



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 Funeral Services Regulation*

Respondent: **Sandra Leigh Regier**

Case Number: **31203**

Licence Number: **77404**

Adjudicator: **Shahid Noorani, Vice President**

Date of Decision: **October 4, 2021**

A. INTRODUCTION

1. Consumer Protection BC oversees compliance with the *Business Practices and Consumer Protection Act* (“BPCPA”), the *Cremation, Interment and Funeral Services Act* (“CIFSA”) and the *Cremation Interment and Funeral Services Regulations* (“CIFSR”).
2. The respondent is funeral director and embalmer, licensed to engage in these activities under Consumer Protection BC license number 77404 (“the license”).
3. On April 26, 2021, Consumer Protection BC notified the respondent of a decision reached at the conclusion of a formal hearing finding the respondent contravened section 38(1)(a)(b) of the CIFSR by failing to complete the minimum required training in both an approved program of funeral services and an approved program of embalming services during the two-year period of February 1, 2015 to February 15, 2021. The contraventions led to the issuance of a Compliance Order dated April 26, 2021, requiring the respondent to complete the required training in funeral services and embalming services before May 31, 2021, and to supply proof of completion to Consumer Protection BC by June 4, 2021. The Compliance Order also required the

respondent to pay Consumer Protection BC partial inspection costs in the amount of \$150.00. The contravention to section 38(1)(a) of the CIFSRS (the failure to complete the approved training in funeral services) also resulted in a Notice of Administrative Penalty dated April 26, 2021, to be issued, imposing a \$500.00 administrative penalty to be paid within 30 days.

4. On June 25, 2021, a Business Practices Officer for Consumer Protection BC delivered a Report to Director to the Respondent. The Report alleged the respondent had failed to comply with the parts of the Compliance Order requiring the respondent complete six hours of training in an approved program of funeral services by May 31, 2021, and to provide Consumer Protection BC with certificate(s) of completion no later than June 4, 2021.
5. Under the BPCPA and CIFSRS the respondent is entitled to an opportunity to be heard on the allegation. On June 29, 2021, a notice of hearing was sent to the respondent. The notice of hearing provided the respondent with the opportunity to submit a written reply to the Report to Director by July 20, 2021.
6. An Amended Report to Director ("Amended Report") was sent to the respondent on August 23, 2021. The Amended Report initiated a hearing to address an alleged violation of failing to comply with the Compliance Order. The allegation was referred to me to adjudicate. As the Vice President, I have been delegated the authority of the Director to decide if a contravention to the legislation has taken place and what consequences, if any, should flow from a confirmed contravention.
7. On August 23, 2021, a notice of hearing was sent to the respondent (along with the Amended Report). The notice of hearing provided the respondent with the opportunity to submit a written reply to the Amended Report by September 7, 2021. The hearing notice indicated that after the opportunity to be heard (respond) was completed, a decision maker for Consumer Protection BC would determine whether the alleged violations occurred. Should a reply to the Amended Report not be provided, the hearing notice advised the decision maker would proceed in the absence of a response. The hearing notice also set out possible licensing and enforcement consequences should the contravention be confirmed.
8. The respondent did provide a response to the Amended Report.
9. I am satisfied that an opportunity to be heard has been afforded the respondent and that the procedural requirements for a hearing into the allegation have been met.

B. ALLEGED CONTRAVENTIONS

10. The Amended Report advances the following allegations against the Respondent:

- i. Section 61(3)(d)(i) CIFSA – failing to comply with a Compliance Order dated April 26, 2021

C. LEGISLATION

11. The legislation relevant to this determination includes portions of the CIFSA and BPCPA as follows:

CIFSA Section 56 – Application of Divisions 1 to 3 of Part 10 – inspections and enforcement

2) The following sections of the *Business Practices and Consumer Protection Act* apply for the purposes of this Act:

- (a) [...]
- (b) [...]
- (c) section 155 [*compliance orders*];
- (d) [...]

CIFSA Section 55 - Part 9 Application of Licenses

3) Sections....145(2)[*licenses*], 146 [*actions by director respecting license*] and 147 (1) to (5) [*opportunity to be heard and reconsideration*] of the *Business Practices and Consumer Protection Act* apply for the purposes of this Act.

CIFSA Section 58 – administrative penalties and court proceedings

3) Sections 164 (2) to (4) [*administrative penalties*], 165 [*amount of penalty*] to 171 [*damages recoverable*] and 173 (1) (a), (2) and (3) [*notice to director*] of the *Business Practices and Consumer Protection Act* apply for the purposes of this Act.

CIFSA Section 61- Offences

3) A person must not do any of the following:

- (a) [...]
- (b) [...]
- (c) [...]
- (d) fail to comply with
 - (i) an order of a director under this Act,
 - (ii) [...]
 - (iii) [...]
- (e) [...]

(f) [...]

BPCPA Section 145 - Licenses

(1) The director may issue a license to an applicant and impose conditions on the license.

(2) [...]

BPCPA Section 146 – Actions by Director Respecting License

(1) The director may

- (a) refuse to issue or renew a license,
- (b) suspend or cancel a license, or
- (c) amend, impose or rescind conditions on a license.

(2) Without limiting the authority of the director under subsection (1), the director may make a decision under subsection (1) if the applicant or licensee does any of the following:

- (a) contravenes this Act or the regulations;
- (b) [...];
- (c) [...];
- (d) [...];
- (e) [...]

BPCPA Section 155 – Compliance Orders

(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) [...]
- (b) [...]
- (c) [...]
- (d) [...]
- (e) [...]

(3) [...]

(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) [...]

EVIDENCE – THE REPORT

12. I have reviewed all of the evidence in the Amended Report but will limit my comments to only the parts of the evidence necessary to give context to my decision.
13. On April 26, 2021, the Director decided the respondent contravened section 38(1)(a)(b) of the CIFSRS by failing to complete required training in approved programs of funeral services and embalming services for the period February 15, 2019 to February 15, 2021. The contraventions resulted in the issuance of a Compliance Order requiring six hours of training in both programs to be completed before May 31, 2021, and that the respondent confirm completion of the approved training by providing certificates of completion before June 4, 2021. The Compliance Order also required the respondent to pay Consumer Protection BC partial inspection costs in the amount of \$150.00 by May 31, 2021. The Director's determination also imposed a \$500.00 administrative monetary penalty (to be paid within 30 days of the service of the Notice of Administrative Penalty) for the contravention to section 38(1)(a) for failing to complete the required approved training in funeral services.
14. Service of the Compliance Order and the Notice of Administrative Penalty on the respondent took place by electronic mail on April 26, 2021. The electronic mail address used to deliver the Compliance Order and Notice of Administrative Penalty to the respondent was an electronic email address provided by the respondent to obtain their license.
15. On April 27, 2021, the respondent made full payment towards the administrative penalty and the inspection costs (as ordered in the April 26, 2021 Compliance Order).
16. Following issuance of the Compliance Order, the respondent provided proof of completion of three credits in approved training funeral services and six credits of in approved training in embalming services completed on March 22, 2021. As per the requirements of the Compliance

Order, these credits were backdated to fulfil education requirements for the period February 15, 2021 to February 15, 2021.

17. On May 25, 2021, the respondent provided Consumer Protection BC with a certificate of completion for training at the 2021 Virtual AGM and Conference for the Alberta Funeral Services Association (“AFSA”). On May 31, 2021, the respondent was advised by Consumer Protection BC that AFSA credits could not be accepted because the courses were not approved.
18. Following receipt of the Report to Director dated June 25, 2021, the respondent sent an email communication to Consumer Protection BC advising that two weeks earlier they had participated in two days of courses in order to get credits and were waiting to receive certificates from the Funeral Services Association of Canada (“FSAC”).
19. The same day the respondent received the notice of hearing into the Report to Director, the respondent forwarded to Consumer Protection BC an email from the FSAC listing all courses completed by the respondent as part of the 2021 FSAC Conference. The FSAC email indicated a “formal certificate” was to follow. The respondent’s email to Consumer Protection BC advised they had requested the FSAC provide “proof as soon as possible” and were advised the soonest this could happen was the week of July 5, 2021.
20. On July 7, 2021, the respondent provided a Certificate of Attendance issued by the FSAC. The Certificate confirmed the respondent’s attendance at the 2021 FSAC Annual Conference on June 8 and 9, 2021 and courses completed.
21. On August 23, 2021, an Amended Report to Director (“Amended Report”) was delivered to the respondent. The Amended Report replaced the earlier Report to Director. The Amended Report continued with the same allegation of failing to comply with a Compliance Order; however, the legislative reference for the allegation was changed from section 189(c)(ii) of the BPCPA to section 61(3)(d)(i) of the CIFSA. The evidence and other particulars remained unchanged. A notice of hearing accompanied the Amended Report and provided the respondent with an opportunity to make a written response to the allegation before September 7, 2021.
22. On August 23, 2021 (the same day as receiving the Amended Report and notice of hearing), the respondent sent an email to Consumer Protection BC expressing confusion about what they were “doing wrong.” The respondent advised they had sent proof of courses completed. The respondent asked to be informed what they needed to do to rectify matters immediately.
23. On August 23, 2021, an email response was sent to the respondent advising that Consumer Protection BC was in receipt of the proof of course completion; however, the Compliance Order

required courses to be completed by May 31, 2021 with proof of completion to be submitted by June 4, 2021. The respondent was reminded of their opportunity to respond, as outlined in the notice of hearing.

D. ANALYSIS

24. The respondent did not make a request for reconsideration of the Compliance Order, the result of which may have stayed the requirements.
25. Based on the respondent's actions in paying the inspection costs and the follow up correspondence with Consumer Protection BC staff, there is little doubt the respondent received the Compliance Order. Nevertheless, my analysis will include a discussion confirming service of the Compliance Order took place.
26. Section 56(2) of the CIFSA adopts section 155 of the BPCPA. Under section 155(5) of the BPCPA a Compliance Order must be served on the person named in the Order. The April 26, 2021, Compliance Order named the respondent as the subject of the Compliance Order and was served on the respondent by email.
27. Section 65(b)(v) of the CIFSA says documents permitted to be served may be sent by electronic email to the address provided by that person. The email address used was one the respondent had recently used to exchange email communications with Consumer Protection BC. In reviewing Consumer Protection BC licensing records kept in the ordinary course of business, I note the email address used to serve the Compliance Order was the same one provided by the respondent when applying for a license. Read together with section 155(5), a Compliance Order is a document that is to be served. Therefore, it can be sent by email.
28. Section 66(d) of the CIFSA says if a document is served by electronic email, it is deemed received on the third day after it is sent. The Compliance Order was emailed to the respondent on April 26, 2021. Applying the provisions for the calculation of time from the *Interpretation Act*, the Compliance Order is deemed to have been received, at the latest, on April 29, 2021.
29. The respondent did not refute the allegation of not complying with the Compliance Order by failing to complete six hours of approved training in funeral services by May 31, 2021, and to provide a certificate of completion by June 4, 2021. The respondent's evidence shows completion of the courses on June 8 and 9, 2021 with evidence of course completion submitted to Consumer Protection BC on June 25, 2021 (the forwarded email from the FSAC). The terms and dates of the Compliance Order were specific and mindful of a reasonable period for the training to be completed. The respondent did not make a request to extend the dates. Completing the training after the dates in the Compliance Order, resulting in the corollary late

submission of course certificates is a breach to the Compliance Order. As such, I find the respondent did contravene section 61(3)(d)(i) of the CIFSA.

E. DUE DILIGENCE

30. The respondent is entitled to the defence of due diligence against the allegation if the respondent shows all reasonable steps were taken to prevent the contravention. The onus is on the respondent to establish this defence. There is no evidence to show due diligence exercised by the respondent.

F. CONCLUSION

31. I conclude the respondent contravened section 61(3)(d)(i) of the CIFSA by failing to comply with the requirements of the April 26, 2021 Compliance Order.

G. ENFORCEMENT ACTION

32. The hearing notice informed the respondent that should the allegation be confirmed, the decision maker had the discretion to take licensing and/or enforcement action.

33. Having concluded a contravention to section 61(3)(d)(i) of the CIFSA has taken place, I may take one or more of the following actions:

- (i) issue a compliance order (under section 56(2) of CIFSA and section 155 of the BPCPA), directing the respondent to:
 - stop a specified act or practice and take actions to correct the issue;
 - reimburse Consumer Protection BC the costs of the relevant inspection, including creation of the Amended Report.
- (ii) 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 165 of the Act. A contravention to section 61(3)(d)(i) of the CIFSA is prescribed for the purposes of administrative penalty under the *Administrative Penalties Regulation*.
- (iii) enter into an Undertaking with the respondent on terms that I consider appropriate.
- (iv) suspend, cancel, or place conditions on the licenses.

34. A breach to a Compliance Order is a serious contravention that draws interest to impose an administrative monetary penalty. The contravention is a challenge to the Director's authority and the legislative scheme. Under the Consumer Protection BC policy, "Calculation of

Administrative Monetary Penalties Policy and Procedures,” the base amount for such a contravention type is \$3,250 on an individual. I have taken into consideration a series of factors including the respondent’s efforts to complete the training, albeit late; the respondent’s reach outs to Consumer Protection BC staff for clarification and; the factors under section 58(3) of the CIFSA and section 164(2) of the BPCPA. With all of these considerations in mind I have decided not to impose an administrative monetary penalty for the contravention.

35. As already expressed, a breach of a Compliance Order is a serious contravention. I believe sanctioning is appropriate. To that end, another Compliance Order is issued requiring the respondent to pay inspection costs in the amount of \$265.00.

36. The Compliance Order also requires that the respondent, when meeting regulatory requirements under section 38 to complete education training for every two-year period, to provide Consumer Protection BC before the deadline to complete the training, a certificate of course completion or other documentation issued by the education/training provider confirming the respondent’s completion of Consumer Protection BC approved course(s).

37. The Compliance Order is attached to this decision.

H. RECONSIDERATION

50. A Compliance Order may be reconsidered in accordance with section 60 of the CIFSA and sections 181 and 182 (2) of the BPCPA. A request for reconsideration must be submitted within 30 days of delivery of the order to the respondent. The request must be in writing, identify the error the person believes was made or other grounds for reconsideration, and be accompanied by a \$252 application fee. A request for reconsideration should be addressed to:

Consumer Protection BC
Attention: Shahid Noorani, Vice President
200 – 4946 Canada Way, Burnaby, BC V5G 4H7
shahid.noorani@consumerprotectionbc.ca

Decided on October 4, 2021 in Burnaby, BC.



Shahid Noorani, Vice President

Encl. Compliance Order

