

## **DECISION OF THE DIRECTOR**

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In the Matter of: *Business Practices and Consumer Protection Act, S.B.C. 2004, c.2 and the Travel Industry Regulation*

Respondent: Lynda Cochrane (Port Renfrew Vacation Rentals)

Case Number: 31391

Adjudicator: Tegan Scardillo

Date of Decision: June 29, 2023

### **A. INTRODUCTION**

1. Under statutory delegation, Consumer Protection BC (Business Practices and Consumer Protection BC) is responsible for the administration of the Business Practices and Consumer Protection Act (“BPCPA”) and the Regulations associated with the BPCPA.
2. On April 27<sup>th</sup>, 2023, a Consumer Protection BC Inspector (“the Inspector”) issued the Respondent a Report to the Director (“the Report”) that alleged the Respondent violated section 143 of the BPCPA when they engaged in the designated activity of a travel wholesaler without a license. The Report also alleged the Respondent violated section 189(5) of the BPCPA when they failed to provide information as required under the Act.
3. I have been delegated the authority of the Director to decide if contraventions to the BPCPA have taken place. This delegated authority allows me to exercise the powers of the Director under Part 10 of the BPCPA. A copy of the Report has been provided to me to perform these delegated adjudicative functions.
4. With a few exceptions, the BPCPA 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.
5. In a letter dated May 2<sup>nd</sup>, 2023, a hearing notice (or “opportunity to be heard”) on the allegations advanced in the Report was provided to the Respondent. The hearing notice invited the Respondent to formally respond to the allegations 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 allegations be confirmed, including an undertaking, an administrative monetary penalty and/or a Compliance Order. The Respondent was given until May 23<sup>rd</sup>, 2023, to provide a written response.

6. The Respondent did not provide a written response to the hearing notice. I am satisfied that the Report and hearing notice were both provided to the Respondent; therefore, I will proceed with this decision in the absence of a reply made by the Respondent.

**B. ALLEGED CONTRAVENTIONS / LEGISLATION**

7. The Report alleges the Respondent engaged in the designated activity of a travel wholesaler without a license. Section 143 is cited as the basis for the allegation and is reproduced as follows:

*License required*

*143 A person must not engage in a designated activity unless the person is*

*(a) Licensed to engage in the designated activity, [...]*

8. The Report also alleges the Respondent failed to provide information as required under the Act. Section 189(5) is cited as the basis for the allegation and is reproduced as follows:

*Offences*

*189(5) A person must not do any of the following:*

*[...]*

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

*[...]*

**C. EVIDENCE IN THE REPORT TO DIRECTOR Re Allegation #1 (BPCPA 143)**

9. The Report establishes that the Respondent, Lynda Cochrane, operates a sole proprietorship in British Columbia identified as “Port Renfrew Vacation Rentals”.
10. Port Renfrew Vacation Rentals was not licensed with Consumer Protection BC as a travel wholesaler at the time the Report was written and is currently not a licensee with Consumer Protection BC.
11. Resulting from an anonymous complaint, an inspection was initiated of the Respondent to determine whether the Respondent required a travel wholesaler license with Consumer Protection BC.

12. Through communications with the Inspector, the Respondent explained that their business model was for homeowners to enlist Port Renfrew Vacation Rentals to market their properties on various websites for the purposes of providing accommodation to consumers. The Respondent also explained that Port Renfrew Vacation Rentals provides booking confirmations to consumers once the property is booked and paid for.
13. The Report includes an email dated March 8<sup>th</sup>, 2022 in which the Respondent states *“I don’t have management agreements with the owners as we are friends. I don’t have addresses as I just e-transfer their income to their email addresses along with a monthly income statement less expenses. There are 4 owners that I manage their cottages provided through Booking.com, Airbnb and Homeaway, as well as my website”*.
14. The Inspector notified the Respondent that they required a travel wholesaler license and provided information on how to obtain a license with Consumer Protection BC.
15. The Respondent contacted Consumer Protection BC’s licensing department in March 2022 with questions regarding a trust account and a request for an extension to get their financial statements and security prepared. These items are all requirements for a travel wholesaler license.
16. The Inspector provided a final deadline of April 22<sup>nd</sup>, 2022 for the Respondent to submit an application for a travel wholesale license to Consumer Protection BC.
17. From the evidence in the Report, it appears the Respondent had initiated the license application process but did not submit an application for a travel wholesaler license to Consumer Protection BC.
18. In June 2022, Inspection Orders (under authority of section 151 of the BPCPA) were provided to two financial institutions to establish whether the Respondent was receiving consumer funds for payment of travel services.
19. The Report states the documents provided (from the financial institutions) *“showed consumer funds for payment of travel services made through Booking.com and AirBNB were deposited to two accounts under the name “Lynda Cochrane”*.
20. Bank records from one financial institution included in the Report show 23 deposits (from 2021/06/01 – 2022/05/28) made to a savings account under the name “Lynda Cochrane” with transaction descriptions of “AIRBNB PAYMENTS”. A separate business account (also under the name “Lynda Cochrane”) shows 152 deposits (from 2021/05/31 – 2022/05/31) with transaction descriptions as “MISC PAYMENT RESERVATIONS ON BOOKING.COM” or “ACCOUNTS PAYABLE AIRBNB PAYMENTS”.

21. The Report states “*a total of \$180,637.90 of consumer funds for payment of travel services was deposited into the Respondent’s bank accounts*”.
22. The Report concludes the Respondent “*acquired the rights to travel services for the purpose of resale to the public*” and “*sold travel services and received payment directly from consumers*”.

**D. ANALYSIS Re Allegation #1 (BPCPA 143)**

23. In British Columbia, a person in the business of providing short-term vacation rentals (accommodation) to consumers for properties they do not own is required to obtain a travel wholesaler license with Consumer Protection BC.
24. The Respondent notified the Inspector that homeowners enlist Port Renfrew Vacation Rentals to market their rental properties on various websites. When consumers pay for accommodation through one of these websites, funds are transferred from the website to the Respondent’s bank account, as shown on the bank statements. The bank statements show regular deposits into the Respondent’s bank account from these various websites. The Respondent explained to the inspector that they e-transfer the homeowners’ income to them, less expenses. This activity is consistent with the business model of an accommodation provider, which is included under the travel wholesaler license requirement.
25. Evidence in the Report leads me to conclude that the Respondent has been providing accommodation to consumers since at least May of 2021. Although the Inspector did not explicitly state in the Report that the Respondent was providing short-term vacation rentals, the Report does state the Respondent “*rented out private cottages on behalf of homeowners*” and that “*homeowners enlisted the Respondent’s business to market their private properties [...] for the purposes of providing accommodation*”. A quote included in Exhibit 2.1 (the website of Port Renfrew Vacation Rentals) reads “*The perfect destination for a friends’ relaxing getaway, fishing trip, family vacation or a romantic retreat.*” Through the inclusion of Exhibit 2.1 and the information provided in the Report, I can reasonably conclude the Respondent has acquired rights to resell travel services (short-term vacation rentals) to consumers for properties the Respondent does not own, thus meeting the definition of a travel wholesaler.
26. The Respondent has not argued or attempted to explain to the Inspector that they are not acting as a travel wholesaler, and even initiated the license application process, which leads me to believe they have no dispute with their business model being that of a travel wholesaler. Additionally, when provided with a copy of the Report to Director, there was no response or dispute from the Respondent and no additional information was provided for me to consider. The Respondent is aware they are engaging in the designated activity of a travel wholesaler and has not obtained a license or communicated that they are no longer providing these services to the public.

27. The evidence provided to me in the Report leads me to the conclusion that the Respondent has been operating as travel wholesaler without licensure from Consumer Protection BC. **The allegation to a breach of BPCPA 143 is confirmed.**

**E. CONCLUSION Re Allegation #1 (BPCPA 143)**

28. I find the Respondent did commit a contravention of section 143 of the Business Practices and Consumer Protection Act when they engaged in the designated activity of a travel wholesaler without a travel wholesaler license from approximately May 2021 – May 2022.

**F. EVIDENCE IN THE REPORT TO DIRECTOR Re Allegation #2 (BPCPA 189)**

29. As previously stated, the Report establishes that the Respondent, Lynda Cochrane, operates a sole proprietorship in British Columbia identified as “Port Renfrew Vacation Rentals”. A Consumer Protection BC Inspector contacted the Respondent to determine whether a travel wholesaler license was required.

30. The Report shows on February 10<sup>th</sup>, 2022, a Consumer Protection BC inspector emailed the Respondent a request for information for the purposes of understanding the business model of the Respondent. The request for information included:

- 1) *A description of the prices detailing how consumers pay and whom receives the money*
- 2) *A template of the agreement(s) / documents(s) the Respondent enters into with the homeowners of the rental properties.*
- 3) *A template of the receipt the Respondent gives to consumers*

31. On February 15<sup>th</sup>, 2022, the Respondent emailed the Inspector confirming receipt of the February 10<sup>th</sup> email and stated their preference to discuss the issue via telephone. A phone call took place on February 15<sup>th</sup> where the Respondent answered some of the Inspector’s questions from the February 10<sup>th</sup> email.

32. On February 28<sup>th</sup>, 2022, the Inspector emailed the Respondent an Inspection Notification and Demand letter (“the Inspection Letter”) pursuant to section 150 of the BPCPA to obtain further information regarding the Respondent’s business. The Inspection letter was also sent to the Respondent via registered mail through Canada Post. The Inspection letter demanded that the following information be submitted to the Inspector by March 9, 2022, for the purposes of conducting an inspection under the BPCPA:

- 1) *“Provide the address of each property (“the Properties”) for which Port Renfrew Vacation Rentals offered or did facilitate the rental or lease of the Properties to travellers at any time during the period inclusive of June 1, 2019 through the date of this Order (“the Time Period”)*
- 2) *Provide copies of all rental management agreements, contracts or other covenants involving Port Renfrew Vacation Rentals with owners of the Properties that called for or allowed Port Renfrew Vacation Rentals to rent, lease or otherwise arrange for the supply of accommodation at the Properties at any time during the period inclusive of June 1, 2019 through September 30, 2020 (“the Time Period”)*
- 3) *If not otherwise disclosed in the business records detailed in this Order, provide a list with the name, address and any other contact related information for the owners of the Properties.*
- 4) *The name, address, email, and phone number of each consumer for whom Port Renfrew Vacation properties rented, leased, or otherwise arranged for the supply of the accommodation at the Properties during the Time Period.*
- 5) *Identify the financial institutions (including brand address and bank account numbers) that Port Renfrew Vacation Properties received consumer funds related to the supply of accommodation at the Properties during the Time Period.*
- 6) *Provide the information, documents, or material to be produced under this Order to the Consumer Protection BC Inspector identified in this order, no later than March 9, 2022.”*

33. The Respondent confirmed receipt of the Inspection letter in an email to the Inspector dated March 8<sup>th</sup>, 2022, and explained to the Inspector they could not provide answers to the questions by March 9<sup>th</sup>, 2022. The Respondent stated *“I don’t have management agreements with owners as we are friends. I don’t have addresses as I just e-transfer their income to their email address along with a monthly income statement less expenses [...] There is no way I can provide information on who rented since June 2019. I don’t save those records. Please just send me the form I need to fill out for establishing a license with your company and I will provide you with my credit card information.”*

34. The Inspector emailed the Respondent information on how to obtain a travel wholesaler license on March 9<sup>th</sup>, 2022.

35. On April 1<sup>st</sup>, 2022, the Respondent phoned the Inspector regarding license application documents and requested a deadline to submit the documents. A deadline of April 22<sup>nd</sup>, 2022, for submission of the license application documents was approved by the Inspector.

36. Another extension to provide license application documents was requested by the Respondent on April 13<sup>th</sup>. The Inspector replied on April 20<sup>th</sup>, confirming the deadline for submission of the license application remained April 22<sup>nd</sup>, 2022. The Inspector's email also stated:

*"In addition to the above, per the Inspection Order Feb 28, 2022, I require:*

- *Rental Property address (civic address, municipality, province and postal code*
- *Name of owner, owner's telephone number, owner's email address and owner's contact address*
- *A copy of the monthly income statement less expenses you speak of in your email on March 8, 2022. Please provide these statements from January 1, 2021 to current.*
- *Identify the financial institutions (including branch address and bank account numbers) that Port Renfrew Vacation Properties received consumer funds related to the supply of accommodation at the Properties during the Time Period.*

*The Order documents are required May 2, 2022."*

37. On May 3<sup>rd</sup>, 2022, the Inspector sent another email to the Respondent noting the Inspection letter documents were due on May 2<sup>nd</sup>, 2022, and restated the required documents. The email also stated *"It is an offence to refuse or fail to provide information as required under the Business Practices and Consumer Protection Act. Should you continue to refuse or fail to provide the above requested information a Report to Director will be written. If found to be in breach of the Act you may encounter an Administrative Penalty."*

38. On December 30<sup>th</sup>, 2022, the Inspector emailed the Respondent noting a travel wholesaler license was required. The inspector requested a response regarding the status of the license application documents by January 6<sup>th</sup>, 2023. The inspector did not receive a response to this email.

39. On January 10<sup>th</sup>, 2023, the Inspector telephoned the Respondent. The Report notes the Respondent answered the call and then terminated it after the Inspector identified themselves.

40. The Report concludes the Respondent failed to provide the records as stated in the Inspection Letter, which were due on May 2<sup>nd</sup>, 2022.

41. The Report also concludes the respondent failed to provide information required by the Inspector when they failed to submit the license application documents by the final deadline of January 6<sup>th</sup>, 2023.

**G. ANALYSIS Re Allegation #2 (BPCPA 189)**

42. The Report alleges there were 2 separate requests for information/records to be produced by the Respondent. The first were records noted in the Inspection Notification and Demand Letter. The requested records and status of each record are noted in the table below.

<b>Record requested in Inspection Notification and Demand Letter</b>	<b>Status of record</b>
<i>address of each property (“the Properties”) for which Port Renfrew Vacation Rentals offered or did facilitate the rental or lease of the Properties to travellers at any time during the period inclusive of June 1, 2019 through the date of this Order (“the Time Period”)</i>	The Respondent failed to provide this information to the Inspector.
<i>copies of all rental management agreements, contracts or other covenants involving Port Renfrew Vacation Rentals with owners of the Properties that called for or allowed Port Renfrew Vacation Rentals to rent, lease or otherwise arrange for the supply of accommodation at the Properties at any time during the period inclusive of June 1, 2019 through September 30, 2020 (“the Time Period”)</i>	The Respondent failed to provide these records to the Inspector. The Respondent states they do not have management agreements, as they are friends with the owners of the properties.
<i>name, address and any other contact related information for the owners of the Properties</i>	The Respondent failed to provide this information to the Inspector and despite stating that they are “friends” with the property owners, the Respondent also states “I don’t have addresses as I just e-transfer their income to their email address along with a monthly income statement less expenses”.
<i>name, address, email, and phone number of each consumer for whom Port Renfrew Vacation properties rented, leased, or otherwise arranged for the supply of the accommodation at the Properties during the Time Period.</i>	The Respondent failed to provide this information to the Inspector and stated they do not save these records.
<i>the financial institutions (including brand address and bank account numbers) that Port Renfrew Vacation Properties received consumer funds related to the</i>	The Respondent failed to provide this information to the Inspector. Bank statements obtained directly from



<p><i>supply of accommodation at the Properties during the Time Period.</i></p>	<p>the financial institutions under an Inspection Order prove the records did exist.</p>
<p><i>A copy of the monthly income statement less expenses you speak of in your email on March 8, 2022. Please provide these statements from January 1, 2021 to current.</i></p>	<p>The request for this record was emailed to the Respondent separately on April 20<sup>th</sup>, 2022, and was not included in the Inspection Notification and Demand Letter of February 28<sup>th</sup>, 2022. The Respondent failed to provide this information to the Inspector.</p>

43. While the Respondent claims some of these records do not exist, it is clear the Respondent failed to provide any records requested by the Inspector. Based on the bank statements obtained directly from the financial institutions, I can conclude that some of the requested records did in fact, exist. In addition, the Respondent did not provide any records resulting from the Inspector’s emailed request dated April 20<sup>th</sup>. **I conclude the allegation of a breach to BPCPA 189 is confirmed.**

44. The second request for records as noted in the Report is related to the submission of the license application documents. The Inspector requested the Respondent to submit a travel wholesaler license application to Consumer Protection BC by April 22<sup>nd</sup>, 2022. The most recent correspondence sent to the Respondent from the Inspector states “*Please provide status of these documents [license application documents] by January 6, 2022.*” I note this request does not actually speak to submission of the licence application documents, but simply requests a status update. While a license application (or update on the status of the license application) was not submitted to Consumer Protection BC, these are not records that are required to be submitted under the Act. Similarly, they are not records that can be requested for the purposes of an inspection. Under BPCPA 150, an Inspector can inquire into the business, affairs or conduct of a person and inspect/examine any records for the purposes of an Inspection. I find the Respondent’s failure to submit the license application documents or failure to provide a status update on the license application does not constitute a breach of BPCPA 189. **In this instance, the allegation of the breach of BPCPA 189 is dismissed.**

45. After reviewing the Report, I note there is a third request for information from the inspector in the form of an email sent to the Respondent on February 10<sup>th</sup>, 2022 (see point 30 above). The email was sent to the Respondent before the Inspection Notification and Demand Letter was sent, so it is reasonable to infer that the Inspector intended to replace the informal emailed request for documents with the formal Inspection Notification and Demand Letter. Since the Report did not conclude that the documents requested on February 10<sup>th</sup> were to be included in the allegation of the breach to BPCPA 189, I find it would not be appropriate to confirm a breach to BPCPA 189 regarding this request. **I conclude there is no breach to BPCPA 189 regarding the records the Inspector requested via email on February 10<sup>th</sup>, 2023.**

**H. CONCLUSION Re Allegation #2 (BPCPA 189)**

46. I find the Respondent did commit a contravention of section 189 of the Business Practices and Consumer Protection Act when they failed to provide information required under the Act related to the records requested by the Inspection Notification and Demand Letter of February 28<sup>th</sup>, 2022.
47. Any allegation of a breach to BPCPA 189 in relation to submission of the license application documents, status of the license application, or the records requested in the February 10<sup>th</sup> email is dismissed.

**I. DUE DILIGENCE Re Allegations #1 and #2**

48. Due diligence can serve as a full defence of the contraventions if the Respondent can demonstrate that it took all reasonable steps to prevent the contraventions from occurring. The onus is on the Respondent to establish this defence. The Respondent has not provided any evidence to demonstrate that any measures were taken to avoid the contraventions; therefore, the defence of due diligence has not been established.

**J. ENFORCEMENT AND REMEDY Re Allegations #1 and #2**

49. As the Director's delegate, and having determined that contraventions have occurred, I may take one or more of the following actions:
- i. Accept an Undertaking, pursuant to section 154 of the BPCPA
  - ii. Issue a Compliance Order, pursuant to 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
  - iii. Impose an administrative monetary penalty of up to \$5,000 on an individual or up to \$50,000 on a corporation, pursuant to section 164 of the BPCPA. A contravention to section 143 and 189 of the BPCPA are each prescribed for the purpose of administrative penalties under the Business Practices and Consumer Protection Regulation.
50. For the contravention of engaging in the designated activity of a travel wholesaler without a license, I have decided to issue a Compliance Order. Further information is noted under point 52 below.
51. For the contravention of failing to provide information required under the Act, I have decided to impose an Administrative Monetary Penalty. Further information is noted under point 54 below.

## Compliance Order

52. 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:
- Stop a specified act or practice;
  - Take actions to correct the issue; and,
  - Reimburse Consumer Protection BC the costs of inspection in the matter.
53. Recognizing the extent of inspection resources allocated to the contravention of BPCPA 143, I believe it appropriate to order the Respondent to reimburse Consumer Protection partial costs of the associated inspection in the amount of **\$1,300.00**. The Compliance Order also orders the Respondent to cease the designated activity and remove all advertisements until such a time as the Respondent is licensed as a travel wholesaler. Specific terms are described within the Compliance Order.

## Administrative Monetary Penalty

54. A contravention to section 189 of the BPCPA is prescribed for the purpose of administrative monetary penalties (“AMPs”) under the Business Practices and Consumer Protection Regulation. The BPCPA authorizes the imposition of a penalty of up to \$5,000 on an individual or up to \$50,000 on a corporation (section 165 of the BPCPA).
55. In the context of the factors under 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.
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 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.
57. 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 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.

58. 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.
59. 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.
60. 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 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.
61. When applying the Policy, the decision maker considers all the factors under 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 164(2) of BPCPA (and one additional related criterion) and any other relevant circumstances.
62. 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. The Respondent did not submit any response.
63. I have determined that an AMP should be imposed for the Respondent’s contravention to section 189 of the BPCPA for failing to provide information as required under the Act.

### Calculation of the AMP amount

64. 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) of the BPCPA, one additional criterion and any other relevant circumstances.
65. A breach to section 189 of the BPCPA is a Type C type contravention based on categorization in Policy contravention under the Policy (page 17 Appendix A, 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.
66. According to the AMP Matrix in part 4.3 of the Policy (page 5), the “base” amount for the AMP is \$3,250.00 for an individual.
67. 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 (Allegation #2 - BPCPA 189)
1. <i>Previous enforcement actions for contraventions of a similar nature</i>	0	There are no previous enforcement actions for a contravention of a similar nature.
2. <i>Gravity and magnitude of the contravention</i>	0	I feel the base penalty is appropriate in this case. I maintain the gravity level at zero.
3. <i>Extent of the harm to others resulting from the contravention</i>	0	There is no evidence of harm to others resulting from the contravention.
4. <i>Whether the contravention was repeated or continuous</i>	0	For the purposes of this AMP, I have decided to treat this breach to BPCPA as a single contravention.

<p><b>5. Whether the contravention was deliberate</b></p>	<p>1</p>	<p>While the respondent states some of the required records do not exist, evidence has proven that some of the requested records (such as banking records) did exist. I find that the Respondent was deliberate in their failure to produce these records to the Inspector, therefore I increase the gravity level by 1.</p>
<p><b>6. Economic benefit derived by the person from the contraventions</b></p>	<p>0</p>	<p>There is no evidence of economic benefit resulting from their failure to produce records to an Inspector.</p>
<p><b>7. Whether the person made reasonable efforts to mitigate or reverse the effects of the contravention</b></p>	<p>0</p>	<p>The person has made no attempt to mitigate or reverse the effects of the contravention.</p>
<p><b>8. The person's efforts to correct the contraventions &amp; prevent recurrence</b></p>	<p>0</p>	<p>The person has made no effort to correct the contravention &amp; prevent recurrence.</p>

**Final Calculation of AMP**

68. According to my application of the Policy and its AMP Matrix, the overall adjustment for the contravention to section BPCPA 189 involves an overall score of “1”.

69. The Policy determines that a violation of section 189 of the BPCPA is a Type C contravention based on categorization in Policy with a base penalty amount of \$3,250.00. In this case, having found a gravity level of “1” the Matrix calls for an AMP of \$3,500.00. 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.

70. I have considered the \$3,500.00 AMP 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 \$5,000.00 for individual, I believe \$3,500.00 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 **\$3,500.00**.

**K. RECONSIDERATION**

71. A Notice of Administrative Monetary Penalty and/or the Compliance Order may be reconsidered in accordance with 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 182(2) of the BPCPA. A reconsideration fee in the amount of \$272 must accompany the written request for reconsideration.

72. A request for reconsideration should be addressed to:

Consumer Protection BC  
Attention: Director  
200 – 4946 Canada Way, Burnaby, BC V5G 4H7

Decided on June 29, 2023, in Burnaby, BC.



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Tegan Scardillo  
Director of Compliance and Classification  
Consumer Protection BC

## APPENDIX - LEGISLATION

### Travel Industry Regulation

**"travel service"** means

- (a) transportation,
- (b) accommodation, or
- (c) another service combined with transportation or accommodation

that is for the use or benefit of a traveller, tourist or sightseer;

**"travel wholesaler"** means a person who engages in the business or occupation of

- (a) Repealed. [B.C. Reg. 369/2008, Sch. 2, s. 1 (c).]
- (b) purchasing or acquiring from another person rights to travel services for the purpose of resale, or
- (c) dealing with travel agents or other travel wholesalers for the sale of travel services supplied by another person.

### **Designated activities**

**1.1** For the purposes of the definition of "designated activity" in section 142 of the Act, the following are designated:

- (a) the business and occupation described in the definition of "travel agent";
- (b) the business and occupation described in the definition of "travel wholesaler".

### Business Practices and Consumer Protection Act

#### **Licence required**

**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.

#### **Inspection powers**

**150** (1) For the purposes of an inspection, an inspector may do any of the following:

- (a) enter the business premises of a person at any reasonable time;
- (b) inquire into any business, affairs or conduct of a person;
- (c) inspect, audit or examine any record, goods or other thing or the provision of services in the premises;
- (d) inspect a vehicle or vessel that is being used for business purposes;



- (e) require any person who has possession or control of any of the records, goods or other things in the premises, vehicle or vessel to produce the records, goods or things;*
  - (f) make a record, including a record on film, audio tape, video tape or otherwise, of the premises, vehicle or vessel and any thing in or on the premises, vehicle or vessel;*
  - (g) remove any record from the premises, vehicle or vessel for the purpose of making copies;*
  - (h) remove and retain any record, good or other thing that may be required as evidence from the premises, vehicle or vessel.*
- (2) The authority under subsection (1) must not be used to enter a private dwelling except with the consent of the occupant or with the authority of a warrant under section 152 [inspection under warrant].*

### **Offences**

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

[...]

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