



DECISION OF THE DIRECTOR

In the Matter of: The *Business Practices & Consumer Protection Act*, and the *Consumer Contracts Regulation*

Respondent: CARE Funeral Services (Vancouver Island) Ltd.

Licences: 49850, 71382, 77117

Case Number: 30337

Adjudicator: Robert Penkala

Date of Decision: July 15, 2020

Introduction

Consumer Protection BC by statutory delegation oversees compliance with the *Cremation, Interment and Funeral Services Act*, the *Business Practices and Consumer Protection Act* (BPCPA), and the *Consumer Contracts Regulation* (Regulation). CARE Funeral Services (Vancouver Island) Ltd. (“respondent” or “licensee”) is a company operating under three licences granted by Consumer Protection BC within this regulatory framework.

In February 2020 Consumer Protection BC’s Manager of Business Practices issued a Report to the Director to the respondent alleging it had violated section 10 (1) of the Regulation, referring to the licensee’s failure to comply with prescribed reporting for its preneed funeral services contracts for the business years 2016 to 2019. The director referred the matter to me to decide in a proceeding under the BPCPA.

On February 5th, 2020, I sent an email initiating a hearing (notice, or “opportunity to be heard”), on the matters raised in the Report. On February 28th I sent a second notice amending the allegations and extending a new time for the licensee’s formal response. In the latter I advised the respondent that the Report was amended for the purpose of the hearing by excluding two of its four allegations. Further, I determined the Report premature in respect of the allegation concerning reporting for business year 2019.

Consequently, the respondent was given an opportunity to resolve the alleged reporting failures for business years 2018 and 2019 or to defend against the allegations by March 30th. If providing the reports by that time, the licensee was not required to provide any further written response to the allegation, and enforcement proceedings in relation to late or deficient reporting would end. Due to a further extension of the timeline for responding or reporting granted to all licensees for 2019 preneed reporting, the respondent's deadline also shifted to May 31st for the most recent year-end reporting. (The deadline for its 2018 reporting remained March 30th.)

After being informed by our Business Practices group that the respondent had allegedly failed to meet the new deadlines for both 2018 and 2019 reports, I sent a third notice to the respondent on June 5th allowing it until June 22nd deliver a formal response. (A separate notice concerning the allegedly incomplete 2019 reporting was also sent to the respondent by the responsible Business Practices officer, with the same timeline for reply.)

In accordance with procedural fairness, prior to any potential enforcement action the respondent must be provided with an opportunity to be heard. The first two notices had extended an opportunity to respond to the allegation or, alternatively, to remedy the alleged breach. All the notices advise that an adjudicator would determine whether the alleged violations occurred and allude to the possibility of enforcement actions such as orders, licence conditions, or licence suspension.

The respondent replied to the notices or "opportunities to be heard". While in principle objecting to the allegations, it has not raised any issues respecting the sufficiency of notice (e.g., not being adequately informed of the specifics of the allegations) and has not requested any further disclosure of evidence regarding the alleged reporting deficiencies. The thrust of the response is that CARE has provided to Consumer Protection BC all the information required by section 10 of the Regulation. I will say more about the licensee's response in this decision below. The relevant point here is that the licensee's response satisfies me that it has been afforded the procedural rights required for my exercise of statutory enforcement powers.

Alleged contravention & legislation

The relevant provisions of the CCR set out the licensee's obligations concerning preneed reporting:

- 10** (1) *A supplier must submit to the director a report that includes the following information in respect of each preneed cemetery or funeral services contract for the previous fiscal year or the period specified by the director:*
- (a) the name and address of the consumer;*
 - (b) the date on which the contract was entered into;*
 - (c) the total purchase price for the goods or services supplied, or to be supplied, under the contract;*

- (d) any amounts received, or held, in relation to the contract immediately before the beginning of the fiscal year or specified period;*
- (e) any amounts received, or held, in relation to the contract during the fiscal year or specified period;*
- (f) any amounts placed in the preneed interim account in relation to the contract during the fiscal year or specified period;*
- (g) any interest credited to amounts placed in the preneed trust account in relation to the contract during the fiscal year or specified period;*
- (h) any amounts paid out by the trustee in relation to the contract during the fiscal year or specified period;*
- (i) the balance in the preneed trust account in relation to the contract at the end of the fiscal year or specified period;*
- (j) the investment account number of any account in which any amounts received, or held, in relation to the contract were held during the fiscal year or specified period.*

(2) [...]

(3) The supplier must make the report to the director as soon as practicable

- (a) after the end of the supplier's fiscal year, or*
- (b) on the request of the director.*

Consumer Protection BC's authority to issue and enforce a remedial order against the respondent at the conclusion of a hearing is found in section 155, BPCPA, incorporated through section 56(2)(c) of the *Cremation, Interment and Funeral Services Act*, which provides:

(1) After giving a person an opportunity to be heard, an inspector may order the person to comply with this Act and the regulations if satisfied that the person is contravening, is about to contravene or has contravened this Act or the regulations.

(2) A compliance order must

- (a) name the person in respect of whom the order is issued,*
- (b) describe the person's act or practice that is contravening, is about to contravene or has contravened this Act or the regulations,*
- (c) identify the section of this Act or the regulations that is being contravened, is about to be contravened or has been contravened,*
- (d) be dated and signed by the inspector issuing the order, and*
- (e) inform the recipient that the director may file the compliance order with the Supreme Court and that a filed order is deemed to be an order of the Supreme Court.*

(3) In a compliance order, an inspector may order a person to stop engaging in or not engage in a specified act or practice.

(4) The director may include one or more of the following orders in a compliance order:

- (a) [...]*
- (b) [...]*

(c) that a person take specified action to remedy an act or practice by which the person is contravening, is about to contravene or has contravened this Act or the regulations;

(d) that a person reimburse to the director all or a portion of the actual costs of any inspection, including actual legal costs, incurred by the director for the inspection of that person in respect of the contravention referred to in the compliance order.

(5) [...].

(6) [...]

(7) A compliance order may be reconsidered in accordance with Division 1 of Part 12

THE MANAGER'S EVIDENCE

- The respondent has a business year end date of December 31. The deadline for submitting annual preneed reports is 90 days from year end (March 30 or 31).
- The Consumer Protection BC database records email reminders sent to the licensee in March 2019 regarding pending due dates for preneed reporting for all its licences (Exhibits 10a and 10b, with “60 days late” and “87 days late” notifications.)
- The respondent submitted a preneed report for 2018 [Exhibit 11] on March 27, 2019. It included 37 pages of preneed insurance statements from different insurance companies and a trust account statement from the Bank of Nova Scotia.
- On April 5, 2019, Business Practices sent the respondent a “notice of pending action” stating that the 2018 report “has not been submitted”. The notice requested the report be submitted online by April 18, 2019 to avoid enforcement action being taken. [Exhibit 12]
- The report submitted in March was reviewed by an officer who then emailed the respondent on July 22, 2019 detailing areas of the report she said were not compliant with section 10. [Exhibit 14]
- The email requested that the Respondent add missing information and resubmit the report by August 23, 2019. Specifically noted as “missing” was the following:
 - Funeral Plans Canada documentation – client addresses and contract dates
 - BMO Life Insurance – client addresses
 - Assurant – client addresses
 - Foresters Financial – client addresses
 - Bank of Nova Scotia – client addresses
- On July 22, 2019, the respondent replied to the Business Practices officer. [Exhibit 15] The Respondent stated that all three of its funeral provider locations

report their preneed activity through the location operating under licence number 77117. The officer replied, restating the compliance issues and the August deadline.

- On August 22, 2019 the respondent faxed 42 pages of individual preneed trust contracts completed in 2018. [Exhibit 16] The Report notes the following were later identified as outstanding:
 - the submissions only included new (2018) trust preneed contracts.
 - contracts provided were not in “the required report format”
 - Bank of Nova Scotia statements were missing the amount placed in trust, monies received during the year, year-end balance, and investment account number
- On September 6, 2019 the officer emailed the respondent, giving it information as to why the report for 2018 was in her view not compliant. Her email referred to the insured preneed contracts, the trust bank statement, and where each did not comply with Section 10. The deadline to resubmit the report was extended until October 8, 2019. [Exhibit 17]
- On September 9, 2019 the respondent delivered an email attaching insurance policy statements from Assurant, Foresters, and Funeral Plans Canada [Exhibit 18] Upon review, the following issues were noted:
 - Funeral Plans Canada – missing client addresses
 - Foresters – missing client addresses
 - Assurant – did not report insured preneeds for each licensed location
- On September 19, 2019 the officer emailed the respondent, explaining why she believed the report submitted did not meet the section 10 requirements.
- On September 19, 2019 the respondent delivered by facsimile 68 pages of individual preneed contracts covering multiple years. The contracts provided in the facsimile were only for clients with last names starting with A through C. [Exhibit 19]
- The officer reviewed the submission and responded to the respondent on September 24, 2019, stating that the submissions were not satisfactory. The Respondent was reminded of the October 8, 2019 deadline. [Exhibit 20] The specific issues identified were:
 - not providing a report
 - interest, additional monies added to the contract, any monies paid out, and opening balance at start of the fiscal year were all missing
- The respondent denied the need for a different or specific form of “report”, saying that the submissions of contracts and trust account and insurance

statements were sufficient. [Exhibit 21]

- On November 19, 2019, the manager outlined the director’s opinion of a “report” in relation to section 10 and stated that the information provided to date did not constitute a report. The manager requested that a “proper report” be submitted for the preneed for 2018 by December 31, 2019. [Exhibit 22]
- On January 30, 2020, the Respondent sent a facsimile containing copies of preneed contracts for 2019, bank trust statements, and insurance statements. [Exhibit 25] The copies of records total 134 pages sent by the respondent by fax.
- According to the Report, the following was identified as not complying with section 10:
 - not providing a report,
 - interest, additional monies added to the contract, any monies paid out, and opening balances at start of the fiscal year were all missing

RESPONDENT’S EVIDENCE

The respondent (in fact Mr Buckley, its owner and sole director) has not provided any business documents to me by way of response in the hearing, in relation to either the 2018 or 2019 preneed reporting allegations. The response consists of three letters sent by Mr Buckley, dated February 26, March 2, and June 22. Each of the letters states that the respondent has already complied with section 10 (“all reports provided to you by us thus far have contained all the information we have access to as we attempt to satisfy every requirement of Section 10.”)

Further, the respondent identifies an issue that appears to be a point of contention in the events leading to this hearing, i.e., whether his providing information in relation to the requests of the Business Practices office is indeed the provision of “a report” according to the Regulation. Mr Buckley says: “If you are taking the position that ‘failing to submit a fully compliant’ report in actual fact means that CARE [...] has not provided the previously ‘provided information’ in a format of your choosing but rather has provided copies of the original documents, I must agree.”

ANALYSIS & DISCUSSION

Whether specific required information was omitted

2018 reporting

I make the following observations regarding, first, assertions of a factual nature in the Report. That is, the allegations concerning any of the specific components (a) through (j) at issue in applying section 10 (1) as determinable based on observation of the contents of the “reports” CARE purports to have submitted. Each of those components can be identified as either present or not present in a report (whatever its format) as will be readily apparent, due to the nature of the

information: i.e., names, addresses, dates, prices, amounts or balances held, money paid out, interest earned, and accounts identified.

The Report provides details of four separate submissions made by CARE with respect to its 2018 reporting. As outlined in my summary of evidence above, the Manager alleges that the insured preneed contracts associated with Foresters Financial were not reported by CARE including the policy-holders' addresses, as required by section 10 (1)(a). It is clear that the three-page "Inforce Police Listing [...] at Dec 31, 2018" sent by CARE in March and in September 2019 contains no addresses corresponding to the 71 policies held by the preneed purchasers. It is also apparent that, for the Assurant insured preneeds CARE reports, addresses were added to the reporting between the initial March and later September submissions. Certificates from BMO Life Assurance, a third insurer, (March submission only) identify three policy-holders without, however, listing their addresses. A document involving a fourth insurer, Funeral Plan Canada, lists only two policies in one family, and CARE attaches an insurance certificate with an address for the policy-holders. For the purpose of a very simple aspect of the reporting, such as this, I find the information to have been provided.

Another matter raised in the Report relates to the suggestion that CARE failed to itemize insured preneeds (Assurant, in particular) for each of its three licensed locations. CARE states in correspondence to the officer in July and August 2019 that all its insured preneeds "are *ONLY* with our Victoria office". Despite CARE's position on this point, an email from the officer in September seeks "to verify whether any preneed contracts are written at" the Sooke or Sidney offices, and reiterates, "we require re-submission from each of your 3 locations". The Report subsequently indicates that all three locations are the subject of the allegations as to unmet reporting requirements. However, the issue does not appear to have been pursued by Business Practices after the September email and is not expressly alleged in the Report. Furthermore, the issue is not identified in the Business Practices' email to CARE in March 2020 concerning its 2019 preneed reporting. For these reasons I take the matter to be either resolved or not squarely within the Report's intended allegations.

The second recurring allegation throughout this series of CARE's reporting submissions is that preneeds with payments held in trust by a financial institution in 2018 are not associated with information for each contract indicating interest earned, other money added to the account, money paid out from the accounts, and the "opening balance" for each account at the beginning of the fiscal year, the closing preneed trust account balances, and the investment account numbers. These reporting elements are found in section 10 (1) (d), (e), (g), (h), (i), and (j).

In the case of CARE's preneed trust reporting, among the documents sent ostensibly in satisfaction of the relevant section 10 requirements are copies of original preneed funeral service agreements ("and invoice" in some cases), indicated in some cases as having been paid into either TD trust accounts (prior to 2018) or Bank of Nova Scotia (Scotiabank) trust accounts (in part prior to 2018, and exclusively for preneed trust accounts opened in 2018). None of the

information provided in this form verifies the deposit of preneed purchases into the TD or Scotiabank accounts. Also, none of the agreements (and invoices) evidenced in total of 110 faxed pages in Exhibit 16 and Exhibit 19 include information about the interest to be earned in the trust accounts. CARE's March 2019 submission includes a Scotiabank trust account "master statement" for 384 clients. Nowhere in the evidence is there an equivalent master statement for the original TD trust accounts, but the Report does not identify that absence as germane to any section 10 issues.

I surmise that the respondent has provided copies of its original preneed agreements in order to supplement the Scotiabank trust statement respecting client information, as the master statement does not list client addresses whereas the original agreements do contain them. This matter is raised at paragraph 14 of the Report, "Bank of Nova Scotia – client address missing". I concur that the Scotiabank master statement does not include client addresses. (The question remains whether that is remedied by the respondent submitting copies of preneed agreements that record consumer addresses.)

Itemized below, is my assessment of the remaining sub-allegations in respect of section 10 and the information submitted for the 2018 preneed trust contracts.

interest not reported

- The Scotiabank master statement in fact shows the interest rate, monthly interest, and accrued interest for every client account.

other money added to the account

- My review of the original agreements suggests that these are often fully funded at purchase (indicated by the notation "fully paid" to the trust, as well as evidence of corresponding cheques or money orders). Aside from the original preneed purchase payments and interest accrual, it is not clear what might constitute additional money added to the accounts. Without knowing of the existence of possible additional payments in connection to the accounts, I am unable to accept the suggested reporting deficiency.

opening balance for each account at the beginning of the fiscal year

- The Scotiabank master statement includes only amounts for "principal" invested in the preneed trust account, interest accrued, and accumulated value. For all 2018 purchases I would expect the principal to be the same amount as opening balance. However, accounts opened in 2014 to 2017 do not reflect the amount brought forward immediately preceding the current reporting year (it can be found by subtracting current year accrued interest from the accumulated value but is not stated as such).

any monies paid out

- The Scotiabank master statement does not indicate any payments out of trust accounts. Nor does the Report cite any specific redemptions or refunds that are not captured by the statement. I note, however, that the statement appears to have

notations in relation to the deaths of five preneed consumers (“DOD”, which appears to be date of death). Four of the presumed deaths are notated as occurring in 2019 and therefore would not appear in 2018 reporting: the remaining one has a date of December 14, 2018. It seems reasonably likely that the latter preneed consumer’s account would be redeemed in 2018, though one cannot be certain. Beyond this potential anomaly, I find the Manager’s suggestion of non-reporting to be plausible in that there is no single instance recorded among 384 preneed clients in 2018 of trust accounts being paid out (including those purchased between 2014 - 2017).

(I mention that the Report, in paragraph 17, states that the 42 pages of preneed documents faxed by the respondent in August 2019 included Scotiabank statements missing, “amount placed in trust, monies received during the year, year-end balance, [and] investment account number”. In my assessment this allegation is not accurate. The respondent did not re-submit the Scotiabank master statement in August, as it had been delivered in March 2019. Moreover, that statement includes the original principal amounts placed in trust for all listed 2018 preneeds, the accrual of interest, the year-end balance, and each investment account number. None of those things would be sufficiently captured by the August submission alone, given that the Scotiabank statement forms no part of it.)

To summarize:

1. the respondent’s reporting for preneed funeral services contracts insured by Foresters Financial and BMO Life Assurance fail to include consumers’ addresses, contrary to section 10 (1)(a) of the Regulation;
2. The respondent’s Scotiabank trust account master statement does not include client addresses, “opening balances” or the amounts held in accounts immediately preceding the reporting year, or any “amounts paid out” during the year (which I find, more likely than not, to have occurred).

2019 reporting

The Report exhibits CARE’s submission for business year 2019, consisting, again, of copies of preneed agreements with consumers, statements of preneed insurance providers, and additionally (unlike the 2018 reporting) a separate Bank of Nova Scotia “trust account master statement as at 31 Dec. 2019”. The trust master statement itemizes 386 investment accounts held by clients. The deficiencies alleged in the Report with respect to criteria (a) through (j) of section 10 are described as: “interest, the additional monies added to the contract, if any monies had been paid out, opening balance at start of the fiscal year, were all missing”. Although not specifically alleged in the Report, it is evident to me based on communication from the Business Practices officer to the respondent on June 5, 2020 (part of a “notice of pending action” and “opportunity to be heard in respect of the officer’s review of 2019 reporting) that the provision of consumer addresses remains a point of contention in relation to the 2019 Scotiabank trust master statement, as well as being relevant to the Foresters Financial and BMO Life Assurance documents.

I find that the issues with respect to the Scotiabank statement are substantially the same as outlined above for the respondent's 2018 reporting. The Scotiabank statement format appears to be the same for 2018 and 2019 reporting years. Thus:

1. the Foresters Financial and BMO Life Assurance policy summaries do not include (except in the case of one BMO policy-holder) client addresses, contrary to section 10 (1)(a) of the Regulation;
2. to the extent that the Scotiabank statements are to be assessed for all the section 10 requirements, the same section 10 required elements are missing from the 2019 report as was the case for 2018: client addresses are not listed, the statement does not include the balances immediately preceding the current year (or present upon opening of the year), and there is no evidence of any "amounts paid out" (more remarkable with the passage of an additional year and 386 account-holding clients). While the Scotiabank 2018 statement contains five "date of death" notations (for "T.A", "D.A", "G.K", "P.M", and "L.R"), the 2019 statement no longer includes the relevant account information or any indication of the redemption of the preneed trust funds [individuals' names in original are redacted here]. Nor does information regarding such amounts "paid out" appear elsewhere in the preneed submission.

Whether the respondent provided a report

In a sense this issue is moot, after deciding that in some respects the sum of the respondent's reporting does not satisfy each of the section 10 requirements, both in terms of 2018 and 2019. I do not see any way for the preneed agreements and invoices (and for 2019, proof of cheque or money order payments) combined with the insurers' and Scotiabank's statements to fully satisfy the reporting requirements. The apparent dispute about the utility of the respondent's prolific "reporting" of original preneed documents is somewhat misplaced. The only aspect of section 10 reporting locatable in the preneed agreements and invoices is the consumers' addresses. With that exception, the information provided as a form of "reporting" is extraneous in terms of section 10 (it could verify the amounts of preneed purchases, but not that those amounts were put into trust, became interest bearing, "accumulated" over time, or were paid out).

Despite the limited potential relevance of the respondent's reproduction of preneed agreements as a component of section 10 compliance, I must address whether, as the respondent claims and the Report denies, the production of those documents in 2019 and 2020 was actually "reporting" as contemplated by the Regulation. The Manager says that the respondent's delivery of hundreds of pages of documents at intervals, while failing to "encompass the totality of the required information" is simply not *a report*. A report, she says, "needs to be in a distinct document that gives a coherent summary" of the information sought by the regulatory body. The respondent, on the other hand, believes that the regulatory body should assemble the report in a format of its choosing from information made available to it by the licensee.

Even if the only clearly pertinent section 10 matter in the respondent's preneed agreements is the reporting of clients' addresses, the idea of a single coherent summary provided by the licensee must prevail over a kind of "inspection" performed by the regulator to organize and reconcile different pieces of information provided in a less than coherent fashion. My reasoning regarding the intent of section 10 involves the following:

- it obligates the licensee to report, not the licensing body to inspect;
- it does not permit the licensee merely to engage in the act of "reporting", in the broad sense of providing information - it calls for "**a** report", which specifies a unitary document (not different "reports" lacking any clear connection or consolidation of related pieces of information);
- a report is not only the dissemination of information, as may be implied in common parlance: in a business and regulatory context it is the orderly and intentional extraction, distillation, and arrangement of the required information – distinct from reproducing a plethora of original business documents in which the information is said to be embedded;
- while the Regulation does not prescribe a report format or authorize the licensing body to prescribe it, the enumeration of reporting criteria in (a) through (j) in the context of "a report", reasonably requires presentation involving the alignment or association of related information through the use of tables, headings, sub-headings, columns, rows, cells, or similar conventions of business reporting (to a degree the preneed insurance and trust accounting statements conform to this notion);
- I have examined all the exhibits in which the respondent delivered scores of preneed documents in well over 100 pages of faxed records. The cross-referencing of client address names and addresses with the relevant Scotiabank trust account statements would be necessary in order to create a unitary, coherent report. The supposition that the licensing body be required to assemble "a report" rather than the licensee creating it is inconsistent with the plain meaning of section 10.

On the balance of probabilities, based on all the evidence before me, I conclude that the respondent has breached its reporting responsibilities under section 10 of the Regulation.

Compliance Order

As an adjudicator determining that certain violations occurred as alleged, I may take the following action:

Issue a compliance order (under section 155 of the Act), directing the respondent to:

- stop a specified act or practice;
- take actions to correct the issue; and,
- repay Consumer Protection BC the costs of inspection in the matter.

For remedial purposes, as well as the ends of general and specific deterrence, I will issue an order for compliance, with costs, against the respondent. The objective here is not punitive, but to gain licensee compliance with the statutory and regulatory framework and to promote consistency among all licensees' practices.

In the circumstances, I consider administration of section 10 of the CCR, involving efforts to obtain and scrutinize the licensee's preneed report and preparation of the OTBH, to be within the scope of the inspection authority in the BPCPA. Recognizing the extent of Consumer Protection BC's resources allocated in relation to this violation, I impose **inspection costs of \$700** on the respondent. Moreover, I order the licensee to comply with section 10 (1) of the Regulation by providing preneed reports with the outstanding prescribed information discussed in this decision within 21 days of the date of service of the order, subject to any subsequent variation authorized in writing by Consumer Protection BC.

Due diligence

The respondent is entitled to a complete defence of due diligence if it shows it took all reasonable steps to prevent the contravention. It has not availed itself of any of the resources (documented in the Report) offered by Consumer Protection BC and designed to facilitate the filing of complete preneed reports under the Regulation. It is my understanding, as explained to me by the responsible Business Practices officer, that the preneed reporting system implemented by Consumer Protection BC in 2016 (including online tools, templates, and tutorials) features a very small margin of deficient or delinquent reporting across several hundred licensees. In my view, the respondent has made a conscious effort to place the onus for completion of the reports on the licensing body rather than attempting seriously to address several evident deficiencies in its reporting and deliver a complete and coherent summary in a timely way. CARE has not provided any detailed or persuasive submissions elaborating what steps it took toward meeting the requirements of section 10 of the Regulation. The defence of due diligence has no bearing on my conclusions as to the respondent's responsibility for the violations in this matter.

Conclusion

The respondent is responsible for failing to provide the required preneed reports, as alleged, in contravention of section 10 (1) of the Regulation. The respondent is ordered to comply with the reporting requirement and to pay Consumer Protection BC's costs in the inspection, including issuance of the Report and initiation of this hearing.

Considered on July 15th in Vancouver, BC

original signed

Robert Penkala
Manager, Enforcement Hearing