

An application for suspension

- by -

Frontier-Kemper Constructors ULC  
("FKC")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

Pursuant to section 113 of the  
*Employment Standards Act* R.S.B.C. 1996, C. 113 (as amended)

**TRIBUNAL MEMBER:** Carol L. Roberts

**FILE No.:** 2012A/56

**DATE OF DECISION:** June 28, 2012



## ANALYSIS

9. Section 113 of the *Act* provides as follows:
- (1) A person who appeals a determination may request the Tribunal to suspend the effect of the determination.
  - (2) The tribunal may suspend the determination for the period and subject to the conditions it thinks appropriate, but only if the person who requests the suspension deposits with the director either
    - (a) the total amount, if any, required to be paid under the determination or,
    - (b) a smaller amount that the tribunal considers adequate in the circumstances of the appeal.
10. The Tribunal will not suspend the effect of a Determination in circumstances where the grounds of appeal are frivolous or have no apparent merit; however it may suspend where the appeal may have some merit. (*Tricom Services Inc.*, BC EST # D420/97; *TNL Paving Ltd.*, BC EST # D397/99).
11. It is not the function of the Tribunal Member to conduct an extensive analysis of the merits of an appeal on a suspension application. Nevertheless, I am persuaded that the appeal has some merit. Without expressing an opinion on those merits, the appeal raises issues of law and the delegate's assessment of the facts in light of the applicable law, issues which will require serious consideration by the Tribunal. The appeal also raises an issue of natural justice which the Tribunal will be required to address.
12. The full amount of the Determination has been deposited with the Director, satisfying the requirements of section 113(2)(a).
13. As Mr. Evinger made no submissions in response to FKC's application, I infer that the only prejudice he may suffer if FKC is unsuccessful on appeal would be a short delay in receiving funds determined owing. On the other hand, I accept that if FKC is successful on appeal, it may have difficulty recovering funds from Mr. Evinger if those are paid out, given that Mr. Evinger no longer resides in British Columbia.
14. Having received no submissions opposing the application and after a consideration of all of the other factors, I find no reason not to grant the application.

## ORDER

15. Pursuant to section 113 of the *Act*, I allow the application to suspend the effect of the Determination pending the outcome of the appeal.

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**Carol L. Roberts**  
**Member**  
**Employment Standards Tribunal**