



Position Statement of the Automobile Insurance Committee on UMP

Whereas: the current *Insurance Vehicle Act* defines UMP in Section 148 1(1) of the regulation as including any occupant of a motor vehicle described in owners certificate, a member of an owners household, the holder of a drivers certificate pursuant to Section 42 of the Act or a member of Section 42 household and:

Whereas: this gives rise to a situation where a British Columbia resident who does not fill any of the above noted definitions (does not own a car, does not have a drivers licence and does not live with somebody who has done either of things) will have no Under Insured Motorist Protection coverage when struck by somebody who has minimal limits of insurance or when struck by somebody who was uninsured. This leads to a result where a very small percentage of the British Columbia population is not covered mandatory LJMP coverage because of these factors.

The committee's position is.

1. That an amendment to the legislation permitting people to purchase optional coverage where they do not have a drivers licence or own a car, should be made available to the general population of British Columbia similar to the ability to purchase excess UMP coverage
2. Further, there should be a brief period of advertisement so that the general population is aware that the coverage is available.
3. The committee recommends that offices to be targeted would include government offices such as EI and public transit facilities in order to capture people in the system who are likely not to have driver's licence. The committee further recommends that broker instructions and participation would be essential



CANADIAN BAR ASSOCIATION

BRITISH COLUMBIA BRANCH

AUTOMOBILE INSURANCE COMMITTEE

POSITION PAPER CONCERNING THE WITH-HOLDING OF DRIVER'S LICENSES BY THE INSURANCE CORPORATION OF BRITISH COLUMBIA TO DEBTORS WHO HAVE DISCHARGED THEIR INDEBTEDNESS TO ICBC THROUGH BANKRUPTCY

When a debtor receives a discharge from bankruptcy, the debts that could have been proved in the bankruptcy are, with some exceptions, discharged. They cease to be enforceable claims.

When an insured person breaches their insurance policy with ICBC, ICBC claims the amounts it pays to the party who was injured by the insured, then claims repayment of those amounts from the insured.

Those insured persons who have breached their policies and then become liable to pay ICBC money, paid by ICBC to compensate the victims of the insured's negligence, often cannot pay the debt they owe to ICBC. Those



persons then seek the protection of the federal bankruptcy laws, and after compliance with those laws (and with notice to ICBC) receive their discharge from bankruptcy; thus discharging the debt owed to ICBC.

The debt owed by the insured to ICBC arising from the breach of their insurance policy is a claim provable in bankruptcy, and is a claim which is discharged in bankruptcy upon discharge of the bankrupt

As a matter of policy, ICBC denies those persons a driver's licence as ICBC claims that *notwithstanding the discharge from bankruptcy, the insured must pay the discharged debt in order to obtain their driver's license.*

This policy has been challenged in the Supreme Court of British Columbia. One decision has found the practice of ICBC to be constitutional, and another decision has found the practice to unconstitutional.

The legal background of this issue is discussed in the enclosed paper.

The policy of ICBC is unfair to the public and is of questionable legal validity.

If an insured's conduct is egregious and some payment should be made for the insured's tort, then the proper forum is the bankruptcy court. ICBC can



object to the discharge of the debtor and seek an increased contribution to the estate of the debtor from future income of the debtor.

Currently, ICBC simply ignores the bankruptcy process, and then enforces the collection of the debt by withholding the debtor's driver's licence; obtaining an advantage over other creditors and making it impossible for an insured in breach to obtain relief from their debts in bankruptcy.

The remedy for this situation is not legislative. Any judicial remedy hinges on the uncertainty of which line of reasoning in the presently divided trial authorities, the Court of Appeal or the Supreme Court of Canada may follow.

Rather than leave this issue to the vagaries of litigation, a just resolution is for ICBC to change its policy in two ways:

- (a) When an insured is in breach and seeks to avoid payment of an ICBC debt claim through bankruptcy, ICBC should participate like all other creditors in the bankruptcy process to seek such relief as may legally and justly be available to ICBC in the bankruptcy process;



(b) When an insured who is in breach and has incurred a debt to ICBC has obtained a discharge from bankruptcy, ICBC, like all other creditors in Canada, should recognize that discharge from bankruptcy for its legal effect and grant that insured a driver's license without seeking to collect a debt which has been discharged by operation of the bankruptcy law.