

## **DECISION OF THE DIRECTOR**

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In the Matter of: *Business Practices and Consumer Protection Act, S.B.C. 2004, c.2  
Cremation Interment Funeral Services Act, S.B.C. 2004, c.35 and Cremation  
Interment and Funeral Services Regulation*

Respondent: Jessica Barton (nee Higgins)

Licence: 76607

Case Number: 31544

Adjudicator: Laura Casey, Vice President of Analytics, Business and Consumer Services

Date of Decision: March 15, 2023

### **A. INTRODUCTION**

1. Under statutory delegation, Consumer Protection BC (aka the Business Practices and Consumer Protection BC Authority) is responsible for the administration of the Business Practices and Consumer Protection Act (“BPCPA”) and the Cremation Interment and Funeral Services Act (“CIFSA”), and the Cremation Interment and Funeral Services Regulation (“CIFSR”)
2. The Respondent is an individual operating under a funeral director and embalmer licence granted by Consumer Protection BC.
3. On December 15, 2022, a Consumer Protection BC Business Practices Officer issued the Respondent a Report to the Director (“Report”) that alleged the Respondent violated section 38(1)(b) of the CIFSR.
4. I have been delegated the authority of the Director to decide if a contravention to the CIFSR has taken place. This delegated authority allows me to exercise the powers of the Director under Part 9 of the BPCPA and Part 10 of the BPCPA, as well as Part 11 of the CIFSA. A copy of the Report has been provided to me to perform these delegated adjudicative functions.

5. With a few exceptions, the BPCPA and the CIFSA requires the Respondent be given an opportunity to be heard to any allegation before a determination is made and any potential statutory action is taken.
6. In a letter dated December 15, 2022, a hearing notice (or “opportunity to be heard”) on the allegation advanced in the Report to Director was provided to the Respondent. The hearing notice invited the Respondent to formally respond to the allegation by presenting written submissions on evidence, explanations, interpretations of legislation and policies of Consumer Protection BC. The hearing notice outlined several possible consequences for the Respondent, should the allegation be confirmed, including a licensing action, an undertaking, an administrative monetary penalty and/or a Compliance Order. The Respondent was given until December 29, 2022, to provide a written response.
7. The Respondent provided a written response to the hearing notice. The response did not question the sufficiency of the notice (i.e., being adequately informed of the specifics of the allegation) and did not request any further disclosure of evidence, clarification, or time to respond. The written response demonstrated the Respondent was afforded the rights required under the BPCPA and CIFSA prior to the Director exercising statutory decision making and licensing or enforcement powers.

**B. ALLEGED CONTRAVENTION / LEGISLATION**

8. The allegation against the Respondent is stated as:

The respondent contravened CIFSR section 38(1)(b) by failing to complete the minimum required 6 hours of training in a program of embalming services approved by the Director during the past two-year successive period commencing on the date the respondent was first issued an embalmer licence.

9. Section 38(1)(b) of the CIFSR is cited as the basis for the allegation and reproduced as follows:

**Continuing education**

38 (1)A person licensed as a funeral director, embalmer or both must complete a minimum of

(a) 6 hours of training in a program of funeral services that is approved by the director, if licensed as a funeral director,

(b) 6 hours of training in a program of embalming that is approved by the director, if licensed as an embalmer,

### **C. EVIDENCE IN THE REPORT TO DIRECTOR**

10. I have reviewed the Report and the respondent's written reply in their entirety. I limit my comments to only the parts of the evidence necessary to give context to my decision.
11. The respondent was first issued the licence on September 14, 2018, to act and hold themselves out as a funeral director and embalmer.
12. The most recent successive two-year period from when the respondent was first issued the licence commenced September 14, 2020, to September 14, 2022.
13. On July 20, 2020, Consumer Protection BC emailed all licensed funeral directors and embalmers providing information about changes being made to share the status of individual continuing education training requirements. The communication provided a reminder that it is the responsibility of the funeral director and embalmer to ensure course completion documentation is submitted to Consumer Protection to receive credit for completion. It was also noted in the communication that funeral directors and embalmers would receive a status report every six months as a reminder of credits completed and how many credits remained due.
14. On January 20, 2021, Consumer Protection BC notified the respondent of their obligation to complete and submit proof of continuing education (note: due to a system error, this email referenced an incorrect CEU due date and the number of credits outstanding).
15. On August 18, 2022, the respondent was sent an email from Consumer Protection BC that showed the respondent had not completed the full credits for embalming services in the successive two-year period.
16. Before the end of the two-year successive period (September 14, 2020, to September 14, 2022), Consumer Protection BC received records showing the respondent completed 5 credits in embalming services, however, no records were provided for 1 credit in embalming services.
17. The Report to Director was emailed to the respondent on December 15, 2022.
18. December 28, 2022, the respondent sent an email to Consumer Protection BC including 4 attachments:
  - a. A letter dated December 28, 2022, from Laura Mckinnon at Sands Funeral Chapel Cremation & Reception Centre – Nanaimo, providing a reference of character and requesting '*we accept the respondents appeal for this singular occurrence*' and also stating '*we take full responsibility for this clerical error however please know we have already taken the necessary steps to rectify this, and we will pay close attention to such details in the future*'.

- b. An email dated December 15, 2022, from the respondent to Canadian College of Funeral Services (“CCFS”) requesting registration for an embalming service course.
- c. An email response dated December 28, 2022, from CCFS stating their office was closed for the holidays from December 21 to January 2.
- d. A letter from the respondent dated December 28, 2022. The letter outlined 2 separate maternity leaves taken by the respondent. March 2020 to March 2021 as well as January 2022 to December 5, 2022. The respondent stated in their letter they did not have access their email during either of these periods, therefore missing the notifications regarding CEU’s. The respondent also stated the below relevant information in the letter:
  - *‘I was not aware at the time of completing these credits that the Relevance of Restorative Arts course I had completed on May 15, 2021, was only worth two credits and not three’.*
  - *‘On August 18, 2022, about my credits becoming due in September 2022, however, I had already been on maternity leave since January 2022 therefore the email was never received and would have bounced back to the sender as my email address was out of commission as of March 2022’.*
  - *‘Consumer Protection BC made no effort to call the business in which I was licensed through and allowed my license to be reissued in September 2022 (renewed and paid for August 4, 2022)’.*

19. January 9, 2023, the respondent sent an email containing evidence of course #1202 ‘West Nile Virus – Are We Safe’ that was completed January 6, 2023, and provided 3 embalming services credits.

20. February 24, 2023 Consumer Protection BC located the ‘mail delivery notification’ for the email sent to the respondent on August 18, 2022 regarding their outstanding CEU credit. The mail delivery notification was received by Consumer Protection BC on August 18, 2022, however, at the time it was misplaced.

#### **D. ANALYSIS**

21. It is the responsibility of the licensee to ensure all credits are completed within the successive period. The respondent had 2 years to ensure training was completed.

22. It is also the responsibility of the licensee to ensure Consumer Protection BC is updated immediately with change of information, such as an inactive email address.

23. Consumer Protection BC sends CEU reminders to licensees as a courtesy only.

24. The respondent was out of the office for a good portion of the successive 2-year period on maternity leaves. The respondent also alleged a course taken was mistaken for a 3-credit course

instead of a 2-credit course. Though this does not provide a defense as to why the training was not completed on time it is an element that will be considered in the assessment of any penalty.

25. The evidence establishes in the last two-year successive period of September 14, 2020, to September 14, 2022, the respondent was required to complete a minimum of 6 hours in an approved program of embalming services. The respondent did not complete the required training before the end of the last two-year successive period; therefore, I find the respondent contravened CIFSR section 38(1)(b).

**E. DUE DILIGENCE**

26. The respondent is entitled to the complete defense of due diligence against the allegation if they show that all reasonable steps were taken to prevent the contravention from happening. The onus is on the respondent to establish this defense. I was not presented with any evidence to show due diligence by the respondent.

**F. CONCLUSION**

27. I conclude the respondent contravened CIFSR section 38(1)(b) by failing to complete the minimum required 6 hours of training in a program of embalming services approved by the Director during the past two-year successive period (September 14, 2020, to September 14, 2022) from when the licence was first issued.

**G. ENFORCEMENT AND REMEDY**

- H. As the Director's delegate, and having determined that a contravention has occurred, I may take one or more of the following actions:
- i. Suspend, cancel, or impose conditions on a license, pursuant to section 55(3) of the CIFSA and section 146 of the BPCPA
  - ii. Accept an Undertaking, pursuant to section 56(2) of the CIFSA and section 154 of the BPCPA
  - iii. Issue a Compliance Order, pursuant to section 56(2)(c) of the CIFSA and 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.
  - iv. Impose an administrative monetary penalty of up to \$5,000 on an individual or up to \$50,000 on a corporation. pursuant to section 58(3) of the CIFSA and section 164 of the BPCPA. A contravention to section 38(1)(a) and 38(1)(b) of the CIFSR is prescribed for the purpose of administrative penalty under the Administrative Penalties Regulation.
- I. For the contravention of failing to complete the minimum required 6 hours of training in a

program of embalming services, I have decided to impose an administrative monetary penalty and issue a Compliance Order.

### **Administrative Monetary Penalty**

- J.** A contravention to section 38(1)(b) of the CFSR is prescribed for the purpose of an administrative monetary penalty (“AMP”) under the Administrative Penalties Regulation. The CIFSA authorizes the imposition of a penalty of up to \$5,000 on an individual or up to \$50,000 on a corporation (section 58(3) of CIFSA and section 165 of the BPCPA).
- K.** In the context of the factors under section 58(3) of the CIFSA and section 164(2) of the BPCPA, I have decided that an AMP is warranted for the contravention. The purpose is to effect deterrence and to promote the Respondent’s compliance in the future.
- L.** Section 58(3) of the CIFSA and 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 person
  - 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.
- M.** For the contravention at issue, I considered all these factors to decide whether an AMP should be imposed. If imposing an AMP and in determining the *amount* that should be imposed, I consider the section 58(3) of the CIFSA and the section 164(2) of the BPCPA 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.
- N.** The Policy, normally applied by Consumer Protection BC, sets out how an AMP amount is calculated, starting with a base penalty amount. The Policy is a guidance document that helps to ensure the calculation of AMP amounts are consistent, transparent, flexible, and proportionate to the contraventions at issue. The Policy allows suppliers subject to AMPs to know how Consumer Protection BC interprets the legislation and analyses the criteria when 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 legislation in the public interest.
- O.** According to the Policy, contraventions for which AMPs are imposed are first categorized into Type A, Type B or Type C. 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.

- P.** After categorization of the contravention, the decision maker considers a set of “adjustment factors” that are laid out in the Policy. These “adjustment factors” are based on section 58(3) of the CIFSA and section 164(2) of the BPCPA, 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.
- Q.** When applying the Policy, the decision maker considers all the factors under section 58(3) of the CIFSA and section 164(2) of the BPCPA in their calculation or analysis of the AMP amount that should be imposed. The decision maker continues by exercising their discretion on whether the amounts in the Policy should be used or whether different amounts should be imposed based on consideration of the factors under section 58(3) of the CIFSA and section 164(2) of BPCPA (and one additional related criterion) and any other relevant circumstances.
- R.** In the Respondent’s notice of hearing, I identified the Policy and advised that it would be applied as part of any decision that may impose an AMP. This notice further stated that the Policy can be viewed on Consumer Protection BC’s website and would be otherwise provided to the Respondent in paper form upon request. Therefore, in this hearing the Respondent 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 and the CIFSA. The Respondent’s submission did not make any mention of the Policy.
- S.** I have determined that an AMP should be imposed for the Respondent’s contravention to sec. 38(1)(b) of the CIFSR for the failure to complete the minimum of 6 hours of training in a program of embalming services.

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

- T.** 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 58(3) of the CIFSA and section 164(2) of the BPCPA, one additional criterion and any other relevant circumstances.
- U.** A breach to section 38(1)(b) of the CIFSR is a Type A contravention based on categorization in Policy. Contravention under the Policy page 23 Appendix A, line 225. 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.

V. According to the AMP Matrix in part 4.3 of the Policy (page 5), the “base” amount for an AMP is \$500.00 for an individual.

W. My assessment of the adjustment factors applicable to these contraventions under the Policy’s AMP Matrix is set out in the table below.

Adjustment Factor	Effect on Gravity	Analysis
1. <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 maintain the gravity level at neutral.
2. <i>Gravity and magnitude of the contravention</i>	0	Continuing education requirements are in place to ensure funeral directors and embalmers grow and expand their knowledge in the profession. The respondent has continued to offer its service and professional expertise as a funeral director and embalmer without completing the requisite training. Imposing an AMP is intended to correct the non-compliance and deliver a message to the respondent about completing their education requirements into the future. I maintain the gravity level at neutral.
3. <i>Extent of the harm to others resulting from the contravention</i>	0	There is no evidence or basis to infer harm to others resulting from the contraventions. I maintain the gravity level at neutral.
4. <i>Whether the contravention was repeated or continuous</i>	0	The contravention was not repeated or continuous. I maintain the gravity level at neutral.



<p><b>5. Whether the contravention was deliberate</b></p>	<p>0</p>	<p>I have no reason to believe the respondent's actions were of a deliberate or intentional nature. The respondent stated they thought a 2-credit course was a 3-credit course and was also on maternity leave during the times of the courtesy email reminders about potential outstanding CEU credits. I maintain the gravity level at neutral.</p>
<p><b>6. Economic benefit derived by the person from the contraventions</b></p>	<p>0</p>	<p>I have no reason to believe the respondent derived any economic benefit from the contravention. I maintain the gravity level at neutral.</p>
<p><b>7. Whether the person made reasonable efforts to mitigate or reverse the effects of the contravention</b></p>	<p>-1</p>	<p>I have taken into consideration that the respondent completed the overdue credit in embalming services after the due date. I have adjusted the gravity level accordingly.</p>
<p><b>8. The person's efforts to correct the contraventions &amp; prevent recurrence</b></p>	<p>0</p>	<p>I have not been given evidence on measures that will be taken to ensure completion dates for education requirements are not missed again. I maintain the gravity level at neutral.</p>

**Final Calculation of AMP**

- X. According to my application of the Policy and its AMP Matrix, the overall adjustment for the contravention to section 38(1)(b) of the CFSR involves an overall score of "minus one".
- Y. The Policy determines that a violation of section 38(1)(b) of the CFSR to be a Type A based on categorization in Policy. with a base penalty amount of \$500.00. In this case, having found a gravity level of minus one the Matrix calls for an AMP of \$450.00. 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.

**Z.** I have considered the \$450.00 under the Matrix and the guidance provided under the Policy, mindful that I am not bound to the Policy, or the amounts calculated under it. Exercising my discretion to apply a penalty amount of up to \$5,000 for individual, I believe \$450.00 to be an appropriate amount given the reasons I have discussed above. Attached to these reasons is a Notice of Administrative Penalty in the amount of **\$450.00**.

#### **AA. Compliance Order**

**BB.** My delegated functions give me the authority to issue a Compliance Order following a determination that a contravention has occurred. The Compliance Order may, amongst other things, require the Respondent to:

- Take actions to correct the issue; and,
- Reimburse Consumer Protection BC the costs of inspection in the matter.

**CC.** Recognizing the extent of inspection resources allocated to the contravention of failing to complete the minimum required six hours of training in the program of embalming services, I believe it appropriate to order the Respondent reimburse Consumer Protection the partial costs of the associated inspection in the amount of \$150.00 Specific terms for payment of the inspection costs are described within the Compliance Order.

**DD.** Education requirements are in place to ensure funeral directors and embalmers stay up to date and expand in their level of skill and knowledge to perform the functions of the profession. I am not comfortable in allowing the respondent to maintain the licence without acquiring the full training that should have been obtained during the last two-year successive period. Therefore, I exercise my authority under BPCPA section 155(4)(c) and CIFSA 56(2)(c) to order that the 3 credits acquired by the respondent on January 6, 2023, be applied to the 2020-2022 period to satisfy the requirements for that period. The precise terms are described in the Compliance Order attached to this decision.

**EE.** Attached to this decision is a Compliance Order.

#### **FF. RECONSIDERATION**

**GG.** The Compliance Order may be reconsidered in accordance with section 60 of the CIFSA and sections 181 and 182 of the BPCPA. A request for reconsideration must be submitted within 30 days of receipt of the Notice of Administrative Monetary Penalty and the Compliance Order. The request for reconsideration needs to be presented in writing and must satisfy the "new evidence" requirements under section 60(2) of the CIFSA and section 182(2) of the BPCPA. A reconsideration fee in the amount of \$272.00 must accompany the written request for reconsideration.

**HH.** 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 March 15, 2023, in Victoria, BC.

A handwritten signature in black ink that reads "Laura Casey". The signature is written in a cursive style with a large initial "L".

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Laura Casey