

ANNOUNCEMENT OF NO-FAULT (ENHANCED CARE) AUTO INSURANCE: BACKGROUND AND SUMMARIES

ICBC Documents Posted 6 February 2020

Transforming ICBC to deliver lower rates, better benefits

Umbrella page which includes a number of documents including a technical briefing <https://news.gov.bc.ca/files/New-Model-Launch.pdf> and a discussion Basic rates <https://www.icbc.com/insurance/costs/Documents/Basic-insurance-rates-2020-looking-ahead.pdf>

ICBC says Basic rates will remain unchanged for 2020 (while neglecting to mention that cabinet had ordered the BCUC to approve the 2020 rates without a review). The main reasons include fewer crashes and the savings from the cap on pain and suffering payments for minor injuries.

No-Fault: The Saskatchewan System

A useful summary of the difference between the no-fault and the tort models in Saskatchewan.

[https://www.sgi.sk.ca/documents/625510/626987/guide to choosing.pdf/44c2bd6b-10a8-43ab-b55b-72df161e8a33](https://www.sgi.sk.ca/documents/625510/626987/guide%20to%20choosing.pdf/44c2bd6b-10a8-43ab-b55b-72df161e8a33)

Media Stories

B.C. to cut ICBC rates 20 per cent and switch to 'no-fault' insurance, Rob Shaw, *Vancouver Sun*, February 6, 2020

“You shouldn’t need a lawyer to access the benefits you’ve paid for,” said Attorney General David Eby. “The current auto insurance system in British Columbia simply doesn’t work.”

A person’s doctor, not ICBC, will decide what recovery treatments are needed and for how long, according to the province.

Drivers will still be able to choose their deductible levels under no-fault, and purchase additional optional insurance from either ICBC or private providers — though optional insurance will mainly cover the areas of collision, comprehensive and travel outside of B.C.

Reaction by Andrew Wilkinson and the trial lawyers.

<https://vancouver.sun.com/news/local-news/live-b-c-to-switch-to-no-fault-auto-insurance-trim-rates-20-per-cent-in-2021>

The inside story on David Eby's decision to revamp ICBC, Rob Shaw
Vancouver Sun, February 6, 2020

An interview with Attorney General David Eby on how he changed from an opponent to a supporter of the no-fault model. The public's concern with the current cost of insurance was a major factor in convincing the AG to shift to no-fault.

"I had too much confidence that the legal system could change more quickly than it actually can," Eby told Postmedia News. "And I had an inadequate understanding at the time how concerned British Columbia were about their car insurance rates.

"I also had an inadequate understanding of how poorly the existing system supports people who have been in accidents."

Eby has been quietly working to develop no-fault auto insurance in B.C. since November 2018, after being convinced only dramatic reform could keep premiums from soaring.

The journey culminated with a series of cabinet meetings on no-fault that started last summer and continued until December, when Premier John Horgan finally gave the green light to proceed.

Eby said he knew the system was unsustainable as far back as November 2018, when the Insurance Corp. of B.C. told him that his new cap on pain and suffering costs for minor auto injuries was on track to save \$1 billion annually — yet wasn't enough to halt a projected 36 per cent rate increase over the next five years.

"It's not what people were asking for," he said. "They were not saying do your best to keep rates around four per cent. They were saying where we are is too expensive for us. And reducing the benefits, I didn't see as a very credible option."

The prospect of complex reforms, unpopular rate increases and facing more years of "chasing down additional savings" just to barely keep ICBC's finances in the black was, Eby says, simply untenable.

He fired a warning shot to trial lawyers in October 2019: "In going after these reforms, they should be careful what they wish for, because there won't be many options left for government after that."

By then, Eby knew no-fault was coming.

"I had decided," he said. "But I was still in the process of convincing my colleagues."

Cabinet made the decision in December to proceed.

It was, Eby admits, “a long discussion.”

<https://vancouversun.com/news/politics/from-no-fault-hater-to-no-fault-lover-the-inside-story-on-david-ebys-decision-to-revamp-icbc>

Personal Injury Lawyers Oppose the Change

ICBC changes put rights of injured at grave risk, lawyers warn, Ian Mulgrew, *Vancouver Sun*, February 7, 2020

“Their strategy of the last two years has failed,” Rice exploded. “This entire package was introduced by ambush. With no notice. The government campaigned on a promise of no, no-fault. They don’t have a mandate for this.”

“Instead, in exchange for sacrificing that, not being made whole, they get to deal with ICBC in what they call a ‘care model.’ They’ll have to deal with ICBC indefinitely, to trust in them to provide the care that ICBC deems is necessary. The only real beneficiary of this policy is ICBC.

<https://vancouversun.com/news/local-news/ian-mulgrew-rights-of-injured-at-grave-risk-lawyers-warn>

B.C. lawyers promise to consider whether to challenge no-fault, Nick Eagland, February 7, 2020.

<https://vancouversun.com/news/local-news/reaction-to-icbc-changes>

Legal community bristling over Eby's legerdemain, Ian Mulgrew, *Vancouver Sun*, February 13, 2020.

Object to secret plan to shift to no-fault.

At the same time, the lawyers complained loudly that ICBC’s litigation strategy was driving up legal costs and pushing more cases to trial — exacerbating the problem of crowded dockets and leaving claimants waiting months or years to collect.

“How can the public trust ICBC to be fair with no-fault when at the very same time ICBC is needlessly bullying people into trials that should settle for fair damages?” Rice asked. “These needless trials are a complete waste of money.”

No-fault may indeed be the answer to ICBC’s financial woes, but Eby’s method of introducing it raises troubling questions about his effort to avoid public debate.

In making the decision secretly ... oops, sorry ... “quietly,” he abandoned the high ground in favour of political expediency.

B.C.'s public auto insurance system gets a major overhaul, transitioning to no-fault model, Justine Hunter, *Globe and Mail*, February 6, 2020.

“Over time, the public will look back and say this was a pivotal moment in the history of a public auto insurance company that had lost its way,” Mr. Horgan told reporters at a news conference in Victoria.

<https://www.theglobeandmail.com/canada/british-columbia/article-bcs-public-auto-insurance-system-gets-a-major-overhaul/>

Based on Manitoba Model

B.C.'s new insurance system mirrors Manitoba's, Rob Shaw, *Vancouver Sun*, February 6, 2020

Much of Manitoba’s system was in turn modelled on Quebec, which brought in full no-fault in 1978, giving B.C. the benefit of long experiences in both provinces.

Staff at Manitoba Public Insurance have been helping actuaries at the Insurance Corp. of B.C. estimate costs and crunch data for months, said Ben Graham, CEO of the Manitoba agency.

“If you think about that from managing your financial exposure, it really helps with that predictably in the rates. What B.C. will probably find in the coming years is they will recalibrate their insurance rates, but when they get it to the model we have in Manitoba, which is a break-even model on insurance, it should be much more predictable.”

Graham said customers are less inclined to try to perpetrate fraud because instead of chasing one large court payment that may not land in their favour, they receive predictable weekly and monthly benefits.

The number of personal injury lawyers in Manitoba is proportionally a fraction of that in B.C. because of the no-fault system, said Graham. And while the B.C. public may be skeptical, he said once ICBC begins to funnel the \$700 million annually it spends in legal fees back into the benefits system, he expects it will produce a notable change in public sentiment.

“I actually think a number of years from now premiums will be so much lower, and people will still be getting amazing coverage, it will be a non-topic,” he said.

<https://vancouver.sun.com/news/politics/b-c-s-new-insurance-system-mirrors-manitobas>

With Eby's ICBC flip-flop, what could possibly go wrong?

Vaughn Palmer, *Vancouver Sun*, February 7, 2020.

Notes that initially David Eby opposed no-fault. Then during an October 2019 press scrum...

He then mentioned “no-fault systems” as one option for reducing legal costs. Was no-fault really back in play? Eby was asked as a follow-up. He just smiled and exited the scrum.

The date was last Oct. 31, Halloween. Eby’s attempt to throw a scare into the lawyers was his first public signal that the New Democrats were headed to where they ended up Thursday — with a commitment to no-fault auto insurance.

The coming election is one of the keys to the NDP plan to build sympathy with the public. For Eby reckons that all of the savings on litigation will translate into a 20-per-cent reduction in rates in 2021.

Plus all of this is dependent on ICBC — and particularly on ICBC changing its ways from the company that (as Eby admitted two years ago) drove claimants to the courts time and again.

<https://vancouver.sun.com/opinion/columnists/vaughn-palmer-with-ebys-icbc-flip-flop-what-could-possibly-go-wrong>

B.C. Liberals warned years ago about ICBC 'dumpster fire', but only fanned the flames, Vaughn Palmer, *Vancouver Sun*, February 11, 2020.

Recent history of the financial crisis at ICBC. Outflanked the opposition Liberal party.

Still, there was no overlooking the desperation of the Opposition Liberals this week as they scrambled to adjust to the changing landscape around auto insurance.

No longer did it make sense to complain about out-of-control premiums, with the New Democrats freezing rates this year and promising a 20-per-cent cut next year.

<https://vancouver.sun.com/opinion/columnists/vaughn-palmer-b-c-liberals-were-warned-years-ago-about-icbc-dumpster-fire-but-only-fanned-the-flames>

Other Voices

A Doctor's Take on No-Fault Insurance, Stephen Wiseman, *Vancouver Sun*, February 18, 2020.

But is it? British Columbians and their doctors already have lots of experience with no-fault insurance through their interactions with WorkSafeBC and some other disability insurers. Let's hope everyone is happy with this kind of model and service, because ICBC will be offering the same thing as of 2021.

The big picture is that every injured citizen will be dealing directly — without legal advice or support — with a vast bureaucratic apparatus whose interest is split between offering benefits and protecting its bottom line. The government itself says that 700,000 of us don't even have a regular family doctor in our corner. Any thoughts on how this might turn out?

The author has other concerns with the WSBC model being applied at ICBC.

<https://vancouversun.com/opinion/stephen-wiseman-a-doctors-take-on-no-fault-insurance>

'No Fault' Insurance in BC Will Hurt Us All, Claudia Walker, *Times Colonist*, February 23, 2020.

Claimants are left without timely treatment and support. All of my clients are experiencing pain, anxiety, depression and generalised loss. A negative response from an adjustor (particularly when it is repeated) becomes a key determinant of their recovery.

Conversely, when treatment is over-funded and over-delivered, these same people become institutionalized and dependent upon passive therapy.

Navigating the line between over- and under-servicing takes skill, training and experiencing. This cannot be done by an adjustor. It can be done by a case manager, but there are not enough of us to go around.

<https://www.timescolonist.com/opinion/op-ed/island-voices-no-fault-insurance-in-b-c-will-hurt-us-all-1.24081390>

New ICBC scheme will discriminate against many people, Nicholas Coleman, *The Georgia Straight*, February 14, 2020.

The biggest downfall of the new ICBC scheme will be that people will not have any recourse if ICBC determines their loss to be less than what they believe it to be. In effect, people will have to trust that ICBC will not rip them off, when ICBC will invariably short-change people—whether it is for budget pressure, political reasons, or a predisposition to err on the side of conservative losses.

<https://www.straight.com/life/1359966/nicholas-coleman-new-icbc-scheme-will-discriminate-against-many-people-especially-those>

ICBC's pivotal pivot – from an insider's perspective, Charlie Grahn, *The Orca*, February 14, 2020.

The author says the penny-pinching attitude at ICBC has to change.... Claims management is the key.

The projected 20 percent decrease in auto insurance rates will mollify the motoring electorate until after next year's election. However, the problem with kicking the can down the road is that it's still there, on the road.

The corporation's problems are more structural than its personal injury loss expense and litigations costs. They will reemerge in time, and we'll be right back where we are today.

<https://theorca.ca/visiting-pod/icbc-pivotal-pivot-from-an-insiders-perspective/>

More Background

Recent Initiatives Respecting Auto Insurance in British Columbia, Richard McCandless, *BC Policy Perspectives*, December 2019, revised January 4, 2020.

Was Premier Horgan signaling a shift to a no-fault model?

http://www.bcpolicyperspectives.com/media/attachments/view/doc/commentary_recent_initiatives_auto_insurance_20_december_2019/pdf/commentary_recent_initiatives_auto_insurance_20_december_2019.pdf

ICBC officials spent years pushing 'goofy' ideas: former minister, Rob Shaw, *Vancouver Sun*, November 1, 2019.

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.

“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.”

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.

But, for his part, Eby warned Thursday the province may have to pivot to no-fault insurance, a model where most, if not all, automobile accident cases would be settled without any access to court. It is used in a handful of provinces.

Eby said no-fault is not his preference, but if ICBC continues to have its reforms overturned by court challenges from the B.C. Trial Lawyers Association, he'll have to reconsider that to get the \$1 billion in savings annually needed at ICBC.

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

Eby pulls no-fault concept out of his Halloween bag of ICBC horrors, Vaughn Palmer, *Vancouver Sun*, November 1, 2019.

Vaughn Palmer wrote 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.”

Also comments from former minister for ICBC Todd Stone:

He described spending years shooting down “goofy” proposals from ICBC for saving money.

One he strongly opposed was ICBC's preference for basing rates on risk assessments rather than just actual driving records.

The driver risk model means you pay more based on age, experience, and where you live, even if you've never had an accident, Stone explained.

"I'm sure David Eby is finding the same thing I did, that you've got to be right on top of the corporation because they are coming up with crafty schemes all the time, like the driver risk model," Stone told Rob Shaw of The Vancouver Sun.

"And, you know, that's why we have ministers responsible. Unfortunately, in the case of the driver risk model, David Eby he was a sucker and he fell for it hook, line and sinker."

Hence the now soaring hikes in insurance rates for young and inexperienced drivers, as well as those with clean driving records who happen to live in higher-risk locations, says Stone.

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

Another ICBC sticker shocker? \$1.9 billion paid to law firms last year, Mike Smyth, *The Province*, October 27, 2019.

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>

No-fault vehicle insurance is unpopular but could ease ICBC troubles, Times Colonist Editorial, November 16, 2019.

What's happening is that motorists are coming forward to claim injuries in crashes that were not serious enough to be reported at the time, and in which the police were not involved.

This is, to put it mildly, somewhat suspicious. The only obvious explanation is that motorists are taking advantage of minor incidents to claim injuries that may very well be exaggerated or outright bogus.

The challenge facing the minister is to reassure a skeptical public that if a no-fault scheme is introduced, justice will still be done. Motorists who cause injuries will pay a price.

What will not happen is that crash-free customers will continue paying for legal bills in the \$855 million range, bills from which they derive no personal benefit.

<https://www.timescolonist.com/opinion/editorials/editorial-no-fault-vehicle-insurance-is-unpopular-but-could-ease-icbc-troubles-1.24010120>

Government Losses Challenge to Expert Report Limitation and Eby Hints at No-Fault

Lawyers warn of threat to drivers' rights as Eby hints at no-fault insurance for ICBC, Eric Rankin, *CBC News*, November 7, 2019.

"There are a number of different measures that we think we could bring in that would reduce rates and would reduce costs, especially legal costs, which is what no-fault systems tend to address," Eby said in a media scrum.

And he warned if trial lawyers continue to fight the remaining two reforms, the province could be forced to take drastic action.

"If those were to fail in court, it would be catastrophic and we would have to look at absolutely everything," said Eby, "because that's about \$1 billion a year, plus the savings available to us."

"I've 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 for government after that," said Eby.

<https://www.cbc.ca/news/canada/british-columbia/b-c-s-attorney-general-raising-the-spectre-of-no-fault-auto-insurance-legal-opponents-say-1.5350958>

Reducing legal costs is critical to the financial health of ICBC, David Eby, *Vancouver Sun*, December 10, 2018.

Retort to trial lawyers. Father was a personal injury lawyer in Ontario.

The explanation for the spike in B.C. advertising spending is simple: the current insurance system in our province has been uniquely generous to lawyers. Not so much to those paying for insurance and those injured in collisions, whose benefits haven't increased since the 1990s. Our system is the last in Canada to face significant reforms curtailing legal costs despite the fact that ICBC now reports that almost half of the average collision settlement in B.C. isn't going to the injured person, but toward legal costs and lawyers' fees.

I know this from personal experience. My father was a personal-injury lawyer. He put food on our family's table by helping people who were injured in car crashes, or otherwise through the negligence of someone else. I've personally brought personal-injury actions as a lawyer on behalf of low-income clients attempting to seek justice.

<https://vancouver.sun.com/opinion/op-ed/david-eby-reducing-legal-costs-is-critical-to-the-financial-health-of-icbc>

Richard McCandless February 24, 2020. <http://www.bcpolicyperspectives.com/>

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.