



BRITISH COLUMBIA

July 23, 2020

Mr. Kenneth Armstrong
President
Canadian Bar Association, BC Branch
Email: president@cbabc.org

Dear Mr. Armstrong:

Thank you for your letter of June 3, 2020, and the supporting submissions from the Canadian Bar Association – British Columbia Branch (CBABC), regarding government’s latest reforms to auto insurance in British Columbia. While I will not be able to address all of the points raised in your detailed submissions via this letter of response, I hope I can at least give you some broad context around the changes we are making and why government believes they are in the best interests of British Columbians.

While I respect the amount of work that went into your submissions, I strongly disagree with your assertion that “there is no firm support for the conclusion... that the automobile insurance system in British Columbia needs to be substantially overhauled.” Your submissions take a position to support a status quo approach to auto insurance in British Columbia, one that sees hundreds of millions in insurance premiums spent every year on legal costs alone. These costs continue to escalate, increasing premium costs for all British Columbians, without improving benefits.

Our government has been clear we will not – and simply cannot – accept unaffordable insurance rates or benefit levels that leave some people to either live in poverty or struggle to get the care they need after they’re injured in a crash. Instead, when the Insurance Corporation of British Columbia’s (ICBC) new Enhanced Care model comes into effect in May 2021, British Columbia’s drivers can expect to see their rates drop and all British Columbians will enjoy some of the best collision benefits in the country.

Government’s decision to move to a new way of doing auto insurance was not one taken lightly, but rather was thoroughly considered, based on two core objectives. The first is affordability. Auto insurance in this province has been too expensive for much too long and that is why we are making life more affordable with the introduction of Enhanced Care coverage next spring. With this new kind of auto insurance, drivers will save an average of 20 per cent, or approximately \$400, on average, on their ICBC insurance compared to today.

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The second objective is about care and the fact our current system too often leaves people injured in car crashes without the care they need to fully recover. I continue to meet with and hear from people in this tragic situation. I often speak about my meeting with Lorraine Tran who had hit a moose with her vehicle and ended up quadriplegic. She struggles to survive under ICBC's old Accident Benefits limit of \$150,000 which she immediately exhausted, and even the current level of \$300,000 would have been totally inadequate for her. This government believes making a split-second judgment error, or having a one car collision that could not be avoided, is not morally culpable behaviour that should be punished with inadequate access to care and wage replacement. Enhanced Care will take care of British Columbians without making entitlement dependent on whether there is someone else liable for their injuries and whether that person has sufficient insurance or other means to compensate their loss.

Under Enhanced Care, any British Columbian hurt in a crash will have access to significantly improved care benefits, up to a maximum of at least \$7.5 million. This would mean the tragic events of the crash referenced above would lead to Lorraine getting all the care she needs, when she needs it, for as long as she needs it. She would not be dependent on public disability assistance. In addition, she would receive up to \$250,000 in the form of a cash compensation for a permanent impairment. It is indisputably a better outcome for her, ratepayers and taxpayers. This new permanent impairment compensation effectively replaces pain and suffering awards determined by the courts today and will be available to all those with permanent injuries, calculated based on the extent of the impairment, without consideration of whether another person was at fault and has sufficient insurance to cover such an award. For those catastrophically injured, it will be available without having to fight for years in court, and without the need to pay between 25 to 33 per cent of the award to a lawyer as a contingency fee to assist the individual in negotiating our current adversarial system.

Prior to announcing the move to this new care-based model in February, government engaged with healthcare and disability stakeholders in our province and they were in support – and continue to be in support – of the changes we are making. This support includes the Doctors of BC who concluded that, under Enhanced Care, there “will be more care able to be led by the patient's treating physician.” It includes the Disability Alliance BC who stated, “we're glad that there's going to be increased care and supports and benefits for people who suffer accidents.” The Physiotherapy Association of BC said, “we see the changes as being a plus for those people that are injured in a motor vehicle crash.”

These are the very associations that know what improvements we need to make, and these are the very reasons we are making them. Since February, consultations with these groups and many others has continued, as we want to ensure we get the care benefits and coverage levels right for British Columbians when Enhanced Care launches next year.

It is public record I was initially doubtful a care-based model – one which is based on elements known as no-fault in other jurisdictions – was the right one for British Columbia. That is why government, instead, initially moved ahead with other reforms at ICBC, most notably putting a limit on pain and suffering payouts for minor injury claims.

While some, including your association, may believe government should be giving the current reforms more time, the fact remains that even though our reforms had put ICBC on track to break even financially this year prior to the pandemic, rates continue to be too high, and benefits too low. It is not enough to be satisfied with our progress in stabilizing the corporation – we have an unmistakable mandate from British Columbians to reduce rates to more affordable levels and increase care benefits for British Columbians.

To achieve these savings and deliver increased benefits for British Columbians, we need to make substantial changes to the way we do auto insurance in British Columbia. By largely removing the need for litigation from the system, we expect to see \$1.5 billion in overall reduced costs per year, which will significantly reduce the cost of insurance for British Columbia drivers. Only by removing many of the costs associated with tort litigation embedded in our current system can we bring major rate relief while increasing benefits dramatically.

As we transition away from today's adversarial, litigation-based auto insurance model, to one focused on care, I recognize it is not just benefits which need to improve, but also how ICBC administers those benefits and interacts with its customers and care providers. That is why government has introduced legislation that will require ICBC, by law, to advise and assist each individual with making a claim and endeavour to ensure they are informed about and receive all the benefits to which they are entitled. This will replace ICBC's legal obligation in most situations to defend the interests of the at-fault driver in a collision.

In addition, the Civil Resolution Tribunal – which is fully independent from ICBC – will also continue to provide dispute resolution processes separate from the courts, in the event a customer disagrees with an aspect of their claim for benefits. We will also be establishing a new Fairness Office for greater independence, which will be appointed by government and have increased oversight of ICBC, as well as the authority to review and make recommendations to resolve customer complaints and policy related to fairness.

Your submission included a recommendation that government should ensure the “penalization of negligent or reckless drivers, consistent with the notion that individuals will be held accountable for their errors.” I am pleased to tell you, while Enhanced Care will be a care-based system, it will very much be one where fault matters. Drivers who cause crashes will continue to be held accountable through paying higher premiums and the most dangerous drivers – those who are convicted of *Criminal Code* offences, such as impaired driving – can still be sued in a civil claim

for certain compensation. ICBC also made significant changes to its rate model last year, ensuring even greater accountability and costs for drivers engaging in risky behavior. This model will continue alongside Enhanced Care.

I was pleased to see your submission also references another vital pillar in keeping our roads safe, with a recommendation that government focus on “proactive safety measures to prevent accidents and reduce costs.” Government has taken action to do exactly this, by already implementing the majority of the changes coming out of an independent EY review, including the activation of red-light cameras 24/7 and the implementation of automated speed enforcement at British Columbia’s highest risk intersections. After years of increasing crash numbers across British Columbia, we have actually started to see the benefit of exactly what these programs are designed to do – lower the amount of crashes which happen in the first place – with 20,000 fewer crashes in 2018 than 2017. I must correct your assertion that improved road safety measures will also produce “an increase in ICBC revenue via enforcement.” In fact, all net revenue collected from motor vehicle fines is returned to municipalities, under existing provincial government programs. It is not retained by ICBC.

Your submission makes several other recommendations, which have already been implemented – including higher premiums for operators of luxury vehicles, incentives for drivers to purchase vehicles with accident-avoiding technology, an independent rate-setting agency and an independent operational review of ICBC. On the latter point, in particular, in 2018, government had PricewaterhouseCoopers conduct a detailed operational review of ICBC. The report concluded ICBC’s “current state operations are performing at or above our view of industry average performance.” All that being said, again, none of these measures are going to be enough to achieve our core principles of more affordability and better care for British Columbians.

Of course, every decision government is making today must be put into context of the major challenge for us all – the COVID-19 pandemic, including the effect it is having on our economy and the everyday lives of British Columbians. These are truly unique and challenging times and we are committed to continuing to do everything we can to bring relief to British Columbians, while ensuring their safety. The impacts of COVID-19 have been far-reaching, including the significant financial impacts many are currently feeling, through either loss of work or income, or through many of the other financial burdens being placed on them.

Given this reality, our move toward a whole new way of doing auto insurance in British Columbia, one that will significantly lower the cost of insurance for motorists, is needed now more than ever. Anything government and ICBC can do to drive down the cost of vehicle insurance for British Columbians now, in both a fair and equitable way, has an even greater sense of urgency.

While COVID-19 has tested British Columbia's justice system in many ways, court hearings never stopped. For example, during the months of April and May 2020, an average of 828 and 927 daily criminal appearances were scheduled to be heard province-wide, respectively. These included: applications; judicial interim releases (bail); fix date and disposition appearances; applications to revoke bail in Provincial Court, and bail and detention reviews conducted remotely; applications and authorizations based on written materials; sentencing hearings by video; voir dres or trial continuations with in-court appearances; summary conviction appeals by telephone; pre-trial and case management conferences by telephone; and fixing future trial dates remotely in Supreme Court.

We are continuing to work with the judiciary to improve timeliness and efficiency, to further reduce delays in courtrooms across the province. This uniquely challenging situation has provided us with many opportunities for innovation and will allow us to rethink how we provide justice services now and in the future.

Independent of the impacts of COVID-19, there is clearly a significant risk in relying upon a tort system for providing income replacement or additional care benefits to those injured in motor vehicle crashes. Even without the current unavoidable backlog caused by public health restrictions, people wait far too long for a resolution of their claim under the current system – an average of almost two years for litigated claims.

Under Enhanced Care, those same people would not have waited for years and borrowed money, often from their lawyers, or creditors associated to their lawyers, to survive. Instead, they would have started receiving income replacement and rehabilitation benefits immediately, and they would continue uninterrupted. The Civil Resolution Tribunal continues to operate and resolve minor injury claim disputes during this time so if they had had a dispute with ICBC over entitlement that could have been resolved efficiently. By moving to the Enhanced Care model, we will see a dramatic reduction in litigated claims, which will only help to ease the increased burden our courts will face over the next few years.

Your submission states that “despite a multitude of variations in the insurance systems implemented across Canada, there is no conclusive evidence that no-fault reforms have resulted in a dramatic or sustained reduction in insurance costs over time.” This statement is directly shown to be false by the lived experience in two Canadian provinces, which provide clear evidence that care-based auto insurance systems do work – for both policyholders and auto insurers. For many years now, both Manitoba and Saskatchewan have had care-based systems, which have proven to be successful in achieving very stable rates and superior care coverage.

While all jurisdictions across Canada are facing pressures on their auto insurance models, Manitoba Public Insurance (MPI) and Saskatchewan Government Insurance (SGI) are providing some of the lowest and most stable insurance rates across Canada. MPI has been able to keep its

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annual rate increases below the cost of inflation for a number of years and, most recently, has applied for an overall rate decrease of 10.5 per cent – its largest rate reduction in three decades. Meanwhile, SGI has not had a rate increase for the last five years.

As if further evidence were needed, our government commissioned EY to conduct a report, titled ‘Canadian Automobile Insurance Rate Comparisons’ in February, which also concluded both MPI and SGI offer drivers among the lowest rates in Canada. These are just the type of outcomes – rate relief to drivers and a financially-stable public auto insurer that provides great care – we want to achieve here in British Columbia.

I also want to briefly address your submission regarding the *Evidence Act Amendment Act 2020*, which you will be aware received Royal Assent on July 8, 2020. Expensive, drawn out legal battles are not working for people who are injured in motor vehicle crashes or for British Columbia drivers who want more affordable rates. We are limiting the number of expert reports on damages that can be tendered in a motor vehicle personal injury case. We are placing a cap on recoverable expert report costs and total recoverable disbursements, in order to reduce litigation costs and delays which plague our current system. I will be following up separately with a formal request for your input related to the changes we are seeking to implement related to expert report and disbursement limits.

As I indicated during debate on the legislation, based on the feedback our government has heard from stakeholders, we are currently reviewing the most appropriate cap amounts to be placed on recoverable expert report costs and disbursements.

These changes will help resolve vehicle accident claims more efficiently and reduce excessive expert reports. This will help strike the right balance of protecting the interests of injured people and the affordability of our public auto insurance system, while also managing the strain on the court system during the transition to Enhanced Care.

British Columbians deserve auto insurance that both takes care of them when they need it and, just as importantly, is affordable to them. That is just what Enhanced Care coverage will deliver.

I appreciate your taking the time to write and for your supporting submissions.

Yours truly,

A handwritten signature in black ink, appearing to read 'D. Eby', with a long horizontal flourish extending to the right.

David Eby, QC
Attorney General

pc: Mr. Richard Fyfe, Deputy Attorney General
Mr. Craig Ferris, President, Law Society of British Columbia
Mr. Nicolas Jimenez, President and CEO, ICBC