

NDP PERPETUATES LIBERAL PRACTICES IN CONTROLLING ICBC'S FINANCES: KEEPS WATCHDOG CONFINDED

Attorney general David Eby, the minister responsible for ICBC, has rightly blamed the previous Liberal administration for allowing a crisis to develop in the finances of the public auto insurer. Through various cabinet directives the previous government kept annual compulsory Basic insurance rate increases low resulting in major annual losses and a serious depletion of the capital reserve. Despite close to \$1.0 billion in transfers in recent years from the Optional program, the Basic capital reserve was near the minimum regulatory ratio when the NDP assumed power in July 2017.

Through a variety of cabinet orders, the Liberal government greatly circumscribed the independence of the B.C. Utilities Commission, which was intended to provide independent regulatory oversight of the monopoly Basic program.¹ These actions contributed to the financial crisis, and to the lack of public awareness of the gaming of the finances at ICBC.

By continuing with the restrictions on the BCUC's independence, and adding a few new twists, the NDP government seems to have adopted the old thinking of the Liberals.

A Financial Crisis from Day One

When he assumed responsibility for ICBC attorney general Eby was immediately confronted by a report commissioned by the previous government which reviewed the financial problems and suggested some general options to avoid massive rate increases in the Basic program. He was also faced with a looming deadline for filing the 2017 policy year Basic rate increase to the B.C. Utilities Commission (BCUC).

ICBC advised the government that a general 20% increase was required to keep the Basic capital reserve above the 100% regulatory minimum ratio that the BCUC was required to meet when determining the rate change. Also, the 2013 "rate smoothing" cabinet directive was still in effect which limited the BCUC to a maximum increase of only 6.8%.²

Rather than rescind the "rate smoothing" limitation on the Commission's rate setting authority, the government approved the 6.8% increase, and ordered ICBC to transfer \$470 million of the rapidly diminishing Optional capital reserve to keep the Basic

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http://www.bcpolicyperspectives.com/media/attachments/view/doc/occasional_paper_no_15_bcuc_independence_27_october_2016/pdf/occasional_paper_no_15_bcuc_independence_27_october_2016.pdf

² OIC 152/13 of March 2013; http://www.bclaws.ca/civix/document/id/oic/arc_oic/0152_2013

capital at the regulatory minimum.³ This met the government's affordability objective but dug the financial hole even deeper at ICBC.

In December 2017, the NDP government emulated the Liberal's pattern of infringing on the BCUC's independence when it ordered the BCUC to make an early decision on the (mostly pro forma) 2017 rate increase.⁴

Rate Affordability Changes at ICBC

The most obvious way to avoid massive rate increases and bring expenditures back into balance with premium revenues was to reduce claims costs. In February 2018, ICBC and the government announced a series of important changes to the Basic coverage, including higher no-fault benefit limits and a cap on minor injury pain and suffering claims. ICBC forecast that these changes would save approximately \$1.0 billion in claims costs once annualized.

But the phase-in to realize the savings was too long to maintain the Basic capital reserve. In February 2018 cabinet ordered the suspension of the 100% minimum ratio for the Basic program,⁵ which allowed the BCUC to set the Basic rate increases at much lower levels.

At the same time the government ordered ICBC to fund the additional costs associated with developing the new Basic coverage rules and the planned Basic rate design changes from the Optional program.⁶

This use of the Optional program to fund mostly Basic costs mirrored the Liberal government's approach to funding the \$400 million Transformation Program from 2012 to 2016. While contrary to the policy of no cross-subsidization, in 2012 the Optional program had surplus capital to draw upon. But by 2018 the Optional capital reserve is now approximately \$2.0 billion below the management target level, and far below the levels competing private insurers are required to carry.⁷

³ OIC 326/17 of September 2017; http://www.bclaws.ca/civix/document/id/oic/oic_cur/0326_2017 Optional rates were increased by an annualized 9.6%.

⁴ OIC 602/17 required the BCUC to decide by January 12, 2018; http://www.bclaws.ca/civix/document/id/oic/oic_cur/0602_2017

⁵ OIC 67/18 suspended the 100% minimum capital ratio for 2018 to 2021; http://www.bclaws.ca/civix/document/id/oic/oic_cur/0067_2018

⁶ OIC 84/18 of March 5, 2018 gave effect to a letter from Eby dated February 13, 2018. http://www.bclaws.ca/civix/document/id/oic/oic_cur/0084_2018

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http://www.bcpolicy Perspectives.com/media/attachments/view/doc/occasional_paper_no_60_28_august_2018/pdf/occasional_paper_no_60_28_august_2018.pdf

The government justified the decision by saying it would relieve Basic policyholders of addition costs,⁸ but this is no comfort to the 80% of Basic policyholders who purchase Optional coverage from ICBC.

In fact, one must conclude that the underlying reason for funding these change initiatives from the Optional program was the desire to avoid the public scrutiny that could be expected from the BCUC if the appropriate amount was charged to the Basic program.⁹ ICBC does not provide a detailed year-end public report on its Optional program, and the BCUC has no jurisdiction over this program.¹⁰

Government Steamrolls BCUC Review of Basic Rate Design

After months of development, in early August the government unveiled a new and highly complex model for determining Basic rates. The new framework would be “fairer” to low-risk drivers by providing lower rates, and much more expensive for younger and higher risk drivers.

The last major change to the Basic rate design was approved by the BCUC in early 2008, after nine months of detailed review.

The government ordered the formerly independent regulator only 45 days from the time of filing (September 15) to render a decision. The BCUC’s “streamlined” review process will not be able to explore the details of how the new model will operate, and the government directive limited the scope of the review as well.¹¹

A Return to Independent Oversight?

The NDP may have decided that an independent regulator, with the authority to ask difficult or potentially embarrassing questions, was an unaffordable luxury while the government and ICBC struggled to resolve the financial crisis and address the public concern about rate fairness. Certainly, the four-year hiatus in the need to meet the 100% capital ratio suggests that it may be some years before the government restores the Commission’s independence.

Alternatively, after reforming the tort coverage and radically changing the Basic rate design model, the government may be planning to review the efficacy of having the BCUC perform the role of the regulator. An independent review board that recommends rate changes to cabinet, similar to the Saskatchewan model, may be more efficient and

⁸ Ibid.; see letter attached.

⁹ It would appear that Ernst Young and Accenture have been given untendered contracts to assist in the implementation of the changes, see reference at http://www.bcuc.com/Documents/Proceedings/2018/DOC_52228_B-1_ICBC-2018RateDesign.pdf p. 4-1.

¹⁰ And ICBC’s lawyers ensure that questions regarding the Optional program are ruled as out-of-bounds during the BCUC’s annual Basic rate reviews.

¹¹ http://www.bcuc.com/Documents/Proceedings/2018/DOC_52232_A-2-Timetable.pdf

effective. The Alberta government recently assigned its independent review board with the pricing authority for both the Basic and the Optional auto insurance.

We shall await developments in the unfolding saga of the politicization of ICBC's finances.

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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.

APPENDIX

KEY GOVERNMENT DIRECTIVES RESPECTING BASIC INSURANCE SINCE 2012

2013

OIC 152/13 March 2013; amendments to SD IC2; incorporating rate smoothing, a customer renewal credit and annual rate changes; annual rate increases are limited and rates cannot decrease; the Commission to set rates to allow Basic to maintain at least 100% MCT level.

OIC 153/13 March; ICBC directed to seek BCUC approval for a revised capital management plan "to use Basic capital to promote more stable and predictable Basic rates." If the MCT reserve ratio is projected to fall below 100% ICBC must, in conjunction with Treasury Board, develop a plan to restore the capital level.

2014

OIC 15/14 February; transfers balance of excess Optional capital to Basic for 2013 (\$113 million).

OIC 56/14 February; changes policy year to November 1st.

2016

Insurance Corporation Act amended to allow ICBC capital reserve targets to be set by cabinet order.

OIC 614/16 August; orders Optional transfer of \$300 million of net income and \$172 million of capital to allow ICBC to propose a 4.9% rate increase despite a forecast requirement of 15.5%.

OIC 615/16 August; amends Special Direction IC2 deleting all references to Commission approval of the Basic capital reserve target.

OIC 960/16 December; orders the Commission to approve a maximum 4.9% rate increase for PY2016 by January 16, 2017. The government ordered ICBC to conduct an “independent’ review of Basic insurance rates.

2017

OIC 326/17 September; orders transfer of \$470 million from Optional capital to Basic to allow a 6.8% rate increase..

OIC 602/17 December; Orders BCUC to end 2017 Basic rate review by January 12, 2018.

2018

OIC 67/18 February; suspends requirement of BCUC to set Basic rates to ensure a minimum 100% MCT for the years 2018 to 2021.

OIC 84/18 March 5; orders ICBC (February 13th) to fund costs relating to “Rate Affordability” initiatives, including Basic coverage changes and rate design, from the Optional program.

OIC 456/18 August 9; changes Basic policy year to April-March, with rate application filing by 15 December of prior year.

OIC 457/18 August 9; ICBC ordered to make policy year 2019 rate request by December 15, 2018.

OIC 459/18 August 9; directs BCUC to decide on the Basic rate design application within 45 days of filing.