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Paul Halucha, Esq.
Director-General
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235 Queen Street, 10th Floor, East Tower
Ottawa, ON K1A 0H5

Dear Mr. Haluca:

Re: **Re: Statutory Review of the BIA and the CCAA**

I am writing on behalf of the Insurance Corporation of British Columbia ("ICBC") with regard to the Statutory Review of the *Bankruptcy and Insolvency Act* ("BIA") and the *Companies' Creditors Arrangement Act* that is presently underway. We appreciate the opportunity to provide submissions on the issues of importance that relate to ICBC's business as they relate to the BIA.

ICBC is a provincial Crown corporation that provides universal compulsory auto insurance to drivers in British Columbia (B.C.). ICBC also sells Optional auto insurance in a competitive marketplace. In addition, ICBC provides driver licensing, vehicle registration and licensing services, and fines collection on behalf of the provincial government.

Of particular interest to ICBC is the consumer insolvency theme of the "fresh start" principle and the denial of a driver's licence. ICBC has statutory powers under provincial legislation (*Motor Vehicle Act* and *Insurance (Vehicle) Act*) to deny a driver's licence, refuse to renew insurance or suspend driving privileges. It is the discretionary aspect of this legislation, ICBC's reasonable approach and the potential for abuse that will be the focus of these submissions.

Provincial Legislation in BC:

The legislation in British Columbia has granted ICBC the statutory power to refuse subsequent licence plates, driver's licences and ICBC's insurance transactions through:

- s.93.1 of the *Insurance (Vehicle) Act* (corporation's collection remedies, refuse to issue a licence);
- s.26 of the *Motor Vehicle Act* (refusal to issue licence, permit, etc.); and
- s. 91 of the *Motor Vehicle Act* (ability to suspend driving privileges if there is an unsatisfied judgment).

As a result of these statutory powers, ICBC maintains a policy that drivers licences, vehicle licences and ICBC insurance will not be renewed to debtors who have filed Consumer Proposals until they have been accepted by the creditors or a bankrupt obtains his discharge. It is not until the acceptance or discharge that the debt owing to ICBC is extinguished.

After Discharge:

Currently, ICBC does not exercise any refusal to issue remedies *after* an insured is discharged from bankruptcy for debts discharged through the bankruptcy process or after acceptance and conclusion of a Consumer Proposal. ICBC is mindful of the fact that the bulk of recent case law suggests that there is no right to apply refusal to issue remedies *after* an insured is discharged.

ICBC therefore takes no position on whether or not legislative change would be required to prohibit refusal to issue remedies after discharge.

Under s.178(1)(a.1)(d) or (e) of the *BIA*, ICBC is able to maintain the debt despite an order of discharge. Section 178 is intended to prevent certain types of debt from being discharged, including fines, penalties, debts as a result of fraud.

ICBC only exercises those remedies available through statute for debt that is maintained despite an order of discharge through the bankruptcy process. For example, where:

- (1) fraud is alleged;
- (2) ICBC has paid the victim of a motor vehicle accident in circumstances where the insured is in breach of his insurance and judgment is obtained or;
- (3) there has been an award for bodily harm intentionally inflicted or wrongful death.

Under s.178(1)(a.1)(d) or (e) of the *BIA* ICBC is able to maintain the debt despite an order of discharge.

The legislation noted above is further supported by the case law. The Supreme Court of Canada has held a tortfeasor should not be able to escape a debt by declaring bankruptcy where the act in question involved misconduct in operating a vehicle ([Kozack v. Richter \(1973\) S.C.R. 832](#)). There can be no doubt that society's interest in punishing such behaviour far outweighs any benefits that might be gained from releasing the bankrupt from his obligations ([Kundan S. Sangha, 2004 BCSC 799](#)).

ICBC submits that, the approach currently outlined in s.178 of *BIA* is wholly proper. It is ICBC's position that a debtor who falls under one of the three scenarios above should not be permitted to avoid an ICBC debt by becoming bankrupt. ICBC submits that it is supportive of the current *BIA* legislation in disallowing the debts arising from the use of a motor vehicle from being discharged.

Prior to Discharge:

The greatest area for concern is the right to deny a licence *prior* to discharge or acceptance and conclusion of a Consumer Proposal. It is ICBC's submission that an uninsured or insured in breach should not gain access to a driver's licence or ICBC insurance by merely declaring bankruptcy. To extinguish ICBC's right to enforce its collection remedies would give rise to an abuse of process. ICBC, therefore, submits that it is opposed to legislative change preventing the ability to enforcing rights prior to discharge.

ICBC submits that there is no conflict between the provincial legislative scheme allowing a licence to be denied or to not renew insurance *prior* to acceptance or discharge and the *Bankruptcy and Insolvency Act*. It is noteworthy that none of the legislative changes in the United States or the Canadian case law restrict a licensing body's right to enforce the refusal to issue rights *prior* to discharge.

The United States has expressly barred the use of special collection tools on released debt. Not on an unreleased debt. Examples of recent case law include the following: the Supreme Court of Canada has disallowed the use of toll debt as a basis to deny a truck driver a driver licence *after discharge* ([407 ETR Concession Company Limited v. Superintendent of Bankruptcy](#)). Recent Ontario case law further supports the notion that a *discharged* bankrupt should not be denied a drivers licence ([Ontario \(Minister of Finance\) v Clarke, 2013 ONSC 1920, 115 OR \(3d\) 33](#)). The case law, as mentioned, is not dealing with pre-discharge and should not be read as applying to same. The two periods (pre and post-discharge) are very different.

ICBC submits that it is significant that British Columbia's statutory provisions are discretionary. For example, ICBC allows for a term of the Consumer Proposal that permits a driver to obtain a licence and insure a vehicle.

ICBC has criteria by which it reviews each debtor's circumstances, including:

- The circumstances giving rise to the debt;
- The period of time a licence or insurance has been refused prior to a *BIA* filing;
- Whether the ICBC debt was a significant component of the debtors debt load or incidental (an ICBC driven filing or not);
- The impact on the debtor's employment, education or ability to obtain medical treatment; and,
- Other hardships that may result through the refusal to renew insurance or licences.

ICBC does not intend to frustrate the "fresh start" principle where a debtor is an honest, but unfortunate debtor. ICBC takes a fair and reasoned approach in handling ICBC debts. There is no question, however, that the rights afforded ICBC in maintaining its collection remedies are fundamental to ICBC as an insurer. It is ICBC's submission that the Corporation's entitlement to enforce these rights prior to discharge is clear under the *BIA* and that it would be both inappropriate and result in an abuse of process by the driver if the rights were removed by legislative change.

In British Columbia, driver's licences are generally issued for a period of five years and vehicle licensing materials for a period of one year. The rights afforded ICBC under provincial legislation provide effective collection remedies (s.91 and s.93.1 of the *Insurance (Vehicle)* and s.26 of the *Motor Vehicle Act*) ICBC can rely on these remedies without having to resort to litigation and thereby placing additional stress on the court system. Debt owed the government such as ambulance fees or MSP are good examples of debt that can be recovered through various means other than having to resort to the legal system. ICBC submits that it should continue to have these remedies available to it as well. The importance and effectiveness of these non-

judicial collection remedies are further reflected in the fact that motor vehicle indebtedness has a six year limitation period. As a result of amendments under the *Limitation Act* that amend s. [38](#) of the *Financial Administration Act*, R.S.B.C. 1996, c. 138, recovery actions for “vehicle indebtedness” as defined in s. [93.1](#) of the *Insurance (Vehicle) Act* remain subject to a six-year limitation period as a type of “government claim”. Therefore, the new BC *Limitation Act* has purposefully given these types of debts a limitation period in excess of the usual two years.

Any legislative change which removes the right to refuse to issue licences or renew insurance upon a mere application for bankruptcy, would give rise to a significant opportunity for abuse. An example of past abuse includes student loans and the subsequent changes making student loans non-dischargeable. Likewise individuals with an ICBC insurance debt could apply for bankruptcy, receive their drivers licence and ICBC insurance and then never follow through with the discharge process. This would be a significant abuse of process that would result in increased litigation for ICBC as ICBC would have limited avenues, other than litigation. Further, this would result in increased cost for ICBC and lower chances of recovery.

ICBC’s legal ability to deny a drivers licence or refuse to renew insurance *prior* to discharge is not a remedy that is taken lightly by ICBC. It is a right that the courts have not curtailed. It is a right that US legislation does not curtail. ICBC’s submission, therefore, is that no legislative change relating to licensing remedies should be considered prior to discharge.

Thank you for your consideration of ICBC’s position.

Yours truly,

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Corporate Law
ICBC