

**Hearing of the Qualification and Registration Committee
of the Registered Insurance Brokers of Ontario held pursuant to the
*Registered Insurance Brokers Act***

PANEL:

Thomas Watson	Chairperson
Melissa Bajwa	Broker Member
Hugh Fardy	Broker Member
Karol Pawlina	Public Member
Frances Kordyback	Public Member

Between:

The Registered Insurance Brokers of Ontario

Counsel: Patricia Harper

-and-

Rates Insurance Services Ltd

Counsel: Marisa Coggin

Heard: July 5, 2024

DECISION AND REASONS

This matter came on for hearing before a panel of the Qualification and Registration Committee (the "Panel") of the Registered Insurance Brokers of Ontario ("RIBO") on July 5, 2024 via written submission.

Background

Rates Insurance Services Ltd. ("the Applicant") applied to RIBO to be licensed as an insurance brokerage in Ontario under the *Registered Insurance Brokers Act*, R.S.O. 1990, c. R.19 ("the RIBA"). The Qualification and Registration Committee ("the Committee") granted the request for licensing subject to the acceptance of an Undertaking. The purpose of the Undertaking was to ensure that the Applicant was in compliance with the existing regulatory framework for regulating insurance brokers in Ontario. Attached at **Appendix A** is a copy of the proposed Undertaking.

The Applicant agrees with the Undertaking with the exception of paragraph 6. This paragraph provides that, "the fees paid by licensed entities for the provision of brokering services will be paid directly to the firm." The firm in this context refers to the Applicant.

On consent of the parties this hearing proceeded in writing pursuant to section 14(7) of the RIBA, and written submissions were accepted from the parties.

Submissions of the Applicant:

The Applicant provided a detailed written submission along with two Appendices through counsel acting on behalf of the Applicant and its parent company, RatesDotCa ("RDC"), an insurance aggregator. Appendix A is the original Undertaking provided by RIBO and Appendix B is a Proposed Structure outlining the proposed client flow between unlicensed and licensed entities.

The Applicant submitted that when comparison websites emerged in Canada over 20 years ago there was no regulatory framework for them, though it was generally accepted that the publishing of rates was not considered soliciting or selling insurance. With the Financial Services Regulatory Authority of Ontario's ("FSRA") development of the Take All Comers Rule ("TAC"), regulators have been clear that carriers and brokers are required to provide the lowest available rates for automobile insurance. The application and enforcement of TAC has placed tremendous pressure on carriers and brokers to ensure that any rate comparison website used for automobile lead generation is compliant with the TAC Rule.

The Applicant and RDC submitted that they believe its websites should be compliant with the TAC Rule and be subject to the same oversight and scrutiny as brokers and carriers that provide online quotes to consumers. The panel agrees with this submission.

In consultation with FSRA, the Applicant determined that the quoting activities they provide best fit within the current regulatory framework under RIBO. The Panel also agrees that the activities of RDC and the Applicant are properly regulated under the RIBO regulatory framework.

With respect to paragraph 6 of the Undertaking the Applicant submitted that,

“as proposed, would impose an artificial requirement or bifurcation, which would arguably be misleading. Specifically, the fees payable by the carrier or broker would be bifurcated into (i) a lead generation fee paid to RDC; and (ii) a fee in respect of the quoting function paid to the Applicant. Absent the requirement in paragraph 6, the customer journey and the resulting process would never lead to two separate invoices being issued to the carrier or broker. In addition, the requirement to issue two separate invoices would create unnecessary administrative burden and cost for the Applicant as well as the carriers and brokers with whom RDC engages. Carriers and brokers would be asked to remit payment for invoices of nominal amounts. It is also not reflective of the legal and commercial reality of the service, since they are not sold as separate services, as described above.”

The Applicant made submissions regarding the applicable legislation and regulations, specifically Section 403 of the *Insurance Act*, R.S.O. 1990, c.I.8 (the “Ontario Insurance Act”) and Subsection 15(1), paragraph 12 of General Regulation, being R.R.O. 1990, Reg. 991 (the “general regulation”) made pursuant to the RIBA.

Ontario Insurance Act, Section 403

Section 403 of the Ontario Insurance Act provides as follows (Applicant’s emphasis added):

No insurer, and no officer, employee or agent thereof, and no broker, shall directly or indirectly pay or allow, or agree to pay or allow, compensation or anything of value to any person for placing or negotiating insurance on lives, property or interests in Ontario, or negotiating the continuance or renewal thereof, or for attempting so to do, who, at the date thereof, is not an agent or broker and whoever contravenes this subsection is guilty of an offence.

The Applicant argued that it is not placing or negotiating insurance, nor is it attempting to do so. They argue that the portion of the fee that is payable to the Applicant relates to the quoting function, and the Applicant is therefore not being compensated by any insurer or broker for placing or negotiating insurance. They argue that the Applicant’s proposed payment arrangement would therefore not result in any insurer or broker acting contrary to section 403 of the Ontario Insurance Act. The Panel disagrees with this submission.

RIBA, Subsection 15(1), paragraph 12 of the General Regulation

Subsection 15(1), paragraph 12 of the general regulation provides that the payment of any referral fee or finder’s fee to, or the acceptance of a referral fee or finder’s fee from, a person who is not, a licensed professional as outlined in that section, constitutes misconduct.

The Applicant argues that the RIBA does not define “referral fee” or “finder’s fee”; however, it is understood that such fees are typically paid upon the successful referral of a client by a referee (emphasis added). The Panel disagrees with this interpretation.

The Applicant argues that there is no interaction between the Applicant and the carriers or brokers who contract with RDC for access to the Rates platform. RDC will continue to be the party selling the lead to the carriers and brokers. The Applicant is therefore not being paid a referral fee for its services. They argue that there is no legal or regulatory requirement for the \$1-\$2 fee related to the quoting function to be paid directly to the Applicant.

The Applicant argues that comparison sites have existed for decades and are presently not regulated as insurance intermediaries in Ontario. They argue that from a regulatory perspective the publishing of rates is not considered soliciting or selling insurance.

They argue that comparison sites need to be able to charge carriers and brokers a fee in order to recoup their investment on advertising and marketing costs to bring the customer to the comparison website. The fee paid to RDC is a marketing fee for the generation of a lead and is not contingent on placement of any insurance policy or service. They argue that it is therefore not a referral fee within the meaning of the RIBA, nor is it a commission on premium.

The Applicant proposed adding a disclosure to the invoice delivered to carrier and brokers that reads:

“The marketing fees set out in this invoice include a fee for the generation of the quote(s) by Rates Insurance Services Ltd. presented to the customer in connection with the lead(s) to which the marketing fees relate.”

The Applicant therefore requested that the Q&R Committee consider amending the Undertaking as follows:

- 1- Remove paragraph 6 of the Undertaking; or,
- 2- Provide that, notwithstanding paragraph 6 of the Undertaking, the marketing fees payable to Rates.ca¹ by carriers and licensed brokers which include the fees attributable to the quoting function performed by the Applicant may be paid to Rates.ca

Submissions of RIBO

RIBO submitted that the Panel must determine whether the Applicant’s proposal accords with s. 403 of the Ontario Insurance Act and the RIBA general regulation. RIBO did not take a position regarding whether the proposal accorded with either of these two provisions nor did

¹ This is a reference to the website managed RDC, the parent company of the Applicant.

RIBO take any position regarding any other issues associated with the Applicant's application for registration under RIBO.

DECISION:

Pursuant to the RIBA, Subsection 14 (7), the Panel after a hearing or review has three potential courses of action;

- (a) Confirm the proposed decision.
- (b) Require the applicant to take qualifying examinations or additional training as a condition of registration, or both, as specified by the Panel: or
- (c) Direct the Manager to register the applicant on any appropriate register subject to such conditions as the Panel consider appropriate in cases where the Panel finds that the applicant meets the requirements for registration.

The Panel carefully reviewed the submissions of the parties and for the reasons that follow, denies the Applicant's request with respect to the removal or amendment of paragraph 6 of the proposed Undertaking. The Panel therefore confirms the proposal of the Committee to approve the application subject to the execution of the Undertaking attached at **Appendix A** to this decision.

REASONS FOR DECISION

In considering this matter, the Panel is required to keep in mind the primary focus of RIBO which is the protection of the public, insurance purchasing consumer in Ontario, by governing insurance brokers and brokerages in accordance with the governing statute, the RIBA, and the regulations thereunder.

The Panel accepts RIBO's submission that any registration under the RIBA must be compliant with s. 403 of the *Insurance Act* and RIBO's general regulation. The Applicant has made submissions on both of these provisions in their written submissions.

The activities of RDC ought to be regulated by RIBO:

The Panel agrees with the submissions of the Applicant that the activities of RDC best fit into the current regulatory framework under RIBO and further agree that its websites should be compliant with the TAC Rule and subjected to the same oversight and scrutiny as brokers and carriers that provide online quotes to consumers.

RDC is self described as insurance aggregator and acts as a conduit between customers and insurance providers. According to their website, they maintain partnerships with multiple insurance companies, either direct providers, brokers or both, and they help connect shoppers with insurance providers.

In coming to this conclusion, the Panel reviewed the definition of “insurance broker” in section 1 of the RIBA. The definition is as follows:

“insurance broker” means any person who for any compensation, commission or other thing of value, with respect to persons or property in Ontario, deals directly with the public and,

- (a) acts or aids in any manner in soliciting, negotiating or procuring the making of any contract of insurance or reinsurance whether or not the person has agreements with insurers allowing the person to bind coverage and countersign insurance documents on behalf of insurers,
- (b) provides risk management services including claims assistance where required,
- (c) provides consulting or advisory services with respect to insurance or reinsurance, or
- (d) holds himself, herself or itself out as an insurance consultant or examines, appraises, reviews or evaluates any insurance policy, plan or program or makes recommendations or gives advice with regard to any of the above; (“courtier d’assurances”)

The Panel finds the services that RDC and the Applicant provide meets the definition of an insurance broker as they deal directly with the public and perform the activities outlined in paragraphs (a), (c), and (d), listed in the definition above. They are compensated for those activities.

The Panel specifically finds that by virtue of providing quotes to the public and providing the services described in paragraphs 2 and 3 of the “Customer Journey” on page 2 of the Applicant’s submissions, the Applicant, “acts or aids in any manner in soliciting, negotiating or procuring the making of any contract of insurance.”

The ability to bind coverage themselves on behalf of an insurer is not a requirement to fall within the definition of insurance broker. Furthermore, the service includes recommendations with respect to the coverage to be placed and the potential insurer or broker with which to place the quoted coverage.

Based on the above the Panel finds that RIBO has both the authority and responsibility to license and regulate RDC and the Applicant.

Referral Fees Must be paid to professionals listed in the general regulation:

The Applicant argues, however, that it would be onerous and misleading to bifurcate the fees paid by carriers and brokers into lead generation paid to RDC and the quoting function paid to the Applicant.

While the Panel is sympathetic to the operational issues that the Applicant raises, this observation has no impact on the matter presented. It is beyond the scope and authority of the Panel to comment on the Applicant's proposed business model.

The Panel is required to consider its governing statute and regulations and specifically relevant to the payment of fees, the Panel refers to the general regulation 15(1) which outlines that it would be considered "misconduct" to pay or accept a referral fee or finder's fee in certain situations. Subparagraph (12) outlines misconduct as follows;

12. The payment of any referral fee or finder's fee to, or the acceptance of a referral fee or finder's fee from, a person who is not,
 - i. licensed as an insurance agent or broker under the laws of any jurisdiction,
 - ii. licensed to sell mutual funds under the laws of any jurisdiction,
 - iii. licensed as a real estate agent or broker under the laws of any jurisdiction,
 - iv. licensed as a mortgage broker under the laws of any jurisdiction,
 - v. engaged in the business of a financial planner,
 - vi. engaged in the business of providing financing for the payment of insurance premiums, or
 - vii. engaged in the business of providing products or services that reduce insurance risk.

The RIBA and its regulations do not define "referral fee" or "finder's fee." The Applicant argues that a referral fee or finder's fees are typically paid upon the successful referral of a client by a referee. No further submissions were made regarding the definition of referral fee or finder's fee by either party.

The Panel could not find a definition of referral fee or finder's fee in any legislation.

In considering the definition of any referral fee or finder's fee, the Panel considered the overall context of the RIBA in its grammatical and ordinary sense and with a view to the purpose of the RIBA which is consumer protection. Referral fees or finder's fees are permitted among specific insurance and financial professionals as enumerated in the RIBA in order to protect the customer. The legislation does not restrict these fees to successful placement or negotiation of a policy of insurance.

The Panel unanimously agreed that their interpretation of the applicable section of the regulation in describing "any referral fee or finder's fee" was that it was broadly worded to capture scenarios where a fee is not only paid upon the successful referral of a client by a referee.

The Panel finds that a referral fee or a finder's fee is any payment made to a person or a company that helped to facilitate a possible transaction between parties to a potential insurance contract and does not depend on the successful negotiation of an insurance contract.

Without the appropriate licenses in place, therefore, such payments made or received, can constitute misconduct under the current regulatory regime.

Ontario Insurance Act, Section 403:

The Panel disagrees with the Applicant's position regarding their interpretation of section 403 of the Ontario Insurance Act and finds that the described activities constitute participating in the negotiation of insurance.

The Ontario Insurance Act, s. 403 states as follows:

No insurer, and no officer, employee or agent thereof, and no broker, shall directly or indirectly pay or allow, or agree to pay or allow, compensation or anything of value to any person for placing or negotiating insurance on lives, property or interests in Ontario, or negotiating the continuance or renewal thereof, or for attempting so to do, who, at the date thereof, is not an agent or broker and whoever contravenes this subsection is guilty of an offence.

In considering this section as a whole, the Panel finds that the purpose of this section is to ensure that the negotiating and placing of insurance in Ontario is performed by licensed professionals specifically either an insurance agent or an insurance broker. The section includes, "placing or negotiating...or attempting to do so." While the Applicant does not place insurance coverage for consumers themselves, they provide the quote for coverage which is the first step in negotiating and placing an insurance contract and should be performed by a regulated professional.

In order to provide these quotes, RDC collects the consumer's information and details specific to each consumer's unique situation and returns individualized recommendations for coverage. In addition, RDC refers the consumer to its partners, either an insurer or a broker where the quoted coverage can be purchased.

The Panel finds that the act of providing a client specific quote, as opposed to simply publishing a list of non-individualized prices, to be part of the negotiating of an insurance contract. While the Applicant sells the provided quote to a licensed insurer or broker instead of writing the policy themselves, the act of quoting is part of and inseparable from the negotiation and placing of insurance. As such, in order to be compliant with s. 403, that act must be performed by an insurance agent regulated by (FSRA) or an insurance broker regulated by RIBO.

Disclosure proposed by the Applicant:

The Applicant proposes that the invoice delivered to carriers and brokers contain the following disclosure:

The marketing fees set out in this invoice include a fee for the generation of the quote(s) by Rates Insurance Services Ltd. presented to the customer in connection with the lead(s) to which the marketing fees relate.

The proposed Undertaking, including paragraph 6, was carefully crafted by the Committee to ensure that the regulation of RDC and the Applicant fell within the current regulatory regime.

The current regulatory regime makes it an act of misconduct for referral fees or finders fees to be accepted or paid to any entity that is not permitted by section 15(1)(12) of the general regulation. Given the Panel's findings regarding the meaning of referral fees or finder's fees under the general regulation, the Panel finds that the payment for the quoting services under the current regulatory framework must be paid to the Applicant to be compliant.

As it stands, RDC does not fall under any of the exceptions in section 15(1)(12) of the general regulation, but the Applicant as a registered brokerage once the Undertaking is executed, will be compliant with the current regulatory regime.

CONCLUSION:

The Panel wishes to thank RDC and the Applicant for proactively seeking the appropriate regulatory regime to conduct its business in Ontario. The Panel also acknowledges the thorough submissions and the detailed information provided through counsel to explain the business model of RDC and the Applicant.

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I, Thomas Watson, Broker Member, sign this decision and reasons for the decision as Chairperson of this Qualification and Registration Committee and on behalf of all members of the Qualification and Registration Committee

X 
Thomas Watson
Chairperson

DECISION ISSUED: July 24, 2024