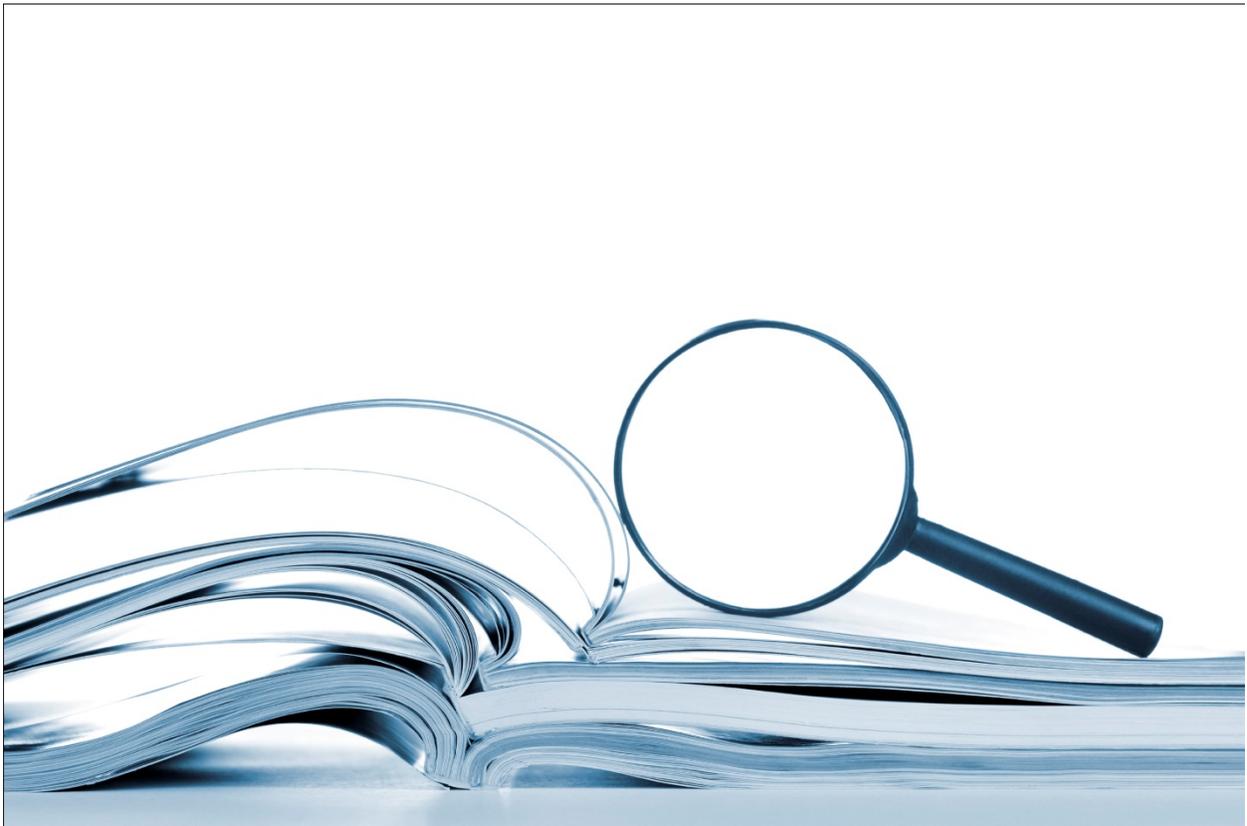


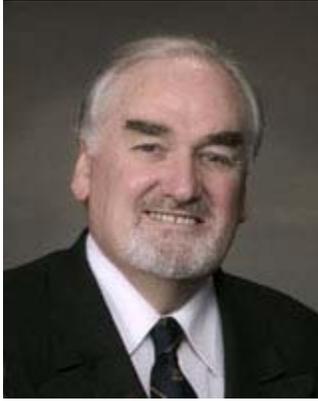
2012 Annual Report
Office of the
ICBC Fairness Commissioner

Peter Burns, Q.C.
ICBC Fairness Commissioner



Published April 2013

Who is the ICBC Fairness Commissioner?



Peter Burns, Q.C., was Professor of Law at the University of British Columbia, where he was Dean of Law from 1981 to 1992. He was appointed Queen's Counsel in 1984. His primary areas of teaching and research include criminal law, torts, international criminal law, and international human rights. He retired from the Faculty of Law in 2003, but continues to hold the rank of Dean emeritus and Professor emeritus.

He has also served on the BC Law Reform Commission and was a board member of the BC International Commercial Arbitration Centre for 10 years.

He has been a consultant to various branches of government, particularly in the fields of International Human Rights and Law Reform. He was appointed to the Board of Directors of the International Centre for Criminal Law Reform and Criminal Justice Policy (Vancouver) in 1982, is a former President of the International Society for the Reform of Criminal Law, and was a member of the UN Organization Committee against Torture from 1987 to 2003, serving as Chair from 1988 to 2003.

He began his appointment as ICBC Fairness Commissioner in April 2005.

From the Fairness Commissioner:

The value of a Fairness Commissioner's office as part of a statutory motor vehicle insurance corporation, with a monopoly over a portion of its business activities, is reflected in part in the number of cases that it deals with.

In the past a steady state of between 150 to 185 new cases has traditionally reached the Fairness Commissioner's office, but in 2012 the number reached 213. These cases do not reflect the complete picture, as over 64 per cent of the cases are resolved by the Insurance Corporation of British Columbia (ICBC) Customer Relations department to the satisfaction of the customer and do not reach me for review. As well, sometimes I refer cases back to the Customer Relations department, with a view to having ICBC review its decision. Each year, several of these result in different decisions being reached by the Corporation, again to the satisfaction of the customer concerned.

I am advised that ICBC sells approximately 3 million policies, processes about 1.4 million driver's licence transactions, and deals with 1 million claims, annually.

Against the backdrop of the statistics of this report, again one thing stands out. The overwhelming majority of decisions taken by ICBC employees and agents in their dealings with the Corporation's customers are reasonable and fair. Even in those cases that I dealt with in 2012, only one required a formal recommendation based upon a lack of fairness in the decision-making process or the reasonableness of the decision itself.

It is worth emphasizing that my jurisdiction goes to procedural fairness only. Has the Corporation in its application of its policies and practices dealt with a customer fairly? Are these policies and practices fair? I have no jurisdiction to go behind the statutory scheme itself. Nor can I substitute my view of what should have been the decision taken by the Corporation, unless I conclude that it was unreasonable in the circumstances.

I am very pleased to report to the Board that in the case that I referred back for another review the response of ICBC was unreservedly positive. In each instance, appropriate changes to decisions or practices have been made and this has led to a better result for the customer. In 2012, there were five such cases, summarized in Appendix B.

I would also like to express my appreciation to the staff of the Corporation. They have been patient, instructive, and above all, cooperative, in pursuing the mission of the Fairness Commissioner's Office.

Peter Burns, Q.C.
ICBC Fairness Commissioner

ANNUAL REPORT OF THE ICBC FAIRNESS COMMISSIONER

April 2013

TABLE OF CONTENTS

	Page
<i>ICBC Fairness Commissioner</i>	2
<i>From the Commissioner</i>	3
1. Introduction	5
2. Mission Statement	5
3. Role and Authority	5
4. What is the process?	6
5. Highlights of 2012	8
6. Fairness Commissioner 2012 Statistics	9
Appendix A: Recommendation made by the Fairness Commissioner	14
Appendix B: Cases resolved by the Fairness Commissioner without a recommendation	19
Appendix C: Cases resolved by ICBC's Customer Relations department	23
Appendix D: Select cases	26
Appendix E: Examples of non-jurisdictional cases	43
Appendix F: Statistics from 2010 – 2012	46
Appendix G: Terms of Reference for the ICBC Fairness Commissioner	48

Introduction

The Annual Report of the ICBC Fairness Commissioner is a summary of his activities in 2012. The report is a requirement of the Fairness Commissioner's Terms of Reference (Appendix F).

This report includes:

- the concept and elements of the Office of the ICBC Fairness Commissioner, with some examples of customer complaints and resolved cases
- statistics from 2012
- Terms of Reference for the ICBC Fairness Commissioner



Mission Statement

To ensure that customers affected by ICBC's products, services or decisions are treated fairly in terms of process and administration.

Role and Authority

The Fairness Commissioner's role is to investigate, conduct reviews, and make findings and recommendations to ICBC management and/or the Board of Directors regarding unresolved customer complaints. This includes all complaints in reference to the fairness of an ICBC decision, action or practice where ICBC itself has not satisfied the customer through its internal complaint resolution process.

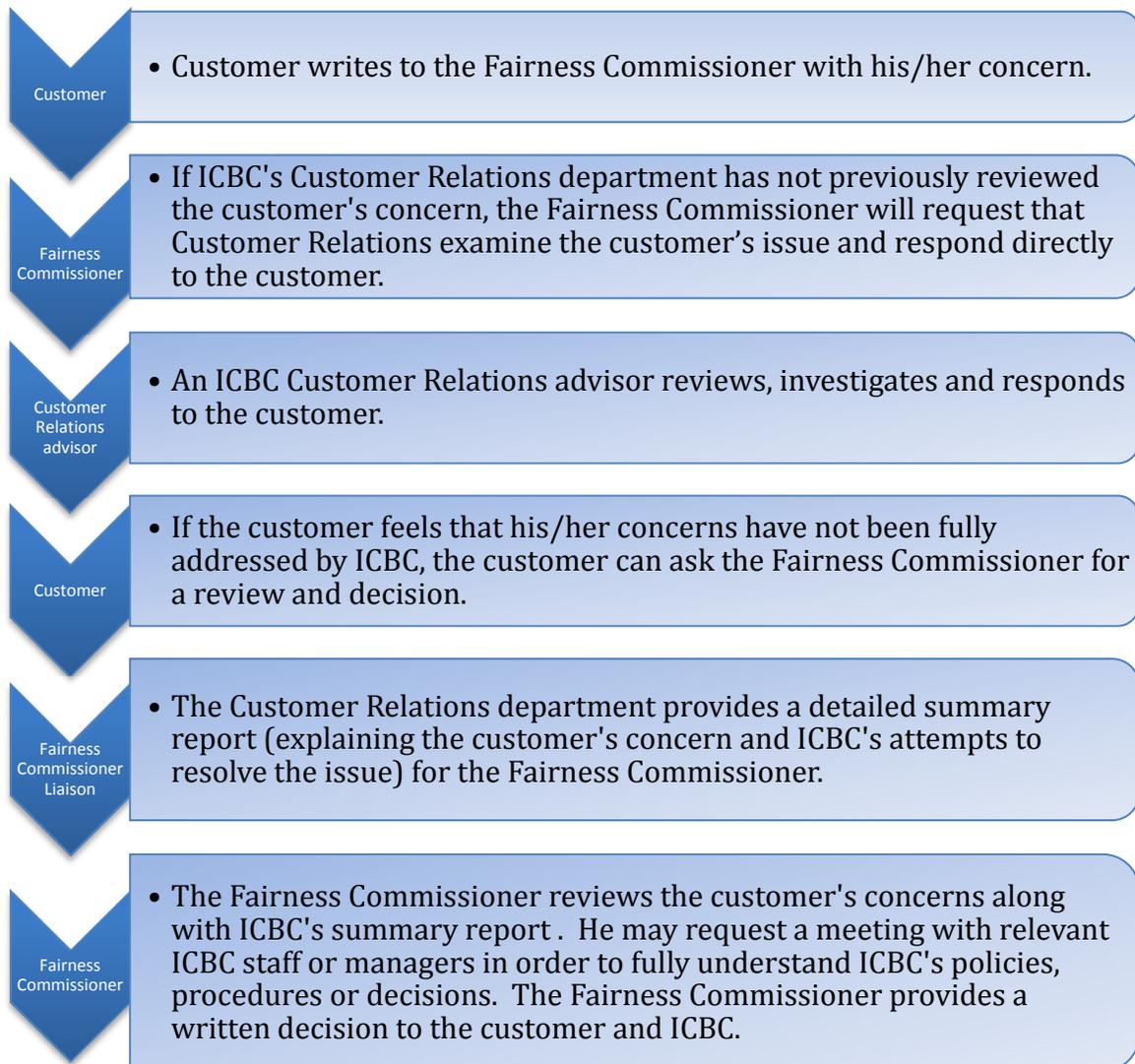
The Office of the Fairness Commissioner is limited in jurisdiction as the Commissioner deals with issues of fairness in terms of process or administration. The Commissioner does not have jurisdiction to deal with disputes that relate solely to the amount of a final payment or the assessment of liability. Those are matters where the customer, in most instances, has a right to a Claims Assessment Review with respect to liability or an Arbitration Process with respect to vehicle damage. The Commissioner does retain jurisdiction to deal with any absence of fairness in either of these processes.

The Commissioner has the power to insist on the production of any documents or other information from ICBC which he considers necessary to conduct an investigation and, if necessary, take evidence under oath or otherwise from the customer or a representative of ICBC.

The Commissioner must be:

- **totally independent**, in particular, he is independent of ICBC and any prior decisions that may have been made by ICBC
- **impartial** in all respects
- **accessible** to the public in writing and on online
- **responsive** to those that write to him

What is the process?



Upon completion of his review, the Fairness Commissioner may:

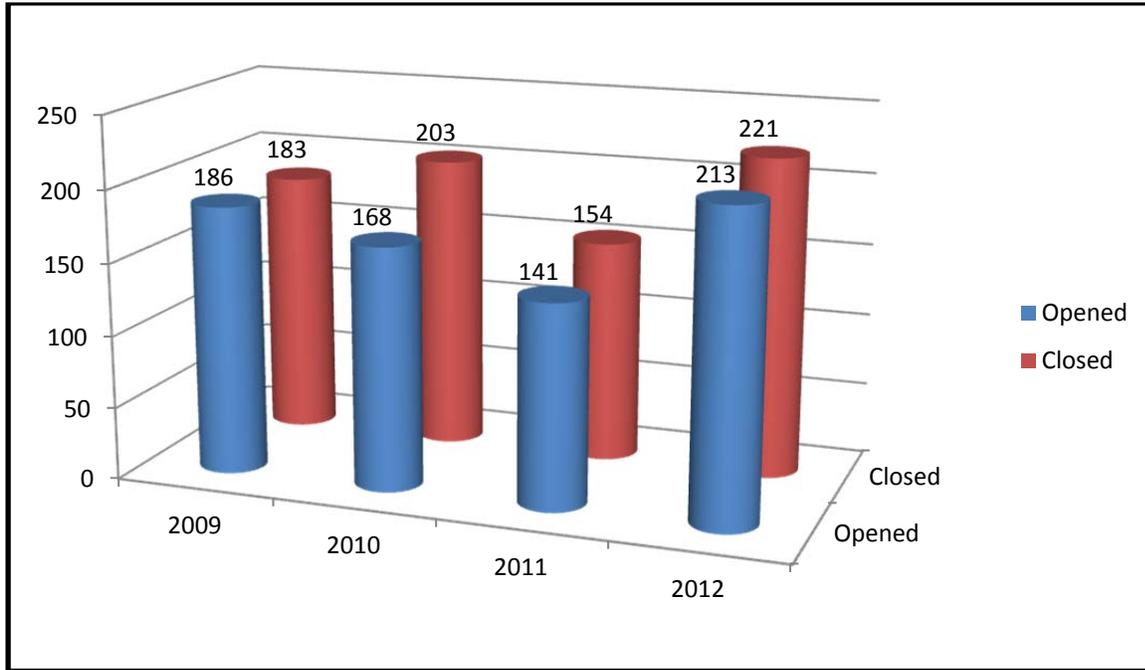
- refer the matter back to ICBC for reconsideration, as in cases summarized in Appendix B.
- make a recommendation to ICBC that the complaint be resolved in such manner as he deems appropriate, as summarized in Appendix A. Should ICBC reject the Fairness Commissioner's recommendation, he is empowered to take the matter directly to the Board of Directors of ICBC. If the Board rejects the recommendation, the Fairness Commissioner is empowered to take that matter to the public through the press where appropriate.
- dismiss the complaint if he finds no unfairness on the part of ICBC or its employees, as in cases summarized in Appendix D.

Highlights of 2012

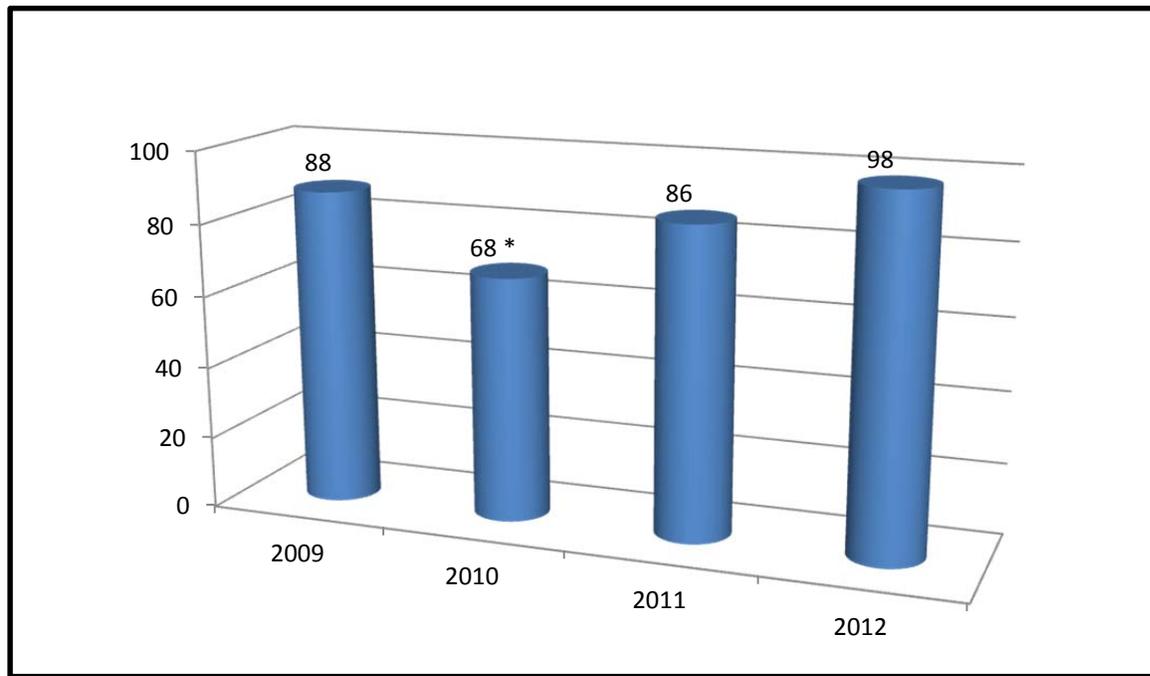
There were a number of important events which took place in 2012:

- 1) The Fairness Commissioner made one formal recommendation to ICBC in 2012. This case is summarized in Appendix A. In contrast, the Fairness Commissioner made no recommendations in 2011, one recommendation in both 2010 and 2009, and five recommendations in 2008.
- 2) The Fairness Commissioner referred five cases back to ICBC in 2012, which were resolved without the necessity of a formal recommendation (see Appendix B).
- 3) 2012 was the first full-year that customers were able to contact the Fairness Commissioner using an online complaint form. This form was added to the Fairness Commissioner's web site on July 5, 2011, and now 55 per cent of customers wishing to contact the Fairness Commissioner use the online form instead of using regular mail.
- 4) The Fairness Commissioner received a total of 213 complaint letters in 2012. This was significantly higher than previous years and this increase can be mainly attributed to the rise in the use of the online complaint form. The Fairness Commissioner received 116 online complaints in 2012 compared to 47 in 2011 (July to December 2011). The number of complaints reviewed by the Fairness Commissioner also increased in 2012 (98 cases compared to 86 cases in 2011). See graphs on page 9.
- 5) Changes made to the Fairness Commissioner's web site (www.icbc.com/about-ICBC/raising-concerns/fairness_commissioner) in June 2011 resulted in a notable increase in visits in 2012 compared to prior years. There were 3,129 visits to the web site in 2012; 1,601 visits in 2011; and 528 visits in 2010. These changes also likely had an influence in the increase in the number of complaint letters received by the Fairness Commissioner in 2012.

Fairness Commissioner Opened and Closed cases (2009 to 2012)



Complaints reviewed by the Fairness Commissioner (2009 to 2012)



* In 2010, ICBC's Customer Relations department was able to resolve 64% of complaints prior to involvement of the Fairness Commissioner.

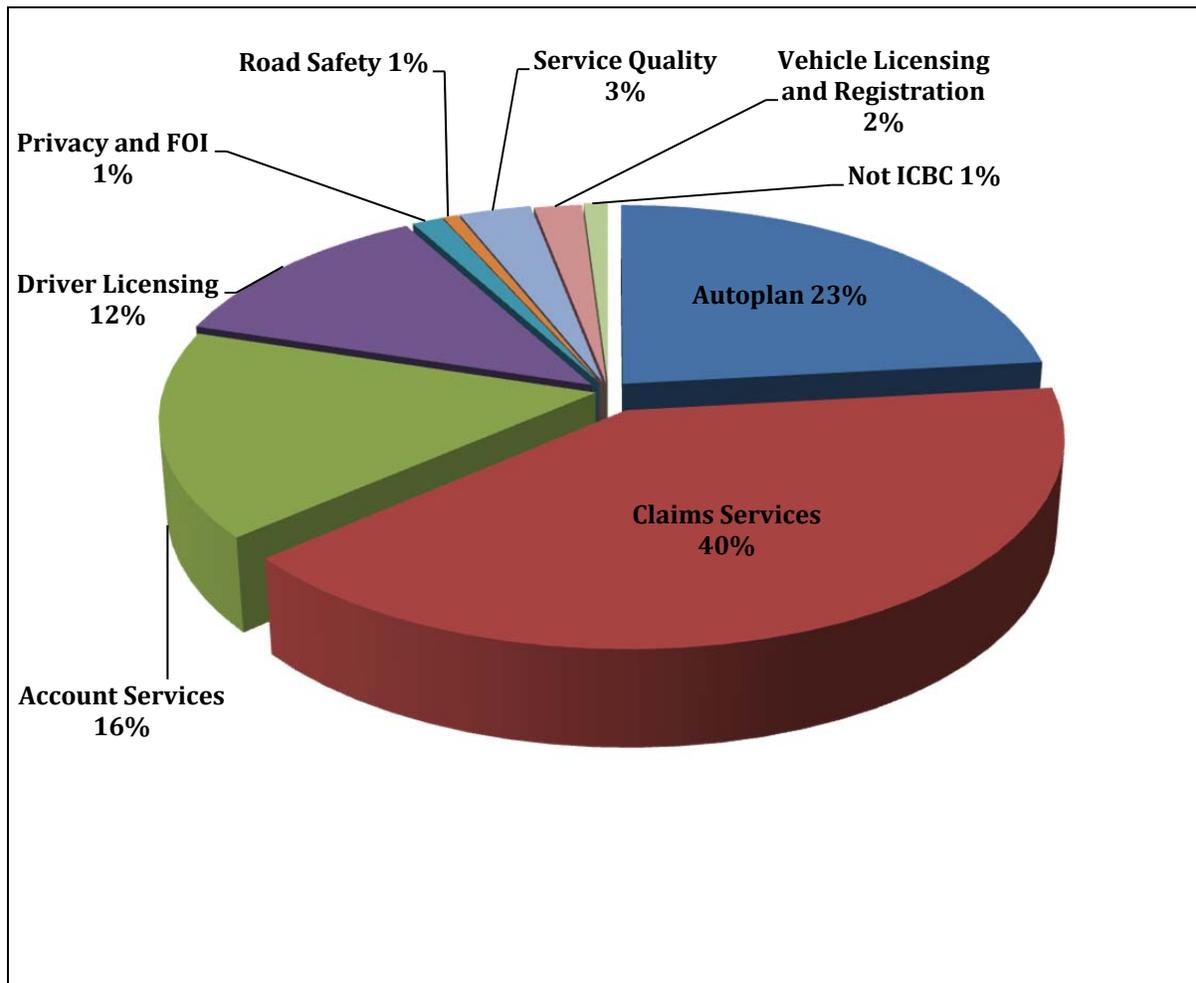
What do ICBC customers write to the Fairness Commissioner about?

In 2012, the majority of customers writing to the Fairness Commissioner had concerns with one of the following ICBC business areas: Claims Services, Account Services (formerly known as Customer Collections), Autoplan, and Driver Licensing.

The following charts provide an illustrative view of 2012 closed files by issue type and percentages from these main business areas. (Note: Percentages may not sum to 100 per cent due to rounding).

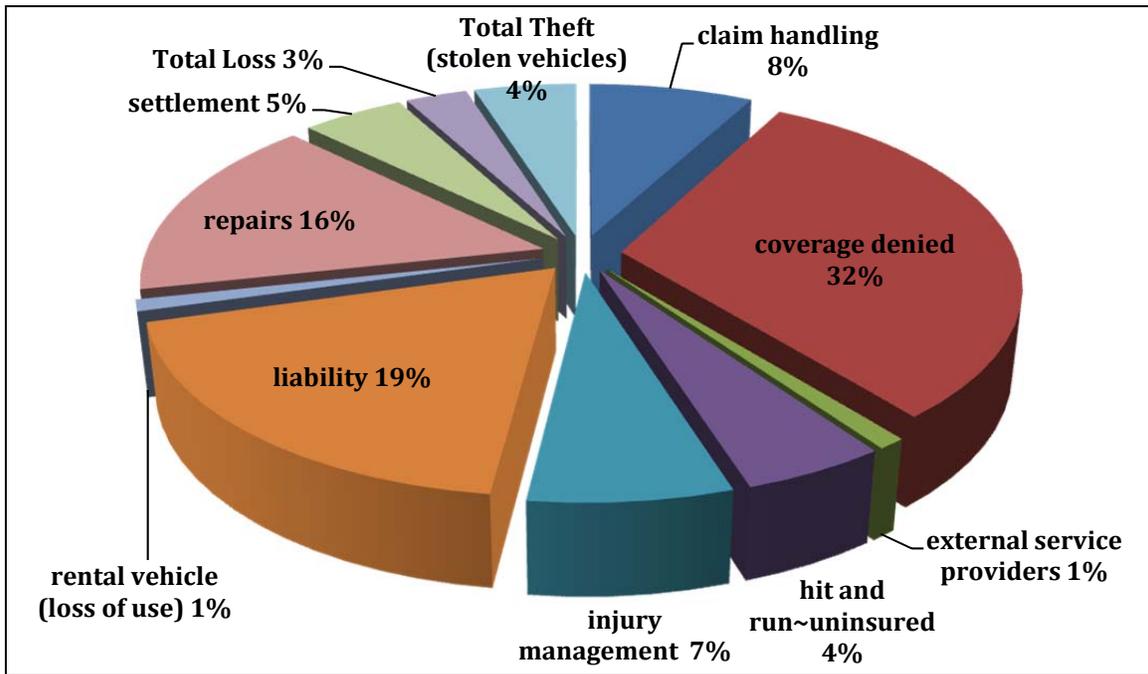
Statistics for 2010 -2012 summarized in Appendix E.

Fairness Commissioner Cases by Business Area



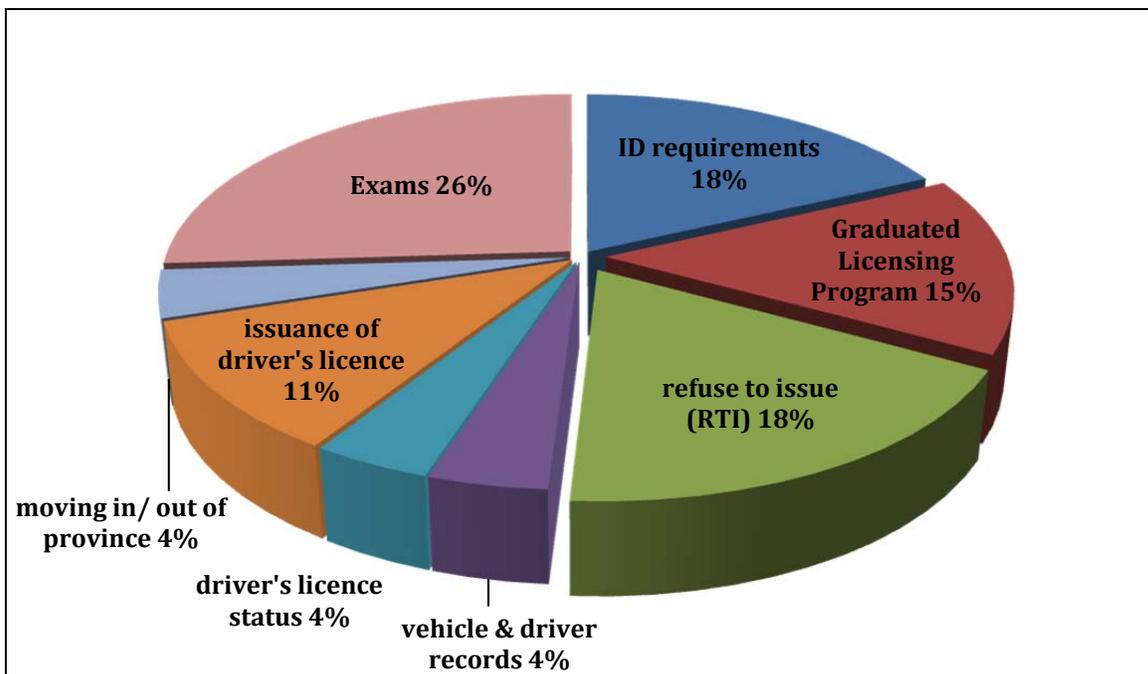
Claims Services

What aspect of the claims experience concerned the customer?



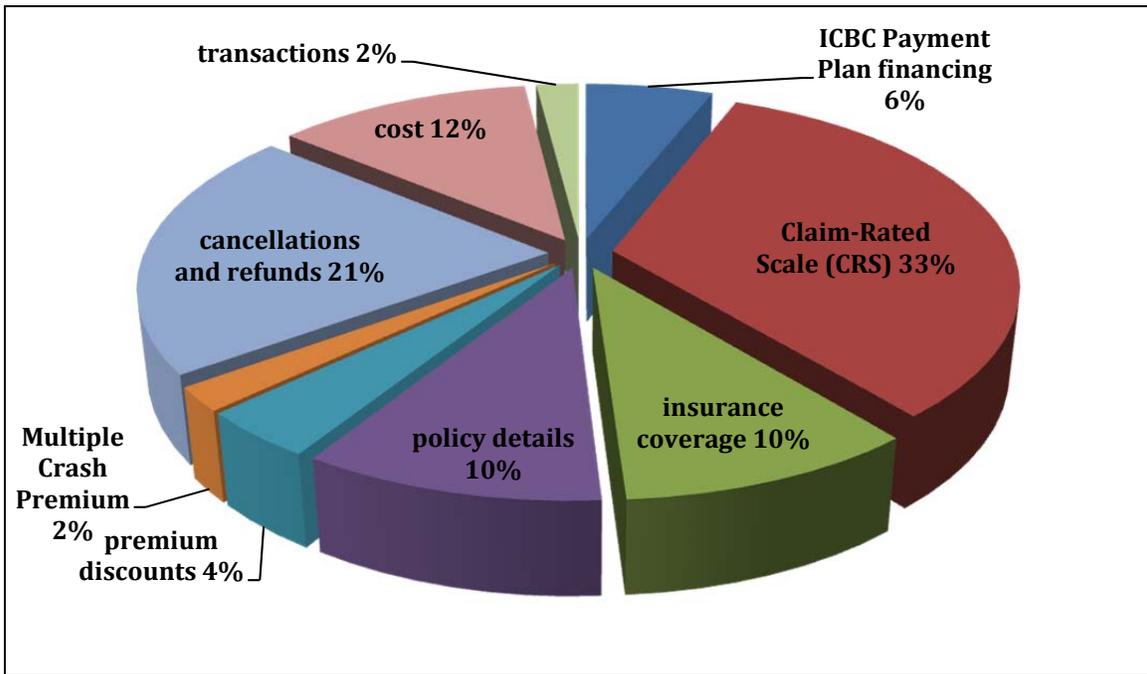
Driver Licensing

What process or program within the driver licensing transaction concerned the customer?



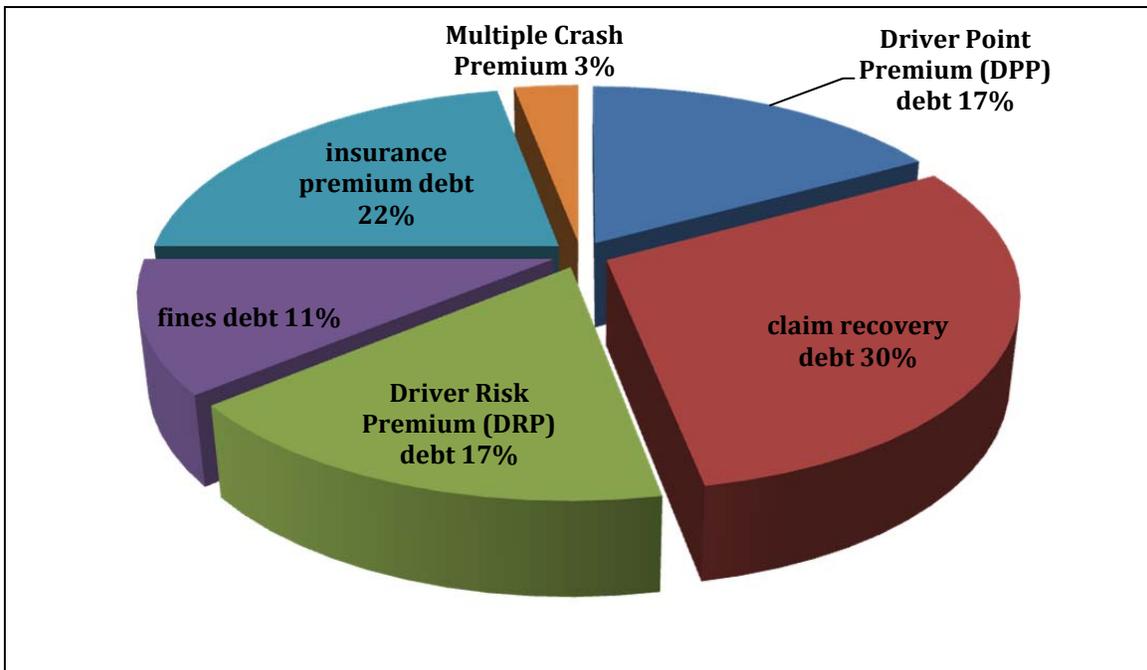
Autoplan

What insurance related transaction concerned the customer?



Account Services

What type of debt related activity concerned the customer?



Fairness Commissioner (FC) case resolution from 2009 – 2012

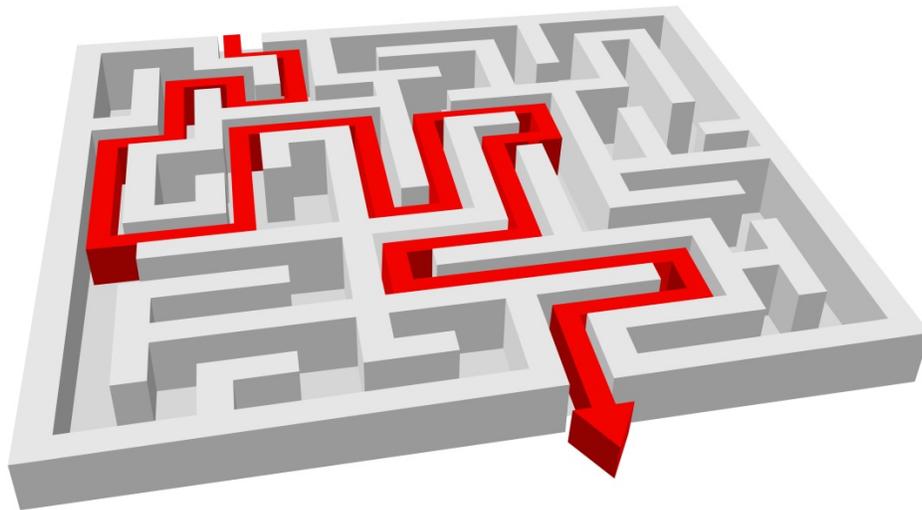
	2009		2010		2011		2012	
Customer Relations resolved the matter to the customer's satisfaction	92	50%	129	64%	63	41%*	119	54%
Reviewed by the FC with a determination of no unfairness	67	36%	52	25%	70	45%	66	30%
Reviewed by the FC with a recommendation that was implemented by ICBC	1	1%	1	1%			1	0%
Resolution facilitated by the FC	1	1%	5	2%	3	2%	5	2%
Another ICBC department resolved the matter to the customer's satisfaction							1	0%
Determined to be outside the jurisdiction of the FC	19	10%	10	5%	15	10%	25	11%
Customer abandoned or withdrew their concern	5	3%	6	3%	3	2%	4	2%
Total	183		203		154		221	

Note: Percentages may not sum to 100% due to rounding

*In 2011, ICBC's Customer Relations department made changes to its Fairness Commissioner file management process which resulted in a smaller number of file openings and as a consequence the percentage of files resolved by the Customer Relations department was lower than in previous years.

Appendix A:
Recommendation made by the Fairness Commissioner

There was one case in 2012 (C208547) where the Fairness Commissioner made a formal recommendation. After a review of this very “convoluted” case, the Commissioner found that ICBC had treated the customer unfairly in that it had sent some personal correspondence to the customer to an incorrect address. The Commissioner recommended that ICBC apologize to the customer for this error. ICBC agreed with the recommendation and sent an apology to the customer.



The following is a summary of the issue and the Fairness Commissioner’s investigation, analysis, recommendation, and the resolution.

Issue:

Customer wrote to the Fairness Commissioner because he was unhappy in the way ICBC had dealt with his Driver Penalty Point (DPP) premiums.

Investigation and Analysis:

In reaching his decision, the Fairness Commissioner reviewed the various points and a timeline that the customer had submitted as well as material contained in a file prepared by ICBC which included the regulatory basis for the DPP process and correspondence between the customer and ICBC.

Upon completion of his review, the Commissioner wrote to the customer and stated that:

“The facts of your case are quite convoluted. Having analyzed the material in the file several times, including your comments and assertions relating to them, I am persuaded that the summary of facts contained in the letter to you, dated December 22, 2010, from Catherine Dixon, Customer Relations Advisor, is an accurate portrayal of the events leading up to your request for a review.

You must bear in mind that ICBC acts upon facts it finds to exist as probabilities and not facts that are proven beyond a reasonable doubt. It will not act upon mere speculation, but only upon probabilities. I conclude that Ms. Dixon's letter accurately sets out the probable events leading up to this application for a Fairness review.

If I understand your argument that you have been dealt with unfairly by the Corporation, it is this: there are three issues that you raise in support of your unfairness claim.

1. Your driver penalty points surcharge (DPP) was engendered by two traffic offense tickets issued to you on September 8, 2008, and October 24, 2008, respectively. You say that the October 24, 2008, ticket was erroneously attributed to you because on that date you were in Washington and not in British Columbia. You were advised by an employee of ICBC, “Danny”, that there was a process available to review the integrity of tickets where a driver is alleging that someone impersonated him or her at the time. You initiated this process which involved the issuing officer reviewing the matter. In your case the issuing officer was satisfied for the reasons summarized by Ms. Dixon in her letter to you, dated December 22, 2010, that the violation ticket had been issued to you. You were notified in writing by a letter dated August 21, 2009, that your impersonation review had been unsuccessful. Unfortunately, that form letter advised you to proceed to the Provincial Court if you wanted to continue to appeal your ticket. This was misleading, because only the Supreme Court of this province has jurisdiction to take an appeal where a conviction relating to a particular ticket has been entered. Since the fine was not paid on that ticket this is treated as a conviction in relation to it. A conviction was also entered because you did not enter a notice of intention to dispute the ticket within the 30 day period allowed. In this respect you also say that "Lisa" told you to appeal to the Provincial Court, but this is not borne out by the file information which indicates that Lisa directed you to the Provincial Court to determine what your next step would be, not to take the formal appeal there. This matter only became problematic because you apparently lodged an appeal in the Provincial Court which was received there and only later was the appropriate court jurisdiction resolved.

You argue that you were directed into the impersonation review process of ICBC by Danny, which delayed your opportunity to properly appeal the

ticket, and were erroneously directed to the Provincial Court which again delayed your opportunity to lodge an appeal in the Supreme Court. On the material presented to me I cannot conclude that Danny, as a probability, insisted that you engage with the impersonation review process. The file indicates that he advised you of the option and sent you the forms to fill in. You had the option of participating in it or not. So, I put aside your argument based upon your involvement in the impersonation review process.

I also do not find that you have demonstrated as a probability that Lisa directed you to the Provincial Court for the purpose of an appeal to that court. The file makes it quite clear that she directed you there to determine what your options were. I agree that the letter you received after the impersonation review process was misleading, but it should have been resolved in the Court Registry when you filed your appeal. The Corporation has since changed that form letter to accurately reflect the jurisdiction of the respective courts. In my opinion the letter to you, dated August 21, 2009, was misleading and unfair to you. But, in her letter of December 22, 2010, Ms. Dixon apologized to you in this respect and arranged to remove certain interest owing from your DPP premium and to issue you six months insurance upon specific terms. In my opinion this satisfactorily dealt with the issue.

2. You talk of "harassing and threatening notices" from ICBC and complain that much of your correspondence was not responded to in a timely fashion.

The "harassing and threatening notices" are standard notices that ICBC forwards to customers in your circumstances. In my opinion the practice of ICBC using these notices in dealing with customers who are in arrears is not unfair. The matter of timely response is not one of fairness, because you did not indicate that you suffered any loss other than aggravation, which we all do when we think that another, in this case the Corporation, is not dealing with a matter as efficiently as we think it should. This is really a matter of customer service and not one of fairness. So I put it aside.

3. The real complaint that you have, and the one that has caused me the most difficulty, relates to the fact that one piece of correspondence relating to the (initially) unpaid traffic ticket and a DPP invoice was sent to you at an address on T. Road, Abbotsford, instead of your S. Avenue address in Abbotsford. The T. Road address was at that time the address of your estranged wife. For whatever reason, she paid the October 24, 2008, ticket without your authority. If I understand the reason why you think this error on the part of the Corporation is unfair to you, it is that the outstanding invoice led to subsequent disharmonious communications between you and your estranged spouse. You argue that this constitutes an invasion of your privacy, and a constitutional invasion of privacy at that!

As a Fairness Commissioner I do not make determinations that are essentially legal in nature. So, I will put aside your argument concerning you being the victim of a constitutional breach of privacy, this issue could only be resolved by a court. But, in this province there is legislation dealing with that matter and it requires, among other things, for a person alleging an invasion of privacy to establish that it was intentional and that he or she has suffered damage as a result. The letter did go to the wrong address, but it was not intended to invade your privacy. As well, you have not demonstrated that you have suffered any damage as a result of it going to the wrong address. Why it went to the wrong address remains a mystery.

I asked the Customer Service Department of ICBC to track it down and advise me. After several days of reviewing computer threads, ICBC concluded "there is some sort of system issue that we can't trace that led to the letter going to the other address". It obviously was related to the fact that the car located at the T. Road address, which was being driven by your ex-wife, was registered in her and your joint names.

I am persuaded that ICBC has done all that it can to ascertain just how that letter was sent to the wrong address but, can it be said that by sending the letter to the T. Road address that ICBC was dealing with you unfairly? It was in all probability careless, but was it unfair? My opinion is that it was unfair in the sense that it was quite unreasonable to forward such correspondence to another address when your S. Avenue address had been clearly designated as the appropriate one for matters relating to your motor vehicle and licensing. The material in the correspondence was sensitive in nature, but ICBC could not have anticipated that it would be received by your spouse during divorce proceedings and opened by her when clearly addressed to you. Also, you have not demonstrated the error by the Corporation caused you any particular loss, nor have you demonstrated that it affected any of your opportunities to appeal the ticket. It was certainly an additional aggravation to what you perceive to be a number of customer service failures on the part of the Corporation and for that I am going to recommend that ICBC issue you an apology."

Recommendation:

My conclusion is that you have been unfairly dealt with in one unresolved respect by the Corporation and you are entitled to an apology in that regard. This is the recommendation that I will make to the Corporation. If you are dissatisfied with my decision you could take your case to the Office of the Provincial Ombudsperson, which has a much wider jurisdiction than my own, or to the courts of this province.

Resolution:

Given the Fairness Commissioner's recommendation, ICBC sent the following apology letter to the customer on September 17, 2012:

"Dear Mr. S:

I have received a copy of the August 31, 2012 decision from Mr. Peter Burns, ICBC Fairness Commissioner. The Commissioner concluded that an apology is warranted for ICBC mistakenly sending correspondence meant for your personal attention to the wrong address.

We strive to maintain a high standard of customer service. With respect to the letter sent to an incorrect address, please accept my apology on behalf of ICBC for this standard not being met.

Yours truly,

Bob Saito
Manager, Customer Relations and Review Services"

Appendix B:
Cases resolved by the Fairness Commissioner without a recommendation

In 2012, there were five cases where the Fairness Commissioner directly assisted with the outcome, but was not required to write a recommendation letter to ICBC in order to assist the customer. The following are summaries of the issues and the Fairness Commissioner's investigations, analyses, and the resolutions.



Case 1 (C212091):

Issue:

Customer wrote to the Fairness Commissioner because he was unhappy that ICBC had denied a backdated insurance premium refund for the policy his daughter had on a leased vehicle he had purchased.

Investigation and Analysis:

Customer's daughter had been the lessee of a vehicle and the customer decided to purchase the vehicle by buying out the lease. The customer cancelled the previous insurance policy and had the vehicle transferred into his name at a dealership. Unfortunately, the broker at the dealership failed to obtain the licence plates during the purchase as an employee of the dealership had placed the licence plates in the trunk of the vehicle. Neither the customer, the broker, or the lessor/dealership were aware that the initial policy had not been properly cancelled. About two months after the purchase, the customer's daughter noted payments from the initial (leasing) policy were still continuing. The customer brought this to the attention of the dealership, the broker and ICBC.

ICBC declined to provide a backdated premium refund based on two reasons:

1. ICBC felt that the cancellation error was as a result of the broker's unawareness of the proper procedure and the dealership's carelessness.

2. Until active licence plates for a policy are returned to ICBC, the policy remains active and ICBC is at risk to pay a claim whether or not the licence plate is attached a vehicle. Unattached licence plates carry insurance coverage such as Third Party Liability, Accident Benefits, and Underinsured Motorist Protection. Unattached licence plates can also be used as temporary insurance (up to 10 days) when a replacement vehicle has been acquired.

The Fairness Commissioner carefully reviewed the customer's situation and determined that the result "was not as the result of any decision, policy, or action of the Corporation but through an oversight initially by an employee of the dealership and subsequently by your insurance broker." Given the reluctance on the part of the dealership and insurance broker to help the customer, the Fairness Commissioner asked ICBC to revisit the matter.

Resolution:

At the suggestion of the Fairness Commissioner, ICBC reviewed the customer's situation again and the Fairness Commissioner was pleased to report to the customer that:

After extensive internal review, ICBC brought this oversight to the attention of the insurance brokerage that processed your policy transactions. The brokerage has acknowledged that their representative did not process your policy cancellation properly. As a result, ICBC is in the process of issuing you with a refund cheque for \$583.00.

Cases 2 to 5 (C208036, C212323, C212340 and C212341):

Issues:

Four different customers wrote to the Fairness Commissioner in March and April 2012 complaining that ICBC had restricted the amount of a Claim-Rated Scale (CRS) refund to their current insurance policies. ICBC was not willing to backdate their refunds to the time they had obtained their Class 7 learner's driver's licences. In all four cases, the customers argued they had held a learner's driver's licence "for a certain number of years and should be entitled to credit on the CRS for the accident free years involved, and a refund for any premiums paid that did not reflect those accident free years."

Investigation and Analysis:

The Fairness Commissioner reviewed ICBC's practice in backdating CRS entitlements when a customer moves from a learner's ("L") driver's licence to a novice ("N") driver's licence or a Class 5 driver's licence. The Commissioner found that:

"the Corporation takes the position that the formal limits placed upon learners creates an artificial driving experience which, in many cases, may not reflect the driver's ability to drive safely once he or she had moved beyond the "L" learner's licence. For example, the "L" licence requires a qualified driver to be present in the vehicle when the "L" licenced driver is operating it. This is why the Corporation

draws a distinction between "L" drivers and other drivers for the purpose of determining CRS entitlement. This appears to me to be reasonable and not unfair.

At its inception, the policy relating to backdating a CRS discount is very simple, insofar as it applied to "L" drivers. There was no credit for "L" years of experience granted to "L" drivers in determining where they should be placed on the CRS.

In recent years this practice has changed so that claims free "L" years can result in an enhanced place on the CRS for former "L" drivers. This change was introduced as a gratuitous customer service but was implemented subject to two conditions. The first is that a customer must initiate the application for the enhanced CRS level, and any backdate of that level is confined to a maximum of 395 days and any related refund is confined to the current policy term. The second condition is that an enhanced credit on the CRS may attract a subsequent refund to the customer, but only for the current year and going forward. It will not be backdated to prior years."

Regarding the latter condition, the Fairness Commissioner stated that is was:

"unfair for ICBC to confine refunds (as distinct from place on the CRS) to those a customer may be entitled to in a current year and in subsequent years. In the present context there is no provision in the Corporation's computer system to pick up "L" drivers for the purpose of reassessing their CRS level. It has to be done manually which is a very expensive proposition. Given that such a review is a gratuitous customer service engrafted on the initial practice, that the Corporation budgets on an annual basis, that any retroactive effects of its practices would have to be borne by the general run of customers, and that ICBC has made provision for amendments of the CRS and refunds based on that CRS for the current, and subsequent years, I am not persuaded that the present practice is unfair."

Regarding the first condition, the Fairness Commissioner explained that:

"ICBC has dealt with the matter of customer notification by making brokers the sole point of distribution for its insurance products and delegating the responsibility for providing advice to the customer's broker. Experienced brokers are generally aware of the rule and check on a client's entitlement when the client purchases his or her first policy of insurance or a renewal. My conclusion is that the notification policy involving brokers is reasonable and not unfair to customers."

In the end, the Fairness Commissioner did find that:

"given that the contact point between the customer and ICBC is the broker, and not ICBC itself, I have persuaded ICBC to incorporate a short statement of a customer's entitlement in its web pages and provide brokers with more information on the situation."

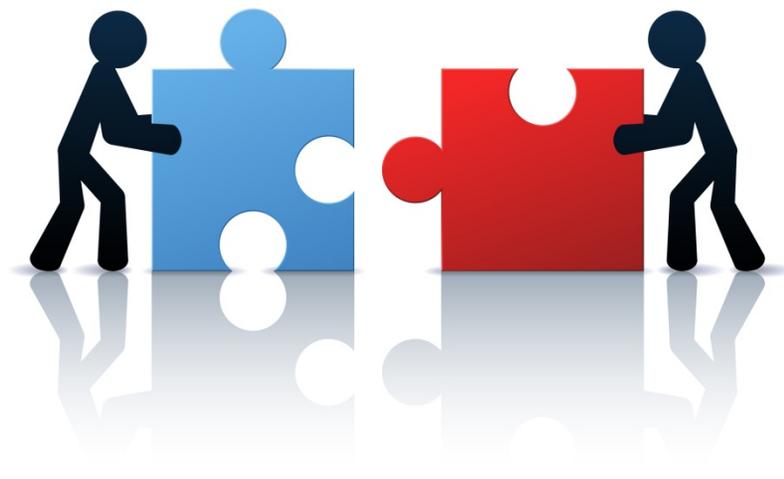
Resolution:

ICBC reviewed the Fairness Commissioner's two practical and pragmatic suggestions and updated its web site with a better explanation of the importance of speaking to a broker to obtain the proper CRS credit for one's learner's driver's licence history. ICBC also sent out appropriate communication regarding this issue to brokers through a broker bulletin and an online broker newsletter.

Appendix C:
Cases resolved by ICBC's Customer Relations department

The following cases illustrate some of the circumstances where ICBC's Customer Relations department resolved the customer's concern without the direct assistance of the Fairness Commissioner. These cases involved customers writing to the Commissioner with their concern and the Commissioner asking the Customer Relations department to investigate. In 2012, 54 per cent of the complaints directed to the Fairness Commissioner were successfully resolved by the Customer Relations department to the satisfaction of the customer. In those instances, a Customer Relations advisor was able to investigate the customer's concern and either explained ICBC's decision or obtained an agreement from a manager, senior executive, or committee to reconsider or to make a more favourable decision on behalf of the customer.

Although the Fairness Commissioner was not directly involved in the resolution of these cases, the assurance that there could be future recourse to his office likely had some influence on the final decisions.



Case 1 (C204001):

Issue:

Customer wrote to the Fairness Commissioner as she wanted a backdated insurance premium refund from ICBC to the date she had totaled her vehicle, August 28, 2011. ICBC had backdated the cancellation of her policy 45 days to October 16, 2011.

Investigation:

Customer crashed her vehicle in California and her vehicle was a total loss. Unfortunately, she did not carry Collision coverage. ICBC backdated the cancellation of her ICBC policy 45 days from the time she had contacted ICBC, as the customer had not returned her

British Columbia licence plates which carries ongoing insurance coverage, regardless if they are attached to a vehicle. Customer Relations asked the customer to provide proof her vehicle had been a total loss and that her licence plates were lost in the crash.

Resolution:

Customer later supplied information confirming vehicle had been a total loss and that her licence plates were likely lost in the crash, so ICBC agreed to backdate the premium to the date of the crash.

Case 2 (C206568):

Issue:

The customer sent an online submission to the Fairness Commissioner requesting that ICBC allow her to register a 1995 Western Star tractor and insure a 2006 Midland belly trailer. ICBC had refused to do so because of outstanding debt on both vehicles.

Investigation:

Customer Relations worked with the customer and confirmed that the debt had been apparently paid when the vehicles were transferred into the customer's company name.

Resolution:

Customer Relations had the Account Services department review the documentation forwarded by the customer and the customer was allowed to register and insure the truck and trailer.

Case 3 (C208134):

Issue:

Customer wrote to the Fairness Commissioner complaining that he had not received an Anti-Theft Device discount from ICBC until the last time he renewed his insurance policy when in fact he had been eligible for the discount for the past eight years.

Investigation:

Customer Relations contacted the Autoplan broker who had completed the majority of the customer's renewals. This broker had not completed the original policy eight years ago so they did not create this error.

Resolution:

Broker gave the customer a \$50 Tim Hortons gift card as customer service gesture and Customer Relations had a message written in a broker newsletter reminding brokers to cover off the Anti-Theft Device discount with their clients.

Case 4 (C212176):

Issue:

Customer wrote to the Fairness Commissioner as he was upset that ICBC had not accepted his Pakistani driver's licence and that ICBC was unfairly placing him into the graduated licensing program (GLP) even though he had been driving since 1987.

Investigation:

Customer Relations liased with a manager at a Driver Licensing Office regarding the customer's situation and asked that the manager to review the matter.

Resolution:

The Driver Licensing Office manager reviewed the customer's Pakistani driver's licence and agreed to accept it. Manager met with the customer, explained this and that he will not be placed into the GLP.

Case 5 (C213195):

Issue:

Customer wrote to the Fairness Commissioner using the online form as he was concerned about how he was going to pay ICBC regarding the outstanding balance of a debt so he could have his driver's licence reinstated by ICBC.

Investigation:

The customer had made several significant payments against the debt in the past, but was unable to work without a driver's licence. The customer had also suffered a recent health related setback that could be an obstacle in resolving his outstanding account. Customer Relations brought the customer's situation to the attention of an Account Services manager.

Resolution:

The manager reviewed the customer's file and concluded that the customer's past efforts in repaying his outstanding debt should be acknowledged and agreed to accept a final \$1000 payment to settle the matter.

Appendix D: Select cases

From the Fairness Commissioner:

To give the reader of this report some idea of the issues that I deal with, I include the following sample cases from 2012. Additional examples from my previous annual reports can also be found at: www.icbc.com.



Case Study 1: *denial of request to backdate a premium refund (C206442)*

I acknowledge receipt of your application for a Fairness Review, dated February 13, 2012, of the decision of ICBC to refund only part of the monthly premium payments that you continued to make after your vehicle became a constructive total loss.

In reaching my decision I have taken into account the points that you make in your submission to this office, as well as the contents of a file prepared by the Corporation for the purpose of this review which includes, among other things, a full chronology of the events, the pertinent regulatory provisions, and a statement of ICBC's policy relating to backdating refunds of this sort.

At this stage it would be useful to outline my jurisdiction and to underscore some features of it. My terms of reference limit my review to matters of process. I can interfere with decisions of the Corporation and make recommendations for change if I conclude that a customer has been dealt with in a discriminatory manner, or that the way in which the decision reached by the Corporation is in some way irregular leading to unfairness in the result. What I cannot do is make a recommendation for change to the Corporation merely because I would have reached a different conclusion, or that the customer does not agree with it.¹

¹ *This paragraph explains the jurisdiction of the Fairness Commissioner and for the purposes of this report has been removed from the subsequent case studies.*

My jurisdiction is concerned with procedural fairness. For example, has the Corporation taken the pertinent facts into account, listened to the arguments made by the customer, and communicated its decision and the reasons for it once it has been made? At the end of the day, is the Corporation's decision reasonable in the circumstances of the case?²

The facts in your case are quite clearly set out in the letter to you, dated February 7, 2012, from Ms. Natalie Aktas, Customer Relations Advisor, so I will not restate them here. Your argument is that you were unaware that ICBC had continued to withdraw monthly premium payments from your account, but when you did become aware of such withdrawals you contacted the Corporation and were advised to turn in your licence plates to an Autoplan broker's office. You did this and ICBC processed the backdated policy refund based upon 45 days from the date you turned in your plates.

You argue that the refund should extend back from the date that you turned in your licence plates to the date of the collision rendering your car a constructive total loss. You argue that it is unfair for ICBC not to do this.

Unfortunately, the problem that you have encountered appears to be one of your own making. When you picked up your settlement cheque you received two envelopes, both of which would have had adhesive stickers on them advising you to take the plates to an Autoplan broker to either transfer them to another vehicle or to cancel your insurance. It was not until May 7, 2011, that you attended a broker's office and actually cancelled your policy. The premium refund was then calculated to extend back for 45 days from that date.

The formal requirements for cancelling insurance over a motor vehicle are contained in the Basic Insurance Tariff which has the effect of a regulation in this province. It requires surrender and cancellation of an Owner's Certificate, surrender of the number plates and the completion of a cancellation form. There is no provision for backdating refunds where a vehicle has been a total loss and the insured has just failed to complete cancellation of the policy.

But the Corporation has developed a backdating policy relating to such refunds. It was introduced in 2003 and it confines backdating to 45 days from the date of cancellation. The reason for adopting the 45 day rule was that 90% of total loss claims were settled within 45 days and it took an average of 45 days for an adjustor to conduct the investigation and settle liability. This means that most cases are covered by the 45 day rule.

In deciding whether or not the rule is reasonable (fair) two factors must be borne in mind. The first is that during the period when the policy is not cancelled by the customer the Corporation continues to remain liable for certain features of the customer's insurance covered by that policy. So, a range of contingent liabilities continue to remain in force so far as ICBC is concerned until the policy expires or is cancelled. The second point is that the

² This paragraph explains the jurisdiction of the Fairness Commissioner and for the purposes of this report has been removed from the subsequent case studies.

45 day limit upon backdating refunds in total loss cases covers the vast bulk of such claims. In these circumstances I am unable to conclude that the 45 day limit upon backdating refunds in total loss cases is unreasonable, and therefore it is not unfair.

Accordingly, I am unable to find any unfairness on the part of the Corporation in applying its standard practice relating to backdating total loss refunds to your case. I do not propose to make a recommendation to the Board of the Corporation that would affect the outcome of your case.

Of course, you could take your case to the office of the Provincial Ombudsperson, which has a much wider jurisdiction than my own, or to the courts of this province.

Case Study 2: *assessment of responsibility* (C209270)

I acknowledge receipt of your email request for a Fairness Review, dated May 2, 2012, on behalf of your mother, Mrs. M., relating to the finding of liability made by ICBC concerning the collision that she was involved in with another vehicle on March 9, 2012.

In reaching my decision I have taken into account the various pieces of correspondence that you have had with ICBC, the points you make in your email to this office; as well as the contents of a file prepared for the purpose of this review by ICBC that contains, among other things, driver and witness statements, photographs of the damage to the motor vehicles concerned, the full chronology of events including the police report, the pertinent legislative and regulatory provisions involved, and some earlier decisions of my own that deal with broadly similar matters.

The facts in your case are in dispute. In this review you are acting upon behalf of your mother, Mrs. M., who was the driver of the Saturn at the time of the collision. On March 9, 2012, you were a passenger (with your son) in a 2000 Saturn sedan driven by your mother, Mrs. M.. Both your mother's and your version of events are that while proceeding southbound on Gilmore Avenue in Burnaby, your vehicle stopped for a red light at the intersection with Lougheed Highway. A small red pickup truck had stopped in front of you and it reversed into your vehicle and drove away. You obtained the licence plate and advised the police. An officer attended and on those bare facts issued a ticket against the other driver, once he had been identified. You notified ICBC two days later of the collision.

On March 10, 2012, the other driver reported to ICBC that he had been stopped at the intersection and that the vehicle behind him struck his 1994 Mazda pickup truck causing a minor scratch. He asserted that your vehicle left the scene without his being able to take the licence plate. The attending police officer, who has since interviewed the other driver, has now concluded that on the facts presented to him he is unable to positively attribute fault. Since the other driver has issued a notice to dispute that traffic ticket the matter will presumably be resolved in the provincial court.

In essence, ICBC was confronted with the fact of the collision and statements from you and your mother asserting certain facts, and a statement from the other driver asserting diametrically different facts. The physical evidence did not resolve the discrepancy between the two descriptions, so the Corporation was obliged to apply such inferences as it could draw from the established facts and such law as applied to them.

ICBC applies a civil standard of proof in determining whether or not particular facts have been demonstrated. It determines such facts to be probabilities or not, it does not require them to be established beyond a reasonable doubt, nor does it act upon mere speculation. The only fact, independent from the versions of the parties involved in the collision, is the fact of the collision. In this respect, since the versions presented by the parties were inconsistent and not independent, the Corporation applied section 161(1) of the *Motor Vehicle Act*. This imposes the obligation of proving that the other motorist was negligent upon you. In the circumstances ICBC has concluded that you have just not established the negligence of the other motorist upon the balance of probabilities. It was for this reason that your mother, the driver, was held to be 100% at fault.

I am unable to conclude that this decision is unreasonable. Accordingly, I am unable to find that ICBC has dealt with you unfairly in concluding that your mother was 100% at fault.

But, this matter is essentially one of credibility. A Fairness Review, which is administrative in nature, is an imperfect tool to deal with that issue. Only a court where the parties and witnesses can be examined and cross-examined could really resolve the credibility issue.

The upshot is that, because I could find no unfairness in the decision by ICBC, I do not propose to make a recommendation to the Board of the Corporation that would affect the outcome of your case.

But this need not be the end of the matter as far as you are concerned. You could take your case to the courts of this Province and, in my view, that is the appropriate forum to have the real issues involved properly dealt with. You could also take the matter to the Office of the Provincial Ombudsperson, which has a much wider jurisdiction than my own.

Case Study 3: *Driver Risk Premium program (C215212)*

I acknowledge receipt of request dated October 24, 2012, for a review of the decision of ICBC to place you within its Driver Risk Premium (DRP) program and bill you accordingly.

In reaching my decision I have taken into account the argument you make in your review application, together with material provided to me by the Corporation relating to the DRP itself.

The facts in your case have been succinctly set out in the letter to you, dated October 31, 2012, from Ms. Jackie Turner, Customer Relations Advisor. Your argument that you have

been unfairly dealt with by the Corporation by imposing the DRP upon you is a simple one. You say that you have only received one speeding ticket in the past 15 years and have had no other driving infractions during that period. But, because of that speeding ticket you have been placed in the DRP and will be subjected to a driver risk premium of \$320 for the next three years. This, you argue, is unfair.

The DRP is set out in Schedule E of the *Basic Insurance Tariff* and was mandated by the B.C. Utilities Commission in 2007. Once the B.C. Utilities Commission authorized the DRP, it had the effect of a Regulation in this province. This means that I cannot go behind the substance of the program and can only look at the way in which it is applied in individual cases. Effectively, if you could demonstrate, for example, that ICBC was discriminating against you in some way, or that it ignored an essential element of proof, I could deal with those issues on the grounds of procedural fairness. But, you make no such argument. You argue that, given your previous driving record, it is unfair to place you in the program for a single transgression.

In your case you were charged and convicted of the offence of excessive driving, with excessive driving being defined as "*driving a motor vehicle on a highway at a speed greater than 40 km/h over the applicable speed limit*" It is this fact and this fact alone that placed you into the DRP. ICBC does not exercise a discretion, it just applies the provisions of the DRP in each case. In these circumstances, I am unable to conclude that the Corporation has dealt with you unfairly in applying the DRP to you. Accordingly, I do not propose to make a recommendation of the Board of the Corporation that would affect the outcome of your case.

However, you could take the matter to the Office of the Provincial Ombudsperson, which has a much wider jurisdiction than my own, or to the courts of this province.

Case Study 4: *validity of out-of-province driver's licence (C212745)*

I acknowledge receipt of your online application for a Fairness Review, dated August 22, 2012, of the decision of ICBC to require you to enroll in the Graduating Licensing Program (GLP), rather than accepting as evidence of your driving experience the driver's licence from India that you provided.

In reaching my decision I have taken into account the points that you have made in your submission to this office, together with a file prepared for the purpose of this review by the Corporation that sets out the full chronology of relevant events, correspondence from you to the Corporation and from the Corporation to you or others acting on your behalf, and a letter to you, dated August 13, 2012, from Ms. Christine Barrette, Customer Relations Advisor, explaining why your driver's licence was not sufficient to satisfy the requirements of the Corporation.

The facts of your case are fairly clear. On March 5, 2012, you submitted your driver's licence from the city of Raikot, located in the Punjab area of Northern India, together with

an application for an equivalent B.C. driver's licence. ICBC licensing staff concluded that the licence did not match those previously received and accepted from other applicants that had been issued by provincial authorities in India. The driver's licence that you proffered revealed misspelling on the linear stamps and an apparent error relating to its expiry date. You had been advised of the reasons for not accepting your driver's licence as evidence of your driving experience in India. Another problem with the driver's licence that you gave to ICBC was the fact that it was noted as a duplicate.

You were also advised, through a female relative, that no further documents would be acceptable as evidence of your driving experience in India. You were advised that ICBC would contact the Indian licensing authority directly to verify the information, but that until a reply was received you would be required to remain in the GLP. On April 24, 2012, ICBC forwarded the Indian licensing authorities a request for further documentation relating to you and your son, Mr. G.. To date, there has been no response to this request.

On these facts can it be said that ICBC has treated you unfairly in requiring you to enroll in the GLP? We must bear in mind that the Corporation makes its decisions on the basis of facts perceived as probabilities. It does not require facts to be established beyond a reasonable doubt, nor does it act upon mere possibilities or speculation. Under the Motor (Vehicle) Act, ICBC must be satisfied of the probable veracity of the facts stated in an application for a driver's licence before issuing another. The burden of establishing the veracity of an applicant's driving experience lies upon the applicant. So, on the facts so far as they are known, can it be said ICBC was acting unreasonably (unfairly) in not accepting the documentation you provided in support of your application for a driver's licence? In my opinion it was not. The documentation that you provided in support of your application was deficient in a number of crucial respects. Upon the basis of its experience in dealing with Indian drivers' licences, the Corporation concluded that the licence that you provided to it was probably inaccurate. The burden of establishing the licence's accuracy rested with you, and the Corporation concluded that you had not satisfied this burden. I am unable to conclude that you have demonstrated that ICBC was dealing with you unfairly in reaching this conclusion. The Corporation also reviewed its decision and upheld it.

But, if I understand your argument correctly, you say that the refusal to accept further documentation in support of your position is unfair as well. ICBC's response is that if the original material offered to it in support of your application is deficient, then further documentation purporting to remedy such deficiencies would in all probability not be cogent. Instead, it would merely provide an opportunity for those who provided the "original" with its deficiencies to provide another with the deficiencies remedied. I am unable to conclude that ICBC's practice in this regard is unreasonable, therefore I cannot conclude that its application in your case was unfair.

You do not argue that there has been any technical administrative error on the part of the Corporation in its dealings with you, so I put that matter aside. Of course, if the Indian authorities respond to ICBC's request for information in a manner favourable to your case, the matter can be re-opened.

You could also take your case to the courts of this province, or to the Office of the Provincial Ombudsperson, which has a much wider jurisdiction than my own.

Case Study 5: *refusal to allow a claim repayment (C206366)*

I acknowledge your electronic request, dated January 10, 2012, for a Fairness Review of the decision of ICBC not to permit you to repay the 2009 "chargeable" claim attributable to you, in order to enhance your present position on the Claim-Rated Scale (CRS).

In reaching my decision I have taken into account the arguments that you have made in your submission to this office, together with the contents of a file prepared by the Corporation for the purpose of this review, which contains among other material, a full chronology of the relevant events, the pertinent regulatory provisions that apply in this case, and a number of earlier decisions of mine that deal with roughly the same issue that you raise.

I will not belabour the facts. They seem to me to be quite clearly set out in the e-mail letter to you, dated January 31, 2012, from Ms, Debby Raffard, Customer Relations Advisor. If I understand your fairness argument correctly it is this: after your 2009 accident ICBC did not, when discussing the repayment option with you, point out that if you have future at fault accidents your CRS might be adversely affected. This became pertinent because in 2011 you had another at fault accident which, together with the 2009 accident, did affect your CRS quite strongly. The costs of repayment relating to the 2011 accident were considerably more than the costs of repayment of the 2009 accident would have been. You say that had you realized this in 2009, you probably would have repaid the 2009 accident costs and would therefore be in a much more favourable position on the CRS if you did not repay the 2011 accident costs.

I would have found this argument more convincing if I had not noted on the file that on three occasions prior to 2009 you had repaid the costs associated with chargeable claims made against your insurance policies at the time. I am unable to conclude that it was unfair of ICBC not to advise you at the time of your 2009 claim that your CRS may be affected by any additional at fault claims. In my view, any reasonable customer of the Corporation must be taken to be aware of this.

You also have a subsidiary argument. You say that in your case ICBC is "in effect profiting from me by a considerable sum". You say that your increased insurance rates over a four year period will be much more than the amount that ICBC paid out on your behalf for the 2009 accident. This may be true, but I am not sure what to make of it except to relate it to your other assertion that "*ICBC is a public entity with a mandate ... not to plan on profiting off the public*" In fact, ICBC is a public corporation in the insurance market engaging in business in exactly the same way as any other insurance company does. The only real difference is that it is created by statute and has a monopoly over basic (compulsory) insurance coverage.

Where does this take us? You have not been able to point to any administrative error on the part of ICBC. You have also been dealt with in exactly the same way as all customers in your situation are dealt with. The matter of repayment of damage costs is regulated by the Basic Insurance Tariff, which has the force of a regulation in this province. I cannot go behind the Basic Insurance Tariff. In earlier cases I have concluded that the practices of ICBC in applying this part of the Basic Insurance Tariff are reasonable and therefore not unfair to customers. This includes the practice of not allowing claim repayments after policy renewal.

Your case has been reviewed and the decision that you cannot now repay your 2009 claim in order to enhance your CRS was upheld. I am afraid that I can discern no unfairness in the way in which you have been dealt with by ICBC. Accordingly, I do not propose to make a recommendation to the Board of the Corporation that would affect the outcome of your case.

Of course, there are some options that are also open to you. You could repay the 2011 claim. You could also take your case to the Office of the Provincial Ombudsperson, which has a much wider jurisdiction than my own.

Case Study 6: *denial of Total Theft claim (C206352)*

I acknowledge receipt of your letter to this office dated February 1, 2012, requesting a Fairness Review of the decision of ICBC to seek repayment of monies that it had paid out to you as a result of an alleged theft of your Nissan 300ZX.

In reaching my decision I have taken into account the points that you make in your letter to this office, together with the contents of a file prepared by the Corporation for the purpose of this review that contains, among other things, the relevant customer notes, photographs of the vehicle when it was recovered as well as the scene of the recovery, a locksmith's report relating to the recovered vehicle, the CL159 form that you signed when making your initial claim containing a declaration that you have not ever considered selling or trading the vehicle concerned, as well as an earlier decision of my own dealing with a case that is broadly similar to your own.

The facts upon which ICBC based its decision to demand repayment from you are set out, in the letter dated January 13, 2012, from Ms. Jackie Turner, Customer Relations Advisor. The actual demand for repayment and the basis for it is contained in the letter to you, dated July 25, 2011, from Ms. Ann Bukowsky, Claims Representative, Chilliwack Customer Services.

The basis of your argument that it is unfair for ICBC to attempt to recover the payout that it made on the basis of your initial theft claim, appears to be that the vehicle was indeed stolen and that when you signed the CL159 form you were distracted and did not realize that you were declaring that you had never offered the vehicle for sale.

At the outset I should reiterate two obvious points. I can only interfere with the decisions of ICBC if there has been a breach of administrative process in the way in which the decision you complain of was reached, or if at the end of the day the final decision is clearly unreasonable. You do not claim that administrative process was breached by ICBC, so I put that matter aside. Instead, I will focus on the real question: is ICBC's decision to demand recovery of the amount paid out to you clearly unreasonable?

This question has two features that must be examined. The first is: have you established that your vehicle was stolen? When you lodged your claim for indemnity under your Storage Policy for the theft of your vehicle, the facts as presented by you did not arouse suspicion. It was on the basis of those facts that ICBC settled with you. It was only when your vehicle was discovered and recovered by the Agassiz RCMP that the facts that you presented to ICBC became suspect. Your vehicle was recovered from an area close to a remote forestry service road near Harrison Lake and the tow operator described the recovery site as being well hidden as though the car was not meant to be discovered. In the car was a For Sale sign with your telephone number on it.

A member of ICBC's Special Investigation Unit (SIU) viewed the vehicle and concluded that its door locks and ignition had not been tampered with. As part of the SIU investigation a locksmith was retained to examine the vehicle and report on the question, had the ignition been compromised? The locksmith concluded that a "working key is the most likely method of the theft". The locksmith did point out that the creating of keys by code can occur but it requires specialized tools, knowledge and/or the involvement of others. Upon the basis of the locksmith's report, together with the location and the hiding of the vehicle in heavy undergrowth, at the time of its recovery, ICBC concluded that there was insufficient evidence to establish that your vehicle was probably stolen. You should appreciate that ICBC bases its decisions upon facts found as probabilities. The Corporation does not base its decisions upon facts established beyond a reasonable doubt, nor does it base its decisions upon mere conjecture.

Under your contract of insurance the burden of establishing as a probability that your vehicle was stolen rested with you. The Corporation's view is that in the light of the new facts you have failed to do this on the balance of probabilities. The other fact that also supported this conclusion was the discovery that you had indeed offered the vehicle for sale and had failed to sell it.

The failure to properly declare the fact that you had attempted to unsuccessfully sell your vehicle was the formal reason for declaring you to be in breach of your policy of insurance.

Where does this take us? In your letter to this office you attempt to discredit the conclusion reached by the Corporation upon the basis of the locksmith's report. You argue that there are any number of ways in which motor vehicles can be key driven where the key is not the key of the owner. This is perhaps true, but the question that ICBC is asking is: is it more probable than not that you have established the theft of the vehicle? In the light of the location where the vehicle was found and the locksmith's report, ICBC is of the view

that you have not demonstrated that your vehicle was stolen as a probability. I am unable to conclude that this determination is unreasonable and therefore cannot conclude that it is unfair to you in the circumstances.

Your second line of argument goes to the matter of the declaration that you made in the CL159 form that you had never considered selling or trading the vehicle. You now admit that you had attempted to sell the vehicle and say that you had not carefully read the CL159 form when you signed it and had not noticed that particular question. Having taken the position that you did not notice the question because you were distracted and that no one put the question to you directly, you undercut your argument at page 2 of your letter to this office by then claiming that you misunderstood the question and that your answer was premised by the fact that since the For Sale sign had been removed from the windshield to the back seat, the word "'was" meaning present tense and not "was" as in has ever been for sale' was the way in which you interpreted the question contained in form CL 159. With respect to your argument that you were not truly aware of what it was that you were signing at the time, I find myself unpersuaded by your arguments and find the decision of ICBC to hold you in breach of your insurance contract to be reasonable and therefore not unfair.

Where does this take us? My conclusion is that you have not been dealt with unfairly by ICBC and, in the circumstances, I do not propose to make a recommendation to the Board of the Corporation that would affect the outcome of your case.

However, you could take the matter to the courts of this province, or to the Office of the Provincial Ombudsperson, which has a much wider jurisdiction than my own.

Case Study 7: *Claim-Rated Scale and damages to other motorist's vehicle (C213304)*

I acknowledge receipt of your online communications to this office, dated September 2, 2012, and September 6, 2012, respectively, requesting a review of the way in which a collision with another vehicle (whilst your son was driving your own), on May 3, 2011, was dealt with by ICBC.

In reaching my decision I have taken into account the various points that you have made in your communications to this office, together with a file prepared by the Corporation for the purpose of this review which contains, among other things, a full chronology of events, statements from the two drivers concerned, coloured photographs of the damage sustained by the other vehicle, correspondence between you and the Corporation relating to the matter, the provisions in the Basic Insurance Tariff relating to the Claim-Rated Scale and some earlier decisions of my own which bear (somewhat obliquely) on the Claim-Rated Scale issues.

The facts of this case are disputed but I adopt for the purpose of this review those that were found by the assessor in the Claims Assessment Review of July 7, 2011. You continue to

object to the finding of liability at 100% against your son, but acknowledge that I have no jurisdiction to interfere with this finding. I merely note in passing that the assessor's finding in this regard was the same as that of ICBC after a full review of the matter.

The amount of the settled claim concerns you because the initial estimate was considerably less than the final cost of \$1,122.05. But, as the Corporation has explained to you, it is not uncommon for initial estimates to be altered as actual damage which may have initially been concealed becomes apparent. Because the shop owner where you took your car for repair, on the basis of photographs, considered that the other vehicle had previously been involved in a similar accident involving damage to the same part of it, you requested information from ICBC relating to the (alleged) prior accident. The damage to the other party's vehicle was examined by an ICBC estimator who concluded that it was caused in all probability as a result of impact with your vehicle. It is not the practice of ICBC to provide customers with information relating to earlier damage that a motor vehicle may have sustained. Instead, a court order would be necessary to obtain this in the course of litigation. I do not find ICBC's practice to be unreasonable and therefore do not find that it is unfair.

Your next argument that you have been dealt with unfairly is upon the basis that the way in which the Claim-Rated Scale (CRS) would apply to your son in the future amounted to "double-dipping". I confess, that I have great difficulty in following your argument in this respect. I note from the file that Ms. Christine Barrette, Customer Relations Advisor, explained to you how the CRS functions in an email dated August 22, 2012. The Claim-Rated Scale, and the way in which premiums are calculated, is set out in Schedule D, of the Basic Insurance Tariff. The Basic Insurance Tariff has the effect of a Regulation in this province, and I cannot go behind its provisions. Only if a customer can, for example, demonstrate that she or he has been discriminated against as the result of the way in which the CRS is applied to him or her do I have the jurisdiction to intervene. In your case you make no such argument, you merely assert that the effects of applying the CRS to your son's circumstances are clearly unfair. I am afraid that, whatever my views in this regard, I have no jurisdiction to go behind the CRS.

You also complain that you were not given notice in a timely fashion of the payout to the other driver which may have precluded your ability to repay that amount in order to avoid the CRS consequences of non-payment. I agree that this was a failure on the part of the Corporation and that it would have been unfair in your case if you had been precluded from paying off the third party's claim in time to avoid the impact on your CRS. Fortunately, you were given the information just before the need to renew your insurance arose. You did renew your insurance after paying off your third party claim thus avoiding the severe adverse effects that might otherwise have accrued.

What is the upshot in your case? Your real disagreement with the Corporation is on the question of liability, and I am not able to intervene in that regard. I have read the file carefully and, so far as your other issues are concerned, I am unable to conclude that you have been dealt with unfairly by the Corporation. So far as your concern about the results of the accident following your son for 20 years for insurance purposes, I am advised by

ICBC that this is merely a notation on his file which has no substantive impact upon him. In the result, I do not propose to make a recommendation to the Board of the Corporation that would affect the outcome of your case.

Of course, you could take the matter to the courts of this province, or even to the Office of the Provincial Ombudsperson, which has a much wider jurisdiction than my own.

Case Study 8: *principal operator breach (C209331)*

I acknowledge receipt of your online application, dated May 6, 2012, for a Fairness Review of the decision of ICBC to hold you in breach of the policy of insurance over your 1995 Mercury Villager van, by incorrectly declaring yourself to be the Principal Operator at the time you took out that insurance policy.

In reaching my decision I have taken into account the points you make in your application for a Fairness Review, as well as the contents of a file prepared by the Corporation for the purpose of this review which contains, among other things, a full chronology of the relevant events, the statements of yourself and your wife, Mrs. P., the decision of the Claims Coverage Committee which reviewed the decision to deny you coverage, and the relevant regulatory provisions that apply to your case.

The facts of your case are fairly clear. On May 2, 2011, Mrs. P. whilst driving your Mercury Villager van was involved in a collision with another vehicle and found by ICBC to be 100% at fault. On May 11, 2011, you met with an ICBC adjustor and gave a statement. As a result of your statement you were advised that an issue had arisen about who was the Principal Operator of the Mercury Villager van. Whereas you had declared yourself to be the Principal Operator when you purchased your insurance policy, your statement led to the conclusion that Mrs. P. was probably the Principal Operator.

You were sent a warning letter dated May 11, 2011, advising you that you will be investigated for a possible breach of your insurance relating to the declaration that you made that you were to be the Principal Operator of your vehicle. This was subsequently followed up by a letter dated June 21, 2011, advising you that the Corporation had found you to be probably in breach of your insurance policy for the reason just stated. Before that letter was sent to you the matter had been reviewed by a Manager and later was reviewed by the Surrey Claim Office Manager. It was again reviewed by the Claims Coverage Committee and the decision to hold you in breach of your policy of insurance was affirmed.

What is the basis of your argument that you have been unfairly treated by ICBC? You do not claim to have suffered any administrative failure on the part of the Corporation, so it can only be based upon the argument that ICBC has dealt with your case unreasonably and therefore unfairly. Do the facts bear this out? In my view they do not. You say that when you took out the policy of insurance you were not really aware of what it was that you were signing. This runs counter to the fact that you signed the application and you specifically

initialed that part of it that refers to the Principal Operator of the vehicle. As well, ICBC contacted your insurance broker and the broker advised that it had notes to indicate that the Principal Operator designation was confirmed with you.

Your second argument is that Mrs. P. was not the Principal Operator of the vehicle, but you were. This goes to the definition of "Principal Operator" contained in section 1(1) of the *Insurance (Vehicle) Regulation*. It is stated there to mean "*the person who will operate the vehicle described in an application for a certificate for the majority of the time the vehicle is operated during the term of the certificate*" In determining this issue, the Corporation was confronted with three statements – two from you and one from Mrs. P..

Your first statement, dated May 11, 2011, states in part, "*I have a white 1995 Villager van that Mrs. P. uses to go to the pizza place and to do shopping and stuff. I drive the van sometimes to get groceries on the weekend. But, this is the vehicle that Mrs. P. drives mostly*" The reference to the pizza place was to a family pizza business where Mrs. P. worked (apparently, not on a full time basis). You gave a second statement on June 8, 2011, subsequent to having been notified that ICBC was investigating what it felt was a possible breach of your policy of insurance. In this statement you said in part, "*Mrs. P. uses the van about once a week to go to the pizza shop to help out. She would get called in about once or twice a week. I drive the van more than Mrs. P.. After work I don't drive the Tacoma (another vehicle that you own) so I would use the van or the Yaris (still another vehicle that you own) and I would drive the van on weekends to take the family out and do the grocery shopping*"

In her statement, taken on June 8, 2011, Mrs. P. said, "*I drive the van once a week maybe. Sometimes I will walk to work about 10 minutes walking. ... When I drive the van it is for errands once a week or something but not to work. ... I drive the van about once a week. My husband drives the van only after work for his personal errands*" Because of language difficulties this statement was a translation, and you were in the room at the time.

Your second statement, which closely resembles that of Mrs. P., clearly conflicts in a material respect with what you said in your first statement. In your case there is no issue with understanding the English language, so that matter can be put aside.

Where then does all this take us? ICBC bases its decisions upon what it perceives to be the probable facts of the case. Is it unreasonable in these circumstances to conclude that you were probably in breach of your policy of insurance when you made the declaration at the time of taking it out that you would be the Principal Operator of the vehicle? I cannot conclude that it is. The facts in the file reveal that you probably understood the obligations involved in declaring yourself to be the principal operator of the vehicle at the time you took out your policy of insurance, and that Mrs. P. (rather than yourself) was intended to be the Principal Operator as defined in section 1 of the *Insurance (Vehicle) Regulation*. One cannot also be unmindful of the fact that by falsely declaring yourself to be the Principal Operator of your vehicle, you incurred a premium saving in the amount of \$668. In these circumstances, I am not persuaded that you have demonstrated that ICBC has dealt with you unfairly in concluding that your misrepresentation breached your policy of insurance.

Accordingly, I do not propose to make a recommendation to the Board of the Corporation that would affect the outcome of your case.

But, this need not be the end of the matter. You could take your case to the courts of this province, or to the Office of the Provincial Ombudsperson, which has a much wider jurisdiction than my own.

Case Study 9: *Escalating Deductible Program (C212935)*

I acknowledge receipt of your online request for a Fairness Review, dated August 20, 2012, of ICBC's decision to offer you optional Own Damage Collision and Comprehensive coverage with a minimum \$2500 deductible relating to Collision and Comprehensive coverage. This resulted from ICBC placing your policy in the Escalated Deductible Program (EDP).

In reaching my decision I have taken into account the points that you have made in your review request, as well as the contents of a file prepared for the purpose of this review by ICBC, which includes the full chronology of events, information relating to the EDP and the way in which it applies to customers, as well as earlier decisions of my own relating to the EDP.

The facts, at least as ICBC understands them, are set out in the letter dated July 12, 2012, to you from Ms. Debby Raffard, Customer Relations Advisor. In support of your claim that you have been unfairly dealt with by ICBC you make a number of additional submissions. You point out that given the area that you live in, the risks of collision with wild life are constant and that none of the collisions that form the basis of placing you into the EDP were your fault. But, the EDP is not related to the customer's driving record based upon fault, but is merely a response to the customer's perceived elevated risk of claims based upon his or her claim history. It is a mechanism designed to ensure that those who drive in circumstances of higher risk bear a cost that reflects this rather than imposing that cost upon all other customers who do not drive in those circumstances. It should be borne in mind that the EDP only applies to comprehensive coverage which is optional. No customer of ICBC is required to purchase comprehensive coverage from the Corporation. Instead, the customer can go to the open insurance market and purchase such coverage if it is preferred.

You also complain that you were given no "prior warning" of the EDP applying to you upon renewal of your insurance with the Corporation. I note that the renewal reminder that was sent to you contained a specific warning in the third last paragraph of the second page, and that you received a specific letter advising you that you will be covered by the EDP if you renew your comprehensive insurance with the Corporation, by letter dated June 12, 2012. As well, on August 10, 2011, the date of your policy renewal, the Autoplan broker received an electronic error code prompt to advise you of the possibility that your policy may be placed in the EDP if another comprehensive claim was processed. I am not persuaded that

you have established that ICBC has unreasonably failed to advise you of your risk of placement in the EDP.

You also argue that ICBC has dealt with you unreasonably by not providing you with some sort of formula revealing exactly why your comprehensive claims deductible has been set at \$2500 rather than some lesser amount. The Risk Underwriting Department of the Corporation bases the decision to change someone's deductible on their policy on an individual assessment of the claims history under that policy. The actual deductible offered will depend on the individual circumstances, including the number and type of claims and the amount paid for each claim. There is no formula in the sense of a table, and I am unable to conclude that the \$2500 deductible offered to you is unreasonable, particularly in the light of the range of payments that ICBC has made in the four comprehensive claims you made between January 26, 2010, and November 4, 2011.

You also feel there is some significance in the fact that you are located in West Kootenay and some correspondence referred to East Kootenay. The Kootenay reference is really irrelevant, it is the Territory which is significant. Both Kootenays are in Territory N and the average claim of customers in Territory N is one claim every nine years. This should be contrasted to your four claims over a two year period.

In the result, I am unable to conclude that offering you a \$2500 deductible for future comprehensive claims is unfair. Accordingly, I do not propose to make a recommendation to the Board of the Corporation that would affect the outcome of your case.

I would draw your attention, however, to the fact that you could go to the private insurance market and attempt to get a better rate for your Own Damage Comprehensive insurance. You could also take your case to the courts of this province, or the Office of the Provincial Ombudsperson, which has a wider jurisdiction than my own.

Case Study 10: *payment of deductible* (C205929)

I acknowledge receipt of your request for a Fairness Review of the way in which ICBC dealt with the deductible cost to you associated with the damage sustained by your 2000 Dodge Neon on February 4, 2011, on the Coquihalla Highway.

In reaching my decision I have taken into account the extensive submission that you have made to the office of the B.C. Ombudsperson, as well as correspondence that you have had with the Ministry of Transportation and Infrastructure, and V. Ltd. I have also taken into account the contents of a file prepared by the Corporation for the purpose of this review that sets out the full chronology of events.

I will not go over the facts of your case in any detail. They can be shortly summarized in the following way: whilst driving north on the Coquihalla Highway you struck a large pothole which caused damage to two tires and rims on your motor vehicle. The

replacement cost relating to the damage was \$451.04 and your policy of insurance carried a \$300 deductible. Accordingly, you were reimbursed in the amount of \$151.04 on March 8, 2011. You attempted to obtain reimbursement for the cost to you of the \$300 deductible carried by your policy of insurance from both the provincial Ministry of Transportation and Infrastructure, and the company responsible for maintaining that part of the Coquihalla Highway, V. Ltd. Your attempts were unsuccessful.

You have since turned to ICBC and attempted to persuade ICBC that it was under an obligation to pursue reimbursement to you of the \$300 deductible from either or both of the two parties referred to above. In fact, ICBC exercised its good offices and attempted to obtain the cost of the deductibles involved in all the cases of customers whose vehicles had been damaged as a result of their vehicles running into the pothole. But, these attempts were fruitless.

If I understand your fairness argument correctly, it is that ICBC should be your agent in attempts to recover the deductible costs and is obliged to pursue recovery on your behalf, not merely by extending "good offices" but by taking legal action against the highway contractor and/or the provincial highway authority.

I confess that I am somewhat taken aback by your line of argument. My understanding of the legal position is that under your contract of insurance you are able only to recover damage covered by the policy less the amount of whatever deductible you have contracted for. In any legal action based upon subrogation by ICBC against the B.C. highways authority or the maintenance company, ICBC would only recover whatever it was legally obliged to pay out to the insured customer and did in fact pay out. If the customer wanted to recover for the deductible costs, the customer would be obliged to bring a separate action against the defendants for the amount of the deductible.

If my analysis of the situation is correct, I am unable to see how it can be said that ICBC has dealt with you unfairly by failing to bring an action to recover a sum of money for you, which it has no legal right to do. So, with respect to your \$300 deductible I am unable to find any unfairness on the part of the Corporation in the way in which it has dealt with the matter.

It appears to me that you seem to be making a more general argument as well. You seem to be saying that it is unfair for ICBC not to bring suit against the highway authority and the highway maintenance company to recover the non-deductible costs that have been incurred as a result of its various customers sustaining damage as a result of the pothole. In this regard you have had the matter explained to you by ICBC in some detail. Whether or not the Corporation elects to pursue a subrogated action is, in my view, outside my jurisdiction. The factors that the Corporation has to take into account in determining the cost effectiveness of such an action are many and various – not the least of which is the likelihood or unlikelihood of success. In the present circumstances, given that customers have already been reimbursed for their actual damage less their deductible, and that the Corporation could not pursue in a subrogated action recovery of that deductible, I am unable to see any room for the argument that I have jurisdiction over the matter at all.

At the end of the day I am unable to conclude that you have been dealt with unfairly by ICBC. Accordingly, I do not propose to make a recommendation to the Board of the Corporation that would affect the outcome of your case. Of course, you are free to take the matter up once more with the Office of the Provincial Ombudsperson, which has a much wider jurisdiction than my own, or even the Small Claims Court of this province. Before taking this latter course, however, I urge you to seek the advice of a lawyer.

Appendix E:
Examples of Non-Jurisdictional Cases



In addition to those issues that the Fairness Commissioner has reviewed, there are matters which the Commissioner has ruled to be outside of his jurisdiction as per his Terms of Reference (Appendix G). A few examples of letters written to customers by the Fairness Commissioner have been provided to illustrate what other matters have been directed to the Fairness Commissioner which are beyond his jurisdiction.

Case 1: *litigated matter (C209443)*

“I acknowledge receipt of your application for a Fairness Review of the decision of ICBC to find you in breach of your policy of insurance relating to a collision on November 10, 2010, that your motor vehicle was involved in.

Unfortunately, my terms of reference exclude my jurisdiction if a matter has been referred to a court. I have been advised by ICBC that your lawyer issued a writ on May 3, 2012, relating to this matter. Accordingly, I do not have jurisdiction to deal with your case.”

Case 2: *decisions made by the courts regarding court ordered costs (C213733)*

“I acknowledge receipt of your letter of September 3, 2012, requesting a Fairness Review of the decision of ICBC to enforce the award of costs made against you by the B.C. Supreme Court, relating to the decision of that Court holding you responsible for the single vehicle accident that occurred on March 4, 2000.

My jurisdiction precludes me from dealing with any matter relating to a court decision, so I am afraid that I cannot address the substantive issue that concerns you.

I will, however, for the sake of clarity comment on two matters that you have raised. You seem to argue that there is some sort of estoppel because the cheque by which you paid the substantive award made against you contained on its face the statement that it was in complete settlement of court costs. Although it is a question of law rather than one of fairness, I am unaware of any doctrine that would enable one party to impose an estoppel upon another by merely writing on a cheque made out to satisfy a substantive court judgment that it also satisfies the costs.

You also complain at the time it took ICBC to figure out its costs and to bill you for them. In this regard I would merely point out that pursuant to the Limitations Act of this province ICBC has 10 years in which to present and enforce its account to you in this respect.

I fear that I am unable to deal with your application on account of my lack of jurisdiction.”

Case 3: *liability decision (C205498)*

“I acknowledge receipt of your electronic application for a Fairness Review of the decision of ICBC to find you to be 100% at fault for the motor vehicle collision that you were involved in on June 28, 2011. You were driving your sister's Honda Civic and, whilst making a U-turn, were involved in a collision with another Honda Civic.

In reaching my decision I have taken into account the very extensive legal analysis and supporting material that you have provided in order to rebut the Corporation's conclusion that you are 100% at fault for the collision, as well as the decision of the Claims Assessment Review, dated October 31, 2011, that upheld the Corporation's finding as to your liability.

At the end of the day, however, I have to conclude that I have no jurisdiction to deal with your case. My terms of reference, which are appended to the Annual Reports of the ICBC Fairness Commissioner, state quite clearly that my jurisdiction does not include complaints or disputes that relate solely or primarily to ... the assessment of liability.

Yet, it is the liability assessment that you want me to review. As well, the basis for such a review lies on your interpretation of what you say is the law that should have applied in your case. I am afraid that this is clearly outside my purview, as a Fairness Commissioner. The sort of argument that you are raising can only be properly made in a court of law.

The result is, I fear, that I must decline jurisdiction in this instance. Accordingly, I do not propose to make a recommendation to the Board of the Corporation that would affect the present outcome of your case.

There are some options, however, that are open to you. You could take your case to the Office of the Provincial Ombudsperson, which has a much wider jurisdiction than my own, or you could take your case to the courts of this province.”

Case 4: *review of street racing conviction (C208983)*

“I acknowledge receipt of your letter of April 24, 2012, requesting a review of ICBC's decision to not open up the matter of your "street racing" conviction relating to events that took place in 2003.

I am afraid that I am unable to assist you in this respect because my jurisdiction is confined to examining the decisions and practices of ICBC. ICBC is merely the gatekeeper when it comes to issues relating to motor vehicle infractions. It has the statutory responsibility of maintaining records, but it has no jurisdiction to interfere with the substantive content reflected in such records.

Only the courts of this province can overturn your conviction. In this regard, I do urge you to seek legal advice before proceeding further.

The upshot is that I must decline jurisdiction to engage in an overview of your case.”

Case 5: *review of driving suspension (C215082)*

“I acknowledge receipt of your application, dated October 27, 2012, for a review of the decision of the Office of the Superintendent of Motor Vehicles to require you to remain in the Graduated Licensing Program for a further two years, as a result of your one month driving suspension for failing to display an N sign on your vehicle whilst driving it.

Unfortunately, I do not have jurisdiction to review this matter. When you had your case reviewed by the Office of the Superintendent of Motor Vehicles, and the time of your suspension was reduced from four months to one month, the ICBC employee acted in the capacity of reviewer as being so on behalf of the Office of the Superintendent of Motor Vehicles and not ICBC. I am confined to fairness reviews that relate to ICBC decisions, etc. In these circumstances I am afraid that I must decline jurisdiction.”

Appendix F:
Statistics from 2010 – 2012

The following numbers are based on files **closed** from 2010 to 2012 (Jan to Dec):
(Percentages may not sum to 100% due to rounding)

	2010		2011		2012	
Claims Services	105	52%	92	60%	89	40%
Autoplan	30	15%	19	13%	51	23%
Account Services (formerly Collections)	29	14%	22	14%	36	16%
Driver Licensing	18	9%	13	8%	27	12%
Service Quality	13	6%	2	1%	8	4%
Vehicle Registration			3	2%	3	1%
Road Safety	1	1%	1	1%	3	1%
Privacy & Freedom of Information	3	1%	2	1%	1	1%
Vehicle Licensing					1	1%
Commercial Vehicle Services	1	1%				
Not ICBC	3	1%			2	1%
Total	203		154		221	100%

Claims Services – Fairness Commissioner related Concerns by Sub-Categories

	2010		2011		2012	
Coverage denied	35	34%	31	34%	28	32%
Liability disputes	22	21%	23	25%	17	19%
Repairs	12	11%	10	11%	14	16%
Claim handling process	8	8%	9	10%	7	8%
Injury management	1	1%	2	2%	6	7%
Settlement	6	6%	8	9%	4	5%
Total theft	6	6%	3	3%	4	4%
Hit and run~uninsured	4	4%	2	2%	4	4%
Total Loss	5	5%	2	2%	3	3%
Rental vehicle	1	1%	1	1%	1	1%
External service providers	2	1%	1	2%	1	1%
Info request	1	1%				
Comprehensive (other than theft)	2	1%				
Total	105		92		89	

Autoplan - Fairness Commissioner related Concerns by Sub-Categories

	2010		2011		2012	
Claim-Rated Scale (CRS)	14	47%	6	32%	17	33%
Policy cancellations refunds	2	7%	5	26%	11	22%
Cost of insurance	1	3%			6	12%
Policy details	7	23%	4	21%	5	10%
Insurance coverages			1	5%	5	10%
Premium discounts	1	3%	1	5%	2	4%
Autoplan 12 & 6					2	4%
ICBC Payment Plan financing			1	5%	1	2%
Multiple Crash Premium (MCP)					1	2%
Miscellaneous transactions	3	10%			1	2%
Broker services	2	7%				
Vehicle registration fraud			1	5%		
Total	14		19		51	

Driver Licensing – Fairness Commissioner Related Concerns by Sub-Categories

	2010		2011		2012	
Exams (written or road test)	2	11%	3	23%	7	26%
Driver's licence ID requirements	7	39%	4	31%	5	18%
Refuse to issue BCDL	6	33%	2	15%	5	18%
Graduated Licensing Program	3	17%	1	8%	4	15%
Driver's licence issuance					3	11%
Vehicle and driver records			1	7%	1	4%
Driver's licence status					1	4%
Moving in/ out of province					1	4%
Vehicle impoundment			2	15%		
Total	18		13		27	

Account Services – Fairness Commissioner Related Concerns by Sub-Categories

	2010		2011		2012	
Claim recovery debt	13	45%	6	27%	11	31%
Insurance premium debt	5	17%	5	23%	8	22%
DRP (Driver Risk Premium) debt	5	17%	3	14%	6	17%
DPP (Driver Point Premium) debt	2	7%	2	9%	6	17%
Fines debt	4	14%	5	23%	4	11%
MCP (Multiple Crash Premium) debt					1	3%
Government debt			1	5%		
Driver Licensing	29		22		36	

Appendix G:
Terms of Reference for the ICBC Fairness Commissioner

STATEMENT OF PURPOSE

1. ICBC is a publicly owned and customer driven organization. As such, it recognizes the value of having a process to independently review the fairness of its actions. To achieve this goal, the Fairness Commissioner will review and make recommendations with respect to unresolved customer complaints that relate to the fairness of the process leading to a decision or action, but without duplicating existing internal or external dispute resolution processes. An important component of a fairness review is that it be completed in a timely manner. Accordingly, the Fairness Commissioner's review should be thorough but straightforward enough that recommendations may be made without undue delay.

SCOPE

2. An "unresolved customer complaint" is:
 - a. a complaint about the fairness of an ICBC decision, action or practice as it has been applied to a customer;
 - b. made in writing (with the assistance of ICBC staff if necessary) by an ICBC customer, where "customer" includes those who are directly affected by an ICBC decision, act or failure to act in any of its lines of business, and in which the customer agrees to the terms set out in section 9 b) of these Terms of Reference; and
 - c. not resolved to the customer's satisfaction after a reasonable effort by the customer to address their complaint through ICBC's internal complaint resolution processes including ICBC's Customer Relations department but does not include:
 - i. complaints by suppliers, brokers or employees of ICBC that arise from their contract or employment with ICBC;
 - ii. complaints or disputes that relate solely or primarily to the amount of a final payment, claim settlement or assessment of liability;
 - iii. complaints concerning the disposition of a violation ticket issued by a peace officer employed by ICBC, or the conduct of a peace officer employed by ICBC;
 - iv. complaints that relate to decisions made by or are at the discretion of the Board;
 - v. a matter that is referred to a court, a statutory tribunal or to arbitration; a court decision, a decision of a statutory tribunal or the result of an arbitration;
 - vi. complaints concerning the advice or conduct of lawyers; and
 - vii. matters that fall within the principal jurisdiction of statutory decision makers such as the Human Rights Tribunal.

CONDUCT OF REVIEW

3. Upon receiving an unresolved customer complaint for review, the Commissioner may do any of the following:
 - a. Refer the matter to the appropriate department of ICBC with or without recommendations;
 - b. Recommend that ICBC's Manager, Customer Relations conduct an investigation;
 - c. Facilitate a resolution of the complaints with the complainant and the appropriate ICBC personnel;
 - d. Recommend that the complaint proceed to mediation or arbitration;
 - e. Seek the assistance of the Executive or Board of Directors of ICBC;
 - f. Conduct an investigation of the complaint;
 - g. Group together complaints of a similar nature and conduct a single review of the issue or issues raised by such complaints; and
 - h. With the consent of ICBC and the complainant, act as mediator with respect to the complaint, in which case the Commissioner may no longer continue to conduct an investigation or review or make any findings or recommendations with respect to the complaint.
4. If the Commissioner requires any documents or information from ICBC that the Commissioner considers might assist in the conduct of an investigation, ICBC will promptly make every reasonable effort to provide the required documents or information to the Commissioner, subject to the *Freedom of Information and Protection of Privacy Act* and any other law governing the disclosure of personal information.
5. Any party that may be adversely affected by an investigation or recommendation must be given timely notification and an adequate and appropriate opportunity to respond to any issues raised and any possible findings or recommendations before they are finalized or published. Without limiting the previous sentence, if the Commissioner intends to recommend a remedy that has not been suggested by the parties the Commissioner will give both parties the opportunity to respond to the proposed remedy before making any findings or recommendations.
6. If the Commissioner considers it appropriate, evidence may be taken from the complainant or a representative of ICBC under oath or affirmation, either verbally or in writing, but no person may be compelled to give such evidence.

COMPLETION OF REVIEW

7. At any stage in the review of an unresolved customer complaint the Commissioner may:
 - a. Recommend that an ICBC action or decision be reconsidered
 - b. Recommend that an exception be made to an ICBC policy or procedure, having regard to the impact that making such an exception may have on other customers

- c. Recommend that an ICBC policy or procedure be studied or reviewed by the Board of Directors of ICBC, or that new policies or procedures be adopted to address customer needs
- d. Make a report to the Executive or Board of Directors of ICBC with respect to the findings of an investigation; and
- e. Determine that no further action or investigation is required

If the Commissioner makes a report or recommendation, the Commissioner must concurrently state in writing the reasons for the recommendation, including a description of the procedural unfairness that led to the recommendation or report. If ICBC declines to follow a recommendation, it must state to the Commissioner, in writing, its reasons for doing so.

8. ICBC will designate a member of its senior executive to act as ICBC's liaison with the Commissioner. The Commissioner may bring any concerns with respect to the implementation of a recommendation to the attention of the executive liaison.

CONFIDENTIALITY

9. Recognizing that any unresolved customer complaint could later become the subject of litigation, and information or documents received in the course of reviewing an unresolved customer complaint should not lose any claim of privilege which may attach to them:
 - a. The Commissioner, his/her staff and any individuals, including legal counsel, retained by the Commissioner to assist him/her in performing his/her duties will:
 - i. Maintain the confidentiality of all information and documents provided to the Commissioner;
 - ii. Not disclose to any person, including the other party, any information or documents provided to the Commissioner by ICBC or the complainant without the consent of the party who provided the information or document having been obtained in advance;
 - iii. If appropriate, obtain a written agreement from ICBC or the complainant that any confidential information or documents shared with them will be kept in strict confidence and not disclosed to any other person unless required by law; and
 - iv. Not refer to any information or documents in any correspondence, report or recommendations without the consent of the party who provided the information or document having been obtained in advance.
 - b. ICBC agrees, and the complainant will agree when making the unresolved customer complaint, that they will not request the Commissioner, his/her staff and any individuals, including legal counsel, retained by the Commissioner to assist him/her in performing his/her duties be compelled as a witness in court or in any proceedings of a judicial nature in respect of anything coming to the

Commissioner's knowledge as a result of anything done pursuant to these Terms of Reference.

REPORTING

10. The Commissioner shall prepare an annual report for the Board of Directors and shall deliver that report to the Governance Committee of the Board. The Commissioner shall appear before the Governance Committee to discuss the report and shall also appear before that Committee or the Board at any other time the Committee or the Board may request or the Commissioner considers necessary, with respect to:
 - a. The activities of the Commissioner;
 - b. The adequacy of ICBC's responses to the Commissioner's investigations and recommendations, including a discussion of the number of his/her recommendations that were not accepted by ICBC and the explanations given by ICBC for declining to adopt them; and
 - c. Circumstances that the Commissioner believes require the Board's review of a specific policy or procedure.

11. After reporting to the Board and permitting the Board an opportunity to respond within a period of time that he/she considers reasonable, the Commissioner may, subject to Article 7 of these Terms of Reference, make a public report in respect of the matters set out in Article 10.