

VOLUNTARY SECTOR

FORUM

DU SECTEUR BÉNÉVOLE ET COMMUNAUTAIRE



VOLUNTARY SECTOR FORUM

SUBMISSION

TO THE

SENATE

STANDING COMMITTEE ON

BANKING, TRADE AND COMMERCE

FEBRUARY 14, 2005

**Submitted in relation to the
study of consumer issues and industry supervision
in the financial services sector**

**Voluntary Sector Forum
85 Albert Street
Ottawa, ON K1P 6A4
613-238-7555
cberry@vsi-isbc.org**

Introduction

This submission voices concerns shared by a wide range of non-profit and charitable organizations in Canada, here collectively referred to as the voluntary sector.

Voluntary sector organizations rely on insurance products and services to finance the risks of their activities. Voluntary sector organizations contribute almost 7% of the total national GDP¹, and as such they represent a significant group of insurance consumers. The recent hard market in liability insurance has affected thousands of voluntary organizations to the extent that some important community services have been lost.

This submission provides background information on the voluntary sector, the current insurance environment, and the devastating impact of volatile insurance premiums on voluntary sector organizations. Specific concerns about how the federal regulatory system contributes to the problem are identified. This Committee is then urged to address these issues by making certain findings and recommendations.

The Voluntary Sector Forum

The Voluntary Sector Forum (“the Forum”) is a leadership body comprised of 20 members from across the Canadian voluntary sector. Its membership reflects the knowledge, diversity, experience and common interests of the sector. The Forum has a mandate to build and engage the sector and address issues that are of concern to voluntary sector organizations across the country. Affordability and availability of liability insurance are issues of priority concern.

The Voluntary Sector

The voluntary sector is a central feature of Canada's social infrastructure that touches the lives of millions of Canadians in areas such as social services, arts, faith, sports, recreation, and environmental protection. These organizations contribute directly to our quality of life and are a vital part of the economy. The sector includes an estimated 161,000 registered non-profit and charitable organizations² and thousands of unincorporated groups that have formed to respond to the needs and aspirations of their communities.

In 2004, Statistics Canada published its first detailed analysis of the size and scope of the voluntary sector as a contributor to the Canadian economy. It found that:

“the GDP of the nonprofit sector was estimated at \$61.8 billion in 1999, accounting for 6.8% of the total economy.”

¹ Statistics Canada. (2004) *Satellite Account of Nonprofit Institutions and Volunteering*. 13-015-XWE, online: <http://www.statcan.ca/english/freepub/13-015-XIE/2004000/economic.htm> [“Satellite Account”]

² Statistics Canada. (2004) *Cornerstones of Community: Highlights of the National Survey of Nonprofit and Voluntary Organizations*. 61-533-XPE, at 7, online: <http://www.statcan.ca/english/freepub/61-533-XIE/61-533-XIE2004001.htm>. [“Cornerstones of Community”]

“The nonprofit sector’s extended GDP is more than eleven times that of the motor vehicle manufacturing industry, over four times larger than agriculture, and over twice the value of the mining, oil and gas extraction industry. It is more than 50% larger than Canada’s entire retail trade industry.”³

The fields of social services, culture and recreation, development and housing, religion, business and professional associations and unions, and health accounted for over 80% of the non-profit sector’s contribution to the GDP (excluding hospitals, universities and colleges).⁴

Current context: “hard market” for liability insurance

The past few years have been described as a hard market for insurance: a low point in the insurance market cycle. While this reflects an international trend, some aspects are directly attributable to the Canadian context.

Canadian insurers’ reactions to the market situation during this period have had a direct detrimental impact on insurance consumers, including voluntary sector organizations. Premium prices have increased several-fold without apparent relation to an organization’s claims experience or risk profile. In some cases insurers simply declined to renew policies with little or no notice.⁵ Those unforeseen expenses and complications had a particularly severe and detrimental impact on voluntary sector programming, as explained in more detail below.

In 2003, public concern about the increased consumer cost of property and casualty (P & C) insurance prompted the federal Office of the Superintendent of Financial Institutions (OSFI) to review and report on this issue to the Secretary of State⁶. OSFI concluded that the financial condition of the P & C industry had been deteriorating for some time due to increases in the cost of automobile and other claims, under-pricing of automobile insurance premiums, and reduced revenues from investment portfolios⁷.

The OSFI report further noted that, for the last twenty years, P & C premiums had not covered all costs of related claims. Rather, insurers’ profits were made through the success of their investment portfolios. **OSFI applauded the fact that P & C insurers improved their solvency position in 2003 in part by significantly increasing premiums charged⁸.**

Automobile insurance accounts for half the net P & C premium revenues, and thus drives the P & C sector. All provinces and territories control auto rates⁹, while other lines are not regulated in that regard. This begs the question whether pressures on and claims arising from the automobile insurance sector are borne by other P & C insurance lines.

³ *Satellite Account*. “Extended GDP” includes the value of volunteer work.

⁴ *Cornerstones of Community*, at “Other Organizations...”

⁵ Voluntary Sector Forum, (2004) *Liability Insurance and the Voluntary Sector – Framing the Issues*, online: http://www.voluntary-sector.ca/eng/liability/framing_issues/index.cfm, at Key Findings [“Framing the Issues”]

⁶ Office of the Superintendent of Financial Institutions. (2003) *Report On The Property And Casualty (P&C) Insurance Industry In Canada*, online: http://www.osfi-bsif.gc.ca/eng/documents/osfireports/docs/Report_on_PC_Industry_e.pdf [OSFI report]

⁷ *Ibid* at 1

⁸ *Ibid* at 5 & 6

⁹ *Ibid* at 8. See also Office of the Superintendent of Financial Institutions. (2004). *OSFI Canada – Annual Report 2003/2004*, online: http://www.osfi-bsif.gc.ca/eng/documents/osfireports/docs/osfi2004_e.pdf at “Performance Highlights”

Focus of concern: Impact of insurance market cycles on organizations

It is recognized that the primary concern of the federal regulator is to ensure the solvency and sustainability of insurance companies. However, we urge this Committee to consider the actual impact of market corrections on the consumers that the insurance products were designed to serve.

Organizations willingly pay premiums so that their costs of risk are relatively predictable and spread over time. Insurance is to be a form of protection from catastrophic events that could otherwise threaten the survival of the organization. It is a tragic irony that in some cases the **price of this protection itself threatens organizational survival**. The private insurance industry as presently regulated does not fulfill this basic objective of predictability and stability.

Almost nine out of ten respondents to a 2004 on-line survey of over 300 voluntary sector organizations reported increases in insurance costs over the past three years. For 24% of these respondents, costs had more than doubled. One children's summer camp reported an increase of 400%¹⁰.

Meanwhile, the Nova Scotia Insurance Review Board received submissions from a number of non-profit groups that had experienced premium increases from between 35% and 300%. **The Board was unable to determine why such increases had occurred due to limited availability of industry statistics in this regard.**¹¹

Other types of organizations, such as small private businesses, have suffered as well. The Canadian Federation of Independent Business conducted an extensive survey of its members in 2003 and found that half of respondents reported premium increases of over 20%, while 10% of members faced increases of 50% or more¹². Some 50,000 member businesses have endorsed a petition calling for a federal government review of the P & C insurance industry.

Unique impact on the voluntary sector and communities

The voluntary sector is not financed like other sectors. While private businesses may have the agility to recoup unforeseen expenses by increasing the cost of their products or services, non-profits do not enjoy that flexibility. Budgets for non-profit and charitable organizations are often set more than twelve months in advance, are dependent on either public fundraising or fulfillment of government funding requirements, and may be subject to contractual constraints. Moreover, non-profits rarely have any financial cushion with which to absorb unexpected expenses.

When voluntary sector organizations have no means to cope with volatility in the P & C insurance market, they must reduce or eliminate their programs and services. Sometimes

¹⁰ *Framing the Issues*, at Key Findings

¹¹ Nova Scotia Insurance Review Board (2004), *Report to the Governor in Council on Rates and Availability of Fire, Other Property and Liability Insurance for Homeowners, Tenants, Non-profit Organizations and Small Businesses - November 1, 2004*, online at: <http://www.gov.ns.ca/nsirb/documents/NSIRBPropertyStudy.pdf> at 81. [NSIRB report]

¹² Canadian Federation of Independent Business (2003), *Soaring Insurance Costs: Dealing With the Problem*, online: <http://www.cfib.ca/legis/national/pdf/6408.PDF>, graph "Change in Insurance Premiums"

the organizations themselves must disband. This has a direct and widespread impact on the health and vibrancy of our communities.

In November 2004, the Nova Scotia Insurance Review Board (NSIRB) expressed great concern about the impact of the hard insurance market on the voluntary sector:

“Volunteer groups have limited budgets and the sudden and unpredictable insurance premium hikes of recent years cannot be absorbed. Organizations are closing and are cutting programs and services. Volunteerism, in general, is being threatened, as people feel vulnerable without proper liability coverage. Many small community activities such as parades, fairs, and festivals are similarly affected; and fundraisers have become frustrated as they see all their efforts going towards insurance premiums.”¹³

The NSIRB recommended that the Nova Scotia and the federal governments require insurers to provide detailed historical liability claims data for non-profit organizations so that the Board can conduct a study to determine if the premiums being charged reflect the liability risk of the non-profit sector¹⁴.

Most recently, the House of Commons Standing Committee on Finance acknowledged having heard concerns about the impact of rising insurance costs on charities.¹⁵

The hard market will happen again

The recent volatility in the P & C insurance market has created a crisis situation for a significant proportion of the voluntary sector over the last few years. In Canada, this particular hard market cycle has been attributed to unexpectedly high automobile insurance claims, low interest earnings on investments, and “9/11” (as some consumers have been told). Certain court decisions related to non-profit organizations have also reportedly influenced insurers to shy away from the voluntary sector, even in the absence of related claims data.

Regardless of the reasons offered for the current hard market, it should be of greater concern that the **present situation is merely the latest repetition of a long-standing pattern**. A similar cycle was experienced in the mid-1980’s. The following excerpts from the 1986 Final Report of the Ontario Task Force on Insurance could have been written today:

“Volunteer and charitable organizations...have faced dramatic premium increases or indeed instances of total non-availability of liability insurance for their volunteers....Reports of activities being terminated by reason of lack of insurance have been common. Insurers point to high court awards in the US and to the high legal cost of defending even frivolous claims, while the insureds argue that the increase in premium rates and the reduction of coverage have no apparent relationship to the history of the claims against the insured.”

¹³ NSIRB Report at 61.

¹⁴ NSIRB Report, Recommendation 4(b)

¹⁵ Pacetti, Massimo. (December 2004). *Moving Forward: Balancing Priorities and Making Choices for the Economy of the Twenty-First Century*. Report of the Standing Committee on Finance, at 46

"Over and over again, the Task Force was told that the cost of insurance had increased because of social inflation in awards and settlements... However... without more information, hypotheses of all sorts remain unchecked and unverifiable. **More importantly, the defenders of the status quo will be able to continue to assert that there is no evidence to support any criticism or proposals for change.**"¹⁶ [emphasis added]

As noted above, the NS Insurance Review Board felt hindered in its ability to determine whether liability insurance premiums were reasonable, in the absence of reliable data from the industry. Sadly, this too appears to be a longstanding issue as noted in another excerpt from the 1986 report:

"..The Task Force suggests that the industry associations and the government authorities make a special effort to develop statistical and analytical programs to fill most of the gaps noted above. Much the same plea was made about a decade ago...Not much has happened in the intervening decade. **In this crisis, the public and the industry have suffered more than they needed to, in part because of the confusions resulting from the gaps in statistics and analysis. It would be unfortunate if a Task Force or a Legislative Committee a decade from now had to repeat this plea.**"¹⁷ [emphasis added]

Ontario is **the only jurisdiction that heeded this plea** by instituting a form of mandatory reporting of P & C data.

In each hard market cycle, our communities suffer from the loss of programs and services due to lack of available, affordable insurance coverage for the voluntary sector. While some services may eventually be offered again, others will never recover and our communities will suffer accordingly.

Authority of this Committee:

We recognize that insurance is a matter of shared jurisdiction in which the federal government focuses on solvency of federally-registered companies while the provinces and territories handle issues of market conduct. While the concerns raised within this submission may appear to relate primarily to market conduct, **the manner by which solvency is ensured directly affects the way insurers act in the marketplace.** More than 80% of the Canadian P & C insurance companies are federally regulated¹⁸. As such, these matters are of legitimate federal concern.

The Order of Reference authorizes this Committee to examine and report on the "impact of federal legislation and initiatives designed to protect consumers within the financial services sector", as well as "the role and effectiveness of agencies (including supervisory/regulatory and self-regulating), ombudspersons and others who play a role with respect to consumer protection and the supervision of the financial services sector".

¹⁶ Ontario Ministry of Financial Institutions. (May 1986) *Final Report of the Ontario Task Force on Insurance*, at 31 & 159.

¹⁷ *Ibid* at 159.

¹⁸ Giunio-Zorkin, Deborah. (2000). *A Framework For Change: Preliminary Design of a Dispute Resolution System for the Property Casualty Sector of the Insurance Industry of Canada*. MA Thesis. Online: www.ibc.ca/pdf/files/publications/research_studies/ADR_thesis.pdf

The Voluntary Sector Forum urges this Committee to take advantage of its broad mandate and its unique national vantage point to make the findings and recommendations set out below.

Findings:

The Forum urges this Committee to make the following findings:

1. The current method of managing insurer solvency during hard market periods condones periodic and uncontrolled “market corrections” in premium setting for P & C insurance policies. These corrections create volatility for consumers that can cause severe and detrimental impact on their operations.
2. Voluntary sector organizations have suffered from the most recent market correction and will continue to be vulnerable in the future if the current systems continue. The voluntary sector represents a vital component of Canadian society, its economy, and our communities and its concerns deserve due consideration and attention.
3. There are chronic long-standing weaknesses in the existing systems of collecting and analyzing insurance data. It is appropriate for the federal government to lead efforts to address it.

Recommendations:

The Forum further urges this Committee to:

1. Recommend that the OSFI investigate whether its methods of ensuring insurer solvency tend to provoke episodes of volatile liability insurance premiums, and if so what could be done to moderate this effect.
2. Endorse the NSIRB recommendation that insurers be required to provide detailed historical liability claims data for non-profit organizations, and support a study to determine if the premiums being charged reflect the liability risk of the non-profit sector. The OSFI could collect this data from federally regulated insurance companies directly, or support these initiatives within the forum of the Canadian Council of Insurance Regulators.
3. Recommend that the OSFI initiate a national review of insurance data collection and analysis to address the chronic issue of inadequate insurance data, as described in the 1986 Ontario report and the 2004 NSIRB report. This could occur via the Canadian Council of Insurance Regulators.
4. Investigate whether the strict regulatory controls over automobile insurance rates in most jurisdictions has the effect of shifting a disproportionate, and inequitable, financial burden on consumers of other P & C insurance lines.