 2013), especially when considering the number of young people in internships with inadequate benefits and low wages (Attfield and Couture 2014). While requests have been sent to Statistics Canada to track and prevent precarious employment (Attfield and Couture 2014), young people are often left with no other options for employment and remain vulnerable to precarious work, which according to Scott (2014), has increased by 50% in the last two decades.

Because young people are more likely to experience precarious employment, young people have an increased potential to be impacted by the more than 85 complex exemptions and special rules that are contained in the Employment Standards Act. As stated in the Changing Workplaces Review, “exemptions and special rules have the potential to recognize that the unique characteristics of some occupations and industries require a different approach from the norm. However, it must also be recognized that an exemption normally reduces employment rights.” This is particularly important to consider in relation to Ontario’s young people. The CYN would agree with the Special Advisors that “the burden of persuasion to maintain, extend or modify an exemption is high and ought to lie with those seeking to maintain the exemption.”

- Eliminate the lower minimum wage rate for students under 18
- Remove the exemption of students from the ‘three-hour rule’

5.2.4 Exclusions

5.2.4.1 Interns/Trainees

Despite unpaid internships being technically illegal in Ontario, there are still a number of employers who offer illegal unpaid internship opportunities. On April 29, 2016, the provincial government released the results of the 2015 Ministry of Labour blitz of Ontario internships from 123 inspections across the province:

- 27 employers had no internship programs
- 19 employers had no interns at the time of the inspection
- 77 employers had interns at the time of the inspection
- 41 were found to have programs that exempted the intern from the Employment Standards Act (Co-op students and specified trainees)
- 18 had paid interns and were found to be in compliance with the ESA
- 18 had interns and were found to be in contravention with the ESA
- Of these 18, \$140,630 was owed to interns that had not been paid
- The most common violations were vacation pay/vacation time; public holidays/public holiday pay; minimum wage; wage statements; and record keeping

The results of the most recent blitz are troubling because it demonstrates that despite the fact that unpaid internships, on paper, are illegal in Ontario, employers still offer these opportunities to young people. As you can see from the results stated above, almost 15% of employers were in direct contravention with the Employment Standards Act and did not extend the rights that should be afforded to all workers in Ontario. In addition to that, more than one-third of the inspections of these workplaces showed that there were interns who were exempted from pay because of special exemptions provided under the ESA. With these results, it seems that more than half of all internships examined through the blitz were either unpaid through a special exemption or were unpaid by employers in direct violation with the Employment Standards Act legislation. The blanket statement that unpaid internships in Ontario are illegal may on the surface be true, but in reality, there need to be several more protections put into place for Ontario's young people.

The ESA provides an exclusion for “interns/trainees” (referred to as “person receiving training” under the Act). The conditions that must all be met for the exclusion to apply are as follows:

- training is similar to that of a vocational school;
- training is for the benefit of the individual;
- person providing the training derives little, if any, benefit from the activity of the individual while being trained;
- intern does not displace employees of the person providing the training;
- intern is not accorded a right to become an employee of the person providing the training; and
- intern is advised that he or she will receive no remuneration for the time spent in training

In a recent study about unpaid internships, Attfield and Couture (2014) have noted there is no common definition of an internship, which can have direct safety and legal implications for young people. There are three exemptions under the Ontario Employment Standards Act that would exempt a person performing work for an employer from the rights and protections provided by the ESA.

The CYN agrees with the assertion that “some employers abuse the intern/trainee exemption by using “interns/ trainees” to perform unpaid work that would otherwise be performed by paid employees and where no training similar to that provided in a vocational school is provided.” The CYN also agrees that employees can be misclassified as interns or trainees and in effect can be denied the protections afforded to Ontario workers under the Employment Standards Act. Understanding that unpaid internships continue to be an ongoing challenge with which young people are faced, we would suggest the following option from the Changing Workplaces Review:

- Provide that intern/trainee exemption is permitted only if a plan is filed by the employer and approved by the Director as complying with the Act and with reporting obligations as determined by the Director (Option 3, Section 5.2.4.1) (Recommendation 10, pg. 16)

5.3.2 Scheduling

Workers in precarious employment often have schedules that change from week to week (Poverty and Employment Precarity in Southern Ontario 2013). This can make it difficult for workers to find suitable child care and to adequately organize their finances. These workers are also more likely to have their rights violated in the workplace (Law Commission of Ontario 2012).

The Changing Workplaces Review presented some options around scheduling that would make improvements to the lives of young people across the province. The CYN suggests the following options from the review:

- Increase minimum hours of reporting pay from current 3 hours at minimum wage to 3 hours at regular pay;
- Require all employers to provide advance notice when setting and changing work schedules and include all of the following provisions
 - Require employers to offer additional hours of work to part-time employees before hiring new employees or using staffing agencies or contractors to perform additional work
 - Require employers to provide part-timers and full-timers equal access to scheduling and time-off requests
 - Require employers to get consent from workers in order to add hours or shifts after the initial schedule is posted
 - Provide new employees with a good faith written estimate of the employee’s expected minimum number of scheduled shifts per month and the days and hours of those shifts
 - If an employee is required to be “on-call,” but is not called in to work, the employer must pay the employee the premium of two to four hours of pay at the employee’s regular hourly rate (depending on the advance notice and the length of the shift.)
- The minimum allowable shift per day should be 3 hours

5.3.9 Paid Sick Days

Related to the complications experienced by young people in terms of scheduling, the same principle of fairness should apply to providing paid sick days to all employees.

- ☑ Require employers to provide paid sick days (One hour for every thirty-five hours worked, up to a cap of seven paid days). There should be no qualifying period before an employee is entitled to sick leave

5.3.7 Part-Time and Temporary Work - Wages & Benefits

This section of the review highlighted relevant statistics related to part-time and temporary work and noted that this type of work is:

- predominantly female (as of 2015, women made up about 50% of total employees and 66% of total part-time workers, while men comprised 34% of total part-time workers)¹⁹¹;
- recent immigrants (as of 2008, they made up 10% of total employees and almost 16% of temporary part-time workers)¹⁹²; and,
- minimum-wage earners (as of 2013, 21.8% of part-time workers earned minimum wage as compared to only 3.4% of full-time workers)

Unfortunately, within these statistics, the impact of part-time and temporary work for young people was overlooked in this review. Young people are more likely than other groups to have part-time employment for a variety of different reasons. If 21.8% of part-time workers are earning minimum wage, the impacts of employment policies are particularly relevant to young people who are likely to be in low-paying jobs. Considering the rules and exemptions currently provided in the ESA, young people may not even be entitled to the minimum wage. Considering these challenges, the CYN recommends the following option from the Employment Standards Act:

- ☑ Require part-time, temporary and casual employees be paid the same as full-time employees in the same establishment unless differences in qualifications, skills, seniority or experience or other objective factors justify the difference

5.3.9 Temporary Help Agencies

- ☑ Make the client company the employer of record for all employment standards. In the alternative, make both the client company and temporary help agency joint employers for all employment standards.
- ☑ Same wages for same/similar work:
provide the same pay to an assignment worker who performs substantially similar work to workers directly employed by the client unless:
 - there are objective factors which independently justify the differential; or
 - the agency pays the worker in between assignments as in the EU; or
 - there is a collective agreement exception, as in the EU; or
 - the different treatment is for a limited period of time, as in the UK (for example, 3 months)
- ☑ Limit how much clients may use assignment workers (eg. establish a cap of 20% on the proportion of client's workforce that can be agency workers)

5.4 OTHER STANDARDS AND REQUIREMENTS

All employers in Ontario should be held to the same standard in order to afford the same level of basic protections to all workers in the province. It is for this reason that the CYN would support the following option:

5.4.1. Greater Right or Benefit

- Maintain the status quo; prohibit any contracting out of the ESA

5.5 ENFORCEMENT AND ADMINISTRATION

In January of 2016, the Toronto Star reported that in a Ministry of Labour blitz from 2015, 78% of 238 businesses inspected were found to be in violation of the Employment Standards Act. This finding highlights the importance of making changes to the ESA and that there is more work to be done so vulnerable workers are not taken advantage of. This speaks to the need for more education about the ESA for all parties involved - employers and employees - to make certain people are aware of both their rights and their obligations.

5.5.2 Education and Awareness Programs

- Simplify the ESA by reviewing and eliminating exemptions and special rules that reduce employment standards (Recommendation 10, page 16)
- Require mandatory ESA training for all newly registered business owners and managers.
- Make ESA education part of the provincial high school curriculum

5.5.4 Reducing Barriers to Making Claims

- Remove the ESA provision allowing the Director to require that an employee must first contact the employer before being permitted to make a complaint to the Ministry (Recommendation 14, page 16)
- Allow anonymous claims, it being understood that the facts of the alleged violation must be disclosed to the employer by an ESO in order to permit an informed response (Recommendation 14, page 16)

5.5.5 Strategic Enforcement

Considering the number of violations that have been found across recent Ministry of Labour blitzes, a more nuanced enforcement technique is necessary to make sure the rights of all workers, and especially young people, are protected.

5.5.5.1 Inspections, Resources and Implications of Changing Workplaces for Traditional Enforcement Approaches

- Focus inspections in workplaces where “misclassification” issues are present, and include that issue as part of the inspection
- Increase inspections in workplaces where migrant and other vulnerable and precarious workers are employed
- Cease giving advance notice of targeted blitz inspections
- Adopt systems that prioritize complaints and investigate accordingly
- Adopt other options for expediting investigation and/or resolution of complaints