2026 CanLII 101688 (BC WCAT)

DECISION OF THE WORKERS' COMPENSATION APPEAL TRIBUNAL

WCAT Decision Number: A2501117
WCAT Decision Date: August 13, 2026
Panel: Hilary Thomson

Introduction

[1] This appeal is about whether the appellant, a closely-held family British Columbia corporation, is responsible for paying assessments to WorkSafeBC. In a decision dated November 6, 2024, WorkSafeBC explained that, because of information sharing between WorkSafeBC and the Canada Revenue Agency, it had learned that the appellant had paid two directors living in British Columbia. Therefore, it identified the appellant as an employer that was not registered with WorkSafeBC.

[2] In that decision, WorkSafeBC decided that:

- The appellant needed to be registered, effective January 1, 2021.
- The appellant should be classified in CU 762003 – Administration or Management of Operation Conducted Outside BC.
- Funds paid to the two principals were assessable payroll, and therefore the employer owed an assessment of approximately $812.40 for the calendar years 2021, 2022, and 2023. The assessment was based on estimated payroll at the maximum wage rate since information from the Canada Revenue Agency showed multiple T4s had been issued, and the appellant did not provide the information requested by WorkSafeBC.
- An additional amount was payable as an under-remitting penalty, so the total owed to WorkSafeBC was $877.39.

[3] The appellant asked for a review to the Review Division. The Review Division confirmed the decision in *Review Reference #R0332343*, issued on April 16, 2025.

[4] WCAT held a hearing in May 2026. The appellant was represented by one of its directors. There were some initial concerns about the disclosure package, but those concerns were addressed before the hearing proceeded. During the hearing, I confirmed the documents before me and provided the appellant with an opportunity to submit additional evidence after the hearing if necessary. The appellant did not provide any further documents.

[5] The appellant's main position at the hearing was that it was not required to pay assessments to WorkSafeBC or penalties because neither the director nor his wife (the other director) were workers within the meaning of the *Workers Compensation Act* (Act).

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150, 4600 Jacombs Road, Richmond, B.C. V6V 3B1
Tel: (604) 664-7800 | 1-800-663-2782
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Preliminary Matters

[6] It is my practice, at the start of a hearing, to summarize my preliminary understanding of the issues that are before me. The appellant disagreed with my characterization of the issues. However, after reviewing the decisions set out by WorkSafeBC and the Review Division, I am satisfied that those matters were decided and are properly before me.

[7] The appellant's submissions focused on whether it was required to register with WorkSafeBC and pay assessments on amounts paid to the directors. I have therefore addressed that issue and also considered whether it was appropriate to issue a penalty for under-remittance.

[8] I have also addressed the effective date of registration and the penalty because those matters were raised in the Review Division submissions and also, indirectly, at the hearing.

[9] No submissions were made regarding the classification unit, and no evidence was provided to show that WorkSafeBC's payroll estimate was incorrect. Therefore, I have not addressed those issues further.

Issue(s)

[10] The issues in this appeal are:

- Is the appellant responsible for registering in British Columbia and paying assessments on salaries paid to the appellant's directors?
- What is the effective date of the registration?
- Was the penalty amount appropriate?

Summary of Decision

[11] The appellant is an employer under the Act. It is incorporated in British Columbia, and the evidence shows the two British Columbia directors were actively involved in its business operations. Under the binding policies in the *Assessment Manual*, the directors are workers, and they are required to register in British Columbia. The appellant argues that the directors' involvement was limited to strategic oversight. However, neither the Act nor policy excludes individuals from being considered workers because their duties are strategic rather than operational.

[12] As a result, the remuneration paid to the directors was assessable payroll and the appellant was required to pay assessments. I also find it was consistent with the policy to backdate the effective date of registration to January 1, 2021. I have not reduced the penalty amount.

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Reasons and Decision

Background

[13] The appellant is incorporated in British Columbia. It is a franchisee and operates a motel in another province.

[14] According to evidence at the hearing, the appellant has other business interests as well, such as a restaurant at the hotel, and some land development projects. The appellant is also related to other corporations but they are not the subject of this appeal.

[15] According to the articles of incorporation for the appellant, the two directors are responsible for strategic decision-making but are not involved in the daily operations of the hospitality properties. In other documents, they are described as being responsible for governance, whereas the general manager makes operational decisions. There is also another corporate document that shows the directors are responsible for strategic decisions such as business planning, major financial decisions, regulatory compliance, and hiring and evaluating the manager.

<u>Is the appellant responsible for registering in British Columbia and paying assessments on salaries paid to the appellant's directors?</u>

[16] As explained in policy item AP1-1-1 (*Coverage Under the Act - Determining Workplace Status*), every employer in British Columbia must register with WorkSafeBC, report its payroll, and pay assessments on the payroll.

[17] An entity is an employer under the Act if it has a worker in their service under a hiring or apprenticeship agreement. The agreement may be written or verbal and may be express or implied. The worker must be engaged in work in or about an industry.

[18] A worker is someone working under a contract of service or apprenticeship. The agreement may be written or verbal and may be express or implied. The definition contained in the Act is not limited to people performing manual labour.

[19] The policies provide additional guidance on interpreting these definitions. The policies are binding, and I do not have discretion to depart from them except in very limited circumstances where they are not capable of being supported by the Act or regulations.

Does the appellant need to register?

[20] Policy item AP1-1-1 explains that a corporation is considered an employer if it:

- Is registered in British Columbia,
- has workers in British Columbia, and
- is active in an industry in British Columbia.

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[21] In this case the corporation was registered in British Columbia.

[22] It also had workers in British Columbia, namely the two directors who are resident in British Columbia.

[23] Policy item AP1-1-1 explains that principals (including directors) who are active in the business are generally considered workers under the Act. Spouses and family members who report earnings are also considered active. The evidence shows that both directors were actively involved in the business. The director who appeared at the hearing had significant responsibility for overseeing the motel's operations. The management contract shows that he conducted performance reviews, received monthly reports, and had authority to direct the manager to perform additional duties, such as relief housekeeping. I also heard evidence that his spouse, the vice-president, received invoices. That suggests she was involved in the financial administration of the business. I therefore find that both directors were actively engaged in the motel business, and that at least some of those activities were carried out from British Columbia. The appellant had workers in British Columbia.

[24] In making that finding, I acknowledge that policy item AP1-1-1 creates a narrow exception to the general rule that active principals are workers. A sole active principal injured during a period when the corporation is not registered with WorkSafeBC is not considered a worker and their claim will be denied. The same applies to a principal who is responsible for the failure to register, even if they are not the sole principal. In those circumstances, the principal's pre-injury earnings are not assessable. However, I do not find this exception means a principal of an unregistered employer is not a worker in circumstances where no injury has occurred. Rather, it is a limited exception to the generally no-fault compensation system that relieves a principal from assessments when they are not entitled to coverage benefits because of their failure to register. It does not excuse an unregistered employer from paying assessment on directors' remuneration in other circumstances.

[25] Since I have found the appellant had workers in British Columbia, I have also considered whether the appellant was active in an industry in British Columbia. I acknowledge that the motel business is actually in Saskatchewan. However, much of the work was performed by the directors from British Columbia. I also heard evidence about certain ventures in British Columbia.

[26] I further note the appellant is not exempt, even though it may also be registered in another province, and some of the work may be done in another province. There are exemptions, set out in policy item AP1-4-1 (Exemptions from Coverage) for employers with no places of business in the province who do not employ a British Columbia resident and who carry on business temporarily in British Columbia. However, in this case the corporation is headquartered in British Columbia. The directors live and are paid here, such that this exemption is not applicable to them.

[27] The appellant is also not exempt under any interjurisdictional agreement. There are special considerations in place when workers are employed in more than one province. WorkSafeBC and its counterparts have entered into interjurisdictional agreements that avoid double payment

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of assessments on the same work. However, under Saskatchewan's *Workers' Compensation Act, 2013, SS 2013, c W-17.11* coverage for directors is optional, not automatic. Optional coverage does not form part of the interjurisdictional agreements. For that reason, policy AP5-245-3 (Payroll – Out-Of-Province Employers and Operations) says that employers must pay assessments on the full amount of earnings paid to principals who live in British Columbia and also work in a province where workers' compensation coverage for principals is optional.

[28] I also do not find that the appellant falls within any of the exemptions set out in policy item AP1-4-1 (Exemptions from Coverage). Holding companies can be considered exempt, but there are certain requirements for that exemption. For example, to be considered a holding company, the company must not carry on any activities except for managing personal financial investments, including non-revenue producing land, buildings or equipment. In this case, the appellant operates a motel business, which is a revenue-producing business, and therefore would not qualify as a personal financial investment.

Is the appellant excused from paying assessments on amounts paid to the directors because their role was strategic?

[29] As noted, I found above that the appellant is an employer with workers in British Columbia, who was required to register. The appellant also has a corresponding obligation, under section 245 of the Act, to report its payroll and pay assessments. That obligation includes an obligation to pay assessments on the earnings of principals, as set out in policy item AP5-245-2 (Assessable Payroll). That policy says that the total remuneration paid to each active principal, including a shareholder, director or officer of a corporation, is assessable. WorkSafeBC is authorized, under Part 5 of the Act, to levy and collect assessments for the purpose of maintaining the accident fund.

[30] The appellant's main argument, as noted above, was that because the directors played a strategic role, they should not be considered workers and thus their payroll was not assessable. The appellant asked me to review documents submitted to WorkSafeBC and the Review Division. I have considered those submissions.

[31] The fact that the directors' role is more strategic is clearly an important aspect of the corporation's structure. It is reflected in its bylaws, amendments to its articles, and corporate governance documents. The appellant notes that there is a manager on site at the motel. The appellant provided the manager's contract, which shows that the manager is responsible for much of the work on site. The organizational charts do show they report to the directors.

[32] However, the Act and policy do not exempt directors who perform strategic functions from being classified as workers.

[33] I reviewed the cases referenced in the submission on file, including submissions made to the Review Division. They do not support the position that worker status depends on active operational involvement. One of the cited decisions (*Parker v. WorkSafeBC*) does not appear

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to exist. The other decision (*Bodman v. Workers' Compensation Appeal Tribunal*, 2016 BCSC 2436) did not concern workplace status. Rather, it concerned procedural fairness in relation to the timing of a vice chair's decision and therefore does not assist the appellant.

[34] As noted above, directors are explicitly considered workers under the policy if they are active in the business. Further, the definition of worker is not limited to a specific category of work. It includes persons performing manual labour "or otherwise." This language makes it clear that a person need not perform physical work at the worksite to be considered a worker. Strategic, supervisory, and administrative functions may also constitute work under the Act.

Summary of decision on status

[35] In summary, the appellant was a British Columbia corporation engaged in an industry in British Columbia, and its British Columbia principals were actively involved in the business. Therefore, under the law and policy, the appellant was an employer, and the two directors were workers.

[36] The appellant was required to register in British Columbia and the two directors are workers. The appellant is an employer that has an obligation to pay assessments.

[37] In this case, the appellant did not provide payroll information to WorkSafeBC. Accordingly, WorkSafeBC estimated the payroll based on the T4 issued, and assessed the appellant on that basis, as permitted under section 245 of the Act. The appellant did not make any submissions about that aspect of the decision, and I see no reason to change it.

<u>What is the effective date of the registration?</u>

[38] WorkSafeBC made the registration effective January 1, 2021. I have considered the effective date of registration, since the appellant said in written submissions provided earlier that it was erroneously backdated. At the hearing, the appellant also queried the effective date of registration.

[39] The policy provides direction on this point, and WorkSafeBC followed it in this case. Policy item AP5-245-1 (Registration of Employers) says that if an employer fails to register, the effective date will only go back as far as January 1st of three years before the current year, unless there is evidence the employer deliberately avoided registration by misrepresentation, fraud, or ignoring registration requests.

[40] WorkSafeBC applied this policy. The unregistered appellant came to WorkSafeBC's attention in late 2024, and that is why WorkSafeBC set the registration date to January 1, 2021 (three years earlier) even though the appellant was operational before then. I have no basis to apply a different date since there is no compelling evidence that the failure to register was due to fraud, misrepresentation, or ignoring prior requests.

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Was the penalty amount appropriate?

[41] WorkSafeBC imposed a penalty on the appellant for under-remitting its payroll. WorkSafeBC has the authority to do so under section 245 which says that if an employer does not meet its reporting obligations, WorkSafeBC may impose a penalty based on a percentage of the assessment. WorkSafeBC may also estimate the employer's payroll and calculate the assessment using that estimate. If it does so, the employer is bound by WorkSafeBC's estimate and the resulting assessment.

[42] In this case, WorkSafeBC used an estimate of payroll and calculated the penalty on the under-remittance at 8% of that estimated amount, which is consistent with policy item AP5-261-1 (Penalties).

[43] There is authority under section 261, and policy AP5-261-1 to reduce a penalty in limited circumstances, set out as follows:

- An error on the part of the Board;
- Where the penalty is charged after the cancellation date for an employer's account, except if it applies to a period before the cancellation date;
- The penalty is charged after the bankruptcy or receivership date of the firm;
- Death or incapacitation of a family member, partner, proprietor, principal or accountant within the last period for which a remittance would normally be due;
- Loss, destruction or theft of payroll records within the last three months prior to the penalty imposition;
- Non-return of a remittance form where there was a "nil" amount owing, either because of a nil payroll for the period or because there was a sufficient credit in the account to cover the assessment payable for the period (this reason will only be accepted upon written declaration from the firm, its representative or a Board officer of the payroll figures from the beginning to the end of the period for which the penalty is imposed.);
- Issued cheques have failed to arrive (The supporting information should include the cheque ledger or a copy showing the cheque stubs immediately before and after so that it can be reasonably ascertained the Board cheque was issued within two weeks of the due date.);
- Where the balance owing consists of penalties only (all other outstanding amounts have been paid), and the balance is less than $15.00 or a higher minimum that has been set by the Board since this policy was published;
- Where the penalty is charged as a result of an employer's reasonable belief in a mistaken set of facts, which if true, would render a specific individual not its worker, and where the employer took the reasonable steps to verify this belief; or
- In exceptional cases, for any other reason that the Board determines is consistent with the Act and the purpose of this policy.

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[44] The appellant did not specify that it fell within any of these categories, and I do not find any of these circumstances apply. Rather, it wanted the penalty rescinded because of its view that the decision was wrong.

[45] I do not find, for example, that the penalty was charged as a result of the appellant's reasonable belief in a mistaken set of facts. The appellant had a mistaken understanding of the policy and who is considered a worker under the policy, but a mistaken understanding of the law or policy is different from a mistaken understanding of the facts.

[46] Further, the appellant could have taken reasonable steps to confirm its understanding of the policy, for example, by contacting the assessment department at WorkSafeBC to find out what its obligations were. As a result, I have not reduced the penalty.

Conclusion

[47] The appellant's appeal is denied. *Review Reference #R0332343* is confirmed.

[48] I find that the appellant was an employer. The appellant was required to register with WorkSafeBC and pay assessments on remuneration paid to its British Columbia directors. The appropriate effective date of registration was January 1, 2021. I also find that WorkSafeBC properly imposed the penalty.

Hilary Thomson
Vice Chair

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