

IMPORTANT CHANGES COMING IN ICBC'S INJURY MODEL

On 6 February 2018, David Eby, minister responsible for ICBC, and ICBC board chair Joy MacPhail announced important changes to the tort model currently in place in BC for settling injury claims arising from vehicle crashes.

The changes were prompted by the growing financial crisis at ICBC caused by rapid increases in claims costs, especially injury claims costs, not being matched by increases in premium revenue. In fact, the previous government's policy of depleting ICBC's capital reserves to subsidize the Basic rates reduced the reserves to the point where they will be significantly below the government's regulatory minimums by 31 March 2018.

"For too long, difficult decisions have been put off and growing financial problems at ICBC hidden from the public," minister Eby said. "The changes we're initiating today will reduce ICBC's claims costs by more than \$1 billion every year, helping make it sustainable for decades to come."¹

Cap on Minor Injury Claims

Effective 1 April 2019, the pain and suffering component of "minor" injury claims will be capped at \$5,500, with annual increases to match the increase in the consumer price increase. Not-at-fault parties with more serious injuries will continue with the current tort model (including the right to sue for pain and suffering).

Increased No-Fault Benefit Limits

Currently, both the at-fault and the not-at-fault injured parties receive capped accident benefits to pay for medical costs, rehabilitation costs, wage loss, home care and death benefits. The announcement stated that both the monetary limits and the scope of the rehabilitation coverage would increase, retroactive to 1 January 2018.

New Dispute Process

The minister also announced that injury claims will be assessed by medical professions to determine which are minor and which are more serious (thereby allowing a claim for compensation for pain and suffering). Disputes for "minor" injuries, including the

¹ <http://www.citopbroker.com/news/b-c-to-introduce-auto-insurance-pay-out-limits-in-2019-to-save-1b-annually-13727>

classification itself, will be adjudicated by the Civil Arbitration Tribunal rather than the courts. More serious injury claim disputes will continue to be ultimately resolved by the courts.

Public Consultation on Revisions to Rate Structure

A consultation process will occur to judge whether the current driver discount/penalty scale should be modified to increase the cost of insurance for high risk drivers.

ISSUES AND OBSERVATIONS

1) Financial Savings

The government had previously indicated that retaining the full tort model and raising insurance rates to eliminate the structural deficit (and rebuild the reserves) was unacceptable. Limiting the pain and suffering component for most claims and providing higher no-fault accident benefit (Part 7) levels, should remove some of the current incentive to retain legal representation and litigate for compensation.

Will the cap on pain and suffering for minor injury claims, combined with the higher initial no-fault benefits, produce annual operating savings of \$1.0 billion? My estimates, detailed in Appendix A, suggest that the annual savings may be in the order of \$500 million.

2) Rebuilding Appropriate Capital Reserves

As the caps on pain and suffering will not come into effect until the 2019/20 fiscal year, we can expect that the combined reserves of \$2.46 billion as of 31 March 2017 will be seriously depleted by the start of 2019/20.

Appendix B estimates that by the end of the current fiscal year the combined capital reserves will be approximately \$1.76 billion below the combined regulatory minimums for the Basic and Optional programs. Reducing the regulatory minimum requirements could reduce the shortfall to \$1.1 billion. For 2018/19, the minimum loss (the Basic structural deficit) is estimated to be a further \$0.5 billion.

The government has not indicated what the rate increases will be for November 2018, but I expect the Basic rate to increase by at least 5% as an interim measure pending the imposition of the cap on pain and suffering claims.

3) Definition of a “Minor” Injury

A clear definition of what constitutes a minor injury is critical to the new scheme. The minister said that ICBC will be developing this definition, which presumably will be included in the new regulations (although ICBC was still able to estimate a savings of \$1.0 billion).

Mild whiplash injuries (including strains and sprains), cuts and bruises, anxiety and stress would be considered as minor injuries. More serious injuries would include broken bones, brain injuries (including concussions) and impairment lasting more than 12 months would seem to be non-major injuries.

The distinction between minor and other injuries requires some thought. As outlined, it would appear to offer an incentive for some injured parties to prolong their recovery to qualify for claiming pain and suffering compensation after 12 months.

The medical professionals that will review claims should include dentists, as jaw-related injuries were used to weaken the cap on soft tissue pain and suffering claims in Alberta. In fact, rising injury claims costs in recent years resulted in the auto insurance regulator agreeing to a maximum 10% increase in premiums for the coming year. Citing a priority on affordability, the Alberta government reduced the maximum increase to 5% for private vehicles in December 2017.² The \$5,000 cap on minor soft tissue injury in Alberta seems to be less effective in holding down increases in injury settlements.

4) Administration and Dispute Costs

The current adjudication of liability, and the negotiation over the degree of seriousness of the injury, should be lessened if the injured party's no-fault accident benefits are covered though the move to a care model.

However, much more detail will be required on the new assessment and dispute resolution model. The government can anticipate disputes and court challenges.

5) Greater Enforcement of Traffic Rules

The minister did not make any announcement of further funding to enhance traffic enforcement to reduce the number of crashes. Reducing the number of crashes would reduce the pressure on injury and property damage claims costs.

6) Government Payment for Services/Revenue Provided by Basic Policyholders

The minister did not provide any commitment that the government will provide direct payment for the costs currently incurred by Basic policyholders for services where the government receives the revenue (driver licensing and intersection cameras, and fine collection through refuse to issue), or where the cost is required by government policy (seniors' discount).

In my Occasional Paper No. 47 I suggest that an annual payment of \$200 million would be appropriate to cover the current costs.³

²

http://www.bcpolicyperspectives.com/media/attachments/view/doc/commentary_alberta_caps_auto_rates_19_dec_2017/pdf and <http://thompsonnews.com/alberta-sets-auto-rate-hike-limit/>

³

http://www.bcpolicyperspectives.com/media/attachments/view/doc/occasional_paper_no_47_4_december_2017/pdf/occasional_paper_no_47_4_december_2017.pdf

If the government reimbursed ICBC for these costs the annual savings of the coverage changes and the reimbursement would be in the order of \$700 million; enough to cover the structural deficit in the Basic program plus an annual amount to begin to rebuild the capital reserves.

SUMMARY

The shift from a hybrid tort scheme toward a less litigious no-fault model should result in a significant reduction in future injury claims costs as almost half of the current +\$1.0 billion expenditures for pain and suffering will be eliminated. The change will lessen the pressure for large annual rate increases; not many years ago a rate increase of over six percent would have been classed as rate shock).

Many details have yet to be finalized, particularly the definition of a “minor” injury subject to the \$5,500 cap on claims for compensation for pain and suffering. The new model, incorporating higher no-fault accident payments based on actual costs, should benefit both the innocent victim of a crash as well as the at-fault driver.

It would appear, however, that greater cost reductions and enhanced revenue (government reimbursement) will be required if the capital reserves are to be rebuilt within a reasonable number of years, thereby resulting in a satisfactory financial condition for our public auto insurer.

If the anticipated savings prove inadequate, or the new scheme is overturned by the courts, the government still has the option of adopting the dual tort or no-fault with enhanced accident benefits model used in Saskatchewan. However, the attractiveness of the dual model has been lessened by the significant increase in accident benefits that were just announced by minister Eby.⁴

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The writer is a retired senior BC government public servant whose paper describing the BC government’s manipulation of the finances of BC Hydro from 2008 to 2014 was published by *BC Studies* in November 2016. *BC Studies* published his paper on the 40-year financial history of ICBC in 2013. He has been an intervener in the BC Utilities Commission’s recent reviews of ICBC’s rate requests, and is an intervener in the Commission’s current review BC Hydro’s rate request.

⁴ The total accident benefits allowed in Saskatchewan are still significantly higher than the new \$300,000 limit for BC.

APPENDIX A -- FINANCIAL SAVINGS

ICBC stated that the average cost to settle the minor injury claims was approximately \$30,000, of which \$16,500 was compensation for pain and suffering. ICBC did not state how many claims were considered minor, but during the 2017 Basic rate review it stated that 47,372 injury claims were filed in 2016/17, and the average cost of settled claims that year was \$43,176.⁵

If 40,000 of these claims were for “minor” injuries we can derive the anticipated savings from the cap on pain and suffering as \$440 million (\$16,500 less \$5,500 cap is \$11,000 X 40,000 equals \$440 million).

In 2016/17 (April to March), ICBC paid \$1.04 billion for pain and suffering compensation to settle approximately 43,200 injury claims (both minor and non-minor).⁶ It is likely that approximately \$600 million will be paid for this component of the non-minor injury claims even after the \$5,500 cap takes effect.

The increased no-fault accident benefit coverage and higher financial levels will likely have a minor additional cost because injured claimants were eventually recouping their actual out of pocket costs (rehabilitation, wage loss etc.) through the claim settlement process. I have assumed that the shift to the care-based model, including paying only the actual incurred cost, will save \$50 million in reduced settlements, and litigation fees and disbursements.⁷

APPENDIX B – REBUILDING THE CAPITAL RESERVES

The imposition in 2013 of the “rate smoothing” policy of using the capital reserves to underprice the Basic rates resulted in a serious depletion of the Optional capital reserve.

As shown in Tables B.1, the Basic operating deficits began in 2015, while the Optional loss last year, combined with the Basic loss, resulted in a combined operating loss of \$612 million (April 2016 to March 2017). When the third-quarter results were released on 28 January 2018 (far earlier than previous practice), ICBC forecast a combined operating loss of almost \$1.3 billion by 31 March 2018.⁸

Unfortunately, ICBC does not provide quarterly results or year-end forecasts at the program level, therefore the program forecasts are my estimates.

⁵ BCUC, ICBC 2017 Rate Request, IR 1, RM 4.10.

⁶ BCUC, ICBC 2017 Rate Request, IR 1, RM 4.2, and RM 4.10.

⁷ In 2016/17 (April to March), ICBC paid \$667 million in settlements for Accident Benefit type compensation, in addition to the approximately \$200 million paid as a no-fault benefit. ICBC may redirect its savings to reducing the claim backlog.

⁸ <https://www.theglobeandmail.com/news/british-columbia/bc-auto-insurer-icbc-posts-935-million-net-loss-in-fiscal-years-first-nine-months/article37761586/>

TABLE B.1 – NET OPERATING PROFIT/(LOSS) (\$=million)

	2014	2015	2016/17	2017/18
BASIC	87	(257)	(329)	(800)
OPTIONAL	285	387	(283)	(480)
COMBINED	372	130	(612)	(1,280)

Source: ICBC annual reports, 2016/17 is April to March from BCUC, ICBC 2017 Rate Request, IR 1, RM 1.4 Attachment A, 2017/18 is estimated.

Table B.2 shows the year-end capital reserve surplus/deficit compared to the regulatory minimums of 100% MCT for the compulsory Basic program, and the 200% for the Optional program.

At 31 December 2014, ICBC's was in a satisfactory financial condition, but by 31 March 2017 the Optional transfers to subsidize the Basic rates and increased material damage claims had dropped the Optional reserves to a \$0.5 billion deficit.

The 2017/18 year-end position is my estimate assuming no significant change in the fair value of assets modifying the operating net loss as of 31 March 2018.

TABLE B.2 – YEAR-END CAPITAL RESERVE SURPLUS/DEFICIT (\$=million)

	2014	2015	2016/17	2017/18
BASIC @100%	450	(174)	45	(810)
OPTIONAL @ 200%	540	550	(540)	(950)
COMBINED	990	(376)	(495)	(1,760)

Source; 2014 to 2016/17 derived from ICBC annual reports; 2017/18 is estimated assuming a combined year-end operating loss of almost \$1.3 billion.

Changing the regulatory capital minimum requirement from 100% MCT to 80% MCT for Basic and from 200% MCT to 150% MCT for Optional, as I suggested in my Occasional Paper No. 49,⁹ would lower the capital deficit by almost \$1.0 billion. This is shown in Table B.3.

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http://www.bcpolicy Perspectives.com/media/attachments/view/doc/occasional_paper_no_49_21_december_2017/pdf

TABLE B.3 – ESTIMATED CAPITAL DEFICTS with CURRENT and LOWER MINIMUM RATIOS 2017/18 (\$=million)

	Current 100+200	Revised 80+150	Difference
BASIC	(810)	(520)	(290)
OPTIONAL	(950)	(575)	(375)
COMBINED	(1,760)	(1,095)	(665)

Lowering the capital regulatory minimums would relieve pressure on premium rates.

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