

1.0 Purpose

This document sets out the policy and procedures related to the imposition of administrative penalties for violations of the *Business Practices and Consumer Protection Act* (the BPCPA), the *Cremation, Interment and Funeral Services Act* (the CIFSA) and associated Regulations as a result of investigations conducted into consumer complaints and other issues identified during investigations. Enforcement Inspectors exercise delegated powers of the Director to perform inspections and to impose administrative penalties and compliance orders.

2.0 Rationale

Consumer Protection BC is a risk based regulator. Similarly, Consumer Protection BC utilizes progressive discipline to escalate enforcement responses for violations detected in the marketplace. While the BPCPA and CIFSA have always included the power to assess administrative penalties, this power was historically only delegated to higher level decision makers within the organization and used to address complex and high impact violations of consumer protection law.

With the delegation of administrative penalty power to the enforcement inspectors by the Board of Directors in November of 2010, Consumer Protection BC will now be able to address specific and/or repeated violations detected through investigation into consumer complaints with financial sanctions.

This additional enforcement tool will provide greater responsiveness and effectiveness to the complement of enforcement tools utilized by Consumer Protection BC enforcement staff.

3.0 Policy Statement

- 3.1. An administrative penalty may be imposed where a person contravenes a prescribed provision of the BPCPA, CIFSA or related Regulations. Consumer Protection BC compliance and enforcement inspectors are delegated the powers of the Director to impose administrative penalties under Section 164 of the BPCPA and Section 58 of the CIFSA.
- 3.2. The Business Practices and Consumer Protection Regulation (BPCP Regulation) sets out those provisions of the BPCPA and related Regulations for which administrative penalties may be imposed. The Administrative Penalties Regulation sets out the provisions of the CIFSA and CIFSA Regulation for which administrative penalties may be imposed.
- 3.3. Where an enforcement inspector has reasonable grounds to believe that a person, including an individual, business or licensee, has violated a prescribed section of the BPCPA or the CIFSA, the enforcement inspector will provide the person with the opportunity to be heard.;

- 3.4.** Prior to imposing an administrative penalty, the enforcement inspector will consider the factors related to the imposition of an administrative penalty under section 164(2) of the BPCPA and/or section 58(3) of CIFSA.
- 3.5.** If a corporation contravenes
- a prescribed provision of the BPCPA or the CIFSA or the regulations,
 - a condition of a licence,
 - a compliance order,
 - a direct sales prohibition order,
 - a property freezing order, or
 - an undertaking,
- an officer, director or agent of the corporation who authorized, permitted or acquiesced in the contravention is also liable, whether or not an administrative penalty is imposed on the corporation.
- 3.6.** An individual on whom an administrative penalty is imposed is liable to a penalty of not more than \$5,000. A corporation on which an administrative penalty is imposed is liable to a penalty of not more than \$50,000.
- 3.7.** The enforcement inspector will give the person subject to an administrative penalty a notice that specifies the requirements under section 166 of the BPCPA and/or section 58(3) of the CIFSA.
- 3.8.** The person may request that Consumer Protection BC reconsider a notice imposing an administrative penalty in accordance with Part 12, Division 1 of the BPCPA and/or Section 60 of the CIFSA. Please see the Consumer Protection BC reconsideration policy for more detail.
- Consumer Protection BC may vary or cancel a notice imposing an administrative penalty only if the Director is satisfied that new evidence has become available or been discovered that (a) is substantial and material to the determination, and (b) did not exist at the time of the review or did exist at that time but was not discovered and could not through the exercise of reasonable diligence have been discovered.
- 3.9.** A person subject to an administrative penalty must pay the penalty within 30 days after the date on which the notice of penalty is served, or if the person requests a reconsideration, within 30 days after the date on which the decision of the Director respecting the reconsideration is served.
- 3.10.** If the person fails to pay an administrative penalty as required under BPCPA or the CIFSA, Consumer Protection BC may file with the Supreme Court or Provincial Court a certified copy of the notice imposing the administrative penalty and, on being filed, the notice has the same force and effect, and all proceedings may be taken on the notice, as if it were a judgment of that court. The Regulations require that Consumer Protection BC add an additional 10% to the amount of the penalty prior to filing with a court.
- 3.11.** Consumer Protection BC may publish information respecting the notice of administrative penalty consistent with Section 186 of the BPCPA and Section 60(5) of the CIFSA. This action will be taken consistent with Consumer Protection BC policy on publishing statutory determinations.
- 3.12.** Consumer Protection BC must pay all amounts derived from administrative penalties to the Consumer Advancement Fund.

3.13. Consistent with Section 170 - Limitation Period - of the BPCPA and/or section 58(3) of the CIFSA, Consumer Protection BC will not serve notice imposing an administrative penalty more than 2 years after the date on which the contravention occurred.

4.0 Procedures

4.1 Investigation

Enforcement Inspectors will conduct investigations consistent with established protocols.

4.2 Investigation Report

The results of the investigation will be documented by the enforcement inspector during the course of their investigation. Following the investigation, the enforcement inspector will set out the evidence, the alleged contraventions, and a preliminary analysis in the investigation report.

4.3 Opportunity to be Heard

The investigation report will be sent to the individual or designated representative of the business with information on how to respond to the investigation report, and the possible consequences that may result should the alleged contravention(s) be confirmed.

This letter and report will constitute the opportunity to be heard as required under 164(1) of the BPCPA and/or Section 58(1) of the CIFSA.

The person will be provided with at least 14 days and no more than 30 days in which to respond.

4.4 Determination

Upon receiving the response from the person, the enforcement inspector will proceed to consider the evidence, the alleged violations, and the response from the person.

4.5 Administrative Penalty

Where a decision is made that the contravention(s) did occur, the enforcement inspector will consider the following criteria, pursuant to section 164(2) of the BPCPA and/or section 58(3) of CIFSA, before imposing an administrative penalty:

- a review of 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.

4.6 Amount of Penalty

Administrative penalties assessed during the enforcement process will not exceed \$5,000 for an individual or \$50,000 for a corporation.

4.7 Notice of Penalty

The enforcement inspector will give the person subject to an administrative penalty a notice imposing the administrative penalty that specifies the following:

- the contravention;
- the amount of the penalty;

- the date by which the penalty must be paid;
- the person's right to have this decision reconsidered, including a copy of the Consumer Protection BC Reconsideration Guide;
- an address to which a request for a reconsideration may be given.

4.8 Tracking and Payment Processing

Administrative penalties must be paid by the person within 30 days from the date the notice of penalty is served. Consumer Protection BC staff will track receipt of the payments and once paid, will confirm that the penalty was processed in the case file activities.

4.9 Enforcement of Penalty

If the person fails to pay an administrative penalty as required under BPCPA or the CIFSA, Consumer Protection BC may file a certified copy of the notice imposing the administrative penalty with the Supreme Court and initiate proceedings to recover the penalty as if it were a judgment of the court. The Regulations require that Consumer Protection BC add an additional 10% to the amount of the penalty prior to filing with a court.

4.10 Reconsideration of Penalty

The person may request that Consumer Protection BC reconsider a notice imposing an administrative penalty in accordance with Part 12, Division 1 of the BPCPA or Section 60 of the CIFSA. Please see the Consumer Protection BC reconsideration policy for more detail.

The reconsideration request must be made in writing within 30 days of receiving the notice of penalty. The request must identify the error or other grounds for reconsideration and must be accompanied by the required reconsideration application fee (currently \$223.00). Requests for reconsideration must be forwarded to the attention of the Director, Consumer Protection BC at the Burnaby office.

Upon receipt of an application for reconsideration, and assuming the request meets the criteria for acceptance, the designated person hearing the application will consider whether or not new evidence has become available or been discovered that (a) is substantial and material to the determination, and (b) did not exist at the time of the review or did exist at that time but was not discovered and could not through the exercise of reasonable diligence have been discovered. Assuming that new evidence exists that meets these criteria, the designated person will hear the reconsideration and may uphold, vary or cancel a notice imposing an administrative penalty.

The result of the reconsideration will be communicated to the applicant. Where the penalty is confirmed, the person will have 30 days in which to pay the penalty.

5.0 Authority

5.1. *Business Practices and Consumer Protection Act*

Sections 164-170 of the *Business Practices and Consumer Protection Act* sets out the requirements for the imposition, notification, appeal and payment of administrative penalties;

Section 175 of the *Business Practices and Consumer Protection Act* provides the Director with the power to delegate powers of enforcement to a person or class of persons;

Section 176 of the *Business Practices and Consumer Protection Act* provides the Director with the power to designate persons or classes of persons as inspectors;

Sections 180-182 of the *Business Practices and Consumer Protection Act* identify requirements for reconsiderations by the director.

Section 186 of the *Business Practices and Consumer Protection Act* sets out the power of the Director to publish information respecting administrative penalties.

5.2. Business Practices and Consumer Protection Regulation

The Business Practices and Consumer Protection Regulation under the *Business Practices and Consumer Protection Act* sets out the violations for which administrative penalties may be imposed;

5.3. Cremation, Interment and Funeral Services Act

Section 58 of the *Cremation, Interment and Funeral Services Act* sets out the requirements for the imposition, notification, appeal and payment of administrative penalties;

Section 59 of the *Cremation, Interment and Funeral Services Act* adopts Section 175 of the *Business Practices and Consumer Protection Act* and provides the Director with the power to delegate powers of enforcement to a person or class of persons;

Section 59 of the *Cremation, Interment and Funeral Services Act* adopts Section 176 of the *Business Practices and Consumer Protection Act* and provides the Director with the power to designate persons or classes of persons as inspectors;

Section 60 of the *Cremation, Interment and Funeral Services Act* sets out the requirements for reconsiderations and adopts Sections 181 and 182 of the *Business Practices and Consumer Protection Act* related to reconsiderations by the director. Section 60 also adopts the power under Section 186 of the BPCPA for the Director to publish information respecting administrative penalties.

5.4. Administrative Penalties Regulation

The Administrative Penalties Regulation under the *Cremation, Interment and Funeral Services Act* sets out the violations for which administrative penalties may be imposed;