

INSURANCE COUNCIL OF BRITISH COLUMBIA

Proposed Mandatory Errors and Omissions Insurance for Licensees Amended Recommendations in Response to Industry Feedback

On February 21, 2000, Council published its Notice "Proposal to Introduce a Mandatory Errors and Omissions Requirement for Insurance Agents, Salespersons and Adjusters."

The February 21st Notice outlined recommendations for mandatory errors and omissions ("E&O") insurance for licensees and sought industry feedback. Responses were received from licensees in all sectors of the insurance industry as well as from insurers and various industry associations that represent licensees.

At its Annual General Meeting in June 2001, Council considered the issues raised in the industry's response and arrived at the following amended recommendations:

1. All licensees, other than motor vehicle warranty dealers, must have E&O coverage with a minimum limit of \$1,000,000 per claim and a minimum aggregate limit of \$2,000,000, exclusive of defence costs.
2. Both corporate and individual licensees must have E&O coverage. However, several licensees may be covered jointly under a single policy. For instance licensees employed with a general insurance agency, life insurance agency or adjusting firm may be covered under the corporate E&O policy of that agency or firm without the need for individual coverage. Conversely, an individual life insurance agent who operates an associated licensed corporation could include that licensed company as a named insured on his/her individual E&O policy.
3. E&O coverage must extend to all activities as a licensed insurance agent, salesperson or adjuster.
4. Licensees, other than new licensees or those with no previous E&O coverage, must have coverage for prior acts. This coverage may exclude those prior acts the licensee has knowledge of at the effective date of the policy.

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5. There must be an endorsement allowing for tail coverage upon payment of an additional premium. The minimum available tail coverage must be 2 years for general insurance agents, salespersons and adjusters and 5 years for life insurance agents.
6. There must be coverage for the licensee's liability arising from fraudulent or dishonest acts by employees or other insureds, where the licensee was not involved in the fraudulent or dishonest act. This coverage should not be limited to liability for failure to place insurance.
7. Claims exceeding the policy deductible should be paid out to the consumer on the first dollar and any deductible amounts recovered directly from the insured by the insurer. However, this need not be a specific policy provision.
8. Applicants for an insurance licence will be required to confirm they have their own E&O coverage or are covered under a corporate or other E&O policy.
9. A licensee who ceases to be covered by an E&O policy must immediately notify Council and must not conduct any further insurance business while uninsured. If the licensee does not obtain new E&O coverage within 30 days, his/her licence will be subject to suspension or termination by Council.
10. Licensed employees of insurance companies are exempt from the E&O requirement provided they sell only their employer's products. The insurance company must certify that the licensee is an employee of the company, the company accepts responsibility for the licensee's activities as a licensed insurance agent, and the company will respond to E&O claims against the employee on the same basis as set out in Council's E&O requirements for other licensees.
11. In special circumstances, such as a licensee holding a restricted licence, Council may grant an exemption from the E&O requirement where the licensee satisfies Council that E&O coverage is not required to protect the public.

The amendments to the recommendations addressed the following issues raised by the industry:

- The requirement for 5 years' tail coverage for general insurance agents and adjusters was perceived as too long.
- New licensees or those with no previous history of E&O coverage would be unable to obtain prior acts coverage.
- There was a concern that the scope of activities to be covered was described too broadly.
- There was a concern that employees of insurance agencies or adjusting firms who were covered by the corporate E&O policy would not be able to satisfy the requirements for tail coverage, prior acts or notice to Council on changes in the E&O coverage.

- It was felt that specifying a requirement for payment of a claim on the first dollar was unnecessary and potentially restrictive given that this was the usual practice of E&O insurers.
- There was a concern as to whether extended coverage for fraudulent acts was available and affordable. However, much of this concern arose from licensees reading this requirement to mean they must be insured against their own fraudulent acts. This type of fidelity coverage is not part of Council's recommendations.
- There was a concern that the definition of fraud not be interpreted narrowly. It should include the broad legal concept of fraud.
- The minimum aggregate limit should be a stated amount rather than expressed as twice the claim limit to avoid unnecessarily large aggregates.
- There was a concern that separate E&O coverage for corporate life insurance licensees might not be available.
- It was submitted that E&O coverage for licensees employed directly by insurance companies was unnecessary as insurance companies are directly responsible for their employees' actions and the effect of E&O coverage would be simply to transfer this risk from one insurer to another.

As a whole, the majority of respondents supported Council's proposal. Some respondents, particularly in the life insurance industry, felt the proposed requirements did not go far enough while other respondents agreed a minimum amount of coverage should be required but further details of the policy should be left to the individual licensee. Other respondents were philosophically opposed to the idea of mandatory E&O insurance. A summary of the responses from industry may be obtained by sending a request in writing to the address or fax number on page 1 of this Notice.

Travel agents licensed to sell travel insurance expressed significant concerns with the proposal, particularly with respect to potential costs. Council continues to believe it is in the public interest that all insurance licensees, including those selling travel insurance, have E&O coverage. However, Council is meeting with the Association of Canadian Travel Agents (ACTA) to further discuss issues of concern to the travel industry and explore potential alternatives that will address the interest of consumer protection. Initial discussions have been positive.

Licensees should note that Council anticipates there will be individual circumstances where E&O coverage may not be appropriate. In these cases Council will consider granting an exemption to licensees who are able to demonstrate that the public interest is adequately protected without the need for E&O coverage.

At this point Council will proceed with preparation of submissions to government outlining Council's recommendations, as well as the industry's feedback, with a request for appropriate regulatory amendments.