



CLAIHR

Canadian Lawyers for International Human Rights
Juristes canadiens pour les droits internationaux de la personne

VIA EMAIL TO: policyconsultation@lso.ca

Teresa Donnelly, Treasurer
Law Society of Ontario
Osgoode Hall, 130 Queen Street West
Toronto, ON M5H 2N6

March 16, 2022

RE: CLAIHR Supports a Minimum wage and a Living Wage for Articling Students

The Law Society of Ontario has recently solicited opinions from the legal community with respect to whether articling students should be accorded the minimum wage.

The Canadian Lawyers for International Human Rights (CLAIHR) strongly supports a minimum wage, and a living wage for all articling students.

Who is CLAIHR

CLAIHR is a federally incorporated registered charity. It is a non-governmental organization of lawyers, law students, legal academics, and other jurists, founded in 1992 to promote international human rights, within and in connection to Canada, through advocacy, research, and education.

CLAIHR's objectives include:

- a. analyzing laws, institutions, and practices affecting human rights;
- b. contributing to the strengthening of international human rights instruments and institutions that protect human rights, both domestically and internationally;
- c. promoting awareness of international human rights issues among Canadians generally, and specifically within the Canadian legal community; and
- d. supporting lawyers, legal organizations, and others dedicated to the realization of human rights.

A large part of CLAIHR's work involves intervening in court proceedings where questions of international human rights law are being considered, including the application of that law to domestic legislation and by domestic courts in Canada. CLAIHR's other activities include promoting international human rights education by hosting conferences and speakers, publishing a blog dedicated to international human rights issues, and supporting student involvement in research on matters of international human rights.

CLAIHR

email: president@clair.ca

Charitable Registration No.: 138620257RR0001

www.clair.ca



CLAIHR also works closely with groups dedicated to human rights and refugee advocacy. For example, CLAIHR has worked with Amnesty International, the Canadian Centre of International Justice, and the Law Union of Ontario on projects to promote international human rights.

Recommendation

A minimum wage for workers is a Canadian value and it is a human right. There is justification for this position based on international labour and human rights law. CLAIHR submits that the minimum wage for Ontario should apply to all articling students in the province. We would submit that failure to remunerate an articling student would violate Convention No. 26, where there are "no arrangements for the effective regulation of wages" and "wages are exceptionally low".

Further still, we would recommend the LSO Benchers, upon promulgating the Ontario minimum wage for all articling students, as a next step study the wages of articling students in reference to ILO Convention No. 131. After remedying the "exceptionally low wages" noted in above, we should study whether the minimum wage constitutes "unduly low wages", and whether the Benchers should prescribe a living wage based on the factors outlined, and others as needed.

International Law supporting a Minimum Wage

The International Labour Organization (ILO) has several instruments which speak specifically to wages. The below content is offered from the ILO Minimum Wage Policy Guide, a comprehensive publication on the subject - cf. <https://www.ilo.org/global/topics/wages/minimum-wages/lang--en/index.htm>

In 1928, the ILO adopted the [Minimum Wage Fixing Machinery Convention, 1928 \(No. 26\)](#). In line with the prevailing philosophy of the time, this Convention encouraged member States to implement minimum wages "for workers employed in certain of the trades or parts of trades (and in particular in home working trades) in which no arrangements exist for the effective regulation of wages by collective agreement or otherwise and wages are exceptionally low". This instrument is one of the most widely ratified ILO conventions with over 100 countries. Canada ratified this treaty on 25 April 1935 and it is therefore worthy of consideration.

In 1970, ILO adopted the [Minimum Wage Fixing Convention, 1971 \(No. 131\)](#), which is considered to offer broader protection than that envisaged by ILO Convention No. 26 noted above. [Convention No. 131](#) encourages member States which ratify to establish a *system* of minimum wages² which:

- offers a broad scope of application and where exclusions made are kept to a minimum;
- establishes a machinery to fix and adjust minimum wages from time to time;
- is based on the principle of full consultation with social partners;
- involves social partners, on an equal footing, as well as independent experts in the design and operation of the system;
- sets minimum wage levels that take into account the needs of workers and their families, as well as economic factors;



CLAIHR

Canadian Lawyers for International Human Rights
Juristes canadiens pour les droits internationaux de la personne

- includes appropriate measures to ensure the effective application of minimum wages.

The objective of a generally applicable lower limit under which wages are not permitted to fall reflects the view that all workers – as a matter of right – should receive protection against “unduly low wages”. However, [Convention No. 131](#) does not prescribe a single national minimum wage. The [Minimum Wage Fixing Recommendation, 1970 \(No. 135\)](#), which accompanies the Convention, makes clear that broad coverage can be achieved “either by fixing a single minimum wage of general application or by fixing a series of minimum wages applying to particular groups of workers”. By not seeking to impose a single model on all ILO member States, [Convention No. 131](#) allows for the existence of different national circumstances and different levels of economic and social development.³ While not ratified by Canada, we suggest this second instrument is still of persuasive value.

Thank you for your work in governing our profession.

Yours Sincerely,

James Yap
President
Canadian Lawyers for International Human Rights

CLAIHR

email: president@clair.ca

Charitable Registration No.: 138620257RR0001

www.clair.ca