

**IN THE MATTER OF THE FUNERAL SERVICES ACT, RSA 2000, CHAPTER F-29,  
AS AMENDED AND RELATED REGULATIONS**

**AND IN THE MATTER OF A HEARING BEFORE THE ALBERTA FUNERAL  
SERVICES REGULATORY BOARD INTO CERTAIN CONDUCT OF 2033232  
ALBERTA LTD., GARRY HOWDLE AND JIM JOHNSTON**

**Before:**

S. Barbour – Chair  
D. Miller – Vice-Chair  
S. Feist - Member  
J. Redekop- Member  
D. Ross– Member

Board Administrator: K. Carruthers, Executive Director

Board Counsel: G. J. Stewart-Palmer, Q.C., Shores Jardine LLP  
A. Regan, Shores Jardine LLP

**Those in Attendance**

D. August - Inspector	2033232 Alberta Ltd.
Counsel - J. Sadhra, Emery Jamieson LLP	S. Brar
	G. Brar
	Counsel – R. Collistro and J. Chronopoulos,
	Collistro Chronopoloulos LLP
	J. Johnston
	G. Howdle

**INTRODUCTION**

[1] A hearing of the Alberta Funeral Services Regulatory Board (the “Board”) was held via Zoom September 23, 2020, Edmonton, in the Province of Alberta to provide 2033232 Alberta Ltd., Mrs. S. Brar, Mr. G. Brar, Mr. J. Johnston and Mr. G. Howdle the opportunity to make representations to the Board on whether:

- a. the following licences issued under the Funeral Services Act, R.S.A. 2000, c. F-29 (the “Act”) should be cancelled, suspended or have conditions imposed on them:
  - i) 2033232 Alberta Ltd. – operating as Affordable Edmonton Cremation at need funeral business licence and operating as Park Place Funeral Home at need and pre-need funeral business licence;
  - ii) Jim Johnston – business manager licence; and
  - iii) Garry Howdle – funeral director licence; and

b. the Board, if it finds that the allegations are substantiated, should impose administrative penalties under section 34.1 of the Act.

[2] The Board derives its authority to make decisions under section 15 and section 34.1 of the Act.

## **BACKGROUND/PRELIMINARY MATTERS**

[3] Following the introduction of the members of the Board, Board Member Feist advised all parties that he had previously worked with Mr. Howdle, and that they had not worked together for approximately 18-19 months. None of the persons in attendance at the hearing objected to the membership of the Board or to Mr. Feist's participation as a member hearing this matter.

[4] At the beginning of the hearing, the Chair noted to Mr. Johnston and Mr. Howdle that 2033232 Alberta Ltd. and Mr. and Ms. Brar were represented by counsel. He asked if they wished to proceed or to be represented by legal counsel. They declined the opportunity and advised that they wished to continue with the hearing.

[5] At the beginning of the hearing, the Board indicated it had received submissions from all parties which would be marked as exhibits. There was no objection to the exhibits. These exhibits are as set out at the end of the decision.

## **SUMMARY OF THE EVIDENCE AND SUBMISSIONS**

[6] The following is a brief summary of the oral and written evidence submitted to the Board. At the beginning of the hearing, the Board indicated that it had reviewed all the written submissions filed in advance of the hearing.

### **Summary of Evidence and Submissions of the Inspector**

[7] Counsel for the Inspector advised that the Board's mandate is to protect the public. The Alberta funeral services industry is heavily regulated because those requiring at need services are vulnerable at an emotional time. Customers buying pre-need services trust that the goods and services they purchase will be provided in accordance with their wishes, because once the services are required, the persons cannot advocate for themselves. The Act protects the public interest and provides the Board with broad powers.

[8] The investigation of Mr. Howdle, Mr. Johnston and the Brars, representing 2033232 Alberta Ltd., began in March 2020. Mr. August found compliance issues at that time, including a pattern of multiple contraventions of the Act in a short period of time.

[9] The Inspector alleged there were 6 breaches of the Act, the General Regulation, AR 226/1998 (the "Regulation"), or both as set out in summary form below. The details of the charges are found in the first 8 pages of Exhibit 8. The Inspector's complete written submissions are found at Exhibit 8.

a. **Contract requirements** — (Appendix 1) contains a list of the contracts which have the deficiencies listed below. Following the appendix, a sample of these contracts is also attached.

Issues found

1. The pricing on the contract was not detailed. There were 43 contracts reviewed that had this deficiency.
2. The contracts were not initialed by the purchaser to indicate they understand what happens to cremated remains that are not claimed within 5 years. There were 33 contracts with no initials.
3. The contract was not signed by the purchaser. There were 13 contracts reviewed that had this issue.
4. The contract was not signed by the funeral director. There were 3 contracts that had this issue.
5. The contract was not filled out completely. One contract only contained a purchaser's signature with no other information completed and the other was totally blank. There is additional documentation in the files that shows services were provided but no completed contract exists.

These issues are in breach of Section 8 of the Regulation

b. **Cremation Authorization**

Issue found:

There were two contracts in which there was no cremation authorization signed.

1. CP<sup>1</sup>; and
2. IB.

This issue is in breach of section 13.1 of the Regulation.

c. **Government funded contracts (Appendix 2)**

Issues found

1. There were other concerns found with the contracts funded by the Alberta Government. The majority of these contracts are for direct cremation, but the contracts claim for embalming, a ceremonial farewell and the Imperial #2 casket.

- i) The following are some of the contracts that have the above listed issues:

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<sup>1</sup> The Board has made reference to only the initials of the named individuals to protect their privacy. The materials before the Board included the individual's full name.

- January 29, 2020 —BA contract. No embalming authorization although embalming claimed on the contract. The cremated remains were provided in a cardboard box.
- December 2, 2019 — PM contract. PM was not embalmed and no ceremonial farewell. Both items were claimed on the contract. The cremated remains were provided to the family in an urn but not one that the family chose.
- January 30, 2020 — MB contract. MB was not embalmed and no ceremonial farewell. Both items were claimed on the contract. The cremated remains were placed in an urn purchased by the family (not from the funeral services business).
- January 27, 2020 — CW contract. CW was not embalmed and no ceremonial farewell. Both items were claimed on the contract. There was also an Imperial #2 casket listed on the contract, but the cremation authorization shows "CB" (confirmed as cardboard) as the container type. The cremated remains were provided to the family in a black plastic container.
- February 21, 2020 — DB contract. No ceremonial farewell. This item was claimed on the contract. The family picked out an urn from the funeral services business at no charge, but this is not indicated in the file. Also, there was an Imperial #2 casket listed on the contract, but the cremation authorization shows "CB" (confirmed as cardboard) as the container type.
- February 21, 2020, TM contract. There was no ceremonial farewell. This item was claimed on the contract. The cremated remains were provided to the family in a black plastic container.

None of the above contracts include an authorization form to embalm which has been included in other funeral contract files for 2033232 Alberta Ltd.

This issue is in breach of section 13.1 of the Regulation and Schedule 2, paragraph 2 of the Regulation.

d. **Funeral Services Business Pre-need Licence** (Appendix 3)

Issue found

1. 2033232 Alberta Ltd. was issued the pre-need funeral business licence for Park Place Funeral Home on October 4, 2019. This licence allows the business to enter into pre-need contracts. From a sample of the contracts reviewed, there were pre-need contracts being entered into by 2033232 Alberta Ltd. starting in April of 2019, prior to the pre-need licence being issued.

Some of the contracts that were documented during the review.

- April 26, 2019 —EH and LH
  - April 29, 2019 — CB
  - May 7, 2019 — AH
  - June 24, 2019 — GW
  - August 22, 2019 — KR
  - September 30, 2019 — KB
2. Affordable Edmonton Cremation (another location of 2033232 Alberta Ltd) is not currently licensed and has never held a licence to enter into pre-need contracts. It was found that there were two pre-need contracts written on Affordable Edmonton Cremation contracts.
    - February 25, 2020, MT contract. This contract was written as an at-need contract prior to the death of MT. The contract was paid for, but no goods and services were provided as MT had not passed away as of May 7, 2020. No money was placed in trust or refunded to the purchaser.
    - March 9, 2020, EL contract. This contract was written as an at-need contract prior to the death of EL. The contract was paid for, but no goods and services were provided as EL had not passed away as of May 7, 2020. No money was placed in trust or refunded to the purchaser.

This is in breach of section 2(2) of the Regulation.

e. **Trust Money (Appendix 3)**

Issue found

1. The money paid for the pre-need contracts was not placed in trust in the proper timeframe. The list below includes some of the contracts found that were not placed in trust in the proper timeframe.
  - April 26, 2019 — EH and LH (two contracts), GIC not confirmed in trust until April 23, 2020
  - April 29, 2019 — CB, GIC not confirmed in trust until April 21, 2020.
  - May 7, 2019 — AH, GIC not confirmed in trust until April 23, 2020.
  - June 24, 2019 — GW, GIC not confirmed in trust until April 21, 2020.
  - August 22, 2019 — KR, GIC not confirmed in trust until April 21, 2020.
  - September 30, 2019 — KB, GIC not confirmed in trust until April 15, 2020.
  - December 18, 2019 — KC and JC (two contracts), GIC not confirmed in trust until April 15, 2020.
  - January 28, 2020 — RC, GIC not confirmed in trust until April 22, 2020.

This is in breach of section 8(1) of the Act.

f. **Funeral Director Trainee (student status) (Appendix 4)**

Issue found

1. Gamdur Brar and Satvir Brar registered with the AFSRB as active students in the funeral directing program at Mount Royal University. Under a FOIP request (copy attached), Mount Royal University provided information that Gamdur Brar and Satvir Brar had an inactive student status as of January 1, 2020. The FOIP request also stated that Gamdur Brar and Satvir Brar failed all courses in which they were enrolled for the fall 2019 semester, which indicates that they were not students in good standing much earlier than January 1, 2020.

One consumer, JL (regarding the contract for EL) told the investigator that he only met with Satvir Brar when his contract was written on March 9, 2020.

This is in breach of section 3(2) of the Act and section 28 of the Regulation.

[10] In March 2020, the Inspector inspected Park Place Funeral Home, acting on concerns brought forward by Mr. Howdle and Mr. Brar and found deficiencies. In relation to Appendix 1 “Contract Requirements”, he outlined the list of contracts that he found to have deficiencies. The Inspector provided the following summary of the contracts attached at Appendix 1.

- a. 43 contracts did not have detailed pricing. For example, there were service fees but then nothing listed, just a simple fee at the top and GST noted at the bottom. In some instances, the contract was completely blank.
- b. 33 contracts were not initialed by the purchaser to indicate they understood what happens to cremated remains that are not claimed within 5 years.
- c. 13 contracts were not signed by the purchaser.
- d. 3 contracts were not signed by the funeral director.
- e. The contract was not filled out completely. One contract only contained a purchaser’s signature with no other information completed and the other was totally blank. There is additional documentation in the files that shows services were provided but no completed contract existed.

[11] This is in breach of Section 8 of the Regulation.

[12] In relation to the second allegation, Mr. August noted that there were no cremation authorizations for CP and IB. This is a breach of Section 13.1 of the Regulation.

[13] In relation to the third allegation concerning government funded contracts, the Inspector referred to Appendix 2. The Alberta Government provides funds for funeral services where they have approved contracts for specific individuals, which services may include direct cremation. The Inspector found that the majority of the contracts he reviewed were for direct cremation but the contracts also claimed for embalming, a ceremonial farewell and the Imperial # 2 casket. The Inspector noted that he reviewed only a sample of the contracts, and he found violations of the Act in those contracts. In his oral evidence, he highlighted only a sample of the issues set out in his written materials. The full scope of the issue is found in Exhibit 8.

- a. BA contract dated January 29, 2020: BA’s sister told the Inspector that there was no embalming authorization and the contract was supposed to be for strictly cremation. The cremated remains were provided in a cardboard box. She was also advised that there would be additional costs.
- b. PM contract dated December 2, 2019: KM told the Inspector that PM was not embalmed and there was no ceremonial farewell. Both of these items were claimed on the contract. The cremated remains were provided to the family in an urn but not one that the family chose.

c. MB contract dated January 30, 2020: SB told the Inspector that MB was not embalmed and there was no ceremonial farewell. Both of these items were claimed on the contract. The cremated remains were placed in an urn purchased by the family from Amazon (not from the funeral services business).

d. CW contract dated January 27, 2020: SW told the Inspector that CW was not embalmed and there was no ceremonial farewell. Both of these services were claimed on the contract. There was also an Imperial #2 casket listed on the contract, but the cremation authorization shows "CB" (confirmed as cardboard) as the container type. The cremated remains were provided to the family in a black plastic container.

e. DB contract dated February 21, 2020: MC told the Inspector that there was no ceremonial farewell. This service was claimed on the contract. The family also picked out an urn from the funeral services business at no charge, but this is not indicated in the file. Also, there was also an Imperial #2 casket listed on the contract, but the cremation authorization shows "CB" (confirmed as cardboard) as the container type.

f. TM contract dated February 21, 2020: KC told the Inspector that there was no ceremonial farewell. This item was claimed on the contract. The cremated remains were provided to the family in a black plastic container.

[14] The Inspector advised that the listed contracts were in breach of Section 13.1 of the Regulation because none of the above files had express authorization to embalm.

[15] In relation to the fourth allegation, the Inspector referred to his report at Appendix 3 entitled Trust Money. A pre-need licence allows the business to enter into pre-need contracts. The Inspector's investigation found that there were contracts entered into by 2033232 Alberta Ltd starting in April 2019 which was prior to its pre-need licence being issued. Its pre-need licence was issued October 2019. Those pre-need contracts included:

- April 26, 2019 – EH and LH
- April 29, 2019 - CB
- May 7, 2019 -AH
- June 24, 2019 – GW
- August 22, 2019 – KR
- September 30, 2019 - KB

[16] The Inspector advised the Board that Affordable Edmonton Cremation, another location of 2033232 Alberta Ltd., did not hold a current licence for pre-need contracts. He found that the following contracts were entered into during that time:

- a. MT contract February 25, 2020: This contract was written as an at-need contract prior to the death of MT. The contract was paid for, but no goods and services were provided as MT had not passed away as of May 7, 2020. No money was placed in trust.
- b. EL contracted March 9, 2020: This contract was written as an at-need contract prior to the death of EL. The contract was paid for, but no goods and services were provided as EL had not passed away as of May 7, 2020. No money was placed in trust.

This is in breach of section 2(2) of the Regulation.

[17] In relation to the fifth allegation, the Inspector noted 10 contracts where monies were not placed in trust in the proper time frame. By not placing that money into trust, the action is a breach of section 8(1) of the Act:

- a. April 26, 2019 – EH and LH (two contracts), GIC not confirmed in trust until April 23, 2020
- b. April 29, 2019 – CB, GIC not confirmed in trust until April 21, 2020.
- c. May 7, 2019 -AH, GIC not confirmed in trust until April 23, 2020.
- d. June 24, 2019 – GW, GIC not confirmed in trust until April 21, 2020.
- e. August 22, 2019 – KR, GIC not confirmed in trust until April 21, 2020.
- f. September 30, 2019 - KB, GIC not confirmed in trust until April 15, 2020.
- g. December 18, 2019 – KC and JC (two contracts), GIC not confirmed in trust until April 15, 2020.
- h. January 28, 2020 – RC, GIC not confirmed in trust until April 22, 2020.

[18] The contracts were written from April 26, 2019 to January 28, 2020 and the funds were not put into trust until April 21-23, 2020. This breached Section 8 (1) of the Act.

[19] In relation to the sixth allegation, the Inspector reviewed Appendix 4 entitled “Funeral Director trainee student status”. Gamdur Brar and Satvir Brar registered with the AFSRB as active students in the funeral directive program at Mount Royal. In response to a FOIP request, Mount Royal provided information that showed Gamdur Brar and Satvir Brar had an inactive student status as of January 1, 2020.

[20] A customer, JL, told the Inspector that the customer only met with S. Brar when he contracted for EL on March 9, 2020. This is a breach of section 3(2) of the Act.

### *Questions for the Inspector*

[21] In response to questions from counsel for 2033232 Alberta Ltd., the Inspector advised that there was as much as a year gap between the pre-need money being collected and being put into trust. His investigation in March 2020 found that the collected money was not in trust. In April 2020, documentation showed the money put into trust.

[22] In closing argument, the Inspector stated that the Inspector's findings are not in dispute. The Act and the Regulation have been contravened. The Board must enforce and has the power to do so. The business licence holder is responsible to ensure that their business is managed in accordance with the law and he cited section 3 and 6(2) of the Regulation. The business licence holder is responsible: if this is not the case, then there is no obligation to correct the problems. Despite 2033232 Alberta Ltd.'s argument that they hired experienced people, ignorance of the law is no excuse. 2033232 Alberta Ltd. remains responsible for those it hires on its behalf. Section 3(1) and section 19 of the Act provide that no company can engage in business without a funeral services business licence and only a funeral director can enter a contract on behalf of a funeral services business licensee. Mrs. Brar was not an active student. The evidence supports a finding that she did negotiate a contract. In regard to Mr. Howdle and Mr. Johnston, Mr. Howdle admits his failure to complete the contracts. Mr. Johnston is responsible under sections 3(d) and 18(2)(b) of the Regulation. Mr. Johnston also played a part in the contracts where the services provided were inconsistent with those charged for. In relation to the pre-need contracts, 2033232 Alberta Ltd. was not licensed for pre-need contracts, but entered 6 pre-need contracts. The state of the trust money was unknown for one year. There is no proof that the money was in a business account. The money is trust money and if it is not in a trust account, it is at risk from other creditors.

[23] The Inspector argued for administrative penalties, plus mandated inspections 3 times a year.

[24] The Inspector argued that each of the parties should be sanctioned. If they are not, it sends the wrong signal to the industry.

### **Summary of Evidence and Submission of Mr. G. Howdle**

[25] Mr. Howdle has been in the funeral industry since 1983 and has almost 37 years in the industry. He has been a general manager of a larger, multiple-location funeral home. He met the Brars in July 2019 where they had conversations about him joining Park Place Funeral Home. They needed a funeral director and a future general manager. He confirmed he worked for the Brars from November 3, 2019 to February 25, 2020.

[26] On November 5, 2020, he was asked to help with Affordable Edmonton Cremation, and that role turned into a 24 hour a day on call shift where it was his sole responsibility. He denied receiving considerable training about how the operation was run, contrary to Mr. Johnston's assertions. His introduction to the business was 5 minutes in length and after that he was left to his own devices.

[27] Regarding the issue of detailed pricing, Mr. Howdle was told that all he needed to know was that Affordable Edmonton Cremation cost \$899. Early on he recognized issues with how the business was run. On November 18, 2019, he requested a meeting with Mr. Brar regarding the lack of a price list for Park Place or Affordable Edmonton Cremation. Mr. Brar reassured Mr. Howdle that once Mr. Johnston left in March 2020, many changes were going to be made.

[28] Mr. Howdle recalled a specific incident involving a contract where a family was coming to them under Social Services benefits. Mr. Howdle went to Mr. Johnston to get a price list for AISH services and he was told that Affordable Edmonton Cremation was \$899 plus GST. He filled in the forms and it totaled approximately \$2,200. Mrs. Brar then revised his form to \$4,533.99 and told him she was entitled to do that. He noted that it was the maximum amount that Mrs. Brar filled out the form for. He had misgivings about this. Mrs. Brar would inspect his forms in the future to make sure that all were filled out to the maximum amount. Eventually, Mr. Howdle refused to sign the AISH and Social Services forms. He emphasized to the Board that he received no benefit to increasing the price on these forms and was doing what he was told.

[29] Mr. Johnston noted in his materials that each deceased person had a private visitation, were cleaned, and dressed. Mr. Howdle contended that this statement is false. Many families did not want to see their loved ones and the deceased went directly to cremation.

[30] Regarding the Imperial casket issue, Mr. Howdle consulted Mr. Johnston on who placed the order for the casket. Mr. Johnston replied, advising to wait a couple of days. Mr. Howdle assumed some other shipment was coming and perhaps all caskets would come at once. Mr. Howdle was instructed on when to use a casket and when to use cardboard to cremate deceased persons. He noted that it was disconcerting that cardboard was being used instead of caskets paid for by the family. As a person with his experience in the funeral industry, he knew it was wrong but went ahead and did it anyway.

[31] Mr. Howdle pointed out one particular contract for CW. The family wanted a simple cremation. That service was carried out and CW's remains were provided to her family in a black plastic container. They brought in three separate teapots of their own. He filled out the contract and brought it to Mr. Johnston to review. Mr. Johnston upgraded the casket to an oversized casket, a casket that they never ordered and which was never used.

[32] When he began full time with Affordable Edmonton Cremation in November, the company was completing approximately 33 to 35 contracts, which averages to approximately 70 contracts a year. By the time he left the company, the company was averaging 240 contracts a year. Affordable Edmonton Cremation doubled at least in the time he was there.

By industry standards regarding staffing, for every 75-100 contracts written, you need one licensed funeral director. At the rate the company grew, he was understaffed with no administrative support and only himself doing all the services.

[33] Mr. Howdle admitted that errors were made. He was traveling back and forth between Park Place Funeral Home and Affordable Edmonton Cremation, where there was no equipment. He sat at a desk and there were some casket displays. He would run in with the files to meet families and then go back to the other facility to complete work. He described his workload as staggering and unmanageable.

[34] Mr. Howdle conceded that he met with Mrs. Brar and Mr. Johnston in January because he was falling behind in completing his work. He had 20 files sitting on his desk at any given time. He started taking files home, and having his wife assist him in completing the contracts.

[35] Mr. Howdle addressed the charge regarding no initials on the contracts, and he stated that this was due to a design flaw in the contract. When families would initial, it looked as if they were initialing for the GST, so he skipped that initial on the contracts and thought it would be covered off on the cremation authorization form, which had near identical language. He did not believe that this flaunted the Act or Regulation and that the issue was covered off in another manner.

[36] Mr. Howdle agreed wholeheartedly with the findings of Mr. August. He was overwhelmed by the workload; he was embalming, running funeral services, all while trying to keep Affordable Edmonton Cremation growing and viable. However, he was sinking on the administrative side of the business.

[37] When asked by the Board, Mr. Howdle explained that he was attempting to serve the families, and the concerns that were not addressed eventually became routine. He noted that he was also attempting to build evidence and a record to take to the Board.

[38] Mr. Howdle stated that he does not believe Mrs. Brar signed contracts. Sometimes Mr. Johnston was in the room with Mrs. Brar and sometimes he was nearby when she met alone with clients. He stated that sometimes Mr. and Mrs. Brar would meet alone with clients.

[39] Mr. Howdle confirmed he was an independent contractor where he completed services for remuneration and was not an employee of the business or of the Brars. Mr. Johnston was the business manager. Mr. Howdle received a pre-determined commission for business he brought through the doors and a flat rate as an independent contractor. He had no benefits. On the day to day, Mr. Howdle would go to Mr. Johnston with concerns or questions and on the larger issues, he would speak with Mr. Brar.

[40] Mr. Howdle explained that the Regulation require the contracts to be itemized, and having worked in the industry for a while, he noted that it is standard practice for a funeral home to provide an itemized list to the staff for reference.

[41] Mr. Howdle did not know what level the Brars were at in their education. He knew that the Brars just had bought the company but was unaware that they were students. Mr. Howdle would go to Mr. Brar with questions, in Mr. Brar's capacity as the business owner.

[42] Mr. Howdle conceded that he knew it was fraudulent for the contracts to be filled out to the maximum when submitted to the government, and he submitted them anyways. Mr. Howdle explained that he believes it is fraudulent if a company charges for goods or services, and received money for those charges, but did not provide the goods or services. To simplify, Mr. Howdle explained that a business should not charge for a casket if it is not ordered and used. Charges were applied to contracts that were not warranted.

[43] Mr. Howdle confirmed that he was the one who contacted the Board after his termination from the company, and he viewed himself as an employee of the company.

[44] Mr. Howdle has worked for 37 years without a single issue. He has a lot of regret over what occurred in the 4 months with the company. He stated that he is a good funeral director, but got overwhelmed and fell behind due to the workload. There was no malice intended.

### **Summary of Evidence and Submission for Mr. J. Johnston**

[45] He was the owner of Park Place Funeral Services Ltd. in Sherwood Park, having built the business himself. He operated for over 21 years. Over that time, he had no issues with the regulatory board. He did not sell his business, and only sold the Brars the property and assets, retaining the company. As part of the sale in order to assist the Brars in running the business, he agreed to be an employee for 1 year expiring March 31, 2020. He confirmed that he was the business manager at the relevant time.

[46] Mr. Johnston recalled the issues with Mr. Howdle over the Imperial casket #2. He noted that the fine print of the contract explains that it could also be an urn of equivalent value instead of the casket. In those circumstances, in lieu of Imperial Casket #2, the family was offered an urn of the same value.

[47] Mr. Johnston confirmed he checked and signed three contracts relating to Social Services because Mr. Howdle's contracts were being rejected because they were incomplete. He never amended any of those applications. Mr. Johnston noted that Mr. Howdle did not indicate to Mr. Johnston any concerns with the form of contract. He noted that Mr. Howdle was not completing the contracts from the beginning of his time working with the Brars.

[48] Mr. Howdle never commented to Mr. Johnston that he (Mr. Howdle) was falling behind in his work; however, Mr. Johnston knew that Mr. Howdle was falling behind on day 1. While Mr. Howdle explained he was back and forth between Affordable Edmonton Cremation and Park Place, Mr. Johnston noted that Mr. Howdle should have always been at Affordable Edmonton Cremation.

[49] Mr. Johnston was told by his legal counsel that he should see the business through until March 31, 2020 and then he could leave.

[50] Mr. Johnston disputed the claim by the Brars that they were new business owners and could not keep up with the business. They had recently bought another business, a driving school. He was aware that the Brars had entered an apprentice program.

[51] Regarding the pre-need contract issue, that is why he made an issue about not selling his company to the Brars. He retained his contract licence. He knew that Mr. and Mrs. Brar could not enter into pre-need contracts and explained that to them.

[52] Regarding the pre-need contracts, he was comfortable that Mr. and Mrs. Brar entered into pre-need contracts as long as the money was put in his trust account. He was attempting to help them build the business and get a business licence so that what was necessary was in place. To his knowledge, there is no pre-need money missing or unaccounted for.

[53] Mr. Johnston confirmed that as the business manager, it was his responsibility to complete the contracts appropriately. Mr. Howdle did not respond to Mr. Johnston's instructions and Mr. Johnston requested that Mr. Howdle be terminated. Mr. Howdle was, in fact, terminated.

[54] The Inspector instructed Mr. Johnston not to make corrections to the invoices because he (the Inspector) wanted to retain the evidence regarding the situation.

[55] Mr. Johnston stated that Mr. and Mrs. Brar did not run services without a funeral director. However, Mrs. Brar did everything under his supervision, and she preferred to speak with customers "in her own language". He stated that Mrs. Brar was "hands on" and was at work every day. When asked if Mr. and Mrs. Brar entered at need contracts and signed them, he stated that they did not sign them. He stated that they did not enter or sign pre-need contracts. He stated that they were business minded and astute.

[56] Mr. Johnston denied that he knowingly sold a casket to a family who chose cremation but used alternate containers for that process.

[57] Regarding SW, Mr. Johnston did not recall cremating her. He noted that if she was not put into a casket then the family was offered an urn of the same value. While he may have filled out the cremation documents, he does not remember it. Mr. Johnston confirmed that he does go through the crematory operator checklist as required by the Regulation.

[58] Mr. Johnston explained to the Board that it is the responsibility of the funeral director to place orders for urns or caskets, or the responsibility of Mr. and Mrs. Brar. Mr. Howdle had the responsibility to order caskets and he would also order caskets.

[59] Mr. Johnston stated that he brought forward the issues in relation to the pre-need contracts to the Brars. He did not have authority to address the issues.

## **2033232 Alberta Ltd. And Mr. and Mrs. Brar**

[60] Although Mr. and Mrs. Brar were present for the hearing, their counsel made submissions on their behalf. The Brars are entrepreneurs who saw a business opportunity at Park Place. They recognized they had limited experience and required Mr. Johnston to provide training and expertise. They also realized they needed to set up a team, which is why they hired Mr. Howdle as a licensed funeral director. Unfortunately, Mr. and Mrs. Brar were let down by the people they employed to assist them in complying with the regulatory requirements.

[61] Counsel noted the difference between a business licence holder and a funeral business licence. The business required a business licence and in order to receive that they needed a business manager. Mr. Johnston was designated as the business manager.

[62] On the issue of the contracts, the errors occurred largely during Mr. Howdle's tenure and the documents speak for themselves. Mr. Howdle was responsible for the contracts.

[63] Counsel noted Exhibit B of their written submissions, which were emails from Mr. Howdle explaining to the Brars that he had considerable training and experience in the industry. They thought it wise to delegate compliance of the legislation to Mr. Howdle based on his experience.

[64] Counsel contended that Mr. Howdle's comments about the business deficiencies such as the price list are merely attempts to distract the Board from his responsibility. The Regulation sets out minimum requirements for contracts and do not require a formal price list. Mr. Howdle and Mr. Johnston had the ability to determine what should be included in the contracts. Any suggestion that the licensed business owners are responsible is inaccurate. They purposely delegated the duty to adhere to the legislation to the licensed and credentialed individuals.

[65] Mr. and Mrs. Brar delegated responsibility to their business manager and funeral director to ensure compliance with the legislation.

[66] It is up to the Board to decide whether those are appropriate justifications.

[67] The Brars have changed their process on a go forward basis. They now require the funeral director and the person embalming to sign off to make sure written documentation is in place at all times. It is worth noting that the situation will not repeat itself. The Brars have a new team of employees: business manager and funeral director. The individuals responsible for the situation before the Board are not involved in the business on a go forward basis.

[68] In Schedule 2, B1 of Exhibit 7, it notes that a business manager is required to be of high professional standard of funeral services. The Brars relied on Mr. Johnston to fulfill that role.

[69] The Brars are not aware of any complaints from the families involved.

[70] Regarding the contention around Social Services contracts, if the government was charged for services not rendered, that is an issue between the funeral home and the government. The Board does not have jurisdiction to force the Brars to pay restitution. They will conduct an internal audit to figure out what has occurred, and if discrepancies exist, they will get in touch with families and the government to resolve the problems so that everyone is made whole.

[71] Regarding the pre-need contracts, these were signed before 2033232 Alberta Ltd. had a pre-need licence in place. Compliance with legislation lies with the business manager who was Mr. Johnston. He had experience and he does acknowledge that part of his role was training Mr. Howdle. He made it clear that his concern was that the money was not deposited in his trust account, not that the contracts were complete at all. Mr. Johnston's explanations are insufficient.

[72] Regardless of Mr. and Mrs. Brars' status as students, there is at all times a business manager responsible for the operations. Further, through the entire investigation, there was only a single instance where Mrs. Brar met with a client. There is no evidence that she signed contracts or worked as funeral director or that it is a pattern of behavior. The Board was advised that the Brars will be re-enrolling in the Mount Royal program. The submission of the Brars was that the company and not the Brars personally entered the contracts.

[73] Counsel for 2033232 Alberta Ltd. argued that the Board should not be passing judgment on the business operations. Rather, this is a regulatory hearing, and the question is whether the licence of 2033232 Alberta Ltd. should be affected. 2033232 Alberta Ltd. should not be penalized due to the conduct of Mr. Howdle and Mr. Johnston, whom they hired and relied upon. There has been no misappropriation of trust funds. The Board cannot make any direction in relation to the contracts with the government.

## FINDINGS OF FACT

[74] The Board makes the following findings of fact:

a. Count 1 in relation to Contract requirements:

The Board finds that:

- i) The pricing on the forty-three contracts set out in Table 1 was not detailed.
- ii) Thirty-three contracts as shown in Table 1 were not initialed by the purchaser to indicate they understand what happens to cremated remains that are not claimed within 5 years.
- iii) Thirteen contracts as shown in Table 1 were not signed by the purchaser.
- iv) Three contracts as shown in Table 1 were not signed by the funeral director.
- v) As shown in Table 1, one contract was not filled out completely; one contract only contained a purchaser's signature with no other information completed and the other was totally blank. There is additional documentation in the files that shows services were provided but no completed contract exists.

The details are set out at Table 1 at the end of this decision.

b. Count 2 in relation to no cremation authorization:

The Board finds that for the contract for CP (contract 1037-2644) and IB (contract 1085-2734), no cremation authorization was signed, but cremation occurred.

c. Count 3 in relation to government funded contract:

The Board finds that for the following 6 contracts, services were claimed for, but not provided as set out in the Inspector's written submissions at page 3 of Exhibit 8:

- i) The BA contract dated January 29, 2020;
- ii) The PM contract dated December 2, 2019;
- iii) The MB contract dated January 30, 2020;
- iv) The CW contract dated January 27, 2020;
- v) The DB contract dated February 21, 2020 and
- vi) The TM contract dated February 21, 2020.

d. Count 4 in relation to Funeral Services Business Pre-need Licence:

The Board finds that 2033232 Alberta Ltd. entered into the following pre-need contracts before it had a pre-need business licence:

- i) April 26, 2019 —EH and LH;
- ii) April 29, 2019 — CB;
- iii) May 7, 2019 — AH;
- iv) June 24, 2019 — GW;
- v) August 22, 2019 — KR; and
- vi) September 30, 2019 — KB.

e. In relation to Count 4 concerning the entering at need contracts when they should have been pre-need contracts and without a pre-need business licence:

The Board finds that 2033232 Alberta Ltd entered two at-need contracts written on Affordable Edmonton Cremation contracts for MT on February 25, 2020 and EL on March 9, 2020. The Board finds that the two individuals were alive at the time the contract was entered and as of May 2020 neither of the two had passed, which would require that a pre-need contract be written. The Board also finds the money was not placed in trust and not refunded to the purchaser.

f. In relation to Count 5, in relation to trust money:

The Board finds that the funds paid for the following pre-need contracts were not placed in trust in the required timeframe:

- i) April 26, 2019 — EH and LH (two contracts), GIC not confirmed in trust until April 23, 2020;
- ii) April 29, 2019 — CB, GIC not confirmed in trust until April 21, 2020;
- iii) May 7, 2019 — AH, GIC not confirmed in trust until April 23, 2020;
- iv) June 24, 2019 — GW, GIC not confirmed in trust until April 21, 2020;
- v) August 22, 2019 — KR, GIC not confirmed in trust until April 21, 2020;
- vi) September 30, 2019 — KB, GIC not confirmed in trust until April 15, 2020;
- vii) December 18, 2019 — KC and JC (two contracts), GIC not confirmed in trust until April 15, 2020; and
- viii) January 28, 2020 — RC, GIC not confirmed in trust until April 22, 2020.

g. In relation to Count 6 in relation to the Funeral Director Trainee (student status):

The Board finds that Mrs. Brar did solicit to enter a contract with JL when Mrs. Brar was not an active student or a licensed funeral director.

## REASONS

[75] It is the jurisdiction of the Board to impose sanctions for breach of the Act and regulations. The Board has a role in protecting the public from persons who breach them. The Board has been delegated the powers of the Director under section 15<sup>2</sup> and section 34.1 of the Act.

[76] The Board sets out below its reasons for the findings in relation to each of the allegations raised by the Inspector.

### **Reasons for Finding Breach of Act or Regulation**

#### ***Count 1***

[77] Section 8 of the Regulation (shown in full in Appendix C to this decision) sets out the requirements of funeral services contracts. In particular, section 8(1)(c) requires details of the costs for the listed items. Section 8(1)(e) of the Regulation requires an initial to acknowledge what occurs with cremated remains not claimed within 5 years after the date of cremation. Section 8(1)(b) of the Regulation requires contracts to be signed by the purchaser and the funeral director. Section 8(1)(a) requires the contract to be in writing.

[78] The Board finds that the allegations in Count 1 which deal with the contract requirements are evidenced on the face of the contracts. The 43 contracts which are the subject of the dispute are included in Exhibit 8. The Board has reviewed the contracts and finds that the allegations (lack of detailed pricing, no initials to indicate action for cremated remains unclaimed at 5 years, lack of signatures, and lack of complete form) are apparent on the face of the contracts. Moreover, none of the persons who provided evidence or argument provided any evidence to the contrary. Therefore, in light of the clear evidence of supporting the allegations of lack of detailed pricing, no initials to indicate action for cremated remains unclaimed at 5 years, lack of signatures, and lack of complete form, and the lack of any evidence to contradict this evidence, the Board finds as a fact that this allegation has been established.

[79] The Board finds that Mr. Howdle as the funeral director is responsible for the completion of the forms. Mr. Howdle admitted that he did not complete the forms and states that this was due to his workload and the failure to have a price list. The Board will consider the impact of the reason for the breach below in relation to the sanctions. In light of Mr. Howdle's admission about the lack of the completion of the forms, the Board finds that this count has been substantiated against Mr. Howdle.

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<sup>2</sup> Full copies of the sections of the Act and Regulations referenced by the parties are found in Appendix D.

[80] Mr. Johnston admitted that he knew that Mr. Howdle was falling behind on his work. The Board heard no evidence from Mr. Johnston that Mr. Johnston provided active supervision of the contracts prepared by Mr. Howdle. The Board finds that Mr. Johnston as the business manager is responsible for the supervision of the work done by Mr. Howdle, particularly when Mr. Johnston noted that he knew that Mr. Howdle was falling behind on his work. The Board finds that Count 1 is substantiated against Mr. Johnston, since as business manager, he should have supervised the contracts, particularly when he knew that there might have been concerns about the contracts since Mr. Howdle was falling behind in his work.

[81] 2033232 Alberta Ltd. and the Brars have argued that they bear no responsibility for any breach under this count. They argue that they are merely the “business owners” and they hired licensed staff who are responsible. They argue that since they hired professionals who are regulated under the Act and Regulation, they should not bear any responsibility for the breach. The Board acknowledges that 2033232 Alberta Ltd. hired Mr. Howdle and Mr. Johnston, who are each licensed under the Act and the Board has found that each bears responsibility for the breach under this count. However, the Board does not accept the argument advanced that 2033232 Alberta Ltd. has no responsibility for the breaches of the Act. The Board is not holding 2033232 Alberta Ltd. responsible on the basis of vicarious liability. Rather, the reason is that 2033232 Alberta Ltd. is also a licence holder under the Act (for a funeral business). The evidence before the Board was that “big” decisions regarding the business were made by Mr. Brar. The evidence before the Board was that Mrs. Brar was present at the business every day and was active in the business. This shows that they were involved in the business and were not “absentee business owners” as claimed. The requirement for licensing is based, at least in part, on a mandate of public protection. As a result, the Board does not accept that a licence holder like 2033232 Alberta Ltd. can disclaim responsibility for a breach of the Regulation conducted by those who perform services for it. Each licensee is responsible for compliance with the Act and Regulation. Section 8 of the Regulation references a “funeral services contract” and its requirements. The wording of section 8 does not limit responsibility for compliance to only the funeral director and business manager. The Board finds that the holder of the funeral services business licence also has a responsibility to either ensure compliance, or to put into place systems to ensure compliance with the Act and Regulation. The Board does not accept that it is enough for 2033232 Alberta Ltd. to state that it was some other person’s responsibility to ensure compliance. As a result, the Board finds that count 1 is substantiated against 2033232 Alberta Ltd.

### ***Count 2***

[82] Section 13.1 of the Regulation (shown in full in Appendix C to this decision) requires an authorization to embalm or cremate. Count 2 alleges that there was no cremation authorization for CP or IB.

[83] The Board finds that the allegation in Count 2 regarding the lack of cremation authorization for CP and IB has been substantiated. The Inspector was not able to locate any authorizations. None of Mr. Howdle, Mr. Johnston or 2033232 Alberta Ltd or the Brars submitted any authorizations. If there had been authorizations, they would have been under the control of 2033232 Alberta Ltd., but it did not provide such authorizations. Therefore,

due to the lack of any cremation authorization for CP and IP from a party which had control over such a document, the Board finds that this allegation has been established.

[84] As funeral director, Mr. Howdle should have obtained cremation authorizations for these two contracts. As business manager, Mr. Johnston should have been supervising the work done by Mr. Howdle. As set out in paragraph [81], 2033232 Alberta Ltd. is the holder of the funeral business licence. The evidence was that Mr. Johnston had agreed to provide services for one year, so that he could provide assistance and training to 2033232 Alberta Ltd. in relation to the funeral services business. As set out in paragraphs [79], [80] and [81] above, the Board finds that count 2 has been established against Mr. Howdle, Mr. Johnston and 2033232 Alberta Ltd.

### ***Count 3***

[85] Section 13.1 of the Regulation (shown in full in Appendix C to this decision) requires an express authorization to embalm or written authorization to cremate. Schedule 2, paragraph 2 of the Regulation sets out a portion of the Code of Conduct requiring those operating funeral businesses to conduct business honestly and in a professional manner.

[86] Count 3 deals with the charge for services (embalming and ceremonial farewells) which were not conducted in relation to government funded contracts. Mr. Howdle raised the concern about claims for goods and services not being provided and acknowledged that the incidents alleged did occur. He stated that he could not continue the practice, and so had Mr. Johnston sign these contracts. Mr. Johnston disputed that work which was not done was billed for, and argued that if no casket was used, then families were offered an urn of similar value. However, he did acknowledge signing some of these government contracts (see contract for BA 1000063381 dated 2020-01-29, contract for MB dated 2020-02-05, contract for CW dated 2020-01-27, contract for DB dated 2020-02-18, contract for TM dated 2020-02-20). 2033232 Alberta Ltd. again took the position that it should not be held responsible, as the conduct was that of Mr. Howdle and Mr. Johnston.

[87] In light of Mr. Howdle's acknowledgement of the conduct, the Board finds that count 3 is established against him. In relation to Mr. Johnston, the Board finds that he signed the contracts set out above. He has signed acknowledging that all of the services claimed for would be provided. The Board received evidence from the Inspector that relatives of the persons indicated that although claims were made for them, there was no embalming conducted, no ceremonial farewell, and where no casket was used for the cremation, there was no urn offered to the family. The Board accepts the evidence of the Inspector in regard to count 3. The Board weighed the evidence from the Inspector, based upon the statements of loved ones whose credibility was not challenged, as against the vague statements made by Mr. Johnston. The Board preferred the evidence of the Inspector as being more specific, and detailed. The Board finds count 3 established against Mr. Johnston as the licensed business manager responsible for supervising the licensed staff, as well as independently having obligations under the Act.

[88] In relation to 2033232 Alberta Ltd., the Board noted that the evidence was that all payment obligations, both billings to the government and for goods like caskets, occurred by 2033232 Alberta Ltd, mostly through Mrs. Brar. The Board finds that since the financial functions were conducted by Mrs. Brar, 2033232 Alberta Ltd or Mrs. Brar would either know, or ought to have known that claims were made for goods or services which were not provided. If there had been embalming authorizations, they would be in the custody or control of 2033232 Alberta Ltd., but it did not provide any embalming authorizations, thus leading to a conclusion that these authorizations were not obtained from the families. On a balance of probability, the Board finds that count 3 is established against 2033232 Alberta Ltd.

[89] In light of the above, the Board finds that there has been a breach of section 13.1 of the Regulation (shown in full in Appendix C to this decision) in that there was no authorization to embalm as alleged. Further, the Board has found substantiated allegations that there had been claims for payment for good and services that were not provided. The Board finds this to be unprofessional conduct and that it is dishonest business practice.

#### ***Count 4***

[90] Section 2(2) of the Regulation provides that pre-need contracts can only be provided if there is a pre-need business licence in place.

[91] This allegation is only in relation to 2033232 Alberta Ltd. The uncontroverted evidence was that 2033232 Alberta Ltd. did not hold a pre-need licence at Park Place Funeral Home until October 2019 and the Board finds this as a fact. The evidence is that 2033232 Alberta Ltd. does not hold a pre-need licence at Affordable Edmonton Cremation and the Board finds this as a fact.

[92] The allegation as set out in Exhibit 8 is specifically in relation to 2033232 Alberta Ltd. The allegation is that 2033232 Alberta Ltd. entered 7 pre-need contracts before it obtained a pre-need licence for Park Place Funeral Home. The evidence before the Board was that Mr. Johnston knew that 2033232 Alberta Ltd. could not enter into pre-need contracts and explained that to Mr. and Mrs. Brar. He was attempting to help them build the business and get a pre-need business licence in place.

[93] Although 2033232 Alberta Ltd. argued that responsibility lay with Mr. Johnston or Mr. Howdle, these 7 contracts were entered before Mr. Howdle arrived on November 3, 2019. The evidence set out in Exhibit 8, Appendix 3 shows Bank of Montreal banking documents showing that the funeral services provider was 2033232 Alberta Ltd. The evidence before the Board is that all financial dealings were conducted by 2033232 Alberta Ltd. The licence for the business authorizing pre-need sales was also applied for and in the name of 2033232 Alberta Ltd. The Board finds that 2033232 Alberta Ltd. knew that it did not have a pre-need licence based upon this fact and Mr. Johnston's uncontroverted evidence that he advised Mr. and Mrs. Brar that they did not have a pre-need licence and could not enter pre-need contracts. Therefore, the Board finds count 4 substantiated against 2033232 Alberta Ltd.

[94] The Board notes that it has restricted its conclusions on this allegation to 2033232 Alberta Ltd. because that is the only licensee listed in this count. However, the Board is concerned that Mr. Johnston, who has significant experience, entered pre-need contracts before 2033232 Alberta Ltd. had a pre-need licence for Park Place Funeral Home. While he might have been under the assumption that he could do so because he did not sell “the business” but only the assets, the Board is concerned that someone with his experience did not conduct the necessary due diligence to ensure that he was acting in accordance with the Act and Regulation.

**Count 5**

[95] Section 8(1) of the Act, and section 12(1) of the Regulation provide that funds for pre-need contracts must be transferred to a trustee within the specified period of 35 days (5 days after the 30-day cancellation period ends).

[96] Neither Mr. Johnston nor 2033232 Alberta Ltd. nor the Brars denied that the funds were received, but only that these funds were deposited in trust after the specified period. The Board makes a finding of fact that the funds for these 10 pre-need contracts were received and deposited as follows:

	Initials of individual	Date of contract	Date funds into trust
1.	EH	April 26, 2019	April 23, 2020
2.	LH	April 26, 2019	April 23, 2020
3.	CB	April 29, 2019	April 21, 2020
4.	AH	May 7, 2019	April 23, 2020
5.	GW	June 24, 2019	April 21, 2020
6.	KR	August 22, 2019	April 21, 2020
7.	KB	September 30, 2019	April 15, 2020
8.	KC	December 18, 2019	April 15, 2020
9.	JC	December 18, 2019	April 15, 2020
10.	RC	January 28, 2020	April 22, 2020

[97] The uncontroverted evidence before the Board was that, for the 10 pre-need contracts listed above (see Exhibit 8, page 5), the funds were not deposited into trust until after the required period, some as long as approximately one year after they were received by 2033232 Alberta Ltd. The Board notes that for the first 7 contracts, the funds were received by 2033232 Alberta Ltd. before it obtained the pre-need licence. It obtained the pre-need licence on October 4, 2019. However, the funds for these 7 contracts were not put into trust until April 2020, approximately 7 months after the trust fund was established and the pre-need licence was obtained. This is a significant delay.

[98] Based on the uncontroverted evidence before it, the Board finds that count 5 is substantiated against 2033232 Alberta Ltd.

### ***Count 6***

[99] Section 3(2) of the Act provides that unlicensed persons are not to solicit to enter or enter funeral services contracts, and section 28 of the Regulation provides that the Director is to establish conditions under which trainees may carry out the duties for a funeral services business. The formal education and the conditions under which funeral professional trainees complete their requirements is in place for the protection of the public and the industry, as it is recognized that funeral professionals deal with clients at a very vulnerable time in the clients' life. Funeral director trainees are required to obtain 1800 hours of classroom and practical hours before they can be licensed. It is recognized that funeral director trainees must participate in licensed activity as part of their training but the Board requires that in order to participate in licensed activity the trainee must be a student in good standing. The student eligibility applications signed by Mr. Brar and Mrs. Brar confirm that they understood that they were eligible to complete licensed activities only while a student in good standing. The uncontroverted evidence before the Board was that at as of January 2020, both Mr. Brar and Mrs. Brar were inactive, and therefore not eligible to conduct any licensed activities. The Inspector provided evidence that Mrs. Brar met alone with JL on March 9, 2020, which is after Mrs. Brar was no longer an active student at Mount Royal University.

[100] The evidence in relation to count 6 is partially disputed. Mr. Howdle stated that he does not believe Mrs. Brar signed contracts, but sometimes Mr. Johnston was in the room with her and sometimes he was nearby when she met with clients.

[101] Mr. Johnston stated that Mr. and Mrs. Brar did not run services without a funeral director. He stated that Mrs. Brar did everything under his supervision, and she preferred to speak with customers "in her own language". He stated that Mrs. Brar was "hands on" and was at work every day. When asked if Mr. and Mrs. Brar entered at need contracts and signed them, he stated that they did not sign them. He stated that they did not enter or sign pre-need contracts.

[102] The evidence on behalf of Mr. and Mrs. Brar was that at all times there was a business manager responsible for the operations. The submission of the Brars was that the company, and not the Brars personally, that entered the contracts.

[103] The Board finds that Section 3 of the Act deals with both the entering into funeral services contracts as well as soliciting to enter the contracts. The Board accepts the evidence that Mrs. Brar did meet with a client on one occasion (March 9, 2020). Despite the fact that only one occurrence was documented, the Board heard anecdotal evidence that Mrs. Brar was hands on while at the funeral business every day. It was also stated that the Brar's did not sign contracts, but the act of signing a contract is not the only action considered licensed activity. The submissions indicated that Mrs. Brar met with clients regarding funeral services under the supervision of Mr. Johnston, which still constitutes soliciting to enter a contract while not eligible to do so. This conduct is in breach of section 3(2) of the Act and contrary to the application signed by Mrs. Brar on April 2, 2019 which set out that she was eligible to conduct funeral director activities, such as soliciting contracts, only while a student in good standing. The Board finds count 6 established against Mrs. Brar.

## **Penalty**

[104] This Board's role is to maintain the highest level of professional, ethical, and educational standards for the provision of funeral services throughout the Province of Alberta. In carrying out that function, this Board has carefully considered the evidence in relation to the conduct of Mr. Howdle, Mr. Johnston and 2033232 Alberta Ltd. and Mr. and Mrs. Brar.

[105] During his submissions, the Inspector submitted that, should the Board find that the charges are substantiated, that the Board impose administrative penalties, plus increased mandatory inspections to ensure that there is future compliance with the legislation.

[106] Mr. Johnston did not provide specific argument in relation to penalty but stated that he told Mrs. Brar to abide by the Regulation, and that he had only limited authority as the business manager.

[107] Mr. Howdle admitted his conduct, but stated he was overwhelmed and received no administrative assistance. He did report the conduct to the Board because he was not happy about what he had seen.

[108] 2033232 Alberta Ltd., and Mr. and Mrs. Brar stated that the Board should not be passing judgment on whether they received “a bad report card on their business operations”. This is not a matter of vicarious liability matter but is one of regulatory review. Their counsel suggested that the Brars take the matter seriously, but the responsibility for the allegations regarding the contracts lay with Mr. Howdle. They urged the Board to take into account that there was no misappropriation of trust funds.

[109] The Board has considered the submissions made by the parties in regard to potential penalties. In making its determination in regard to penalties, the Board has taken into account the fact that Schedule 4 of the Regulation sets out administrative penalties which can be imposed and notes as well that under section 15(4) of the Act, it may refuse to issue or renew a licence, may cancel or suspend a licence or may impose terms and conditions on a licence, if it determines that the licensee or any of its employees has contravened the Act or the Regulation. In addition, under section 34.1(1), the Board, exercising the powers of the Director, may require a person to pay an administrative penalty, if of the opinion that the person has contravened the Act or Regulation. Schedule 4 of the Regulation sets out the administrative penalties. (see Appendix C).

[110] In the section below, the Board sets out its determination regarding the imposition of penalties, including administrative penalties, and its reasoning. In coming to its conclusions, the Board has considered both aggravating, and mitigating factors, to the extent that they were argued by the parties.<sup>3</sup>

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<sup>3</sup> The Board is aware of the non-exhaustive list of factors to be considered in imposing a penalty in a professional disciplinary matter listed in *Jaswal v. Newfoundland Medical Board* [1996] NJ No. 50 at para 36:

1. the nature and gravity of the proven allegations;
2. the age and experience of the offending [person];
3. the previous character of the [person] and in particular the presence or absence of any prior complaints or convictions;
4. the age and mental condition of the offended [customer];
5. the number of times the offence was proven to have occurred;
6. the role of the [person] in acknowledging what had occurred;
7. whether the offending [person] had already suffered other serious financial or other penalties as a result of the allegations having been made;
8. the impact of the incident on the offended [customer];
9. the presence or absence of any mitigating circumstances;
10. the need to promote specific and general deterrence and, thereby, to protect the public and ensure the safe and proper practice of [funeral professionals];
11. the need to maintain the public's confidence in the integrity of the [funeral] profession;
12. the degree to which the offensive conduct that was found to have occurred was clearly regarded, by consensus, as being the type of conduct that would fall outside the range of permitted conduct; and
13. the range of sentence in other similar cases.

*Count 1*

[111] Schedule 4 of the Regulation permits the imposition of an administrative penalty for contraventions of section 8 of the Regulation. There were 43 contracts which the Board found not to have been done in accordance with section 8 of the Regulation. The Board notes that neither Mr. Howdle nor Mr. Johnston are newly licensed professionals. Each has decades of experience in the funeral industry. Such long standing licensees should have known better, and have done better at compliance with this fundamental requirement of funeral services.

[112] The Board is concerned that the lack of compliance with section 8 of the Regulation was not a "one-off" situation. While the Board accepts that Mr. Howdle may have been overwhelmed later in his work with 2033232 Alberta Ltd., the Board notes that some of the contracts which did not comply with section 8 of the Regulation were from early November 2019 (for instance, contract for PT dated November 3, 2019 and MB dated November 4, 2019), which was right after Mr. Howdle started with 2033232 Alberta Ltd. Therefore, the Board does not accept that being overwhelmed can justify all of the lack of compliance. The Board also wishes to note its concern with the potential breach of privacy by having Mr. Howdle's wife assist him in completing the contracts. While the Board understands that Mr. Howdle felt this was required so he could get on top of the paperwork, the personal information on the contracts should not be shared with persons not affiliated with the funeral services business. The Board is not imposing a penalty based on such practice, but wishes to convey its concern that personal information be protected.

[113] The Board noted that Mr. Johnston was aware that Mr. Howdle appeared to be overwhelmed, but in his role as business manager did not provide oversight, or assistance. The absence of concern is troubling to the Board.

[114] The Board is concerned about the significant number of contracts which were not in compliance with section 8 of the Regulation. The contracts spanned from November 2019 to February 2020.

[115] The Board believes that the public needs to have confidence in the profession, and the lack of compliance with section 8 of the Regulation, if left unsanctioned, would lead to the reputation of the profession being lowered, particularly given the experience of both Mr. Howdle and Mr. Johnston. Since the Board has found 43 contracts which had no pricing details, 33 with no initials, 33 not signed by the purchaser and 3 that were not signed by the funeral director and 1 not filled out at all, the Board imposes an administrative penalty against:

- a. Mr. Howdle of \$6,500 (\$1,500 for the first contravention, and \$5,000 for the second one); and
- b. Mr. Johnston of \$6,500 (\$1,500 for the first contravention, and \$5,000 for the second one).

The time for payment for each of them is 30 days from service of this decision on Mr. Howdle and Mr. Johnston.

[116] The Board notes that it has found that there were at least 43 contracts from the sample reviewed where breaches of the Regulation were found. In light of the wording of Schedule 4 of the Regulation, the Board is imposing the administrative penalty for the first contravention, and then is imposing the administrative penalty for the second contravention, but which reflects the fact that there were another 41 contracts which were not in compliance with the Regulation.

[117] The Board is of the view that imposing this sanction reflects the Board's concern with the lack of compliance and will encourage compliance with the Regulation in future, as well acting as a general deterrent, evidencing to the industry the results of repeated nonconformity with the Regulation.

[118] The Board did consider whether an administrative penalty should be imposed against 2033232 Alberta Ltd. However, the Board is of the view that the appropriate penalty is an increase in mandated inspections of the operations of 2033232 Alberta Ltd. The Board has come to this conclusion because, as will be seen below, it has imposed other administrative penalties against 2033232 Alberta Ltd. The penalty should be suitable in all the circumstances and the Board is of the view that an additional penalty for this count may be unreasonable in the circumstances.

#### *Count 2*

[119] The Board has found that count 2 was established in relation to all of the licensees. However, Schedule 4 does not authorize the imposition of an administrative penalty for breach of section 13.1 of the Regulation. The Board has significant concerns that there were no cremation authorizations signed. The Board wishes to reflect its concern with the lack of compliance with section 13.1 of the Regulation. Given this concern, the Board is of the view that the appropriate penalty is an increase in mandated inspections of the operations of 2033232 Alberta Ltd. Such a penalty should impress the significance of compliance with the regulatory provisions, while not unduly hampering the ability to conduct business.

#### *Count 3*

[120] As with count 2, the Board has found count 3 was established in relation to all of the licensees, but Schedule 4 does not authorize the imposition of an administrative penalty for breach of section 13.1 of the Regulation. The Board has significant concerns that there were charges for goods and services not provided and were paid for by taxpayer dollars. The Board wishes to reflect its concern with the lack of compliance with section 13.1 of the Regulation. The conduct of all of the parties does not reflect the professionalism which this Board expects of licensees. The Board has no power to order restitution, but urges 2033232 Alberta Ltd. to consider not only own reputation, but also the effect that its conduct will have on the perception of the industry. Given the concern of both general and specific deterrence, the Board is of the view that the appropriate penalty is an increase in mandated inspections of the operations of 2033232 Alberta Ltd. Such a penalty should impress the significance of compliance with the regulatory provisions, while not unduly hampering the ability to conduct business.

*Count 4*

[121] The Board has found count 4 was established in relation to 2033232 Alberta Ltd. for breach of section 2(2) of the Regulation. The Board has significant concerns that there were pre-need contracts entered when there was no pre-need licence.

[122] The protection of the public is a significant aspect of the Board's role. The Board is concerned that 2033232 Alberta has disclaimed all responsibility in relation to pre-need contracts, even though the pre-need licence was applied for by the Brars under the name of 2033232 Alberta Ltd and evidence before the Board was that Mr. Johnston advised them that it did not have a pre-need licence in its own name. 2033232 Alberta Ltd did not have a pre-need licence for Park Place Funeral Home and it is difficult to accept that they were not aware of the lack of a licence. In order to protect the public and to impress the significance of a licensee acting beyond the scope of the licence granted to it, the Board suspends 2033232 Alberta Ltd. pre-need funeral business licence for Park Place Funeral Home for a period of approximately 5 months effective as of the date of service of this decision on 2033232 Alberta Ltd. and the Board will refuse to renew this pre-need funeral business licence for the subsequent licensing period (12 months) starting April 1, 2021 and continuing until March 31, 2022. The Board is of the view that 17 months is an appropriate period of time. This reflects a concern with failure to work within the licensing scheme and is of a sufficient duration to show the significant concern that the Board has with the unlicensed conduct.

[123] In relation to the two at-need contracts at Affordable Edmonton Cremation, which were really pre-need contracts, the Board notes that Affordable Edmonton Cremation does not have a pre-need licence and therefore cannot put the money into trust. It is not clear where these funds are held. The funds taken by Affordable Edmonton Cremation cannot be transferred to Park Place Funeral Home to deposit in Park Place Funeral Home's trust account. The Board therefore imposes a condition on the at-need funeral business licence of 2033232 Alberta Ltd (Affordable Edmonton Cremation) that no later than 7 days from the date of service of this decision on 2033232 Alberta Ltd. that it return the funds to the purchasers of the contracts and to advise the Board in writing when this has been done. The Board is of the view that the return of the funds is the only way to address the issue since the lack of a pre-need licence means that the funds cannot be held in a trust account, and should not be held in the general account. The Board will also not consider the issuance of a pre-need licence to 2033232 Alberta Ltd operating as Affordable Edmonton Cremation for approximately 17 months commencing on the date of service of this decision and continuing until March 31, 2022.

*Count 5*

[124] The Board has found count 5 was established in relation to 2033232 Alberta Ltd. as outlined in paragraph 96. Schedule 4 does authorize the imposition of an administrative penalty for breach of section 8(1) of the Act and 12(1) of the Regulation. The Board is concerned at the relatively cavalier attitude displayed by 2033232 Alberta Ltd. in relation to its obligation to hold trust moneys in trust accounts.

[125] The Board acknowledges that the contract funds for the 10 contracts listed in paragraph [96] have now been placed in trust, although the income earned on these funds while not held in trust has not been accounted for. Income earned on trust funds is required to remain with that trust. The mishandling of trust funds is significant. The administrative penalties that can be applied to pre-need contract funds not being placed in trust in the proper timeframe are the highest allowed, which indicates the egregious nature of these contraventions as established by the legislation. The money paid by a consumer for a pre-need funeral contract is not protected if it is not deposited in trust. By not being placed into a trust account, the funds become liable to demand, seizure or detention under any legal process, should those situations arise or being used by the funeral services business for their own purposes which is not allowed by the Act and Regulation. The public must have trust in the funeral industry. Pre-need contract money not deposited into a trust account increases the risk of loss to the consumer, diminishes the confidence of the public and negatively affects the public's perception of the professionalism of licensees.

[126] The Board considered the following aggravating factors:

a. Nature of the offences

The failure to deposit into trust is a serious error. The legislation requires money paid for pre-need contracts to be set aside and kept safe for the beneficiary. Not only must the funds be put into trust, but they must also be put into trust within the timeframe specified in the legislation.

b. Length of time it took to get the money into trust

The Regulation allows 35 days to deposit the money into a trust account. In each case noted in the inspection, it took a significant period of time to deposit the money into trust. This is not missing by a few business days, but was a substantial period of time, ranging between 3 and 12 months.

c. Pattern of behavior

This delay in putting funds into a trust account occurred more than once.

d. There was no evidence that the failure to put pre-need funds into trust was due to oversight, especially in light of Mr. Johnston's evidence that he advised 2033232 Alberta Ltd. that it could not enter pre-need contracts.

[127] The Board also considered the following mitigating factor:

a. All of the money for the contracts in question has now been deposited in trust.

[128] Although the money has now been deposited in trust, that does not change the fact that during the time it was not, it could have been used for purposes other than the purchased services, or could have been taken by creditors. Putting the money into trust eliminates these risks, and the Board is concerned that the trust funds were not treated appropriately for a significant period of time.

[129] In light of the number of pre-need contracts from the sample where trust money was not deposited into a trust account in a timely manner (10 contracts and therefore 10 contraventions), and the length of the delay (some up to a year), the Board imposes on 2033232 Alberta Ltd. an administrative penalty of \$5,000 for the first contravention, and \$20,000 for the second contraventions. The time for payment is 30 days from service of this decision on 2033232 Alberta Ltd.

[130] The Board notes that there were, in fact, 10 contraventions, but imposes the penalties due to the wording of the Schedule. The Board believes this will act as both a specific deterrent, preventing 2033232 Alberta Ltd. from permitting similar delays in the future, as well as a general deterrent, evidencing to the industry the results of repeated delays in complying with the statutory requirements to protect pre-need funds.

[131] There is a public interest in imposing the administrative penalty. These infractions relate to pre-need contracts. The penalty needs to include an aspect that protects the public from the improper handling of trust money and an aspect that sends a message to the members that it is important to follow the legislation in respect to trust money.

#### *Count 6*

[132] The Board has found count 6 established against Mrs. Brar on one occasion. Schedule 4 does authorize the imposition of an administrative penalty for breach of section 3(2) of the Act and the Board imposes an administrative penalty of \$1,500 against Mrs. Brar for the breach. The Board has determined that the imposition of a penalty will act as both a specific deterrent, preventing Mrs. Brar from ignoring the requirements of licensure in the future, as well as a general deterrent, evidencing to the industry the need for those seeking to be funeral professions to comply with the obligations under the Act and Regulations. The time for payment is 30 days from service of this decision on Mrs. Brar.

[133] In addition, the Board orders Mrs. Brar to successfully complete the Alberta Funeral Law Refresher Course to ensure that she is aware of the ethical framework expected of a funeral professional and until this course is completed, the Board will not issue a new student registration.

[134] Regarding student registration, the requirements to show that the applicant is a registered, active student in good standing with one of the AFSRB approved educational institutes must be met prior to any issuance of a student registration. As well, on request, the student will be required to provide to the AFSRB office, confirmation from the educational institute that they remain in good standing.

[135] The Board believes that the public needs to have confidence in the profession, and that the above penalties are required because the conduct, if left unsanctioned, would lead to the reputation of the profession being lowered. In imposing the sanctions, the Board has weighed the impact on the respondents, and the need to provide general and specific deterrence, as well as to protect the public.

### **General Notes**

[136] Although the Board heard evidence of other business practices of 2033232 Alberta Ltd. (relating to flowers, etc.) from Mr. Howdle and Mr. Johnston, the Board did not consider this evidence because it was not related to the allegations raised by the Inspector.

[137] The Board has decided that the results of this hearing will be published on the Board's webpage as has been the Board's practice for other disciplinary matters under its authority under section 21 of the Act. The decision will be published in 30 days or in the case of an appeal, the decision will be published at the end of the appeal process. If applicable, at the completion of the appeal, this decision as well as the decision of the Appeal tribunal will be published on the Board's webpage. Publication will provide information to the industry to assist in the general deterrence. Further, the Board notes that the status of any applicant's licence is available to members of the public on request to the Board's office.

## DECISION OF THE BOARD

[138] It is the decision of the Board that sanctions be imposed as set out in the table below:

Count	Mr. Howdle	Mr. Johnston	2033232 Alberta Ltd.	Mrs. Brar
1.	<p>Administrative Suspension</p> <p>First contravention \$1,500 Second and subsequent contravention \$5,000</p> <p>Total: \$6,500 Due within 30 days of service of decision</p>	<p>Administrative Suspension</p> <p>First contravention \$1,500 Second and subsequent contravention \$5,000</p> <p>Total: \$6,500 Due within 30 days of service of decision</p>	<p>Increased mandatory inspections</p>	N/A
2.			<p>Increased mandatory inspections</p>	N/A
3.			<p>Increased mandatory inspections</p>	N/A
4.			<p>Suspension of pre-need funeral business licence and refusal to renew until March 31, 2022.</p> <p>Licence condition of refunding the 2 at-need contracts that have not been fulfilled by Affordable Edmonton Cremations.</p>	N/A

Count	Mr. Howdle	Mr. Johnston	2033232 Alberta Ltd.	Mrs. Brar
5.	N/A	N/A	<p>Administrative Suspension</p> <p>First contravention \$5,000 Second and subsequent contravention \$20,000</p> <p>Total: \$25,000 Due within 30 days of service of decision</p>	N/A
6.	N/A	N/A	N/A	<p>Administrative Suspension</p> <p>First contravention \$1,500</p> <p>Total: \$1,500 Due within 30 days of service of decision.</p> <p>Required to take Alberta Funeral Law Refresher Course before student registration is reapplied for.</p>

Dated at the Hamlet of Sherwood Park, in the Province of Alberta, this 10 day of November, 2020.

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Scott Barbour, Board Chair

**Table 1**

#	No.	Name	Not itemized 43	Not initialed (5 years) 33	Not signed by purchaser 13	Not signed by FD	Incompletely filled out	No Cremation Authorization Contract	AISH Casket	Cremation use portion not completed
1.	1033-2629	MB	X	X						
2.	1034-2640	PT	X	X						
3.	1035-2642	VK	X	X	X					
4.	1037-2644	CP	X	X				X		
5.	1040-2652	DR	X							
6.	1041-2653	JF	X	X						
7.	1042-2654	JP	X	X						
8.	1043-2658	CS	X	X	X					
9.	1044-2659	RS	X	X						
10.	1045-2661	JU	X	X	X					
11.	1046-2669	JG	X							
12.	1048-2671	PM	X			X				X
13.	1049-2674	DT	X	X						
14.	1051-2680	JF	X	X						X
15.	1053-2681	LG	X	X						
16.	1055-2683	MN	X	X		X	No Contact information Cremation operator checklist not filled out			X
17.	1056-2689	KS	X				Urn has \$298 price but no description			X
18.	1058-2691	PM	X	X						
19.	1059-2690	FL	X	X	X					
20.	1060-2648	PP	X	X						
21.	1061-2696	KK	X	X						
22.	1062-2698	TO	X							
23.	1063-2695	RK	X	X	X					
24.	1064-2699	RS	X							
25.	1066-2702	RF	X	X						

#	No.	Name	Not itemized 43	Not initialed (5 years) 33	Not signed by purchaser 13	Not signed by FD	Incompletely filled out	No Cremation Authorization Contract	AISH Casket	Cremation use portion not completed
26.	1068-2705	HS	X	X	X					
27.	1070-2703	ST					No written contract			
28.	1070-2707	IN	X	X	X					
29.	1072-2708	SB	X	X	X					
30.	1073-2713	JT	X							
31.	1075-2718	LB	X	X						
32.	1076-2722	JB	X	X	X					
33.	1078-2725	MJ	X	X	X					
34.	1080-2732	CL	X	X						
35.	1081-2730	JT	X							
36.	1082-2724	NEAR	X	X						
37.	1084-2733	SS	X	X	X					
38.	1085-2734	IB	X		X Not signed by representative s. 6			No original		
39.	1088-2738	DM	X	X	X					
40.	1090-2731	AS	X							
41.	1095-2748	DW	X							
42.	1097-2750	GK	X	X	X	X				
43.	1101-2761	PL	X	X	X					
44.	1103-2771	G	X	X	X Signature white d out					

**APPENDIX A**  
**Exhibits Submitted to and considered by the Board**

Exhibit	Item	Party tendering exhibit	Date
1	Letter to G and S. Brar, 2033232 Alberta Ltd.	Inspector	June 11, 2020
2	Letter to G and S. Brar, 2033232 Alberta Ltd.	Inspector	June 11, 2020
3	Letter to J. Johnston	Inspector	June 11, 2020
4	Letter to G. Howdle	Inspector	June 11, 2020
5	Letter to Board	J. Johnston	July 10, 2020
6	Letter to Board	G. Howdle	July 7, 2020
7	Letter to Board	2033232 Alberta Ltd. o/a Park Place Funeral Home	September 17, 2020
8	Submissions to the Board	Inspector	September 17, 2020

**APPENDIX B**  
**Excerpts from the Funeral Services Act, RSA 2000, c.F-9**  
**Relating to Appeals from the Decision of the Board**

**Appeal**

16(1) A person

- (a) who has been refused a licence or renewal of a licence,
- (b) whose licence is made subject to terms and conditions,
- (c) whose licence has been suspended or cancelled, or
- (d) to whom an order under section 15(6) has been issued

may appeal the decision by serving the Minister with a notice of appeal within 30 days after being notified of the Director's decision.

(1.1) A notice of appeal referred to in subsection (1) must be in writing and must set out

- (a) the appellant's name,
- (b) the appellant's address for service,
- (c) the decision or order being appealed, and
- (d) a brief description of the grounds for the appeal.

(1.2) The Minister is responsible for appointing members to an appeal board.

(2) The Minister shall, within 30 days after being served with a notice of appeal under subsection (1) and payment of the fee for the appeal as established by the regulations, refer the appeal to an appeal board appointed under subsection (1.2) or to an appeal board designated under subsection (5).

(2.1) When the Minister appoints members to an appeal board under subsection (1.2) or designates an appeal board under subsection (5), the Minister shall specify the appeal or appeals for which the appeal board is responsible.

(2.2) The Minister may appoint an Administrator to assist with administrative matters in respect of appeals whether or not an appeal board exists, and the Minister may designate the Administrator as chair of an appeal board.

(3) An appeal board shall consist of the following members:

- (a) a person designated by the Minister as chair of the appeal board;
- (b) not fewer than 2 and not more than 4 other persons.

(4) The following persons shall not be members of an appeal board:

- (a) the Director;
- (b) a delegate, agent or employee of the Director;
- (b.1) any person holding a subsisting licence issued under this Act or the regulations;
- (c) a member of a regulatory board.

(5) Notwithstanding subsection (3), the Minister may designate a board or commission established by or under an Act of the Legislature to act as an appeal board under this section, and in that case,

references in this section to an appeal board are deemed to be references to that board or commission.

(6) The Minister may set the time within which an appeal board is to hear an appeal and provide the appellant with the appeal board's written decision, and may extend that time.

(7) An appeal board that hears an appeal under this section may, by order, do any one or more of the following:

- (a) vary, confirm or quash the decision;
- (b) direct that a licence be issued or that a licence be renewed;
- (c) reinstate a suspended or cancelled licence;
- (d) substitute a suspension for a cancellation or a cancellation for a suspension;
- (e) add, vary or delete conditions on a licence;
- (f) order the appellant to pay all or part of the investigation costs;

and may make the order subject to any terms and conditions that it considers appropriate.

(8) An appeal board may order that the costs of the appeal are to be paid by the appellant.

(9) The Minister may set the rates of remuneration for and provide for the payment of reasonable living and travelling expenses to the members of an appeal board.

(10) The Director or a person who appeals to an appeal board under subsection (1) may appeal the decision of the appeal board by filing an application with the Court within 30 days after being notified in writing of the decision of the appeal board, and the Court may make any order that an appeal board may make.

(10.1) An appeal under this section is a new trial of the issues that resulted in the decision or order being appealed.

(11) Repealed 2008 c33 s18.

RSA 2000 cF-29 s16;2008 c33 s18;2009 c53 s69

### **Effect of appeal**

16.1(1) Subject to subsection (2), an appeal under section 16 does not affect the status or enforceability of the decision or order being appealed.

(2) A person who is appealing a decision under section 16(1)(b), (c) or (d) may apply to the chair of the appeal board to stay the decision being appealed until the appeal board provides the appellant with the appeal board's written decision on the appeal.

(3) On application under subsection (2) and after allowing the Director to make representations, the chair may, if the chair considers it appropriate, order a stay of the decision being appealed until the appeal board provides the appellant with its written decision on the appeal.

### **Appeal of administrative penalty**

**34.2(1)** A person to whom a notice to pay an administrative penalty is given under section 34.1(1) may, within 30 days after receipt of the notice, by serving a written notice of appeal on the Minister, appeal the decision to an appeal board.

**(2)** A notice of appeal under subsection (1)

(a) must describe the administrative penalty appealed from and state the reason for the appeal, and

(b) must set out the appellant's name and address for service.

**(3)** The Minister shall, within 30 days after being served with a notice of appeal under subsection (1) and the receipt of payment of the fee for the appeal as established by the regulations, refer the appeal to an appeal board appointed under section 16(1.2) or designated under section 16(5).

**(4)** The appeal board on an appeal may vary, quash or confirm the decision of the Director.

**(5)** The appeal board's decision under this section is final.

**(6)** Sections 16(1.2), (2.1), (2.2), (3), (4), (5), (6), (8), (9) and (10.1) and 16.2 to 16.9 apply, with all necessary modifications, to the proceedings of an appeal board under this section.

**APPENDIX C**  
**Referenced Excerpts from the Funeral Services Act, RSA 2000, c.F-9**

**Prohibitions**

**3(1)** No person shall, unless that person holds a funeral services business licence, solicit to enter into or enter into a contract under which that person promises to provide, or to arrange for the provision of, funeral services to another person.

**(1.1)** No person shall perform the duties and functions of a business manager, as prescribed by the regulations, unless that person holds a business manager licence.

**(2)** No person shall, unless that person holds a funeral director licence, solicit to enter into or enter into a funeral services contract as agent for a person who holds a funeral services business licence.

**(3)** No person shall, unless that person holds a pre-need salesperson licence, solicit to enter into or enter into a contract under which that person promises to provide, or to arrange for the provision of, funeral services on a pre-need basis.

**(4)** No person shall embalm human remains pursuant to a funeral services contract unless the person holds an embalmer licence.

**(5)** Where activities are authorized under a licence referred to in section 4(1)(e), no person shall carry out those activities unless the person holds the licence described in the regulations that authorizes those activities.

**Transfer of money to authorized trustee**

**8(1)** Money held in trust by a licensee pursuant to section 7 must be transferred to an authorized trustee within the period prescribed in the regulations.

**(2)** The licensee may deduct an administration fee in accordance with section 6 from the money to be transferred under subsection (1) to an authorized trustee.

**(3)** An authorized trustee

(a) shall deposit money received under subsection (1) in a trust fund provided by the authorized trustee by agreement with the licensee, and

(b) may, subject to the regulations, invest the money only in accordance with the regulations.

**(4)** An authorized trustee shall, for the purpose of its financial records, keep the money received under each pre-need funeral services contract separate from any other money but may, for the purpose of investing the money in accordance with subsection (3)(b), combine the money received from all pre-need funeral services contracts of the same licensee.

**(5)** The financial records required under subsection (4) must show

(a) the amount of principal and income held in the trust fund to the credit of each pre-need funeral services contract, and

(b) the name of the person for whose benefit the contract was entered into.

**(6)** Money that is held in a trust fund pursuant to this section is not, while in the fund or while being transferred to or from the fund, liable to demand, seizure or detention under any legal process.

### **Duties relating to licences**

**15(1)** The Director is authorized to receive applications for the issuance or renewal of licences.

(2) The Director may issue a licence if the applicant meets all the requirements for that licence set out in the regulations and may issue the licence subject to any terms and conditions the Director considers appropriate.

(3) The Director may renew a licence if the applicant meets all the requirements for renewal of that licence set out in the regulations and may renew the licence subject to any terms and conditions the Director considers appropriate.

(4) The Director may refuse to issue or renew a licence, may cancel or suspend a licence or may impose terms and conditions on a licence if

(a) the applicant or licensee does not meet the requirements of this Act and the regulations with respect to the class of licence applied for or held;

(b) the applicant or licensee or any of its employees

(i) fails to comply with an order of the Director under this Act or the regulations,

(ii) provides false information or misrepresents any fact or circumstance to the Director or an inspector,

(iii) fails to comply with an agreement under section 19,

(iv) fails to pay an administrative penalty in accordance with a notice under section 34.1,

(v) in the Director's opinion, has contravened or is contravening this Act or the regulations,

(vi) fails to comply with any other legislation that may be applicable,

(vii) fails to pay a fine in respect of a conviction for an offence under this Act or under any criminal or other law in force in Alberta or elsewhere,

(viii) fails to comply with an order made in relation to a conviction for an offence under this Act or under any criminal or other law in force in Alberta or elsewhere, or

(ix) is convicted of an offence or is serving a sentence imposed in respect of a conviction for an offence under this Act or under any criminal or other law in force in Alberta or elsewhere,

or

(c) in the Director's opinion, it is in the public interest to do so.

(5) The Director may suspend or cancel a licence

(a) if the licensee contravenes this Act or the regulations,

(b) for any of the reasons set out in the regulations, or

(c) if, in the Director's opinion, it is in the public interest to suspend or cancel the licence.

(5.1) Before refusing to issue or renew a licence or suspending, cancelling or imposing terms and conditions on a licence, the Director shall give the applicant or licensee

(a) written notice of the proposed refusal, suspension or cancellation of the licence or the proposed terms and conditions to be imposed on the licence, with reasons, and

(b) an opportunity to make representations to the Director.

(5.2) Despite subsection (5.1), the Director may suspend the licence of a licensee without notice or an opportunity to make representations to the Director if the licensee is being investigated under this Act and the Director is of the opinion that the licensee has misappropriated or will misappropriate funds that the licensee is required to hold in trust.

(6) When the Director refuses to renew a licence or makes a decision to suspend or cancel a licence, the Director may also, by written order, do any or all of the following:

(a) if the licensee is a funeral services business, assign to another licensee any funeral services contracts entered into by the licensee;

(b) prohibit the licensee from continuing to carry on the activities authorized by the licence, subject to any terms and conditions set out in the order;

(c) direct any person to cease any act or omission that contravenes this Act or the regulations;

(d) prohibit the licensee who committed any act or omission that resulted in the suspension or cancellation or who directed, authorized, assented to, acquiesced in or participated in the act or omission from so acting, subject to any terms and conditions set out in the order.

(7) Where the Director issues or renews a licence subject to conditions or refuses to issue or renew a licence, the Director must notify the applicant in writing of the decision and the reasons for the decision.

(8) Where the Director suspends or cancels a licence, the Director must notify the licensee in writing of the decision and the reasons for the decision.

#### **Administrative penalties**

**34.1(1)** Where the Director is of the opinion that a person has contravened a provision of this Act or the regulations, the Director may, by notice in writing given to that person, require that person to pay to the Director an administrative penalty.

(2) A person who pays an administrative penalty in respect of a contravention may not be charged under this Act with an offence in respect of that contravention.

(3) Where a person fails to pay an administrative penalty in accordance with a notice under subsection (1), the Director may recover the amount owing in respect of the penalty in an action in debt.

(4) A notice of an administrative penalty under this Act may not be issued more than 3 years after the date on which the contravention to which the notice relates occurred.

## Regulation

### Funeral services business licence

**2(1)** Subject to subsection (2), a funeral services business licence authorizes the licensee to enter into funeral services contracts with members of the public.

**(2)** A funeral services business licence authorizes the licensee to enter into pre-need funeral services contracts with members of the public only if the licence specifically states such authorization.

### Requirements of funeral services contract

**8(1)** A funeral services contract shall

- (a) be in writing,
- (b) be signed by the purchaser and by
  - (i) a funeral director of the funeral services business, or
  - (ii) a pre-need salesperson of the funeral services business, if it is a pre-need funeral services contract,
- (c) contain a detailed listing of the goods and services to be provided by the funeral services business and the cost to be charged to the purchaser for each of those goods and services including, without limitation, where applicable:
  - (i) the professional service charge;
  - (ii) the facility charges;
  - (iii) the transportation costs;
  - (iv) the cost of the casket;
  - (v) the cost of the outer receptacle;
  - (vi) the cost of cremation;
  - (vii) the cost of the cremation container;
  - (viii) the cost of the urn;
  - (ix) the amount or amounts, if any, set aside for the payment of taxes;
  - (x) the itemized cost of other disbursements not included in subclauses (i) to (ix);
  - (xi) the total cost of all items referred to in subclauses (i) to (x);
- (c.1) contain a list of the current locations where embalming, and cremation services are to be performed and contain a statement that the final location of these services may be subject to change and, if changed, a list of the then current locations will be provided at the time these services are required;
- (d) contain a statement of cancellation rights in accordance with section 9, if it is a pre-need funeral services contract;

(e) contain a statement, to be initialled by the purchaser, that cremated remains not claimed within 5 years after the date of cremation will be disposed of in accordance with section 36.3.

(2) At the time a funeral services contract is entered into, the funeral services business must disclose to the purchaser, in writing, whether or not refrigeration is available at the location where the funeral services will be provided.

(3) Where a funeral services business does not have refrigeration facilities available at the location where the funeral services will be provided, and

- (a) the funeral services contract does not provide for embalming services, and
- (b) final disposition will not occur within 72 hours from the time the funeral services business takes possession of the deceased's remains,

the funeral services business must disclose in writing, at the time the funeral services business takes possession of the deceased's remains, the location of any refrigeration facilities to which the funeral services business has been provided access.

#### **Transfer of money to authorized trustee**

**12(1)** For the purposes of section 8(1) of the Act, the period within which a licensee shall transfer money in trust to an authorized trustee is 5 business days from the date on which the cancellation period under section 10 expires.

(2) Notwithstanding subsection (1), where the cost of a pre-need funeral services contract is paid by instalments and the licensee charges an administration fee in accordance with section 6(1)(a) of the Act, the licensee

- (a) may collect that administration fee from the initial instalment payments until the full amount of the fee is satisfied, and
- (b) shall transfer each instalment payment received after the full amount of the administration fee has been satisfied to an authorized trustee within 5 business days of the date on which the payment is received.

#### **Authorization to embalm or cremate**

**13.1** A funeral services business licensee shall not

- (a) embalm a dead human body without express authorization, or
- (b) cremate a dead human body without express authorization in writing

from a person who the representative of the funeral services business believes on reasonable grounds has authority to control the disposition of the dead human body.

#### **Conditions of work for trainees**

**28** The Director shall establish the conditions under which funeral director trainees, embalmer trainees and pre-need salesperson trainees may carry out duties for a funeral services business.

## Schedule 2

### Alberta Funeral Services Code of Conduct

All persons licensed under the Funeral Services Act, referred to collectively as “funeral professionals”, have responsibilities to their profession, their colleagues, the families they serve and to the public at large.

To carry out these responsibilities funeral professionals must recognize that businesses operate within a framework of competition and cooperation. All efforts must be made to ensure each funeral business is conducted honestly and in a professional manner, demonstrating respect for colleagues. This professional respect will maintain and enhance public confidence and understanding of the funeral profession and funeral professionals.

Funeral professionals must recognize the need to compete on merit and not by attempts at discrediting or disparaging colleagues. In accordance with this responsibility, funeral professionals will act at all times in accordance with the standards set out below.

### Schedule 4 Administrative Penalties

The following administrative penalties are payable in respect of a contravention of the following sections of the *Funeral Services Act*:

<i>Funeral Services Act</i> (section)	Penalty for 1st contravention (\$)	Penalty for 2nd contravention (\$)
10(1)	1000	2500
3(1.1), (2), (3), (4) and (5), 5(3), 12(1) and 13(1) 3(1) and 8(1)	1500 5000	5000 20 000

The following administrative penalties are payable in respect of a contravention of the following sections of this Regulation:

<i>General Regulation</i> (section)	Penalty for 1st contravention (\$)	Penalty for 2nd contravention (\$)
8.1, 9, 12.2(b), 13(1), 14, 15(1), 17, 18(7) and (8), 25, 36.1(2) and 36.2(1)	500	1000
7, 12.1(1), (2), (4), (5) and (7) and 16(1)	1000	2500
8	1500	5000
12(1)	5000	20 000