

## Ashton, Marion TRAN:EX

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**From:** Tupper, Chris <Chris.Tupper@icbc.com>  
**Sent:** Thursday, March 31, 2016 8:59 AM  
**To:** Kislock, Lindsay M TRAN:EX; Brownsey, Silas TRAN:EX; Mercer, Andrea TRAN:EX  
**Cc:** XT:Matthews, Lindsay ICBC:IN  
**Subject:** IN - BC Supreme Court changes  
**Attachments:** IN - BCSC rule changes - draft - 03 31 2016 0645.docx

Hello;

Attached please find the final for the ICBC IN developed on the BC Supreme Court rules change. We have also shared this final this morning with Ryan.

Best – Chris

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[Contact Us](#)

## Ashton, Marion TRAN:EX

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**From:** Kislock, Lindsay M TRAN:EX  
**Sent:** Thursday, March 17, 2016 10:50 AM  
**To:** Bain, Nancy TRAN:EX; Bishop, Carol TRAN:EX; Brownsey, Silas TRAN:EX; Mercer, Andrea TRAN:EX  
**Subject:** FW: BN -- Rules of Court Changes  
**Attachments:** BN - July 1 BCSC costs changes - Mar 16 v3.docx

FYI

---

**From:** Crombie, Steve [<mailto:Steve.Crombie@icbc.com>]  
**Sent:** Thursday, March 17, 2016 10:11 AM  
**To:** Kislock, Lindsay M TRAN:EX  
**Cc:** Tupper, Chris  
**Subject:** BN -- Rules of Court Changes

Lindsay:

As discussed, attached is a briefing note on the changes to the rules of court. More work is being done on the implications **s.13** but this will provide a good basis for understanding the issue.

Steve

.....  
**Steve Crombie**

VP, Corporate & Stakeholder Governance

**ICBC** building trust. driving confidence.

.....  
517 - 151 W. Esplanade  
North Vancouver | British Columbia | V7M 3H9  
**direct:** 604-982-2451 | **mobile:** 604-209-0025  
**Executive Assistant:** [sheena.dinnie@icbc.com](mailto:sheena.dinnie@icbc.com)

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[Contact Us](#)

## BRIEFING NOTE FOR INFORMATION

**DATE:** March 16, 2016

**PREPARED FOR:** Grant Main, Deputy Minister, Ministry of Transportation and Infrastructure

**ISSUE:** BC Supreme Court Civil Rules regulation changes may cost ICBC:

- s.13,s.17
- s.13,s.17

s.13

### Background

In January 2016, the provincial government approved changes to the Supreme Court Civil Rules Regulation (SCCRR), effective July 1, 2016. The changes significantly increase the amount of legal costs that successful parties will receive from unsuccessful parties when BC Supreme Court actions go to trial or are settled.

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The longstanding SCCRR provides that the successful party in a BC Supreme Court action will receive an amount of legal costs (known as party and party (P&P) costs) and expenses, whether the action goes to trial or is settled out of court. Rules for the payment of P&P costs, as well a tariff for calculating them, are set out in regulation.

ICBC is the largest single entity that is affected by these changes to the SCCRR. Any increases to the P&P costs prescribed in the SCCRR have a considerable financial impact on ICBC because, in the vast majority of civil actions arising from motor vehicle accidents, ICBC is the insurer of one or more defendants and as a result is required to pay P&P costs. In 2015, ICBC paid approximately \$50M for these P&P on litigated claims.

### Discussion<sup>1</sup>

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<sup>1</sup> All financial impacts are preliminary. Further analysis is required.

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1. s.13

2.

There may be ways to reduce the financial impacts to ICBC associated with the July 1 changes to the SCCRR, yet maintain the improvements embodied in those changes.

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“Fast Track” summary of current and future P&P costs:

Fast Track Actions (by category)	Costs currently paid by ICBC	Costs payable under Rules after July 1, 2016
Case settles 90+ days before trial date	\$0 to \$4,000 <sup>1</sup>	\$8,500
Settles 30-90 days before trial date	\$4,000 to \$5,000 <sup>1</sup>	\$9,250
Settles less than 30 days before trial	\$5,000 to \$6,500 <sup>1</sup>	\$10,000
trial = 1 day or less	\$8,000	\$11,500
trial = 2 days	\$9,500	\$13,000
trial = 3 days	\$11,000	\$14,500
trial = 4 days	\$11,000	\$16,000
trial = 5 days	\$11,000	\$17,500

<sup>1</sup> This amount/range reflects recommended cost table: Files Settled in Fast Track”, as well as the \$6,500 “cap” for costs payable per case law

## Regular Actions (>\$100,000)

A more complex tariff exists in the SCCRR for cases where damages are expected to exceed \$100K. The SCCRR amendments greatly simplify the tariff by amalgamating 48 tariff items to 13. They change the tariff by moving from a scale based formula based on steps taken to a flat rate for each of the tariff items. *See appendix A for a summary table of the tariff and the rate increases within the tariff.*

Under the July 1 tariff, a plaintiff who simply initiates a “regular action” and provides a list of documents prior to negotiating settlement will be entitled to a fixed \$7,500 in costs from the defendant, regardless of the amount of time and effort expended.

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### Summary of cost increases to ICBC<sup>2</sup>:

#### A. One-Time Impact on Claims Incurred Costs in 2016 and Additional Basic Rate Requirement to Cover Costs:

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#### B. Ongoing Annual Increase to Claims Costs

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<sup>2</sup> See Appendix B for table of overall costs and impacts

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**Recommendation:**

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**Immediate next steps:**

Senior ICBC staff are meeting with Ministry of Justice/Attorney General and Ministry of Finance staff in Victoria tomorrow to discuss the issue and associated implications.

**ICBC Key Contact:**

Bill Carpenter, Chief Actuary

Phone: 604 982-7422

Email: Bill.Carpenter@icbc.com



**Appendix A**  
**Regular Actions (over \$100,000)**

**Supreme Court Civil Rules – Party and Party Costs Tariff**  
**Increase in Costs Payable Resulting from July 1, 2016 Changes to Tariff**

Item	Description*	Current Amounts Typically Paid by ICBC for that Item(s)	July 1, 2016 Fixed Cost formula (\$)	Increase in Costs Payable for this Tariff Item Resulting from July 1, 2016 Tariff (D-G)
	<i>* July 2016 onward descriptions, like items from the current 49 tariff items collapsed into 13 items per new regulation.</i>			
1	Correspondence, conferences, instructions, investigations, negotiations and preparing, filing and serving of all pleadings or a petition proceeding	\$330 - \$2310	\$4500	\$2190 - \$4170
2	Case planning and mediation, including preparation for and attendance at case planning conferences, trial management conferences, mediation conferences and settlement conferences	\$220 - \$440 for Case Planning Conferences (CPC) and Trial Management Conferences (TMC) \$880 for mediations	\$1000	\$560 - \$780 per half day for CPCs and TMCs  \$120 per half day for mediations
3	Process for giving or obtaining discovery and inspection of documents, serving or answering interrogatories and requiring or making admissions of fact	\$440 - \$1210	\$3000	\$1790 - \$2560
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	\$880 or \$2200	\$1500 for each day/part day	\$620 (if examination for discovery of plaintiff only)  \$800 (if examination for discovery for plaintiff and defendant)
5	Preparation for and attendance at each application or at each hearing before a registrar, if uncontested	\$330	\$500 for each half day of attendance	\$170 for each half day
6	Preparation for and attendance at each application or at each hearing before a registrar, if contested	\$660 or \$880	\$1000 for each half day of attendance	\$340 for assessment before Registrar  \$120 for contested chambers
7	Preparation for trial where trial settles 30 days or fewer before beginning of trial	up to \$550 total	\$500 for each day of trial or at a trial	\$1950 (using, a planned 5 day trial as an example)



			management conference	
8	Preparation for trial where trial settles between 30 and 90 days before beginning of trial	up to \$550 total	\$250 for each day of trial or at a trial management conference	\$700 (using, a planned 5 day trial as an example)
9	Preparation for and attendance at trial, petition hearing or trial of an issue, including retaining and preparing witnesses	\$1100 for each day of trial	\$2000 for each day or part of a day of a trial, petition hearing up to 5 days  \$3000 for each additional day	\$900 for each day of trial up to 5 days  \$1900 for each day of trial after 5 days
10	All process for obtaining the comments and recommendations of the Public Guardian and Trustee where required	\$110 - \$550	\$1500 for each set of comments and recommendations	\$950 - \$1390
11	Registry attendance to enter an order or certificate of costs where tariff items 5 and 6 do not apply	\$110	\$200 for each attendance	\$90
12	Written argument at applications or hearings in excess of 2 hours or at trial	\$110 - \$550	\$1500	\$950 - \$1390
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	\$220	\$300 for each day or half day on which the lawyer travels	\$80

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## **BC Supreme Court Civil Rules Changes**

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DATE: MARCH 31, 2016

### **ICBC Responses:**

- **ICBC supports the Attorney General's decision to take the time to fully consider all the information available regarding these changes to ensure the impact on all the affected parties is understood.**
- **Motorists in BC who are accused of being responsible for damages are entitled to a defense in court and in the vast majority of cases ICBC, as their insurance company, pays for that defense using the insurance premiums everyone pays.**
- **On behalf of BC motorists, ICBC is the single largest payer of legal costs for all BC civil actions. Changes to the rules are of interest to us and all ratepayers in the province.**
- **Anything that increases the costs to defend motorists could have an impact on everyone's insurance rates. With bodily injury costs already putting pressure on auto insurance rates, any additional pressures need to be carefully considered.**
- **ICBC has a responsibility to all ratepayers to make sure that anything which will put significant pressure on rates is fully understood by decision makers as they look to make updates to the civil rules.**

### **Background:**

- **In January 2016, the provincial government approved changes to the Supreme Court Civil Rules Regulation (SCCRR), effective July 1, 2016. The changes significantly increase the amount of legal costs that successful parties will receive from unsuccessful parties when BC Supreme Court actions are settled or go to trial.**
- **The longstanding SCCRR provides that the successful party in a BC Supreme Court action will receive an amount of legal costs (known as party and party (P&P) costs) and expenses, whether the action is settled out of court or goes to trial. Rules for the payment of P&P costs, as well a tariff for calculating them, are set out in regulation.**
- **The changes will affect a number of entities, including private insurance companies in both general liability insurance (claims against the government, doctor's insurance, home insurance, etc.) and auto insurance.**

## ICBC ISSUES NOTE – ADVICE TO MINISTER

- By virtue of its representation of at-fault BC motorists, ICBC is the largest single entity that is affected by these changes to the SCCRR. Any increases to the P&P costs prescribed in the SCCRR have a considerable financial impact on ICBC because, in the vast majority of civil actions arising from motor vehicle accidents, ICBC is the insurer of one or more defendants and as a result is required to pay P&P costs. In 2015, ICBC paid approximately \$50M for these P&P on litigated claims.
- The upcoming changes to the SCCRR have the potential to substantially increase ICBC's claims costs which would have an impact on Basic insurance rates and Basic capital.

# 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



# 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.

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### ☐ ICBC's recently tabled Service Plan

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- ☐ 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.

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### ☐ ICBC's position – s.13

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☐

# 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



## 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

## Most likely:

- ☐ s.13

# 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%

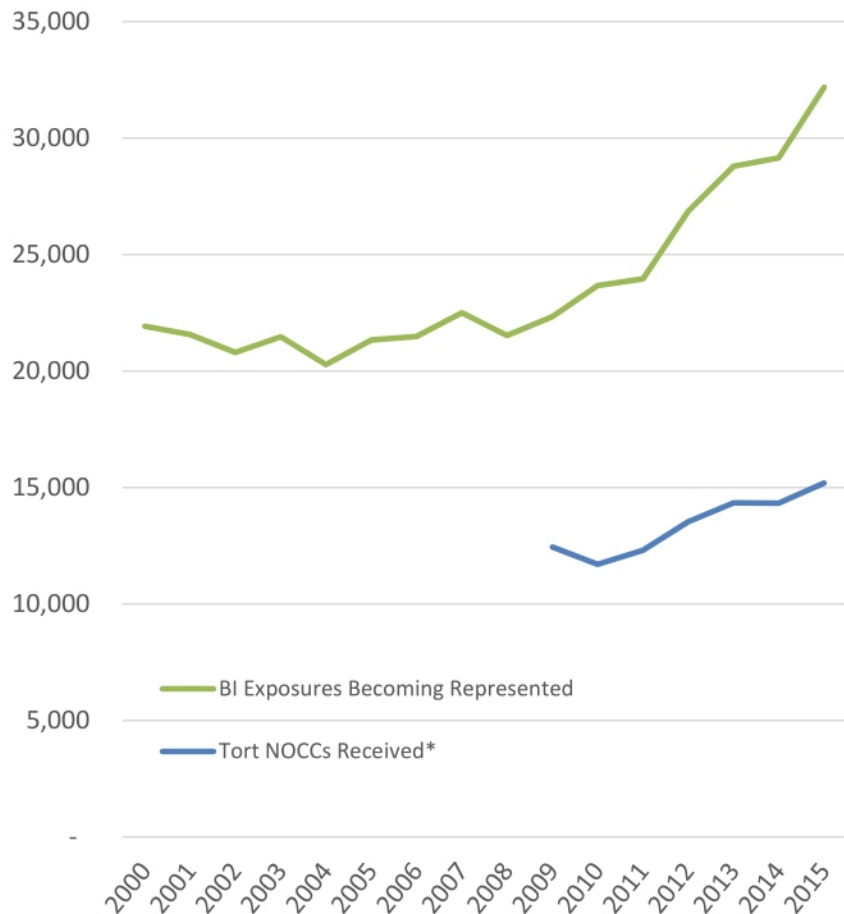
### Notes on the data

- ☐ 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%

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# SUMMARY OF ESTIMATED IMPACTS IN 2016

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## 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

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# 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 <sup>1</sup>	(1)	\$8,500	\$4,500 to \$8,500
Settles 30-90 days before TD	\$4,000 to \$5,000 <sup>1</sup>	(1)	\$9,250	\$4,250 to \$5,250
Settles less than 30 days before TD	\$5,000 to \$6,500 <sup>1</sup>	(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

Page 28 to/à Page 29

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s.13

## Brownsey, Silas TRAN:EX

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**From:** Brownsey, Silas TRAN:EX  
**Sent:** Thursday, March 31, 2016 1:53 PM  
**To:** Tupper, Chris  
**Cc:** Jabs, Ryan GCPE:EX; XT:Matthews, Lindsay ICBC:IN; Kislock, Lindsay M TRAN:EX  
**Subject:** Re: IN - BC Supreme Court changes

Thanks.

Sent from my iPhone

> On Mar 31, 2016, at 1:44 PM, Tupper, Chris <[Chris.Tupper@icbc.com](mailto:Chris.Tupper@icbc.com)> wrote:

>

> Thanks. Jason has followed up a couple times. **s.13**

**s.13**

>

>> On Mar 31, 2016, at 1:39 PM, Brownsey, Silas TRAN:EX <[Silas.Brownsey@gov.bc.ca](mailto:Silas.Brownsey@gov.bc.ca)> wrote:

>>

>> I would be interested to know how they are being used - we want stay away from this being portrayed as a solely ICBC issue, as it is not.

>>

>> Sent from my iPhone

>>

>> On Mar 31, 2016, at 8:44 AM, Jabs, Ryan GCPE:EX <[Ryan.Jabs@gov.bc.ca](mailto:Ryan.Jabs@gov.bc.ca)<<mailto:Ryan.Jabs@gov.bc.ca>>> wrote:

>>

>> I don't. Silas may have thoughts, as I believe he's been more engaged on the discussions.

>>

>> From: Tupper, Chris [<mailto:Chris.Tupper@icbc.com>]

>> Sent: Thursday, March 31, 2016 8:43 AM

>> To: Jabs, Ryan GCPE:EX

>> Cc: Brownsey, Silas TRAN:EX

>> Subject: RE: IN - BC Supreme Court changes

>>

>>

>> Thanks Ryan. As a heads up, I had a call this morning with Jason K asking if he could use some slides from the deck ICBC presented to JAG on Mar 18 for some stakeholder communication – in particular those remaining on the rules committee to demonstrate the potential impacts. I will check internally if there are any issues with that, but let me know if you have any. I'll copy you both on any email to Jason on that.

>>

>> Regards,

>> Chris

>>

>> From: Jabs, Ryan GCPE:EX [<mailto:Ryan.Jabs@gov.bc.ca>]

>> Sent: Thursday, March 31, 2016 8:34 AM

>> To: Cooper, Doug <[Doug.Cooper@icbc.com](mailto:Doug.Cooper@icbc.com)<<mailto:Doug.Cooper@icbc.com>>>

>> Cc: Henderson, Doug  
>> <[Doug.Henderson@icbc.com](mailto:Doug.Henderson@icbc.com)<<mailto:Doug.Henderson@icbc.com>>>; Matthews,  
>> Lindsay  
>> <[Lindsay.Matthews@icbc.com](mailto:Lindsay.Matthews@icbc.com)<<mailto:Lindsay.Matthews@icbc.com>>>;  
>> Tupper, Chris <[Chris.Tupper@icbc.com](mailto:Chris.Tupper@icbc.com)<<mailto:Chris.Tupper@icbc.com>>>;  
>> Trotter, Kate GCPE:EX  
>> <[Kate.Trotter@gov.bc.ca](mailto:Kate.Trotter@gov.bc.ca)<<mailto:Kate.Trotter@gov.bc.ca>>>; Rorison,  
>> Trish GCPE:EX  
>> <[Trish.Rorison@gov.bc.ca](mailto:Trish.Rorison@gov.bc.ca)<<mailto:Trish.Rorison@gov.bc.ca>>>  
>> Subject: RE: IN - BC Supreme Court changes  
>>  
>> Thanks, Doug. I haven't heard a specific time, but sounds like they'll go out with a statement sometime after 1:00. I'll confirm once I know.  
>>  
>> From: Cooper, Doug [<mailto:Doug.Cooper@icbc.com>]  
>> Sent: Thursday, March 31, 2016 8:27 AM  
>> To: Jabs, Ryan GCPE:EX  
>> Cc: Henderson, Doug; XT:Matthews, Lindsay ICBC:IN; Tupper, Chris;  
>> Cooper, Doug  
>> Subject: IN - BC Supreme Court changes  
>>  
>> Hi Ryan,  
>>  
>> Here is the draft IN with our response points in anticipation of the JAG announcement. Have you heard anything more on timing?  
>>  
>> I'm at an appointment between 9:30-11 so if you want to discuss things during that time, please call Doug H. I'm otherwise available outside of that time.  
>>  
>> Thanks  
>> Doug  
>>  
>>  
>> .....  
>> Doug Cooper  
>> Communication Advisor  
>> Corporate & Stakeholder Governance  
>> ICBC building trust. driving confidence.  
>> .....  
>> #505 - 151 W. Esplanade | North Vancouver | British Columbia | V7M  
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>> direct: 604-982-6590 | cell: 604-999-8012  
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