



DECISION OF THE DIRECTOR

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: Jeremy May

Licence: 16016

Case Number: 31772

Adjudicator: Laura Casey, Vice President, Operations

Date of Decision: April 26, 2024

Introduction

Under statutory delegation, Consumer Protection BC (aka the Business Practices and Consumer Protection 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”).

The Respondent is an individual operating under a funeral director and embalmer licence granted by Consumer Protection BC.

On March 20, 2024, a Consumer Protection BC Business Practices Officer issued the Respondent a Report to the Director (“Report”) that alleged the Respondent violated section 38(1)(a) and 38(1)(b) of the CIFSR.

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.

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.

In a letter dated March 20, 2024, 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 April 5, 2024, to provide a written response.

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.

Alleged Contravention / Legislation

The allegation against the Respondent is stated as:

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

Section 38(1)(a) 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,

during each successive two-year period where the first two-year period commences on the date the person first received their licence to act as a funeral director or an embalmer or both in the province.

(2) Despite subsection (1), the director may at any time require a funeral director or embalmer to take additional training in a program of funeral services education or embalming.

Evidence in the Report to Director

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.

The Respondent was first issued the licence on September 9, 1999, to act and hold themselves out as a funeral director and embalmer.

The most recent successive two-year period from when the Respondent was first issued the licence commenced September 9, 2021, to September 9, 2023.

On August 10, 2023, an email was sent advising the Respondent had not yet completed the required funeral director and embalming continuing education credits within the required 2-year period that was coming due September 9, 2023, with 6 funeral director credits and 6 embalmer credits outstanding.

Before the end of the two-year successive period (September 9, 2021, to September 9, 2023), Consumer Protection BC did not receive records showing the Respondent had completed any of the required credits in funeral services or embalming services.

The Report to Director was emailed to the Respondent on March 20, 2024.

On March 22, 2024, the Respondent sent an email to the Director explaining the courses taken for funeral directing credits in September 2023 was meant to be applied to the previous 2-year period (September 9, 2021, to September 9, 2023). The email stated the following:

'It appears that the courses I took in September of 2023 that I intended to cover off the last two years. were applied towards my ongoing period for the next two years.

This was not my intent. My intent in Sept of 2023 was that they be applied for the last 2 years - not the next 2 years? While I may have made an error in submitting them or was late for the previous period, the intent was not to write 12 credits for the future, while not having the 12 that I needed right then?'

Here is a list of the courses referenced in the email from March 22, 2024, along with, number of credits and dates completed:

- Understanding Hospice and Palliative Care (1 FD credit) – completed September 21, 2023
- Funerary Ethics and Best Practices (3 FD credits) – completed September 21, 2023
- Perinatal Bereavement and Memorialization (2 FD credits) – completed September 21, 2023
- Restorative Art and Modern Technologies (3 EMB credits) – completed September 21, 2023

The email of March 22, 2024, also included information from the Respondent relating to further embalming credits. The Respondent noted that they did not submit the credits previously as an oversight. And stated, 'In previous years the CCFS would notify the CPBC, I see now that it was my responsibility to upload them now and moving forward'. The Respondent submitted the credits via the web portal and included them as an attachment to the email. The Respondent also provided an email from August 21, 2021, from the Canadian College of Funeral Services where they indicated they notified Consumer Protection BC about completed courses. A list of the course, number of credits and date completed is below:

- CJD-A Deeper Understanding (3 EMB credits) – Completed September 22, 2023

Analysis

Though the Respondent completed the course work shortly after the deadline of September 9, 2023 (completion dates: September 21, 2023 and September 22, 2023), the evidence establishes that in the last two-year successive period of September 9, 2021, to September 9, 2023, the Respondent was required to complete a minimum of six hours in an approved program of funeral services and a minimum of six 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 CFSR section 38(1)(a) and 38(1)(b). I note that the respondent completed the credits shortly after the deadline and prior to the Report to Director being received, which I will take into consideration in this decision.

Due Diligence

Due diligence can serve as a full defence to the contravention if the Respondent can demonstrate that they took all reasonable efforts to prevent the contravention. Based on my review of the evidence I believe the Respondent has not shown due diligence.

Conclusion

I conclude the Respondent contravened CFSR section 38(1)(a) and 38(1)(b) by failing to complete the minimum required six hours of training in a program of funeral services and six hours or training in a program of embalming services approved by the Director during the past two-year successive period (September 9, 2021, to September 9, 2023) from when the licence was first issued.

Enforcement and Remedy

As the Director's delegate, and having determined that a contravention has occurred, I may take one or more of the following actions:

- Suspend, cancel, or impose conditions on a license, pursuant to section 55(3) of the CIFSA and section 146 of the BPCPA
- Accept an Undertaking, pursuant to section 56(2) of the CIFSA and section 154 of the BPCPA
- 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.
- 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) of the CIFSR is prescribed for the purpose of administrative penalty under the Administrative Penalties Regulation.

For the contravention of failing to complete the minimum required six hours of training in a program of funeral services and failure to complete the minimum required six hours of training in the program of embalming services, I have decided to impose an administrative monetary penalty and issue a Compliance Order.

Administrative Monetary Penalty

A contravention to section 38(1)(a) of the CIFSR 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).

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.

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:

- Previous enforcement actions for contraventions of a similar nature by the person
- The gravity and magnitude of the contravention
- The extent of the harm to others resulting from the contravention
- Whether the contravention was repeated or continuous
- Whether the contravention was deliberate
- Any economic benefit derived by the person from the contravention
- The person's efforts to correct the contravention.

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.

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.

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.

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.

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.

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.

Although open to me to impose an administrative penalty for each contravention, I have decided to only impose an AMP for the contravention to sec. 38(1)(a) for failing to complete the minimum required 6 hours of training in a program of funeral services approved by the Director.

Calculation of the AMP Amount

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.

A breach to section 38(1)(a) 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.

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.

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
<p>1. Previous enforcement actions for contraventions of a similar nature</p>	<p>0</p>	<p>There are no previous enforcement actions by Consumer Protection BC against the Respondent. I maintain the gravity level at neutral.</p>
<p>2. Gravity and magnitude of the contravention</p>	<p>0</p>	<p>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 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.</p>

<p>3. Extent of the harm to others resulting from the contravention</p>	<p>0</p>	<p>There is no evidence or basis to infer harm to others resulting from the contraventions. I maintain the gravity level at neutral.</p>
<p>4. Whether the contravention was repeated or continuous</p>	<p>0</p>	<p>The contravention was not repeated or continuous. I maintain the gravity level at neutral.</p>
<p>5. Whether the contravention was deliberate</p>	<p>0</p>	<p>I have no reason to believe the Respondent's actions were of a deliberate or intentional nature. I maintain the gravity level at neutral.</p>
<p>6. Economic benefit derived by the person from the contraventions</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>7. Whether the person made reasonable efforts to mitigate or reverse the effects of the contravention</p>	<p>-2</p>	<p>I have taken into consideration the Respondent completed the overdue credits in funeral directing and embalming services shortly after (2 weeks after) the due date and prior to the Report to Director and Opportunity to be Head documentation was sent to the respondent. I have adjusted the gravity level accordingly.</p>
<p>8. The person's efforts to correct the contraventions & prevent recurrence</p>	<p>0</p>	<p>Though the Respondent stated in their response to their Opportunity to be Heard that they will ensure courses are submitted by the Respondent in the future (vs. relying on the schools) I have not been given any clear 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

According to my application of the Policy and its AMP Matrix, the overall adjustment for the contravention to section 38(1)(a) of the CFSR involves an overall score of -2.

The Policy determines that a violation of section of the 38(1)(a) 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 -2 the Matrix calls for an AMP of \$400. 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.

I have considered the \$400 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 \$400 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 **\$400**.

Compliance Order

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.

Recognizing the extent of inspection resources allocated to the contravention of failing to complete continuing education credits for funeral services I believe it appropriate to order the Respondent reimburse Consumer Protection the costs of the associated inspection in the amount of \$150. Specific terms for payment of the inspection costs are described within the Compliance Order.

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. Therefore, I exercise my authority under BPCPA section 155(4)(c) and CIFS 56(2)(c) to order the following funeral director and embalmer courses to be applied to the 2021-2023 period to satisfy the requirements for that period:

- Understanding Hospice and Palliative Care (1 FD credit) – completed September 21, 2023
- Funerary Ethics and Best Practices (3 FD credits) – completed September 21, 2023
- Perinatal Bereavement and Memorialization (2 FD credits) – completed September 21, 2023
- Restorative Art and Modern Technologies (3 EMB credits) – completed September 21, 2023
- CJD-A Deeper Understanding (3 EMB credits) – Completed September 22, 2023

The precise terms are described in the Compliance Order attached to this decision.

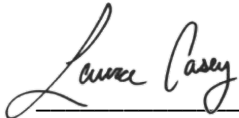
Reconsideration

A Notice of Administrative Monetary Penalty and/or 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 \$283 must accompany the written request for reconsideration.

A request for reconsideration should be addressed to:

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

Decided on April 26, 2024, in Victoria, BC.



Laura Casey