



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: **Daniel Salmon**

Case Number: **31249**

Licence Number: **72011**

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 72011 (“the license”).
3. On June 14, 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 March 13, 2019 to March 13, 2021. The contraventions led to the issuance of a Compliance Order dated June 14, 2021, requiring, in part, the respondent complete the required training in embalming services before July 14, 2021 and to supply proof of completion to Consumer Protection BC by July 19, 2021.

4. On August 19, 2021 Consumer Protection BC delivered an Amended Report to Director (“Amended Report”) to the Respondent. The Amended 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 embalming services by July 14, 2021, and to provide Consumer Protection BC with a certificate(s) of completion no later than July 14, 2021.
5. The Amended Report initiated a hearing to address the 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.
6. Under the BPCPA and CIFSA the respondent is entitled to an opportunity to be heard on the allegation. On August 23, 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 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.
7. The respondent did provide a response to the Amended Report.
8. I am satisfied that an opportunity to be heard has been afforded the respondent and that procedural requirements for a hearing under the legislation have been met.

B. ALLEGED CONTRAVENTIONS

9. 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 June 14, 2021

C. LEGISLATION

10. 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

11. 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.
12. On June 14, 2021, the Director decided the respondent contravened section 38(1)(a)(b) of the CIFSR by failing to complete required training in approved programs of funeral services and embalming services for the period March 13, 2019 to March 13, 2021. The contraventions resulted in the issuance of a Compliance Order requiring, in part, the respondent complete six hours of training in an approved program of embalming services by July 14, 2021, and to provide a certificate(s) of course completion by July 19, 2021. The Compliance Order also required the respondent to pay Consumer Protection BC partial inspection costs in the amount of \$150.00 by July 14, 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)(b) for failing to complete the required approved training in embalming services.
13. Service of the Compliance Order and the Notice of Administrative Penalty on the respondent took place by electronic mail on June 14, 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.
14. On June 15, 2021, the respondent submitted a Certificate of Participation from the Canadian College of Funeral Service (CCFS) for training in a program of embalming services. The certificate was dated May 11, 2021. The course had been approved by Consumer Protection BC for three credits in embalming services. As per the Compliance Order, the credits were applied to satisfy training requirements for the two-year period that ended on March 13, 2021.
15. The respondent's June 15, 2021 submission also included a proof of attendance (certificate) dated May 14, 2021 issued by the Alberta Funeral Service Association (AFSA) for their 2021 Virtual AGM and Conference. The AFSA certificate was submitted to satisfy embalming training requirements under the Compliance Order. The AFSA courses were not approved by Consumer Protection BC. On June 28, 2021, Consumer Protection BC sent an email to the respondent advising the CCFS credits were accepted; however, the courses from the AFSA could not be accepted as they were not approved by Consumer Protection BC. The email noted three credits in embalming services were still required.

16. On June 29, 2021, the respondent asked Consumer Protection BC for an explanation why the AFSA courses were not approved. On July 7, 2021, a response was given to the respondent that the AFSA had not applied for approval of the courses.
17. On July 8, 2021, the respondent made payment in full towards the \$500 administrative monetary penalty and the \$150 reimbursement for partial inspection costs (as required under the Compliance Order).
18. On July 21, 2021, a report was sent to the respondent showing the status of their training requirements. The report noted three credits in embalming services for the period ending March 14, 2021 remained outstanding.
19. On August 13, 2021, the respondent forwarded an email from the CCFS showing completion of a three-credit course in embalming services on July 20, 2021. A certificate of course completion was supplied on August 17, 2021 owing to the failure of the education provider to attach the certificate to their August 13th email. The CCFS courses were Consumer Protection BC approved courses.
20. On August 24, 2021, in follow-up to receipt of the Amended Report and hearing notice, the respondent sent an email communication to Consumer Protection BC asking if they were “supposed to do something” with the Report, indicating they had “paid the fines” and submitted all their continuing education documents. A response was sent back the same day advising the Compliance Order required education requirements to be completed by July 14, 2021, not July 20th. Additionally, the CO required proof of completion to be submitted by July 19, 2021, not August 17th.

D. ANALYSIS

21. The respondent did not make a request for reconsideration of the Compliance Order, the result of which may have stayed the requirements.
22. 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.
23. 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 June 14, 2021 Compliance Order named the respondent as the subject of the Compliance Order and was served on the respondent by email.

24. 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.
25. 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 June 14, 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 June 17, 2021.
26. The respondent did not refute the allegation of failing to complete six hours of approved training in funeral services by July 14, 2021, and to provide a certificate of completion by July 19, 2021. The evidence shows completion of three-credits (hours) completed on May 11, 2021, with a certificate of approval supplied on June 15, 2021. Completion of this course and submission of the certificate half-filled the embalming training and reporting requirements in the Compliance Order. The respondent then completed three-credits (hours) of training on July 20, 2021 and reported this training to Consumer Protection BC on August 13, 2021 (the forwarded email from the CCFS). This latter mentioned training and reporting came after the dates given in the Compliance Order (training to be completed by July 14, 2021 and reporting by July 19, 2021). 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 date in the Compliance Order, resulting in the corollary late submission of the course certificate 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

27. The respondent is entitled to the defence of due diligence against the allegation if it 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

28. I conclude the respondent contravened section 61(3)(d)(i) of the CIFSA by failing to comply with the requirements of the June 14, 2021 Compliance Order.

G. ENFORCEMENT ACTION

29. 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.
30. Having concluded a contravention to section 61(3)(d)(i) of the CIFSA took 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.
31. 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. All of these considerations satisfy that an administrative monetary penalty is not necessary in this instance.
32. 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.
33. 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(s) or other documentation issued by the education/training provider(s) confirming the respondent's completion of Consumer Protection BC approved course(s).

34. 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

