

Personal Injury

B.C. legal community questions changes to ICBC policy limiting number of expert witnesses

By **Ian Burns**

(February 14, 2019, 9:25 AM EST) -- The B.C. government is moving to change court rules to limit the number of expert witnesses in motor vehicle cases, but the move is being condemned by some in the legal community, who say it will restrict the rights of individual British Columbians.

The amendments to the B.C. Supreme Court Civil Rules Regulation, revealed Feb. 11, will limit the number of experts and expert reports permitted to address the issue of damages, such as wage loss, future wage loss and future care that can be used by each side of a motor vehicle dispute. Parties will be able to use one expert and report for fast-track claims (e.g., less than \$100,000), and up to three experts and reports for all other claims. Judges will be able to permit additional court-appointed or joint experts at their discretion.



Attorney General David Eby

Attorney General David Eby said the intent of the reforms is to avoid "costs and delays associated with the disproportionate use of experts and reports that we are seeing today, without removing access to further expertise in situations where it's necessary."

"These changes are meant to encourage greater use of court-appointed or joint experts to provide a more neutral expert opinion and assist the court in determining appropriate amounts for injury claims," he said.

According to the Ministry of the Attorney General, vehicle injury claims have increased by 43 per cent in the past five years. The increased use of experts has contributed to a 20 per cent increase in the government-owned Insurance Corporation of British Columbia (ICBC)'s litigated injury settlements over the last year, the Ministry said. ICBC recently revealed it was currently on track to record a \$1.18 billion loss for the 2018-19 fiscal year.

But Eby's move was met with wide concern by many in the legal industry. In a release, the Trial Lawyers Association of British Columbia (TLABC) said it supports any reasonable effort to at making the system fairer, faster and cheaper, but added it was concerning that Eby "is forcing such severe restrictions on a victim's right to prosecute her or his claim to the sole benefit of one party, ICBC."

"Further, it should concern all British Columbians the attorney general has passed these changes behind closed cabinet doors by order-in-council, thereby precluding public debate in the legislature. Passing such consequential changes to our system of civil justice with no legislative debate is undemocratic," the release said. "Repeatedly this government seems to favour ICBC's financial interests over the legal rights of British Columbians, and this rush to pass restrictions on how victims of negligence must prove their cases at law is the most recent illustration of making car accident victims pay for reckless driving."

Kenneth Armstrong, vice-president of the Canadian Bar Association, B.C. Branch (CBABC), said his organization has called on the government in the past to look at changes to the rules which would include a schedule of fees limiting the amount experts can charge for their reports.

"That might have been a more rationally connected way to curtail the rising costs of expert reports, and I don't know if that has been considered or not. It certainly doesn't appear to be part of the regulation," he said. "[And] we certainly weren't consulted with respect to these particular changes and we would have appreciated the opportunity to do so, but we acknowledge there will be an opportunity in the next 11 months to provide input on the evolution of these regulations."

Armstrong said CBABC has raised concerns about the cost of medical-legal reports for more than a decade.

"We agree that there is an issue with the costs of experts for sure, but we think there's a different way to address those costs," he said. "Reducing the number of reports affects the quality of evidence before trial that wouldn't necessarily happen if you just reduced the cost."



Scott Stanley, Murphy Battista

Scott Stanley, a personal injury lawyer with Vancouver's Murphy Battista, said Eby should be "ashamed" of himself for bringing in the changes.

"I don't think one individual has done more to compromise the public's access to justice more than Attorney General David Eby has done," he said. "If a private insurance company was poorly run, that would be no reason to take away the rights of the citizens. That's not something that governments should do, and it's just asinine that a poorly run insurance company would result in British Columbians losing access to justice and basic compensation."

Stanley agreed that experts "charge way too much," but sided with Armstrong in saying the answer is to set a cap on the amount they can charge for their reports.

"That's been suggested several times, but rather than restrict the amount of money that the experts charge for these reports, [Eby] is restricting the amount of reports a plaintiff can use," he said. "He'd

rather take it out on the poor innocent victim rather than the wealthy doctor or expert, many of whom makes millions of dollars a year writing these reports.”

The amendments will come into effect immediately upon deposit for motor vehicle-related actions. They will also apply to all personal injury claims as of Feb. 1, 2020, subject to the further analysis and consultation that the Ministry plans to undertake.

The Ministry says more information will be available in the coming weeks.

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