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**ORAL SUBMISSION OF THE CANADIAN INTERN ASSOCIATION  
PRESENTED BY JOSH MANDRYK**

Thank you for the opportunity to present to the Changing Workplaces Review. It is my pleasure to be here today on behalf of the Canadian Intern Association. We are a federally incorporated not-for-profit that advocates for the workplace rights of interns. Since we were founded in 2012, we have been urging the Ontario government to enact legislative reforms to provide greater protections for interns. We welcome the opportunity to speak to you concerning this issue.

As Canada's primary advocacy organization for the rights of interns, we hear from interns whose workplace rights have been violated on a daily basis. We routinely hear stories from interns who are misclassified and mistreated at work, and want to know what to do about it. Unfortunately, given their limited legal protections, and the weakness of Ontario's enforcement regime, these workers have limited options.

We are here today to implore you to improve the situation facing interns in Ontario. Our submissions today focus on two main areas:

- First, in response to question 8 in the Guide to Consultations, we discuss changes we believe need to be made to the current exemptions for interns and students under the *Employment Standards Act, 2000* (the "ESA"); and
- Second, in response to question 10 from the Guide to Consultations, we discuss reforms we believe are necessary to strengthen ESA enforcement.

**GREATER PROTECTIONS FOR INTERNS**

Our first set of recommendations address the exemptions for interns and students under the ESA. There are three relevant exemptions:

- I. The trainee exemption contained in section 1(2) of the ESA;
- II. The secondary and post-secondary student exemptions contained in section 3(5) of the ESA; and
- III. The professional student exemption contained in section 2(1) of *O. Reg. 285/01*.

All of these exemptions were enacted in the year 2000. Given their impact to date, we believe that all three need to be tightened up.

The past decade has witnessed the explosive growth of unpaid internships in Canada and around the world. Statistics Canada doesn't keep official statistics on unpaid internships, but the most commonly cited estimate places the number of unpaid internships in Canada at 100,000 to 300,000 annually. Workers in all provinces have been impacted by the rise of unpaid internships, but the problem appears to be particularly pronounced in Ontario. We believe Ontario's lax regulatory regime plays a role in this problem.

The Canadian Intern Association has four specific recommendations to address the problem of unpaid internships in Ontario.

### **I. Prohibit Unpaid Internships not Linked to Academic Study**

First, we recommend the Ontario government repeal the exclusion contained in section 1(2) of the ESA. This exclusion permits employers to hire unpaid interns not formally linked to an academic program so long as the placement meets the requirements of a stringent six-part test. In practice, few if any unpaid internships meet this test. Nonetheless, illegal unpaid internships in Ontario are pervasive. This is because the current regulatory approach leaves it up to employers to self-assess the legality of their internship programs, and leaves it up to interns to file complaints against their employers if they want to enforce their rights.

This approach has failed to protect interns, resulting in the displacement of paid employment with unpaid internships. We recommend the Ontario government repeal this exclusion. If employers want to retain unpaid interns, they should do so through academic programs, which can ensure proper regulation and oversight.

### **II. Eliminate the Exemption of Professional Students from the ESA**

Second, we recommend the Ontario government bring students in training for the professions enumerated in sections 2(1)(a)-(d) of *O. Reg. 285/01* under the ESA's protections by repealing the exclusion contained in section 2(1)(e) of that regulation.

This exclusion does not reflect the lived realities of students in training for these professions today. In the legal profession, for instance, students in Ontario are increasingly recruited for unpaid articling positions. Reports also indicate that a substantial portion of positions in the first year of the Law Practice Program trial were either unpaid or underpaid. Clearly, these young workers would benefit from the ESA's protections.

Students in law and other professional programs in Ontario undertake years of academic training, during which they pay high tuition fees. These are highly skilled workers who have accumulated large sums of debt. At the very least, they should be entitled to compensation and basic workplace protections.

### **III. Narrow the Exclusion for Secondary and Post-Secondary Internships**

Third, we recommend the Ontario government narrow the full-scale exclusion from the ESA for students in experiential learning programs. Each year, students perform countless person-hours of unpaid work as a requirement of their secondary or post-secondary programs. Reports of students simply performing work that would otherwise be performed by paid employees raise concerns about the appropriateness of certain unpaid placements and the need for greater oversight. The need for reform has been further highlighted by the tragic deaths of several students in experiential learning programs in Ontario in recent years.

We recommend that the Ontario government narrow the scope of the exclusion under section 3(5) of the ESA. We present two options for reform in this regard. The first option is to require school boards and post-secondary institutions to enact experiential learning policies outlining the circumstances in which unpaid placements are permissible. If you determine that this recommendation falls outside of the scope of your review, the second option we recommend is to amend section 3(5) of the ESA to apply the six-part test currently contained in section 1(2) to placements run through academic programs. Either of these approaches would address the need for greater oversight of experiential learning programs.

### **IV. Extend basic workplace protections to unpaid interns in secondary and post-secondary placements**

Fourth, recognizing that unpaid experiential learning programs may be appropriate in certain circumstances and under adequate supervision, we recommend that the Ontario government extend basic workplace protections to unpaid interns in academic placements. We recommend that the Ontario government amend the ESA to extend the non-monetary provisions of the Act to these workers. In addition to these basic protections, the Ontario government should enact a prohibition on overnight work, along with a lower maximum weekly hour threshold for these workers. These latter reforms reflect the fact that these workers are likely to have to undertake paid employment in addition to their unpaid placements.

## **STRENGTHENING ESA ENFORCEMENT**

Our next set of recommendations address enforcement of the ESA. These reforms are essential to address intern misclassification and other forms of wage theft.

### **I. Adopt an Anonymous and Third Party Complaints System**

First, we recommend the adoption of a formalized system of anonymous and third party complaints. This approach is essential to overcoming the barriers interns and other vulnerable workers face in enforcing their rights under the ESA.

## **II. Adopt a Practice of Undertaking Expanded Investigations**

Second, we recommend that the Ministry of Labour return to a practice of undertaking an expanded investigation of an employer's practices in the event that a complaint results in a finding of a violation of the ESA. This was the practice during the heyday of ESA enforcement, and should be the practice today.

## **III. Increase Proactive Enforcement and Inspection Blitzes**

Third, we recommend that the Ministry of Labour expand the use of proactive enforcement and inspection blitzes. The MOL's Internship inspection blitz from Spring 2014 highlighted widespread violation of the laws surrounding unpaid internships and demonstrates the need for wider proactive enforcement.

## **IV. Mandate Treble Damages for Wage Theft**

Fourth, we recommend that the Ontario government follow the best practices of other jurisdictions such as the State of Massachusetts and enact reforms entitling employees to treble damages for wage theft. This approach will incentivize employer compliance, and encourage settlements that better reflect wages owed.

The adoption of the reforms outlined above would strengthen compliance with the ESA and give interns and other vulnerable workers meaningful recourse to their rights under the Act.

## **CONCLUSION**

On behalf of the Canadian Intern Association, I would like to thank you once again for the opportunity to appear before the Changing Workplaces Review. These oral submissions will be expanded upon in our forthcoming written submissions. Subject to any questions you may have, this concludes my presentation.