

ALBERTA INSURANCE COUNCIL  
(the "AIC")

In the Matter of the *Insurance Act*, R.S.A. 2000 Chapter I-3  
(the "Act")

And

In the Matter of Gail Carstairs  
(the "Agent")

DECISION  
OF  
The Life Insurance Council  
(the "Council")

This case involved an alleged violation pursuant to s. 465(1) of the Act. Specifically, that the Agent failed to renew her Errors and Omissions (E&O) insurance coverage prior to the policy expiring on October 16, 2021. In so doing, it is alleged that the Agent subsequently violated s. 480(1)(b) of the Act.

**Facts and Evidence**

This matter proceeded by way of written Report to Council dated March 15, 2022 (the "Report"). The Report was forwarded to the Agent for review, and to allow the Agent to provide the Council with any further evidence or submissions by way of Addendum.

The AIC conducted a random audit in February 2022, which sought to verify that E&O coverage was in place, following the expiration date noted in the licensees' 2020/2021 renewal application.

The Agent held Life and Accident and Sickness (A&S) certificates of authority during the period of November 16, 2016 to March 15, 2022, when the Agent's certificates of authority were suspended in accordance with s. 478(2) of the Act.

On February 1, 2022, the AIC emailed a Demand for Information (the "Demand") to the Agent, requesting the following information:

[...] According to your 2020/21 renewal application, you disclosed that your E&O insurance policy coverage had an expiration date between September 1 – October 31, 2021. As such, please provide E&O coverage details of your current E&O insurance policy. The following documents may be submitted by email to [audits@abcouncil.ab.ca](mailto:audits@abcouncil.ab.ca):

- A copy of an E&O insurance policy summary page(s) or certificate of insurance showing coverage was in place after the expiration date and is currently in place; [...]
- A copy of the issued E&O insurance policy(s) showing coverage was in place after the expiration date and is currently in place.

[...]

On February 15, February 22 and March 1, 2022, an email was sent by the AIC, reminding the Agent to respond to the Demand by the deadline provided, that being March 8, 2022. On March 3, 2022, the AIC contacted the Agent by way of telephone, however, there was no answer, a voicemail was left reminding the Agent to respond to the Demand by the deadline provided. A final reminder email was sent by the AIC on March 7, 2022.

On March 8, 2022, the Agent responded to the Demand with the following information:

Please be advised that all my accounts were handed over to another adviser [sic] before the October 16, 2021 expiration date of my E&O insurance so my license can also be cancelled.

[...]

On March 8, 2022, the AIC Compliance Department sent an email to the Agent's former E&O provider requesting the following:

[...]

I was hoping you could confirm an E&O coverage for me? [sic]

Licensee is Gail Carstairs, policy#\*\*\*\*\*.\*\_\*\*\*030A. The expiry date was October 16, 2021. Can you confirm if this policy was renewed or not or any other policies for this individual?

[...]

On March 10, 2022, the former E&O provider stated the following:

[...] we can confirm that the agent did not renew this policy for the 2021/2022 term. Numerous renewal reminder notices were sent, but there was no reciprocating response. [...]

[Emphasis added in original document]

### **Discussion**

The Council contemplated s. 465(1) of the Act, which provides that *"Every business and individual that holds a certificate of authority must meet the requirements respecting financial guarantees set out in the regulations."* (emphasis added). This offence is strict liability in nature. Under a strict liability offence, the AIC has the onus to prove that the Agent failed to renew her E&O insurance coverage. Once this occurs, the onus then shifts to the Agent to establish a due diligence defence. The Agent must prove that all reasonable means were taken to avoid making the offence. There is no requirement on the AIC to prove the Agent's intent.

In consideration of the evidence before it, the Council is satisfied that the Agent failed to renew her E&O insurance coverage prior to its expiration. The Council considered the Agent's explanation that all accounts were handed to another advisor prior to the expiration of the Agent's E&O insurance coverage. However, the Act specifically states, "*Every [...] individual that holds a certificate of authority [...]*". Given that the Agent held certificates of authority at the time her E&O insurance coverage expired, it is the responsibility of the Agent to ensure that she held valid E&O insurance. The Agent has not met the burden of proof to establish a due diligence defence. As such, the Council finds the Agent guilty of violating s. 465(1) and has subsequently violated s. 480(1)(b) of the Act.

In terms of the applicable sanction, the Act requires that all holders of certificates of authority have active E&O insurance coverage. Pursuant to s. 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001, the Council has the discretion to levy a civil penalty in an amount up to \$1,000.00. In consideration of all the evidence, the Council orders that a civil penalty in the amount of \$1,000.00 be levied against the Agent.

The civil penalty of \$1,000.00 must be paid within thirty (30) days of the mailing of the Decision. In the event that the civil penalty is not paid within thirty (30) days, interest will begin to accrue at the prescribed rate. Pursuant to s. 482 of the Act (excerpt enclosed), the Agent has thirty (30) days in which to appeal this decision by filing a Notice of Appeal with the Office of the Superintendent of Insurance.

This Decision was made by way of a motion made and carried at a properly conducted meeting of the Life Insurance Council. The motion was duly recorded in the minutes of that meeting.

Dated: June 10, 2022

[Original Signed By]  
Michael Bibby, Chair  
Life Insurance Council

**Extract from the *Insurance Act*, Chapter I-3****Appeal**

482 A decision of the Minister under this Part to refuse to issue, renew or reinstate a certificate of authority, to impose terms and conditions on a certificate of authority, to revoke or suspend a certificate of authority or to impose a penalty on the holder or former holder of a certificate of authority may be appealed in accordance with the regulations.

**Extract from the *Insurance Councils Regulation*, Alberta Regulation 126/2001****Notice of appeal**

16(1) A person who is adversely affected by a decision of a council may appeal the decision by submitting a notice of appeal to the Superintendent within 30 days after the council has mailed the written notice of the decision to the person.

(2) The notice of appeal must contain the following:

- a) a copy of the written notice of the decision being appealed;
- b) a description of the relief requested by the appellant;
- c) the signature of the appellant or the appellant's lawyer;
- d) an address for service in Alberta for the appellant;
- e) an appeal fee of \$200 payable to the Provincial Treasurer.

(3) The Superintendent must notify the Minister and provide a copy of the notice of appeal to the council whose decision is being appealed when a notice of appeal has been submitted.

(4) If the appeal involves a suspension or revocation of a certificate of authority or a levy of a penalty, the council's decision is suspended until after the disposition of the appeal by a panel of the Appeal Board.

**Contact Information and Useful Links for Appeal:**

Email: [tbf.insurance@gov.ab.ca](mailto:tbf.insurance@gov.ab.ca)

Phone: 780-643-2237

Fax: 780-420-0752

Toll-free in Alberta: Dial 310-0000, then the number

Mailing Address: 402 Terrace Building, 9515 – 107 Street Edmonton, AB T5K 2C3

Link: [Bulletins, notices, enforcement activities | Alberta.ca](#) – *Interpretation Bulletin 02-2021 – Submitting Notices of Appeal of Insurance Council Decisions*