

REASONS FOR DECISION
Employment Standards Act, 2000

Claim Number : 0084544-CL000

Business Name : 1000021114 ONTARIO INC. o/a CORPORATE
PROTECTION & INVESTIGATIVE SERVICES

Claimant Name : Zikun (Alex) Xu

Date Claim Filed : March 26, 2026

Standard(s) at issue:

- Payment of wages, section 11(1) section 11(5)
- Wage statements, section 12(1)
- Tips and other gratuities, section 14.2.1
- Vacation pay, section 35.2(a)
- Reprisal, section 74

Evidence, Decision and Reason(s) With Respect to Each Standard at Issue:
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DETERMINING LEGAL NAME OF EMPLOYER:

I have determined that the employer for the purposes of this claim and the application of the *Employment Standards Act, 2000* (the "Act") is 1000021114 ONTARIO INC.

The claimant identified CORPORATE PROTECTION AND INVESTIGATIVE SERVICES as the employer on the claim form.

In response to the claim received, the employer, represented by Nakone (Ken) Vongkham, has provided as evidence a copy of the Articles of incorporation for the business which lists 1000021114 ONTARIO INC. as the legal name of the business.

A corporate profile search was conducted on April 27, 2026 through the Ontario Business Registry database. The search results confirm 1000021114 ONTARIO INC. is an active registered corporation. The Director is listed as Nakone Vongkham.

Based on the results of the corporate profile search and the information provided by the employer, I find 1000021114 ONTARIO INC. to be the legal name of the business for the purposes of this claim.

FACTS / EVIDENCE:**POSITION OF THE CLAIMANT:**Unpaid wages

The claimant alleges entitlement to payment of wages for work performed between January 18, 2026 and February 21, 2026.

The claimant worked for the employer as a corporate security guard from January 18, 2026 to February 21, 2026 earning \$19.00 per hour.

The claimant confirms he received \$180.00 in wages for working on February 19, 2026.

The claimant submits he is owed unpaid wages for all other work performed between January 18, 2026 and February 21, 2026.

Wage statements

The claimant's position is that he did not receive any wage statements during his employment period.

The employer did not provide any records outlining the wages he earned, any wages paid, and any deductions taken.

Tips and other gratuities

The claimant verbally withdrew his allegation of tips and other gratuities on May 13, 2026.

Vacation pay

The claimant submits he did not receive any vacation pay on wages earned between January 18, 2026 to February 21, 2026 and is entitled to vacation pay.

Reprisal

The claimant alleges when he requested payment of wages from the employer, she was immediately removed from the company's online work scheduling application.

The claimant argues she was terminated by the employer in response to her request for wages as an act of reprisal.

The claimant provided the following relevant documents:

- Email string between the employer and the claimant dated February 21, 2026 in which the employer alleges the claimant resigned from his employment and advised payment of wages will be processed once uniform is returned.
- Employee agreement signed by the claimant to work more than 48 hours in a work week.
- Record of hours worked from January 17, 2026 to February 20, 2026.
- Bank statement confirming payment of \$180.00 from the employer to the claimant dated February 19, 2026.
- Email from the employer to the claimant dated February 21, 2026 confirming outstanding wages owed to the claimant and payment of \$180.00 sent to the claimant.
- Email from the claimant to the employer dated February 24, 2026 advising of the return of company property and requesting payment of outstanding wages.
- Record of employment.
- Email to the employer from the claimant dated March 7, 2026 again request payment of outstanding wages.
- No trespass letter issued to the claimant by the employer dated February 21, 2026.

POSITION OF THE EMPLOYER:

The employer failed to provide any information to refute the claimant's allegations and failed to provide any evidence regarding unpaid wages.

The employer provided the following relevant documents:

- Articles of Incorporation

Additional Information:

The employer failed to provide any evidence, such as wage statements and record of hours of work, all of which is required to be retained subject to section 15 of the Act.

The employer, represented by Nakone (Ken) Vongkham, Director, was served with a demand for records via email on May 13, 2026. Prior email communication has been established with the employer. The deadline to provide records was May 22, 2026.

To the date of this decision, the employer failed to provide records to assist in the investigation of this claim.

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

Payment of wages

Section 11(1) of the Act requires an employer to establish a recurring pay day and pay all wages earned during each pay period on the pay day for that period.

It is undisputed information that the claimant did not receive his wages on a pay day, as required. As such, I find the employer in contravention of section 11(1) of the Act.

Section 11(5) of the Act requires an employer to pay all wages, owing to an employee, within seven (7) days after their employment had ended or the next regular pay day, whichever is later.

As the claimant did not receive her wages after his employment ended, I find the employer in contravention of section 11(5) of the Act.

The claimant alleges he did not receive all wages owed to him for work performed between January 18, 2026 to February 21, 2026. The claimant did confirm he received one payment of \$180.00 on February 19, 2026.

The claimant provided as evidence records of hours worked from January 18 to February 20, 2026 and the bank statement confirming payment of \$180.00 on February 19, 2026.

The employer failed to provide any records, such as wage statements or record of hours worked, all of which are required to be maintained subject to section 15 of the Act.

As such, based on the best and only available evidence, I find the claimant is owed unpaid wages subject to section 11(1) and 11(5) of the Act.

The record of hours worked provided by the claimant confirms the claimant working the following number of regular hours:

Work week	Hours worked	Minus breaks*	Total payable hours
January 17 to January 23	30.25	2.0	28.25
January 24 to January 30	35.25	2.45	32.8
January 31 to February 6	31.15	2.15	29.0
February 7 to February 13	27.15	1.45	25.7
February 14 to February 20	23.25	2.0	21.25
Total	147.05	10.05	137.0

* Subject to section 20(1) of the Act, eating periods/breaks are considered time in which work is not performed, thereby not subject to payment of wages.

Based on the evidence of hours of work, the claimant worked a total of 137.00 regular hours from January 18, 2026 to February 20, 2026. He earned \$19.00 per hour, resulting in earned wages totaling \$2,603.00.

As the claimant confirmed he received wages totaling \$180.00, I find the claimant is owed **\$2,423.00** (\$2,603.00 wages earned - \$180.00 paid) in unpaid wages.

Vacation pay on unpaid wages will be calculated in a separate heading below.

Wage statements

Section 12(1) of the Act requires an employer to provide employees, on or before each pay day, a written statement outlining how the employee's net wages are calculated.

The claimant submits he did not receive any wage statements during his employment period of January 18 to February 21, 2026.

The employer did not provide any information or evidence to refute the claimant's allegation of not receiving a wage statement. Furthermore, the employer failed to provide documents, such as wage statements, which is required to be maintained subject to section 15 of the Act.

Absent of any evidence from the employer and based on the best available evidence of the claimant's statement, I find the employer in contravention of section 12(1) of the Act.

Vacation pay

Subject to section 35.2(a) of the Act, an employer is to pay 4% vacation pay on all wages earned, if the employment period is less than 5 years.

The claimant alleges entitlement to vacation pay on wages earned between January 18, 2026 to February 21, 2026.

As stated above, the employer failed to provide any evidence, such as wage statements, to refute the claimant's allegation of entitlement to vacation pay.

Absent of any evidence from the employer, I am inclined to rely on the claimant's statement of position of entitlement to vacation pay.

Therefore, I find the employer in contravention of section 35.2(a) of the Act and I find the claimant is owed vacation pay.

Based on the evidence of the record of hours worked and the evidence of the payment of \$180.00, it has been found wages of \$2,423.00 are owed to the claimant.

As such, subject to section 35.2(a) of the Act, the claimant is owed **\$96.92** (\$2,423.00 wages owed x 4% vacation pay) in vacation pay.

Reprisal

Section 74(1) prohibits employers and anyone acting on their behalf from taking reprisal action against employees for asking about, exercising or seeking the enforcement of their rights under the Act or for participating in proceedings under the Act.

Note that section 74(2) of the Act places the burden of proof on the employer in the context of an allegation of reprisal.

The claimant's position is that he worked for the employer from January 18, 2026 to February 21, 2026. During a telephone conversation on February 21, 2026, the claimant advised he could not continue to perform work without receiving payment of wages and requested to receive his outstanding wages. The employer sent the claimant an email advising he would consider the claimant to have resigned and removed him from the scheduling platform, effectively ending the employment relationship.

The claimant alleges the employer terminated his employment in an act of reprisal for having requested payment of outstanding wages.

The claimant submitted as evidence email communication between the claimant and the employer dated February 21, 2026. The claimant's position is that, as a result of requesting outstanding payment of wages, the employer effectively terminated his employment and deemed it to be a resignation.

In the email dated February 21, 2026 from the employer to the claimant, the employer states in part:

"...In response to your comments regarding company reviews and operations, please note that Corporate Protection & Investigative Services has been transparent with staff regarding the rebuilding phase of the company. During 2023-2024, we experienced financial strain due to a major client's failure to remit payment, which created payroll disruptions and a temporary domino effect. This situation was communicated internally and is not something we have concealed. Many of our employees have remained loyal and supportive throughout this rebuilding period."

The employer has not responded to this claim to refute the allegation of reprisal.

As stated, the reverse onus applies to the employer to demonstrate their action to terminate the claimant's employment was not as a result of the claimant's engagement of protected activities. The protected activity in this case being asking the employer to comply with the Act, namely, to pay proper wages, as per section 74(1)(a)(i).

The Employment Standards Program applies a four-step test for determining whether an employer, or a person acting on behalf of the employer, has engaged in a reprisal contrary to section 74(1) of the Act.

If all four questions are answered in the affirmative, a breach of section 74(1) is established. Note, section 74(2) of the Act places the burden of proof on the employer in the context of an allegation of reprisal.

This four-step test is set out below:

Step 1: is the person alleged to have committed a reprisal the employee's employer or a person acting on behalf of the employer?

YES Yes, Nakone (Ken) Vongkham, Director of the company

Step 2: Did the employer or person acting on behalf of the employer intimidate, dismiss, otherwise penalize or threaten to intimidate, dismiss or otherwise penalize the employee?

YES the claimant was removed from the company's shift scheduling application, constituting a penalization, at the same time as him requesting payment of outstanding wages.

Step 3: Did the employee engage in any of the protected activities set out in ss. 74(1)(a) or was the employer required by a court order or garnishment to pay an amount owing to the employee over to a third party as described in clause 74(1)(b)?

YES The claimant asked the employer for unpaid wages owed to him for performing work, which is her right under section 11(1) of the Act.

Step 4: Did the employer or person acting on behalf of the employer intimidate, dismiss, otherwise penalize or threaten to intimidate, dismiss or otherwise penalize the employee because he or she engaged in the protected activities listed in paragraph 3?

YES Yes, the employer, Nakone (Ken) Vongkham, removed the claimant from the company's scheduling application after he requesting payment of wages.

The claimant's request for payment of outstanding wages constitutes an attempt to exercise a right under the Act.

The timing and sequence of events are critical. The evidence demonstrates that immediately after the claimant asserted this right, the employer characterized the claimant's conduct as a resignation and removed him from all future scheduling.

I am not persuaded that the claimant intended to resign. His statement that he could not continue working "for free" is properly understood as a refusal to continue providing labour without lawful compensation, not as an unequivocal resignation. There is no evidence that the claimant expressed a clear and voluntary intention to end the employment relationship.

Conversely, the employer's actions, declaring the claimant to have resigned and removing him from scheduling, constitutes a unilateral termination of the employment relationship.

The close temporal connection between the claimant's assertion of his rights under the Act and the employer's actions supports an inference that the claimant's request for

payment was a factor in the employer's decision. The employer has not provided a credible alternative explanation for this conduct.

Accordingly, I find that the claimant has established a prima facie case of reprisal. The employer has not rebutted this inference with sufficient evidence to demonstrate that the actions taken were unrelated to the claimant's exercise of his rights under the Act.

Therefore, I find the employer in contravention of section 74(1) of the Act and the claimant was reprisal against for requesting payment of outstanding wages, which is his right under section 11(1) of the Act.

Heads of Damages

Where a reprisal has occurred, compensation is intended to place the claimant in the position he would have been in had the reprisal not occurred.

Section 104 of the Act grants authority to an officer to issue an order for compensation or reinstatement, or both, in the event of a contravention of section 74 of the Act. Section 113 of the Act allows an Officer to issue a notice of contravention in the event of a contravention of a provision of the Act.

In this case, the claimant has stated he does not want to be reinstated and work for this employer given his experience of non-payment of wages. I accept the claimant's position and therefore an order for reinstatement will not be issued.

Regarding an order for compensation, I consider each head of damage as outlined below. There will also be no order for pre-reinstatement compensation as reinstatement will not be ordered.

Under section 54 of the ESA, employees are entitled to notice of termination or termination pay only if they have been continuously employed for at least three months. The claimant was employed from January 18, 2026 to February 21, 2026, which is a period of less than three months. Accordingly, the claimant is not entitled to termination pay.

Time required to find a new job

An award under this section is made when there is a termination and no order for reinstatement is made. This award considers the earnings (including vacation on amounts considered wages) that would have been earned in the time it did (or should have taken) to find a new job.

A review of the National Job Banks's labour market trends indicate that prospects for a

security guard in the Toronto economic region are moderate, meaning there was a moderate number of new positions due to employment growth and retirements.

I find it reasonable, based on the National Job Banks's labour market and the claimant's statement, it would have taken him at least two weeks to find new employment in the same field and assess the claimant's compensation for the time to find a new job as follows:

Subject to section 60(2) of the Act, the claimant's average weekly earnings are calculated based on the twelve weeks preceding termination date. In this case, the claimant only worked for the employer for five (5) weeks.

Based on the evidence of the record of hours worked provided by the claimant, the claimant's average weekly salary was \$520.60 (\$2,603.00 wages earned/5 weeks).

As such, I award the claimant **\$1,041.20** (\$520.60 average weekly wages x 2 weeks) as compensation for the time to find new employment.

Expenses Incurred in seeking new employment

The claimant did not provide evidence to show any expenses incurred while seeking new employment and therefore no compensation awarded under this heading.

Loss of reasonable expectation of continued employment

An award under this section is made when there is a termination and no order for reinstatement is made.

It addresses the fact that the claimant was unlawfully deprived of employment to which, if not for the breach of the Act, he was entitled. Adjudicators and decision makers have long recognized that there is, to the individual who suffers because of an employer's breach of the Act, some inherent value in having had the job.

Therefore, I award one (1) week of compensation for five (5) weeks of employment for the loss of the job itself totaling **\$520.60**.

Emotional pain and suffering

An award under this section is made when the employee experienced pain and suffering as a result of the employer's breach.

The claimant did not present any evidence of physical suffering.

I accept the claimant did suffer some version of emotional pain and suffering as a result of the job loss and the associated impacts such as searching for a new job and the loss of

household income.

Therefore, I assess his entitlement under this head of damage at **\$200.00**.

Assessment:

Unpaid wages:	\$2,423.00
Vacation pay:	\$ 96.92
Total:	\$2,519.92

Order to Compensate

Time required to find a new job:	\$1,041.20
Loss of reasonable expectation of continued employment:	\$ 520.60
Pain and suffering:	<u>\$ 200.00</u>
Total:	\$1,761.80

Obligation to Produce and Assist

Section 91(8) of the *Act* states that if an employment standards officer demands that a record or other thing be produced, the person who has custody of the record or thing shall produce it and, in the case of a record, shall on request provide any assistance that is reasonably necessary to interpret the record or to produce it in a readable form.

A Ministry Letter was prepared which required the employer to produce specific documents related to this investigation. The letter, titled Demand for Records, was served on the Director, Nakone Vongkham, via email on May 14, 2026. Prior email communication has been established with the Director.

The deadline for the requested records was May 22, 2026 and the employer failed to provide records or a statement of position.

Based on this evidence, I find the employer is in contravention of section 91(8) for failing to produce records and aid this officer for the purposes of investigation of this claim.

Action(s) taken by officer:

My investigation of this claim has been concluded on June 25, 2026.

Subject to section 103(1)(b) of the *Act*, Order to pay no. 0084544-OP001 has been issued against the employer for **\$2,519.92**, plus an administrative fee of **\$251.99** for a combined total of **\$2,771.91**.

Subject to section 104(3)(a)(i) of the *Act*, Order to compensate no. 0084544-OC001 has been issued against the employer for **\$1,761.80**, plus subject to section 104(3)(a)(ii) of the *Act*, an administrative fee of **\$176.18** for a combined total of **\$1,937.98**.

The parties are being provided with a copy of these reasons for decision along with additional employment standards information and assistance with ensuring compliance with the standards discussed above, through the following website: [Your Guide to the Employment Standards Act](#).

A handwritten signature in black ink, appearing to read 'Tina Kapoor', written over a horizontal line.

Tina Kapoor
Employment Standards Officer #1611