

Stakeholder Summary

Legal confusion presents challenges for expanding work-integrated learning opportunities

As experiential education and work-integrated learning (WIL) opportunities expand across Ontario and the rest of Canada, a new paper by the Higher Education Quality Council of Ontario (HEQCO) cautions that a lack of clarity on a number of WIL legal issues is becoming increasingly challenging for institutions.

Maximizing Opportunity, Mitigating Risk: Aligning Law, Policy and Practice to Strengthen Work-Integrated Learning in Ontario identifies seven areas for institutions and policy makers to focus on: employment standards, health and safety, human rights, intellectual property, employment insurance, immigration law and tax expenditures. The study found that while only a small number of cases result in litigation, campus leaders and legal representatives are becoming increasingly preoccupied interpreting unclear laws and regulation, mediating disputes and negotiating agreements to address this growing and changing area of postsecondary education.

The report calls for greater clarity and consistency in the use of terminology to improve communication about the legal norms and expectations for WIL; more collaboration, communication and knowledge sharing throughout institutions, students, employers and government; and better and more publicly accessible data about the range of opportunities and experiences available through WIL.

Project Description

The study combined in-depth interviews with WIL experts in legal and non-legal roles with a review of provincial and federal legislation and regulations, as well as legal cases dating back to 1990. Only off-campus WIL opportunities delivered to students as part of an academic program offered by a university or college of applied arts and sciences in Ontario were examined in depth. Other jurisdictions are used only for comparison and post-doctoral fellowships, professional licensing processes, apprenticeships and programs delivered by private or career colleges were not included. Canadian tax expenditure programs designed to support WIL were also examined.

Findings

The issues explored fall under either federal or provincial jurisdictions, with tax expenditures being an area of shared responsibility. Provincially, the report highlighted employment standards, health and safety, and human rights issues that may be potentially challenging. Intellectual property, employment insurance and immigration law are areas of primarily federal concern.

WIL students are not covered by basic employment standards, whether they are paid or unpaid, including standards on minimum wage, statutory holidays, vacation pay, maximum work hours and regular breaks. The study found that even individuals knowledgeable about WIL were sometimes unaware or unclear about how the Employment Standards Act applies to a student on a placement. The

authors recommend that Ontario review this aspect of employment standards law and that even if some placements must be unpaid, there is an opportunity to expand certain protections to WIL students.

While the province has already passed legislation to clarify that students are covered by occupational health and safety laws on placements, there is confusion surrounding what safety training a student should receive and who should provide it. There is also the challenge of administrative barriers and burdens regarding insurance protection for accidents in the workplace.

The Ontario Human Rights Code protects WIL students, but issues such as the growing demand for police record checks and disclosure of mental health or disability create the potential for misuse of this information or discrimination. Another potential challenge is accommodation for disabilities. Postsecondary institutions have become well prepared to manage special accommodations, but on a placement there is a lack of clear policies on who is responsible for providing these supports.

The growing range of technology-driven and business placements raises questions about intellectual property and confidentiality. Do students have any ownership over ideas they may generate in a placement and what are they able to disclose from their exposure to proprietary information? The authors argue for clear intellectual property agreements to be in place to protect all interests.

Employment Insurance (EI) is another challenge. Leaving a job for a WIL placement is not considered “just cause” to claim EI and placements do not count as insurable employment. Better clarity is needed on EI implications for students to make informed choices and the authors recommend Ontario consider seeking amendments to EI to ensure that low-income students are not disadvantaged by WIL.

International students face unique hurdles in participating in off-campus WIL placements because of work restrictions on study permits issued by Immigration, Refugees and Citizenship Canada. While they can attain a co-op work permit, it is a lengthy process that makes completion difficult. On-campus work is permitted and is a potential avenue for creating WIL placements for international students.

Finally, the report analyzes tax expenditures aimed at promoting WIL and found that Ontario is the highest-spending jurisdiction in the country, both in total funds and per capita. Most WIL tax expenditures target the employers to create spaces, instead of providing supports for students and the existing tax credits only support a select category of WIL placements. For example, unpaid placements or placements in the public and non-profit sectors do not qualify for tax credits. The authors argue more evidence is needed to examine the effectiveness of these programs.

Authors of Maximizing Opportunity, Mitigating Risk: Aligning Law, Policy and Practice to Strengthen Work-Integrated Learning in Ontario are Joseph F. Turcotte, Leslie Nichols and Lisa Philipps.