



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: **John Ellwood**

Case Number: **31324**

Licence Number: **16203**

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

Date of Decision: **January 14, 2022**

A. INTRODUCTION

1. John Ellwood (“the respondent”) is a funeral director and embalmer, licensed to engage in the activity under Consumer Protection BC licence number 16203 (“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 November 15, 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 an embalmer 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 November 15, 2021. It provided the respondent with the opportunity to submit a written reply to the Report by November 29, 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 did not provide a written response to the notice.
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)(b) by failing to complete the minimum required six hours of training in a program of embalming services approved by the Director during the past two-year successive period commencing on the date the respondent was first issued an 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 in its 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 September 15, 1999, 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 September 15, 2019 to September 15, 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 not completed any credits for embalming services or funeral services in the current two-year successive period. The communication noted the required education credits were due on “9/15/2021”.
16. On August 6, 2021, Consumer Protection BC sent an email to the respondent which stated there was 6 funeral director credits and 6 embalmer credits due by September 15, 2021.
17. On August 10th, 2021, Consumer Protection BC received records showing the respondent had completed 6 credits in a program of funeral services and 2 credits in a program of embalming services. All 8 credits were completed on June 9, 2021.

18. Before the end of the two-year successive period (September 15, 2019 to September 15, 2021), Consumer Protection BC did not receive any records showing the respondent had completed the required credits in embalming services.
19. On October 7, 2021, Consumer Protection BC received confirmation that the respondent had completed two courses (one course worth 2 credits and the other worth 3 credits) for a total of 5 credits in programs of embalming services on the same date.
20. The Report to Director was emailed to the respondent on November 15, 2021.

F. ANALYSIS

21. Without a response to the report, I am left with the evidence provided in the report and any course completion certificates provided to form my analysis and conclusion.
22. The evidence clearly establishes in the last two-year successive period of September 15, 2019 to September 15, 2021, the respondent was required to complete a minimum of six hours in an approved program embalming 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 CIFSR section 38(1)(b).

G. DUE DILIGENCE

23. 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

24. I conclude the respondent contravened CIFSR section 38(1)(b) by failing to complete the minimum required six hours of training in a program of embalming services approved by the Director during the past two-year successive period (September 15, 2019, to September 15, 2021) from when the licence was first issued.

I. LICENSING AND ENFORCEMENT ACTION

25. 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 CIFSFA 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

26. 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 exercise my authority under BPCPA section 155(4)(c) and CIFSA 56(2)(c) to order that the two courses completed by the respondent on October 7th, 2021 (total of 5 embalmer credits) be applied to the 2019 – 2021 period to satisfy the requirements for that period. (Although only 4 embalmer credits are required to meet the requirements of the 2019 – 2021 period, credits for one course cannot be split between periods; therefore, all 5 credits will be applied to 2019 – 2021.) 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.
27. 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

28. 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) and/or 38(1)(b) is prescribed by the Administrative Penalties Regulation and may, therefore, attract an AMP.
29. 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

30. 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.
31. 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.
32. 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.
33. 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.
34. 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.
35. 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.

36. 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 embalming services approved by the Director during the past 2-year successive period (September 15, 2019, to September 15, 2021), beginning from when the licence was first issued. I now will consider the specific AMP to be applied.

Calculation of the AMP amounts

37. 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.

38. A breach to CIFSR section 38(1)(b) 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.

39. 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.

40. 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.

<p>2. Gravity and magnitude of the contravention</p>	<p>0</p>	<p>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 has continued to offer its service and professional expertise as an embalmer 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.</p>
<p>3. Extent of the harm to others resulting from the contravention</p>	<p>0</p>	<p>There is no evidence or basis to infer harm to others resulting from the contraventions. I maintain the gravity level at neutral.</p>
<p>4. Whether the contravention was repeated or continuous</p>	<p>0</p>	<p>The contravention was not repeated or continuous. I maintain the gravity level at neutral.</p>
<p>5. Whether the contravention was deliberate</p>	<p>0</p>	<p>I have no reason to believe the respondent’s actions were of a deliberate or intentional nature. I maintain the gravity level at neutral.</p>
<p>6. Economic benefit derived by the person from the contraventions</p>	<p>0</p>	<p>I have no reason to believe the respondent derived any economic benefit from the contravention. I maintain the gravity level at neutral.</p>
<p>7. Whether the person made reasonable efforts to mitigate or reverse the effects of the contravention</p>	<p>-1</p>	<p>I have taken into consideration that the respondent completed the overdue credits in embalming services after the due date but prior to receiving the Report. I have adjusted the gravity level accordingly.</p>

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.
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Final Calculation of AMP

41. According to my application of the Policy and its AMP Matrix, the overall adjustment for the CIFSA section 38(1)(b) contravention involves an overall score of “minus one”.
42. The Policy determines that a violation of CIFSA section 38(1)(b) 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

43. 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 \$262 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 January 14, 2022, in Burnaby, BC.



Tegan Scardillo
Director of Business Practices and Classification