



THE CANADIAN
BAR ASSOCIATION
British Columbia Branch

December 5, 2017

By Email: AG.Minister@gov.bc.ca

Hon. David Eby QC
Attorney General
PO Box 9044, Stn Prov Govt
Victoria, BC V8W 9E2

Dear Attorney General:

Recent news reports indicate that your Ministry is considering the implementation of various changes to the Insurance Corporation of British Columbia (“ICBC”) in an effort to remedy financial shortfalls that have been identified over the past several years. We understand in particular that such measures as a “cap” are being considered by the government as a means to address the present financial situation of ICBC.

Rather than imposing limitations on the rights to compensation by British Columbians, the Canadian Bar Association BC Branch (“CBABC”) encourages the government to implement changes that will serve three purposes:

1. Preservation of the rights of British Columbians;
2. Reduction in the incidence of accidents and injuries in our province; and
3. Improvement of the rate of recovery of British Columbians following injury.

The CBABC believes that the challenges the government faces with ICBC represent an opportunity for British Columbia to take a leadership role in Canada in road safety and preservation of a system that does not penalize victims. In our view, any system of caps has unintended discriminatory consequences and decreases accountability of motorists for their driving behaviour.

The CBABC has had the opportunity to review the Ernst and Young report of July 10, 2017, entitled “ICBC: Affordable and effective auto insurance – A new road forward for British Columbians” The CBABC agrees with and embraces many of the principles in the Ernst and Young report; however, there are other principles within that report which the CBABC does not support. We have also reviewed the Trial Lawyers Association of BC (“TLABC”) report of October 25, 2017, entitled “Safe Roads to a Strong ICBC”, and make reference to it below.

Implementation of the various road safety and technological solutions identified by Ernst & Young and adopted by TLABC will empirically result in a significant reduction in motor vehicle accidents on British Columbia roads and an increase in ICBC revenue from enforcement of road safety measures. The CBABC encourages the government to make the safety of British Columbians a priority and to take the steps that have been identified in the Ernst & Young 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 an example for the rest of Canada and will make significant inroads to addressing ICBC's current financial shortfall.

The CBABC also encourages the government to find other ways to ensure that British Columbians are put first when it comes to auto insurance. 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. As has been seen 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 costs have in fact decreased. For those at the fringes of our society, implementation of a cap – with the onus on the plaintiff to establish that it does not apply – will ensure that access to justice for our most marginalized members is denied. A system such as this precludes access to contingency fee agreements and the result will be that all but those of substantial means will be left powerless to challenge a determination of the applicability of the cap.

The CBABC encourages the government of British Columbia to lead on this issue rather than to follow. The reality in other provinces have 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 also conflicting evidence as to whether or not the costs to policy holders have decreased as a result.

BC has historically been a leader in connecting automobile insurance and road safety, with ICBC playing a very important role in encouraging 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 is a solution recommended by both the Ernst and Young report and the TLABC document. This is a solution CBABC agrees with, as it will undoubtedly contribute to returning ICBC to a position of financial stability.

While ICBC's suite of no-fault accident benefits ("Accident Benefits") is commendable, there are improvements that this government can make. The CBABC agrees that the Accident Benefit scheme is a central element of insurance in BC, and that it should be modernized, enabling injured motorists to obtain treatment in a timelier manner. As discussed in the Ernst & Young report, Accident Benefits have not been increased since 1991. Currently, the Accident Benefit scheme may present as an impediment to injured motorists seeking treatment; an obviously unintended consequence of the system. Again, the differential impact of the legislation affects those most needy in our society. Payment of only a small portion of treatment fees results in many being unable to access treatment in a timely manner, or at all.

Modernizing this system to expand the benefits available to ensure access to treatment by all in our province will result in speedier recovery from injuries. This in turn should lead to reduced need for resort to legal counsel to pursue litigation either against ICBC (for failure to provide benefits) or by way of tort claims. It should also lead to reductions in the quantum of claims where improved and quicker recovery from injuries results. BC has an opportunity to provide an example to the rest of Canada and, in the process, will decrease both the incidence and cost of claims. It is the CBABC's view that early and fulsome access to treatment supported by Accident Benefits is an integral piece to righting the financial situation of ICBC.

The CBABC also supports the recommendations of the Ernst & Young and TLABC reports with respect to modernizing the ICBC insurance premium model. Specifically, CBABC supports adopting increased and escalating premiums for high risk drivers. Doing so is an important part of changing driver behaviour. Distracted driving is currently one of the primary causes of injury and death on our roads and, in the CBABC's view, an entirely preventable cause. BC has led the way in increasing fines and penalties associated with distracted driving and ICBC can follow suit through implementation of increased driver risk premiums. As has been seen with seatbelt use and impaired driving, it takes a coordinated series of measures to change culture around behaviour. One of those measures as it relates to distracted driving is making motorists more accountable for their choice to engage in risky behaviours. This, in turn, will also contribute to the repair of ICBC's financial situation.

In addition, the CBABC supports adoption of a high value vehicle sliding scale premium model to better recognize the increased cost of insuring luxury vehicles. The CBABC views this measure as fair and in accordance with insurance principles generally. It is unfair that presently a portion of British Columbians are able to access an enhanced level of coverage for their luxury vehicles without an associated increase in cost.

Further, the CBABC supports recent efforts that have been made by this government to assess and analyze procurement activities at ICBC in a measure designed to identify areas in which cost savings may be realized. We particularly encourage the government to analyze the costs associated with medical legal reports in ICBC cases, and to find ways to decrease what is currently a very significant cost of any ICBC claim. In particular, it is worth noting that the term “legal costs”, as defined in the Ernst & Young report, includes the costs for medical examiners or other experts retained in both the prosecution and defence of claims.

In sum, the CBABC encourages the BC government to find ways to maintain its status as a leader in automobile insurance, rather than to become a follower of demonstrably failed or failing inequitable models. In addressing the financial situation of ICBC, this government has the opportunity to:

- improve the lives of British Columbians;
- maintain the principle of full recovery for victims of negligence, a principle that is fair and prudent;
- implement measures that will decrease the incidence of accident and accident-related injury in our province;
- enable injured motorists to obtain treatment in a timelier manner; and
- be 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.

The CBABC supports this government in moving forward with measures that will achieve these ends, as set out in this letter.

We thank you for your consideration of this important issue facing all British Columbians. We welcome the opportunity to discuss this with you further at your convenience.

Yours truly,



Bill Veenstra
President
Canadian Bar Association, BC Branch