Ministry of Labour, Immigration, Training and Skills Development
Provincial Claims Centre
70 Foster Drive, Suite 410
Sault Ste. Marie, ON P6A 6V4
Telephone: (705) 945-6389
Toll Free: 1-866-382-6274
Fax: 1-888-252-4684

Ministère du Travail, de l'Immigration, de la Formation et du Développement des compétences
Centre provincial de réception des réclamations
70, promenade Foster, bureau 410
Sault Ste. Marie ON P6A 6V4
Téléphone : (705) 945-6389
Sans frais : 1-866-382-6274
Télécopieur : 1-888-252-4684

December 23, 2022

LEEANNE BIELLI
111 - 33 ERSKINE AVE,
TORONTO, ON,
M4P 1Y6

By email

Dear LEEANNE BIELLI:

Re: LIOR SAMFIRU PROFESSIONAL CORPORATION AND SIVAN TUMARKIN PROFESSIONAL CORPORATION LLP operating as SAMFIRU TUMARKIN LLP, Claim ID# 0022962-CL000, Order ID# 0022962-OP001

I have completed my investigation and find that the employer has contravened the *Employment Standards Act, 2000*. Please be advised that I have issued an order against the business. A copy of the order(s) and the reasons for my decision are enclosed.

If you disagree with this decision, you may file an application for review with the Ontario Labour Relations Board (OLRB) within 30 days from the date this order was served. See the OLRB's Information Bulletin #24 at http://www.olrb.gov.on.ca/Forms/IB/InformationBulletin-24-EN.pdf for information on the application for review process. Please ensure that prior to filing with the OLRB, you consult the OLRB's **Notices to Community** at http://www.olrb.gov.on.ca/ to see if there have been any updates to service and filing requirements.

The business to whom the order(s) was issued against has 30 days from the date the order was served to either pay the amount owing to the Director of Employment Standards in Trust or to apply to the OLRB to review this decision. You will be contacted if the business exercises this right.

Please inform our office immediately if your address, phone number or email changes at any time, in order to ensure prompt receipt of any monies paid pursuant to the above mentioned order(s).

Yours truly,

Maleeha Haq
Employment Standards Officer #1607

Telephone: 647-205-5267

Enclosures: Copy of Order(s) and Reasons for Decision

Help us improve…

As part of our commitment to continuous improvement, we are interested in your feedback. Please take a few minutes to complete this short, anonymous survey within the next 10 days: https://survey.alchemer-ca.com/s3/50070379/Post-Claim-Survey. Your voluntary participation will assist us in providing inclusive and equitable services.

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Ministry of Labour

Ministère du Travail

Ontario

REASONS FOR DECISION

Employment Standards Act, 2000

Claim Number: 0022962

Business Name: LIOR SAMFIRU PROFESSIONAL CORPORATION AND SIVAN TUMARKIN PROFESSIONAL CORPORATION LLP O/A SAMFIRU TUMARKIN LLP

Claimant Name: Leeanne Bielli

Date Claim Filed: 22 June 2022

Standard(s) At Issue:

- **Payment of Wages, Section 11**
- **Unauthorized Deductions, Section 13**
- **Vacation Pay, Section 35.2**
- **Reprisal, Section 74**

Pursuant to the *Employment Standards Act, 2000* (the "*Act*")

POSITION OF THE CLAIMANT:

The claimant's position is that the employer did not pay her all outstanding wages at the end of employment, made unauthorized deductions from her wages and did not pay her outstanding vacation pay. The claimant further alleges that the employer reprised against her by terminating her employment as a direct result of her making inquiries regarding unauthorized deductions and vacation pay.

POSITION OF THE EMPLOYER:

The employer's position is that the claimant is not entitled to any further wages or vacation pay. The employer states that no unauthorized deductions were made from the claimant's wages. The employer further states that the claimant's employment was terminated due to performance issues and was unrelated to any inquiries about unauthorized deductions or vacation pay.

FACTS / EVIDENCE:

Undisputed Information

- The claimant worked as a Paralegal from October 1, 2018 to June 10, 2022.
- The claimant's employment was terminated on June 10, 2022.
- The claimant was paid 3 weeks of termination pay in the amount of $6,166.11 on June 23, 2022.
- The employment contract states that the claimant's compensation is calculated on the basis of 50% of her fees collected each month, reconciled monthly and paid out semi-monthly the following month.

The claimant alleges the following:

- Her compensation was commission based and paid out in arears based on her fee collections from the previous month, paid out in two equal payments semi-monthly the following month. These payments occurred on the 15th and the 30th/31st of each month.
- For the month of May 2022, the claimant collected fees on behalf of the employer which would have resulted in $7,796.20 owing to her, which would have been paid out in two installments in June 2022.
- She was paid $3,898.10 on June 15, 2022 but did not receive the other half of her commission due to be paid on June 30, 2022 for work performed in May 2022.
- She is entitled to a further $3,898.10 in unpaid wages.
- The bonus for paralegals was up to $5,000.00. She is entitled to her bonus payment for 2021 which was due to be paid in 2022.
- The employer would advise on her bonus amount at the time of her annual review, which was schedule for February 1, 2022. However, the claimant's annual performance review was postponed by the employer and her employment was terminated before it was rescheduled.
- She is owed the maximum bonus amount of $5,000.00 as she worked in extra-ordinary conditions during the covid 19 pandemic in the 2021 year.
- Her bonus payments for the 2019 and 2020 years were $2,900.00 and she maintained earnings close to her 2019 levels in 2021.
- She was not paid for a file associated with Elamin, Iman in the amount of $2,029.73. She had collected the settlement cheque for this case; however, it was written in the employer client's name which resulted in an altercation with the employer's client's husband. She contacted her employer who handed the matter to Melanie Henriques who did nothing further. Whether or not the employer recovered the money from its client, it still was obligated to pay her $2,029.73 for the work she completed.
- She was not paid $150.00 for a file associated with Dolson, Shelley. The client did not provide her with relevant information about their employment being subject to a collective agreement and subsequently agreed to settle for a relatively small amount. The employer decided to waive the client's legal fees and, in turn did not pay her for the work completed on the file. The employer further tried to deduct the costs associated with the file from her compensation and retained $150.00.
- She conducted consultations for clients, but often consultations were refunded

to ensure customer satisfaction. If a caller did not have a case worth pursuing, the employer's intake department would try to get the caller to pay for a consultation fee. If the caller complained, they were refunded their consultation fee. However, the employer would then try to recover the loss from her fees and not pay her for services rendered in the consultation despite her performing the task.

- She was not given a choice in determining who was charged for a consultation. The employer decided who would be charged and did this to maximize business from as many inquiries as possible.
- She was scheduled to do at least 10 consultations per month and was supposed to be paid $85.00 per consultation, on average one consultation per month was refunded since the beginning of her employment.
- After the covid-19 lockdown, the employer changed their billing practices and no longer covered certain administrative costs such as couriers. If a cost on a file came after the final invoice was paid, she would be required to cover costs from earnings if it could not be recovered from the employer's client.
- She was advised by the employer that as a paralegal she is exempt from vacation pay at the onset of her employment.
- She was not paid any vacation pay throughout her period of employment.
- She is owed vacation pay at 6% on all gross wages throughout her period of employment.
- The employer removed her from the new client intake roster of revenue generating files and this had negatively affected her earnings as she was receiving less work.
- She contacted the Ministry of Labour to determine her rights and became aware that paralegals are not exempt from parts VII to XI of the Act as she had been advised by the employer and she was entitled to vacation pay.
- She hired a lawyer in May 2022, to have them contact her employer to discuss issues regarding unauthorized deductions, vacation pay and potentially restructuring her employment agreement to that of an independent contractor if they did not rectify her employment situation.
- She had lost trust in the employer after he tried to make unauthorized deductions from her compensation and advised her that she was exempt from the vacation pay provisions in the Act.
- On June 3, 2022, her lawyer contacted the employer asking to set up a meeting regarding her employment and stating that she had not received a few ESA entitlements.
- On June 10, 2022, the employer terminated her employment for performance issues and conduct.
- Prior to the termination of her employment, there had been no specific incidents or issues raised by the employer regarding her performance.
- She was not issued any written warnings, disciplined or placed on a performance improvement plan.
- Her employer reprised against her, and her employment was terminated as a direct result of making enquiries about her ESA entitlements.
- The employer has filed 3 separate civil actions against her since the

termination of her employment. None of these claims have any factual basis.
- These claims have been undertaken by the employer as pressure tactics attempting to intimidate her into withdrawing her ESA complaint.

The claimant submitted the following evidence:

- Statement of Position
- Summary of Events
- Employment Contract
- 2018, 2019, 2020, 2021 T4 Statements
- Wage Statement dated June 15, 2022
- Wages Statement dated June 23, 2022
- Wage Statement dated December 31, 2020
- Wage Statement dated December 31, 2021
- Emails between Chris Achkar and employer commencing June 2, 2022
- Emails between Chris Achkar and employer commencing June 15, 2022
- Termination Letter
- Email correspondence with employer dated July 21, 2021 discussing Dolson case
- Email from employer to Daniela Faukovic dated July 19, 2022
- Copies of Civil Actions filed by employer

The employer alleges the following:

- The claimant has been paid all outstanding wages and is not entitled to any further wages.
- For each month that she was employed, the claimant's compensation comprised of an amount equal to one-half of the fees collected the previous month. This amount was then paid to the claimant, as a salary, on the two pay days during the month following collection.
- The claimant's salary was based on collections, i.e., monies paid by clients and already received by the Firm, i.e., a fixed and known amount, not conditional on future payment by clients or based on future billings of the claimant.
- The compensation paid to the claimant each month was completely independent of, and unrelated to, the amount of time worked, or work performed or billed during the month for which this compensation was paid.
- The salary paid to the claimant each month was fixed and knowable by previous month's end, even if the amount paid varied from one month to the next.
- The salary determined during any month, if paid over the course of the next month's pay days, brought the claimant fully up to date by the last pay day of each month.
- The claimant's employment was terminated just before the first pay day of the month, and the only salary owed was a pro-rated amount based on the days worked since the last pay day.
- All salary paid for the claimant's last completed month of employment (May 2022) was fully paid, and a suitably pro-rated amount was paid based on her termination date of June 10, 2022.

- The claimant was on a variable salary and not a commission plan.
- The claimant compensation was not a commission plan, as it lacked all recognized features of a commission, such as, a draw, targets or thresholds after which a commission becomes payable, and conditions which typically apply, such as sales being confirmed and invoices being paid.
- Based on the compensation terms, that one-half of collections each month was to be used for the purposes of determining her salary for the following month, and for no other purpose.
- Once the amount determined based on the previous month's collections was paid on any given pay day, there was no other amount owed or accruing. All compensation obligations were immediately discharged each pay day, in real time, based on a figure pre-determined the previous month.
- The claimant's compensation was never based on amounts billed; it was always and solely based on amounts collected. And such collections were only ever used as a basis for determining the next month's salary, if employed.
- The claimant did not qualify for a bonus for the 2021 year as she did not meet the bonus targets.
- The claimant did not achieve a minimum score of 8/10 on client satisfaction surveys to qualify for the first part of the bonus as her score was 6.2/10 in 2021.
- The claimant did not achieve the minimum number of marketing actions to qualify for the second part of the bonus as she had 8 marketing actions and she required at least 12.
- With respect to the Dolson case, the claimant made a negligent error by pursuing a case she should not have pursued. She commenced a lawsuit on behalf of a unionized employee. A unionized employee cannot sue and must file a grievance through the union. Since the claimant should not have pursued the matter and her actions were negligent, the firm, would not pay for the disbursements incurred as per policy.
- The firm decided in each case whether a matter would be eligible for a fee or a paid consultation. The claimant had no say with respect to that. If a matter was scheduled as a paid consultation and the firm received payment, the claimant would be paid accordingly. If the matter was scheduled as a free consultation, there would be no payment.
- There may have been an occasion where a matter was improperly scheduled as a paid consultation, when it should have been scheduled as a free consultation. In that case, the client would be refunded any payment they made for the consultation. Since the claimant would have been overpaid, the overpayment would be corrected. This was not a deduction, but a correction of an overpayment.
- Since the claimant was paid based on money paid to the firm, if there was no money paid, there would be no monies to add to the claimant's compensation.
- Since the firm had the right to decide if a consultation was free or paid, the firm's decision in that regard cannot give the claimant any entitlements. In other words, if the consultation at issue was scheduled as free, it is the exact same thing as if the consultation was initially incorrectly scheduled as a paid

consultation, but that was then corrected.

- The claimant is a licensed paralegal and was employed as a practitioner of law at the Firm. She provided legal advice and legal representation to clients, including before the court and tribunals. A licensed paralegal and duly qualified paralegal is a practitioner of law.
- Part XI of the Act, in respect of vacations with pay, did not apply to the claimant's employment.
- The vacation provision in the claimant's employment contract does not apply as it was replaced by an unlimited vacation policy, a change which was explicitly communicated to, and accepted by, the claimant in 2019. This new policy applied to the Firm's lawyers and to the claimant as a paralegal and fellow practitioner of the law.
- The unlimited vacation policy replaced and superseded the vacation provision in the claimant's contract and rendered it null and void and of no further force or effect.
- This new policy provided as much flexibility as possible, for those covered, to take vacation time off away from professional responsibilities. This new policy permitted and conferred onto the claimant the right to take as much or as little time off work as she desired, based on her own needs and sensibilities.
- The intent of the policy was to provide unlimited vacation time off, with no minimum or maximum entitlement, the precise amount of which would be determined by the claimant.
- The claimant accepted this change to her vacation entitlements, as she took no action to negotiate over or reject the changes.
- The claimant exercised her right under the policy not to take any vacation time off and, therefore, she did not receive any compensation as would have otherwise been the case had she opted to take vacation time off under the policy. She understood that, if no vacation time was taken, no vacation pay would be forthcoming. She chose instead to realize the benefit from working to maximize her billings/collections and, therefore, her level of salary.
- Since the claimant took no vacation time off under the policy, something explicitly contemplated by the terms of the policy, no compensation is owed under its terms.
- The new policy provided that the claimant's salary would be maintained, without interruption, through all periods of vacation time. Had the claimant opted to take time off during any month, during the period of any vacation, she would have continued to receive her salary as determined by the collections from the previous month.
- The Ministry may not issue an order for wages that became due to the employee more than two years before this complaint was filed. This means the Ministry may issue an order for wages that became due during the period from July, 2020, through to the filing date.
- The Firm's vacation year is the calendar year.
- The Firm allows new hires to take a prorated amount of vacation time off during their first year of employment. Then, as of the following January 1st, an employee is credited with their annual vacation entitlements, for use during that

same vacation year.

- The Firm uses a fully “real time” system whereby that portion of employment during the year of hiring is effectively treated as the stub period and then employees are brought into full alignment with the Firm’s vacation year at the start of the next vacation (calendar) year. Vacation time off entitlements are intended to be used within the vacation year.
- This “real time” system provides a greater benefit than under the Act, which does not entitle an employee to take any vacation time off until after the completion of 12 months of employment. As such, the Firm’s real-time vacation administration practices apply to determine when the salary at issue in this claim became due.
- Having taken no vacation time off during the first half of the 2020 vacation year, by July, 2020, the claimant remained entitled to take her full 2020 allotment of vacation time off during the remainder of 2020, i.e., a total of two (2) weeks of vacation time off, with a corresponding two-week salary payment, which can be considered as becoming due on or after July, 2020.
- The claimant worked and completed the 2021 vacation year, i.e., an entitlement to another two (2) weeks of vacation time off and a corresponding amount of salary, by the end of the 2021 vacation year.
- In the 2021 vacation year, by working until June 10, 2022, the claimant would have earned one-half of her two-week entitlement (taking into account the 3-week notice period), i.e., an entitlement to one (1) week of vacation time off and a corresponding amount of salary.
- During the applicable recovery period, the claimant became entitled to a total of five (5) weeks of vacation time off in respect of the 2020, 2021, and 2022 vacation years, to be compensated based on the weekly salary as determined by the claimant’s employment contract.
- In the event the Ministry finds that Part XI of the Act applies to this claim, the maximum amount which can be ordered is $10,276.85.
- The claimant’s employment was terminated for poor performance and conduct and not as a result of her raising any potential ESA concerns.
- The claimant repeatedly failed to move files along and utilize all available measures to ensure that client interests are advanced, resulting in unreasonable delays and very frustrated clients.
- They received more client complaints about the claimant than anyone else at the firm. In addition, her score on client satisfaction surveys is one of the lowest of anyone, across all offices.
- The claimant insisted on taking on more and more files, when it was clear that she was unable to manage her existing workload and provide proper service to clients
- The claimant had been rude, uncooperative, and unresponsive to Melanie Henriques as well as other partners and members of management and had repeatedly refused to respond to queries or unreasonably delayed such responses.
- The claimant did not participate in any active way in department meetings or office hours held by partners of the Firm or infirm marketing efforts.

- Despite carrying 3 times the number of cases the claimant should have been carrying (and significantly more than anyone else at the firm) her billings had been consistently subpar.
- Much newer paralegals, with significantly less files, were able to bill substantially more than the claimant.
- The claimant was attempting to divert clients away from the Firm while still employed and this matter is currently subject to legal proceedings before the courts.
- Mr. Samfiru spoke with the claimant's lawyer for the first time on June 6, 2022. During this conversation the claimant's lawyer advised that the claimant was aware that the Firm was planning to terminate her employment and proposed that she resign instead, if the Firm paid her 100% of her billings for a 6-month period.
- They had been trying to schedule the claimant's termination meeting since May 30, 2022.
- The claimant was not reprised against.

The employer submitted the following evidence:
- Registration Form 6
- Record of Employment
- Employment Contract
- Wage Statements
- Termination Letter
- Statement of Position Re Vacation Pay
- Email correspondence between Melanie Henriques and the claimant commencing on May 30, 2022
- Statement of Position Re Unpaid Wages
- Collection Reports and Paystubs
- June 2022 Compensation Calculation
- Dolson, Shelley Pre Bill
- Bonus Eligibility

Legal Entity Determination

The claimant identified "Samfiru Tumarkin LLP" as her employer on the claim form.

In response to the claim received, the employer, represented by Lior Samfiru, does not dispute that the claimant worked for the company. The employer submitted a Registration For 6 identifying "Samfiru Tumarkin LLP" as the legal name of the business.

An Ontario Business search (ONBIS) was conducted on December 19, 2022 which confirms "Samfiru Tumarkin LLP" is a registered Ontario Limited Liability Partnership. The partners are listed as "Lior Samfiru Professional Corporation" and "Sivan Tumarkin Professional Corporation" The directors for each corporation respectively are Lior Samfiru and Sivan Tumarkin.

Based on the information provided by the employer and the search, I find “LIOR SAMFIRU PROFESSIONAL CORPORATION AND SIVAN TUMARKIN PROFESSIONAL CORPORATION LLP O/A SAMFIRU TUMARKIN LLP” to be the legal name of the employer for the purposes of this claim.

DECISION AND REASON(S) WITH RESPECT TO EACH STANDARD AT ISSUE:

Payment of Wages

Section 11(1) of the Act states an employer shall establish a recurring pay period and a recurring pay day and shall pay all wages earned during each pay period, other than accruing vacation pay, no later than the pay day for that period.

Section 11(5) of the Act states that any wage entitlements owing to an employee whose employment has ended must be paid out no later than the later of seven days after employment has ended and the next regular pay day.

The claimant alleges that she is owed wages in the form of commissions that were earned in May 2022 that were due to be paid on June 31, 2022.

Both parties submitted a copy of the claimant’s Employment Contract. Clause 3.1(a) of this document stipulates that “compensation shall be calculated on the basis of 50% of [the claimant’s] fees collected each month, reconciled monthly.” It continues with “compensation will be paid semi-monthly in the following month,” suggesting wages that are earned in one month become payable in the next. A plain language reading of this suggests her compensation was commission based.

The employer argues that this should instead be interpreted as the claimant earning a “variable salary” and not a commission plan. They suggest this is because the claimant’s wages were “independent of, and unrelated to, the amount of time worked…”.

I disagree. Commission, by definition, is distinct from hourly or annual rates of pay, and so is equally independent of an employee’s hours of work.

The employer also alleges this “variable salary” structure was understood by the claimant, but save for the contract itself, did not provide any further evidence that a clear understanding existed between the parties.

The contract language is obfuscated somewhat by the statement in the same clause that “if [the Claimant] collects $20,000 in paid fees in January, [her] compensation ***for*** February will be calculated as $10,000…” [emphasis added]. But for the word ‘for’, the clause would clearly establish a commission compensation structure. However, the

courts have long since recognized the principle of *contra proferentem*, which prefers an interpretation of ambiguous contract language against the party that drafted it. See, for example, *473807 Ontario Limited v. The TDL Group Ltd.* 2006 CanLII 25404 (ON CA) at paragraph 63.

I find the claimant's contract clearly establishes an entitlement to commission, with any ambiguity being reconciled in the claimant's favor.

Furthermore, there is no language in the contract that requires active employment at the time of payout. The OLRB has previously found that in the absence of clear and unambiguous language to the contrary, active employment is not a requirement for payment of earned commissions (see, for example, *Manulift E.M.I. Ltd. Manulift E.M.I. Ltee v Tom Marchewka,* 2020 CanLII 38301 (ON LRB), at paragraphs 59 and 77 – 78). In keeping with their logic, I find the claimant is owed wages equal to 50% of fees collected in May 2022, less what has already been paid out.

The employer submitted a June 2022 Salary Calculation document which outlines that the claimant's May 2022 collections totaled $21,439.55 and 50% of this is $10,719.78 which would be due to be paid in June 2022. The claimant has already been paid $3,898.10 on June 15, 2022, and she is further owed $6,821.68 in unpaid wages.

The claimant also alleges that she was not paid for a file associated with Elamin, Iman [20211682] in the amount of $2,029.73. She states that she had collected the settlement cheque for this case; however, it was written in the employer client's name which resulted in an altercation with the employer's client's husband. She contacted her employer who handed the matter to her supervisor Melanie Henriques who did nothing further. The claimant alleges that the employer did not pay her $2,029.73 for the work she completed on this file, and she is entitled to these wages. As evidence the claimant submitted an invoice issued to this client dated September 24, 2021, which outlines the fees billed.

The employer has not responded to this allegation.

The employer submitted a document entitled "Collection Reports and Paystubs" which outline the claimant's monthly collections broken down by file number. The file 20211682 is listed in the claimant's collection reports but there is no amount listed under the "Cash Received" column. The claimant's employment contract stipulates that the claimant's compensation is calculated based on fees collected. There is no evidence to suggest that these fees were collected and that the claimant is owed these amounts.

The claimant further alleges that she was not paid $150.00 for a file associated with Dolson, Shelley [20194088]. The claimant states that the client did not provide her with

relevant information about their employment being subject to a collective agreement and subsequently agreed to settle for a relatively small amount. The employer decided to waive the client's legal fees and, in turn did not pay her for the work completed on the file. There is an email thread between the parties where the employer suggested that the legal costs incurred on this file be taken out of the claimant's collections, however the claimant refuses. The claimant states that the employer ultimately agreed to not deduct the costs associated with this file from her collections, however he still deducted $150.00.

The employer alleges that the claimant made a negligent error on this file and pursued a case that was not viable due to the client being a unionized employee.

The claimant's employment contract stipulates that she is paid based on fees collected. It is undisputed by the claimant that she did not collect fees on this file and as such she in not entitled to any further wages. A review of the "Collection Reports and Paystubs" submitted by the employer suggests that no further deductions were made from the claimant's collections with regards to this file.

I find that the employer contravened section 11(1) and 11(5) of the Act and the claimant is owed **$6,821.68** in unpaid wages.

Unauthorized Deductions:

Section 13(1) of the Act states that an employer shall not withhold wages payable to an employee, make a deduction from an employee's wages or cause the employee to return his or her wages to the employer unless authorized to do so under this section.

The claimant alleges that she conducted consultations for clients, but often consultations were refunded to ensure customer satisfaction. The claimant states that if a prospective client called the employer and this caller did not have a case worth pursuing, the employer's intake department would attempt to get the caller to pay for a consultation fee. If the caller complained, they were refunded their consultation fee. The claimant alleges that the employer would then try to recover this loss from her fees and not pay her for services rendered in the consultation despite performing the task. The claimant alleges that she was scheduled to do at least 10 consultations per month and was supposed to be paid $85.00 per consultation, on average one consultation per month was refunded since the beginning of her employment.

The employer states that they decided in each case whether a matter would be eligible for a free or paid consultation and the claimant had no say with respect to that. The employer states that if a matter was scheduled as a paid consultation and the firm received payment, the claimant would be paid accordingly. The employer states that if the matter was scheduled as free, there would be no payment. The employer states that there may have been an occasion where a matter was improperly scheduled as a paid

consultation, when it should have been scheduled as a free consultation and in this case the client would be refunded any payment. This would have resulted in an overpayment, which would be corrected. The employer states that if no monies were paid to the firm, then there would be no monies added to the claimant’s compensation.

As stated in the previous section, the claimant’s Employment Contract stipulates that her compensation is equal to a percentage of fees collected. The claimant’s compensation structure does not stipulate that she is paid per specific task, rather that she is paid based on fees collected. If the employer did not actually collect the fees and the claimant performed the task, that’s within the consideration of her contract.

Referees under the former Employment Standards Act have held that the employer may deduct wages paid in error in the past from an employee's pay cheque. As the referee pointed out in *All-Way Transportation Services Ltd v Fountain (June 6, 1979), ESC 627 (Brent)* when an employee is overpaid, they were never entitled to the amount that the employer seeks to deduct, so it cannot be regarded as wages payable in the first place.

In keeping with this decision, even in instances where the employer collected fees and then refunded amounts to the client, the employer is able to recover these amounts from the claimant’s compensation as she was never entitled to these amounts. Because these fees were not actually collected by the employer any payment that the claimant received for these consultations would have resulted in an overpayment.

I find that the employer did not make unauthorized deductions from the claimant’s pay with regards to this matter.

The claimant further alleges that after the Covid-19 lockdown, the employer changed their billing practices and no longer covered certain administrative costs such as couriers. If a cost on a file came after the final invoice was paid, she would be required to cover costs from earnings if it could not be recovered from the employer’s client. The claimant states that she incurred this cost 5 times at a cost of $25.00 each time for courier services.

The best available evidence is the Collection Reports and Paystubs document submitted by the employer. The claimant was unable to provide specific dates or files in which these deductions occurred and there is no evidence to suggest that the employer deducted these costs from the claimant’s compensation. I find that no deductions were made from the claimant’s compensation with regards to courier services.

I find that the employer did not contravene section 13(1) of the Act.

Vacation Pay

Section 35.2 of the Act states that an employer shall pay vacation pay to an employee in the amount of 4% of wages earned if the employee’s period of employment is less

than 5 years.

Section 38 of the Act provides that when an employee's employment ends, for any reason, the employee is entitled to any accrued vacation pay that is outstanding at the time the employment ended, and the employer is required to pay any such vacation pay within the later of seven days of the date the employment ended or on the day that would have been the employee's next pay day.

The claimant's position is that she did not take any vacation time for which she was paid vacation pay throughout her entire period of employment. The claimant alleges she is owed vacation pay calculated at 6% on all wages earned.

The employer's position is that the claimant is a licensed paralegal and was employed as a practitioner of law. The employer states that as a licensed paralegal, the claimant provided legal advice and legal representation to clients before the courts and tribunals. The employer states that a licensed paralegal and duly qualified paralegal is a practitioner of law and is exempt from the vacation pay provisions of the Act.

Ontario Regulation 285/01 Section 2(1)(a)(ii) states that a duly qualified practitioner of law is exempt from the vacation pay provisions of the act. However, program policy states that a duly qualified practitioner of law means an individual who is licensed by the Law Society of Ontario to practice law. Paralegals are not covered by this exemption, because although they are governed by the *Law Society Act* and Law Society of Ontario, they are licensed only to "provide legal services", not to "practise law".

I find that the claimant is entitled to be paid vacation pay on wages earned during the recovery period.

Section 111(1) states that if an employee has filed a complaint under the Act, the order for wages that became due to the employee either in respect of the contravention alleged in the complaint or any contravention discovered during the course of the investigation is limited to those wages that became due to the employee within the two-year period preceding the date the complaint was filed.

The claimant filed this claim on June 22, 2022. Considering the limitation period, under normal circumstances, the claimant's allegations for the period of June 22, 2020, to June 22, 2022, would have been investigated. However, the limitation period was suspended as per O. Reg. 73/20 under the Reopening Ontario (A Flexible Response to COVID-19) Act, 2020. Under this order the limitation periods provided for in Ontario statutes and regulations during a portion of the COVID-19 pandemic were suspended. This order essentially "stopped the limitation period clock" between March 16, 2020, and September 13, 2020. The dates of overlap between the dates encompassed within the original limitation period and the suspension period will be used to determine the start of the new limitation period. The new recovery period is from December 24, 2019 to June 22, 2022, however the limitation period for the allegation pertaining to vacation pay will be extended to January 1, 2019, as vacation pay accrued in 2019 would have been

payable within the 10 month period following the completion of the vacation entitlement year. The employment contract states that the vacation entitlement year is the calendar year.

The employer's position is that the vacation provision within the claimant's Employment Contract does not apply as it was replaced and superseded by an unlimited vacation policy. The employer states that this change was communicated to and accepted by the claimant in 2019. The employer states that the new policy provided the claimant with the ability to take unlimited vacation time with no minimum or maximum entitlements. The employer states that the claimant exercised her right under this policy to not take any vacation time and she understood that if no vacation time was taken no vacation pay would be forthcoming. The employer did not provide a copy of the new vacation policy.

The claimant denies having received a copy of this policy or having agreed to it. It is important to note that vacation pay, and vacation time are two separate employment standards. Regardless of the employer's policy with regards to vacation time, he cannot contract out of his obligations to pay the claimant vacation pay as she is still entitled to the minimum entitlements under the Act. It is also important to note that the employer's argument stating that the claimant understood she would not receive any vacation pay because she chose not to take any vacation time, is invalid. The claimant's actions to not disentitle her from her minimum vacation pay entitlements.

The claimant's Employment Contract states that she is entitled to 3 weeks of paid vacation time per calendar year. However, it does not stipulate the percentage of vacation pay the claimant is entitled to. As the claimant's period of employment is less than 5 years, I will be awarding vacation pay at the default standard of 4% as outlined in the Act.

The best available evidence to determine the claimant's gross wages are the wage statements submitted by the employer. The claimant's gross wages in 2019 were $108,514.98. The claimant's gross wages in 2020 were $91,981.66. The claimant's gross wages in 2021 were $106,860.12. The claimant's gross wages for the period she was employed in 2022 including her termination amounts and the amount previously found outstanding in the unpaid wages section is $51,470.17. This is total gross wages paid during the recovery period is $358,826.93. The claimant is entitled to **$14,353.08** in unpaid vacation pay.

I find that the employer contravened Section 38 of the Act.

Reprisal

Section 74 (1) (a) of the Act prohibits an employer from intimidating, dismissing or otherwise penalizing an employee, or threatening to do so, because the employee asks the employer to comply with this Act and the regulations or makes enquiries about their rights under the Act.

For a reprisal to occur it must be established that the claimant engaged in a protected activity as set out in section 74 (1) (a) of the Act and the claimant was penalized, dismissed, intimidated or threatened as a result.

Subject to section 122(4), section 74(2) places the legal burden of proof on the employer in any complaint alleging that the employer or a person acting on behalf of the employer has committed a reprisal contrary to section 74. The employer is required to disprove an employee's claim that they have been reprised against. The employer must establish, on a balance of probabilities, that the employer did not contravene section 74 of the Act.

The claimant's position is that she had previously been advised by the employer that she was exempt from the vacation pay provisions of the Act. She states that in June 2021 the employer attempted to make deductions from her compensation for costs incurred on a file. She further states that she had previously been removed from the new intake roster of revenue-generating files and her yearly performance review had been cancelled. The claimant states that as a result of all of these actions, she contacted the Ministry of Labour to determine her rights under the Act. During this call she became aware that paralegals are not exempt from vacation pay as previously communicated to her by the employer. The claimant states that the employer is a high-profile employment firm that presents itself to the public as a workers' right expert and ought to have known that unauthorized deductions cannot be made from wages and that vacation pay is payable to paralegals. The claimant states she lost trust in the employer and sought the assistance of a lawyer to preserve her rights and regulate her employment relationship with the employer so that her employment may continue. The claimant states her lawyer contacted the employer on June 3, 2022, via email and stated that she had retained counsel and had not received a few ESA entitlements and the employer responded acknowledging receipt of this email. The claimant alleges that on June 10, 2022, the employer terminated her employment and stated the cause was for performance issues. The claimant states she was never issued any previous written warnings or been placed on a performance improvement plan prior to the termination of her employment. The claimant further states that the employer issued a termination letter which made vague allegations about her performance, that had never been addressed with her prior, and this letter also threatened legal action against her if she did not accept their termination offer. The claimant alleges that the employer reprised against her by terminating her employment as a direct result of her making inquiries regarding her rights under the Act. As evidence the claimant provided her Termination Letter and email correspondence between her lawyer and the employer.

The employer's position is that the claimant's employment was terminated due to performance issues. The employer alleges that the claimant's employment was terminated for the following reasons: she repeatedly failed to move files along and utilize all available measures to ensure that client interests are advanced, resulting in unreasonable delays and very frustrated clients, she received more client complaints than anyone else at the firm and her score on client satisfaction surveys is one of the lowest across all offices, she insisted on taking on more files though it was clear that

she was unable to manage her existing workload and provide proper service to clients, she had been rude, uncooperative and unresponsive to Melanie Henriques and other partners and members of management and had repeatedly refused to respond to queries or unreasonably delayed such responses, she did not participate in any active way in department meetings or office hours held by partners of the Firm or infirm marketing efforts, she carried 3 times the number of cases she should have been carrying (and significantly more than anyone else at the firm) yet her billings had been consistently subpar, much newer paralegals, with significantly less files, were able to bill substantially more than the claimant and she was attempting to divert clients away from the Firm while still employed. The employer states that the first time he had spoken with the claimant's lawyer was on June 6, 2022, and during this conversation the claimant's lawyer advised that the claimant was aware that the Firm was planning to terminate her employment and proposed that she resign instead, as long as the Firm paid her 100% of her billings for a 6-month period. The employer alleges that they had been attempting to schedule the claimant's termination meeting since May 30, 2022, before her lawyer contacted them and raised any ESA entitlements. The employer states that the claimant was not reprised against as her employment was terminated due to performance issues. As evidence, the employer submitted the Termination Letter, email correspondence between the claimant and her supervisor Melanie Henriques dated May 30, 2022, and a Bonus Eligibility document which outlines the claimant's client satisfaction scores and marketing actions for 2021.

The employer provided an email chain between Melanie Henriques and the claimant which commenced on May 30, 2022. The subject of this email is "Check in Meeting-June 15/22 at 10am". In this email thread the claimant's supervisor is attempting to schedule a meeting on June 15, 2022, with the claimant to "meet and see how things are going" on her end. The supervisor follows up again on May 31, 2022, and then on June 3, 2022 stating she now has availability on June 8, 2022 and requests to move the meeting up to that date. The claimant responds on the same date stating she is busy that week and her supervisor responds stating they will keep the original meeting date of June 15, 2022. There is nothing to suggest that this meeting was a termination meeting or anything other than a "Check In meeting" as stated in the subject line and body of this email chain.

The employer alleges that the first time he spoke with the claimant's lawyer was on June 6, 2022. However, the claimant submitted an email between her lawyer Chris Achkar which commenced on June 3, 2022 addressed to Sivan Tumarkin (partner) which states the following in part : *"Hi Sivan, I sent you a message on LinkedIn on May 20th, asking for a phone call. My intention wasn't to catch you off guard, but mostly to chat over the phone about Leeanne. As colleagues, I would have liked to discuss it over the phone with you first so we can have a fluid conversation. Leeanne reached out to me about a month ago. Amongst other things, she informed me about a drop of 40% in her pay, a reduction from 25 intakes a week to 2 intakes a week, and not receiving a few ESA entitlements. Again, I'm happy to get on a call and discuss so we can find a quick solution where she doesn't feel she needs to call me. Let me know your availability, please, and we can set a call down."*

To which Lior Samfiru (partner) replies on the same date asking if Chris Achkar has been formally retained by the claimant, to which Chris Achkar responds on the same date that he is formally retained by the claimant and requests to set up a phone call. The employer responds on June 4, 2022 requesting to set up a phone call on June 6, 2022 to which Chris Achkar agrees on June 6, 2022.

The employer then emails Chris Achkar on June 8, 2022 stating the following in part: *"Hi Chris, We are still looking at a few things on our end and making decisions as to how to proceed. Can you talk Friday morning, say at 10am?"* The employer is referring to Friday June 10, 2022, which is the date the claimant's employment was terminated.

A subsequent email thread between the parties started on June 13, 2022, post the claimant's employment being terminated. The employer forwards an email to Chris Achkar that contains a client complaint from June 11, 2022, about the claimant and states the following in part *"Chris, For your information, I am forwarding you just one email received from a former client of Leanne's, after we told him that she is no longer with the firm (I redacted his name). We have received quite a few of these. I've never seen anything like this. It's bad."* The employer then emails Chris Achkar again on June 15, 2022 stating *"Chris, Since I have not received any further communication from you and in light of the fact that you stated that you were on a very limited retainer, can I assume that you no longer act for Leeanne? As she has not responded to our offer by today's deadline, we will be significantly escalating the matter and will be communicating with her directly, unless advised otherwise."*

To which Chris Achkar responds on the same date stating the following in part: *"Hi Lior,I am still retained - I just have not had a chance to speak with Leeanne yet. I am not sure what "significantly escalate"means in this situation- you guys fired her, so not sure what else there is for you - I've tried to be a mensch and talk about an amicable split - you turned around and terminated. Anyway, I am scheduled to speak with her on Friday. Her instructions are already to issue a claim. My options right now are:1. I file the claim on her behalf 2. We negotiate an amount that makes sense (4 weeks total makes no sense for someone who makes 110k a year with her seniority) 3. She files a claim with another lawyer and she goes to the media. This is not my style - but this is something she floated many times - I already found her a lawyer to take the file should she choose that route. She wants the value of the files she was working on - at 100% - to be able to make ends meet without any new files from you. She could have survived on 50% had she kept getting new files. Honestly, unless you can make an offer at something significantly higher and similar to what she is expecting, I have to keep her happy one way or another, and we'll have to go back to option 1 or 3 from above. I can speak on the phone if you'd like."*

The employer responds on the same date stating: *"If you want to start a claim against a colleague, that is your call. I'll still keep you on our conflict list, because that's what I believe to be right. We will be suing Leeanne. If you saw the disarray she left behind, you would be in utter disbelief. Files mishandled. Clients not being responded to. Legal*

arguments missed or made improperly. Multiple LawPro claims to come. And that is above and beyond her unacceptable behaviour towards members of the firm. We only now are starting to realize the magnitude of the damage that Leeanne has caused and our corresponding loses. By the way, you still have not given me any basis as to why we would owe Leeanne anything beyond her ESA entitlements, as per her employment agreement. I understand that she "wants" more, but I am not aware of the "want doctrine" of contract interpretation. In any event, we will be suing Leeanne in Superior Court. Please advise if you or anyone else will accept service." The employer responds again on the same date stating *"One more thing, Chris. The suggestion of "going to the media", could only have been made by someone that has no clue how the media works. Does Leeanne believe that a story about a law firm firing an incompetent paralegal is media worthy? But, let us say that it is. A story published outlining all the reasons we let Leeanne go (and the things we've discovered since), will assure that not only will Leeanne never work again, but that no client will ever hire her. A Google search would reveal everything. I have not copied Sivan on this email, on purpose. I'll give Leeanne until 10am tomorrow to sign and return the Release to me. If we don't have it, we will serve her directly, unless you advise that you accept service."*

This email thread is the best available evidence in determining when the claimant's lawyer first contacted the employer. The employer was first contacted by the claimant's lawyer on June 3, 2022, about not receiving a few ESA entitlements. The employer and the claimant's lawyer had agreed to speak on the phone on June 6, 2022. It is likely the parties had a conversation on June 6, 2022, as the employer has stated. The employer then requests to speak with the claimant's lawyer on June 10, 2022, but instead terminates the claimant's employment on this date. There is no strong documentary evidence to suggest that the claimant's employment was terminated solely due to performance issues. The employer has stated that the claimant's actions were egregious and has stated that her actions have resulted in significant losses to reputation, good will and revenue. However, there is no evidence to suggest that her employer issued any written warnings to her regarding her performance, disciplined her for her conduct or placed her on a performance improvement plan prior to speaking with the claimant's lawyer or terminating her employment. The claimant's employment was terminated within one week after stating she did not get some of her ESA entitlements. Additionally, the employer did not address any of the claimant's ESA concerns after the issue was raised or at all. The tight timeline of events, the fact that the claimant had never previously been warned or disciplined for her performance and the fact that the employer never attempted to address the claimant's concerns about not receiving her ESA entitlements, suggest that on a balance of probabilities, the employer's decision to terminate the claimant's employment was not solely due to performance issues. The OLRB has previously found in 2325671 Ontario Limited v. Susan Benson 2015 CanLII 43662 (ON LRB) at paragraph 24: "… the Board's jurisprudence is clear that if any part of the decision to dismiss an employee was made as a result of the employee engaging in a protected activity, then the decision is tainted and a violation of the ESA".

In the context of the claim, the claimant did engage in a protected activity as her lawyer had stated to the employer on June 3, 2020, that she had not received a few ESA

entitlements.

I find that the employer has not provided sufficient documentary evidence to show that the claimant's employment was terminated solely due to performance issues unrelated to the claimant's enquiries about her ESA entitlements.

Based on the best available evidence, I find the employer contravened section 74 of the Act.

Reprisal Remedy Assessment:

Compensation for having been reprised against is intended to make the claimant "whole again," as though she had not suffered a reprisal. There are a number of heads of damages to consider. I have assessed the compensation owed to the claimant under section 104 of the Act using the following criteria:

<u>Reinstatement</u>

Reinstatement has not been considered as the employee indicated that the employment relationship has been damaged to the point that it is irreparable. An assessment for compensation has been made.

<u>Direct Earnings Loss</u>

The claimant has stated that she was not given her annual bonus for 2021 which would have been paid out in 2022. The claimant alleges she received this bonus payment in both 2019 and 2020 in the amount of $2,900.00 and her performance in 2021 hadn't changed significantly to disentitle her from this bonus payment. She states that she would generally be told how much her bonus would be for the previous year during her annual review, which was scheduled for February 1, 2022, but this meeting was postponed without reason and never rescheduled prior to the termination of her employment. The employer has stated that the claimant was not entitled to a bonus payment for this year, but I find that the employer did not provide sufficient evidence to show the claimant wasn't entitled to this bonus payment or that her performance had changed drastically from 2019 and 2020 where she received this bonus. I find it likely that the claimant would have received this bonus had she continued to be employed and the annual review was scheduled. The maximum amount a paralegal can receive according to the bonus structure submitted by the employer is $5,000.00, but I will be awarding $2,900.00 in keeping with the amounts she received in 2019 and 2020.

<u>Time Required to Find a New Job</u>

Program policy is that claimants who suffer a reprisal are to be compensated for the greater of the time it takes to find a new job or their entitlement to termination pay under the Act.

The claimant's employment was terminated on June 10, 2022. The claimant is a paralegal and was self-employed and working with the employer until she became their employee in October 2018. After her employment was terminated the claimant returned to her private practise and resumed her business. The claimant has stated it took her one month to resume her independent practise post her termination as she had to set up her business after suspending it for 3 years and 8 months.

It is program policy that an employee is entitled to the greater of:

1. Compensation for damages being an amount equal to the employee's weekly earnings (including earnings that are not "wages" within the meaning of ESA Part I, s. 1, such as tips, and including vacation pay on those earnings that are "wages") multiplied by the number of weeks it took or should have taken (whichever is less) the employee to find a new job;

Or

2. The employee's termination pay entitlement under the Act with vacation pay (excludes earning that are not wages, e.g., tips and other gratuities).

As the claimant was employed for 3 years and 8 months, her termination pay entitlement under the Act is 3 weeks' wages in the amount of $6,166.11 which the employer paid her on June 23, 2022, which is less than the 4 weeks it took her to find a new source of income. As such, I award wages for the time it should have taken her to find a new employment. Deductions will be made for termination pay already paid to the claimant.

The employer's evidence shows the claimant earned $2,055.37 per week in her last 12 weeks of employment leading up to the termination. The claimant's entitlement to compensation is $8,221.48 ($2,055.37 x 4 weeks). I will deduct $6,166.11 in termination pay already paid. The claimant's total entitlement to compensation is $2,055.37.

In addition, pursuant to section 35.2, she is entitled to 4% vacation pay on these wages in the amount of $82.21 for a total of **$2,137.58.**

Expenses Incurred in Seeking New Employment

The claimant states she incurred expenses in starting up her business again. She states she spent $200.00 in advertising her new business, $160.00 renewing her business license with the government and $2,700.00 in purchasing IT equipment. The employer's reprisal action led the claimant to re-open her private practise and she would not have incurred these expenses but for the employer terminating her employment. I am awarding **$2,960.00** in compensation under this heading.

Loss of Claimant's Reasonable Expectation of Continued Employment with the Former Employer

This head of damages is commonly referred to as compensation for loss of the job itself. Damages under this section compensate for the loss of the opportunity to continue to be employed, an opportunity that the employer's wrongful act denied. These damages are prospective in nature and are not subject to a duty to mitigate.

The claimant worked as a paralegal at a well-known employment law firm for 3 years and 8 months. The claimant has stated that she wished to salvage the employment relationship if the employer would rectify his actions. Due to the claimant's high salary, technical expertise, and the employer's status within the industry, it is fair to conclude that the claimant viewed this job as a long-term career prospect.

Though the employer has stated that the claimant had previous performance issues, there is no strong documentary evidence to suggest that any disciplinary actions were taken by the employer or that these issues were long standing and severe. It would be reasonable to assume that the claimant's position was relatively secure with the employer.

Program policy acknowledges that adjudicators have generally awarded one month per year of service under this head of damages but allows for the consideration of mitigating or aggravating factors.

The claimant's period of employment was 3 years and 8 months, and she has stated that she is earning significantly less income in private practice than what she was being paid by the employer. It is important to note, that prior to her employment with the employer the claimant was self-employed and receiving referrals from the employer; the claimant has stated she relied heavily on business that the employer referred to her and it comprised of most of her earnings. The claimant states she is no longer being referred business by the employer and has found it difficult to re-start her business and earn revenue. I find 3 months of compensation to be sufficient. Compensation under this section shall be awarded equal to 12 weeks of claimant's weekly earnings.

The claimant earned $2,055.37 per week. Compensation will be awarded in the amount of **$24,664.44** ($2,055.37 x 12 weeks).

Emotional "Pain and Suffering"

The claimant has stated the employer's actions deeply upset her and was a source of great anxiety. She states that she was anxious about her financial security without a pay cheque from the employer and worried about how she would resume her private practise without referrals from the employer which she had depended upon greatly prior to her employment. The claimant further states that the employer's actions have caused her significant economic hardship as she earns significantly less now than she did when she was employed by the employer, and this has been extremely distressing for her.

The claimant states that the impact to her mental health has been immeasurable and

that the employer's aggressive conduct towards her has caused her a lot of pain. The claimant states that the employer is a prominent employment law firm and him stating that he dismissed her for performance issues implies that her competence and conduct were at issue which caused her reputational damage. The claimant states that this was very distressing to her as the legal community is small and she felt any reputational damage could cause her further financial hardship and anxiety.

Damages will be awarded in the amount of **$2,500.00**.

Other Reasonably Foreseeable Damages

No other foreseeable damages, no damages awarded.

Action(s) Taken by Officer:

Order to Pay #0022962-OP001 was issued to the employer for $21,174.76 plus administrative costs of $2,117.48 for a total amount of $23,292.24. Order to compensate #0022962-CR001 was issued to the employer for $35,262.02 plus administrative costs of $3,526.20 for a total amount of $38,788.22.

This decision was written on December 23, 2022.

Maleeha Haq
Employment Standards Officer #1607

Order to Pay Wages

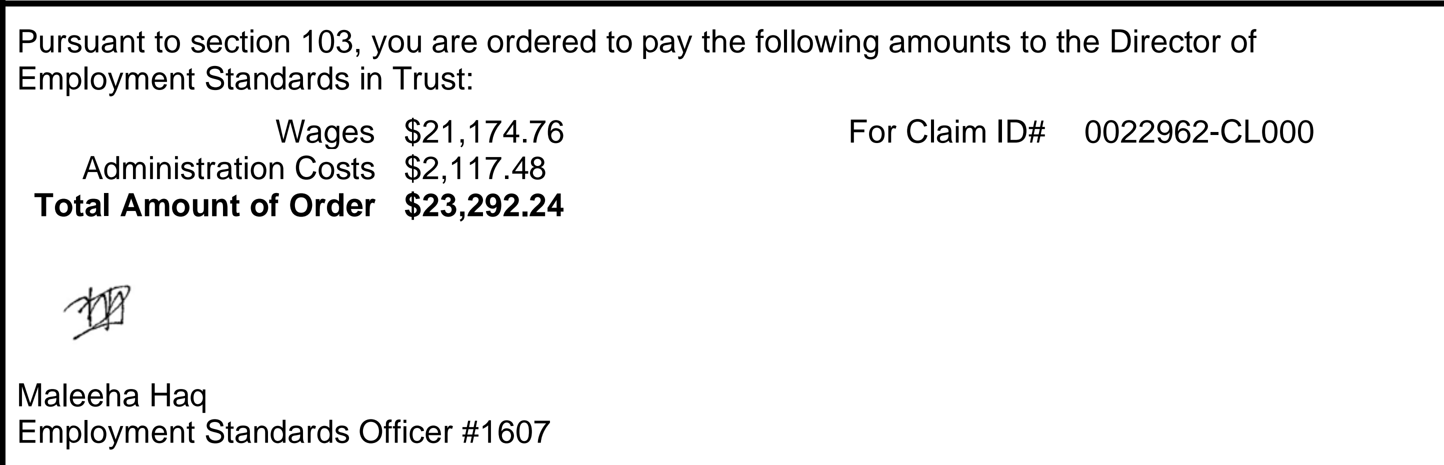
Employment Standards Act, 2000

Statutes of Ontario 2000, Chapter 41

Ministry of Labour, Immigration, Training and Skills Development
Employment Standards Program

Order ID#	**Date Issued:**
0022962-OP001	December 23, 2022

Issued To:
LIOR SAMFIRU PROFESSIONAL CORPORATION AND SIVAN TUMARKIN PROFESSIONAL CORPORATION LLP



Pursuant to section 103, you are ordered to pay the following amounts to the Director of Employment Standards in Trust:

Wages	$21,174.76	For Claim ID#	0022962-CL000
Administration Costs	$2,117.48		
Total Amount of Order	**$23,292.24**		

Maleeha Haq
Employment Standards Officer #1607

You are required to pay the total amount indicated to the Director of Employment Standards if you are not applying for a review of the order. Payments are to be made in Canadian funds. Failure to pay the order within 30 days of the date of service may result in further enforcement action, including referral of this matter to a collector whose fee will be added to the amount of the order.

Retain this order for your records.

See the instructions on the next page for payment options and applying for a review of the order.

V. 11/2022

Ontario

Payment Form

Order ID#	Order Amount	Claim ID#
0022962-OP001	$23,292.24	0022962-CL000

Important – Instructions for Payment

Step 1: Select one of the following options and check the box that applies:

☐ **I am paying this order**

- I am including a cheque or money order for the **total** amount of the order
  - The payment is made in Canadian funds, and
  - The cheque or money order is made payable to the "Director of Employment Standards in Trust"
- I understand that my payment will be released to the employee(s)

☐ **I am applying for a review of this order within 30 days of receiving this order**

- I have completed and filed the Ontario Labour Relations Board's (OLRB) "Application for Review (*Employment Standards Act, 2000*)" form directly with the OLRB.
  - See the OLRB's Information Bulletin #24 at http://www.olrb.gov.on.ca/Forms/IB/InformationBulletin-24-EN.pdf for information on the application for review process. Please ensure that prior to filing with the OLRB, you consult the OLRB's **Notices to Community** at http://www.olrb.gov.on.ca/ to see if there have been any updates to service and filing requirements.
- I am including my payment for the **total** amount of the order by either (*choose a or b*):
  a) Cheque or money order
    - The payment is made in Canadian funds, and
    - The cheque or money order is made payable to the "Director of Employment Standards in Trust"
  b) A letter of credit
    - The approved template can be found in the "Letters of credit" section in the "Role of the ministry" chapter in *Your Guide to the Employment Standards Act*: Ontario.ca/ESAguide.

Step 2: Return this completed form along with payment or letter of credit to:

Director of Employment Standards
Ontario Ministry of Labour, Immigration, Training and Skills Development
400 University Avenue, 9th Floor
Toronto, ON M7A 1T7

V. 11/2022

Order for Compensation and/or Reinstatement

Employment Standards Act, 2000
Statutes of Ontario, 2000, Chapter 41

Ministry of Labour, Immigration, Training and Skills Development
Employment Standards Program

Order ID#:	**Date Issued:**
0022962-CR001	December 23, 2022

Issued To:
LIOR SAMFIRU PROFESSIONAL CORPORATION AND SIVAN TUMARKIN PROFESSIONAL CORPORATION LLP

Pursuant to section 104, you are ordered to pay the following amounts to the Director of Employment Standards in Trust:

Amount	$35,262.02	for Claim ID#	0022962-CL000
Administration Costs	$3,526.20		
Total Amount of Order	**$38,788.22**		

Maleeha Haq
Employment Standards Officer #1607

You are required to pay the total amount indicated to the Director of Employment Standards if you are not applying for a review of the order. Payments are to be made in Canadian funds. Failure to pay the order within 30 days of the date of service may result in further enforcement action, including referral of this matter to a collector whose fee will be added to the amount of the order.

Retain this order for your records.

See the instructions on the next page for payment options and applying for a review of the order.

Ontario

Payment Form

Order ID#	Order Amount	Claim ID#
0022962-CR001	$38,788.22	0022962-CL000

Important – Instructions for Payment

Step 1: Select one of the following options and check the box that applies:

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  - See the OLRB's Information Bulletin #24 at http://www.olrb.gov.on.ca/Forms/IB/InformationBulletin-24-EN.pdf for information on the application for review process. Please ensure that prior to filing with the OLRB, you consult the OLRB's **Notices to Community** at http://www.olrb.gov.on.ca/ to see if there have been any updates to service and filing requirements.
- I am including my payment for the **total amount of the order or $10,000 (whichever is less)** by either (*choose a or b*):
  a) Cheque or money order
    - The payment is made in Canadian funds, and
    - The cheque or money order is made payable to the "Director of Employment Standards in Trust"
  b) A letter of credit
    - The approved template can be found in the "Letters of credit" section in the "Role of the ministry" chapter in *Your Guide to the Employment Standards Act*: Ontario.ca/ESAguide.

Step 2: Return this completed form along with payment or letter of credit to:

Director of Employment Standards
Ontario Ministry of Labour, Immigration, Training and Skills Development
400 University Avenue, 9th Floor
Toronto, ON M7A 1T7

V. 11/2022