

An Application for Reconsideration

- by -

Nacel Properties Ltd.  
("Nacel")

- of a Decision issued by -

The Employment Standards Tribunal  
(the "Tribunal")

pursuant to Section 116 of the  
*Employment Standards Act* R.S.B.C. 1996, C.113

**ADJUDICATOR:** David B. Stevenson

**FILE No.:** 2003/33

**DATE OF DECISION:** July 23, 2003

## DECISION

### OVERVIEW

Nacel Properties Ltd. (“Nacel”) has requested a “stay of proceedings” pending the results of a reconsideration of a decision of the Tribunal, BC EST #D121/03, dated April 8, 2003.

The Tribunal has no inherent authority to order a “stay of proceedings”, but has a discretion to suspend the effect of a Determination under Section 113 of the *Act*, which states:

113. (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 full 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.*

The Tribunal has considered the “stay” request as though it were an application under Section 113.

There are two pre-conditions which relate to whether the Tribunal would exercise its discretion in favour of Nacel. The first is that an amount be deposited with the Director; the second is that it be the full amount, unless some lesser amount is considered adequate by the Tribunal.

The request for a suspension of the Determination is denied for two reasons. First, the application for reconsideration has been denied and the Tribunal’s April 8, 2003 decision confirmed. The request is moot. Second, and in any event, the preconditions identified in Section 113 were not met by Nacel - no amount was ever deposited with the Director. I do not challenge the contention by counsel for Nacel that holding the full amount in a lawyer’s trust account ought to provide the Director with a sufficient measure of security, but the discretion of the Tribunal is limited by the words of the *Act*.

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**David B. Stevenson**  
**Adjudicator**  
**Employment Standards Tribunal**