

ICBC 2019 RATE REQUEST APPLICATION

REQUEST THAT BCUC PANEL REQUIRE ICBC TO PUBLICLY FILE FULL RESPONSE TO IR 2019.1, RM 3.8.

My IR 3.8 requested a) the number of closed Basic exposures or claims, b) the total settlement amount and c) the average settlement (severity) amount per exposure or claim for 2012, 2015, 2016/17, 2017/18 and the forecast for 2018/19. These were to be grouped as unrepresented, represented but not litigated and litigated.

In its 8 March 2019 response ICBC provided the number of settled exposure counts for the requested years in the three categories, but redacted the total award and the average severity.¹

I am requesting the Panel to direct ICBC to publicly file the requested information.

Rationale

ICBC justified the redaction because it deems the average severity information confidential:

Unrepresented and Represented BI severity data is considered confidential. The confidential information, if made public, could influence settlement negotiations with claimants and prejudice ICBC and its Basic insurance policyholders and thereby harm their financial interests. The unredacted version of the response to this information request has been filed confidentially with the BCUC.²

During the 15 March 2019 procedural workshop Mr. Ghikas provided stated that the request for confidentiality was in keeping with past practice.³ He went on to suggest that access to the average settlement amount for closed claims could set some sort of monetary benchmark for claimants who have outstanding claims. “They see -- they have the potential to see averages as a benchmark or as an entitlement. They have the potential to look at individual settlement offers and the amounts awarded at trial as indicative of what they may obtain in the future.”⁴

Mr. Ghikas went on to say that the dire financial situation of the public auto insurer is a good reason to keep the average settlement award information from the public: “The last thing that we want to do is compound the problem by introducing evidence into the

¹ https://www.bcuc.com/Documents/Proceedings/2019/DOC_53549_B-2-ICBC-Responses-to-BCUC-Intervener-IR1.pdf pdf 789.

² Ibid.

³ https://www.bcuc.com/Documents/Transcripts/2019/DOC_53665_2019-03-26-Transcript-PC-Vol-1.pdf p. 34.

⁴ Ibid. p. 36.

public that could be, you know, misinterpreted and used against the -- to the detriment of policyholders generally.”⁵

Treating Average Settlement Awards as Confidential is New

Seeking to keep the average settlement awards confidential is not in keeping with past practice. During the 2016 RRA, in response to my IR 1 RM 3.4 to 4.1 ICBC provided a comprehensive response for paid severity grouped as unrepresented, represented but not litigated and litigated for 2012 and 2015.⁶

The following year when I requested similar information for 2016/17 ICBC did not provide it because it said that the 2012 and 2015 information was from a one-time study. It had not repeated the study for 2016/17. It did not say that it considered such average severity information confidential.⁷

The Previous BCUC Decision is Easily Distinguishable

To further support the claim that average severity settlements should be confidential Mr. Ghikas cited a 2013 oral decision related to a request for comparing pre-settlement offers to the final award at trial.⁸

This example is easily distinguishable from my request in that it involved some 200-250 settlements, not the 62,000 settlements for 2017/18. It may be possible for some enterprising personal injury lawyer to develop some sort of monetary benchmark from the small number of court ordered settlements, but it stretches credulity to assert that litigators could somehow use the average of the 17,000 litigated settlements in 2017/18 (or the 12,000 litigated settlements in 2012/13) to run up the average cost of pending claims.

The Average Severity of Settlements is A Key Indicator

Lowering the average cost of injury claims is a vital aspect of the new Basic coverage model which is designed to end the financial losses in the Basic program. ICBC, using the EY study, estimates gross savings of some \$1.5 billion, offsetting a huge increase in the forecasted claims costs for 2019/20 before the product changes.

For the public to have confidence that the coverage and process changes will have the desired financial impact, and for assurance that the requested 6.3% increase will achieve the forecasted result, it is important that the key data be publicly available and verifiable.

⁵ Ibid.

⁶ https://www.bcuc.com/Documents/Proceedings/2016/DOC_47830_B-2_ICBC-IR-No-1.pdf pdf 628-632.

⁷ https://www.bcuc.com/Documents/Proceedings/2017/DOC_50367_B-2_ICBC-Responses-to-IR-1.pdf pdf 119.

⁸ https://www.bcuc.com/Documents/Transcripts/2019/DOC_53665_2019-03-26-Transcript-PC-Vol-1.pdf p. 37, and https://www.bcuc.com/Documents/Proceedings/2014/DOC_40598_B-16_ICBC-ANSWER-AIC-UNDERTAKING.pdf

This statement conforms to the B.C. Utilities Commission’s default option in its rule 17.01, where, subject to limited restrictions, “information filed by parties in a matter before the BCUC will be placed on the evidentiary record and may be made publicly available.”⁹

Historic injury severity information for settled exposures is critical to comparing the recent past severities to ICBC’s forecasted severity for 2019/20. Without this information the acceptance of the 2019 RRA becomes much more a matter of faith and hope.

Is the Large Pre-Reform Forecast Increase in Claims Costs Believable?

In its application ICBC states that the status quo 2019/20 forecast for current year claims costs is almost 24% higher than the forecast for 2018/19. In my occasional paper number 66 of 26 February 2019, I question whether ICBC is over-stating the 2019/20 forecast.¹⁰

The public, as well as BCUC staff¹¹ would have greater assurance in the ICBC forecasts if more key information was published on a regular basis. Unfortunately, the claim for confidentiality seems to form part of a strategy to limit transparency and accountability.

ICBC Discussed the Average Severity for Litigated Claims

I would also note that ICBC president Nicholas Jimenez and Attorney General Eby did not think that the average litigated injury claim settlement demanded for litigated claims was confidential. In explaining the most recent 2018/19 financial operating loss forecast they specifically used litigated claim severity information to justify the growing loss.¹²

Is it reasonable to place this information in the public domain through the media, yet refuse to provide the historic severities to explain and justify the planned injury claims savings that are fundamental to this rate request?

Respectfully Submitted.

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⁹ https://www.bcuc.com/Documents/Participant-Info/G-15-19_BCUC_Rules_of_Practice_and_Procedure.pdf

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http://www.bcpolicyperspectives.com/media/attachments/view/doc/occasional_paper_no_66_26_feb_2019/pdf/occasional_paper_no_66_26_feb_2019.pdf

¹¹ The accuracy of ICBC’s recent forecasts was questioned during the March 15th procedural conference.

¹² <https://vancouver.sun.com/news/politics/icbc-financial-losses-worsen-to-1-18-billion-this-year>

