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Trial Lawyers Association of BC launches constitutional challenge in wake of new ICBC legislation

Vancouver, BC –The Trial Lawyers Association of British Columbia (TLABC) has launched a constitutional challenge to protect the charter rights of British Columbians as regulations come into effect for the new ICBC legislation for those injured on our roads.

A constitutional challenge means a law is being challenged in court to determine if it violates or is inconsistent with the Constitution of Canada, including the Canadian Charter of Rights and Freedoms.

“Access to justice is a basic human right guaranteed to us as Canadians under the Canadian Charter of Rights and Freedoms”, says TLABC’s Ron Nairne. “The approach this government has taken to legislative and regulatory changes to address ICBC’s mismanagement problems violates the rights of British Columbians”, said Nairne. “This should be about protecting the public interest – not about protecting ICBC.”

TLABC members are concerned that the regulations emerging from the recent ICBC legislation will unduly restrict access to the courts and unfairly reduce compensation for those injured on the road. The regulations now in place will make it that much more challenging for British Columbians to protect their rights after being injured on the road.

TLABC also sought out the opinion of lawyer, former B.C. Attorney General and Premier, and former Federal Cabinet Minister Ujjal Dosanjh. “I am deeply concerned with the impacts on my fellow British Columbians of the impending legislation introduced by our current government. Fixing ICBC is a priority, but not at the expense of access to justice and the charter rights of British Columbians”, said Dosanjh.

“I felt compelled to speak out as I do not believe this government has clearly understood or described the impacts of this legislation on the citizens of BC, especially those least able to advocate for themselves after an injury resulting from a road

accident,” added Dosanjh.

Shelley Howard of the Campbell River Brain Injury Society also expressed concerns about the impacts of the new legislation and regulations. “The new injury cap legislation and regulations has the potential to discriminate against British Columbians with brain injuries, psychiatric injury, and chronic pain by treating their harms and losses differently than other injuries, and results in a complicated and almost impossible reverse onus of establishing their injuries have caused “incapacity” or “serious impairment,” said Howard. “Our members are really concerned about what this means for restricting access to the courts and the negative impact this will have on our basic human rights as British Columbians. Their worry is mainly about being not able to articulate or even being aware of their needs until it is too late. Persons with brain injury are the most vulnerable by the very nature of the injury itself and how long it can take to determine the extent of loss. Often the individual cannot recognize it in themselves and therefore communicate it to others.”

“Having treated and assessed individuals who are terribly disabled by psychiatric injuries over the course of many years, I am troubled by legislation that singles out people suffering from psychiatric injuries and treats those people differently,” said Vancouver-based psychiatrist and past president of the BC Medical Association Dr. Derryck Smith. Smith suggested that he is also concerned with rules and regulations that apply rigid criteria to disabilities that often cannot be neatly categorized, particularly not in the initial weeks and months following trauma.

According to Nairne, “TLABC felt compelled to launch a constitutional challenge so that B.C.’s courts could review this legislation and accompanying regulations through the lens of protecting our fundamental human rights.”

About TLABC

The mission of the Trial Lawyers’ Association of BC is to support and promote the rights of individuals in British Columbia.

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