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**MINOR INTERNATIONAL STUDENTS IN CANADA:  
DOES THE LEGAL FRAMEWORK MATTER?**

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## MINOR INTERNATIONAL STUDENTS IN CANADA

### **Abstract**

As Federal and provincial governments invest to “ help secure Canada’s long - term prosperity and economic success” (DFATD, 2014; Scott et al. 2015) through increased international student recruitment and retention, there is a steady increase in international student numbers with a proportionate increase in international students under age of 18. This MRP examines the implication of this growth particular among minor international students (18 and younger) in a policy context in Canada where there is contradiction between provincial age of majority regulations and no requirement for guardianship for incoming minor international students. Unlike Canada two other jurisdictions, namely Australia’s and the UK’s which have also invested in increasing international students numbers, have established frameworks to ensure the safeguarding of international minors. This MRP will offer a comparative lens to examine frameworks in three jurisdictions with reference to minor international students and provide recommendations for Canadian regulatory framework. The legal protection of international students minors is a human rights issue with ethical implications for the Canadian government and institutions that are equally invested in recruiting international students. Thus this study recommends Canada must take responsibility in aligning federal immigration and legal provincial systems to better protect minor international students. These actions are necessary to protect Canada’s reputation, and ensure that the immigration of international students will continue to grow in Canada.

*Key words: Minor international students, Custodianship, Age of Majority, Policy Framework*

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### Acronyms

AEGIS - Association for the Education and Guardianship of International Students

AUCC – Universities Canada

CBIE - Canadian Bureau of International Education

CBSA - Canada Border services Agency

DIBP - Department of Immigration and Border Protection (Australian Government)

DFAIT<sup>1</sup> - The Department of Foreign Affairs and International Trade

DFAITD - The Department of Foreign Affairs, International Trade, and Development

ESOS - Education Services for Overseas Students (Australia)

IRCC<sup>2</sup> – Immigration, Refugees and Citizenship Canada

IRPA - the Immigration and Refugee Protection Act

IRPR - The Immigration and Refugee Protection Regulations

GAC<sup>3</sup> – Global Affairs Canada

UKCISA - UK Council for International Student Affairs

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<sup>1</sup> The Canadian International Development Agency (CIDA) was merged with the Department of Foreign Affairs and International Trade (DFAIT), creating the Department of Foreign Affairs, International Trade, and Development (DFAITD).

<sup>2</sup> The Canadian federal government department that used to be called Citizenship and Immigration Canada (CIC) has been renamed Immigration, Refugees and Citizenship Canada (IRCC) as of November, 2015

<sup>3</sup> Previously known as Department of Foreign Affairs, International Trade, and Development (DFAITD). Following 2015 election of the Liberal Government, this federal department was restructured and renamed Global Affairs Canada

## **Introduction**

My interest in this research topic originated from my personal experience. My engagement in education sector in Canada began with my work at Seneca College where I was initially responsible for the recruitment of international students. I really enjoyed the position because it gave me the ability to guide international students through the entire application, admission and orientation process. My position of an international recruiter thus slowly evolved into an international guidance counsellor who understood that mobility, be it academic or the one that leads to permanent settlement has commonalities regardless of the countries of origin. My experience as an international student guidance counsellor was particularly valuable as I discovered that different international students - ESL, elementary, secondary, post secondary, exchange or those pursuing other academic paths - have different needs and expectations, and certain groups of international students could be more vulnerable than others. Federal and provincial regulations that drive international strategy are focused on increasing the number of international students, primarily to increase revenues and therefore often see international student body as one category and disregard the different needs with respect to their age or educational level within a diverse pool of international student.

As a custodian and a creator of a guardianship company Student Academic Success Strategies Inc, one of a very few located in Ontario and BC, I assisted over 200 international families and serviced over 20 educational institutions in Ontario, British Columbia and Quebec. The company primarily focused on providing much needed care and support for their minor international students. The overwhelming demand from international families and provincial education institutions for the custodianship service positioned me as a custodianship provider for some of the biggest Ontario public colleges, universities, ESL schools as well as private boarding

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schools. Very often, international families do not have a relative or a friend living in the host country, therefore paid professional guardianship service is an alternative choice to ensure that the minor child is cared upon arrival in Canada. Provision of such service prevents the possible implications that minor international student could face in the absence of a legal guardian. If a minor international student is in Canada without the legal guardian, whom does he/she call when a landlord wrongfully tries to evict a minor without a sufficient and proper notice? The lack of knowledge of rights and provincial regulations puts minor international student into a vulnerable position. Furthermore, when an international minor student is admitted to the hospital due to a suicidal episode, who does the hospital reach for a consent if the minor has no local guardian in Canada?

The scope of my guardianship services ranges from daily and routine phone calls and meetings in person with students, primarily focused on orientation and integration into the learning environment, to serious health care decisions, or being the primary liaison during crisis interventions at the mental health facilities. I have witnessed first - hand the struggles and difficulties international student minors face when they arrive to the new country and an unfamiliar culture. They require attention and support on daily basis and especially during emergencies. However, the regulations in Canada do not necessarily ensure that those needs are met. For example, a minor international students aged 17 accepted to an educational institution in Toronto presents herself to the CBSA officer at the Canadian port of entry. According to federal regulations (IRPR), the student does not need a legal guardian to stay in Canada for the duration of the studies. However, provincial regulations (Parental Responsibility Act, Age of Majority and Accountability Act, Child Welfare Act, Ontario) states that the student will reach the age of majority at 18 and therefore requires a guardian to make decision with respect to the students

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well-being and academic support and success. A simple field trip without the guardian signature or more importantly, a hospitalization, etc. present a real challenge for institutions that admit these students. The onus seems to be on the institution and the parent to find appropriate services for the minor international student.

The current regulatory frameworks (provincial and federal) tackling issues of minor international students in Canada are inconsistent and allow minor international students to fall through policy cracks in terms of their security and support. Why federal policy makers would hand in such an important decision making to an immigration officer and also misalign the provincial age of majority requirements to an immigration policy impacting international students? Wouldn't it be more prudent for federal policy makers to align the immigration policy on international students with already established provincial regulations for age of majority and absorb the responsibilities, duties and assure that there is support to vulnerable minor students coming to Canada? This legislation leads to explore possible ethical concerns and implications minor international students pose while not having a legal guardian in Canada. While the provincial regulations state that the age of majority is 18 or 19 (B.C.), IRCC policy allows minors to enter Canada at 17, without much regard for provincial regulations. As a result, many unaccompanied international minors who arrived without an appointed guardian to Canada find themselves in uncharted waters and reach for paid professional guardianship services for great number of reasons: lack of personal support, unattended social events and class field trips due the absence of a liability form from a guardian, inability to receive college gym membership without guardian's signature and etc. On the other hand, host educational institutions are trying to accommodate those students' needs within provincial regulatory framework, which requires all minor students to have parental or custodian consents. Does the legal framework matter (with

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respect to the provincial age of majority) to IRCC policy allowing minor international students into the country at the age of 17 without appointed legal guardian? The federal and provincial regulation misalignment, differences in jurisdiction obligations made me wonder how this vulnerable, yet a very big group of students is overlooked for support services in the Canadian system. The paper analyzes the policy studies in Canada, Australia and the UK, possible implications of the policy change and the scholarly work rendered to examine minor international students' experiences in Canada. The purpose of this research paper is to examine how, when and to what extent can the UK and Australian practices inform Canadian legislative framework to make the necessary adjustments that would still meet Canadian objectives. The analysis is done using comparative study approach with recommendations of policy borrowing from Australia and the UK international minor students' regulatory frameworks. What regulations of the UK's and Australia's regulatory frameworks should be considered to fill the absence of the policy regulations in Canadian regulatory framework on minor international students? What policies would help comply the Global Affairs Canada objectives and yet align federal and provincial legislative frameworks? What policies would ensure accountability on the part of governments and universities to protect and support minor international students?

Additionally, what is the role of educational institutions hosting this vulnerable group of students with respect to well - being of these unaccompanied students left without required support in Canada? Finally, do international standards as identified in the United Nations *Convention on the Rights of the Child* and Canada's own provincial regulations matter and to what extent?

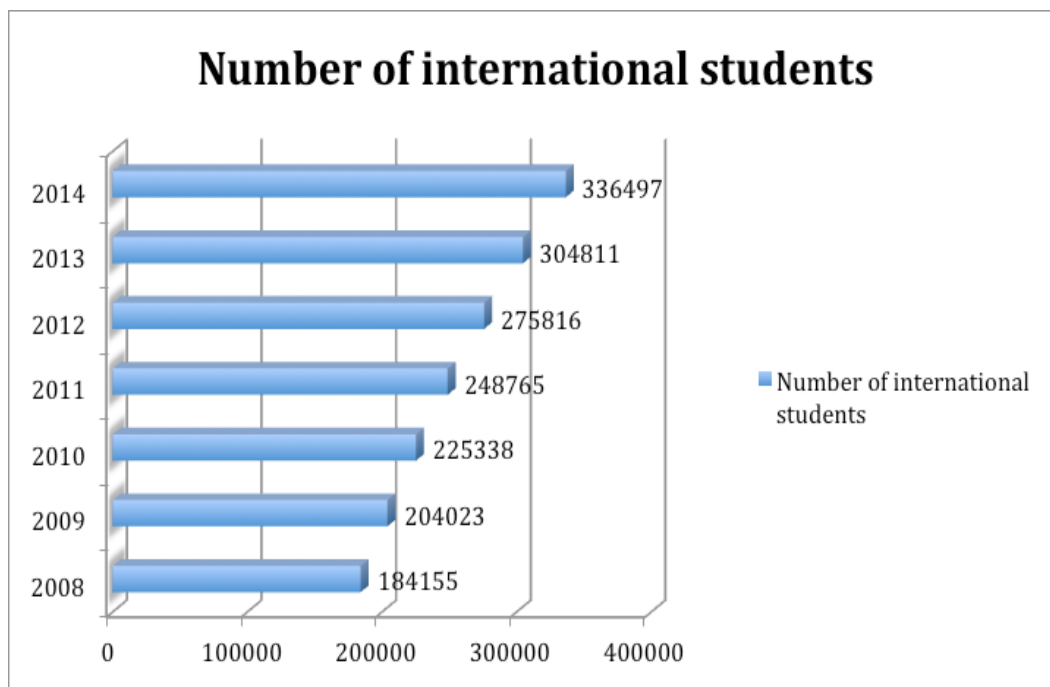


## Literature Review

### Federal and Provincial strategy for international students

Government of Canada acknowledges international student recruitment and retention as one of the key component in the government's economic strategy outlined as Canada's Economic Action Plan (Government of Canada, 2014). International student enrolment in Canada grew from 159 426 in 2003 to over 336 490 in 2014 (CBIE, 2016) (Figure 1). There were 336,497 international students in Canada in 2014, representing an 83% increase since 2008, and an increase of 10% over the previous year (CBIE, 2014).

**Figure 1. International students in Canada by year, all levels of study 2008 - 2014**



*Note: CBIE A World of Learning: Canada's performance and Potential in international education 2015*

Canada gains nearly \$8 billion annually from international student expenditures including tuition and living expenses (Kunin R, 2012). The presence of international students created over 81,000 jobs and generated over \$445 million in government revenue (Kunin R, 2012). Economic

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impact of international students in Canada provides stimulus for the Government to drive strategies increasing those numbers. Policies justifying international student recruitment as an aid to local economies represent international students only in relation to the amount of money they will spend in the country, not only in tuition fees, but also for housing and food, and even job creation (Stein and Andreotti, 2015). One could refer the ‘aid to local economies’ as financial exploitation of international students in order to achieve recruitment success.

In strategizing Canada’s success in attracting international students Trilokekar (2009) explained how Canada has followed along the lines of Australia’s success in attracting international students. She provides a detailed historical perspective of Global Affairs Canada (formerly known as DFAITD) past policies and practices, and the impact of its proactive position in policy making today. Trilokekar and Kizilbash (2013) in “IMAGINE: Canada as a Leader in International Education. How can Canada benefit from the Australian experience?” further analyze the steps Canada is taking to make education into a “pure trade commodity” in education. In their assessment, Canada has seen a shift in the immigration regulations concerning international students. These changes have further supported Government efforts in marketing higher education to international students. With the push from the Global Affairs Canada as well as other legislative bodies, Canada has begun to develop their national marketing strategy to attract international students to Canadian universities, and presently to Canadian elementary and secondary schools.

In January 2014, Foreign Affairs, Trade and Development Canada released Canada’s *International Education Strategy: Harnessing Our Knowledge Advantage to Drive Innovation and Prosperity*. This document is a key element of the Global Markets Action Plan, which calls for action to increase Canada’s profile in higher education, recruit the best international students,

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and prepare the economy for the twenty-first century. While the document is focused on strategies and actions related to postsecondary education, it also acknowledges the importance of K–12 Education. Canada’s international education strategy seeks to attract “top talent” international students. The ultimate goal of hosting international students is to convert them into potential permanent residents, this way addressing skilled labour shortage in Canada (Government of Canada, 2014) and “help secure Canada’s long-term prosperity and economic success”(Scott et al; DFATD 2014; Stein and Andreotti, 2015). This direction leads us to believe that international students are seen in higher education policy and practice as “cash” (Stein and Andreotti, 2015) contributing to the local economy. The economic incentive of international student recruitment drives government strategies and plans further for higher number of international students. Global Affairs Canada ambitiously predicts that by 2022 that number will reach 450 000 (DFAITD, 2014). A sudden increase estimated to contribute the revenue received from international students in Canada to \$16.1 billion and generate approximately \$910 million in new tax revenue (Government of Canada, 2014). Canadian Government investment in international education outlined in the *International Education Strategy* is presented as the “blueprint to attract talent to Canada and prepare our country for the 21st century” (Government of Canada, 2014). These predictions provide a rationale to analyze the implications of fast growing international student numbers and regulations set in place to accommodate a large pool of a diverse body of international students, especially minor international students (Table 1).

**Table 1. International students by level of study 2009 - 2013**

	2009	2010	2011	2012	2013
<b>Level of Study</b>					
Secondary or less	18287 (22%)	19773 (21%)	21216 (22%)	23844 (23%)	25343 (23%)
Trade	9759 (11%)	10469 (11%)	8112 (8%)	5830 (6%)	3910 (3%)
University	38881 (46%)	40333 (42%)	42343 (43%)	44394 (42%)	44420 (40%)
Other post secondary	11867 (14%)	17308 (18%)	20692 (21%)	24291 (23%)	29444 (26%)
Other	6067 (7%)	7363 (8%)	6016 (6%)	6459 (6%)	8430 (8%)
Not stated	8 (0%)	10 (0%)	15 (0%)	12 (0%)	318 (0%)

Note: Citizenship and Immigration Canada (2015). *Evaluation of the International Student Program*, Evaluation Division Research and Evaluation, April 2015

The Federal Government is not the only agent responding to the global competitiveness in bringing more international students. Since education in Canada is provincially regulated, Canadian provinces and institutions are also responding to this new trend in setting strategies and plans for future international students' enrolments. Canadian provinces compete both nationally and internationally with federal and municipal jurisdictions that share the same policy objectives and address international education strategies, creating a need to examine competitiveness of its higher education system, its educational outcomes and labour market pathways (Scot et al, 2015). Among Canadian provinces, Ontario has been the province which attracts the highest number of international students – 43,2% (CIC, 2015).

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**Table 2. International students by province or territory 2009 - 2014**

	2009	2010	2011	2012	2013	2014
Newfoundland and Labrador	1,475	1,612	1,775	1,945	2,038	2,298
Prince Edward Island	631	684	739	769	856	1,098
Nova Scotia	6,405	7,582	8,457	9,218	9,282	9,688
New Brunswick	3,242	3,438	3,560	3,714	3,897	4,093
Quebec	31,391	33,003	34,840	38,887	42,471	47,888
Ontario	76,844	89,417	102,349	115,995	130,450	143,786
Manitoba	5,084	5,228	5,472	5,989	6,739	7,891
Saskatchewan	3,711	3,843	4,097	4,312	4,721	5,060
Alberta	15,098	15,367	15,746	15,776	16,937	17,838
British Columbia	60,074	65,108	71,661	79,111	87,326	96,776
Northwest Territories	29	23	22	60	59	41
Nunavut	--	--	--	--	--	5
Yukon	35	27	40	~40	26	31
Not stated	--	--	--	0	--	4
<b>Total unique persons</b>	<b>204,023</b>	<b>225,338</b>	<b>248,765</b>	<b>275,816</b>	<b>304,811</b>	<b>336,497</b>

*Note: CIC Facts and Figures 2014*

Since Ontario province attracts nearly half of all international students coming to Canada (Table 2), the province took initiative to create Ontario's K- 12 and postsecondary international education strategies. The comprehensive postsecondary international education strategy is under its way and "will help create stronger opportunities for international collaboration, research and

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innovation, ensuring Ontario's postsecondary system remains globally competitive" (Ministry of Advanced Education and Skills Development, 2016).

In 2015 Ontario developed and released *Ontario's Strategy for K-12 International Education* (Ontario Ministry of Education, 2015) which calls for increase in recruitment of elementary and secondary international students. The strategy includes Francophone schools and encourages international student recruitment from French - speaking countries (Ontario Ministry of Education, 2015). The strategy recognizes that "intercultural diversity is not achieved automatically through the enrolment and presence of international students but requires a commitment on the part of boards and schools to promote successful integration" (Ontario Ministry of Education, 2015). Academic, cultural, and social supports are necessary to ensure that international students have a safe, welcoming environment in which to live and study. Ontario Ministry of Education aims to provide the support which include strong protections for international students, to be set out in a planned ministry policy/program memorandum regarding homestay students, the responsibilities of their custodians, and the role of education agents" (Ontario Ministry of Education, 2015). Ontario's K- 12 strategy calls for provincial ministry's policy to regulate conditions for homestay students, the responsibilities of their custodians and the role of educational agents in order to ensure strong protection of minors.

Ontario school boards recruit international students for the contributions they bring to the learning environment and school community. Moreover, more secondary students are coming from abroad to position themselves for entry into Canadian institutes of higher education. As noted previously, Ontario has the largest share, with more than 126000 international students studying at all levels in both public and private institutions and language schools. Approximately 19000 of these international students are in K-12 schools (Ontario Ministry of Education, 2015).

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The availability of secondary education in both English and French continues to give Ontario a competitive advantage. Being the largest and most diverse board in Ontario, Toronto District School Board (TDSB) released their strategic plan *Internationalization and Global Education 2013 - 2017*. This strategic plan was inspired by The Calgary Board of Education's "*International certificate: Engage with the global community – discover yourself*", The Advisory Panel on Canada's International Education Strategy report "*International Education: A Key Driver of Canada's Future Prosperity*", "*Canada's International Education Strategy: Harnessing our Knowledge Advantage to Drive Innovation and Prosperity*" and other provincial jurisdiction strategies and plans, including research report from Australia "*Internationalisation of the curriculum (IoC) in action: A guide*". TDSB set goals and targets to implement the *Internationalization and Global Education Strategy*. Through these actions they "build global competencies in our learners, welcome more international students and visitors into our programs, and contribute to the TDSB's balanced budget plan" (TDSB, 2015). TDSB targets to increase recruitment efforts of international students in emerging markets such as Africa, Brazil, Central and Southeast Asia, China, Germany, India, Indonesia, Mexico, South America and Turkey, also boost promotional activities in countries of origin of the current international students and further explore partnerships with targeted schools internationally to promote to and recruit international students. TDSB also plans to increase the number of TDSB schools that host international students (TDSB, 2015). These goals align with *Ontario's strategy for K-12 international education*. It's clear that there is one united aim and goal throughout all federal and provincial strategic plans and reports - to bring more international students, at all levels, to Canada. It's important to understand how those strategies and policies are transferred into institutional practices. The most prominent finding of AUCC's 2014 survey is that Canadian

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universities are deeply committed to internationalization: “ 95% identify it as part of their strategic planning and 82% view it as one of their top five priorities” (CBIE, 2014). This commitment is deeply embedded at senior administrative levels of most institutions and is being translated into action with increasing urgency: 89% of respondents say that the pace of internationalization on their campuses has accelerated (either greatly or somewhat) during the past three years. Institutions’ most common top priority for internationalization is undergraduate student recruitment, identified by 45% as their highest priority and by 70% as among their top five goals (CBIE, 2014). El Masri, Choubak & Litchmore (2015) in their report “*The Global Competition for International Students as Future Immigrants: The Role of Ontario Universities in Translating Government Policy into Institutional Practice*” provide further details on Ontario universities’ strategies, programs and services for international students. These findings confirm that Ontario universities acknowledge, recognize and respond to federal and provincial policies on international students in their own institutional strategies and policies. Most universities are committed to international student recruitment and increasing international student enrolments (El Masri et al, 2015). However, institutional strategies also examine the demand for international student support and services. Those strategies include better-developed, coherent, resource-rich and targeted international student services (El Masri et al, 2015). Furthermore, the institutional goals aim to provide “advising, counselling and academic support services, expansion of staff positions to assist IS with their transition experiences, and even building residence facilities to further accommodate an increased IS presence on campus” (El Masri et al, 2015). El Masri et al (2015) further examine the range and types of programs offered for international students by Ontario universities. The finding reported “a lack of integration of programs and services, and a lack of coordination and communication between departments in



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offering IS support programs and services throughout their student life cycle” (El Masri at all, 2015). Despite the variety of services offered to international students on Canadian campuses, it was evident that not all services were known to staff and/or seem to be clearly advertised on universities’ websites. This study suggested and reported that “meeting international students social, academic and professional engagement needs was not just an issue of providing additional services or tailoring available services towards international students specific needs but also one of improving the accessibility and awareness of these programs and services to both international students and staff through better advertisement and intra-campus coordination”.

### **Experience of International Students**

Following the growth of international student numbers, there has been a substantial growth in research on international students’ experience. Studying in another country is a stressful period for all students as they experience changing social, financial and academic assumptions. Most scholarly findings suggest that the historical challenges to integration for international students in Canada have varied, depending on several key factors: their national-linguistic backgrounds, their individual personalities, the policies and practices of their host institutions, their programs of study, their length of stay, the local social context, federal and provincial government policies, and even international political developments. Apparently, overseas international students in particular have traditionally faced significant power imbalances in their relations with their host institutions that can often rendered them voiceless and vulnerable (Cameron. 2006). The research shows that international students have a particularly hard time adjusting compared to their domestic peers due to cultural differences (Andrade, 2006). Today’s international students face “a range of stressors, such as culture shock, discrimination, adjustment to unfamiliar cultural norms, values and customs,

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communication/language difficulties, education system differences, financial hardships, lack of appropriate accommodation, isolation and loneliness, homesickness, and loss of established support and social networks” (Khawaja & Stallman 2011). Marginson (2012) draws their position as ‘vulnerable and uncertain, mediated by non- citizen status and related facts of cultural difference, information asymmetry and communication difficulties’ (Marginson, 2012). Marginson’s research focuses on “subordinated outsider status’ of international students which enlarges the problems they face in the host country. He suggests that international students “should be viewed through the lens of comprehensive human rights, rather than, say, the lens of pastoral care, or consumer regulation”. The reason of why universal human rights are especially important for globally mobile students brings to the point of them being outside their own countries and the lack of protection and entitlement of citizenship they receive.

Various studies focus on different factors affecting international students’ experiences. This adjustment process could be divided into two domains - psychological and sociocultural (Scott et al, 2015). Psychological adjustment could vary with individual differences in personality (Goodson & Zhang, 2010), daily struggles and hassles (Safdar, Lay & Struthers, 2003), coping strategies and resilience (Khawaja & Stallman 2011), identification with home and host cultures (Playford & Safdar, 2007) and formation or reformation of their identities (Koehne 2005; Marginson 2014). Sociocultural adjustment or acculturation examines students’ ability to “fit in,” (Violet and Jones, 2012) by negotiating cultural and social aspects of the new host society. Sociocultural adjustment is experienced as a process of social learning and normally improves over time, depending on cultural distance, language ability and satisfaction with contact with host nationals (Hickey et al 2010; Nguyen-Michel et al, 2006). Many research studies seek to examine how institutional resources affects overall experience of international

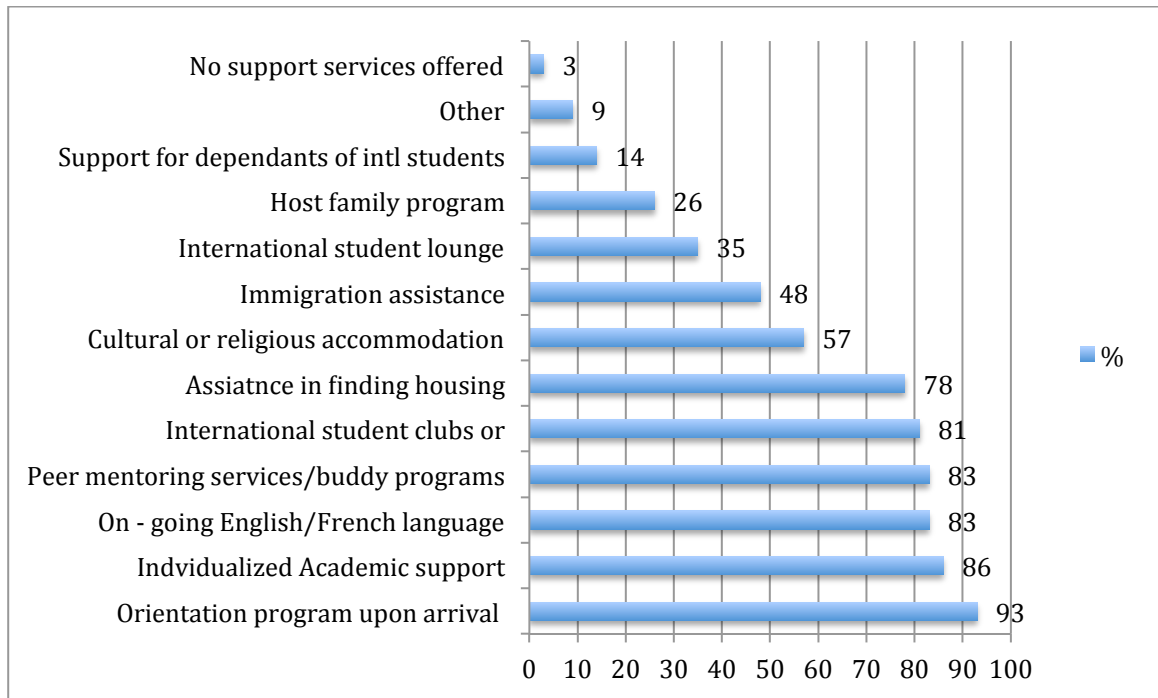
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students while other studies research how international students transform their host institutions (Madge et al. 2014). Many scholars come to the conclusion and suggest that university services must become more closely aligned with international students needs (Roberts and Dunworth, 2012), because “institutions which do not address the unique needs of international students may leave these students feeling disappointed, unfulfilled, and even exploited” (Sherry et al, 2010). Meeri Hellsten (2002) presents “Students in transition: needs and experiences of international students in Australia” case studies of international student experiences of Australian higher education and implications of international students’ transition into their new Australian study environment. She uncovers the expectations international students have for host institutions when they arrive to the host country. Those expectations are described as more “parenting” (Hellsten, 2002). Through Hellsten’s interpretive method of analysis, she sums up that “international students wish for staff of the host institutions to be ‘caring’. This provokes an intervention of ‘caring’ which is required as a form of making students comfortable and encouraging of general questioning of issues (Hellsten, 2002). She points out that “this type of authoritarian support can be associated with the sense of community responsibility, of parental responsibility towards incoming new students” (Hellsten, 2002). She indicates international students’ expectations of their host institutions are linked to more support and more resources. Similarly to Hellsten’s study findings, the key purpose of Popadniuk’s study is to provide welcoming and supportive environment through school counsellors. One could argue that these hosting institutions have ‘parental’ expectations to meet in order to provide a welcoming and safe environment for new adolescent students. This brings into forefront the role that Canadian institutions play in welcoming unaccompanied international minors in light of inconsistencies and the absence of guidelines. As Hellsten analyzes international student experiences in

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Australia, Kumari Beck looks at international student experience in Canada. Hellsten's findings show that "negative evaluation of the experience is substantiated on the basis of failed provision of resources and services by the host institution" (Hellsten, 2002). Similarly, Kumari Beck focuses on "the lived experience of international students" in university campus (Beck, 2012), and the accountability issue of educational institutions to those international students. Beck's studied international students' experiences confirm that "their presence is undervalued, neglected and conceptually underdeveloped" (Beck, 2009). Beck's international student experience study calls for stronger commitment to critically review practice and learn from student experiences, provided that "transformative action must begin with an education of university administrators, policy makers and educators of the issues that permeate internationalization" (Beck, 2012). The most recent Association of Universities Canada (AUCC) Internationalization Survey *Canada's Universities in the World*, published in 2014, summarizes the types of support services provided to foreign students on Canadian campuses. The responsibility and accountability factors are particularly highlighted with respect to minor international students on Canadian secondary and postsecondary institutions' campuses. Figure 2 identifies a variety of services available for international students including services offered for their dependants, however these particular services account for 14 % of Canadian universities. Many of international student services on Canadian campuses offer cultural trips and excursions to international students, however they require all minor students to submit signed waiver form from their guardians.

**Figure 2. Support Services provided to international students on Canadian campus**



Note. AUCC International Survey *Canada's Universities in the World*, 2014

Considering a minor international student studying in Canada without a local appointed custodian, the student is not able to take an advantage of this student service due to the absence of his guardian and no other alternatives offered by the institution. Assuming there are minor international students studying at Canadian post secondary institutions, one could argue that there should be tailored services offered to this vulnerable group of students. To better understand the measures of accountability and responsibility taken by governments to impose regulatory framework for minor international students in host education institutions, this paper engages in comparative studies of Canadian, Australian and the UK's legal frameworks of unaccompanied minor international students. Many of international student services on Canadian

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campuses offer cultural trips and excursions to international students, however they require all minor students to submit signed waiver form from their guardians.

### **Vulnerable among Vulnerable**

Little scholarly work has been devoted to the historical perspective of minor international students in Canada. Some marginal references to them are made in selected surveys and data collected by government reports and few scholars.

There are a number of the reasons why this group of international students was overlooked in most international student related research. As one of those reasons, Popadniuk (2010) refers to “the complexity associated with research ethics and youth, laws on minor children and abuse, and multiple ethical review procedures”. Since minor international students often live alone or with unrelated homestay families, researchers may be required to obtain consent of parents or guardians, as well as consent/assent from the adolescents themselves (Popadniuk, 2010). In case the parental consent is required, it is only natural to wonder whether such consent can be understood by parents. Popadiuk poses the questions whether a truly informed consent can be secured with “parents who live overseas, may not fully understand the risks and benefits of the research, and who likely speak another language” (Popadiuk, 2010). Popadniuk also addresses previously exposed concern by Truscott and Crook (2004) that involvement in a research with minor international students might have a possibility that “there is a higher likelihood of receiving a disclosure of abuse or neglect from a younger population, which would then legally obligate the researcher to make reports to the school, social service agency, parents, and perhaps the police depending on the circumstances” (Truscott & Crook, 2004). Finally, research projects with adolescents or specifically identified organizations, like

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school districts; often require lengthy ethics approvals from both the university and the organization (Popadniuk, 2010).

The most recent CIC Student Program Evaluation 2015 report revealed a substantial number of students arriving to study at the elementary and secondary levels, in total approximately 25% of all international student entries (Table 3; Table 4).

**Table 3. International students by age 2008 - 2014**

	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
<b>0-14</b>	15019	13444	12474	12229	12964	14645	16373
<b>15-29</b>	154269	172992	194183	216303	240546	264671	290781
<b>30-44</b>	13478	15948	17023	18598	20664	23669	27253
<b>45-59</b>	1278	1526	1541	1510	1513	1689	1983
<b>60-74</b>	106	109	114	121	126	132	105
<b>74 &lt;</b>	5	4	2	3	2	4	2
<b>Total</b>	82441	89688	97949	107649	120319	133595	148489

*Note: CIC facts and Figures 2014*

Global Case Management System (GCMC) data reported that 28 371 international students under the age of 17 (CIC, 2015) studied in Canadian education institutions in 2013. However there is no data publicly available of how many of those 17 years old and younger were in Canada with or without legal guardian.

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**Table 4. Demographic Profile of Student Entries by Age 2009-2013**

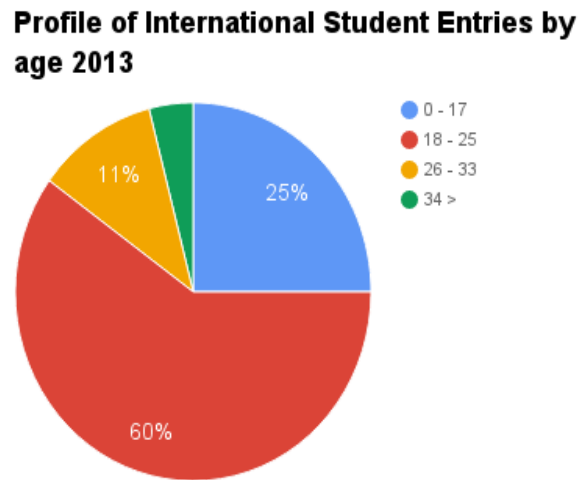
Age	2009	2010	2011	2012	2013
<b>0-17</b>	19869 (23%)	21588 (23%)	22830 (23%)	25893 (25%)	28371 (25%)
<b>18 - 25</b>	52925 (62%)	60283 (63%)	62298 (63%)	64752 (62%)	666717 (60%)
<b>26 - 33</b>	9677 (11%)	10821 (11%)	10787 (11%)	11346 (11%)	13251 (12%)
<b>34 &lt;</b>	2397 (3%)	2563 (3%)	2479 (3%)	2839 (3%)	3526 (3%)
<b>Not stated</b>	1 (0%)	1 (0%)	0 (0%)	0 (0%)	0 (0%)

Note: Citizenship and Immigration Canada (2015). *Evaluation of the International Student Program*, Evaluation Division Research and Evaluation, April 2015

The most recent CIC statistics on international student age parameter counts international students from 0 – 14 years of age and 15 – 29 years of age. This parameter is ineffective to receive the exact number of international student under the age of 18 in the country, however CIC Student Program evaluation Report (2015) is the best indicator on how many minor international students were studying in Canada (Table 4). Since there are some gaps in the CIC departmental data on the numbers of minor international students in Canada, CIC Student Program Evaluation report 2015 is used to acknowledge the exact number of minor international students.



**Figure 3. Profile of International Student Entries by age 2013**



Note: Citizenship and Immigration Canada (2015). *Evaluation of the International Student Program*, Evaluation Division Research and Evaluation, April 2015

Since minor international students at the secondary school level in Canada account for 25 % of the international student pool (Figure 3)(CIC, 2015), the attention on policy mechanism directed to this vulnerable and care - intensive international student group is a timely and relevant question. Given this context and the lack of research on minor international students' issues in Canada, it is important that immigration policies and regulations affecting minors entering Canada align with well - established provincial age of majority regulations and ensure the well - being and safety of minors.

In view of the fact that there are considerable challenges tied to obtaining the research on minor international students, Canadian scholars Ben CH Kuo and Gargi Roysircar (2006) have been successful in securing findings through an exploratory study – quantitative survey. Their

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survey focuses on the psychological well - being and adaptation of adolescent Taiwanese unaccompanied students attending secondary schools in Toronto, Canada. The study investigated the participants' perceived preparedness for studying in Canada. A significant number of these students reported feeling "ill - prepared and poorly oriented upon their arrival in Canada" (Kuo and Roysircar, 2006), as well as "suffering from a lack of information about their host country and their purpose for sojourning" (Kuo and Roysircar, 2006). Given the growing minor international student population in Canada, Kuo and Roysircar point out a need for interventions with this vulnerable group of "unaccompanied sojourners" ( Kuo and Roysircar, 2006). Kuo's and Roysircar's 'unaccompanied sojourners' are exposed to practical implications regarding their development, well – being, and cross – cultural adjustment" (Leung, 2001). Cynthia Leung also examines psychological adaptation of international students and concludes that "supportive social relationships were important for psychological and academic adaptation of international students" (Leung, 2001). What adaptation system is set in place by Canadian government allowing international minors to enter Canada without the appointed Canadian guardian? How fast international minors can develop those social relations without a guardian? Given that these minor international students are coming to study at Canadian educational institutions, do those institutions have a mandate to care about these vulnerable students? Similarly, Popadniuk (2010) investigates the transition experience of minor international students in Canada with the purpose of providing empirical data to school counsellors so they could be better prepared to support international high school students. The emphasis of Popadiuk qualitative report is on the implications for school counsellors who work with these students. Those implications include the demand for the focus of the school counsellors' position of assisting those unaccompanied minor students "emotionally, socially, and academically " (Popadiuk, 2010). Her findings point out that

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“unaccompanied adolescent international students undergo a complex, multi – layered transition experience” (Popadniuk, 2010) and “the impact of daily life and the ongoing needs of these international students goes far beyond their as students and learners” (Popadniuk, 2010).

Popadniuk’s study emphasizes on how these minor international students “learn to renegotiate their family relationships back home, often shifting from dependent children to young adults learning to take care of themselves”. She further examines how the skills of daily tasks performance, such as learning to make decisions and understand consequences connect to developmental stages of life. She argues, that “developmentally, this is no small task, especially when coupled with living with strangers or alone, learning a foreign language in a completely different school structure, and coming to terms with the extra struggles associated with crossing cultures, such as loneliness, homesickness, anxiety, or depression” (Popadniuk, 2010). As pointed in the research, vulnerability comes not only from adapting to the new environment in another country, but also vulnerability could be seen as minor’s developmental ability to adjust to the stage of life.

To further analyze any possible implications of accommodating minor international students without a legal guardian in Canada on Canadian campuses, it is important to review the existing legal framework for minors in Canada beyond relevant immigration regulations. Acts, as such *Parental Responsibility Act*, *Age of Majority and Accountability Act*, *the Criminal Code of Canada* provide the legal implications and the rights minors have within legal provincial and federal systems.

**Legal and regulatory framework for unaccompanied minor international students  
in Canada**

The Immigration and Refugee Protection Act (IRPA) is responsible for international students, or temporary residents in the agency's nomenclature, and study permit regulations. IRPA's regulatory framework provides specifications on who can study in Canada with or without the study permit. They also control work privileges and study permit application requirements, and defines a legal description of studies for international students. However, "the regulations do not specify a requirement for international students to study while in Canada, nor do they define an education institution, its eligibility to host international students, or any minimum requirements to ensure the quality of education provided" (IRP Regulations. SOR/2002 – 227 – April 6, 2010, p. 2). Recently, Canada made changes to their International Student Program, as of June 2014, the new rules are designed to limit misuse or fraud in the program, while protecting the international reputation for Canada. Based on the new rules, students are required to actively pursue their studies in Canada, but these rules have limited the issuance of study permits to those admitted to the institutions that are deemed Designated Learning Institutions. In order for students to obtain a study permit, they must identify with a Designated Learning Institution, as well as prove they have enough money to pay for tuition fees, living expenses, and return transportation. (CIC, 2014) International students must not have a criminal record, and have to produce a police certificate, be in good health, and ensure that at the end the student's authorized stay they will leave Canada. Since IRPA's and CIC frameworks provide clear rules for international students on their study objectives, these frameworks do not determine any regulations nor guidance for Canadian education institutions on their responsibilities to ensure a safe and welcoming environment for incoming international students.

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Prior to September 15, 2011, CIC followed provincial age of majority requirements, which are as follows: 18 years of age in the provinces – Alberta, Manitoba, Ontario, Prince Edward Island, Quebec, Saskatchewan; 19 years of age in the provinces – British Columbia, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Yukon (CIC, Operational Bulletin 339). As of September 15, 2011, Canadian Immigration changed the age requirements for minor international students by issuing Operational Bulletin 339. This new policy describes mandatory and discretionary custodianship regulations that state that international minor students are allowed to apply, enter and to study at the age of 17 without having a custodian in Canada. The discretionary custodianship requirements allow young adults to submit “applications from minors between 17 years of age and the applicable provincial/territorial age of majority at the time of application should be assessed on a case-by-case basis” (CIC, 2011). In assessing whether the custodianship requirement should be applied, officers may exercise discretion in requesting additional documentation or an interview. An officer should be satisfied with respect to whether an applicant can provide care and support to oneself while in Canada. Officers should consider factors such as: level of studies, level of independence, financial capability, travel experience, accessibility of parent(s)/guardian(s), informal arrangements, risk environment” (CIC, *Operational Bulletin 339*, 2011). This raises a question of the officer’s discretionary decision and how subjective it might be in deciding whether the minor international student needs a custodian in Canada or he/she can care and support to oneself upon arrival in Canada. An internal CIC report produced as part of a Study Permit Network Exercise conducted in 2012-13 indicated, “custodians do not appear to be documented in a consistent manner in GCMS. In fact, some offices do not record custodians at all, as a common practice.” In addition, a few interviewees from CIC indicated concern that

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officers are not in a position to properly vet custodians. A few interviewees suggested that, given the vulnerability of unaccompanied minors, CIC should consider tightening controls regarding the number of minors one custodian can oversee as well as regarding the nature of the relationship between a custodian and a minor” (CIC, 2015). The recent immigration legislation change on unaccompanied minor international students’ entry to Canada without legal Canadian guardian allows international students at the age of 17 to enter the country at the discretion of the immigration officer. This immigration policy contradicts and does not follow provincially set age of majority regulations within Canada, which are 18 and 19 in different provinces, and exposes international student minors and their families to the risk of not having adequate security and support while also raising ethical concerns for recruiting institutions. Unlike Canada, other countries such as Australia and the U.K. have clearly defined immigration protocol for accommodating minor international students rather than allowing discretionary parameters to define the age of majority limit for international students.

For the first time, CIC Evaluation of the International Student Program Report, published in April 2015, acknowledges minor international student issue in their Management Response Action Plan as recommendation suggesting “CIC should review its policies and operational guidance regarding minor students and custodianship” (CIC, 2015). In addition to recommendations, CIC is taking a responsibility to “identify and assess the gaps that exist in current processing guidelines”.

### **Comparative Studies**

#### **A rationale for comparative framework**

This comparative study focuses on minor international students’ legal framework and possible implications in Canada. In addition, the research involves comparative analysis of

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Australia's, Canada's and the UK's minor international students' frameworks through policy documents and guides. With respect to the treatment of minor international students, the two other countries selected for comparative analysis are - Australia and UK. All three countries, Canada, Australia and the U.K. are commonwealth countries and thus share similarities in their legal systems and frameworks. Additionally, my rationale of the country selections included factors such as comparable international student numbers and legal frameworks for minor international students. The US, the UK and Australia are the leaders in the international student market because they annually welcome the highest number of incoming international students. Actually, the UK attracts more new international students each year than any other host country (including visiting and exchange students, the UK was host to 272,835 new students in 2013 - 2014; the US, in comparison, welcomed 270,128 new students) (Peak, M. 2015). The UK being the second largest international students' host country, and Australia being the third largest among the top twenty countries (UNESCO, 2014) in the world, have taken significant measures towards internationalising their higher education systems, especially in recent decade. Australia and the UK implemented further initiatives to facilitate the arrival and integration of international students, including substantial amendments to immigration requirements and procedures (Verbik, L & Lasanowski, V., 2007). Following Trilokekar and Kizilbash's (2013) idea of Canada trying to benefit from the Australian experience, this comparative analysis looks at newly established legislative instrument, Australian National Code under the ESOS Act. Australia offers protection for international students through the *Education Services for Overseas Students Act 2000* (ESOS Act) which in turn protects and enhances Australia's reputation for quality education, provides tuition protection and supports the integrity of the student visa program. The rationale to include the UK legal framework of minor international students is

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based on the UK sponsor Tier 4 general and child student visa protocol as well as the UK's national advisory body, the UK Council for International Student Affairs (UKCISA) guidance and good practice guide developed to all stakeholders who serve international student interests.

The differences in each country's jurisdictions and different obligations and regulatory frameworks placed on different types of education providers (public secondary, post – secondary schools, private independent language schools and etc.) make this issue a complex one to analyse based on select criteria (type of programs, length of the programs). This comparative study analysis thus focuses solely on the age requirement which obligates the minor international student to have a custodian/guardian, and the regulatory framework and policy documents and guides, as well as welfare and accommodation conditions to host international minor students in each country.

Countries like Australia and the UK, which are internationalization leaders in the world, could provide some guidance on minor international student issues. Since these countries successfully included minor international students' regulations within education and immigration systems, it would be beneficial for Canada to adopt some points on this particular matter. This comparative study analysis looks at the age requirement which obligates the student to have a custodian/guardian, a regulatory framework policy documents and guides, welfare and accommodation conditions to host unaccompanied international minor students in each country.

### **Custodian Definitions**

#### **Custodian definition within IRCC framework**

The department of Justice explains that the specific definition or use of the term custody varies from statute to statute in each province, but apart from Quebec's legislation, “the term usually refers to all the rights and obligations related to the care and control of a child, the



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responsibility to make all important decisions about a child's care and upbringing, and physical custody, the responsibility for the everyday physical care and control of the child. This bundle of rights and responsibilities is sometimes called *guardianship of the person of the child*” (Department of Justice, 2015). CIC provides a simplified description of custodian and custodianship required for minor international students. Minor student who are less than 17 years of age and come to Canada to study without a parent or legal guardian must be cared for by a responsible adult in Canada. This person is known as a custodian (CIC, Operational Bulletin, 2011). CIC also provides a single condition as to how a responsible adult should care for an international minor: a responsible adult (Canadian citizen or Permanent Resident) must reside within a reasonable distance. The question arises of what would be ‘reasonable’? The same question would be asked by the legal Canadian custodian. Does ‘the reasonable distance’ mean the length of the travel time to meet with custodian on a daily basis or take care of the minor if emergency happens? Needless to say, that the only requirement CIC included to determine custodians, does not carry any official legal or social characteristics. The fact that CIC determine the custodian to be a Canadian citizen or a permanent resident of Canada, but does not require an ID proof at the submission of custodian form, also shows how inattentive could be the background check on custodians. Provided such a noticeable absence of the duty, educational institutions or their boards defines their own guidelines and obligations for minor international students’ custodians. One of such cases, Toronto District School Board (TDSB) which sets their own custodian description and expectations. One of the requirements for the custodian is to provide the proof of the residency or citizenship at the time of registering the minor child at one of TDSB schools (TDSB, 2016). However the age of majority requirement differs from CIC discretionary 17 years of age requirement. TDSB quotes CIC regulation that “children who are

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under the age of 18 years and come to Ontario, Canada to study, without a parent or legal guardian, must be cared for by a responsible adult. This person is referred to as a Custodian. Custodianship requires that a legal arrangement be made to give the custodian in Canada the permission to act in place of a parent or legal guardian” (CIC, 2011). The contradiction of the age requirement being 18 for TDSB and being 17 for CIC to study in the country without legal guardian appears to be confusing and complicating matter. This is just one of the examples where federal legislations contradicts provincially set regulations.

### **Custodian definition within DIBP framework**

Custody laws differ across different countries. For visa purposes, a legal custodian is generally a parent (including a step-parent), an adoptive parent or any other person who has been granted custody under particular country’s law. ”“Custody’ is defined in Australia’s Migration law as the right to have the daily care and control of the child and the right and responsibility to make decisions concerning the daily care and control of the child” (Austrade, 2015). A “legal custodian” is a parent, stepparent, adoptive parent, or any other person who has been granted custody under Australian or foreign law. There are three regulatory ways of safeguarding minor international students in Australia during a study period: 1. To have a parent or to appoint a legal guardian; 2. to nominate a ‘suitable relative’; 3. education provider takes the responsibility for the welfare and accommodation arrangements while in Australia (Australian Government). If the child wishes to reside in Australia with a relative, DIBP requires evidence of the family relationship (such as birth certificates or family books), evidence that the relative is at least 21 years old, police clearance/s for the relative and evidence that the relative has the right to remain in Australia for the period of your child’s stay, or until child turns 18, whichever is first (such as an Australian citizenship certificate or visa grant details). A suitable relative constitute as a

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grandparent, brother, sister, aunt, uncle, niece or nephew, or a step-grandparent, stepbrother, step-sister, step-aunt, step-uncle, step-niece or step-nephew. If a parent or suitable nominated relative takes responsibility for the welfare arrangements of the student, Standard 5 does not apply and education providers do not need to complete a Confirmation of Appropriate Accommodation and Welfare (CAAW) letter. Should neither a parent nor a suitable relative be in Australia to directly provide for the welfare of a student, and the education provider accepts the student, the provider must approve suitable accommodation and welfare arrangements. If the person is not a relative approved by DIBP, above, then education provider has the right to decide if these arrangements can be approved, and if there are any conditions for doing this. Education providers are not obliged to approve friends or other relatives as an accommodation provider. A person or entity providing accommodation and welfare must meet the education provider's requirements (Australian Government, 2016). The Department of Immigration and Border Protection (DIBP) must be satisfied that appropriate welfare arrangements are in place for under 18 students before a visa is granted (Australian Government, 2016). The National Code states that the education provider must advise the Department of Immigration and Border Protection in the event that the under 18 year old student has changed his/her living arrangements or the registered provider no longer approves of the arrangements. Education institutions must monitor the living arrangements and report every single change in those arrangements (Australian Government, 2016).

### **Custodian definition within the UK Visas and Immigration**

Under Section 55 of the Borders, Citizenship and Immigration Act 2009, the Home Office, which is a ministerial department of the Her Majesty's Government of the United Kingdom, responsible for immigration, security and law and order, must have regard to the need

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to safeguard children and to promote their welfare. All children studying in the UK must have suitable care arrangements in place for their travel, reception on arrival in the UK and living arrangements while there. “Children are all students under 18 years old“ (UK Visas and Immigration, 2016). If the child is 16 or 17 years old and applying as a Tier 4 (General) student, he/she must have parent(s) or legal guardian(s) written consent that he/she can live and travel independently. “The age of majority is 16 in Scotland rather than 18. However, the Protection of Vulnerable Groups (Scotland) Act 2007, concerning the duty of care for children and vulnerable adults, applies to all under 18 (UKCISA, 2008). Scottish institutions are instructed to use the age of 18 when considering child protection issues. All arrangements for children’s care and accommodation in the UK must comply with relevant UK legislation and regulations. In the UK local authorities are responsible for safeguarding and protecting children. They must make sure that private foster carers are suitable and that they get any support and guidance that they may need to help them care for the child. If a close relative, parent or legal guardian is present, minor international students are not considered to be a private foster carer and so will not need to register with a UK local authority. Home office provides a description of who is a close relative: relative is a grandparent, brother, sister, stepparent, uncle (brother or half- brother of your parent) or aunt (sister or half-sister of your parent) who is aged 18 or over (UK Visas and Immigration, 2016). Following the Children Act (1989), the Protection of Children Act (1999) and the Care Standards Act (2000), education institutions, in promoting and safeguarding the welfare of every student, require parents who do not live in the United Kingdom to appoint a guardian to act on their behalf. The majority of independent schools make it a condition of admission to their school that any overseas child student must have the UK based ‘Educational Guardian’. The guardian should be someone who can be contacted in case of emergency to help resolve

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problems, for example if the parents do not speak English. Considerations might include ensuring there was someone able to take responsibility for the student in circumstances where the child was suddenly required to leave the institution and/or their accommodation for disciplinary or other reasons. If such a contact in the UK is unavailable, guardians can be provided by a reputable guardian organisation (UKCISA, 2008). It is recommended that all minor international students under the age 18 have a guardian who acts as the parents' representative while the student is studying in the UK. If parents request assistance in finding a guardian the institution can refer them to guardian organisations. They can also give parents advice as to what to expect from a good guardianship agency and provide guidance in selecting a guardian (UKCISA, 2008).

### **Education institutions accepting international students**

The similarities between immigration regulated education institutions, which are Tier 4 sponsors by the UK's Visas and Immigration policy and Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) - registered providers in Australia, suggests that Canada followed those footsteps in 2014 selecting designated post secondary institutions which are allowed to accept international students. The initiative of designating the education providers are significant measure to increase education institutions accountability in the process of enrolling international students on campuses, however, unlike Australia, the designation does not determine further standards nor further explanatory guides on international student matters for those designated institutions. In Australia, The *National Code of Practice for Providers of Education and Training to Overseas Students 2007* (National Code) sets nationally consistent standards for the delivery of courses to overseas students within ESOS framework. CRICOS-registered providers must comply with 15 standards that ensure their quality of education and

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professionalism is of a sufficiently high standard to enrol international students (Australian Government, 2016). National code part D, standard 5 is an explanatory guide for younger overseas students “Accommodation and welfare requirements for overseas students in Australia”. Compliance with the National Code by registered providers is assessed at the point of registration. It is legally enforceable and breaches of the National Code by providers can result in enforcement action under the ESOS Act. This action can include the imposition of conditions on registration or suspension or cancellation of registration. The same compliance applies to the UK’s Tier 4 sponsors which are education providers. They must provide suitable arrangements for any children for their travel to the UK, which includes reception at port and living arrangements while in the UK (UK Government, 2016).

### **Guidelines and good practice guides**

There could be some commonalities seen between UKCISA and CBIE in playing the role to develop comprehensive internationalization for educational institutions, however UKCISA focus remains on international students’ affairs and those who work with them. Playing a consultative role for Canadian government in the development of Canada's International education strategy, CBIE developed Code of Ethical Practice in 2014, which is “designed to help educational institutions to engage in expanded internationalization in a manner that is consistent with the highest values of Canadian education” (CBIE, 2014). CBIE *Internationalization Statement of Principles for Canadian Education Institutions* supports “the excellence in the policy and practice of internationalization at Canadian institutions” (CBIE, 2014), however, this statement of principles does not include any information on international minor students and their matters on Canadian campus.

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Due to the complexity of regulatory framework implementation in the UK: ATAS (the new open FCO security system), biometrics, Tier 4 of the Points Based System, Police Registration and ID cards, UKCISA's developed an extensive guide "International students under 18: guidance and good practice" (2008) which describes issues related to international students under the age of 18. This guide includes descriptions of regulatory requirements and examples of good practice, provides sector and country-specific guidance where applicable. UKCISA recognized the challenge in compiling this guide as the changes in legislation, differences between jurisdictions and different obligations on different types of education providers (public secondary, post – secondary schools, private independent language schools and etc) makes this issue a sensitive and complex one. However the main purpose of UKCISA was to develop policy and procedures for education institution to ensure the wellbeing of minor international students in the UK.

Both explanatory guides, UKCISA *International students under 18: guidance and good practice*" and guide for younger overseas students under National code "*Accommodation and welfare requirements for overseas students in Australia*" provides directions for education institutions, international students' families and appointed guardians what are the expectations and what kind of care arrangements need to be in place to assure children are safely residing in the host country during their studies. The initiative of compiling a similar guide for Canadian regulatory framework would not only solve the conflicting CIC and provincially set age of majority regulations, but also allow designated learning institutions to proactively implement safeguarding regulations for international student minors on campus. Provided some school boards (such as TDSB) and other post secondary institutions self regulated minor international student registration process, it would be beneficial for Canadian government to align best

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practices into legislative mechanism like Australia did, or develop an explanatory guide to support regulatory framework like the practice seen in the UK.

### **Commonalities and differences within three frameworks**

The similarities between CIC regulatory framework for unaccompanied minor international students and the UK's Home Office regulatory framework appear in determining the age to travel independently. The requirement of 16 or 17 years of age allows Tier 4 (General) student to live and travel independently provided minor student has the parent(s) or legal guardian(s) written consent to do so (UK Visas and Immigration, 2016). The similarity appears with Canadian regulatory framework allowing 17 year old students study in Canada, however the parent or guardian consent of independent travel and living arrangements are not requested by CIC. The further explanation of the UK's Tier 4 Policy Guidance outlines that "all children studying in the UK must have suitable care arrangements in place for their travel, reception on arrival in the UK and living arrangements while there. Children are all students under 18 years old" (UK Visas and Immigration, 2016). This policy guidance allows Tier 4 sponsors, which are educational institutions, to negotiate those suitable care arrangements to ensure the safety and well - being of student minors. Current CIC regulations (Bulletin 339) permits international students to enter and study in Canada at the age of 17 without a legal guardian based on the discretionary decision of an immigration office, therefore is no further documentation required nor any provincial acts to ensure that there are any suitable care arrangements set in place for incoming international minor students. Australia took a rigorous policy approach by mandating education providers to comply with National Code Standards in ensuring welfare and safe accommodation, and enforce it through DIBP study permit procedure as a part of legislation. Support and 'general welfare' are categorized as main conditions for



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DIBP to consider an international minor student to be eligible for a student visa. Provided there are three ways of satisfying DIBP with meeting those conditions, two of those options require the nomination of the student guardian (Australian Government, 2015) and the third option requests education providers to complete a Confirmation of Appropriate Accommodation and Welfare (CAAW) letter. By issuing CAAW letter, an education institution is accepting the responsibility to care for the minor international students on their campuses. One could argue, that Australian government imposes education institution to take ‘more parental’ role in the absence of relative or legally appointed guardian. It could be considered, that, in a way education institutions become “guardians” and, that DIBP acknowledges the tremendous role guardians and guardianship play hosting minor international students.

Unlike Australia, the UK Immigration does not have a mandatory policy requiring the parents of an international adolescent student to appoint a local guardian. However, depending on the child’s age and the length the of the stay in the UK, it is advised to have an appointed guardian. Section 2(9) Children Act 1989 provides “that a person may not transfer or abdicate parental responsibility for their child but may arrange for some or all of it to be met by one or more persons acting on their behalf. Such a person could be a guardian” (UKCISA, 2008). It is a duty of care towards a child student and the parents for the institution to make the parents aware that they remain primarily responsible for the welfare of their child unless arrangements are made by them for a responsible adult to accept parental responsibility for the child on their behalf. “It is not a legal requirement that institutions require the appointment of a guardian but schools could be in breach of their duty of care towards a child if they fail to raise the issue of the need to appoint someone locally to take parental responsibility for the child or make adequate alternative arrangements to ensure that the parents are able to exercise their residual parental

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responsibility promptly when required to do so or have exercised it in advance” (UKCISA, 2008). Education institutions in the UK play the primary role safeguarding minor international students by following the Children Act (1989), the Protection of Children Act (1999) and the Care Standards Act (2000) ensuring that they have an appointed guardian who exercises parental responsibility. If parents request assistance in finding a guardian the institution can refer them to the Association for the Education and Guardianship of International Students (AEGIS). AEGIS is the authoritative association for inspecting and accrediting UK guardianship organisations in accordance with a strict Code of Practice and current child care legislation. This organization is a national body for monitoring and regulating the welfare of minor international students and connects education institutions and guardianship organizations to ensure the well-being of international students, aged 18 or under (AEGIS, 2016) They can give parents advice as to what to expect from a good guardianship agency. Institutions may choose to work with a designated guardianship service, and send their application forms and information direct to parents, but should add a disclaimer on the limits of institutional liability if referrals to guardianship organisations are made (UKCISA, 2008). They may also choose to vet individual ‘guardians’ if not already known to the school. Alternatively, they may choose to leave the selection of ‘guardians’ entirely to the parents. It is evident that the UK’s education institutions, Tier 4 sponsors, hold the decision of how and who can be a legal ‘education guardian’ to their minor international students.

In order to summarize the points of this comparative study, the following chart (Chart 1) is provided below

**Chart 1. Commonalities and differences within three frameworks**

	<b>Australia</b>	<b>UK</b>	<b>Canada</b>
<b>Regulatory framework for international students</b>	Australian Department of Immigration and Border Protection (DIBP) Visas, subclass 500	Section 55 of the Borders, Citizenship and Immigration Act 2009, UK Visas and Immigration <i>Guidance on UK Visas and Immigration's policy on applications to stay or come to the UK under Tier 4 (General) and Tier 4 (Child). Tier 4 of the points based system: policy guidance</i>	Immigration and Refugee Protection Act (IRPA)
<b>Legal framework safeguarding international minor students</b>	Australian National Code under the <i>Education Services for Overseas Students Act 2000</i> Standard 5 “ <i>Accommodation and welfare requirements for overseas students in Australia</i> ”	Education institutions in the UK play the primary role safeguarding unaccompanied minor international students by following the Children Act (1989), the Protection of Children Act (1999) and the Care Standards Act (2000)	Immigration and Refugee Protection Act (IRPA) Operational Bulletin 339
<b>Education institutions accepting international students</b>	Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) registered providers	UK’s Tier 4 sponsors	Designated Learning Institutions
<b>Requirements and Conditions for unaccompanied minor international students to reside in the host country</b>	The Department of Immigration and Border Protection (DIBP) must be satisfied that appropriate welfare arrangements are in place for under 18 students before a visa is granted. Support and ‘general welfare’ are categorized as main conditions for	If the child is 16 or 17 years old and applying as a Tier 4 (General) student, he/she must have parent(s) or legal guardian(s) written consent that he/she can live and travel independently.  All children under the age of 18 studying in	A minor student who is less than 17 years of age and come to study in Canada must be cared for by a responsible adult in Canada.

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	<p>DIPB to consider an international minor student to be eligible for a student visa.</p> <p>There are three ways of satisfying DIBP with meeting those conditions, two of those options require the nomination of the student guardian and the third option requests education providers to complete a Confirmation of Appropriate Accommodation and Welfare (CAAW) letter</p>	<p>the UK must have suitable care arrangements in place for their travel, reception on arrival in the UK and living arrangements while there</p> <p>In order to meet suitable care arrangements for travel, reception on arrival in the UK and living arrangements, any overseas child student must have the UK based 'Educational Guardian</p>	
<b>Guidelines ensuring minor international students' wellbeing and safeguarding</b>	<p>The <i>National Code of Practice for Providers of Education and Training to Overseas Students 2007</i></p>	<p>UKCISA <i>International students under 18: guidance and good practice</i>"</p>	Not found
<b>Custodian/Legal guardian obligations</b>	<p>If the child wishes to reside with an appointed custodian, the custodian must show suitable accommodation and welfare arrangements;</p> <p>If the child wishes to reside in Australia with a relative, DIBP requires evidence of the family relationship evidence, that the relative is at least 21 years old, police clearance/s for the relative and evidence that the relative has the right to remain in Australia for the period of your child's stay, or until child turns 18, whichever is first.</p>	<p>Education Guardian must take responsibility of the child and remain emergency contact</p>	<p>Custodian act in place of parent or legal guardian and must reside within a reasonable distance</p>

Note: CIC (2015); UKCISA (2008); Australian Government (2015); UK Visas and Immigration (2016)

### **Discussion and analysis**

Evaluation of the IRCC International Student program report acknowledges that secondary level students accounted for approximately 25 % of all international students and therefore it would be reasonable to assume that secondary level education would define the students under the age of majority (10 –18). However, one could argue that international minor students might actually account for a higher percentage of the total international student body, because post - secondary institutions in Canada do also accept and enrol international minor students at the age of 17 or under. Similarly, language schools bring sufficient number of minor international students for ESL training on a visitor visa and not study permit. Short ESL courses do not require a study permit and visitors who enter Canada on a visitor visa, can study ESL without a study permit under six months duration. This shows that there might be more minor international student ‘visitors’ studying at ESL schools and not being reported in the international student numbers of CIC. This raises the question of accuracy in the reporting of minor international students and therefore the question as to whether the custodianship regulations provided by CIC can really be effective. The most recent CIC Evaluation of the International Student Program Report 2015 acknowledges evaluation gaps in current policies related to minors, whereas “internal documents reviewed indicated that there have been inconsistencies between CIC and CBSA regarding their respective application of the IRPA and its regulations with respect to issuing study permits to minors” (CIC, 2015). The report also acknowledges unaccompanied minor international student issue in their Management Response Action Plan as recommendation No 3 suggesting, “CIC should review its policies and operational guidance regarding minor students and custodianship” (CIC, 2015). In addition to recommendations, CIC is taking a long awaited responsibility to “identify and assess the gaps

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that exist in current processing guidelines. CIC will consult provinces and territories, as well as the K-12 sector, to clarify each department and agency's roles and responsibilities with respect to foreign minor children in Canada" (CIC, 2015). Since this is a recent initiative from CIC to review the existing guidelines and assumingly fill the void with 'new' regulations, wouldn't it be more efficient to look at the best experiences of other countries which have been successful in hosting international students?

Regarding managing and tracking custodians for minor international students, an internal CIC report conducted in 2012-2013, that "custodians do not appear to be documented in a consistent manner in Global Case Management System (GCMS). In fact, some offices do not record custodians at all, as a common practice" (CIC, 2015). One could argue, that this inattentive and precipitous data collection provided by CIC overlooks an important and at the same time vulnerable population of students. Minor international students would presumably be more vulnerable since, by most international acts, they would be considered as children. The number of minor international students has increased significantly on par with the substantial increase in the number of adult students attending Canadian post-secondary schools.

Does then CIC minor student age requirement align with universal age of majority? The United Nations *Convention on the Rights of the Child* applies to any young adult under the age of 18. This international agreement sets out minimum and basic standards that all people under 18 should be entitled to. These standards include young adult rights to protection from abuse and exploitation, and respect for views (United Nations Convention on the Rights of the Child, 1959). Taking into the considerations all of the above, one can see that the "new age of majority requirement" for international students was not merely a minor policy initiative, but one in which might have major implications for different stakeholders: minor international students, their

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families overseas, government agencies and education institutions in Canada. Especially Canadian education institutions which suppose to have legally defined accountability and responsibility for accepting minor international students on their campus, should have provincially or/and nationally regulated instructions and guidance of developing services and practise for this vulnerable pool of students.

Host institutions play a significant role by welcoming foreign students on Canadian campuses. The significance of providing a comprehensive on - campus support and meeting the expectations of international students could be assessed through international student satisfaction surveys, retention rates and academic performance. The most recent AUCC Internationalization Survey 2014 provides some current data on support services available for general population of international students at Canadian post secondary campuses, however the survey does not contain any information on minor international students and services tailored to them. Seemingly, minor international students study on Canadian campuses and do contribute to international student numbers, however there is no additional support services extended to this vulnerable group of students. As AUCC Internationalization Survey 2014 indicates how many of Canadian post secondary institutions provide support services and what the type of services are available: “93% of institutions provide an orientation program on arrival, 86% provide individualized academic support and advising services, and 86% provide on-going counselling for areas such as access to healthcare and financial services, however only 48% offer immigration assistance and just 14% offer support services for dependents of international students” (AUCC, 2014). The success of support services is assessed by only 62% of institutions (AUCC, 2014). The success of support service by AUCC is measured by commonly used measurement methods: international student satisfaction surveys (77%), monitoring of

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international student retention rates (70%), and active monitoring of international student academic performance (63%) (AUCC, 2014). Provided such a variety of services available for international students on Canadian post secondary campuses, it is important to point out the absence of counselling psychology services, which “focus on the emotional, social, vocational, educational, health-related, developmental, and organizational concerns helping people improve their well being, alleviate distress and maladjustment, resolve crisis, and increase their ability to live more highly functioning lives” (Society of Counseling Psychology, 2016). Studies have showed (Popadniuk, 2010; Hellsten, 2006) that it’s crucial and essential to provide supportive environment to international students through hosting institutions adopting “more parental” role and empowering school administration and school counsellors with specific interventions on international student issues. Due to the absence of such services provided to international students on campus, minor international students could possibly benefit from having a Canadian custodian, who would assume such services under the guardianship role. Urgency of interventions required for minor international students raise enormously because of current, so called ‘discretionary’ assignment for 17 year old international students. The discretion might result in the absence of the Canadian custodian who could potentially become a very first link to build supportive social relationships which are significant for psychological and academic adaptation (Leung, 2001). The absence of this important initiative from Canadian education institutions and the government departments urges to point out the negligence of minor international students in Canada. The matter of custodianship services or any other required care for minor international students on campus hasn’t been identified in CIC New regulations for international students and best practices for education institutions as DLI holders which took effect on June 1, 2014 (CIC, 2014). Even though, Canadian government regulated education



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institutions on international student academic enrolment status and provided guidance on various international student admission matters (such as fraud prevention, letters of acceptance, compliance reporting process, authorized immigration representatives, educational agents) there were no further guidance on how to deal with minor international students without custodian on campuses.

### **Possible implications**

Most scholarly work on international students highlights the important factors that seemed to inhibit international student integration such as the students' national-linguistic backgrounds, their individual personalities, the policies and practices of their host institutions, their programs of study, their length of stay, the social context, federal and provincial government policies, and international political developments. Building on the existing literature, the proposed focus on the minor international students raises a series of critical questions that require further investigation on the current practices of educational institutions accepting international minor students on their campuses. Furthermore, there needs to be consideration given to the legal implications of the effect of new IRPR in provinces whether the age of majority is older than the new required CIC age limit.

In Canada minor international students can be charged with a number of offenses in which they can be sentenced as an adult, or can provide consent to many restrictions at an earlier age than in in other countries. According to the Criminal Code of Canada, an adult is considered to be a person of the age of 18 and older. Parents will not be notified if an 18 year old is charged. In the event, a 17 years old person committed a criminal offence, his custodian or parents will be notified. In the absence of an appointed custodian or parents, who will be notified in this case? In the department of Justice Canada report explained by Peter J. Carrington and Jennifer

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L. Schulenberg, common techniques used by police when dealing with a young person who they believe on reasonable grounds has committed an offence. This report indicates parental involvement could be an alternative method used by police if there has been an offence by the minor. Given this a custodian will act on a behalf of a parent in an emergency situation for an international student if the parents are unavailable at that particular moment. Also very often international student's parents could be out of reach due to the time difference or any other long - distance unavailability.

A student under 18 years of age requires a “litigation guardian” (an adult to represent) to sue someone or be sued unless a court orders that the minor be allowed to do so on your own (Age of Majority and Accountability Act, 1990). Minor students' parents may be sued for damages caused by the minor if they failed to reasonably supervise and control a minor i.e. depending on the maturity level (Common Law, Parental Responsibility Act, Age of Majority and Accountability Act). In the absence of parents, an appointed custodian is responsible to supervise and control a minor.

Furthermore, the general practise for student services offered to international students at Canadian post secondary education institution campuses require an originally signed permission form from legal guardian or parent of an international minor student to attend class field trips, excursions, social activity trips (Sheridan college). Other college gyms require the signed guardian form from minor’s parent or guardian so they can receive campus gym membership (George Brown college). Since provincially determined age of majority requirements constitute minor as someone who is under 18 or 19 in selected provinces, an unaccompanied international minor student at the age of 17 approved for study without an appointed legal custodian is excluded from social activities at the campus. Referring to scholarly work done by Popadiuk and

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Leung as well as Canada's own AUCC 2014 Report, international students' success on Canadian campuses depends on both academic and non-academic support services. Leung examined and put emphasis on psychological adaptation of international students, and concluded "that supportive social relationships were important for psychological and academic adaptation of international students" (Leung, 2001). Knowing the key factors for successful adaptation, it's important to stress on the urgency to regulate the practise of services offered at Canadian campuses. The services' availability and effectiveness affect international student retention, satisfaction and academic performance, and also affects an institution's reputation among prospective international students. Research has proven (CH Kuo & Roysircar, 2006) that minor international students come unprepared and have little knowledge of new country as well as "their purpose for sojourning" (CH Kuo & Roysircar, 2006). These minor international students share specific traits in their vulnerability and this is one of the reasons why there should be arranged interventions targeted for this specific group of students. Guardianship or custodianship could be potentially seen as 'intervention' in order to ensure those international students have their first support social link to the host country.

### **Conclusions and recommendations**

Canada's acknowledgment of international education importance has helped to improve access of international students to Canadian education. In addition, new government initiatives supported significant international student enrolment growth secondary and postsecondary education institutions, and have driven local communities and economic development forward.

The Canadian government's policy on bringing international students to Canada has significant implications for economic national interests that are addressed at the federal level.

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However education in Canada and the age of majority requirement are left within a provincial-territorial jurisdiction, and as such, are not legislated at the federal level. Therefore, the federal government must work with provincial and territorial governments to set quality assurance and, moreover be accountable for safe and secure environment for minor international students in Canada. Both, federal and provincial governments must work together towards a unified legal framework to enhance Canada's reputation and ensure that that all stakeholders continue to benefit from international student program in Canada. A strategy of attracting international students brings with it many political, cultural and legal implications that must be addressed in order ensure its real success. The legal implications towards international student minors in particular must be addressed given their increased presence in the Canadian educational system. Canada must take responsibility in aligning federal immigration and legal provincial systems to better protect minor international students. It cannot leave this legal decision solely to the discretion of immigration officers. These actions are necessary to protect Canada's reputation, and ensure that the immigration of international students will continue to grow in Canada.

Both countries, Australia and the UK, have showed success and leadership in hosting international students. The importance of proper coordination between the federal government, provinces and territories, and educational institutions is the key start to reassess current international minor student regulatory framework in Canada. It is necessary to involve education providers in the implementation of guidelines, furthermore to consult on developing country and sector specific guidelines in Canada. It would be beneficial for Canadian Government to align best practices into legislative mechanism like Australia did, or develop an explanatory guide to support regulatory framework like the practice seen in the UK.

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It is hopeful that the most recent 2015 Evaluation of the International Student Program Report has recommendations for CIC to review its policies and operational guidance regarding custodianship for minor international students. It is imperative that the federal and provincial governments find a way to work together in a unified legal framework to enhance Canada's reputation and ensure that that all stakeholders continue to benefit from international student program in Canada.

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