CONSUMER PROTECTION BC

Inspection Guide

Telemarketers

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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 Telemarketer Licensing Regulation (TLR).

Together the BPCPA and TLR govern suppliers who engage in the business or occupation of initiating contact with a consumer by telephone or facsimile for the purpose of conducting a consumer transaction.

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	TELEMARKETER INSPECTION REPORT	Y	N	N/A
GENERAL INFORMATION				
1	What is the nature of the telemarketer's business? Fundraising, consumer goods/services?			
2	Does the telemarketer record solicitation calls?	☐	☐	☐
3	Does the number of full-time employees disclosed by the telemarketer appear to be consistent with payroll, office space and the campaign size(s) of the telemarketer?	☐	☐	☐
LICENCED LOCATION				
4	TLR s. 4(1) - Are all locations where the licensee conducts business licensed?	☐	☐	☐
REPORTING CHANGES				
5	TLR s. 4(2) - Has the licensee immediately notified the Director of any change of address for the location from which the licensee conducts business in British Columbia?	☐	☐	☐
6	TLR s. 6(2)(d)(i) - If the licensee is a corporation, has the licensee immediately reported to the Director any change in the senior officers of the licensee?	☐	☐	☐
7	TLR s. 6(2)(d)(ii) - If the licensee is a corporation, has the licensee immediately reported to the Director any material change in the beneficial ownership of the shares of the licensee?	☐	☐	☐
LICENCE				
8	TLR s. 5 - Was the licensee's licence displayed in a conspicuous location in the place of business?	☐	☐	☐
DISCLOSURE REQUIREMENTS				

9	BPCPA s. 18.3(1)(a) - Before entering into the contract with the consumer, did the supplier disclose to the consumer the supplier's name and DBA [BPCPA s. 18.2(a)]?	☐	☐	☐
10	BPCPA s. 18.3(1)(a) - Before entering into the contract with the consumer, did the supplier disclose to the consumer a detailed description of the goods or services to be supplied under the contract [BPCPA s. 18.2(d)]?	☐	☐	☐
11	BPCPA s. 18.3(1)(a) - Before entering into the contract with the consumer, did the supplier disclose to the consumer the supplier's delivery arrangements, if applicable, including the mode of transportation and the place of delivery to the consumer [BPCPA s. 18.2(e)]?	☐	☐	☐
12	BPCPA s. 18.3(1)(a) - Before entering into the contract with the consumer, did the supplier disclose to the consumer if the goods or services are not supplied on the date the contract is entered into, (i) the supply date, and (ii) if applicable, the date on which the supply of the goods or services will be complete [BPCPA s. 18.2(f)]?	☐	☐	☐
13	BPCPA s. 18.3(1)(a) - Before entering into the contract with the consumer, did the supplier disclose to the consumer an itemized purchase price for the goods or services to be supplied [BPCPA s. 18.2(g)]?	☐	☐	☐
14	BPCPA s. 18.3(1)(a) - Before entering into the contract with the consumer, did the supplier disclose to the consumer the nature and amount of other costs payable by the consumer that can reasonably be determined by the supplier, such as taxes [BPCPA s. 18.2(h)]?	☐	☐	☐
15	BPCPA s. 18.3(1)(a) - Before entering into the contract with the consumer, did the supplier disclose to the consumer the nature of other costs payable by the consumer that cannot reasonably be determined by the supplier, such as custom duties [BPCPA s. 18.2(i)]?	☐	☐	☐
16	BPCPA s. 18.3(1)(a) - Before entering into the contract with the consumer, did the supplier disclose to the consumer the currency in which the amounts are payable, if amounts owing under the contract are payable in a currency other than Canadian currency [BPCPA s. 18.2(j)]?	☐	☐	☐
17	BPCPA s. 18.3(1)(a) - Before entering into the contract with the consumer, did the supplier disclose to the consumer a detailed statement of the terms of payment under the contract and, if the contract provides for periodic payments, the amount of each of the periodic payments [BPCPA s. 18.2(k)]?	☐	☐	☐
18	BPCPA s. 18.3(1)(a) - Before entering into the contract with the consumer, did the supplier disclose to the consumer the total price under the contract [BPCPA s. 18.2(l)]?	☐	☐	☐
19	BPCPA s. 18.3(1)(a) - Before entering into the contract with the consumer, did the supplier disclose to the consumer any promotional offers that apply to the contract, including (i) the conditions required to qualify for the offer, (ii) the terms and duration of the offer, and (iii) the contract terms that apply when the offer expires [BPCPA s. 18.2(o)]?	☐	☐	☐
20	BPCPA s. 18.3(1)(a) - Before entering into the contract with the consumer, did the supplier disclose to the consumer any other restrictions, limitations, terms or conditions that apply or may apply to the supply of the goods or services [BPCPA s. 18.2(p)]?	☐	☐	☐

21	BPCPA s. 18.3(1)(a) - Before entering into the contract with the consumer, did the supplier disclose to the consumer the supplier's return, exchange, cancellation and refund policies [BPCPA s. 18.2(q)]?	☐	☐	☐
22	BPCPA s. 18.3(1)(a) - Before entering into the contract with the consumer, if applicable, did the supplier disclose to the consumer information about (i) how the contract may be renewed by the consumer, and (ii) any provisions for automatic renewal [BPCPA s. 18.2(r)]?	☐	☐	☐
23	BPCPA s. 18.3(2) - Did the supplier ensure the information required to be disclosed under BPCPA s. 18.3(1) was (a) provided without charge to the consumer and without conditions, and (b) provided in a clear and comprehensible manner?	☐	☐	☐
24	BPCPA s. 18.3(3) - Did the supplier, at the time the information under BPCPA s. 18.3(1) was disclosed, (a) provide the consumer with an express opportunity to view the entire contract, and (b), if the consumer requested, promptly provide a copy of the contract to the consumer?	☐	☐	☐
25	BPCPA s. 47(2)(a) as applicable - Before entering into the distance sales contract in electronic form with the consumer, did the supplier make the information, required to be disclosed under BPCPA s. 18.3, available in a manner that (i) requires the consumer to access the information, and (ii) allows the consumer to retain and print the information?	☐	☐	☐
26	BPCPA s. 47(2)(b) as applicable - Before entering into the distance sales contract in electronic form with the consumer, did the supplier provide the consumer with an express opportunity to (i) correct errors in the contract, and (ii) accept or decline the contract?	☐	☐	☐
CONTRACT CONTENTS (BPCPA s.48 requirements only apply if a Distance Sales Contract has been executed)				
27	BPCPA s. 18.2(a) or BPCPA s. 48(2)(a) as applicable - Does each contract include the supplier’s name and registered DBA?	☐	☐	☐
28	BPCPA s. 48(2)(b) if applicable - Does each contract contain the consumer's name?	☐	☐	☐
29	BPCPA s. 18.2(c) or BPCPA s. 48(2)(c) as applicable - Does each contract include the date the contract was entered into?	☐	☐	☐
30	BPCPA s. 18.2(d) or BPCPA s. 48(2)(a) as applicable - Does each contract include a detailed description of the goods or services to be supplied under the contract?	☐	☐	☐
31	BPCPA s. 18.2(e) or BPCPA s. 48(2)(a) as applicable - Does each contract include the supplier's delivery arrangements, if applicable, including the mode of transportation and the place of delivery to the consumer?	☐	☐	☐
32	BPCPA s. 18.2(f) or BPCPA s. 48(2)(a) as applicable - Does each contract include, if the goods or services are not supplied on the date the contract is entered into, (i) the supply date, and (ii) if applicable, the date on which the supply of the goods or services will be complete?	☐	☐	☐
33	BPCPA s. 18.2(g) or BPCPA s. 48(2)(a) as applicable - Does each contract include an itemized purchase price for the goods or services to be supplied?	☐	☐	☐

34	BPCPA s. 18.2(h) or BPCPA s. 48(2)(a) as applicable - Does each contract include the nature and amount of other costs payable by the consumer that can reasonably be determined by the supplier, such as taxes?	☐	☐	☐
35	BPCPA s. 18.2(i) or BPCPA s. 48(2)(a) as applicable - Does each contract include the nature of other costs payable by the consumer that cannot reasonably be determined by the supplier, such as custom duties?	☐	☐	☐
36	BPCPA s. 18.2(j) or BPCPA s. 48(2)(a) as applicable - Does each contract include the currency in which the amounts are payable, if amounts owing under the contract are payable in a currency other than Canadian currency?	☐	☐	☐
37	BPCPA s. 18.2(k) or BPCPA s. 48(2)(a) as applicable - Does each contract include a detailed statement of the terms of payment under the contract and, if the contract provides for periodic payments, the amount of each of the periodic payments?	☐	☐	☐
38	BPCPA s. 18.2(l) or BPCPA s. 48(2)(a) as applicable - Does each contract include the total price under the contract?	☐	☐	☐
39	BPCPA s. 18.2(o) or BPCPA s. 48(2)(a) as applicable - Does each contract include any promotional offers that apply to the contract, including (i) the conditions required to qualify for the offer, (ii) the terms and duration of the offer, and (iii) the contract terms that apply when the offer expires?	☐	☐	☐
40	BPCPA s. 18.2(p) or BPCPA s. 48(2)(a) as applicable - Does each contract include information about any other restrictions, limitations, terms or conditions that apply or may apply to the supply of the goods or services?	☐	☐	☐
41	BPCPA s. 18.2(q) & BPCPA s. 48(2)(a) as applicable - Does each contract include information about the supplier's return, exchange, cancellation and refund policies?	☐	☐	☐
42	BPCPA s. 18.2(r) & BPCPA s. 48(2)(a) as applicable - If applicable, does each contract include information about (i) how the contract may be renewed by the consumer, and (ii) any provisions for automatic renewal?	☐	☐	☐
43	BPCPA s. 14.2(1) - Has the supplier ensured they do not include in a consumer contract a term or acknowledgment that prohibits or has the effect of prohibiting a consumer from posting on the internet, or otherwise communicating, a review by the consumer of (a) the goods or services that are the subject of the contract, or (b) the consumer transaction?	☐	☐	☐
44	BPCPA s. 14.3(1) - Has the supplier ensured they do not include in a consumer contract a dispute resolution term or acknowledgment or a class proceeding term or acknowledgment?	☐	☐	☐
45	BPCPA s. 23(3) or BPCPA s. 48(1) as applicable - Did the supplier give the consumer a copy of the contract within 15 days after the contract was entered into?	☐	☐	☐
RECORDS				
46	TLR s. 7(1)(a) - For each distance sales contract entered into by telephone or facsimile, has the licensee maintained a record of the consumer's name, address, telephone number and, if available, facsimile number?	☐	☐	☐
47	TLR s. 7(1)(b) - For each distance sales contract entered into by telephone or facsimile, has the licensee maintained a record of the date on which the contract is entered into?	☐	☐	☐

48	TLR s. 7(1)(c) - For each distance sales contract entered into by telephone or facsimile, has the licensee maintained a record of the information required to be disclosed under BPCPA s. 18.3(1)?	☐	☐	☐
49	TLR s. 7(2)(a) - For each consumer who agrees by telephone or facsimile to contribute money or other property as a result of the licensee soliciting the consumer, has the licensee maintained a record of the beneficiary's name, business address, telephone number and, if available, facsimile number and electronic mail address?			
50	TLR s. 7(2)(b) - For each consumer who agrees by telephone or facsimile to contribute money or other property as a result of the licensee soliciting the consumer, has the licensee maintained a record of a detailed description of the purpose for which the contribution of money or other property was solicited?			
51	TLR s. 7(2)(c) - For each consumer who agrees by telephone or facsimile to contribute money or other property as a result of the licensee soliciting the consumer, has the licensee maintained a record of the consumer's name, address, telephone number and, if available, facsimile number?			
52	TLR s. 7(2)(d) - For each consumer who agrees by telephone or facsimile to contribute money or other property as a result of the licensee soliciting the consumer, has the licensee maintained a record of the date on which the consumer agreed to contribute money or other property?			
53	TLR s. 7(2)(e) - For each consumer who agrees by telephone or facsimile to contribute money or other property as a result of the licensee soliciting the consumer, has the licensee maintained a record of the amount of money the consumer agreed to contribute or the value or a detailed description of the property the consumer committed to contribute?			
54	TLR s. 7(3) - Has the licensee maintained these required records for 2 years from the date the contract was entered into or the commitment was made by the consumer?			
PROHIBITED PRACTICES				
55	TLR s. 8(2) - Has the licensee ensured they do not communicate or attempt to communicate with a consumer by telephone or facsimile (a) on a statutory holiday, (b) on a Saturday or Sunday, except between the hours of 10 a.m. and 6 p.m. local time for the consumer contacted, or (c) on any other day, except between the hours of 9 a.m. and 9:30 p.m. local time for the consumer contacted?	☐	☐	☐
56	TLR s. 8(3) - Unless requested by the consumer contacted, has the licensee ensured they do not communicate with a consumer by telephone or facsimile more than once in a 30 day period in respect of the same proposed consumer transaction?	☐	☐	☐
57	TLR s. 8(4) - Has the licensee ensured they do not block the display to the consumer of the number from which the licensee is originating the telephone call or facsimile?	☐	☐	☐
PAYMENT & OPERATING ACCOUNT INFORMATION				
58	Does the telemarketer accept funds?	☐	☐	☐

59	If applicable, list all forms of payment that the licensee accepts.			
60	Does the licensee have a merchant account that allows funds to be deposited by debit / credit card? If yes, list the bank account where these funds are received.			
61	Does the licensee accept funds via email money transfer (Interac e-transfer) or other EFT processes? If yes, list the bank account where these funds are received.			
62	List the (i) name, (ii) address of the financial institution and (iii) account number for each of the licensee's bank accounts where funds are deposited.			
GENERAL REQUIREMENTS				
63	TLR s. 8(5)(a) - When initiating contact with a consumer by telephone or facsimile for the purpose of conducting a consumer transaction under a distance sales contract, has the licensee disclosed to the consumer, in a clear and comprehensible manner, the supplier's name, business address and telephone number, before the consumer enters into the contract?	☐	☐	☐
64	TLR s. 8(5)(b) - When initiating contact with a consumer by telephone or facsimile for the purpose of soliciting a consumer for a contribution of money or other property by the consumer on behalf or for the benefit of another supplier, has the licensee disclosed to the consumer, in a clear and comprehensible manner, a detailed description of the purpose for which the contribution of money or other property was solicited, before the consumer commits to contributing money or other property?	☐	☐	☐

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