

## 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 detected during routine compliance inspections.

## 2.0 Rationale

Consumer Protection BC is a risk based regulator. Similarly, Consumer Protection BC utilizes progressive discipline to escalate enforcement responses to 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.

The compliance inspection process has been in effect with the business sectors licensed and regulated by Consumer Protection BC since 2005. These inspections have focused on drawing violations to the attention of the business, providing opportunities to remedy the violations, and where non-compliance is not remedied or continues, escalating the matter to other enforcement functions within Consumer Protection BC.

With the delegation of administrative penalty power to 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 during inspections with financial sanctions. This additional enforcement tool will aid in addressing compliance issues and provide greater responsiveness to the compliance process.

## 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 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. Consumer Protection BC will abide by the penalty maximums established in the BPCPA and CIFSA which include \$5,000 for individuals and \$50,000 for corporations;
- 3.4. Where an inspector detects that a licensee has violated a prescribed section of the BPCPA or the CIFSA, and where the inspector believes that the alleged violation warrants the imposition of an administrative penalty, the inspector will prepare a Notice of Enforcement Action Recommended (NEAR) report. The NEAR report may include a

recommendation on the administrative penalty amount for the alleged contravention(s). The recommended amounts for the administrative penalty will be taken from the policy titled "Calculating Administrative Monetary Penalties Policy and Procedures."

- 3.5 The inspector will provide a copy of the NEAR report, including all attachments, to the licensee. The inspector will also provide a copy of the NEAR report, including all attachments, to the Director or a delegate for adjudication and a decision.
- 3.6 The Director or a delegate will contact the licensee and provide them with an opportunity to be heard (OTBH).
- 3.7 After obtaining the licensee's response, the Director or delegate will decide whether a contravention occurred, and if so, what penalty, if any, to apply. Imposing any penalty is discretionary. The Director or delegate is not bound to the administrative penalty recommended in the NEAR report.
- 3.5.** Prior to imposing an administrative penalty, the decision maker will consider the following factors related to the imposition of an administrative penalty under section 164(2) of the BPCPA:
  - 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.
- 3.6.** 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.
- 3.7.** 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.
- 3.8.** The decision maker will give the licensee 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;
  - an address to which a request for reconsideration may be given.
- 3.9.** The licensee 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.

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.

- 3.10.** A licensee subject to an administrative penalty as a result of an inspection must pay the penalty within 30 days after the date on which the notice of penalty is served, or if the licensee requests reconsideration, within 30 days after the date on which the decision of the Director respecting the reconsideration is served.
- 3.11.** If the licensee 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.
- 3.12.** 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.
- 3.13.** Consumer Protection BC must pay all amounts derived from administrative penalties to the Consumer Advancement Fund.
- 3.14.** Consistent with Section 170 - Limitation Period - of the BPCPA, 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 Compliance Inspection**

Compliance Inspectors will conduct inspections consistent with established protocols for routine and complaint based inspections. Inspections will continue to be based on the Consumer Protection BC compliance risk management framework. Inspections will be unannounced wherever possible.

The results of the inspection will be documented by the compliance inspector during the course of their inspection. Following the inspection, the compliance inspector will outline the general findings with the person in charge of the licensed location. The compliance inspector will ensure that the person in charge signs a certification of inspection document at the conclusion of the inspection.

### **4.2 Post Inspection Letter**

Following the field inspection, the compliance inspector will prepare a formal inspection letter known as a post inspection letter. This letter will outline the alleged violations detected during the inspection and any specific notations or observations.

Where the compliance inspector deems that an administrative penalty is warranted for any alleged contravention(s) detected at inspection, the inspector will identify in the letter the alleged contravention(s) that will proceed to enforcement of an administrative penalty.

Rather than recommending an administrative penalty, the inspector may decide to provide a warning in the post inspection letter for any alleged contravention(s) detected at inspection. The warning will indicate what corrective measures the licensee must take to remedy the alleged contravention.

The inspector will deliver the post inspection letter to the licensee. If a NEAR report is to be prepared, the post inspection letter will be delivered with the NEAR Report.

#### **4.3 Notice of Enforcement Action Recommended (NEAR) report**

For those alleged contraventions that the inspector intends on proceeding to enforcement of an administrative penalty, the inspector will prepare an NEAR report. In completing the NEAR report the inspector will refer to the administrative penalty matrix contained within the policy titled "Calculating Administrative Monetary Penalties Policy and Procedures."

The NEAR report is delivered to the licensee with the post inspection letter. A copy of the NEAR report is provided to the Director for adjudication and a potential determination.

NOTE: The compliance inspector may choose to escalate certain more serious and more complex matters for further investigation.

#### **4.4 Opportunity to be Heard**

The Director or delegate will contact the licensee and provide the licensee with an opportunity to be heard. The notice will indicate the commencement of a formal process under the BPCPA or CIFSA, and state that a possible consequence of the process may be the imposition of an administrative penalty.

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

The licensee will be provided with at least 14 days and no more than 30 days in which to respond. The response must be provided in writing.

#### **4.5 Determination**

Upon receiving the response from the licensee, the Director or delegate will proceed to consider the facts, the legislation and any resulting violations. Where violations are confirmed, the decision maker will determine whether or not to impose an administrative penalty.

#### **4.6 Administrative Penalty**

Assuming the result is the choice to impose an administrative penalty, the amount of the penalty to be applied is at the discretion of the Director or delegate. The Director or delegate is not bound any recommended administrative penalty that may be offered in the NEAR report.

In applying their discretion, the Director or delegate must consider the following factors: a review of previous enforcement actions for contraventions of a similar nature by the licensee; 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 licensee from the contravention; the licensee's efforts to correct the contravention.

#### **4.7 Amount of Penalty**

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.

#### **4.8 Notice of Penalty**

The Director or delegate will give the licensee 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 licensee's right to have this decision reconsidered;
- an address to which a request for reconsideration may be given.

#### **4.9 Tracking and Payment Processing**

Administrative penalties must be paid by the licensee within 30 days from the date the notice of penalty is served. Consumer Protection BC will track receipt of the payments and once paid, will confirm that the penalty was processed in the licence inspection activities. Penalties will be processed by the administration function in the Consumer Protection BC Burnaby office. Receipts will be generated for each payment, and separate transactions processed for each penalty and violation.

#### **4.10 Enforcement of Penalty**

If the licensee 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. Prior to filing, the Regulations require that Consumer Protection BC add an additional 10% to the amount of the penalty.

#### **4.11 Reconsideration of Penalty**

The licensee 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 \$219.00 reconsideration application fee. Requests for reconsideration must be forwarded to the attention of the Director, Consumer Protection BC at the Burnaby office. Reconsiderations of administrative penalties will be heard by either the Director of Enforcement (provided he/she has not imposed the administrative penalty), or by the VP of Operations or by the President and CEO.

Upon receipt of an application for reconsideration, and assuming the request meets the above noted 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 licensee. Where the penalty is confirmed, the licensee 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;