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Inside Insurance: Two Things Insurers Should Avoid Doing with Brokers to Promote the Fair Treatment of Customers

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Welcome to our *Inside Insurance* series, developed to provide topical, succinct, and practical insights that address real issues in-house counsel and other insurance and reinsurance industry executives face on a regular basis. As always, we are here to help.

As insurers continue to navigate a type of hard market Canada has not seen in decades, it's easy for their underwriters and business development leaders to forget their relatively newfound obligations to promote the fair treatment of customers (their insureds) when dealing with their insurance brokers.

With this in mind, we take the opportunity to highlight briefly certain aspects of the Canadian Council of Insurance Regulators' (CCIR) *Conduct of Insurance Business and Fair Treatment of Customers* guidance **and highlight some things insurers' in-house legal counsel should do to better ensure their clients remain compliant with it**.

CCIR and the Conduct of Insurance Business and Fair Treatment of Customers

The CCIR is an association of Canada's extra-provincial insurance regulators. The CCIR's mandate is to facilitate and promote an efficient and effective Canadian regulatory system to serve the public interest, including consumers. The CCIR's *Conduct of Insurance Business and Fair Treatment of Customers* is regulatory guidance that, among other things, provides the following:

- Where insurers and brokers are both involved in the design, marketing, distribution, and policy servicing of insurance products, they share the responsibility of treating customers fairly in respect to that business. This would be most relevant to an insurer's Programs and Managing General Agent (MGA) business units.

- Insurers and intermediaries should avoid potential or actual conflicts of interest to not affect the fair treatment of customers. As an example, an insurer should avoid offering inducements to a broker that incentivizes the broker to do (or not do) something that would affect the fair treatment of customers negatively.

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Two Things to Avoid in Order to Promote the Fair Treatment of Customers

Insurers' in-house legal counsel would do well to coach their underwriters and business development leaders to conduct themselves in the following manner:

1. Do not tell broker A that the insurer will not quote an account that the insurer writes with broker B currently, simply because the account is with broker B.

2. Do not tell broker A that the insurer will quote an account as long as broker A does not pursue certain business the insurer writes with broker B currently.

Insurers' in-house legal counsel should also remind the underwriters and business development leaders to consult any internal change of broker guidelines – also known as "Broker of Record" guidelines or, colloquially, "BoRs" – to ensure they remain compliant with them.

Our team has counselled several insurers and brokers with respect to their fair treatment of customers obligations. We would be pleased to assist you too in this regard.

Find other titles in our *Inside Insurance* series here.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.