

RECENT MEDIA REPORTS RESPECTING ICBC FINANCES

The flurry of media reports concerning ICBC's financial crisis began on Thursday October 24, 2019, when Chief Justice Hinkson of the supreme court declares that the cabinet ordered limitation on expert reports not valid. He clearly implied that a legislative amendment to the Evidence Act would be acceptable.

The initial media reports stated that the decision would result in a \$400 million loss in the current year. ICBC booked a one-time \$449 reduction in 2018/19 (which assured that the corporation would avoid insolvency at year-end). The annual savings was estimated at approximately \$30 million.

B.C. Supreme Court rejects province's effort to limit use of experts paid for in ICBC cases Mike Hager, The Globe and Mail October 24, 2019.

<https://www.theglobeandmail.com/canada/british-columbia/article-bc-supreme-court-rejects-provinces-effort-to-limit-use-of-experts/>

ICBC faces \$400-million hit after court overturns limits on medical experts in lawsuits Rob Shaw, Vancouver Sun, October 24, 2019.

<https://vancouversun.com/news/politics/b-c-loses-court-challenge-on-expert-report-limits-in-icbc-cases>

WAS LIMITING EXPERT REPORTS GOOD PUBLIC POLICY OR A GAMBIT TO AVOID INSOLVENCY AT ICBC? Richard McCandless October 27, 2019.

http://www.bcpolicyperspectives.com/media/attachments/view/doc/commentary_icbc_400_million_27_october_2019/pdf/commentary_icbc_400_million_27_october_2019.pdf

The loss of the expert reports case at the supreme court and the potential resulting increase in ICBC's operating loss for the current year sparked questions in the legislature that afternoon. Attorney General Eby took the opportunity to deride the liberal government for allowing the financial crisis to happen. He revealed that former minister Todd Stone had promised to give a major auto repair industry lobby group ICBC's test repair facility.

Is No-Fault Insurance in the Wings?

The loss of the expert witness case promoted speculation about what would the government do if it lost the challenges to the cap in pain and suffering claims for minor injuries and the Civil Resolution Tribunal process for disputes up to \$50,000.

Justine Hunter of the Globe and Mail quoted (October 29, 2019) the attorney general as saying that losing the limit on expert reports was bad “but if we lost on the Civil Resolutions Tribunal and the cap on pain-and-suffering awards, it would be catastrophic.” Those changes were expected to reduce ICBC’s expenses by \$1 billion annually.

<https://www.theglobeandmail.com/canada/british-columbia/article-bc-supreme-court-ruling-on-icbc-puts-provinces-finances-at-risk/>

Rob Shaw (October 31, 2019) also noted that the attorney general said no-fault was not his preference, but if the hybrid tort model fails, he would be forced to reconsider to achieve the planned \$1.0 billion savings.

<https://vancouver.sun.com/news/politics/icbc-officials-spent-years-pushing-goofy-ideas-former-minister>

Vaughn Palmer wrote on November 1st (***Eby pulls no-fault concept out of his Halloween bag of ICBC horrors***) that during a media scrum the day before the attorney general hinted that the government would be forced to bring in a no-fault scheme if the courts rule against the cap on pain and suffering for minor injury claims. Palmer wrote:

“I told the trial lawyers very clearly that in going after these reforms, they need to be careful what they wish for because there won’t be many options left for government after that,” the cabinet minister for ICBC told reporters during a media scrum on Halloween.

“There are a number of different measures that we think we can bring in that would reduce rates and reduce costs — especially legal costs, which is what no-fault systems tend to address.”

<https://vancouver.sun.com/opinion/columnists/vaughn-palmer-eby-pulls-no-fault-concept-out-of-his-halloween-bag-of-icbc-horrors>

Are the Greedy Lawyers Costing the System \$1.9 Billion?

Adding to the media discussion was the release of ICBC’s annual statement of payments to employees and suppliers, published on Monday October 28th. Mike Smyth of The Province (***Another ICBC Sticker Shocker? \$1.9 Billion Paid to Law Firms Last Year***) reported based on a leaked copy of the report that ICBC suffered a net operating loss of \$1.15 billion for FY2018/19; but that information had been known some three months ago when the government released its public accounts for the

previous year. The ICBC report included a summary of payments to certain law firms on behalf of their clients, but this was initially interpreted as payments to the lawyers.

The attorney general seemed to be arguing for a no-fault model when he said that “soaring” legal fees are a key reason for ICBC’s financial losses. Smyth wrote “It’s frankly out of control,” Eby told me, noting ICBC spends a tonne of money on its own lawyers, too.... ‘It’s a big, bloated infrastructure on both sides — for plaintiffs and defendants — that people have to pay for on their car insurance,’ he said.”

<https://theprovince.com/opinion/columnists/another-icbc-sticker-shocker-1-9-billion-was-paid-to-law-firms-last-year>

ICBC Loses Control Over Managing Investments

In the flurry of reporting about the payments to the lawyers (***ICBC paid out nearly \$2 B to law firms in previous fiscal year***) Richard Zussman of Global News reported (October 28, 2019) that the government is moving the handling of ICBC’s billions of invested funds way from the corporation’s direct control (presumably to the BC Investment Management Corporation). This has been rumoured for some months.

<https://globalnews.ca/news/6092920/icbc-paid-out-nearly-2b-to-law-firms-in-previous-fiscal-year/>

Confusing Accounting Equates Net Income to a Dividend

On October 28th Global TV News Hour ran a story about ICBC’s finances. Keith Baldrey showed a graphic where the government/ICBC forecast positive net income for FY2020/21 and FY2021/22 totalling \$234 million. The net income was labeled as a dividend, which suggested a cash transfer to the government (see <https://globalnews.ca/news/6092920/icbc-paid-out-nearly-2b-to-law-firms-in-previous-fiscal-year/>).

While the national public sector accounting rules say that self-supporting Crown corporations’ revenue counts as government revenue it does not necessarily mean that the cash is transferred. In fact, B.C. Hydro’s planned \$712 million net income for the current year will not be transferred to the government, nor will the net loss at ICBC.

The attorney general later stated that the government intends to introduce legislation to prevent future governments from taking any of the policyholders’ funds from ICBC.

The ICBC Basic insurance, which is not intended to generate a profit, should be separated into a separate fund in the governments reporting structure (as is the case in Saskatchewan for its Basic insurance program).

Liberal Critic Struggles to Find Rationale for Attack

Using the latest data on employee earnings Liberal Critic Jas Johal attacked the government for allowing ICBC to increase the number of employees earning more than \$150,000. In fact, the attorney general noted that the number of high wage earners was declining. Mr. Johal boasted that the Liberal government did not allow ICBC to dramatically increase rates. He suggested that this benefited the policyholders while neglecting to mention that the Liberal government's policy of avoiding the financial problem at the Crown insurer led to the loss of all of ICBC's policyholders' equity.

<https://vancouversun.com/news/local-news/number-of-icbc-high-earners-nearly-doubles-since-2016>

ICBC Says Most of the Rate Shock for Inexperienced Drivers from the New Driver-Based Scheme Due to Optional Rate Increases

In defending the new driver-based risk model, introduced on September 1, 2019, ICBC and the attorney general revealed that some 2/3rds of the large rate increases being experienced by younger and inexperienced drivers is occurring on the competitive Optional coverage.

No data was provided to justify this statement because ICBC claims that any information on the Optional near monopoly is withheld for competitive reasons, meaning that more transparency could possibly result in the two major private insurers operating in BC gains some extra sales from ICBC. ICBC currently enjoys about 90% of the Optional market.

The government justified the new Basic rate design as bringing more fairness in assigning the costs between lower and higher risk drivers. By increasing the premiums of inexperienced (younger) policyholders, and the financial penalties for those who caused a claim, the new model lowered the rates for older and lower-risk policyholders.

If, as we now learn, most of the burden transfer is occurring in the Optional program one must wonder if the primary rationale for the new potential risk model was really to position ICBC to retain the lower risk Optional policyholders as ICBC customers.

They did this because it was necessary to offset the general Optional rate increase, estimated at about 12% for the current year. Without lowering the Optional premium for the lower risk policyholders through the new design ICBC risked losing many of the low risk customers to the private insurers. Such an interpretation puts the decision to switch to a risk pool model in a new light, and is a more compelling reason than justifying the shift to a driver-based risk model as a simple shift to better pricing.

Todd Stone's Interview and ICBC's 'Goofy' Ideas

During the height of the flurry of reports about ICBC's finances Todd Stone, the former Liberal minister responsible for ICBC, gave an interview which provided a number of insights into how the previous government mismanaged the corporation's finances.

<https://vancouversun.com/news/politics/icbc-officials-spent-years-pushing-goofy-ideas-former-minister> updated October 31, 2019

“Todd Stone, the minister in charge of ICBC before the 2017 election, said he nixed included implementing no-fault insurance, suspending driver's licences for people who received just one routine traffic ticket, selling the corporation's North Vancouver headquarters for \$40 million and [selling ICBC's website for \\$10 million](#) to a state-owned Chinese bank accused of money-laundering.”

It would appear that the Liberal government had ample warning of the developing financial crisis at ICBC but were unwilling to take the action necessary to stabilize the finances.

Stone said that minister Eby was a sucker for accepting the recommendation to shift to a driver risk model to calculate premiums. He said that the Liberals had rejected an ICBC proposal to implement a no-fault model.

““One was significantly increasing the penalty points in fines and suspending licences after one traffic violation,’ said Stone. ‘Secondly, they were they were relentless, as they had been for decades, that ICBC tried to convince us to do no-fault. We exercised our discretion as the cabinet of the day and said no to all of that stuff.’”

RMcC November 8, 2019.