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Résumé de l'article

Dans le rapport intitulé « Report Concerning the business of Automobile Insurance in Canada », la commission des pratiques restrictives du commerce passe en revue les aspects actuels de l'assurance-automobile au Canada. C'est avec plaisir que nous reproduisons le deuxième chapitre de l'enquête, qui s'intitule « The Automobile Insurance in Canada ». Nous nous excusons de le donner en anglais à nos lecteurs, mais dans le pays bilingue qu'est le Canada, ce sont généralement les anglophones qui sont les premiers servis. Les autres doivent attendre que la traduction soit faite, puis recopiée, puis imprimée. Il y a généralement un décalage de six mois durant lequel il faut se priver d'une source de documentation intéressante ou utiliser celle qu'on met à notre disposition en anglais. La voici.

L'assurance-automobile au Canada

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1. *The Nature of Automobile Insurance*

Insurance, other than life insurance, may be defined as a contract whereby one party, called the insurer, or underwriter, undertakes, for a sum of money called a premium, to indemnify the other party, called the insured, against loss or liability from certain risks to which the object of the insurance may be exposed, or from the happening of a certain event.

In particular, automobile insurance is a contract of indemnity (up to the amount stated in the policy) against liability for loss or damage to persons or property caused by an automobile, or the use or operation of an automobile, and against loss of or damage to an automobile. An automobile policy may consist of three sections, one relating to third party liability, one relating to medical payments, and a third relating to loss of or damage to the insured automobile.

In the section relating to third party liability, the insurer agrees to indemnify the insured and every other person who, with the insured's consent, personally drives the automobile, against the liability imposed by law upon the insured or upon such other person for loss or damage arising from the ownership, use, or operation of the automobile, and resulting from bodily injury to or death of any person, or damage to property.

The second section, relating to medical payments, differs from the others in that it is accident insurance rather than indemnity insurance.¹ It is a contract whereby the insurer agrees to pay, for each person who sustains bodily injury caused by an accident while driving, being carried in or upon or entering or alighting from the automobile and resulting from injuries arising from these activities, the expense of any necessary medical, surgical, dental, ambulance, hospital, professional nursing and funeral services.

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The third section relating to loss of or damage to the insured automobile, consists of a contract whereby the insurer agrees to indemnify the insured against direct and accidental loss of or damage to the automobile: (1) caused solely by collision with another object or by upset; (2) arising from any cause other than by collision or upset; (3) caused solely by fire or lightning, or by accident to a conveyance in which the automobile was being transported or; (4) caused solely by theft or attempted theft.

The insurance described above as third party liability insurance is also sometimes known as public liability and property damage insurance.

The insurance described above under the third section is sometimes described as consisting of two types of insurance, the first being called collision insurance, while the second, covering all of the rest of the risks or perils described therein is called comprehensive insurance.

In common usage and in this report the term « automobile insurance » is not restricted in its application to automobiles alone, but is used to refer also to the types of insurance named above when applied to trucks, buses and interurban transport as well as to privately-owned passenger automobiles.

2. Types of Organization Selling Automobile Insurance

Insurance in Canada is broadly classified by the Federal Department of Insurance as either casualty, fire, or life. The latter two

¹ Ce qui n'est pas entièrement exact puisque l'assureur remboursera, en fait, une dépense encourue. — Note de la rédaction.

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classifications are self-explanatory, but casualty insurance consists of some 20 to 30 classifications, one of which is automobile insurance. The majority of insurance companies, however, for at least several years, have considered automobile insurance as a separate classification from casualty insurance generally. While a few companies write all classes of insurance, the majority of companies are engaged in the life insurance field or in the automobile, fire, and casualty field, but not in both life insurance and the other groups. Of the companies which are engaged in the automobile, fire and casualty field, some companies write only automobile or fire or casualty insurance, others write two of these classes, and still others write all three.

The organizations in Canada selling automobile insurance comprise stock companies, mutuals, reciprocals, the Lloyds organization, and the Saskatchewan Government Insurance Office.

A stock company is an ordinary corporation created in the usual way, having shareholders who are the owners of the capital stock of the company, and a board of directors elected by the shareholders. A stock company is in all respects similar to a corporation in any other line of business. Any profits which may arise from the operation of the company's insurance business belong to the company. To the extent that dividends are declared by the directors these profits will be distributed to the shareholders. Similarly, any losses sustained by a stock company as a result of its operations will be borne by the shareholders, either through reduced dividends, or, in extreme cases, through the bankruptcy of the company and the partial or complete loss of the shareholders' equity.

A mutual company is a company whose policyholders take the place of shareholders, there being no shareholders in the ordinary sense of the word. The policyholders elect a board of directors and for this reason may be said to have ultimate control over the company's policy. Profits arising from the operation of a mutual company's business are made available to the policyholders, at least in part, either in the form of dividends on the policies or in the form of reduced premiums for a subsequent year. Any losses sustained in the operation of the mutual's business are similarly borne by the policyholders.

A reciprocal is a group of persons formed for the purpose of exchanging reciprocal contracts of indemnity or inter-insurance with each other through the same attorney. It is an unincorporated organization.

The corporation of Lloyds is a British institution unique in that the corporation as such does not subscribe policies, risks being accepted by individuals, each of whom signs for a specific sum for which he alone is responsible. The liability of each individual is limited only by the total of the sums for which he signs.

The Saskatchewan Government Insurance Office is an organization set up by an Act of the Saskatchewan Legislature in 1944 to do a general insurance business. It commenced business on May 1, 1945. Although the basic principle of the Act is compulsory insurance to secure financial redress to Saskatchewan residents who are injured in motor vehicle accidents and to the dependents of persons killed in such accidents, changes have been made in the plan practically every year, and at the date of this inquiry, it provided public liability, property damage, and comprehensive insurance in addition to the personal injury protection. In addition to the compulsory insurance required by the Act, additional coverage may be obtained from the Office on a voluntary basis.

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3. *The Agency System*

The variation in the type of enterprise engaged in writing automobile insurance is accompanied by variations in the channels through which the business is conducted. A few companies deal directly with insureds and are known as "direct writers". They usually operate through branch offices which may be insurance offices exclusively or may be combined with some other establishment when the insurer is also engaged in other kinds of business. Much of their automobile insurance business may be done on a mail order basis. Thus, "direct writing" companies do not work through independent agents, and the middleman's function, as represented by the independent agent under the agency system, does not exist.

Most insurance companies conduct their business through agents, although some maintain branch offices for supervisory purposes as well.

The agency system of doing business involves the selling of a company's contracts of insurance through agents who are independent business men owning or renting their own premises and managing their business independently. They may be engaged solely in the insurance business or they may be engaged in real estate or finance or some other business at the same time. The agent's relationship with the company whose insurance he sells is on the basis of an independent contractor rather than that of an employee. Various provinces require

that agents operating in the province be licensed by or hold a certificate of authority from the province. The definition of an agent is substantially similar in most of the provincial Insurance Acts, the following from the Alberta Insurance Act ¹ being typical:

“ ‘agent’ means a person who, for compensation, solicits insurance on behalf of any insurer or transmits, for a person other than himself, an application for or a policy of insurance to or from the insurer or offers or assumes to act in the negotiation of insurance or in negotiating its continuance or renewal.”

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Agents are classified in various ways, such as city agent, local agent, provincial general agent, and supervising general agent.

By the term supervising general agent is meant an agent whose entire business is derived from sub-agents and brokers, who has entire charge for an insurance company of its business throughout one or more provinces, who maintains a fully equipped and independent insurance office, and who supervises all the company's agents and their business in the prescribed territory. The supervising general agent is not an agent in the sense of one who is directly engaged in securing new business or renewing old business. He is in effect a manager for a company throughout the territory for which he is appointed. He is, however, paid in whole or in part on a commission basis. He is expected to develop the company's business in the territory and to appoint his own local agents.

The provincial general agent resembles the supervising general agent in that he has entire charge for an insurance company of its business throughout one or more provinces, maintains a fully equipped and independent insurance office, and supervises all of the company's agents and their business in the prescribed territory. He appears to differ from the supervising general agent in that, while acting as the manager for a company in the territory for which he is appointed, he also produces new business in the same way as does a local agent. On that part of his work which consists of supervising the work of city and local agents, he is paid by “over-riding commissions”. On business which he himself produces he may be paid a commission at the same rate as a local agent, or at a higher rate.

A city agent is one who has been appointed as a city agent by an insurance company. It would appear to be somewhat difficult to distinguish the functions of the city agent from that of the local agent,

¹ R.S.A. 1942, C.201 S.2 (3).

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as within the last 10 years the functions of these two would appear to have become somewhat similar. The evidence shows that the work of a city agent consists in cavassing for business, filling out detailed application forms for individuals and having them signed, submitting the application to the company, and delivering the policy when written to the client. When the client meets with an accident, the city agent notifies the company, sees to it that an adjuster gets to the scene rapidly, and tries to expedite an adequate or amicable adjustment of the loss sustained. The city agent is paid on a commission basis, the commission being calculated as a percentage of the premium paid by the insured. The evidence indicate that formerly the city agent generally prepared the automobile policy himself, but it would appear that for the greater part this is no longer done, the company having taken over this function. One witness claimed that as of the first of 1959 the city agent and the local agent were to all intents and purposes virtually the same¹. It would seem that at one time the city agent had the right to appoint sub-agents who were then local agents.

A local agent simply means an agent having a contract with an insurance company but who does not hold the appointment of supervising general agent, provincial general agent, or city agent. It would appear that at the present time the local agent's functions are very similar to those of a city agent. Although the local agent is appointed on behalf of and by the company, in practice he is generally regarded as the agent of the general agent. The local agent's field of operations is within a local area. He is paid on a commission basis just as is a city agent.

An insurance broker, unlike an agent, has no contractual relationship with a company and can offer his business to any company, being considered more or less as a representative of the insured. Generally, a broker is required to be licensed to solicit insurance business. Brokers are divided into two classes, domestic and foreign. A domestic broker is a firm, person, or corporation domiciled in Canada and holding a licence from a provincial authority to solicit insurance business. A foreign broker is one who is domiciled outside Canada and who is licensed to transact insurance business in his place of domicile, but who places business with an insurance company carrying on business in

¹ En assurance contre l'incendie, le « city agent » se différencie du « local agent » en ce qu'il reçoit une commission plus élevée pour les risques commerciaux. Il a aussi le droit de lier l'assureur dans certains cas et d'avoir accès aux plans et aux cartes de tarification de la C.U.A. — Note de la rédaction.

Canada. Neither type of broker has a contractual relationship with a company nor holds an agency appointment from a company.

The agency system of acquiring insurance business as it has developed in the United States and Canada differs markedly from the agency system used in England. There the acquisition of new business is carried on by inspectors who act as the middlemen between the agents and the branch office. The agent is not a professional insurance man, does not write policies, and has to rely largely upon the expert advice and assistance of the inspector. The agent is simply a man who procures business and apparently has little authority or responsibility.¹

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4. Classification of Insurance Companies

According to the returns of information received by the Director in the inquiry, a total of 219 companies wrote automobile insurance in Canada during the period 1950-1952. Of these, some had discontinued writing such insurance in the course of this period or had disappeared by merger, while others had commenced writing. The number of companies writing automobile insurance in Canada in each of these years was as follows:

1950 —	199
1951 —	208
1952 —	212

Of the 219 companies, 78 were incorporated in Canada, but of these 29 were subsidiaries of or controlled by British, American, or other foreign companies. For all practical purposes, therefore, the companies then writing automobile insurance may be classified as follows:

Canadian Companies	49		22.37%
British Companies	86	(including 17 Canadian companies, 2 American and 1 other foreign company)	39.27%
American Companies	74	(including 7 Canadian companies)	33.79%
Other Foreign Companies		10	(including 5 Canadian companies)	4.57%
		219		100.00%

¹ *Insurance Supervision and Practices in England (Fire, Marine and Casualty)*: A Report by Deputy Superintendents Alfred J. Bohlinger and Thomas C. Morrill to Robert E. Dineen, Superintendent of Insurance, State of New York Insurance Department, 1948, pp. 57-8.

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The information obtained by the Director did not disclose whether all 49 Canadian companies were Canadian owned and controlled, but in any such case ownership or control was not held by a British or foreign insurance company.

Of the total Canadian automobile insurance net premiums, the proportion accounted for by the 49 Canadian companies in the three-year period for which statistical information was obtained by the Director was relatively constant at slightly less than one-third:

1950 —	32.9%
1951 —	32.0%
1952 —	32.5%

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In 1952, 16 of the 49 Canadian companies each had a premium income from automobile insurance in excess of \$1,000,000. One company had a premium income exceeding \$8,000,000 in 1952, and 13 other companies had a premium income over \$500,000 but less than \$1,000,000 in that year.

The percentages of total net premium income from automobile insurance in Canada written by the British, American and other foreign companies as computed by the Director were as follows for the years stated:

	1950	1951	1952
British	36.8%	36.3%	34.6%
United States	25.3%	26.2%	27.3%
Other foreign	5.0%	5.5%	5.6%

Broadly speaking, therefore, Canadian companies accounted for one-third of the total Canadian market for automobile insurance; one-third was held by British or British-controlled companies; and the remaining third was held by American companies, other foreign companies and subsidiaries of these two latter. Since 1953 and up to the end of 1955 some 36 additional companies entered or re-entered the automobile insurance field in Canada and obtained Dominion licences. Of these 10 were Canadian companies, 9 were British, and the remainder (17) were American or other foreign companies.

The Commission has endeavoured to obtain more up-to-date figures on the foregoing classification of insurance companies and their respective shares of the Canadian market, without being led into a major statistical investigation. The issue of the *Canadian Underwriter* of April 15, 1959, filed with the Commission at the hearing as Exhibit

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H-8, contains at pp. 39-94, inclusive, considerable information on the companies writing insurance in Canada. This source was checked with the files of the Superintendent of Insurance for Canada and, subject to the correction of errors so discovered, has been relied upon to provide the following information. These statistics are for the calendar year 1958.

162 The information contained in the above-mentioned issue of the *Canadian Underwriter* did not permit as complete a classification of automobile insurance companies on the basis of nationality or source of control as did the material collected by the Director and presented in his Statement, inasmuch as the *Canadian Underwriter* provided no separation of American companies from the general category of "foreign". The following picture emerges:

Classification of Companies in 1958 according to
Nationality and Control and Showing the Percent-
age of Automobile Insurance Business Secured by
Each Class in that Year.

	Number of Companies	Percentage of Companies	Percentage of Premium Earned
Canadian	63	25.6	34.2
British Companies (including Canadian and Foreign Com- panies owned or controlled by British Companies)	95	38.6	34.2
Foreign Companies (including Canadian Companies owned or controlled by Foreign Com- panies)	88	35.8	31.6
Total	246	100.0	100.0

The percentage figures in the last column are derived from the totals of premiums earned as given in the said issue of the *Canadian Underwriter*, p. 118.

It is clear that no major change in the division of the market among companies of varying nationality has occurred between the period studied by the Director and 1958. It is noted, however, that the 1958 figures taken from the *Canadian Underwriter* are figures of premium earned, whereas the Director's figures for 1950-52 are of premiums written.

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Another way of classifying insurance companies is by their membership in organizations or associations. Two broad groups are recognized and they are known as "Board" or "Tariff" and "non-Board" or "non-Tariff". However, the latter group may be further divided into "Conference" companies and independent companies. As the various designations will be used frequently in this report a brief description of the groups and the abbreviations by which they are designated will be given here.

At the time of the inquiry made by the Director the Board companies were organized in the following way:

Dominion Board of Insurance Underwriters, sometimes referred to in this report as the Dominion Board, had jurisdiction over all Canada and/or of one or more of the affiliated territorial associations described below. At the time of the hearing held by the Commission it was stated that the functions of the Dominion Board had been taken over by the Canadian Underwriters' Association.

1. Canadian Underwriters' Association, sometimes referred to in this report as the "C.U.A.", has jurisdiction in Ontario and Quebec and also establishes rates for some other territories.

2. Western Canada Insurance Underwriters' Association, sometimes referred to in this report as "W.C.I.U.A.", has jurisdiction in Alberta, Saskatchewan, Manitoba and Northwest Territories.

3. British Columbia Underwriters' Association, sometimes referred to in this report as "B.C.U.A.", has jurisdiction in British Columbia and Yukon.

4. New Brunswick Board of Underwriters, sometimes referred to in this report as "N.B.B.U.", has jurisdiction in New Brunswick.

5. Nova Scotia Board of Insurance Underwriters, sometimes referred to in this report as "N.S.B.I.U." has jurisdiction in Nova Scotia.

6. Prince Edward Island Board of Insurance Underwriters, sometimes referred to in this report as "P.E.I.B.I.U.", has jurisdiction in Prince Edward-Island.

7. Newfoundland Board of Insurance Underwriters, sometimes referred to in this report as "N.B.I.U.", has jurisdiction in Newfoundland.

Membership in the Board organizations is purely voluntary but a condition of membership is the observance of the rates promulgated by the various rating bureau of the Board Associations.

The Conference companies are those companies which are members of one or more of the three Conferences which operate in Ontario

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and Quebec and Western Canada. No Conference operates in the Atlantic Provinces. There is no central organization for the three Conferences corresponding to the Dominion Board as the Independent Conferences are organized separately as follows:

1. Independent Automobile and Casualty Insurance Conference, sometimes referred to in this report as the "Eastern Conference" or I.A.C.I.C., operates in the provinces of Ontario and Quebec.

164 2. Western Canada Independent Automobile Insurance Conference, sometimes referred to in this report as the "Western Conference", operates in the provinces of Manitoba, Saskatchewan and Alberta.

3. Independent Automobile Insurance Conference of British Columbia, sometimes referred to in this report as the "B.C. Conference", operates in British Columbia and Yukon.

In addition to the insurance companies which are members of one or more of the territorial associations described above, there are companies which are not members of any associations and which may be classed as independent as distinct from Board or Conference members.

Another organization of insurance companies is the All Canada Insurance Federation, whose primary functions are to watch legislation affecting the insurance business, to keep member companies informed of changes in the law which are of interest to them and to seek the development of sound legislation relating to insurance matters. The Federation has promoted the Safety Responsibility Law throughout Canada and has assisted in the organizational steps of Assigned Risk Plans in those provinces where such plans have been introduced. The Federation also conducts public relations work on behalf of all insurers.

In 1953 the Federation had a membership of more than 225 companies, including both Board and non-Board companies.

Of the 219 companies writing automobile insurance in Canada in the period 1950-52, 128 belonged to one or more Board Associations exercising jurisdiction over each part of Canada in which these companies were writing such insurance; in addition, 8 companies were members of one or more Board Associations for a particular area or areas and members of one or more Conferences for another area or areas; and 5 companies were members of one or more Board Associations for a particular area or areas and belonged to neither a Board Association nor to a Conference for other areas.

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Thirty-seven companies belonged to one or more of the Conferences exercising jurisdiction over each part of Canada (exclusive of the Maritime Provinces and Newfoundland) in which these companies were writing automobile insurance; in addition 7 companies were members of one or more of the Conferences for a particular area or areas and belonged to neither a Conference nor Board Association for other areas and, as mentioned above, 8 companies were partly Board Association and partly Conference members.

Thirty-four companies, of which half were Canadian companies, belonged neither to a Board Association nor to a Conference in any area.

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In the matter of the classification of automobile insurance companies by their affiliations the Commission has again attempted to get more up-to-date figures by reference to Exhibit H-8, pp. 30-94, corrected as before. The material presented in this source permits a classification of the 246 companies into Board companies, Conference companies, independent companies, and companies which were members of Board organizations in some jurisdictions and Conference organizations in other jurisdictions. In the following table the affiliation is indicated in the vertical column on the left. The ownership of these companies is indicated in the top-horizontal column by the letters B, BC, BF, F, FC, and C. The meanings of these letters are respectively: British company; Canadian company which is a subsidiary of a British company; Foreign company which is a subsidiary of a British company; Foreign company; Canadian company which is a subsidiary of a Foreign company; and Canadian company not a subsidiary of a British or Foreign company:

Nationality of Control Affiliation	B	BC	BF	F	FC	C	Total	Percentage of Total
Board	61	17	2	43	6	10	139	56.5
Conference	5	—	—	12	1	16	34	13.8
Board-Conference	1	2	—	3	—	9	15	6.1
Independent	7	—	—	23	—	28	58	23.6
Total	74	19	2	81	7	63	246	100.0

From this table it can be seen that those companies which were affiliated with an organization of insurance companies constituted 76.4 per cent of the total companies doing automobile insurance business in Canada, and that the wholly-independent companies constituted 23.6 per cent.

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The division of automobile insurance business among Board companies, Conference companies, the Saskatchewan Government Insurance Office, and the independent companies in the ten provinces of Canada in the period 1950-1952 was as shown in the following table.

		Net Premium Income			
		<u>1950</u>	<u>1951</u>	<u>1952</u>	<u>Total</u>
166	Board				
	Companies	\$ 54,091,953	\$ 60,381,910	\$ 77,093,169	\$191,567,032
	% of Total	50.0	48.7	48.6	49.0
	Conference				
	Companies	\$ 31,474,773	\$ 36,253,598	\$ 42,081,550	\$109,809,921
	% of Total	29.1	29.2	26.5	28.1
	Independent				
	Companies	\$ 19,843,159	\$ 24,296,450	\$ 35,890,967	\$ 80,030,576
	% of Total	18.4	19.6	22.6	20.5
	Saskatchewan Government Insurance Office	\$ 2,688,943	\$ 3,056,154	\$ 3,688,599	\$ 9,433,596
	% of Total	2.5	2.5	2.3	2.4
	Total Net Premium Income	\$108,098,728	\$123,988,112	\$158,754,285	\$390,841,125

Corresponding figures 1957 were compiled by the Commission's staff in a manner which will be described later in this report (Chapter X). They are as follows:

		<u>1957</u>
Board Companies	...	\$ 99,750,000
% of Total	...	37.8
Conference Companies	...	\$ 52,950,000
% of Total	...	20.1
Independent Companies	...	\$104,000,000
% of Total	...	39.4
Saskatchewan Government Insurance Office	...	\$ 7,000,000
% of Total	...	2.7
Total net Premium Income	...	\$263,700,000

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The most significant change from the period 1950-52 to the year 1957 has been the growth in the share of the market held by the independent companies. It is obvious that from an average of 20.5 per cent for the years 1950-52 the independent companies have increased their share of the market to 39.4 per cent. The independent companies had in 1957 a larger share of the total market and a larger absolute amount of business than the Board companies, which in the earlier period had almost two and a half times the volume of business enjoyed by the fully independent companies. The share of the total market enjoyed by the Conference companies appears to have declined from the period 1950-52 until 1957, falling from 28.1 per cent to 20.1 per cent.

Another way in which these companies may be classified is by the government which has licensed them to do business. Hence they may be classified into Dominion registered companies, provincial licensees, and Lloyds, the latter being in a separate category because it is not a company in the usual sense of the world but rather an association.

The distribution of business among these three categories of company is given below for selected years from 1950 to 1956.

Net Automobile Premium Written

Year	Dominion Registered Companies \$	Provincial Licensees \$	Lloyds \$	Premium Ratio of Dominion Registered Companies to Total %
1950	92,324,158	5,617,950	5,879,584	88.9
1952	137,769,156	5,481,406	9,109,274	90.4
1954	167,926,394	12,168,932	10,345,189	88.2
1956	193,327,252	15,587,037	9,053,196	88.7

(Reports of Dominion Superintendent of Insurance, 1950, 1952, 1954 and 1956).

The table shows that from 88 to 90 per cent of the total business written has been written by Dominion registered companies.

For 1958 the corresponding figures are as follows:

Net Automobile Premiums Written

Year	Dominion Registered Companies \$	Provincial Licensees \$	Lloyds \$	Premium Ratio of Dominion Registered Companies to Total %
1958	255,895,597	36,877,380	13,908,962	83.4

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(Report of Dominion Superintendent of Insurance, 1958).

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For underwriting purposes, two or more companies may operate in what is known as a "group". In the majority of cases the companies in a group are financially related either directly or indirectly, but in other cases the companies have no financial relationship and are considered as a group simply because they are under common management in Canada. In some cases the members of the group pool the insurance written by the group among themselves on a predetermined percentage basis. In other cases one or more of the members of the group may reinsure their entire business with other members of the group. In still other cases there is no pooling or reinsurance arrangement. Generally speaking, each member of a particular group belongs to the same business organization, that is, Board Association or Conference.

5. Organizations of Insurance Agents

The Director's Statement reviews in some detail the history of local, provincial and national associations of insurance agents. The information presented as to the present associations does not indicate that the activities of such organizations relate directly to the practices with respect to which the inquiry has been concerned. It is not considered necessary, therefore, to review in this report the form of organization of the respective associations and the objects as set out in their constitutions. Some reference will be made to their activities in dealing with certain practices of the organized insurance companies.

Prior to 1946 associations of insurance agents were principally of a local nature, except in Ontario and Quebec where there were provincial associations. Subsequent to 1946 provincial associations have been formed in all provinces, which are affiliated with the national organization, the Canadian Federation of Insurance Agents. A few local associations continue to maintain direct affiliation with the Federation rather than through the provincial association. The objects of agents' associations are generally stated as being: to improve standards in the insurance business, to co-operate with Insurance Departments and to promote and protect the interest of members. In the case of the Insurance Agents' Association of Winnipeg (now the Winnipeg Conference of Insurance Agents) a further object was given, "to subscribe to the principles of Tariff Insurance."

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6. *Factors in the Growth of Automobile Insurance,* 1946 - 1958

There has been a considerable growth in automobile insurance since the end of World War II, as the following table shows:

<u>Year</u>	<u>Automobile</u>
1946	\$ 39,707,803
1947	56,180,958
1948	68,482,305
1949	83,884,750
1950	103,821,692
1951	116,909,988
1952	152,359,836
1953	182,912,752
1954	190,440,515
1955	204,018,202
1956	217,967,485
1957	256,747,317
1958	306,681,939

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(Reports of Dominion Superintendent of Insurance, 1946-58).

The table indicates that in the ten years 1946-56 the net automobile premiums written increased by over five times and that in 1957 and 1958 the increase was greatly accelerated. It may be of interest to know also that whereas in 1946 the net premiums written in the fire insurance business in Canada amounted to \$70,235,606, by 1952 the volume of automobile premiums written had increased to such an extent that, for the first time, it exceeded that of fire insurance. It should be noted that fire insurance premiums were increasing during the same period. In 1956 the volume of net premiums written in fire insurance amounted to \$179,504,964, and in 1958 it had reached \$191,131,509.

Several factors have contributed to this rapid growth in automobile insurance. The first of these has been the rapid increase in the number of vehicles on the road since the end of World War II. A second factor has been the steady rise in the value of automobiles, which is a reflection in part of the general rise in prices since the end of World War II. A third factor has been the rise in cost of repairs for damaged automobiles

and a fourth the rise in the cost of medical, nursing, ambulance, hospital, and legal services for those injured in auto accidents or who have suffered property damage as a result of auto accidents. A fifth factor has been the rise in cost of individual insurance coverage sold by automobile insurance companies, which has been affected by an unfavourable loss experience and the charges for providing insurance services. A final factor has been the enactment of compulsory insurance laws, financial responsibility laws, safety responsibility laws, and assigned risk plans, all of which lead to wider insurance coverage.

170 Financial responsibility legislation, broadly speaking, provides that a motorist against whom a judgment arising out of an accident has been obtained shall have his licence suspended until the judgment is satisfied and he files proof of his financial responsibility to take care of damages arising out of any future accidents in which he may be involved. It also provides that motorists convicted of certain more serious traffic offences shall be required to maintain proof of financial responsibility for the future. Such legislation has been passed in the majority of the common law provinces of Canada since 1926, when financial responsibility legislation was first enacted in the State of Connecticut, U. S. A. Two criticisms have been directed against this type of legislation. Firstly, it is effective only if a judgment is rendered against the negligent driver; and since the victim in many cases does not take action because he feels that the chances of recovering damages are slim, the effectiveness of the law as a means of redress to victims and as a curb on negligent drivers is reduced. The second criticism is that this type of legislation makes no provision with respect to the first accident, its terms being applied only to second and subsequent accidents.¹

The safety responsibility law was developed to remedy the defects of the financial responsibility law. A safety responsibility law was first introduced into Canada in 1945 by the Province of Manitoba and similar legislation has since been enacted by Alberta, British Columbia, Nova Scotia, New Brunswick and Newfoundland. Legislation of this type is not in force in Prince Edward Island, for although enacted, it was subsequently repealed.

¹ Il serait bon de dire un mot ici du « Unsatisfied Judgment Fund », c'est-à-dire de la caisse de remboursement des jugements non exécutés. Cette caisse ou ce fonds a pour objet de rembourser à la victime de l'accident les dommages qu'il a subis et que leur auteur n'a pu payer. C'est un complément indispensable à la loi, qui entraîne également la suspension du permis de chauffeur et qui empêche la loi d'être inopérante pour le premier accident. N. de la rédaction.

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The nature of this legislation and its general effects are described in the Report on Automobile Liability Insurance by the Legislative Research Committee of North Dakota, 1950, as follows: ¹

"The principal feature of laws of this type was the requirement of security to cover possible judgments arising out of an accident. Under this plan accidents are reported to the official administering the law, usually the Commissioner of Motor Vehicles. If it develops that a person involved in the accident was uninsured the Commissioner of Motor Vehicles evaluates the extent of the bodily injury and property damage resulting from the accident. An amount not exceeding \$11,000. is fixed, the amount being an estimate of the aggregate amount of judgments that may be recovered by persons injured or damaged in the accident. The Commissioner of Motor Vehicles sends a notice to the motorists involved, and they are required to deposit the specified amount either in cash, securities or by means of a bond. Upon failure of the motorist to deposit the security (unless all claims are settled) his licenses are suspended.

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It can be seen that a law of this type, since its operation is not dependent on the obtaining of a judgment nor on any determination of whether the motorist was at fault, is stringent and effective. Its most conspicuous effect has been to bring about a substantial increase in the percentage of insured motor vehicles, usually to about 75%. The reason for this increase is that motorists fear the impact that the law may have upon them if they should become involved in accidents without having previously purchased insurance. A further effect of the law has been to induce settlement of claims by persons involved in accidents, or to compel such persons to deposit security. As a result, in a state which has enacted a security type of Safety Responsibility Law, the number of accident victims who do not obtain compensation for injuries is reduced."

In Saskatchewan automobile insurance is compulsory and in the majority of the other common-law provinces the effect of the legislation described above has been to make automobile liability insurance virtually compulsory. It was estimated in 1953 that 93 per cent of all motorists are insured in British Columbia, Manitoba and Nova Scotia.²

¹ pp. 118-19.

² Estimate given in a submission made in November, 1953 by the All Canada Insurance Federation to the Manitoba Highway Safety Commission.

What are known as assigned risk plans for automobile insurance have been developed by insurance companies to provide public liability and property damage insurance for motorists who might otherwise find it difficult or impossible to obtain insurance from an individual insurance company in order to comply with the requirements of the financial or safety responsibility legislation. An assigned risk plan was introduced by insurance companies in British Columbia in 1944 and since then assigned risk plans have been put into effect in nearly all the common-law provinces. The situation which led to the introduction of the assigned risk plan is described in the submission of the All Canada Insurance Federation referred to above and may be summarized in the following way. It was recognized by all insurers that serious political difficulties would be encountered if the law required an individual to file proof of financial responsibility when at the same time no insurance company would accept the risk. On the other hand it was recognized that it was unfair that any one underwriter should be obliged to accept a risk that was seriously deemed to be unacceptable. Under an assigned risk plan any individual who requires insurance but is unable to purchase it in the ordinary way, and who is not disqualified completely by reason of a particularly bad accident or conviction record, can obtain the minimum cover required by the law from an insurance company subscribing to the assigned risk plan. The ratio of such unsatisfactory risks insured by any one company is based on its proportion of the total third party liability insurance premiums underwritten in the province.

Although assigned risk plans are operated in a number of provinces only two provinces, Manitoba and Saskatchewan, have enacted legislation referring specifically to such plans and in the case of the Saskatchewan enactment the legislation has not yet been proclaimed. According to information obtained by the Director the volume of insurance written under assigned risk plans runs to slightly in excess of one per cent of net premium income in the provinces in which such plans are operated.

7. Jurisdiction over Insurance

As the subject of insurance is not mentioned in the British North America Act, the respective fields of jurisdiction of the Federal and provincial governments have been determined by the courts in a number of important cases, the majority of which reached the Privy Council. As a result of decisions reached in these cases a certain distribution of

authority between the provinces and the Dominion has been achieved. The position with respect to fire and casualty companies has been described as follows:

“Over the years as a result of the appeals to the Privy Council there has been achieved a distribution of authority between provinces and the Dominion with regard to insurance which has been supported by the companies, and efforts have been made to have this accepted and introduced into the law. The Dominion has dropped the question of policy conditions and licensing of agents from its insurance laws, and the Dominion Department of Insurance has concentrated on questions of solvency and financial responsibility of the companies under its registration. As a result, Dominion registration has been much sought after, and the record . . . indicates how much this has been in the interests of the companies and the public, and the Canadian companies in their business outside Canada. Provincial legislation has been concerned with the solvency of companies incorporated in the province and who confine their business to the province of their incorporation, and with the requirement of fair and equitable terms in insurance contracts.”¹

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8. *Government Supervision of Insurance*

In 1875 the Government of Canada established a Department of Insurance² under the supervision of a Superintendent of Insurance reporting to the Minister of Finance. The Department is responsible for the administration of the Canadian and British Insurance Companies Act³ and the Foreign Insurance Companies Act,⁴ as well as other matters.

The purpose of the Canadian and British Insurance Companies Act may be shown in the following extracts from the preamble to the Act:

“WHEREAS it is desirable to define the status and powers of insurance companies incorporated by the Parliament of Canada, and by the Legislature of the late Province of Canada, and to prescribe the limitations to be placed on the exercise of such powers, and

¹ Arthur Pedoe, « Federal versus State Supervision of Insurance — A Canadian View », *Law and Contemporary Problems*, School of Law, Duke University, Autumn 1950, Vol. 15, No. 4, p. 584.

² Department of Insurance Act, now R.S.C. 1952, C. 70.

³ Now R.S.C. 1952, C. 31.

⁴ Now R.S.C. 1952, C. 125.

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WHEREAS it is desirable to provide for the registration of such companies and of British insurance companies which may desire to carry on the business of insurance in Canada, and for the voluntary registration of provincial companies; and

...

WHEREAS the insurance business transacted within and outside of Canada by companies incorporated by the Parliament of Canada, and by the Legislature of the late Province of Canada, and within Canada by British insurance companies, constitutes an important factor in the international and interprovincial trade and commercial relations of Canada; and

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...

WHEREAS it is desirable to provide by a system of returns and inspection against such companies engaging in, or continuing to carry on, business in Canada while unable to discharge their liabilities to such policyholders as they become due or while otherwise insolvent, and to declare the conditions upon which such companies shall be deemed to be insolvent and be subject to be wound up under the provisions of the *Winding-up Act*."

The following extracts from the preamble of the Foreign Insurance Companies Act illustrate its purpose:

"...

WHEREAS foreign insurance companies, associations and exchanges, transacting the business of insurance throughout Canada, receive each year from policyholders in Canada many millions of dollars in premiums, and incur liabilities to such policyholders requiring involved actuarial and other computations for their determination, and the ability or inability of such companies, associations and exchanges to discharge such liabilities, as they become due, is dependent upon the character and value of their assets available for such purpose; and

...

WHEREAS it is desirable to provide, by a system of registration, deposit of securities, inspection and returns, against such foreign companies, associations or exchanges engaging in or continuing to carry on business in Canada while unable to discharge their liabilities to such policyholders as they become due or while otherwise insolvent and to declare the conditions upon which such companies, associations and exchanges shall be deemed to be

insolvent and be subject to be wound up under the provisions of the *Winding-up Act*."

The nature and extent of Federal supervision over insurance is concisely outlined in a memorandum on the supervision of insurance, loan, and trust companies in Canada, prepared by the Department in 1938 for submission to the Royal Commission on Dominion-Provincial Relations as follows:

"The Department considers that it is its main function to see to it that all companies under its supervision are in a position at all times to meet valid claims made upon them by their policyholders, and that, so far as can be ascertained at any time, they are likely to continue to do so indefinitely. To enable it to perform this function the Acts provide for the submission of annual statements in very great detail by all companies to the Department; for an annual examination of those statements at the offices of the companies by the Department's examiners; for deposit with the Minister by British and foreign companies of securities sufficient to cover their liabilities in Canada; and for the necessary remedies in the event of default on the part of any company. The examination involves the verification of the assets shown in the statements; the valuation of the contracts to ascertain the amount of liabilities; the examination of the contracts to see that the powers conferred by the licences are not exceeded, and this involves the filing of copies of all contracts; and the examination of the charters or other incorporating instruments to see that the corporate powers are not exceeded, and this involves the filing of all incorporating documents with all amendments thereto. The valuation of the contracts of life insurance companies requires a staff of highly qualified actuaries and the examination staff is largely recruited from that branch of the Department.

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The statements of the companies as verified or corrected by the examiners are published in the Department's report consisting of two volumes, one of over 950 pages, covering fire and casualty companies, and the other of over 450 pages, covering life companies and fraternal benefit societies."¹

As has been shown in one of the foregoing tables, from 88 to 90 per cent of automobile insurance business in Canada has been written

¹ Report of the Dominion Superintendent of Insurance for the year ended December 31, 1944, Vol. I, page lxiv.

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by companies holding Dominion licences. It may be added that the vast majority of automobile insurance companies hold Dominion licences.

Provincial insurance legislation in so far as it relates to automobile insurance is contained in the following statutes:

<i>Alberta</i>	The Alberta Insurance Act, R.S.A. 1942, C. 201.
<i>British Columbia</i>	Insurance Act, R.S.B.C. 1948, C. 164.
<i>Manitoba</i>	The Manitoba Insurance Act, R.S.M. 1954, C. 126.
<i>New Brunswick</i>	Insurance Act, R.S.N.B. 1952, C. 113.
176 <i>Newfoundland</i>	The Automobile Insurance Act, R.S.N. 1952, C. 96.
	The Accident Insurance Companies (Licensing) Act, R.S.N. 1952, C. 236.
	The Life and Accident Insurance Agents (Licensing) Act, R.S.N. 1952, C. 239.
<i>Nova Scotia</i>	Automobile Insurance Act, R.S.N.S. 1954, C. 18.
	Insurance Agents Act, R.S.N.S. 1954, C. 134.
	Insurance Companies Act, R.S.N.S. 1954, C. 134.
<i>Ontario</i>	The Insurance Act, R.S.O. 1950, C. 183.
<i>Quebec</i>	Insurance Act, R.S.Q. 1941, C. 299.
<i>Prince Edward Island</i>	The Insurance Act, R.S.P.E.I. 1951, C. 77.
<i>Saskatchewan</i>	Insurance Act, R.S.S. 1953, 133.
	Automobile Accident Insurance Act, R.S.S. 1953, C. 371.
	Saskatchewan Government Insurance Act, R.S.S. 1953, C. 36.

Each province has likewise established an Insurance Department or Branch under a Superintendent of Insurance. Briefly, the Provincial Superintendents, like the Dominion Superintendent, are concerned with the licensing and solvency of insurers and also with the requirement of fair and equitable terms in insurance contracts to safeguard the insuring public.

Due to the efforts of the Provincial Superintendents, the Canadian Bar Association and the companies themselves, substantial uniformity in contract provisions in the common-law provinces has been attained in life, fire, automobile and accident and sickness insurance. There is, however, no great degree of uniformity between the Province of Quebec and the common-law provinces.