

## ONTARIO LABOUR RELATIONS BOARD

**0888-11-ES** Donald Osmun, Applicant v. **ING Engineering Inc.** and Director of Employment Standards, Responding Parties.

Employment Practices Branch File No. **70084626-7**

**BEFORE:** Mary Anne McKellar, Vice-Chair.

**APPEARANCES:** Melynda Layton, Devon Marr, and Donald Osmun for the Applicant; Martin Thompson, Jonathan O'Hara, Ian Glenn, and Charles Vidal for ING Engineering Inc.

**DECISION OF THE BOARD:** April 26, 2013

### **Introduction**

1. This is an application under section 116 of the *Employment Standards Act, 2000*, S.O. 2000, c.41, as amended ("the Act") for review of an Employment Standards Officer's determination that the decision of the responding party employer ("the Employer") to terminate the applicant's ("Osmun's") employment did not amount to a reprisal under section 74 of the Act. I convened hearings into this matter on June 27, 2012 and December 13, 2012.

### **Facts**

2. Ian Glenn, the CEO of the Employer, and Charles Vidal, Osmun's immediate supervisor, testified on behalf of the Employer. Osmun testified on his own behalf. My findings of fact are based on the testimony of these witnesses, and on the contemporary documentary evidence.

3. The Employer specializes in the operation of unmanned aerial vehicles ("UAVs") for a variety of clients, prominent among them the Department of National Defence.

4. Osmun has an engineering background and experience with UAVs gained through a series of employment contracts with the RCMP in Ottawa. In the spring of 2010, Osmun approached the Employer seeking employment because the RCMP had decided to cease funding the program in which Osmun was employed.

5. By letter dated April 28, 2010, the Employer made Osmun an offer of employment. Osmun signed back his acceptance of the offer on May 10, 2010. Prior to

accepting the offer, Osmun had made enquiries of the Employer (by e-mail sent May 3, 2010) with respect to certain policies and procedures:

I was hoping that if you have an electronic copy of the “ING Engineering Policies and Procedures” that I could have it sent to me to review. Since engineers are specifically exempt from most provincial and federal labour regulations concerning hours of work and overtime compensation, I was hoping that the company policies would help clarify these points to me. I’m also looking to see if the company’s hours are flexible, similar to my current employer, to accommodate the occasional appointment, etc I may need to attend. If you could please send me some related documents on these items, or otherwise explain ING Engineering’s policies in this regard, it would be greatly appreciated.

6. The recipient of the above e-mail and Osmun had a subsequent conversation in which the Employer confirmed that Osmun would not be eligible for overtime payment. After that conversation, Osmun signed back the offer, the terms of which were:

28 April 2010

**Mr. Donald Osman**

**SUBJECT: Offer of Full-Time Employment**

Dear Mr. Osman

ING Engineering is pleased to offer you employment as a Junior Engineer in our Fredericton office.

In addition to your principal engineering tasks, you will also be expected to perform other Business Development, Sales, Training, and Technical Support duties as required. The primary duties to be performed and the conditions under which you will be employed will be fully outlined to you by your supervisor, Mr Charles Vidal, Lead Engineer, prior to the commencement of your employment.

As part of your conditions of employment, you will be required to hold a Canadian Government Security Clearance at the **SECRET level (or higher)**, which must be maintained throughout your period of employment. ING Engineering will arrange to hold your security clearance in cooperation with Public Works and Government Services Canada.

You will be required to hold a valid **Canadian passport** for the duration of your employment with ING Engineering at your own expense.

It is expected that all work performed will be undertaken in an ethical manner and that Standards of Conduct and established Policies and Procedures of ING Engineering will be observed. You also agree that

you will adhere to all ING Engineering policies, rules, systems and procedures now existing or to be implemented and such items shall become part of this employment contact. ING Engineering reserves the right to change the provisions of any of these at any time.

**Period of Employment:**

Your employment is expected to start on a **a date to be mutually determined** and shall be for an indeterminate period.

**Pay and Benefits:**

**Base Salary.** The base salary offered for this employment is **\$52,500.00** per year. We are hiring you to be actively employed on a **full-time basis. In addition, ING Engineering is in the practice of providing annual salary increases based upon both successful employee and corporate performance.**

Your pay will be subject to all mandatory statutory deductions such as:

- Federal Income Tax,
- Canada Pension Plan premiums,
- Employment Insurance Premiums, and
- any other deductions that may be required by regulation.

**Paid Annual Vacation:**

Upon completion of 12 months of employment with ING Engineering, you will be entitled to **two weeks** of vacation for every year of active employment completed.

**Location of Work and Provision of Office Equipment:**

Your place of work, while not at our Fredericton office, or travelling in support of ING operational activities, will be at your home office which we expect you to maintain within the Province of New Brunswick. Should you wish to move your home office to another geographical location within Canada we require you to provide at least 90 days notice of this move.

ING Engineering will provide a Mobile/Office Computer on loan for the duration of your employment. This loaned equipment will be returned to ING Engineering upon completion of employment, in reasonable condition subject to normal wear and tear. ING Engineering will also recompense reasonable Internet connection charges from your residence. You will also be provided with a company mobile phone.

Computer equipment is to be used at all times in an ethical manner in keeping with standard industry policies and in accordance with ING Engineering Policies and Procedures All electronic equipment loaned

remains the property of ING Engineering and will only be used in accordance with established Policies and Procedures.

ING Engineering is a distributed organization with employees spread across Canada and the world. We employ a variety of technologies to tie the whole team together. As a normal daily practice while at work, you will establish a Virtual Private Network (VPN) connection to the corporate network and use the corporate tools provided (i.e. iChat, internal wikis and blogs, Daylite, server SharePoints, etc.) to conduct ING Engineering business, communicate with the rest of the team, and keep yourself informed.

**Travel and Living Expenses:**

When required to travel, ING Engineering will make your travel arrangements for you. At the conclusion of your travel, you will be required to submit an expense report for approval and payment using ING Engineering's travel expense report and process. ING Engineering will provide you with a corporate credit card for your use when engaged in ING business activities.

**Insurance and Liability:**

In recognition of the harsh and hazardous conditions which you may encounter in your employment, ING Engineering will purchase, prior to any operational deployment, a Personal Accident Insurance policy which will cover Accident and Sickness, Medical Expenses/Evacuation (CAD \$1,000,000 and/or \$250,000 per item) on your behalf, covering the period during which you deployed in an operational theatre. It is understood and agreed that this will represent ING Engineering's maximum liability to you and your heirs for undertaking deployment to an operational theatre.

**Termination:**

It is always difficult to consider termination just when a new relationship is starting out, however we believe that it is important that you understand and agree to your entitlements upon termination.

If we terminate your employment, unless you are terminated for "cause", ING Engineering will provide you with the *greater of*:

- (a) two weeks of notice (or, at our option, pay in lieu of such notice),
- or
- (b) that period of notice (or, at our option, pay in lieu of such notice) and severance pay, if any, required by the *Canada Labour Code*.

If your employment is terminated for cause, you will not receive any notice (or pay in lieu) or severance pay from the Company. "Cause" for this purpose includes, but is not limited to, such things as: unsatisfactory performance, dishonesty, insubordination and serious

misconduct, as well as anything else which would legally constitute "cause". As with any other organization, the requirement for your services is subject to continued satisfactory performance and availability for work.

I look forward to your joining the ING Engineering team and to a successful and productive working relationship.

Sincerely,

"signature"  
Ian N. Glenn  
Chairman and CEO

I accept this offer and related terms and conditions of employment.

"Donnie Osmun"  
Signature - Mr. Donald Osman

"2010-05-10"  
Date

7. The salary offered to Osmun was approximately \$20,000.00 less than what he had made in his previous employment. In his communications with the Employer while he was deliberating about whether to accept it or not, he had expressed some concerns about the financial viability of what was proposed, but had ultimately decided to accept it. Among his considerations was the fact that he anticipated the cost of living in New Brunswick would be lower and he had extended family in the Fredericton area who could assist with childcare. At the time he accepted the offer Osmun had one young child at home, and his wife gave birth to a second child in late June 2010.

8. Osmun initially offered to commence work for the Employer as soon as two weeks after he had signed back his acceptance of the offer. It was ultimately determined that Osmun would commence employment on July 1, 2010. An e-mail sent to him by the Employer on May 13, 2010 reads:

After discussing this with Ian and looking at our current Engring plan and NB ramp up we have decided the best date for you to start with us is 1 July. Location is not important in the short term - so feel free to move etc at whatever pace works for you and your family.

9. In this proceeding, Osmun claims that his termination was a reprisal for his having raised an overtime claim. While he did make a claim for overtime pay after his employment had been terminated, he did not make such a claim during the currency of his employment, although he did raise issues respecting his hours of work. The exchanges he had with various personnel of the Employer on this topic can be briefly summarized:

- a) E-mail exchanges with Charles Vidal respecting the hours he was expected to work, in which he was advised that they should average out to between 35-40 per week, and that Charles did not mind if he took time off in a week to compensate for having worked more than the average number of hours in a preceding week;
- b) His submission to Charles Vidal on August 31, 2010 of excel spreadsheet data breaking down the hours he had spent on various projects. The e-mail he sent to Vidal attaching the spreadsheet said “the weekly totals are a little bit scary and in excess of the 35-40 hr/week goal you had set for me. In the future I need to try to lower this to provide a better work/life balance for myself and my family and to help my moving to Fredericton process go faster.”;
- c) E-mails that Osmun sent in September 2010 in response to queries about when he would be moving to Fredericton that cited difficulties he was having in getting his Ottawa-area home ready for the market because he had not had time to effect necessary repairs due to the amount of time he spent working and travelling for work. These e-mails are discussed in some further detail below.

10. As indicated above, Osmun was hired to work for the Employer in the Fredericton area in connection with certain contracts that the Employer was pursuing there. At the time of his hire, the Employer did not have any physical premises in Fredericton, but opened an office there sometime in July 2010. Osmun’s contact in that office was Paul Kearney.

11. As of the beginning of September 2010, Osmun had not yet given the Employer any indication of when he might take up his duties in Fredericton. Both Charles Vidal and Paul Kearney had made inquiries about when this might occur, and on September 10, 2010, Osmun wrote a long e-mail to Kearney, which started:

As promised, I will now give you an update on my family’s moving status. Essentially, by mid-October we hope to have our home up for sale. Once it is sold, we will then proceed to build a new home in the Fredericton area, which is expected to take 1-2 months. The question is to [sic] how long it will take our home to sell.

12. The e-mail then went on to refer to a number of reasons why the process was going slowly. Among other things, the reasons included references to: straitened financial circumstances due to his reduced salary and benefits package with the Employer compared to what he had enjoyed with the RCMP; the need for repairs to make his current home saleable which he could not afford to hire a contractor to do and had not enough time to do himself; a broken leg he had suffered before starting with the Employer; the time demands of an infant; and time away from home on business trips. Insofar as the e-mail addressed his hours of work, it stated:

-Significantly longer hours of work than expected - instead of the 35-40 hours of work that I am expected to perform each week on average as a full-time ING employee, as of August 29th, I had worked an average of 53 hours per week, with a peak of 73 hours in one week. These hours, although considered temporary, to meet ING's current short-term requirements, have significantly slowed my moving efforts. I have been told that I am not entitled to any further compensation for additional hours worked and during quieter times I'm to try to bring this average down. However, my current workload in fact has the opposite effect on my family's finances. As we cannot reasonably afford to hire contractors to perform the work required on our house (last estimate received 2 weeks ago for \$6k), I am forced to do whatever work I can on my own. My time in this respect is worth a considerable sum, as to be recovered in the selling price of our home. These additional hours for which no additional compensation is received are therefore putting my family at a financial loss if I have to pay for contractors for work we are capable of performing ourselves.

-Upon hearing the the [sic] firefighting contract with the CyberEye was being postponed for a year, and that the Maveric support role out of Fredericton would be minimal (although this has since changed, now appears urgent), and in lieu of the above difficulties in getting the required work done on our home, I started asking Charles and yourself about possibly postponing such a move until spring, 2011. This received a response in the negative, and thus our efforts towards moving are continuing at as great a rate as possible. There was then the impression received that I was expected to relocate by October, although I was told by Mark during the N.B. Grand Opening visit to take our time. At that time, October was my best estimate, however the extent of travel since was not expected.

13. Kearney sent Osmun a response by e-mail on September 17, 2010:

Don, I have spoken with Ian. You are to be in NB 1 November to assume the duties of DPM Maveric. If you need to discuss this, please do so with Ian directly.

14. In response to the above direction, Osmun wrote to Glenn on September 22, 2010 forwarding his earlier e-mail to Kearney:

With reference to the email I received from Paul last week with respect to my move, I am forwarding you (below) the moving update I previously sent to him for review. The November 1st expectation that you have for me to be relocated to New Brunswick is not realistic for the reasons outlined in that previous update. I do not know if Paul sent you that update in its entirety or not. We remain on track with the schedule outlined in that update.

15. In the week following the above exchange, various representatives of the Employer attended at the Bruce nuclear power facility to demonstrate the operation of UAVs. Osmun and Vidal were in attendance from the beginning. Glenn arrived later in the week.

16. Osmun and Glenn did not have any discussion about Osmun's reporting to Fredericton. Vidal said Osmun had indicated to him that he thought Glenn was going to fire him. Osmun equivocated about this, but ultimately conceded that he had told Vidal he feared he might be terminated if he could not relocate for November 1, 2010, and that Glenn's non-response to his e-mail and the 6-week ultimatum on reporting to Fredericton were the source of his concern. As the Bruce demonstration wound up and people were heading out, Glenn indicated to Osmun something to the effect of "we will speak next week".

17. Glenn testified that he had decided in those last couple of days at the Bruce demonstration that he should terminate Osmun's employment. He also testified that he communicated his decision to Vidal at the time. Vidal's testimony, however, failed to address that issue. Glenn did write to his office and ask to have a copy of Osmun's employment contract forwarded to him, and he also wrote to his solicitor by e-mail on Monday morning. Here is the text of that e-mail:

G'Day Ed,

I hope you had a good summer. Lots going on at ING as always.

Would you please have a look at the attached signed letter of offer for Donald Osmun. I opened an office in Fredericton, NB and as part of that plan hired Donald when he was laid off from the RCMP. Donald currently lives east of Orleans and was hired specifically to staff our new office. The issue now is that he is very resistant to moving house. He has a 'farm' that he doesn't seem able to sell and wants to build a custom home in NB. Lots of excuses. He also has a two year old and a two month old.

The operational tempo of our business has also left him frazzled compared to life as a temp civilian in the RCMP. His performance to date has not been stellar. He hasn't integrated well with the rest of the team.

My position is that I hired him to do a job that needs doing in Fredericton and if he is unwilling to or cannot get himself sorted out and start reporting for work at the office on 1 November 2010, then I need to do something else. There are many who would like his job.

What are my options? Thanks!

cheers, ian

18. Later that same morning, Osmun sent an e-mail to Glenn, communicating his intention to take a period of parental leave:

Good morning Gents,

As per the attached letter, I am going on parental leave from October 11th, 2010 to June 13th, 2011. This is to be able to spend additional time with my family, which I have not been able to spend sufficient time with since starting with ING. Upon my return to work, I will be reporting to our Fredericton office.

Bluegenesis will not let me send attachments today, so I am using my personal account for that reason.

Cheers,

19. Osmun's testimony with respect to when he had determined to take parental leave was inconsistent. At one point, he said he and his wife had discussed it during the last week of his employment, when he was at the Bruce Power demonstration. At another point, he said they had reached this determination over the weekend following that exercise. I have considerable doubts about the *bona fides* of Osmun's intentions respecting the parental leave request. Having regard to his constant references to the severe financial constraints in which he and his family were operating, including the statement in one of his e-mails that they could not afford to stay in their home on his salary with the Employer, it seems an unlikely decision to make, unless he thought he was inevitably facing a termination of his employment and wanted to either stave that off or maximize the payout associated with it. In this regard, I note that Osmun acknowledged awareness of his unilateral right on giving appropriate notice to return to work early from such leave. Regardless of why Osmun decided to request parental leave, however, the fact is that he did request it, and he did so before the Employer terminated his employment.

20. Glenn's immediate response to Osmun's e-mail was sent several hours later on September 27, 2010:

**Re: Parental Leave**

Dear Mr. Osmun,

Thank you for your letter of today's date.

We have reviewed the Canada Labour code (CLC), which governs your employment contract, and have determined that you are not entitled to a leave of absence as requested. Section 206.1 of the CLC which is attached for your review entitles leave to employees who have completed six consecutive months of continuous employment with an employer. Your employment with ING ENGINEERING INC., commenced on July 1, 2010 and accordingly you do not meet

the eligibility requirements. For that reason, your request for leave is not granted.

We look forward to you reporting to the Fredericton office on November 1, 2010, as agreed to with Mr. Paul Kearney on September 17th, 2010.

I trust the above to be satisfactory. Should you have any questions or concerns please do not hesitate to contact me.

Yours truly,

“signature”  
Ian N. Glenn  
Chairman and CEO

21. Osmun replied on the following day, September 28, 2010, communicating his view that his employment was regulated by the Act:

I have just checked with both the Ontario Ministry of Labour - Employment Standards Act, as well as the Federal Labour Program. They have both advised me that I do not fall under the Canada Labour Code, nor does ING Engineering. They have both told me that I instead fall under the Ontario Labour Code. Also, I meet the requirements for job protected parental leave under the Ontario Labour Code. I am therefore proceeding on my parental leave as stated in my letter to you yesterday.

22. The next day Osmun was unable to access the Employer's network. The day after that, September 30, 2010, he received a termination letter:

Dear Mr. Osmun:

As you well know from the interview process and from your letter of hire dated April 28, 2010, the purpose of your position was to become a permanent engineer attending to critical tasks at our Fredericton, New Brunswick office.

Toward that end, you were given considerable training and orientation which was a costly investment for the company. We also afforded you considerable latitude to delay the relocation. You can appreciate our profound disappointment upon to [sic] receiving your email message of September 10, 2010 to the effect that you would not be moving within the anticipated timelines. You further informed your direct superior, Charles Vidal, that you had no intention moving to Fredericton by 1 November 2010. You added that you expected that your employment would be terminated as a result.

Your statements and actions constitute a repudiation of the contract of employment. It is apparent that you have betrayed the confidence

that was placed in you which is an essential ingredient of any continued employment relationship.

We are therefore confirming that your employment [sic] ING Engineering Inc. will cease immediately for just cause.

Your accrued salary and vacation pay to date, if any, will follow under separate cover.

Yours very truly,

**ING Engineering Inc.**

“signature”  
Ian N. Glenn  
Chairman and CEO

23. Glenn solicited reports on Osmun’s performance from various other employees of the Employer, including Vidal. All were provided to Glenn at some point after he had already sent the termination letter to Osmun. None were particularly positive, but on the view I take of this case, I do not need to comment further on them.

24. Osmun alleges in this proceeding that he was terminated as a reprisal for having indicated an intention to take a parental leave.

25. Osmun found other work in Ottawa commencing March 28, 2011 until August 5, 2011. He was then unemployed until October 24, 2011.

**Analysis**

26. Section 74 of the Act prohibits reprisals. It provides:

**74. (1)** No employer or person acting on behalf of an employer shall intimidate, dismiss or otherwise penalize an employee or threaten to do so,

- (a) because the employee,
  - (i) asks the employer to comply with this Act and the regulations,
  - (ii) makes inquiries about his or her rights under this Act,
  - (iii) files a complaint with the Ministry under this Act,
  - (iv) exercises or attempts to exercise a right under this Act,

- (v) gives information to an employment standards officer,
  - (vi) testifies or is required to testify or otherwise participates or is going to participate in a proceeding under this Act,
  - (vii) participates in proceedings respecting a by-law or proposed by-law under section 4 of the *Retail Business Holidays Act*,
  - (viii) is or will become eligible to take a leave, intends to take a leave or takes a leave under Part XIV; or
- (b) because the employer is or may be required, because of a court order or garnishment, to pay to a third party an amount owing by the employer to the employee.
- (2) Subject to subsection 122(4), in any proceeding under this Act, the burden of proof that an employer did not contravene a provision set out in this section lies upon the employer.

27. Glenn hired Osmun, and he made the decision to fire him.

28. At no time during the currency of his employment did Osmun ever claim that the Act entitled him to overtime pay, or that the Act prohibited his working more than 48 hours per week without approval of the Director. Nevertheless, Osmun maintains that I should characterize some of his communications with the Employer as amounting inferentially to a claim that the overtime and/or hours of work provisions of the Act were not being complied with. Those communications have been referred to above. They do not support an inference that Osmun made a claim under the Act respecting either his hours of work or any entitlement to overtime pay.

29. Osmun did make inquiries about the Employer's expectation of the number of hours he would be working, and he did maintain that the hours he was working were detrimentally affecting his ability to expedite the move to Fredericton. As well, Osmun provided Vidal on one occasion, after two months of employment, with a breakdown of the hours he had logged on a project basis. Against these communications, however, there is Osmun's express representation to the Employer of his belief that he was not entitled to overtime pay. Furthermore, none of the communications were made to Glenn. The only communication from Osmun that Glenn saw was the lengthy one in which Osmun mentioned that one of the factors delaying his relocation to Fredericton was his inability to spend more of his own time fixing up his home for sale, but various reasons were offered for that (work hours, travel commitments, a new baby).

30. In short, there is no basis for concluding that Osmun's termination was a reprisal for his seeking to enforce the provisions of the Act relating to hours or work and/or overtime pay.

31. This leaves the question of whether Osmun's employment was terminated because he communicated his intention to take a parental leave.

32. By mid-September there is no doubt that the Employer was losing patience with Osmun's apparent reluctance to report to the work location he had agreed to by signing the offer of employment. Osmun had been issued a clear direction with a reporting deadline, but sought to discuss the matter further. In his testimony before me, Osmun sought to draw a distinction between indicating an inability to move his household to Fredericton for November 1st (which indication he clearly gave) and indicating that he would not himself report to work in Fredericton on November 1st. Osmun's contemporary written communications to the Employer do not clearly make that distinction, and it is clear from the Employer's written communications to him that they did not appreciate any such distinction. Glenn's e-mail to his counsel on September 27, 2010 clearly raises the concern that Osmun is saying he will not report to work in Fredericton on November 1st.

33. I do not accept as accurate Glenn's testimony that he had already decided to terminate Osmun's employment prior to September 27, 2010, and that he had communicated his decision to Charles Vidal. The latter, as noted, did not address this issue in his testimony. I do think terminating Osmun was an option Glenn was considering, but the documentary evidence supports a finding that the decision had not yet been made: (1) he asked counsel what his options were; and (2) his initial denial of the parental leave request reiterated the direction that Osmun report to Fredericton on November 1, 2010. Glenn did not characterize Osmun's communications to him prior to September 28, 2010 as an anticipatory breach of the employment contract's obligation to work in Fredericton. Osmun's last word to Glenn with respect to reporting to Fredericton was the September 22, 2010 e-mail. Between the time he sent that and the delivery of the termination letter to him on September 30, 2010, the only thing that changed was Osmun's request for parental leave. In these circumstances I am unable to find that that request was not a factor in the Employer's decision to terminate his employment. But for that request having been made, I think it likely the Employer would have either asked for a clear commitment from Osmun to report to Fredericton on November 1, 2010, or would have waited until then and treated his contract as at an end if he did not report.

34. Had Osmun not been terminated September 30, 2010, he would have continued to work and earn his full salary (and vacation pay) with the Employer for another two weeks, until his intended leave commenced on October 11, 2010. He is therefore owed two weeks wages plus vacation pay in respect of the period prior to the commencement of the leave.

35. Osmun would have earned no wages during his intended period of parental leave, from October 11, 2010 until June 13, 2011. He has no wage loss for that period, and at the time the intended leave ended he was employed until August 3, 2011 in a temporary position. On October 24, 2011, he secured full time employment. Osmun's counsel urged me to award him 6 months salary as compensation for the breach of section 74. Counsel for the Employer on the other hand submitted that, at best, Osmun is

entitled to his wage loss for the period following the end of his intended leave until he found permanent employment. I agree. The measure of that loss is what Osmun would have earned with the Employer between June 13, 2011 and October 23, 2011 less the amount he actually earned during that period, plus vacation pay thereon. Counsel for the Employer reserved the right to request further documentation to substantiate the quantum of such wage loss.

36. Osmun sought to claim job search expenses as well as expenses related to various repairs to his home, which he maintained were solely incurred for the purposes of selling it and relocating to Fredericton. The first category of expenses was not sufficiently particularized, and his counsel did not urge it upon me. The second category of expenses related to things such as fixing wiring and plastering and hanging curtains etc, all of which are investments Osmun and his family will enjoy while they are in the house, or will recoup should they eventually sell it. They are not in the category of “costs thrown away”, although counsel urged me to view them as such.

37. Osmun also sought to be awarded \$1000.00 for mental stress associated with the reprisal. Generally speaking where the Board is concerned with a termination of employment that occurs as a reprisal for a parental or pregnancy leave request, it is prepared without further proof to award at least a nominal amount for mental stress, recognizing that the loss of employment detracts significantly from what should otherwise be a joyful time in a family’s life caring for a new child. In this case, even though the amount sought is nominal, I am of the view it is not appropriate to award it, because of my conclusion that Osmun had no *bona fide* intention to take a leave.

### **Disposition**

38. I find that the Employer’s termination of Osmun constituted a breach of section 74 of the Act. I leave it to counsel to calculate the amount of compensation owing in accordance with my findings above, and if they are unable to agree on the amount, to make written submissions to me within 60 days of the date of this decision.

“Mary Anne McKellar”  
\_\_\_\_\_  
for the Board