

## **Submission to the Changing Workplaces Review**

### **CWA Canada Associate Members**

CWA Canada is an all-media labour union with 6,000 members at media outlets and newspapers across the country. Through our associate member program, we represent nearly 500 student, youth and emerging media workers in Canada, most of whom do not have access to traditional union representation.<sup>1</sup> We work with our members to support their career development, raise awareness of employment rights and improve working conditions in the sector. Over the past months, we have collected survey responses, held an in-person consultation and met with members one-on-one to gather information on the challenges they are encountering as they enter Ontario's labour market.

Workers at the beginning of their careers in the media are facing very different working realities than their colleagues did in the past. Instead of landing permanent, full-time work with a high school diploma or a post-secondary degree, emerging media workers are now much more likely to enter the workforce with multiple post-secondary degrees and high levels of student debt, and to face un- or underemployment, part-time or contract jobs, freelance work and unpaid internships.

This dramatic shift in the nature of work means that existing employment and labour laws in Ontario no longer provide basic rights or protections to many people working in the media sector. In the following submission to the Changing Workplaces Review, we make recommendations for changes to the Employment Standards Act (ESA) and Labour Relations Act (LRA) that reflect the experiences of emerging media workers in Ontario. We also support all of the recommendations being made by the Workers' Action Centre, the Ontario Federation of Labour, the Toronto York Region Labour Council, the Canadian Intern Association, and the Migrant Workers Alliance for Change during this review.

**Q 1: How has worked changed for media workers?**

**Q 2: What type of workplace changes do we need to both improve economic security for workers, especially vulnerable workers, and to succeed and prosper in the 21<sup>st</sup> century?**

**Q 3: As workplaces change, new types of employment relationships emerge, and if the long term decline in union representation continues, are new models of worker representation, including potentially other forms of union representation, needed beyond what is currently provided in the LRA?**

It is becoming alarmingly common for emerging media workers to work months, if not years, in a series of unpaid internships before landing an entry-level job in the sector.

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<sup>1</sup> CWA Canada Associate Member Program, <http://www.emergingmediaworkers.ca>.

In Ontario, it is estimated that there are between 100,000 – 300,000 unpaid interns.<sup>2</sup> Unpaid work is becoming normalized in the media, as young workers are made to feel lucky to get the opportunity to even work for free.

Many of these interns are misclassified employees who should be receiving at least minimum wage and all of the protections and standards in the ESA. However, even when an unpaid internship is legal, these interns are still not covered by basic employment standards, like hours of work, public holidays, or rest periods. Employers are increasingly taking advantage of the lack of enforcement and existing exemptions in the ESA to shift the cost of training onto their workers. As employers replace entry-level jobs with unpaid internships, the profession is becoming less accessible to those who cannot afford to work for free.

For emerging media workers who manage to land paid work, they often end up in short-term contracts, part-time jobs, or working as independent contractors. A survey of over 300 journalists conducted in 2013 found that only 39.5 percent of working journalists receive a salary, and the majority of journalists are instead paid by word, per piece or per hour.<sup>3</sup> Precarious work is increasing at both large, established media outlets that are shifting much of the work from full-time, permanent jobs to part-time and casual jobs, and at media start-ups and new digital publications that largely rely on interns, contract workers and freelancers.

This shift to non-standard forms of work across the industry is being felt most harshly by young and emerging media workers. They are taking on large amounts of student debt to obtain multiple post-secondary degrees, which is now seen as a prerequisite for entry into the field, and then are facing a 15 percent unemployment rate upon graduation.<sup>4</sup>

While there have been significant changes in the media sector over recent decades, many companies are still making significant profits. Employers like TC Media continue to earn large revenues of over \$2 billion a year,<sup>5</sup> while relying on unpaid interns and paying freelancers low rates. These employment practices significantly disadvantage workers, yet are allowed under current provincial law.

We need a sustainable media sector in Ontario that can continue to play the important role of effectively informing the public and holding those in power accountable. To achieve this, workers in the media sector need basic employment rights and standards, and the ability to collectively advocate for fair working conditions, benefits and wages. Since a large number

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<sup>2</sup> Zoe McKnight, "Unpaid Interns: No one is keeping track," *Toronto Star*, October 22, 2013, [http://www.thestar.com/news/gta/2013/10/22/unpaid\\_interns\\_no\\_one\\_is\\_keeping\\_track.html](http://www.thestar.com/news/gta/2013/10/22/unpaid_interns_no_one_is_keeping_track.html).

<sup>3</sup> Nicole Cohen et al., "Journalistic Labour and Digital Transformation: A Survey of Working Conditions" (paper presented at the Canadian Association of Work and Labour Studies Conference, Brock University, May 30, 2014), 3.

<sup>4</sup> "Ontario Labour Market Statistics for July 2015," <https://www.tcu.gov.on.ca/eng/labourmarket/currenttrends/docs/monthly/201507.pdf>.

<sup>5</sup> "Investor Presentation," [http://tcctranscontinental.com/documents/10180/3171187/Investor\\_presentation\\_April\\_2015\\_78173.pdf](http://tcctranscontinental.com/documents/10180/3171187/Investor_presentation_April_2015_78173.pdf).

of media workers are currently left out of and left behind by labour legislation in this province, significant changes need to be made to both the ESA and the LRA.

**Q 5: In light of the changes in workplaces, how do you feel about the employment standards that are currently in the ESA? Can you recommend any changes to better protect workers? Do the particular concerns of part-time, casual and temporary workers need to be addressed, and if so, how?**

According to the Workers' Action Centre's (WAC) report, *Still Working on the Edge*, 41 percent of work in Ontario's labour market is now non-standard: "part-time work makes up 19 percent of total employment, temporary work 12 percent, and self-employed makes up 10 percent."<sup>6</sup>

This reflects the reality faced by entry-level media workers who now find themselves in non-standard jobs. We hear from our members that they are often doing the same work as full-time permanent employees, but receiving lower pay and worse benefits.

*"I have worked in an environment in which full-time employees were granted benefits, but part-time employees were not. This was confusing, given that part-time employees often worked 35-38 hours a week, but were not considered full-time by the company even when they worked 35+ hours." – K.P.*

We also support the recommendations in the WAC report to improve core labour standards for all workers.

## **RECOMMENDATIONS**

- There should be no differential treatment in pay, benefits and working conditions for workers who are doing the same work but are classified differently, such as part-time, contract, temporary or casual.
- The regular workweek should be 40 hours, beyond which overtime should be paid at time-and-a-half. There should be no averaging provisions beyond the single workweek.
- Employers should be required to provide two paid 15-minute breaks during a regular workday.
- Vacation entitlements should be increased to three weeks (or 6%) per year. After 5 years of service, the entitlement should increase to four weeks.
- All workers should receive a written contract on the first day of employment that set out the terms of the contract. This contract must be negotiable.
- Employers should be required to offer additional hours to part-time employees performing similar work before new employees can be hired.
- Provide just-cause protection to contract workers if the work is ongoing and another worker must be hired to replace a non-renewed employee.
- Require that the minimum shift per day be 3 hours.

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<sup>6</sup> Mary Gellatly, *Still Working on the Edge: Building Decent Jobs from the Ground Up*, (Toronto: Workers' Action Centre, 2015), 12.

- Require the posting of schedules two weeks in advance. Provide for penalties paid to the employee if her schedule is changed within the two weeks. Allow workers to request schedule changes without fear of reprisals.

**Q 8: In the context of the changing nature of employment, what do you think about who is and is not covered by the ESA?**

**UNPAID INTERNS**

Completing one if not several internships is now widely considered a prerequisite for finding an entry-level job in the media. This means that an increasing number of young media workers enter the workforce through positions where they work for free, with virtually no rights or protections. This puts a downward pressure on working conditions throughout the sector.

Many of our members are completing unpaid internships through academic programs. While these are technically lawful positions, we find that it is common for these interns to receive little training or benefit from their internship.

*“I was mostly fetching coffee and writing blog posts. I did not pick up any new skills, I was not given any training, and it was not really hands-on at all.” – M.T.*

We have also heard from members who are being asked to perform work that would otherwise have been done by a paid employee:

*“At a magazine publishing company, I wrote two feature articles (and usually wrote news briefs on the daily). For one feature article, they were simply unprepared and threw me in to co-lead the project. Of course, wanting more experience, I happily did it. But in retrospect, it was a big project that other people would've been paid to do.” – M.T.*

*“As an intern at [a daily newspaper], I participated in a 6 week internship in which I did not have a mentor or a contract, did not receive compensation, an honorarium, or school credit, and was treated as a full-time employee, in the place of other regular, paid employees of the paper who had gone on summer vacation. I was treated as the full-time employees were—held to the same standards, given the same responsibilities, etc.—but was unpaid.” – K.P.*

*“I was an unpaid intern doing the exact same work as people getting paid \$20 plus per hour” – written comment, no name given.*

We support the Canadian Intern Association recommendation that unpaid internships through academic institutions require additional oversight to ensure that they are meaningful learning experiences and not simply a way for employers to replace paid entry-level positions with free, vulnerable labour.

The often extensive periods of unpaid work that many media workers have to endure has a disproportionately negative impact on those who do not have access to financial resources or support. We are very concerned that this is making journalism inaccessible to people from less wealthy backgrounds. As one young journalist explained:

*“While in school, I completed 6 or 7 internships. My perception was that to stand out in this industry I needed extensive experience outside of school to even be noticed. It is true, but all of these internships were unpaid. In the end it was worth it (I landed my dream job), but I'm still upset that it seemed necessary to me. The amount of mental and emotional hardship I underwent doing unpaid internships wrecked me. During my six-week non-academic internship at a magazine, I had to be on leave from my part-time job and spend the money to commute downtown. I got some compensation, but it wasn't enough. I would feel anxious and really emotionally unstable because I sometimes wouldn't know if I had money for lunch the next day or fare to get home from work. I think any internship longer than 2 or three weeks should be required to offer compensation -- enough to cover travel costs and a little more.” – M.T.*

We recommend that unpaid internships not linked to academic study be prohibited, since “few if any” meet the six-part test in section 1(2) of the ESA.<sup>7</sup> This exclusion has failed thousands of young and entry-level media workers in Ontario who have worked for free, and without basic standards and protections, in illegal internships.

We also recommend that interns in Ontario should have access to non-monetary standards in the ESA, information about their rights, and a contract that outlines the terms of their internship.

## **RECOMMENDATIONS**

- Grant unpaid interns non-monetary protections and standards under ESA: regular work day, eating periods, holidays, etc. Prohibit overnight work and lower maximum weekly hour threshold.
- Require employers to provide written notice to Ontario government when they take on unpaid interns. This will help with data collection and enforcement.
- Require employers to display a poster with information about intern's rights in Ontario, prepared by the Ministry of Labour, in the workplace.
- Require employers to present interns with a contract outlining the terms of their internship. This contract must be negotiable.
- Prohibit unpaid internships not linked to academic study and repeal exclusions for secondary, post-secondary and professional students.
- Require post-secondary institutions to enact experiential learning policies outlining the circumstances in which unpaid placements are permissible or apply 6-part test to academic internships.

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<sup>7</sup> Canadian Intern Association, “Oral Submission of the Canadian Intern Association,” (submission presented at the Changing Workplaces Review Toronto Consultation, Toronto, Ontario, June 16, 2015), 2.

## **FREELANCERS AND INDEPENDENT CONTRACTORS**

Our members are increasingly finding work as freelancers or independent contractors, and as such, are excluded from protections under the ESA.

We hear from many of these media workers that they regularly face low wages, long hours of work and concerns about loss of income due to illness or personal emergencies. They have little negotiating power to improve their conditions and fear backlash or blacklisting that may prevent them from finding work in the future.

As one digital freelance worker explained to us, he often ends up working additional hours on a project without compensation.

*“In the tech world, they very often ask freelancers to do a project on flat rate basis. Contracts are based on an approx. amount of hours. So I end up being on the hook for work not done, even if the time they put on the contract is significantly less than what is needed for the job.” - J.B.*

We believe that Ontario needs universal coverage under the ESA, which would provide a basic minimum standard for all workers, regardless of their classification.

In many cases freelance workers have actually been misclassified as independent contractors and are being denied the rights they should have access to as employees.

*“I was working as the Assistant Video Director. All 'employees' except for the heads of the company were independent contractors. I was doing work that made the company money and content for their show. I wasn't granted the rights I deserved.” – P.D.*

Employers have an incentive to misclassify their employees as independent contractors as a way to shift costs onto their workers. Misclassified workers lose out on fundamental benefits like decent wages, pension, health benefits, holiday pay, paid vacation, sick days, and overtime pay.

## **RECOMMENDATIONS**

- Expand definition of who is covered by ESA along the lines of Ontario's Health and Safety Act, which defines a worker as “a person who is paid to perform work or who supplies services for monetary compensation.”
- Misclassification – establish a reverse onus; a worker is assumed to be an employee unless employer demonstrates otherwise.

## **EXEMPTIONS**

We are also concerned about the numerous exemptions that exclude many emerging media workers from basic protections in the ESA. In particular, the exemptions based on size of employer and the exemption on hours of work for film and TV workers.

## RECOMMENDATION

- No exemptions to the ESA and no special rules.

### **Q 10: Do the current enforcement provisions of the Act work well? In your experience, what problems, if any, exist with the current system, and what changes, if any should be made? In your experience, what changes could help increase compliance with the ESA?**

Under the current system, there is little incentive for employers to comply with the ESA. This lack of compliance was evident in the results of the inspection blitz targeting the use of unpaid interns conducted by the MOL from April 1, 2014 to June 15, 2014. In forty-two percent of cases where employers were using unpaid interns, the inspectors found breaches of the ESA including minimum wage, hours of work, and vacation pay.<sup>8</sup>

In many cases, Employers can violate the ESA without any consequences. For example, when a claim for lost wages is filed by a worker, the employer is not penalized, as they only have to pay some or all of the wages owed.

Employers are expected to voluntarily comply with the ESA, as there is no active enforcement and few inspections. It is currently up to the worker to assess if their rights are being violated and to file a complaint against their employer. Yet it is not easy for workers, especially those at the start of their career, to enforce their rights. We have heard from our members they are afraid of backlash from employers or even being blacklisted for speaking out. Therefore, employer abuses of the ESA go unchallenged, and substandard working conditions are normalized.

## RECOMMENDATIONS

- Allow for anonymous and third party complaints.
- MOL should undertake an expanded investigation of employer's practices in the event that a complaint results in a finding of a violation of the ESA.
- Increased use of proactive enforcement and inspection blitzes.
- In instances where employers are found guilty of wage theft, damages should be trebled.
- Anti-reprisal protections need to be strengthened.
- Create a mandatory training program for employers and workers on the ESA, similar to the one now in place for the Ontario Health and Safety Act.

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<sup>8</sup> Andrew Langille, "The Results of the Ministry of Labour's Unpaid Internship Inspection Blitz," *Youth and Work*, September 30, 2014, <http://www.youthandwork.ca/2014/09/the-results-of-ministry-of-labours.html?q=blitz>.

**Q 11: In the context of the changing nature of employment, what do you think about who is and is not covered by the LRA? What specific changes would you like to see?**

**Q12: In the context of changing workplaces, are changes required to the manner in which workers choose union representation under the LRA? Are changes needed in the way that bargaining units are defined, both at the time of certification and afterwards? Are broader bargaining structures required either generally or for certain industries? Are changes needed in regard to protecting bargaining rights?**

Workers form unions to rectify the power imbalances between them and their employer and to create more equitable workplaces. Yet under the current LRA, it is virtually impossible for many emerging media workers to join or form a union. They often work at small companies, are on short-term contracts or are classified as independent contractors.

We recommend that freelancers and groups of workers employed on a project basis need real access to bargaining under the LRA.

We also recommend sectoral bargaining as another way for workers in non-standard work relationships to access collective bargaining and to have a say in setting fair standards across the industry.

**RECOMMENDATION:**

- Give independent contractors access to bargaining under the LRA.
- Establish framework for sectoral or multi-employer bargaining.

**Q 13: Are changes required to the LRA with regard to the ground rules for collective bargaining? Are new tools needed in the LRA with respect to industrial disputes or to deal with protracted labour disputes?**

**Q14: In light of the changing workplace and the needs of workers and employers in the modern economy, are changes needed regarding the unfair labour practices set out in the LRA, or to the OLRB's power to provide remedies in response to unfair labour practices?**

In Ontario, employers have the power to fire or penalize workers who engage in collective action or mutual aid to improve their working conditions. Our members often work at small workplaces or on short-term, part-time contracts and have little access to unionization. They would greatly benefit from the right to work together to improve their working conditions.

**RECOMMENDATION:**

- Workers shall have the right to self-organization and engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection. And if employees are fired, suspended or otherwise penalized for taking part in a group activity, they should be reinstated with full back pay and interest.

**Q 15: Are there changes that could be made to the LRA that would enable the parties to deal with the challenges of the modern economy?**

Labour laws in Ontario need significant overhaul to level the playing field between employers and workers. The currently established framework makes it incredibly difficult for workers to exercise their right to collective representation. Working standards and conditions would be significantly improved across the province if the MOL removed the barriers to unionization that they currently have in place.

We support the recommendations put forward by the Ontario Federation of Labour, including card-check certification, anti-scab provisions, successor rights and off-site voting.

**Q 16: Are there any other issues related to this topic that you feel need to be addressed? Are there additional changes, falling within the mandate of this review, that should be addressed?**

Though outside of the scope of this review, we strongly feel that the minimum wage needs to be increased to \$15 an hour. Many of our members are located in the GTA, where the living wage was recently assessed at \$18.52 per hour.<sup>9</sup> The current minimum wage of \$11 makes it incredibly difficult for workers to pay off student debt while paying for rent, food and other basic costs of living. The inadequacy of the current minimum wage is having negative impacts on health, inequality, and community well-being.

**RECOMMENDATIONS**

- Increase minimum wage to \$15 an hour.
- We also support the specific recommendations from the Workers' Action Centre, the Ontario Federation of Labour, the Toronto & York Region Labour Council, the Canadian Intern Association, and the Migrant Workers Alliance for Change.

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<sup>9</sup> Kaylie Tiessen, "Making Ends Meet: Toronto's 2015 Living Wage," Canadian Centre for Policy Alternatives, April 2015, 5.