

RECENT INITIATIVES RESPECTING AUTO INSURANCE IN BRITISH COLUMBIA

The Government Changes ICBC's Basic Rate Design to Avoid Double Jeopardy for Commercial Drivers

On 19 December 2019, the B.C. Utilities Commission (BCUC) agreed to a significant change to ICBC's new Basic insurance rate design formula. The new rate scheme was originally approved in September 2018 and took effect on 1 September 2019.¹ A government order (OIC 636/19) of 9 December 2019 required the BCUC to make a decision on the amendment by December 19th.

The amendment corrects a glaring flaw in the original model which places a greater reliance on the individual's at-fault claims history in determining the Basic premium. Under the previous model, commercial drivers who were deemed to have been at-fault in a claim while driving the commercial vehicle did not have that claim attached to their rating when calculating the premium for their own private vehicle. Under the "pricing perfection" philosophy underlying the new Basic rate design, a claim caused by individuals driving a commercial vehicle would be attached to that individual's personal rating (called the Individual Driving Factor). This would have resulted in higher premiums for the commercial driver when that driver insured his/her private vehicle.

Without the correction, this form of double jeopardy would have resulted in ICBC charging higher rates to the commercial operator and to the individual at-fault drivers when they sought insurance for their private vehicles. ICBC admitted that "a number" of commercial operators and their employees had "expressed concern" with the potential impacts of this aspect of the new rate design.²

While ICBC may not have wanted to weaken the logic of its driver-based risk model, the government was listening to the commercial operators and drivers. On 15 November 2019, the government directed ICBC (see OIC 636/19) to change the previously approved design and no longer record at-fault crashes caused by commercial fleet drivers against that driver's Individual Driving Factor.³ ICBC did not provide an estimate of the revenue loss resulting from this change.

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https://www.bcuc.com/Documents/Proceedings/2019/DOC_56667_G-335-19-ICBC-December-2019-Rate-Design-Amendment-FinalOrder.pdf For background on the new design see http://www.bcpolicyperspectives.com/media/attachments/view/doc/occasional_paper_no_59_16august_2018/pdf/occasional_paper_no_59_16august_2018.pdf

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https://www.bcuc.com/Documents/Proceedings/2019/DOC_56592_B-1-ICBC-Basic-Insurance-Rate-Design-Update-TariffAmendments.pdf p. 2.

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This is the second major amendment to the new Basic rate design. On 16 August 2019, the attorney general directed ICBC to exclude the drivers of emergency vehicles (including police and fire vehicles) from facing higher private passenger insurance premiums due to at-fault claims incurred while operating the emergency vehicle.⁴ It was odd that the proponents of the new rating scheme did not incorporate this exclusion for emergency responders in the initial design.

The government has not allowed the BCUC to adequately review the implications of the new Basic rating scheme. The government allowed the Commission only 45 days to decide on the new and more complex rate design, and has allowed the Commission only ten to decide on the requests to amend the original approval. Perhaps if the government had originally allowed a more thorough vetting of the new scheme these obvious shortcomings would have been resolved before the new scheme was announced.

Government Delays Filing of ICBC's Basic Rate Request for 2020

On 12 December 2019, the government ordered that the date for filing ICBC's Basic insurance tariff for the period April 2020 to March 2021 with the BCUC be postponed from 15 December 2019 to 16 February 2020.⁵ Attorney General David Eby explained that the delay was necessary to provide ICBC more time "to do the necessary financial analysis of two sets of planned reforms currently underway to help reduce costs, and by extension, car insurance rates."⁶

He elaborated on the two reforms: "First, we are working on reforms to respond to a recent court decision striking our limit on expert reports and associated costs.... Second, we are working on additional reforms in the tort system that will help to reduce costs and have a positive impact on any required rate changes."⁷

Is the reference to additional reforms to the tort system a hint that the government is now considering a legislative change to allow for no-fault liability coverage? Based on ICBC's actual second quarter financial results it appears that the capping of pain and suffering awards for minor injuries is not producing the estimated \$1.0 billion in claims savings as originally forecast.⁸

The short statement from ICBC concerning the delay in filing the 2020 Basic rate change made no mention of any additional reforms to the tort system.⁹ But a shift to a no-fault model offers the possibility of significant claims costs savings, and

https://www.bcuc.com/Documents/Proceedings/2019/DOC_56592_B-1-ICBC-Basic-Insurance-Rate-Design-Update-TariffAmendments.pdf

⁴ https://www.bcuc.com/Documents/Proceedings/2019/DOC_55182_B-1-ICBC-BI-RateDesign-UpdateTariffAmend-Application.pdf

⁵ OIC 644/19 of December 12, 2019.

⁶ <https://globalnews.ca/news/6289041/icbc-rate-application-delay/>

⁷ Ibid.

⁸ http://www.bcpolicyperspectives.com/media/attachments/view/doc/commentary_icbc_q2_report/pdf/commentary_icbc_q2_report.pdf

⁹ <https://www.icbc.com/about-icbc/newsroom/Pages/2019-dec12.aspx>

would achieve Premier Horgan's objective of reducing auto insurance rates (see below).

Is Alberta Considering a No-Fault System?

On December 18, 2019, the Alberta finance minister announced a review of auto insurance in that province, with the objective being a viable industry and drivers being able to obtain affordable coverage.¹⁰

During the last five years auto insurance rates in Alberta had been increasing sharply. This prompted the previous NDP government to limit annual increases to 5%, which resulted in many insurers refusing non-mandatory collision and comprehensive coverage for drivers deemed of a higher risk. Industry representatives said the cap was actually increasing rates and discouraging competition.¹¹ Some insurers stopped writing policies in that province, which may have allowed Intact Financial to increase its market share. The United Conservative government abandoned the price cap, which has resulted in steep price increases for drivers renewing their insurance.¹²

In announcing the review, the finance minister stated; "We ultimately need to deal with the challenges that are leading to increased premiums ... and present a reformed insurance system in this province that can serve Albertans well."¹³

In a related interview Premier Jason Kenney raised the possibility of adopting a no-fault model to replace the hybrid tort model which was introduced in 2004. Kenney said the government will use the next six months to address "out-of-control increases on personal injury awards." Those payouts contribute to driving up costs, which are then paid by customers through their premiums, he said.¹⁴

Premier Horgan Says ICBC's Rates Are Too High

The auto insurance review in Alberta may prove instructive for the B.C. government. ICBC's new hybrid-tort liability model, where minor injury pain and suffering claims are capped at \$5,500, used the Alberta scheme as its model. In a year-end interview Premier John Horgan stated that the people (and therefore the government) do not have confidence in ICBC; "We have got to get a handle on ICBC rates for people, we've got to bring rates down."¹⁵

¹⁰ <https://globalnews.ca/news/6313310/alberta-automobile-insurance-review-panel/>

¹¹ <https://edmontonjournal.com/news/local-news/panel-to-troubleshoot-albertas-auto-insurance-problem>

¹²

http://www.bcpolicy Perspectives.com/media/attachments/view/doc/commentary_alberta_insur_standards_1_october_2019/pdf/commentary_alberta_insur_standards_1_october_2019.pdf

¹³ <https://www.cbc.ca/news/canada/edmonton/auto-insurance-alberta-review-1.5401305>

¹⁴ Ibid.

¹⁵ <https://vancouver Sun.com/opinion/columnists/vaughn-palmer-horgan-aims-to-get-handle-on-icbc-downplays-rumours-of-snap-election>

The premier was sounding like the Alberta finance minister when he told Rob Shaw and Vaughn Palmer of the *Vancouver Sun* that the government must find a way “to rebalance ICBC, so that our public insurance company can provide the same services that we’re getting in other places at a rate that’s affordable for people.”¹⁶

Offering ICBC policyholders the choice of a tort and a no-fault third-party liability scheme, such as the Saskatchewan model, has the possibility of significantly reducing injury claims costs if it is designed to appeal to most drivers. Injured parties would receive all necessary care and be reimbursed for all other pecuniary losses without the need to sue the at-fault party.

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¹⁶ <https://vancouversun.com/opinion/columnists/vaughn-palmer-horgan-aims-to-get-handle-on-icbc-downplays-rumours-of-snap-election>