

DECISION OF THE DIRECTOR

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

Respondent: Todd Flaro ***dba*** Accurate Home Inspection

Case Number: 31095

Adjudicator: Sean Sisett

Decision Issued: November 4, 2021

INTRODUCTION

- [1] As part of its mandate Consumer Protection BC administers three statutes including the *Business Practices and Consumer Protection Act* [“BPCPA”] and a series of regulations including the Home Inspector Licensing Regulation [“HILR”].
- [2] In its capacity as the delegated authority administering the BPCPA and HILR, Consumer Protection BC oversees the business practices of persons who engage in the designated activity of Home Inspection [“Home Inspectors”]. Home Inspectors act as suppliers as defined under the BPCPA when they sell their services related to their opinions as to the component condition of residential dwellings.
- [3] The licensing mechanism operative under s.143 of the BPCPA requires persons who engage activities designated by Regulation to be licensed to do so unless exempted by the BPCPA or other statute/regulation. The HILR designates the business or occupation of home inspector as designated activity.
- [4] Consumer Protection BC inspectors are empowered under S.149 of the BPCPA to conduct inspections. When inspecting a person or business’s trade practices, inspectors often require those under inspection to produce records, answer inquiries of the inspector and otherwise cooperate with the inspection process. The records, responses and other information gathered during an inspection affords the inspector the best opportunity to form an opinion about whether there is apparent non-compliance with the requirements of a statute, a regulation or other items such as remedial orders and/or licensing conditions set out by the Director acting under statutory authority.
- [5] In cases where a Consumer Protection BC inspector finds there to be an apparent breach of law or order, the inspector may choose to escalate the matter via formal Report to the Director [“RD”]. At this point, the allegations in an RD are framed using evidence available to the inspector and exhibited as part of a cohesive case presented to a decision-maker for consideration and adjudication.

- [6] If a decision maker finds an alleged contravention of the BPCPA or the Regulation occurred, they are authorized to issue remedial orders that may call for a respondent to cease certain activities, take specific actions to correct or amend business practices, and pay costs of any inspection that led to the confirmed allegation(s) made by the inspector. For prescribed breaches of law, the respondent may also be subject to the imposition of administrative monetary penalties.
- [7] In the instant case, the RD [“the Report”] prepared by a Consumer Protection BC inspector [“Inspector”] alleges that after having been assigned to investigate an allegation of a person engaging in the designated activity of home inspector without proper licensing, the Inspector found what they believed was direct and compelling evidence that Todd Flaro [“the Respondent”] engaged in the designated activity of home inspector without being properly licensed to do so on more than one-thousand four hundred occasions since 2014.
- [8] 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 by the Respondent in reply to the Report. In these written reasons, I refer only to the evidence and submissions that I find relevant to provide context for my decision.
- [9] As is detailed below, I have decided the contraventions alleged by the Inspector occurred and that imposition of a remedial order and multiple administrative monetary penalties against the Respondent is warranted.

OPPORTUNITY TO BE HEARD

- [10] The Inspector sent the Respondent a digital copy of the RD by email on August 20, 2021. The Inspector also sent a copy of the RD and associated exhibits in hard-copy format [“HCF”] to the Respondent by Rush/Trace mail that same date. Canada Post records show the HCF mailed to the Respondent was delivered to Accurate Home Inspection on August 24, 2021.
- [11] Prior to an action being taken under the BPCPA, I was required to afford the Respondent an opportunity to be heard. After being notified by the Inspector that the RD had been sent to the Respondent via email and HCF, I sent a notice of hearing letter [“OTBH”] to the Respondent by email on August 23, 2021, and a copy of the OTBH by Rush/Trace mail on August 24, 2021. The OTBH provided the Respondent with the opportunity to submit a written reply to the Report. The OTBH also indicated that following the opportunity to respond period expiring, I would determine whether the alleged violation(s) occurred and may take enforcement action if warranted.
- [12] On September 3, 2021, I received an email from the Respondent with an attached letter. The attached letter [“the Response”] was an undated, three-page typed letter indicating it was a response to the allegations made against the Respondent in the Report. The Response specifically addresses the allegations laid out in the Report. Given the detail in the Response, it is apparent the Respondent fully grasped the nature of the allegations made in the Report, the licensing requirement for home inspectors laid out in the BPCPA and the potential consequences the Respondent faced should the allegations in the Report be confirmed by me.

[13] I conclude the Respondent had a full and fair opportunity to respond to the allegations made by the Inspector.

ALLEGED CONTRAVENTIONS

[14] The Inspector alleges the Respondent breached BPCPA 143 on more than 1,400 occasions when the Respondent engaged in the designated activity of home inspector from May 2014 through to July 2021 without being licensed to do so.

BUSINESS PRACTICES AND CONSUMER PROTECTION ACT

143 *A person must not engage in a designated activity unless the person is*
(a) licensed to engage in the designated activity, or
(b) exempted by regulation from the requirement to be licensed.

HOME INSPECTOR LICENSING REGULATION

Definitions

1 *In this regulation:*

"Act" *means the [Business Practices and Consumer Protection Act](#);*

"licence" *means a licence, as defined in section 1 of the Act, to engage in a designated activity referred to under section 2 of this regulation;*

"home inspector" *means a person who engages in the business or occupation of home inspection.*

Designated activities

2 *The business and the occupation of home inspector are designated for the purposes of the definition of "designated activity" in section 142 of the Act.*

EVIDENCE OF THE INSPECTOR

[15] 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 information included the Inspector's Report and exhibit evidence:

- (a) The Respondent was a licensed home inspector from April 1, 2009 until May 21, 2014.
- (b) The Respondent's home inspector license #47685 issued by Consumer Protection BC expired in May 2014.
- (c) In 2017, information filed with Consumer Protection BC questioned the home inspector licensing status of the Respondent.
- (d) An inspection into the licensing status and business practices of the Respondent was performed in 2017. That inspection resulted in a warning letter ["Warning Letter"] being



prepared and sent to the Respondent by email to accuratealberni@gmail.com and registered mail to [REDACTED].

- (e) The Warning Letter stated it was the belief of Consumer Protection BC that the Respondent was practicing as a home inspector without a license and that doing so could result in a compliance order, administrative penalty and future licensing consequences depending on the Respondent's conduct in response to the Warning Letter.
- (f) On January 29, 2021, Consumer Protection BC received information about the Respondent engaging in the unlicensed business and occupation of home inspector.
- (g) After intake and assessment of the information received in the complaint, Consumer Protection BC casefile 31095 was created and ultimately assigned to the Inspector for investigation.
- (h) The informant in file 31095 alleged the Respondent was not licensed as a home inspector and in fact, had not been so since sometime in 2014. The complaint included what the informant purported to be a 22-page Home Inspection Report prepared by the Respondent in relation to a March 22, 2017, home inspection performed for the informant.
- (i) On March 29, 2021, the Inspector wrote to the Respondent, informing him of the allegation and asking for a reply from the Respondent.
- (j) On April 14, 2021, The Inspector received a reply from the Respondent making several statements related to the allegation noted by the Inspector:
 - i. I did not know I was in non-compliance"
 - ii. ... "ex common law was in charge of running my business for many years"
 - iii. "I am a very good inspector but not the best business manager."
 - iv. ... "this was in no way intentional."
- (k) On April 14, 2021 the Inspector told the Respondent to cease all home inspections until licensed to perform them.
- (l) In a May 19, 2021, email, the Inspector requested the Respondent to prepare and submit a detailed excel sheet itemizing each home inspection performed for a fee by the Respondent since May 21, 2014. Each line item in the excel document was to contain the following information:
 - i. Consumer name
 - ii. Date of the inspection
 - iii. The address of the inspection
 - iv. The total fee collected
- (m) In reply to the May 19 2021, email, the Respondent sent the Inspector a series of photographs combined into a single PDF. formatted document ["the List"].
- (n) The List details 1364 lines of information about what the Inspector says were home Inspections the Respondent admits to performing from May 8, 2014, through to March 31, 2021.
- (o) The Respondent performed 736 home inspections after the Warning Letter was sent to the Respondent on September 15, 2017.

- (p) Information from the List indicates the Respondent was paid \$688,415 for the home inspection services provided to consumers by the Respondent from May 8, 2014 to March 31, 2021, inclusive.
- (q) At Tab 16 of the Report, the Inspector exhibited copies of 7 home inspection reports [the “First Submission HIR’s”] sent to the Inspector by the Respondent.
- (r) The Inspector states information such as consumer name, inspection date and number, and inspection cost related to each First Submission HIR, appears on the List.
- (s) The Respondent told the Inspector that his ex-partner was running his business and had failed to keep up with maintaining a Consumer Protection BC licence.
- (t) The Respondent told the Inspector the non-compliance was ultimately his fault as the Respondent is the owner of the Business.
- (u) The Respondent admits engaging in the designated activity of home inspector on 77 occasions after April 1st, 2021.
- (v) At Tab 3 of the Report, the Respondent told the Inspector he was not insured for errors and omissions and general liability from sometime in 2015 until the current date.
- (w) The Report (at Tab 18) shows the Respondent providing Consumer Protection BC four home inspector licence renewal forms from 2010 to 2014 declaring the Respondent signed them and had current errors and omission and liability insurance coverage as required by conditions placed on the home inspector licence under authority of HILR 7.1.
- (x) The Respondent provided the Inspector an excel sheet [the “Second List”] at Tab 17 of the Report. The information was apparently drawn from home inspections The Respondent performed from April 1, 2021 through July 29, 2021. The Information cited at Tab 17 of the Report includes
 - i. 77 consumer names
 - ii. 77 unique Report ID’s
 - iii. 77 unique addresses
 - iv. Varying inspection price/costs totalling \$38,950

RESPONDENT’S EVIDENCE

- [16] The Respondent takes no issue with the allegation that no license as a home inspector was issued to the Respondent since May 21, 2014.
- [17] The Respondent says the Warning Letter of 2017 was never received.
- [18] The Respondent said, if aware of the notice in the Warning Letter in 2017, they would have faced it immediately as they have now done.
- [19] The Response details what the Respondent says were reasons they were unaware of their unlicensed status since 2014:

- (a) The Respondent's [REDACTED] negatively impacted the ability to run the business and recognizing this, the Respondent was assisted in these tasks by the Respondent's mother until 2012 at which time the Respondent's girlfriend was trained to perform the tasks.
- (b) In early 2014, the Respondent's girlfriend's [REDACTED] led to financial crisis for the Respondent that saw the sale of his residence to clear up debt created by his girlfriend.
- (c) [REDACTED]
- (d) During the years noted in items (a) to (c) above, the Respondent's daughter [REDACTED]
- (e) Volunteering with multiple community organizations was useful in management of [REDACTED] however, being so busy negatively affected the Respondent's attention to administrative matters and combined with the mistaken belief someone else was taking care of such things, led the Respondent unintentional non-compliance with the BPCPA.

[20] The Response also states:

- (a) The Respondent loves being a home inspector, has re-taken academic training in home inspection and at a cost of \$3,250.00, completed other requirements to become a fully licenced home inspector.
- (b) "I am the captain of my ship and there for *[sic]*, I should have known. I take full responsibility for what has occurred."
- (c) Asks the decision maker to allow time to pay for any penalties, and to become a fully licensed home inspector in the future.

ANALYSIS

A. Introduction

- [21] Plainly, the Respondent does not disagree with the Inspector's allegation that the Respondent engaged in the designated activity of the occupation and business of home inspector without proper licensing from May 29, 2014 until at least July 29, 2021. The Respondent was not a licensed home inspector at any time from May 29, 2014 through July 29, 2021.
- [22] The Respondent offered reasons for the admitted, seven-year unintentional non-compliance with the licensing requirement of BPCPA 143 applicable to home inspectors. The reasons are generally without supporting documentation or supporting references. As discussed below, the reasons are, for the most part, more appropriately considered in the context of penalty and/or other enforcement action should I chose to impose either as a consequence of any non-compliance finding in this matter.
- [23] At page 1 of the Report the "Title" section misstates the Respondent's former license number as #476857 rather than the correct licence number #47685. The error is not otherwise replicated in the Report and is clearly a typographical error of no significance to the substance of the Report or my findings related to the allegations contained therein.

B. Discussion of the Evidence

- [24] My conclusions as to what were the actual trade practices of the Respondent are in large part derived from the uncontested evidence provided to the Inspector by the Respondent.
- [25] A home inspection is performed when a supplier provides a consumer their opinion(s) as to condition of components of a residential dwelling. There are no prescribed methodologies or a single industry standard setting out how home inspectors must inform the opinions they arrive at in relation the condition of components in any residential dwelling.
- [26] The HILR requires licensed home inspectors to prepare home inspection reports with certain requirements detailed in the HILR. These requirements include such things as for the reports to be in writing, to contain prescribed consumer information and identify what components of the residential dwelling (both inspected and not inspected) were present at the time of the inspection.
- [27] I agree with the Inspector that the 12 exhibited items at Tabs 7, 10, 11, 12, 13 and 16 contain home inspection reports prepared in connection with home inspections. Each home inspection report documents an opinion about various components of a particular residential dwelling, such as the roof, garage, kitchen, structural components and plumbing. Each exhibited invoice related to a home inspection report lists the Respondent as the person who performed the inspection.
- [28] Each of the 12 exhibited items at Tabs 7, 10, 11, 12, 13 and 16 the Inspector says contain home inspection reports prepared by the Respondent between May 22, 2014 and March 31, 2021, meet the HILR component criteria for a home inspection report. Each home inspection report names the Respondent as the inspector who performed the home inspection.
- [29] Each of the 12 consumers named in exhibited items at tabs 7, 10, 11, 12, 13 and 16 are found on the List or the Second List. With one exception¹ the inspection dates in the List are the day following the date included in the home inspection report. I find the List dates are the recorded payment dates corresponding to the home inspection reports in the exhibits. For the footnoted exception, I find that nothing turns on the date included the home inspection being five days apart from the date in the List. In this discreet case, as the home inspection report and invoice both indicate the inspection date of July 31, 2019, and the invoice documents a charge of \$0.00, whereas the List notes a charge of \$450.00. I find it more likely than not the home inspection was performed by the Respondent on July 31, 2019 and on August 5, 2021, and the consumer paid \$450 to the Respondent.
- [30] The consumer's name, the inspection number, price and date of the 2021 inspections included in the Second List reconcile exactly with the same information from the home inspection reports and invoices seen at Tabs 10 through 13 in the Report.
- [31] ***I find that on July 19, 2015, May 13, 2016, March 22 and September 3, 2017, August 22, 2018, July 31 and 2019, March 23, 2020 and May 28, March 2, June 8, June 29 and July 19, of 2021***

¹ The List details an August 5, 2019, date associated with the home inspection report 2719. The home inspection report states it was performed on July 31, 2019. All other information (address, name of consumer) consistent with information provided.

["the HI Report Dates"] the Respondent conducted home inspections and prepared home inspection reports related to consumer transactions. On the HI Report Dates, the Respondent was not licensed to engage in the designated activity of home inspector. It naturally follows the Respondent was in breach of the BPCPA 143 requirement to not engage in the designated activity of home inspector unless licensed to do so.

- [32] Consumer Protection BC licensing records, the Warning Letter, and Report information and Tabs all evidence the address accuratealberni@gmail.com was active and in use by the Respondent from April of 2011 inclusive of the date I received the Response.
- [33] The information on the List and Second List evidence the Respondent performed at least 1,441 home inspections during the period after the expiry of home inspector licence #47685. The evidence was for the most part, provided by the Respondent. The Inspectors evidence in the Report related to the quantum and dates of home inspections was not challenged in the Response. The 12 home inspection reports and invoices exhibited in the Report contained information easily reconciled with the information from the List and Second List.
- [34] My review of the Report and exhibits including the List and the Second List show the Respondent detailed the performance of 390 home inspections from December 3, 2019 through July 29, 2021. I find this uncontested information to be credible and accurate.
- [35] ***Exclusive of the 12 occasions previously noted, I find that from May 28, 2014 through July 29, 2021, each "REPORT ID" in the List and each "Report ID" in the Second List documents an event where the Respondent conducted a home inspection. The Respondent was not licensed to engage in the designated activity of home inspector during the noted timeframe. It follows the Respondent was in breach of the BPCPA 143 requirement to not engage in a designated activity of home inspector unless licensed to do so, on each of the more than 1400 other occasions documented in the List and Second List.***
- [36] The Inspector leads evidence in the Report about the amount of money charged by the Respondent for home inspector services from May 8, 2014, until July 29, 2021. The evidence was for the most part provided to the Inspector in the List and Second List. The amounts stated in the Report were not challenged in the Response.
- [37] The Respondent's home inspector licence expired on May 21, 2014. My addition of the amounts disclosed (as charged) by the Respondent for home inspection services after May 21, 2014 through to July 29, 2021 were an aggregate of \$723,620.00 The information from home inspections 2719 and 1957 (items 2 and 3 of Tab 16) citing there was no amount charged for these home inspections is not credible. The information from the List indicates the Respondent charged \$450.00 for each of these inspections, consistent with other contemporaneously charged amounts disclosed in the List. In this case, I prefer the information in the List to that of the invoices. Without further banking and auditing of home inspection contracts related to each consumer transaction referenced in the List or Second List, I find it reasonable to conclude the Respondent charged more than \$720,000.00 for home inspection services supplied to consumers from May 22, 2014 to July 29, 2021 inclusive.

- [38] On April 14, 2021 the Respondent sent the Inspector an email in response to the initial March 29, 2021 correspondence from the Inspector. The Respondent admits to being unlicensed and avers to this being the first awareness that their home inspector licence was expired.
- [39] At Tab 15 of the Report, it is clear and uncontested the Respondent was made aware of the licence expiry on receipt of the Inspector's March 29, 2021 email. On April 14, 2021, the Respondent acknowledged receipt of the email and the reply to the Inspector shows the Respondent with an awareness of the content and context of the subject matter being discussed. In an email reply to this acknowledgement by the Respondent, the Inspector specifically tells the Respondent to cease all home inspections until properly licensed.
- [40] In the Second List, the Respondent documents 67 home inspections conducted after the evidence of April 14, 2021, shows they were told not to conduct home inspections because the Respondent was not licensed. The Respondent's fees associated with these 67 home inspections were \$34,025.00. I conclude the Respondent deliberately performed 67 home inspections from April 15, 2021 through to July 29, 2021 with the knowledge they were not licensed to perform the inspections.

DUE DILLIGENCE

- [41] The Respondent is entitled to the complete defence of due diligence against the allegations if it shows it took all reasonable steps to prevent the contraventions from occurring.
- [42] It is enough for a Respondent to lead evidence that may tend to indicate they were diligent in their efforts to prevent the contravention occurred for it to be considered by me. In this case, the only two general references in the Response I see as speaking to diligence efforts of the Respondent are the attestation they did not receive the Warning Letter and the disclosure of the Respondent that [REDACTED] it was necessary to hire others to ensure the orderly administration of the business took place.
- [43] The Report includes evidence Consumer Protection BC sent the Warning Letter to an email address shown in the evidence as being used by the Respondent when conducting the business of Accurate Home Inspections from 2014 to the current date. The evidence also shows the Respondent was sent the Warning Letter by registered mail in 2017.
- [44] The Report provides evidence the Respondent was aware of the requirement to be licensed and the annual reporting required for home inspector licensees by Consumer Protection BC. The four annual licence renewal forms cited at Tab 18 of the Report are signed by someone purporting to be the Respondent in printed name and signature.
- [45] The evidence is not unequivocal that the Respondent received correspondence from Consumer Protection BC related to the investigation and making the Respondent aware of the relevant application of the licensing requirements for home inspections and for the consequences, should a breach of these requirements be found in the future.

- [46] It is not the responsibility for Consumer Protection BC to ensure licensees engaged in designated activities renew their licenses as required using the forms and policies set out by the Regulator. Licensees bear the burden of informing themselves about the licensing requirements under the BPCPA, HILR and Consumer Protection BC policies. I note all requisite information to inform a person about the requirements noted are available at the Consumer Protection BC website and by inquiry through email and by telephone. Further, I take notice that there is an annual cost to be paid by home inspector licensees at the time their licenses are renewed. Consumer Protection BC licensing records indicate the Respondent paid for license application and renewal each year 2009-2013 inclusive. Given the preceding, I don't see how a licensee exercising even a modicum of diligence and, who successfully renewed their license four years in a row, would not, at some point realize that for the subsequent six years they had not submitted, processed or paid for the trade practices licence for which they had consistently done so since the home inspection industry became subject to licensing under the BPCPA in 2009.
- [47] For the Respondent's declaration that [REDACTED], it appears some degree of diligence was exercised when the Respondent delegated some administrative tasks to others such as his mother and girlfriend. Diligence speaks to a persistence and care applied to a task. It is an ongoing requirement to exercise diligence and for certain, all due diligence, if offered in defence of a breach under the BPCPA. In this case, I would expect any level of diligence would involve oversight that delegated tasks, especially core licensing and regulatory requirements were performed in a timely and effective manner.
- [48] In the instant case, the actions of the Respondent fall well short of exercising all due diligence to prevent the breach from occurring. The defence of due diligence is not made out in this matter.

ENFORCEMENT ACTION

- [49] As the adjudicator determining that a violation occurred, I may take one or more of the following actions related to the confirmed breaches of the BPCPA:
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. For each breach, 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).
- [50] I have considered these possible enforcement actions and determined that a compliance order and administrative penalties for some confirmed contraventions of BPCPA 143 are warranted and appropriate.

Compliance Order

- [51] Having found The Respondent committed multiple contraventions of BPCPA 143, I have authority per section 155(4)(c) and 155(4)(d) of the BPCPA to require the Respondent to take a specified action to remedy the contraventions and to reimburse the Director costs associated with the

inspection leading to the allegations in the Report. I will require The Respondent to:

1. Reimburse the Director for partial inspection costs incurred as the result of the inspection in the amount of **\$2,118.38**.

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

Administrative penalties

[53] 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 143 of the BPCPA is listed as an offence under the BPCPA 189(4)(u). Offences under the BPCPA 189(4) are prescribed by Section 6(a) of the Business Practices and Consumer Protection Regulation [“BPCPAR”].

[54] For the purposes of imposing administrative penalty in this case, I have considered both that the overarching regulatory scheme for home inspectors is one where individuals are licensed rather than the businesses via which they conduct the designated activity of home inspector, and the fact Accurate Home Inspection is not a separate identifiable corporate entity from the Respondent. I have elected to deal with the Respondent as an individual.

[55] This case is unusual given the number of occasions and length of time over which I have found the contraventions of BPCPA 143 to have occurred. It is further complicated by what I have found to be the recent and deliberate non-compliance of the Respondent. These factors were in the forefront when considering whether I chose to impose an administrative penalty and the amount of any penalty I found appropriate. I am mindful that Section 170 BPCPA limits the time after which a contravention has occurred for an adjudicator to give notice of administrative penalty to two years from the date of contravention. As such, I have limited my considerations as to the appropriateness and amount of any administrative penalty to only those contraventions of BPCPA 143 the Respondent committed after December 1, 2019, separating them into two distinct groups. For reasons that will be discussed in the AMP policy penalty analysis later in this decision, I treat those contraventions committed from December 1, 2019 through April 14, 2021 as a single contravention happening over multiple dates. For those contraventions that took place after March 30, 2021, I treat each of them as a separate discreet breach of BPCPA 143.

[56] 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

[57] For the violations at issue, I consider all these factors when deciding 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.

- [58] 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.
- [59] 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 of, 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 (the categorization).
- [60] 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 legislations purpose. The Policy requires the decision maker to choose a “gravity” value for each adjustment factor considering the relevant aggravating or mitigating circumstances as the case may be.
- [61] When applying the Policy, the decision maker is to consider all the factors under BPCPA 164(2) in their calculation or analysis of the AMP amount that should be imposed. The decision maker continues by then deciding using their 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, should be considered and applied.
- [62] 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 on the Policy from the Respondent.
- [63] As noted, I have determined that AMP should be imposed for the Respondent’s unlicensed engagement in the designated activity of home inspector between the dates of December 1, 2019 and March 30, 2021. For this, I treat the Respondent’s actions in that timeframe as one confirmed breach of BPCPA 143, happening over multiple dates, imposing a single AMP. **[“AMP 1”]**
- [64] I have also determined that individual AMPs should be imposed related to the timeframe from

April 15, 2021 until July 29, 2021. For this period the Respondent performed 67 home inspections. The evidence in the casefile is clear the Respondent was aware of his licence status with Consumer Protection BC and the prohibition on his engagement in the occupation of home inspector. On the 4 occasions where the Respondent engaged in the designated activity of home inspector where the Consumer Protection BC Inspector introduced evidence of the home inspection report generated by the Respondent concomitant to the breach of BPCPA 143, I choose to impose administrative monetary penalty for each event. (Four AMPs). [**“AMPs 2 to 5”**]

AMP #1

- [65] I first apply the Policy to calculate an AMP amount. 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.
- [66] Breach of section 143 of the BPCPA is a Type C contravention under the Policy (Appendix A, page 13, line 113.3). I agree with this categorization. It represents the appropriate level of severity and potential harm for prescribed contraventions according to the Policy.
- [67] 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 an Individual, is \$3,250.
- [68] My assessment of the adjustment factors under the Policy’s penalty matrix applicable to the confirmed contravention that took place from December 1, 2019 until March 29, 2021 is set out in **Table 1** below.



Table 1		
Adjustment Factor	Effect on Gravity	Analysis
<i>Previous enforcement actions for contraventions of a similar nature</i>	0	There are no previous enforcement actions by Consumer Protection BC against the Respondent.
<i>Gravity and magnitude of the contravention</i>	2	To my mind, the magnitude of this contravention (313 home inspections) performed without being properly licensed and subjected to the routine annual oversight requirement for home inspector licensees to provide proof of general liability and errors and omissions coverage cannot be overstated. In context, the effect on magnitude is +2
<i>Extent of the harm to others resulting from the contravention</i>	0	There is no evidence or basis that direct harm to others resulted from the contravention. This is a neutral factor in this assessment.
<i>Whether the contravention was repeated or continuous</i>	1	The timeframe across which the non-compliance took place was 484 days. The Respondent performed 313 Inspections in that time period, an average of 4.5 home inspections per week. I find this amount of repetition across the timeframe to warrant an increase of +1 .
<i>Whether the contravention was deliberate</i>	0	While I find it very difficult to believe the Respondent was unaware of his unlicensed status as a home inspector from December 1, 2019 until March 29, 2021, there is no evidence to indicate the Respondent was anything other than inattentive and negligent related to this confirmed breach. I find this factor not to be aggravating for the purposes of this administrative penalty.
<i>Economic benefit derived by the person from the contraventions</i>	3	Clearly the Respondent derived economic benefit from the contravention. The evidence in the Report shows the Respondent charged more than \$175,000 for his services as a home inspector during the time period encompassing this breach. Beyond the raw fees charged to consumers, the Respondent benefitted from not paying annual licensing fees to Consumer Protection BC or Insurance Premiums for general liability and errors and omissions insurance. I take notice this type insurance is not free. I also note the Respondent did not pay the Consumer Protection BC annual licensing fees payable by home inspector licensees for the two licensing periods across the timeframe of the non-compliance 2019 \$820.00 and 2020 \$1,025. The level of economic benefit derived by the Respondent was significant and warrants an increase of +3

<i>Whether the person made reasonable efforts to mitigate or reverse the contravention's effects</i>	0	There is no information as to mitigation or contravention reversal. This is factored as neutral in this assessment.
<i>The person's efforts to correct the contraventions & prevent recurrence</i>	-2	I am aware of the Respondent's offer and efforts to retrain as a home inspector and bear the costs of that training. I am also aware that the Respondent immediately admitted to the non-compliance when presented with information related to the complaint and cooperated with the Inspector in this case. Given this, and specific to this breach and administrative penalty, I find a factor of -2 (the maximum) available in the policy to the Respondent's benefit when calculating this administrative penalty.

Calculation of AMP #1

- [69] According to my application of the Policy and its AMP Matrix, the overall adjustment for the BPCPA 143 contravention involves an overall score of "Plus 4."
- [70] The Policy determines that a violation of BPCPA 143 is a Type C contravention with a base penalty amount of \$3,250 for an individual. In this case, having found a gravity level of "Plus 4" (after adjustments) and following the direction of the Matrix, I apply a penalty of **\$4,250**. 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.

AMPs #2-#5

- [71] As with AMP #1, I first apply the Policy to calculate an AMP amount considering it is a Type C contravention with an individual base amount of \$3,250. 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.
- [72] My assessment of the adjustment factors under the Policy's penalty matrix applicable to the confirmed contraventions that took place on May 28, 2021 at [REDACTED] June 8 [REDACTED], June 29, 2021 at [REDACTED] and on July 19, 2021 at [REDACTED], is set out in Table 2 on pages 16 and 17 of this decision.



Table 2		
Adjustment Factor	Effect on Gravity	Analysis
<i>Previous enforcement actions for contraventions of a similar nature</i>	0	There are no previous enforcement actions by Consumer Protection BC against the Respondent.
<i>Gravity and magnitude of the contravention</i>	1	I have chosen a limited number of events for the purposes of these AMPs, the effect on penalty is somewhat muted. I note however home inspections performed without being properly licensed and subjected to the routine annual oversight requirement for home inspector licensees to provide proof of general liability and errors and omissions coverage brings risk to the consumers dealing with the unlicensed home inspector should a liability issue occur where the personal assets of the home inspector are unable to satisfy a judgement against the home inspector. In context, the effect on magnitude is +1
<i>Extent of the harm to others resulting from the contravention</i>	0	There is no evidence or basis that direct harm to others resulted from the contravention. This is a neutral factor in this assessment.
<i>Whether the contravention was repeated or continuous</i>	0	The 4 home inspections subject to these AMPs were performed across more than a month. I cannot find the repetition particularly remarkable or impactful. I find this factor to be slightly more than neutral but not rising to the level where I consider it impacts the amount of the AMPs
<i>Whether the contravention was deliberate</i>	3	There is no question on my mind the Respondent was aware of the requirement to cease performing home inspections because he was not licensed to perform them. The Inspector’s evidence was clear, not subject to misinterpretation by a reasonable person and was clearly read by the Respondent. I can draw no other conclusion than the Respondent was aware of the BPCPA 143 requirement and deliberately breached it. I find a gravity factor of +3 is appropriately applied to the calculation of each AMP.

<p><i>Economic benefit derived by the person from the contraventions</i></p>	<p>1</p>	<p>Clearly the Respondent derived economic benefit from the contraventions. The evidence in the Report shows the Respondent charged \$475 for his services as a home inspector on each occasion. The Respondent benefitted from not paying the 2021 annual home inspector licensing fee to Consumer Protection BC (\$1,025) or premiums for general liability and errors and omissions insurance. The level of economic benefit derived by the Respondent in these events is moderate and warrants an increase of +1</p>
<p><i>Whether the person made reasonable efforts to mitigate or reverse the contravention's effects</i></p>	<p>0</p>	<p>There is no information as to mitigation or contravention reversal. This is factored as neutral in this assessment.</p>
<p><i>The person's efforts to correct the contraventions & prevent recurrence</i></p>	<p>0</p>	<p>I am aware of the Respondent's offer and efforts to retrain as a home inspector and bear the costs of that training. I am also aware that the Respondent immediately admitted to the non-compliance when presented with information related to the complaint and cooperated with the Inspector in this case. In the timeframe after April 1, 2021 when these home inspections took place, the Respondent had been made aware of the requirement and perpetuated the non-compliance. Given this, I find the weighting for this factor to be neutral.</p>

Calculation of AMPs # 2 to #5

- [73] According to my application of the Policy and its AMP Matrix, the overall adjustment for each of the BPCPA 143 contraventions factors a weighting of "Plus 5": for each AMP.
- [74] The Policy determines that a violation of BPCPA 143 is a Type C contravention with a base penalty amount of \$3,250 for an individual. In this case, having found a gravity level of "Plus 5" (after adjustments) for each AMP. Following the direction of the Matrix, I apply a penalty of **\$4,500** for each breach, an aggregate for the four penalties of **\$18,000**. 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.
- [75] The Notice of Administrative Penalty to be served on the Respondent related to these reasons will include the amounts of **\$4,250 for AMP #1 and \$4,500 each, for AMP's #2 to #5.**

RECONSIDERATION OF ORDER AND PENALTY

A Compliance Order or Administrative 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

Decided on November 4, 2021 in Burnaby, BC.

**Original Signed*

Sean Sisett
Director – Inspections & Case Management