



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: **Drake Smith**

Case Number: **31272**

Licence Number: **33185**

Adjudicator: **Tegan Scardillo, Director of Business Practices and Classification**

Date of Decision: **November 15, 2021**

A. INTRODUCTION

1. Drake Smith (“the respondent”) is a funeral director and embalmer, licensed to engage in the activity under Consumer Protection BC licence number 33185 (“the licence”).
2. Unless ordered otherwise by the Director, all funeral directors must complete six hours of training in a funeral services program approved by the Director during each successive two-year period (“the successive period”) from when the licence was issued. Similarly, embalmers must complete six hours of training in an approved program of embalming services. A person that is both a funeral director and embalmer must complete the required training for both designated activities.
3. On September 28, 2021, a Business Practices Officer with Consumer Protection BC delivered a Report to Director (“the Report”) to the respondent. The Report alleged the respondent failed to complete the required training as a funeral director in the past two-year successive period, as required under the Cremation Interment Funeral Services Regulation (“CIFSR”).

4. 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.

B. OPPORTUNITY TO BE HEARD

5. Prior to an action being taken under the *Business Practices and Consumer Protection Act* (“BPCPA”) and the *Cremation Interment and Funeral Services Act* (“CIFSA”), the person subject to the action must be provided with an opportunity to be heard.
6. An opportunity to be heard notice (“the notice”) was emailed to the respondent on September 28, 2021. It provided the respondent with the opportunity to submit a written reply to the Report by October 12, 2021. The notice indicated after the opportunity to respond was completed, a decision maker for Consumer Protection BC would determine whether the alleged violation(s) occurred. Possible licensing and enforcement consequences for a confirmed contravention were described in the notice.
7. The respondent provided a written response to the notice on October 6, 2021.
8. I conclude the requirement for providing an opportunity to be heard has been completed.

C. ALLEGED CONTRAVENTION(S)

9. The Report advances the following allegation(s):
 1. The respondent contravened CIFSR section 38(1)(a) by failing to complete the minimum required six hours of training in a program of funeral services approved by the Director during the past two-year successive period commencing on the date the respondent was first issued a funeral director and embalmer licence.

D. LEGISLATION

10. The legislation relevant to the alleged contravention is contained in the CIFSR:

Continuing education

- 38** (1)A person licensed as a funeral director, embalmer or both must complete a minimum of
- (a) 6 hours of training in a program of funeral services that is approved by the director, if licensed as a funeral director,
 - (b) 6 hours of training in a program of embalming that is approved by the director, if licensed as an embalmer,

during each successive two-year period where the first two-year period commences on the date the person first received their licence to act as a funeral director or an embalmer or both in the Province.

(2) Despite subsection (1), the director may at any time require a funeral director or embalmer to take additional training in a program of funeral services education or embalming.

E. EVIDENCE

11. I have reviewed the Report and the respondent's written reply in their entirety. I limit my comments to only the parts of the evidence necessary to give context to my decision.
12. The respondent was first issued the licence on August 10, 2005, to act and hold themselves out as a funeral director and embalmer.
13. The most recent successive two-year period from when the respondent was first issued the licence commenced August 10, 2019, to August 10, 2021.
14. On July 20, 2020, Consumer Protection BC emailed all licensed funeral directors and embalmers providing information about changes being made to share the status of individual continuing education training requirements. The communication provided a reminder that it is the responsibility of the funeral director and embalmer to ensure course completion documentation is submitted to Consumer Protection to receive credit for completion. It was also noted in the communication that funeral directors and embalmers would receive a status report every six months as a reminder of credits completed and how many credits remained due.
15. On July 21, 2020, the respondent was sent an email from Consumer Protection BC that showed the respondent had 6 funeral director credits and 6 embalming credits due in the current two-year successive period. The communication noted the required education credits were due on "8/10/2021".
16. On July 2, 2021, the respondent was sent an email from Consumer Protection BC stating there were 6 funeral director and 6 embalmer credits due by "2021/08/10".
17. On July 9th, 2021, Consumer Protection BC received a record of completion from the respondent showing they had completed 6 hours in an approved course of embalming services on July 7th, 2021.

18. Before the end of the two-year successive period (August 10, 2019 to August 10, 2021), Consumer Protection BC did not receive any records showing the respondent had completed the required credits in a program of funeral services.
19. On September 10th, 2021, the respondent submitted proof of completion for 6 credits in an approved course of funeral services which was completed by the respondent that same day.
20. The Report to Director was emailed to the respondent on September 28, 2021.
21. A response to the report was received from the respondent on October 6, 2021, in which the respondent apologized for the error and stated: *“I believed that because my licence was set to expire on September 14, 2021 I had until that time to acquire my ceus for the period. This is why I took a course in August 2021 for my 6 required embalmer credits and why I called CPBC in early September this year to confirm that I needed 6 credits for funeral director ceus. When I called in early September I was informed that I needed 6 funeral director ceus but that I was overdue; the credits were required by August 10, 2021. I was confused as I thought the deadline was the same as the licence renewal date -- September 15, 2021. [Name removed] explained my error. Upon learning this I immediately began to explore a course I could take right away and found one scheduled for September 10, 2021. I took that all day course to complete my required ceus.”*
22. The email further stated: *“I realize that I missed the required deadline and sincerely apologize for doing so. It was not done deliberately but rather based on an erroneous assumption on my part. The emails outlined in the Report to the Director failed to come to my attention, and I apologize for this as well. I will await your decision and ask only for your consideration that I was unaware of my error and took swift action to address it as soon as [name removed] brought it to my attention early in September 2021.”*
23. The response goes on to state: *“Also, the Report to the Director indicates that I have failed to complete the ceu requirements for 6 funeral director and 6 embalmer credits for the period of August 10, 2015 to August 10, 2017. I was unaware of this matter until I read the Report. If you could please confirm this for me I will take steps immediately to remedy this outstanding obligation. Thank you in advance for your assistance in this matter. I would like to rectify any outstanding obligations very quickly.”*

F. ANALYSIS

24. The July 21st, 2021 email reminder clearly states *“Programs must be specific to their profession in 2-year cycles starting from when your initial licence was first issued in British Columbia. **This means it may not line up with the September renewal date.**”* The email made it clear that the continuing education credit due date may not be the same as the license renewal date, and

further, the email clearly showed a due date of “8/10/2021”. The onus is on the respondent to have read and understood the information provided in the email. While I point out the required education was completed after the course due date of August 10, 2021, I also note the credits were completed before receiving the Report. I speak more to this in on page 10 below under the “Adjustment Factors” table.

25. The respondent states the reminder emails failed to come to their attention. The emails were all sent to the correct email address provided to Consumer Protection BC by the respondent for delivery of documents and is the same email address currently being used by the respondent for the purposes of communicating in this hearing process. It would be expected that the respondent has access to and would read any emails delivered to the email address.
26. The respondent notes the Report mentioned past continuing education periods where the respondent failed to complete the requirements. In this decision, I will speak only to the current alleged contravention for the 2019 – 2021 period.
27. The evidence clearly establishes in the last two-year successive period of August 10, 2019 to August 10, 2021, the respondent was required to complete a minimum of six hours in an approved program of funeral services. The respondent did not complete the required training before the end of the last two-year successive period; therefore, I find the respondent contravened CFSR section 38(1)(a).

G. DUE DILIGENCE

28. The respondent is entitled to the complete defence of due diligence against the allegation if they show that all reasonable steps were taken to *prevent* the contravention from happening. The onus is on the respondent to establish this defence. I was not presented with any evidence to show due diligence by the respondent.

H. CONCLUSION

29. I conclude the respondent contravened CFSR section 38(1)(a) by failing to complete the minimum required six hours of training in a program of funeral services approved by the Director during the past two-year successive period (August 10, 2019, to August 10, 2021) from when the licence was first issued.

I. LICENSING AND ENFORCEMENT ACTION

30. As the Director determining that a contravention has occurred, I may take one or more of the following actions:

- suspend, cancel a license and/or impose conditions on a license (BPCPA section 146 and CIFSA section 55(3));
- accept an undertaking on terms I consider appropriate (BPCPA section 154 and CIFSA section 56(2)(b));
- issue a compliance order to take specified further corrective action, and to repay Consumer Protection BC costs of this inspection and any associated legal costs (BPCPA section 155(4)(c)(d) and CIFSA section 56(2)(c));
- impose an administrative penalty of up to \$5,000 on an individual (BPCPA section 164-165 BPCPA and CIFSA section 58)

Compliance Order

31. Education requirements are in place to ensure funeral directors and embalmers stay up to date and expand in their level of skill and knowledge to perform the functions of the profession. I am not comfortable in allowing the respondent to maintain the licence without acquiring the full training that should have been obtained during the last two-year successive period. Therefore, I exercise my authority under BPCPA section 155(4)(c) and CIFSA 56(2)(c) to order that the 6 credits in a program of funeral services acquired by the respondent on September 10, 2021 be credited to the two-year successive period of 2019-2021 to satisfy the training requirements for that period. For clarity, the respondent must still complete a minimum of 6 hours of approved training in a program of funeral services and a minimum of 6 hours of approved training in a program of embalming services during the current successive period of 2021 - 2023. The precise terms are described in the Compliance Order attached to this decision.
32. I also exercise my authority under BPCPA section 155(4)(d) and CIFSA section 56(2)(c) to require the respondent reimburse Consumer Protection BC *partial* inspection costs associated with preparing the Report in the amount of \$150.00. Details of payment are described in the attached Compliance Order.

Administrative Penalty

33. As per CIFSA section 58(1), an administrative monetary penalty (“AMP”) may be imposed where a person contravenes a prescribed provision of the CFSR. A contravention to CIFSA section 38(1)(a) or 38(1)(b) is prescribed by the Administrative Penalties Regulation and may, therefore, attract an AMP. A contravention to CIFSA section 38(1)(a) and 38(1)(b) is also prescribed by the Administrative Penalties Regulation and may attract an AMP.
34. I have decided to impose an AMP for the contravention to section 38(1)(a) for failing to complete the minimum required six hours of training in a program of funeral services approved by the Director.

35. BPCPA section 164(2) and CIFSA section 58(3) set out the following factors that must be considered before imposing an AMP:
- (a) previous enforcement actions for contraventions of a similar nature by the respondent
 - (b) the gravity and magnitude of the contravention
 - (c) the extent of the harm to others resulting from the contravention
 - (d) whether the contravention was repeated or continuous
 - (e) whether the contravention was deliberate
 - (f) any economic benefit derived by the person from the contravention
 - (g) the person's efforts to correct the contravention
36. For the contravention at issue, I consider all these factors to decide whether an AMP should be imposed. If imposing an AMP, to determine the *amount* that should be imposed, I consider the BPCPA section 164(2) and CIFSA section 58(3) factors together with the Consumer Protection BC policy, “Calculation of Administrative Monetary Penalties Policy and Procedures” (the “Policy”). The Policy model and rationale are discussed below.
37. The Policy, normally applied by Consumer Protection BC, sets out how the AMP amount is calculated, starting with a base penalty amount. The Policy helps to ensure calculations of AMP amounts are consistent, transparent, flexible, and proportionate to the contraventions at issue, and that suppliers subject to AMPs know how Consumer Protection BC interprets the BPCPA and CIFSA and analyses the criteria determining AMP amounts. Consumer Protection BC has developed the Policy from its experience and expertise in providing consumer protection services, and from its mandate to administer the BPCPA and CIFSA in the public interest.
38. According to the Policy, contraventions for which AMPs are imposed are first categorized into Type A, Type B, or Type C, as set out in the Appendix. Consumer Protection BC makes these assignments based on its purposes and experience in delivering consumer protection services in the public interest, and the consideration of two factors: (1) the inherent severity of harm specific to the contravention, and (2) the probability that a person will experience harm from the contravention.
39. After categorization of the contravention, the decision maker considers a set of “adjustment factors” laid out in the Policy. These “adjustment factors” are based on section 164 (2), plus one additional criterion consistent with the legislation. The Policy requires the decision maker to choose a “gravity” value for each adjustment factor based on consideration of the relevant aggravating or mitigating circumstances.
40. When applying the Policy, the decision maker is considering all the factors under BPCPA section 164 (2) and CIFSA section 58(3) in their calculation or analysis of the AMP amount that should be imposed. The decision maker continues by then deciding in their discretion whether the amounts in the Policy or different amounts imposed based on consideration of the factors under

BPCPA section 164 (2) and CIFSA section 58(3) (and one additional related criterion) and any other relevant circumstances.

41. In the respondent's opportunity to be heard notice, I identified the Policy and advised that it will be applied as part of any decision that may impose an AMP. This notice further stated that the Policy can be viewed on our website and would be otherwise provided to the respondent in paper form upon its request. Therefore, in this hearing the respondent had an opportunity to respond to the Policy by making submissions on the appropriateness of its application or its consistency with criteria in the BPCPA and CIFSA. However, in this hearing I have not received any submissions from the respondent on the Policy.
42. I have determined that an AMP should be imposed for the respondent's failure to complete the minimum required six hours of training in a program of funeral services approved by the Director during the past 2-year successive period (August 10, 2019, to August 10, 2021), beginning from when the licence was first issued. I now will consider the specific AMP to be applied.

Calculation of the AMP amounts

43. I first apply the Policy to calculate an AMP amounts. I then decide whether that amount or a different amount should be imposed based on consideration of the factors under BPCPA section 164(2) and CIFSA section 58(3), and one additional criterion, and any other relevant circumstances.
44. A breach to CIFSR section 38(1)(a) is a Type A contravention under the Policy (page 20 Appendix A, line 225). I agree with this categorization given the circumstances of this violation. It represents the appropriate level of severity and potential harm for prescribed contraventions according to the Policy.
45. Consequently, according to the AMP "Matrix" in part 4.3 (page 5) of the Policy, the "base" amount for penalty is \$500.00 for an individual.
46. My assessment of the adjustment factors applicable to these contraventions under the Policy's penalty matrix is set out in the table below.

Adjustment Factor	Effect on Gravity	Analysis
1. <i>Previous enforcement actions for contraventions of a similar nature</i>	0	There are no previous enforcement actions by Consumer Protection BC against the respondent. I maintain the gravity level at neutral.
2. <i>Gravity and magnitude of the contravention</i>	0	As mentioned in the decision, continuing education requirements are in place to ensure funeral directors and embalmers grow and expand their knowledge in the profession. The respondent continued to offer its service and professional expertise as a funeral director without completing the requisite training. Imposing an AMP is intended to correct the non-compliance and deliver a message to the respondent about completing their education requirements into the future. I maintain the gravity level at neutral.
3. <i>Extent of the harm to others resulting from the contravention</i>	0	There is no evidence or basis to infer harm to others resulting from the contraventions. I maintain the gravity level at neutral.
4. <i>Whether the contravention was repeated or continuous</i>	0	The contravention was not repeated or continuous. I maintain the gravity level at neutral.
5. <i>Whether the contravention was deliberate</i>	0	I have no reason to believe the respondent's actions were of a deliberate or intentional nature. I maintain the gravity level at neutral.
6. <i>Economic benefit derived by the person from the contraventions</i>	0	I have no reason to believe the respondent derived any economic benefit from the contravention. I maintain the gravity level at neutral.

7. Whether the person made reasonable efforts to mitigate or reverse the effects of the contravention	-1	I have taken into consideration that the respondent completed the training after the due date but prior to receiving the Report to Director. As such, I have treated this as a mitigating factor and have adjusted the gravity level accordingly.
8. The person's efforts to correct the contraventions & prevent recurrence	0	I have not been given evidence on measures that will be taken to ensure completion dates for education requirements are not missed again. I maintain the gravity level at neutral.

Final Calculation of AMP

47. According to my application of the Policy and its AMP Matrix, the overall adjustment for the CIFSA section 38(1)(a) contravention involves an overall score of “minus one”.

48. The Policy determines that a violation of CIFSA section 38(1)(a) is a Type A contravention with a base penalty amount of \$500.00 for an individual. In this case, having found a gravity level of “minus one” and in following the Matrix, I apply a penalty of **\$450.00**. In this hearing no additional relevant circumstances have been brought to bear on my analysis and calculation of penalty as to vary it from the Policy amount. I consider this penalty amount to be appropriate for the contravention. Attached to these reasons is a Notice of Administrative Penalty in the amount of **\$450.00**.

J. RECONSIDERATION

49. A compliance order or monetary penalty may be reconsidered in accordance with Division 1 of Part 12 of the Act, subject to the provisions outlined in sections 181 and 182 (2). 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: Tegan Scardillo, Director of Business Practices and Classification
200 – 4946 Canada Way, Burnaby, BC V5G 4H7
Tegan.scardillo@consumerprotectionbc.ca

Decided on November 15, 2021, in Burnaby, BC.

A handwritten signature in black ink, appearing to read "Scardillo", is written over a horizontal line.

Tegan Scardillo
Director of Business Practices and Classification