

RETREAT FROM TRANSPARENCY: ICBC DEEMS AVERAGE INJURY CLAIMS DATA CONFIDENTIAL

During the last two fiscal years ICBC's compulsory Basic insurance program has lost approximately \$2.3 billion, and by 31 March 2019 the corporation was insolvent, with liabilities forecast to exceed assets by some \$270 million.¹ The government has made major changes to Basic coverage, including a cap on pain and suffering awards for minor injuries, to lower claims costs.

In its rate request to the B.C. Utilities Commission (BCUC) ICBC asserts that the coverage changes will avoid a 44% increase in Basic rates for 2019/20 (approximately \$1.5 billion).² Instead, it is seeking a 6.3% increase (approximately \$220 million) to balance revenues and expenditures for the year.

But it is impossible to determine if ICBC's forecasted savings from the coverage changes are reasonable because our public auto insurer has refused to disclose key forecasting data.

ICBC Withholds Key Severity Information

In the last few years ICBC has argued that part of the rapid increase in average injury claims costs (claim severity) is the result of an increasing portion of claimants who obtain legal representation. Legal representation is much more prevalent for serious and more complex injury claims.

ICBC has also stated that in recent years the rapid growth in claims for minor injuries, both represented and unrepresented, has been a major driver of total injury claims costs.

ICBC states that the changes to the coverage, including the cap on pain and suffering awards for minor injuries and the increase in the no-fault accident benefits, will result in net claims costs savings of almost \$1.2 billion.³ It relies on a November 2018 study by Ernst Young (EY) to justify the estimated claims costs savings.

¹ <https://www.icbc.com/about-icbc/company-info/Documents/service-plan-2019-2022.pdf> p. 18.

² ICBC cited various cost pressures for the increase in the forecasted claims costs, especially the growing number of more expensive claims and the growing proportion of claims represented by a lawyer. See chapters 2 and 4 in https://www.bcuc.com/Documents/Proceedings/2018/DOC_53062_B-1-ICBC-2019-RRA.pdf

³ Ibid., Appendix E.2 (pdf 211).

The coverage changes are designed to provide those with minor injuries greater no-fault accident benefits (the financial maximums for these Part 7 benefits were significantly increased) but reduce the payments for pain and suffering. To have confidence in the forecasted net savings for 2019/20 it is important to understand the assumptions about injury claim severity by representation status. Whether a claimant is represented by a lawyer and whether the claim results in litigation are useful indicators of the severity of an injury claim.

But ICBC redacted the severities for both minor and non-minor injury claims, and the severities by representation status (although the information was provided to the BCUC on a confidential basis).

ICBC Claims Potential Financial Loss if Information Made Public

ICBC justified the claim of confidentiality by arguing that injured claimants could use the average settlement information to bolster their damage claims, thereby driving up total claim costs.⁴

This ignores the fact that claims for pecuniary losses are based on the unique characteristics of the personal injury, while the non-pecuniary (pain and suffering) settlements are based on court ordered awards for similar fact patterns. To suggest that knowing the corporation's forecasted average award for thousands of claims by representation level could influence specific claims is a major stretch.⁵

Claim of Potential Harm Part of a Pattern

In recent Basic rate request filings ICBC has claimed that disclosing the forecasted severity levels by representation status could result in financial harm, as the assumed average payment would be used by claimants/litigants as a starting point for their financial claim. The assertion of potential harm was used to file confidential responses to BCUC questions about forecasted severity levels in the review process for 2017, 2016 and 2015.

Unfortunately, in the earlier reviews the BCUC did not question ICBC's assertion that disclosing the average severity assumptions would harm its financial interests. In fact,

⁴ Ibid., Technical Appendix E.0, (pdf 512). Information may be kept confidential where its disclosure could cause financial harm to an organization.

⁵ Unfortunately, in a number of recent rate request filings the BCUC has allowed ICBC to use the claim of a potential financial harm if the segmented injury severity forecasts were disclosed. The corporation has appropriately withheld information that might directly affect negotiations with its suppliers or divulge confidential contract information. But the BCUC should have been less accommodating when ICBC claimed that disclosing the forecasted injury severities by representation level would result in greater claims costs.

the Commission (which received the unredacted information) proceeded to query ICBC on the material – in confidence.⁶

One must question how strongly ICBC holds to the belief that the disclosure of the average severity would result in financial harm when both its president and the attorney general used the increase in the litigated severity to justify the increase in the Basic program deficit for 2018/19.⁷ 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?

Severity is a Key Data Element

Without this key severity information, it is very difficult to analyze the ICBC/EY claims costs forecast for 2019/20. We must rely on ICBC's assertions and hope that the coverage changes (or "product reform" in ICBC's terminology) will produce enough savings to fund the large increase in Part 7 benefits and still allow the Basic program to break-even for 2019/20, after including the 6.3% rate increase which became effective on 1 April 2019.

ICBC Attempts to Widen Scope of Confidentiality

Not content with withholding the anticipated injury claim severity information, in the 2019 rate submission ICBC attempted to withhold the actual paid severity data from previous years.

When the writer asked for the actual amount and average cost of settled claims by representation status for 2012 to 2017/18 (past not future years) ICBC refused to make this information public. It argued that injured parties with open claims could use the average settlements as a start point for their financial requests: "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."⁸

As a further reason for not disclosing the past severity amounts by representation status the lawyer representing ICBC stated that the insurer's dire financial situation was a good reason to keep the average claim settlement from the public;" The last thing that we want to do is compound the problem by introducing evidence into the public that could be, you know, misinterpreted and used against the -- to the detriment of policyholders generally."⁹

⁶ https://www.bcuc.com/Documents/Proceedings/2019/DOC_53374_A-8-Confidential-IR1-CoverLetter.pdf

⁷ <https://vancouver.sun.com/news/politics/icbc-financial-losses-worsen-to-1-18-billion-this-year>

⁸ https://www.bcuc.com/Documents/Proceedings/2019/DOC_53549_B-2-ICBC-Responses-to-BCUC-Intervener-IR1.pdf Pdf 790.

⁹ https://www.bcuc.com/Documents/Transcripts/2019/DOC_53665_2019-03-26-Transcript-PC-Vol-1.pdf p. 36.

When challenged to justify this position, especially when ICBC had provided such severity amounts by representation status in past rate reviews, ICBC abandoned its claim of confidentially and publicly filed the information.¹⁰

Injury Severities by Representation Status 2015/16 to 2017/18

The number of injury exposures settled, the total payments (including litigation costs) and the average payments are provided in the Appendix. The amount paid is charged to (or funded by) both the Basic program and, depending on the total settlement amount, the Optional program.

An exposure is an individual claim, while the term claim is linked to a vehicle involved in a crash. Therefore, a claim usually generates more than one injury exposure.

Summary

The latest attempt by ICBC to keep key data from the public is part of a disturbing management philosophy to limit transparency and accountability at our auto insurer.¹¹

Keeping key injury severity information confidential makes it much more difficult to independently assess ICBC's claims costs forecast (which may be the reason for the withholding). It also has the potential to undermine the public's trust in ICBC as our monopoly public auto insurer.

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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 is an intervener in the BC Utilities Commission's current reviews of both ICBC's and BC Hydro's rate requests.

¹⁰ https://www.bcuc.com/Documents/Proceedings/2019/DOC_53742_B-4-ICBC-Response-to-McCandless-Request.pdf

¹¹ See http://www.bcpolicyperspectives.com/media/attachments/view/doc/commentary_icbc_advice_to_eby_31_march_2019/pdf/commentary_icbc_advice_to_eby_31_march_2019.pdf and http://www.bcpolicyperspectives.com/media/attachments/view/doc/commentary_optional_24_january_2019/pdf/commentary_optional_24_january_2019.pdf

APPENDIX

Injury Claims Severity

Tables 1 through 3 was developed from the data that ICBC initially withheld. It shows that while unrepresented exposures make up almost half of the total settled for 2017/18, the amount paid was less than 10% of the total. The more complex litigated exposures, on the other hand, were only 27% of the 2017/18 exposures settled, but the value of the payments was just under 75% of the total paid.

It must be emphasized that the figures for the payments and the average payment include all payments (funded by the Basic and Optional programs) and include litigation costs for both plaintiffs and ICBC.

The increase in the total closed or settled exposures partly reflects the additional staff resources that ICBC has hired to deal with the large and growing number (and value) of pending injury exposures.

Table 1 – Number of Closed Basic and Optional Injury Exposures

	2015/16	2016/17	2017/18	2 yr. % Δ
Unrepresented	26,000	30,000	30,000	15.4
Repres. Not Litigated	10,000	14,000	15,000	50.0
Litigated	13,000	15,000	17,000	30.8
Total Paid	49,000	59,000	62,000	26.5

Source: https://www.bcuc.com/Documents/Proceedings/2019/DOC_53742_B-4-ICBC-Response-to-McCandless-Request.pdf

Table 2 – Total Paid for Closed Basic Injury Exposures (\$=millions)

	2015/16	2016/17	2017/18	2 yr. % Δ
Unrepresented	191	220	239	25.1
Repres. Not Litigated	234	321	396	69.2
Litigated	1,320	1,544	1,836	39.1
Total Paid	1,745	2,065	2,471	41.6

Source: https://www.bcuc.com/Documents/Proceedings/2019/DOC_53742_B-4-ICBC-Response-to-McCandless-Request.pdf

Table 3 – Average Cost of Closed Injury Exposure (\$)

	2015/16	2016/17	2017/18	2 yr. % Δ
Unrepresented	7,378	7,466	8,019	8.7
Repres. Not Litigated	22,692	23,682	26,486	16.7
Litigated	100,924	100,798	107,427	6.4
Average Cost	35,612	35,000	39,854	11.9

Source: https://www.bcuc.com/Documents/Proceedings/2019/DOC_53742_B-4-ICBC-Response-to-McCandless-Request.pdf

Highlights

- Over the two years the total of settled exposures increased by 26.5%, with settlements for represented exposures increasing faster than for unrepresented exposures.
- The average severity of settled exposures that were represented by a lawyer (but not litigated) increased by 16.7% during the last two years, while severity of litigated exposures increased by the smallest amount.
- This appears to contradict the argument that the recent growth in the cost of expensive exposures is a major reason for the growth in overall costs.

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