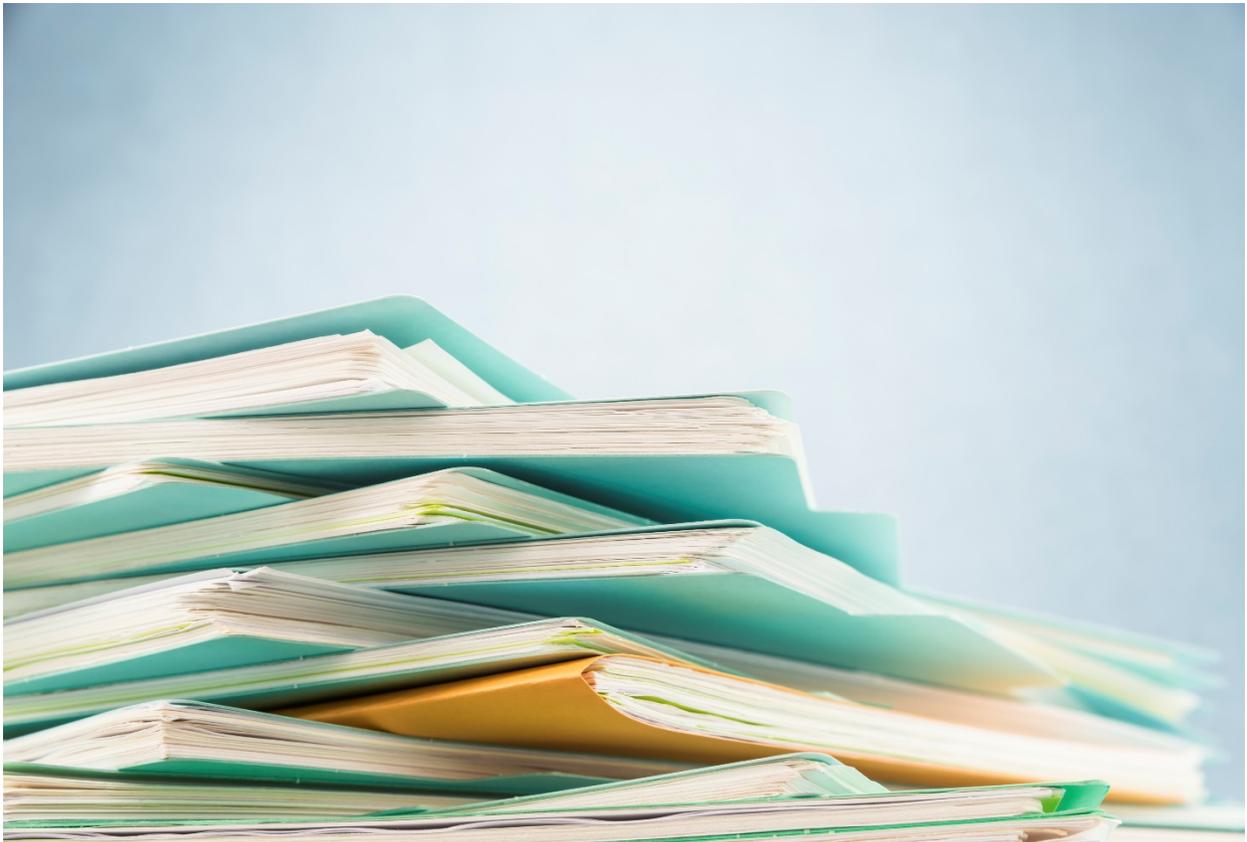


2015 Annual Report

Office of the ICBC Fairness Commissioner

Peter Burns, Q.C.
ICBC Fairness Commissioner



Published April 2016

2015 Annual Report of the ICBC Fairness Commissioner

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Introduction

The Annual Report of the ICBC Fairness Commissioner is a summary of activities in 2015. The report is a requirement of the Fairness Commissioner's Terms of Reference, outlined in Appendix D.

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 2015
- Terms of Reference for the Fairness Commissioner

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) from 1982 to 2014, 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 ICBC 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, as well as the decisions it renders and publicises.

In recent years the number of such cases has been increasing. Last year there were 234 and this year they reached 251. These cases do not reflect the complete picture, as 60 per cent of the cases in 2015 were resolved by the Insurance Corporation of British Columbia (ICBC) Customer Relations department and did not reach me for review. As well, I sometimes 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, to the satisfaction of the customer concerned.

I am very pleased to report to the Board, again, that in the cases that I referred back for another review by ICBC the response 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 2015, there were three such cases, summarized in Appendix A.

I am advised that ICBC continues to sell 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, one thing still 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. In those cases that I dealt with in 2015, only three 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 only goes to procedural fairness. 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 for that taken by the Corporation, unless I conclude that ICBC was acting unreasonably in the circumstances.

I would like to express my appreciation to the staff of the Corporation. They have continued to be patient, instructive, and above all, cooperative, in pursuing the mission of the Fairness Commissioner's Office. I would also like to acknowledge the excellent contribution to the Fairness Process made by my colleague, Elizabeth Edinger, who acted for me when I was unable to deal with particular cases.



Peter Burns, Q.C.
ICBC Fairness Commissioner

Mission Statement

To ensure 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's jurisdiction deals with fairness 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. In these matters, customers have a right to a Claims Assessment Review when disputing liability decisions or an Arbitration Process with respect to vehicle damage. The Commissioner does retain jurisdiction to deal with any concerns about fairness.

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

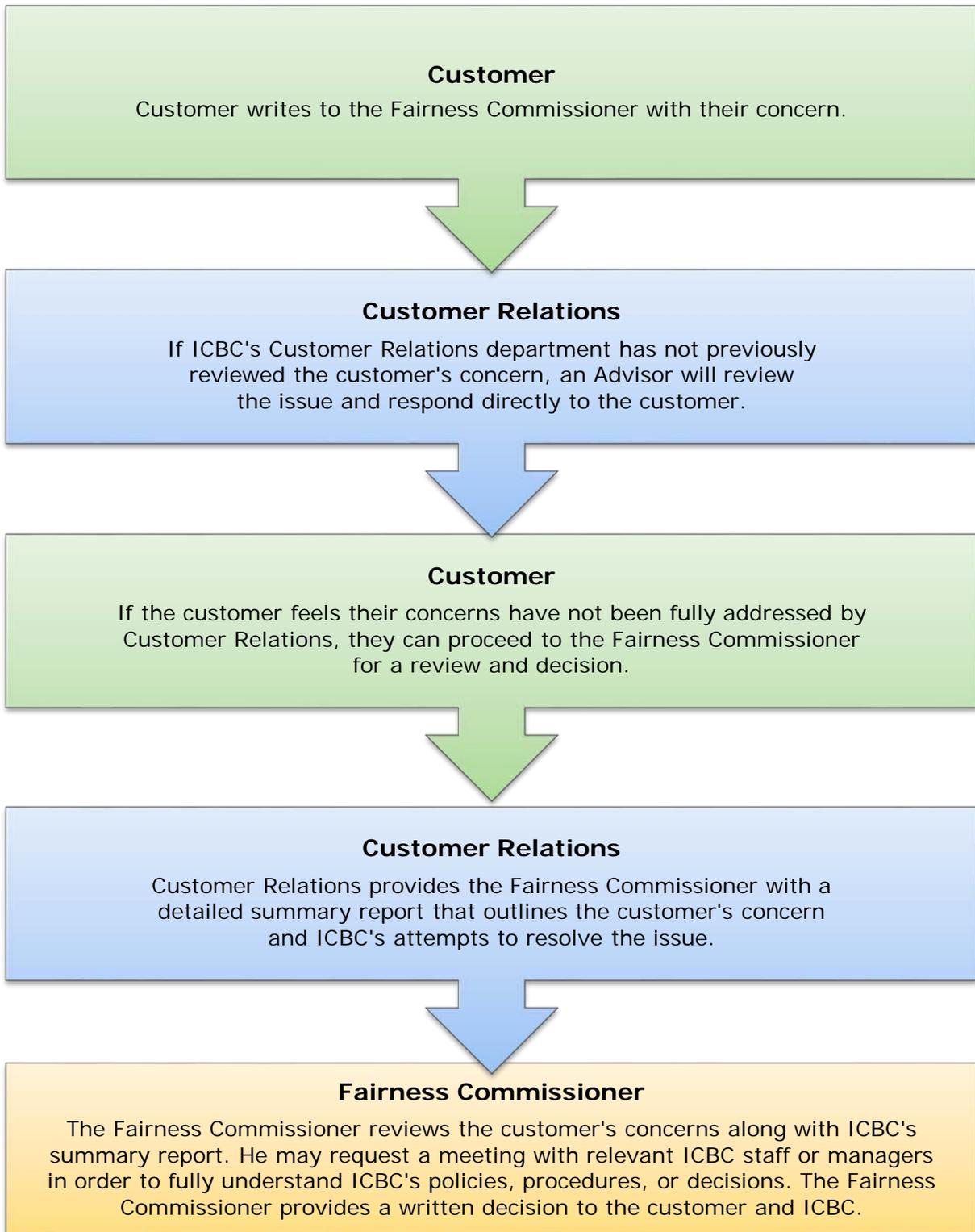
The Fairness Commissioner must be:

- **Totally independent**, in particular, the Commissioner 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 online
- **Responsive** to those who write

Upon completion of a review, the Fairness Commissioner may:

- Refer the matter back to ICBC for reconsideration.
- Make a recommendation to ICBC that the complaint be resolved in such manner as appropriate. Should ICBC reject the Fairness Commissioner's recommendation, the Commissioner 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 the Commissioner finds no unfairness on the part of ICBC or its employees.

The Fairness Process

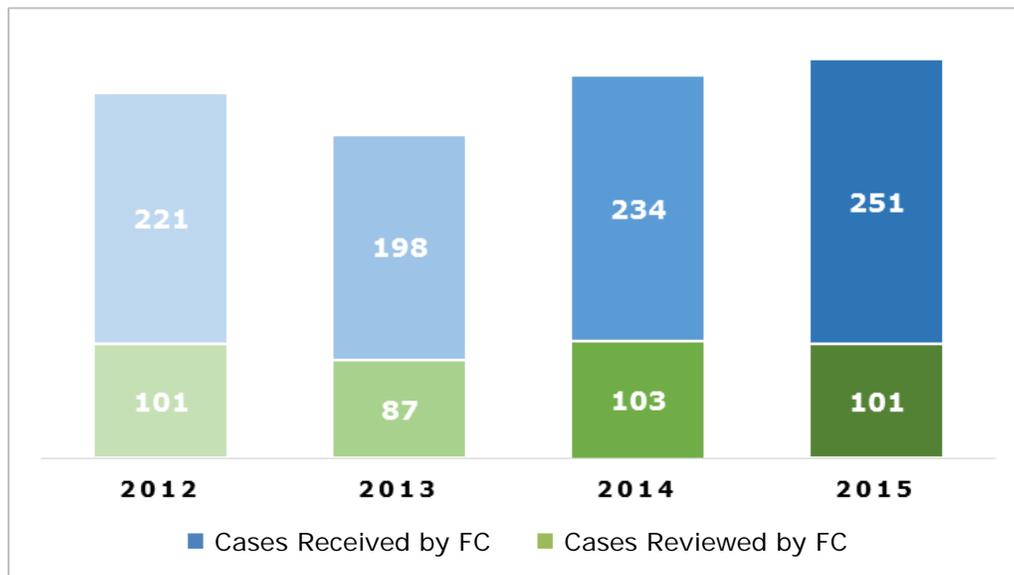


Highlights of 2015

- The Fairness Commissioner received 251 complaints and reviewed 101 of them in 2015, compared to receiving 234 complaints of which 103 were reviewed in 2014.
- Of the 251 complaints to the Fairness Commissioner 60%, or 150 files, were successfully resolved with Customer Relations, which is consistent with past years.
- The Fairness Commissioner made three recommendations to ICBC in 2015. This compares to four in 2014.

Statistics for 2015

Number of Applications Received and Number of Cases Reviewed by the Fairness Commissioner - 2012 to 2015



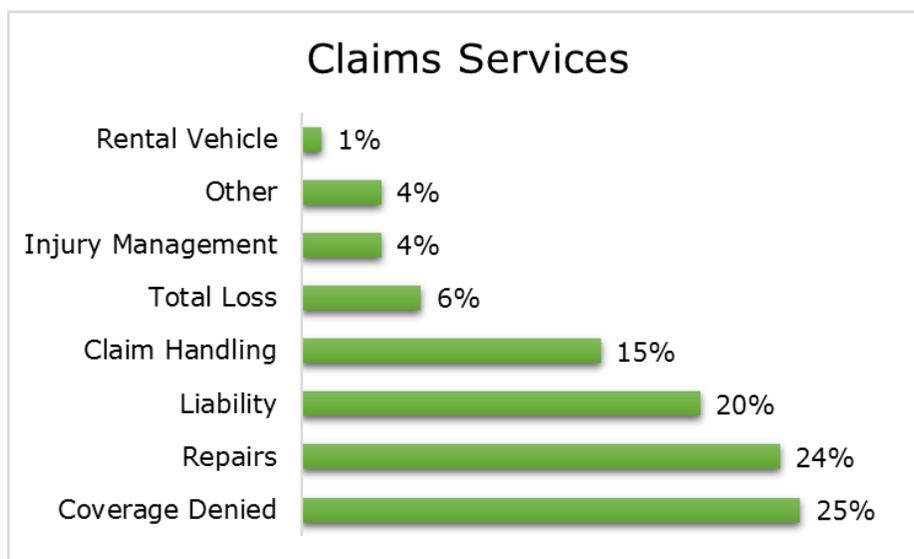
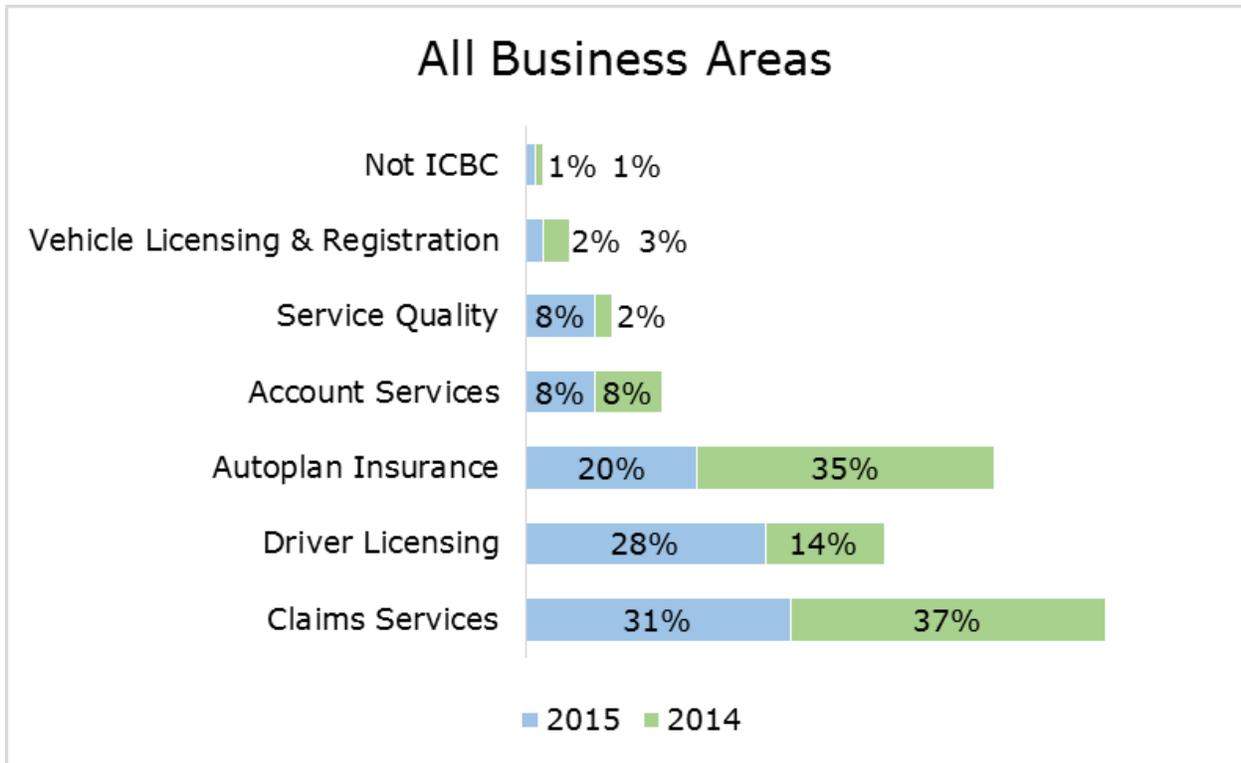
Case Resolution Details – 2012 to 2015

Total Cases Reviewed by the Fairness Commissioner	2012		2013		2014		2015	
	Count	Percentage	Count	Percentage	Count	Percentage	Count	Percentage
Determination of no unfairness	66	65%	70	81%	84	82%	93	92%
Outside FC jurisdiction	25	25%	9	10%	14	14%	5	5%
Customer withdrew concern	4	4%	3	3%	0	0%	0	0%
FC facilitated resolution	5	5%	5	6%	1	1%	0	0%
Recommendation by FC*	1	1%	0	0%	4	4%	3	3%

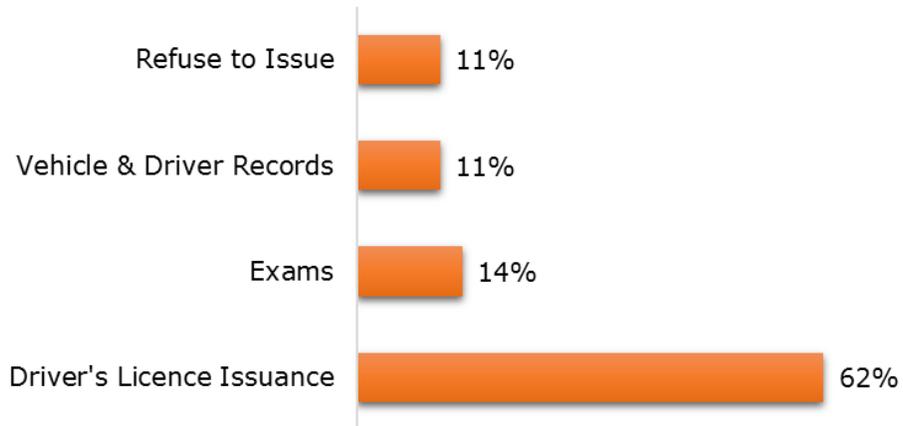
*All recommendations accepted and implemented

Topics of Complaint by Business Area

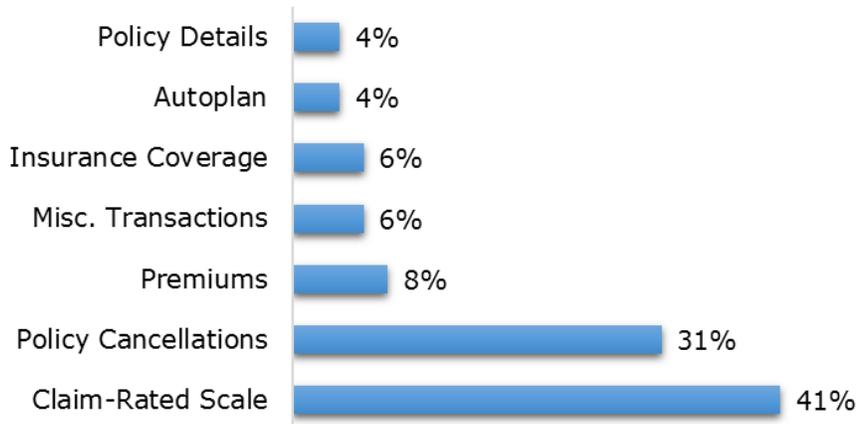
The following charts provide a view of 2015 closed files, including a more detailed view of the top four business areas. Note: *percentages may not sum to 100% due to rounding.*



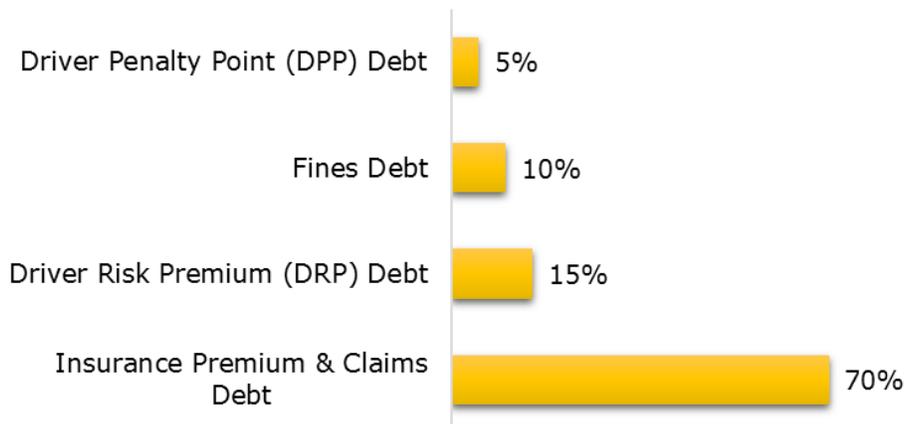
Driver Licensing



Autoplan Insurance



Account Services



APPENDIX A

Cases Requiring a Fairness Commissioner Recommendation



In 2015, the Fairness Commissioner made a written recommendation in three cases that ICBC responded to and implemented.

Case 1: *Disagreement of the actual cash value for a vehicle total loss settlement and claim limitation expiry*

*Office of the ICBC Fairness Commissioner
151 West Esplanade
North Vancouver, B.C.
V7M 3H9*

CONFIDENTIAL

THIS DOCUMENT IS SUBJECT TO A CONFIDENTIALITY AGREEMENT BETWEEN ICBC AND THE COMPLAINANT AND MUST NOT BE DISCLOSED TO ANY PERSON OR LISTED IN ANY LIST OF DOCUMENTS IN A LEGAL PROCEEDING.

April 14, 2015

[REDACTED]

Dear Mr. [REDACTED]:

Re: Application for ICBC Fairness Commissioner's Review: File No. C [REDACTED]

I acknowledge receipt of your online application, dated March 18, 2015, for a Fairness Review of the decision of ICBC to offer you the sum of \$9,214.67 (including taxes) to compensate you for the Actual Cash Value of your 20[REDACTED] Ford Escape Hybrid which was vandalized on March 26, 20[REDACTED], and deemed to be a total loss.

In reaching my decision I have taken into account the submissions that you make in your review application, as well as the contents of a file prepared for the purpose of this review by the Corporation which includes, among other things, a full chronology of the relevant events, various pieces of correspondence between you and the Corporation, the pertinent statutory provisions that apply to cases such as yours, and some earlier decisions of my own relating to such cases as this.

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.

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?

The facts of your case are fairly clear. On March 27, 20[REDACTED], you reported your vehicle as having been vandalized and ICBC initiated a claim on your behalf. The real dispute between you and the Corporation is the nature and extent of the damage that your vehicle sustained as a result of its vandalization. I will not go through the interaction between you and the Corporation in this regard except to say that the Corporation made a final offer to you based upon information that it had obtained about the Actual Cash Value of a vehicle such as yours in the condition such as it was.

More recently you have obtained a number of advertisements offering vehicles of the same type for sale at certain prices. Of course, the condition of your vehicle was a really pertinent factor and prices in advertisements for sale are merely asking prices and subject to negotiation. The long and short of the matter is you were offered \$9,214.67 (including taxes) in final settlement.

You have consistently failed to accept that amount which brings you up against a real problem. Under the regulatory scheme that governs resolution of "Own Damage" claims in this province, if you are unable to reach a settlement with the Corporation, then you must take the matter to arbitration pursuant to section 176 of the *Insurance (Vehicle) Regulations*. Whether you settle the matter with ICBC or take the matter to arbitration there is a two year limitation period that applies. You are now out of time in both respects. The vandalization occurred on March 27, 20[REDACTED], and you had until March 27, 20[REDACTED], to resolve your case with ICBC or to take it to arbitration. So, in a very real sense, you are out of time and, in the ordinary course of events, ICBC could refuse to deal with the matter any further with you.

But, you introduced a "wild card" by initiating a Fairness Review application dated March 18, 20[REDACTED]. The two year limitation period relating to settlement or arbitration is statutory in the one instance and regulatory in the other. The fairness process itself was engrafted on the standard procedures that apply to cases such as yours by the Board of the Corporation itself. The Corporation can, if it chooses to do so, waive the effects of a limitation period. But the circumstances that would persuade the Corporation to do so must be very compelling. Is yours such a case? Yours is a simple dispute about the amount of final payment by way of compensation for damage which is covered by your policy of insurance. You were largely responsible for the limitation periods lapsing by not dealing with your options in a timely manner. But, you did apply for a Fairness Review during the period when the limitation periods were still running.

I am unable to conclude that you have demonstrated that ICBC has dealt with you unfairly in making the offer it did in final settlement. But, given that you were entitled to that amount (at least), I conclude that in this instance it would be unfair to preclude you from either receiving it upon an *ex gratia* basis, or by waiving the limitation period, or by allowing you to go to arbitration. Although it may be stretching things to breaking point, had your review application come to my office earlier, I probably could have dealt with it within the limitation periods. You would have then continued to have the option of accepting the cash proposal or taking the matter to arbitration.

In these circumstances, even though I am of the view that you are largely the author of your own misfortune in this respect, I conclude that it would be unfair for ICBC not to permit you to accept the existing cash offer on the table, or to take the matter to arbitration. I will make such a recommendation to the Board of the Corporation. I will also recommend that you be required to

notify the Corporation in writing within three weeks of the date of this decision as to your intention or the offer lapses.

You should also note that you have the option of taking the matter to the Office of the Provincial Ombudsperson, which has a wider jurisdiction than my own.

Following receipt of this decision, should you wish to receive a copy of the ICBC report that was sent to me, please mail or fax your request to:

ICBC Privacy & Freedom of Information
151 West Esplanade
North Vancouver BC V7M 3H9

Fax: 604-443-4562

Please ensure you include your name, return address and signature (for identification purposes) with your request.

Your request will be handled as per the guidelines outlined in the *Freedom of Information and Protection of Privacy Act of British Columbia*

Yours truly,

A handwritten signature in black ink, appearing to read "Peter Burns". The signature is fluid and cursive, with a long horizontal stroke at the end.

Peter Burns, Q.C.
Fairness Commissioner

cc: Casey Riddle, Customer Relations and Review Services, ICBC

Office of the ICBC Fairness Commissioner
151 West Esplanade
North Vancouver, B.C.
V7M 3H9

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August 31, 2015



Dear Mr. [REDACTED]:

Re: Application for ICBC Fairness Commissioner's Review: File No. C [REDACTED]

I acknowledge receipt of your letter to this office, dated July 22, 2015, which, together with your letter addressed to Mr. Mark Blucher, ICBC President and CEO, I take to contain the substance of your application. You complain that you have been dealt with unfairly in the way in which the Corporation has dealt with your automobile insurance costs relating to 2014-2015.

In reaching my decision I have taken into account the submissions you make in the material that I have already referred to, as well as the contents of a file prepared for the purpose of this review by ICBC which contains, among other things, the full chronology of the relevant events, the pertinent provisions of the *Basic Insurance Tariff* that apply to cases such as this, and some earlier decisions of my own dealing with broadly similar cases.

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.

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?

The facts of your case are fairly clear and are set out in the letter to you, dated July 20, 2015, by Ms. [REDACTED], Customer Relations Advisor. I will, however, emphasize some features of your case in addition to those contained in that letter, as I proceed with my decision.

At the outset, it is useful to remind ourselves that the burden of establishing unfairness rests with the customer. The customer must establish on the balance of probabilities that the Corporation has dealt with him/her unfairly. You do not make any allegation of a technical procedural breach by ICBC, so we can put that matter aside. Instead, it appears to me that your case is that ICBC has dealt with you so unreasonably that the process involved was demonstrably unfair. What is the basis of this claim? I put aside your arguments concerning the cost of insurance in B.C. as opposed to Alberta. Comparing apples with oranges never leads to a logically valid conclusion.

If I understand your case correctly, your unfairness argument is based upon the fact that it took almost six months for ICBC to advise you that you had been incorrectly billed by your broker and that your Claim-Rated Scale (CRS) had been reduced from 43% to 15% for the period of September 15, 2014, to September 14, 2015. You were billed an additional \$937.00 as a consequence. It took ICBC almost six months from the time the insurance policy was let to you, to the date (March 5, 2015) when you were advised of the underpayment. It seems to me that the time involved for ICBC to review your insurance rate and to advise you of its findings and their consequences is the real basis of your unfairness complaint.

The rules relating to the determination and cost of the CRS are set out in the *Basic Insurance Tariff*, Schedule D: Claim-Rated Scale. The process is roughly this: a new customer applies for a policy of insurance through a broker or directly through the Corporation. The cost of that insurance is worked out or assumed to be worked out and the application for such insurance is forwarded to the Corporation. To this point, where a broker is used, the broker is the agent of the customer. The Corporation reviews the application before accepting it as it is required to do under the *Basic Insurance Tariff*. If the premium costs are confirmed a policy of insurance is issued and its terms accepted by the Corporation. If the review reveals that the customer has had his or her premium undercharged, then the customer must be advised and billed for the difference. If the review reveals that the customer has been overcharged, then the customer must be notified and given a refund. I have decided in earlier decisions that this process is not unfair.

Since the process is mandated by the *Basic Insurance Tariff* I cannot go behind it. But, I can review the way in which the process is applied by the Corporation. If, for example, it was not applied even-handedly to all customers in the same class, I could declare such a differential application unfair if appropriate. In your case there is no evidence that you are being treated any differently from all other new customers. Your unfairness argument, it seems to me, goes something like this. The broker took your application for insurance and placed it with ICBC. The broker sold you insurance based upon three out-of-province insurer's letters. ICBC's Department of Risk Underwriting noted the liability claim listed in one of the letters. Due to this claim Risk Underwriting adjusted the CRS on March 5, 2015. You argue that the time lag between the initial placing of the policy on September 15, 2014, and the notification to you on March 5, 2015, that your CRS was in error and would be corrected downwards, was inordinate and therefore unfair to you.

I have to agree with your argument that six months is unreasonable for the Corporation to take in order to resolve individual cases. In my view this is clearly so in those cases where the subsequent decision by review leads to an increase in the cost of the customer's CRS. We can argue about what the appropriate period made available to the Corporation for the review should be. But, it seems to me that 90 days is a reasonable period, in the absence of extraordinary circumstances. In your case there are no extraordinary circumstances. The at-fault chargeable accident that you were involved in was clear on the face of the out-of-province insurer that covered it and provided a letter to that effect which formed part of your file when you applied for insurance in this province.

The steps you took to cancel the optional coverage of your policy when you became aware of the change to your CRS makes it quite probable that you would have done the same thing had you been notified within 90 days out from taking up the policy.

The upshot is that I will recommend that the Corporation amends its adjusted CRS billing relating to your optional coverage to 90 days from September 15, 2014. I base my decision on the fact that, on the basis of the material provided to me in the file, it would be clearly unreasonable and therefore unfair for the Corporation to do otherwise.

Of course, if you remain dissatisfied, 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. You might also want to take the matter of the cost to you for the initial 90 days of optional coverage up with your broker given that the at-fault accident was apparent on the face of the material that you provided at the time.

Following receipt of this decision, should you wish to receive a copy of the ICBC report that was sent to me, please mail or fax your request to:

ICBC Privacy & Freedom of Information
151 West Esplanade
North Vancouver BC V7M 3H9
Fax: 604-443-4562

Please ensure you include your name, return address and signature (for identification purposes) with your request.

Your request will be handled as per the guidelines outlined in the *Freedom of Information and Protection of Privacy Act of British Columbia*

Yours truly,



Peter Burns, Q.C.
Fairness Commissioner

cc: Casey Riddle, Customer Relations and Review Services, ICBC

Case 3: *Issues with claim handling and failure to notify customer of the responsibility assessment*

*Office of the ICBC Fairness Commissioner
151 West Esplanade
North Vancouver, B.C.
V7M 3H9*

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October 16, 2015

[REDACTED]

Dear Mr. [REDACTED]:

Re: Application for ICBC Fairness Commissioner's Review: File No. C [REDACTED]

I acknowledge receipt of your online application, dated September 21, 2015, for a Fairness Review of the way in which your liability for the damage resulting from a collision you were involved in on October 15, 2013, whilst riding a motorcycle on Fraser Street at 56th Avenue in Vancouver, was determined.

In reaching my decision I have taken into account the various submissions you make in your review application, as well as the many emails you have forwarded to the Corporation. I have also taken into account the contents of a file prepared for the purpose of this review by the Corporation that contains, among other things, a full chronology of the relevant events, a police report relating to the accident, a Vancouver Fire Department report relating to the accident, and photographs of the damage sustained by the third party vehicle.

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.

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?

The facts in your case are, at first blush, somewhat opaque. On October 15, 2013, whilst driving a motorcycle on Fraser Street in Vancouver you became aware that the truck that you were following had stopped to allow a pedestrian to cross the street. At this point the facts become somewhat dislocated. The version presented to ICBC by the other driver was that a motorcycle struck his vehicle on the right rear bumper and ended up underneath his truck. Whereas you claim that you braked sharply, lost control of the motorcycle, and ended up physically striking the left rear bumper of the truck with your body. You go on to say that your motorcycle dropped to the ground and rested there some feet behind the truck and never came into contact with the truck. You suffered some relatively minor physical injuries and the file does not reveal the damage, if any, that your motorcycle sustained. There the matter rested until April 18, 2015, when you learned that ICBC had made a payment for repairs to the other driver's truck that would affect your Claim-Rated Scale (CRS). To this point you had received no communication from ICBC relating to the damage to the truck.

Reviewing the file a number of points can be made. The estimator's note, dated October 22, 2013, makes it clear that he estimated the vehicle upon the basis that the damage to it was as the result of an impact to the right rear bumper. The note states "a fresh impact area seen lower right edge and bumper assembly is slightly misaligned. No visible damage to exhaust system." An earlier note that day also states that there was no old damage. Upon the basis of the other driver's reported version of the accident, and the estimator's evaluation of the damage the other driver's claim was settled on May 26, 2013. Meanwhile, the police report had been received and much later in time the Vancouver Fire Department report was obtained by ICBC. Both the police report and the Vancouver Fire Department report reveal that the motorcycle was not under the truck, as claimed by the other driver, but several feet away from the rear of it.

When taxed with the factual error (was the contact with the bumper on the left or right side of it) upon which the original estimation was made, ICBC has consistently taken the view that the process it used to reach its conclusion was not flawed. It now takes the position that it didn't matter which part of the bumper was collided with and it did not matter whether the collision was by your body or your motorcycle. Instead, the position taken by ICBC became: the photographs indicate that there is a distortion on the left side of the bumper that is consistent with the area that you say you impacted and that there is a scuff mark on the left rear tailgate probably arising from your left elbow rubbing it.

The other driver's cash recovery was for the cost of the removal of the whole bumper in order to ascertain whether there was any hidden damage behind it. The Corporation, in short, now says that the damage to the bumper could have been caused by your body impacting the bumper. I suppose anything is possible, but given that the estimate was based upon damage received on the right side of the bumper as a result of contact with your motorcycle, I do not find that conclusion to be particularly persuasive. Nor do I find the argument that since there was some damage to the left side of the bumper (a scuff mark from the leather on your elbow, in all likelihood) and an

indentation, which I will return to, the whole bumper assembly had to be removed to check for hidden damage beneath.

You point out that in a truck which is 20 some years old, distortion to the bumper probably would occur as the result of it being used to step up to the tray of the truck and that the "bump" or indentation was molded into the bumper into which a bolt is inserted. In short, the only real damage to the left side of the bumper was, in all probability, the scuff mark left by the leather on your jacket when you struck the truck.

Like you, I find the argument that this would necessitate the removal of the bumper in order to view further possibility of hidden damage to be speculative to say the least. On the other hand, if the estimator believed that the bumper had been struck by a motorcycle travelling at a fair speed, then such a procedure would seem to me to be perfectly reasonable and proper.

To summarize my views to this point, they are that the original estimation process was faulty and that when its defects were drawn to the attention of managers, instead of engaging in a new review they basically glossed over the problems with the initial estimation and recast the findings of fault to support that initial result. On this basis alone I would conclude that the procedure adopted to reach the conclusion it did by the Corporation was unfair. It was particularly unfair because it was only on April 18, 2015, that you realized that your CRS would be affected by ICBC's liability decision. It has always been your position that, whereas you may have been driving your motorcycle too fast, you did not cause any damage to the truck.

As well, once the liability decision had been made by ICBC you should have received a letter putting you on notice of that so that you could take such steps as are necessary to protect your legal position. For whatever reason, no such letter was sent to you. In this respect you are being dealt with in a way that is not even-handed. I find that in the circumstances of your case that this was also unfair.

Where does this take us? I do not have the jurisdiction to interfere with decisions of the Corporation that are primarily assessments of liability. But I do have jurisdiction to examine the process whereby such decisions have been made. In my opinion, the original estimating decision was patently unreasonable and therefore unfair. Subsequent attempts to rationalize that decision were also manifestly unreasonable and therefore unfair. The failure of the Corporation to put you upon notice that your insurance policy was liable to the payment to the driver of the truck was in breach of its ordinary practice and, again, unfair to you. It is true, that "in the interest of settling the matter" ICBC has reduced the paint cost to you by 50 percent. But, you had to pay the balance (a little under \$400) in order to maintain your Claim-Rated Scale. As well, the two year limitation period that applies to your case, if you choose to take it to Small Claims Court, expires on October 15, 2015. Given that I received the file on October 6, 2015, the review process from my office and notification of the result places you in a very invidious position in relation to your limitation period.

The upshot of my review is that, in my opinion, you have been unfairly dealt with by the Corporation and that the only legal remedy in your case is to reimburse you for the amount that

you paid out to preserve your CRS, and that your CRS be restored to what it was immediately prior to the accident. I will make this recommendation to the Board of the Corporation.

Following receipt of this decision, should you wish to receive a copy of the ICBC report that was sent to me, please mail or fax your request to:

ICBC Privacy & Freedom of Information
151 West Esplanade
North Vancouver BC V7M 3H9

Fax: 604-443-4562

Please ensure you include your name, return address and signature (for identification purposes) with your request.

Your request will be handled as per the guidelines outlined in the *Freedom of Information and Protection of Privacy Act of British Columbia*

Yours truly,

A handwritten signature in black ink, appearing to read "Peter Burns". The signature is fluid and cursive, with a long horizontal stroke at the end.

Peter Burns, Q.C.
Fairness Commissioner

cc: Casey Riddle, Customer Relations and Review Services, ICBC

APPENDIX B

Select Cases from the Fairness Commissioner



The following eight cases are samples which correspond to the top four business areas displayed in Topics of Complaint by Business Area.

Case 1: Claims
Cost of exploratory vehicle damage

Office of the ICBC Fairness Commissioner
151 West Esplanade
North Vancouver, B.C.
V7M 3H9

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February 3, 2015



Re: Application for ICBC Fairness Commissioner's Review: File No. C 

I acknowledge receipt of your application, dated October 3, 2014, for a Fairness Review of the refusal of ICBC to pay for the “upfront” cost of investigating the possibility of water damage to your car, incurred when your car was impounded and towed in rainy weather on June 22, 2014 with at least one window still open.

In reaching my decision I have taken into account the points you have made in your review application, and other communications with the Corporation, as well as the contents of a file prepared for the purpose of this review by ICBC that contains, among other things, a full chronology of relevant events, correspondence from Customer Relations explaining the basis for the decision, a number of extracts from the ICBC Claim Procedures manual and an earlier decision dealing with a similar issue.

At this stage it would be useful to outline my jurisdiction and to emphasize 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 has been 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 because the customer does not agree with it.

In sum, my jurisdiction is concerned with procedural fairness. I consider whether the Corporation has taken all the pertinent factors into account, listened to the arguments made by the customer, and communicated its decision and the reasons for it once it has been made. The ultimate question which I have to answer is whether the Corporation's decision is reasonable in all the circumstances of the case.

The file I received contains some disagreement about the facts as well as some unproven allegations. However, everyone agrees that when your car was impounded, some water entered the car because the windows were not all closed even though the towing company had promised they would be closed. There is also agreement on the fact that you never made an appointment with an ICBC claim office for an estimate. The file does not reveal what, if anything, you did to dry out your car when you found water in it but it does indicate that ICBC would likely have authorized detailing. Finally, the file indicates that you are aware that water damage may cause mould. Indeed, mould in the car is what you fear. I deduce from your application that you are aware that the water damage escalates with time.

My jurisdiction does not permit me to make findings of fact. I am concerned only with the fairness of the procedure.

I cannot find any evidence that you have been treated or that your case has been handled in a discriminatory way by ICBC. You complain of a lengthy delay but that delay is in part attributable to your failure to make an appointment to bring the car in to an ICBC claims adjuster.

The refusal of ICBC to pay for the exploratory diagnosis that you have requested is general practice dictated by its Claims Procedures manual. When no damage is visible, it is the responsibility of the insured to prove the existence of damage. If the insured establishes that there is damage and that the damage is related to the incident, ICBC will reimburse the cost of the diagnosis and pay for the repairs (less deductible, of course). I am unable to find that the procedure which has been followed has been irregular in any way or that ICBC has been unreasonable in asking you to prove that your car was damaged by the entry of water when it was impounded.

In the circumstances I do not propose to make a recommendation to the Board of the Corporation that would vary the standard practice of the Corporation or its application to you.

However, you may take the matter to arbitration or to the Office of the Provincial Ombudsperson which has a wider jurisdiction than my own.

Following receipt of this decision, should you wish to receive a copy of the ICBC report that was sent to me, please mail or fax your request to:

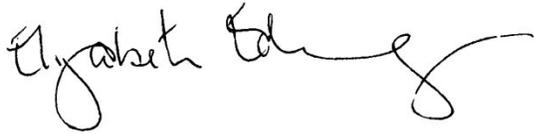
ICBC Privacy and Freedom of Information
151 West Esplanade
North Vancouver, B.C. V7M 3H9

Fax: 604-443-4562

Please ensure that you include your name, return address and signature (for identification purposes) with your request.

Your request will be handled in accordance with the guidelines outlined in the *Freedom of Information and Protection of Privacy Act of British Columbia*.

Yours truly,

A handwritten signature in black ink, appearing to read "Elizabeth Edinger". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Elizabeth Edinger
Acting Fairness Commissioner

Cc: Casey Riddle, ICBC

Case 2: Claims
Denied claim coverage resulting from false information provided to ICBC

Office of the ICBC Fairness Commissioner
151 West Esplanade
North Vancouver, B.C.
V7M 3H9

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February 25, 2015

[REDACTED]

Dear Mr. [REDACTED]:

**Re: Application on behalf of your son, [REDACTED], for a
Fairness Commissioner's Review: File No. C [REDACTED]**

I acknowledge receipt of your application, dated September 23, 2014, and addendum of December 31, 2014, for a review of the decision by ICBC to deny [REDACTED]'s claim for the damage that his 2012 GMC truck sustained at about 4:00pm on December 27, 20[REDACTED].

In reaching my decision I have taken into account the submissions you make in your fairness application, together with the contents of a file prepared by the Corporation for the purpose of this review that contains, among other things, a full chronology of the relevant events, a report by the Corporation's Special Investigation Unit, copies of the relevant legislative provisions that apply in cases such as this, and material relating to [REDACTED]'s financial circumstances prior to the incident.

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.

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?

The facts of this case are really quite singular. On December 27, 20[REDACTED], [REDACTED] reported to ICBC that he had driven onto a boat ramp in Ladysmith, got out of his truck to empty some buckets of seagull feed and the truck rolled down the ramp into the ocean. The truck was submerged for four hours before being towed out of the water. By a letter dated October 6, 2014, Ms. [REDACTED], Customer Relations Advisor, advised you that [REDACTED]'s claim for compensation for the damage sustained by the truck had been denied after investigation by the Claim Centre staff, and which had been reviewed by Customer Relations, the denial being upheld. The denial was based upon the Corporation concluding that [REDACTED] had made a false statement or statements of a material nature relating to the events leading up to the alleged loss. This was reiterated in a letter to you, dated February 23, 2015, from Ms. [REDACTED], Customer Relations Advisor.

At the outset it would be useful to summarize the obligations of the parties in claims such as this. The customer has the initial obligation to demonstrate on the balance of probabilities that he or she has suffered a loss that is compensable under the policy of insurance. It is the Corporation's position that [REDACTED] has not done this and it points to a number of inconsistencies in the way in which he described the events leading up to the loss taking place and the Corporation's review of those events. As well, when a customer argues that the Corporation has dealt with him or her unfairly, the initial burden is upon the customer to establish this upon the balance of probabilities.

Apparently the truck was facing towards the ocean on a ramp leading down to the water. [REDACTED] claims that he stopped the truck and, as far as he can recall, put it in park, got out and walked towards the back. The truck started rolling into the water, floated, and then sank. He recalled the truck running when it went into the water. He was not sure how the rear gate of the truck opened, but it was open at the time. There are several inconsistencies in [REDACTED]'s version of how events transpired and their aftermath, but I will deal only with some of them.

You do not claim that there is any technical administrative breach in the way in which ICBC has dealt with [REDACTED]'s case, so, I will put this aside. The thrust of your argument that he has been dealt with unfairly by ICBC must be that the decision to hold him in breach of his policy of insurance is unreasonable and therefore unfair in the circumstances. [REDACTED] says he was at the location, which is part of [REDACTED] in order to drop off some paperwork to his employer who owns the property. The property was closed and locked for the season but he had a key that enabled him to gain access to the grounds. His employer was out walking her dogs and there was a drop box for any material to be left. She was not expecting [REDACTED] to be on the property that afternoon.

[REDACTED] had several drums (he says) of material described as compost or scraps for seagull feed.

Investigating the matter ICBC was unable to replicate the events as described by [REDACTED]. The Corporation obtained a similar vehicle and was unable to have it roll towards the ocean in the way in which [REDACTED] described. As well, they contacted the manufacturer and learned that there have been no transmission issues with this model of vehicle. The Corporation had the transmission stripped and the linkage checked and nothing untoward was found in that regard. So, the Corporation concluded that there was no mechanical reason for the vehicle to drift into the water. Nor was there any reason for the rear gate to be open at the time. It could not be opened with the key fob on that model. There was also very little evidence of any feed at the location, which one

would have assumed to be present if there were open buckets in the back of a partially submerged SUV.

ICBC also points out that [REDACTED] was less than forthcoming when the issue of his financial circumstances was dealt with. He admitted the Autoplan 12 default with ICBC, but had an explanation for that, and the delinquent [REDACTED] account for which he had an explanation also. But what he did not do was reveal a number of delinquent accounts with financial institutions.

In these circumstances is it unreasonable for ICBC to conclude that [REDACTED] was in breach of his policy of insurances? In my opinion, the cumulative effect of the mechanical evidence, the unexplained way in which the vehicle rolled into the water with an open tail gate, and the nondisclosure of outstanding financial obligations by [REDACTED] leads to the conclusion that the Corporation is not dealing with him unfairly in holding him in breach of his policy of insurance. In short, you have not persuaded me that ICBC is probably treating [REDACTED] unfairly in the circumstances.

The upshot is that I do not propose to make a recommendation to the Board of the Corporation that would affect [REDACTED]'s present circumstances.

But, of course, you could take his case to the Office of the Provincial Ombudsperson, which has a wider jurisdiction than my own, or to the courts of this province.

Following receipt of this decision, should you wish to receive a copy of the ICBC report that was sent to me, please mail or fax your request to:

ICBC Privacy & Freedom of Information
151 West Esplanade
North Vancouver BC V7M 3H9
Fax: 604-443-4562

Please ensure you include your name, return address and signature (for identification purposes) with your request.

Your request will be handled as per the guidelines outlined in the *Freedom of Information and Protection of Privacy Act of British Columbia*

Yours truly,



Peter Burns, Q.C.
Fairness Commissioner

cc: Casey Riddle, Customer Relations and Review Services, ICBC

Case 3: Claims
Obligation to pay insurance deductible when not responsible for a loss

Office of the ICBC Fairness Commissioner
151 West Esplanade
North Vancouver, B.C.
V7M 3H9

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October 2, 2015



Dear Ms. [REDACTED]:

Re: Application for ICBC Fairness Commissioner's Review: File No. C [REDACTED]

I acknowledge receipt of your online application, dated August 7, 2015, for a Fairness Review of the decision of ICBC not to refund you the comprehensive deductible in the amount of \$300 relating to scratches to the paint work of your husband's new truck that were sustained on June 7, 2014.

In reaching my decision I have taken into account the submissions you make in your review application, as well as the contents of a file prepared for the purpose of this review by ICBC that includes, among other things, the full chronology of the relevant events, and the various communications that you have had with ICBC during the period that you were negotiating with it. 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.

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?

The facts in your case appear to be relatively clear. On June 7, 2014, you took your husband's vehicle through a [REDACTED] car wash and the next day, when your husband examined the vehicle, he discovered there were a number of scratches on it. The vehicle was a new one and the Corporation accepts the fact that the scratches were the result of having it washed at [REDACTED].

You filed a claim with ICBC under the comprehensive policy over the vehicle. The truck was taken to ICBC for estimation and the estimator was able to polish out a white scuff mark on the right side of it. But, there were still scratch marks that had not been removed by the estimator and the truck required repainting. ICBC paid the cost of repainting under your husband's comprehensive insurance policy. But, he was obliged to cover the \$300 deductible pursuant to the terms of that policy itself. You argue that it is unfair for ICBC to require your husband to pay the deductible in the circumstances of the case.

In what way is it unfair for ICBC to insist upon you (your husband) to pay the deductible? You do not claim that there was any technical procedural breach on the part of the Corporation, so we can put that matter aside. Instead, if I understand your argument correctly it is this: given the amount of time and trouble that you have been put to in pursuing your coverage under the comprehensive policy, it is manifestly unreasonable for the Corporation to expect you to cover the \$300 deductible. For the Corporation to insist upon it is unfair in the circumstances.

While it is true that it took an inordinate amount of time to have a relatively simple insurance matter resolved, can it be said that you have been dealt with unfairly? Your complaints about your initial adjustor and her manager really go to the issue of customer service rather than the issue of unfairness. It cannot be said that the delay in concluding your claim has led to an unfair result. The result is the same as it would be if the procedure had gone like clockwork.

Your obligation to pay the deductible is contained in your contract of insurance itself. I am advised that ICBC policy and practice is not to waive this requirement whether the customer is at fault or not. In your case there is no question but that you were not at fault. You have been advised that ICBC is attempting to recover both the amount that it paid to repaint your vehicle and the \$300 deductible from the owner and operator of [REDACTED]. If [REDACTED] pays the Corporation for your deductible, ICBC has committed to reimburse you that amount.

In these circumstances I am unable to conclude that you have been dealt with unfairly by the Corporation. Accordingly, I do not propose to make a recommendation to the Board that would affect the present outcome of your case.

You could, of course, take the matter to the Office of the Provincial Ombudsperson, which has a wider jurisdiction than my own.

Following receipt of this decision, should you wish to receive a copy of the ICBC report that was sent to me, please mail or fax your request to:

ICBC Privacy & Freedom of Information
151 West Esplanade
North Vancouver BC V7M 3H9

Fax: 604-443-4562

Please ensure you include your name, return address and signature (for identification purposes) with your request.

Your request will be handled as per the guidelines outlined in the *Freedom of Information and Protection of Privacy Act of British Columbia*.

Yours truly,

A handwritten signature in black ink, appearing to read "Peter Burns", with a long, sweeping horizontal stroke at the end.

Peter Burns, Q.C.
Fairness Commissioner

cc: Casey Riddle, Customer Relations and Review Services, ICBC

Case 4: Driver Licensing
Acceptable name order displayed on a British Columbia driver's licence

Office of the ICBC Fairness Commissioner
151 West Esplanade
North Vancouver, B.C.
V7M 3H9

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September 14, 2015



Dear Mr. [REDACTED]:

Re: Application for ICBC Fairness Commissioner's Review: File No. C [REDACTED]

I acknowledge receipt of your letter, dated August 12, 2015, applying for a Fairness Review of the decision of ICBC to require your name order listed on your driver's licence and B.C. Services Card to be the same as displayed on your Quebec birth certificate.

In reaching my decision I have taken into account the submissions you make in your application for a review, as well as the contents of a file prepared for the purpose of this review that includes, among other things, the reasons why ICBC reached the decision it did, and an earlier decision of my own dealing with the same issue.

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.

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?

The facts in your case are not in issue. On June 2, 2015, you attended the Driver Licensing Office at Royal Centre, Vancouver, to apply for a B.C. driver's licence and presented your Quebec birth certificate as your primary/foundational identification document as required. Your names for the driver's licence were entered in the order as presented on your birth certificate as required by ICBC's Licensing Operational Manual Procedures. Two months later you contacted ICBC's Customer Relations Department to complain about the order of your names on your driver's licence and the inconsistency and procedures between divisions of ICBC.

Your names on your vehicle insurance documents are in the common order that you use – " [REDACTED] [REDACTED] [REDACTED] ". You wanted your driver's licence information to be altered to reflect your preferred usage. Instead, ICBC advised you that your insurance documents will have to be amended when you next renew them so that they match your legal name on your driver's licence.

You do not argue that ICBC has committed any technical administrative error in dealing with your case. Nor can it be said that you are being dealt with discriminately because the requirement that the customer's names on a driver's licence must be consistent with those on the foundational document presented to obtain the licence, is applied to everybody equally.

Instead, I take your argument that you are being dealt with unfairly to be based upon the proposition that ICBC is behaving in a demonstrably unreasonable manner in not acceding to your request. Is this so?

At the outset, it is useful to reiterate some features of the fairness process. The burden of establishing unfairness lies upon the customer, upon the balance of probabilities. You argue that it is demonstrably unreasonable for ICBC not to agree to the name change that you want. On the other hand, ICBC has the statutory authority to determine what documentary proof is satisfactory to obtain a licence or certificate in order for an applicant to establish his/her identity to obtain a driver's licence or a B.C. Services Card. Since February 15, 2013, only legal names have been acceptable for the purposes of B.C. driver's licences or B.C. Service Cards. This requirement applies to new applications as well as those renewing such licences or cards. Your foundation document, your Quebec birth certificate, sets out your legal name. This is the foundation document that you relied upon when you applied for your B.C. driver's licence.

The rationales for the name standardization are fairly obvious. They include the fact that it reduces the opportunity of someone maintaining multiple identities, reduces the possibility of privacy issues arising, and reinforces the integrity of the driver's licence as a means of identifying the holder, amongst other things.

Admittedly, it will be a real inconvenience to you if you want to have your name altered on your driver's licence to accord with your customary, as distinct from your legal, name. It would involve formally changing your name to that which you wish to have displayed on your driver's licence. ICBC considered this when it declined to accede to your request. As I concluded in my earlier decision, the reasons for standardizing the name requirement on driving licences appear to me to be quite compelling. Accordingly, I have concluded that you have not demonstrated that ICBC is dealing with you unfairly in not acceding to your request. The upshot is that I do not propose to

make a recommendation to the Board of the Corporation that would affect the present circumstances of your case.

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

Following receipt of this decision, should you wish to receive a copy of the ICBC report that was sent to me, please mail or fax your request to:

ICBC Privacy & Freedom of Information
151 West Esplanade
North Vancouver BC V7M 3H9

Fax: 604-443-4562

Please ensure you include your name, return address and signature (for identification purposes) with your request.

Your request will be handled as per the guidelines outlined in the *Freedom of Information and Protection of Privacy Act of British Columbia*.

Yours truly,

A handwritten signature in black ink, appearing to read "Peter Burns". The signature is fluid and cursive, with a long horizontal stroke at the end.

Peter Burns, Q.C.
Fairness Commissioner

cc: Casey Riddle, Customer Relations and Review Services, ICBC

Case 5: Driver Licensing
Preferred versus acceptable name display on a British Columbia driver's licence

Office of the ICBC Fairness Commissioner
151 West Esplanade
North Vancouver, B.C.
V7M 3H9

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December 4, 2015



Dear Mr. [REDACTED]:

Re: Application for ICBC Fairness Commissioner's Review: File No. C [REDACTED]

I acknowledge receipt of your online application, dated November 18, 2015, for a Fairness Review of the decision by ICBC not to issue you with a new driver's licence displaying your preferred Christian name "[REDACTED]". Instead, the Corporation is insisting upon your renewed driver's licence to show your legal name, as it appears under the Coat of Arms on your Certificate of Canadian Citizenship.

In reaching my decision I have taken into account the very detailed submissions that you make in your review application, together with a file prepared for the purpose of this review by the Corporation that sets out the rationale for ICBC's decision, the relevant legislation that governs the matter, and some earlier decisions of my own dealing with the same issue.

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.

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?

There is really no dispute about the relevant facts of your case, and they are quite clearly set out in the letter to you, dated November 5, 2015, from Ms. [REDACTED], Customer Relations Advisor. It appears that Customs and Immigration Canada would probably issue you an updated Citizenship document but it would take several months to obtain it. So, you have not proceeded with such an application. It is true that in the past your assumed name of "[REDACTED]" had been accepted for the purpose of applying for and display on a B.C. driver's licence. But, the policy and practice of ICBC has changed in the meantime.

Since February 15, 2013, only legal names have been acceptable for the purposes of B.C. drivers' licences or B.C. service cards. This requirement applies to new applicants as well as those renewing such licences or cards. Since 9/11, all public institutions, including ICBC, have introduced stringent identification criteria in their dealings with customers. Now the Corporation requires all drivers in this province to have their given names outlined on their driver's licence so that the licence reflects the names contained in the Foundation Document relied upon by the customer in the licence application. In your case the Foundation Document is the Certificate of Canadian Citizenship. So, it is the names on that Certificate that must now be reflected on your B.C. driver's licence.

ICBC has the statutory authority to determine documentary proof that is satisfactory to obtain a licence or certificate in order for the applicant to establish his/her identity. ICBC's requirements are the same as those required in most provinces. The reasons for name standardization are fairly obvious. They include the fact that it reduces the opportunity of someone maintaining multiple identities, it reduces the possibility of privacy issues arising, and reinforces the integrity of the driver's licence as a means of confirming the identity of the holder, amongst other things. I have decided in earlier decisions that ICBC's policy and practice in this respect is not unfair to customers. In your case you are being dealt with exactly the same way that everybody in your circumstances is by the Corporation. The burden of establishing unfairness rests with the customer upon the balance of probabilities. My conclusion is that you have not demonstrated that you are being dealt with unfairly in the circumstances.

You do have some choices open to you. You could go to a driver's licence office and have the name on your driver's licence corrected to match your current Canadian Citizenship Certificate. Alternatively, you could apply to complete a legal name change through B.C. Vital Statistics or apply to Customs and Immigration Canada as referred to above to have your Canadian Citizenship Document amended. I am advised that this may take several months but that if you demonstrate to ICBC that you have applied for an amended Canadian Citizenship Document your interim driver's licence could be renewed until such amendment actually takes place.

Where does this take us? My conclusion is that you have not demonstrated that the Corporation is dealing with you unfairly. Accordingly, I do not propose to make a recommendation to the Board of the Corporation that would affect your present circumstances.

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

Following receipt of this decision, should you wish to receive a copy of the ICBC report that was sent to me, please mail or fax your request to:

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151 West Esplanade
North Vancouver BC V7M 3H9

Fax: 604-443-4562

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Yours truly,

A handwritten signature in black ink, appearing to read "Peter Burns". The signature is fluid and cursive, with a long horizontal stroke at the end.

Peter Burns, Q.C.
Fairness Commissioner

cc: Casey Riddle, Customer Relations and Review Services, ICBC

Case 6: Insurance
Position on the Claim-Rated Scale and the effect of dangling claims

Office of the ICBC Fairness Commissioner
151 West Esplanade
North Vancouver, B.C.
V7M 3H9

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October 30, 2015



Dear Mr. [REDACTED]:

Re: Application for ICBC Fairness Commissioner's Review: File No. C [REDACTED]

I acknowledge receipt of your online application, dated September 19, 2015, for a Fairness Review of your present position on the Claim-Rated Scale (CRS).

In reaching my decision I have taken into account the submissions you make in your review application, as well as various pieces of correspondence that you have had with the Corporation dealing with the issue over time, and the contents of a file prepared for the purpose of this review by ICBC which includes, among other things, the relevant provisions of the *Basic Insurance Tariff* which sets out the way in which the CRS applies to customers, a full chronology of the relevant events, and some earlier decisions of my own dealing with the same broad issue.

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.

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?

At the outset it is useful to be clear about the way in which the review process functions. The burden of establishing unfairness rests upon the customer on the balance of probabilities. Unfairness can arise in either one of two ways. It can occur as the result of a procedural failure on the part of the Corporation in dealing with your case, or if the ultimate decision is manifestly unreasonable in the circumstances of the case.

Since you do not claim that there was any procedural failure by the Corporation in dealing with you, we can put that issue aside. So, it must be that your unfairness argument is based upon the proposition that the decision reached by the Corporation (your place on the CRS) is manifestly unreasonable.

The facts of your case, having read the file more than once, appear to me to be quite comprehensively set out in the letter to you, dated June 23, 2015, by Ms. [REDACTED], Customer Relations Advisor. There she carefully explains just why your CRS is placed at the point it is. The variables that led to the decision are outlined in paragraph 2 and the specific claims history of significance is detailed on the second page.

Your position on the CRS was reviewed by the Corporation and, as a result, of including your out of province claims history, your position on the CRS improved. The Corporation is clear that your present position on the CRS is the correct one.

You complain about five year old minor claims being taken into account in determining your CRS. This raises the issue of "dangling" claims. A claim, for the purpose of determining CRS is detached from a policy when the policy is not renewed. But it "dangles" until the owner of the vehicle or the driver concerned takes out another policy. At that time it is attached to the new policy. In earlier decisions I have concluded that this practice by ICBC is not unreasonable and therefore not unfair to those customers who have had it applied to them. It is perfectly consistent with the wider policy of the Corporation to make drivers with more extensive chargeable claims histories bear higher rates of insurance costs.

You also complain that you were not the driver in two of the accidents referred to in the letter of Ms. [REDACTED]. But, under the dangling claims practice, this is not significant. So long as the driver is authorized by the owner to operate the vehicle the claim can properly be taken into account to determine the CRS of the registered owner. This, again, is perfectly consistent with the overarching policy of the Corporation to make drivers with more extensive chargeable claims histories bear higher rates of insurance costs.

Finally, you complain that the ICBC insurance premium is "extortionate", only explicable by the fact that ICBC is a statutory monopoly. By this, I take it, you are arguing that you have no choice other than to take out insurance with ICBC and that you are somehow the victim of the Corporation's "extortionate" premium policies. In fact, the only compulsory insurance that you are bound to take out with the Corporation is the compulsory \$200,000 third party personal injuries insurance. You are perfectly entitled, for any insurance beyond that, to go to the private insurance

market. There you can compare the cost of ICBC's policies against those of the private insurers. In any event, the compulsory portion of a driver's insurance in this province originates in legislation which neither I nor ICBC can go behind.

Where does this take us? In my opinion you have not demonstrated on the balance of probabilities that ICBC has treated you manifestly unreasonably. Accordingly, my conclusion is you have not shown that ICBC has dealt with you unfairly. In the circumstances, I do not propose to make a recommendation to the Board of the Corporation that would affect your current CRS.

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

Following receipt of this decision, should you wish to receive a copy of the ICBC report that was sent to me, please mail or fax your request to:

ICBC Privacy & Freedom of Information
151 West Esplanade
North Vancouver BC V7M 3H9

Fax: 604-443-4562

Please ensure you include your name, return address and signature (for identification purposes) with your request.

Your request will be handled as per the guidelines outlined in the *Freedom of Information and Protection of Privacy Act of British Columbia*.

Yours truly,

A handwritten signature in black ink, appearing to read "Peter Burns". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Peter Burns, Q.C.
Fairness Commissioner

cc: Casey Riddle, Customer Relations and Review Services, ICBC

Case 7: Insurance
Insurance cancellation requirements

Office of the ICBC Fairness Commissioner
151 West Esplanade
North Vancouver, B.C.
V7M 3H9

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THIS DOCUMENT IS SUBJECT TO A CONFIDENTIALITY AGREEMENT BETWEEN ICBC AND THE COMPLAINANT AND MUST NOT BE DISCLOSED TO ANY PERSON OR LISTED IN ANY LIST OF DOCUMENTS IN A LEGAL PROCEEDING.

October 21, 2015



Dear Mr. [REDACTED]:

Re: Application for ICBC Fairness Commissioner's Review: File No. C [REDACTED]

I acknowledge receipt of your online application for a Fairness Review of the decision by ICBC not to backdate the cancellation of the insurance policy that you held over your motor vehicle that was destroyed in California on July 28, 2015, to that date. Instead, the Corporation cancelled your policy as of the date it received your licence plates, etc. from Ireland.

In reaching my decision I have taken into account the submissions you make in your review application, 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 events, the regulatory provisions that set out procedure for cancellation of a customer's insurance, and an earlier decision of my own dealing with the issue.

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.

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?

I will not go over the facts in any detail, most of them are quite adequately presented in the email letter to you dated October 13, 2015, from Ms. [REDACTED], Customer Relations Advisor.

You do not argue that there has been any technical procedural breach by ICBC in dealing with the matter, so I will put that issue aside. Instead, if I understand your argument correctly you argue that it is unreasonable for ICBC to cancel the policy at the date it received your cancellation material from Ireland. I am afraid that I am not persuaded by your argument in this respect. The cancellation requirements are regulatory in form and set out in the *Basic Insurance Tariff*. Neither ICBC nor I can go behind these provisions. On August 1, 2015, you were advised by ICBC of these requirements. ICBC received the cancellation package from you on August 31, 2015, which you say you mailed on August 13, 2015. Following its standard practice in such cases, ICBC cancelled your insurance as from August 31, 2015. In doing this, the Corporation was dealing with you in exactly the same way as it deals with all other customers in similar circumstances.

Was ICBC dealing with you unfairly in these circumstances? I am afraid that I am unable to conclude that it was. The Corporation has no control over the length of time international mail takes to reach it from the date of postage. The cancellation process occurred the same day that the mail package requesting cancellation was received. In these circumstances I am unable to conclude that you have demonstrated unfairness in the way in which ICBC has dealt with your case.

Accordingly, I do not propose to make a recommendation to the Board of the Corporation that would affect the present outcome of your case. However, you could take the matter to the Office of the Provincial Ombudsperson, which has a wider jurisdiction than my own. You could also consider taking the matter to the courts of this province.

Following receipt of this decision, should you wish to receive a copy of the ICBC report that was sent to me, please mail or fax your request to:

ICBC Privacy & Freedom of Information
151 West Esplanade
North Vancouver BC V7M 3H9

Fax: 604-443-4562

Please ensure you include your name, return address and signature (for identification purposes) with your request.

Your request will be handled as per the guidelines outlined in the *Freedom of Information and Protection of Privacy Act of British Columbia*.

Yours truly,

A handwritten signature in black ink, appearing to read "Peter Burns". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Peter Burns, Q.C.
Fairness Commissioner

cc: Casey Riddle, Customer Relations and Review Services, ICBC

Case 8: Finance
Error in applying credit to a customer's credit card

Office of the ICBC Fairness Commissioner
151 West Esplanade
North Vancouver, B.C.
V7M 3H9

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December 22, 2015



Dear Ms. [REDACTED]:

Re: Application for ICBC Fairness Commissioner's Review: File No. C [REDACTED]

I acknowledge receipt of your online application, dated December 17, 2015 for a Fairness Review of the way in which ICBC dealt with the sum of \$6 [REDACTED].00 that had been erroneously credited to your Master Card on November 7, 2015.

In reaching my decision I have taken into account the submissions that you make in your review application, as well as the contents of a file prepared by ICBC for the purpose of this review that contains a full chronology of relevant events.

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.

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?

The facts in your case are fairly clear. On November 7, 2015, ICBC credited your Master Card account with a \$6,000 refund which should have been credited to another customer's credit card. You apparently did not notice this at the time and it was not until December 1, 2015, that ICBC had it drawn to its attention when the other customer contacted the Corporation when his refund did not arrive.

On December 4, 2015, Customer Accounting corrected the error by refunding the correct customer and reversing the refund to your Master Card. On December 9, ICBC sent you a letter advising you of the mix-up and advising you of the mix-up and its withdrawal of the \$6,000 from your Master Card account. You say that the reversal of the payment to your Master Card account is unfair in the circumstances, because it was done without your consent or even notice, and that you have had to borrow money to pay it off. At this stage it is worth making a couple of points. The first is that in law mistakes of this sort are not uncommon and money paid out under such a mistake must be repaid. The reversal to your Master Card account took place on December 4, 2015, and the letter notifying you of it is dated December 9, 2015. In your review application you say that you still have not received a copy of this letter, which is odd. It was apparently enclosed in the email letter to you from [REDACTED], Customer Service Advisor, dated December 9, 2015. This does not explain why you did not see the original letter from the Corporation, although it may have something to do with the volume of business experienced by the Post Office in the weeks leading up to the Christmas season.

Given that the burden of establishing unfairness rests upon you on the balance of probabilities, in what way have you been unfairly treated by the Corporation? You do not claim that there was a technical procedural error on the part of ICBC. So, we can put that matter aside. You seem to be arguing that the conduct of ICBC was manifestly unreasonable and therefore unfair. In what way is this borne out by the facts? You say that you did not notice the credit that the Corporation erroneously made in your favour because "I pay off the card as I go along". You only noticed it when you went to pay the card off.

I do not find your argument that ICBC had put you in a compromised position due to its initial error and subsequent rectification of it very compelling. You seem to be making the argument that you relied upon the Master Card statement to correctly reveal your debt situation with it, and at the same time that you were not aware of the additional sum of money having been placed in your account. You do not explain where you thought the credit had come from.

You also claim that ICBC acted unfairly in withdrawing the amount involved from your Master Card account without your specific authority. Given that the amount was deposited in that account without your authority, pursuant to its established practice in this regard, I see nothing unreasonable in the Corporation remedying an error in this respect so long as the customer is notified of it in a reasonable time. Even if you did not receive the letter of notification, of December 9, 2015, you became aware of the error as a result of Ms. [REDACTED]'s email to you dated December 11, 2015.

Where does this take us? You are clearly entitled to be aggravated by this series of events. They should not have played out the way they did. I have been advised that it is because of an old computer system which is in the process of being replaced. I realize that this is little solace to you for the annoyance and time that you have had to expend on dealing with this matter. However, I am not persuaded that you have made out a case that ICBC has dealt with you unfairly. In the circumstances I do not propose to make a recommendation to the Board of the Corporation that would affect your current circumstances.

Of course, 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.

Following receipt of this decision, should you wish to receive a copy of the ICBC report that was sent to me, please mail or fax your request to:

ICBC Privacy & Freedom of Information
151 West Esplanade
North Vancouver BC V7M 3H9

Fax: 604-443-4562

Please ensure you include your name, return address and signature (for identification purposes) with your request.

Your request will be handled as per the guidelines outlined in the *Freedom of Information and Protection of Privacy Act of British Columbia*.

Yours truly,

A handwritten signature in black ink, appearing to read "Peter Burns", with a long, sweeping horizontal stroke at the end.

Peter Burns, Q.C.
Fairness Commissioner

cc: Casey Riddle, Customer Relations and Review Services, ICBC

APPENDIX C

Examples of Non-Jurisdictional Cases



The following three cases are examples from 2015 that were outside of the Fairness Commissioner's jurisdiction for review as per Section 2 of the Terms of Reference.

Case 1: Claims
Issue being disputed in court

Office of the ICBC Fairness Commissioner
151 West Esplanade
North Vancouver, B.C.
V7M 3H9

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April 1, 2015



Dear Mr. [REDACTED]:

Re: Application for ICBC Fairness Commissioner's Review: File No. C [REDACTED]

I acknowledge receipt of your online application, dated February 25, 2015, for a Fairness Review of the decision of ICBC not to entertain compensating you for the repairs to your vehicle which was damaged in a hit and run accident on October 17, 2012, because your application for compensation is out of time.

Having read the material relating to your case, provided to me by you and the Corporation, I conclude that I have no jurisdiction to proceed to a fairness review. I base my conclusion not upon the fact that your application for compensation for the damage your vehicle suffered was out of time, but because you have filed a Notice of Claim in the provincial court of British Columbia, Small Claims Court, dealing with the same matter.

Under my terms of reference I have no jurisdiction to deal with a complaint that relates to a matter that is referred to a court. Accordingly, I am unable to proceed with this matter.

Following receipt of this decision, should you wish to receive a copy of the ICBC report that was sent to me, please mail or fax your request to:

ICBC Privacy & Freedom of Information
151 West Esplanade
North Vancouver BC V7M 3H9

Fax: 604-443-4562

Please ensure you include your name, return address and signature (for identification purposes) with your request.

Your request will be handled as per the guidelines outlined in the *Freedom of Information and Protection of Privacy Act of British Columbia*.

Yours truly,

A handwritten signature in black ink, appearing to read "Peter Burns", with a long horizontal flourish extending to the right.

Peter Burns, Q.C.
Fairness Commissioner

cc: Casey Riddle, Customer Relations and Review Services, ICBC

**Case 2: Claims
Assessment of fault for a crash**

*Office of the ICBC Fairness Commissioner
151 West Esplanade
North Vancouver, B.C.
V7M 3H9*

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July 24, 2015



Dear Mrs. [REDACTED]:

Re: Application for ICBC Fairness Commissioner's Review: File No. C [REDACTED]

I acknowledge receipt of your application for a Fairness Review, dated May 6, 2015, together with the additional material with photographs of the damage to your motor vehicle, dated June 19, 2015, of the decision of ICBC to hold you 75% at fault for the minor collision that you were involved in on [REDACTED], Surrey, on May 24, 2014.

In reaching my decision I have taken into account the very extensive submission that you have provided in your review application, as well as the contents of a file prepared by ICBC for the purpose of this review which contains, among other things, the full chronology of events, customer notes, the statements of yourself and the other driver and the third party witness, and the decision of the Claims Assessment Review (CAR).

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.

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?

I will not go into the facts in any great detail. You say that you had turned right from [REDACTED] into [REDACTED] and had travelled for almost half a block when the vehicle driven by Ms. [REDACTED] in the same direction moved right and struck the left side of your vehicle. Ms. [REDACTED], on the other hand, asserts that she was stopped at the intersection of [REDACTED] and [REDACTED], turned right (which was mandated by a road sign) and was struck by your vehicle which had come up on the inner side of her own. A third party witness supported the version of the other driver. You claim that the other driver's version of events was inaccurate, indeed you claim that it was motivated by an element of fraud, and that there must be some unknown relationship between the other driver and the third party witness.

Initially you were found by ICBC to be 100% at fault for the collision. You disputed this and continue to dispute this. You argued from the outset that much of the damage suffered by the other vehicle was pre-existing damage and, only after you persisted in this respect did a Managerial Material Damage review conclude that you were correct in this respect. The amount of damage that you were held to be liable for was accordingly reduced in large measure.

You continued to be dissatisfied as to the liability determination by ICBC and took your case to a Claims Assessment Review. The Claims Assessment Reviewer, in a decision dated September 12, 2014, changed the liability assessment to one of 75% on your part and 25% on the part of the other driver. He based his determination on an application of the pertinent statutory provisions that apply in cases such as yours.

You remain dissatisfied and argue that the Corporation is treating you unfairly by holding you responsible in any way for the collision. This takes us to a very basic analysis of my jurisdiction. My terms of reference preclude me from dealing with complaints or disputes that relate solely or primarily to the amount of a final payment, claim settlement or assessment of liability. But, if I read your application for a fairness review correctly, it is the specific issue of liability assessment by the Corporation that forms the basis of your review application itself. You do not claim that there was any technical administrative breach on the part of the Corporation. Looking at the file it is clear to me that all your concerns have been received and dealt with by ICBC. You may not agree with the way in which they were dealt with but they were only dealt with after hearing and weighing up your concerns. You have received reasons for the final disposition of liability assessment.

I cannot interfere with the decision of the Claims Assessment Reviewer unless there is an overriding error in the process which was applied. The burden rests with you to demonstrate on the balance of probabilities such an overriding error, assuming it to exist. The fact that ICBC and the Claims Assessment Reviewer agreed with the other driver's version of events leading up to the collision is not in itself such an error. There were facts to support the conclusion reached. They include the physical damage sustained by both vehicles, the statement of the other driver, and the statement of the third party witness. In my opinion, the conclusion reached by ICBC and also the

Claims Assessment Reviewer relating to liability assessment was not only not manifestly unreasonable, but reasonable in the circumstances of the case. You accuse the other driver of fraud but, in my view, there is no evidence of that. It is true that the damage issue that was resolved in your favour may otherwise have raised a red flag. But, the file notes reveal that the other driver had advised ICBC of pre-existing damage to her vehicle and this had not been picked up and acted upon by the Corporation in the very early assessment of the damage concerned.

Where does this take us? In my opinion, you have not demonstrated on the balance of probabilities that you have been dealt with unfairly by ICBC when it assesses your liability at 75% for damage resulting from the collision that you were involved in on May 24, 2014. Apart from that, I am of the view that your case falls outside my jurisdiction in any event. Accordingly, I do not propose to make a recommendation to the Board of the Corporation that would affect the present outcome of your case.

But, of course, you do have other recourse that you may take. You could take the matter to the Office of the Provincial Ombudsperson, which has a wider jurisdiction than my own. But, given the thrust of your claim that you have been dealt with unfairly by the Corporation, you should probably consider taking the matter to the Small Claims Court of this province. That process would involve examination and cross-examination of the parties and the witness which may bring the closure that you say you want.

Following receipt of this decision, should you wish to receive a copy of the ICBC report that was sent to me, please mail or fax your request to:

ICBC Privacy & Freedom of Information
151 West Esplanade
North Vancouver BC V7M 3H9

Fax: 604-443-4562

Please ensure you include your name, return address and signature (for identification purposes) with your request.

Your request will be handled as per the guidelines outlined in the *Freedom of Information and Protection of Privacy Act of British Columbia*

Yours truly,



Peter Burns, Q.C.
Fairness Commissioner

cc: Casey Riddle, Customer Relations and Review Services, ICBC

**Case 3: Driver Licensing
Issuance of traffic tickets**

*Office of the ICBC Fairness Commissioner
151 West Esplanade
North Vancouver, B.C. V7M 3H9*

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June 16, 2015



Dear Ms. [REDACTED]:

Re: Application for ICBC Fairness Commissioner's Review: File No. C [REDACTED]

I acknowledge receipt of your undated application for a Fairness Review relating to your current prohibition from driving a motor vehicle as a result of driving whilst prohibited.

In reaching my decision I have taken into account the very comprehensive submissions that you have made to both the Customer Relations Department and myself.

I have read the material that you forwarded and am struck by the difficulties that you have encountered over the recent few years.

But, my jurisdiction is limited to that which is granted to me by ICBC in my Terms of Reference. As a consequence, I am forced to conclude that I have no jurisdiction to deal with your application. The first reason is that I can only view decisions and practices of ICBC. In your case the decision was not really that of ICBC but of the legislature of this province which imposes an automatic oneyear prohibition from driving under section 99 of the *Motor Vehicle Act* where a person has been convicted of driving whilst prohibited.

The more basic reason why I have no jurisdiction is that I cannot go behind the clear language of a piece of legislation. Both ICBC and I are bound by the provisions of the *Motor Vehicle Act*.

Accordingly, I do not propose to make a recommendation to the Board of the Corporation that would affect your present circumstances. But, if your understanding of what occurred is accurate, you should consider taking the matter to the Office of the Provincial Ombudsperson, which has a wider jurisdiction than my own, or consulting a lawyer with a view to having the courts of this province review your case.

Yours truly,

A handwritten signature in black ink, appearing to read "Peter Burns". The signature is fluid and cursive, with a long horizontal stroke at the end.

Peter Burns, Q.C.
Fairness Commissioner

cc: Casey Riddle, Customer Relations and Review Services, ICBC

APPENDIX D:

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.