

2017/18 Annual Report

Office of the ICBC Fairness Commissioner

Peter Burns, Q.C.
ICBC Fairness Commissioner



Published May 2018

2017/18 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 2017/18. The report is a requirement of the Fairness Commissioner's Terms of Reference, outlined in Appendix C.

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 2017/18 (12 month fiscal year: April 1, 2018 – March 31, 2018)
- 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.

It is important to note 2017/18 was a 12 month fiscal year compared to the 15 month fiscal year in 2016/17. In 2016/17 there were 321 cases while in 2017/18 there were 227. These cases do not reflect the complete picture, as 66 per cent of the cases in 2017/18 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.

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 2017/18, none of them required a formal recommendation based upon a lack of fairness in the decision-making process or the reasonableness of the decision itself. Although in one case I found there to be a technical case of unfairness, I also found that it not bear on the result.

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 in a manifestly unreasonable manner 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.

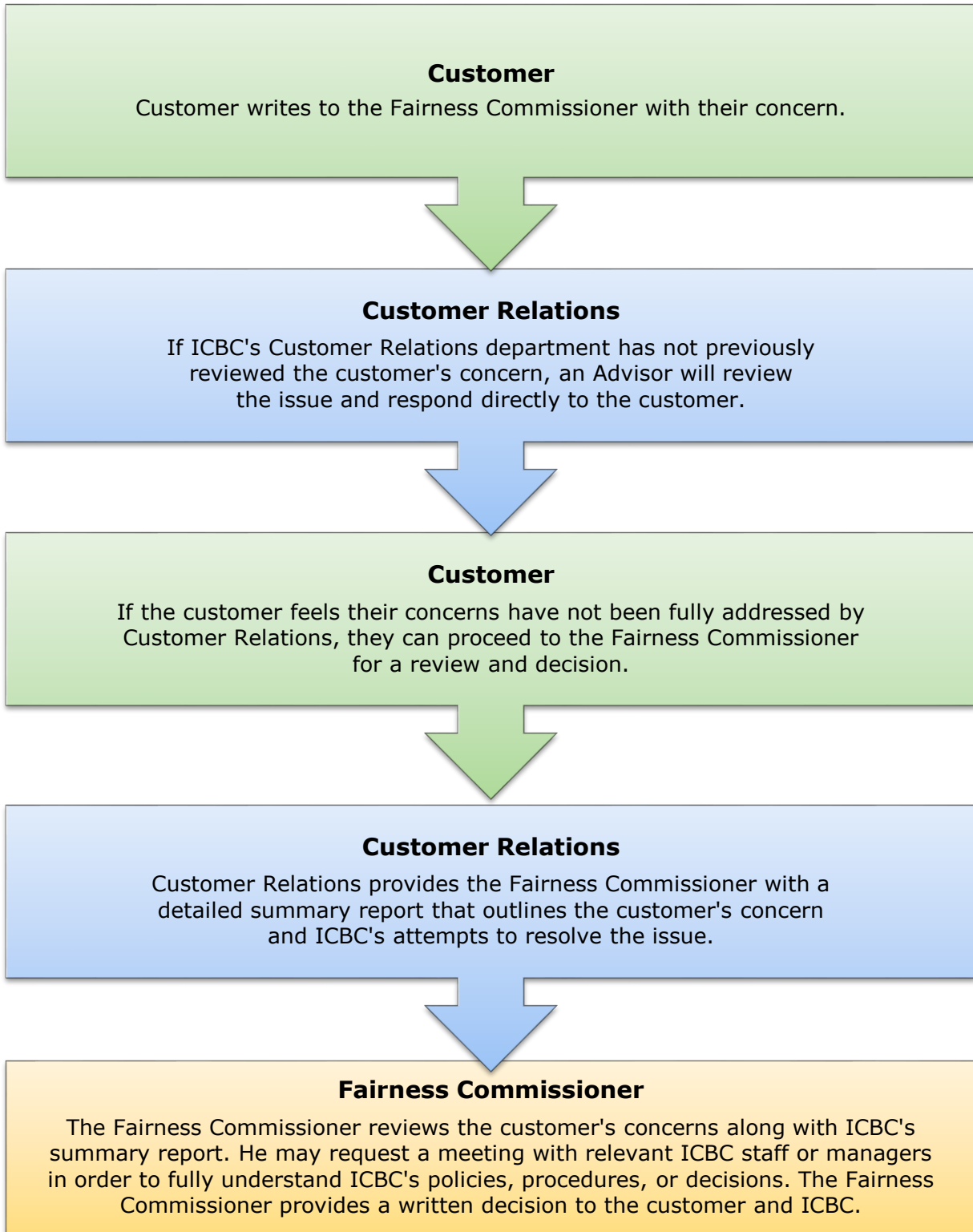
The Fairness Commissioner must be:

- **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



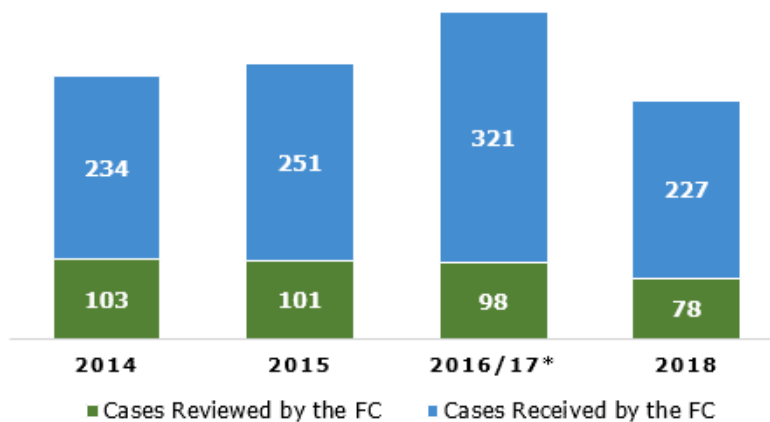
Highlights of 2017/18

The Fairness Commissioner received 227 complaints and reviewed 78 of them in 2017/18, compared to receiving 321 complaints of which 98 were reviewed in 2016/17. The higher number of complaints in 2016/17 reflects the 15 month fiscal year with the average quarterly intake of complaints being consistent over the past two years.

- Of the 227 complaints to the Fairness Commissioner 66 per cent, or 149 files, were successfully resolved with Customer Relations.
- Customer Relations has consistently resolved a majority of files without the involvement of the Fairness Commissioner.
- The Fairness Commissioner has not made any recommendations to ICBC in 2017/18. This compares to four in 2016/17.

Statistics of 2017/18

Number of applications received and number of cases reviewed by the Fairness Commissioner from 2014 to 2017/18



*2016/17 was a 15 month fiscal year

Case Resolution Details from 2014 to 2017/18

Total Cases Reviewed by the Fairness Commissioner	2014		2015		2016/17 (15 month fiscal year**)		2017/18	
	103		101		98		78	
Determination of no unfairness	84	82%	93	92%	92	94%	71	91%
Outside FC jurisdiction	14	14%	5	5%	1	1%	6	8%
Customer withdrew concern	0	0%	0	0%	1	1%	1	1%
FC facilitated resolution	1	1%	0	0%	0	0%	0	0%
Recommendation by FC*	4	4%	3	3%	4	4%	0	0%

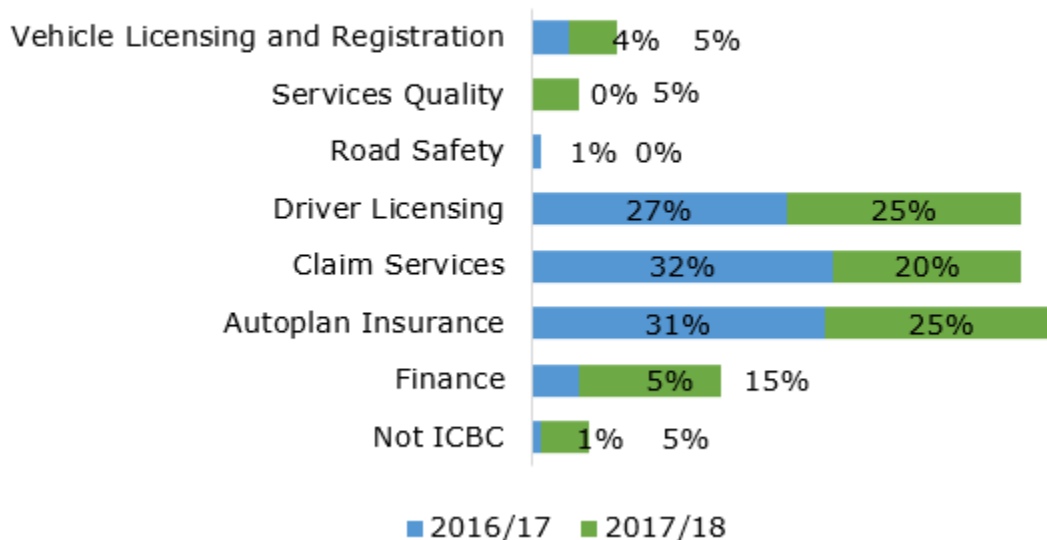
*All recommendations accepted and implemented

**2016/17 was a 15 month fiscal year

Topics of Complaint by Business Area

The following chart provides a view of 2017/18 closed files. Note: *percentages may not sum to 100% due to rounding.*

All Business Areas



APPENDIX A

Select Cases from the Fairness Commissioner



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

Case 1: Insurance

Request denied for a 2014 claim repayment to assist with position on Claim-Rated Scale.

*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.

June 29, 2017

[REDACTED]

Dear Ms. [REDACTED]:

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

I acknowledge receipt of your online application, dated June 11, 2017, for a Fairness Review of the decision of ICBC not to permit you to repay the costs of a claim that was applied to your motor vehicle insurance policy arising from an accident in 2014.

In reaching my decision I have taken into account the submissions you make in your review application as well as the material contained in your communication to this office, dated June 11, 2017. I have also had the benefit of the contents of a file prepared by the Corporation for the purpose of this review which contains, among other things, a full chronology of the relevant events, correspondence between you and the Corporation, an earlier decision of my own dealing with some of the issues that your case raises, and the relevant portions of the *Basic Insurance Tariff*.

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 manifestly unreasonable in the circumstances of the case?

Other than in one respect, the facts of your case are not really in dispute. They are well summarized in the letter to you, dated May 17, 2017, from Ms. [REDACTED], Customer Relations Advisor. In short, since 2007 you have made five claims on your policy of insurance that you held at the time. As ICBC has pointed out, the Claim-Rated Scale (CRS) effects of these claims rolled over to any new policies taken out by the owner. In your case, the Corporation applied this practice in conformity with the requirements of its procedures manual. You were dealt with in exactly the same way as every other customer of ICBC. So, I put this issue aside.

What then is the real thrust of your argument that you have been dealt with unfairly by ICBC, which has led to an unfair result? It appears to be that after the accident in 2014, claim notification letters were sent to your husband ([REDACTED]) and yourself. You say that you did not receive yours. This is mysterious. All the more so since you were sent two further letters advising you of the claim, which you also say you did not receive.

If I understand your argument correctly, it is this: you did not receive a claim notification letter in 2014 relating to Claim [REDACTED], much less a specific claim repayment letter setting out that option. Had you received either you would have repaid Claim [REDACTED].

If you did not receive a claim notification letter because ICBC failed to send it to you in accordance with its standard practice or was careless in where it was sent, it would be unfair of the Corporation to rely on its standard repayment rules to stop you from now repaying the claim. But, the address that the letters were sent to is correct, so your failure to receive them remains a mystery.

The burden of establishing unfairness on the part of ICBC rests with the customer claiming it. In this instance I am not persuaded that, if you did not receive the notification letters, you have established that such failure can probably be laid at the door of ICBC. The various time-line issues you raise do not, in my view, advance your case. Computers never sleep, and the letters were computer generated.

It is useful to recall that the burden of proving unfairness rests with the customer upon the balance of probabilities. The *Basic Insurance Tariff* does not speak to the repayment option which is a policy implemented by the Corporation as a customer service. Given this, the Corporation can determine its own procedures, so long as they are not manifestly unreasonable or somehow discriminatory.

In cases such as yours a general letter which is sent to all customers advising them of the repayment option puts them on notice of that possibility. On the other hand, the additional repayment letter that you say you should also have received is, according to ICBC's own claims procedures, available to a customer who is at fault and requests information about the repayment option. The

claim notes do not reveal such a request. In any event, the whole rationale for advising a customer of the option to repay is to put that customer on notice of the possibility. The general repay letter, in my view, does this. As well, when a customer's claims history shows that he or she was probably aware of the repay option, a technical procedural error by the Corporation will not in most cases lead to an unfair result.

There is nothing in the file to reveal that you were treated any differently from any other customer in your circumstances. From the 2007 claim onwards, my conclusion is that you were probably aware of the repayment option but chose not to avail yourself of it. I am not persuaded that it is more probable than not that if you had received a repay notice after the 2014 accident (assuming but not concluding that you did not), you would have repaid that claim at the time.

It is noteworthy that the matter only became a real issue as far as you were concerned when the claims piled up and began to adversely affect your CRS. What then is the result? I am unable to conclude that you have demonstrated that you have been unfairly dealt with by ICBC and I do not, therefore, propose to make a recommendation to the Board of the Corporation that would affect your present circumstances.

Of course, you could take the matter to the Office of the Provincial Ombudsperson, which has a wider jurisdiction than my own. Or you could take your case 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 2: Insurance
Requirement for legal financial interest in a vehicle.

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

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November 14, 2017

[REDACTED]

Dear Mr. [REDACTED]:

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

I acknowledge receipt of your online application, dated October 26, 2017, for a Fairness Review of the decision of ICBC not to compensate you for the damage to a 1992 Fleetwood motorhome as a result of a fire on May 27, at [REDACTED].

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 which includes, among other things, a full chronology of the relevant events, and correspondence between you and ICBC.

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 manifestly unreasonable in the circumstances of the case?

The facts of your case are somewhat opaque. You apparently attempted to register and insure the motorhome as early as April, 2017, and you argue that ICBC has been negligent in not proceeding with it in a timely manner so that you would be fully insured at the time of the fire. But the various communications that you say you had with ICBC are not confirmed by the file that the Corporation has on your case.

But two things stand out. At the time that your motorhome was damaged by fire you had no financial interest in it. It was still registered in the name of [REDACTED]. As well, the motorhome had been written off and then sold to [REDACTED] on August 22, 2016, as a non-repairable vehicle. Accordingly, it was uninsurable.

Having read the file through several times, I am at a loss to see what your real basis of unfairness is. You have not demonstrated any procedural failure on the part of the Corporation in its dealings with you. Nor at the end of the day am I able to conclude that you have demonstrated that the conduct of ICBC is manifestly unreasonable.

If you truly believe that ICBC has dealt with you negligently, your real recourse is through a lawyer and the courts of this province.

Accordingly, I am unable to find that you have established unfairness by the Corporation in this case and I do not propose to make a recommendation to the Board of the Corporation that would affect your present circumstances.

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

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151 West Esplanade
North Vancouver BC V7M 3H9

Fax: 604-443-4562

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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 3: Insurance

Request denied to accommodate customer's preferred name to be displayed on insurance papers.

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

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July 21, 2017



Dear Mr. [REDACTED]:

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

I acknowledge receipt of your letter, dated January 24, 2017, requesting a Fairness Review of the decision of ICBC to require you to accept the use of your full name in correspondence with you and the Corporation.

In reaching my decision I have taken into account the submissions you make relating to identity theft as well as the rationale provided to me by ICBC for being unable to accede to your request at this time.

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 manifestly unreasonable in the circumstances of the case?

There is no disagreement between you and the Corporation concerning the facts of your case. Whereas you do not describe just how ICBC by utilizing the initial of your second name rather than your second name itself would deter identity theft, I am willing for the sake of argument to accept that it would.

The burden of establishing unfairness rests upon the customer, and such proof must be upon the balance of probabilities. You do not claim that you are being discriminated against by the Corporation's current practice, nor do you claim that you are being singled out by it. So, we can put that matter aside.

Instead, if I understand your argument correctly, it is that it is manifestly unreasonable and therefore unfair for your request not to be accommodated.

In order to determine whether or not you have established this, we must look at the context in which communications from ICBC to its customers are made. At the present time ICBC's computer system, which by any standards is massive, is undergoing a comprehensive update. In this update there are no plans at the moment to accommodate customers' preferred name variations relating to outgoing correspondence.

The Corporation has several systems with customers' name and information, for example, driver's licence, vehicle registration, claims and accounts services. Renewal reminders for insurance policy renewal and drivers' licences will automatically pull from these systems. In order to allow a customer's request to change the middle name to an initial, someone would need to manually access the system to stop a letter and issue a manual letter. The same process would be required for account services and claims. Also, there is some correspondence which requires the full legal name as customers will be put on notice for a claims breach, an outstanding debt, or notification of a driving prohibition.

Although you place little weight on the cost of updating a request such as you make, the cost to the system would be quite considerable. In my opinion, this is a legitimate factor for the Corporation to take into account in determining whether or not to implement such a system. Given that the Corporation has considered your request and rejected it on the basis of thrift and efficiency, I am unable to conclude that you have demonstrated on the balance of probabilities that such decision is manifestly unreasonable.

In the circumstances I cannot conclude that you have demonstrated that ICBC is dealing with you unfairly.

Accordingly, I do not propose to make a recommendation to the Board of the Corporation that would alter your present circumstances. But, of course, you could take the matter to the Office of the Provincial Ombudsperson, which has a wider jurisdiction than my own. You could even take 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 stroke at the end.

Peter Burns, Q.C.
Fairness Commissioner

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

Case 4: Driver Licensing

British Columbia driver licensing requirements regarding name display.

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

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June 26, 2017

[REDACTED]

Dear Mr. [REDACTED]:

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

I acknowledge receipt of your online application, received on June 15, 2017, objecting to the decision of ICBC to require you to accept a B.C. driver's licence with your name spelled as "[REDACTED]" rather than "[REDACTED]", which is the spelling on various other government documents that have been issued to you.

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 the Corporation, which contains, among other things, a full chronology of the relevant events, an earlier decision of my own dealing with the same issue, and provisions of the *Motor Vehicle Act* empowering ICBC to determine a customer's name that will appear on his or her driver's licence.

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 manifestly unreasonable in the circumstances of the case?

Since 2011, all public institutions in this county, including ICBC, have introduced stringent identification criteria in their dealings with customers. The Corporation now requires all drivers in this province to have their "Foundation" names outlined in their driver's licence so that a 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 your birth certificate which outlines your surname as "██████" with a diacritical mark over the "o". Given that a diacritical mark is not part of the English language you had over time used the surname "██████" as a substitute. This was accepted when your B.C. driver's licence for 1998-2001 was issued, but was corrected in 2001 upon the basis of the spelling in your birth certificate. Since your Foundation document is your birth certificate the name on the driver's licence must comport to the spelling there.

You cannot be arguing that the basis of your unfairness complaint is that ICBC is treating you discriminately. You are being dealt with in the same manner that all customers in your circumstances have or will be dealt with. So, the basis of your argument must be that it is manifestly unreasonable to require you to receive a driver's licence issued in the name of "██████". It is certainly an inconvenience and may involve some cost to you if you move formally to change the spelling of your surname to bring it into conformity with other government documents. But, when you align those factors against the security and identity issues that the Corporation is charged with serving, in terms of systemic integrity, I am unable to conclude that you have demonstrated on the balance of probabilities that the decision in your case is manifestly unreasonable. You may view it as a form of institutional pettifoggery but the Corporation views it as crucial to the maintenance of the integrity of the licensing system itself.

In the circumstances, I am not persuaded that you have demonstrated that ICBC has dealt with you unfairly in in this instance and I do not, therefore, propose to make a recommendation to the Board of the Corporation that would affect your situation.

Of course, you could take the matter 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

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Peter Burns, Q.C.
Fairness Commissioner

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

Case 5: Driver Licensing
*British Columbia driver licensing requirements regarding name display,
despite previous ICBC error.*

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

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November 14, 2017

[REDACTED]

Dear Ms. [REDACTED]:

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

I acknowledge receipt of your application, dated September 27, 2017, for a Fairness Review of the decision by ICBC that the name displayed on your B.C. driver's licence must match the name on your current foundation document, namely your Canadian Citizenship certificate.

In reaching my decision I have taken into account the submissions you make in your review application, together with the contents of a file prepared by ICBC for this review, that contains, among other things, the various submissions that you have made to the Corporation over time, the relevant provisions of the *Motor Vehicle Act*, and an earlier decision 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 manifestly unreasonable in the circumstances of the case?

The facts in your case are fairly clear. In 2000 you were issued a B.C. driver's licence in the name of [REDACTED], which did not include [REDACTED]. This omission was admittedly an error on the part of ICBC at the time. You left British Columbia in 2008 and returned this year. When you applied for a B.C. driver's licence you were advised that it would have to be issued in the name of [REDACTED].

Since the issuance of your B.C. driver's licence you had used only the name [REDACTED] and this is reflected in a number of formal identities acknowledged by other parts of government. ICBC's position is that, whereas section 25(1.1)(b) requires an applicant to provide "documentary proof" satisfactory to ICBC before a driver's licence will be issued to a customer, the statute does not specify which documents will constitute "proof satisfactory" to ICBC. But the ICBC Licensing Manual lists Canadian birth certificates and documents or cards issued by Citizenship and Immigration Canada.

The rigour intrinsic to the limited number of documents that a customer can use to demonstrate proof satisfactory to ICBC is essentially the result of the terrible events of 9/11 2001. Since that time all licensing authorities have developed strict requirements before issuing drivers' licences to customers. It is not just for the security of the state but also, more generally, to combat identity fraud. Drivers' licences are the most common means of identification in our society today and if exceptions were made to the rigour of the current system the integrity of the driver's licence as a means of identification would disappear. It undoubtedly causes real hardship to some customers who have been caught up in this change. But, I have ruled in the past, so long as the proof requirements are even-handedly applied to all customers they are not unfair.

You have been advised by the Attorney-General in his letter to you of the steps you could take to deal with the matter.

Although there was an error by ICBC in issuing the original driver's licence to you, once such an error is discovered it is incumbent upon the Corporation to rectify it. As well, I am puzzled why at that time of issuance you did not point out the error to the Corporation.

The burden of establishing unfairness rests upon the customer on the balance of probabilities. In your case I am not persuaded that you have met this burden. Accordingly, 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 your case to the Office of the Provincial Ombudsperson, which has a wider jurisdiction than my own. You could also take 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 stroke at the end.

Peter Burns, Q.C.
Fairness Commissioner

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

Case 6: Driver Licensing
Request denied to retain an out of country driver's license.

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

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October 31, 2017

[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 12, 2017, for a Fairness Review of the decision of ICBC to retain your [REDACTED] driver's licence when you failed your road test for a Class 5 driver's licence on September 12, 2017.

In reaching my decision I have taken into account the submissions you make in your review application, the contents of a file prepared for the purpose of this review by the Corporation that contains, among other things, the relevant statutory provisions that apply in cases such as this, and an earlier decision of my own that deals 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 manifestly unreasonable in the circumstances of the case?

The facts in your case are quite clearly outlined in the letter to you, dated September 29, 2017, from Ms. [REDACTED], Customer Relations Advisor.

The burden of establishing unfairness rests with the customer upon the balance of probabilities. In your case you do not argue that ICBC has breached any technical rule of process or that you are being dealt with differently from any other customer in your situation. Accordingly, you must be arguing that the decision to retain your driver's licence was manifestly unreasonable in the circumstances.

I am afraid that I am unable to agree with this argument. ICBC has the power to retain a driver's licence in the circumstances that you were involved in. I have examined this matter in the past and I have concluded that in the absence of any evidence of malfeasance on the part of the Corporation it is not unfair for the Corporation to retain a driver's licence in circumstances such as yours. There is a statutory provision against a customer holding two driver's licences at the same time, and you had been issued a B.C. Learner's licence. Accordingly, I am unable to conclude that you have demonstrated that the retention of your [REDACTED] licence by ICBC was unfair.

Your real complaint, it seems to me, is that having had your [REDACTED] licence retained you discovered that although you can drive with your learner's licence, another road test date for your Class 5 driver's licence would be some months away. This is essentially an argument that goes to the allocation of resources by the Corporation to a particular function and falls outside my remit. In the result, I am unable to conclude that you have demonstrated on the balance of probabilities that ICBC has dealt with you unfairly.

Accordingly, I do not propose to make a recommendation to the Board of the Corporation that would affect your present circumstances. However, you could 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:

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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 7: Claims
Disagreement on the Actual Cash Value of a vehicle, and consideration for compensation for after-market parts

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

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June 9, 2017

[REDACTED]

Dear Mr. [REDACTED]:

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

I acknowledge receipt of your application, dated April 19, 2017 for a Fairness Review of the settlement you reached with ICBC pertaining to compensation for the theft of your [REDACTED] [REDACTED] from a car show you were attending in [REDACTED], on July 31, 2016.

In reaching my decision I have taken into account submissions you make in your review application, together with the letters of correspondence between yourself or Mr. [REDACTED], acting on your behalf, and the Corporation over the past year. I have also taken into account the contents of a file prepared by the Corporation for the purpose of this review which includes, among other things, a full chronology of the relevant events, and a detailed description of the condition that your vehicle was in at the time of its theft.

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 manifestly unreasonable in the circumstances of the case?

ICBC is not disputing the theft of your vehicle nor that you are entitled to compensation under your policy of insurance for that theft. The dispute between you and the Corporation relates to the amount of compensation that you are entitled to. The Corporation says that it is only responsible for the Actual Cash Value (ACV) including \$5,000.00 for bolted on after-market equipment. This, in ICBC's eyes, would be \$55,483.04 which would include \$5,000.00 for the after-market equipment added to it. You, on the other hand, feel that the ACV should be somewhere in the range of \$72,000 odd dollars to \$86,000 odd dollars. Ultimately, you have accepted ICBC's ACV. You argue that although you accepted ICBC's offer of settlement, it was an unfair settlement.

The basis for your argument is a simple one. You purchased your insurance coverage through an Autoplan broker. You could have, at that time, purchased a declared value policy, so long as all the modifications you had made to the vehicle were disclosed to the broker at that time. But you did not purchase such a policy. Accordingly, the estimator based the value of your vehicle on a stock vehicle plus \$5,000.00 for bolted on after-market equipment. The value attributed to your vehicle was reviewed by ICBC's Business Review Committee which concluded that the estimator's decision was in accordance with ICBC's obligations under the policy of insurance that you purchased.

You argue that the amount reached by ICBC is unfair because you were not advised at the time of purchase of the policy that a declared value policy was available and more appropriate to your needs.

This leads us to what I believe is the real problem in your case, and one that is essentially legal rather than a matter of fairness. You seem to be arguing that ICBC is responsible for the conduct of its Autoplan brokers. But, a broker is an agent for both the customer and the principal. In this case it is clearly the agent of ICBC in placing whatever insurance ICBC has and is placed. But, in determining the nature of the insurance to be purchased the broker is acting as agent for the purchaser and not ICBC. At least, that is my view of the relationships involved.

This means that if you should have been advised about more appropriate insurance to suit your circumstances, that is a matter to be taken up with the broker and cannot be laid at the feet of ICBC. Under my terms of reference I am confined to dealing with matters of policy and procedure of ICBC and not of others. So, in a real sense I may have no jurisdiction to deal with your case.

But, having read and reviewed the voluminous material on your file my conclusion is that ICBC has taken your arguments into account, considered them and rejected them only after proper reflection. My conclusion is that you have not demonstrated on the balance of probabilities that the offer made to you by ICBC (and which you have accepted) is patently unreasonable in the

circumstances. ICBC has merely followed its standard practice in determining the ACV in cases where there is no declared value policy in issue.

The upshot is that I am not persuaded that you have been dealt with unfairly by the Corporation. Accordingly, I do not propose to make a recommendation to the Board of the Corporation that would affect your present circumstances.

Of course, you could 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:

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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.

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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 8: Claims
Misrepresentation of vehicle information from ICBC presented in arbitration review.

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

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July 10, 2017



Dear Mr. [REDACTED]:

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

I acknowledge receipt of your online application, dated June 23, 2017, for a review of ICBC's participation in the arbitration proceeding that dealt with the value of your 2002 [REDACTED], which was deemed to be a total loss, as the result of a two vehicle collision that you were involved in on September [REDACTED], 2014. You were found to be not at fault for that collision.

In reaching my decision I have taken into account the submissions you make in your review application, together with the contents of a file prepared by ICBC for the purpose of this review which contains, among other things, a full chronology of the relevant events, a copy of the arbitrator's decision and report, and various pieces of correspondence between you and the Corporation over time.

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 manifestly unreasonable in the circumstances of the case?

Following the damage to your vehicle, resulting from the collision itself, you were initially dissatisfied with the decision of ICBC that your car was a total loss. Subsequently, you were dissatisfied with the Actual Cash Value placed on the vehicle by ICBC. Since no agreement between you and ICBC could be reached as to the Actual Cash Value of your car you decided to have the matter arbitrated. Before the arbitrator you proposed an Actual Cash Value of \$ [REDACTED], exclusive of taxes and deductibles, whereas ICBC proposed the sum of \$ [REDACTED]. The arbitrator found the Actual Cash Value to be \$ [REDACTED].

What then is the gist of your complaint? You say that in the material provided to the arbitrator by Mr. [REDACTED], Total Loss Handler, there was a misrepresentation. In the submission Mr. [REDACTED] stated "we were not able to find out what the insured is expecting for a payout". ICBC agrees that this statement was inaccurate and that there were several e-mails between yourself and Mr. [REDACTED] indicating that you were expecting a \$ [REDACTED] payout for the loss of your vehicle.

After the arbitration decision, on April [REDACTED], 2017, you raised concerns about the information that Mr. [REDACTED] had provided to the arbitrator and the matter was reviewed. As a result, on June [REDACTED], 2017, you spoke to the Operations Manager who, after examining the file, agreed that erroneous information had been passed on to the arbitrator and apologized to you for that. You argue that the misrepresentation by Mr. [REDACTED] was willful and speculate (although you couch your speculation terms of a desire not to speculate) as to whether or not Mr. [REDACTED] had done this in the past. You also speculate that the misrepresentation may have "potentially prejudiced my case".

The file reveals that Mr. [REDACTED], Operations Manager, who subsequently made the apology on behalf of the Corporation, taxed Mr. [REDACTED] with the error. He was convinced that the false submission to the arbitrator was as the result of "an oversight versus a deliberate act". Whether deliberate or careless, the submission appears to me to have not affected the award of the arbitrator. Having read her decision, it appears to me that she took all the relevant information into account and based her decision on that information when she awarded you an Actual Cash Value in the amount of \$ [REDACTED], exclusive of taxes.

Given that the burden of establishing unfairness of ICBC in its dealings with you rests upon you, on the balance of probabilities, I draw two conclusions from the material that you have presented. The first is that you were unfairly treated as the result of the way in which information presented to the arbitrator by ICBC is concerned. The second conclusion is that the misrepresentation had no material affect on the arbitrator's decision itself. Mr. [REDACTED], on behalf of ICBC, apologized to you for the misrepresentation and the way in which it occurred, and I am of the view that this was the appropriate response in the circumstances. I am not persuaded that you have demonstrated that the misrepresentation in any way affected the outcome of the arbitration itself.

Accordingly, I do not propose to make a recommendation to the Board of the Corporation that would affect your present circumstances. Of course, you could take the matter to the Office of the Provincial Ombudsperson, which has a much 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 9: Finance
Failure to meet the terms of ICBC insurance premium payment plan agreement

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

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August 1, 2017

[REDACTED]

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, dated June 28, 2017, of the claim by ICBC that you have a small debt, in the amount of \$[REDACTED], owing to the Corporation resulting from the cancellation of your insurance on August 1, 2016.

In reaching my decision I have taken into account the submissions you make in your review application, as well as the various communications that you have had with the Corporation over time. I have also had the benefit of a file prepared by ICBC for the purpose of this review which includes, among other things, a full chronology of the relevant events, a copy of the financing contracting that you held with the Corporation and a copy of your insurance agreement itself.

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 manifestly unreasonable in the circumstances of the case?

I will not restate the facts of your case. They are very clearly set out in the letter to you, dated April 12, 2017, from Ms. [REDACTED], Customer Relations Advisor. The specific issue that you raised relating to your inability to obtain Autoplan services prior to the unsuccessful attempt of the Corporation to obtain payment on August 1, 2016, was also clearly addressed by Ms. [REDACTED] in her letter to you, of June 29, 2017.

Bearing in mind that the burden of establishing unfairness rests with the customer claiming it, in what way has the Corporation dealt with you unfairly?

You do not base your claim on a failure by the Corporation to observe rules of administrative fairness, nor do you claim that you have been discriminated against. Accordingly, the basis of your claim must be that it is manifestly unreasonable for the Corporation to require payment by you of the balance it says you owe it. But, you do not make out a case for this. All that the Corporation is doing is enforcing the terms of a contract that it entered into with you. The whole matter could have been avoided by a little forethought on your part prior to August 1, 2016. In these circumstances, I cannot agree that ICBC is dealing with you unfairly by insisting upon the terms of your payment plan being met.

Accordingly, I do not propose to make a recommendation to the Board of the Corporation that would affect the circumstances of your case. However, you could take the matter to the Office of the Provincial Ombudsperson, which has a wider jurisdiction than my own. Or, you could take the matter to the courts of this province. You could also make arrangements with Account Services of the Corporation to pay off the debt.

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,

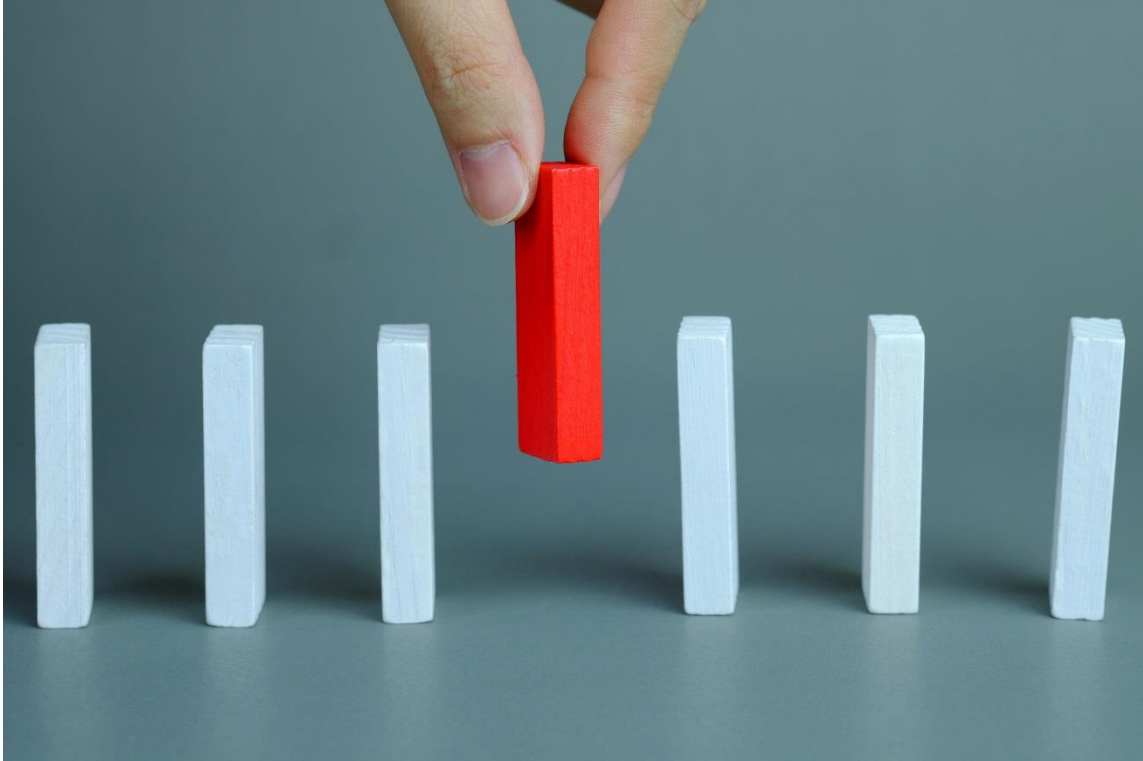
A handwritten signature in black ink, appearing to read "Peter Burns". The signature is fluid and cursive, with a long horizontal stroke at the end.

Peter Burns, Q.C.
Fairness Commissioner

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

APPENDIX B

Examples of Non-Jurisdictional Cases



The following two cases are examples from 2017/18 that were outside of the Fairness Commissioner's jurisdiction for review as per Section 2 of the Terms of Reference.

Case 1: Driver Licensing
Issuance or traffic violations.

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

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May 8, 2017

[REDACTED]

Dear Ms. [REDACTED]:

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

I acknowledge receipt of your application for a Fairness Review, dated February 28, 2017, and updated on April 20, 2017. The Fairness Review is presented on your behalf by your mother, Ms. [REDACTED], and relates to the decision of RoadSafetyBC that you should be prohibited from driving a motor vehicle in this province for six months from [REDACTED].

In reaching my decision I have taken into account the submissions made in your review application, together with the contents of a file prepared for the purpose of this review by ICBC, which contains, among other things, a full chronology of the 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 manifestly unreasonable in the circumstances of the case?

The facts of your case are fairly clear. You received a six month driving prohibition as a result of two offences in February 2015. These were failing to remain at the scene of an accident and driving without due care, each of which is considered a high risk driving offence.

Nine months after that prohibition ended you incurred two additional offences, one of which was for excessive speed (40 km over the posted speed limit). You were then issued a seven month prohibition which you appealed to ICBC and RoadSafetyBC. As a result of the appeal to RoadSafetyBC, the length of your driving prohibition was reduced from seven months to six months.

At the outset, you should understand that my jurisdiction is limited. It is confined to procedural errors committed by ICBC that have led to an unfair result. I can also intervene if the decision of ICBC is manifestly unfair in the circumstances of the particular case.

The burden of establishing unfairness is on the customer, and it must be established upon the balance of probabilities. What then is your claim that you have been treated unfairly by ICBC?

You say it is because of the economic impact of the suspension which is borne by your mother. You also say that you felt scared by the police officer when you decided not to defend the last ticket you got for speeding.

I am afraid that neither of these reasons grant me jurisdiction to deal with your application. The economic impact of a properly applied sanction is not a matter of procedural error. Nor do I have jurisdiction to deal with your reaction to the police officer when you were ticketed on the last occasion. I am confined to reviewing procedures, practices, and decisions of ICBC and cannot review those of other Crown agencies. As well, in my opinion, no stretch of the imagination can characterize ICBC's decision to uphold the six months prohibition as manifestly unreasonable in the circumstances. You are being dealt with in exactly the same way as all other customers are in your circumstances and you have committed two high risk driving offences. The Driver Improvement Program (DIP) under which the prohibitions were made is clearly designed to reduce high risk driving activities of customers. In my view, the second driving prohibition is quite consistent with the policy goals of that program.

The upshot is that I am unable to uphold your submission that you have been dealt with unfairly by ICBC and do not propose to make a recommendation to the Board of the Corporation that would affect your present circumstances.

You could, of course, apply again to ICBC to review the suspension, but you should be aware of ICBC's policy of not granting such a review unless there is new evidence that has not already been considered. You also have the option to appeal your suspension to the Supreme Court under section 94 of the *Motor Vehicle Act*.

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.

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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 2: Claims
Determination of liability decided by ICBC's arbitration process, Claims Assessment Review (CAR)

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

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July 21, 2017

[REDACTED]

Dear [REDACTED]:

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

I acknowledge receipt of your application for a Fairness Review of the decision by ICBC to hold you 100% at fault for the relatively minor collision that occurred between a vehicle driven by you on the ramp of Lions Gate Bridge on November [REDACTED], 2016, and another vehicle.

In reaching my decision I have taken into account the submissions that you have made over time relating to the way in which the collision occurred and the contents of a file prepared by ICBC for the purpose of this review that sets out a full chronology of events and a copy of the relevant statutory provisions that apply to cases such 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 manifestly unreasonable in the circumstances of the case?

The facts, as ICBC understands them, are set out in the letter to you, dated June 22, 2017, from Ms. [REDACTED], Customer Relations Advisor.

You dispute the liability decision which was reached by a claims adjustor and reviewed by two managers. For the purpose of this review you submit that the adjustor when you initially reported the case made a mistake or misunderstood some of the information that you related to her. You say that you were fully established in the lane that you were driving in when you were struck by the other vehicle. ICBC has concluded that the other vehicle was fully established in that lane and your vehicle struck the other vehicle whilst attempting to establish itself in that lane.

Unfortunately, I am advised that since the claim was reported in 2016, the call recording is no longer available. The claim that the adjustor misunderstood what you reported at the time is a “he said/she said” issue. A fairness review forum is, in my view, the wrong place to decide the matter. It is only in a court where the parties and witnesses are subject to examination and cross-examination that such a matter can be fully canvassed and resolved.

Be that as it may, you took your case to the internal arbitral process that the Corporation makes available to customers where they remain dissatisfied with the Corporation’s determination of liability, namely a Claims Assessment Review. This is an arbitration process available to customers upon their request. Given that it is an arbitration I, technically, have no jurisdiction over the proceedings and result. But, it is worth noting that the arbitrator concluded that you were “in all likelihood changing lanes to [your] left at the time of the accident. The damage to [your] vehicle is consistent with such a scenario and the assertion that the [REDACTED] had crossed into oncoming traffic to pass [you], while not impossible, was improbable in my opinion, and unsupported by independent evidence.” It is true that the arbitrator prefaced this conclusion by accepting that you had initially stated that you were in the right hand lane when you had contact with the other vehicle. This is what you now describe as a misunderstanding of what you said to that adjustor. However, I have no jurisdiction to interfere with the determination of the arbitrator in the Claims Assessment Review. Nor, under my Terms of Reference do I have jurisdiction to deal with claims or disputes that relate to assessment of liability.

In the circumstances of your case, I am forced to conclude that I have no jurisdiction to review it other than where it relates to the “misunderstanding by the adjustor” as to the facts that were initially reported by you. In that regard, I must conclude that you have not demonstrated upon the balance of probabilities that the conclusion reached by ICBC is manifestly unreasonable. My conclusion is, therefore, that you have not demonstrated unfairness on the part of ICBC in its dealings with you.

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

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

APPENDIX C

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.