



THE CANADIAN
BAR ASSOCIATION
British Columbia Branch

CBABC POSITION PAPER ON
**THE PROPOSED ICBC CHANGES
IN BILL 20 AND BILL 22**

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Introduction

On April 23, 2018, the Attorney General introduced two pieces of legislation relating to ICBC and the handling of motor vehicle claims. Bill 20 contains amendments to the *Insurance (Vehicle) Amendment Act*, while Bill 22 contains amendments to the *Civil Resolution Tribunal (“CRT”) Act*.

This position paper summarizes the response of the Canadian Bar Association BC Branch (“CBABC”) to those proposed changes as they relate to the handling of ICBC claims. The CBABC has over 6,800 members who practice law in many different areas, including personal injury and vehicle accident law. Our Automobile Insurance Committee is made up of lawyers who represent both those injured in motor vehicle accidents and the insurer. The Automobile Insurance Committee provides advice to the Branch on matters arising in this area of law, and has assisted the Branch in the development of the positions set out herein.

It is the policy of the Canadian Bar Association that “the right of an individual to recover general damages from the wrongdoer in motor vehicle cases and to have such right adjudicated in the courts is one of the most vital hallmarks of the Canadian system of justice.”

The method of compensating British Columbians injured in automobile collisions and its impact on the British Columbia justice system are matters of special interest to the CBABC. We believe it is in the public interest to work cooperatively with the government to achieve workable situations to the current financial situation of the Insurance Corporation of British Columbia (“ICBC”). However, we have a number of concerns about the approach represented in Bills 20 and 22 as set out below.

What Is Wrong With the Current System?

The fundamental problem with ICBC as currently structured has been identified as:

- Rising numbers of claims; and
- Increased costs of dealing with these claims, including but not limited to:
 - compensation paid to victims;
 - legal costs; and
 - auto body repair costs.

In 2017, ICBC conducted a re-evaluation of its reserves for outstanding claims and concluded that its current rate structure did not provide adequate revenue to cover the cost of the outstanding and ongoing anticipated new claims. In order to avoid a general rate increase, the government has been considering ways to restructure ICBC and the insurance product it provides. In addition, the government is considering the way our laws provide compensation for victims of motor vehicle accidents, and means by which those rights might be limited.



Presently in British Columbia, compensation of people injured in automobile collisions is based on the principle that those who are injured due to the negligence of others are entitled to be fully compensated for the actual losses they have sustained. In almost all cases, the necessary funds for this compensation come from ICBC's insurance program, which has two main parts:

- Liability insurance, by which ICBC pays on behalf of at-fault drivers compensation for damages suffered by those injured in motor vehicle accidents based on common law principles of tort law; and
- A system of Accident Benefits provided to all drivers, including at-fault drivers, which are commonly referred to as "No-Fault Benefits" or "Accident Benefits".¹ Payments are made based on a schedule of specified benefits that are available to anyone injured in a motor vehicle collision regardless of fault.

Individuals injured in a motor vehicle accident are able to access Accident Benefits immediately upon incurring an injury as a result of a motor vehicle collision, without the need for any assessment of fault. Innocent victims (those not at fault) are able to receive this funding and treatment while still maintaining their entitlement to a further assessment of damages in court should they so choose. However, to the extent their costs of care are covered by Accident Benefits, there is no need to claim them in those further court proceedings.

The tort system aims to place an innocently injured plaintiff in the original position he or she would have been in absent the defendant's negligent or willfully tortuous actions. Compensation will include any costs of care not already covered by Accident Benefits, as well as loss of income, costs of future care, and compensation for pain and suffering. British Columbia courts presently recognize the importance of considering the individual situation of the plaintiff when awarding damages, with decades of jurisprudence aimed at determining what compensation is fair and just for any particular individual.

The principal feature of the present system is that those who are injured as a result of the carelessness of others are, to the extent that money can provide adequate compensation, fully compensated for their injuries; while those who injure themselves through their own neglect are provided with only basic coverage available through the Accident Benefits.

The provincial government asserts that the present system needs to be reformed because it fears that the escalating costs of automobile insurance will not be sustainable. In order to assess the validity of this fear, factual information regarding ICBC's operations (and not just conclusions drawn) should be disclosed.

At this stage, the CBABC position is that the case for fundamental changes including statutory abrogation of the rights of injured citizens to full and fair compensation, because of uncontrollable costs has not been established. What has been established, however, is that the

¹ Accident Benefits are provided under Part VII of the *Insurance (Vehicle) Regulation*, B.C. Reg. 156/2000, made pursuant to the *Insurance (Vehicle) Act*, R.S.B.C. 1996, c. 231



number of accidents occurring each year has been steadily increasing. The solution to that problem, however, is to look at and deal head-on with the causes of those increases.

In any event, as discussed below, the evidence from other jurisdictions does not support the conclusion that the proposed changes will achieve sustained cost savings at all.

What Is the Problem With Legal Costs?

Much has been said about the legal costs associated with adjudicating ICBC claims. On April 30, 2018, Attorney General David Eby stated legal costs have grown to 24 per cent of ICBC's total annual cost.² However, in considering legal costs, it is important to give separate consideration to the various component parts. Legal costs of ICBC include the costs of:

- ICBC's legal teams defending claims;
- expert reports obtained in the defence of claims, including through independent medical examinations requested by ICBC;
- a portion of the claimant's legal fees; and
- expert reports obtained by claimants in order to persuade ICBC (or the Court) of the need for compensation.

The CBABC encourages the provincial government to look at the numbers with a critical eye, assessing legal costs the way that they would be assessed in any business. If ICBC's legal costs exceed what is reasonable in an insurance company then changes need to be made within ICBC to bring those costs down. Tough questions that must be asked include: Is ICBC adjudicating claims in a way that leads to higher legal costs? Is ICBC making the right decisions in cases that it takes to trial in terms of true costs savings? ICBC management needs to be held accountable for the decisions that are being made and the claims handling that is being conducted. A key indicator of that is a comparison of settlement offers versus trial results and the amount of legal fees paid.

The cost of medical legal reports is often the largest component of legal costs in any given ICBC legal matter. In many cases, multiple medical-legal reports are produced for each side, the costs of which are ultimately paid by ICBC. We encourage the provincial government to analyze these expert costs and to find ways to process claims, including through the litigation process, with more reasonable expert disbursements being incurred. The CBABC reiterates its willingness to work with the Province on all concerns with respect to legal costs.

² "ICBC dumpster fire' draws heat from CBA, trial lawyers of B.C." retrieved April 30, 2018, from <http://www.canadianlawyermag.com/legalfees/icbc-dumpster-fire-draws-heat-from-cba-trial-lawyers-of-bc-15669> by Jean Sorensen.



These are solutions that would attack directly the legal costs being incurred. However, as will be discussed below, the primary strategy with respect to legal costs appears to be to impose statutory caps on the rights of innocent victims to compensation. Those caps will only indirectly impact legal costs – to the extent that they make cases uneconomic for legal advice to be obtained. In the submission of the CBABC, a strategy for legal costs that is focused on restricting the rights of innocent victims of motor vehicle accidents (in the hope that it may indirectly impact legal costs) is not an appropriate public policy approach.

The Solutions Proposed in Bills 20 and 22

The solutions proposed by the government contain three major features:

- A cap on damages for pain and suffering in what it is calling “minor injury” cases;
- A new administrative regime to determine whether a claimant has a “minor injury” within the definition that is being developed, as well as to administer claims under \$50,000; and
- Improvements to Accident Benefits.

The CBABC believes that there are many areas of our present automobile insurance compensation system that warrant considered review and reform. However, those reforms should result in a costs savings to automobile insurance while preserving the core components of the current system valued by British Columbians.

The CBABC believes the present government proposals are not the correct solutions to the problem. They will not achieve the purpose for which they are espoused and they will result in considerable inequity and injustice among the public.

What Is Wrong With Minor Injury Caps?

No-fault or injury cap types of compensation schemes result in a bureaucratization of justice with rights prescribed by legislation that, in most circumstances, reduce the level of compensation available for innocent accident victims. The CBABC views the implementation of no-fault or cap types of compensation schemes as not being in the public interest. Among other concerns, they eliminate the right of innocent accident victims to seek redress before an independent judiciary and, at the same time, relieve parties of responsibility for their negligent or willfully tortious conduct. The CBABC continues to view any limitation of the rights of an individual to recover damages in motor vehicle accident cases to be contrary to the principles of the Canadian justice system and continues to oppose any such changes.

Bill 20 provides for a limit on payments for pain and suffering in minor injury cases, to be effective for accidents occurring on or after April 1, 2019, but does not specify the amount. However, the provincial government has announced that the limit will be a \$5,500. We are told that this limit is comparable with the rest of Canada. To that end, Alberta’s limit is set at



approximately \$5,000; Prince Edward Island and New Brunswick are each approximately \$7,500 - \$8,000; and Nova Scotia's "minor injury limit" is estimated to be \$8,500.

What is a "minor injury"? Bill 20 proposes a definition that excludes injuries that result in a "serious impairment" (defined to mean an impairment that is not resolved within 12 months), but would include:³

- An abrasion, a contusion, a laceration, a sprain, or a strain;
- A pain syndrome;
- A psychological or psychiatric condition

In addition, the government is given the power to, by passing a regulation, add any additional injury or class of injury to this definition, set additional criteria for what is meant by a "serious impairment", and even to modify the 12 month time period for serious impairment".

A few days after the Bill was introduced, ICBC published online further information, advising that the new legal definition would include:

...sprains, strains, general aches and pains; cuts and bruises; mental anxiety and stress from a crash. If after 12 months, these symptoms persist and have a significant effect on activities of daily living, such as work and school, the injury would no longer be considered minor. Minor injury does not include broken bones or brain injuries. A medical professional – not ICBC – will determine the diagnosis of a customer's injuries and this will determine whether the injury falls under the definition of minor injury.⁴

With respect to this latter point, it is clear that the medical professional will provide a diagnosis – and that ICBC staff will then interpret the diagnosis.

On May 2, 2018, Attorney General David Eby issued a statement for immediate release entitled "Further transparency on regulations planned for ICBC reforms". In that statement, he says:

...we anticipate that the regulations will include temporomandibular joint disorder (TMJ) – pain in your jaw joint and in the muscles that control jaw movement – as well as the more minor whiplash associated disorders (WAD) 1 and 2 in the definition. The most serious of whiplash-associated disorders will not be included in the definition, nor will third degree sprains, strains, broken bones or brain injuries.

³ See proposed new s. 101 of the *Insurance (Vehicle) Act*, at s. 29 of Bill 20.

⁴ Automobile Insurance in BC: What's Changing? Retrieved from ICBC's website at <http://www.icbc.com/about-icbc/changing-auto-insurance-BC/Documents/Changes-to-auto-insurance-in-BC-factsheet.pdf> on April 26, 2018.



We are also working in consultation with the medical community to refine and narrow the scope of mental-health conditions, which are listed in the legislative definition of minor injury.⁵

The proposed plan suggests individuals suffering a “minor injury” who continue to have serious impairment or a significant inability to care for themselves beyond one year would no longer be considered to have a minor injury. The implication of this is that individuals suffering significant impairment but who are able to return to work or become able to care for themselves after a shorter time – say 11 months – are labeled to be suffering from “minor” injuries. This is misleading and disrespectful of what these individuals have to endure. This will also fail to encourage injured parties to return to work as they are able, as it may appear to be in their best interest to remain off of work for over one year post-collision.

What we know for certain is that the definition of “minor injury” is ever-changing at this point in time. Whatever is enacted by regulation will categorize certain injuries as “minor” regardless of their actual severity. However, the legislature is being told that it is essential to pass this legislation quickly with the actual definition of minor injury to be left to Cabinet to pass by regulation after it has been worked out at a later date. Defining “minor injury” by regulation effectively delegates this task to Cabinet, which means that Cabinet is granted the power to determine what civil rights are statutorily barred. This, in turn, may open the provincial government up to a further constitutional challenge: Can the abrogation of civil rights be delegated to regulation?

The CBABC is opposed to the imposition of a cap; however, if a cap is to be imposed the CBABC argues that no legislation should be passed until a definition has been established, and any such definition should appear in the legislation and not in regulations. And no definition should be finalized until fulsome consultation has occurred.

Depriving British Columbians of full compensation through the implementation of a system of caps will have the unintended but significant consequence of a disproportionately negative impact on those already most disadvantaged in our society. In other provinces across Canada where such measures have been implemented, litigation has ballooned in the area of determining whether the cap applies and there is conflicting evidence as to whether or not litigation costs have in fact decreased. A system such as is proposed complicates access to contingency fee agreements – which make litigation affordable for the majority. The result will be that all but those members of society who are of substantial means will be challenged when it comes to contesting a decision by ICBC that the cap applies.

The reality in other provinces has been that implementation of caps or other limits on compensation has resulted in decreased accountability for unsafe driving and imposition of the cost of unsafe driving onto the victim. Similar to the unknown impact on litigation costs, there is

⁵ “STATEMENT: Further transparency on regulations planned for ICBC reform” dated May 2, 2018, issued by the Ministry of the Attorney General



also conflicting evidence as to whether or not the costs to policy holders have decreased as a result. The CBABC encourages the provincial government to lead on this issue rather than to follow, and abandon the idea of minor injury caps.

Have Caps Worked Elsewhere?

Comparable reforms to automobile insurance have been attempted across our nation with little success. Beginning with the Province of Quebec, various jurisdictions in Canada have instituted various forms of modified no-fault insurance schemes and caps on tort losses. Although direct comparisons are difficult, it would appear that there is no significant difference in the cost of insurance to the consumer between those jurisdictions that have some system of no-fault insurance and those that do not.

For example, when insurance reforms were introduced in Ontario, it was hoped that they would reduce the cost of insurance. This was not successful and although there have been repeated attempts to modify both the insurance product and restrictions on tort liability to achieve those savings, these have been unsuccessful to date. In June 2016, the Ontario government introduced changes to the automobile insurance system that resulted in new lower standard benefits. The changes were aimed at giving more choice to consumers and to stabilize rates. In April 2017, Ontario's adviser on automobile insurance, David Marshall, released his report "Fair Benefits Fairly Delivered: A Review of the Auto Insurance System in Ontario", outlining a five-part action plan including an independent regulator to regulate the insurance industry independent of government. Thus, Ontario has gone through several versions of no-fault insurance schemes without any apparent success in containing or reducing the cost of insurance. The repeated changes there have created uncertainty and unfairness among innocent victims of automobile collisions and have, in turn, diminished the integrity of the civil justice system.

In Manitoba no-fault insurance was similarly imposed, accompanied by promises of reduced insurance premiums. Notwithstanding this, the cost of insurance in that province continued to increase and the cost of claims has risen at a phenomenal rate. Saskatchewan introduced no-fault insurance in 1995 and although premiums were initially held constant, the accumulated deficit of the Saskatchewan government insurance corporation increased by approximately 15 per cent in the first two years. In 2012, the Saskatchewan Court of Appeal effectively struck down that province's no-fault regime.⁶ Modified insurance schemes have also been introduced in Alberta, Nova Scotia, New Brunswick, and Prince Edward Island. In October 2014, the Prince Edward Island government passed legislation to increase no-fault Accident Benefits mirroring those of New Brunswick, increase the cap on minor personal injuries, and narrow the definition of "minor personal injury". Here, our provincial government is proposing a relatively low monetary cap and an increasingly broad definition of "minor injury".

⁶ *Acton v. Rural Municipality of Britannia No. 502*, 2012 SKCA 127. An application for leave to appeal to the Supreme Court of Canada was dismissed.



In short, what we have learned from these other jurisdictions is that insurance premiums have not declined after the introduction of no-fault based insurance schemes. The result has been a bureaucratization of justice with rights prescribed by legislation that, in most circumstances, reduces the level of pecuniary compensation and either eliminates or significantly reduces compensation for non-pecuniary damages for innocent accident victims. The policy and social values promoted by our present tort system – such as encouraging people to adhere to a higher standard of care by holding them accountable for their negligence or willfully tortuous conduct – are compromised by the provincial government’s proposed “care-based model”, which benefits at-fault drivers by providing them with increased Accident Benefits.

How are Accident Benefits Impacted, Will Improvements be Expensive, and Do They Need to be Tied to Minor Injury Caps?

Accident Benefits assist with compensating parties injured in an automobile collision with medical care and wage loss benefits, regardless of who is at fault. If warranted, ICBC pays Accident Benefits to all occupants of a vehicle licensed and insured in British Columbia; as well as to pedestrians or cyclists who are impacted by a vehicle, so long as they are named on an owner’s certificate of insurance or are a member of an insured’s household.

Under the present liability system, innocent victims of automobile collisions receive full compensation for all medical costs on an individualized basis from the courts as a result of their tort claims – although they generally do not get reimbursed until a claim is settled. However, the proposed changes to Accident Benefits will significantly improve the compensation available to individuals who have caused their own injuries – including reckless drivers who speed or drive while intoxicated, as examples.

Under the current system, those injured in a motor vehicle accident pay up front for medical treatment and submit receipts from time to time to ICBC, which are reimbursed based on a fee schedule that is not adequate for the actual cost of services. Those who are unable or reluctant to pay up front for treatment may be less likely to follow prescribed treatment regimes for financial reasons. A key improvement in Accident Benefits will eliminate this concern. While the rates that ICBC will pay are to be determined in consultation with medical service providers; ICBC’s stated goal is that “...whether a customer is responsible for a crash or not they will not be out of pocket for their treatment costs.”⁷

Retroactive to January 1, 2018, the provincial government has increased the lifetime allowance for medical care and recovery costs under Part 7 from \$150,000 to \$300,000. While this seems substantial, it was extremely rare for any claimant to reach even the prior maximum. In addition,

⁷ Automobile Insurance in BC: What’s Changing? Retrieved from ICBC’s website at <http://www.icbc.com/about-icbc/changing-auto-insurance-BC/Documents/Changes-to-auto-insurance-in-BC-factsheet.pdf> on April 26, 2018.



the provincial government has proposed that as of April 1, 2019, the following increases to Accident Benefits will take effect:

- Wage loss payments will increase from \$300/week to \$740/week;
- Home support benefits will increase from \$145/week to \$280/week;
- Funeral costs will increase from \$2,500 to \$7,500; and
- Death benefits will be “simplified” and increase from a range of \$17,580 - \$20,080, to \$30,000.

The CBABC has been strongly advocating for improvements to Accident Benefits, which have been frozen since 1991, and is supportive of this reform. This increase reflects modern realities and will reduce the need for automobile collision victims to pursue litigation against ICBC for Accident Benefits, which is in turn beneficial to society. While paying the full costs of treatment up front is a key improvement that is welcomed, the CBABC asserts that these changes will not have as significant a financial impact as suggested, given that:

- Those not at fault would have been compensated for all medical costs as part of their tort claim in any event;
- The additional encouragement provided by up-front payment of treatment costs will help all claimants recover more quickly – and thus indirectly reduce tort claims; and
- Even the previous maximum claim amounts were rarely reached.

The increase in Accident Benefits has been presented by the government as a trade-off for the imposition of a cap on non-pecuniary damages. It is suggested that the government is only available to afford to increase Accident Benefit as a result of savings reduced by the cap. It is clear that improved Accident Benefits will not, in fact, have a significant impact in light of the above-noted factors. There are strong public policy reasons for improvements to Accident Benefits, and financially it is an improvement that stands on its own.

What Role Should the CRT Play in these Claims?

The Civil Resolution Tribunal (“CRT”) is an administrative tribunal in British Columbia that is presently granted jurisdiction by the provincial government over strata disputes and small claims disputes where less than \$5,000 is at issue. The CRT began to handle claims under \$5,000 in June 2017. It is a relatively new organization with very little experience in personal injury matters (that experience being limited to those claims under \$5,000 that have come to it since June 2017). In comparison, the Canadian judicial system, which has evolved over hundreds of years of practice and binding precedent, has extensive experience in assessing fair compensation for those injured in motor vehicle accidents.

The initial rationale of the provincial government to involve the CRT in automobile disputes was that the CRT will be able to “provide fair, fast resolution, without the involvement of a lawyer.” The CRT is said to have experience in resolving matters within 60 to 90 days.



Our existing civil system of justice in British Columbia resolves disputes fairly. Trial dates are available within a few months for those plaintiffs who have straightforward claims and whose injuries have reached maximum medical recovery. The provincial government's emphasis on speedy resolution through the CRT fails to account for the importance of ensuring that injuries have reached maximum medical recovery prior to any decision being made respecting appropriate compensation. The suggested time savings is illusory.

Those injured in motor vehicle accidents regularly seek legal advice. They do so for several reasons. They want the advice of someone who they know is on their side, who is knowledgeable about the area of law, and who can ask the right questions to develop a personalized assessment of their likely financial recovery in a claim. They want someone who has the expertise to present a supported and supportable claim to ICBC and negotiate effectively with ICBC. Many are uncertain of their ability to negotiate with experienced adjusters and ICBC staff whose responsibility to their employer is to minimize payouts. A goal of rendering lawyers unnecessary does not serve the public interest.

Section 9 of the existing *Civil Resolution Tribunal Act* prohibits the CRT from hearing proceedings in which the government is a party. That is because Tribunal members are civil servants, appointed by Cabinet, with limited tenure (2-5 years) and remuneration set by Cabinet. Their independence from government is limited.

Bill 22 would repeal section 9 and replace it with provisions clearly giving the CRT jurisdiction over ICBC claims. The inherent conflict in having the Tribunal decide proceedings involving a Crown agency closely connected to government is thus of the utmost concern. That conflict is not resolved by Bill 22 – rather, the conflict is embraced as part of the strategy to reduce ICBC costs. It is noteworthy that the same Ministry to which the CRT reports, and which appoints CRT adjudicators, is responsible for ICBC and accountable to the public for ICBC's financial performance. In light of the evidence that the government is working hard to reduce the amount ICBC spends on claims, the conflict of having civil servants of the Tribunal making decisions on monetary compensation to victims of motor vehicle accidents is arguably stronger than ever.

It is noteworthy as well that the proposed monetary threshold of \$50,000 is substantially greater than the CRT's current monetary jurisdiction, which is a mere \$5,000 for small claims personal injury matters. In contrast, Provincial Court judges in our province – who maintain their tenure to age 75, and operate as judicial officers independent of government – have only been granted monetary jurisdiction for decision making up to \$35,000. Is it reasonable and prudent to grant monetary jurisdiction of \$50,000 to government employees whose appointments may be as little as two years?

The CBABC has prepared a concurrent submission with specific respect to Bill 22 (the *CRT Amendment Act*). The comments made in that submission are equally applicable to the proposed CRT jurisdiction over motor vehicle accident matters.



What Should the Government Be Doing Instead?

Rather than imposing limitations on the rights to compensation by British Columbians as proposed, the CBABC encourages the provincial government to implement changes that will:

1. Preserve the rights of British Columbians;
2. Reduce the incidence of accidents and injuries in British Columbia; and
3. Improve the rate of recovery of British Columbians following injury.

Changing the existing automobile insurance system as proposed will not result in long term control of insurance costs. The only way to modify cost trends on a long term basis is to change driver behavior through sweeping traffic initiatives including but not limited to stricter enforcement of all traffic safety laws, more severe penalties for errant drivers, tougher licensing standards, and distracted driving and photo radar programs that work.

The CBABC has had the opportunity to review the July 10, 2017, Ernst & Young LLP report entitled, "ICBC: Affordable and effective auto insurance – A new road forward for British Columbia" (the "E&Y Report"). The CBABC agrees with and embraces many of the principles in the E&Y Report; however, there are other principles within that report that the CBABC does not support. It is the position of the CBABC that the E&Y Report does not provide conclusive evidence that automobile insurance in the Province of British Columbia needs to be substantially overhauled. What the E&Y Report clearly demonstrates – and what the CBABC supports – is the need for the Province of British Columbia to focus on accident prevention and to implement traffic safety initiatives. It is only through the implementation of such preventative initiatives that the trends in the cost of insurance will be reduced.

The CBABC has also had the opportunity to review the Trial Lawyers Association of British Columbia report of October 25, 2017, entitled "Safe Roads to a Strong ICBC" (the "TLABC Report"), and believes that the implementation of the various road safety and technological solutions identified in the E&Y Report and adopted in the TLABC Report will empirically result in a significant reduction in motor vehicle accidents on British Columbia roads, along with an increase in ICBC revenue from enforcement of road safety measures. The CBABC encourages the provincial government to make the safety of British Columbians a priority and to take the steps that have been identified in the E&Y Report and the TLABC Report to achieve those ends. There is significant evidence that this will result in the reduced incidence of injury in British Columbia. Taking this step alone will make British Columbia a leading example for the rest of Canada and the world, and will make significant inroads to addressing ICBC's current financial shortfall.

The CBABC advocates that the focus of change should be on improving road safety as the best means of controlling automobile insurance costs. This also cements the direct relationship between the cost of insurance and automobile collisions in the public consciousness. British Columbia has historically been a leader in linking automobile insurance and road safety. ICBC,



unlike other provincial insurers, is a partner in encouraging safe driving practices in British Columbia. However, the cost of doing so has been placed on the shoulders of policy holders. Allowing ICBC to retain a portion of the revenue from its road safety measures – rather than siphoning the revenue stream into the provincial government’s general revenue – is a solution recommended by both the E&Y Report and the TLABC Report. This is a solution the CBABC agrees with, as it will undoubtedly contribute to returning ICBC to a position of financial stability.

Other steps that should be taken include:

1. The provincial government should adopt and implement the establishment of an independent rate setting agency to fix and monitor premiums to ensure premium adjustments are made on a timely basis. ICBC rates should be set in accordance with sound insurance and actuarial principles.
2. The CBABC is prepared to work with ICBC to develop ways in which the legal profession can publicly endorse and promote safety programs and other initiatives to limit distracted and intoxicated driving.
3. Consideration should be given to a change in the *Supreme Court Civil Rules* to include a schedule of fees limiting the amount that experts can charge for their independent medical examinations, consultations, and written reports tendered in personal injury cases, without leave of the court.
4. Negligent or reckless drivers should be penalized. Our society is predicated on the notion that individuals will be held accountable for their errors and that victims will be entitled to recover their losses to the extent that they are not individually responsible for them. This is fair and reasonable, and consistent with the notion that each of us should be encouraged to be responsible and careful.
5. Drivers with records of dangerous driving behaviours such as impaired driving, excessive speeding, and distracted driving should pay higher premiums. Significant weight should also be placed on prior accidents and driving infractions, such as failing to stop. Doing so will ensure that those motorists who are placing others at risk are paying a financial price for having done so.
6. Drivers who operate safer vehicles should receive a subsidy to their premium. The CBABC supports measures being put in place to incentivize motorists and car companies to implement accident-avoiding technology, such as back up cameras and blind spot warning sensors, which decrease the likelihood of crashes. This in turn will encourage safe driving and increase the safety of British Columbia roads.
7. Drivers who operate luxury vehicles should pay more for their premium.
8. All of British Columbia’s intersection safety cameras should be turned on 24 hours a day, seven days a week.



9. The provincial government should proceed with an independent operational review of ICBC in order to identify opportunities for business reform. A key component of running ICBC as a business is transparency. The ever-shifting numbers that are being reported on ICBC's losses are concerning and reflect either mismanagement or a lack of transparency. The losses that are being reported at ICBC are losses that in any other business would have resulted in significant questions being asked and quite likely a change in management. The CBABC encourages the government to ensure that those tough questions are being asked. We understand the current government is taking the position that the previous government was aware these losses were being projected and that this problem falls at their feet. It is not that simple.
10. The provincial government should cease taking dividends from ICBC to support general revenue of the provincial government. A key component to ICBC's long term financial health and ultimately, its survival, is the implementation of measures that require ICBC to be run like a business rather than an arm of government. Utilizing policy dollars for functions outside of traditional insurance will necessarily result in financial shortfalls for ICBC. This needs to be addressed by either funding these functions through government financing or, at the very least, by returning any revenue generated by these functions to ICBC. [For example, the funds collected by ICBC's driver licensing offices that flow through to government without recognition of the costs of operating a network of such offices.]

Conclusion

The CBABC believes that the challenges the provincial government faces with ICBC represent an opportunity for British Columbia to take a leadership role in Canada in road safety initiatives and preservation of a system that is just, fair, and does not penalize victims. It is our position that any system of capping non-pecuniary damages results in discriminatory consequences and a dearth of accountability for at-fault drivers.

In addressing the financial situation of ICBC, the provincial government should instead focus on:

- Maintaining the principle of full recovery for victims of negligence – a principle that is fair and prudent;
- Implementing measures that will decrease the incidence of accident and accident-related injury in our province;
- Enabling injured motorists to obtain treatment in a timelier manner; and
- Being a leader in developing a system of premium assessment that motivates reasonable and prudent behaviours, penalizes risky and unsafe behaviours, and has those who choose to drive luxury vehicles paying more to insure them.



We encourage the government to explore other potential avenues to address the financial problems at ICBC and to abandon the announced implementation of caps, which is short-sighted and will not serve to address the long term financial problems. From a public policy perspective it is preferable to control costs by reducing the number and severity of accidents rather than by cutting the compensation available to innocent accident victims. Reducing accidents will reach the root of the problem and will also eliminate the pain and disability that accompany traffic injuries. Reducing the cost of automobile insurance by limiting compensation puts an unfair burden on innocent accident victims, rather than placing that burden on the people who cause the accidents or on society for failing to make driving safer.

The CBABC remains committed to a system that allows for the independent determination of the actual loss suffered by persons injured in automobile collisions on an individual basis. Our position is that the only entity that can be trusted to ensure fairness in any dispute between an individual citizen and a public institution is an independent and accessible judicial system. We believe that we have made a number of meaningful suggestions for reform that will improve the present system without taking away the rights of innocent victims. The CBABC welcomes the opportunity to work with this government to find ways to preserve British Columbians' rights to full compensation following injury, to decrease the number of accidents on British Columbia roads, and to decrease the costs associated with claims.