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BY E-MAIL: policy@worksafebc.com

Ms. Pamela Austin, Policy Analyst
Policy, Regulation and Research Division
Workers' Compensation Board
P.O. Box 5350, Station Terminal
Vancouver, B.C. V6B 5L5

Dear Ms. Austin:

Re: *Feedback on Compensation of Principals – Shareholder Dividends Discussion Paper*

The BC Building Trades Council appreciates the opportunity to provide feedback on the policy discussion respecting the compensation of principals and shareholder dividends.

Our Council represents approximately 35,000 unionized construction workers throughout British Columbia. Our members range from ironworkers and electricians to cement masons, insulators, painters, plumbers, pipefitters, sheet metal workers, operating engineers, and general labourers. When the BC Building Trades says *We Build BC* – we mean it - literally.

The June 2014 release of the Board's discussion paper entitled *Compensation Principals–Shareholder Dividends* follows on the heels of the Board's December 2012 discussion paper entitled *Treatment of Principals*. This latter discussion paper dealt with three issues: (1) the treatment of principals as "workers"; (2) assessing shareholder dividends; and (3) coverage of active officers of a society, cooperative, trade union or similar entity. On the subject of assessing shareholder dividends, the BC Federation of Labour, the province's premier labour organization that represents 400,000 workers in every sector of our political economy, forcibly opposed the proposal to exclude shareholder dividends from assessable payroll. They opposed this option for good reason and the BC Building Trades supports their logic in so doing. As you may recall, they stated in their submission that:

...it is our position that NOT assessing any dividends is unfair and arbitrary. As stated in the discussion paper, it is commonly known that many principals receive dividends as part of their remuneration for the labour portion of their earnings.

It is fair and appropriate for the employer to at least pay assessments on the portion of dividends that reflect the remuneration of labour.

As stated in the paper, it would also create an incentive for firms to declare more principal's earnings as dividends for the sole purpose of lowering their assessable payroll.

In summary, all of the above would result in inaccurate and inadequate funding of the workers' compensation system – to the detriment of other firms that would ultimately be subsidizing these principals through their assessments, as well as to all stakeholders that benefit from a properly funded system.

Despite this opposition, the Board of Directors decided to amend their assessment policy to provide that dividends paid to active principals no longer be included in assessable payroll effective January 1, 2015. As noted in the current discussion paper, this option was chosen because "the majority of stakeholders supported removing dividends paid to active principals from assessable payroll". The stakeholders provided the following rationale for holding this position:

- *Dividends are often a return on investment and not remuneration for work.*
- *Wages represent actual work, whereas dividends represent a reward for growing the company and/or sacrifices and risks of owning a business.*
- *Including dividends in assessable payroll for active principals in circumstances where dividends are paid pro rata to all shareholders of a class of shares, irrespective of participation level, would be discriminatory and inequitable.*
- *Dividends are fundamentally different than income and are treated as such by the Canada Revenue Agency ("CRA").*
- *The decision of whether or not to pay a dividend is based on a number of business and tax implications, and WorkSafeBC should not intrude into this business process.*
- *The CRA recognizes a difference between income earned from labour, and dividends. Excluding shareholder dividends would be more in line with CRA requirements under which dividends are not included in determining pensionable or Employment Insurance earnings.*

This, then, was the rationale expressed for supporting the removal of dividends paid to principals from assessable payroll by "the majority of stakeholders". But who is this "majority" and who do they represent? Our research reveals that during the 2009 consultations 12

parties supported excluding dividends from assessable payroll: One Source Productions Ltd., the Construction Labour Relations Association of BC, an individual employer, Council of Construction Associations, BC Construction Association, BC Floor Covering Association, New Car Dealers Association of BC, and Southern Interior Construction Association. During the second round of consultations in 2013, 10 parties supported excluding dividends from assessable payroll. The parties consisted of the Council of Construction Associations, Cedar Ridge Tree Care, Vancouver Regional Construction Association, Employers' Forum, The Churchill Corporation, BC Construction Association, BC Dental Association, Employers' Advisors Office, an individual employer, and the Canadian Association of Petroleum Producers. Clearly, the Board's "majority" consist of representatives of business who, of course, represent private interests.

Given the *raison d'être* of these stakeholders, it is not surprising that their reasons reflect a *laissez-faire* approach which seeks to minimize government "intrusions" into the business process, relegate labour to the sidelines, and maximize profits for private enterprise. What is surprising and highly unfortunate, however, is the Board's acceptance of these bogus claims and their result, namely, the removal of dividends paid to principals from assessable payrolls. Such a change does not respect the historic compromise and undermines the Board's mandate to ensure sound financial management for a viable workers' compensation system.

Now, given the imminent changes to assessment policy, the Board has embarked upon the current review of *compensation policy* to determine whether to modify the policy to exclude the payment of dividends to principals in the calculation of their average earnings for compensation purposes. No doubt there will be a "push" from the business majority to exclude principals' dividends in the calculation of their average earnings for compensation purposes. Holding firm to their *laissez-faire* logic, the business majority will, presumably, regurgitate their same arguments, that is, that dividends are a return on investment, not remuneration for work; that dividends, in contrast to work, represent a reward for growing the company and risks of private ownership; that in unique pro rata circumstances the system would be discriminatory, or even worse, inequitable; that the Canada Revenue Agency treats dividends different from income and so too should the Board; and that the payment of dividends is based on business and tax matters where the state should fear to tread, etc., etc., etc.

But what are the negative implications for workers and society at large if we exclude shareholder dividends from the calculation of a principal's average earnings? This is the question that should have been asked in the context of shareholder dividends and assessment policy, and it is the question that needs to be asked in the context of shareholder dividends and compensation policy. *This* is the heart of the matter. This is an important question for the 400,000 BC Fed members and our 35,000 Building Trades members who rely upon the Board to provide workplace injury prevention, rehabilitation, vocational training, fair compensation, and disability awards for permanent impairments. But it's also critically important to the Board of Directors who must ensure their policy changes do not undermine the foundation of the workers' compensation system – for workers and society at large.

On page 8 of the Board's discussion paper it lists the "implications" of excluding shareholder dividends from the calculation of a principal's average earnings. Unfortunately, in addition to being incomplete, the listed implications fail to explicate the implications with reference to workers, society at large or the financial stability of the system.

Take, for example, the first noted implication: "Assessment and compensation policy would be aligned." This sounds positive but what does it actually mean? If one thinks (as the BC Building Trades does) that the removal of dividends paid to active principals for assessable payroll was detrimental to workers, society at large, and the economic viability of the system, then, logically, there is nothing to be gained by aligning compensation policy with assessment policy. Are two wrongs better than one?

Let us consider several of the other listed implications that raise concerns.

Principals who receive a portion of their remuneration as dividends would receive reduced payments for temporary and permanent disability than under current policy.

Principals remunerated solely with dividends may receive no compensation for temporary partial, temporary total and permanent partial disabilities. However, these workers would still be entitled to health care benefits and statutory minimum benefits without paying assessment premiums.

An implication of this approach is that principals could be treated unequally with respect to compensation benefits and the structure of their earnings. A principals who receives all of his or her remuneration as wages would have the full amount included in determining their compensation, up to the maximum wage rate. Conversely, a principal with the same remuneration paid as dividends would be considered to have no earnings.

Clearly, if the Board removes dividends from the calculation of compensation for principals, it will add yet another layer of confusion onto the illogical disconnect of dividends from the assessment payroll which becomes effective January 1, 2015. Not only will the existing linkage between average earnings and assessment be frustrated, another "fracture" will be introduced by delinking earnings from compensation. As noted earlier, two wrongs are not better than one. And while it is exceedingly difficult to coherently evaluate all the implications of changes to compensation policy in isolation from the changes already approved in assessment policy, we cannot support removing dividends from the assessment of compensation.

Furthermore, if a principal is injured on the job, particularly if he is seriously injured, he is likely to find that his compensation from the Board is insufficient. As a result, he may be compelled to seek out supplementary social and health benefits wherever he can find them. And where will he find them? Certainly not in the private context because his limited cash flow will not

avail him of such services. So he will turn, of course, to the public system; that is to say, he will burden the public social and/or health system that, strictly speaking, should not be taxed in the context of his workplace injury.

Therefore, the BC Building Trades strongly oppose the exclusion of principals' shareholder dividends from the calculation of their average earnings to determine temporary and permanent disability benefits. The current compensation policy that provides that dividends paid to principals of limited companies as remuneration for labour may be used to calculate a principal's average earnings when calculating disability benefits should be retained. Equally importantly, the decision by the Board to amend assessment policy to provide that dividends paid to active principals be excluded from their assessable payroll effective January 1, 2015, should be reversed.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Merrill James O'Donnell', with a long horizontal flourish extending to the right.

Merrill James O'Donnell, M.A., LL. B.
Workers' Advocate

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