

**IS ALBERTA ABOUT TO EXPAND NO-FAULT AUTO INSURANCE?**

This month the Alberta government is expected to release the recommendations of an advisory committee established to review the auto insurance system in that province. The review was prompted by rising public concern about the rapid growth in the cost of auto insurance, and is likely to recommend an expansion of the no-fault injury model.

**Alberta's Hybrid Tort Model**

In Alberta, the compulsory Basic and the Optional additional coverage is provided by private or co-op insurers, and annual rate increases must be approved by the independent Rate Review Board. In 2004, in response to the growing cost of injury claims, the government capped the awards for pain and suffering for minor injuries.<sup>1</sup>

All injured individuals, including the at-fault driver, are entitled to no-fault accident benefits to a maximum of \$50,000.<sup>2</sup> If the financial loss is greater than the maximum limit the only recourse for the no-at-fault party is to sue. The injured party can sue for pain and suffering if the injury is considered non-minor. In recent years, the number of pain and suffering awards has been rising because certain forms of jaw injuries were not covered in the original statutory definition of a minor injury.

**The Crisis Develops**

In the last few years, the high (and rising) cost of auto insurance became an issue of public concern, especially when Albertans compared their rates to those of Saskatchewan and Manitoba (see Appendix A and B). In late 2017, the NDP government ordered the provincial rate regulator to cap annual rate increases at 5%. This form of price control resulted in many insurers limiting their underwriting exposures by only insuring low-risk drivers, causing a crisis of adequate coverage availability.<sup>3</sup> When the newly elected United Conservative party ended the price control in 2018 auto insurance prices leap higher.

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<sup>1</sup> The limitation was challenged in the courts and was upheld by the Alberta court of appeal, and the Supreme Court of Canada refused to hear and appeal.

<sup>2</sup> Most provinces mandate a higher limit for the no-fault accident benefits. Currently, the limit is \$300,000 in BC.

<sup>3</sup>

[http://www.bcpolicyperspectives.com/media/attachments/view/doc/commentary\\_alberta\\_insur\\_standards\\_1\\_october\\_2019/pdf/commentary\\_alberta\\_insur\\_standards\\_1\\_october\\_2019.pdf](http://www.bcpolicyperspectives.com/media/attachments/view/doc/commentary_alberta_insur_standards_1_october_2019/pdf/commentary_alberta_insur_standards_1_october_2019.pdf) Limiting ICBC's price increases was the approach of the BC Liberal government starting in 2014 and resulted in the complete depletion of the policyholders' capital (equity) reserves.

In June 2019, the insurance brokers association of Alberta launched a task force to development recommendations to confront the “crisis” in auto insurance.<sup>4</sup> The resulting report stated that the current auto insurance system “has serious deficiencies that have led to an unsustainable system for the insurance industry, and ultimately, the Alberta consumer.” The brokers report recommended several changes, including allowing policyholders the option to purchase no-fault insurance, which would be similar to the dual model available in Saskatchewan.<sup>5</sup>

## **The Review**

The Alberta government believed that the current hybrid-tort model for auto insurance was generating unsustainable price increases. In December 2019, Premier Kenny announced the formation of a three-person review panel to address “out-of-control increases on personal injury awards.” A no-fault system was specifically mentioned; “We’re going to look at how to have a more effective control,” Kenney said. “Something like a no-fault insurance system, which maintains a reasonable control on the awards.”<sup>6</sup>

Finance Minister Toews stated that “We know the automobile insurance industry ... is no longer meeting Albertans’ needs. We pay some of the highest automobile rates in the country. Our government is omitted to addressing this problem and making necessary changes to automobile insurance.”

The Panel’s review was to be guided by four key principles: fair, accessible, and affordable automobile insurance; timely and appropriate claims outcomes; a private-sector delivery model for automobile insurance; and a viable and sustainable automobile insurance system.<sup>7</sup>

These principles ruled-out any public insurer option, but did suggest that an expansion of the no-fault system. This belief was reinforced in March 2020, when it came to light that the previous government had commissioned a study which recommended a no-fault model similar to the Ontario system.<sup>8</sup> The report recommended the system be modified to make it easier for a claimant “to make a claim without the time consuming and costly legal process.”<sup>9</sup>

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<sup>4</sup> <https://www.ibaa.ca/news/454602/IBAA-Announces-Task-Force-on-Sustainable-Solutions-to-the-Auto-Insurance-Crisis-in-Alberta.htm>

<sup>5</sup> [https://cdn.ymaws.com/www.ibaa.ca/resource/resmgr/website\\_docs/the\\_framework\\_-\\_fixing\\_the\\_a.pdf](https://cdn.ymaws.com/www.ibaa.ca/resource/resmgr/website_docs/the_framework_-_fixing_the_a.pdf)

<sup>6</sup> <https://www.cbc.ca/news/canada/calgary/calgary-personal-injury-lawyer-no-fault-auto-insurance-in-alberta-1.5486388>

<sup>7</sup> <https://www.alberta.ca/release.cfm?xID=67332019D9B80-D7A9-49C2-24BAF94FB3C95C97>

<sup>8</sup> For a detailed review of the Ontario model see <https://www.fin.gov.on.ca/en/autoinsurance/fair-benefits.pdf>

<sup>9</sup> <https://www.thestar.com/news/canada/2020/03/17/leaked-alberta-auto-insurance-study-recommends-bizarre-measures-like-no-more-suing-over-pain-and-suffering.html>

## **BC the Legislature is Debating the Legislation to Mandate No-Fault**

On 6 February 2020, the BC government announced that ICBC would shift to a no-fault liability model in May 2021. The no-fault system will prohibit injured victims from suing the at-fault party, particularly for pain and suffering (general damages). The savings from lower claims costs will be re-directed to enhanced coverage, and to reducing the combined Basic and Optional rates by approximately 20%.

The changes to the Insurance (Motor Vehicle) Act, which provide the basis for detailed regulations to mandate a no-fault/enhance care model, are now being debated in the Legislature. The rapid increase in injury claims costs, especially the payment for pain and suffering, and the increase in related legal costs were cited by the government as causing the rates for auto insurance to increase at unsustainable levels.<sup>10</sup> The new model was based on the no-fault system that had been in place in Manitoba since 1994.

The Liberal party opposes the change to the no-fault/enhanced care model because it eliminates the right of the victim to sue the at-fault party, and its ICBC critic questioned whether the assumed savings would be achieved.<sup>11</sup>

BC was the last jurisdiction in Canada to abandon the full tort system for auto insurance liability coverage. In April 2019, the model shifted to a hybrid tort scheme like that currently in place in Alberta. Assuming the legislation and regulations are in place, the no-fault model should be operational by May 2021. Will Alberta follow the BC example and reform its auto insurance through a shift closer to a full no-fault model?

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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 both ICBC's and BC Hydro's rate requests.

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<sup>10</sup> <https://www.leg.bc.ca/documents-data/debate-transcripts/41st-parliament/5th-session/20200622pm-House-Blues#328B:1515> see approximately 3:10 pm.

<sup>11</sup> Ibid. Mr. Johal spent much of his time criticizing ICBC's monopoly on the sale of the compulsory Basic insurance.

## APPENDIX A

Each year as part of its Base rate request to the PUB the MPI compiles a comparison of price quotes for different cities and insurers. It uses the most common vehicle registered in Manitoba ( a 2016 Ford F-150 XLT SuperCrew), a \$500 all perils deductible, and \$2 million in third-party liability.

Scenario A – 21-year old male, claims and conviction free

Scenario B – 40-year old couple with a 16-year old son, all claims and conviction free

Scenario C – 35-year old couple, both claims and conviction free

### Quoted Basic and Optional Price Comparison for 2019 (dollars)

	Vancouver	Calgary	Regina	Winnipeg	Toronto	Montreal
Scenario A	3,976	7,297	1,438	1,718	7,505	7,459
Scenario B	2,650	4,182	1,261	1,406	5,505	2,674
Scenario C	2,144	2,119	1,291	1,361	2,814	2,155

Source: MPI 2020 Basic Rate Request Application, Part IV; [https://apps.mpi.mb.ca/Rate-Application/2020/GRA/2020\\_GRA.pdf](https://apps.mpi.mb.ca/Rate-Application/2020/GRA/2020_GRA.pdf) Pdf 188/13334

Note: In September 2019 ICBC changed the rate design formula which resulted in much higher prices for inexperienced (young) drivers. The Vancouver numbers do not reflect this change.

## APPENDIX B

### Rate Increases for the Last Five Years

The rate increases for Basic auto insurance for the western provinces and Ontario are shown below. Clearly the no-fault programs in Saskatchewan and Manitoba have had much lower annual rate increases than the other three jurisdictions. The zero increase for ICBC in 2018 was due to a change in the policy year from November to October to April to March, thus the increase of 1 November 2018 was superseded by the requested increase of 6.3% for 1 April 2019.

	<b>B.C.</b>	<b>Alberta</b>	<b>Saskatchewan</b>	<b>Manitoba</b>	<b>Ontario</b>
<b>2015</b>	5.5	5.7	0.0	3.4	-1.0
<b>2016</b>	4.9	6.5	0.0	0.0	-1.4
<b>2017</b>	6.4	5.7	0.0	3.7	3.0
<b>2018</b>	0	6.9	0.0	2.6	9.0
<b>2019</b>	6.3	5.0	0.0	1.8	unknown

Source: ICBC response to BCOAPO information requests 1.1 and 2.1 (pdf 628 and 632)

[https://www.bcuc.com/Documents/Proceedings/2019/DOC\\_53549\\_B-2-ICBC-Responses-to-BCUC-Intervener-IR1.pdf](https://www.bcuc.com/Documents/Proceedings/2019/DOC_53549_B-2-ICBC-Responses-to-BCUC-Intervener-IR1.pdf); Alberta Rate Review Board <https://airb.alberta.ca/ratechanges/>; the 2019 increase of 5% was the maximum allowed by the provincial government for the period until July 2019.

The increases for ICBC were much lower than the actuarially required increases resulting in significant operating deficits.