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British Columbia Utilities Commission
Suite 410, 900 Howe Street
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attention: Commission Secretary

filed online

January 3, 2018

Dear Mesdames/sirs:

**Re: Insurance Corporation of British Columbia 2017 Revenue Requirements Application –
Project No. 1598929**

This is the Final Argument of the Movement of United Professionals (MoveUP) filed under the modified Regulatory Timetable, Schedule A to Exhibit A-10 in this proceeding.

Truncated Proceeding

We expect that the motivation for Order in Council No. 602/17 relates to the review processes that have been initiated by government and are currently underway, seeking appropriate means of addressing the serious financial circumstances in which ICBC has been left. Larger-scale structural and process changes would supersede many of the determinations that might have been made in the normal course through the annual regulatory process. Basic insurance premium increases for the current year are already essentially determined by Special Direction, in any event, as the actuarially indicated revenue requirement of the Corporation significantly exceeds the maximum permissible increase in Basic rates.

As we commented in the December 5 2017 Procedural Conference, the Commission's process does have a salutary role to play in the context of the government reviews:

However, the Commission does have a significant role to play, including assisting in that process by creating a record and providing an analysis, which should be foundational for the work that has to be done to put the Corporation back on its feet.

[Transcript p. 19]

The substantive record upon which the Commission’s determinations will be based in this proceeding is limited to the Corporation’s application and its responses to the various Information Requests filed by the Commission staff and interveners.

Key Issues We Will Address

The range and the degree of detail that we are able to address in this Final Argument are necessarily reduced by the interruption of the prescribed course of the proceeding.

A large portion of our client’s focus in its first (and now, only) round of IRs concerned the degree of cost control exercised by ICBC with respect to vehicle repairs at the hands of Express Repair (“Valet”) repair shops. Most of our comments now will similarly focus on that subject-matter, which is also the subject of an audit commissioned by the government.

We will also comment on ICBC’s proposal for the abandonment of various service delivery performance metrics, particularly in the Claims Department. In a nutshell, we will argue that maintaining robust service delivery reporting is “hard-wired” into the Corporation’s particular statutory regulatory regime. We will argue that now is not the time to reduce the scope of performance measure reporting – in the midst of extensive reviews of the Corporation’s products, services and operations, and while key questions remain unanswered in the identification of operational deficiencies which may be contributing to current trends. We will also argue that, in particular, the relevant performance issues may have a direct bearing on some contributing causes of the very high Legal Representation Rate.

The Commission will be in a far better position to consider the most appropriate array of performance metrics after the Corporation emerges from the intensive review processes and its future course has been determined.

General Observations

First, we offer the following general comments.

MoveUP wishes to acknowledge an apparent shift in the Corporation’s attitude over the past several months, reflecting an increasing willingness to acknowledge deficiencies in past approaches and practices. This is readily seen, for example, by contrasting ICBC’s analysis of the underlying causes of the surging Legal Representation Rate in Bodily Injury claims as presented in the 2014 Customer Attitudes Survey (CAS), compared with its 2016 CAS.

The 2014 CAS was to a substantial extent an exercise in responsibility avoidance. Its key conclusion was the circular assertion that the primary reason why increasing numbers of customers were choosing to retain counsel was “the perceived benefits of retaining legal counsel” – i.e., people retained lawyers because they thought it was a good idea to retain

lawyers. The yield of useful information flowing from this proposition, and its contribution to finding solutions through changes in Corporation practices or resourcing, conveniently rounded off to zero.

By contrast, the 2016 study actually involved ICBC looking into the mirror and identifying perceived shortcomings in the way it was handling claims and interacting with customers.

More tangibly, the Corporation has begun to reverse the “penny-wise” depletion of claims staffing over the past several years, rebuilding the capacity of the Claim Centre to respond to increasing claims volumes and complexity, and has already identified a positive impact that is helping at least to dampen the rate of increase in the cost of settling claims.

We are encouraged by ICBC’s stated commitment to continue building these internal resources to respond to evolving needs:

As discussed in the responses to information requests 2017.1 RR BCUC.30.4 and 2017.1 RR BCUC.61.2, ICBC determines claims staffing levels on the basis of an integrated workforce planning and staffing model. ICBC will continue to recruit and train staff based on claims intake volume, mix, and type of claims, and forecasted claims closures. The integrated workforce planning and staffing model is refreshed regularly to enable refinement based on the most recent data, which is used to inform the development of staffing levels on an ongoing basis.

The 2016 initiative to hire new claim staff as described in the Application, Chapter 7, paragraph 11, is completed. As the integrated workforce planning and staffing model is refreshed, taking into account development in claims trends and volumes, additional staff will be hired as required, with appropriate consideration to other important factors such as operational budgets. Based on current trends, ICBC continues to recruit more staff.

[Ex. B-2 MoveUP IR 3.1]

Moving away from an ideological “FTE-aversion” to a more pragmatic approach to balancing internal capacities with needs is already providing a measure of relief and MoveUP looks forward to a continuation of this more rational orientation.

Property Damage Claims

We are calling for a similar approach toward the containment of surging property damage repair costs. While there can be no doubt that factors identified by ICBC as contributors to the increased cost of repairing vehicles are at play, including changes in the cost and sophistication of parts, MoveUP is concerned about the inadequacy of oversight of the cost of contracting out

the process of estimating and approving repairs to the very shops that perform the vast majority of the repair work, the Express Repair/"Valet" shops. The current repair authorization process entails a very large measure of reliance upon the integrity of the vendor shops, as to the extent of repairs properly arising from an insured claim, the amount of labour required to effect those repairs, and the proper completion of the self-authorized work.

To put this in perspective, in 2010, 75% of original estimates were written by ICBC staff and 25% by the repair shop. By 2016, these proportions had nearly reversed, with only 31% written by ICBC staff and the remaining 69% by the shops themselves. In 2016 Express Repair shops handled 231,906 out of a total of 236,765 paid claims [Exhibit B-2 MoveUP IR 2.4.12].

ICBC's oversight processes and capacity are threadbare in this respect. In 2016, a crew of only 35.3 ICBC-employed Express Repair estimators¹ comprised the entire workforce for the hands-on oversight and approval of 237,122 repairs by Express Repair shops [Ex B-2 MoveUP IR 2.2.5].

To a large extent, ICBC relies on customer complaints to trigger post-repair reviews of the work done by Express Repair shops. The miniscule trickle of complaints cannot rationally be taken to mean that the standard of performance of the Express Repair shops, system-wide, is one of virtual perfection. In 2017 YTD to October, of 203,114 Express Repair Claims Paid, there was a grand total of 9 (nine) customer complaints producing 9 (nine) reinspections – that is, 0.004% of repairs were subject to reinspection [Ex B-2 MoveUP IR 2.4.12]. ICBC acknowledges that there may be deficiencies that the customer is unable to detect,² that customers may have no personal financial stake in the propriety of the invoice the shop submits to the Corporation,³ and that at least one very significant repair cost, whose necessity is generally a judgment-call – "paint blending" – cannot normally be evaluated except by an expert, as to whether it has actually been performed at all.⁴

ICBC's strategy of depleting its own internal resources over recent years has produced a particularly gaping vulnerability in its control over repair shops because of its "two-hour rule." When an Express Repair shop submits an electronic request for approval of supplemental repair work on a vehicle, unless it hears back from ICBC within two business hours of the submission the work is deemed to be authorized. MoveUP's members include the ICBC-employed estimators who are tasked with reviewing these supplemental requests, and they report that because of staffing shortages it routinely takes far longer than two hours for an ICBC employee to get to a submitted request. ICBC is unable to contradict this suggestion. It does not attempt to keep track of problems with two-hour compliance. [See, generally, Ex B-2 MoveUP IR 2.2.1-6]. Presumably, that data is readily available from the Corporation's claims processing system.

¹ expressed as FTEs

² Ex B-2 MoveUP IR 2.4.5

³ Ex B-2 MoveUP IR 2.4.7

⁴ Ex. B-2 MoveUP IR 2.6.3

Obviously, the shops themselves are acutely aware of such a situation; less-than-scrupulous shops would be well aware of their ability to self-authorize paid work and rely on a deemed go-ahead by simply waiting 120 minutes before proceeding, with no substantial approval or oversight mechanism, and no real risk of post-performance reinspection.

This problem arises because the Corporation has not maintained sufficient staffing to make its authorization rules work as intended. We trust that the audit of the Express Repair program will examine this weakness in ICBC's cost-control system.

MoveUP is not suggesting that British Columbia's automotive repair industry is rife with corruption; however, lack of diligent compliance by even a minority of shops is a major cause for concern, given the very substantial premium dollars that go to this program.

ICBC expresses a view that the Express Repair program brings a significant improvement in customer service and satisfaction, but in fact has no information to confirm whether and to what degree the program actually accelerates the process of estimating claims and repairing vehicles [Ex B-2 MoveUP IR 2.2.7 and 2.2.8].

The Commission has the jurisdiction to order ICBC to upgrade its Express Repair cost control processes and capacities; realistically, we expect that improvements of this nature will more likely flow from the current audit of this aspect of the Corporation's operations, with follow-through on prescribed remedies left to future regulatory cycles.

Performance Metrics

As we indicated above, MoveUP submits that now is not the time to consider thinning out the range of operational performance metrics that ICBC is required to report. Specifically, we submit that the Commission should not provide the following approvals sought in the draft Order G-xx-18 attached to the Corporation's final submission:

h) Discontinue operational metrics for Call Centres, including:

- a. New Claims Initiation.
- b. Customer Contact Service Level.

o) Discontinue Legal Representation Rate as a measure but continue reporting on the topic in Claims Cost Management chapters in future RRAs

Discontinue all TP and TP related reporting

b) Discontinue provision of transitional period operational metrics (Average Handling Time, Average Speed to Answer, Abandon Rates and Deflection Rates) in future RRAs

Our reasons for opposing these changes are as follows:

First, by way of context, it is important to note that Part 2 of *the Insurance Corporation Act* (ICA) confers upon the Commission a more extensive mandate to oversee service delivery by the Corporation than it wields over utilities under the *Utilities Commission Act* (UCA). That includes far-reaching authority to require ICBC to provide reports regarding policies, practices and service quality, and to order changes in the way the Corporation provides services to the public, reaching beyond the Commission's oversight of practices and service delivery by utilities.

Without setting out all of those provisions, we note in particular the following extracts from ICA sections 44 and 45. Section 44 applies and adapts various provisions of the UCA to ICBC. Section 45 adds supplemental regulatory powers that are not grounded in the UCA:

Utilities Commission Act to apply

44. (1) Subject to subsections (3), (6) and (7), the Utilities Commission Act, other than sections [...], applies to and in respect of the corporation as if it were a public utility, and a reference in this Part to the Utilities Commission Act or to a provision of that Act is deemed to be a reference to that Act or provision as it applies for the purposes of this Act.

(2) Despite subsection (1), the corporation is not a public utility.

(3) For the purposes of subsection (1),

....

(b) a reference to "service" in the Utilities Commission Act is deemed to be a reference to universal compulsory vehicle insurance, and includes

(i) **the corporation's practices and procedures** related to universal compulsory vehicle insurance, and

(ii) **the corporation's performance** in providing universal compulsory vehicle insurance to its customer base as a whole or to classes of its customers,

but does not include the corporation's provision of universal compulsory vehicle insurance to any one customer,

(c) section 23 (1) (g) (i) of the Utilities Commission Act is deemed to read as follows:

"(i) the convenience **or service of the public**, or", and

(d) section 43 (3) (a) of the Utilities Commission Act is deemed to read as follows:

"(a) **all profiles, contracts, reports of accountants, actuaries and consultants, accounts and records in its possession or control relating in any way to its property or service or affecting its business**, or verified copies of them, and".

....

Regulation of universal compulsory vehicle insurance

45. (1) If the corporation is authorized by the Lieutenant Governor in Council to provide universal compulsory vehicle insurance, **the corporation must make available universal compulsory vehicle insurance in a manner, and in accordance with practices and procedures, that the commission considers are in all respects adequate, efficient, just and reasonable.**

(2) If the commission, after a hearing held on its own motion or on complaint, **finds that the manner in which universal compulsory vehicle insurance is provided by the corporation does not comply with subsection (1) or that the practices and procedures in accordance with which that insurance is provided do not comply with subsection (1),** the commission must

(a) **determine the manner or the practices and procedures, as the case may be, that comply with subsection (1), and**

(b) **order the corporation to comply with that manner or with those practices and procedures.**

(3) After a hearing held on the commission's own motion or on complaint, **the commission may determine and set adequate, efficient, just and reasonable standards, practices or procedures to be used by the corporation in providing universal compulsory vehicle insurance and may order the corporation to comply with those standards, practices or procedures.**

(4) **The commission may, by order, require the corporation to report, at the times and in the form ordered by the commission, on the corporation's performance in providing universal compulsory vehicle insurance, including, without limitation, on the corporation's performance in complying with any order made under subsection (2) or (3).**

[emphasis added]

Thus, the Corporation's obligations to report to the Commission with respect to the nature and quality of its service delivery to customers rests upon specific and extensive statutory foundations unique to the regulation of ICBC.

This special regulatory mandate was addressed by the Commission in the course of ICBC's 2014 Revenue Requirements proceedings in Order G-174-14. There, the Commission overruled most of ICBC's objections to Information Requests filed by our client which bore upon service quality issues, including questions about staffing levels in certain parts of the organization. After considering our argument on those issues, the Commission ruled as follows:

The Commission Panel agrees with ICBC's interpretation of this "while the Commission can set Basic Insurance rates and establish performance measures, it has no jurisdiction to dictate how ICBC decides to staff particular areas of the organization or allocate work among employees in order to manage its costs or achieve performance measures."

However the Commission Panel has jurisdiction to identify problems in service and performance levels, identify the apparent causes of such problems and direct improvements in service if necessary. While the Commission cannot direct how ICBC must fix any problems identified, it is entirely within the purview of the regulator to examine and identify such problems. The Commission Panel has reviewed the disputed IRs with this lens.

[emphasis added]

The Commission should ensure that it continues to receive a full array of performance reports from the Corporation in order to fulfill this special statutory mandate.

Second, the timing of the requests is unfortunate. Common sense indicates that the Commission should wait on the outcome of the government's ICBC reviews, which have interrupted the normal flow of this proceeding, before attempting to determine whether additions, deletions or modifications of performance metrics are appropriate. These metrics are tools and not ends in themselves. It would make sense to retain the full existing tool-kit at least until we know what services will be delivered, and by what mechanisms, and generally what the future informational requirements will be.

Third, there is reason to consider that the efficiency of claims handling and its convenience to customers has a substantial bearing on the burgeoning representation rate, which clearly is a complex phenomenon with several contributing factors. This is apparent from the 2016 Customer Attitudes Survey (Application, Appendix 7-A); for example, ICBC notes at page 7A-8:

21. The 2016 CAS survey provides some important insights for ICBC in terms of how it can better service injured customers and work more effectively with them throughout their injury recovery and claim. In summary, for the remaining portion of represented claimants who continued to work directly with ICBC for a longer period of time before retaining legal services, the main self-reported reasons behind the decision to get a lawyer were:

- Perceived hassles of dealing with ICBC.
- Perceived unfair treatment by ICBC.

Both of these perceptions have an obvious relationship with the nature and scale of resourcing of ICBC's claims handling, its staffing, training, and operational methods. It is reasonable to assume that the promptness, efficiency and responsiveness of the Claims Centre and other internal resources may have an impact on the propensity of customers to retain legal counsel before proceeding further with their injury claims. The increasing proportion of customers who retain lawyers very early in the claims process may in part reflect ICBC's reputation in these respects, and indicate the scale of the problem.

Application Figure 7a.6 - **Influences on Retaining Representation for the Claim** – lists a series of perceptions that significantly contribute to claimant decisions to retain counsel, either early or later in the process. 55% of respondents indicated that the perception that “Making a claim with ICBC would be difficult or confusing” was very or somewhat influential in their decision to retain counsel later in the process, after their initial direct dealings with the claims department. 63% reported that they retained counsel later in the process, at least in part, because they “didn’t feel the adjuster was working with [them] on [their] claim.”

Again, objective measures of responsiveness to customer contacts and queries would reasonably provide useful tools to craft effective remedies.

The importance of these factors is also reflected in ICBC’s response to MoveUP IR 3.3.1:

2017.1 RR MoveUP.3.3.1 Reference: p. 7A-11:

27. Notably, when unrepresented claimants were asked whether they considered legal representation at some point during their claim, 40% indicated that they had. The most frequently cited reasons for ultimately deciding against representation included:

- **Confidence in being able to manage the claim on their own.**
- **Not wanting to wait for settlements.**
- **Positive perception of the ICBC adjuster’s service.**

Please confirm that the second and third bulleted reasons listed in this passage are all enhanced by ensuring that claims adjuster services are adequately staffed.

Response:

Intuitively it is reasonable to assume, all things being equal, that adequate staffing to meet operational requirements is one of many factors that may help to reduce the rate of legal representation.

As shown in the Application, Chapter 7, Figure 7.4, over half of represented claimants retain legal services by the time of, or within a short period of time after, reporting the claim. More injured customers are becoming represented before ICBC has an opportunity to provide them with service and work directly with them on their claims.

As noted in the Application, ICBC has undertaken a number of claims cost management initiatives including initiatives which are intended to improve ICBC’s interactions with customers, and has hired additional bodily injury adjusters in order to manage the growth of its pending bodily injury claims that would otherwise occur.

We do not know to what precise extent delay in handling Dial-a-Claim calls, and delay in other customer interactions with ICBC staff, contribute to the representation rate trend, but they cannot be dismissed as material factors. ICBC’s current scores with respect to these measures are hardly stellar, though they have registered significant improvements in some respects:

Figure 6B.1 – Performance Measures Results

PERFORMANCE MEASURES		2014 Actual	2015 Actual	2016/17 Target or Outlook ¹	2016/17 Actual
Service	Insurance Services Satisfaction	96%	93%	≥95%	95%
	Driver Licensing Satisfaction	94%	94%	≥95%	93%
	Claims Services Satisfaction (BCUC) Accident Benefit Only (BCUC)	86% 84%	not available not available	83% 84%	89% 85%
	New Claims Initiation Calls answered in 100 seconds	33%	59%	65%	56%
	Customer Contact Service Level Calls answered in 90 seconds	65%	56%	45%	41%
	Customer Approval Index	63%	64%	not applicable	61%
	Legal Representation Rate	46%	48%	53%	51%
	Complaints Heard by the Fairness Commissioner	234	251	not applicable	321

New Claims Initiation – Calls answered in 100 seconds has maintained the gains achieved since the very poor performance level of 33% 2014; on the other hand, the proportion of calls to the Customer Contact Service Centre answered in 90 seconds deteriorated from 65% in 2014 to only 41% in 2016/17. We expect to see significant future progress in that performance measure following ICBC’s improvements to staffing levels in the Claims Department, but the Commission should continue to receive and review this information, while ICBC continues to monitor its evolving Claims staffing requirements.

ICBC has not suggested that maintaining reporting of the current performance metrics would be burdensome, nor asserted any other particular downside to retaining the *status quo* at least through the next regulatory cycle. Whether or not reporting Average Handle Time, Average Speed to Answer, Abandon Rate (hang-ups) and Deflection Rates (busy signals) was originally devised to measure the efficacy of the Transformation Project, they continue to contribute helpful information about the Corporation’s responsiveness to customers at the very cost-sensitive point of the initiation of claims, and should be maintained, at least until the outcome of the government’s review is available.

MoveUP submits that these requests should be tabled for the time being, perhaps to be revisited in a year or two.

Concluding Comments

MoveUP and its members acknowledge that ICBC is struggling with a challenging set of circumstances. They are determined to play their part finding the best solutions and setting the Corporation on a firm foundation for stability and excellence. MoveUP is fully committed to a strong public insurer with solid popular support, and is confident that all of ICBC's problems are capable of resolution.

All of which is respectfully submitted.

Yours very truly,

ALLEVATO QUAIL & ROY

A handwritten signature in blue ink, appearing to read "Jim Quail". The signature is stylized with large, overlapping loops and a prominent initial "J".

per Jim Quail
Barrister & Solicitor