

IMPACT ON ICBC BODILY INJURY CLAIMS COSTS OF PROPOSED CIVIL RULES TARIFF CHANGES

On 27 July 2016 Ron Nairne, a member of the Trial Lawyers Association’s board of directors, forwarded the writer a copy of documents he obtained from ICBC¹ concerning the financial impact of proposed changes in the Supreme Court civil rules fee schedule (tariff) that the successful party can claim to help offset their legal costs (3rd Party Costs).

On 12 August 2016, the Vancouver Sun published Ian Mulgrew’s article on the rapidly growing Bodily Injury (BI) claims costs, based on ICBC’s cost impact of the proposed changes to the civil rules tariff.² The impact analysis (page 7) notes that the number of litigated BI claims for the first two months of 2016 are up by 16%, which tends to confirm the suggestion in Occasional Paper No. 2 that BI claims costs are continuing to accelerate.

The proposed changes³ would have revised and increased the tariff schedule, which was last changed in 2010. ICBC estimated that the changes would have substantially increased its bodily injury (BI) expenditures for the plaintiffs Bill of Costs, including new and pending claims. They also suggested that the changes would make the claims for lesser amounts more economically viable for lawyer involvement, and increase ICBC’s defense costs.

ICBC supplied a series of calculation sheets to develop estimates of the additional costs, which included growth assumptions in legal representation rates resulting from the higher tariffs. It noted that BI claims and claims costs have risen significantly in recent years, that more claims were being represented by lawyers (at a higher settlement cost), and that the 3rd party costs in BC were already higher than in Alberta.

The concern is that the new tariff would result in greater pressure on insurance (primarily Basic insurance) costs and premiums. ICBC estimated that the new tariff would add \$35 million in annual costs, and one-time costs of \$125 million for pending claims and a further \$60 million for a one-time slowdown in closing claims in 2016.⁴

In 2015, new BI claims were 7,560 (12.8%) greater than in 2010, while pending claims had grown by 22,400 (33.8%). The ratio of pending to new claims rose from 112.6% in 2010 to 133.6% in 2015, reflecting the growing backlog of BI claims. During this period, the cost of all pending claims (including

¹ ICBC FOIPPA request F263147.

² <http://vancouversun.com/news/local-news/icbcs-claims-costs-balloon-fuelled-by-antagonistic-litigious-strategy>

³ The government actually approved the changes by cabinet order (OIC 32/16) but then cancelled the order.

⁴ ICBC, “BC Supreme Court Civil Rules Regulation Change 2016: Impact Discussion,” Appendix 1, 18 March 2016, p 34.

material damage claims) rose by \$3.8 billion (45%).⁵ The rising cost of the unpaid claims is also adding to the pressure on ICBC's Basic rates.⁶

In the calculation worksheets ICBC provided information on the average BI claims and settlement costs from 2010 to 2014. This information also provides information on the number of unrepresented and represented claims by broad settlement amounts, and is summarized in the following tables.

ICBC BODILY INJURY CLAIMS AND COSTS

AVERAGE 2010 to 2014

NUMBER of CLAIMS SETTLED

	≤25K	25-100K	≥100K	TOTAL	%
Unrepresented	21,980	650	--	21,630	50.6
Represent. - Not Litigate	5,743	1,240	65	7,048	16.5
Represent. - Litigated	6,015	6,290	1,770	14,075	32.9
TOTAL	32,739	8,180	1,835	42,754	
Percent of Total	76.5	19.1	4.4	100	

AVERAGE CLAIM SETTLEMENT (\$=million)

	≤25K	25-100K	≥100K	TOTAL	%
Unrepresented	117.4	28.2	--	145.6	10.1
Represent. -Not Litigate	75.9	49.9	15.9	141.7	9.8
Represent. - Litigated	123.2	415.3	616.1	1,154.6	80.1
TOTAL	316.5	493.4	632.0	1,441.9 ⁷	
Percent of Total	22.0	34.2	43.8	100	

AVERAGE COST Per SETTLEMENT (\$)

	≤25K	25-100K	≥100K	TOTAL
Unrepresented	5,600	43,400	--	6,730
Represent. - Not Litigate	13,300	40,100	244,700	20,100
Represent. - Litigated	20,465	66,000	348,600	128,000
TOTAL	9,670	60,300	344,400	33,715

⁵ ICBC annual reports.

⁶ The Basic unpaid claim liability rose by \$2.37 billion, or 51.7%. The capital reserve guidelines require that every \$1.0 billion in unpaid claims be covered by approximately \$1.06 million in zero risk assets, therefore the \$2.37 billion growth in the unpaid claims required an addition \$2.51 billion in assets, with the additional risk margin of \$140 million being equivalent to a 5% rate increase over the five-year period.

⁷ The \$1.44 billion settlement total includes 3rd Part Costs (\$48.6 million), Disbursements (\$90.7 million) and Defense Costs (\$16.3 million).

FAST TRACK SUMMARY

	NUMBER	COST (MIL)	AVERAGE
Less than \$100k	40,922	\$810	\$ 19,800
Over \$100k	1,832	\$632	\$345,000

Source: ICBC, "BC Supreme Court Civil Rules: Considerations for Discussion," 1 April 2016, pp. 66-68.

Of the four-year average 42,700 claims, 76.5% were for amounts which settled for an average of approximately \$9,700 (totaling some \$315 million). Approximately 19% of the claims settled for an average of \$60,300 (\$493 million) and 4.4% settled for an average of about \$345,000 (\$632 million).⁸

The total BI claims cost is split as follows:

Settlement Costs	\$1,156.2 million	80.2%	at an average of 32%, the legal fees are \$370 million
Defense Costs	\$ 146.3 million	10.1%	
Disbursements	\$ 90.8 million	6.3%	
3 rd Party Costs	\$ 48.6 million	3.4%	
TOTAL	\$1,441.9 million		

Legally represented claims account for 49.4% of the claims and approximately 90% of the settlement cost (\$1.3 billion). Non-represented claims account for 50.6% of the claims and account for about 10% of the settlement cost (\$145.6 million).

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The writer is a retired senior BC government public servant who's paper on the 40-year financial history of ICBC was published by *BC Studies* in 2013. The same academic journal will be publishing his paper describing the BC government's manipulation of the finances of BC Hydro from 2008 to 2014 in the fall. He has been an intervener in the BC Utilities Commission's 2014 and 2015 reviews of ICBC's rate requests.

⁸Generally, the balance of a claim amount greater than \$150,000 is assigned to Optional insurance.