CONSUMER PROTECTION BC

Inspection Guide

Debt collection agents and bailiffs

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Introduction

Consumer Protection BC is responsible for the administration and enforcement of the *Business Practices and Consumer Protection Act* (BPCPA), the *Cremation Interment and Funeral Services Act* (CIFSA), the *Motion Picture Act* (MPA), the *Ticket Sales Act* (TSA), and the Debt Collection and Repayment Regulation (DCRR).

The BPCPA and DCRR govern the conduct of persons who engage in debt collection, the business of debt collection, the business and occupation of bailiffs, and the licensing requirements related to each in British Columbia.

This guide has been prepared to better inform and educate you on the compliance inspection process. As one of our licensed businesses, it is your responsibility to conduct yourself and operate your business in compliance with the laws and conditions on your license. We recommend you take the time needed to read this guide fully and to make sure that your managers and staff are familiar with the information contained herein.

This guide serves as a reference, so you know what to expect and how to prepare for an inspection conducted by a Consumer Protection BC Inspector.

This is a general overview of the inspection process. This guide is not intended to provide legal advice and it is not an exhaustive review of the legislative provisions affecting you or the operation of your licensed business. We recommend that you get copies of the legislation and review it in detail. You can order from Crown Publications at www.crownpub.bc.ca.

For more general information, visit our corporate website at www.consumerprotectionbc.ca.
To learn more about your licensing requirements and legal obligations, visit the Get & Keep your Licence section of our website. To find out how best to contact us, please visit the Contact Us page of our website.

Background: our responsibilities

The role of Consumer Protection BC

Consumer Protection BC licenses and inspects regulated businesses, responds to consumer inquiries, investigates alleged violations of consumer protection laws, classifies all general release and adult films, and provides information and referrals to consumers.

As part of our responsibility to ensure compliance with the law and conditions on a licence, we regularly perform risk-based inspections as well as inspections in response to consumer complaints. When an inspector identifies issues of non-compliance, the inspector may open a complaint file. When the eventual outcome of a complaint file results in voluntary compliance with the law or some form of enforcement action being taken by the Director, the outcome is published to our website. We share this information to enable consumers to make informed decisions.

The role of the licensee

You are legally responsible for compliance with the laws and licensing conditions as it relates to the operation of your business. You are also responsible for ensuring your employees and agents are acting in compliance with the laws and licensing conditions applicable to your business.

You must fully cooperate with an inspector. Providing false or misleading information to an inspector or obstructing or hindering an inspection are serious contraventions of the laws we administer. A person who obstructs, hinders, or makes misleading statements to an inspector is subject to prosecution under *the Offence Act*.

Inspection process

Scheduling and notification

Inspectors attend businesses located throughout the Province, sometimes arriving unannounced. The BPCPA, CIFSA, MPA and TSA allows for an inspector to enter a business at any reasonable time to determine compliance with the law, conditions on a licence, the suitability of a licensee or an applicant for a licence.

Authority to inspect

It is your responsibility to cooperate fully during an inspection. In most instances, an inspector will provide their official identification on arrival, or a request can be made for them to produce it. You must not do anything to obstruct, hinder, or interfere with an inspector's entry and inspection of a business.

The BPCPA gives the inspector the authority to:

- Inquire into any business, affairs or conduct of a person
- Inspect, audit or examine any record, goods or other things or the provision of services in the premises
- Inspect a vehicle or vessel that is being used for business purposes
- Require a person who has possession or control of any records, goods, or other things in the premises, vehicle or vessel to produce the records, goods or things
- Make a record, including a record on film, audio tape, video tape or otherwise, of the premises, vehicle or vessel or any other things in the premises, vehicle or vessel
- Remove any record from the premises, vehicle or vessel for purpose of making copies
- Remove and retain any record, good or other thing that may be required as evidence from the premises, vehicle or vessel.

Conclusion of inspection & Post Inspection Letter

Once the inspection is complete, the inspector may discuss any non-compliance identified during the inspection at this time. After returning to the office, the inspector will document the inspection, update your file and, if required, inform other departments within Consumer Protection BC of the inspection results.

The inspector will update the Inspection Checklist[1] and a Post Inspection Letter (PIL) detailing the results of the inspection will be uploaded to your My Account set up with Consumer Protection BC.

In order to receive the PIL, you must have your My Account set up. If your email is not entered into the My Account, you will not receive the PIL and other pertinent documents related to the inspection. To setup your My Account, please go to www.consumerprotectionbc.ca and select "MyAccount Login" or contact operations@consumerprotectionbc.ca for assistance.

The PIL will identify any alleged violations that you must correct and/or any alleged violations for which the inspector recommends that enforcement action be taken by the Director. Any further instruction(s) will be noted in the inspector's notes in the PIL.

For more information on the enforcement process, please see the section below entitled "Enforcement."

We may conduct a follow up inspection to ensure that non-compliance found at the previous inspection is corrected.

Enforcement

If an inspector detects violations that they believe should proceed to an enforcement hearing, they will notify you of these alleged contraventions in the PIL issued after the inspection. The inspector will also prepare a Report to the Director (RD) document for the Director. A copy of the RD will also be sent to you. The RD will identify the allegation(s) proceeding to an enforcement hearing and the evidence the inspector is relying on to support the allegation(s). You will be given an opportunity to respond to the allegation(s) made in the RD. A decision-maker will then decide whether the allegation(s) took place, and whether statutory action such as an administrative penalty, licensing action or other remedial order is appropriate. Note: the decision to impose an administrative penalty is at the discretion of the Director or the delegated decision maker.

Before deciding to impose an Administrative Monetary Penalty (AMP) and calculating the amount of the AMP, the decision-maker will consider the factors set out in section 164(2) of the BPCPA. To calculate the amount of the AMP the decision-maker will normally apply the policy of Consumer Protection BC, "Calculating Administrative Monetary Penalties Policy and Procedures.", including its AMP Penalty Matrix. This policy is available on the website of Consumer Protection BC at www.consumerprotectionbc.ca. You can access the policy electronically by clicking the following link: Admin Penalty Policy and Procedure.

If you are dissatisfied with the decision, you may apply for a reconsideration of the decision.

Further information on the policies and procedures relating to the calculation of administrative monetary penalties and the reconsideration process can be found by visiting the About us (Our policies) section of our website at www.consumerprotectionbc.ca.

[1] See Appendix – Inspection Checklist

What will be inspected

Remember that while inspectors attend businesses to test for compliance with the laws we administer and any conditions we have imposed on a licence, they are also there to educate and answer questions. Please feel free to approach them about any business issues or problems related to the laws we administer.

Typically, you can expect that an inspector will do some of the following:

- Review the legislation and the conditions on a licence for any issues that are identified;
- Inspect the physical layout of the business;
- Inspect legal, financial and other business records;
- Observe and record your business practices, identify deficiencies or problem areas that may lead to non-compliance;
- Identify any contraventions;
- Answer your questions and help you understand your obligations

To find out what an inspector will examine during the inspection, please read a sample inspection checklist (Appendix-Inspection Checklist). Note: the items on the checklist are not an exhaustive list of the items an inspector may examine.

Documents and records

You must produce all business records and documents requested by the inspector. Since business records are not always kept on the premises, an inspector may schedule an inspection in advance so you can make sure the records are at the business for the inspection. Sometimes, the inspector may require that you provide additional records at a later date. Refusing to provide records or providing false or misleading information is a serious contravention of the law.

Appendix – Inspection Checklist

The following are the types of things that the inspector is checking during an inspection of your business. This is not a comprehensive list and not all items on this list are inspected during each inspection.

CONSUMER PROTECTION BC

Licence #: __________

Date of inspection: ___________

Question	DEBT COLLECTION / BAILIFF INSPECTION REPORT	Y	N	N/A
GENERAL INFORMATION				
1	What designated activities does the licensee engage in? Bailiff, collection agent, or both?			
2	What is the number of employees engaged in the designated activity of bailiff and/or collection agent?			
3	BPCPA s. 143(1)(a) - Are all employees of the business engaged in the designated activity properly licensed?	☐	☐	☐
4	If acting as a bailiff, list the address(es) of the locations where the bailiff stores seized items.			
LICENSED LOCATION				
5	DCRR s. 8(1) - Are all locations where the licensee conducts business licensed?	☐	☐	☐
REPORTING CHANGES				
6	DCRR s. 8(2) - Did the licensee immediately notify the Director of any change of address for the location from which the licensee conducts business in British Columbia?	☐	☐	☐
7	DCRR s. 11(2)(a) - Has the licensee reported any change of address for any employee (who is licensed)?	☐	☐	☐
8	DCRR s. 11(2)(b) - Has the licensee reported the name and address of every individually licensed employee?	☐	☐	☐
9	DCRR s. 11(2)(c) - Has the licensee reported the name of every employee who ceased to be employed by the licensee and the reason their employment ceased?	☐	☐	☐
10	DCRR s. 11(2)(d)(i) - If the licensee is a corporation, has the licensee reported any change in the senior officers of the licensee?	☐	☐	☐
11	DCRR s. 11(2)(d)(ii) - If the licensee is a corporation, has the licensee reported any material change in the beneficial ownership of the shares of the licensee?	☐	☐	☐

LICENCE				
12	DCRR s. 11(4)(a) - Was the licensee's licence displayed in a conspicuous location in the place of business?	☐	☐	☐
COMMUNICATION WITH DEBTOR				
13	BPCPA s. 116(1) - Has the collector ensured they do not communicate or attempt to communicate with a debtor at their place of employment unless permitted to do so?	☐	☐	☐
14	BPCPA s. 116(2) - Did the collector ensure only a single verbal attempt was made to communicate with a debtor at their place of employment because the collector was unable to contact the debtor via their home address, telephone number or email address?	☐	☐	☐
15	BPCPA s. 116(3)(a) - At the time a collector communicates with a debtor, has the collector indicated to the debtor the name of the original creditor, and if different, to whom the debt is now owed?	☐	☐	☐
16	BPCPA s. 116(3)(b) - At the time a collector communicates with a debtor, has the collector indicated to the debtor the amount of the debt on the day it was first due and payable, and if different, the amount currently owing, including a breakdown of that current amount?	☐	☐	☐
17	BPCPA s. 116(3)(c) - At the time a collector communicates with a debtor, has the collector indicated to the debtor the identify and authority of the collector to collect the debt from the debtor?	☐	☐	☐
18	BPCPA s. 116(4) - Was the collector complying with requests to (a) communicate in writing only, (b) communicate through the debtor's lawyer, or (c) to cease communication in the event of a disputed debt?	☐	☐	☐
DEBT COLLECTION PRACTICES				
19	BPCPA s. 114(1) - Has the collector ensured they do not communicate in a manner or with a frequency as to constitute harassment?	☐	☐	☐
20	BPCPA s. 115(1)(a) - Has the collector ensured they do not attempt to collect payment of a debt until they have notified, or made a reasonable attempt to notify, the debtor in writing of the name of the original creditor, and if different, to whom the debt is now owed?	☐	☐	☐
21	BPCPA s. 115(1)(b) - Has the collector ensured they do not attempt to collect payment of a debt until they have notified, or made a reasonable attempt to notify, the debtor in writing of the amount of the debt on the day it was first due and payable, and if different, the amount currently owing, including a breakdown of that current amount?	☐	☐	☐
22	BPCPA s. 115(1)(c) - Has the collector ensured they do not attempt to collect payment of a debt until they have notified, or made a reasonable attempt to notify, the debtor in writing of the identify and authority of the collector to collect the debt from the debtor?	☐	☐	☐
23	BPCPA s. 115(2) - Has the collector ensured they do not initiate verbal communication with a debtor until 5 days after the written notice required under BPCPA s. 115(1) has been sent, unless it is for the purpose of	☐	☐	☐

	requesting the debtor's information in order to send it, if the collector does not have it, or has reason to believe it is not correct?			
24	BPCPA s. 115(3) - Has the collector ensured they sent the written notice required under BPCPA s. 115(1) in circumstances where the debtor informs the collector they have not received the written notice?	☐	☐	☐
25	BPCPA s. 117(1) - Are collectors only communicating with persons other than the debtor when authorized to do so, or for the purpose of obtaining the debtor's home address, telephone number or electronic mail address if the collector does not have that information or has reason to believe it is not correct?	☐	☐	☐
26	BPCPA s. 117(2) - Are collectors only communicating with the debtors employer for (a) the purpose of confirming the debtor's employment, business title and business address, and only once notice regarding legal proceedings has been given to the debtor, or (b) other purposes if authorized in writing by the debtor to do so?	☐	☐	☐
27	BPCPA s. 118(2) - Unless requested by the person contacted, are collectors only communicating, by phone or in-person, with persons on (a) non-statutory holidays, (b) on a Sunday between 1300 - 1700 (local time), or (c) any other day between 0700 - 2100 (local time)?	☐	☐	☐
28	BPCPA s. 119 - Are collectors ensuring that the costs of communication for the purpose of collecting, negotiating or demanding payment of a debt are not being borne by the person contacted?	☐	☐	☐
29	BPCPA s. 120 - Are collectors ensuring that they do not (a) collect or attempt to collect money that exceeds the amount of the debt owing, (b) collect or attempt to collect money from a person who is not liable for the debt, or (c) continue to communicate with a person who claims they are not the debtor, unless the collector first makes all reasonable efforts to ensure that the person is in fact the debtor.	☐	☐	☐
30	BPCPA s. 121 - Before doing so, are collectors ensuring that the debtor has first been given notice (1.1) if the collector intends to bring a legal proceeding for the recovery of a debt, or (2) prior to recommending to a creditor that a legal proceeding for the recovery of a debt be brought?	☐	☐	☐
31	BPCPA s. 121(4) - Are collectors ensuring that they do not directly or indirectly threaten, or state an intention, to bring or continue a legal proceeding for the recovery of a debt (a) for which the collector does not have the written authority of the creditor, or (b) for which there is no lawful authority?	☐	☐	☐
32	BPCPA s. 123 - In attempting to collect payment of a debt, are collectors ensuring that they do not (a) supply any false or misleading information, (b) misrepresent the purpose of a communication, (c) misrepresent the identity of the collector or, if different, the creditor, or (d) use, without lawful authority, a summons, notice, demand, or other document that suggests or implies a connection with any court inside or outside of Canada?	☐	☐	☐

RECORDS				
33	DCRR s. 11(4)(c) - Was the bailiff licensee maintaining proper records of property repossessed, seized or distrained on, or disposed of, by the licensee?	☐	☐	☐
34	DCRR s. 11(5) - Does the bailiff licensee have written consent from the debtor, or authorization from the Director, to move repossessed, seized or distrained property more than 100 km while the debtor may redeem the property or reinstate the security agreement (21-day redemption period)?	☐	☐	☐
35	DCRR s. 5(a) - Has the licensee submitted to the Director a copy of each form the licensee uses to evidence any agreement or arrangement between the licensee and a person for whom the licensee acts?	☐	☐	☐
36	DCRR s. 5(b) - Has the licensee submitted to the Director a copy of every document or other form of written communication that the applicant uses in collecting, negotiating, demanding or arranging payment of a debt?	☐	☐	☐
PROHIBITED PRACTICE				
37	DCRR s. 11(4)(b) - Has the licensee ensured they do not use any agreement, document or communication used in the collection, negotiation, demanding or arranging payment of a debt unless it has first been approved by the Director?	☐	☐	☐
PAYMENT & OPERATING ACCOUNT INFORMATION				
38	List all forms of payment that the licensee accepts from debtors.	☐	☐	☐
39	Does the licensee have a merchant account that allows debtor funds to be deposited by debit / credit card? If yes, list the bank account where these funds are received.	☐	☐	☐
40	Does the licensee accept debtor funds via email money transfer (Interac e-transfer) or other EFT processes? If yes, list the bank account where these funds are received.	☐	☐	☐
41	List the (i) name, (ii) address of the financial institution and (iii) account number for each of the licensee's general operating bank accounts.	☐	☐	☐
TRUST ACCOUNT INFORMATION & ADMINISTRATION				
42	DCRR s. 9(1)(a) - Is the licensee maintaining a trust account with a savings institution in British Columbia?	☐	☐	☐
43	List the (i) name, (ii) address of the financial institution and (iii) account number for each of the licensee's trust bank accounts.	☐	☐	☐
44	DCRR s. 11(2)(a) - Has the licensee reported any change of address for the licensee's trust account?	☐	☐	☐
45	DCRR s. 9(1)(d) - Is the licensee maintaining the licensee's records and trust account at the place specified in the licence application? If not, has the Director approved of the change?	☐	☐	☐
46	BPCPA s. 146(2)(c) - If applicable, is the licensee complying with any licensing conditions in place that are specific to the operation of the trust account?	☐	☐	☐

47	DCRR s. 9(1)(b) - Is all money received for distribution to a debtor's creditors deposited into the licensee's trust account within 5 days of receipt?	☐	☐	☐
48	DCRR s. 9(1.1) - Is the licensee ensuring that the only funds deposited into the trust account are funds intended for distribution to creditors?	☐	☐	☐
49	DCRR s. 9(2) - Is the licensee only disbursing money from the trust account to satisfy contractual obligations, to correct an error, or to make a payment as described in in BPCPA s. 126(2) or s. 126(3)?	☐	☐	☐
50	BPCPA s. 126(2)(a)(i), BPCPA s. 126(2)(a)(ii) and BPCPA s. 126(3) - Has the licensee accounted for all funds received from debtors and remitted those funds within the required timeframes?	☐	☐	☐
51	BPCPA s. 126(2)(b)(c)(d) - Has the licensee paid money, within the required timeframes, to the debtor in the circumstances outlined under BPCPA s. 126(2)(b) and (c), or to the administrator in the event the debtor cannot be located?	☐	☐	☐
52	DCRR s. 9(1)(c) - Is the licensee maintaining proper records of the trust account, in a form and manner satisfactory to the Director?	☐	☐	☐
ANNUAL FINANCIAL STATEMENT				
53	DCRR s. 10(1)(2) - Has the licensee submitted financial statements to the Director as required?	☐	☐	☐
54	Does the current collections activity of the licensee indicate the financial statements last filed with the Director are accurate?	☐	☐	☐
SECURITY				
55	DCRR s. 12(1) - Has the licensee provide security to the Director that is of the type and in the acceptable form within the required time frame?	☐	☐	☐
56	DCRR s. 12(2) & DCRR s. 12(2.1) as applicable - Is the amount of security provided by the licensee to the Director correct?	☐	☐	☐
GENERAL REQUIREMENTS				
57	DCRR s. 11(3) - Has the licensee given the Director the licence for those employees whose employment has ceased?	☐	☐	☐

For more information about your obligations as a licensed business, our processes and our organization, please visit www.consumerprotectionbc.ca.