

**IN THE MATTER OF THE FINANCIAL INSTITUTIONS ACT  
R.S.B.C. 1996, C. 141**

**- AND -**

**INSURANCE DYNAMIC NETWORK INC. DBA INTERMEX MEXICAN  
INSURANCE SERVICES AND QUALITAS COMPANIA DE SEGUROS  
S.A. DE C.V.**

**ORDER UNDER SECTIONS 244(2) AND 238**

**NOTICE OF RIGHT OF HEARING OR APPEAL  
UNDER SECTIONS 238(2) AND 242**

Upon reviewing the submissions of Staff supporting documentation, I make the following findings and order:

1. In November 2007, the Financial Institutions Commission ("FICOM") received a complaint that a British Columbia insurance broker had been solicited by Insurance Dynamic Network Inc., dba Intermex Mexican Insurance Services ("Intermex") of San Ysidro, California, for Mexican auto insurance to be underwritten by Qualitas Compania de Seguros S.A. de C.V. ("Qualitas").
2. Neither Intermex nor Qualitas are authorized to carry on insurance business in British Columbia.
3. Numerous documents were faxed to the British Columbia broker for Mexican auto insurance through Intermex. The address shown on one of those documents was [REDACTED], telephone [REDACTED] or [REDACTED], fax [REDACTED]. The name shown on the document was [REDACTED], (" [REDACTED] ") Marketing Representative, Licence # [REDACTED].
4. Telephone number [REDACTED] and fax number [REDACTED] were active British Columbia numbers.
5. On January 3, 2008, FICOM investigator Clemons telephoned 604 [REDACTED], and reached the voicemail of [REDACTED] of Intermex.
6. On January 3, 2008, Clemons contacted the complainant who advised that:

- (a) ██████ contacted their office in October of 2007 offering Mexican auto insurance.
  - (b) ██████ also dealt with the complainant and another employee at the brokerage.
  - (c) ██████ followed up her telephone calls by mailing numerous documents with respect to insurance products offered by Intermex as follows:
    - i. Introduction Sheet and testimonials.
    - ii. Application form.
    - iii. Commission Agreement.
    - iv. Website link Commission Agreement.
    - v. Website link application form.
  - (d) ██████ again telephoned the brokerage, but this call was not returned.
7. Neither Intermex, Qualitas, nor ██████ are licensed to conduct insurance business within the Province of British Columbia.
  8. Qualitas is not an authorized insurer under the *Financial Institutions Act* ("Act") and as such is not authorized to conduct insurance business in British Columbia.
  9. ██████ married name is ██████
  10. ██████ husband, ██████, (██████) is a licensed insurance agent Level 3 in British Columbia.
  11. ██████ confirmed that ██████ was promoting insurance products on behalf of Intermex and he believed ██████ was not soliciting insurance business, but rather was only promoting the service to various insurance brokers.
  12. Clemons advised ██████ that ██████ must cease conducting any insurance business until such time as she obtains proper licensing. ██████ agreed that he would advise ██████ to no longer represent Intermex nor promote their insurance products.
  13. On January 15, 2008, Clemons spoke to ██████ who advised that she had originally contacted approximately 30 people but did not have many sales from

those contacts. ██████ further advised that she has ceased soliciting for Intermex and has since disconnected both her business line and the 1-800 line.

14. Staff submits that ██████ was contacting British Columbia insurance brokerages in an attempt to solicit travel and auto insurance coverage on behalf of Qualitas, however; she has since confirmed that she has ceased this activity.
15. Section 1 of the *Act* defines insurance business as follows:

*"insurance business" means the business of*

- (a) *undertaking or offering to undertake to indemnify another person against loss or liability for loss in respect of a certain risk or peril to which the object of the insurance may be exposed,*
- (b) *soliciting or accepting any risk,*
- (c) *soliciting an application for a contract of insurance,*
- (d) *issuing or delivering a*
  - (i) *receipt for any contract of insurance, or*
  - (ii) *contract of insurance,*
- (e) *in consideration of any premium or payment, granting an annuity on a life or lives,*
- (f) *collecting or receiving any premium for a contract of insurance,*
- (g) *adjusting any loss covered by a contract of insurance, or*
- (h) *advertising for any business described in paragraphs (a) to (g), whether or not the person undertaking an activity or activities set out in paragraphs (a) to (h) can or does distribute any gain, profit or dividend, or otherwise disposes of the person's assets, to a member or shareholder of the person other than during winding up or on dissolution."*

16. Intermex and Qualitas solicited and advertised their Mexican auto insurance product directly to British Columbia agents for the purposes of contracting with those agents to sell their insurance to British Columbia residents.
17. Solicitation as provided in the *Act* is not so narrowly confined to require direct solicitation. The British Columbia Supreme Court and Court of Appeal have

considered the meaning of solicitation under the *Act* in the *Bank of Nova Scotia* case (*Bank of Nova Scotia v. British Columbia (Superintendent of Financial Institutions)*, 2003 BCCA 29 overturning 2001 BSCS 1517, (leave to appeal to SCC denied), and subsequently overturned but on other grounds). Both courts discussed the meaning of solicitation in a very broad sense. They also compared it to the use of the term “promotion” used in the federal *Insurance Business (Banks) Regulations (Insurance Business (Banks) Regulations, SOR/92-330)*. The question of whether solicitation must be direct was not considered. The meaning of solicitation was not in dispute at the Court of Appeal.

18. The Supreme Court held:

*Advice and promotion are frequently part of the selling or solicitation process. The fact that the more specific terms “advice” and “promotion” have been used in the Regulation while the general word “sale” has not, indicates that Parliament did not intend to grant banks the capacity to be directly involved in the completion of the sale contract between the cardholder and the insurance company. (at paragraph 67)*

19. The Court of Appeal held that:

*The ordinary rules of statutory interpretation must be applied to determine the ambit of the expression “solicits, obtains or takes an application for insurance.” [citations omitted] ...*

*One begins with the ordinary meaning of the words of the Act, and specifically the meaning of the word “solicit” in section 168 of the FIA. The Concise Oxford Dictionary of Current English, 7<sup>th</sup> ed., provides the following definition:*

*Solicit. 1. invite, make appeals or requests to, importune, ask importunately or earnestly for...*

*The sole purpose of the carefully prepared scripts, reviewed and approved by BNS, is to invite and encourage BNS customers to apply for [insurance]. In my view, therefore, on a plain reading of s. 168, the telemarketing activity engaged in by BNS and Optima is soliciting applications within the meaning of the section.*

*Consideration of the legislative context and the legislative intent does not appear to displace or modify the plain meaning of the words. Nor do these considerations support the narrow interpretation of s. 168 advanced by the appellants. On its face, the definition does not distinguish between types of contracts solicited. The legislative scheme suggests that the legislature intended to regulate all "soliciting" activity generally, and then exempt specific persons who engage in the activity. It is therefore my opinion that BNS and Optima are within the definition of "insurance agent" in s. 168 of the FIA because they solicit applications for insurance. (at paragraphs 44-47)*

20. Optima was hired by the bank to market the insurance to the public. The court found that the bank and Optima, through the use of Optima's marketing, were both soliciting. The Court of Appeal found that the Act regulates all soliciting, and provides for very specific exemptions. In my opinion, this includes soliciting of insurance sales by "intermediaries" like Intermex to end sales agents like the complainant. In my opinion, the regulatory framework does not allow for an unlicensed intermediary to intercede.
21. In *Edwards (Law Society of British Columbia v. Crawford Grant Edwards, 2006 LSBC 27)* a hearing panel of the Law Society recently considered the meaning of solicitation in the context of disciplining a lawyer who recklessly assisted in a fraudulent investment scheme. They took the view that the term is very broad, and included indirect solicitation.

*The Respondent did solicit funds from K.S. both in relation to the latter's initial investment of US \$300,000 and to the further US \$200,000. In each case the solicitation was made either directly by the Respondent or indirectly through his uncle W.E. "Solicit" is a broad, not a narrow technical concept. It is not, in our view, limited to a direct request for funds but extends, without any distortion of language, to include the creation of an environment, atmosphere or context in which someone is encouraged, by reassurances about the safety and security of funds, intimations of the possibility of significant returns within a short period of time and by other elements designed to give comfort, to part with his or her funds. In this case, the assurance of safety and security if the law*

*firm was used as a conduit, the possibility of significant returns and the assurances of a full refund if things went wrong and, indeed, the general vagueness of the proposed scheme, all taken together, in our view is continued a "solicitation". (at paragraph 41(a))*

22. Here, Intermex on behalf of Qualitas recruits licensed agents to sell Mexican auto insurance to British Columbians. Intermex distributes insurance marketing materials which inform licensees about the Qualitas insurance, and about how they can sell it. Intermex promotes the sale of the insurance and its value to consumers as well as the value to licensees through commissions and web links.
23. I find that the conduct of Qualitas and its agent Intermex constitute soliciting and advertising for insurance in British Columbia and as such they are conducting insurance business in British Columbia while unauthorized.
24. Section 75 of the *Act* provides that Intermex and Qualitas requires a business authorization or license to conduct insurance business in British Columbia:

*75 A person must not carry on insurance business in British Columbia unless the person is*

*(a) an insurance company or extraprovincial insurance corporation that has a business authorization to carry on insurance business,*

*...*

*(d) licensed under Division 2 of Part 6 as an insurance agent, insurance salesperson, insurance adjuster or employed insurance adjuster and is carrying on the insurance business only in that capacity,...*

25. Section 76 of the *Act* provides for the sale of unauthorized insurance in British Columbia in very limited circumstances, and solicitation is not permitted:

*76 (1) Despite section 75,*

*(a) any person may require insurance to be placed by a borrower as security for a loan,*

*(b) any person may*

*(i) adjust a loss,*

- (ii) prosecute or maintain a writ, action or proceeding, or*
- (iii) perform an obligation*

*under or arising out of a contract of insurance that was made or issued in British Columbia at a time when the person was authorized to carry on insurance business, and*

*(c) an insurance agent licensed under Division 2 of Part 6 who*

- (i) does not, directly or indirectly, solicit the resident for the insurance contract, and*
- (ii) is authorized by the resident to effect the insurance contract, may negotiate or procure an insurance contract between a resident of British Columbia and an insurer prohibited by section 75 from carrying on business in British Columbia.*

*(2) An insurance agent licensed under Division 2 of Part 6 who, under subsection (1) (c), procures or negotiates a contract of insurance must keep a record showing the particulars of the contract and at the request of the Commissioner of Income Tax or of the commission, must provide the record to the Commissioner of Income Tax or commission as requested.*

*(3) If*

- (a) the sum imposed by way of tax under section 4 of the Insurance Premium Tax Act in respect of an insurance contract lawfully made under subsection (1) (c) has been paid,*
- (b) the insurer described in subsection (1) (c) has notified the commission that it proposes to make an inspection for the purpose of the insurance contract or to adjust or appraise a loss under the contract, and*
- (c) the commission has given written approval to the proposed activity by the insurer,*

*the insurer may make the inspection or adjust and appraise the loss.*

*(4) The approval referred to in subsection (3) (c) is valid for all necessary inspections, adjustment and appraisals during the period specified in the approval.*

*(5) The commission may suspend, cancel or refuse to issue an approval referred to in subsection (3) (c) if an insurer contravenes a provision of this Act.*

26. Intermex and Qualitas were soliciting insurance business in British Columbia through [REDACTED] and may continue despite [REDACTED] involvement having ended.
27. I find that a hearing would require approximately four witnesses and take approximately four to five days. Some witnesses may need to attend from out of the country. This results in a three to four month delay due to scheduling and preparation requirements. I find that the length of time that would be required to hold a hearing would be detrimental to the due administration of the *Act*.
28. If the soliciting of insurance products without proper licensing were to continue for three months or more, the reputation of the British Columbia insurance industry and the public would be put at risk.
29. I am of the opinion that by the above acts or conduct, pursuant to Section 244(2) of the *Act*, Intermex and Qualitas are committing an act or pursuing a course of conduct that does not comply with the *Act* by conducting unauthorized insurance business.
30. The Financial Institutions Commission has delegated to the Superintendent the powers and duties under section 244 of the *Act* in the Instrument of Delegation executed June 2, 2005.
31. I therefore make the following order:

Pursuant to Sections 244(2) and 238 of the *Act*, I order Insurance Dynamic Network Inc., dba Intermex Mexican Insurance Services Intermex of California and Qualitas Compania de Seguros S.A. de C.V. of Mexico to immediately cease conducting insurance business in British Columbia.



TAKE NOTICE THAT Insurance Dynamic Network Inc., dba Intermex Mexican Insurance Services Intermex and Qualitas Compania de Seguros S.A. de C.V. may request a hearing before the Superintendent under section 238(2)(a) of the *Act* or appeal to the Financial Services Tribunal under section 238(2)(b) of the *Act*.

Dated at the City of Surrey,  
Province of British Columbia  
this ~~24th~~ day of January, 2008.

  
W. Alan Clark  
Superintendent of Financial Institutions

TO: Qualitas, Compania de Seguros, S.A. de C.V.  
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