

**MINISTRY OF JUSTICE
COURT SERVICES BRANCH
BRIEFING NOTE**

PREPARED FOR: The Honourable Suzanne Anton, Attorney General and Minister of Justice
FOR DECISION

ISSUE: s.12,s.13,s.14
s.12,s.13,s.14

BACKGROUND:

- In 2014, the Supreme Court Rules Revision Committee (RRC) identified the need to amend the Supreme Court Civil Rules to simplify and reduce the number of civil tariff items.
- s.12,s.13,s.14,s.17
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DISCUSSION:

- s.12,s.13,s.14,s.17
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s.12,s.13,s.14,s.17

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- The Ministry of Finance (through its Risk Management Branch's self-insurance program) is assessing the recent tariff change on its pending claims. Similar work is underway for claims under the *Crown Proceedings Act* as with other parts of government and related agencies.
- s.12,s.13,s.14,s.17
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OPTIONS:

s.12,s.13,s.14,s.17

s.12,s.13,s.14,s.17

RECOMMENDATION:

s.12,s.13,s.14,s.17

APPROVED / NOT APPROVED

DATE:

The Honourable Suzanne Anton, QC
Attorney General and
Minister of Justice

Approved by:
Richard J. M. Fyfe, Q.C.
Deputy Attorney General and
Deputy Minister, Justice
250-356-0149

Prepared by:
Lynda Cavanaugh
Assistant Deputy Minister
Court Services Branch
250-356-1526

Attachments: s.12,s.13,s.14,s.17
s.12,s.13,s.1
7

From: [Brouwer, Shauna JAG:EX](#)
To: [Cavanaugh, Lynda A JAG:EX](#)
Cc: [Gunnarson, Jess JAG:EX](#); [Hoadley, David JAG:EX](#)
Subject: Supreme Court Rules/ wording review please
Date: Friday, March 18, 2016 3:56:02 PM

Why rescindment is needed before March 31 rather than at date of implementation?

As part of the year end close off work for the government's public accounts, ICBC will be required if the OIC is not rescinded to prepare a new actuarial estimate of its claims liabilities. The effect of the new regs will significantly impact the estimate of claims liabilities at the government's fiscal year end 2015/16.

- s.13,s.17

-

I also sent Doug a note and he may return a comment but for now let's use this as a placeholder.

From: Cavanaugh, Lynda A JAG:EX
Sent: Friday, March 18, 2016 2:55 PM
To: Brouwer, Shauna JAG:EX
Cc: Gunnarson, Jess JAG:EX
Subject: FW: Supreme Court Rules/ wording review please

Shauna can you please suggest wording for cab ops regarding the necessity that this is rescinded by March 31st. I get that once the legislation is introduced (as it was in January) it compels an accounting regime or structure be put in motion, and that year end financial activities are critical to that - but if you could propose something we would appreciate it.

From: Gunnarson, Jess JAG:EX
Sent: Friday, March 18, 2016 1:47 PM
To: Cavanaugh, Lynda A JAG:EX
Subject: Supreme Court Rules

Hi Lynda,

s.12,s.13,s.14

Thanks, Jess

Jess Gunnarson,
A/ Director, Policy, Legislation and Issues Management
Court Services Branch, Ministry of Justice
Ph.: 250-356-9757 Cell: 250-415-6202

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Dayman, Marlene JAG:EX

From: Foster, Doug FIN:EX
Sent: Friday, April 1, 2016 5:40 AM
To: Main, Grant TRAN:EX; Fyfe, Richard J JAG:EX
Cc: Kislock, Lindsay M TRAN:EX; Bishop, Carol TRAN:EX; Matthias, Lauren FIN:EX; Brouwer, Shauna JAG:EX; Cavanaugh, Lynda A JAG:EX; Dube, Jonathan FIN:EX
Subject: FW: For Tomorrow Morning
Attachments: 2016 Tariff Change Discussion 2016-04-01 (incl Appendix).pdf

Slide deck we are using to brief the Attorney this AM.
d.

From: Carpenter, Bill [<mailto:Bill.Carpenter@icbc.com>]
Sent: Thursday, March 31, 2016 9:58 PM
To: Foster, Doug FIN:EX
Cc: Kirkham, Robert
Subject: For Tomorrow Morning

I will bring copies for the morning and will be ready to project, if we have that capability. For this copy, I have included as an appendix what we presented two weeks ago. I will only print the new material, however.

- Bill

Bill Carpenter, FCAS

Chief Actuary

ICBC building trust. driving confidence.

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BC Supreme Court Civil Rules

Considerations for Discussion

April 1, 2016



Prepared by : Bill Carpenter – Chief Actuary
Rob Kirkham – Director Claims Legal Services

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ICBC – BACKGROUND & CURRENT ENVIRONMENT

ICBC Overview

☐ ICBC's recently tabled Service Plan

☐ s.13

- ☐ Very challenging income and rate change targets
- ☐ Operating in a very challenging environment with more vehicle use, more vehicle density, greater legal representation, lower interest rates, inflationary pressures, etc.

☐ Some basic ICBC facts

- ☐ Approaching \$5 billion in annual premium; Basic is 60% and growing
- ☐ Bodily injury claims costs topped \$2 billion for the first time in 2014, escalated to \$2.3 billion in 2015 – an increase of 64%, or almost \$900 million, since just 2008.
- ☐ A \$28-\$30 million increase in Basic costs translates into 1% additional Basic rate
- ☐ At year-end 2015, carrying \$9.1 billion in unpaid claims liabilities; 77% is Basic
- ☐ A 1% increase in estimated unpaid claims has an impact of \$91 million on capital (about 3% of capital)
- ☐ Basic Insurance has never made a profit; all capital is “paid-in” capital from Optional

A CHALLENGING CLAIMS ENVIRONMENT

Bodily Injury Volumes on the Rise

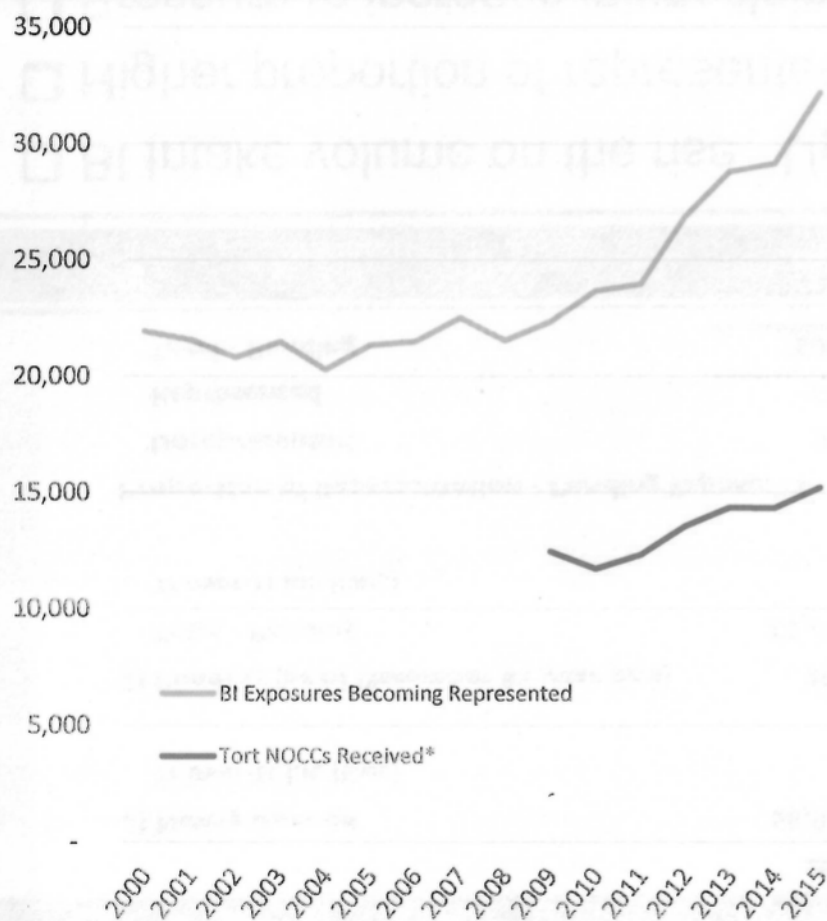
	2010	2011	2012	2013	2014	2015
1) Newly Opened	58,975	60,268	60,348	60,528	62,922	66,535
Yr over Yr Inc (Dec)		2%	0%	0%	4%	6%
2) Pending (as of December 31 year-end)	2010	2011	2012	2013	2014	2015
Total - Pending	66,423	70,491	76,033	78,052	82,840	88,871
Yr over Yr Inc (Dec)		6%	8%	3%	6%	7%
Proportion of Representation - Pending Exposures						
Unrepresented	31%	32%	30%	27%	28%	26%
Represented	69%	68%	70%	73%	72%	74%
Total - Pending	100%	100%	100%	100%	100%	100%

Key Points

- ☐ BI Intake volume on the rise. Upward trend expected to continue
- ☐ Higher proportion of represented exposures in pending book
- ☐ Pressure to increase injury claims handling staff to manage higher volume of intake and built-up pending volume

GROWTH IN REPRESENTATION

BI Representation & Litigation Volumes



Trends

☐ Represented claims

- ☐ Averaged 21,500 from 2000 through 2009, the year prior to the last tariff change
- ☐ Increased to over 32,000 in 2015
- ☐ 55% of compensable claims are now represented
- ☐ Increasing percentage of claims are represented at first notice of loss

☐ Litigated claims

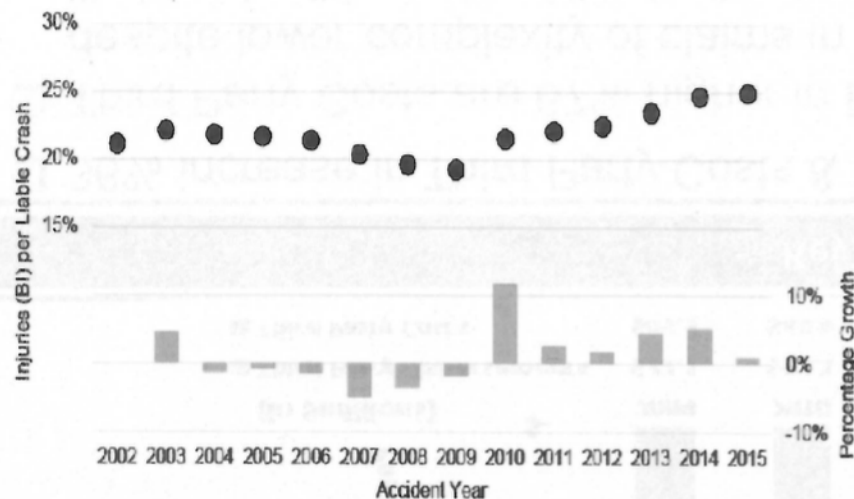
- ☐ Approximately 12,000 per year prior to the last tariff change
- ☐ Increased to over 15,000 in 2015
- ☐ Up 16% alone in the first two months of 2016
- ☐ In addition, litigation is up over 70% on first-party Accident Benefit claims

LEGAL REPRESENTATION UP NEARLY 50%



BODILY INJURY GROWTH OUTPACES OVERALL CRASH GROWTH

More Injuries per Liable Crash



Entitlement: Customer Quotes

- "This is the 1st accident I was in. For what I have gone thru for a month. I find this a very "LOW" ball offer and have friends that have been in accidents similar to mine and the amount you are offering me nowhere near matches anything they received. Please reconsider this amount – I look forward to a reasonable offer."
- "I have seen 2 Doctors after my accident both telling me that I am very tight and they do not recommend massage or physio at this time. I feel that I should be compensated."
- "I'm calling about my accident claim are you the person I can talk to about settling my claim on this? I wanted to take care of medical things, I haven't gone to my doctor yet. I'm trying to this so I don't have to go thru the lawyer and the courts and all that. I'm wondering if we can just do a settlement right now. There are other options I want to do other than going to the doctor."

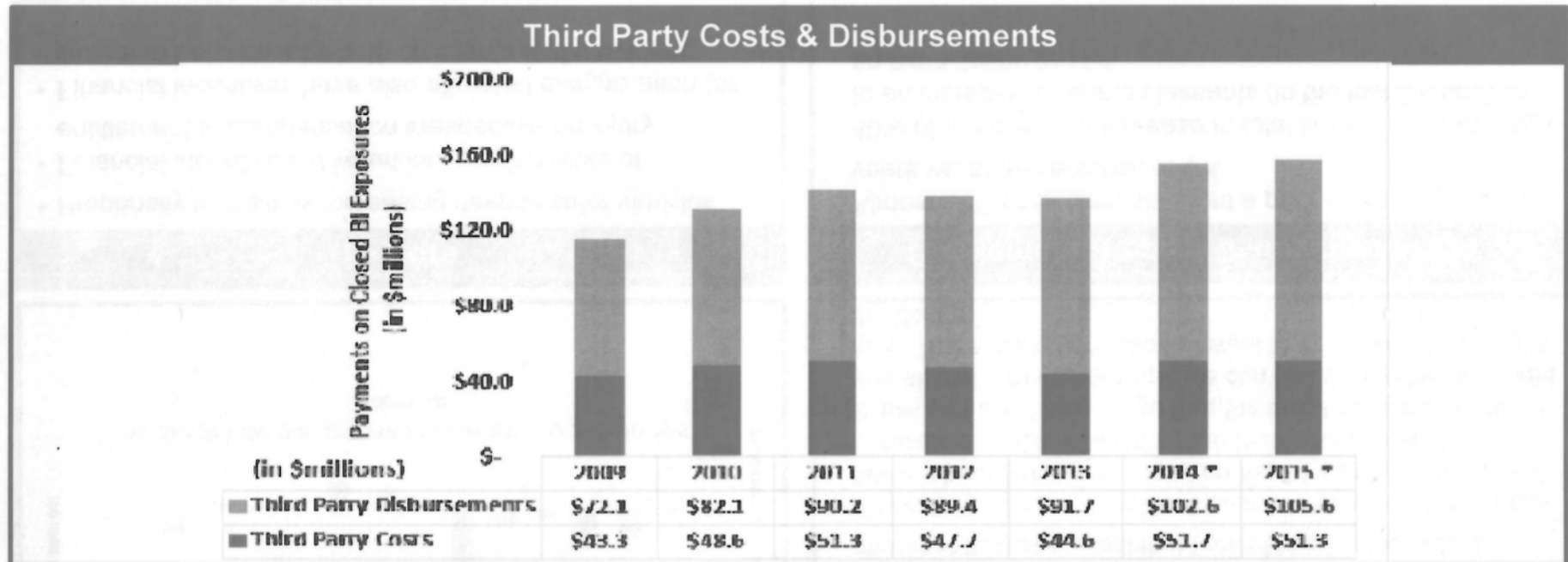
Factors

- Propensity to claim is increasing despite safer vehicles
- Financial incentives drive an increasing sense of entitlement to compensation irrespective on injury
- Financial incentives have also attracted exaggeration (or worse) in behaviour by both claimants and providers

Entitlement: Repeat Claimants in 2015

- Almost 11% of BI claimants had a prior claim in the last 3 years vs. an expectation of 6%
- 40% of the one year increase in total BI claimants was due to an increase in repeat claimants (in the last 3 years) vs. an expectation of 11%

PLAINTIFF COUNSEL COSTS ON THE RISE

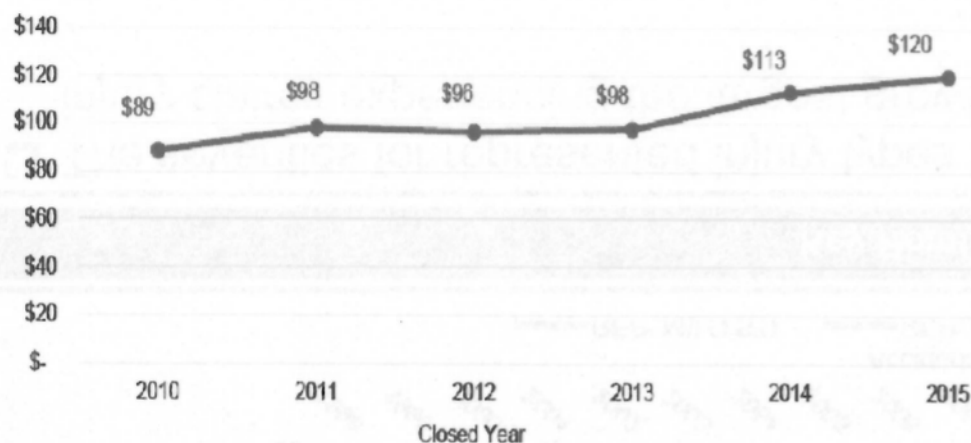


Key Points

- ☐ 36% increase in Third Party Costs & Disbursement payments since 2009
- ☐ Third Party Costs are 67% higher in BC than for ICBC's claims in Alberta despite lower complexity of claims in BC (minor soft-tissue injury claims less likely to be litigated in Alberta due to general damages cap on those claims)
- ☐ Disbursements comparison still underway

COST & IMPACT OF MEDICAL REPORT COSTS

Medical Reports (\$ millions)



	2010	2011	2012	2013	2014	2015
Medical Report	\$ 88,652,653	\$ 98,182,295	\$ 96,402,602	\$ 97,729,864	\$ 113,222,434	\$ 120,046,095
Y/Y Inc/(Dec)		11%	-2%	1%	16%	6%

Primary Means to Build a Case

ROGERS LTE 12:15 PM 84%

< Search

There is never a guarantee of winning simply because you hire a lawyer... If a judge rules in favor of the opposing party, c'est la vie. Lawyers have high stress jobs, and work very hard... In my opinion. I personally know of quite a few people that were very pleased with Mr. Byl's law services, and highly recommended him.

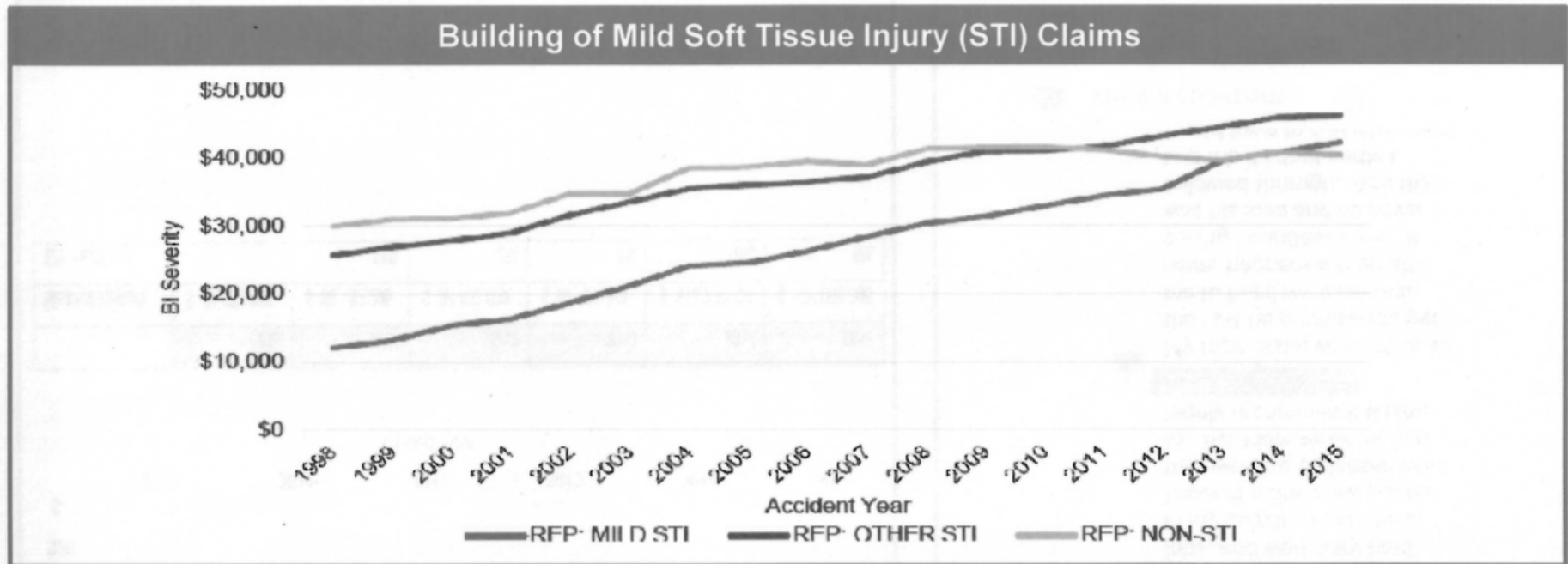
Claimant

My main issue with him is all the test he promised to get me to build my case that never happened even after asking countless times. It was his idea and he never followed through.. And then told me if i dont settle i would have to pay icbc court

Write a comment... Post

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HOW CLAIMS ARE BUILT UP



Key Points

- ☐ The severities for represented injury types have converged, with mild soft tissue injury claims experiencing the largest growth over the years

COST & IMPACT OF MEDICAL REPORT COSTS



Medical Reports (\$ millions)				
Medical Reports	Doctors of BC Fee Schedule	WorkSafe Negotiated Schedule	ICBC Purchased Independent Medical Examination	Plaintiff Purchased Independent Medical Examination
Medical Legal Opinion –	\$1,692	\$1,501.21	*\$3,928 - \$7,575	**10 - 25% higher

* A sample of medical report pricing shows an average costing for the top 3 requested speciality types. This reflects the pricing charged to ICBC for the purchase of IME reports for defence purposes. The price points for these reports have continued to increase as the market continues to reinforce this behaviour.

** It is not uncommon to see plaintiff disbursements for medical reports from specialists to be higher than those charged out to ICBC.

Key Points

- ☐ Medical report usage and cost reform are significant opportunities to reduce the cost of Basic insurance



PENDING LEVELS & TIME TO SETTLE

Time to Settlement

Age at closing (5 yr average - 2010 to 2014)

Litigated	3.0 years
Represented not Litigated	1.4 years
Unrepresented	0.6 years

Duration from Open to Closed:	Litigated	Represented but not Litigated	Unrepresented
0 to 6 months	4%	15%	63%
6+ to 12 months	6%	28%	19%
1+ to 2 years	18%	45%	15%
2+ to 3 years	28%	7%	2%
3+ to 4 years	23%	2%	1%
4+ to 5 years	11%	1%	0%
5+ years	10%	2%	1%
Total	100%	100%	100%

☐ Litigated claims take more than 5 times longer than an unrepresented claim to settle.

+80% of unrepresented exposures are settled within the first year.
Only 10% of litigated exposures are settled within the first year.



HIGH LITIGATION ACTIVITY BUT LESS THAN 1% END UP IN TRIALS

Trial Statistics

	2008	2009	2010	2011	2012	2013	2014	2015
Bodily Injury Trials	291	348	247	227	348	253	247	191
Closed BI Exposures *								
Total Closed Count	43,311	43,342	44,866	43,379	40,629	46,930	47,616	49,409
% Represented	41.1%	42.5%	43.3%	45.5%	46.7%	48.4%	50.3%	46.5%
Total Represented Count	17,804	18,416	19,423	19,717	18,960	22,703	23,973	22,980
% of Total Closed at Trial	0.7%	0.8%	0.6%	0.5%	0.9%	0.5%	0.5%	0.4%
% of Represented at Trial	1.6%	1.9%	1.3%	1.2%	1.8%	1.1%	1.0%	0.8%

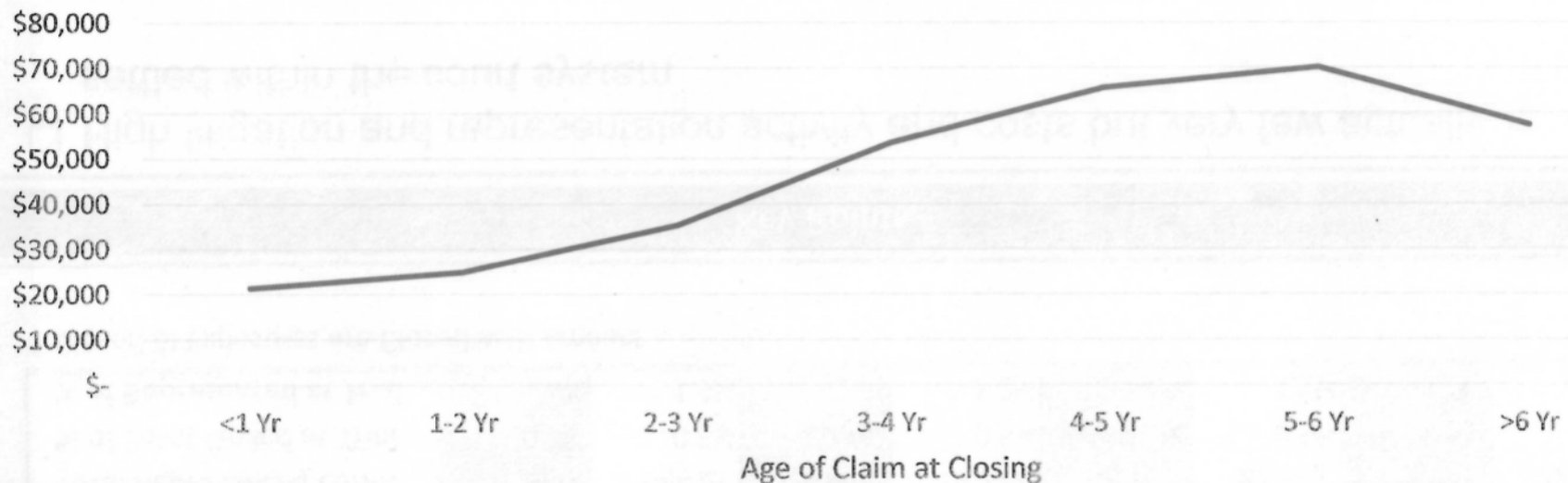
* Closed BI Exposures are Closed with Amount

Key Points

- ☐ High litigation and representation activity and costs but very few actually settled within the court system

ICBC INCENTIVE TO CLOSE CLAIMS EARLIER

2015 Represented Claims: Average Claim Size by Age at Closing



Key Points

- ☐ Time to build claims is an advantage to claimants
- ☐ Severity may increase by \$5,000 to \$20,000 if a claim is closed one year later
- ☐ Data excludes catastrophic claims

PRESSURE TO INCREASE INJURY HANDLING STAFF

Claims Staffing Levels Since 2010

	2010 **	2011 **	2012	2013	2014	2015	2016 Plan
Unrepresented Claims	n/a	n/a	257.2	234.4	232.3	234.1	225.1
Represented Exposures	n/a	n/a	275.6	294.9	314.4	304.1	374.7
Total - Injury claims handling FTEs	555.3	548.8	532.9	529.3	546.7	538.3	599.8
Yr over Yr Inc (Dec)		-1%	-3%	-1%	3%	-2%	11%

** ICBC's Claims Division functional organization was implemented in Q4 2011.

Key Points

- ☐ Shift of staffing mix to more FTEs handling represented claims
- ☐ In the midst of very successful recruiting effort
- ☐ Likely to hire expected 2017 attrition to get further ahead on staffing given high 2016 claim levels and increasing representation & litigation to date

NEW STAFF NEED SEVERAL MONTHS IN JOB BEFORE BEING FULLY PRODUCTIVE TO COMPLEX NATURE OF INJURY CLAIMS HANDLING



SUMMARY

- ☐ ICBC appreciates the opportunity to represent BC auto insurance ratepayers by providing input to the Rules of Court and Tariff
- ☐ ICBC asks that changes in costs be designed so that they do not produce costly changes in claim behaviour that would have an adverse impact on premiums paid by ratepayers
 - ☐ For example, costs should be proportionate to the work effort to qualify for those costs, a particular concern when minimum cost levels are established
- ☐ ICBC asks that any changes be benchmarked with other jurisdictions, just as it benchmarks its own costs
- ☐ ICBC is operating in a very challenging environment
 - ☐ Increasing number of claims, increasing portion represented and litigated, increasing numbers of pending claims
 - ☐ ICBC has no incentive to delay resolution of claims
 - ☐ Ratepayers will appreciate finding a balance between increases in costs with changes that could encourage earlier settlement, reduced use of multiple medical reports or other factors that could offset cost increases

APPENDIX 1

MATERIAL SHARED WITH JAG REPRESENTATIVES ON MARCH 18

ICBC – BACKGROUND & CURRENT ENVIRONMENT

Discussion Points

☐ ICBC significantly impacted by the tariff changes

- ☐ Largest single entity affected. In 2015, ICBC paid approximately \$50M of party and party (P&P) costs on litigated claims.

☐ s.13

☐ ICBC's recently tabled Service Plan

☐ s.13

- ☐ Very challenging income and rate change targets
- ☐ Operating in a very challenging environment with more vehicle use, more vehicle density, greater legal representation, lower interest rates, inflationary pressures, etc.

☐ s.13, s.17

☐ ICBC's position – the changes must be reversed

☐ s.13

☐

2016 BC SCCR REGULATION CHANGES

☐ Current state

- ☐ 48 specific tariff items
- ☐ Prescribed ranges based on effort and number of days

☐ Effective July 1, 2016

- ☐ Only 13 items will attract costs, but
- ☐ Flat fee, potentially multiplied by number of days

☐ Drivers of Litigation Costs

- ☐ Plaintiff entitlement to court costs will increase
- ☐ Litigation will be triggered earlier
- ☐ Defense costs for preparation of trial briefs and attending pre-trial conferences will increase

IMPACT ON ICBC

At a minimum:

- ☐ Tariff rule changes will systematically increase the cost of litigated claims
 - ☐ \$8,500 minimum Third Party Costs, up from current average of \$4,400 for Litigated exposures
 - ☐ Applies to all Litigated exposures \$25,000 and over

s.13,s.17

TECHNICAL IMPACT OF FEE CHANGES

☐ Fast Track Claims (>\$25,000 & < \$100,000, 3 day or shorter trials)

- ☐ 100% increase in Third Party Costs
- ☐ Current average of \$4,259 for litigated claim exposures
- ☐ \$8,500 minimum Third Party Costs in new rules

☐ Claims > \$100,000

- ☐ 30% increase in Third Party Costs
- ☐ Current average of \$8,949 for litigated claim exposures
- ☐ Tariff, Appendix B applies

☐ Adding up the impacts

- ☐ \$35 million in annual, ongoing additional third party costs
- ☐ \$125 million approximate impact from third party costs on open claims
- ☐ \$60 million minimum impact from one-time slow down in closing claims in 2016

COMPARING TO ALBERTA (BEFORE TARIFF CHANGE)

Average Third Party Costs on Litigated Claims

Settlement Range	BC	Alberta	BC vs AB
\$0 to \$25K	\$862	\$624	+38%
\$25K to \$100K	\$4,259	\$3,044	+40%
\$100K and over	\$8,949	\$4,426	+102%
Total	\$3,395	\$2,028	+67%

Notes on the data

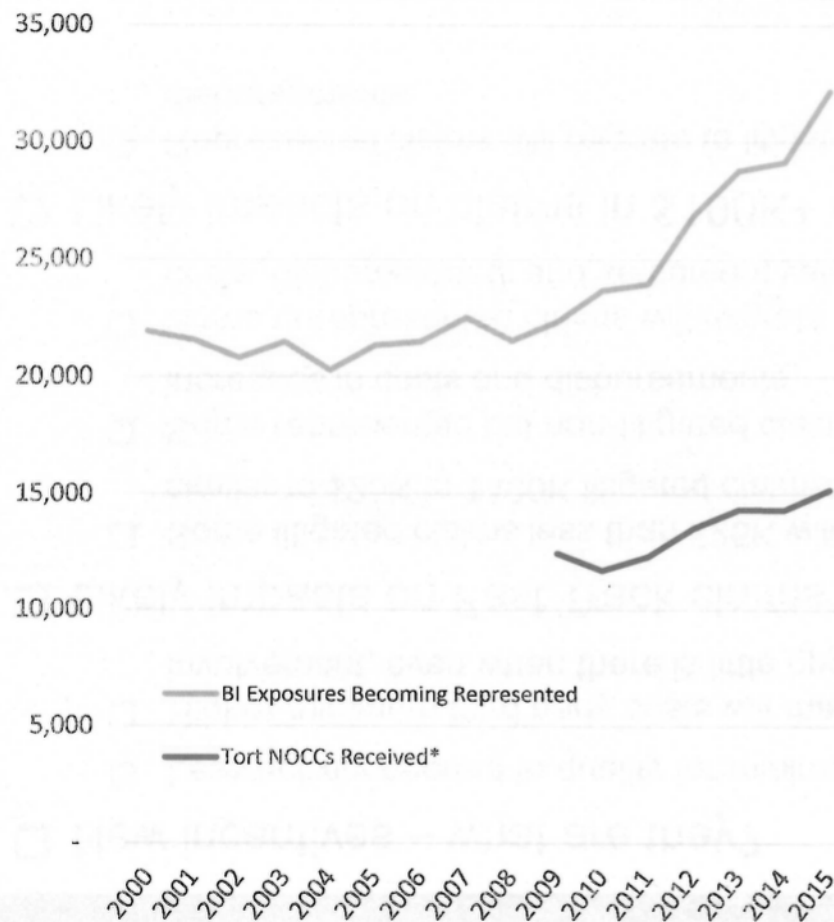
- ☐ Based on ICBC claims occurring in each location, litigated under local court rules
- ☐ Based on claims closing between 2010 and 2014
- ☐ Encompasses 383 claims from Alberta

BC THIRD PARTY COSTS ALREADY 67%
HIGHER THAN IN ALBERTA



BEHAVIOUR CHANGES SINCE LAST TARIFF CHANGE IN 2010

BI Representation & Litigation Volumes



Trends

☐ Represented claims

- ☐ Averaged 21,500 from 2000 through 2009, the year prior to the last tariff change
- ☐ Increased to over 32,000 in 2015
- ☐ 55% of compensable claims are now represented
- ☐ Increasing percentage of claims are represented at first notice of loss

☐ Litigated claims

- ☐ Approximately 12,000 per year prior to the last tariff change
- ☐ Increased to over 15,000 in 2015
- ☐ Up 16% alone in the first two months of 2016
- ☐ In addition, litigation is up over 70% on first-party Accident Benefit claims

LEGAL REPRESENTATION UP NEARLY 50%



Page 028 to/à Page 031

Withheld pursuant to/removed as

s.13;s.17

SUMMARY

- ☐ Impacts to net income and rate changes are untenable to ICBC
- ☐ And, inconsistent with government plans for ICBC that resulted in the just tabled Service Plan that was the result of significant reengineering effort
 - ☐ The additional impact on rates is significant
 - ☐ The reasons for higher rate pressure are a required disclosure in the BCUC rate setting process, leading to potentially significant media and public intervenor scrutiny
 - ☐ The deterioration of capital would also demand the BCUC's attention and potential action regarding a Government response, bringing the potential for an additional round of media and public intervenor scrutiny
- ☐ A delay in implementation date provides almost no relief to ICBC
- ☐ If a compelling case exists for the changes, reverse the current decision and let that be the result of a consultation with a decision in 2017
 - ☐ In particular, ICBC would suggest changes that limit the incentives for significant and costly changes in claim behavior

SUPPLEMENTAL DATA

COMPARISON OF CURRENT P&P COSTS WITH ORIGINAL PROPOSAL

RULE 15-1 ACTIONS: TABLE OF COSTS (FAST TRACK CLAIMS)

Rule 15-1 Actions, by Category	A		B	
	Third Part Costs Payable Under Current Rules (2)		TARIFF RULE CHANGE	
			Costs Payable Under Rules After July 1, 2016 (3)	Increase over Current (B - A)
Settles 90+ days before TD	\$0 to \$4,000 ¹	(1)	\$8,500	\$4,500 to \$8,500
Settles 30-90 days before TD	\$4,000 to \$5,000 ¹	(1)	\$9,250	\$4,250 to \$5,250
Settles less than 30 days before TD	\$5,000 to \$6,500 ¹	(1)	\$10,000	\$3,500 to \$5,000
Trial = 1 day or less	\$8,000	(2)	\$11,500	\$3,500
Trial = 2 days	\$9,500	(2)	\$13,000	\$3,500
Trial = 3 days	\$11,000	(2)	\$14,500	\$3,500
Trial = 4 days	\$11,000	(2)	\$16,000	\$5,000
Trial = 5 days	\$11,000	(2)	\$17,500	\$6,500

Notes:

(1) This amount/range reflects ICBC's "Recommended Costs: Files Settled in Fast Track" (see below), as well as the \$6,500 "cap" for costs payable in respect of a Rule 15-1 action that settles, as per case law

(2) As per the current Rule 15-5(15)

(3) As per the new Rule 15-5(15), effective July 1, 2016

OVERALL IMPACT IS 100% INCREASE IN COSTS



SAMPLE TARIFF CHANGES: (CLAIMS OVER \$100,000)

Item	Description	Current Amounts Typically Paid by ICBC	July 1, 2016 Fixed Cost formula (\$)	Increase in Costs Payable for this Tariff Item
1	Correspondence, conferences, instructions, investigations, negotiations and preparing, filing and serving of all pleadings or a petition proceeding	\$330 - \$2,310	\$4,500	\$2,190 - \$4,170
3	Process for giving or obtaining discovery and inspection of documents, serving or answering interrogatories and requiring or making admissions of fact	\$440 - \$1,210	\$3,000	\$1,790 - \$2,560
7	Preparation for trial where trial settles 30 days or fewer before beginning of trial	up to \$550 total	\$500 per day of trial or trial mgmt. conf.	\$1,950 (using, a planned 5 day trial as an example)
12	Written argument at applications or hearings in excess of 2 hours or at trial	\$110 - \$550	\$1,500	\$950 - \$1,390

OVERALL IMPACT IS 30% INCREASE IN COSTS



Dayman, Marlene JAG:EX

From: Stewart, Josh JAG:EX
Sent: Thursday, March 31, 2016 4:04 PM
To: Anton, Suzanne JAG:EX; Fyfe, Richard J JAG:EX
Subject: revised

VICTORIA – Attorney General and Minister of Justice Suzanne Anton has issued the following statement regarding civil tariffs:

“Today, our government took steps to provide further time for consultation on changes to the civil tariff recommended by the Supreme Court Rules Revision Committee in order to better understand their potential financial impacts on consumers.

“While I respect the recommendation made by the Committee, as Attorney General I have the responsibility of ensuring that the rules we adopt serve the citizens of British Columbia, which is why I have recommended that government not proceed with any changes to the civil tariff until we have allowed time for further consultation and analysis. It is important to understand how the proposed changes affect all stakeholders.

“The Rules Revision Committee’s recommendations were received in December and included in an Order in Council in January, with implementation of the changes planned for July. The intervening period was designed to allow stakeholders to assess the implications of the changes. Since January, ^{s.13} government have flagged concerns with the proposed changes, including the potential financial impacts on the public and rate payers.

“I want to thank the Rules Revision Committee and acknowledge the principled thinking and extensive work they put into the development of their recommendations.”

Dayman, Marlene JAG:EX

From: Stewart, Josh JAG:EX
Sent: Thursday, March 31, 2016 10:23 AM
To: Fyfe, Richard J JAG:EX; Anton, Suzanne JAG:EX
Subject: FW: Statement
Attachments: CSB - Civil Tariffs OIC - ST - 31MAR16.docx

Statement with all changes incorporated.

From: Nelson, Tiffany GCPE:EX
Sent: Thursday, March 31, 2016 10:22 AM
To: Stewart, Josh JAG:EX; Kuzminski, Jason GCPE:EX
Subject: Statement

Hello – here is the latest statement with this morning's edits included. Will await your direction on timing and next steps.

Tiffany
2350 858-4680

Page 038

Withheld pursuant to/removed as

s.13

Dayman, Marlene JAG:EX

From: Stewart, Josh JAG:EX
Sent: Thursday, March 31, 2016 9:17 AM
To: Fyfe, Richard J JAG:EX; Kuzminski, Jason GCPE:EX
Subject: 2016-03-31 AG Proposed Statement re Civil Tariff (RF Notes)
Attachments: 2016-03-31 AG Proposed Statement re Civil Tariff (RF Notes).docx

Couple small changes.

Dayman, Marlene JAG:EX

From: Kuzminski, Jason GCPE:EX
Sent: Wednesday, March 30, 2016 8:37 PM
To: Fyfe, Richard J JAG:EX; Anton, Suzanne JAG:EX; Stewart, Josh JAG:EX
Attachments: 2016 Tariff Change Discussion.pdf; ATT00001.txt

BC Supreme Court Civil Rules Regulation Changes 2016

Impact Discussion

March 18, 2016

Prepared by : Bill Carpenter – Chief Actuary
Rob Kirkham – Director Claims Legal Services



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ICBC – BACKGROUND & CURRENT ENVIRONMENT

Discussion Points

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☐ s.13

☐ ICBC's recently tabled Service Plan

☐ s.13

- ☐ Very challenging income and rate change targets
- ☐ Operating in a very challenging environment with more vehicle use, more vehicle density, greater legal representation, lower interest rates, inflationary pressures, etc.

☐ s.13,s.17

☐ ICBC's position – s.13

☐ s.13

☐

2016 BC SCCR REGULATION CHANGES

☐ Current state

- ☐ 48 specific tariff items
- ☐ Prescribed ranges based on effort and number of days

☐ Effective July 1, 2016

- ☐ Only 13 items will attract costs, but
- ☐ Flat fee, potentially multiplied by number of days

☐ Drivers of Litigation Costs

- ☐ Plaintiff entitlement to court costs will increase
- ☐ Litigation will be triggered earlier
- ☐ Defense costs for preparation of trial briefs and attending pre-trial conferences will increase

IMPACT ON ICBC

At a minimum:

- ☐ Tariff rule changes will systematically increase the cost of litigated claims
 - ☐ \$8,500 minimum Third Party Costs, up from current average of \$4,400 for Litigated exposures
 - ☐ Applies to all Litigated exposures \$25,000 and over

s.13,s.17

TECHNICAL IMPACT OF FEE CHANGES

- ☐ Fast Track Claims (>\$25,000 & < \$100,000, 3 day or shorter trials)
 - ☐ 100% increase in Third Party Costs
 - ☐ Current average of \$4,259 for litigated claim exposures
 - ☐ \$8,500 minimum Third Party Costs in new rules

- ☐ Claims > \$100,000
 - ☐ 30% increase in Third Party Costs
 - ☐ Current average of \$8,949 for litigated claim exposures
 - ☐ Tariff, Appendix B applies

- ☐ Adding up the impacts
 - ☐ \$35 million in annual, ongoing additional third party costs
 - ☐ \$125 million approximate impact from third party costs on open claims
 - ☐ \$60 million minimum impact from one-time slow down in closing claims in 2016

COMPARING TO ALBERTA (BEFORE TARIFF CHANGE)

Average Third Party Costs on Litigated Claims

Settlement Range	BC	Alberta	BC vs AB
\$0 to \$25K	\$862	\$624	+38%
\$25K to \$100K	\$4,259	\$3,044	+40%
\$100K and over	\$8,949	\$4,426	+102%
Total	\$3,395	\$2,028	+67%

Notes on the data

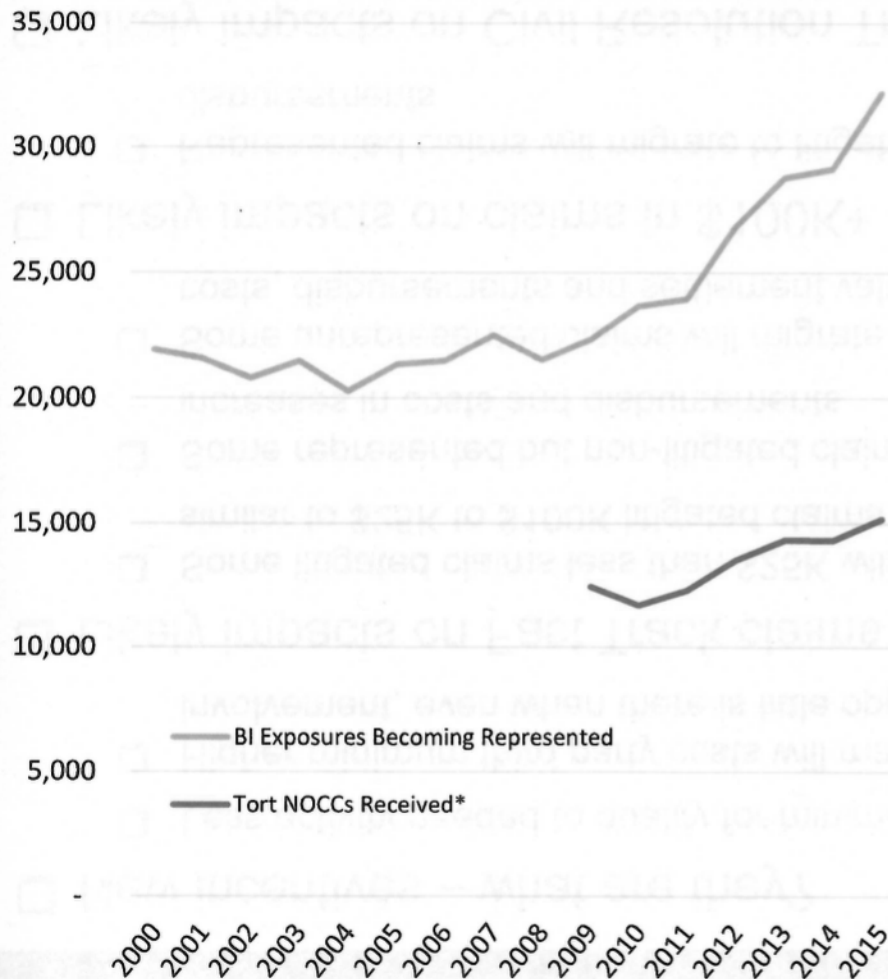
- ☐ Based on ICBC claims occurring in each location, litigated under local court rules
- ☐ Based on claims closing between 2010 and 2014
- ☐ Encompasses 383 claims from Alberta

BC THIRD PARTY COSTS ALREADY 67%
HIGHER THAN IN ALBERTA



BEHAVIOUR CHANGES SINCE LAST TARIFF CHANGE IN 2010

BI Representation & Litigation Volumes



Trends

☐ Represented claims

- ☐ Averaged 21,500 from 2000 through 2009, the year prior to the last tariff change
- ☐ Increased to over 32,000 in 2015
- ☐ 55% of compensable claims are now represented
- ☐ Increasing percentage of claims are represented at first notice of loss

☐ Litigated claims

- ☐ Approximately 12,000 per year prior to the last tariff change
- ☐ Increased to over 15,000 in 2015
- ☐ Up 16% alone in the first two months of 2016
- ☐ In addition, litigation is up over 70% on first-party Accident Benefit claims

LEGAL REPRESENTATION UP NEARLY 50%

Page 048 to/à Page 051

Withheld pursuant to/removed as

s.13;s.17

SUMMARY

- ❑ Impacts to net income and rate changes are untenable to ICBC
- ❑ And, inconsistent with government plans for ICBC that resulted in the just tabled Service Plan that was the result of significant reengineering effort
 - ❑ The additional impact on rates is significant
 - ❑ The reasons for higher rate pressure are a required disclosure in the BCUC rate setting process, leading to potentially significant media and public intervener scrutiny
 - ❑ The deterioration of capital would also demand the BCUC's attention and potential action regarding a Government response, bringing the potential for an additional round of media and public intervener scrutiny
- ❑ A delay in implementation date provides almost no relief to ICBC
- ❑ If a compelling case exists for the changes, reverse the current decision and let that be the result of a consultation with a decision in 2017
 - ❑ In particular, ICBC would suggest changes that limit the incentives for significant and costly changes in claim behavior

APPENDIX

Item 1	100.00	100.00	100.00	100.00
Item 2	200.00	200.00	200.00	200.00
Item 3	300.00	300.00	300.00	300.00
Item 4	400.00	400.00	400.00	400.00
Item 5	500.00	500.00	500.00	500.00
Item 6	600.00	600.00	600.00	600.00
Item 7	700.00	700.00	700.00	700.00
Item 8	800.00	800.00	800.00	800.00
Item 9	900.00	900.00	900.00	900.00
Item 10	1000.00	1000.00	1000.00	1000.00

RULE 15-1 ACTIONS: TABLE OF COSTS (FAST TRACK CLAIMS)

Rule 15-1 Actions, by Category	A		B	
	Third Part Costs Payable Under Current Rules (2)		TARIFF RULE CHANGE	
			Costs Payable Under Rules After July 1, 2016 (3)	Increase over Current (B - A)
Settles 90+ days before TD	\$0 to \$4,000 ¹	(1)	\$8,500	\$4,500 to \$8,500
Settles 30-90 days before TD	\$4,000 to \$5,000 ¹	(1)	\$9,250	\$4,250 to \$5,250
Settles less than 30 days before TD	\$5,000 to \$6,500 ¹	(1)	\$10,000	\$3,500 to \$5,000
Trial = 1 day or less	\$8,000	(2)	\$11,500	\$3,500
Trial = 2 days	\$9,500	(2)	\$13,000	\$3,500
Trial = 3 days	\$11,000	(2)	\$14,500	\$3,500
Trial = 4 days	\$11,000	(2)	\$16,000	\$5,000
Trial = 5 days	\$11,000	(2)	\$17,500	\$6,500

Notes:

(1) This amount/range reflects ICBC's "Recommended Costs: Files Settled in Fast Track" (see below), as well as the \$6,500 "cap" for costs payable in respect of a Rule 15-1 action that settles, as per case law

(2) As per the current Rule 15-5(15)

(3) As per the new Rule 15-5(15), effective July 1, 2016

OVERALL IMPACT IS 100% INCREASE IN COSTS



SAMPLE TARIFF CHANGES: (CLAIMS OVER \$100,000)

Item	Description	Current Amounts Typically Paid by ICBC	July 1, 2016 Fixed Cost formula (\$)	<u>Increase</u> in Costs Payable for this Tariff Item
1	Correspondence, conferences, instructions, investigations, negotiations and preparing, filing and serving of all pleadings or a petition proceeding	\$330 - \$2,310	\$4,500	\$2,190 - \$4,170
3	Process for giving or obtaining discovery and inspection of documents, serving or answering interrogatories and requiring or making admissions of fact	\$440 - \$1,210	\$3,000	\$1,790 - \$2,560
7	Preparation for trial where trial settles 30 days or fewer before beginning of trial	up to \$550 total	\$500 per day of trial or trial mgmt. conf.	\$1,950 (using, a planned 5 day trial as an example)
12	Written argument at applications or hearings in excess of 2 hours or at trial	\$110 - \$550	\$1,500	\$950 - \$1,390

OVERALL IMPACT IS 30% INCREASE IN COSTS

Dayman, Marlene JAG:EX

From: Foster, Doug FIN:EX
Sent: Wednesday, March 30, 2016 6:13 PM
To: Kuzminski, Jason GCPE:EX
Cc: Fyfe, Richard J JAG:EX
Subject: FW: Draft Statement
Attachments: CSB - Civil Tariff - ST - 30MAR16 - DRAFT.docx; ATT00001.txt; CSB - OIC Tariff- IN - 30MAR16 - DRAFT.DOCX

Sorry. Sent to another Jason in our own shop who has deleted.
d.

-----Original Message-----

From: Foster, Doug FIN:EX
Sent: Wednesday, March 30, 2016 6:02 PM
To: Butler, Jason FIN:EX
Cc: Fyfe, Richard J JAG:EX
Subject: FW: Draft Statement

Thanks Jason. Minor suggestion I the ST.
I get the general messaging approach and the issues we are dealing with in the rest of the messaging.
d.

-----Original Message-----

From: Kuzminski, Jason GCPE:EX
Sent: Wednesday, March 30, 2016 5:45 PM
To: Foster, Doug FIN:EX
Cc: Fyfe, Richard J JAG:EX
Subject: Draft Statement

This is the working draft of a Statement that is planned for release tomorrow. Please do not circulate it to others without consulting me.

Jason

Dayman, Marlene JAG:EX

From: Kuzminski, Jason GCPE:EX
Sent: Wednesday, March 30, 2016 5:48 PM
To: Foster, Doug FIN:EX
Cc: Fyfe, Richard J JAG:EX
Subject: Draft IN
Attachments: CSB - OIC Tariff- IN - 30MAR16 - DRAFT.docx; ATT00001.txt

Here is the current working draft of the Civil Tariff IN. Please do not circulate to others without consulting me.

Jason

Dayman, Marlene JAG:EX

From: Kuzminski, Jason GCPE:EX
Sent: Wednesday, March 30, 2016 5:45 PM
To: Foster, Doug FIN:EX
Cc: Fyfe, Richard J JAG:EX
Subject: Draft Statement
Attachments: CSB - Civil Tariff - ST - 30MAR16 - DRAFT.docx; ATT00001.txt

This is the working draft of a Statement that is planned for release tomorrow. Please do not circulate it to others without consulting me.

Jason

Dayman, Marlene JAG:EX

From: Stewart, Josh JAG:EX
Sent: Wednesday, March 30, 2016 4:01 PM
To: Fyfe, Richard J JAG:EX
Subject: FW: Statement for review
Attachments: CSB - Civil Tariff - ST - 30MAR16 - DRAFT.docx

In case you want to join but I have noted your change.

From: Stewart, Josh JAG:EX
Sent: Wednesday, March 30, 2016 4:00 PM
To: Allison, Brittany JAG:EX; Anton, Suzanne JAG:EX
Cc: Kuzminski, Jason GCPE:EX; Nelson, Tiffany GCPE:EX
Subject: FW: Statement for review

Hi Minister. Can you give us a shout on this line once you get in the car and we can discuss the attached statement?

s.15

Josh

Dayman, Marlene JAG:EX

From: Kuzminski, Jason GCPE:EX
Sent: Wednesday, March 30, 2016 3:22 PM
To: Fyfe, Richard J JAG:EX
Cc: Stewart, Josh JAG:EX
Subject: Re: AG's IN - OIC tariff

I take responsibility, having shared a draft with my peers in Finance and Transportation for their input without explaining the need to limit further circulation.

I've been in touch with the CD in Transportation, and he is making an effort to retrieve the draft IN.

Jason

Sent from my iPhone

On Mar 30, 2016, at 5:49 PM, Fyfe, Richard J JAG:EX <Richard.Fyfe@gov.bc.ca> wrote:

Richard J.M. Fyfe QC
Deputy Attorney General
Ministry of Justice and Attorney General

Phone: (250) 356-0149
Fax: (250) 387-6224

This communication (both the message and any attachments) is confidential and may be protected by solicitor-client privilege. It is intended only for the use of the person or persons to whom it is addressed. Any distribution, copying, or other use by anyone else is strictly prohibited. If you have received this communication in error, please destroy the email message and any attachments immediately and notify my office by telephone or by email.

Begin forwarded message:

From: "Fyfe, Richard J JAG:EX" <Richard.Fyfe@gov.bc.ca>
Date: March 30, 2016 at 2:47:54 PM PDT
To: "Foster, Doug FIN:EX" <Doug.Foster@gov.bc.ca>
Cc: "Main, Grant TRAN:EX" <Grant.Main@gov.bc.ca>, "Mentzelopoulos, Athana FIN:EX" <Athana.Mentzelopoulos@gov.bc.ca>, "Kislock, Lindsay M TRAN:EX" <Lindsay.Kislock@gov.bc.ca>
Subject: Re: AG's IN - OIC tariff

How is it that this note is coming from ICBC?

Richard J.M. Fyfe QC

Deputy Attorney General
Ministry of Justice and Attorney General

Phone: (250) 356-0149

Fax: (250) 387-6224

This communication (both the message and any attachments) is confidential and may be protected by solicitor-client privilege. It is intended only for the use of the person or persons to whom it is addressed. Any distribution, copying, or other use by anyone else is strictly prohibited. If you have received this communication in error, please destroy the email message and any attachments immediately and notify my office by telephone or by email.

On Mar 30, 2016, at 2:29 PM, Foster, Doug FIN:EX <Doug.Foster@gov.bc.ca> wrote:

This just in from ICBC (to keep you in loop).

My one concern is that its just ICBC being singled out.

The tariff change will affect a wider audience in the civil claims area (other private insurance companies, physicians, etc)

I think we want to guage far more fully within govt (and that includes Risk Management Branch of Finance for our self-insurance programs) as well as more broadly outside, like the BCMA - doctors of BC and their insurance providers, for which the Province pays their insurance premiums.

My thoughts.

d.

-----Original Message-----

From: Carpenter, Bill [<mailto:Bill.Carpenter@icbc.com>]

Sent: Wednesday, March 30, 2016 1:58 PM

To: Foster, Doug FIN:EX

Subject: FW: AG's IN - OIC tariff

Doug, I hope you've seen this.

- Bill

-----Original Message-----

From: Tupper, Chris

Page 062

Withheld pursuant to/removed as

s.14;s.13

REQUEST NO.	JAG-2016-62671
PROGRAM AREA CONTACT	Marlene Dayman 7-5211

ACCESS REQUEST REVIEW ATTACHMENT: DETAILED REVIEW OF RECORDS

(USE MULTIPLE SHEETS IF NECESSARY)

NAME OF PUBLIC BODY	Ministry of Justice
PROGRAM AREA	Deputy AG Office

RECORDS REVIEWED BY (NAME)					POSITION:	START DATE			TARGET COMPLETION DATE			ACTUAL COMPLETION DATE		
						YR	MO.	DAY	YR.	MO.	DAY	YR.	MO.	DAY
Shauna Rasmussen					Paralegal, Legal Services Branch	2016	07	12	2016	07	19	2016	07	14
DOC. NO.	NO. OF PAGES	DOC. DATE			DOCUMENT DESCRIPTION	EXCEPTION(S) APPLIED	COMMENTS/EXPLANATIONS					THIRD PARTY NOTICE/CONSULTATION		
		YR	MO	DAY										
1.	3	16	03	31	Email between DAG & FIN/TRAN executive re: AG briefing materials	ss. 13, 14	DAG collecting information for the purposes of briefing and advising AG							
2.	5	16	03	31	Email string between DAG & GCPE re: draft correspondence	s. 14	GCPE seeking legal advice from DAG; DAG providing legal advice to & on behalf of AG							
3.	2	16	03	31	Email from Rules Revision Committee to DAG re: advice on the OIC	ss. 13, 14	Rules Revision Committee member providing advice to the AG through her legal advisor, the DAG.							
4.	2	16	03	31	Email between DAG & FIN re: rescindment of OIC	s. 14	DAG eliciting information from FIN on which to provide legal advice to AG							

5.	11	16	03	31	Email strings and draft statements sent between DAG, AG and program areas	ss. 13, 14	DAG collecting recommendations from program areas to inform his legal advice to AG
6.	2	16	03	30	Email between AG and DAG re: letter from Rules Revision Committee	s. 14	AG conferring with DAG regarding legal advice and activities
7.	1	16	03	30	Draft statement that is the subject of a conference call with AG, DAG, GCPE and AG's Office	ss. 13, 14	DAG provided legal advice based on materials
8.	6	16	03	29	Email attaching and discussing draft Issues Note regarding OIC	ss. 13, 14	DAG provided guidance on changes
9.	6	16	03	29	Email asking DAG for legal advice on draft Issues Note	ss. 13, 14	GCPE requesting DAG legal advice on wording of Issues Note
10.	3	16	03	22	Court Services Branch Briefing Note	ss. 13, 14	DAG used content in this BN to provide legal advice to the AG
11.	12	06	03	17	Email string between DAG and CSB ADM re; sending OIC materials to FIN, including Rules Revision Committee meeting minutes	s.14	ADM requesting DAG advice on response to FIN ADM's questions; DAG providing advice on what information to be shared
12.	24	16	03	11	Email string between DAG and CSB ADM re: CSB providing advice in preparation for DAG meeting with Chief Justice; information gathered for DAG's use as legal advisor.	ss. 13, 14	CSB providing advice in preparation for DAG meeting with Chief Justice; information gathered for DAG's use as legal advisor.

13.	22	16	03	03	Email string between JSB A/ADM and DAG re: briefing for AG	ss. 13, 14	JSB providing advice; DAG collecting information to base his legal advice on	
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Gordon, Stephanie JAG:EX

From: Cavanaugh, Lynda A JAG:EX
Sent: Thursday, July 14, 2016 9:11 AM
To: Gunnarson, Jess JAG:EX
Cc: McMeekin, Laurie D JAG:EX
Subject: FW: OIC 032 - Changes to Rules of Court

From: Miller, Brenda L JAG:EX
Sent: Friday, March 4, 2016 12:46 PM
To: Cavanaugh, Lynda A JAG:EX; McMeekin, Laurie D JAG:EX
Subject: RE: OIC 032 - Changes to Rules of Court

Hi Lynda. This was all a done-deal by the time I became involved with the OIC package back in January. I am not aware of what consultation occurred when these rule changes were developed. Laurie, perhaps Jess can help with pulling some background information together quickly for Lynda.

From: Cavanaugh, Lynda A JAG:EX
Sent: Friday, March 4, 2016 12:23 PM
To: Miller, Brenda L JAG:EX; McMeekin, Laurie D JAG:EX
Subject: FW: OIC 032 - Changes to Rules of Court
Importance: High

Do either of you have any idea or material on what this? I honestly am still trying to figure out how the rules revision cttee works....

From: Deitch, James JAG:EX
Sent: Friday, March 4, 2016 11:15 AM
To: Cavanaugh, Lynda A JAG:EX
Cc: Mead, Rhonda M JAG:EX
Subject: FW: OIC 032 - Changes to Rules of Court

Lynda:

Rhonda has arranged for us to have a call at 4 on this issue. Richard forwarded me this material which came to him from Doug Foster at Finance. Doug also spoke with Shauna this morning.

They are very concerned about the changes which came from the Supreme Court Rules Committee and will go into effect on July 1. The below sets out their concerns (on behalf of ICBC). Doug has suggested this may impact upon their support of the TB sub for the CRT although I think the two issues are really quite distinct.

The greater concern I think is the perceived lack of consultation with stakeholders prior to the implementation of these rule changes. I do not know historically if there was consultation in the past or not. Anyway perhaps we can figure out how best to respond so that we can provide advise to Richard on Monday.

Thanks, Jamie

From: Carpenter, Bill [<mailto:Bill.Carpenter@icbc.com>]
Sent: Wednesday, March 2, 2016 7:46 PM

To: Foster, Doug FIN:EX; Bishop, Carol TRAN:EX
Cc: Prior, Geri; Leong, Philip; Yendall, Steve; Jarvis, Brian
Subject: RE: OIC 032 - Changes to Rules of Court

Doug, to help your discussions, I give you some details below as you requested. s.13,s.17
s.13,s.17

Anyway, this is an early peak into what the new rules will mean to our costs per litigated claim. Unfortunately, our estimate is likely to be quite significant in terms of both increased losses and rate impact.

- Bill

s.13,s.17

s.13,s.17

s.13,s.17

From: Foster, Doug FIN:EX [<mailto:Doug.Foster@gov.bc.ca>]
Sent: Wednesday, March 02, 2016 2:12 PM
To: Carpenter, Bill ; Bishop, Carol TRAN:EX
Cc: Prior, Geri ; Leong, Philip
Subject: RE: OIC 032 - Changes to Rules of Court

Thanks. I have much to discuss with our friends at JAG.
d.

From: Carpenter, Bill [<mailto:Bill.Carpenter@icbc.com>]
Sent: Wednesday, March 2, 2016 2:00 PM
To: Foster, Doug FIN:EX; Bishop, Carol TRAN:EX
Cc: Prior, Geri; Leong, Philip
Subject: OIC 032 - Changes to Rules of Court

For a start, here is the document we discussed earlier on changes to the Rules of Court, including Tariff.

Bill Carpenter, FCAS
Chief Actuary
ICBC building trust. driving confidence.

.....
Suite 504 | 151 W. Esplanade | North Vancouver | BC | V7M 3J9
direct: 604-982-7422 cell: 778-875-6586

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Insurance Corporation of British Columbia | 151 W. Esplanade | North Vancouver | V7M 3H9
[Contact Us](#)

Gordon, Stephanie JAG:EX

From: Cavanaugh, Lynda A JAG:EX
Sent: Thursday, July 14, 2016 9:12 AM
To: Gunnarson, Jess JAG:EX
Cc: McKenna, Ross JAG:EX
Subject: FW: FOR 4:00 PM MEETING - BN re Civil Tariff
Attachments: 418738 - BN re Civil Tariff.pdf; Re: FOR ACTION: OIC 032 - Changes to Rules of Court

Importance: High

From: McMeekin, Laurie D JAG:EX
Sent: Friday, March 4, 2016 3:07 PM
To: Cavanaugh, Lynda A JAG:EX
Cc: Gunnarson, Jess JAG:EX
Subject: FOR 4:00 PM MEETING - BN re Civil Tariff
Importance: High

Hi Lynda,

Please find attached a copy of the BN prepared in December regarding the changes to the Civil Tariff, that was provided to the DAG for his information. Also attached is the response provided by Jess today. If you need to speak with him, he is currently on the ferry returning from Vancouver and can be reached on his cell phone at: ^{9.22} (Thanks very much for contacting me, Jess!).

I hope this is helpful for your 4:00 pm meeting with Jamie.

Thanks!
Laurie

Gordon, Stephanie JAG:EX

From: Gunnarson, Jess JAG:EX
Sent: Friday, March 4, 2016 2:48 PM
To: McMeekin, Laurie D JAG:EX
Subject: Re: FOR ACTION: OIC 032 - Changes to Rules of Court

Hi Laurie,

My apologies, I'm just seeing your e-mail now and am in transit. Rule changes are brought to the RRC, either by committee members or by request of the bar and other stakeholders. Issues are discussed and, following analysis and sub-committee review and where the committee agrees to rule amendments, legislative counsel is tasked with drafting amendments. The committee has the ability, I believe, to undertake consultation; however, in this instance, the RRC determined that the amendments would go forward in January with July implementation, allowing for a more passive form of consultation during the six months between. A briefing note was prepared for Lynda on this subject, I believe, and I'll try to locate it in my e-mail folders right now. Please let me know if any further detail is needed. Thanks, Jess

Sent from my BlackBerry 10 smartphone on the TELUS network.

From: McMeekin, Laurie D JAG:EX
Sent: Friday, March 4, 2016 1:16 PM
To: Gunnarson, Jess JAG:EX
Cc: Achampong, Bernard JAG:EX; Cavanaugh, Lynda A JAG:EX; LeBlanc, Belinda JAG:EX; Cavanaugh, Lynda A JAG:EX
Subject: FOR ACTION: OIC 032 - Changes to Rules of Court

Hi Jess,

Lynda has a meeting with Jamie Deitch at 4:00 pm today to discuss the issues around the Supreme Court Rule changes coming into effect on July 1, 2016 regarding the changes to Rule 15-1(15) i.e. the Rule that sets out the simplified (compared to the Tariff) means to calculate costs payable in respect of a Fast Track action. A Fast Track action is a case above small claims level (\$25,000) and less than \$100,000 and where trial is expected to last three days or less. If possible, can you please pull something together quickly – an email is fine – providing Lynda with some information on how the RRC works when deciding on changes to the Rules and whether or not there is consultation in advance with stakeholders affected by the changes.

Any insight you can provide would be much appreciated!!

Many thanks,

Laurie

Laurie McMeekin | Executive Coordinator to the
Assistant Deputy Minister | Court Services Branch |
Ministry of Justice and Attorney General |
PO Box 9249 Stn Prov Gov | Victoria BC V8W 9J2 |
☎ 250.356-1527 | Fax 250.387.4743

**MINISTRY OF JUSTICE
COURT SERVICES BRANCH
BRIEFING NOTE**

PURPOSE: For INFORMATION for Richard J.M. Fyfe, Q.C., Deputy Attorney General,
Ministry of Justice

ISSUE: Proposed amendments to the civil tariff in the Supreme Court (Civil) Rules

DECISION REQUIRED/ RECOMMENDATION:

- s.12,s.13

SUMMARY:

- The Supreme Court Rules Revision Committee (RRC) established a sub-committee in November 2014 to review the civil tariff in the Supreme Court (Civil) Rules.
- The civil tariff is the standard established in the Supreme Court Rules to guide the court in awarding costs to compensate the successful party. These awarded costs are a partial reimbursement to the successful party for fees/ costs accrued during the civil action.
- s.12,s.13,s.14,s.17
- The amended civil tariff changes the description of the items in the tariff and increases the amounts that are recoverable. As an example, the current tariff allocates \$400 for a default judgement between \$25,000 and \$35,000. The amended tariff provides an allocation of \$600. Increases of this nature may become a barrier to access to justice.
- In addition, broad stakeholder and public consultation regarding these proposed changes has not occurred.

BACKGROUND:

- The RRC is comprised of representatives of the judiciary, the bar, legislative counsel, and a representative of the Ministry of Justice.
- The RRC proposes regulatory amendments which typically occur once annually with an Order in Council package presented to Cabinet in July.

- s.12,s.13,s.14,s.17
- The RRC formed a sub-committee to lead the revisions to the civil tariff. The sub-committee reviewed the tariffs of other jurisdictions and the Supreme Court (Family) Rules which were amended in 2010.
- The sub-committee proposed amendments to the RRC based upon the principles of reduction/simplification of the number of tariff items and recovery of 40% to 50% of costs.
- The RRC has approved the civil tariff amendments proposed by the sub-committee.
s.12,s.13,s.14,s.17
- The new civil tariff reflects an increase in recoverable costs and the RRC has not consulted with the bar, the Canadian Bar Association, the public or other stakeholders. The RRC has suggested that consultation could occur following approval of the regulatory amendments in January 2016 and prior to implementation in July 2016.

OPTIONS:

1. s.12,s.13,s.14,s.17

2. s.12,s.13,s.14

s.12,s.13,s.14

OTHER MINISTRIES IMPACTED/CONSULTED:

Dispute Resolution Office, Justice Services Branch.

Approved by:



Lynda Cavanaugh
Assistant Deputy Minister
Court Services Branch

DATE:

December 18, 2018

Prepared by:

Jess Gunnarson
Senior Policy Analyst
Court Services Branch
250-356-9754

Reviewed by:

Carly Hyman
Director- Policy, Legislation, and Issues
Management
Court Services Branch
250-356-9757

Attachment

Redline Version of the Amended Civil Tariff (Draft)

Gordon, Stephanie JAG:EX

From: Cavanaugh, Lynda A JAG:EX
Sent: Thursday, July 14, 2016 9:13 AM
To: Gunnarson, Jess JAG:EX
Cc: McMeekin, Laurie D JAG:EX
Subject: FW: Court Rules changes
Attachments: 0032_2016.pdf

From: Miller, Brenda L JAG:EX
Sent: Wednesday, March 9, 2016 9:59 AM
To: Cavanaugh, Lynda A JAG:EX
Cc: McMeekin, Laurie D JAG:EX
Subject: FW: Court Rules changes

Hi Lynda. I believe you are meeting with Shauna today and this may be discussed. I'm not sure if Shauna is aware that this tariff isn't revenue that goes to CRF. It is the cost sharing formula between parties in civil disputes. This is likely why it was never contemplated that CMSB would need to be consulted. I just thought I'd flag that for you.

Brenda

From: Stevens, Ted JAG:EX
Sent: Monday, March 7, 2016 11:29 AM
To: Miller, Brenda L JAG:EX
Subject: FW: Court Rules changes
FYI

From: Hoadley, David JAG:EX
Sent: Monday, March 7, 2016 11:19 AM
To: Gunnarson, Jess JAG:EX
Cc: Stevens, Ted JAG:EX
Subject: FW: Court Rules changes

Hi Jess,

I understand that you are the director in charge of responsibility for annual Supreme Court changes and for rule changes (except for family and probate).

In the future, where an Order in Council might have a significant fiscal impact across government, please let Corporate Management Services Branch (Ted Stevens and me) know in advance of the OIC being approved. Doug Foster (ADM at Ministry of Finance) is currently looking to bring together a cross agency (including ICBC and the Crown Proceeding Act) impact assessment as a result of the Court Rules changes arising from the attached OIC. In the future, it would be better for the ministry to do this analysis before the OIC is passed, as opposed to the Ministry of Finance doing it after.

Thanks for your assistance,

David Hoadley, CPA, CA

Chief Financial Officer and Executive Director, Finance and Administration

Corporate Management Services Branch

Justice and Public Safety Sector

250 356-5393

CMSB

Striving to be:
An outstanding service provider
A great place to work

From: Carter, Nancy L JAG:EX
Sent: Thursday, March 3, 2016 3:53 PM
To: Hoadley, David JAG:EX
Cc: Forrest, Cris J JAG:EX
Subject: Re: Court Rules changes

Hi david - Court services branch has responsibility for annual SC changes and for rule changes (except for family and probate)- the acting director is jess gunnarson

Sent from my iPhone

On Mar 3, 2016, at 12:58 PM, Hoadley, David JAG:EX <David.Hoadley@gov.bc.ca> wrote:

Hi Nancy,

Where you aware of the attached OIC? In the future, where an OIC might have a significant fiscal impact across government, please let CMSB know.

Doug Foster is currently looking to bring together a cross agency (including ICBC and the *Crown Proceeding Act*) impact assessment as a result of the Court Rules changes arising from the OIC. In the future, it would be better for the ministry to do this analysis before the OIC is passed, as opposed to the Ministry of Finance doing it after.

Thanks!

David Hoadley, CPA, CA
Chief Financial Officer and Executive Director, Finance and Administration
Corporate Management Services Branch
Justice and Public Safety Sector
250 356-5393

From: Dube, Jonathan FIN:EX
Sent: Thursday, March 3, 2016 10:33 AM
To: Houston, Gordon JAG:EX; Pollner, Kyle JAG:EX
Cc: Hoadley, David JAG:EX
Subject: CPA

Good morning,

Doug Foster is looking to bring together a cross agency impact assessment as a result of the Court Rules changes set out in the January 2016 OIC attached herewith, effective July 1, 2016. Would you folks be able to evaluate the potential impact for CPA? Happy to discuss further.

As noted, we'll need your assessment in pretty short order. It might make sense to have a quick call later today once you've had a chance to take a look. Thanks.

Regards,

Jonathan Dubé

Director
Treasury Board Staff
Ministry of Finance
Tel: 250-387-9043 | Mobile: 250-507-2327 | Fax: 250-356-7624
E-mail: Jonathan.Dube@gov.bc.ca

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you are not the intended addressee, you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system.

PROVINCE OF BRITISH COLUMBIA
ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. 032 , Approved and Ordered January 28, 2016

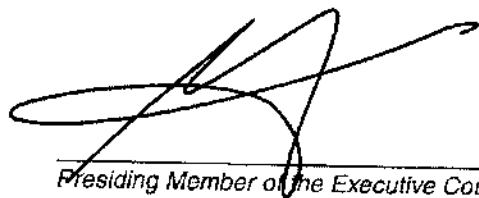

Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, made after consultation with the Chief Justice of the Supreme Court, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that, effective July 1, 2016, the Supreme Court Civil Rules, B.C. Reg. 168/2009, are amended as set out in the attached Schedule.



Attorney General and Minister of Justice



Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section: Court Rules Act, R.S.B.C. 1996, c. 80, s. 1

Other: OIC 302/2009

December 17, 2015

R/1026/2015/27

SCHEDULE

1 Rule 12-2 of the Supreme Court Civil Rules, B.C. Reg. 168/2009, is amended

(a) by repealing subrule (3) and substituting the following:

Trial brief required

- (3) Unless the court otherwise orders, the plaintiff must, at least 28 days before the date set for the trial management conference,
 - (a) file a trial brief in Form 41, and
 - (b) serve a copy of the filed trial brief on all other parties of record.

Court may require further information, dispense with trial management conference

- (3.1) Unless the court otherwise orders, each party of record, other than the plaintiff, must, no later than 21 days before the date set for the trial management conference,
 - (a) file a trial brief in Form 41, and
 - (b) serve a copy of the filed trial brief on all other parties of record.

Failure to serve trial brief

- (3.2) If a party of record has failed to comply with subrule (3) (b) or (3.1) (b), the judge or master at a trial management conference may order costs against that party.

Trial removed from trial list

- (3.3) Unless the court otherwise orders, a trial must be removed from the trial list if no trial brief has been filed under subrule (3) or (3.1).

Application for consent order

- (3.4) Despite subrule (1), the parties of record may, no later than 14 days before the date set for a trial management conference, apply under rule 8-3 (1) for an order by consent dispensing with the need for a trial management conference.

Application materials

- (3.5) In addition to the materials required under rule 8-3 (1), an application referred to in subrule (3.4) of this rule must include
 - (a) a copy of each filed trial brief, and
 - (b) a trial certificate in Form 42 from every party of record.

Consent order

- (3.6) A judge or master may make the order referred to in subrule (3.4) if satisfied that the matter is ready to proceed to trial and can be completed within the time reserved for it, *and*
 - (b) in subrule (6), by repealing paragraph (c).

2 Rule 15-1 (15) is repealed and the following substituted:

Costs

- (15) Unless the court otherwise orders or the parties consent, and subject to Rule 14-1 (10), the amount of costs, exclusive of disbursements, to which a party to a fast track action is entitled is as follows:

- (a) if the action is settled more than 90 days before trial, \$8 500;
- (b) if the action is settled fewer than 91 days but more than 29 days before trial, \$9 250;
- (c) if the action is settled fewer than 30 days before trial, \$10 000;
- (d) if the action proceeds to trial, \$10 000 plus \$1 500 for each day of trial.

3 Form 22 in Appendix A is amended by striking out the following:

Date:[dd/mm/yyyy].....

Signature of [] listing party [] lawyer for listing party

.....[type or print name].....

and substituting the following:

Date:[dd/mm/yyyy].....

Implied undertaking to the court

Documents produced are not to be used by the other party(ies) except for the purposes of this litigation unless and until the scope of the undertaking is varied by a court order or other judicial order, consent or statutory override or a situation of immediate and serious danger emerges. This implied undertaking continues despite settlement or completion of the litigation.

Signature of [] listing party [] lawyer for listing party

.....[type or print name].....

4 Form 23 in Appendix A is amended by striking out the following:

Date:[dd/mm/yyyy].....

Signature of [] party wishing to conduct examination [] lawyer for party(ies) wishing to conduct examination

.....[type or print name].....

and substituting the following:

Date:[dd/mm/yyyy].....

Implied undertaking to the court

Documents produced are not to be used by the other party(ies) except for the purposes of this litigation unless and until the scope of the undertaking is varied by a court order or other judicial order, consent or statutory override or a situation of immediate and serious danger emerges. This implied undertaking continues despite settlement or completion of the litigation.

.....
Signature of ☐ party wishing to conduct
examination ☐ lawyer for party(ies) wishing to
conduct examination
.....[type or print name].....

5 **Form 41 in Appendix A is repealed and the following substituted:**

FORM 41 (RULE 12-2 (3) AND (3.1))

{Style of Proceeding}

TRIAL BRIEF

{Rule 22-3 of the Supreme Court Civil Rules applies to all forms.}

Filed by:[party]..... (the "filing party")

{The pages of this trial brief must be consecutively numbered. If this trial brief is more than 5 pages in length, it must include an index.}

The trial of this action is scheduled for[number of days scheduled for trial]..... days and is scheduled to begin on[dd/mm/yyyy]..... . The total time needed respecting items 2, 4, 5, 9 and 11, as applicable, is[total, in hours, of all times indicated in items 2, 4, 5, 9 and 11 below]..... .

{Check whichever one of the following boxes is correct and complete any required information.}

- ☐ The filing party expects the trial to complete within the scheduled time.
- ☐ The filing party expects the trial to require[number]..... days, and the filing party and counsel are available to continue for[number]..... consecutive days following the currently scheduled completion date.

1 SUMMARY OF ISSUES AND POSITIONS

The following are the issues in dispute and the filing party's position on each:

Issue in dispute	Filing party's position
1	1
2	2

2 WITNESSES TO BE CALLED

The following are the names and addresses of the witnesses the filing party intends to call at trial, the issue(s) each will address, an estimate of the time each will need for giving direct evidence, and the filing

party's opinion on whether, if the court so orders or the parties all consent, the witness's direct evidence could conveniently be given by affidavit:

Name	Address	Issue	Time in hours needed	Direct evidence by affidavit (Y/N)

3 EXPERT REPORTS

The following are the expert reports that will be offered as evidence at trial:

Name of expert	Area of expertise	Date of report

4 WITNESSES TO BE CROSS-EXAMINED

The following are the names of the witnesses the filing party anticipates cross-examining at trial, and an estimate of the time the filing party will need for each:

Name	Time in hours needed

5 OBJECTION TO ADMISSIBILITY

The filing party intends to object to the admissibility of all or a part of the following expert reports:

Name of expert	Area of expertise	Date of report	Basis of objection	Time in hours needed

6 DOCUMENTS AND EXHIBITS

- 1 The parties ☐ have agreed on ☐ have not agreed on ☐ have not yet discussed a common book of documents.
- 2 The parties ☐ have reached ☐ have not reached ☐ have not yet discussed an agreement governing the use and admissibility of documents.

7 ADMISSIONS

The filing party will admit the following facts at trial:

- 1
- 2

8 AUTHORITIES

The filing party ☐ expects ☐ does not expect that there will be a joint brief of authorities.

9 TIME REQUIRED FOR SUBMISSIONS

The filing party estimates that[time estimate, in hours]..... will be needed for the filing party's opening statement and[time estimate, in hours]..... will be needed for that party's final submissions.

10 ORDERS THAT MAY AFFECT THE CONDUCT OF THE TRIAL

The following orders may affect the conduct of the trial:

Date of order	Nature of order

11 ORDERS OR DIRECTIONS TO BE APPLIED FOR AT THE TRIAL MANAGEMENT CONFERENCE

The following orders or directions will be applied for at the trial management conference:

Nature of order or direction	Time in hours needed for application

12 SETTLEMENT

- 1 Settlement discussions or mediation sessions ☐ have ☐ have not taken place.
- 2 A mediation ☐ is ☐ is not scheduled before the date set for trial.
- 3 The court at the trial management conference ☐ will ☐ will not be asked to assist the parties' efforts to settle.

13 TRIAL TO BE HEARD WITH OR WITHOUT JURY

[Check the correct box.]

The trial of this action is to be heard by the court

- ☐ without a jury.
☐ with a jury.

Date:[dd/mm/yyyy].....

.....
Signature of ☐ filing party ☐ lawyer for filing
party
.....[type or print name].....

6 Appendix B is repealed and the following substituted:

APPENDIX B – PARTY AND PARTY COSTS

Interpretation

- 1 In this Appendix, “**process**” means the drawing, filing or service of a document and any amendment to it or particulars of it, but does not include an application made with respect to the process or any part of the process.

Scale of costs

- 2 (1) Subject to sections 3 and 4, if a court has made an order for costs, it may determine if the case involves less than ordinary difficulty, ordinary difficulty or more than ordinary difficulty.
(2) If the difficulty involved in a case has not been determined under subsection (1), costs must be assessed under subsection (4) as if the case involved ordinary difficulty.
(3) Unless the court otherwise orders or the parties otherwise agree, if an offer to settle is made under Rule 9-1, any costs payable on acceptance of that offer must be assessed as if the case involved ordinary difficulty.
(4) After the difficulty involved in a case has been determined, a registrar must assess the costs in accordance with the Tariff.

Uncontested foreclosure proceedings

- 3 In a proceeding under Rule 21-7, uncontested at the hearing on any issue except costs, the costs must be assessed as if the case involved less than ordinary difficulty.

Default judgment and process for execution

- 4 (1) Schedule 1 applies to the costs that may be assessed on a default judgment entered under Rule 3-8.
(2) The amount involved under subsection (1) is the amount for which the judgment is entered.
(3) If a writ of execution or garnishing order, or a process in Form 56, 58 or 59, is issued, the costs must be endorsed on the process and allowed in accordance with Schedule 2.
(4) The amount involved under subsection (3) is the amount payable, if any, that is endorsed on the process.
(5) In addition to the fees set out in Schedules 1 and 2, the costs of any application to the court relating to the judgment or to the process for execution may be ordered to be assessed under the Tariff.

Apportionment if proceedings tried together

- 5 If 2 or more proceedings have, by order, been tried at the same time or tried one after the other and no order has been made as to apportionment of costs, the registrar may
 - (a) assess 2 or more bills as one bill,
 - (b) allow an item once or more than once, or
 - (c) apportion the costs of an item or of the whole bill between the proceedings.

Offer to settle bill of costs

- 6 A party to an assessment may serve on another party an offer to settle the amount of the bill of costs in Form 123 and, after the assessment has been completed, may produce the offer to the registrar, and the registrar must determine whether the offer should have been accepted and, if

so, may disallow items of the Tariff that relate to the assessment to the party presenting the bill, and

- (a) allow, by way of set-off, items of the Tariff that relate to the assessment to the party making the offer, or
- (b) allow double the value of items of the Tariff that relate to the assessment to the party presenting the bill and making the offer.

Transitional – orders, settlements and costs before 2007

7 Appendix B of the Supreme Court Rules, B.C. Reg. 221/90, as it read on December 31, 2006, applies to

- (a) orders for costs made before January 1, 2007,
- (b) settlements reached before January 1, 2007 under which payment of assessed costs is agreed to,
- (c) costs payable on acceptance of an offer to settle made under Rule 37, if that offer to settle was made before January 1, 2007, and
- (d) all assessments related to those orders, settlements and costs.

Transitional – orders, settlements and costs before 2010

8 Without limiting section 9, Appendix B of the Supreme Court Rules, B.C. Reg. 221/90, as it read on June 30, 2010, applies to

- (a) orders for costs made after December 31, 2006 and before July 1, 2010,
- (b) settlements reached after December 31, 2006 and before July 1, 2010 under which payment of assessed costs is agreed to,
- (c) costs payable on acceptance of an offer to settle made under Rule 37 or 37B, if that offer to settle was made after December 31, 2006 and before July 1, 2010, and
- (d) all assessments related to those orders, settlements and costs.

Transitional – orders, settlements and costs before 2016

9 Without limiting sections 9 and 10, Appendix B of the Supreme Court Rules, B.C. Reg. 168/2009, as it read on June 30, 2016, applies to

- (a) orders for costs made after June 30, 2010 and before July 1, 2016,
- (b) settlements reached after June 30, 2010 and before July 1, 2016 under which payment of assessed costs is agreed to,
- (c) costs payable on acceptance of an offer to settle made under Rule 37 or 37B, if that offer to settle was made after June 30, 2010, and before July 1, 2016, and
- (d) all assessments related to those orders, settlements and costs.

SCHEDULE 1

(Section 4 (1))

Item

1	If the amount involved is	
	(a) less than \$5 000	\$360
	(b) \$5 000 or more, but less than \$15 000	440
	(c) \$15 000 or more, but less than \$25 000	520
	(d) \$25 000 or more, but less than \$35 000	600
	(e) \$35 000 or more, but less than \$45 000	680

(f) \$45 000 or more, but less than \$55 000	760
(g) \$55 000 or more, but less than \$65 000	820
(h) more than \$65 000	880
2 If no amount is involved.....	\$520
3 And, in addition, disbursements.	

SCHEDULE 2

(Section 4 (3))

Item	
1 If the amount involved is	
(a) less than \$5 000	\$30
(b) \$5 000 or more, but less than \$15 000	50
(c) \$15 000 or more, but less than \$25 000	75
(d) \$25 000 or more, but less than \$35 000	100
(e) \$35 000 or more, but less than \$45 000	125
(f) \$45 000 or more, but less than \$55 000	150
(g) \$55 000 or more, but less than \$65 000	170
(h) more than \$65 000	185
2 If no amount is involved.....	\$95
3 And, in addition, disbursements.	

SCHEDULE 3

(Rule 5-3 (6) (b) (i))

Item	
1 (a) If the application is unopposed	\$500
And, in addition,	
(b) instead of disbursements	\$120
(c) if one or more taxes is payable in respect of legal services by the party entitled to costs, an additional amount to compensate for that tax, which additional amount must be determined by multiplying the amount of costs to which the party is entitled under this Item by the aggregate of the percentage rates of the taxes.	
2 (a) If the application is opposed, for each 1/2 day of attendance	\$1 000
And, in addition,	
(b) instead of disbursements	\$120
(c) if one or more taxes is payable in respect of legal services by the party entitled to costs, an additional amount to compensate for that tax, which additional amount must be determined by multiplying the amount of costs to which the party is entitled under this Item by the aggregate of the percentage rates of the taxes.	

TARIFF

Item	Description	Level of Difficulty or Rate	Costs (\$)
1	Correspondence, conferences, instructions, investigations, negotiations and preparing, filing and serving of all pleadings or a petition proceeding	If the case involves: (a) less than ordinary difficulty (b) ordinary difficulty (c) more than ordinary difficulty	1 500 4 500 9 500
2	Case planning and mediation, including preparation for and attendance at case planning conferences, trial management conferences, mediation conferences and settlement conferences	For each half day of attendance	1 000
3	Process for giving or obtaining discovery and inspection of documents, serving or answering interrogatories and requiring or making admissions of fact	If the case involves: (a) less than ordinary difficulty (b) ordinary difficulty (c) more than ordinary difficulty	1 000 3 000 7 500
4	Preparation for and attendance at each examination of a person for discovery or on affidavit or in aid of execution or of a person before trial under Rule 7-5 or 7-8 or any analogous proceeding	For each day or part of a day of attendance	1 500
5	Preparation for and attendance at each application or at each hearing before a registrar, if uncontested	For each half day of attendance	500
6	Preparation for and attendance at each application or at each hearing before a registrar, if contested	For each half day of attendance	1 000
7	Preparation for trial where trial settles 30 days or fewer before beginning of trial	For each day of trial confirmed in a notice of trial or at a trial management conference	500
8	Preparation for trial where trial settles between 30 and 90 days before beginning of trial	For each day of trial confirmed in a notice of trial or at a trial	250
9	Preparation for and attendance at trial, petition hearing or trial of an issue, including retaining and preparing witnesses	For each day or part of a day of a trial petition hearing up to 5 days For each additional day or part of a day after 5 days	2 000 3 000
10	All process for obtaining the comments and recommendations of the Public Guardian and Trustee where required	For each set of comments and recommendations	1 500
11	Registry attendance to enter an order or certificate of costs where tariff items 5 and 6 do not apply	For each attendance	200

TARIFF

Item	Description	Level of Difficulty or Rate	Costs (\$)
12	Written argument at applications or hearings in excess of 2 hours or at trial	If the case involves: (a) less than ordinary difficulty (b) ordinary difficulty (c) more than ordinary difficulty	500 1 500 4 000
13	Travel by a lawyer to attend at any trial, hearing, application, examination, reference, inquiry, assessment or other analogous proceeding if held more than 75 km from the place where the lawyer carries on business	For each day or half day on which the lawyer travels	300

Gordon, Stephanie JAG:EX

From: Cavanaugh, Lynda A JAG:EX
Sent: Thursday, July 14, 2016 9:16 AM
To: Gunnarson, Jess JAG:EX
Cc: McMeekin, Laurie D JAG:EX
Subject: FW: OIC and chronology
Attachments: icbc20160323.pdf

From: Gunnarson, Jess JAG:EX
Sent: Wednesday, March 23, 2016 3:56 PM
To: Cavanaugh, Lynda A JAG:EX
Subject: RE: OIC and chronology

Attached, as requested...

From: Cavanaugh, Lynda A JAG:EX
Sent: Wednesday, March 23, 2016 3:50 PM
To: Gunnarson, Jess JAG:EX
Subject: FW: OIC and chronology

She's talking about the ICBC – can you do it?

From: Anton, Suzanne JAG:EX
Sent: Wednesday, March 23, 2016 3:42 PM
To: Cavanaugh, Lynda A JAG:EX
Cc: Fyfe, Richard J JAG:EX; Stewart, Josh JAG:EX
Subject: RE: OIC and chronology

Hi Lynda – can you pls send the .ppt in a more readable form – thanks (its up and down)

From: Cavanaugh, Lynda A JAG:EX
Sent: March 23, 2016 10:57 AM
To: Anton, Suzanne JAG:EX <Suzanne.Anton@gov.bc.ca>
Cc: Stewart, Josh JAG:EX <Josh.Stewart@gov.bc.ca>; Fyfe, Richard J JAG:EX <Richard.Fyfe@gov.bc.ca>
Subject: FW: OIC and chronology

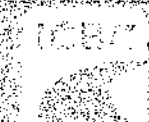
Minister, the OIC that was deposited is above. It is a very large file and takes a while to open. As well, below is chronology of events. Both the OIC and chronology was shared with the Ministry of Finance last week, as you can see from my note below.

From: Cavanaugh, Lynda A JAG:EX
Sent: Thursday, March 17, 2016 1:18 PM
To: Foster, Doug FIN:EX
Cc: Brouwer, Shauna JAG:EX; Fyfe, Richard J JAG:EX
Subject: OIC and chronology

Page 089 to/à Page 090

Withheld pursuant to/removed as

s.12;s.13

[illegible]

ICBC – BACKGROUND & CURRENT ENVIRONMENT

DISCLOSURE 2015-2015

☐ ICBC significantly impacted by the tariff changes

- ☐ Largest single entity affected. In 2015, ICBC paid approximately \$50M of party and party (P&P) costs on litigated claims.

☐ s.13

☐ ICBC's recently tabled Service Plan

☐ s.13

- ☐ Very challenging income and rate change targets
- ☐ Operating in a very challenging environment with more vehicle use, more vehicle density, greater legal representation, lower interest rates, inflationary pressures, etc.

☐ s.13,s.17

☐ ICBC's position – the changes must be reversed

☐ s.13

☐

2016 BC SCCR REGULATION CHANGES

☐ Current state

- ☐ 48 specific tariff items
- ☐ Prescribed ranges based on effort and number of days

☐ Effective July 1, 2016

- ☐ Only 13 items will attract costs, but
- ☐ Flat fee, potentially multiplied by number of days

☐ Drivers of Litigation Costs

- ☐ Plaintiff entitlement to court costs will increase
- ☐ Litigation will be triggered earlier
- ☐ Defense costs for preparation of trial briefs and attending pre-trial conferences will increase

IMPACT ON ICBC

of a minimum:

- ☐ Tariff rule changes will systematically increase the cost of litigated claims
 - ☐ \$8,500 minimum Third Party Costs, up from current average of \$4,400 for Litigated exposures
 - ☐ Applies to all Litigated exposures \$25,000 and over

Most likely:
s.13,s.17

TECHNICAL IMPACT OF FEE CHANGES

☐ Fast Track Claims (>\$25,000 & < \$100,000, 3 day or shorter trials)

- ☐ 100% increase in Third Party Costs
- ☐ Current average of \$4,259 for litigated claim exposures
- ☐ \$8,500 minimum Third Party Costs in new rules

☐ Claims > \$100,000

- ☐ 30% increase in Third Party Costs
- ☐ Current average of \$8,949 for litigated claim exposures
- ☐ Tariff, Appendix B applies

☐ Adding up the impacts

- ☐ \$35 million in annual, ongoing additional third party costs
- ☐ \$125 million approximate impact from third party costs on open claims
- ☐ \$60 million minimum impact from one-time slow down in closing claims in 2016

COMPARING TO ALBERTA (BEFORE TARIFF CHANGE)

Average Settlements Based on Litigated Claims

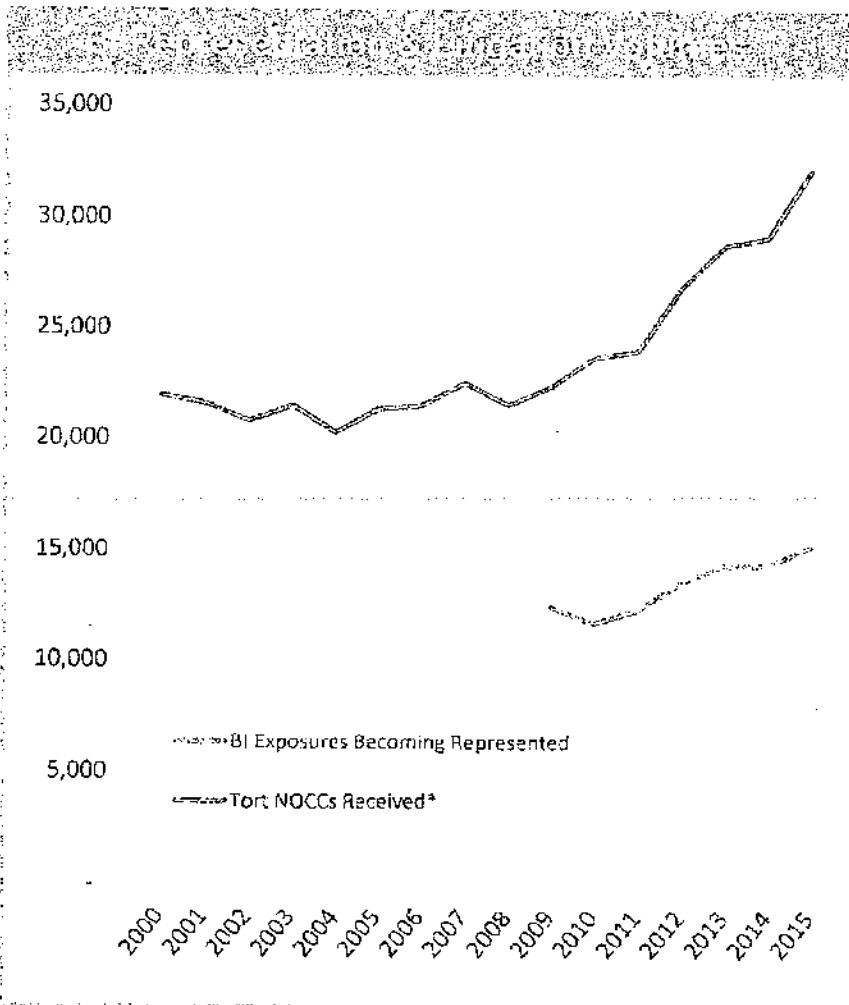
Settlement Range	BC	Alberta	BC vs AB
\$0 to \$25K	\$862	\$624	+38%
\$25K to \$100K	\$4,259	\$3,044	+40%
\$100K and over	\$8,949	\$4,426	+102%
Total	\$3,395	\$2,028	+67%

Notes: (continued)

- ☐ Based on ICBC claims occurring in each location, litigated under local court rules
- ☐ Based on claims closing between 2010 and 2014
- ☐ Encompasses 383 claims from Alberta



BEHAVIOUR CHANGES SINCE LAST TARIFF CHANGE IN 2010



Represented claims

- ☐ Averaged 21,500 from 2000 through 2009, the year prior to the last tariff change
- ☐ Increased to over 32,000 in 2015
- ☐ 55% of compensable claims are now represented
- ☐ Increasing percentage of claims are represented at first notice of loss

Litigated claims

- ☐ Approximately 12,000 per year prior to the last tariff change
- ☐ Increased to over 15,000 in 2015
- ☐ Up 16% alone in the first two months of 2016
- ☐ In addition, litigation is up over 70% on first-party Accident Benefit claims

Page 098 to/à Page 101

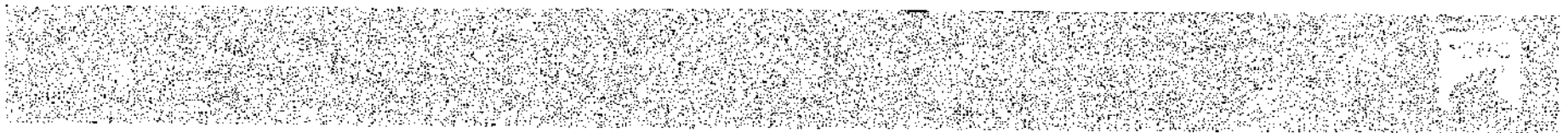
Withheld pursuant to/removed as

s.13;s.17

SUMMARY

- ☐ Impacts to net income and rate changes are untenable to ICBC
- ☐ And, inconsistent with government plans for ICBC that resulted in the just tabled Service Plan that was the result of significant reengineering effort
 - ☐ The additional impact on rates is significant
 - ☐ The reasons for higher rate pressure are a required disclosure in the BCUC rate setting process, leading to potentially significant media and public intervenor scrutiny
 - ☐ The deterioration of capital would also demand the BCUC's attention and potential action regarding a Government response, bringing the potential for an additional round of media and public intervenor scrutiny
- ☐ A delay in implementation date provides almost no relief to ICBC
- ☐ If a compelling case exists for the changes, reverse the current decision and let that be the result of a consultation with a decision in 2017
 - ☐ In particular, ICBC would suggest changes that limit the incentives for significant and costly changes in claim behavior

APPENDIX



RULE 15-1 ACTIONS: TABLE OF COSTS (FAST TRACK CLAIMS)

Rule 15-1 Actions, by Category	A		B	
	Third Part Costs Payable Under Current Rules (2)		TARIFF RULE CHANGE	
			Costs Payable Under Rules After July 1, 2016 (3)	Increase over Current (B - A)
Settles 90+ days before TD	\$0 to \$4,000 ⁽¹⁾	(1)	\$8,500	\$4,500 to \$8,500
Settles 30-90 days before TD	\$4,000 to \$5,000 ⁽¹⁾	(1)	\$9,250	\$4,250 to \$5,250
Settles less than 30 days before TD	\$5,000 to \$6,500 ⁽¹⁾	(1)	\$10,000	\$3,500 to \$5,000
Trial = 1 day or less	\$8,000	(2)	\$11,500	\$3,500
Trial = 2 days	\$9,500	(2)	\$13,000	\$3,500
Trial = 3 days	\$11,000	(2)	\$14,500	\$3,500
Trial = 4 days	\$11,000	(2)	\$16,000	\$5,000
Trial = 5 days	\$11,000	(2)	\$17,500	\$6,500

Notes:

(1) This amount/range reflects ICBC's "Recommended Costs: Files Settled in Fast Track" (see below), as well as the \$6,500 "cap" for costs payable in respect of a Rule 15-1 action that settles, as per case law

(2) As per the current Rule 15-5(15)

(3) As per the new Rule 15-5(15), effective July 1, 2016

SAMPLE TARIFF CHANGES: (CLAIMS OVER \$100,000)

Item	Description	Current Amounts Typically Paid by ICBC	July 1, 2016 Fixed Cost formula (\$)	<u>Increase</u> in Costs Payable for this Tariff Item
1	Correspondence, conferences, instructions, investigations, negotiations and preparing, filing and serving of all pleadings or a petition proceeding	\$330 - \$2,310	\$4,500	\$2,190 - \$4,170
3	Process for giving or obtaining discovery and inspection of documents, serving or answering interrogatories and requiring or making admissions of fact	\$440 - \$1,210	\$3,000	\$1,790 - \$2,560
7	Preparation for trial where trial settles 30 days or fewer before beginning of trial	up to \$550 total	\$500 per day of trial or trial mgmt. cost	\$1,950 (using a planned 5 day trial as an example)
12	Written argument at applications or hearings in excess of 2 hours or at trial	\$110 - \$550	\$1,500	\$950 - \$1,390