

March 5, 2020

BCCC Position Statement on ICBC Enhanced Care

Every year, there are over 300,000 crashes on BC's roads, many resulting in injuries; 5 people die in a motor vehicle crash every week across the province.

Beyond the human toll, every public auto insurance policyholder shares equally in the extraordinary financial cost of these crashes.

Last year, changes went into effect at ICBC in order to limit costs and make the rating system fairer — and more just — for all who drive. Coverage and premiums are now tied to individuals, not vehicles, which means greater accountability for the driving behaviour of any British Columbian behind the wheel. Changes have also resulted in a more accurate reflection of the true risk and cost of motor vehicle ownership for every premium-paying customer.

AUTO INSURANCE IN BC & VULNERABLE ROAD USERS

However, not every British Columbian owns or drives a motor vehicle. Vulnerable road users — people who predominantly walk, cycle or wheel for transportation, as well as those who use transit — represent neither the source of a significant proportion of the losses at the Crown corporation, nor the overriding need to overhaul its rating system.

With [Enhanced Care](#), the new regulatory framework that accompanies [legislation tabled on March 4th, 2020](#) by the BC government — a bill which strikes down the ability to sue for personal injury damages from a crash — the proposed changes do nothing to benefit vulnerable road users; there are no indications that any of the \$1.5 billion in savings ICBC anticipates from the proposed legislation will be put towards funding [the new active transportation strategy](#), Vision Zero & [the BC Road Safety Strategy](#), or any such policies, programs, systems, or facilities to reduce risk of injury or death of vulnerable road users.

Additionally, nothing new has been provided for the education and enforcement needed for motorists to operate with greater duty of care; under the new model, cyclists and pedestrians — who are more vulnerable to injury, and less likely to be able to defend their position due to the greater likelihood of cognitive or physical injuries from crashes — will not only forfeit their ability to bring a claim for damages due to the negligence of others, their only recourse will be one prescribed by an insurer.

That the continued risk exposure, insufficient protections, and unjust treatment of vulnerable road users in current legislation is not addressed by Enhanced Care is problematic.

ENHANCED CARE BENEFITS & NO-FAULT

Today, all BC residents involved in a crash — including cyclists and pedestrians who do not own vehicles — are eligible for damage awards and benefits, but awards are limited if they are at fault.

The Enhanced Care model will allow ICBC to offer improved medical care for everyone in the province, including vulnerable road users, regardless of fault.

The list of benefits is impressive, including a maximum of \$7.5 million of care and recovery benefits, reimbursement of expenses, and lost wages that form the core of Enhanced Care.

BENEFITS DETERMINATION

For vulnerable road users, a primary concern is how the Enhanced Care model will account for the most significant of losses, mainly loss of earnings and quality of life.

While the awards for loss of earnings have increased, they still do not fully replace income for anyone earning above \$85,000 annually.

ICBC has also proposed a maximum lump sum cash benefit of \$250,000 as compensation for permanent impairment, which is defined as injuries that result in impairment lasting a lifetime, which could include a wide range of physiological conditions and effects, ranging from a concussion to quadriplegia.

While it's true that pursuing damages for such injuries can be onerous — requiring a lawyer, expert witness reports, and years of waiting — under the proposed model, the amount of the cash benefit awarded to a claimant would depend on ICBC's determination of the nature of the injury, the degree of permanent impairment, and on the basis of a care plan provided by a doctor on the claimant's behalf.

Under Enhanced Care, whether an impairment is catastrophic or not — and thus subject to a cash payout from \$250,000 down to \$800 — will be a determination made not in the courts, but by the ICBC claims department.

While disputes can be brought to a Civil Resolution Tribunal, a Fairness Office, and the Office of the B.C. Ombudsperson, we don't believe matters of medical rehabilitation and personal care can be resolved effectively coming from a starting point of cost containment.

BCCC RECOMMENDATIONS

The name of the proposed legislation reflects its promise — that Enhanced Care is about improving how insurance responds when you really need it. Yet, under this model, vulnerable road users would have to be in a crash to benefit from any of the changes.

Once enacted, Enhanced Care will also allow ICBC to continue to assign fault based on their own determination of liability.

Lastly, there is no indication that any savings from the proposed model will be used to protect road users or to prevent crashes in the first place.

As such, we've made recommendations for the Ministry of Attorney General and ICBC to consider as they work to further develop a regulatory framework that works for all British Columbians:

- Re-allocate \$500 million, or one-third of the projected \$1.5b in year one savings from Enhanced Care, to providing dedicated facilities for active transportation within provincial jurisdiction in all three transportation regions, in keeping with the direction of CleanBC and to accelerate both the safety and growth of active transportation.
- Remove the onus of proof of liability from the vulnerable road user; in Ontario, Section 193(1) of the [Highway Traffic Act](#) supersedes common law, such that, in a crash involving a motor vehicle and a bicycle or pedestrian, the driver of the motor vehicle must prove they were not at fault.
- Hire and assign independent medical case managers and social workers to manage all claims involving injuries; this would ensure the resolution of any claim begins and ends from the perspective of care and recovery, not cost containment.
- Ensure that anyone hurt in a crash involving any road user has a medical doctor / general practitioner, or provision one at no cost to the claimant.
- Ensure the ICBC Board of Directors includes representation by subject matter experts in active transportation, justice, population health, and road safety.
- Mandate that the Civil Resolution Tribunal and Fairness Office include senior staff who self-identify as vulnerable road users, and educate all senior staff on the challenges faced by vulnerable road users in an environment designed primarily for cars.
- Work with road safety and active transportation advocacy groups to update ICBC driver training standards and materials related to cycling and walking, including the rights and responsibilities of all road users, prior to the effective date of any new legislation.

SUMMARY

BC's Motor Vehicle Act places some unique obligations on cyclists, starting with requirements, regulations and allocation of road space, as well as safety equipment. But the Motor Vehicle Act — largely unchanged since the 1960s — has no unique provisions or protections that recognize their disproportionate vulnerability. This, despite the growth of people using bicycles in recent years, especially in our most populated urban centres.

New laws and regulations in British Columbia should not generate financial and behavioural incentives to make driving more attractive and frequent. Indeed, in the context of the climate crisis and the objectives of the CleanBC initiative, the environmental, financial, and social costs of excessive motor vehicle use should be reflected in all new laws, regulations, and policies, particularly related to our transportation systems.

Enhanced Care legislation should reflect and extend the broader government goals of addressing climate change and road safety for BC residents. Moreover, the Enhanced Care legislation should work in lockstep with new active transportation strategy, Move Commute Connect, in recognizing and promoting walking, cycling and other mobility options in all BC communities.

As such, vulnerable road users need full recognition in the proposed Enhanced Care model, as well as in the outdated Motor Vehicle Act.

We're asking the BC government to implement our recommendations, in order to extend appropriate recognition, protections, and benefits for vulnerable road users — before and after crashes — for which they are rarely at fault.

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