THE BURNING QUESTION:
Regulating the Fire Insurance Industry in Ontario, 1883-1929

by

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ABSTRACT

Studies of regulation have focussed on state regulation as the primary method of rationalizing the economy. However, self-regulation within industries provided an alternate form of regulation. The Canadian Fire Underwriters' Association (CFUA), a combination of joint stock insurance companies, sought to establish economic order in the Ontario insurance market by utilizing self-regulation. It controlled insurance rates, entry conditions, and enforced internal discipline over its membership in its exercise of private authority. It evolved because the unique legal and economic characteristics of fire insurance encouraged volatile price fluctuations in an unregulated market, creating hazardous and unstable business conditions for both consumers and insurance companies. Given the ambiguous constitutional jurisdiction and an aversion to state regulation, joint stock companies sought self-regulation as an appropriate regulatory mechanism. The Association's ability to reconcile industry problems and arbitrate members' differences without infringing on the managerial prerogatives of its membership was a measure of the Association's success, permitting competitors within the industry to regulate the industry effectively.

The relationship between the insurance industry and the Ontario government was redefined between 1917 and 1923 as a result of an Ontario Insurance Commission which investigated the role of the CFUA and the availability of fire insurance in Ontario. The Commission recommended a new role for government in the regulatory process, while at the same time affirming the central and defining role played by the Underwriters in maintaining stability and price control. The

Underwriters had convinced the Insurance Commissioner that, although they were exercising quasi-public power through their control of the industry, they were doing so, successfully, in the public interest.

In their deliberations over the recommendations proposed by the Ontario Insurance Commission, Ontario governments pursued their own political goals. The United Farmers of Ontario government viewed the central purpose of the new regulatory impetus as reducing the costs of insurance to the consumer. The Conservative government which took office in 1923, on the other hand, sought to use the insurance issue as an opportunity to broaden its constitutional authority over "property and civil rights". These government agendas clearly defined the goals of the regulatory process and created the arena for political and economic activity.

The Underwriters actively participated in the regulatory process, not to create favorable regulation, but to ensure that any inevitable regulation was not incompatible with the operation of their enterprise. The resulting regulation left self-regulation essentially unchanged. Unlike the public utilities, the Underwriters' exercise of monopoly control did not create social or economic instability. Implicitly, the government had defined fire insurance within the realm of private property, rather than public property. This allowed the Association to continue self-regulation, albeit under closer scrutiny.

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The Need to Regulate:

The Dynamics of Self-Regulation in the Ontario Insurance Industry

Between 1887 and 1917, the fire insurance industry in Ontario was dominated by a strong self-regulatory combine, the Canadian Fire Underwriters' Association (CFUA), which exercised control over price, entry conditions, and the conduct of its membership. Through its strict internal discipline and broad membership, the CFUA brought stability and profitability to an otherwise unstable and cut-throat industry.1

The unique legal and economic characteristics of fire insurance, and the organization of the industry in an unregulated state, encouraged volatile price fluctuations, and thus hazardous business conditions for both the consumer and the insurance companies. In response, insurance companies sought self-regulation to regulate the uncertainty in the industry. The success of the Underwriters rested with their ability to maintain competition within the realm of managerial decision-making, while at the same time enforcing a collaboration of competitors to conform to established and agreed upon regulations for the benefit of its membership. Although the Underwriters never desired or achieved monopoly status, their success extended beyond their membership to shape and define the industry as a whole. By 1917, the Underwriters were exercising quasi-public power, controlling industry prices and defining entrance requirements under the guise of private enterprise.

Relations between the insurance industry and the state prior to 1917 were limited in both its scope and its ultimate goals, adopting investigation and publicity regulation functions without interfering in the more important managerial prerogatives of the insurance companies. Given both the absence of clear constitutional jurisdictional authority and the bureaucracy's limited resources, the

Underwriters' control became entrenched and recognized by the public and both industry and government officials as the de facto regulator of the industry.

This relationship between the insurance industry and the Ontario government was redefined between 1917 and 1923 as a result of an Ontario Insurance Commission which investigated the role of the CFUA and the availability of fire insurance in Ontario, and recommended a new role for government in the regulatory process. Acknowledging the central and defining role played by the Underwriters in maintaining stability and price control, as well as the abuses that accompanied such authority, the Commissioner's concerns were not with simple concentration of economic power, but with accountability. He thus did not propose restrictions on the distribution or implementation of schedule rates; nor did he propose to limit the exercise of self-regulatory rules and internal discipline. He thought the Underwriters had been successful in their efforts to stabilize the industry and insurance rates, especially since government bureaucracy lacked both the finances and expert personnel resources to fulfill the same function. Consequently, the Commissioner blamed excessive rates and unprofessional practices on insurance agents and their commissions, elements which he viewed as unnecessary and piratical. The primary rules, which were the cornerstone of the Underwriters' authority, remained intact. The Commissioner advocated a new accountability - to the public and to the Ontario Superintendent of Insurance - through increased disclosure and reporting mechanisms. Rather than restricting the activities of the Underwriters, the Commissioner contended that competition was a more effective regulator than the extension of paternal regulation and encouraged the provincial government to broaden the market of competitors and allow unlicensed and reciprocal insurers to operate under different requirements. He further maintained that the key to controlling insurance premium costs rested with controlling insurance agents' commissions, not controlling the Underwriters.

In implementing the recommendations of the Ontario Insurance Commission, the United Farmers of Ontario government viewed the central purpose of the new regulatory impetus as reducing the costs of insurance to the consumer. However, because the issue of fire insurance had never aroused broad public concern or interest, beyond the Canadian Manufacturers' Association and large municipality representatives, the process of determining a new regulatory role would be left to the bureaucracy, which had little intention of interfering with rate-making or managerial decision-making. Because of the complexity of the fire insurance industry, in particular rate-making and the relationship between insurance agents and companies, the Underwriters' assistance was sought by government officials, and was an integral part of the regulatory process, but only for the expressed purpose of fulfilling the government's agenda.

Under the Conservative government in 1923, the goals of insurance regulation changed from reducing the cost of insurance to promoting broad provincial jurisdictional authority over "property and civil rights". Because of the jurisdictional disputes between the federal and provincial governments, the Ferguson government sought constitutional authority to regulate federally registered companies operating in Ontario. This was not welcomed by the Underwriters, who preferred federal regulation, if regulation was necessary, to provincial control, which they considered unpredictable and parochial.

During a period characterized by increased government regulation in community property, the new regulatory relationship between the CFUA and the government did not dilute either the authority or the effectiveness of the Underwriters. The complexity of the insurance business, combined with the lack of public interest, deterred provincial authorities from regulating rates - which was the crux of the Underwriters' authority - and supervising the industry's complex mechanisms. The rationale for government's new role was political as well as

economic. Further, the existence of a strong self-regulatory tradition, combined with the unique nature and function of the fire insurance business, influenced the regulation debate and the appropriate role of government regulation. The CFUA's financial and organizational strength characterized the success of their self-regulatory efforts and ensured that they would play an important role in the redefinition of business-state relations. The Underwriters had convinced the Insurance Commissioner that, although they were exercising quasi-public powers, they were doing so, successfully, in the public interest. They asserted that the internal constraints of regulating competitors within the CFUA was sufficient to control abuses of power. Their importance and authority, however, was not without limits. The government's agenda clearly defined the goals of the regulatory process and created the arena for political and economic activity. The Underwriters at no time advocated increased government intervention. They actively participated in the regulatory process, not to create favorable regulation, but to ensure that any inevitable regulation was not incompatible with the operation of their enterprise. The resulting revision of the Ontario Insurance Act, which did not include rate controls or managerial regulation, provided the model for uniform insurance regulation adopted in all provinces by 1935.

The relationship between business and the state, through direct or indirect promotion, protection and regulation, has been a recurring theme in Canadian history.2 Resource-based industries, railroads and public utilities have provided historical examples of the regulation of public and private enterprise. In an effort to understand why and how the state's role has changed, Canadian historians have drawn on literature from American history, political science, and economics to examine the conditions under which regulation was initiated and the forces which advocated and opposed increased government regulation.3 In particular, the role of

industry involvement in the regulatory process raises questions about the ultimate goals of regulation and its effectiveness. The capture thesis, proposed by American historians such as Gabriel Kolko and Robert Wiebe, asserted that industry representatives actively sought the protection of the state to achieve economic benefits not available in an unregulated free market. Kolko's analysis of the Progressive era argued that businessmen solicited federal regulation to operate in their interest, to ensure stability and security in the marketplace.4 Wiebe asserted that businessmen used the expertise and prestige demonstrated during the war to utilize the institutions of the state as a means of self-regulation.5 Economist George Stigler even more explicitly acknowledged that the institutions of the state acted in the interests of business, at their request, and this access to state machinery was given in exchange for political support.6

Canadian historians have emphasized similar themes. H. V. Nelles, in his analysis of Ontario's resource industries, argued that business actively sought co-operation with the provincial government to produce a mutually beneficial relationship.

> The province received substantial revenue from the development process and enjoyed the appearance of control over it, while industrialists used the government - as had the nineteenth century commercial classes before - to provide key services at public expense, promote and protect vested interests, and confer the status of law upon private decisions.7

The Crown landlord made few demands upon business and, at the same time, exercised paternalistic promotion of its interests.

Paul Craven offered a structural explanation of the way in which capitalism constrained the state.8 He concluded that the state provided the battleground in which industrialists, workers and farmers engaged in a process of conflict and accommodation. The mediation of these interests, however, was bound by the imperatives of capital accumulation. The role of the state was to contain class conflict without impairing the operation of the market. As such, Canadian

industrial policy circumscribed particularistic disputes without jeopardizing managerial authority.

Tom Traves in his assessment of the critical post-war period employs the same framework. He interpreted the development of post-war regulation as a part of the process in which the state responded to demands of big business for regulation.9 He concluded that such regulation failed because other interest groups had sufficient importance to prevent the state from responding as businessmen wished. Traves viewed the entire regulatory process only from the perspective of the state in its attempt to mediate disputes. In each of these studies, the process of regulation outside the realm of the state, and its relationship to the changing nature of state power is completely ignored.10

More recent work has tried to trancend these limitations. Christopher Armstrong and H. V. Nelles, in their important analysis of public utilities regulation in Canada, examined the impact of community property and growth of natural monopoly in the regulatory debate. They argued that the unique characteristics of community property, or public ownership, required a distinct form of regulation to ensure accountability and legitimacy to all owners and users of the property.11 The infusion of new, expensive technology created large and powerful utilities monopolies which exploited community property and created disequilibrium in what Nelles and Armstrong term "the markets of the mind", the balance between an exchange economy and a moral economy.12 The objective of regulation was to reconcile the interests of the civic populists, consumers, industrialists and the state within the political arena to re-establish an equilibrium. The results of regulation included direct federal and provincial regulation, depending on constitutional jurisdiction, and in some cases public ownership, or state-owned utilities. Monopolists did not seek the protection of government, but rather attempted to exercise their influence to determine the regulatory tools adopted. This influence,

however, was not unlimited. The relative strengths of each of the contending interest groups determined the form of regulation adopted.

In his study of the regulation of private property, Mark Cox contends that conditions for regulating community property differed from those for regulating private property.13 Although efforts for increased government regulation were attempted between 1919 and 1939, the traditional functions of investigation and publicity, or promotional regulation, were reconstituted rather than replaced. Regulation which usurped managerial decision-making required the support of the capitalists who would be supervised, which was most often not forthcoming. In order to achieve consensus between state managers, businessmen, and the public, who would ultimately pay for additional regulation, regulation which interfered with managerial decision-making was often diluted to deprive the proposed instruments of much of the intended power.

Neither of these models pertains fully to the CFUA's situation, since while it acted as a private association, it also exercised quasi-public power. It thus straddled the ground between private and public policy. Since in the absence of a broad public concern, neither Ontario government was willing to redefine fire insurance as community property and interfere with insurance rate making, they would ultimately return to the traditional forms of government supervision to control the industry. Although they would achieve constitutional jurisdiction to extend their regulatory influence, they would not choose to exercise it until much later.

The CFUA's role during both the creation and administration of the regulation was essentially reactive and defensive. The impetus for government regulation of the fire insurance industry was not initiated by the CFUA. The initial request for an investigation came not from the industry, nor even from its unhappy customers, but from Sir Adam Beck, for reasons that contemporaries speculated were based on his own private political agenda. Nor did the CFUA attempt to

capture the regulatory process once it was created. Although the Underwriters actively and willingly participated in the regulatory process, they did so only at the request of the provincial government and within the constraints defined by them in an effort to ensure that new regulations would not unduly interfere in the conduct of their business. Further, the complexity and expense of regulating rates and insurance practices resulted in regulations which left the Underwriters, as a combine, unchanged.

In order to understand the relationship between business and the state, it is important to understand the dimensions of private authority and its uses. The debate over regulation in Canadian historiography has focussed almost exclusively on direct regulation by the state, as opposed to internally derived regulation or delegated regulatory authority, such as the securities and medical industries. Manufacturing producers, staples industries and the transportation infrastructure have been the primary subjects of inquiry, as each was an important economic agent affected, directly or indirectly, by state regulation. Self-regulation, however, constituted an important aspect of economic regulation. Self-regulatory organizations operated outside the realm of direct government supervision, exercising control over entry requirements, penalizing infractions and operating under an internal code of conduct. They provided a forum to stabilize the marketplace when government was unable or unwilling to do so.14

In his study of the Chicago Board of Trade, Jonathan Lurie contended that the structure of industry or institutions shaped the regulatory process applied to it. In particular, he observed that self-regulation preceded government intervention in many industries, and that this form of commercial control required study. Acknowledging that the interplay between state and business interests warranted analysis, he contended that:

> there is the field of non-public administrative action undertaken by private groups (voluntary associations) that wield considerable power in the name of public policy".15

Though private in composition, these organizations exercised unofficial regulation that extended considerable formal and informal disciplinary powers over its membership, and often over the industry as a whole. The primary purpose of these voluntary associations was to rationalize the marketplace through efficient and effective regulation and to reconcile the inherent tension between private economic activity and an ordered market. Because the nineteenth century political and administrative framework was unable to guide economic and industrial modernization effectively, American legal institutions permitted some of these agencies to provide order to an otherwise disorderly market. In the Canadian context, however, legal institutions provided no such forum for the legitimization of authority. Armstrong and Nelles point out that:

> the legal tradition forces business ... into the legislatures to seek political solutions to their problems. The great documents in Canadian regulatory history are not judicial - except in regard to jurisdiction - but rather in statutes.16

It is therefore important to understand how the relationships between private regulatory agents and their exercise of public policy were exercised and legitimated.

The experience of the Chicago Board of Trade in many ways mirrored that of the CFUA. The Chicago Board of Trade, a self-regulatory agency for the Chicago commodities market, maintained its autonomy from state regulation through a combination of expertise, authority and its ability, "to maintain and nurture a reasonable competition that seemed to many progressives a thing of the past."17 The Board received legal sanction by the United States Supreme Court in 1905 to regulate the commodities market, on the grounds that it possessed the required expertise and professional standards that would have been enforced through government supervision.18 The impact of World War I dramatically affected the

operation of the Board as increased demands for grain were met by increased acreage yields, with the Food Administration Grain Corporation controlling the domestic grain markets. In 1920, price guarantees previously provided by the government ended and commodity exchanges resumed control of the industry, leading to dramatic reduction in the price of grain and dissatisfaction among farmers. This unrest led the Harding Administration to place the Chicago Board of Trade and the futures grain trade under federal supervision. The Board of Trade attempted to address the demands for change by adjusting internal rules and procedures, at no point advocating government regulation of futures trading. Once concrete efforts were initiated to provide public supervision, the Board sought cooperation with federal authorities to ensure a system of regulation within which it could operate. Lurie maintained that the Board was not seeking to capture the institutions of the state, arguing instead that, "there is a very real difference ... between calling for federal regulation and grudgingly accepting it as inevitable."19 State regulation replaced private supervision with government and the courts mediating the interplay of interest groups.

The degree of expertise and technical complexity of the fire insurance industry influenced the form of regulation and the degree to which interest groups could participate in the regulation process. The relative strength of contending groups influenced the urgency for government regulation, but the issue lacked broad public appeal. During investigations of the CFUA in 1887 and 1917, consumer groups were not present, nor were petitions submitted on their behalf. At the same time, the fire insurance business, in particular rate-making and business practices, required specialized knowledge and experience that went beyond lay knowledge. The most contentious issue between the fire insurance industry and the government was over the role of the agent and agent's commissions - the relationship which is

least complex and represents the most concrete connection between the insured and the insurer.

According to Kenneth Meier, in his study of the regulatory process, the greater the salience, or broad public appeal, the less effective industry will be in determining regulatory initiative and the more successful will be the consumer groups and political elites which address these issues within the broader public arena.20 The greater the complexity of the issue, the greater the possibility for industry, and to some extent, bureaucrats, to determine the direction of regulation. This situation characterized the fire insurance industry.

The fire insurance industry's function also illuminates our knowledge of the service sector, which although it provided the administrative and financial support for Canadian industry, and participated as "an important part of expansion and structural change in employment and investment", has largely been absent from the historical literature.21 The fire insurance industry provided a necessary protection and credit requirement. Although fire insurance neither created capital nor restored that which fire destroyed, it was considered to be of such commercial importance, "that it ranks with banking, railway express and telegraph services".22 It was important because it generated a distribution of losses through the mutual pooling of resources. In spite of its importance, there is a paucity of literature on the subject.

Scholars interested in the fire insurance industry have generally concentrated on company histories, mostly successful American and British firms.23 British firms were the largest and most profitable insurance companies, using far-reaching branch networks to saturate their domestic British market and expand their offices throughout North and South America. Many of these corporate biographies, some commissioned, offer little more than a chronicle of the "high character of the

officers and Directors who have managed its affairs ... and the loyalty and devotion of its agents" in the pursuit of public service.24 They suffer from many of the serious pitfalls of biography and provide at best a chronology of the company's history. These histories tend to lack a methodological framework, a systematic use of primary sources or an effort to relate findings to the broader economic or political environment. The study of insurance as business history has been attempted more rigorously and systematically by British historians, as important business archives have been constructed and more complete documentation has become available.25 The analysis of corporate growth and decision-making within the context of a broader insurance community of investors characterize these studies. Continuing to use the firm as the relevant unit of analysis and utilizing company records, these historians assessed fire insurance as a profit making venture, addressing themes of investment patterns, capital formation, combination and regulation within the industry, international expansion into foreign markets and the administrative revolution within the organization to accommodate corporate growth.26 The analysis of dominant British firms emphasized the importance of longevity, reputation and profitability which characterized the British industry and influenced changing economic conditions. urban development, investor preferences and internal decision-making.27

In the American context, Roger Grant, in his study of insurance regulation during the Progressive era, identified the catalysts for change in the American insurance industry. He contended that the regulation of life and fire insurance was the product of consumer resistance, arising from industry abuses, and the efforts of sympathetic Insurance Commissioners, who wished to implement regulations through state government supervision.28 This analysis offered a clear understanding of industry practices and problems and the gamut of regulatory options considered during state investigations into abuses in the insurance industry.

However, the broad consumer unrest which he maintained characterized the American situation was not significant in Ontario.

Aside from Douglas McCalla's essay on the early Ontario insurance market, Canadian historiography has not included company or industry wide studies of the insurance industry.29 Fire insurance has been addressed as an adjunct of urban history and through traditional institutional biographies. The fire itself has served as a useful, but limiting, unit of analysis. Armstrong's discussion of the Toronto conflagration of 1849 examines the fire hazards which contributed to the fire, the resulting damage and the city's response. Fire insurance is discussed only as a cause and consequence of the fire itself.30 John Weaver and Peter de Lottinville offer the most synthetic analysis of conflagration and its effect on city initiatives for planning, fire protection and urban reform.31 They stress the importance of the fire insurance industry as a significant force imposing local civic reforms including professional fire departments, building codes and waterworks and urban planning. Darrell Norris, in his study of rural fire conditions, deals specifically with fire insurance. He blames insurance companies for contributing to rural depopulation from small urban and rural centres to Ontario's cities.32 Insurance companies did refuse to accept farm risks because of high losses, as the hearings of the Ontario Insurance Commission in 1917 make clear. This particular situation highlighted the limitation of government regulation of insurance companies. As long as the government could not force insurance companies to accept risks which they deemed undesirable, the government in turn would face public pressure to offer insurance for those risks through state insurance. This was an unacceptable proposition for the government.

The CFUA has been the subject of two studies.33 Written as narrative biography, both emphasized internal development and individual contributions to the success and longevity of the Association. The Association's history is

painstakingly chronicled, at the expense of systematic analysis. Both are uncritical of the assumptions underlying industrial combination and the policies adopted by the CFUA to maintain control within the industry. These studies tended to overemphasize the positive impact of fixed tariff rates, without fully examining the industry implications of rate control.

The CFUA was not original in its organization or its function. Rating boards and underwriters associations were a characteristic of the industry rather than an aberration in the Canadian insurance market. The Fire Offices' Committee (FOC), which continues to operate in Britain, has been carefully studied by Oliver Westall, who thoroughly examined the functions and structure of the Association.34 Like the CFUA in Ontario, the FOC stabilized the fire insurance industry without achieving monopoly control. The National Board of Underwriters (NBFU), the American counterpart, had greater difficulties and was defunct as a rate-setting body by 1915.35 The NBFU attempted to regulate the American fire insurance industry. However, because of the diverse local insurance conditions and dispersion of its members throughout individual states, the National Underwriters were unable to enforce internal discipline and hence ensure the adherence to insurance rates. When the Supreme Court ruled that state governments had the constitutional authority to regulate the insurance industry, and not the federal government, the NBFU lost its constituency and adopted an advisory function. As Lurie suggested, the inherent structure of the industry and its operating conditions in each country shaped the function of self-regulation.

The CFUA's different context gave it rather more success. Their success in stabilizing an inherently unstable industry demonstrated the effectiveness of the self-regulatory tools they adopted. And without broad public concern to support a redefinition of government's role in regulating the industry, the provincial government's regulations reconstituted the older limited control instead of

restricting the Underwriters' exercise of self-regulation. For political as well as economic reasons, the provincial government refused to engage in control over rates, which even they recognized were the crux of the Underwriters' authority. Thus unlike the utilities, the fire insurance industry emerged from its regulatory experience, not only with its status as private property intact, but with its self-regulatory capacity essentially undiminished.

The Ontario fire insurance industry amply illustrates this process. The CFUA, whose jurisdiction included Ontario, represented the strongest and most effective Underwriters' Association in Canada. Although the CFUA also regulated the Quebec insurance market, or more accurately the Montreal market, the Ontario Committee operated independently from the Quebec Committee. The Ontario Insurance Commission in 1916-18 mirrored similar inquiries into the fire insurance industry in both Canada and the United States, with the resulting recommendations drawing upon these earlier investigations. The growth of the insurance industry during the late nineteenth and early twentieth centuries, in general, was substantially larger in Ontario than in other provinces and the legislation ultimately introduced in 1923 provided the model for standard legislation in other provinces. As well, Ontario led the campaign for provincial jurisdiction to regulate the insurance industry. The important and defining roles played by both the CFUA and the Ontario government in the insurance industry warrant examination.

Chapter 2 will examine the unique characteristics of the insurance industry, the role of state regulation, the regulatory tools adopted by the CFUA to stabilize the fire insurance industry, and the extent to which the Underwriters exercised industry control. I will also examine the conditions for effective self-regulation, the nature of competition, and some of the difficulties encountered in implementing

self-regulation. I will establish that the Underwriters exercised oligopolistic power which extended beyond its membership to shape the industry itself. Chapter 3 will focus on the impetus for an investigation into the conduct of the CFUA and the insurance industry, the interaction of interest groups, the role of public interest and the proceedings of the Ontario Insurance Commission. The role of the Underwriters during the commission will be explicitly addressed, as well as their response to allegations raised during the commission. The recommendations arising from the commission established the foundations for future legislation. The Commissioner's perspective and response to comparable legislation was important in his final deliberations and will be examined. Chapter 4 will address the regulatory process undertaken by the Ontario government, its changing motivations, the Underwriters' participation in the process and the resulting legislation.

CHAPTER 1 ENDNOTES

1. The Canadian Fire Underwriters' Association will be referred to as the "CFUA", the "Underwriters", the "Association", and the "Board" interchangeably throughout this thesis, in keeping with contemporary references. Its members will be referred to as the "board companies" or "tariff companies".

2. For a useful discussion of the literature see Glenn Porter, "Recent Trends in Canadian Business and Economic History", Business History Review, Volume XLVII, No. 2 (Summer 1973); Michael Bliss, Northern Enterprise: Five Centuries of Canadian Business, (Toronto: McClelland and Stewart, 1987); Harold Innis, The Fur Trade in Canada: An Introduction to Canadian Economic History, (Toronto: University of Toronto Press, 1930; The Cod Fisheries: The History of an International Economy, (Toronto: University of Toronto Press, 1940); Donald Creighton, The Empire of the St. Lawrence, (Toronto: University of Toronto Press, 1970); Hugh G. J. Aitken, "Defensive Expansion: The State and Economic Growth in Canada", in W. T. Easterbrooke and M. H. Watkins, eds. Approaches to Canadian Economic History, (Toronto: University of Toronto Press, 1967) pp. 183-221.

3. For an overall discussion of this field, see Thomas McCraw, "Regulation in America: A Review Article", Business History Review, Volume XLIX, No. 2 (Summer 1975), pp. 159-183.

4. Gabriel Kolko, The Triumph of Conservatism, (New York: The Free Press, 1963).

5. Robert H. Wiebe, Businessmen and Reform, (Cambridge: Harvard University Press, 1962), p. 4-5.

6. George J, Stigler, "The Theory of Economic Regulation", Bell Journal of Economics and Management Science, Volume 2, Spring 1971, pp. 3-21.
This line of argument generated contemporary interpretations concerning the inherent value of regulation in general. Conservative critics of regulation point to the ineffectiveness and undesirability of a system of regulation which ultimately operates in the interests of business. Marxian critics of the capitalist system point to the necessity of regulation, as business cannot be trusted to operate in the public interest but they also identify the inability to establish regulatory agencies which can do this because of the inherent constraints of capitalism which must be addressed.

7. H. V. Nelles, The Politics of Development: Forests, Mines and Hydro-Electric Power in Ontario, 1849-1941, (Toronto: Macmillan of Canada, 1974), p. ix.

8. Paul Craven, "An Impartial Umpire": Industrial Relations and the Canadian State, 1900-1911, (Toronto: University of Toronto Press, 1980).

9. Tom Traves, The State and Enterprise: Canadian Manufacturers and the Federal Government, 1917-1931, (Toronto: University of Toronto Press, 1979).

10. Traves attempts an analysis of the Canadian Reconstruction Association as a sectorial lobby group as opposed to a regulatory agency. See Traves, The State and Enterprise, Chapter 2.

11. Christopher Armstrong and H. V. Nelles, Monopoly's Moment: The Organization and Regulation of Canadian Utilities, 1830-1930, (Philadelphia: Temple University Press, 1986).

12. Nelles and Armstrong, Monopoly's Moment, 322-3. The markets of the mind consisted of acceptable norms of fairness in the transactions of the marketplace and politics. The assumptions of the exchange economy and the moral economy built on the principles of equity, legitimacy and ethics.

13. Mark Cox, "The Transformation of Regulation: Private Enterprise and the Problem of Government Control in Canada, 1919-1939", unpublished PhD Thesis, York University, 1990.

14. Different forms of government regulation included promotional and managerial intervention. Promotional regulation consisted of direct or indirect financial aid which required few, if any, obligations that would infringe on the operation of business. Subsidies, bonuses, bounties, and the protective tariff were both desirable and acceptable as they provided assistance to business without interfering in the exclusive preserves of management. Managerial spheres of intervention infringed upon the tradition prerogatives of business, such as setting prices, wages, working conditions and production levels. See Mark Cox, "The Limits of Reform: Industrial Regulation and Management Rights in Ontario, 1930-7", in The Canadian Historical Review, Volume No. 4, December 1987, p. 552-575. For the purposes of this thesis, promotional regulation will be widely interpreted to include competition policy, other than tariffs and subsidies, which influence the business environment without infringing on managerial decision-making. Promotional regulation could allow government to achieve its regulatory goals without interfering in the traditional prerogatives of management by limiting or promoting competition.

15. Jonathan Lurie, The Chicago Board of Trade, 1859-1905: The Dynamics of Self-Regulation, (Chicago: University of Illinois Press, 1979), p. 3.

16. Armstrong and Nelles, Monopoly's Moment, p. 322.

17. Jonathan Lurie, The Chicago Board of Trade, p. 3-19.

18. *Board of Trade v. Christie*, 198 U.S. 236 (1905); Lurie, Chicago Board of Trade, p. 193-94.

19. Ibid., p. 211.

20. Kenneth J. Meier, The Political Economy of Regulation: The Case of Insurance, (Albany: State University of New York, 1988), p. 30-32.

21. Douglas McCalla, "Fire and Marine Insurance in Upper Canada: The Establishment of a Service Industry, 1832-68", in Peter Baskerville, ed., Canadian Papers in Business History, (Victoria: Public History Group), Volume I, December 1987, p. 130.

22. Report of the Ontario Insurance Commission, Commissioner Justice C. A. Masten, Sessional Paper #53, 1919, Special report from E. P. Heaton, Fire Marshall, Ontario.

23. Barry Supple, "Insurance in British History", O. M. Westall, ed., The Historian and the Business of Insurance, (London: Manchester University Press, 1984), p. 3.

24. These studies include Hawthorne Daniel, The Hartford of Hartford: An Insurance Company's Part in a Century and a Half of American History, (New York: Random House, 1960); Marquis James, Biography of a Business, 1792-1942: Insurance Company of North America, (New York: The Bobbs-Merrill Company, 1942); Henry R, Gall, Being a History of the Aetna Insurance Company, Hartford Connecticut, 1819-1919, (Connecticut: Aetna Insurance Company, 1919); Bernard Drew, The Fire Office: Being a History of the Essex and Suffolk Equitable Insurance Society Limited, 1980-1952, (London: Curwen Press, 1952). Quotation from Gall and Jordan, One Hundred Years if Fire Insurance, p. 3.

25. For an analysis of possible uses and availability of fire insurance documentation see H. A. L. Cockerell and Edwin Green, The British Insurance Business, 1547-1970: An Introduction and Guide to Historical Records in the United Kingdom, (London: Heinemann Educational Books, 1976), especially Chapters 2 and 5 and Part 2. For a short bibliographical analysis and introduction to sources see D. T. Jenkins, "The Practice of Insurance Against Fire, 1750-1840, and Historical Research", in O. M. Westall, ed., The Historian and the Business of Insurance, (United Kingdom,: Manchester University Press, 1984), p. 9-37.

26. The most important studies to initiate this approach were Barry Supple, The Royal Exchange: A History of British Insurance, 1720-1970, (Cambridge: Cambridge University Press, 1970), and P. G. M. Dickson, The Sun Office, 1710-1960: The History of Two and a Half Centuries of British Insurance, (London: Oxford University Press, 1960). See also, Roger Ryan, "The Norwich Union and the British Insurance Market in the Early Nineteenth Century", in O. M. Westall, ed., The Historian and the Business of Insurance, (United Kingdom: Manchester University Press, 1984), pp. 39-73, which examines Norwich Union's diversification into alternate forms of insurance when the Norwich worsted industry declined.

27. These studies focus on the British insurance market and its extension into North America and South America to meet growing insurance needs in new markets. Another study which has drawn on these influences is Harold E. Raynes, A History of British Insurance, (London: Sir Isaac Pitman and Sons Ltd., 1984); G. Clayton, British Insurance, (United Kingdom: Elek, 1971). Both of these studies focus on the history and structure of the industry rather than an individual company.

28. Roger Grant, Insurance Reform: Consumer Action in the Progressive Era, (Ames: Iowa State University Press, 1979).

29. McCalla, "Fire and Marine Insurance", p. 129-152. The fire insurance business is discussed within the context of an expanding staples market.

30. See F. H. Armstrong, "The First Great Fire of Toronto, 1849", Ontario History, 53 (1961), p. 202-221; "The Rebuilding of Toronto After the Great Fire of 1849", Ontario History, 70 (1978), p. 3-38; John Fear, "Ottawa's Lumber Interests and the Great Fire of 1900, Urban History Review, Volume III (June 1979), pp. 38-65.

31. John C. Weaver and Peter de Lottinville, "The Conflagration and the City: Disaster and Progress in British North America during the Nineteenth Century", Histoire Sociale/Social History, Volume XIII, NO. 26, pp. 417-449. The term conflagration refers to a sudden widespread outbreak of fire that destroys considerable property within a relatively short period of time.

32. Darrell A. Norris, "Flightless Phoenix: Fire Risk and Fire Insurance in Urban Canada, 1882-1886", Urban History Review/Revue d'histoire urbaine, Volume XVI, No., 1, June 1987, pp. 62-68.

33. E. O. Ryan, "The History of the First Seventy-Five Years", was a pamphlet commissioned by the then Canadian Underwriters' Association, 1959. Christopher L. Hives, The Underwriters: The Insurers' Advisory Organization and Its Predecessors, 1883-1983, (Toronto: Phelps Publishing Company, 1985). The Hives project offers relatively no new information for the 1883-1950 period and bears an exceptionally close resemblance to the Ryan study.

34. Oliver M. Westall, "David and Goliath: The Fire Offices Committee and Non-Tariff Competition, 1898-1907", in O. M. Westall, ed., The Historian and the Business of Insurance, (United Kingdom: Manchester Press, 1984), pp. 130-151. For the purposes of this study, this is a particularly important article, as it identifies the characteristics of the Board for comparative purposes since all Tariff organizations adopted similar rules and regulations.

35. Harry Chase Brearley, Fifty Years of a Civilizing Force: An Historical and a Critical Study of the Work of the National Board of Fire Underwriters, (New York: Frederick A, Stokes Company 1916).

Chapter 2

The Canadian Fire Underwriters' Association: Competition and Collaboration

From 1883-1919, the Ontario fire insurance industry was dominated by the CFUA. The nature and function of the fire insurance industry defined the regulatory tools initially adopted by the insurance companies to provide stability and profitability. This self-regulatory body's primary objectives were the reconciliation of market tensions stemming from increased economic growth and expansion in a growing urban environment. Publicly, insurance representatives insisted that reducing fire waste and promoting fire prevention, rather than simply maintaining desirable rates, was the association's central task. This however was not the case. As a company manager testifying before one investigation conceded, the function of fire insurance was not to prevent fires.

> Were there no fires, there would be no insurance business; and on the other hand, the greater the fire damage, the greater the turn-over out of which insurance companies make profit. Speaking as manager of a company, I say, we cannot make profits for our shareholders without fires, and further, that within certain limits we welcome fires.1

The CFUA thus perceived its primary role as the creation of a stable marketplace best suited to profit maximization. It introduced schedule rating which required strict adherence from its members and eventually became the industry standard. Inspections and certifications were initiated to ensure that building structures and fire protection were reflected in schedule rates. It negotiated exclusive distribution rights for Goad's fire maps, the sole issuers of fire maps in Ontario, which provided the necessary contextual information to determine adequate insurance rates. It also designed uniform contracts to ensure standard policy provisions and adherence to the rating scheme. Procedures for verifying each contract accepted by CFUA members were created to enforce rates and contract

provisions in response to non-observance of the rules. Dispute settlement mechanisms and infractions punishments were imposed to ensure that the friendly competitors of the fire insurance industry operated under the same guidelines.

Neither the CFUA's self-regulatory structure nor its restrictive ordinances were uncommon, as similar trade associations existed in Britain and the United States.2 But the risks inherent in the fire insurance industry made self-regulation a particularly characteristic response, to limit liability posed by undiversified risks in concentrated urban settings.

Despite the inducements to self-regulation and the consequent authority exercised by the CFUA, the Underwriters were limited by the social, economic and political environment in which they operated. As competition within the fire insurance business expanded during the early twentieth century, so too did the role of the state. Early regulatory efforts emphasized promotion and investigation, including licensing provisions and the creation of broad conditions for capital accumulation.3 The regulatory tools adopted by both the federal and provincial governments emphasized maintaining solvency and consumer protection, rather than the control of managerial prerogatives such as rate-setting. Although the Underwriters had no control over external factors, the Board attempted to be an active agent in the regulatory process, to define and exercise expertise and standards within existing parameters. The economic and political environment provided the "theatre" for self-regulatory tools which would characterize the industry until the 1920s.

The British insurance agency system was introduced as early as 1832 when the British America Fire and Life Assurance Company was incorporated, just fifteen years before the first life insurance enterprise.4 The early insurance market was dominated by the large British joint stock companies expanding into new colonial

markets.5 The growing population and economy of North America during the nineteenth century encouraged the early introduction of fire insurance to accompany the development of the industrial and financial infrastructure.

Despite the early introduction of fire insurance, the British North America Act provided no clear jurisdiction for the conduct of fire insurance, as the overall size of the business did not warrant specific mention.6 The absence of a clear legislative jurisdiction concerning the regulation of insurance provided a bone of contention between provincial and federal governments. The question of jurisdiction was paramount when the Dominion government, under the auspices of its authority to regulate "trade and commerce", introduced the Insurance Act of 1868.7 This legislation required compulsory licensing of all insurance companies engaged in Dominion-wide business, and deposit requirements for foreign insurance companies operating in Canada and for domestic insurance companies engaging in inter-provincial insurance.8 Companies were also required to file financial reports with the Dominion government to allow public scrutiny.9 These provisions were intended to protect the consumer in the event that insurance companies were unable to meet their Canadian liabilities. In 1875, the Office of the Dominion Superintendent of Insurance was created to ensure compliance with the federal requirements and to withdraw licenses from companies in danger of insolvency. The insurance community initially had reservations about the Office's establishment, but these fears soon gave way to indifference when jurisdictional squabbles prevented rigorous exercise of its administrative authority. In 1910, the Chronicle stated:

> The position of Fire Commissioner always was regarded as something of a joke; otherwise our old friend, Fred Perry, whose principal claim to distinction was that he was suspected of setting fire to the Parliament buildings, would never have been appointed Fire Commissioner.10

When similar deposit requirements had been introduced to the life insurance industry in 1868, the majority of British and American companies withdrew from the Canadian life insurance market because they considered the deposit level too high and resented legislative supervision of premium income investment practices, consisting predominantly of long-term securities holdings.11 The result of this exodus was the creation of a strong indigenous Canadian life insurance industry. The fire insurance industry's reaction was, however, much less volatile. The Insurance Act of 1868 simply extended provisions which were in effect before Confederation. These had been accepted by the industry as providing protection to both firms and the consumer because fire insurance investments were relatively liquid financial claims of short duration, reflecting the relatively short-term nature of the insurance contract and the unpredictable nature of fire losses.12 Because of this response, British and American fire insurance companies continued to play a determining role in the industry. These regulatory tools attempted to protect consumers from under-capitalized and unscrupulous insurers, but they did nothing to protect consumers from insurance companies which did not bother to seek licenses in the first place, which were common because of the Superintendent's limited administrative scope. The Dominion government's primary policy objective was to ensure solvency rather than broader forms of accountability.

Under its authority to regulate "property and civil rights" in the province and to incorporate companies with provincial objectives, the Ontario government introduced the Ontario Insurance Act in 1879 to govern the licensing of provincial companies and general insurance conditions throughout the province. The Office of the Provincial Superintendent of Insurance was also established to implement its regulations. An uneasy, and certainly informal, truce operated between the federal and provincial governments concerning the regulation of fire insurance; companies with national objectives were under the auspices of federal regulation and those

with provincial aims were governed by provincial regulation. In the landmark judicial decision in 1881, *Citizens Insurance Co. v. Parsons*, the Privy Council confirmed Ontario's jurisdictional authority to regulate the contractual provisions of the fire insurance industry including those companies operating with federal licenses.13 As a result, the Ontario government introduced statutory conditions governing insurance policy requirements. Thus, the industry's growth was complemented by increasing controversy over jurisdiction.

The underwriting experience in Canada during the late nineteenth and early twentieth centuries was characterized by significant fire loss.14 During his study of fire waste in Canada, J. Grove Smith, Chairman of the federal Commission of Conservation, concluded that the Canadian fire loss record was disproportionately high relative to Europe's.15 He attributed this fire waste primarily to the rapid growth of expanding and new congested urban areas and the extreme climatic conditions in Canada. Unlike in Europe, where the high costs of lumber led to stone construction, which helped prevent serious conflagration losses, the main construction material in Canada was wood, which was comparatively more flammable. Moreover, as the demand for new buildings was urgent, development often took place with little definite planning and foresight.

> There has been no guarantee of permanence and no means of anticipating future developments. Consequently it has been to the economic interest of the individual to build cheaply and temporarily, to burn if necessary, and build again.16

Increasingly, fire loss in Canada was characterized by losses involving adjoining properties which led municipal leaders to examine fire protection and building requirements.17

The rise of civic populism and urban reform between 1890 and 1920 led to new regulatory efforts to improve health and fire conditions in Ontario's towns and

cities.18 But they were sporadic and not that effective. While municipal building legislation was gradually introduced to adjust to the changing urban environment, compulsory systematic codes were not introduced in many cities and towns until after 1915. Exposure fires caused by extreme heat and a lack of precipitation during the summer months were frequent. During the winter months, artificial heating and lighting systems caused fires and poor weather created obstacles for fire departments, as road conditions and frozen fire hydrants slowed efforts to extinguish fires. Furthermore, the increasing availability of fire insurance, according to Smith's investigation, created a false sense of security and promoted carelessness.19

The problems for the fire insurance companies created by the changing urban environment were compounded by structural instability inherent to the industry itself. The determination of sound rates became more difficult to ascertain at the time the contract was made because of volatile changes in urban centres. And ease of entry into the market created intense competitive pressures which exacerbated these contractual uncertainties.

The nature of the fire insurance contract differed from other contracts in both process and purpose. The purchase of insurance represents a sale of risk from the property owner, the insured, to the insurer. But unlike the sale of a manufactured product where price is determined through production and distribution costs and where the liability to the customer is usually relinquished at the point of sale, fire insurance represents a short-term indemnity to compensate the insured in the event of fire loss, the probability of which is unknown at the point of sale.20

Fire insurance companies provided the mechanism for, and the service of, pooling risks for the mutual protection of the insured.21 But as urbanization and industrialization developed, it became increasingly difficult to estimate the

projected costs and probability of fire loss. Unlike the life insurance industry, which had developed "scientifically" derived life annuity tables to determine the premium rates, fire insurance premiums could only be estimated based upon aggregate historical loss experience.22 Effective rating could not be based upon the historical loss experience of a single firm.

Fire insurance contracts were differentiated from other contracts as contracts of adhesion rather than contracts of bargain, where all parties freely entered into terms mutually negotiated.23 For the most part, clients purchasing fire insurance were free to accept the terms of the contract or go without coverage. This distinguishing characteristic ensured that the insurance companies, to some degree, exercised a greater control over the extent and cost of coverage. The premium rate embodied the price of acceptable risk and reflected the cost of shifting the risk from the insured to the insurer, in a way that would adequately compensate the insurer for assuming the liability and ensure that the insured could receive payment for losses incurred. Other costs embodied in the premium included administrative costs associated with the conduct of business, including processing fees, agent commissions (the costs of acquisition), and claim settlements to meet contractual obligations.24 As fire losses increased throughout the late nineteenth century, insurance rates increased as well.

The value of an insurance contract was inextricably linked to the solvency and stability of the insurer, at least in the short term. An industry trade journal lamented that: "perhaps no business is based so wholly on confidence, on the trust of the community, as that of insurance."25 To provide sufficient coverage, the contract had to be enforceable under the most adverse market conditions.26 This placed the large British and American firms at a distinct advantage. These foreign firms were generally organized as joint stock companies, with shareholders and professional managers operating offices in Ontario. British insurance companies

pursued a policy of amalgamation and expansion during the mid-nineteenth century, more aggressively than did American and Canadian firms.27 The organizational and financial resources available to these companies permitted them to weather periods of high losses and low premium income.28 As one industry journal confirmed:

> The large companies have them [the small companies] at a disadvantage at all points, in superiority of organization, in their ability to secure the most skillful (sic) underwriters, in proportionally lower expenses and in the magnitude of their resources and the scale of their operations enabling them safely to transact business of a character which would be fatal to a small company.29

The premium rate provided the focal point for industry competition and public scrutiny as new firms entered the insurance market throughout the late 1800s. The comparative ease with which companies of indifferent standing could be organized in, or enter, certain provinces, was a weakness in the Canadian insurance situation, particularly as the practice had evolved of provincially licensed companies doing extra-provincial business, in contradiction of the Dominion Insurance Act.30 Newly established companies tended to accept greater risk at lower rates in an effort to secure new business. They required only an office and a standard insurance contract to enter the business. Initial capital requirements were minimal, as no claims were immediately payable. Unlicensed, under-capitalized insurance companies, referred to as "cheap-jacks" or "fly-by-night" operations, provided insurance protection below actual cost and were often unable to meet their full obligations, paying only a percentage of the claim or nothing at all.31 By 1883, intense competition in the Ontario market resulted in rate reductions:

> with recklessness unequalled in any other class of business, and risks [had] been completed with a rapacity hitherto unknown, without regard to the moral or any other attendant hazard, until the whole business of fire underwriting [had] been completely demoralized.32

The prevalence and popularity of lower insurance rates required established firms to meet these competitive rates, often incurring losses covered by investment capital

reserves because of insufficient premium income in an effort to maintain their reputation.33

The industry-level problems were exacerbated by the general lack of professionalism that characterized the insurance agency system.34 Because the population centres were dispersed throughout southern Ontario, insurance companies appointed agents to represent their interests in each region, with a single agent often representing more than one company. The system of employing agents was adopted from the British system, in which an agent represented and bound the company, whereas a broker represented and bound the insured. No requirements for licensing agents existed other than those informally adopted by each company. In 1914, the Ontario government had introduced an annual licensing fee of $3.00, but with the intention of raising revenue rather than recognizing professional credentials.35 Formal training was neither required nor provided. Appointed agents were often local businessmen engaged in insurance as a profession of last resort, with insurance sales supplementing existing business pursuits such as real estate or investment sales. The Canadian Manufacturers Association (CMA) regretted:

> that, in many cases, the business of the insurance agent has come to be regarded as the last resort of the unfit, a haven of refuge for the business failure. If a man engaged in trading or manufacturing fails so badly as to prohibit his recommencing in the same line, he is too apt to consider that, with an agency for a couple of insurance companies, his friends will come to his assistance for the sole reason that it does not cost them anything to let him place their insurance.36

The relationship between the agent and the insured was, in practice, ambiguous, as the agent was a slave to two masters: the client and the company. His obligation to the client was to obtain adequate fire insurance coverage to protect his assets against fire loss. His obligation to the company was to obtain safe risks, and the companies valued the agent's knowledge of local conditions and the

moral hazard of potential clients above any technical expertise and knowledge of the principles of insurance.37 And his obligation to himself was to maximize his commission.38 Moreover, because commissions were based solely upon policy sales, careless inspection of risks, over-insurance and poorly investigated moral hazard contributed to rising costs and increased fire losses.39 Yet despite these problems, the agency system allowed the insurance companies to expand the pool of insurance risks across regions without incurring commensurate increases in administrative and acquisition costs or permitting a dangerous concentration of risks.40 The agents' role in the abuses associated with acquiring policies would, however, become fodder for serious reform in the future.

Competition among agents encouraged discriminatory practices, which were often openly endorsed by the companies.41 Rebating - the return of a percentage of the agents' commission to the insured after the sale of a policy - was the most common and accepted practice to lower rates for preferred customers. These "kick-backs" were usually limited to special risks and industrial properties because of the intense competition by agents to secure these policies and because of the higher insurance premiums, and hence higher commissions, associated with these risks. Rebates were, by their very nature, offered on a selective and preferential basis, creating resentment among agents and clients unable to secure similar treatment. In some cases, individual companies would purchase their insurance through one of their employees, who had been appointed as an insurance agent. The full commission would then be returned to the company, thus internalizing the commission costs. Bank managers were often accused of similar practices, accepting loan applications contingent upon the purchase of appropriate fire insurance from them.42 Penalties for rebating were introduced into the Criminal Code in 1917,43 but since they penalized the insured rather than the insurer, they were ineffective.44

Competitive conditions also varied somewhat depending on the particular type of insurance firm. Joint stock companies preferred risks in urban centres, where loss experiences and comparable risks were relatively easy to determine.45 By the 1880s, access to joint stock fire insurance was virtually uniform throughout Ontario's larger urban centres, but, "in small incorporated places and in Ontario's incorporated villages as well, full or even adequate insurance coverage was the exception rather than the rule."46 Inadequate fire protection services and the threat of forest fires made the joint stock companies less willing to assume risks in these less populated areas. Consequently, mutual fire insurance companies provided insurance services for rural risks, because the joint stock companies voluntarily abandoned these markets.47 These mutual insurance companies operated under Ontario provincial license to provide coverage on a non-profit basis, similar to co-operative schemes. They were Canadian in origin, composition and operation, which distinguished them from the joint stock companies and gave them a privileged position with provincial government regulators.

All operating and subscribed capital was collected from each "mutual" policyholder, based upon an initial assessment. As losses were incurred above the accumulated capital, each member was levied further assessments. Insurance was sold by and through an elected Board of Directors and all profits were repaid to policyholders as annual dividends or reinvested in the mutual. Different categories of mutual insurers existed, each defining its own market. County and parish mutuals were organized locally and insured isolated and non-commercial risks. Municipal mutuals were organized for the insurance of taxable properties within municipalities. Ecclesiastical mutuals insured Roman Catholic churches, colleges, schools and other church property. Farm mutuals were organized locally and insured only farm property.48 Although all these types of mutuals provided an important competitive element in the formative years of the industry and a

necessary service in the rural market, they were relatively small and restricted to their defined markets.

Inter-insurance, or reciprocal insurance, provided another competitive catalyst. These "industrial mutuals" were primarily American insurance schemes to provide coverage for first-class manufacture and industrial risks. Property insured under these policies included manufacturing plants, equipment and stock, which were exposed to constant risk of fire and experienced high losses when fire did occur.49 Joint stock companies charged excessive premiums for manufacturers and industrialists, so these businessmen turned to "self-insurance" to meet their insurance needs.50 Each member contractually agreed to unlimited liability for losses incurred by other members of the reciprocal and to subject each operating plant to quarterly inspections, with costs to be borne by the mutual. It was mandatory that all recommended changes made by the inspector be completed before the next inspection. Annual assessments were contractually determined to cover the costs of inspection and anticipated losses and a portion of the profits was returned to members as a dividend reimbursement, to act as incentive for fire safety.51 Originally intended to be a haven from the heavy costs of joint stock company insurance, these organizations grew in popularity and they attempted to enter the Canadian insurance market without the required federal insurance licenses.52 These "inter-insurers" were however denied entrance because they uniformly refused to comply with the deposit requirements. Thus, Canadian manufacturers wishing to purchase reciprocal insurance had to do so in the United States.

Unlicensed insurance provided another option for insurance buyers. These enterprises were joint stock insurance companies incorporated in the United States, but operating in Canada without the necessary licenses. In an effort to promote competition in the insurance field, the federal government allowed these companies

to operate in Canada provided that they did not open offices, employ agents or brokers, or advertise, either directly to clients or through local newspapers in Canada.53 Canadians were allowed to purchase unlicensed insurance, if they went outside the country to do so. Individuals insuring property with an American insurance company were required to file the particulars of the risk and the company holding the indemnity with the federal government.54 In the event that fire loss did occur, the settlement received by the insured was subject to a tax of 5 per cent, which was perceived by insurance purchasers to be unjust, since after a fire loss the insured would be most in need of the money. Further complications could arise because Canadian policyholders insured by unlicensed companies were allowed no legal recourse through Canadian courts.55

Conveniently disregarding the fact that these unlicensed American companies were operating under what had been intended to be handicaps, the foreign companies operating under Dominion license complained that unlicensed insurers had an unfair advantage. They did not have to meet the $100,000 deposit requirement and they were not subject to Canadian taxation.56 These advantages, the licensed companies argued, were significant enough to let the unlicensed companies offer lower rates and induce Canadian consumers to take their insurance business outside the country.57 Although some insurers did take the opportunity to purchase their insurance coverage in the United States, the information costs associated with locating and purchasing unlicensed insurance were significant and acted as a deterrent.

The Canadian Manufacturers' Association (CMA) actively supported the availability of unlicensed insurance for its members, without the associated taxes. Contending that insurance was a service rather than a productive endeavor, and hence not requiring the same measure of protection due manufacturers, the CMA argued that unlicensed insurance provided the only effective competitive influence

in the insurance market. The insured required access to insurance services to cover risks that the licensed companies were unwilling to accept, or for risks which were quoted at prohibitively high rates by the licensed companies. There were also large industrial risks which could not be insured by a single insurer. The CMA contended that the absence of available and adequate insurance services artificially restricted manufacturing development in Ontario.

The CMA was so concerned with the problem of adequate insurance that it opened its own insurance service. The Insurance Department provided professional counsel for the CMA membership, including the examination of policies, suggestions for the most favorable and liberal forms of contract, confidential advice regarding the strength and reputation of insurance companies operating in Ontario and Quebec, and collection and distribution of any information which could be publicly obtained.58 The significant amount of insurance placed by industrialists with unlicensed companies ensured that unlicensed insurance would remain an important option for insurance purchasers.

Throughout the 1870s, competition in the industry was characterized by declining premium rates, beyond the actual indemnity cost. The resulting instability led to sentiment for a broad association to stem the tide of these declining rates. In 1871, such a proposal had been regarded as "unworkable" by industry observers.59 Less than a year later, however, conditions had deteriorated to the point that joint stock companies in Ontario and Quebec organized associations, in Toronto and Montreal respectively, to establish and maintain adequate insurance rates.60 Unable to resolve the structural and competitive pressures in the industry, the associations fell into disarray and impotence as rate-cutting and industry abuses continued. However, a growing number of insurance company failures and the increasing fire losses that accompanied urban expansion, particularly in the Chicago

fire of 1871 and the St. John fire of 1877, renewed the efforts of joint stock companies to seek broad structural changes which could secure greater stability in rate-making.61

The companies' problem was devising an effective and acceptable instrument to create and regulate these changes. Using the state was neither desirable nor practical. Government control through Superintendents of Insurance was limited to supervision and investigation at both the federal and provincial level.62 While such supervision protected insurers by exerting some control over unscrupulous insurers, the industry preferred self-regulation over government control to resolve its problems - taking the position that insurers knew the extent and gravity of their problems far better than any outsider could. This position was understandable. Because the companies and their managers possessed specialized knowledge and experience and an understanding of the technical complexity of their business which ostensible regulators in government would lack, autonomous governmental attempts at exerting control were unlikely to be forthcoming, and the sort of general public interest in the affairs and processes of the insurance industry which might stimulate such intervention was even more remote.63

However, the sectoral organizations existing during the 1870s were equally incompetent to administer and enforce rates effectively. Local underwriters' boards which had been created in Hamilton, Toronto, and Montreal promoted and protected the insurance business in those areas. But their membership was insufficiently broad to permit any comprehensive attempts at self-regulation. Finally, in 1883, Robert McLean, President of the British America, proposed a meeting for all joint stock insurance companies to: "discuss the dangerous conditions created by the multiplicity of companies and their diverse methods of operation."64 The response was encouraging. By June 1883, twenty-nine of the thirty-two federally licensed joint stock companies operating in Ontario and Quebec

agreed to join a voluntary, unincorporated trade association, to be known as the Canadian Fire Underwriters' Association (CFUA). They resolved:

> That the present unsatisfactory condition of the insurance business in Ontario, outside of places where tariff organizations now exist, renders it most desirable that an Association should at once be formed to include all stock companies doing business in the said Province, the Association to establish tariffs of rates for all cities, towns and villages, making due allowances for construction and the fire appliances of each, and to make rules for the due regulation of the business generally; that all Companies represented at this meeting do now pledge themselves to form an Association, and strictly observe the rules and rates ... decided upon.65

Such an association would resemble the Fire Offices' Committee (FOC) in Britain and the National Board of Fire Underwriters (NBFU) in the United States, both of which regulated rates in their national markets.

The CFUA did not immediately displace all local rate-setting authorities. Local boards operating in Toronto, Hamilton and Montreal retained initial control over tariff rates within their cities. The most important was the Toronto Board of Fire Underwriters (TBFU.) which, unlike the others, actually went so far as to refuse to join the CFUA when it was first formed.66 But when the Secretary of the TBFU resigned in November 1883, the chief agents of the member companies, acting on instructions from their head offices (which were now members of the CFUA), elected Robert McLean as the new Secretary, the same Robert McLean who was the Secretary of the CFUA. Several members of the TBFU felt that such action was a "threat to its autonomy." They were quite correct. The overlap of officers gave the CFUA informal control over the activities of the Toronto Board, essentially suppressing its local autonomy. By 1905, every local Board in Ontario had formally joined the CFUA.67

The CFUA had little difficulty attracting members and by 1890 included all federally licensed insurance companies, the largest and most profitable insurers operating in Ontario.68 The effect of the trade combination in Ontario was to strengthen already strong companies. Given a choice between tariff companies,

each offering the same rates, John Ferguson, manager and owner of the Grand Opera House, chose the strongest British Company and acknowledged to a later Parliamentary investigation that: "the combination has the effect of freezing out the weaker companies."69 Because of the relative size and success of its members:

> The public generally [were] inclined to regard the non-tariff companies with less favor than the tariff, assuming that the distinction in name implied a difference in their relative security.70

The rules adopted in 1883 gave the membership the power to elect an Executive.71 Representatives from each company operating with a head office in Ontario participated in the Toronto Committee (later called the Western branch) and those from companies operating with head offices in Quebec became members of the Montreal Committee (later called the Eastern branch).72 All directives and orders affecting the full membership required approval from both committees.73 The most important regulation stipulated that all companies and their agents were bound to adhere to the rate schedule approved by the full membership.

As volume increased in both the Association's membership and in the insurance business in general, more authority became vested with the executive and was codified into the Constitution. The CFUA eventually expanded to include permanent staff members and a powerful Permanent Secretary who coordinated and supervised the Association's activities. The Annual General Meeting became the final court of appeal for questions which could not be resolved through regular administrative procedure, although it would eventually become a cumbersome forum. The judicious application of regulatory tools and restraints was difficult, as each Association member was also an active insurance businessman, with commitments to individual company interests and profits. The distinction between the interests of the industry as a whole and its separate member firms needed to be clearly defined to ensure any measure of success.

Given the failure of previous attempts to organize an association, firm regulatory powers were introduced to ensure conformity and fairness in the application of and adherence to the internal rules.74 The industry's trade journal acknowledged in 1883 that:

> being purely voluntary, its existence will depend entirely upon the loyal and good faith of its members. With the results of past experience before them, it [was] hoped that there [would] not be any backsliders among the membership of this organization, so that this period of good-will and manifestation of friendly confidence and harmony following so closely upon mutual distrust and bitter rivalry, [would] need no other more binding obligation than this voluntary agreement among the companies to work for the common good, which [could] not but result in the benefit of each.75

Each company wishing to join the CFUA was required to sign a copy of the Constitution and Rules of Association which bound each member and its agents to adhere to the rules set out, particularly the tariff rates.76 Thus, by his signature to such an agreement, each member brought himself within the purview of a contractual relationship, which by the mid-nineteenth century had become a legitimizing basis for private coercive power.77 The CFUA itself, however, remained an unincorporated body, limiting its legal liability.

The nature of self-regulation dictated that a rule, once adopted, must have the sanction of the Board behind it. Unenforceable rules simply weakened the effectiveness necessary to rationalize the marketplace and command conformity. Differences between competitors, even friendly competitors, were inevitable and the ability to reconcile private economic activity with the common good of the industry participants was the ultimate test for the CFUA. The Underwriters introduced a series of "primary rules", to define terms of entry for competitors and to place the CFUA membership at a distinct advantage with the insuring public.78

Since the Underwriters' most important goal was to establish and maintain insurance rates throughout Ontario, the most important rules related to enforcing uniform rates. The combination of prominent insurers permitted the collection of

accurate historical loss information to assist in the creation of adequate rates. The first uniform rates introduced in 1888 were "minimum rates" based upon a municipal rating and applicable only to dwellings and small mercantile risks. These tariffs were soon extended to include all risks, with consideration given to construction and fire protection services.79 The most important objective of uniform rates was not explicitly to increase premiums, but to systematically stabilize rates and profitability.80 By 1900, the persistence of serious fires induced the Underwriters to revise the tariff structure to ensure that specific districts and hazards were incorporated. Drawing upon American technical knowledge, factors such as available municipal fire protection and service, building congestion, construction materials and unique building characteristics were taken into account.81 Inspections throughout Ontario and Quebec were conducted in each urban centre to identify general fire conditions and each individual risk was inspected and suggestions made to ensure that it conformed to the Association's new standards. Appeals for a revised tariff by the insured were made first to the Secretary, then to the Rating Committee and, if no agreement could be reached, finally to the general membership. Decisions were made arbitrarily and the insured was denied representation during the rating discussions. This process of dispute resolution satisfied the Association, but caused conflict with the insured and competing insurance companies who were not members of the Tariff Board.

The distribution of rate schedules was limited exclusively to CFUA members and their bona fide agents, each bound to adhere to the rates. The appearance of technical and systematic rating inspired public confidence, even though the initial schedules were often inaccurate and unscientific. Revisions were undertaken by the Rating and Municipal Protection Committee on a periodic basis and at the request of CFUA members or municipal officials. Because of the size of the Association's membership, its relative importance and the scope of the Tariff schedule, these

schedules became the industry standard, particularly for non-hazardous risks.82 Such risks consisted of residential and small scale commercial property, often with relatively low market value and low insurance premiums. There was little advantage for the insured to shop around for lower rates, as the combination of the CFUA rates and membership and the relatively low property values prevented any meaningful rate variation. Rate competition only became significant if competing mutuals and non-board members were able to acquire the rating schedules, which they made every effort to obtain through clients and other agents. Even though the schedules were continuously updated, bootleg copies of the tariff schedules provided a benchmark for competitive rates, usually a discount of ten to twenty per cent of the tariff rate. The tariff schedules provide a particularly accurate basis upon which to quote discounted rates for non-hazardous risks because loss ratios and fire conditions varied marginally. While the insurance companies constantly complained of high loss ratios in this market, statistics compiled from company records show it provided a stable and profitable component of their business compared to the hazardous market.83

The hazardous market provided the competitive battlefield for board and non-board companies. Insurance for large scale industrial and commercial property generated large premiums because of the high risk and expensive replacement values should a fire destroy the property. There was significant comparative advantage for the insurer to seek the lowest insurance rate. Schedule rating was less effective in this market because each manufacturing or industrial risk was unique and the quality of fire protection, construction materials and working conditions were specific to time, place and industrial activity. Unlicensed and reciprocal insurers, which generally had more knowledge about technical and industry information, and hence more confidence when offering lower rates, identified the first class risks and approached them on an individual basis. These competitive

conditions enticed Association members to undercut the CFUA's tariff schedule in an effort to accept desirable hazardous risks, and led to most of the infractions considered by the CFUA membership.

The CFUA also provided specialized information to its membership in an effort to reduce the costs of doing business. It provided inspections of risks, evaluated technological changes, suggested improvements to property and supplied adjusters for the settlement of claims.84 The inspectors, however, could not complete all the required inspections because of the sheer amount of property covered by the Underwriters, so that the rates never quite accurately reflected the hazard in many instances.85

Yet while the CFUA's ability to measure risk accurately was not as complete as it would have liked, its inspectors exercised considerable authority over the insured. The CFUA's compulsory inspections attempted to internalize and eliminate the new risks associated with the introduction of electricity and sprinkler systems. Inadequately or improperly installed electrical lighting posed a new and serious fire hazard. In 1893, the Underwriters employed an Electrical Inspector to complete regular, thorough inspections to determine appropriate tariff rates based on anticipated rather than historical losses.86 The inspector had no legal authority to enforce the recommendations, but one inspector noted: "I have never conceded the point, and have, in a number of places, been able to insist on a number of important changes."87 These investigations gained formal legitimacy as the CFUA rates and construction regulations became accepted as industry standards. Recommendations for improved fire prevention and protection were, often bitterly, accepted by municipalities and businessmen to ensure the best possible rating. Many of these standards were later formalized in municipal planning and building codes.88 By 1915, many power companies in Ontario would not turn on the power current until the installation had been inspected and approved by the CFUA

inspector.89 The CFUA's increased emphasis on inspections, like its rate schedules, were intended to further stabilize the industry by countering the efforts of the more successful non-tariff companies which actively sought favorable risks and offered competitive rates below tariff. While the Association's official historians have argued that the inspections were introduced in the name of public service, their primary objectives were to create a barrier to entry and to establish a competitive advantage for its members against non-tariff firms.90

The CFUA was not always so effective in its attempts to manage technological transformation to its own advantage. The introduction of sprinkler systems at the turn of the century vastly improved the ability to contain fire loss at its source. As with electricity, improper installations or careless upkeep created potentially dangerous risks, even if the initial systems had been approved. But competition for sprinkler risks was intense. The New England Mutuals, unlicensed insurers who demanded and actually performed regular inspections of risks they accepted and provided lower rates for first class risks, were getting a significant proportion of this desirable business. In 1896, the CFUA hired a Sprinkler Risk Inspector and in 1905 several companies within the CFUA formed the Sprinkler Risk Inspection Bureau, to incorporate the technological advances systematically into the broader scheme of tariff revision. The Sprinkler Bureau, as it was referred to, accepted these risks on behalf of its members and reinsured them equally among the members of the Bureau to a maximum limit of $10,000, as the costs of the bureau were equally born by all bureau members. This bureau also provided engineering, inspection and rating services to streamline the application of industry standards and reduce overall costs. The Sprinkler Bureau operated to the distinct advantage of its limited membership, which did not include all Association members. The presence of the Sprinklered Risk Bureau, its unwillingness to accept new CFUA members into its ranks and the restriction of a $10,000 limit were

sources of tension within the Association as desirable sprinklered insurance was not being equitably distributed. Unlicensed insurers guaranteed intense competitive pressures in this market because of their specialized knowledge and better inspection services. The CFUA never exerted industry control in the hazardous market because of internal divisions and because unlicensed insurers were successful in actively exploiting this specialized market. The Underwriters were, however, successful in their efforts to define and control the non-hazardous market.

The CFUA's attempts to manage technological transformation in order to create obstacles to outside competition were complemented by its efforts to control access to technical information. In 1908, the CFUA entered into a series of agreements with the Charles E. Goad Company, which held exclusive copyright and distribution rights for fire insurance maps in Ontario. These maps provided an overall image of building density, construction materials, the placement of fire walls and the proximity to municipal fire protection - all vital elements in the determination of appropriate rates and acceptable risks.

In 1911, the Underwriters clearly were aware of the implications of the federal Anti-Combines Act and sought legal advice concerning the advisability of continuing these agreements. Their solicitor, I. F. Hellmuth, conceded that these maps were not necessary to conduct a fire insurance business, nor did they constitute an article or commodity which was subject to trade and commerce regulations. Contravention of such regulations would have made the CFUA liable to action under the Combines Investigation Act.91 Further, the restriction of sales did not unduly prevent or lessen competition because there was no barrier to other companies preparing their own plans.92 Nonetheless, he advised the Underwriters' not to continue the agreement, because members would be summoned to give potentially embarrassing testimony about whether the intent of the agreement was to create a barrier to entry and to hinder the competition of non-tariff companies.

Such an agreement might invite prosecution under the Combines Act, and the courts might conclude that, "while it might be quite correct that the letter of the Statute had not been contravened the spirit and intention of same had been offended".93 Nonetheless, the Underwriters continued to pursue a monopoly over the distribution of fire maps. After the agreement came due and needed to be renegotiated, Goad placed an exceedingly high value on his company's copyright and goodwill. The ensuing difficulties induced the CFUA to set up its own Plans Department to produce maps exclusively for use by the Association. His bargaining position weakened, Goad finally agreed to a deal in 1917, which gave the Underwriters' Plans Department the sole rights to revise and reprint his maps. In turn, the CFUA limited distribution of these maps to its membership. In 1931, the CFUA purchased all of the assets from the Goad Company under the auspices of a separately incorporated company to avoid charges of illegal combination. The Underwriters had finally attained their objective of securing a monopoly over this vital aspect of technical knowledge within the industry.

Despite the implementation of schedule rating and effective barriers to entry, the presence of non-tariff competition continued to plague the CFUA members.94 This problem was exacerbated when some agents appointed to represent tariff companies and having access to the tariff schedules also accepted appointments to act on behalf of non-tariff companies. This created opportunities for non-members to reap the rewards of the Underwriters' inspecting and rating service without contributing to their cost. The Board companies did not discipline the agents involved, for fear of losing valued insurance policies, contacts and members. This reluctance to censure or discipline agents and their companies brought complaints from members who were obliged to follow the schedules. So serious was the problem, that at the Annual General Meeting in 1885, the Association forbade the

appointment of Agents representing both tariff and non-tariff companies.95 No agent associated with the CFUA was permitted to place insurance outside of the Board companies and no tariff company could place re-insurance with a non-tariff company.96 This curtailed competition among agents and non-board companies. It also severely limited the amount of insurance that mutuals could carry, as these regulations limited their ability to diversify and reinsure their risks. In less than one year, serious complaints were registered with the Infractions Committee concerning the non-observance of this rule, since it interfered with the relationship between the company and its agents and severely constrained managerial decision-making concerning the placing of re-insurance. By 1886, the non-intercourse rule had fallen into disuse because of the difficulties and opposition encountered in its enforcement.97 Agents were permitted to operate for non-tariff companies provided they placed insurance at the tariff rates. The tariff companies also agreed to allow re-insurance with non-tariff companies, provided that such insurance could not be placed with a tariff company.98 The ability of the Directors to enforce a regulation which was clearly unpopular defined, in part, the dynamics and limitations of the self-regulatory process. If those responsible for regulation got too far ahead of member sentiment, whether their views were correct or not, they risked isolation from their constituency. Since this would be an intolerable condition for an effective regulatory body, the scope of the regulators was constrained accordingly.99

The CFUA's "secondary" rules imposed arbitration procedures to adjudicate transactions after they had occurred.100 To enforce prices in an "Association of Competitors" was difficult, as the ability to create and maintain stability and profitability was not simply achieved through increasing the membership. The relative market share of each member and the composition of member and non-member companies were important factors. It was therefore important to create

rules which would not alienate the strongest members nor interfere excessively in their management decisions. For example, the Buenos Aires Underwriters' Association in Argentina failed because local government supported domestic companies through preferential tax benefits that encouraged most of the large domestic companies to remain outside the rating bureau, while the British companies operated under tariff rules, a system which ensured that rate schedules would be completely unenforceable.101 Local firms maintained a market share significant enough to draw business from the tariff companies, forcing the Board members to reduce their rates below tariff and ultimately to abandon the rating organization.

The Nova Scotia Fire Underwriters' Association had experienced a similar problem when the Halifax Fire Insurance Company, the largest domestic company in Halifax, refused to continue its membership. The Halifax openly undercut the tariff rates, creating pressure for Tariff companies to abandon the schedule.102 Since the Association did not want to alienate its existing members by eliminating competitive options and interfering in managerial prerogatives, they continually permitted more flexible rating schedules providing neither long term profitability nor market stability. Too much administrative flexibility was as dangerous as too little.

The CFUA hoped that its methods of dispute resolution would strike a happier balance. Too often, however, the system of dealing with infractions only exacerbated internal divisions. When fellow members initiated investigations over insurance policies accepted below tariff rates, the Secretary adjudicated all such complaints. The Infractions Committee, composed of six elected members, addressed any infractions which could not be resolved by the Secretary.103 The full membership at the Annual General Meeting acted as the final court of appeal and all infractions were recorded in the proceedings to act as incentive for companies to

settle outstanding infractions.104 Any company found guilty of an infraction was required to cancel the policy within ten days. In 1883, the Association introduced a system of fines to punish infractions, but these fell into disuse immediately.105 At the 1894 meeting, in response to the growing number of infractions, T. L. Morrissey noted that:

> It being understood that this is simply an honorable compact between companies, and no penalty attaches for violation; but it is admitted that the slightest deviation from the terms of this agreement should be considered a dishonorable action, and worthy of the contempt of all honorable men.106

This process of internal discipline and dispute settlement, where peers sat in judgment of fellow competitors, created a unique environment for collective action.107 Most infractions were swiftly dealt with through the cancellation of policies. The Association seldom administered serious penalties or dismissals. The self-regulatory environment required that:

> if the rules were enforced too harshly, board members could either ignore them or decline to remain in the organization. Yet another primary purpose of the [association] was to rationalize the [insurance] market through efficient and effective regulation, and the efforts of the directors to reconcile the inherent tensions between private economic activity and an ordered national market [was] a recurring problem.108

That they found punishing colleagues difficult is evident from the lengthy record of infractions published with the Minutes of each Annual Meeting and the time consumed settling difficult disputes.109 Both the Infractions Committee and the membership at large were unwilling to punish infractions, often because the abuses were so widespread that universal penalties might need to be considered. The great accomplishment of 1899 was deemed to be the revision of the constitution, "rendered necessary by the abuses which had crept in under the old rules".110 T. L.. Morrissey, Manager of the Union and London, refused to cancel policies which had been accepted below the tariff on the grounds that the rules were being openly violated on a regular basis and, "to carry the will of these same members who sat in judgment (sic) ... would seem nothing short of ridiculous".111 He contended that:

> in any Association such as ours something of individual independence must be given up for the general good and unless this [was] recognized by all members the usefulness of the Association must be seriously injured and its continued existence made impossible.112

The Infractions Committee, by 1917, had become so frustrated with the "inexcusable delays" and "almost interminable correspondence" involved in settling infractions, that they suggested the introduction of compulsory stamping to prevent infractions.113 Stamping procedures required that all insurance contracts complied with CFUA rates and commissions and all contracts had to be approved by the CFUA Secretary. As early as 1912, a majority of companies supported the introduction of stamping as a policy throughout Ontario and Quebec to, "ensure uniformity and standardization within the Association", but opposition was effective enough to prevent implementation.114 By 1919, the persistence of abuses finally led to the adoption of uniform stamping.

To facilitate the process of stamping, the CFUA introduced standard policy forms. Such uniformity lowered the administrative cost associated with processing and interpreting the provisions of each contract, provided equal treatment for each client, and facilitated loss settlements.115 It also simplified the process of determining if policies were consistent with the rules set out by the Underwriters, and by reducing the myriad of different contractual forms to a single standard, gave the tariff companies increased security against legal challenges which might end with the courts making unfavorable reconciliations of disputes over policy terms.116 Since the courts tended to interpret the insurance policy as a contract of adhesion, the CFUA feared that:

> any doubtful expressions in a policy of insurance are to be construed most strongly in favor of the insured and against the company because the policies are prepared by the companies with the greatest care and deliberation for their protection and the insured has no option except to accept the terms of the policy.117

Even stamping had its limitations however, because as the volume of policies written increased, and the policies themselves grew more complex, their administration became increasingly difficult.

The Underwriters were successful in their efforts to stabilize the insurance industry, incorporating a sensitive balance between competition and collaboration. The nature, function and organization of the insurance market prevented the invisible hand of market pressures from achieving equilibrium or a sustainable market price. Unregulated competition created unstable market conditions for both consumers and producers. Given the limited goals of government supervision and, from the companies' perspective, the undesirability of state regulation, self-regulation was a suitable and more acceptable form of regulating the industry. It successfully responded to both industry-wide concerns for stability and individual company needs for profitability and competition.

The Underwriters permitted "managed competition" within its membership and beyond, while cultivating a profitable business environment. By 1917, the CFUA wrote 85% of all licensed insurance in Canada. The Association had erected effective barriers to entry into the industry. Its rating schedule defined the Ontario insurance market for tariff and non-tariff companies. And it controlled the important regulatory tools available to supervise the fire insurance industry.118. This had the effect of bringing greater stability to rates and improving insurance conditions for its members.119 Although competition did exist, it was limited to specialized markets.

At the same time, there were limits to the scope of the association's authority, limits which were inherent in the attempt to co-ordinate a collection of companies which were simultaneously both competitors and collaborators. The CFUA could not function as a dictator over the industry, but such total control was

never its goal. The Underwriters were an effective trade association because they could mediate the diverse interests of its membership, while also representing the members' collective interests by actively participating in the construction of the regulatory environment.

The CFUA operated as a private voluntary association which operated not only as a self-regulatory agency with private goals of stability and profitability, but also as a quasi-public regulatory agency, exercising power by defining and controlling access to insurance, which had become a necessary commodity. Such power rested on the CFUA's ability to impart to the insurers, the insured and the state confidence that its authority was both effective and legitimate. Further, the Association's leadership had to ensure that its membership also shared in this confidence, albeit for different reason. This ability, however, was dependent on the maintenance of that confidence among all the parties to the process, a confidence that could ultimately be challenged by any of the parties involved

CHAPTER 2 ENDNOTES

1. Statement from the general manager of the Scottish Union and National Insurance Co. of Edinburgh appearing before the Investigation of Fire Insurance Rates in Illinois, 1914, as quoted in J. Grove Smith, Fire Waste in Canada, p. 265.

The fire insurance industry argued that one of its main objectives was fire prevention. The increasing rates, it maintained, represented the response to rising fire losses. Further, it maintained that each of the regulatory tools exercised by the CFUA presented opportunities for the insurer to reduce fire risk. Regardless, as efforts to increase fire prevention were introduced, rates continued to rise. In reality, within reasonable limits, the loss ratio was inconsequential, as long as premium deposits were sufficient to cover losses. The Chronicle, March 1, 1918, p. 213, 221.

> The insurer charges for the risk and earns that money regardless of whether the risk becomes a claim or not. That is the whole principle of insurance.

2. Self-regulation in the fire insurance industry was common because of the unique competitive business conditions. For a study of the American association, the National Board of Fire Underwriters' Association, see Harry Chase Brearley, Fifty Years of a Civilizing Force: An Historical and a Critical Study of the Work of the National Board of Fire Underwriters' (New York: Frederick A. Stokes Company, 1916). For a study of the British example, The Fire Offices' Committee, see Oliver M. Westall, "David and Goliath: The Fire Offices' Committee and Non-Tariff Competition, 1890-1907", in O. M. Westall, ed., The Historian and the Business of Insurance (U.K.: Manchester University Press, 1984), pp. 130-151. Two studies of the Canadian Fire Underwriters' Association include E. O. Ryan, "The First Seventy-Five Years" a pamphlet published by the Canadian Underwriters' Association, 1959 and Christopher L. Hives, The Underwriters': The Insurers' Advisory Organization and Its Predecessor, 1883-1983 (Toronto: Phelps Publishing Company, 1985). For a general study of trade association and its role in the nineteenth century business environment, see The National Industrial Conference Board, Trade Associations: Their Economic Significance and Legal Status (New York: National Industrial Conference Board, Inc., 1925). For an outline of the Canadian experience see, Lloyd G. Reynolds, The Control of Competition in Canada (Baltimore: Johns Hopkins University Press, 1940). For a Canadian case study of self-regulation, see Mark Cox, "Associationalism Canadian Style: Flour Millers, Self-Regulation and the State, 1920-1935", in the Journal of the Canadian Historical Association, Volume 1, 1990, pp. 119-143.

3. Mark Cox, "The Limits of Reform: Industrial Regulation and Management Rights in Ontario, 1930-7", The Canadian Historical Review, Volume 4, December 1987, pp. 552-554.

4. The British America obtained its initial incorporation for the purpose of selling fire and life insurance, but seems never to have exercised its right to issue life insurance policies. Douglas McCalla, "Fire and Marine Insurance in Upper Canada: The Establishment of a Service Industry, 1832-68", in Peter Baskerville ed., Canadian Papers in Business History, (Victoria: Public History Group, 1989), p. 129; Industrial Canada, December 1928, p. 53; E. P. Neufeld, The Financial System of Canada: Its Growth and Development, (Toronto: Macmillan, 1972), p. 220-22, 282-83.

5. Barry Supple, The Royal Exchange Assurance: A History of British Insurance, 1720-1970 (Cambridge: Cambridge University Press, 1970), p. 469-492. Harold E. Raynes, A History of British Insurance, (London: Sir Isaac Pitman & Sons, Ltd., 1964), pp. 254-274. Charles Jones, "Competition and Structural Change in the Buenos Aires Fire Insurance Market: The Local Board of Agents, 1875-1921", in O. M. Westall ed., in The Historian and the Business of Insurance (U.K.: Manchester University Press, 1984), pp. 114-129.

6. Marvin Baer and James A. Rendall, Cases on the Canadian Law of Insurance. Fourth Edition (Toronto: Carswell, 1988), p. 3

7. Despite its particularly partisan quality, opposition to the Insurance Act of 1868 was based upon the absence of federal jurisdiction to introduce regulations concerning the business of insurance. House of Commons. Debates, May 19, 1868, May 20, 1868.

8. All licensed joint stock companies were required to maintain cash deposits with the Treasury. Foreign and British companies were required to deposit $100,000 cash, while Canadian companies were required to deposit $50,000. In 1915, the government permitted Government securities to be held in lieu of cash deposits. This permission to include securities reflected the government's efforts to increase the sale of Treasury bills and securities to finance the war effort. Canada. Revised Statutes, 1927. Canada Insurance Act, Chapter 101, Section 14.

9. The reliability of these reports varied over the years. The fire insurance companies had their own agenda when submitting these reports. There were no consistent accounting procedures which extended over a period of years to allow for comparisons and there was no breakdown of premiums based upon different risk categories. The insurance companies also sought to reduce their Dominion taxes which were based upon figures submitted to the Superintendent. During the First World War, in particular, the government taxed premium income directly. The inconsistent reporting procedures were discussed during the Ontario Provincial investigation.

10. The Chronicle, January 14, 1910.

11. Neufeld, The Financial System of Canada, p. 236-37. A similar response occurred in South Carolina when the State legislature introduced legislation

granting the Insurance Commissioner the authority to set fire insurance rates. Financial Post, March 25, 1916, p. 12; May 26, 1916, p. 12.

12. Neufeld, The Financial System of Canada, p. 288. The investments of fire insurance companies were not as significant as those of the life insurance industry.

13. Neufeld, Financial System of Canada p. 233; Baer and Rendall, Cases on Canadian Insurance Law, p. 64-69; *Citizens' Insurance Co. v Parsons* (1881), 7 App. Cas. 96, 51 LJPC 11..

14. See Table 2 for a summary of fire insurance premiums received between 1890 and 1930. Table 3 summarizes the annual net amount of cash paid as losses for the same period and Table 4 illustrates the high loss ratios experienced consistently during the period. These figures, it should be noted, do not take into account rising property values and rising dollar values. There is however, a pattern of high property losses. Between 1912 and 1915, the annual loss of life and property caused by fire was $2.73 per capita, a higher per capita loss than in any other country in the world. J. Grove Smith, Fire Waste in Canada, p. 5.

15. In part these differences can be accounted by higher property values in Canada. However, these losses were incurred with more advanced and adequate fire protection than that found in Europe. Grove Smith, Fire Waste in Canada, Commission of Conservation, 1918, p. 5, 22-29.

16. Ibid., p. 28.

17. Ibid., p. 25.

18. For a discussion of urban reform and its social and environmental impact, see Paul Rutherford, "Tomorrow's Metropolis: The Urban Reform Movement" pp. 435-455; and John C. Weaver, "'Tomorrow's Metropolis Revisited: A Critical Assessment of Urban Reform in Canada, 1890-1920", pp. 456-477, in Gilbert Stelter and Alan Artibise, The Canadian City: Essays in Urban and Social History, (Carleton University Press, 1984).

19. Smith cites that between 65% and 85% of all property lost during the period 1914-1917 was covered by fire insurance. Ibid., p. 36-37

20. The Chronicle, May 10, 1918, p. 483; Nov. 28, 1919, p. 1237.

21. For a discussion of the basic theories of insurance, see Baer and Rendall, Cases on Canadian Insurance Law, pp. 2-12.

22. The Carlisle mortality tables, compiled in the United Kingdom, were adopted for use in Canada. The experience of existing life insurance business and the state of actuarial knowledge facilitated the ease of establishing agencies in Canada. Neufeld, Financial System of Canada p. 224.

23. Friedrich Kessler, "Forces Shaping the Insurance Contract" in the University of Chicago Law School, Conference on Insurance (Chicago: University of Chicago, 1954), pp. 4-5.

24. The fire insurance business was characterized by many small transactions, in particular insurance contracts for single dwellings and small merchant shops. These costs increased over the years as overall losses increased. Further, as most insurers were joint stock companies, incorporated with shareholders providing the necessary capital, profits sufficient to compensate investors were required. Agents' commissions were incurred predominantly by joint stock companies operating within an agency system.

25. The Chronicle, February 22, 1918, p. 191.

26. The insurer is selling its credit for a specified period and the consumer is vitally interested in knowing if the company can meet its obligations. The Chronicle, Nov. 28, 1919, p. 1240.

27. Supple, The Royal Exchange, pp. 273-303, 469-492; Raynes, British Insurance, pp. 254-274; G. Clayton, British Insurance (London: Elek Books, 1971), pp. 132-137.

28. Hives, The Underwriters p. 51-52. J. Grove Smith, Fire Waste in Canada, p. 251.

> "The better class of business always gravitates to the large companies in consideration of their ability to take poor business of which they have sufficient to assure an average experience."

29. Insurance and Financial Chronicle, December 1928, p. 53-55.

30. The Chronicle, March 11, 1890.

31. Hives, The Underwriters, p. 7; Roger Grant, Insurance Reform: Consumer Action in the Progressive Era, (Ames: Iowa State University Press), Chapter 1. American "fly-by-night" companies were attempting to float phantom investment stock in the U.S. and Canada, promoting both fire and life insurance. Industry observers noted that these promotions, "affect the public sentiment towards insurance ventures and tend to throw discredit on legitimate insurance projects". The Chronicle, March 11, 1890.

32. Insurance and Financial Chronicle, November 1883.

33. Barry Supple, "Insurance in British History", in O. M. Westall ed., The Historian and the Business of Insurance, (U.K.: Manchester University Press, 1984), p. 2. Smith, Fire Waste in Canada, p. 267-274.

34. The Chronicle, February 14, 1916, p. 185. Prior to 1916, there were only three insurance brokers operating in Ontario and Quebec. They were more popular in the United States, but not in Canada. The Ontario Insurance Commission, Evidence. December 20, 1916. The fundamental difference between the British agency system and that in Canada was that the British agent could not bind the company before each contract was signed by an officer of the company. There were few, if no provisions for this in the Canadian business. The Underwriters attempted to eliminate this problem with the introduction of stamping, discussed later in the chapter. "Regulation of Agents, Brokers and Adjusters," by V. Evan Gray, Superintendent of Insurance, Monetary Times, October 22, 1920, p. 4

35. There were no examinations or professional requirements attached to these licenses. The insurance companies did not regularly respond to government requests to supply a list of active agents. By 1917, only 5701 of approximately 10,000 agents were licensed with the provincial government.

> It is very evident that ... many people are transacting insurance business in the province of Ontario without being duly authorized, and are liable to penalties ... If the companies would only assist the Department there would be little fault to be found in regard to people transacting insurance business illegally.

Financial Post, January 20, 1917, p. 14; July 14, 1917, p. 14.

36. Industrial Canada, August 1918, p. 39.

37. Hives, The Underwriters, p. 11.

38. Industrial Canada, March 17, 1917, p. 1294.

39. Moral hazard refers to the personal character, integrity, solvency and general honesty of the insured. The Chronicle, February 21, 1919, p. 211-213; March 21, 1919. In some cases, investigation of the moral hazard extended to race, (Jews in particular), and politics, (Bolshevism after the war was perceived as a threat). The Chronicle, October 18, 1918; Financial Post, August 30, 1919, p. 1/16. In some insurance circles, companies were investigating the moral hazard of neighbors and building tenants before extending fire insurance.

Over-insurance occurred when agents intentionally, or unintentionally, sold policies insuring property for more than its value. This had the immediate effect of increasing the agent's commission, and the long-term effect of promoting carelessness and possibly arson. Smith, Fire Waste in Canada, p. 246-47.

40. J. Grove Smith concluded that the insurance companies were equally responsible for the conduct of their agents.

> ... How far the companies may be answerable for the blame by the loose way in which they gather up risks by agents who look chiefly to the number and extent of them to get their commissions, instead of making the characters of the party and the value of the property the basis of the contract, must also be considered. The proper cure for gross dishonesty on the part of those who insure is that the companies be more careful in selecting those with whom they deal.

(quotation from the judgment in *Smith v. Commercial Union Insurance Co.*, 33 U. C. R. at 69 as cited in Smith, Fire Waste in Canada, p. 257)

41. For a detailed discussion of these industry practises, see H. Roger Grant, Insurance Reform, Chapter 1; E. O. Ryan, "The History of the First Seventy-Five Years", pamphlet published by the Canadian Underwriters' Association, 1959, p. 6.

Another abuses, more common in life insurance than fire insurance, was "twisting". This occurred when an agent induced a client, already possessing adequate insurance coverage, to surrender his policy in favor of a new policy. This policy to be held with a competing company, offered promises of better provisions and premiums.

42. Financial Post, August 18, 1917, p. 1/7. Smith, Fire Waste in Canada, p. 268.

43. Insurance Act, 1917, c.29, s. 127; c.29, s. 128.

> No agent, broker or other person representing or doing business in Canada for any fire insurance company licensed under this Act shall, in any way, directly or indirectly, divide, or offer to divide, his commission or other remuneration with, or give, or offer to give, any part of his commission or other remuneration, or any other matter or thing of value to any person whose property he may be insuring or seeking to insure, or to any person having or claiming or appearing to have any influence or control as to the placing of such insurance, as an inducement to insure with him or in or with a company employing him or represented by him; nor shall any person knowingly receive as such inducement any such commission or other remuneration or any rebate of premium or other consideration intended to be in the nature of a rebate of premium ... Every person violating the provisions of the last preceding section shall, for a first offense be liable to a penalty of double the amount of the premium on the application or policy in respect of which such violation took place, but in no case shall such penalty be less than one hundred dollars.

44. Industrial Canada, July 1917, p. 468-469; The Chronicle, February 15, 1918; Financial Post, August 18, 1917, p. 9. The problem of rebating continued to be a problem after the law was put into effect. J. Grove Smith, Fire Waste in Canada, p. 267.

> The result [of the Rebating law is that the rate of premium in respect of a risk may be said to be the rate net to the company, and that rate is, in fact, available either to the assured or the insurance agent on application. The assured whose insurance is placed through the agent or broker pays the insurance company's net rate plus the broker's commission. The broker's commission, therefore, represents in effect a bargain between himself and the assured, and not between the company and the broker.

Monetary Times, October 22, 1920, p. 4. Speech by V. Evan Gray, Superintendent of Insurance for the Province of Ontario, "Regulation of Agents, Brokers and Adjusters".

45. Committee on Trade Combinations. Evidence. Robert McLean, Secretary of the CFUA, p. 435.

46. Ibid.

47. Darrell Norris, "Flightless Phoenix: Fire Risk and Fire insurance in Urban Canada, 1882-1886", Urban History Review, Volume XVI, No. 1, June 1987, p. 67. As late as 1919, joint stock companies were limiting or cancelling insurance in rural areas. The fire at Thorold in 1919 was due to poor fire protection and the distance from water sources. Several stock companies pulled out of the area until services were properly introduced. Financial Post, August 9, 1919, p. 14.

48. J. Grove Smith, Fire Waste in Canada, p. 252.

49. Lumber mills were the first Canadian industry risks to take part in these schemes. One of the largest American reciprocals included major department stores.

50. Committee on Trade Combinations. Evidence. Hugh Scott, Manager of the Millers and Manufacturers and the Queen City Insurance Exchange, p. 488-489.

51. Report of the Ontario Insurance Commission, 1919, p. 34.

52. he Canadian insurance industry watched the American reciprocal industry and its regulators with great interest to evaluate the merits and success/failure of this form of insurance. The issue of unlimited liability, the presence of misrepresentation and the inability to litigate in Canadian courts caused some concern for prospective insurers. The Chronicle, December 13, 1918; Industrial Canada, January 1919, p. 151.

53. Revised Statutes 1927; Chapter 101, Section 129, Paragraph 1.

54. The amount of unlicensed insurance was reported annually in the Annual Report of the Department of Insurance. The full extent of unlicensed insurance was unknown, as there was no way to insure that all insurers reported insurance obtained outside the country. See Table 5 for a summary of unlicensed insurance reported to the Dominion Government. The nature of property insured by unlicensed insurance reported to the Superintendent included lumber and lumber mills; industrial plants and mercantile establishments; stock and merchandise and railway property and equipment.

55. Industrial Canada, October 1917, p. 867

56. In addition to corporate tax, all fire insurance companies were subject to an additional tax to fund the Ontario Fire Marshal Department. The presence of this department, the licensed companies argued, created positive conditions for the conduct of fire insurance business. As the unlicensed companies did not contribute to the betterment of business conditions, they should not be able to avail themselves of its benefits. Industrial Canada, October 1917, p. 867.

57. The Chronicle, January 4, 1918; Monetary Times, July 13 1917.

58. Industrial Canada, November 1916, p. 849; October 1918, p. 46. The Insurance Department also reported annually to the General Meeting about any changes to the insurance Acts, federal and provincial, which could impact on its members. Annual Reports were published in Industrial Canada.

59. Monetary Times, 1871.

60. Hives, The Underwriters, p. 7-8.

61. Committee on Trade Combinations. Evidence. Robert McLean, Secretary of the CFUA, p. 435-36.

62. Mark Cox, "The Limits of Reform", pp. 552-53.

63. Kenneth Meier proposed a theoretical variation of William Gromley's regulation theory to analyze the role of the bureaucracy in the regulatory process. The basic premises include the differentiation of salience and complexity.

> a salient issue is one characterized by intense conflict of a broad scope. A complex issue requires specialized knowledge and training to address the

> actual questions of regulation ... Insurance regulation can be characterized as complex but not salient. Complexity can be illustrated by focusing on insurance policies alone; policies are difficult to read and harder to understand ... Despite the large cost of insurance to most individuals, insurance regulation is not a salient issue ... Lack of salience means that political elites have no incentive to intervene in the process."

Kenneth Meier, The Political Economy of Regulation, p. 30-32.
The CFUA seems to have adopted a similar understanding with respect to industry information and publicity.

64. Circular, Robert McLean, CFUA Collection (UWO); Hives, The Underwriters, p. 11.

65. Minutes, June 1883. CFUA Collection (UWO), Hives, Ibid.

66. Ryan, "The First Seventy-Five Years", pp. 4-27; Hives, The Underwriters, p. 13-35.

67. Other provincial Boards of Underwriters operated, with varying measures of success. The Manitoba Board of Fire Underwriters existed outside the jurisdiction of the CFUA until 1897 when it reorganized itself as a branch of the CFUA in 1909, known as the Western Canada Fire Underwriters Association (WCFU), with jurisdiction over Manitoba, Saskatchewan, Alberta and the Northwest Territories. In 1912, the WCFU severed its formal ties with the CFUA, but continued to work closely with the CFUA on an informal basis. The Nova Scotia Board of Fire Underwriters, the first such organization, and the British Columbia Board of Fire Underwriters operated on a provincial basis and were never members of the CFUA.

68. For a summary of CFUA membership from 1883-1930 see Table 1.

69. Committee on Trade Combinations. Evidence. John Ferguson, Manager and Proprietor of the Grand Opera House, p. 497-98.

70. Financial Post, November 30, 1918, p. 14.

71. Each company joining the CFUA agreed to contribute the amount of one-fifth of one percent of its premiums for the upkeep of the organization. These funds were used to pay for the administrative and investigatory support services. Committee on Trade Combinations. Evidence. Robert McLean, Secretary of the CFUA, p. 436. Constitution of the Canadian Fire Underwriters, 1883 (UWO).

72. The Executive consisted of two vice-presidents, one from Toronto and one from Montreal, one secretary and one President. Committee on Trade Combinations. Evidence. Robert McLean, Secretary of the CFUA, p. 429.

73. Constitution of the Canadian Fire Underwriters' Association, 1883, Article 4 and 5.

74. The Chronicle, July 29, 1883.

75. Insurance and Financial Chronicle, August 1883.

76. Constitution, CFUA, 1883, Article 10.

77. Jonathan Lurie, The Chicago Board of Trade, 1859-1905: The Dynamics of Self-Regulation, (Chicago: University of Illinois, 1979), p. 28.

78. Lurie, The Chicago Board of Trade, p. 40.

79. Minutes, CFUA, October 1, 1888.
Committee on Trade Combinations. Evidence. Robert McLean, Secretary of the CFUA, p. 429.

> We have a tariff for all classes of risks and for all places. We do not have the same tariff for all places. The tariff is fixed with regard for the facilities which each place has for extinguishing fires. You will notice by this book that we divide the risks into six classes: A, B, C, D, E and F. A, B, and C are places having water works, D places having steam fire engines and other appliances for extinguishing fires, and E places having either hand fire engines or standard chemical engines, while F is for places having no kind of protection whatever.

80. Despite the growing fire losses, net fire premiums written before 1900 grew at substantially faster rates than did G.N.P. because of the increased amount of property insured and the higher premiums. Neufeld, The Financial System of Canada, p. 284. Committee on Trade Combinations. Evidence. William Tatley. Manager of the Royal Insurance Company, p. 460. Table 5 summarizes the rates of premiums charged ($ rate for every $100 of insurance) as a percent of risks taken, based upon figures submitted to the Dominion Superintendent. These figures do not represent the schedule of the CFUA.

81. The Underwriters adopted the American Universal Mercantile Schedule Tariff which was implemented extensively throughout the States. Ryan, "The First Seventy-Five Years", p. 13-15; Hives, The Underwriters, p. 24; Insurance and Financial Chronicle, January 23, 1903. "Basis and Practice of Schedule Rating", Monetary Times, February 15, 1918, p. 42; February 22, 1918, p. 44. Minutes, General Meeting, CFUA Collection, University of Western Ontario, June 13 1919; June 23, 1919. No adjustments were made for moral hazard. Committee on Trade Combinations. Evidence. Robert McLean, Secretary of the CFUA, p. 440.

82. Westall, "David and Goliath", p. 132-133.

83. Province of Ontario, Report of the Superintendent of Insurance, Classification of Aggregate Experience on Fire Risks, 1923-1928. Appendix IV.

84. In an effort to reduce concentration of risks, several insurance companies would insure portions of the same risk. By providing one adjuster to settle a claim on behalf of all the companies, this reduced the costs which would otherwise have been borne by each company to the full cost. This point was reinforced by T. L.. Morrissey, President of the All Canada Federation, the federal lobby organization for the fire insurance industry. The Chronicle, March 1, 1918, p. 219.

85. Committee on Trade Combinations. Evidence. William Tatley, Manager of the Royal Insurance Company, p. 464-65.

86. Minutes, General Meeting, CFUA, February 10, 1897. The growing demands for inspections involving electricity resulted in the hiring of an additional inspector.

87. Hives, The Underwriters, p. 15.

88. John Weaver and Peter De Lottinville, "The Conflagration and the City: Disaster and Progress in British North America during the Nineteenth Century", Histoire Sociale/Social History, Volume XIII, No. 26, p. 444.

89. Eventually, the Ontario Hydro Commission officially assumed control of these inspections and supervised electric installations throughout the province, hiring away many of the association's staff in the process. Ryan. "The First Seventy-Five Years", p. 10, 22; Hives, The Underwriters, p. 22, 40.

90. This is a consistent theme throughout both Hives, The Underwriters and Ryan, "The First Seventy-Five Years".

91. *Combines Investigations Act*, S.C. 1910, c. 9.

92. Opinion, I. F. Hellmuth, April 7, 1911, Plan Committee, Minutes and Related Correspondence, 1910-1914, CFUA Collection (UWO)

93. Ibid.

94. Hives, The Underwriters, p. 31-32; Ryan, "The First Seventy-Five Years", p. 11-26.

95. Committee on Trade Combinations. Evidence. D.C. Macdonald, Manager of the London Mutual Fire insurance Company, p. 421-423; Conclusions. p. 10. All companies were required to file a list of authorized agents with the CFUA Secretary to ensure that no non-tariff agents had access to the CFUA tariff. Minutes, General Meeting, February 10, 1897, CFUA

96. Reinsurance was the insurance of an indemnity against fire loss, which had been contractually established between the insured and the insurer, in whole or in part, with a third party. This allowed insurance companies to spread their risk beyond municipal and even national borders. Joint stock companies operating in Canada reinsured with many foreign companies, particularly German and American companies. Reinsurance was particularly important for mutuals, which were by definition regional. The Chronicle, March 29, 1918, p. 329; May 10, 1918, p. 485; Committee on Trade Combinations, Conclusions, p. 10; Evidence, Robert McLean, Secretary of the CFUA, p. 422.

97. Report of the Ontario Insurance Commission, p. 57-58. Committee on Trade Combinations. Evidence. James Boomer, Secretary of the Western Assurance Company, p. 447-450. The non-intercourse rule was resurrected again at the turn of the century, during declining insurance sales. Hives, The Underwriters, p. 32.

98. For an example of preferential re-insurance see, Committee on Trade Combinations. Evidence. George Hamilton, Insurance Inspector for the Millers' and Manufacturers' Mutual Insurance Company, p. 494-95. The CFUA would threaten to cancel policies if risks were partially insured or re-insured outside the Underwriters.

99. Lurie, The Chicago Board of Trade, p. 88.

100. Lurie, The Chicago Board of Trade, p. 40.

101. Charles A. Jones, "Competition and Structural Change in the Buenos Aires Fire Insurance Market: The Local Board of Agents, 1875-1921", in O. M. Westall, ed., The Historian and the Business of Insurance, (U.K.: Manchester University Press, 1984), p. 114-129.

102. B. E. S. Rudachyk, "Managing the Market: Board Insurance in Nova Scotia, 1857-1920", unpublished paper delivered at the Business History Conference, Victoria, 1988.

103. Constitution, CFUA, 1914, Article 13 (f).

104. For an example of Infractions published, see Appendix 1. Committee on Trade Combinations. Evidence. Robert McLean, Secretary of the CFUA, p. 440.

105. An attempt to introduce the following penalties was made in 1883, but was immediately defeated.

> For the first offense, forfeit 25 per cent of the premium on said risk; 50 per cent for the second offense; 100 per cent for the third and every subsequent offence; and in the event of such fines not being paid into the funds of the Association within fifteen days after he has been notified by the Secretary of such penalty, then in such case it shall be obligatory on the Company or Companies such agent represents either to pay the amount of such penalty or dismiss said agent; and he shall not be eligible to represent any Company member of this Association.

Constitution, CFUA 1883, Rules of Association #4.

106. Minutes, Annual General Meeting, 1894, CFUA Collection, (UWO).

107. Westall, "David and Goliath", p. 149.

108. Lurie, The Chicago Board of Trade, p. 32

109. Law Union and Crown requested special permission to accept a risk below tariff based upon an agreement which was made when they joined in 1883. They were denied permission , but accepted the risk anyway. The infraction discussion lasted from 1899-1923; Hives; The Underwriters, p. 32-34. Committee on Trade Combinations 1889, Evidence, Robert McLean, Secretary of the CFUA, p. 428. The Underwriters had fined no one since its inception.

110. Minutes, Annual Meeting 1899, President's Address, P. H. Sims; Ryan, "The First Seventy-Five Years", p. 10.

111. Hives, The Underwriters, p. 30-31; Ryan, "The First Seventy-Five Years", p. 19-20; Minutes, Annual Meeting 1901. Morrissey eventually cancelled the policies when resolutions renewing the schedule rates were introduced.

112. Minutes, Annual Meeting, 1909.

113. Minutes, Annual Meeting 1917.

114. Hives, The Underwriters, p. 49; Ryan, "The First Seventy-Five Years", p. 22; Minutes, Eastern Stamping Committee, February 18, 1919.

115. For a discussion of standardized forms, see, Kessler, "Insurance", pp. 11-13.

116. T. L. Morrissey, President of the All Canada Federation quoted in the Financial Post, March 9, 1918, p. 14.

117. The Chronicle, December 6, 1918, p. 1261.

118. Industrial Canada, July 1917, p. 443. Meier, The Political Economy of Regulation, p. 43-48.

119. This was the consensus opinion of witnesses testifying before the Committee of Trade Combinations in 1887, regardless of their relationship with the CFUA Committee on Trade Combinations. Evidence. James Boomer, Secretary of the Western Assurance Company, p. 448; William Tatley, Manager of the Royal insurance Company, o, 463; Hugh Scott, Manager and Director of the Millers' and Manufacturers', and the Queen City Insurance Company, and the Secretary, Hand in Hand Fire Insurance Exchange, p. 499.

Chapter 3

The Ontario Insurance Commission: Investigation and Redefinition of Regulation

The Ontario Insurance Commission was created for reasons which seemed questionable and politically motivated. Despite this inauspicious beginning, the investigation itself evolved into an exhaustive and systematic investigation into the fire insurance industry. The Commission presented an opportunity to reassess and redefine government's regulatory role in the insurance industry. However, the nature of the industry's internal structure and the Commissioner's own reservations about an interventionist state set the parameters for the regulatory debate. While the Underwriters initially viewed the Commission with some trepidation, and the Commission did recommend some changes from the Association's established operating practices in the form of greater supervision, its overall conclusions seemed to legitimate much of the CFUA's methods and policies. In his deliberations, the Commissioner sought guidance from American Insurance Commissioners who had participated in earlier state insurance investigations, and their reservations about the total success of the American regulatory initiatives tended to confirm the Commissioner's own dislike of what he considered "paternalistic" legislation. Consequently, his recommendations shied away from direct regulation which would have fundamentally redefined insurance as a public utility and altered the existing scope of government control. It thus seemed to offer the CFUA the ability to continue its activities largely along similar lines as before.

On April 10, 1916, Sir Adam Beck, the Member of the Ontario Legislature for London, proposed that an inquiry be made into the control exercised by the CFUA over the fire insurance industry, its methods of rate regulation and the

adequacy of legislation defined by the Ontario Insurance Commission.1 At the request of municipal officials, he maintained the CFUA controlled the fire insurance industry in London and the whole province, and that it exercised such authority in an arbitrary and discriminatory manner.

Relations between the CFUA and municipal officials in London had been strained since the CFUA's 1904 and 1908 inspections of London's fire protection services and general fire conditions. These investigations increased the key rate for the City, because the water works were inadequate for its size and construction, and this hiked up insurance costs for all dwelling and manufacturing owners.2 Civic leaders, including Beck, designed an improvement and expansion program to increase the city's water mains, to seek alternate water supplies, and to address the construction and fire protection issues raised in the inspection report. These efforts, however, produced only a partial lowering of the key rate. Local manufacturers charged that the CFUA's rates were arbitrary and discriminatory, favoring larger insurers, who were rare in London. They also maintained there was no process of redress to address what they considered to be unfair rates. The CFUA, city officials complained, was uncooperative and autocratic in the conduct of its business, leaving insurers with few options to acquire adequate and appropriate fire insurance.3 In its defense, the CFUA contended that it had conducted an expert investigation which was submitted directly to the City Council to aid in the improvement of fire protection. The Association cited water shortages during the summer of 1915 as corroborative evidence that improvements requested had not been undertaken and the water supply for fire protection was inadequate.4

Beck's critics questioned his motives for demanding a public investigation into the fire insurance industry. Beck had taken a keen interest in the municipal water supply and had supported the changes adopted by the city. However, political opponents in London criticized the water works project, on the grounds that it had

not met the standards set by the CFUA and, as a result, had not achieved the anticipated reduction in rates predicted by Beck himself. In light of this, commentators contended that Beck had put his political reputation on the line, and when confronted with the continued high rates, maintained that the CFUA, acting as a private combination, had no right to question the adequacy of fire protection and water supply in London, or in any other city.5

Response from the CFUA concerning the appointment of the Commission was mixed. One Toronto manager was concerned about the inquiry because the situation in London had not, in fact, been settled and the Inquiry itself would put the Association through a great deal of inconvenience and expense.

> Of more concern, the Commission would provide an opportunity ... for many cranks to bring themselves forward and air their views, [on] a business as technical as fire insurance, as it is often the unreasonable proposal that looks fairest to the uninformed public.6

Since similar insurance investigations conducted throughout the United States between 1910 and 1916 resulted in the industry being subjected to varying measures of direct regulation, most industry officials feared similar intervention. They maintained that:

> the laws of supply and demand ... are the best safeguard for the protection of the public and when the legislatures interfere the result is usually just to make things worse instead of better.7

Some CFUA members did counsel co-operation. They perceived that the Inquiry, despite its danger, might possibly have some benefit. Alfred Wright, President of the CFUA, suggested a public confirmation of the reasonableness of the CFUA's methods was in the best interests of the Underwriters, "as it might serve to clear up any misunderstandings that may exist on the part of the public as to the methods of the Canadian Fire Underwriters Association."8 In his address to the Annual Meeting, the President called upon the members of the Association to assist

the Commissioner in every way possible. "Publicity of this nature is to be desired and encouraged", he said, but also recognized that:

> such an investigation carries with it a more or less distinctly implied charge of wrong-doing which our members in the full knowledge of the aims and practices of the Association will be inclined to resent. But upon this occasion, our feelings should be put aside in the hope that under a competent Commissioner earnestly desirous of reaching the facts, the insuring public may be made more fully aware of the needs and exigencies of the business.9

The companies anticipated that the public would recognize the overwhelming need for fire insurance companies to remain solvent in order to meet their obligations and that the best way to lower insurance costs would be through improved fire prevention and reduced agents' commissions.10

In consultation with the Ontario Fire Marshal, the Attorney-General appointed Cornelius Arthur Masten, Justice for the Appellate Superior Court of Ontario, as Commissioner of the Ontario Insurance Commission.11 The selection of the Commissioner was well received by both Ontario insurance interests and their critics because of his well-known reputation as a capable and fair-minded barrister.12

The Commission was conducted with the widest range of input solicited from the general public, insurance companies, the Fire Marshal's office, members of the Ontario Legislature, the Canadian Manufacturers' Association, and municipalities throughout the province.13 It held hearings from August 1916 to May 1918 in London, Hamilton, Ottawa and Toronto. Judge Masten also sought assistance from the Insurance Commissioners from the States of Massachusetts and New York, who had previously participated in similar investigations and were overseeing the implementation of legislation arising from those investigations.

The Ontario Insurance Commission's mandate was to inquire and report on:

1. The methods by which insurance companies registered or licensed by the province of Ontario, their representatives or agents, transact all classes of business, except the business of life and marine insurance, but more particularly as to fire insurance, automobile insurance, plate glass insurance, boiler insurance and accident insurance.

2. The methods, rules, regulations and practices of all associations, or such insurance companies and associations of representatives or agents of such insurance companies, with regard to making, promulgating, enforcing or controlling rates, commissions, forms, clauses, contracts or the placing of insurance.

3. The existing laws of Ontario in relation to the foregoing and their practical operation.

4. The existing laws in Ontario in relation to unlicensed insurance and their practical operation.

5. Any matter arising out of the foregoing which it is necessary to investigate with a view to the above inquiries.14

From the outset, Masten attempted to exercise the broadest interpretation of the Commission's mandate, and to refrain from focussing on the conduct of the CFUA, exclusive of the other issues of the inquiry.15 In his deliberations, Masten attempted to reconcile the imperatives of public supervision with the exercise of private enterprise. In doing so, he focused on the issues of insurance rates, the CFUA's exercise of monopoly power, and competitive conditions within the industry in assessing the appropriate role for the state. Masten began with the assumption that the insuring public was generally dissatisfied with existing insurance costs and conditions.16 And yet, while fire insurance interests were well represented at the Commission hearings, there was no participation by individual insurers or consumer groups representing the interests of dwelling insurers, who were the largest group of insurance purchasers.17 Even the small communities which had been adversely affected by the CFUA's policies did not see fit to send deputations. The CMA observed that the general public did not, "appear to realize that the Commission was appointed for their benefit and that if certain phases of the insurance business in Ontario are carried on against the public interest, it is not only their privilege, but

their duty to assist the Commissioner".18 This conspicuous absence of public interest was a cause of concern and surprise for Masten, "seeing that insurance by its very nature, either directly or indirectly, affects the economic-well being of every individual in the Province."19

The absence of public involvement should not have been a surprise to Masten. The economic and social conditions arising from the war were of more pressing concern. Also, the cost of fire insurance for average city dwellings was relatively small compared to the insurance costs incurred by large manufacturers. Moreover, the presence of numerous fire insurance agents to assist property owners with the rating and collection of the insurance premium made active involvement by such consumers seem unnecessary.20 Moreover, the Statutory Conditions specified in the Ontario Insurance Act, which defined the contractual relationship between the insurance company and the customer, provided a legal protection to private dwelling owners from unprofessional practices, further reducing the need for consumer vigilance. Insurance was seen by most building owners as a requirement rather than a luxury, and subsequently owners purchased standard coverage from easily accessible and reputable insurance companies.21 Finally, the technical expertise required to determine the appropriateness of rates was complex. The Underwriters maintained that rate making was a difficult and evolving process which required experience and knowledge, beyond that of the average policyholder. The general public, therefore, had little incentive to participate in the proceedings.

Masten thus consciously adopted the role of public protector, assessing the evidence in terms of public need, public response and public responsibility. This position raised the ire of one industry journalist, who criticized Masten because, "the Commissioner seems to think his duty is to align himself with public opinion in the regulation of great businesses instead of leading public opinion to his own trend of thought."22

Masten concluded the public interest was ill-served after he became convinced that insurance companies were engaging in cross-subsidization. Dwelling owners who were less likely to scrutinize the premium paid, and lacked experience negotiating insurance rates, were being charged rates in excess of their loss experience. This overcharging of non-hazardous risks allowed the insurance companies to compete more effectively with unlicensed and non-tariff companies in the hazardous insurance market, where total premiums and commissions were higher and competition more intense.23 Masten repeatedly requested throughout the hearings that the Underwriters furnish statistical evidence demonstrating insurance rates and fire loss experience by class of risk, to identify the premiums received by dwelling and small shopkeepers and the corresponding losses for those risks. The insurance companies replied that statistical records based on insurance classes were not systematically maintained, and that standard reporting methods which could permit comparisons did not exist.24 This led Masten to recommend that:

> all Companies be required to keep their records in such a way as to classify the business done by them and to show in their annual returns to the Department not only the amount of business done in the Province, and the underwriting profit made, but also the profits made in each of the several classes of risks assumed by them."25

Masten made a great effort to identify the industry's true costs and profitability for the purpose of reducing insurance costs to the general public. Of the three expense ingredients - profit margin, administration costs and acquisition costs - Masten concluded the acquisition cost of agent commissions was central. He was particularly critical of the excess control exerted by the agents and the lack of service offered in return for the high commissions.26

Agents provided the greatest source of competition in the fire insurance industry - competition between companies for the appointment of agents, and competition between agents for agent commissions. High acquisition costs accompanied the intense competition for agents and insurance risks. Agents' fees constituted 22% of the expenses of insurance companies.27 Efforts had been made since 1915 to create Agents' Commission Rules which would lower costs, but they failed because of intense competition both within and outside the CFUA,28 and because of the structure of the fire insurance industry, in which competition between branch offices and general agencies mitigated against a satisfactory resolution.29

Considerable pressure originated with both agents and industry analysts for stricter qualifications and higher licensing fees to isolate the bona fide from the fly-by-night agents.30 Many agents were engaged in side-line businesses or alternate professions.31 Others seemed in conflict of interest. The appointment of lawyers, trust company representatives and company employees received serious criticism, on the grounds that they were abusing a position of trust. Some mutual insurance companies were in the habit of permitting their directors to act as agents.32

Ideally, Masten preferred that the function of the agent be eliminated from the business, requiring that property owners acquire insurance coverage on their own accord.33 This, however, was impractical. Masten agreed with contemporary agents' critics that stricter controls be exercised on the appointment of agents. He advocated that only fit and qualified men, undertaking insurance as a serious profession, should be eligible to receive licenses.34 Further, the government should set appropriate examinations, standards of conduct and provisions for the cancellation of licenses, to protect the insuring public.35 In resolving the problematic issue of commission costs Masten preferred that the companies resolve the commission dilemma amongst themselves, but given their inability to reach a

general agreement in the past, he recommended that the Legislature limit commissions.36

Criticism of the CFUA's methods was also presented to the Commission in a lengthy report by the Ontario Fire Marshal, E. P. Heaton. He presented strong evidence critical of the tight control exercised by the CFUA and concluded that the Underwriters had been arbitrary and autocratic towards the insuring public.37 Through its coercive internal self-government, Heaton charged, the Underwriters prevented freedom of contract and accessibility to accurate fire insurance maps, and restrained trade through the maintenance of excessive insurance rates and non-intercourse rules which obstructed competition.

Heaton's recommendations for measures to control insurance rates sparked a debate over state insurance and the appropriate role for government in the creation and implementation of rating.38 Masten, however, concluded that state insurance was "neither desirable nor practical" for political and economic reasons.39 The implementation of either state insurance or a provincial rating bureau would require an Insurance department with a staff of considerable expertise and experience to oversee the re-inspection of all risks in Ontario to determine equitable rates.40 Any efforts to implement state fire insurance would be inordinately expensive. It would also destroy the private insurance industry, which was providing insurance protection that was being offered efficiently and relatively economically. There were also practical objections concerning possible political abuse and personal bias by Government Inspectors responsible for reporting on risks and adjusting losses.

Moreover, although several witnesses during the hearings advocated establishing regulatory rating bureaux similar to those adopted in the United States, Masten believed insurance rates could not be fixed the same way as railway rates.41 Railways could be compelled to carry passengers and cargo at fixed rates. Insurance

companies retained the option of refusing risks, if the premiums seemed to be incommensurate with the hazard. If government chose to put a cap on premiums, the companies could do the same thing. When states such as South Carolina and Missouri introduced state control of insurance rates, insurance companies simply withdrew from that state insurance market in protest.42 The failure of state insurance and state rating bureaux in the United States convinced Judge Masten that such policy options were not advisable.43 He concluded that "government control of rates would be very difficult to apply and would not afford an adequate substitute for competition."44

The CMA followed the proceedings carefully, attentive to any recommendations or changes that might influence the costs and availability of insurance for its members. Initially, the CMA was critical of the Fire Marshal's attack on the CFUA, arguing that excessive fire waste caused high insurance costs, not the insurance companies. Its journal, Industrial Canada, declared:

> one would have thought that the problem of reducing the annual fire waste of Ontario would have been of sufficient importance, and would have involved duties sufficiently arduous, to have commanded the entire time and attention of the Fire Marshal for some years to come. That, at any rate, was the expectation of the business interests that advocated the creation of the office ... But the office seat of the Government's appointee was barely warm before his all-important duties are temporarily laid aside, so that he can sharpen the axe with which he hopes to get after the CFUA.45

The CMA did not however initially participate directly in the Commission hearings, believing that any proposed form of rate control would not be effective and changes to the unlicensed insurance markets which were widely used by its members would not be introduced.46

The CMA took an active involvement when the Underwriters requested that Masten consider the advisability of introducing a 5% tax on unlicensed insurance in an effort to create a "level playing field" in the Ontario insurance industry.47 The

Underwriters maintained that they were subjected to unfair competition because, as licensed companies, they were required to maintain deposits with the Dominion government, to finance the operations of the Ontario Fire Marshal's Office, and were subject to special war taxes as well as general municipal and provincial company taxes.48 Unlicensed companies, on the other hand, were exempt from paying taxes.49 In reality, unlicensed insurance companies did not enjoy many advantages available to the licensed companies. Dominion government regulations prevented them from maintaining offices in Canada or directly soliciting business, and made their insurance policies legally unenforceable in Canada. They did, however, provide competitive rates and services in the hazardous market, which limited the Underwriters' ability to control the manufacturing and industrial insurance market. The CFUA contended it was amenable to competition, so long as it was "fair competition".50 "We [CFUA] have no objection to competition, and, in fact, consider it desirable so long as it is on fair and equal terms with companies regularly licensed in Canada".51 The CMA, on the other hand, argued that the Underwriters' request for a tax on unlicensed insurance was a "modest demand that they be granted a virtual monopoly of the fire insurance business ... when there is scarcely sufficient competition to exercise wholesome restraint of the CFUA."52

Declaring the matter of unfair competition "a proverbial red-herring", the manufacturers obtained the legal services of F. W. Wegenast to represent their interests before the Commission.53 The CMA had to defend the difficult position of demanding economic protection for its members, while denying the need for such protection for insurance interests.54 They maintained that manufacturers, employing labour and resources, were producers making great contributions to the economy. Further, manufacturing interests which combined to secure industry advantages were subject to legal action under the Combines Act, unlike their insurance counterparts.55 Insurance companies, on the other hand, were

distributors; they could commence business in a rented office, with no additional staff and no investment in physical assets. Because manufacturers' fire insurance was necessary, companies should have the freedom to acquire it under the same conditions as other financial services.

Manufacturers introduced evidence demonstrating that unlicensed insurance was sought as an alternative when licensed companies refused to provide sufficient coverage for manufacturing plants, equipment and inventories, when policy contracts were unduly restrictive, or when rates were uncompetitive or arbitrarily enforced.56 Many CMA members felt the New England Mutuals and Reciprocal insurers from the United States offered superior inspection services that improved their overall fire risk and reduced the cost of their insurance. Because the CFUA based its rates on scheduled rating, risks that did not have a schedule, particularly sprinklered and industrial risks, were often quoted high premium rates, or else, because the CFUA did not have an adequate loss experience to determine an acceptable rate of risk, were simply refused insurance.57 Moreover, rates for unscheduled risks, which were subject to change when competitive pressures were present, were determined and enforced in an arbitrary and secretive manner, often without adequate inspections.

Manufacturers also complained that the CFUA's influence extended beyond its membership. Its enforcement of Tariff rates influenced non-Tariff companies because they secured access, albeit illegally, to the CFUA schedules and thus based their rates on the Tariff schedules. This indirect control, manufacturers contended, severely limited their options in the Canadian insurance market, while cheaper and more competitive rates were available from unlicensed American insurers.58 The CMA argued that the government should not sanction the control exercised by the CFUA and construct artificial barriers hindering the acquisition of adequate insurance coverage.

The CMA also criticized the CFUA's alleged lack of flexibility. Manufacturers had no recourse for rate revisions and felt they had not been treated professionally by Officers of the CFUA, particularly by the Toronto Secretary, Mr. Robertson, whose manner was described as arbitrary and uncooperative. In his defense, Robertson replied, "I will not attempt to offer anything in excuse, beyond saying that I see, in the course of business many people, the majority of whom are asking for some special treatment or concession they have no right to expect or receive, and this sometimes has an effect on the nerves and temper."59

Although the matter of Robertson's behavior received no comment from the Commissioner, Masten assessed the CFUA's format of dispute resolution, and concluded that rate appeal procedure available through the Association was unacceptable.60 The insured had to rely on their agent or broker to act on their behalf because they were not allowed to be present during any appeal session. Masten recognized that the CFUA performed a quasi-public policy function but also conceded the potential negative implications of an inaccessible, private rate making combination setting insurance rates, regardless of their accuracy. He thought "its actions ought, in my opinion, be subject to review by an Appellate Court,"61 and that "increased publicity, and an increased obligation to justify its action before an independent tribunal, would be of benefit both to the public and to the insurance companies, in promoting a mutual understanding of each other's positions".62 He further recommended that all Rating Bureaux engaged in rate fixing should file their Constitution, Articles of Association, and By-Laws with the Superintendent of Insurance. He did not follow American precedent and recommend that insurance companies file their rates and schedules with the Superintendent of Insurance prior to placing insurance. He felt that non-Tariff companies would endure undue and unreasonable hardship to construct rating schedules for the public record.63 The only result of such a provision would thus be to drive small companies out of

business. He did, however, recommend that the Superintendent be granted an arbitrator function and be empowered, upon complaint by an insurer or by his own personal observation, to require the Underwriters or other Rating Bureaux to file details explaining how a particular rate was constructed to determine if a rate unfairly discriminated between risks of the same hazard.64 The authority of the Superintendent should also be extended to cancel any insurance rate which was deemed discriminatory. This, Masten concluded, would disrupt insurance companies the least, while achieving the greatest public benefit.

The Underwriters were not sympathetic to introducing such a complaint mechanism. The potential for political abuse was raised.

> If you can be quite sure of the impartiality of the person who may be selected, perhaps the end desired might be accomplished, but what we fear, and what we understand has happened in the United States, is that from time to time an official may be appointed who would have a distinct bias one way or the other, and that it is not a fair tribunal because he is too much subject to temporary excitement or passion of the public.65

The Underwriters were simply opposed to disclosing their rating methods.

Freedom of contract was an important concern which both the CMA and Judge Masten wished to preserve to facilitate competition.66 Large insurance risks, including buildings and fluctuating inventories, were required to carry a co-insurance clause, covering only 80% of the replacement cost in the event of fire.67 Although the CFUA maintained that this clause was standard for all manufacturing risks, mutuals and inter-insurers did not require a co-insurance clause or any similar policy condition. The manufacturers contended that this represented a restrictive policy condition which increased the cost and the liability of the insured in the event of fire.

The Underwriters also controlled competition by enforcing standard policy provisions in the insurance contract. Occasionally, individual companies would be willing to write insurance for a risk with special coverage provisions, but the

Association would not allow such coverage to remain effective. This not only protected the interests of the insurance companies and controlled potentially dangerous competition between Association members, it minimized the possibility of litigation against the Association and its members.68 Insurance companies were averse to using the courts to enforce contracts because of the negative publicity of large insurance companies unwilling to fulfill their obligations.

Dissatisfied with the limited policy alternatives available from the Tariff companies, manufacturers demanded the right to exercise freedom of contract when acquiring their fire insurance. Masten supported the Underwriters' enforcement of standard policies, since this protected the consumer from inadvertent and unfair changes made by the insurer, but he asserted that access to freedom of contract must prevail, and thus opposed making the standard contract compulsory.69

Yet Masten did not agree completely with the CMA's thinking on freedom of contract. The CMA maintained that unlicensed insurers provided the greatest opportunities for freedom of contract and competition and requested that the Commissioner not entertain any proposals that would reduce competition.70 Specifically, they opposed any additional taxes assessed on unlicensed insurers, on the grounds that this would impair competition and thus their access to cheaper insurance.71 Taxation on unlicensed insurance "was the thin edge of the wedge. It would provide a lucrative source of income and might be a danger."72 Masten, however, agreed with the Underwriters that a minimal tax of 5% was not an undue burden which would contribute to the restraint of competition.73 "Prima Facie ... the suggestion as presented by the Tariff companies has appeared to me to be fair and equitable."74

> This tax, as suggested, doesn't, to my mind, when you come to actual figures, make any appreciable difficulty. It isn't of sufficient size to produce any effect in reducing competition. No one would hesitate to make use of foreign insurance on account of the amount of this tax.75

Masten acknowledged the legal distinction of unlicensed mutuals and reciprocal insurers, which precluded their compliance with the conditions set out in the Ontario Insurance Act, but he recognized their important role in the Ontario insurance market.76 He maintained throughout the hearings that he would not consider proposals that would reduce competition.

> Anything interfering with or reducing competition, or interfering with the ability to place insurance with the New England Mutuals was serious and an undesirable situation.77

He also wanted to guarantee the greatest protection for the insuring public. He recommended that insurers wishing to purchase unlicensed insurance should demonstrate, to the Ontario Superintendent of Insurance, an inability to obtain insurance coverage from licensed companies or to demonstrate that available insurance was offered at excessive rates.78 This was not welcomed by the CMA. However, Masten did not recommend changes to the taxation of unlicensed insurance or suggest licensing requirements for reciprocal insurers.79 Most importantly for the CMA, he reserved judgment on the issue of taxing unlicensed insurance. Masten remained committed to ensuring competition and was hesitant to suggest changes which might further limit competitive pressures. Reciprocals, he pointed out, were used by large insurers, who were quite able to take care of themselves. "There is not the same necessity for paternalism with them as that existing for the small domestic insurer in feeble mutual companies."80

There was consensus among manufacturers, insurance interests and Commissioner Masten that the Underwriters' exercised monopoly control in the fire insurance industry, fixing and enforcing insurance rates, controlling agents, regulating the distribution of fire insurance maps and performing inspection services.81 However, the CFUA's defence of its methods led Masten to conclude that the Underwriters did not act contrary to the public interest.82 He also

concluded that the Underwriters were exercising quasi-public authority and that they were just beginning to acknowledge and accept the responsibilities that accompanied the exercise of that power.83

> I am of the opinion that the operations of the Canadian Fire Underwriters' Association have been and are to the advantage and in the interests of the public, and that such a combination tends strongly to maintain the solvency of the companies, to stabilize rates, to eliminate discrimination, and assist in controlling the expenses of carrying on the business ... I find that the Canadian Fire Underwriters' Association, though a combination which largely controls the premium rates in Ontario, ought not be abolished or hampered in its legitimate work, but, being a combination, ought to be fully subject to supervision and control by the State.84

He asserted that the Association ensured the economical and efficient distribution of insurance protection, while at the same time improving fire conditions for the general public through their inspection and fire prevention services.85 The combination of insurance interests was deemed necessary to stabilize rates, in an industry where the natural tendency is to engage in cut-throat rate competition which only threatens the ability of companies to meet their claims. A corollary effect of the work of the Association, he believed, was the general improvement of fire conditions in Ontario. The Underwriters argued that they did not abuse their power, but rather were constantly under competitive pressure from within the organization as well as from without, which required flexible and intelligent responses to changing industry conditions.86

The condition of being subject to supervision and control by the state included an appeal mechanism to address discriminatory and inequitable rates. Masten accepted the view that the nature of setting rates required definite and precise rulings, and that such rulings might appear to be arbitrary and autocratic.

. . .

Industry observers waited with anticipation for the recommendations and forthcoming legislation resulting from the Commission.87

> The practice in Canada is to follow the lead in Ontario and every departure in Ontario would be seriously studied by other provinces, and in all probability, copied by them.88

Masten, in his deliberations, looked to American legal precedents and insurance experience for direction rather than British precedence, upon which the existing Dominion and Ontario Insurance Acts had been constructed.89 The trends in American insurance regulation included both publicity forms of regulation as well as managerial, or direct, regulation. British insurance regulation, however, was characterized by non-intervention, granting the FOC, the largest rating organization in the world, considerable influence and control in the insurance market. Masten recommended general provisions for public disclosure ostensibly for public protection, but he did not contemplate direct control of the internal affairs of the companies. The results of Masten's deliberations represented a Canadian compromise of American and British precedent.90 Although he was unwilling to allow the Association to continue its work unfettered, he was not prepared to recommend sweeping intervention. His conclusions were strongly influenced by his perception of the effects, rather than the goals, of interventionist insurance regulation in the United States.

Response to Masten's report was received positively by industry representatives.91 The CMA supported most of the Commission's findings, but was unhappy that the Commissioner had not been more emphatic in his support for unlicensed insurers.92 At the conclusion of the Insurance Commission, the Underwriters' felt confident that the comprehensive investigation had vindicated the nature and scope of their operations, and that they enjoyed the respect of the general insuring public.93 They did not anticipate any radical departures in the regulation of their Association and they fully expected that any changes considered by the government as it began the task of distilling the report's recommendations into actual legislation would reflect both their expertise and their objectives.

CHAPTER 3 ENDNOTES

1. Ontario. Journal, 1916; Insurance Chronicle, June 1916, p. 180; Globe, April 11, 1916.

Resolution:

> That in the opinion of this House, inquiry should be made into the control exercised by Underwriters' Associations and similar bodies, over the method of regulating and placing insurance and the rates changeable for insurance against loss or damage by fire or otherwise, and that His Honor the Lieutenant-Governor-in-Council be requested to name a Commission to conduct such inquiry under the "Public Inquiries Act" and to report the results thereof with such recommendations as may be deemed proper to His Honor the Lieutenant-Governor-in-Council, that action may be taken there under at the next session of the Legislature."

2. The CFUA requested larger mains, better facilities for the pumping station and extra reservoirs. The cost of replacing the water mains was prohibitive, so extra mains were laid along side the existing mains. This did not meet with the requirements of the CFUA. The effect of the increase in the key rate was to increase all insurance premiums in the city. Canadian Insurance and Office and Field, Evidence: London City Officials, July 4, 1917, pp. 6-10.

3. Evidence, Canadian Insurance and Office and Field, Evidence: Robertson, October 24, 1917, p. 9.
Robertson, Secretary of the CFUA argued that:

> The city, of course, is jealous of criticism, while the Association's inspector is required to give to the members of our Association a plain and unvarnished statement of what he finds, in what aspects there are deficiencies, what improvements, if any, have been made, and what he would suggest in the way of improvements. The Association does not hide this report, but on the contrary, sends a number of copies to the Mayor. In this particular case, when we learned that the officials of the city disputed the correctness of our Inspector's report, we offered either to send him back again or to send an independent expert ... This expert, after a very painstaking enquiry, confirmed, though in different and more professional language and detail, all of our Inspector stated with regard to the water supply.

4. Canadian Insurance and Office and Field, Evidence: Robertson, October 24, 1917, p. 9.

5. Financial Post, September 2, 1916; The Monetary Times, November 3, 1916; Insurance Chronicle, October 1916.

6. The Monetary Times, August 11, 1916.

7. The Monetary Times, August 11, 1916.

8. The Monetary Times, August 11, 1916.

9. Insurance Advisory Organization - University of British Columbia Collection (IAO-UBC) Box 39, File 4, Annual Meeting Minutes 1915-1916, President's Address, June 20, 1916.

10. IAO-UBC Box 39, File 4, Minutes 1915-1916, President's Address, June 20, 1916.

11. Justice C. A. Masten may be referred in future references as the "Commissioner" or simply as "Masten"".

12. The Globe, April 11, 1916; The Monetary Times, August 11, 1916, p. 26. Only recently he was called to the bench, resigning at the same time a directorship of the National Trust Company, which he had held but a few months. One of the most important cases in which Judge Masten appeared, prior to his call to the bench, was the Union Life trial at Toronto, in which he watched the interests of the Attorney-General of Ontario.

13. Public notices were printed in The Toronto World, The Toronto Globe, The Mail and Empire and The Monetary Times. Report of the Ontario Insurance Commission, Appendix No. 1, p. 42-46. See Appendix 1 for a sample of the circulars distributed by the Commission.

14. The official commission also included the following:
The advisability of adopting Statutory Conditions for Automobile, Plate Glass, Boiler and Accident Insurance policies."
Since the focus of this discussion is isolated to the issues arising in the fire insurance industry, the matters raised in the fields of automobile insurance, plate glass insurance, boiler insurance and accident insurance have not been included. However, it should be noted that the conclusions relating to the regulation of general insurance conditions in the fields of insurance, other than fire, were similar to those for fire insurance. Also, automobile insurance was in its formative stages with little or no legislative guidelines relating to the distribution and conduct of the automobile insurance industry.
Report of the Ontario Insurance Commission, Appendix No. 1, p. 42.

15. Canadian Insurance and Office and Field, Evidence: Masten, December 5, 1917, p. 6

16. Report of the Ontario Insurance Commission, p. 3-4.

17. The following Associations and organizations were represented during the course of the Commission:
Canadian Fire Underwriters' Association, D. L. McCarthy (Counsel)*
Accident Underwriters'
Mutual Underwriters'
Glass Underwriters' Association, J. R. McClennan
Fire Chiefs' Association
Maryland Casualty Company, F. J. Lightbourn
Norwich Union, J. B. Laidlaw*
Ocean Accident, C. H. Neely
Scott and Walmsley Companies, H. C. Fortner
Mutual Fire Companies, Mr. Ewing
Secretary, Canadian Fire Underwriters' Association, J. A. Robertson*
British American and Western Companies, C. S. Wainwright
London and Lancashire, A. Wright*
British Crown, A.C Stephenson*
Hartford, P. A. McCallum*
Home, A. M. M. Kirkpatrick*
Aetna, J. R. Stewart*
General, T. H. Hall*
New York Underwriters', T. E. Richardson
Springfield, J. M. Murphy*
Merchants' Casualty, T. J. Barron
Insurance Broker, P. Robertson
Canadian Manufacturers' Association, F. W. Wegenast
Ontario Fire Marshal, E. P. Vale
Ontario Superintendent of Insurance
Dominion Superintendent of Insurance

* denotes members or representatives of the Canadian Fire Underwriters' Association

The Monetary Times, Volume 57, August 11, 1916; Volume 57 September 1, 1916; The Monetary Times, Volume 62, May 9, 1919.

> One of the curious features of the report is the public apathy which was evidenced regarding the investigation, in the face of the alleged unpopular discontent with the condition of the fire insurance business which was the principal reason for instituting the inquiry."

See Appendix 2 for a list of all witnesses appearing before the Commission.

18. Industrial Canada, December 1916, p. 949.

19. Report of the Ontario Insurance Commission, p. 3.

20. City dwellings and small shops were preferred risks because their rates were easily determined due to their long loss experience and rates for preferred risks were strictly enforced by the Underwriters. Most dwellings had effective access to

fire protection services offered by municipalities. This was the insurance market the CFUA had the greatest rating experience because all of the variables, physical and moral risk, fire protection, construction codes and loss experience, were easily available, quantifiable and inspectable. This aided in the scientific determination of rates, unlike sprinklered risks where each building represented a unique and distinct risk and rate.

21. The possibility of retribution by the Underwriters at the conclusion of the Commission may have been a concern for some insurers, but there is no evidence to suggest that this was a motive for inaction.

22. Canadian Insurance and Office and Field, Editorial, December 26, 1917.

23. Cross-subsidization occurs when one class of insurance risk is charged a premium rate in excess of its loss experience. Higher profits are realized in one class of risk to subsidize disproportionately higher losses in another class of risk.

> Only by forcing some consumers to pay more than the costs they impose on the insurance system [is] it possible for companies to serve other consumers at rates that do not cover costs.

Irwin M. Stelzer and Geraldine Alpert, "Benefits and Costs of Insurance Deregulation", p. 8. Report of the Ontario Insurance Commission, p. 9; Canadian Insurance and Office and Field, Evidence: Masten, February 14, 1917; February 28, 1917, p. 8; August 8, 1917, p. 9; December 26, 1917, p. 12.

Masten suspected that the profits deriving from dwelling risks was significantly higher than that from manufacturing and industrial risks.

> It has struck me throughout the enquiry as an undesirable feature why the less hazardous classes should bear the burden of rates on the more hazardous risks. It's inequitable.

24. Report of the Ontario Insurance Commission, p. 9. This inability to produce consistent records demonstrated the intuitive rate making processes adopted by the Underwriters. Although the CFUA attempted to employ a standardized and scientific rate making process, the nature of the insurance premium, with the actual costs unknown, allowed some measure of flexibility in the face of intense competition. Similar conditions existed in the creation of railway rates, as discussed in Ken Cruikshank, Close Ties: Railways, Government and the Board of Railway Commissioners, 1851-1933, Montreal: McGill-Queens, 1991, pp. 8-28.

25. Report of the Ontario Insurance Commission, pp. 9, 16, 40. He also suggested that the Dominion and Provincial Superintendents of Insurance design the same form for reporting purposes, for simplicity and ease of completion for the companies and to allow for comparative analysis.

26. Canadian Insurance and Office and Field, Evidence: Masten, November 21, 1917, p. 7; Monetary Times, Volume 59, December 28, 1918, p. 14.

27. Report of the Ontario Insurance Commission, p. 16. Agents, however, did not agree with Masten's assessment. They felt that the remuneration for agents was not excessive and required considerable effort and expertise. Canadian Insurance and Office and Field, Evidence: Colonel Reed, January 2, 1918, p. 10.

28. IAO-UBC Box 39, File 4, Minutes, 1914-1915: Special Meeting: Proposed Rules Governing Agency Appointment and the Payment of Commission, January 28, 1915; Toronto Committee Minutes, February 15, 1915; Toronto Committee Minutes, February 22, 1915; IAO-UBC Box 39 File 5, Minutes 1917-1918: Special Meeting: Toronto Commission Agreement, November 1917; Annual Meeting Minutes, December 6, 1917; Special Meeting: Toronto Commission Agreement, March 1, 1918; Special Committee: Regulation of Commissions, June 26, 1918. Canadian Insurance and Office and Field, Evidence: John Laidlaw, January 23, 1918, p. 7; Canadian Insurance and Office and Field, Evidence: Colonel Reed, January 2, 1917, p. 10; Report of the Ontario Insurance Commission, p. 20.

29. Canadian Insurance and Office and Field, Evidence: Mark Irish, January 16, 1918, p. 7-10, January 23, 1918, p. 7-8; Evidence: Col. Reed, January 9, 1918, p. 8-9.

30. Canadian Insurance and Office and Field, Evidence: Mr. Hardy, August 22, 1917.

Professional organizations such as the Toronto Insurance Institute and agents' associations were formed to protect the interests of insurance agents and to assist with their professional development, as well as providing legal assistance to agents in the event of disputes or abuses with clients.

IAO-UBC Box 39 File 5 Minutes 1919-1920, November 29, 1919. The Underwriters' themselves proposed a $5 registration fee, payable by the agent to the Association, to control the number of agents operating in Toronto and to eliminate unqualified and unscrupulous agents. It also provided a source of income for the Association.

31. Canadian Insurance and Office and Field, Evidence: Mr. Kernahan, January 9, 1918, p. 9.

University courses were created for insurance businessmen to improve the theoretical and practical knowledge of managers and agents. The Monetary Times, Volume 59, September 14, 1917, p. 26.

32. Financial Post, March 10, 1917, p. 14. The Deputy Fire Marshal, W. J. Vale, threatened to introduce legislation prohibiting the practice, but hoped that the companies would voluntarily discontinue this practice.

33. Report of the Ontario Insurance Commission, p. 19

34. Report of the Ontario Insurance Commission, p. 20. Should the Superintendent refuse or cancel a license, his decision should be subject to appeal to a Judge of the High Court.

35. Report of the Ontario Insurance Commission, p. 21. He also recommended that the requirements established for agents be extended to include insurance adjusters.

> Owing to the competition between the Companies and the control which agents have over the business, the expense of insurance is increased to the public, without any chance of its being lowered by competition or other ordinary means.

36. Report of the Ontario Insurance Commission, p. 20.

37. Report of the Ontario Insurance Commission, Appendix No. 1, pp. 46-79; Financial Post, September 2, 1916; The Monetary Times, Volume 57, September 1, 1916, p. 18; October 6, 1916, p. 18-19; October 13, 1916, p. 5-8.

38. Financial Post, September 2, 1916. The issue of state insurance and state rating boards was actively discussed in insurance industry journals, almost all of which opposed the introduction of such policy initiatives. Insurance Chronicle, September 27, 1918, p. 1013; October 11, 1918, p. 1059; October 31, 1919, p. 1121; May 9, 1919; May 23, 1919; Financial Post, August 17, 1918, p. 14; September 21, 1918, p. 14; The Monetary Times, Volume 58, March 2, 1917, p. 9; Volume 59, July 6, 1917, p. 20; Industrial Canada, July 1917, p. 444; Canadian Insurance and Office and Field, Editorial, March 7, 1917, p. 23.

The implementation of state rating bureaus in South Carolina and Texas led to the withdrawal of insurance companies from the state, until the legislation was repealed. Financial Post, March 25, 1916, 1916; March 26, 1916, p. 12.

In the state of Missouri, in 1914, when rate regulating legislation was implemented, all fire insurance companies, except those of domestic origin, retired from offering fire insurance in the state. The effect of this was to restrict investment and development until the legislation was repealed. Financial Post, October 27, 1916, p. 28; Report of the Ontario Insurance Commission, Appendix No. 1, p. 68.

39. Report of the Ontario Insurance Commission, p. 5; Insurance Chronicle, November 28, 1919, p. 1240.

40. State insurance is the offering of insurance coverage through premium and tax supported indemnity coverage. A Rating Bureau is an organization whose responsibility it is to determine equitable rates and enforce those rates with existing insurance companies.

41. Canadian Insurance and Office and Field, Evidence, July 4, 1917, Mr. Bocce, President of the London Shoe Company and Chairman of the London Public Utilities Commission. For an assessment of the degree of success experienced in Canadian freight rate regulation, see Ken Cruikshank, Close Ties: Railways, Government, and the Board of Railway Commissioners, 1851-1933, (Montreal: McGill-Queen's, 1991).

42. The Monetary Times, Volume 59, July 6, 1917, p. 18.

43. For a discussion of reactions to state insurance and state rating boards, see The Report of the Ontario Insurance Commission, Appendix No. 1, p. 60, and Roger Grant, Insurance Reform, Chapter 5, "State Made Fire Rates", pp. 100-133.

44. The Monetary Times, February 2, 1917, p. 16.

45. Industrial Canada, October 16, 1916, p. 736-737.

46. Industrial Canada, July 1917, p. 441.

47. Canadian Insurance and Office and Field, Evidence: McCarthy, March 21, 1917, p. 6;

48. Canadian Insurance and Office and Field, Evidence: McCarthy, November 28, 1917, p. 6.

49. Insurance companies were subject to the following taxes:
    1. 1% on premiums collected: Corporations Tax Act
    2. 1/3 of 1% on premiums collected: Fire Marshal's Act. In reality, taxes collected from Canadian insurers on the proceeds of insurance receive from losses covered by unlicensed insurance offset the costs to Canadian insurance companies. The actual costs to licensed insurers was marginal.
    3. $5000 for the upkeep of the Ontario Insurance Department, paid in proportion to the premium income by companies incorporated in Ontario
    4. 1% on premiums collected: War Tax
    5. 1/4 of 1% on premiums collected for the upkeep of the Dominion Insurance Department, paid by insurance companies operating under Dominion license.
    6. 1% of losses covered by unlicensed insurance was payable to the Fire Marshal's Office.

Insurance Chronicle, January 4, 1918; September 26, 1919; Letter of support from T. L. Morrissey, President of the All Canada Federation; November 21, 1919, p. 1203; The Monetary Times, Volume 59, July 6, 1917, p. 12; July 13, 1917, p. 38; Canadian Insurance and Office and Field, CFUA Evidence, August 1, 1917; Industrial Canada, October 1917, p. 867; IAO-UBC Box 39 File 4 Minutes 1914-1915, Report of the Legislation Committee, January 28, 1915. Complaining about increases in

taxation. Their Life insurance counterparts were so alarmed about the increases in taxes that they decided to dispute the legality of the provincial taxation in its entirety on the grounds that it was indirect taxation, though collected from the Companies, it was really obtained from the policyholders.

The CFUA protested that the maintenance of the Fire Marshal's Office should be placed entirely on the shoulders of the stock companies. They argued that mutual companies and all tax payers should also bear some of the financial burden of the office, since the benefits of the office would be reaped by all of society. Canadian Insurance and Office and Field, November 21, 1917, p. 6.

50. Canadian Insurance and Office and Field, November 28, 1917, p. 7.

51. Canadian Insurance and Office and Field, Evidence: Robertson, October 31, 1917, p. 7.

52. Industrial Canada, December 1916, p. 949. Canadian Insurance and Office and Field, March 28, 1917.

Arguing that the purpose for the investigation was to protect the consumer, "the specific instructions to investigate the methods and regulations of the Canadian Fire Underwriters' Association would be readily explainable on the ground that those methods and regulations were thought to be burdensome upon the consumer, but hardly on the ground that the Canadian Fire Underwriters' Association was itself an aggrieved party and needed protection at the hands of the Government." Industrial Canada, July 1919, p. 441.

53. See Appendix II for the summary of the Canadian Manufacturers' Association submission.

Industrial Canada, December 1916, p. 949, November 1916, p. 849.; July 1917, p. 441-446.
The CMA considered the issue of taxing unlicensed insurance to be a tactical effort to deflect attention from the issues of industry combination and arbitrary and discriminatory rate practices. However, the issue had been discussed with the Dominion Superintendent in 1911-12, when the All Canada Federation requested that the Dominion Insurance Act be amended to include the taxation of unlicensed insurance. The request was denied on legal, constitutional and competitive grounds. The Commission provided an opportunity to raise the matter in a provincial forum.

There is every likelihood that the Underwriters did attempt to deflect the focus of the investigation away from their business practices solely. Although the issue of taxing unlicensed insurance consumed a dominant policy in their presentation to the Commission, it was not mentioned at any of the Annual or Semi-annual meetings of the CFUA between 1916-1919. IAO-UBC, Minutes, 1916-1919.

54. Industrial Canada, November 1916, p. 849, December 1916, p. 949; July 1917, p. 441. Editorial critical of the position maintained by the CMA: The Monetary Times, Volume 59, July 6, 1917, p. 18; Volume 63, September 12, 1919, p. 12.

55. *Combines Investigations Act*, 1910, S.C., c. 9.

56. Manufacturers' evidence included:

Mr. F. W. Wegenast, Counsel for the Canadian Manufacturers' Association

Mr. S. R. Parsons, Vice-President, Canadian Manufacturers' Association, February 7, 1917: Maintenance of competition; Shortage of insurance for manufacturers.

Mr. Murray, Secretary, Canadian Manufacturers' Association, February 7, 1917: Costs of licensed insurance excessive; Arbitrary conduct and methods of CFUA.

Mr. W. B. Tingle, Parry Sound Lumber Company, February 14, 1917: Arbitrary conduct and methods of CFUA; excessive rates; restrictive contract conditions.

Mr. P. Davies, Canada Glue Company, February 14, 1917: Excessive rates; Superior inspection service by New England Mutuals.

Mr. J. Bird, Bird Woollen Mills, February 14, 1917: Superior inspection services by New England Mutuals; Arbitrary conduct and methods of CFUA.

Mr. A. White, White & Sons Traction Engine and Threshing Machine Manufacturers, February 21, 1917: Arbitrary conduct and methods of CFUA; Excessive rates by CFUA.

Mr. W. S. Gardner, representative for Textile Companies, Rolling Mills and Iron Manufacturers and Mines, February 21, 1917: Availability of sufficient insurance.

Mr. Lake, Gutta-Percha Company, February 21, 1917: Excessive rates; Superior inspections by New England Mutuals.

Mr. McKinnon, McKinnon Dash Company, February 21, 1917: Restrictive contract conditions; Excessive rates.

Mr. Kirby, Williams, Green and Rome Shirt Makers, February 21, 1917: Excessive rates; Superior inspections of New England Mutuals; Restrictive contract conditions.

Mr. Carlisle, Goodyear Tire and Rubber Company, February 21, 1917: Restrictive contract conditions; Excessive rates.

Mr. Fullerton, Cobourg Dyeing Company and Cobourg Carpet and Matting Company, February 21, 1917: Arbitrary conduct and methods of CFUA; Excessive rates.

Mr. E. H. Jones, Canadian Yale and Towne, February 21, 1917: Excessive costs.

Mr. J. H. Kerr, Canadian Westinghouse Company, February 21, 1917: Superior inspection service of New England Mutuals; Excessive rates;

Mr. A. Flockhart, Cotton Lap Company, February 21, 1917: Superior inspection service; Excessive rates; Restrictive policy conditions.

Mr. Smyth, Massey Harris Company, February 28, 1917: Restrictive contract conditions; Availability of sufficient insurance; Superior inspection service.

Mr. Harding, Toronto Carpet Company, February 28, 1917: Superior inspection service of New England Mutuals.

Mr. McMurtry, Gold Metal Furniture Company, February 28, 1917: Arbitrary conduct and methods of CFUA; Excessive rates; Superior inspections of New England Mutuals.

Mr. Biggs, Walkerville Brewery, March 7, 1917: Excessive rates.

Mr. W. Laidlaw, Laidlaw Lumber Company, March 7, 1917: Complaint about tax on unlicensed insurance.

Mr. W. H. Shapley, Canadian Manufacturers' Association Insurance Committee Chairman and Goole-Shapley-Muir Company, March 14, 1917: Complaint about tax; Superior inspections of New England Mutuals; Excessive rates.

Mr. Ross, J. R. Booth & Company, March 28, 1917: Arbitrary conduct and methods of CFUA.

Mr. Ivey, John D. Ivey Wholesale Milliners Company, March 28, 1917: No inspection by CFUA; Excessive rates

Mr. Glendinning, W. C. Edwards & Company, March 28, 1917: Excessive rates.

Mr. J. S. Gillies, Gillies Bros. Lumber Company, March 28, 1917: Excessive rates.

Mr. G. S. Benson, Canada Starch Company, March 28, 1917: Excessive rates; Arbitrary conduct and methods of CFUA.

Mr. F. W. Hay, Grain Dealers, April 4, 1917: Contract provisions insufficient.

Mr. C. O. Shaw, Anglo-American Leather Company, April 4, 1917: Arbitrary conduct and methods of CFUA; Restrictive contract conditions; Excessive rates.

Woltenhausen Hat Company, April 4, 1917: Arbitrary conduct and methods of CFUA.

Mr. F. H. Ahrens, Charles A. Ahrens' & Sons Shoe Manufacturers, April 18, 1917, p. 8: Excessive rates; Objection to tax on unlicensed insurance; Restrictive policy conditions.

Mr. H. H. Chant, Steel Company, July 18, 1918: Excessive rates; Superior inspections by New England Mutuals; Restrictive policy.

Mr. J. R. Shaw, Canada Furniture Company, August 1, 1917: Restrictive policies; Excessive rates.

Mr. J. F. M. Stewart, Pointe Anne Quarries, Ltd, August 1, 1917: Excessive rates.

All dates of evidence represent the published dates in the Canadian Insurance and Office and Field transcription of the evidence.
Shaw, Reed, Shaw and McNaught (Brokers) - "When they had "filled up" all licensed companies, they had to go outside." Evidence. Canadian Insurance and Office and Field, August 8, 1917, p. 8; Mr. Mason (lawyer), March 21, 1917, p. 10.

57. Canadian Insurance and Office and Field, September 5, 1917, Evidence: Dominion Superintendent of Insurance, Mr. G. D. Finlayson: Tariff companies were withdrawing from Cochrane, Ontario because the fire losses in northern Ontario were excessive and they no longer wanted to do business there. Financial Post, August 9, 1919, p. 14. The London and Lancashire notified its agents that they would not accept further business from the town of Thorold because the town has not provided an adequate fire department.

Mr. Ivey, a wholesale milliner complained that, "the field we have should not be penalized because it was not big enough to take that kind of insurance." Canadian Insurance and Office and Field, Evidence: Mr. Ivey, March 28, 1917, p. 7.

58. Canadian Insurance and Office and Field, October 24, 1917, p. 6.

59. Canadian Insurance and Office and Field, October 17, 1917, p. 10.

60. Canadian Insurance and Office and Field, Evidence: Masten, July 4, 1917, p. 10; Evidence: Masten, September 19, 1917, p. 6.

61. Report of the Ontario Insurance Commission, p. 13; Canadian Insurance and Office and Field, Evidence: Mr. Meir, March 7, 1917, p. 10.

62. Report of the Ontario Insurance Commission, p. 13.

63. Report of the Ontario Insurance Commission, p. 13.

64. Report of the Ontario Insurance Commission, p. 13. The Superintendent should also publish the facts and findings in his Annual Report.

65. Concern raise by John Laidlaw of the CFUA during the Commission hearings. The Monetary Times, Volume 57, October 27, 1916, p. 12.

66. Canadian Insurance and Office and Field, Evidence: Mr. Hay, Grain Dealer, April 4, 1917; Mr. W. H. Slater, Insurance Broker, August 1, 1917.

67. The co-insurance clause was adopted by insurance companies during the war when property values increased rapidly to accommodate for changing inventory and building values. There was considerable concern in insurance circles that insurance coverage was not keeping up with the increased values experienced during the war. Financial Post, April 13, 1918, p. 14; April 20, 1918, p. 14; August 23, 1919, p. 14; Insurance Chronicle, July 21, 1918; September 6, 1918, p. 939; Canadian Insurance and Office and Field, Evidence: Woltenhaus Hat Co., April 11, 1917, p. 8.

68. Canadian Insurance and Office and Field, Evidence: Robertson, October 24, 1917, p. 7.

69. Canadian Insurance and Office and Field, October 24, 1917. Insurance Chronicle, January 24, 1919, p. 107; Report of the Ontario Insurance Commission, p. 37.

70. There was consensus during the hearings that although non-tariff insurance companies and mutual insurance companies did offer some competition, it was not effective enough to curb the control exercised by the CFUA. The Monetary Times, Volume 57, November 10, 1916, p. 18; Canadian Insurance and Office and Field, Evidence: Mr. Benson, April 4, 1917, p. 7; Evidence: H. L. Gettleson, September 12, 1917, p. 8; Evidence: Mr. Shaw, August 8, 1917, p. 9.

Despite claims that effective competition did not exist, industry journals commented that, "there is practically no field in the world where competition is keener than in Canada, since the big American companies flew in over the border, the British companies come in from over the sea, and there are a large number of strong local concerns." Financial Post, July 28, 1917, p. 14.

71. Canadian Insurance and Office and Field, July 25, 1917; The Monetary Times, June 22, 1917, p. 46; Industrial Canada, July 1917, p. 441.

72. Canadian Insurance and Office and Field, March 21, 1917, p. 10.

73. Canadian Insurance and Office and Field, August 1, 1917, p. 7; July 25, 1917, p. 8

The CMA contended that the government had no right to tax unlicensed insurance since it was procured outside the country and held no legal recognition in Canada. Masten disagreed, "A Government may tax anything. They can tax you or me because we part our hair in the middle, or because we don't". Canadian Insurance and Office and Field, December 12, 1917, p. 10

74. Report of the Ontario Insurance Commission, p. 31. Masten was uncertain as to the real effect a tax would have on competition, because of conflicting evidence given throughout the Commission hearings.

75. Canadian Insurance and Office and Field, Evidence: Masten, August 1, 1917, p. 7.

76. Canadian Insurance and Office and Field, Evidence: Masten, September 26, 1917.

77. Canadian Insurance and Office and Field, February 28, 1917, p. 6, 8.

78. Report of the Ontario Insurance Commission, p. 34.

79. Report of the Ontario Insurance Commission, p. 34-35.

80. Canadian Insurance and Office and Field, Evidence: Masten, December 5, 1917, p. 7.

81. Industrial Canada, July 1917, p. 441; Report of the Ontario Insurance Commission, p. 13.

82. Report of the Ontario Insurance Commission, p. 6; Canadian Insurance and Office and Field, Evidence: Robertson, October 17, 1917, p. 8-10; October 24, 1917, p. 6-10; October 31, 1917, p. 7-9; Editorial, October 17, 1917, p. 6; Evidence: Laidlaw, November 14, 1917, p. 6.

83. Report of the Ontario Insurance Commission, p. 12; The Monetary Times, Volume 57, November 3, 1916, p. 28; Insurance Chronicle, presentation by J. Laidlaw, Norwich Union, November 28, 1919, p. 1237-8;

84. Report of the Ontario Insurance Commission, p. 12-13.

85. Report of the Ontario Insurance Commission, p. 12.

86. Canadian Insurance and Office and Field, Evidence: McCarthy, November 28, 1917, p. 7.

87. The Manitoba government was reported to be watching the proceedings of the Commission with great interest, "it is stated that the findings of the Commission will form the basis for legislation in Manitoba, or at any rate will be used as a means of guidance in any amendments to the Insurance Act." Financial Post, April 7, 1917, p. 14.

88. Canadian Insurance and Office and Field, Evidence: F. W. Wegenast,

December 5, 1917, p. 6.

89. Report of the Ontario Insurance Commission, p. 13; Canadian Insurance and Office and Field, Editorial, October 17, 1917, p. 7.

90. Report of the Ontario Insurance Commission, p. 13.

91. Insurance Chronicle, March 14, 1919, p. 295; Monetary Times, Volume 62, April 18, 1918, p. 24.

92. Industrial Canada, July 1919, p. 171; Financial Post, June 14, 1919, p. 14

93. IAO-UBC Box 39 File 5 Minutes 1919-1920, President's Address, June 1920.

Chapter 4

Regulation in Practice:

The Redefinition and Limitation of Government Control

After the release of the Masten Report, the Underwriters were confident that their actions had been justified sufficiently that little, if any, legislation would be forthcoming. They also expected an active role in any public policy process that would follow. And follow it did. Masten's recommendations, which defined the parameters of the regulatory debate, were accepted by two very different provincial administrations - the United Farmers of Ontario (UFO) under the leadership of Premier E. C. Drury and the Conservatives, under Howard Ferguson - and formed the basis for the revisions of the Ontario Insurance Act between 1919 and 1925. The UFO government's objectives for legislative change was to protect consumers and reduce the costs of insurance. The Conservative government which succeeded it in 1923 viewed insurance regulation as an opportunity to extend provincial rights.

The UFO represented a new economic and political perspective in Ontario politics. Its brand of agrarian idealism included redefining government's role and its relationship with industry. The CFUA was initially confident that it could significantly influence the legislative process to reflect the best interests of both the companies and the public. The UFO government had other ideas. Under the stewardship of W. E. Raney, the new Attorney-General, it embraced Masten's recommendations and embarked on an ambitious revision of the Ontario Insurance Act.

Raney was an advocate of a stronger regulatory role for government as well as strong anti-trust legislation which would have followed the model of the American Sherman Anti-Trust Act in making the fact of combination itself an offence. Since he lacked sympathy with the Underwriters' position, he intended that

their role in constructing a new regulatory framework would be limited to clarifying the companies' position on recommended changes and soliciting support for the new supervisory powers incorporated with the Superintendent of Insurance. He formed a Select Committee to review the recommendations of the Masten Commission and announced to the insurance representatives at its first meeting that:

> the changes will be against the interest of some of the persons who are here; I have no doubt of that. But the public interest must prevail, and those of you who might, from your personal point of view, be disposed to be antagonistic, will, I think, as a result of the discussion which will take place, come to the conclusion that the only point of view that the Legislature can consider is the public point of view.1

Raney immediately appointed V. Evan Gray as the new Superintendent of Insurance and Registrar of Loan Companies, intending that Gray would play an influential role in revising the Ontario Insurance Act.2

The government pursued a program of legislative change which followed Masten's recommendations by emphasizing that greater control be expressed through supervision rather than directly attempting to regulate insurance rates. Under Gray's administration, Raney's vague intentions about trust-busting gave way to a more conventional approach to government control, because the complexity and low salience of insurance issues induced Gray to depend on the industry's technical expertise and administrative support and deterred him from embarking on the expensive and long-term task of rate-making. The primary objectives of insurance regulation during the Drury government changed to emphasize consumer protection and lower insurance costs. The regulatory tools adopted were designed to identify excessive insurance rates, to curtail competition which increased costs and to promote competition which lowered insurance costs.

In the face of this challenge, the CFUA attempted to improve its internal control by addressing operational and structural problems both inside and outside

the Association. The ongoing difficulties of excessive agents' commissions, particularly in Toronto, and the appointment of licensed agents were addressed in an attempt to prevent further government intervention. It also attempted to increase its control of technical and loss experience information, both to strengthen its bargaining position as experts with the Provincial government and to relieve internal tensions. The Underwriters tried to exercise a creative role in the legislative process, but their participation was carefully controlled by the Superintendent of Insurance. While the political forum, epitomized in Beck's theatrics and the appointment of the Commission, had been a colorful challenge to the CFUA's authority, ultimately the more prosaic constraint of the bureaucracy proved more important. Even under the Conservatives, who pursued different policy objectives and seemed more sympathetic than the UFO, the CFUA's direct influence on the policy process was restricted. While they were able to modify some parts of the government's agenda, they failed to shape government regulation so that it would operate in favor of the insurance companies. The Underwriters were to learn that the extent of their influence would be determined by the creators of the new regulatory tools. Control of technical expertise was no longer sufficient to guarantee authority. The creation of the Association of Superintendents of Insurance, the Conference of Commissioners on Uniformity of Legislation in Canada, and the Association of Fire Marshals during the 1920s eroded the technical expertise previously monopolized by the CFUA. Although the Underwriters were invited to represent their members and submit their proposals before each of these Boards, they held no decision-making role. This constrained their ability to influence the recommendations and legislation put forward from these bodies.

And yet, this process did not undermine the CFUA's authority to regulate itself. While it had no success at exercising direct control over the new bureaucratic agencies, these agencies eschewed any attempts to infringe on the Underwriters'

critical powers of rate-making. Thus, the success of the Underwriters in maintaining authority rested not with its ability to capture the state, but with its organizational flexibility which allowed them to exercise greater internal discipline.

The United Farmers of Ontario (UFO), which defeated the Conservatives in 1919, was charged with acting on Masten's Report. The new government was immediately subjected to the same pressures present during the Masten Commission. Much to the consternation of the licensed insurance companies, the CMA, under S. R. Parsons' leadership, quickly arranged a meeting with Premier Drury to discuss the appointment of a new government committee in an attempt to influence the legislative agenda.3 The Underwriters disapproved of the CMA's interference, but remained cautious. Although they were willing to participate in a review of Masten's recommendations, the Association was convinced that it had been vindicated against the accusations brought forward during the Commission's deliberations. Further, it opposed government intervention and hoped that further legislation would not be deemed necessary. At the same time, its members understood the realities of politics. If the government chose to introduce legislation, it was vital that the Association be represented and participate in discussions to protect its interests.4

> Most of us are inclined to resent Government interference in our business which is highly technical and hazardous in its character and only handled successfully through long experience, it must not be forgotten that Fire Insurance companies are looked upon by many as similar to public utility organizations.5

The Underwriters feared the UFO government was "very socialist in its disposition and very anti-monopolistic", which created an uncertain environment for the Tariff companies.6 The companies were also aware that the fire insurance agents, who had received considerable bad press during the Masten Commission, would be

subject to intense government examination. This was an important issue for the companies since they relied heavily on the agency system to maintain and develop new business. The CFUA recognized that it was in their interests to protect the interests of their agents.

The first issue addressed by the government's new Select Committee was cross-subsidization, which figured so prominently with Judge Masten during the Commission hearings.7 Superintendent of Insurance Evan Gray presented comparative statistics of insurance rates for private dwellings and their contents in Toronto and Buffalo.8 Although the rates presented before the Committee were considerably higher in Toronto, the Underwriters maintained that the fire conditions existing in New York State were too different to permit comparisons.9 They went even further and suggested that the Committee did not have the required expertise to interpret rates and rate making.10 Whether or not this was the case, it was not well received by the Committee.

Convinced that Masten's assumptions about cross-subsidization were correct, the Attorney-General asked the Associated companies to submit details of the premium income and fire loss experience on private dwellings and contents, to determine if private dwelling owners were being unfairly discriminated against through high premium rates. Since none of the companies kept consistent records, these figures remained unavailable and the companies refused to reconstruct the requested statistics.11 The Underwriters responded to the Select Committee, informing them that any decrease in dwelling rates would have to be met with increases in other classes of insurance, if profitability was to remain.12 Alternately, they were amenable to keeping and filing consistent premium and loss records based upon minimum classifications, which would be made available to the Ontario Legislature.13

Provisions for standard filing requirements were included in the 1923 Insurance Act.14 This additional disclosure requirement helped identify discriminatory rates and increased public access to company records. However, since it merely duplicated federal requirements for federally regulated companies, it hardly constituted a dramatic policy innovation. The first opportunity to analyze the new statistical evidence was in 1928, when it was confirmed that dwelling owners were paying excessively high rates relative to their loss ratios. As a result, the Underwriters lowered the rates of preferred risks.15

The process of rate making posed a difficult problem for government regulators. While there was reservation about actually setting rates, they wanted to be in a position to influence and directly change discriminatory rates, where necessary.16 The Select Committee recommended the supervision of rating bureaux without directly entering the rate-making process. The proposals, which became law, permitted companies to combine for the purposes of fixing and maintaining rates, but introduced regulations ensuring the accountability of the insurance companies.17 These rating bureaux were required to file copies of their constitution, by-laws, and membership list with the Superintendent of Insurance, and the Insurance Department was entitled to full disclosure, if required. Upon request, rating bureaux were required to file schedules of rates and the composition of rates promulgated, which the Superintendent was entitled to assess. Unfair discrimination in rates was not permitted between risks of essentially the same hazard. The Superintendent was charged with the responsibility of ensuring that rates and contracts were fair and equitable. He was authorized to review any written complaint charging insurers with discriminatory rating or unfair practices and was empowered to adjust rates upward and downward if rates were found to be discriminatory. The overall effect was to ensure accountability by the insurance companies.

Judge Masten's presentations before the hearings of the Select Committee endorsed the supervision of the companies' rating bureaux, suggesting even tighter controls. This came as a surprise to the Association, which was convinced that:

> nothing in Judge Masten's report showed that there was anything in the actions or methods of the CFUA that actually called for such restricting and regulating Legislation, and that while efforts should be made to get the wording of the Act made as satisfactory as possible, the right should still be retained for members to use their influence in the Legislature to have this portion of the Act struck out entirely.18

It was learned that the Judge had also submitted proposed legislative changes to be incorporated into the Insurance Act to the Attorney-General, along with his public report.19 These recommendations were, however, consistent with those submitted in 1919 which recommended state supervision of the CFUA, in spite of its effective self-regulatory methods.

The Underwriters were hesitant to accept government regulation of their rates, but recognized that the government was determined to introduce a rate appeal mechanism. They were opposed to addressing complaints before a judge, on final appeal, rather than before the Superintendent. The courts were less likely to rule in favor of the companies because of their privileged technical knowledge and the absence of such knowledge by policyholders. The Association objected to the Superintendent adopting additional authority to inquire into any question which either the insured, the assured, or any rating bureau might pose regarding rating and contracts, on the grounds that CFUA rates would become community property as a result of each investigation.20 The CFUA's objections notwithstanding, the UFO government was determined to adopt the policy. The CFUA backed down from its position. And the policy's actual operation worked to the satisfaction of both parties. The Conservative government of Howard Ferguson, which defeated the UFO in 1923, would endorse the UFO's rating law.

This statutory imposition on the CFUA's rate-making authority seemed powerful. Yet it proved more symbolic than substantial. Giving the Superintendent the authority to review rates upon complaint had relatively little effect because of the almost total absence of complaints. Leighton Foster, Gray's successor as Superintendent of Insurance would note that, between 1922 and 1925, "there has been an almost entire absence of complaints of unfair discrimination by disinterested citizens".21 Foster concluded that the subsequent absence of complaints of rate discrimination demonstrated the law's success, noting:

> It would almost seem as if the public of Ontario, impressed with the protection afforded by the government in the direction of adequate rates and financial solvency ... have come to place such confidence in the government and assume that insurance rates are reasonable, non-discriminatory and not excessive else the companies would not be allowed to employ them.22

Private dwelling insurers, who had not previously complained about their insurance rates, and who did not participate in the regulatory process, were unlikely to bring grievances to the attention of the Superintendent. Further, the new Insurance Act made provisions for insurers to access unlicensed insurance more easily. Therefore, the manufacturers and businessmen who complained before the Commission, were free to acquire insurance from sources other than the CFUA.

The government also chose not to interfere with the CFUA's internal affairs by compelling revision of its restrictive membership policies. The North Western Mutual Fire Insurance Association of Seattle asked the government's Select Committee to force the Underwriters' Association to admit mutual companies and insurance brokers who were willing to follow the Tariff rates.23 The Mutuals maintained that they were willing to follow the rates promulgated by the CFUA and to follow the rules and obligations set out in the Association's constitution, but were also committed to returning unearned profits to policyholders, which was a distinguishing characteristic from stock companies. They cited the New York

investigation of fire insurance, which concluded that membership in rating bureaux should be made available not only to stock companies, but to mutual and reciprocal insurers on appropriate terms. The Committee agreed with the mutuals and requested the CFUA representatives to consider the admission of mutual insurance companies in its membership.24 The Underwriters refused to entertain the proposition. They maintained that:

> If non-Tariff organizations should be forced into the CFUA and if at the same time these organizations were allowed to offer something apparently better to the public than the old Members, so much disturbance would be made there would be a great chance that the organization itself might be wrecked.25

As a voluntary and non-incorporated entity, the Underwriters were confident that they could not be compelled to admit members it chose to exclude. They responded to the Select Committee that:

> Any company that will join the Association on equal terms with all others can obtain this service, but it would be distinctly unjust to ask that our work and service should be supplied to Companies that operate independently and in competition with our members.26

Since regulating the Underwriters was a means to an end rather than an end in itself, the Committee withdrew the request.27 Allowing unrestricted access to the Underwriters did not contribute to improved competitive conditions or reduced insurance costs.

The Select Committee, like Masten before it, eventually came to the conclusion that the primary reasons for excessive insurance costs was not the internal rules of the CFUA, but rather the number of agents and their commissions. Both the companies and agents acknowledged there was fierce competition between companies for agents' services in an effort to acquire new business. Thus instead of trying to secure a competitive advantage by lowering rates to entice consumers, insurance companies increased their commission rates to entice agents. The result was increased numbers of agents and excessive commissions. The Superintendent

recommended stricter licensing requirements to limit the excessive competition by eliminating dishonest and unqualified agents from the insurance field and thus protect the qualified bona fide agents while lowering commission rates.28

The Dominion government strongly opposed the introduction of such regulation, complaining that the Ontario Insurance Department was using licensing to increase revenue. Gray informed insurance representatives and G. E. Finlayson, the Dominion Superintendent of Insurance, that:

> so far as the insurance department is concerned, it [licenses] is one of the most fruitful sources of trouble and work and annoyance that we have. If the department were to consider its own interest in the matter they would like to see the whole thing wiped out because it means a great deal of labour and trouble to them.29

The Committee also recommended that each agent purchase a license for each company he represented, rather than one license to transact insurance with all companies.30 The CFUA objected to the additional costs, anticipating they and not the agents would absorb them.31 Moreover, it objected to the spirit of the proposal. The London Mutual Fire Insurance Company of Canada declared that the licensing proposals constituted:

> class legislation, Bolshevistic (sic) in its utter disregard for rights of long standing, savoring of government control which as a war measure met with some success, but which has recently been abolished in the public interests and contrary to the laws of supply and demand and consequently foredoomed to utter failure!32

With both agents and underwriters vociferously opposed to the proposal, the government backed down, reconsidering the licensing legislation and returning to most of the provisions that had existed prior to the Committee.33

Proposals to limit eligibility for agents' licenses were less controversial. The Ontario Department of Insurance passed legislation preventing bankers, trust company officers, lawyers and employees from acquiring insurance agent licenses, to

prevent them from rebating their commissions to their employer or using their control of credit to compel customers to place insurance policies through their office.34 The Underwriters supported this supervision, since they had no desire to exercise such authority within the CFUA and they preferred to employ professional full-time agents. Bona fide agents supported the proposal because these types of agents were competitors, whose business would now be available for licensed agents.

This degree of supervision imposed by the province was hardly onerous to the CFUA. Yet it still did its best to minimize the impact of government control by playing off the federal insurance regulators against the provincial. It supported the Dominion Insurance Department's introduction of similar licensing regulations for agents who represented Dominion licensed companies, to dilute the effectiveness of the provincial legislation.35 Convinced of the province's right to regulate insurance licenses, provincial Superintendent Gray contended that the Dominion government lacked the constitutional jurisdiction to regulate agents.

> I am certain that the evils resulting from the proposed duplication of licensing systems by the Dominion, in controversy and litigation involving the Departments and in confusion to the insurance business, will far outweigh the benefit which the Dominion Department may confer through its rechecking of a Provincial Department's work ... The effect of the proposed Dominion legislation would be to render null and of no effect a Certificate issued by a Provincial Insurance Department in any case in which the Dominion Superintendent expressed his disapproval of the persons to whom the Certificate of Authority was issued.36

The Dominion government refused to withdraw its amendment to the Insurance Act until it was tested through the courts. However, since agents had previously obtained their licenses through the Ontario government, they continued to do so, as few agents extended their business outside the province. Thus, this attempt to diffuse provincial regulatory authority accomplished little.

The Select Committee's attempt to control costs through licensing was complemented by efforts to reduce the high commission rates paid to agents. Well aware of their controversial nature, the Underwriters had been attempting to bring these commission costs under control themselves for some time. Therefore, from 1918 onward, they continued their efforts to reach a Commission Agreement for Ontario, excepting the city of Toronto. Yet despite these efforts, the different interests of branch office managers whose overhead costs were paid by head offices, and chief agents who had to pay all expenses out of their commissions, prevented any agreement. During his President's Address in 1924, Alfred Wright lamented:

> a disposition on the part of members to deplore the growing expense of our business, while at the same time whenever any proposal to reduce expense has been put forward it has met with very little support from the same members especially where the contemplated action would in any way affect their interests even though improving conditions as a whole. As long as such a spirit manifests itself I feel that improvement in present conditions is impossible and I would urge members to take a broader and more unselfish view believing, as I do, that no business can continue with an expense ratio of 38.2%.37

The Superintendent recognized that these internal divisions in determining an appropriate rate of commission impaired the Underwriters' ability to resolve the problem internally. Yet he still preferred an internal resolution of this problem which would make legislation unnecessary, in order to avoid a regulatory adventure into an issue which even the Underwriters with their more technically sophisticated understanding of the industry, and ability to mediate within it, had failed to resolve. Fear of failure was a powerful disincentive to government involvement. Nevertheless, the Superintendent had concluded that the problem of excessive agents' commissions had grown worse since the Masten Commission and it was a:

> certainty that the public interest is suffering under existing conditions and that without some intervention the managers of the company are unable to deal with the situation. This has compelled the department to the conclusion that unless the companies adopt some voluntary and effective remedial

> measures forthwith the solution of the matter must be sought through Legislation.38

Consequently, the Attorney-General told the Underwriters to resolve the matter within the confines of their Association, or else have the government enforce an undesirable resolution.39 He offered the cooperation of the Insurance Department; however, he also demanded that any reduction in commission rates be translated into reduced insurance costs for the public.40 He stated that:

> It is the farthest from the desire of the Department to intervene in rate regulation or to embarrass the companies in any way in the revision from time to time of any class of rates, which experience shows, requires adjustment either downward or upward. Nevertheless, the companies will have failed to do justice to the agents whose commissions are proposed to be regulated and to the insuring public unless they provide by rate adjustment for passing along to the public the advantage which will accrue.41

Gray warned that failing agreement among the companies, the Insurance Department would recommend limiting commission rates to 15% on all property situated in Ontario.42 He realized that there would not be consensus support for the proposal, and, in the hope that the companies could resolve the matter themselves, he insisted:

> it is eminently in the interests of the Fire Insurance Business and all concerned therewith that a settlement should be reached. The department does not pretend that the above proposals are ideal or that they cannot be abused by people seeking to evade the spirit of the rules. On the other hand, it does believe that they are rules under which all companies and agents can live and seek business on a fair and free basis of competition; that they will stabilize business; that they will prevent excessive commissions being paid to agents; that they will reduce the cost of acquisition of business.43

All the insurance companies, tariff and non-tariff, opposed legislated regulation. They were concerned that, "if they Legislate against the Insurance Agent, there is no reason why they should not legislate against the Managers."44 One executive restated the prevailing attitude towards government regulation:

> As a matter of conviction, and a matter of firm principle ... it is not the duty of the Ontario Insurance Department to interfere with the internal workings of a fire Insurance Business in this Province. I think it is the duty of the Department to collect from those companies reports, to check and retain their solvency ... the Department is inclined to exceed its true functions if it undertakes to regulate Agents' Commissions ... I think that the Government would be very well advised to do their utmost to produce harmony, especially in the City of Toronto, which seems to be the strong centre of the whole business, but I should be very sorry indeed to see this thing crystallized in any legislation.45

While the companies took solace in such rhetoric, pragmatists recognized the government might be not so easily put off. T. Morrissey, President of the All Canada Insurance Federation, conceded that, "if it [the 15% commission rule] goes on the Books of the Ontario Government, we will have to accept it."46

Thus, the CFUA again renewed its efforts to reach agreement. The Tariff companies remained concerned that any agreement reached would bind their members, while non-Tariff companies would not be required to follow any commission guidelines. Provided that the CFUA could reach agreement on a Commission arrangement for the whole province, Gray offered the assistance of "non-Legislative methods" - presumably the threat of some type of harassment - to induce non-tariff companies to comply.47

> If there was a very substantial agreement, that it was evident that justice was being done very well, it would be simply a matter for the Legislature to say that the licenses issued to Agents in the Province of Ontario would be dependent upon their observance of these Rules which had been approved by the Government.48

In September 1922, the Superintendent of Insurance invited all companies to meet to determine if the companies could possibly achieve a consensus and implement a voluntary agreement to limit commissions. He re-confirmed the government's commitment to introduce legislation limiting commissions to 15% if the companies could not reach agreement, although the Insurance Department

preferred to avoid legislation, if possible.49 The purposes of the government's actions were:

> First - reduction of insurance rates to the insured;
> Second - reduction of cost of acquisition of business to the companies;
> Third - equal and fair remuneration for equal service to all agents in all parts of Ontario;
> Fourth - improved agency service to the public by competent and trustworthy agents."50

The company managers attended the meeting on the understanding that the Superintendent was seeking their advice on possible resolutions to the problems of excessive commissions. But the Superintendent was single-minded in his efforts. All policy discussions were addressed in terms of reduced insurance costs, and Gray repeatedly informed the meeting that "I am not going to accept anybody's view that it [rates] cannot be reduced".51 Even in the face of imminent legislation, it was clear throughout the meeting that no resolution would be achieved between the companies. Each proposal introduced was buffeted by the logistical difficulties of satisfying all the diverse elements within the industry while adhering to the Superintendent's requirement that it contribute to lower rates. The CFUA introduced a commission arrangement tentatively reached by the Tariff companies, but the non-Tariff companies refused to adopt its provisions because they favored large chief agency offices.52 When called upon to join the Underwriters in their efforts to implement agent commission rules, a mutual company representative responded:

> It is a good principle for people to put their own house in order first, and then, afterwards, if it is necessary to attend to the other fellows ... I think it would be better for the CFUA first to put their own house in order.53

Divisions between Tariff and non-Tariff companies and between Branch offices and Chief agents' offices continued to thwart any agreement efforts.54 The

only agreement achieved at the meeting was that the government's proposed 15% commission scheme would achieve utterly no reductions in insurance costs and that the government should refrain from legislating commission rates, which clearly fell within the managerial decision-making of the companies themselves.55

The Superintendent decided to defer any decision on the issue, in the hope that the companies could introduce reasonable commission rules without legislation. In reality, the government backed down, concluding that the Underwriters' long-standing inability to resolve the problems surrounding the commission question made its threat a hollow one. Thus, while the licensing requirements proposed by the Select Committee were incorporated into the Ontario Insurance Act, the commission regulations were not.

The attempt of insurance regulators to curtail this competition which increased costs was complemented by attempts to encourage competition which would lower insurance rates. The Attorney-General introduced a Reciprocal Bill which allowed licensing of reciprocal insurers in Ontario without a security deposit. The purpose of the bill, Gray maintained, was to improve competitive insurance conditions, as "in the past the tariff companies have had an undisputed field and have set what rates they pleased, which is not good business."56 He cited the large reciprocals which had long and successful histories and the evidence presented during the Ontario Insurance Commission attesting to the influence of reciprocals in the reduction of insurance costs.57 Insurance deposits, Gray asserted, were an obsolete regulatory tool.58 The reciprocals, like the Tariff Companies, would be subject to examination by the Superintendent of Insurance, required to pay taxes on all Ontario business and compelled to maintain reserves against unearned premiums, as well as report annually to the Insurance Department.

The Underwriters strongly objected to licensing reciprocals under special provisions, declaring that:

> we are unalterably opposed to the principle of allowing insurers foreign or domestic doing business in Canada upon any conditions other than those provided in the Insurance Act of Canada and protest against any exemption from deposit requirements.59

They asserted it was unfair for enormous sums of stock company money to be tied up in deposits with the Dominion government, while reciprocals were able to transact business without a security deposit.60 The Underwriters identified the inherent weaknesses and dangers of reciprocal insurance contracts and the high failure rate of reciprocals reported to American Insurance Departments. They argued that the proposed legislation was not in the public interest.61 Association representatives actively lobbied members of the Ontario legislature, but conceded it was difficult to convince any member to support legislation which seemed sympathetic to the insurance companies.62 The Ontario Fire and Casualty Agent's Association joined the CFUA in its opposition to the Reciprocal Bill, declaring it to be, "another bit of brilliant legislation" which "we believe will have still further disastrous effect upon the already very unsettled business conditions in our Province".63

In their efforts to influence the legislative process, the Underwriters sought the assistance and support of the Dominion Superintendent of Insurance, J. A. Finlayson.64 He was sympathetic towards the Underwriters and willingly offered his support, but requested that he not be publicly involved in their efforts, fearing it could jeopardize his relationship with the provincial Superintendents of Insurance. He convinced the Underwriters that:

> a great deal of the proposed regulation of Companies that Mr. Gray has inserted in the Ontario Act is ultra vires of the Ontario legislature, and ... that the admission of Reciprocals on the terms proposed by Mr. Gray would

not really entitle those concerns to do business in any part of the Dominion".65

The Dominion Superintendent opposed the Ontario reciprocal bill because similar licensing provisions were included in the Dominion Insurance Act.66 In 1917, the Dominion government had introduced licensing requirements for reciprocal and mutual insurance organizations.67 The federal government required companies to submit their company documents along with a security deposit of $50,000 to the Dominion Insurance department to protect policy-holders in the event of insolvency. Finlayson maintained that: "this Department welcomes the competition of reciprocals so long as it is not obtained at the sacrifice of security." Few reciprocals complied with the Dominion requirements, preferring to operate as unlicensed companies. Because reciprocals were financed differently than joint stock companies, the deposit requirement was considered burdensome and unnecessary.

The duplication of licensing requirements forced the issue of constitutional jurisdiction. Finlayson contended that the licensing of foreign insurance companies rested solely with his department's jurisdiction.68 The Drury government agreed to withhold final consent on the Reciprocal Bill until the question of jurisdiction had been settled by the courts.69 A reference was brought before the Appellate Division of the Supreme Court of Ontario to determine whether the Ontario Insurance Act or the Dominion Insurance Act had precedence over the license provisions of reciprocals. And the Ferguson government pursued it vigorously in the hope of expanding the field of provincial jurisdiction.

The Underwriters concluded that they required representation at the hearing, but were not informed or invited to be present.70 The Attorney-General stated it was not considered necessary to notify the insurance interests, as in his view

they were not concerned.71 It was clear that relations between the government and the Underwriters were becoming increasingly strained.

The Supreme Court ruled in favor of the provinces and the Dominion government appealed to the Judicial Committee of the Privy Council. In 1924 the Privy Council determined that the regulation of insurance fell within provincial jurisdiction and that the Dominion legislation relating to reciprocals was ultra vires.72 Thus Ontario's Reciprocal Insurance Act, passed in 1922, belatedly received Royal Assent.73 Most stock companies continued to take out licenses with the Dominion Insurance department, while the mutual companies and reciprocal exchanges preferred to operate under provincial license.74

The constitutional wrangling indirectly undermined the CFUA's authority because it fostered the development of new bureaucratic organizations which acquired some of the technical knowledge which previously had been within the Underwriters' sole purview. Convinced of the provinces' constitutional jurisdiction to regulate insurance, the Canadian Bar Association, on its own initiative, began in 1919 to prepare revisions to the provincial Insurance Acts for consideration by the provincial Superintendents of Insurance to secure uniformity in insurance legislation:

> The law of insurance in Canada presents an example of wasteful and unnecessary discordance. Every province has an insurance law of its own, for the most part in the form of a statutory code, and while these systems are not differentiated by any fundamental principles, they abound in minor diversities calculated to produce conflicts and uncertainty.75

The objective of this legislative revision was to safeguard the interests of the policyholders without interfering with the conduct of business, and to prevent unwise and arbitrary legislation from being introduced.76 In 1922, the Canadian Bar Association submitted a draft Uniform Act, based upon the Ontario Insurance

Act, for consideration by the Provinces. Each province then appointed three legal representatives to the Conference of Commissioners on Uniformity of Legislation in Canada, to review and investigate provisions for a Uniform Insurance Act and a Uniform Fire Insurance Policy. By 1925, these Commissioners prepared uniform statutory conditions and a model fire insurance policy.77

The Association of Superintendents of Insurance of the Provinces of Canada, consisting of the provincial Superintendents, also enhanced their authority by overseeing the preparation of uniform legislation. The process of defining this new legislation was consultative. Representatives from the insurance companies, the CFUA, the CMA and the Toronto Board of Trade were invited to participate in discussion.78 However, because of the breadth of expertise consulted and the legal expertise of the Commissioners, consensus was difficult to achieve and while the Underwriters influenced the form of the law, they again were denied decision-making authority over function.79 The effect of the Superintendents' Association was to standardize the legal business environments in each province. It thus had the effect of removing control over fire insurance contracts from the CFUA.

The CFUA's limited success in constructing its new regulatory environment contrasted with the success of its renewed efforts at improving the process of self-regulation. The Association attempted to solidify its control and exercise tighter regulation over its membership by implementing systematic stamping requirements, creating the Loss Information Bureau and obtaining full copyright over Goad's plans, as well as alleviating internal tensions.

The growing number of infractions and non-observance of rules and rates presented a difficult matter for the Underwriters. In 1923, a Special Meeting was called for the sole purpose of dealing with outstanding infractions.80 Because of the growing number of such infractions, the Infractions Committee recommended that

"the stamping of business be extended to cover the entire territory of the Association."81 Stamping required that all insurance policies be submitted to the CFUA stamping officer for examination and approval. A minority of companies remained opposed to the imposition of stamping on the grounds that there existed no evidence that stamping prevented violations. Its opponents declared that the disruption of business caused by the delay for approval increased costs and placed Tariff companies at a disadvantage.82 In spite of protests, the Underwriters implemented mandatory stamping throughout the province of Ontario.83 The Stamping Office inspected 300 policies each day and through its work identified several companies in breach of the Tariff agreement. The Merchant's Fire Company, for instance, was writing insurance with wholesale disregard for the tariff and was paying commissions in excess of those endorsed by the CFUA.84 Although opposition to Stamping remained, it continued as a mechanism to enforce rates, which were subject to considerable pressure in competitive markets.

After a series of incendiary or questionable fires in 1923, the CFUA became alarmed at the high costs involved in settling claims where the companies suspected arson. With declining property values and overinsurance resulting from inflated values at the end of the war, incendiary fires were becoming more common. The Underwriters established the Fire Underwriters Investigation and Loss Bureau to act as a clearing house for information on fires in Ontario and insurance settlements.85 Tariff companies could consult the Bureau to determine if insurance applicants had settled a fire insurance claim in the past or if they may might have been involved in a suspicious fire. The Bureau was so successful that in 1925 the Underwriters extended its work to include the whole Dominion, and opened access to the Bureau to all licensed companies.86 During its first year of operation, the Bureau contributed to eleven arrests, with only one acquittal.87 The Bureau was used extensively by the Tariff companies as well as by crown prosecutors, police and

fire departments, fire marshals and others involved in fire investigation.88 It was deemed important that the Bureau operate independent of the CFUA, but not incorporated, to eliminate the possibility of libel suits.89

The issue of Goad's maps was a recurring contentious issue between Tariff and non-Tariff companies. In 1922, the Select Committee declared that the Underwriters' control of fire insurance maps constituted a restraint of trade. Non-tariff and unlicensed insurers complained that they had no access to reliable fire maps, since the Underwriters controlled the production and distribution of these maps, previously printed by the Goad Company.90 In an effort to increase effective non-Tariff competition, the Select Committee requested that the Association make the maps available to unassociated companies at a reasonable price, which would repay the Association for the expense involved in the purchase and maintenance of the map system.91 The Committee recognized, however, that it could not enforce such a requirement since the Underwriters had secured copyright privileges through the Underwriters' Survey Bureau. The CFUA refused open access to its maps. And it solidified its control over Goad's maps by purchasing their exclusive printing and distribution rights. This component of internal self-regulation remained intact.

Thus, in the face of external pressures, the Underwriters were effective in consolidating their efforts to achieve their main goal, the stabilization of rates. They focused on supplementing their existing authority by improving the information available for decision-making, by acquiring access to the Goad's maps and establishing the Information Loss Bureau, and enforcing the tariffs which were being flagrantly ignored.

The recommendations of the Masten Commission resulted in sweeping attempts to change insurance regulation which had not been foreseen by the Underwriters. However the Underwriters' internal regulatory mechanisms were not

the target for government control. Rather the government chose to focus on regulating competitive market conditions and reducing costs for the policyholders. The regulation, however, did not come with the blessing of the CFUA. The Underwriters became keenly aware of their dual role as quasi-public service and private business. Their ability to accommodate the two demands determined their ability to survive as an industry combination. Internally, the Underwriters faced challenging problems arising from competitive pressures within the Association. The ability to deal with divisive issues such as agents' commissions and stamping demonstrated the institutional flexibility exercised by the Association and a recognition of the tenuous alliance represented by the CFUA.

CHAPTER 4 ENDNOTES

1. Provincial Archives of Ontario (PAO), Proceedings of a Conference of Fire Insurance Companies' Representatives, Toronto, December 16, 1920, p. 3. RG 31-23 Insurance Branch: Director's General Correspondence, Box 4 File 4.3.

2. The Select Committee consisted of the Attorney-General, Hon. W. E. Raney, the Superintendent of Insurance, Mr. Evan Gray, and Dr. Sanderson, the Actuarial Advisor, Financial Post, May 8, 1920; January 30, 1920. Gray was a lawyer with experience with Loan and Trust Companies, but had no experience working in the field of insurance.

3. Industrial Canada, February 1920, p. 50-51; Financial Post, January 17, 1920, p. 12.

4. UWO, CFUA Coll., Committee Minutebook, Box 46, Meeting of the Companies, January 27, 1922.

> Resolved that in the opinion of this Meeting the Association should oppose on principle the proposed interference by legislation or otherwise by the Ontario Provincial Legislature and instruct Counsel to urge before the Select Committee the needlessness of such legislation especially in view of the fact that the business of fire insurance has been conducted by its members for many years in the territory under jurisdiction of the Association without any well founded objection to its methods, notwithstanding the most searching enquiry made by the Ontario Commission to investigate complaints.

5. IAO-UBC Box 40 File 1, Minutes 1922-1923, President's Address, June 28, 1922.

6. UWO, CFUA Coll., Committee Minutebook, Box 46, John Robertson, Secretary, CFUA to John Jenkins, President, CFUA, January 7, 1922.

7. The CFUA received a letter from the Superintendent of Insurance discussing the issued raised by the Select Committee, requesting a series of changes, which will be discussed during this chapter. The Underwriters allowed both the Government's letter and their reply to be published in the Insurance Chronicle, February 24, 1922, p. 252-255.

8. PAO, RG 31, Series 31-23, Insurance Branch: Select Committee, 1920-1022, Proceedings of the Select Committee Respecting Insurance, January 6, 1921; Fire Insurance Rates in Ontario and Fire Insurance Agents Commissions, File 4.2, p. 6-8; Financial Post, January 13, 1922, p. 14.

9. UWO, CFUA Coll., Committee Minutebook, Box 46, "An Act Respecting Insurance Rating Bureaus", undated; Draft CFUA response to Select Committee; John Robertson, Secretary, CFUA to John Jenkins, President, CFUA, January 7, 1922; Financial Post, February 24, 1922, p. 1.

The Underwriters maintained that the following characteristics negated any comparisons:

1. Lack of adequate fire protection in Ontario;
2. Inferior class of building and fire resisting construction in Ontario;
3. Greater carelessness in Ontario;
4. Greater incendiarism in Ontario.

The Committee was not satisfied that sufficient evidence was presented to substantiate these claims.

10. UWO, CFUA Coll., Committee Minutebook, "An Act Respecting Insurance Rating Bureaus", undated. Draft CFUA response to Select Committee. The Underwriters argued that issues such as property owned per person and loss ratio were important factors not considered by the Committee.

11. UWO, CFUA Coll., Committee Minutebook, W. E. Raney, Attorney-General, Ontario to John Robertson, Secretary, CFUA, January 1922.

12. UWO, CFUA Coll., Committee Minutebook, "An Act Respecting Insurance rating Bureaus", undated; Draft CFUA response to Select Committee.

13. UWO, CFUA Coll., Committee Minutebook, W. E. Raney, Attorney-General, Ontario to John Robertson, Secretary, CFUA, January 1922. The original proposal included provisions for monthly statistics, which the companies found burdensome. The Underwriters were successful in reducing the extent of information provided for reporting ease, in cooperation with the Insurance Superintendent and other fire and life insurance companies. IAO-UBC Box 39 File 5 Minutes 1920-1921, Legislation Committee, April 20, 1921; IAO-UBC Box 40 File 1, Legislation Committee, June 28, 1922

14. Report of the Ontario Superintendent of Insurance, 1920, p. iii; Report of the Ontario Superintendent of Insurance, 1922, p. iv.

15. Report of the Ontario Superintendent of Insurance, 1928, Appendix 2; Financial Post, November 30, 1928, p, 12.

16. "The Operation of the Ontario Rating Law", Address given before the Eighth Annual Conference of Provincial Superintendents of Insurance, Leighton Foster, reprinted in Industrial Canada, November 1925, p. 39.

17. Ontario. Statutes. Ontario Insurance Act, 1922, Section 7; IAO-UBC Box 40 File 1, Minutes 1922-1923, President's Address, June 28, 1922; Report of the

Ontario Superintendent of Insurance, 1921, p. B273; Insurance Chronicle, March 1922, p. 66.

18. UWO, CFUA Coll., Committee Minutebook, Box 46, Minutes of the Legislation Committee, January 11, 1922.

19. UWO, CFUA Coll., Committee Minutebook, Box 46, John Robertson, Secretary, CFUA to John Jenkins, President, CFUA, January 7, 1922.

20. UWO, CFUA Coll., Committee Minutebook. Box 46, Minutes, Legislation Committee, February 23, 1922.

21. "The Operation of the Ontario Rating Law, Industrial Canada, November 1925, p. 86.

22. Ibid., p. 86.

23. UWO, CFUA Coll., Committee Minutebook, Box 46, W. E. Raney, Attorney-General, Ontario to John Robertson, Secretary, CFUA, January 7, 1922; PAO, RG 31, Series 31-23, Box 4, File No. 4.2, Insurance Branch: Directors' General Correspondence, Select Committee 1920, Proceedings, January 6, 1921, pp. 1B-10B; 28B-32B.

24. UWO, CFUA Coll., Committee Minutebook, Box 46, W. E. Raney, Attorney-General, Ontario to John Robertson, Secretary, CFUA, January 1922.

25. PAO, RG 31, Series 31-23, Box 4, File No. 4.2, Insurance Branch: Directors' General Correspondence, Select Committee, John Robertson, Secretary to W. E. Raney, Attorney-General, Select Committee, February 2, 1922; Insurance Chronicle, February 24, 1922, p. 255.

26. PAO, RG 31, Series 31-23, Box 4, File No. 4.2, Insurance Branch: Directors' General Correspondence, Select Committee, John Roberston, Secretary to W. E. Raney, Attorney-General, Select Committee, February 2, 1922; Insurance Chronicle, February 24, 1922, p. 255.

27. IAO-UBC Box 40 File 1 Minutes, 1921-22, Legislation Committee, June 28, 1922.

28. PAO, RG 31, Series 31-23, Box 4, File No. 4.3, Insurance Branch: Directors' Correspondence. Regulation of Insurance. Insurance Conference Proceedings, Memorandum for the Press from the Superintendent of Insurance, undated; File

No. 4.2, Insurance Branch: Directors' General Correspondence. Select Committee, January 4, 1922.

The proposed legislation introduced an age limit of 21 years for those who intended to, "hold himself to and carry on business in good faith as an insurance agent." PAO, RG 31, Series 31-23, Box 4, File No., 4.3, Insurance Branch: Directors' Correspondence. Regulation of Insurance. Insurance Conference Proceedings. Regulation of Licensing of Agents in the City of Toronto, and Limiting the Rate of Commission, Superintendent of Insurance p. 5A.

Provisions were also made for brokers' licenses which required that the licensee demonstrate trustworthiness and competence, because he acts legally on behalf of the insured. In conjunction with the licensing of agents, the Government proposed licensing Adjusters, who were employed by either the policyholder or the insurer to determine the value of property destroyed by fire. The object of the legislation was to ensure that adjusters were competent to determine loss values and meet the needs of the public. The Underwriters' were concerned that licensing adjusters would tend to confer authority which they did not legally exercise, since an adjuster's determination was not legally binding on the insurance company.

PAO, RG 31, Series 31-23, Box 4, File No. 4.2, Insurance Branch: Directors' General Correspondence. Select Committee, 1920-1922; UWO, CFUA Coll., Committee Minutebook, Minutes, Legislation Committee, November 1, 1921. The Underwriters also felt that adjusters should not be able to charge on a percentage basis, but should charge an up front fee.

29. PAO, RG 31, Series 31-23, Box 4, File No. 4.2, Insurance Branch: Directors' General Correspondence, Select Committee 1920-1922, Proceedings, Evan Gray: Evidence, p. 2A; PAO, RG 4, Series 4-32, File 1921, No. 1688, Insurance Act, 1921, Evan Gray, Superintendent of Insurance, Ontario to Henry Drayton, Minister of Finance, Ottawa, Ontario, March 31, 1920.

> You have been misinformed by whoever told you that this Provincial Legislation was enacted chiefly for revenue purposes. The legislation was adopted only after strong pressure had been brought upon the Government from the insurance men themselves.

30. The proposal included higher licensing fees ranging from $5 to $100. However, the fee remained at $3.00, to be paid by the agent rather than by the company.

31. PAO, RG 31, Series 31-23, Box 4, File No. 4.2, Insurance Branch: Directors' General Correspondence, Select Committee, 1920-1922, p. 7A-8A; File No. 4.3, Regulation of Insurance: Insurance Conference Proceedings, Regulation and Licensing of Agents in the City of Toronto, and Limiting the Rate of Commission, Ontario Superintendent of Insurance.

32. Financial Post, January 7, 1921, p. 14; PAO, RG 4.32, File 1921, No. 1689, Insurance Act 1921, John H. Durham to Agents, December 20, 1920; G. G. Mills, Agent to W. E. Raney, Attorney-General, December 28, 1920.

33. UWO, CFUA Coll., Committee Minutebook, Box 46, John Robertson, Secretary, CFUA to John Jenkins, President, CFUA, January 7, 1922; Financial Post, May 8, 1920. Agents could hold only two classes of license: fire, life or casualty.

34. PAO, RG 31, Series, 31-23, Box 4, File 4.3, Insurance, Insurance Conference Proceedings, Regulation and Licensing of Agents in the City of Toronto, and Limiting the Rate of Commission.

The following were not eligible for registration as agents:

(1) Firms, corporations, or individuals whose business consists principally in placing insurance on their own property;
(2) A person, firm or corporation having no regular place of business;
(3) Life companies, or their officials;
(4) Loan and Mortgage Companies, or their officials;
(5) Trust Companies, or their officials
(6) Lawyers
(7) Bank Managers
(8) All others who do not depend for their livelihood on the revenue from insurance commissions.

PAO, RG 3-4, Box 24, File: Insurance Regulation 1920, Premier Drury to Mr. Holtermann, December 28, 1920; Financial Post, May 4, 1923, p. 14; August 3, 1923, p. 14; PAO, RG 31, Series 31-23, Box 4, File 4.2, Insurance Branch: Directors' General Correspondence, Select Committee 1920-1922, p. 3A-5A Evan Gray: Evidence. There was particular concern with lawyers because they were acting in a dual capacity, acting as counsel and placing insurance. Trust companies argued that they often acquired licenses because the services provided by other licensed agents was not adequate to meet the needs and volume of insurance transacted through their offices.

35. PAO, RG 4, Series 4-32, File 1921, No. 1688, Insurance Act, 1921, Evan Gray, Superintendent of Insurance, Ontario to Sir Henry Drayton, Minister of Finance, Ottawa, March 23, 1920; Gray to Drayton, March 31, 1920; Gray to E. Bayly, K. C., May 25, 1921; Insurance Chronicle, May 27, 1921, p. 623; Financial Post, August 11, 1922, p. 14.

36. PAO, RG 4, Series, 4-32, File 1921, No. 1688, Insurance Act, 1921, Evan Gray, Superintendent of Insurance, Ontario to Sir Henry Drayton, Minister of Finance, Ottawa, March 31, 1920; Gray to Bayly, K. C., May 25, 1921.

37. IAO-UBC Box 40 File 1, Minutes 1923-1924, President's Address, June 24, 1924.

38. Financial Post, December 3, 1920; RG 31-23, File 4.3, Insurance Branch, Directors' General Correspondence. Regulation of Fire Insurance Agents Commissions. Memorandum to the Press, undated.

39. PAO, RG 31, Series 31-23, Box 4, File 4.3, Insurance Branch: Directors' General Correspondence, Regulation of Insurance, Insurance Conference Proceedings, p. 50, T. L. Morrissey: Evidence.

40. Financial Post, October 15, 1920; PAO, RG 4, Series 4-32, File 1921, No. 1688, Insurance Act, 1921, Proceedings of the Select Committee on Insurance, January 4, 1921: Masten Evidence; PAO, RG 31, Series 31-23, Box 4, File 4.2, Insurance Branch: Directors' General Correspondence, Select Committee, 1920-1922, p. 20; Series 31-23, Box 4, File 4.3, Insurance Branch: Directors' General Correspondence, Regulation of Insurance, Insurance Conference Proceedings, pp. 107-108.

41. UWO, CFUA Coll., Minutes of Proceedings, General Meetings, 1915-1925, February 5, 1921; Committee Minutebook, Evan Gray, Superintendent of Insurance, Ontario, to Lymon Root, President, CFUA, February 2, 1921.

42. PAO, RG 31, Series 31-23, Box 4, File 4.2, Insurance Branch: Directors' General Correspondence, Select Committee 1920-1922, Evan Gray, Superintendent of Insurance, Ontario to Lymon Root, President, CFUA, February 1, 1921; Box 4, File 4.3, Insurance Branch: Directors' Correspondence, Regulation of Insurance, Insurance Conference Proceedings, Memorandum from Evan Gray, Superintendent of Insurance to W. E. Raney, Attorney-General, undated; Evan Gray to Lymon Root, President, CFUA, February 1, 1921; UWO, CFUA Coll., Minutes of Proceedings, General Meetings, 1915-1925, February 5, 1921; PAO. RG 4-32 File 1921 No. 1689 Insurance Act 1921, February 5, 1921.

Regulations Proposed for Fire Insurance Agents' Commissions

1. That the local and canvassing agent should be allowed a commission at a rate not exceeding 20% on all three-year business and mercantile buildings, and 15% on all other classes. Each of the above rates of commission includes all agency expenses such as possible exchange, advertising solicitor's fees, personal, local license fees, clerk hire, rent, services in adjusting losses under policies issued at the agency or all other agency charges whatsoever, excepting only maps, map corrections, advertising as required by law and local board expenses and taxes.

2. That each company carrying business in Ontario may have one agency to whom additional remunerations may be paid for managerial and supervising duties by way of allowance other than commission, the amount of which allowance must be definitely fixed in advance by agreement between the company and such agency and be payable to such agency and shown in the company's and the agency's accounts entirely separate and distinct from the other commission charges; the company may define the extent and the nature of the duties to be performed by such agency but not more than one agency may be appointed in Ontario; Underwriters' Agencies which were members of the Canadian Fire Underwriters' Association on 31st of December 1920, are to be treated as companies for the purposes of this ruling but no new or other Underwriters' Agency may be allowed to pay any agent a greater remuneration than the amount of the graded commission terms above quoted.

a. The terms above suggested are applicable to the City of Toronto as well as in all other parts of the Province.
b. With the exception of the agent mentioned in paragraph 2, no salaried officer or employee of the company may receive a commission on premiums other than a profit commission.
c. It is the intention that the additional allowance provided by paragraph 2 shall be limited to a reasonable remuneration for actual managerial and supervising expenses and duties and should not provide any additional remuneration for services properly included in paragraph 1.
d. A company which has a Head Office or Branch Office in Ontario at which business is received from agents is not prohibited from having such an agency as is provided for under paragraph 2
e. It is the wish and intention of the Department that the plan should apply to all companies equally whether members of your Association or not.

43. PAO, RG 31, Series 31-23, Box 4, File 4.2, Insurance Branch: Directors' General Correspondence, Select Committee 1920-1922, Evan Gray, Superintendent of Insurance, Ontario to Lymon Root, President, CFUA, February 1, 1921; PAO, RG 4-32, File 1921, No. 1689, Insurance Act 1921, February 5, 1921.

44. PAO, RG 31, Series 31-23, Box 4, File 4.3, Insurance Branch: Directors' General Correspondence, Regulation of Insurance, Insurance Conference Proceedings, p. 124 Evidence: Mr. McKendrick.

45. Ibid., p. 113 Evidence: Mr. George Kay.

46. Ibid., p. 125 Evidence: Mr.Morrissey; p. 115, Evidence: Mr. McKendrick.

47. UWO, CFUA Coll., Minutes of Proceedings, General Meetings, 1915-1925, Minutes Special Meeting, February 5, 1921; PAO, RG 31, Series 31-23, Box 4, File 4.3, Insurance Branch: Directors' General Correspondence, Regulation of Insurance, Insurance Conference Proceedings, pp. 107-108.

48. PAO, RG 31, Series 31-23, Box 4, File 4.3, Insurance Branch: Directors' General Correspondence, Regulation of Insurance, Insurance Conference Proceedings, p. 116 Evidence: Mr. Gray.

49. Ibid., 108, p. 118 Evidence: Mr. Gray.

50. Financial Post, December 3, 1920.

51. PAO, RG 31, Series 31-23, Box 4, File 4.3, Insurance Branch: Directors' General Correspondence, Regulation of Insurance, Insurance Conference Proceedings, p. 109.

52. IAO-UBC Box 39 File 5 Minutes of General Meeting, December 8-9, 1920; IAO-UBC Box 40 File 1 Minutes of Semi-Annual Meeting, December 12, 1922; IAO-UBC, Box 40 File 1, Minutes, May 9, 1923; Box 39 File 5, Minutes 1920-1921, Minutes of General Meeting, April 20, 1921; UWO, CFUA Coll., Minutes of Proceedings, General Meetings, 1915-1925, October 23, 1922; Minutes, April 18, 1923.

The terms included the appointment of one chief agent in the City of Toronto for each company, who would receive a commission rate of 20% and 25% on all policies placed on Toronto business submitted through his office and 15% and 20% on risks located outside of Toronto, plus 5% on agency profits. A Provincial Agent could be appointed for each company, who would receive 25% on all insurance placed outside Toronto. Canvassing Agents would receive a commission rate of 15% and 20% for dwellings and their contents.

53. PAO, RG 31, Series 31-23, Box 4, File 4.3, Insurance Branch: Directors' General Correspondence, Regulation of Insurance, Insurance Conference Proceedings, p. 103.

54. Ibid., Proceedings of the All Companies Meeting.

55. Ibid., p. 59-62; Financial Post, April 1, 1921, p, 2.

56. Financial Post, April 6, 1923, p. 14.

57. The bill received considerable support from manufacturing interests and lumber interests in particular, which had benefitted from reciprocal insurance in the past. PAO, RG 4-32 File 1924 No. 690, Amendment of the Insurance Act, 1924: David Gillies, President, Gillies Bros., Limited, Lumber Manufacturers to Hon. W. F. Nichol, Attorney-General, February 16, 1924; Telegram: McDougall Mills, Ontario to Ontario Premier. March 19, 1924; Telegram: Fort Frances, Ontario to Ontario Premier, March 20, 1924; H. B. Shepard, President, Shepard V. Morse Lumber Co. to Howard Ferguson, Premier Ontario, March 21, 1924; D. McLeod, General Manager, Keewatin Lumber Company Limited, to Hon. W. F. Nickle, Attorney-General, March 20, 1924; J. Norman Fox, Edward Clark and Sons Ltd, Hardwood and Lumber to Hon. G. H. Ferguson, Premier Ontario, March 21, 1924.

58. Financial Post, September 9, 1927, p. 10.

59. UWO, CFUA Coll., Committee Minutebook, 1920-1922, Box 46, Howgate, Secretary, Montreal to John Robertson, Secretary, Toronto, March 10, 1922; John Robertson, Toronto to Howgate, Montreal, March 23, 1922.

This position was widely supported in industry and business journals, with the exception of the CMA's journal, Industrial Canada. The Chronicle, January 27,

1922; March 24, 1922; Financial Post, September 16, 1927, Financial Post, April 6, 1923, p. 23.

60. Financial Post, September 16, 1927, p. 1.

61. IAO-UBC, Box 39, File 5, Minutes 1920-1921, Minutes of the Legislation Committee, April 20, 1921. UWO, CFUA Coll., Committee Minutebook, 1920-1922, Box 46, John Robertson, Secretary, Toronto to Evan Gray, Superintendent of Insurance, March 23, 1922.

62. UWO, CFUA Coll., Committee Minutebook, 1920-1922, Box 46, John Robertson, Secretary, Toronto to John Jenkins, President, CFUA, March 9, 1922; IAO-UBC Box 39 File 5, Minutes 1920-1921, Legislation Committee, April 20, 1921.

63. PAO, RG 4-32, File 1924, No. 690, Amendments to the Insurance Act, 1924, S. F. Clifford Thomson, Secretary-Treasurer, Association of Fire and Casualty Insurance Agents of the City of Hamilton to Hon. Howard Ferguson, Premier, Toronto, Ontario, March 27, 1924; RG 4-32, File 1924 No. 690 Amendments to the Insurance Act, 1924, J. O. Hutton, President, Kingston Agencies Limited, Kingston, Ontario to Attorney-General W. F. Nickle, Toronto, Ontario, March 27, 1924; Edward W. Nesbitt, Insurance Broker, Woodstock, Ontario to Attorney-General W. F. Nickle, Toronto, Ontario, March 29, 1924; John Sutherland, Agent, to Attorney-General, March 25, 1924.

64. UWO, CFUA Coll., Committee Minutebook, 1920-1922, Box 46, John Jenkins, President, CFUA to John Robertson, Secretary, Toronto, March 10, 1922; Financial Post, April 6, 1923, p. 14; April 14, 1922, p. 14.

65. UWO, CFUA Coll., Committee Minutebook, 1920-1922, Box 46, Personal Letter, John A. Robertson, Secretary, Toronto Office to Mr. L. Howgate, CFUA, Secretary Montreal Office, December 14, 1921.

66. PAO RG 4-32 File 1924 No. 690 Amendment of the Insurance Act, 1924, Finlayson to Nickle, March 24, 1924.

67. Statutes; Financial Post, April 6, 1923, p. 23; RG 4-32 File 1924 No. 690, Amendment of the Insurance Act, 1924; G. D. Finlayson, Dominion Superintendent of Insurance, to Ontario Attorney-General, March 24, 1924.

68. Industrial Canada, July 1922, p. 158.

69. UWO, CFUA Coll., Committee Minutebook, 1920-1922, Box 46, John Robertson, Secretary, Toronto to John Jenkins, President, CFUA, March 10, 1922; John Robertson to L. Howgate, Secretary, Montreal, September 6, 1922. The

CFUA secured legal representation for the hearings concerning the jurisdiction question, but were not notified of the Court dates; IAO-UBC Box 40 File 1 Minutes 1922-1923, May 9, 1923.

70. UWO, CFUA Coll., Committee Minutebook, 1922-1924, Box 52, Ledger Volume 6, Minutes of the Legislation Committee, April 7, 1923.

71. UWO, CFUA Coll., Committee Minutebook, 1920-1922, Box 46, John Robertson, Secretary, Toronto to L. Howgate, Secretary, Montreal, September 6, 1922.

72. Reprinted in Ontario. The Report of the Superintendent of Insurance, 1923 (the Report was submitted January 25, 1924); IAO-UBC Box 40 File 1, Minutes 1923-1924, Legislation Committee, June 24, 1924; "Reciprocal Insurance Act" 1922 (Ont.), c. 62; *re Reciprocal Insurance Legislation*; *R. v Craigon*; *R. v Otte* [1924] A.C. 328, 93 LJPC 137, 40, TLR 273 [1924], 2 W.W.R. 397, 41 Can Cr. Cas, 336 [1924] 1, D.L.R., 789; The Insurance Act, R.S.O., 1927, Sec. 80.

73. Monetary Times, February 1, 1924, p. 17. The Dominion Insurance Department ignored the Privy Council rulings and refused to repeal the Sections of the Insurance Act ruled ultra vires. The issue was finally resolved in 1934 with the Privy Council decision affirming provincial rights to regulate the insurance industry. For a detailed assessment of the political and bureaucratic process of this jurisdictional debate, see Christopher Armstrong, "Federalism and Government Regulation: The Case of the Canadian Insurance Industry, 1927-1934," Canadian Public Administration, 1976, pp. 88-101.

The provincial governments were optimistic that this decision would have far-reaching effects beyond the field of insurance to extend provincial authority in all fields of business and the trend to uphold provincial rights with the Privy Council. Financial Post, September 24, 1926, p. 14: Presentation by Charles Heath, Superintendent of Insurance, Manitoba; Report of the Ontario Superintendent of Insurance and Registrar of Friendly Societies, 1923.

> The judgment is of very great importance, and will have a far-reaching effect, not only upon insurance legislation, but also upon legislation in other fields of business and trade where Government regulation is undertaken ... It is to be noted that the judgment expresses in very wide but definite terms the principle that the regulation of contracts of insurance, and of the business of insurance, as such, is in the exclusive legislative authority of the province. This is a principle for which this Department has contended under all administrations for many years, and its clear recognition in this judgment is most gratifying.

Monetary Times, February 1, 1924, p. 17.

74. Financial Post, March 22, 1929, p. 14; Several reciprocals operating under Dominion licenses refused to renew their licenses and chose to continue operating in Canada under provincial license. Financial Post, December 28, 1928, p. 12; April 20, 1928, p. 14.

75. "The Uniform Fire Insurance Laws of the Canadian Provinces", by Leighton Foster, Superintendent of Insurance for the Province of Ontario, Proceedings of the Insurance Institute of Toronto, 1925-1926, pp. 142.

76. Financial Post, October 21, 1921, p. 14.

77. Insurance Chronicle, January 27, 1922, p. 125;
Financial Post, June 5, 1925, p. 14.

78. IAO-UBC Box 39 File 5, Minutes 1920-1921, April 20, 1921; IAO-UBC Box 40 File 1, Minutes 19210-1922, November 26, 1921.

79. PAO, RG 31 Series 31-32 Box 3, File No. 3-6, Insurance Branch, Director General Correspondence, Evan Gray, Superintendent of Insurance to W. E. Raney, Attorney-General, Ontario, December 11, 1922; Charles Heath, Superintendent of Insurance, Manitoba to Thomas H. Johnson, Attorney-General, Manitoba, January 24, 1922.

80. IAO-UBC Box 40, File 1, Minutes 1924-1925, June 1923, p. 96-98.

81. UWO, CFUA Coll., Committee Minutebook, 1922-1924, Box 52, Ledger Volume 6, Infractions Committee, July 26, 1923; IAO-UBC Box 40 File 1, Minutes 1923-24 June 24, 1924.

An example of the serious infractions: the Great American and the Mount Royal Insurance companies withdrew from the Association because of their unwillingness to follow the rates. IAO-UBC Box 40 File 1 Minutes 1923-1924, April 13, 1924.

82. IAO-UBC Box 40 File 1 Minutes 1923-1924, April 14, 1924.

83. IAO-UBC Box 40 File 1 Minutes, 1924-1925; June 1923, p. 96-98.

84. Christopher Hives, The Underwriters: A Century of Service, p. 56.

85. Financial Post, October 7, 1927, p. 22; IAO-UBC Box 40 File 1, Minutes 1924-1925, June 24, 1924; Industrial Canada, June 1924, p. 64.

86. IAO-UBC Box 40 File 1, Minutes 1924-1925, December 10, 1924. A membership fee was implemented for all participating companies; Financial Post, July 10, 1925, p. 14.

87. IAO-UBC, Box 40 File 1 Minutes 1923-1924, June 24, 1924.

88. IAO-UBC Box 40 File 1 Minutes 1923-1924, June 24, 1924.

89. IAO-UBC Box 40 File 1 Minutes 1924-1925, December 10, 1924.

90. UWO, CFUA Coll., Committee Minutebook, 1920-1922, Box 46, W. E. Raney, Attorney-General, Ontario to John Robertson, Secretary, Toronto, CFUA, January 1922.

91. Ibid. Raney to Robertson, January 1922; Robertson to John Jenkins, President, CFUA, January 7, 1922.

Conclusion
The Dynamics of Regulation and the Fire Insurance Industry in Ontario

The government's decisions to limit direct government regulation of the fire insurance industry affirmed the Underwriters' self-regulatory authority. The CFUA continued to enforce schedule rating. This cornerstone of its authority and power was subjected only to an ineffective appeal procedure. The regulatory debate was powerfully influenced by the strength of the Underwriters' self-regulatory mechanism, which had developed to handle the unique product and business conditions of the insurance industry. While rival business groups would have preferred greater government control over the industry, and the provincial government seriously intended to redefine its regulatory role, the industry's complexity and the CFUA's domination of expertise and experience within it allowed the Underwriters to react effectively and modify undesirable proposed changes. Consequently, while the CFUA never could control the government's agenda, it could influence the course of the debate within the parameters the government had defined. Existing promotional regulatory mechanisms were reinforced instead of being displaced, and direct regulation of managerial decision-making, which could have included regulating rates, was deterred.

Industry dynamics and the collaboration of competitors created a unique regulatory environment in the insurance industry. The CFUA was successful in regulating and enforcing its rules because of the nature and function of the industry itself. Since the insurance premium represented an indemnity rather than an exchange price, unregulated rate competition threatened the solvency and profitability of the insurance companies. In an effort to resolve inherent problems

in the industry, insurance companies adopted self-regulation in 1883 as the appropriate regulatory tool to facilitate an ordered, competitive market, to stabilize rates and to contain industry abuses. Direct government regulation was not pursued nor desired by the companies. Aside from the absence of a clear constitutional jurisdictional authority and limited bureaucratic resources, the determination of insurance rates was viewed by insurance companies as a managerial decision. As a private agency, the CFUA controlled admission to the Association, enforced schedule rates, limited the distribution of fire maps, defined uniform contract provisions, and enforced internal discipline with its membership. It even extended its authority during the 1920s by enforcing stamping to ensure that all rates and contract requirements were consistently implemented. The Underwriters' authority thus extended beyond its own membership to define the parameters of rate competition and insurance standards for their competitors. Rate discounts for the entire industry were based upon the CFUA rate schedules, while municipal and dwelling rates were governed by CFUA inspections and building requirements. Because of their broad membership and the high information costs associated with acquiring alternate insurance, the Underwriters provided easily accessible and competitive insurance services.

The exercise of their authority was, however, subject to economic competition, from within the association and from without. This put pressure on the Underwriters to exercise due caution and prudence in its exercise of authority. If the CFUA intended to retain its membership, it had to define the limits of its authority to allow individual companies to exercise their realm of private decision-making authority, thus ensuring that the large and profitable companies continued to participate in the Association. At the same time, it had to enforce its rules to preserve the value of its membership and provide incentive for new joint stock companies to join. Competition from mutuals, reciprocals and unlicensed insurers

placed external pressure on rates and services to limit the Underwriters' potential abuses of their authority. Nevertheless, they succeeded in stabilizing insurance rates and controlling abuses, such as rebating, which had previously prevailed. Moreover, their control of the industry allowed them to exercise quasi-public powers, by defining rates and insurance conditions for fire insurance, which had become a vital component of the financial marketplace.

The Masten Report acknowledged that the CFUA, acting as an industry combination, controlled fire insurance rates and industry conditions and standards, but in a way which resulted in a more profitable and stable business environment and a safer insurance market for consumers. At the same time, Masten also recognized the potential abuses and the arrogance and isolation which characterized some of the CFUA's actions. Nonetheless, he upheld the right of insurance companies to accept or deny insurance policies based upon the quality of the risk. When witnesses demanded a Board to regulate rates and mediate disputes, similar to the Board of Railway Commissioners, Masten asserted that insurance premiums were not comparable to rail cargo costs, because premiums were an indemnity rather than a simple exchange of goods and services. He did not conceive that valid government regulation included forcing insurance companies to accept risks which they determined were unacceptable based upon existing industry criteria. Nor did he advocate the introduction of state rate-making because he felt that the state lacked the expertise and resources required to implement and enforce rates. Masten supported greater supervision of insurance companies to monitor abuses and excesses of the CFUA which, based upon the testimony heard during the Commission, were occurring. However, he envisioned that this could be best achieved through enhanced competition policy rather than direct intervention into the business decision-making and power exercised by the CFUA. But this enhanced

competition would not force the CFUA's dissolution, since the Canadian anti-trust tradition, unlike the American, recognized the social utility of "reasonable" combinations, a test which Masten believed the CFUA had met.1 This unwillingness to either directly regulate rates or to compel the breakup of the Association was pivotal to the regulation debate. As long as the Underwriters preserved their authority to enforce their rating schedule and limit its distribution, they would retain their industry position.

The Masten Report provided the foundation for government proposals to regulate the industry. The government clearly defined the criteria and objectives of its regulation. The CFUA was invited to participate in the regulatory debate, within the confines of those objectives. The UFO government focused on reducing premium costs, while at the same time improving access to insurance by extending promotional supervision. The government told the CFUA to resolve the recurring problem of excessive agents' commissions, under the threat of government legislation, insisting that any reduction in commissions be translated into lower insurance rates. The insurance companies failed to reach consensus, but their inaction was met with inaction on the part of the government. Not only did it continue to regard agents' commissions as a managerial decision, it conceded that if the CFUA, which had achieved some measure of success mediating industry divisions, was unable to reach an amenable solution, the government would be hard pressed to do so. When confronted with the option of intervening in managerial decisions, and thus redefining direct regulation in the industry, the government backed down, preferring to employ the tools of promotional regulation. Neither reduced insurance rates or reduced agents' commissions were achieved as a result.

In an effort to lower rates and provide more insurance options, the government chose to allow reciprocals and unlicensed insurers to operate more freely in the province. It further expanded the boundaries of promotional regulation

by allowing the Superintendent of Insurance to investigate rate discrepancies upon the request of consumers. However, since few complaints were actually registered, the regulation resulted in little direct interference by government regulators.

Implicitly, the government had defined fire insurance within the realm of private property as opposed to public property. Unlike the public utilities, the exercise of monopoly control by the CFUA did not create social or economic instability.2 Civic populists, who had been important in the utilities regulation debate, were absent here. There appeared to be no disequilibrium in the "markets of the mind". Quite the opposite was true. The largest group of insurance customers were the small, private dwellers, who purchased insurance coverage for a relatively small premium, relative to the property value. The agents, regardless of Masten's very low opinion of them, handled their affairs well enough that they had no need to take an active interest in how the industry was regulated. They notified customers when their policy expired, completed new inspections and policies as required, and collected and documented receipt of the premiums for another period. The consequent public apathy surprised Masten, since he felt that private dwelling owners had the most to gain through lower rates and more accessible insurance. Thus unlike the American experience, where a broad progressive reform movement played such a vital role in revising insurance regulation, there was no broad public sentiment or pressure to redefine or intensify regulation of the Ontario insurance industry.3 Insurers in the non-hazardous market had no incentive to reform insurance regulation because the CFUA's power stabilized an industry previously characterized by instability. This absence of public participation reduced and further defined the demands for government's role in regulating the insurance industry.

The CMA and large manufacturers, along with American reciprocal and unlicensed insurers, provided the strongest opposition to the CFUA and its control over rates. In its efforts to respond to such concerns by regulating agents' commissions, the government failed utterly. It could not compel consensus among the "regulated" to lower agents' commission rates, and it was unwilling to enforce a resolution itself. On the other hand, demands for increased accessibility to lower rates and more diverse insurance options could be more easily resolved and satisfied by improving competitive conditions in the provincial market, as opposed to direct regulation of the industry. Thus, the government was able to produce effective regulation by extending traditional promotional regulation, through increased reporting and enhanced competition policy.

The Underwriters actively participated in the regulatory process, but within the confines of the government's goals. While they tried to work within this framework, to make regulation as burden-free as possible, they also tried strategies which would have subverted the province's efforts entirely. When confronted with the inevitability of increased government regulation, the Underwriters sought the support of the federal Insurance Commissioner, who wished to shore up the constitutional jurisdiction of the Dominion Insurance office. The Underwriters advocated federal regulation, not because they wanted to capture and control the institutions of the state, but rather to be subject to the least undesirable form of government regulation. The federal government required deposits, which acted as a disincentive for unscrupulous and unstable companies, and regular reports which were not unduly onerous. The provincial government, however, was viewed with greater skepticism. In the face of regulatory challenges, the Underwriters did not advocate greater interventionist regulation, but attempted to ensure that any regulation introduced was not undesirable.

Regulation, by its very nature, is a political act, an attempt to reconcile divergent interests and thus rationalize and regularize economic activity. The existence of self-regulation, which succeeded in stabilizing market forces, had already achieved some of the goals of regulation by rationalizing the market.4 Moreover, the primary demands of the CMA and insurance competitors for access to unlicensed and reciprocal insurance could ultimately be met by extending traditional government control and facilitating easier licensing of insurers competing with the CFUA. But the government's objective of reducing insurance costs could only be met through the agreement of the companies to reduce rates and commissions or the imposition of regulatory constraints to do so. And here the government found itself on the horns of a dilemma. Once the first option of voluntary restraint proved a non-starter, it was unwilling to embark on the coercive regulatory option given the limited public interest in the issue. The government was hesitant to commit resources to reforming its role in the regulation process without the public mandate to do so.

The CFUA's authority would survive this initial regulatory attempt. During the 1920s, even though the Ferguson government was successful in its efforts to test its constitutional authority to regulate the industry, it never actually used this ability in a way unpalatable to the Underwriters. Ultimately, the effective challenge to the CFUA's self-regulatory capacity would come not from the external challenge of government, but from within the membership itself. In the 1930s, the combination of depression exigencies and the reduced importance of fire insurance compared to the growing automobile and casualty fields adversely impacted the Underwriters' ability to enforce internal discipline.5 Insurance agents, operating their own self-regulatory association, became increasingly more important and represented a new and powerful interest group. More American insurance companies entered the Canadian market under Dominion license and refused to join the Underwriters,

increasing the non-tariff competition which was not subject to the confines of the rate schedules.6 Given all these problems, by 1940, the CFUA had amalgamated with the Automobile Insurance Underwriters. Self-regulation ultimately became a casualty not of an expanding regulatory state, but of internal change within the industry itself.

CONCLUSION ENDNOTES

1. Mark Cox, "Limits of Reform", pp. 552-554; Michael Bliss, "Another Anti-Trust Tradition: Canadian Anti-Combines Policy, 1889-1910", Business History Review, Volume XLVII, No. 2 (Summer), 1973, p. 177-217.

2. Nelles and Armstrong, Monopoly's Moment, p. 321.

3. Roger Grant, Insurance Reform.

4. Paul Craven, 'An Impartial Umpire': Industrial Relations and the Canadian State, 1900-1911, (Toronto: University of Toronto).

5. Hives, The Underwriters, Chapters 6-8.

6. Canada. Parliament. House of Commons. Report of the Superintendent of Insurance, 1930-1935.

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APPENDIX 1

Infractions
reported October 19, 1892
Toronto Branch

Infractions Brought Forward from Previous Minutes Not Yet Rectified

Aetna - Printing Office, Sarnia
Aetna - Butcher Shop, Niagara Falls
Aetna - Court House, Welland
Agricultural - Dwelling, Peterboro
British America - Lumber, Sarnia
Citizens - Warehouse, Paris
Citizens - Hardware Stock, London
Citizens - Stock, Hats and Furs, Belleville
Commercial Union - Saw and Planing Mill, Norman
Commercial Union - Grain, Seaforth
Guardian - Stock Hats and Furs, Belleville
Hartford - Tannery, Uxbridge
Hartford - Laundry Occupancy, Guelph
Lancashire - Cheese Storage, Brantford
Norwich Union - Grocery (Cigar Factory Occupancy), London
Norwich Union - Clothing Store, London
Phoenix of Hartford - General Store, Elgin
Phoenix of Hartford - Hotel, Claremont
Phoenix of Hartford - Hotel, Sealey's Bay
Phoenix of Hartford - Hotel, Weston
Phoenix of Hartford - Dye Works, London
Phoenix of Hartford - Bank, Express and Telegraph Office, Port Hope
Phoenix of Hartford - Steam Confectionery, Kingston
Quebec - Flour Mill, Thorold
Quebec - Stock, Napanee
Quebec - Agricultural Implement Sale Room, London
Quebec - Store, Brockville
Quebec - Cheese Factory, North Williamsburg
Quebec - Cheese Factory, Frankville
Royal Canadian - Lumber, Byng Inlet
Scottish Union & National - Church, Kingston
Waterloo - Store, Columbus
Western - Lumber, Sarnia
Western - Planing Mill, Dresden
Western - Store, Bethany

Infractions Substantiated To Date

Infractions preceded by an asterisk have been rectified according to instructions

Aetna - Office Furniture, Windsor Bulletined (3-9-92)
***Alliance** - Tinsmith Stock, London Advice note (12-9-92) Cancellation reported (27-9-92)
***Alliance** - Dwelling, London Advice note (15-9-92) Cancellation reported (11-10-92)
***Commercial Union** - Hotel, Cobourg Bulletined (6-8-92) Collection reported (16-8-92
Hartford - Manufacturing Clothier, London Bulletined (17-9-92)
Imperial - Felt Boot Factory, Berlin Bulletined (17-9-92)
***Lancashire** - Free Library, Berlin Bulletined (27-8-92) Cancellation reported (27-9-92)
***Liverpool & London & Globe** - Stock, Port Perry Bulletined (17-9-92) Reported "not renewed" (28-9-92)
Manchester - Manufacturing Clothier, London Bulletined (17-9-92)
Mercantile - Stock, Port Perry Bulletined (17-9-92)
Northern - Manufacturing Clothier, London Bulletined (17-9-92)
Norwich Union - Manufacturing Clothier, London Bulletined (17-9-92)
Phenix of Brooklyn - Felt Boot Factory, Berlin Bulletined (17-9-92)
Phenix of Brooklyn - Manufacturing Clothier, London Bulletined (17-9-92)
Phoenix of London - Hardware Stock, London Bulletined (1-10-92)
Royal - Natural Gas Permit altered on risks taken through Swayze & Son, Welland
Scottish Union & National - Hardware Stock, London Bulletined (1-10-92)
***Sun** - Storehouse, Brantford Bulletined (13-8-92) Cancellation reported (17-8-92)

APPENDIX 2

ONTARIO INSURANCE COMMISSION

I. CIRCULAR TO THE BOARDS OF TRADE

Dear Sir:

I append to this letter a memorandum setting forth the subject which, as a Commissioner, I am now at the instance of The Ontario Government, with a view of making a report thereon towards improvement of the existing laws.

Some of the questions which are arising upon the investigation are, I think, of active and immediate interest to those insurers who are more immediately represented by the Boards of Trade. One question which has arisen is whether legislation ought to be enacted authorizing the Commissioner of Insurance, or some other authorized authority, to determine on complaint of any parties whether the rate charged is discriminatory; that is to say, whether under similar conditions a lower rate is being charged to other insurers.

Questions also arising as to whether or not the Canadian Fire Underwriters' Association has been acting arbitrarily and uniformly in the rates which it has established and in the alterations to those rates which it has from time to time promulgated. Other suggestions have been put forth on behalf of the Association of Fire Chiefs of the Province, and I enclose you copy of these.

Under these circumstances I thought it desirable to address this letter to you in order that your Committee dealing with such matters may determine whether you desire to be heard before the Commission in answer to or in support of any of these questions.

C. A. Masten
Commissioner

Distributed to 147 Boards of Trade in Ontario Cities and Towns

II. CIRCULAR TO THE MUNICIPAL CLERKS

Dear Sir:

I append to this letter a memorandum setting forth the subjects, which, as a Commissioner, I am now investigating with a view of making a report thereon to the Attorney-General looking towards improvement in the existing laws.

Some of the questions which are arising upon the investigation are of active and immediate interest to Municipal bodies. One question has arisen as to whether legislation should be enacted authorizing the Commissioner of Insurance, on complaint of the parties, to determine whether the differences in insurance rates between different places is justifiable or discriminatory. This proposal is opposed by

some parties. Other suggestions have been made in the evidence given on behalf of the Association of the Fire Chiefs of the Province.

Under these circumstances, I thought it desirable to address this letter to you in order that your Council may determine whether you desire to be heard before the Commission in answer to or in support of any of these questions.

III. PUBLIC NOTICE

Notice is hereby give that a sitting will be held in the Parliament Buildings ... for the purpose of considering generally the subject of the above inquiry - grouping that parties to be heard, determining the order in which the questions will be considered, and taking evidence in possession of the Department respecting the matters in question; making further appointments and considering further matters as may be presented.

APPENDIX 3

ONTARIO INSURANCE COMMISSION

List of Commission Witnesses

Testimony was presented from the following witnesses, based upon the record of the Canadian Insurance and Office and Field.

1. Mr. Mark Irish, Insurance Broker and Member of Provincial Parliament

2. Mr. Gurofsky, Insurance Agent for the Hudson Bay Insurance Company

3. Mr. Ormsby, previously Insurance Broker for Ormsby, Clapp and Anderson

4. Mr. Thomas L. Church, Mayor of Toronto

5. Mr. S. R. Parsons, Vice-President of the Canadian Manufacturers' Association

6. Mr. Murray, Secretary for the Canadian Manufacturers' Association

7. Mr. W. B. Tingle, Parry Sound Lumber Company

8. Mr. P. Davies, Assistant Secretary, Canada Glue Company

9. Mr. J. Bird, Manager, Bird Woollen Mills, Bracebridge

10. Mr. A White and Sons, Engine and Threshing Machine Manufacturers, London

11. Mr. W. S. Gardner

12. Mr. Lake, Assistant Secretary, Gutta-Percha Company

13. Mr. McKinnon, McKinnon Dash Company, St. Catherine's

14. Mr. Kirby, Williams, Green and Rome Suit Makers, Kitchner

15. Mr. Carlisle, Good Year Tire and Rubber Company, Bowmanville, Toronto

16. Mr. Fullertonm Cobourg Dyeing Company and the Cobourg Carpet and Matting Company, Cobourg

17. Mr. E. H. Jones, Manager, Canadian Yale and Towne Company of Hamilton

18. Mr. J. H. Kerr, Secretary, Canadian Westinghouse Company, Hamilton

19. Mr. A Flockhard, Cotton Lap Company of Walkerville

20. Mr. Carrick, Lake-of-the-Woods- Milling Company, Port Colborne, Brandon, Thorold, Kenora, Medicine Hat

21. Mr. Smyth, Massey-Harris Company, Toronto

22. Mr. Harding, Secretary, Toronto Carpet Company, Toronto

23. Mr. McMurtry, Manager, Gold Metal Furniture Company

24. Mr. Biggs, Manager Walkerville Brewery Company

25. Mr. W. Laidlaw, Secretary, Ladilaw Lumber Company

26. Mr. C. H. Watrous, President, Watrous Engine Works, Brantford Fire Engine Builders

27. Mr. Meadows, Manager, George B. Meadows Wire, Iron and Brass Works Company, Toronto

28. Mr. W. H. Sharpley, Chairman of the Ontario Insurance Commission of the Canadian Manufacturers' Association, Vice-President Goole-Shapley-Muir Company Limited and Vice-President Sterling Auctions and Keys Limited of Toronto

29. Mr. J. S. Benson, President, Canada Starch Company, Cardinal, Brantford, Fort William, and Port Credit·

30. Mr. F. W. Hay, Grain Dealer, Listowel

31. Mr. C. O. Shaw, Manager, Anglo-Canadian Leather Company of Huntsville

32. Letter from the Woltenhausen Hat Company, Brockville

33. Mr. W. E. Bigwood, Manager, J. Bigwood and Company

34. Mr. Mason, lawyer and Attorney for Insurance Exchange for unnamed company

35. Mr. Ross, J. R. Booth and Company, Lumber, Ottawa

36. Mr. Ivey, John D. Ivey Company, Wholesale millers, Toronto

37. Mr. Glendinning, representing W.C. Edwards and Company, Lumber mills, Ottawa

38. Mr. J. S. Gillies, Gillies Brother Limited, Lumber, Ottawa

39. Mr. H. G. Meir, Meir and linden Limited, Insurance Brokers, Toronto

40. Mr. D. S. Linden, Meir and Linden Limited, Insurance Brokers, Toronto

41. Mr. Muntz, Muntz and Beatty, Insurance Brokers, Kitchener

42. Mr. Kerr, Manager, Dominion Twines, Kitchener

43. Mr. E. S. Little, Secretary, Robinson and Little Company, Dry Goods Wholesalers, London

44. Mr. Pocock, President, London Shoe Company and Chairman of the Public Utilities Commission, London

45. Mr. E. V. Buchanan, General Manager, Public Utilities Commission, London

46. Mr. S. R. Parsons, Vice-President of the Canadian Manufacturers' Association, representing the rate payers of London.

47. Mr. D. C. Martin, Hamilton Board of Trade

48. Mr. G. H. Douglas, Thronton and Douglas Company, Wholedale Clothier, Hamilton

49. Mr. H. H. Chant, The Steel Company of Canada, Hamilton

50. Mr. C. W. Birge, The Steel Company of Canada, hamilton

51. Mr. G. Hardy, Canadian Hart Wheel Company, Grinding Wheels, Hamilton

52. Mr. J. R. Shaw, Canada Furniture Company, Woodstock, Kitchener, and Waterloo

53. Mr. J. F. M. Stewart, Point Ann Quarries Limited

54. Mr. W. H. Slater, Manager, Willis, Faber and Company, Brokers, Toronto

55. Mr. Shaw, Reed, Shaw and McNaught, Insurance Brokers, Toronto

56. Mr. E. D. Hardy, Insurance Agent, Hardy and Reynolds, Ottawa

57. Mr. G. D. Finlayson, Superintendent of the Insurance of the Dominion.

58. Mr. Scott, Insurance Agent, Ottawa

59. Mr. Kirby, Insurance Agent, Ottawa

60. Mr. Guthrie, representative for the Ottawa Insurance Agents

61. Mr. H. L. Gettleson, Merchant, Ottawa

62. Mr. Grace, Real Estate and Insurance Agent, Ottawa

63. Mr. Fraas, Representative of the City of Ottawa

64. Mr. Black, Ottawa City Controller

65. Mr. Mercier, Insurance Agent, Ottawa

66. Mr. Binks, Insurance Agent, Ottawa

67. Mr. Gardiner, Insurance Agent, Ottawa

68. Mr. Fitzsimmons, Insurance Agent, Ottawa

69. Mr. Ross, Representative for the Reciprocal Insurers

70. Mr. Robertson, Secretary of the Canadian Fire Insurance Underwriters' Association

71. John Laidlaw, Norwich Union, Representative of the Canadian Fire Underwriters' Association

72. Mr. Clenidinnan, W.C. Edwards and Company, Representative for Reciproal Insurers

73. Col. LeGrand Reed, Reed, Shaw and McNaught, Insurance Broker, Toronto, Represented the Chief Agents in Toronto

74. Mr. E.Towe, Insurance Agent, London

75. Mr. Campbell, Insurance Agent, London

76. Mr. Watson, Insurance Agent, Sarnia

77. Mr. Morton, Insurance Agent, Windsor

78. Mr. Kernahanm Insurance Agent, St. Catherine's

79. Mr. Payne, Insurance Agent, Hamilton

80. Fire Insurance Agents of Ottawa, represented by Mr. Fraas and Mr. Bethune

81. Mr. Kirkpatrick, Representatve of the Kingston Fire Insurance Agents

82. Mr. Chitty, Insurance Agent, Sault Ste. Marie

83. Mr. Martin, Insurance Agent, Representing the Fire Insurance Agents from North Bay

84. Mr. S. W. Ray, Representing Port Arthur Fire Insurance Agents' Association

85. Mr. Philpott, Fire Insurance Agent, Fort William

86. Mr. Wright, Saturday Night Magazine

87. Mr. Heaton, Ontario Fire Marshal

APPENDIX 4

ONTARIO INSURANCE COMMISSION

Summary of Canadian Manufacturers' Association

Presentation

1. That the control exercised by the Canadian Fire Underwriters' Association over fire insurance rates and terms had approached the nature and proportions of a monopoly.

2. The control had manifested itself in arbitrary ratings and rulings which were frequently discriminatory, and otherwise prejudicial to manufacturers and other property owners.

3. The practice of the Canadian Fire Underwriters' Association was not sufficiently sensitive to merit, and did not afford a proper incentive for fire protection work.

4. The only effective protection which the insured had against exorbitant and arbitrary rating was the competition of unlicensed companies, and to interfere with such competition would be to deprive the insured of his protection.

5. The proposal of a tax on premiums paid to unlicensed companies on contracts entered into outside the Province should not be entertained. Such a tax, if practicable and if within the powers of the Provincial Legislature, would seriously impede the competition of such institutions as the New England Mutuals.

6. In order to promote competition, the present tax paid by brokers on premiums for unlicensed insurance and the tax on fire losses, which was ill-logical and ill-advised, should be abolished, particularly in view of the fact that no such taxes were levied on the re-insurance effected by licensed companies with other companies that were unlicensed.

7. The control of the Canadian Fire Underwriters' Association over Goad's plans was inimical to the public interest and should be prevented, either under the Copyright Law or the law respecting combines.

8. Government control of rates would be very difficult to apply, and would not afford an adequate substitute for competition

TABLE 1

CFUA MEMBERSHIP, 1890-1930

Companies Licensed by the Dominion Government

Year	Canadian	%	British	%	Foreign	%	Total
1890	6	33	8	44	4	22	18
1891	6	33	7	39	5	28	18
1892	6	33	7	39	5	28	18
1893	6	33	7	39	5	28	18
1894	5	15	22	67	6	18	33
1895	4	13	21	68	6	19	31
1896	7	22	19	59	6	19	32
1897	7	22	19	59	6	19	32
1898	7	21	19	58	7	21	33
1899	7	20	20	57	8	23	35
1900	6	17	21	60	8	23	35
1901	6	19	20	63	6	18	32
1902	6	18	20	61	7	21	33
1903	6	19	19	59	7	22	32
1904	5	16	18	58	8	26	31
1905	6	19	16	52	9	29	31
1906	8	22	18	50	10	28	36
1907	7	19	20	54	10	27	37
1908	8	21	21	54	10	25	39
1909	12	25	22	47	13	28	47
1910	12	25	22	47	13	28	47
1911	13	27	24	49	12	24	49
1912	19	31	26	43	16	26	61
1913	18	28	24	36	24	36	66
1914	18	26	25	36	26	38	69
1915	23	30	27	36	26	34	76
1916	23	31	27	36	25	33	75
1917	25	32	29	37	25	32	79
1918	24	29	33	39	27	32	84
1919	24	29	33	39	27	32	84
1920	25	27	34	36	35	37	94
1921	29	25	43	37	45	38	117
1922	26	26	45	37	45	37	121
1923	31	24	50	38	50	38	131
1924	31	24	51	39	48	37	130
1925	31	23	53	40	50	37	133
1926	34	23	56	37	60	40	150
1927	35	23	56	36	64	41	155
1928	34	21	56	35	69	44	159
1929	35	21	57	34	75	45	167
1930	36	21	56	32	82	47	174

Compiled from the Annual Reports to the Dominion Superintendent of Insurance, 190-1930

TABLE 2

Summary of Premiums Received for Fire Insurance in Canada by all Companies operating under Dominion License 1869-1923

Year	Canadian	British	American	Total
1869	501,362	1,119,011	165,466	1,785,539
1870	536,600	1,185,398	194,781	1,916,779
1871	707,418	1,299,846	314,452	2,321,716
1872	796,847	1,499,620	332,243	2,628,710
1873	842,896	1,773,265	352,255	2,968,416
1874	1,463,781	1,809,473	259,049	3,522,303
1875	1,646,654	1,683,715	264,395	3,594,764
1876	1,881,641	1,597,410	228,955	3,708,006
1877	1,622,955	1,927,220	213,830	3,764,005
1878	1,161,896	1,994,940	211,594	3,368,430
1879	1,102,822	1,809,154	225,512	3,227,488
1880	1,190,029	2,048,408	241,140	3,479,577
1881	1,205,470	2,353,258	267,388	3,827,116
1882	1,033,433	2,908,458	287,815	4,229,706
1883	1,091,801	3,178,850	354,090	4,624,741
1884	1,140,428	3,472,119	367,581	4,980,128
1885	1,107,879	3,376,401	359,180	4,852,460
1886	1,107,710	3,429,012	395,613	4,932,335
1887	1,121,435	3,693,992	429,075	5,244,502
1888	1,131,991	3,859,282	445,990	5,437,263
1889	1,173,948	3,970,632	443,436	5,588,016
1890	1,249,884	4,072,133	514,054	5,836,071
1891	1,278,736	4,189,171	700,809	6,168,716
1892	1,052,041	4,455,474	1,004,812	6,512,327
1893	1,137,797	4,623,196	1,032,602	6,793,595
1894	1,108,294	4,602,747	1,000,328	6,711,369
1895	1,151,126	4,750,290	1,041,966	6,943,382
1896	1,061,855	5,006,047	1,007,948	7,075,850
1897	1,021,216	5,165,202	971,243	7,157,661
1898	1,121,927	5,223,345	1,004,859	7,350,131
1899	1,183,739	5,652,228	1,074,525	7,910,492
1900	1,298,751	5,846,020	1,187,177	8,331,948
1901	1,727,410	6,595,447	1,327,491	9,650,348
1902	2,055,793	6,946,919	1,574,372	10,577,084
1903	2,282,498	7,334,432	1,767,832	11,384,762
1904	2,681,275	8,343,666	2,411,941	13,169,882
1905	3,013,714	8,582,925	2,689,032	14,285,671
1906	3,479,319	8,601,374	2,907,270	14,687,963
1907	3,681,335	9,302,906	3,130,234	16,114,475
1908	3,809,382	9,919,403	3,288,500	17,027,275
1909	3,764,341	9,720,997	3,564,126	17,049,464
1910	4,334,612	10,243,235	4,147,684	18,725,531
1911	4,727,141	11,205,694	4,642,420	20,575,255

1912	5,063,409	12,092,125	6,038,984	23,194,518
1913	5,099,298	13,138,597	7,508,052	25,745,947
1914	5,016,653	13,710,907	8,771,598	27,499,158
1915	4,559,076	13,608,360	8,306,397	26,474,833
1916	4,817,876	14,294,803	8,671,173	27,783,852
1917	4,782,833	16,317,311	10,146,386	31,246,530
1918	5,570,095	18,658,710	11,825,600	35,954,405
1919	6,415,838	20,377,871	13,237,765	40,031,474
1920	8,003,456	25,332,651	17,090,830	50,527,937
1921	7,374,791	23,412,312	16,525,461	47,312,564
1922	6,736,410	23,681,866	17,750,034	48,168,310
1923	6,270,441	24,569,552	20,329,257	51,169,250

Compiled from the Annual Reports to the Dominion Superintendent of Insurance, 1869-1922.

1869-1919 -Premiums received
1920-1923 - Premiums written

TABLE 3

Net Cash Paid During the Year for Losses by Companies operating under Dominion License 1890-1920

Year	Canadian	British	American	Total
1890	$ 739,111	$ 2,163,569	$ 300,917	$3,203,598
1891	940,734	2,553,162	411,802	3,905,699
1892	792,219	2,553,162	706,902	4,377,271
1893	797,148	3,496,110	759,428	5,052,688
1894	801,870	3,094,859	692,630	4,589,360
1895	807,002	3,402,336	784,408	4,993,748
1896	713,565	2,845,993	613,940	4,173,499
1897	718,890	3,334,666	648,274	4,701,831
1898	587,705	3,557,120	639,660	4,784,485
1899	637,100	3,867,214	677,724	5,182,039
1900	1,013,087	5,515,232	1,245,974	7,774,294
1901	1,009,898	4,889,192	875,865	6,774,956
1902	865,213	2,724,486	562,587	4,152,287
1903	1,209,677	3,803,762	857,274	5,870,714
1904	2,561,475	9,172,919	2,365,138	14,099,533
1905	1,399,065	3,634,706	966,748	6,000,519
1906	1,602,131	3,829,242	1,152,916	6,584,290
1907	1,801,448	5,073,984	1,569,607	8,445,041
1908	2,655,224	5,776,725	1,847,504	10,279,455
1909	2,123,510	4,849,585	3,564,127	17,049,474
1910	2,544,647	5,488,725	2,259,015	10,292,389
1911	2,519,177	6,181,888	2,235,880	10,936,947
1912	2,731,759	6,319,064	3,068,757	12,119,581
1913	3,020,549	6,939,452	4,043,757	14,003,759
1914	2,972,305	7,796,482	4,578,500	15,347,287
1915	2,625,867	6,889,359	4,646,721	14,161,948
1916	2,595,578	7,926,463	4,592,022	15,114,063
1917	2,376,825	8,358,289	5,643,986	16,379,101
1918	2,741,903	9,908,000	6,709,347	19,359,2522
1919	2,736,220	8,387,864	5,555,268	16,679,353
1920	3,198,302	10,985,183	7,751,902	21,935,387
1921	4,100,205	13,171,425	10,300,938	27,572,588

Compiled from the Annual Reports to the Dominion Superintendent of Insurance, 1890-1922.

TABLE 4

Rate of Losses Paid as a Percent of Premiums Received by Companies operating under Dominion License 1890-1920

Year	Canadian	British	American	Total
1890	57.82	49.58	51.62	51.47
1891	69.65	60.95	58.76	62.59
1892	75.30	61.16	70.35	64.72
1893	70.06	75.62	73.55	74.37
1894	72.35	67.24	69.24	68.38
1895	70.10	70.65	75.28	71.25
1896	67.20	56.85	60.91	58.98
1897	70.40	64.56	66.75	65.69
1898	52.38	68.10	63.66	65.10
1899	53.82	68.42	63.07	64.24
1900	78.00	94.34	104.95	93.38
1901	58.46	74.13	65.98	70.20
1902	42.09	39.22	35.73	39.25
1903	53.00	51.86	48.49	51.57
1904	95.53	109.94	110.27	107.06
1905				
1906	50.39	44.52	39.66	44.83
1907	48.93	54.54	50.14	52.41
1908	69.52	58.24		
1909	56.41	49.89	46.96	50.72
1910	58.71	53.58	54.46	54.96
1911	53.29	55.17	48.16	53.16
1912	53.95	52.26	50.82	51.94
1913	59.23	52.82	53.86	54.39
1914	59.25	56.86	52.20	55.81
1915	57.60	50.62	55.94	53.49
1916	53.87			
1917	49.69	51.22	55.63	52.42
1918	49.23	53.10	57.22	53.84
1919	42.65	41.16	41.97	41.67
1920				
1921	55.60	56.26	62.33	58.30

Compiled from the Annual Reports to the Dominion Superintendent of Insurance, 1890-1922.

TABLE 5

Annual Net Amount of Property at Risk
by Companies operating under Dominion License
1875-1920

Year	Canadian	British	American	Total
1875	190,284,543	154,835,931	19,300,555	364,421,029
1876	231,834,162	153,885,268	18,888,750	404,608,180
1877	217,745,048	184,304,318	18,293,315	420,342,681
1878	171,430,720	202,702,743	35,766,238	409,899,701
1879		202,436,834	40,167,995	
1880	154,403,173	229,745,985	27,414,113	411,563,271
1881	153,436,408	277,721,299	31,053,261	462,210,968
1882	152,564,079	339,520,054	34,772,345	526,856,478
1883	149,930,173	380,613,572	41,720,296	572,264,041
1884	153,555,157	423,394,437	46,830,075	623,779,669
1885	143,759,390	421,205,014	46,830,075	611,794,479
1886	142,685,145	393,166,340	50,921,537	586,773,022
1887	154,165,902	424,648,484	56,287,171	635,101,557
1888	159,070,684	434,941,955	56,722,420	650,735,059
1889	158,883,612	468,379,580	57,275,186	684,539,378
1890	178,691,762	474,884,419	67,103,440	720,679,621
1891	177,785,359	497,550,395	84,266,437	759,602,191
1892	148,557,131	249,223,123	123,629,818	821,410,072
1893	154,614,280	563,044,318	124,028,459	841,687,057
1894	150,241,967	567,948,304	117,876,931	836,067,202
1895	143,697,862	575,683,150	118,491,852	837,872,864
1896	141,251,862	591,656,008	112,666,482	845,574,352
1897	154,231,897	311,840,429	102,449,891	868,522,217
1898	159,927,706	629,768,638	105,697,763	895,394,107
1899	169,792,859	654,890,000	112,186,809	936,869,668
1900	190,577,758	681,751,373	120,003,219	992,332,360
1901	221,756,637	694,491,228	122,439,754	1,038,687,619
1902	246,042,580	695,220,761	133,999,827	1,075,263,168
1903	260,637,251	727,383,239	152,433,226	1,140,462,716
1904	296,888,876	745,159,661	172,965,394	1,215,013,931
1905	328,340,100	785,219,445	204,586,950	1,318,461,495
1906	354,604,064	855,091,245	234,206,935	1,443,902,244
1907	412,019,532	937,282,806	265,401,198	1,614,703,536
1908	433,913,379	976,863,509	289,931,375	1,700,708,263
1909	473,744,578	1,059,178,583	330,353,243	1,863,276,504
1910	502,510,417	1,143,463,774	388,302,549	2,034,276,740
1911	549,604,374	1,269,648,229	460,614,743	2,279,868,346
1912	645,012,207	1,430,070,127	609,273,561	2,684,355,895
1913	684,512,207	1,595,798,865	871,619,317	3,151,930,389
1914	700,239,242	1,736,187,120	1,019,592,647	3,456,019,009
1915	682,793,482	1,828,316,532	1,020,510,788	3,531,620,802
1916	605,129,297	1,958,789,616	1,099,139,323	3,720,058,236

1917	689,229,995	2,159,687,223	1,139,280,296	3,986,197,514
1918	757,301,291	2,414,696,483	1,351,517,067	4,523,514,841
1919	863,798,586	2,570,277,383	1,488,948,412	4,923,024,381

Compiled from the Annual Reports to the Dominion Superintendent of Insurance, 1890-1922.

TABLE 6

Unlicensed Insurance reported to the Dominion Superintendent of Insurance

1910-1921

Year	Ontario	Canada
1910	$ 76,041,130	$189,515,229
1911	65,791,356	191,038,071
1912	86,195,135	214,645,988
1913	96,702,420	250,001,931
1914	97,194,361	219,743,335
1915	103,645,877	235,770,597
1916	112,252,434	262,803,882
1917	135,851,426	283,423,680
1918	159,212,643	318,700,095
1919	171,689,265	374,473,237
1920	N/A	N/A
1921	228,906,336	431,617,986

Compiled from the Annual Report of the Superintendent of Insurance, 1910-1922.

VITA

Surname: Cox Given Names: Theresa Michelle

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The Allan and Elizabeth McKinnon Scholarship 1987-88

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Title of Thesis: A BURNING QUESTION: Regulating the Fire Insurance Industry in Ontario, 1883-1929

Author: [redacted]

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Date