

## DECISION OF THE DIRECTOR

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In the Matter of: *Business Practices and Consumer Protection Act* [SBC 2004] c. 2

Respondent: West Canadian Reservations Inc.

Case Number: 30963

Adjudicator: Sean Sisett

Decision Issued: February 22, 2021

### **INTRODUCTION**

- [1] Consumer Protection BC administers the *Business Practices and Consumer Protection Act* [“BPCPA”] and the accompanying regulations operating under the statute (collectively “the legislation”). For some businesses, the legislation requires businesses to be licensed to engage in certain business practices. Such is the case for the designated activities of travel agent and travel wholesaler described in the Travel Industry Regulation [“TIR”].
- [2] In its capacity as the delegated authority responsible for administration of the BPCPA and TIR, Consumer Protection BC intakes complaints from a wide range of stakeholders related to alleged breaches of the BPCPA including allegations that unlicensed businesses are engaged in the designated activities of travel agent and/or travel wholesaler.
- [3] When investigating complaints related to breaches of the legislation, Consumer Protection BC inspectors are empowered to conduct inspections. These inspections often require people and businesses to produce records and answer inquires of an inspector. The records, responses and production of other information affords an inspector the opportunity to form an opinion about whether any allegation(s) appear to be grounded in fact and if so, what actions may be required to encourage and ultimately achieve compliance with the requirements of the law.
- [4] In cases where the inspector finds there to be a breach of the legislation, the inspector may choose to escalate the matter via formal Report to the Director [“RD”] where the allegation is framed using evidence available to the inspector. These RD’s may recommend the imposition of penalty and other remedial order requiring the respondent to correct non-compliant behaviour or business practices. RD’s are then forwarded to persons delegated decision making authority under the BPCPA.
- [5] If a decision maker finds an alleged contravention of the legislation occurred, they are authorized to order the respondent to take actions to correct its practices and pay costs of the inspection that led to the production of the RD. For prescribed breaches, the respondent may also be subject to the imposition of administrative monetary penalty.
- [6] In the instant case, the RD [“the Report”] prepared by a Consumer Protection BC inspector [“inspector”] alleges that during the inspection into an allegation that the respondent West Canadian Reservations Inc. [“the respondent” or “West Canadian”] was engaged in the designated activity of travel wholesaler, the respondent failed to provide information to the inspector after



having been formally demanded to do so. Plainly, the Report alleges the respondent failed to provide information lawfully demanded by the inspector and as such, breached BPCPA 189(5)(b).

[7] In my capacity as decision-maker in this matter, I have evaluated the particulars of the Report, including the evidence referenced by the inspector and the information provided to me in reply by the respondent's President ["TM"]. I have considered the entirety of the Report and its exhibits along with the submissions of the respondent made by TM. In these written reasons, I refer only to the evidence and submissions that I find relevant to provide context for my decision.

[8] As detailed and discussed below, I have decided the contravention alleged by the inspector occurred, and that both the imposition of a remedial order and administrative penalty against the respondent are warranted.

### **OPPORTUNITY TO BE HEARD**

[9] Prior to an action being taken under the BPCPA, a respondent must be provided with an opportunity to be heard. A notice of hearing ["notice"] was sent to the respondent by me on January 6, 2021. The notice provided the respondent with the opportunity to submit a written reply to the Report. It also indicated that following the opportunity to respond, I would determine whether the alleged violation occurred and that I may take enforcement action if warranted. Further, the notice stated that if I confirmed the contravention as alleged and decided to impose an administrative monetary penalty, I would apply the factors in BPCPA 164(2) and be guided by Consumer Protection BC Policy when calculating the amount of any monetary penalty I may impose on the respondent.

[10] On January 26, 2020, TM sent me an email stating that "West Canadian Reservations" is not a travel wholesaler. TM described the business as a "Strata Hotel Management Company." The email also inquired as to the part(s) of the "Consumer Protection Act" that authorize Consumer Protection BC to require West Canadian Reservations to provide confidential client and banking information.

[11] It was apparent to me TM may be confusing the initial allegation made by the inspector that the respondent was engaged in the unlicensed activity of travel wholesaler with the allegation being made in the Report that the respondent failed to provide information to the inspector acting under authority granted by the BPCPA. As such, I replied to TM by email on that same date, advising him of the specific allegation being made in the Report and my role as the adjudicator of this formal allegation made by the inspector. Further, I addressed TM's question about the legislative authority for Consumer Protection BC to require the production of information by directing him to the legislative references cited by the inspector, and providing a hyperlink to Part 10, Division 1 of the BPCPA.

[12] On January 27, 2021 TM sent me an email with a request that we arrange to have a phone call the next day to discuss "the matter".

[13] On January 28, 2021, an online *MS TEAMS* meeting/call between myself and TM took place. I summarize the matters discussed during this 45-minute meeting/call:

- a. TM initially wanted to review the specifics of the allegation about the respondents' unlicensed activity of travel wholesaler being investigated by the inspector rather than the allegation made in the Report that the respondent failed to provide the inspector



information demanded under authority of the BPCPA. I directed TM that the focus of my letter and the allegation made in the Report was about a matter discreet and separate from the allegation about unlicensed designated activity.

- b. TM also inquired as to the reason for the inspector demanding the information. My response was to refer TM back to the inspector for that information. However, I did tell TM that in my experience, a demand for information was usually made to allow the inspector making the demand the best evidence on which to rely when assessing compliance with a relevant statutory or regulatory requirement.
- c. I emphasised to TM that any response to the allegation being made in the Report should be considered in light of the specific BPCPA 189(5)(b) breach cited in the Report.
- d. TM and I discussed the potential enforcement actions that may be taken against the respondent should the allegation be confirmed. Administrative monetary penalty and issuance of remedial orders were cited as available enforcement actions under the BPCPA.
- e. Other things discussed during the meeting/call dealt with confidentiality of documents provided to Consumer Protection BC inspectors and the duties imposed on Consumer Protection BC employees under Section 185 of the BPCPA.
- f. TM requested an extension of the date by which the respondent was afforded the opportunity to make a reply to the allegation in the Report.<sup>1</sup>
- g. I granted an extension until February 5, 2021 for the respondent to reply to the allegation in the Report.

[14] On February 5, 2021 TM sent an email to the inspector and me. In the body of the email was information TM said was the information demanded by the inspector.

[15] Given the preceding, I conclude a full and complete opportunity to be heard was provided to the respondent.

### **ALLEGED CONTRAVENTION**

[16] The Report alleges the respondent contravened S. 189(5)(b) the BPCPA when in October 2020 it:

- A. did not, by October 9, 2020, provide the following information to an inspector acting under the BPCPA:
  - i. each address and respective owner for all BC properties currently being overseen by West Canadian Reservation Inc.
  - ii. information as to the type of rental and the number of days each property in item i. is available for.
  - iii. Name the financial institutions (including branch address and bank account numbers) where West Canadian Reservation Inc. deposits consumer funds in relation to its rental properties.

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<sup>1</sup> The notification letter of January 6 gave the respondent until January 29, 2021, to reply to the allegation.

## LEGISLATION

### *Business Practices and Consumer Protection Act Part 13 — Offences and Penalties*

#### **Offences**

189(1) Section 5 of the Offence Act [general offence] does not apply to this Act or the regulations.

[...]

(5) A person must not do any of the following:

[...]

(b) refuse or fail to provide information as required under this Act;

[...]

## EVIDENCE OF THE INSPECTOR

[17] The evidence provided by the inspector is contained in the narrative of the Report and the exhibits referenced throughout the Report. I summarize the salient points taken from the inspectors' evidence:

- a. The Respondent is a business that provides people and travelers with access to long-term, and short-term vacation accommodation, at properties in Kelowna BC. The respondent gives consumers the choice to rent from a pool of approximately 26 properties within a condominium complex called Playa Del Sol Resort ["Playa"].
- b. There are over 250 units that compose the condominium complex at Playa.
- c. Okanagan Vacation Home Rentals, licensee #34873, is licensed as travel wholesaler with CPBC and provides travelers with short-term accommodation rental units at Playa.
- d. On August 21, 2020, the inspector sent an email to info@westcanres.com. The email contained an attached information letter<sup>2</sup> to the respondent serving as notification that it appeared to the inspector it may be operating as a travel wholesaler without a licence as required under the BPCPA.
- e. The inspector received no response to the letter's request for the respondent to contact the inspector before August 29, 2020.
- f. On September 10, 2020, the inspector issued an Inspection Notification and Demand ["the First Order"<sup>3</sup>] to the respondent by email<sup>4</sup> at the email address info@westcanres.com.
- g. While the First Order listed the respondent business, it was not addressed to the attention not of TM but rather, to another individual I will note as GH.
- h. On September 18, 2020, TM called the inspector and discussed the specifics of the First Order.
- i. TM told the inspector the respondent "oversees" 26 units available for short-term rental.
- j. TM told the Inspector that the respondent has entered into contracts with the owners of the units that allow for the Respondent to be the exclusive rental agent for each of 26 units at Playa Del Sol Resort.
- k. The inspector made TM aware that information about the 26 units would need to be disclosed under the requirements of the First Order.

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<sup>2</sup> Tab 3 of the Report

<sup>3</sup> Tab 1 of the Report

<sup>4</sup> Tab 4 of the Report



- l. TM advised the inspector not all the information requested in the First Order could be produced by September 24, 2020 and asked the inspector for an extension until the following week.
- m. The First Order required the respondent to produce the following:
  - i. each address and respective owner for all BC properties currently being overseen by West Canadian Reservation Inc.
  - ii. information as to the type of rental and the number of days each property in item a is available for rental.
  - iii. the name of the financial institutions (including branch address and bank account numbers) where West Canadian Reservation Inc. deposits consumer funds in relation to its rental properties.
- n. The inspector granted an extension for the production of information under demand of the First Order until September 30, 2020.
- o. None of the information requested in the First Order was received by the Inspector by September 30, 2020.
- p. On October 3, 2020<sup>5</sup>, the inspector issued a second inspection Order [“the Second Order”<sup>6</sup>] via email to the respondent at the email<sup>7</sup> address info@westcanres.com.
- q. The Second Order had the same disclosures demanded by the inspector as the First Order, [“the Information”] with an amended date of October 9, 2020 for the respondent to produce the Information.
- r. As of December 18, 2020, the inspector had received none of the Information from the respondent.
- s. On October 7, 2020, TM told the inspector he refused to provide the inspector the Information.

### **RESPONDENT’S EVIDENCE**

- [18] As discussed earlier when detailing the respondent’s opportunity to respond in this matter, the respondent was offered multiple opportunities to respond to the allegation made in the Report.
- [19] TM sent two emails to me and we had a phone conversation where we discussed the specifics of the allegation made in the Report and the process for the respondent to reply to the allegation and the potential consequences for the non-compliance should it be confirmed to have occurred.
- [20] I have taken what I believe to be the relevant information provided to me by TM on behalf of the respondent and summarize it here:
- a. TM did not take issue specifically with any evidence of the inspector in the Report.
  - b. TM asked me for direction to the specific legislation referencing the authority of Consumer Protection BC to demand the production of confidential and client information.
  - c. During the meeting/call between myself and TM on January 28, 2021, TM repeatedly stated that because of certain business practices, the respondent was exempt from the BPCPA provincial licensing requirement for travel wholesalers.

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<sup>5</sup> The Report listed the date of service for the Second Order as October 3, 2020. The Second Order and the date on the email sent to TM was October 6, 2020.

<sup>6</sup> Tab 2 of the Report

<sup>7</sup> Tab 5 of the Report



- d. In the same meeting/call, the respondent intimated that he believed that he would only need to comply with the demands of the inspector if the respondent was in fact engaged in the business of travel wholesaler.
- e. TM told the inspector he was a licensed under provincial real-estate laws.
- f. On February 5, 2021, TM sent me an email to advise the information demanded was being provided. The body of the email contained the following:
  - i. The transit, branch number and account number of a BMO bank
  - ii. A description of West Canadian as a condominium management business *“offering short term rentals year round and long term rentals outside of June July and Aug.”*
  - iii. A description of how West Canadian, as a Hotel Management Company differs in business practices from those of a licensed travel wholesaler business operating at Playa.
  - iv. TM’s assertion he was not aware of any consumer complaints.
  - v. The names (25) and addresses (17) the respondent says are the current owners of (18) units at Playa.

### ANALYSIS

- [21] It is uncontested and uncontroversial that the inspector is appointed to act under the BPCPA and has been continuously so appointed since the time the demand for the Information was made to the respondent.
- [22] The inspector’s demand for the Information was made for the purposes of an inspection. This fact and the authority to request the Information was detailed in the Second Order.
- [23] The Information detailed in the Second Order was for records related directly to the operation of the respondent’s business.
- [24] The respondent did not at any point state that the demands of the inspector were unclear or that the respondent did not understand exactly what it was being demanded to produce and provide to the inspector.
- [25] I note the Inspector made an error in the Report about the date the Second Order was emailed to the respondent. There is however no information in the response(s) provided by TM that indicate the respondent could not comply with the demand to produce the Information by the date of October 9, 2021.
- [26] There is uncontested evidence from the inspector that TM told the inspector that the respondent would not be providing the Information as required by the Second Order.
- [27] The inspector states TM told him the respondent oversees the rental and management of 26 residential units at Playa. The information provided by email on February 5, 2021, [“the February 5 email”] to the inspector and to me as part of the response by West Canadian, included seventeen (17) addresses for twenty-five (25) persons who TM identifies as the owners of eighteen (18) units at Playa. Only one (1) set of owners, who I will identify as A & L (W), own multiple units (2) at Playa.
- [28] The Information disclosed by TM in the February 5 email lists eighteen (18) units and the names of 25 people who are current owners of the units.



- [29] Although the February 5 email does not explicitly say the respondent is overseeing these units, I infer from the email that is what is being stated by the respondent. This number varies from the twenty-six (26) units the inspector says TM told him were being overseen by the respondent. Nothing related to the allegation made in the Report turns on the correctness of the disclosure as the disclosure was clearly out of time. I will address the timing of the February 5 email later in this decision.
- [30] It is unclear to me if the disclosures made about the names and addresses of the owners by the respondent is complete. I draw no conclusion as to the respondent's completeness when he disclosed the number correctness of either number of units.
- [31] The February 5 email does disclose some information related to the bank account numbers used to conduct the business of West Canadian. It does not however disclose the address of the branch of the bank required by the Second Order.
- [32] The question as to whether a full or a partial disclosure of the Information after the date set out in the Second Order somehow impacts the finding that the allegation occurred is a binary one. The answer is no. I am comfortable concluding some of the Information was eventually disclosed in the February 5 email. The allegation's confirmation turns on the fact the respondent was to have made the information available to the Inspector by October 9, 2020 and failed to do so.
- [33] The inspector set what I believe to be reasonable timeframes to allow for the respondent to consider the demand and Comply with the Second Order. In fact, early on in the inspection the after having been requested to do so by TM, the inspector extended the timeframe allowed for the respondent to comply with the First Order.
- [34] Compliance with the requirement to produce information to a person acting under the BPCPA allows for reasonable deadlines for that production to be completed. For certain it would be illogical to allow for a respondent to disclose information after enforcement proceedings have been undertaken or completed and in doing so bringing a halt any proceeding or purge a finding of non-compliance and penalty simply by having eventually produced the information. This could lead to the absurd result of requiring enforcement action to be initiated each time a person acting under the BPCPA wanted information described under BPCPA 150(1) to be produced.
- [35] Considering all of the evidence available to me, I have no hesitation in concluding the respondent breached Section 189(5)(b) of the BPCPA when it failed to comply with a demand to produce business records and banking information to an inspector acting under authority of the BPCPA.

#### **DUE DILLIGENCE**

- [36] The respondent is entitled to a complete defence against the allegation if it shows that it exercised due diligence by taking all reasonable steps to prevent the contravention.
- [37] While the evidence of the inspector and evidence offered in response to the Report did demonstrate the respondent had questions as to the authority of the inspector and Consumer Protection BC to demand the Information, I believe the First Order and Second Order both clearly provided the respondent with correct information and adequate notice for it to properly inform itself of the requirements to comply with the terms of the Second Order.



[38] I have taken into consideration TM's response to me that he believed the respondent was only required to produce the Information if it was in the business of travel wholesaler. On multiple occasions TM indicated the respondent was regulated and licensed under the provincial statutory real estate scheme. TM is a sophisticated directing mind and representative of a regulated real estate business. I would expect such a representative to be able to appreciate relatively straightforward requests such as those in the First Order and Second Order when they are made by a regulatory authority. I would also expect TM to be able to appreciate the consequences of non-compliance when they are clearly laid out in formal communication. Both the First Order and Second Order cite the relevant authority and provisions in the BPCPA that empower an inspector to make demands of the respondent and further, the orders both state it is a contravention of section 189(5) of the BPCPA for a person to refuse or fail to provide information as required under the BPCPA. In light of the multiple cautions and the specific references provided to the respondent and what amounted to an outright refusal by the respondent to provide the Information, I cannot conclude the respondent took any level of reasonable measures to avoid the commission of the contravention established in this decision.

[39] Accordingly, the defence of due diligence has not been established by the respondent.

#### **ENFORCEMENT ACTION**

[40] In this case as the adjudicator determining that a violation occurred, I may take one or more of the following actions:

1. Issue a compliance order (under section 155 of the BPCPA), directing the respondent to:
  - stop a specified act or practice and take actions to correct the issue;
  - pay Consumer Protection BC the costs of the relevant inspection, including creation of the Report.
2. Impose a penalty of up to \$5,000 on an individual, or up to \$50,000 on a corporation (under section 164 of the BPCPA).

[41] I have considered these possible enforcement actions and determined that a compliance order and an administrative penalty for the contravention to section 189(5) are warranted and appropriate.

#### **Compliance Order**

[42] Having found West Canadian responsible for contravention of 189(5)(b) of the BPCPA, I have authority per section 155(4)(c) and 155(4)(d) of the BPCPA to require it to take a specified action to remedy a contravention and to reimburse the Director costs associated with the inspection. I will require West Canadian to:

1. Before March 8, 2021, provide the Director with records related to the respondent's business when it rented, leased or otherwise arranged for the supply of accommodation of terms under 45 days at Playa Del Sol Resort, for the period inclusive of June 1, 2019 until September 30, 2020.
2. Reimburse the Director for partial inspection costs incurred as the result of the inspection in the amount of \$500 within 14 days of the respondent receiving a copy of the Order.

[43] The requirements of my order only are set out in the Compliance Order issued with this decision.

**Administrative penalty**

[44] As per section 164(1) of the BPCPA, an administrative monetary penalty [“AMP”] may be imposed where a person contravenes a prescribed provision of the BPCPA. Section 189(5) of the BPCPA is prescribed under the Business Practices and Consumer Protection Regulation [“BPCPAR”] 8.

[45] Section 164(2) of the BPCPA sets out the following factors that must be considered before imposing an AMP:

- (a) previous enforcement actions for contraventions of a similar nature by the respondent
- (b) the gravity and magnitude of the contravention
- (c) the extent of the harm to others resulting from the contravention
- (d) whether the contravention was repeated or continuous
- (e) whether the contravention was deliberate
- (f) any economic benefit derived by the person from the contravention
- (g) the person's efforts to correct the contravention

[46] For the violation at issue, I consider all these factors to decide whether an AMP should be imposed. If imposing an AMP, to determine the amount that should be imposed, I consider the BPCPA section 164(2) factors together with the Consumer Protection BC policy, “Calculation of Administrative Monetary Penalties Policy and Procedures” [the “Policy”]. The Policy model and rationale are discussed below.

[47] The Policy, normally applied by Consumer Protection BC, sets out how the AMP amount is calculated, starting with a base penalty amount. The Policy helps to ensure that calculations of AMP amounts are consistent, transparent, flexible, and proportionate to the contraventions at issue, and that suppliers subject to AMPs know how Consumer Protection BC interprets the BPCPA and analyses the criteria determining AMP amounts. Consumer Protection BC has developed the Policy from its experience and expertise in providing consumer protection services, and from its mandate to administer the statutes and regulations under its jurisdiction, in the public interest.

[48] According to the Policy, contraventions for which AMPs are imposed are first categorized into Type A, Type B, or Type C, as set out in the Appendix. Consumer Protection BC makes these assignments based on its purposes and experience in delivering consumer protection services in the public interest, and the consideration of two factors: (1) the inherent severity of harm specific to the contravention, and (2) the probability that a person will experience harm from the contravention.

[49] After categorization of the contravention, the decision maker considers a set of “adjustment factors” laid out in the Policy. These “adjustment factors” are based on BPCPA 164(2), plus one additional criterion consistent with the legislation. The Policy requires the decision maker to choose a “gravity” value for each adjustment factor based on consideration of the relevant aggravating or mitigating circumstances.

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<sup>8</sup> As per BPCPAR 6(b), the contravention of BPCPA 189(5) (except at paragraphs c or v) is prescribed for the purpose of administrative penalty.

- [50] When applying the Policy, the decision maker is to consider all the factors under BPCPA 164(2) in his or her calculation or analysis of the AMP amount that should be imposed. The decision maker continues by then deciding in his or her discretion whether the amounts in the Policy or different amounts imposed based on consideration of the factors under BPCPA 164(2) (and one additional related criterion) and any other relevant circumstances.
- [51] In the Respondent's notice of this hearing, I identified the Policy and advised that it will be applied as part of any decision that may impose an AMP. The notice further stated that the Policy can be viewed on our website and would be otherwise provided to the Respondent in paper form upon request. The Respondent has had an opportunity to respond to the Policy by making submissions on the appropriateness of its application or its consistency with criteria in the BPCPA. I have not received any submissions from the respondent on the Policy from the respondent.
- [52] I have determined that an AMP should be imposed for the respondent's acts in supplying false or misleading information to an inspector. I now will consider the specific AMP to be applied.

#### **Calculation of the AMP amounts**

- [53] I first apply the Policy to calculate an AMP amounts. I then decide whether that amount or a different amount should be imposed based on consideration of the factors under section 164(2) and one additional criterion, and any other relevant circumstances.
- [54] Breach of section 189(5)(b) of the BPCPA is a Type C contravention under the Policy (Appendix A, page 14, line 115). I agree with this categorization given the circumstances of this violation. It represents the appropriate level of severity and potential harm for prescribed contraventions according to the Policy.
- [55] Consequently, according to the AMP "Matrix" in part 4.3 (page 5) of the Policy, the "base" amount from which to begin calculating the AMP for the respondent, as a corporate entity, is \$5,000. I see no reason to depart from this base amount.
- [56] My assessment of the adjustment factors under the Policy's penalty matrix that are applicable to this instance of contravention is set out in the table on the next pages and as described on page 9 of this decision.



Adjustment Factor	Effect on Gravity	Analysis
<i>Previous enforcement actions for contraventions of a similar nature</i>	<b>0</b>	There are no previous enforcement actions by Consumer Protection BC against the respondent.
<i>Gravity and magnitude of the contravention</i>	<b>0</b>	Failing to provide information to an inspector acting under the BPCPA is a serious contravention that undermines one of the primary regulatory functions of Consumer Protection BC. It is important there be a strong deterrence created against this type of unlawful activity. However, I believe the inherent categorization of the contravention as a type C contravention serves the “base” detective function for the violation. I do not find there are any specific factors aggravating either the gravity or magnitude of this particular instance of contravention.
<i>Extent of the harm to others resulting from the contravention</i>	<b>0</b>	There is no evidence or basis to infer harm to others resulting from the contravention.
<i>Whether the contravention was repeated or continuous</i>	<b>0</b>	The contravention was not repeated or continuous.
<i>Whether the contravention was deliberate</i>	<b>0</b>	The respondent made a conscious decision to not provide the inspector with the Information. However, although I found the respondent effectively negligent from a due diligence perspective when it did not make reasonable efforts to confirm the inspector’s authority to demand the Information, I believe the respondent’s representative was actually of the belief there was no need to comply unless there was a finding the respondent was, in fact, engaged in the designated activity of travel wholesaler. It is only for this reason I exercise my discretion and do not apply an aggravating adjustment value for what I believe was deliberate non-compliance.
<i>Economic benefit derived by the person from the contraventions</i>	<b>0</b>	I have no reason to believe the respondent derived any immediate and tangible economic benefit from the contravention.

<p><i>Whether the person made reasonable efforts to mitigate or reverse the contravention's effects</i></p>	<p>-1</p>	<p>TM eventually disclosed some of the Information to the inspector.</p> <p>I think the Information eventually provided to the inspector will allow for the effective examination of the respondent's business practices and should reasonably be of significant value to the inspector's goal of determining whether the respondent engaged in the designated activity of travel wholesaler.</p> <p>Given the late disclosure and incomplete nature of the Information, I believe only an adjustment factor of -1 is appropriate.</p>
<p><i>The person's efforts to correct the contraventions &amp; prevent recurrence</i></p>	<p>-1</p>	<p>Late disclosure of the Information (even had it been complete) would not have purged the respondent from this enforcement action. It appears it was only the escalation of the matter to enforcement proceedings that motivated the respondent to make serious efforts to understand its responsibilities and attempt to comply with the demands of the inspector. Given the timing of the efforts, I think an adjustment factor of -1 is the only appropriate mitigation value applicable in this instance.</p>

### **Final Calculation of AMP**

According to my application of the Policy and its AMP Matrix, the overall adjustment for the BPCPA 189(5)(b) contravention involves an overall score of "minus two."

The Policy determines that a violation of BPCPA 189(5)(b) is a Type C contravention with a base penalty amount of \$5,000 for a corporate entity. In this case, having found a gravity level of "minus two" (after adjustments) and following the direction of the Matrix, I apply a penalty of **\$4,000**. In this hearing no additional relevant circumstances have been brought to bear on my analysis and calculation of penalty as to vary it from the Policy amount. Attached to these reasons is a Notice of Administrative Penalty in the amount of **\$4,000**.

### **RECONSIDERATION OF ORDER AND PENALTY**

A compliance order or monetary penalty may be reconsidered in accordance with Division 1 of Part 12 of the BPCPA, subject to the provisions outlined in BPCPA 181 and 182(2). A request for reconsideration must be submitted within 30 days of delivery of the order to the respondent. The request must be in writing, identify the error the person believes was made or other grounds for reconsideration, and be accompanied by a \$252 application fee. A request for reconsideration should be addressed to:

Consumer Protection BC  
 Attention: Shahid Noorani, Vice President  
 200 – 4946 Canada Way, Burnaby, BC V5G 4H7  
[shahid.noorani@consumerprotectionbc.ca](mailto:shahid.noorani@consumerprotectionbc.ca)

Decided on February 22, 2021 in Burnaby, BC.



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Sean Sisett  
Director – Inspections & Case Management