BRITISH COLUMBIA UTILITIES COMMISSION

IN THE MATTER OF THE UTILITIES COMMISSION ACT, R.S.B.C. 1996, CAHPTER 473

AND

An Application by Insurance Corporation of British Columbia for Approval of the Revenue Requirements for Universal Compulsory Automobile Insurance Effective November 1, 2013 and Approval of a New Basic Insurance Capital Management Plan ~ Project No.3698726

Final Submission of

British Columbia Pensioners' and Seniors' Organization, Active Support Against Poverty, Council of Senior Citizens' Organizations of BC, and the Tenant Resource and Advisory Centre

("BCPSO *et. al.*")

March 6, 2014

A. Introduction

1. This is the final submission of the BC Pensioners' and Seniors' Organization, Active Support Against Poverty, Council of Senior Citizens' Organizations of BC, and the Tenant Resource and Advisory Centre (hereinafter "BCPSO *et al.*") in this proceeding. BCPSO is a coalition of community-based organizations whose members collectively represent a broad range of ICBC's low and fixed income universal compulsory automobile insurance policyholders.

2. BCPSO has a long history of effective participation in processes before the BC Utilities Commission ("BCUC" or "Commission") and has been an active intervener in most proceedings involving ICBC before the Commission.

3. ICBC is applying for an increase in Basic insurance rates of 4.9% for the policy year commencing November 1, 2013. This rate increase is comprised of the difference between the 11.5% rate change to cover costs and the 6.6% loss cost forecast variance which is excluded by Special Direction IC2.

4. ICBC states that "(t)he requested Basic insurance rate increase has been developed in accordance with accepted actuarial practice, taking into account the new rate smoothing framework as set out in Special Direction IC2 to the BC Utilities Commission/ BC Regulation 307/2004 as amended (Special Direction IC2), and in accordance with the Government directive of March 19, 2013 with respect to Rate Smoothing approved by Order in Council 153/13, March 18, 2013."[1]

5. In accordance with Special Direction IC2, the 2013 Government Directive regarding Rate Smoothing, and Commission Order G-49-13, ICBC also seeks approval of a new Basic insurance Capital Management Plan.

6. In order to transition to the new requirement of Special Direction IC2 requiring ICBC to file future revenue requirements applications annually by May 31st with effective dates of August 1st, the proposed Basic insurance rates in this Application reflect the average cost level of Basic insurance policies written in the first nine months of the 2013 policy year.

7. The full distribution of the rate increase drivers ICBC is relying upon to justify its rate increase is found in Figure 3.2[2] below:

[1] Exhibit B-1, p.1
[2] Exhibit B-1, p.3-4

Line No.	Components	Impact (percentage points of PY 2013 indicated rate change)
1	PY 2012 Loss Cost Forecast Variance	+6.6
2	Loss Trend to PY 2013	+4.4
3	Investment Income	-1.1
4	Impact of IAS 19R and Assumption Changes	+0.2
5	Operating Expense (Excluding Line 4)	-0.6
6	Capital Maintenance Provision	+0.9
7	Change in Average Premium	+1.0
8	Other	+0.1
9	Rate Change to Cover Costs	+11.5
10	PY 2012 Loss Cost Forecast Variance Exclusion	-6.6
11	**Indicated Rate Change**	**+4.9**

8. ICBC's 2013 RRA marks the first ICBC proceeding following the Internal Audit & Advisory Services Review ("IAAS Review") of the corporation. The IAAS Review raised many serious issues concerning how ICBC manages its business, particularly with respect to cost containment of rising bodily injury costs, compensation practices for management, rising legal representation costs, and the need to instill a culture of cost containment at the crown corporation. The Executive Summary of the IAAS Review noted that:

> There are areas where ICBC is not aligned with government's priority of cost containment, including growth in management, compensation and operating costs, despite the economic downturn in 2008. The board should set clear direction to institute a culture of cost consciousness and financial discipline across the organization.
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> . . .
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> From 2007 to 2011 ICBC experienced a 32% increase in management positions across the organization, while union positions declined by 1%. The total compensation cost for the management and confidential employees increased 50% during the last five years, compared to a 9% increase for the bargaining unit for the same period.
>
> Bonuses paid to management have been generous with easily met criteria resulting in almost all staff receiving them. In addition to ICBC management being among the highest paid within the British Columbia public sector, benefits and perquisites provided to senior management have generally exceeded the rest of the sector.
>
> These increases in both staffing and compensation levels continued even after the economic downturn in 2008 when government implemented stricter cost controls. ICBC should endeavour to return to levels that are

more consistent with 2008 as part of a general move to control and reduce costs.[3]

9. BCPSO fundamentally supports public auto insurance. ICBC is generally using sound actuarial practices and is dealing with a situation in which health care costs are largely rising, and these rising costs are outside of ICBC's control. However, there are several issues that we find troubling with the current application:

   - the 4.9% rate increase proposed by ICBC is far in excess of inflation for health care costs;[4]

   - The 6.6% loss cost forecast variance marks the largest loss cost forecast variance in almost 10 years.[5]

   - ICBC's statement during the hearing that it anticipates seeking a further rate increase of 6.4% as part of the 2014 revenue requirements application. If the current 4.9% rate increase is accepted, this will result in an 11.3% rate increase in less than one year for Basic policyholders. Rate increases in the 10% range are generally considered to constitute rate shock; and

   - the corporation's reliance on an interpretation of Special Direction IC2 that would see capital targets raised too high and too quickly when there is no requirement as to the specific MCT to be met and the timeframe in which an increased target should be attained.

10. While we accept that ICBC is required to follow directions issued by the government, these directions contain ambiguities that in our view must be interpreted in favour of ensuring that low and fixed income customers have access to rates that are not unjust and unreasonable.

B. Legislative context (including Special Directions)

11. ICBC's 2013 Application must be viewed in its legislative context in addition to its factual one. For this Revenue Requirement, ICBC is subject to various sections of the *Utilities Commission Act* and the Insurance Corporation Act, Special Direction IC2 to the BC Utilities Commission, BC Regulation 307/2004, as amended, (Special Direction IC2), the 2010 Government Directive regarding Basic Excess Capital and the 2011 Government Directive regarding Basic Rate Stability and Capitalization. BCPSO's interpretation of and response to this Application is informed by the contents and requirements found within the applicable legislation, Special Direction and Directives.

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[3] IAAS Review of ICBC, pp.1-2, 4

[4] Statistics Canada. Table 326-0020 - Consumer Price Index (CPI), 2011 basket, monthly (2002=100 unless otherwise noted) (accessed: February 27, 2014) http://www5.statcan.gc.ca/cansim/pick-choisir?lang=eng&p2=33&id=3260020

[5] Exhibit B-1, Figure 4.1

12. Special Direction IC2 imposes two main requirements on the Commission in setting rates for Basic insurance for PY2013. The Commission must:

    a) Set rates on the basis of accepted actuarial practice that will allow ICBC to fulfill its obligations and maintain capital equal to at least 100% MCT; and

    b) Ensure increases or decreases in rates are phased in in such a way that rates remain relatively stable and predictable.

13. Special Direction IC2 was amended by Order in Council 152/13 on March 18, 2013, and contains the following notable amendments:

    a) the MCT target as determined in a capital management plan approved by the Commission, which consists of three components: the minimum regulatory level 100% MCT; plus the margin, expressed in percentage points of MCT, that reflects ICBC's risk profile in relation to the Basic insurance business and its ability to respond to adverse events that arise from those risks; and any additional margin, expressed in percentage points of MCT, consistent with relatively stable and predictable Basic insurance rates. Special Direction IC2 does not specify the MCT target that must be met, other than to say that it should be 100% plus the margins set out above;

    b) The loss cost forecast variance must be excluded from 2013 approved changes in Basic insurance rates. For 2014 and each subsequent year, the Commission may exclude some or all of that year's loss cost forecast variance from Basic insurance rates in accordance with a new Basic Capital Management Plan approved by the Commission;

    c) For 2014 and each following year for which rates are set, the percentage number of a general rate change approved by the Commission must differ from the percentage number of the previous general rate change approved by the Commission by no more than 1.5% and must not decrease existing rates. We note this gives ICBC a theoretical provision to build capital in the event that ICBC overestimates future year loss costs;

    d) For 2014 and each following year, the Commission must approve a customer renewal credit for basic insurance policyholders if there is excess capital available, the credit will not result in the MCT falling below the capital management target specified in the approved capital management plan, and the rates will remain relatively stable and predictable; and

    e) The MCT must be determined using data available from the most recent quarter at the time ICBC files a revenue requirements application and as at the end of that year.

14. In addition, the 2013 Government Directive regarding Rate Smoothing:

a) directs ICBC to base this Application on the existing Commission-approved Basic Capital Management Plan, as modified to comply with the 2010 Government directive regarding Basic Excess Capital, and the 2011 Government directive regarding Basic Rate Stability and Capitalization;

b) requires ICBC to bring forward to the Commission, for approval by May 31, 2014, a new Basic Capital Management Plan that: continues to protect the solvency of Basic insurance while also improving the ability to use Basic insurance capital to promote more stable and predictable Basic insurance rates; and

c) requires ICBC to set up a non-refundable, non-transferable customer renewal credit to manage Basic insurance capital when MCT levels are well in excess of the capital management target established by the Commission.

C. Accepted Actuarial Practice

15. ICBC states in its Final Submission that "The proposed rate increase, having been prepared in accordance with accepted actuarial practice and the legislative framework and accounting for all of the steps taken by ICBC to reduce costs, is just and reasonable."[6]

16. ICBC has acknowledged that accepted actuarial practice is a fluid concept, and that there are different ways to approach actuarial analysis.[7]

17. The Commission is required to approve rates that are relatively stable and predictable, and that are in accordance with accepted actuarial practice. However, as we noted in our submissions relating to ICBC's PY2012 revenue requirements application, the Commission is not bound to accept whatever revenue requirement ICBC presents provided it has been generated in compliance with accepted actuarial practice.

D. Claims cost management

a) Fraud detection, investigation and recovery

18. ICBC estimates that up to 15 percent of claims involve fraud.[8] We asked whether that meant that 10 -15 percent of loss costs could be fraudulent; and ICBC could not answer this question. In its Final Submission, ICBC asserts that the "evidence demonstrates...ICBC continues to pay appropriate attention to combating

[6] ICBC Final Submission, para. 1

[7] See, for example, BCUC IR1.23.1.2 and Section 2600 of the Standards of Actuarial Practice

[8] Exhibit B-1, Service Plan p. 4; Exhibit B-3-1, BCUC IR1. 111.3, 111.4; Exhibit B-8, BCUC IR2.195.3; Exhibit B-8, BCPSO IR2. 6.1, 6.2, 11.2; Exhibit C10-5; BCPSO IR2.6.6 - KPMG Report, pp. 4, 7, 8, 60, Ex. C-2

fraud..."[9] However, ICBC has also stated that its claims systems are not currently able to calculate the incidence of fraudulent claims per year.[10]

19. Without an estimate of the cost of fraud, it is not clear how ICBC determines the appropriate expenditure on resources for detecting, investigating, and combating fraud, and the performance of the personnel and materials devoted to that pursuit.

20. During the hearing, Ms. Minogue stated "I think our claims folks are making every effort to get things under control and in fact it's a corporate priority to get the bodily injury claims costs under control..."[11] However, Ms. Minogue also offered that ICBC has not quantified the dollar amount of fraud.[12] In a managerial sense, simply not having an estimate of the cost of fraud, which ICBC admits could be a substantial driver of loss costs, seems inconsistent with having made every effort to get fraud under control. When asked for details of its anti-fraud efforts, ICBC has been somewhat vague, usually offering general comments and assurances rather than specific, quantified information. For example, if ICBC was able to eliminate one quarter of fraudulent claims, assuming total fraud accounts for 12% of loss costs, it would mean a cost reduction of 3% --an offset equivalent to half the annualised 6.1% indicated rate change ICBC proposes to 2016.[13]

21. Mr. Wilson said during the hearing that "it's hard to assess how many claims...contain an element of fraud."[14] While we acknowledge ICBC's observation that detecting, quantifying, and combating fraud is difficult, we nonetheless believe that this is something that the corporation should be analyzing more carefully in order to determine whether the appropriate resources are being applied.

22. The greater the actual fraud that goes undetected and unrecovered, the greater the transfer of wealth from insurees who pay their premiums but never make a claim, to fraudulent claimants. Given ICBC's intention to raise rates by more than 25% over the next three years, the real cost of insurance will pose a significant budgetary challenge for low and fixed income insurees. Especially for the sake of our income-challenged clients with excellent driving histories and good driving habits, we urge ICBC to devote optimal resources to reducing the cost of fraud.

23. Fraud may be either bogus claims, or claims build up. Our understanding is that it typically manifests itself as fictitious injuries or injuries unrelated to an auto accident, and can take the form of exaggerated medical costs.

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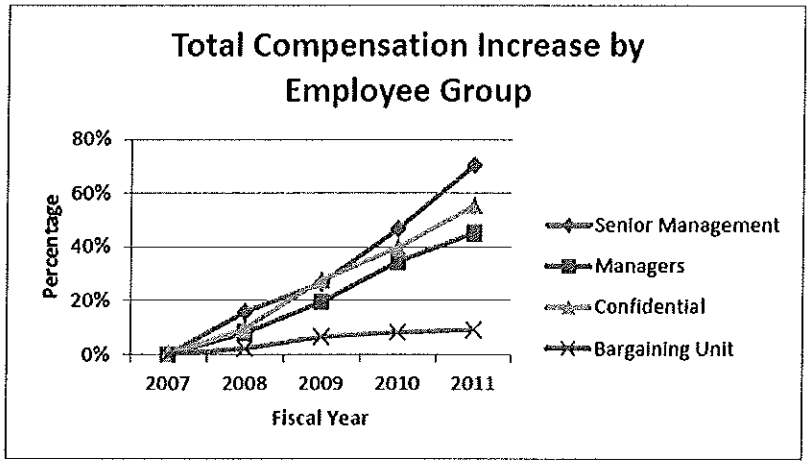
[9] ICBC Final Submission, para. 94
[10] BCPSO IR1.29.3
[11] ICBC Final Submission, para. 70
[12] T2, p.288
[13] BCPSO IR2.8.1
[14] T2, p.288

24. ICBC reported that Medical and Dental report costs have grown significantly since 2006.[15] We appreciate that medical services costs are generally increasing much faster than general inflation: 3.4 % per year for medical services versus 1.3 % for All Items, over the period March 2003 through January 2014.[16] We recognize ICBC's need to ensure premium revenues keep pace with medical costs associated with bodily injuries. But if fraudulent or exaggerated injury claims proliferate unchecked, that combines with mushrooming medical costs to exacerbate cost increases.

25. Ms. Minogue, speaking about claims costs, said that "to actually reverse some of these cost trends is something that is not easy to do, and unlikely."[17] This sounds what may best be characterised as defeatist. ICBC personnel are well paid by the standards of the public service,[18] and we would hope they would not be deterred by problems that are "not easy to do."



Between 2007 and 2011, senior management's salaries increased an average of 20% ($51,000), compared to an average increase of 10% ($6,700) for the Bargaining Unit employees.

26. A typical trait of a monopolist is simply to pass any cost increases straight through to customers. Part of managerial skill is finding ways to overcome cost challenges -- particularly significant ones that emerge without warning.

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[15] AIC IR1.1.2.a – Attachment A

[16] Statistics Canada. Table 326-0020 - Consumer Price Index (CPI), 2011 basket, monthly (2002=100 unless otherwise noted) (accessed: February 27, 2014) http://www5.statcan.gc.ca/cansim/pick-choisir?lang=eng&p2=33&id=3260020

[17] ICBC Final Submission, para. 10

[18] IAAS Report, p. 29

27. The literature supplied by ICBC in response to one of our undertakings[19] demonstrates an industry awareness of the link between fraudulent behaviour and the economic cycle. We understand from other available research that fraud frequently manifests itself as medical costs, particularly as fictitious injuries or injuries claimed but not actually sustained in a motor vehicle accident. Particularly in light of the proposed magnitude of the general rate increases, we encourage ICBC to demonstrate a systematic approach to detecting fraud, and reducing the impact of fraud on Basic insurance.

28. ICBC enjoyed considerable success (and received industry accolades) for the "Bait Car Program." We encourage ICBC to consider whether similar efforts toward fraud detection, deterrence, and recovery might both reduce net costs and give the public a more favourable impression of the corporation.

29. Finally, with loss costs currently in the vicinity of $780M, and assuming the conservative estimate of the extent of fraud at 10% of claims, Basic insurance fraud costs could be in the order of $78M. If ICBC managed to deter or recover 5% of that fraud, it would save nearly $4M. We note that ICBC has characterised a $2M administrative cost as significant.[20]

30. We believe that ICBC's customers would be delighted to see statistics reporting the corporation's successes at detecting and recovering fraudulent claims. The tables showing the Special Investigation Unit's investigative successes were informative and encouraging with respect to ICBC's performance.[21] Considering the significance of fraud as a percentage of loss costs, we would support the Commission requiring ICBC to routinely report these results. We believe reports of their success in combating fraud would also gain ICBC customer goodwill and offset any consumer irritation over rate increases and executive compensation.

b) The rise in the legal representation rate

31. The legal representation rate increased from 34% in 2006 to 45% in 2012.[22] Legal representation costs have grown from $172M in 2005 to $258M in 2012. The annualised rate of litigation cost growth was 7%, whereas the overall Basic Loss Cost rate was less than half of that, at 3%.

32. Finding ways to stem, if not reduce, rising legal representation costs should be a management priority.

33. ICBC cites increasing claims complexity as a reason for increased legal representation. This implies the complexity of claims has suddenly increased in recent years. What we note are the increased costs of litigation: Third Party Costs

[19] Exhibit B-19
[20] ICBC Final Submission, para. 132
[21] BCUC IR1.111.3 and BCPSO IR2, 6.7
[22] BCPSO IR2.10.5

(+13% per year) and Medical and Dental Reports (+14% per year), the fastest growing components.[23]

34. ICBC says "(t)he Legal Representation Rate may provide some indication of service satisfaction related to bodily injury claims, but claimants may have reasons unconnected to service for retaining counsel"[24] and that it "provides some indication of service satisfaction." [25]

35. ICBC adds that "(w)hile it is not possible to prove a link between the legal representation rate and specific claims operational changes, it is reasonable to assume that the cumulative effect of these changes has influenced the rate of legal representation." [26] Yet ICBC also says customer expectations probably are not a factor in the increased use of legal representation -- referencing customer satisfaction survey results.

36. ICBC states it "...has no evidence to suggest the accelerating rate of represented bodily injury (BI) claims is contributing to BI claims frequency." [27] However, ICBC also says it is "currently investigating the factors underlying this trend...expects that its Claims initiatives aimed at reducing both representation rates and the costs associated with represented claims will mitigate the adverse cost implications of the recently observed acceleration in the rate of represented claims."[28]

37. We support the Commission requiring ICBC to report on its investigations of extent to which this is a contributing factor to its rising BI-related costs as part of the 2014 Revenue Requirements application.

38. In BCPSO IR1.10.5, ICBC reports a Claims Services Satisfaction rate of 85% for 2011. However, this indicator is based on a survey excluding those who opted for legal representation. [29] For 2011, the reported Legal Representation Rate was 40%. Assuming half of those who opted for legal representation were not those with complex claims, but rather frustrated (or skeptical) customers, the overall satisfaction rate would be 51%.

39. Responding to BCPSO IR2.10.4, ICBC described the Claimant Attitudes Survey (currently underway) as aimed at measuring customer attitudes influencing the decision to opt for legal representation. We trust this was the same effort referred to when ICBC said it was "surveying a large sample of ICBC policyholders to develop a deeper understanding of its legal representation."[30] We applaud the corporation undertaking this research, and look forward to ICBC relying on its

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[23] AIC IR1.1.2.a – Attachment A
[24] Exhibit B-1, p. 9-8
[25] BCPSO IR1.63.2
[26] BCPSO IR1.20.1
[27] IBC IR1.10.1
[28] BCPSO IR2.7.1
[29] BCPSO IR1.45.5
[30] ICBC Final Submission, para. 81

results to inform initiatives included in the 2014 Revenue Requirements Application.

40. In response to BCUC IR2.201.4, ICBC stated that "One of the contributing factors to the increase in legal representation rate has been the increase in the number of customers who retain counsel before they report to ICBC, giving CCIC no opportunity to handle these claims and demonstrate the ability to positively affect the customer experience." This suggests customers are either unaware of the positive customer experience available through CCIC, or that customers do not agree with ICBC that the experience is positive. Perhaps raising customer awareness of CCIC, or modifying the manner of CCIC services, would mean less "lawyering up" from the outset of a claim -- thereby reducing claims handling costs.

41. As a regulated monopoly (for Basic coverage), it is incumbent on ICBC to take some managerial measures that would not apply to firms in a competitive market structure. In this instance, more fulsome research on the potential link between customer expectations and engaging counsel from the outset of a claim may be warranted.

42. In its Final Submission at paragraph 41, ICBC states "(i)t would be unreasonable based on the information currently known to assume that the initiatives are capable of producing a constant (i.e. flat) legal representation rate that would produce a lower severity figure (4%) than it has been for many years (6%)." ICBC explains neither the source nor significance of the 4% and 6% figures, and it would be helpful if ICBC could address this in its Reply.

43. ICBC appears to have no proactive policy for dealing with dissatisfied customers. Developing a proactive policy could assist the corporation to reduce the legal representation rate, and thereby curb rising BI costs.[31]

c) The need to target distracted driving

44. Distracted driving such as using a handheld electronic device behind the wheel is now the third leading cause of fatal crashes in BC, behind speed and impaired driving[32], and that use of a personal electronic device ("PED") increases the chances of getting into an accident by about 23 times.[33] Further, ICBC has cited distracted driving as a reason for the rise in the frequency of bodily injury claims.[34]

45. ICBC in its Final Submission has identified two circumstances where records relating to PED use are relevant and where ICBC could apply to court to compel records of PED use: 1) where there is some evidence that somebody was using a PED device, and yet they denied using it, and that the use of the PED device contributed to or caused the accident; and 2) where there is evidence of fraud, and

[31] T5, p. 721-724
[32] BCUC 1.116.2 - Attachment A-2012 Road Safety Annual Report, p. 20
[33] Exhibit B-1, p. 3-11
[34] Exhibit B-1, pp. 3-11-3-12

PED records may show coordination among individuals involved.[35] BCPSO encourages ICBC to start applying for production of these records wherever possible, as this may assist in sending a message to drivers that the corporation is taking distracted driving seriously.

46. While we agree with ICBC that compelling such data may result in increased friction between ICBC and claimants,[36] if policyholders are aware that ICBC is targeting distracted driving in order to reduce claims costs and therefore Basic insurance costs, we submit that the friction will likely be outweighed by the positive benefits.

47. ICBC does not currently have the ability to track PED use data under legacy systems in a manner that makes it useful for statistical analysis, and states that this may be possible under the new system.[37] As ICBC is still in the process of developing the Claims Transformation System, we encourage the corporation to design the system to be able to track this data.

48. ICBC is in the process of developing a comprehensive strategy to target distracted driving.[38] We are hoping ICBC will be able to have this strategy completed in time for disclosure during the 2014 RRA so that all parties can review the corporation's plans, and test whether the strategy, if implemented, will have a tangible result on reducing BI claims.

49. Some of the items that we would like to see addressed in the strategy include whether ICBC plans to link the use of PEDs to a potential breach of insurance should an accident flow from the use of PEDs.

50. ICBC's 2012 Road Safety Annual Report[39] shows that the corporation only spent $500,000 on driver distraction programs in 2012, which is just a fraction of the $47.8M spent on road safety programs. The anti-distraction ringtones program is a great example of a program that could be useful for drivers. Given the link between distracted driving and increased claims, we believe that ICBC should devote more funds to towards targeting distracted driving.

E. Operating expenses

51. Incentive pay should be further developed as a mechanism to motivate and reward ICBC personnel for moving the organisation toward performance consistent with customer interests.

52. Specifically, where fraud investigation is concerned, bonus pay should be directly a function of demonstrable fraud detection and recovery. Even a split weighted

[35] ICBC Final Submission, para. 91
[36] ICBC Final Submission, para. 92
[37] ICBC Final Submission, para. 91
[38] BCUC 2.163.1
[39] BCUC 1.116.2 – Attachment A, p. 37

toward employee compensation (i.e., apportion fraud reduction 2:1 toward employee bonus, cost reduction) would be beneficial for customers.

53. ICBC seemed increasingly frustrated as the proceeding progressed at having to provide certain types of information, respond to what it viewed as silly questions, and engage in partial updates. In its Final Submission, ICBC states:

- ICBC submits that, given the confidential nature of the information, the Commission should limit its use of the information to confirming the reasonableness of the original rate indication. The updated numbers should provide the Commission Panel with the desired comfort in that regard.

- ICBC submits, however, that it would be very inefficient to 'chase data' in this manner in future years. ... [40]

54. Regarding the notion of 'chasing data,' where significant real rate increases will flow from the approval of a revenue requirement application, ICBC should expect intervenor interest in any recent information *supporting* the directional changes associated with the filed figures. Such interest is reasonably associated with customers (or their representatives) simply seeking greater situational awareness. While we agree with ICBC that the application is the application, and the figures therein should (absent required error corrections) be relied upon for the proceeding, we also believe it consistent with both the Commission's role and duty to engage in any line of inquiry it deems necessary to ensure the public interest is suitably advanced in its decisions. This is particularly crucial in the case of the current Application, as future rates will be set according to the 1.5% band as directed by the Provincial government.

55. In the Application and in responses to information requests, ICBC did not appear particularly phased by the Internal Audit and Advisory Services Report with respect to its cost structure. As the Audit observed:

> ICBC has a management compensation framework that it considers to be market competitive for its executive, senior management, managers, and other excluded staff. The framework is reviewed and approved by the Board annually, and allows ICBC to align their salary structures with the comparators. Individual merit-based increases are awarded based on performance. The province, despite being the shareholder of ICBC, was not included as a comparator. In the last five years, these increases have resulted in ICBC's management being among the highest paid within the BC public sector.[41]

56. ICBC's perspective on its own compensation sometimes seems to ignore a point we believe the Audit Report was making: that ICBC Management and Confidential staff are well paid public servants. Many ICBC customers lost their jobs due to the

[40] ICBC Final Submission, paras. 15-16
[41] IAAS Report, p. 29

economic downturn, are on fixed incomes that don't attract any inflationary increases, or have wages and salaries that increase at CPI. After enduring last year's ICBC rate increase, they now see significant increases to 2016. Meanwhile, they observe the reported 20% management compensation increase between 2007 and 2011.

F. The proposed Capital Management Plan and stability and predictability of rates

57. In its Final Argument, ICBC states that "There were a number of IRs and submissions filed in this proceeding that are, in essence, challenging the merits of the legislative framework itself."[42] Rather than challenging the legislative framework, our questions and submissions were intended (and the related points raised in this Final Argument are intended) at clarifying the appropriate interpretation of the legislative framework. The existing guidance is the requirement that general rate indications in successive years must not vary by more than 1.5%.

58. This is a Revenue Requirements proceeding. However, consumers are not confronted with "revenue requirements"; they are confronted with the resulting rates. IC2 allows for "any additional margin, expressed in percentage points of MCT, consistent with relatively stable and predictable universal compulsory vehicle insurance rates." IC2 establishes the range of possible rate changes by Requirement [B], described in Section 3(1)(c.2)(ii), effectively defining stability and predictability.

59. ICBC seems surprised that "the rate of capital build...was not the focus of many IRs or questions."[43] We believe consumers are more concerned over real general rate increases than the rate of capital build, per se. Progress toward the MCT target at a pace consumers can reasonably manage is fine. Proposals involving any annual rate increase exceeding 6% enter the realm previously considered the realm of "rate shock":

- "In order to maintain rate stability and predictability or rates for customers, ICBC proposes an annual cap of six percent on the rate adjustments...";[44] and

- "Stakeholders who attended ICBC's workshops in October 2006 expressed general agreement with a cap of ten percent on annual rate changes."[45]

60. While the emergence of a combination of events causing ICBC to require the target MCT of 150% has some non-zero probability, what is certain is that a general rate increase far exceeding general inflation will prove problematic for

[42] ICBC Final Submission, para. 5
[43] ICBC Final Submission, para. 104
[44] 2007 RDA, p.13-6
[45] 2007 RDA, p. 17, 3-7

many British Columbians. ICBC did not consider the income effects of real premium increases in its submission.[46] A private insurer would typically not consider such impacts. However, as ICBC's unique mandate includes providing insurance to all drivers in BC, we believe this means general rate increases must be take into account affordability considerations.[47]

61. ICBC refers to the "importance of rate smoothing." From the customer's perspective, the smoothing of rates may or may not be more important than the level of the rates. For example, if ICBC proposed raising rates by 20% per year, that would be smooth, predictable, and stable, but given household budgetary implications, customers would likely not find it either affordable or acceptable.

62. There is no disagreement that MCT must be at least 100. The original IC2 specified a target MCT of 110 by 2014. The recent IC2 does not specify a set numerical target, instead leaving the target to be set by the Commission. The Commission previously approved a target MCT of 130; ICBC proposes a new target of 150. ICBC says that the overall intent of the amendments is to permit ICBC to use Basic capital to a greater extent than in the past to manage significant sources of volatility in Basic insurance rates.

63. Although it certainly could have, legislation and directions form the government have not specified a higher MCT target. Whether achieved over 10, 20, or even more years, suggests effective rate increases significantly exceeding inflation (CPI).

64. The requirement for MCT to equal 100% justifies ICBC making an abrupt rate increase. However, advancing MCT beyond 100 toward any target (whether 130 or 150, or other) has to be weighed against relative rate stability and predictability.

65. Because rate increases compound into future years, larger increases in prompt years have a much greater effect than would similar increases in later years. Rather than challenging the legislation, we note that, absent IC2, ICBC would be pushing for an unconstrained increase of 11.9% in the first year (2013), with decreasing increases in subsequent years.

66. We see IC2's "no rate decrease" stipulation as a capital build provision. Requirement A leaves to Commission discretion the appropriate balance of real general rate changes against loss costs forecasts. As consequence, rates will be "sticky-upwards." We expect the Commission to explore this balance through proceedings in respect to future policy years.

67. As ICBC points out, "the techniques by which the prospective policy year loss costs are estimated within the actuarial rate indication analysis generate a single best estimate, and do not produce a distribution of possible loss costs with

[46] BCPSO IR1.6.2
[47] ICBC Service Plan, p.15

association probabilities. As a result, ICBC is unable to provide...estimate for prospective policy year loss costs."[48]

68. The 2012 RRA Decision noted the large variances between ICBC forecast and actual costs -- characterising them as "disturbingly high." However, this refers to year-on-year changes. Over the medium term, the cost progression has been reasonably smooth, as favourable and unfavourable variations tend to offset one another. From 2009, there was a sudden increase, due to BI costs, whose exact causation and potential persistence, appears indeterminate as yet. As ICBC pointed out, depicting figures for farther-into-the-future years is of questionable value because the situation may change markedly.

69. The more ICBC's Revenue Requirements exceed the CPI, the less affordable Basic auto insurance becomes for all insurees. Our concern is that the sizeable cumulative rate increase proposed by ICBC between 2012 and 2016 (26.7%) creates an appreciable burden on the household budgets of low and fixed income drivers who have not contributed to the increasing loss costs by having accidents.[49]

70. ICBC says changes in average premium caused increases in indicated rates.[50] We believe ICBC should explore changing the incidence of the required rate changes toward the penalty (surcharge) rate component, to better align cost causation with cost recovery. For this reason, we believe the Commission should direct ICBC to submit a Rate Design that includes a mechanism for shifting the loss cost increase incidence toward the penalty portion of Basic revenues, and away from the base rates.

71. The reply to BCUC Undertaking #7 reports that the Saskatchewan Auto Fund "...uses the MCT to measure and track capital adequacy. The results of our most recent Dynamic Capital Adequacy Testing (DCAT) model revealed that we would need an MCT ratio of nearly 100% prior to a 1-in-100 event (the worst plausible adverse scenario modelled) in order to remain solvent with positive capital following the event. As a result, we are proposing to change our MCT target to 100%." We appreciate the differences between SAF and ICBC. However, SAF's approach is consistent with prioritising MCT>100 first, then rate stability and predictability, then reaching either MCT=130 or =150 last.

72. ICBC refers us to OIC 560 in respect of the Capital Management Plan. We do not believe a private sector insurer would receive specific direction from shareholders as to how to sort out their capital management.

73. In its letter to ICBC of November 25, 2011, the Provincial government explicitly acknowledged the impact of Basic insurance rates can have on BC families. We interpret the use of the word "can" as recognition that, the lower the family income,

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[48] BCPSO IR1.36.2

[49] See table in BCPSO IR2.8.1

[50] ICBC Final Submission, para. 69

the greater the relative impact of real Basic auto insurance rate increases on standard of living.

74. The November 25, 2011 letter instructed ICBC to "exclude any capital build provision in Basic insurance rates from February 1, 2012 to January 31, 2015 provided that Basic capital remains above the regulatory minimum." This instruction aligns with our position that the government intends the legislation to prioritise MCT>100 first, rate stability and predictability second, and progress toward the higher MCT target third. In fact, the government was very clear about their intentions: "Government believes that the capital available **above the Basic insurance regulatory minimum** should be made available to help manage rates." [Emphasis added]

75. We do not agree with the 2012 Decision's characterisation that the primary concern of policyholders should be the financial health and solvency of the Basic insurance business. Our clients' primary consideration is making their household finances work. As Basic auto insurance can form a non-trivial portion of their budgets, our clients would like to see a progression toward ICBC capital targets that does not result in them having to abandon vehicle ownership as a consequence.

76. ICBC certainly should (and does) make revenue requirements (hence general rate) recommendations based on the sound application of actuarial principles and practices. The Commission, as the ultimate authority on the approved increases, must balance the actuarial indications with the reality of ICBC's market structure, the inherent considerations surrounding monopoly conduct vis-à-vis customers, and most importantly the expressed wishes of its shareholder -- the Provincial government.

77. ICBC refers to volatility of the basic insurance industry. The government letter of November 25, 2011 refers to investment market volatility. The most prominent investment market volatility index (the CBOE's VIX) peaked in 2008, with a reasonably steady decrease since then. The trend toward decreased volatility of investment should mean lesser expected risk of adverse investment performance.

78. ICBC notes "Volatility in the investment market alone can easily impact the Basic MCT ratio by 15 percentage points. If any other additional adverse events were to occur simultaneously, such as adverse development in BI claims, then the MCT ratio could be expected to fall below the regulatory minimum."[51] We asked ICBC about the likelihood of certain loss cost outcomes, but were told there was no such calculated probability distribution. (Perhaps ICBC could comment in its Reply submission on the likelihood that investment outcome would reduce MCT by 15 percentage points during PY2013.)

[51] ICBC Final Submission, para. 111

79. As an analogy, constructing flood control works sufficient for a 1-in-100 year flood is good civil planning, but whether it must be completed within the coming 2 years is debatable.

80. From the OSFI Proposed Capital Framework: "Under the current MCT, investments in obligations of federal, provincial, territorial and municipal governments and school corporations in Canada attract a 0% risk factor. While OSFI agrees that this treatment is warranted for federal, provincial and territorial government obligations."[52]

81. Under the *Insurance Corporation Act*, ICBC is an agent of the government. It is difficult to believe that, in the event ICBC encountered a situation that would mean insolvency for a private sector insurer, government would abandon its agent. In contrast, shareholders would neither be required nor expected to bail out a private insurance corporation.

82. Ms. Minogue stated "even with a twenty-point margin the burden on the customer is not that great."[53] Using ICBC's "rule of thumb," the 20 point MCT increase maps to a 10% rate increase. On average, that translates to roughly a $65 increase per Basic insurance customer per year. For someone with an income close to $500K, that may be a triviality. However, for someone making $20K, this represents a day's pay. We have no quarrel with the logic behind the target MCT; our concern is how steeply the rates will change in getting there.

83. To lessen the impact on customers, should the Commission approve ICBC's proposed MCT of 150%, we submit that the build should occur over a 20 year period rather than the 10 years proposed by ICBC.

G. Proposed Customer Renewal Credit

84. In BCPSO IR1.41.1, we asked about the probability of a CRC being issued in any year. ICBC referred us to the response to BCUC IR1.82.3, which said "In the immediate near future of the next two to three years, it is unlikely that a CRC would be generated."

85. ICBC asks the panel to 1) set the MCT level that triggers the CRC and the minimum amount of credit, and 2) rule whether the credit should be a flat amount or proportional to premiums paid. ICBC goes on to say that detailed implementation rules will be addressed in the 2014 Revenue Requirement.[54]

86. Regarding 1), since ICBC expect no CRC distribution during the next three years (at least), we believe setting the trigger MCT level would best be determined in the 2014 proceeding. We also believe addressing the minimum amount of credit should be determined at that time.

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[52] BCUC IR1.60.3-5 – Attachment A
[53] ICBC Final Submission, para. 114
[54] ICBC Final Submission, para. 119

87. We agree with ICBC that a CRC should only apply in a situation where its implementation is cost-effective.

88. Regarding 2), we generally agree with ICBC that a proportional CRC is likely preferable. As this means a distribution across rate classes and discount levels, it is another reason why a Rate Design should be undertaken sooner rather than later. (We remind the Panel that Flat Fee non-insurance payments, previously ordered by the Commission, have yet to be implemented by ICBC.)

89. The CRC program relies on the not-defined phrase "well in excess" in respect to Basic capital. To reach that situation, Basic premiums would have been significantly higher than necessary. For our clients, keeping real rate increases below the realm of rate shock (i.e., exceeding six percent) is a greater concern than defining details surrounding a customer refund that has little likelihood of ever coming into effect.

90. We agree with ICBC on the absurdity of a situation of "pay out then collect back."[55] Perhaps, rather than CRC taking the form of an actual payment, it could take the form of a general rate indication adjustment ("rate holiday" or similar mechanism). This may be worth exploring for 2014.

H. Performance Measures

91. ICBC has proposed to file a performance measures application as part of its 2017 revenue requirements application as this will allow time for the corporation to implement the Claims Transformation Program, but has agreed in the interim to start reporting on BI frequency.

92. It became evident during this proceeding that there are a number of performance measures that could use some adjustments. While some measures such as the New Driver Comparative Crash Rate could be deleted from the list of measures, we are not convinced that performance measures should be removed prior to a comprehensive review.

93. As noted earlier in these submissions, one example of a performance measure that we think requires review is ICBC's Claims Services Satisfaction indicator. Once claimants are represented by lawyers, ICBC does not conduct telephone Customer Satisfaction Surveys with its customers to solicit information on an injury claimant's recent experience with ICBC. As responses to these Survey questions result in the Claims Services Satisfaction performance measure score, the Claims Services Satisfaction score does not include those who have opted for legal representation.

94. As a result, ironically, as the number of ICBC claimants who opt for legal representation increases, ICBC's Claims Services Satisfaction score also increases, as demonstrated in the table provided in response to BCPSO IR 2.10.5.

[55] ICBC Final Submission, paras. 126 to 128

95. Also as noted above, for 2011, the chart from BCPSO 2.10.5 shows a Claims Services Satisfaction rating of 85%. Since represented claimants are not included in the Claims Customer Satisfaction survey, the 85 percent satisfaction rating includes only those claimants who were not represented -- which for 2011 was 60% of claims. If we take 85% of 60%, the result is that about 51% of all claimants (those unrepresented plus those represented) report being satisfied with ICBC's Claims Services. This, of course, is a much lower score than the 85% that is shown in Figure 9.1 of Exhibit B-1.

96. One way to assess the Claims Services Satisfaction score for represented claimants might be to contact the claimants after their legal proceedings have concluded to request information about their satisfaction with ICBC's Claims Services. Contacting claimants with completed claims cases in which they were represented by counsel could provide the corporation with some insight into how to improve Claims Services in order to better address the reasons why people are choosing in increasing numbers to opt for legal representation when dealing with ICBC. It may be, however, that the Claimant Attitude Survey currently being completed by ICBC is able to identify and address some of the concerns that are leading more and more people to opt for legal representation.

I. Proposed procedure for differences between interim and approved rates, 2014 Revenue Requirements Application and upcoming Rate Design Application

a) Deferring refund of any difference between interim and approved PY2013 rates

97. We agree with ICBC's proposal that it would be in the best interest of policyholders to defer refunding any difference between interim and approved 2013 rates until the 2014 revenue requirements application.[56]

b) Procedure for 2014 Revenue Requirements Application

98. ICBC has essentially proposed a primarily written Streamlined Review Process ("SRP") for its 2014 rate application,[57] stating in essence that since the 2014 rate change will be subject to a 1.5% band in accordance with IC2, the cost of a full regulatory process may not be warranted.

99. Although ICBC's rationale indirectly emphasizes the importance of the 2013 RRA as a result of the 1.5% band on rates for future years, we disagree that a written SRP process should be used for the 2014 rate application. While 1.5% may not seem like much to ICBC, for our clients this is significant, and we think that at a minimum, there should be a full written hearing process.

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[56] BCUC 2. 158.1; ICBC's Final Submission, para. 133

[57] BCUC IR1, 4.1

100. We also believe that the timelines proposed by ICBC for such a process are too tight and will not allow for proper review of the application and the 6.4% rate increase that ICBC will potentially be seeking. For example, ICBC is proposing to hold a workshop within one week of the filing the application.[58] Further, ICBC has stated that so long as interim rates are in place for 2014, rates would not have to be finalized by the August 31, 2014.

c) Rate shock and the need for ICBC to prepare and file a rate design application

101. As a result of the 2012 RRA, ICBC policyholders were subject to an 11.2% increase in rates. As a result of the 2013 and 2014 applications, customers could be subject to a further 11.3% increase in rates, bringing the total between February 1, 2012 and August 31, 2014 potentially to 22.5%.

102. ICBC has stated that the earliest it could file a rate design application is "post-2015".[59] With respect, we believe that in the context of such dramatic rate increases which we believe to be in the nature of rate shock, waiting two years or more to look into a re-design of ICBC's rates is too long. Further, ICBC conducted extensive consultation and engagement work in 2012 on the design of its rates, and that work will become stale if we have to wait at least two more years for the corporation to file an RDA.

103. We therefore ask that the Commission order ICBC to file a rate design application within the next 12 months. In our view, having a rate design proceeding initiated while the Claims Transformation Project is underway makes sense, in order to ensure that ICBC's systems are set up to accommodate any changes that a rate design application might lead to. If a rate design application were to be filed within the next 12 months, we would also be less concerned with ICBC's plan to proceed with the 2014 rate application through a streamlined review process.

All of which is respectfully submitted.

Sincerely,
BC Public Interest Advocacy Centre

Original signed by Sarah Khan

Sarah Khan
Barrister & Solicitor
Counsel for BCPSO *et al.*

[58] T7, pp. 1154
[59] T7, pp. 1105-1106