

**2013 Annual Report**  
**Office of the**  
**ICBC Fairness Commissioner**

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**Peter Burns, Q.C.**  
**ICBC Fairness Commissioner**



Published April 2014

## Who is the ICBC Fairness Commissioner?



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

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

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

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

## **From the 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.

In the past a steady state of between 150 to 185 new cases has traditionally reached the Fairness Commissioner's office, and in 2013 the number of new cases was 178. These cases do not reflect the complete picture, as 56 per cent of the cases in 2013 were resolved by the Insurance Corporation of British Columbia (ICBC) Customer Relations department to the satisfaction of the customer 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, again to the satisfaction of the customer concerned.

I am very pleased to report to the Board 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 2013, there were five such cases, summarized in Appendix A.

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

Against the backdrop of the statistics of this report, 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 2013, none 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 also like to express my appreciation to the staff of the Corporation. They have been patient, instructive, and above all, cooperative, in pursuing the mission of the Fairness Commissioner's Office.

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Peter Burns, Q.C.  
ICBC Fairness Commissioner

# ANNUAL REPORT OF THE ICBC FAIRNESS COMMISSIONER

April 2014

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## Introduction

The Annual Report of the ICBC Fairness Commissioner is a summary of his activities in 2013. The report is a requirement of the Fairness Commissioner's Terms of Reference, outlined in Appendix F.

This report includes:

- the concept and elements of the Office of the ICBC Fairness Commissioner, with some examples of customer complaints and resolved cases
- statistics from 2013
- Terms of Reference for the ICBC Fairness Commissioner



## Mission Statement

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

## Role and Authority

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

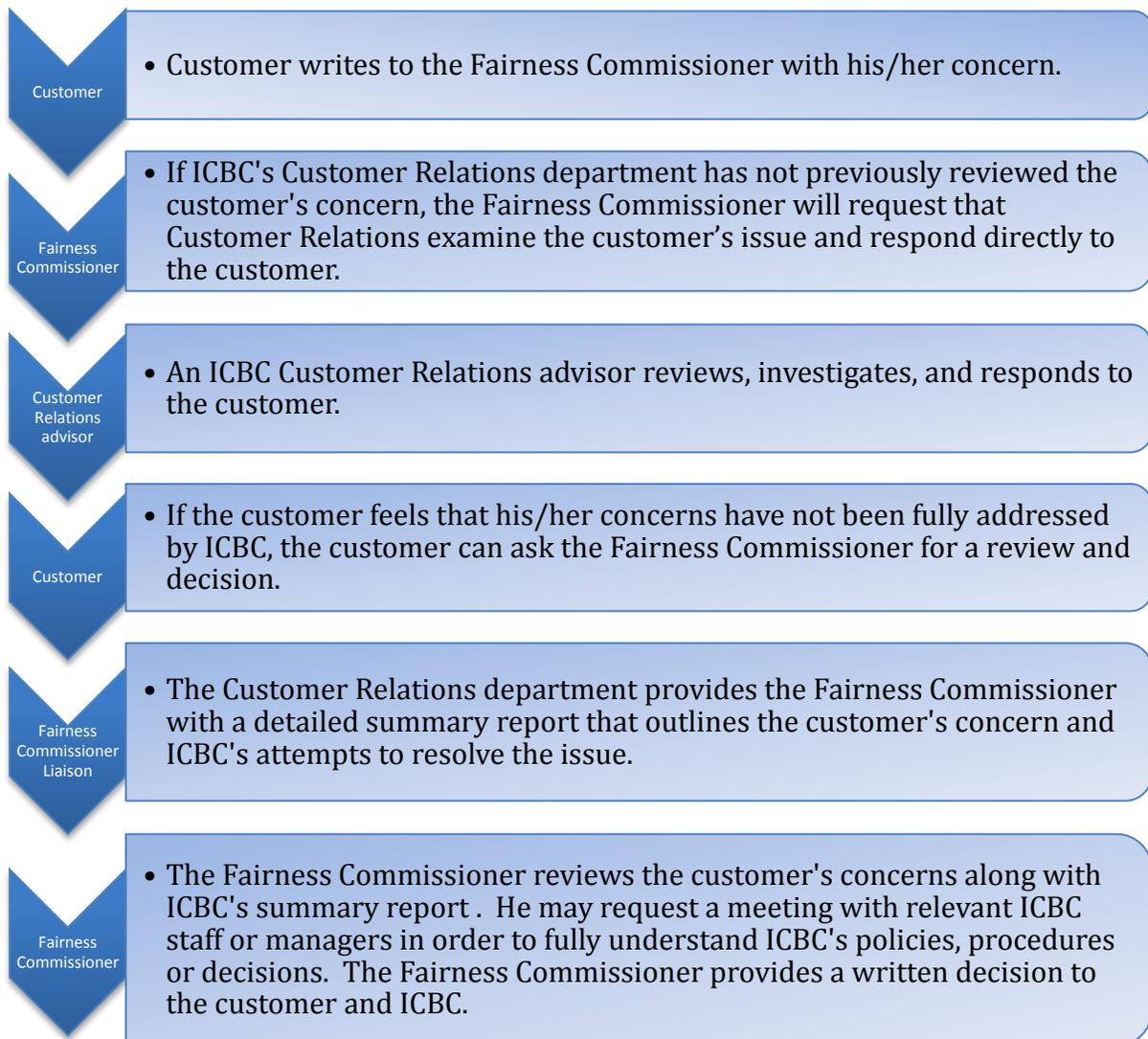
The Office of the Fairness Commissioner's jurisdiction deals with fairness of process or administration. The Commissioner does not have jurisdiction to deal with disputes that relate solely to the amount of a final payment or the assessment of liability. In these matters, customers have a right to a 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 absence of fairness in either of these processes.

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

## The Fairness Commissioner must be:

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

## What is the process?



**Upon completion of his review, the Fairness Commissioner may:**

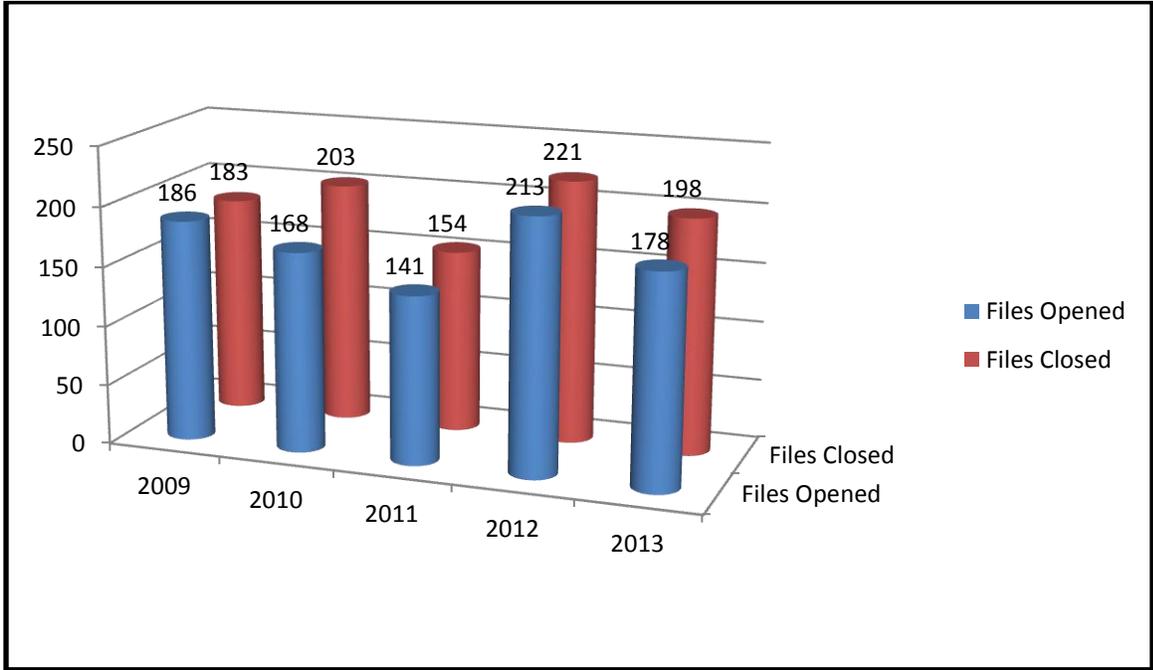
- refer the matter back to ICBC for reconsideration, as in cases summarized in Appendix A.
- make a recommendation to ICBC that the complaint be resolved in such manner as he deems appropriate. Should ICBC reject the Fairness Commissioner's recommendation, he is empowered to take the matter directly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

## Highlights of 2013

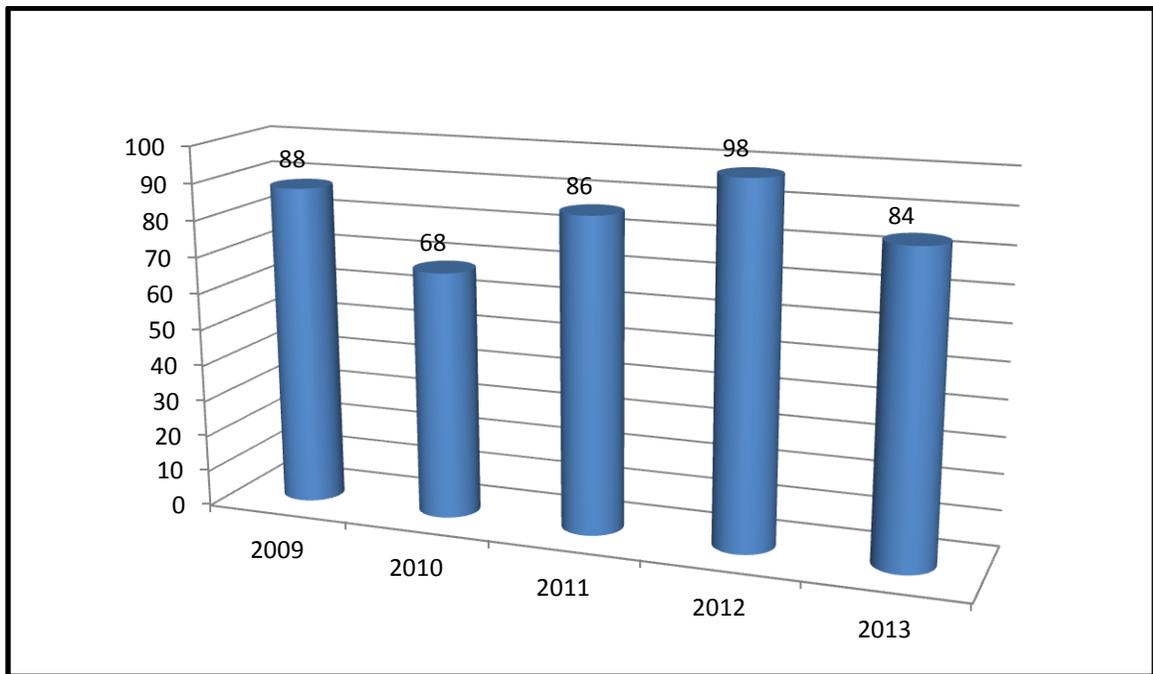
- 1) The Fairness Commissioner did not make any formal recommendations to ICBC in 2013. In comparison, the Fairness Commissioner made one recommendation to ICBC in 2012, no recommendations in 2011, one in both 2010 and 2009, and five recommendations in 2008.
- 2) The Fairness Commissioner facilitated five positive outcomes with ICBC in 2013, and these customer cases were resolved without the necessity of a formal recommendation. See Appendix A.
- 3) The Fairness Commissioner received 178 complaints, in comparison to 213 in 2012. He reviewed 84 cases, whereas in 2012 he reviewed 98. See Fairness Commissioner 2013 Statistics.
- 4) In order to improve customer accessibility to the Fairness Commissioner, an online form was added to the Fairness Commissioner's website in 2011. In 2013, 55 per cent of customers contacted the Fairness Commissioner using the online form instead of regular mail.

# ICBC Fairness Commissioner 2013 Statistics

## Fairness Commissioner Opened and Closed Cases (2009 to 2013)



## Complaints Reviewed by the Fairness Commissioner (2009 to 2013)



## What did ICBC customers write to the Fairness Commissioner about?

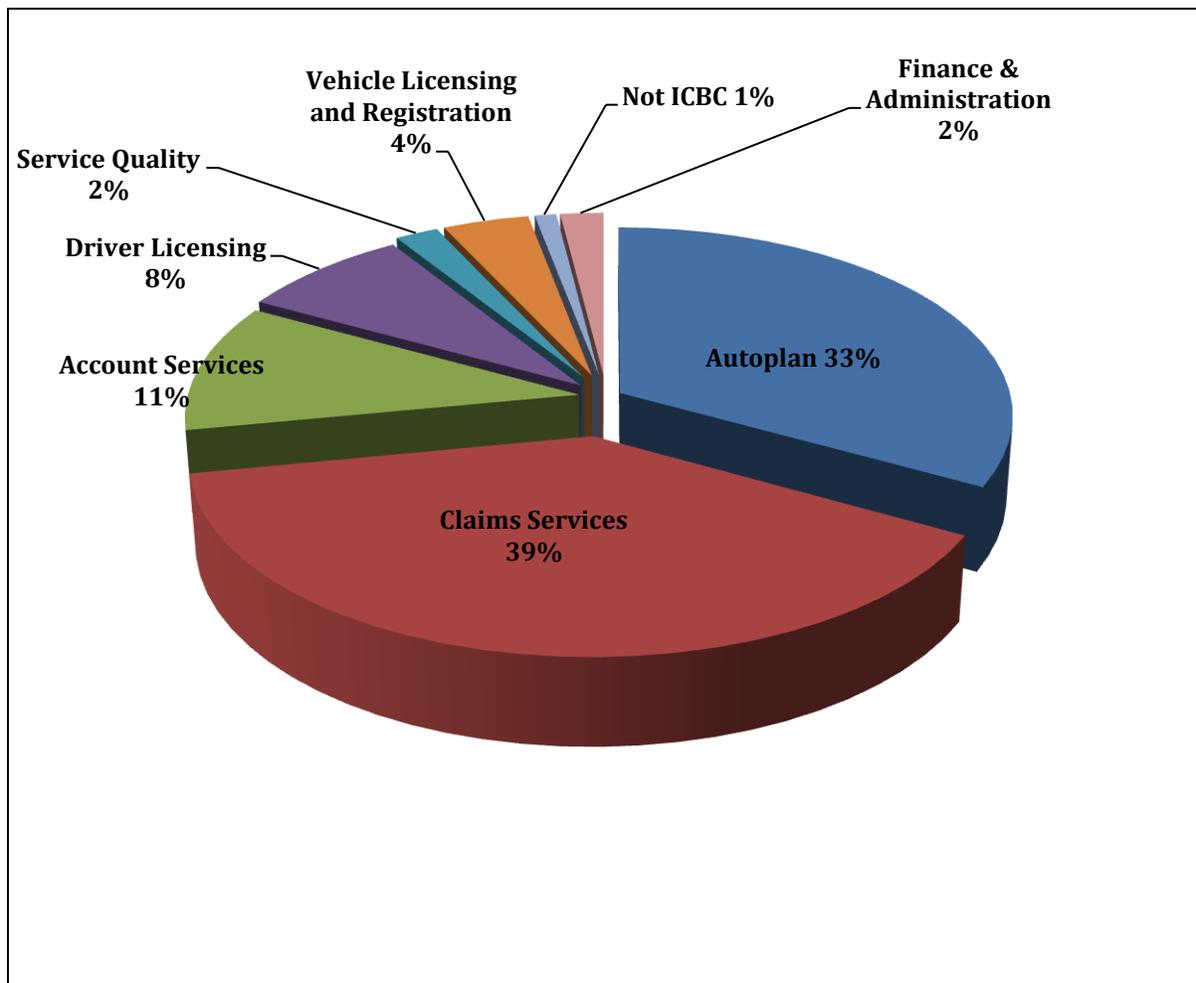
In 2013, the majority of customers who wrote to the Fairness Commissioner had concerns with: Claims Services, Account Services (formerly known as Customer Collections), Autoplan, or Driver Licensing.

The top 4 business areas have remained consistent for the past several years.

### Fairness Commissioner Cases by Business Area

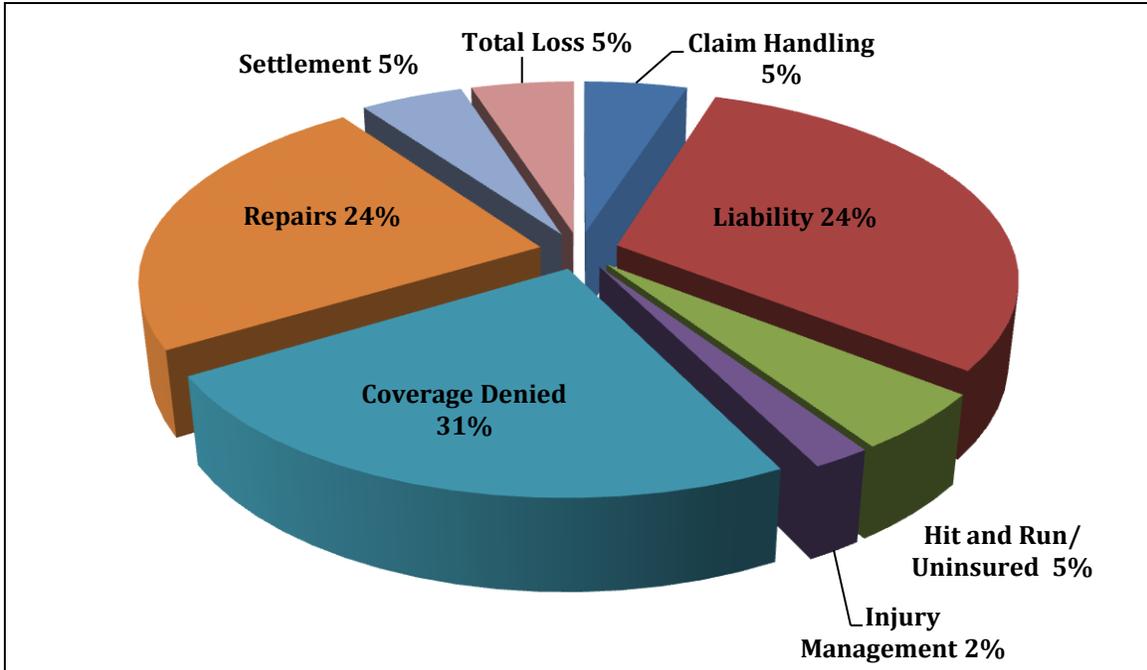
The following charts provide a view of 2013 closed files by business area and issue types. (Note: Percentages may not sum to 100 per cent due to rounding).

Statistics for 2011 -2013 are summarized in Appendix E.



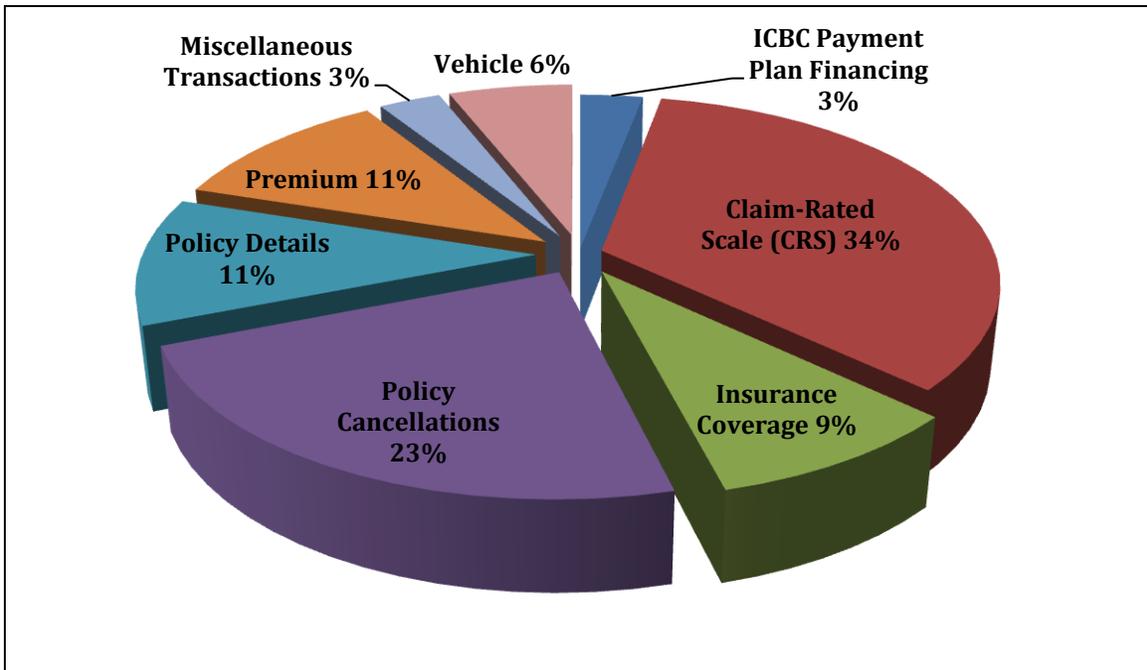
## Claims Services

What aspect of the claims experience concerned the customer?



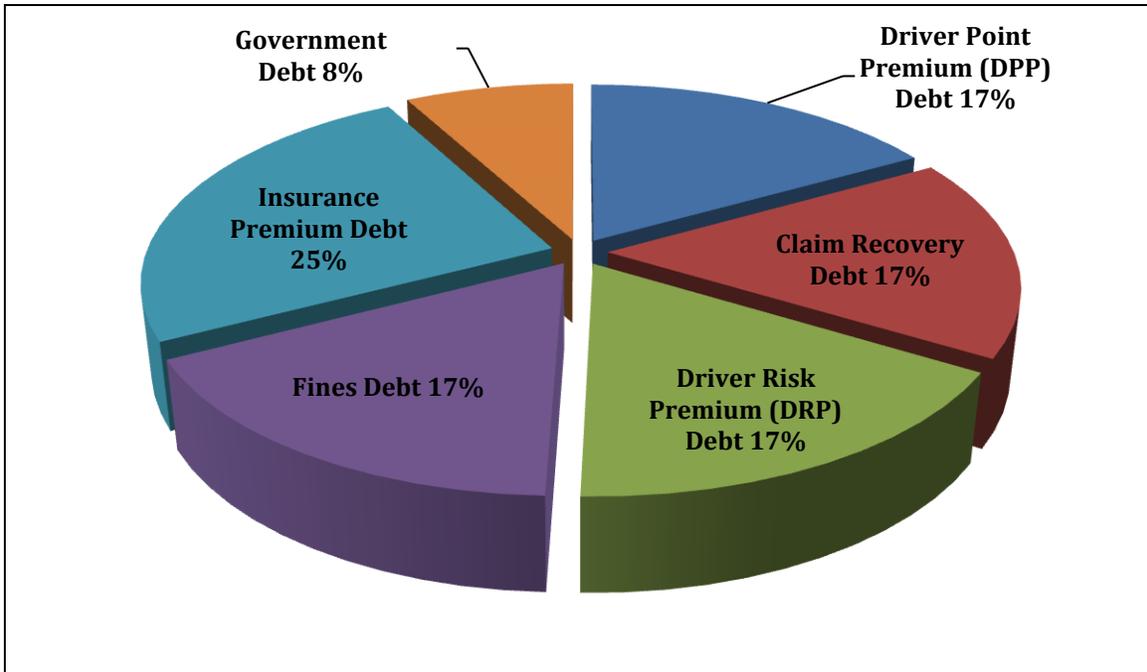
## Autoplan

What insurance related transaction concerned the customer?



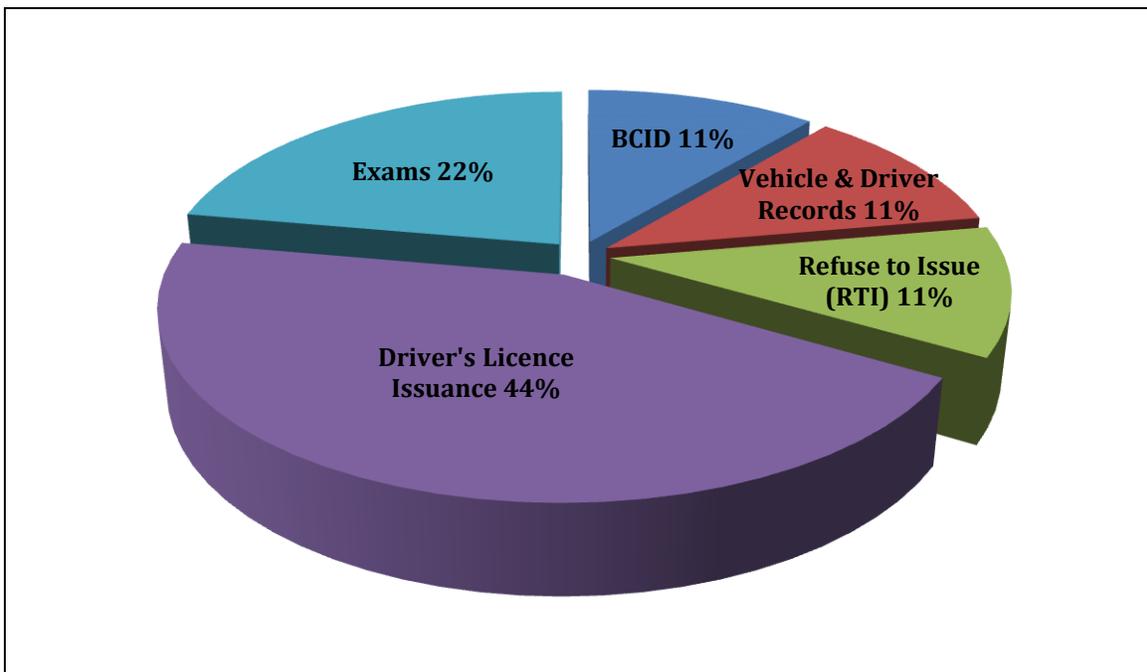
**Account Services**

What type of debt related activity concerned the customer?



**Driver Licensing**

What Driver Licensing process or program concerned the customer?



### Fairness Commissioner (FC) Case Resolution from 2010 – 2013

	2010		2011		2012		2013	
Customer Relations (or other ICBC department) resolved the matter to the customer's satisfaction	129	64%	63	41%	120	54%	<b>111</b>	<b>56%</b>
Reviewed by the FC with a determination of no unfairness	52	25%	70	45%	66	30%	<b>70</b>	<b>35%</b>
Reviewed by the FC with a recommendation that was implemented by ICBC	1	1%			1	0%		
Resolution facilitated by the FC	5	2%	3	2%	5	2%	<b>5</b>	<b>2%</b>
Determined to be outside the jurisdiction of the FC	10	5%	15	10%	25	11%	<b>9</b>	<b>5%</b>
Customer abandoned or withdrew their concern	6	3%	3	2%	4	2%	<b>3</b>	<b>2%</b>
<b>Total</b>	<b>203</b>		<b>154</b>		<b>221</b>		<b>198</b>	

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

## **Appendix A:**

### ***Cases Resolved by the ICBC Fairness Commissioner Without a Recommendation***

In 2013, there were five cases where the Fairness Commissioner directly assisted with the outcome without the necessity of a formal recommendation. In each of these cases, the Commissioner consulted with ICBC and facilitated a positive change for the customer. The following cases are summaries of the issues and the Fairness Commissioner's investigations, analyses, and the resolutions.



#### **Case 1 (C219924):**

##### **Issue:**

Mr. A was in a serious car accident in 1991, which left him a quadriplegic. As part of his settlement, he received a hospital bed to address his medical needs. In 2005, Mr. A was in another car accident where he sustained a neck injury and suffered chronic pain. In early 2013, Mr. A requested that a new hospital bed be purchased by ICBC. This request was denied by ICBC, and Mr. A wrote to the Fairness Commissioner as he did not feel that the denial was fair.

##### **Investigation and Analysis:**

Mr. A argued that ICBC should purchase the bed because his family physician supported its replacement. Mr. A's doctor wrote: *"This gentleman has to make use of a hospital bed, but unfortunately his current one is 20 years old and is not functional and this is aggravating his ongoing pain related, in particular, to his second [2005] motor vehicle accident"*. ICBC felt that the replacement of the aging hospital bed was related to the 1991 car accident and not the 2005 accident.

**Resolution:**

The Fairness Commissioner asked ICBC to re-assess Mr. A's needs given the support from his family physician. ICBC reviewed the customer's situation, and the Commissioner later reported to the customer the following:

*"... the Corporation has agreed to have your bed needs re-evaluated by an occupational therapist in the light of the sequela of your 2005 accident and to be guided by the results of that re-evaluation in determining the rehabilitation benefits that you will be entitled to."*

ICBC did this and, subsequently, advised Mr. A that they would pay for half of the new power bed. ICBC determined that only half of the need for a new bed was related to the most recent car accident, and the other half was related to the initial accident.

**Case 2 (C220506):****Issue:**

In 2005, Ms. V was driving her roommate's vehicle when she was involved in a car accident. ICBC determined that Ms. V was 100 per cent responsible for the accident. Erroneously, ICBC sent standard letters on July 26, 2005 to her and her roommate (registered owner of the vehicle) advising that Ms. V was found zero per cent responsible. In 2013, chargeable claim payments, which were paid on the roommate's insurance policy, affected the Claim-Rated Scale (CRS) of a vehicle in which Ms. V was registered to as a co-lessor. Ms. V subsequently contacted ICBC and was allowed to repay the 2005 claim. She disagreed, however, with the consequences of the 2005 accident and wrote to the Fairness Commissioner.

**Investigation and Analysis:**

The Commissioner reviewed Ms. V's issues, and found that Ms. V understood from ICBC's July 26, 2005 letter that ICBC had determined her not to be at fault in any way. As a result, she made no attempt to take advantage of the internal review process available to customers relating to liability decisions.

The Commissioner noted that,

*"ICBC, on the other hand, argued that you were well aware that you were held 100% at fault at the time. A letter had been sent to your roommate indicating this, and that the letter sent to you, in any event, makes it clear that payments would be made on the policy of your roommate's car. That letter also stated, "Currently a claim payment affects the policy of the vehicle involved in the accident ...." The file notes also reveal that you had been verbally advised by your adjustor in 2005 that you had been found to be 100% at fault for the collision."*

The Commissioner then concluded,

*“In these circumstances is it unreasonable for ICBC to conclude that you were probably aware of your fault assessment in 2005? My opinion is that you have not demonstrated upon the balance of probabilities that this was not the case. The reference to 0% liability in the 2005 letter to you, was obviously a typographical error and, given the other information you had at the time, should not have been relied upon by you in the circumstances. So, as to your primary argument, I conclude that the Corporation has not dealt with you unfairly in holding you 100% responsible for the collision and in applying that determination to your present circumstances as a consequence of the claim still “dangling”.*

*However, one must be mindful of the fact that this is 2013 and the letter and communications with your adjuster occurred in 2005. Your reliance upon one part of the letter to the exclusion of other parts of it was probably an honest mistake on your part. Accordingly, since what you are really concerned about is your lack of opportunity to have the liability determination reviewed by the Corporation, I asked the Corporation to re-examine its position in this regard.”*

**Resolution:**

Based on his review, the Fairness Commissioner asked ICBC to re-assess Ms. V’s situation. ICBC did so and offered her the option of a Claims Assessment Review. Ms. V’s accident was reviewed by an external arbiter in September 2013, and the original determination that Ms. V was 100 per cent responsible for the 2005 accident was upheld.

**Case 3 (C221967):**

**Issue:**

Mr. J moved to B.C. and requested a 35 per cent Claim-Rated Scale (CRS) premium discount from ICBC. ICBC’s Risk Underwriting department reviewed Mr. J’s request and provided him with a 30 per cent discount based on the claims history information he provided. Mr. J wrote to the Fairness Commissioner as he was unhappy that ICBC did not grant him a further five per cent discount on his premium.

**Investigation and Analysis:**

For a year, Mr. J worked in another Canadian jurisdiction and was insured as a driver under his employer’s insurance policy. From the information that Mr. J provided, ICBC was unable to determine whether or not the company vehicle assigned to Mr. J had any liable claims against the policy. ICBC was also unable to determine whether or not he was given exclusive use of the vehicle for work and personal purposes.

**Resolution:**

At the suggestion of the Fairness Commissioner, ICBC reviewed the customer's situation. Based on its review, ICBC agreed to provide Mr. J with a further five per cent CRS discount on the condition that he provide a letter from his former employer confirming the dates he was assigned to their company vehicle for business purposes.

**Case 4 (C224328):****Issue:**

In May 2011, Mr. L's 14 year-old son was injured in a car accident while riding as a passenger in Mr. L's pickup truck. In mid-2013, ICBC made an offer of \$5,000 (with a 30 day deadline) to settle Mr. L's son's injury claim. Mr. L felt ICBC had taken an unreasonable amount of time to present the offer and that the offer was too low. Subsequently, Mr. L wrote to the Fairness Commissioner.

**Investigation and Analysis:**

The Commissioner reviewed Mr. L's case and found that several ICBC managers, as well as the Customer Relations department, had previously reviewed Mr. L's concerns. Regarding Mr. L's concern that ICBC had taken an undue length of time in making its offer, the Commissioner did not find that his son had been treated unfairly and concluded that this was a matter of customer service rather than administrative fairness. Regarding the matter of the offer being too low, the Commissioner advised Mr. L that he was precluded by his term of reference in:

*"interfering in matters of that involve "complaints or disputes that relate solely or primarily to the amount of a final payment claim settlement or assessment of liability ...."*

The Commissioner added that he,

*"did not have the jurisdiction to second guess the Corporation about the proper amount of a claim settlement" and that "I have no jurisdiction to deal with this aspect of your son's case, but I note, in passing, that your son's claim was reviewed by the Manager of Claims Operations Injury Services, who concluded that the offer of \$5,000.00 was appropriate, based on the evidence on file."*

**Resolution:**

Although the Fairness Commissioner did not find any issues of unfairness regarding Mr. L's concerns, the Commissioner raised the matter of the 30 day deadline for acceptance of the offer with ICBC. ICBC subsequently reviewed Mr. L's son's injury claim and agreed to extend the deadline of the offer from 30 days to 90 days.

## **Case 5 (C226388):**

### **Issue:**

In 2007, Mr. G was involved in a minor collision and was found in breach of his ICBC insurance coverage. ICBC determined that he made false representations about the accident. Consequently, ICBC charged Mr. G with monies that were paid as a result of the collision, and a debt account was set up for him. When ICBC asked for repayment of this debt, Mr. G. wrote to the Fairness Commissioner as he did not feel ICBC treated him fairly regarding his claim.

### **Investigation and Analysis:**

At the time of the accident, Mr. G's vehicle was rated for the Senior Rate Class (005). This rate class has a number of restrictions, one being that the vehicle may not be driven to and from, or part way to or from work. ICBC found that Mr. G provided contradictory statements regarding the use of his vehicle at the time of the accident. ICBC determined that Mr. G likely drove his vehicle to pick up his granddaughter from her place of work, which was contrary to the allowed use for the Senior Rate Class.

The Fairness Commissioner reviewed Mr. G's claim and raised some concerns in which ICBC interprets the restrictions for the Senior Rate Class. The Commissioner wrote:

*"Where that clause refers to "to or from work" does it mean the work of the owner, lessee, or principal operator of the vehicle or does it mean any place of work at all? ICBC appears to construe the term as referring to any place of work at all. At first blush it is not obvious to me that this is a reasonable interpretation to place upon the term. If it is, then a customer could not arrange to pick up a friend at his or her work place in order to proceed to a social event. Whereas, the same customer could arrange to pick up the same friend at a bus stop some distance away from the friend's place of work and not be in breach of the exclusion. Since the rationale for the exclusion is, presumably, based upon anticipated risks of collision, the distinction between the two entirely escapes me."*

### **Resolution:**

The Fairness Commissioner requested ICBC review its decision that found Mr. G in breach of his insurance policy, as well as the outstanding debt that resulted. After reviewing Mr. G's claim, ICBC's Account Services department decided to forego its recovery of the debt.

## **Appendix B:**

### ***Cases Resolved by ICBC's Customer Relations Department***

The following cases illustrate some of the circumstances where ICBC's Customer Relations department resolved the customer's concern without the direct assistance of the Fairness Commissioner. These cases involved customers writing to the Commissioner with their concern and the Commissioner asking the Customer Relations department to investigate.

In 2013, 55 per cent of the complaints directed to the Fairness Commissioner were successfully resolved by the Customer Relations department to the satisfaction of the customer. In those instances, a Customer Relations advisor was able to investigate the customer's concern and either explained ICBC's decision or obtained an agreement from a manager, senior executive, or committee to reconsider or make a more favourable decision on behalf of the customer.



#### **Case 1 (C221732):**

##### **Issue:**

The customer wrote to the Fairness Commissioner requesting a backdated insurance premium refund from ICBC to the date he traded in his vehicle. ICBC had denied the customer's request as it had no record of receiving the customer's licence plates, which carried ongoing insurance coverages.

##### **Investigation:**

The matter was referred to the Customer Relations department and it was determined that the customer was out of town when his wife traded in his vehicle for a new car at a dealership. A "roadrunner" agent from a local insurance broker completed the two

insurance transactions. When asked by Customer Relations, the customer's wife, broker, and dealership representative could not explain what had happened to the licence plates for the customer's old vehicle.

**Resolution:**

Customer Relations asked ICBC's Customer Service department to re-evaluate their decision. It was agreed that \$246 would be refunded to the customer based on the following:

- the licence plates were likely surrendered at the dealership even though there was no record of receipt
- the new vehicle was registered on the same day
- the new insurance policy had the same coverage as the old vehicle (the trade-in)

**Case 2 (C222945):**

**Issue:**

The customer wrote to the Fairness Commissioner as he could not understand why ICBC was unable to provide him with a refund beyond three years.

**Investigation:**

The customer transferred the non-Claim-Rated Scale (CRS) policy of a 70 cc motorcycle onto a larger, CRS-qualified 750 cc motorcycle in September 2009. The broker who completed the transaction should have cancelled the policy for the 70 cc motorcycle and issued a new policy for the 750 cc motorcycle.

Due to this error, the customer did not receive a CRS premium discount for the policy on his 750 cc motorcycle and, instead, paid base rate. This error was not brought to the attention of the customer until May 2013. The customer requested a backdated refund from ICBC and he was provided with a refund to May 2010 (3 years).

The matter was referred to ICBC's Customer Relations department and it was determined that ICBC process a backdated refund for three years as a courtesy to the customer on behalf of the broker who made the error in 2009. In these types of cases, ICBC normally refunds customers up to a maximum three years.

**Resolution:**

Customer Relations asked ICBC's Insurance Underwriting department to review the circumstances of the customer's situation. It was found that ICBC's Autoplan manual did not provide sufficient direction in these types of transactions to guide the broker. Given this finding, ICBC agreed to provide a further refund to the customer.

### **Case 3 (C221857):**

#### **Issue:**

The customer wrote to the Fairness Commissioner complaining that he overpaid on his ICBC insurance for the past two years and that ICBC only provided a refund for one of those two years.

#### **Investigation:**

The matter was referred to the Customer Relations department. It was determined that the customer worked in Alberta for about two years. He received improper information from a number of different brokers about rating his vehicle while working in Alberta. The customer believed that he needed to insure his vehicle in Territory Z (out-of-province) since his vehicle was to be driven in Alberta for about half each month.

In 2013, the customer was advised that he was not required to rate his vehicle for Territory Z because his vehicle had not been out of the province for more than half the year or any period exceeding 30 days. The customer was provided a refund for the 2012 policy period as he provided sufficient information to ICBC that his vehicle was not driven outside of BC for more than 30 days in 2012. The customer did not provide the necessary information for 2011.

#### **Resolution:**

Customer Relations asked ICBC's Risk Underwriting department to review the customer's information for the 2011 policy period. Following this review, ICBC agreed to provide a further refund to the customer for 2011.

## **Appendix C:**

### **Select cases**

#### **From the Fairness Commissioner:**

*To give the reader of this report some idea of the issues that I deal with, I include the following sample cases from 2013. Additional examples from my previous annual reports can also be found at: [www.icbc.com](http://www.icbc.com).*



#### **Case Study 1: *breach of policy coverage (C219293)***

I acknowledge receipt of your application for a Fairness Review, dated March 12, 2013, of the decision of the Corporation to hold you in breach of your policy coverage relating to the use of a 1999 BMW motor vehicle which was registered in your name, but driven by your son, M. and involved in a collision on February 6, 2013.

In reaching my decision I have taken into account all the matters that you have raised in your review application, together with the contents of a file prepared for the purpose of this review by the Corporation which includes, among other things, a chronology of the relevant events, the statements that you and your son made to ICBC, the pertinent regulatory provisions, 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.<sup>1</sup>

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<sup>1</sup> This paragraph explains the jurisdiction of the Fairness Commissioner and, for the purposes of this report, has been removed from the subsequent case studies.

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

The facts in your case, as ICBC understands them, are clearly outlined in the letter to you, dated February 25, 2013, from Mr. Craig Stirling, Customer Relations Advisor.

What, then, is the nature of your claim that you have been dealt with unfairly by ICBC? There appears to be two reasons that you provide in support of this proposition.

The first is that your adjustor erroneously advised you that if you paid the difference between the amount of premium that you had been charged for your vehicle and that which you should have been charged, you will no longer be held in breach of your policy of insurance. The amount was relatively small, in the order of \$327.00, and you paid it. Shortly thereafter you were advised by your adjustor that he had made a mistake and that the repayment option in the cases involving misrepresentation relating to the principal operator of a vehicle is not open to a customer. The sum that you had paid out was returned to you. Was this transaction unfair to you? It was certainly an error on the part of your adjustor, but when it was discovered it was remedied at once. You were notified of the error as soon as the Corporation became aware of it. The error did not create any additional disadvantage to you. It was annoying and a failure on the part of the Corporation to measure up to the customer service standards that it sets for itself. But, I am unable to conclude that it led to any unfairness as far as you were concerned.

The other basis for your claim that you have been dealt with unfairly appears to be the argument that the adjustor was leading the questions [that were dealt with in the statements made by you and your son to the adjustor] and that you trusted him and just signed the statements without reading them. The Corporation's response to this is that the answers to any questions asked by the adjustor were provided by you and your son and you each signed off on them. In short, the Corporation takes the position that you were fully aware of the contents of your statement, as was your son, when you made them to the adjustor and signed them.

In these circumstances, have you demonstrated on the balance of probabilities that it is unreasonable for the Corporation to hold you in breach of your policy of insurance? I am afraid that I am unable to conclude that you have demonstrated this. Your statements are really quite unequivocal. You said that your son is the "main driver for this BMW .... He would have the car Monday to Friday and I would drive it on weekends for shopping or visiting family." In the words of your son, M., "I need to drive the BMW all the time .... I am the main driver of the BMW ...." He did confirm that you would drive the BMW on

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

weekends. When what was said in these two statements is lined up against the definition of "Principal Operator" contained in section 1(1) of the *Insurance (Vehicle) Regulation*, where that term is defined to mean "the person who will operate the vehicle described in an application for a certificate for the majority of the time...", there is hardly any room to doubt that the principal operator of your 1999 BMW was M. at the time of the accident.

Accordingly, I conclude that the decision of ICBC that you were in breach of your policy of insurance by failing to notify it that your son rather than you was the principal operator of your 1999 BMW is not unfair to you in the circumstances. Therefore, I do not propose to make a recommendation to the Board of the Corporation that would affect the outcome of your case in this regard.

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.

### **Case Study 2: *premium increase due to single vehicle accident (C225299)***

I acknowledge receipt of your application for a Fairness Review (on behalf of your daughter, Ms. O.) dated September 2, 2013, relating to the insurance effects of the single car accident that Ms. O. was involved in near the Nelson bus station on September 10, 2011.

In reaching my decision I have taken into account the submissions you make in your fairness application, as well as the contents of a file prepared for this review by the Corporation, which includes, among other things, a chronology of the relevant events, relevant portions of the ICBC *Basic Insurance Tariff*, the part of the ICBC Autoplan Manual dealing with "chargeable claims" and two earlier decisions of my own dealing with some of the issues that your daughter's case gives rise to.

The facts of your case are really not in dispute. At 12:40am, whilst driving to the Nelson bus station, Ms. O. lost control of her 2003 Ford because of black ice on the road and damaged the vehicle. She held optional Own Damage Collision coverage over her car and the repairs to it were processed under that policy. This has resulted in the premium increase, which you and she argue is unfair.

You do not argue that there has been any procedural failure in the way in which ICBC has dealt with Ms. O.'s claim, so we can put that matter aside. Instead, I take your argument to be that it is unreasonable and therefore unfair for her to bear the insurance consequences of the collision with the curb that she was involved in. What is the basis of your argument? It very simply is that in your opinion the black ice should have been anticipated and remediated by the City of Nelson, which was and is responsible for maintaining the portion of the road where the collision occurred. In short, you argue that Ms. O. was only partly at fault, if she was at fault at all, and that ICBC should acknowledge this when setting her current Claim-Rated Scale (CRS).

ICBC's response, on the other hand, appears to be that there is a duty imposed upon all drivers to drive their vehicles in accordance with the road conditions that they experience. The first week in December at 12:30am in Nelson would, in all probability, put motorists on notice that black ice on roads is a condition that should be anticipated. Indeed, in your review application you say "it was winter and we were experiencing a freeze/thaw situation". In short, black ice was a road condition that was foreseeable and all users of the roads in the region should take that into account when using the roads. It may well be that the City of Nelson was also at fault by negligently failing to maintain the road, given the weather conditions at the time. But, legal liability in this regard is quite opaque and could not be determined, in my view, except through judicial proceedings.

But, the matter of fault really did not impinge upon the insurance package that your daughter held over her vehicle. She was entitled to the repairs under the policy of insurance, whether or not she was at fault, and her Claim-Rated Scale would be affected at the next renewal following the claim if she was held to be more than 25% responsible for the accident. Reading the file as a whole I can see that ICBC concluded that Ms. O. was probably 100% at fault, and certainly in excess of 25% at fault. This is why her CRS increased in the way it did. She had been given the option of repaying the cost of repairs and thus preserving her CRS, but she chose not to do so.

Where does this take us? From what I am able to discern from the material on file, the Corporation has applied the regulatory provisions dealing with Ms. O.'s case properly. In the circumstances, I am unable to conclude that you have demonstrated on the balance of probabilities that ICBC has dealt with Ms. O.'s case unfairly.

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

### **Case Study 3: *repair costs/assessment of fault/total loss settlement (C223615)***

I acknowledge receipt of your online application for a Fairness Review, dated July 9, 2013, of complaints that you have concerning the way in which ICBC processed two collision claims where you were found to have been fully at fault.

In reaching my decision I have taken into account the submissions that you make in your application to this office, together with the contents of a file prepared by the Corporation for the purpose of this review, which contains, among other things, the full chronology of the relevant events, correspondence between you and the Corporation, photographs of the damage sustained by the other vehicle in the September, 2012, collision, and some earlier decisions of my own relating to the same set of issues that you raise, as well as relevant provisions of the *Insurance (Vehicle) Regulations*.

I will not belabour the facts, they are succinctly set out in the letter to you, dated April 25, 2013, by Ms. Janet MacKinnon, Customer Relations Advisor. From what I can glean from the very protracted correspondence with the Corporation your fairness complaints are as follows:

1. Your position is that so far as the first accident on September 6, 2012, is concerned, the repair costs to the third party vehicle are too high. You base this submission upon the fact that there was very little apparent damage to either vehicle, at least on the surface. It was when the third party vehicle's rear bumper was removed that hidden damage was discovered. The third party vehicle was of a relatively high end type and repairs to such vehicles tend to be expensive. When you complained to ICBC about the cost, the Corporation had it reviewed by an estimator who confirmed that both the damage and repair cost were consistent with the type of impact that had occurred.

So, ICBC received your expression of concern, had the damage estimate reviewed, confirmed its damage estimate and advised you of its decision. I see nothing from what you have established or is contained in the file, to indicate that the damage/repair cost was unreasonable in the circumstance. Accordingly, I find that you have not demonstrated that you have been treated unfairly by the Corporation in this respect.

2. You also argue that you have been dealt with unfairly by ICBC in its finding that you were 100% at fault for the collision you were involved in on December 20, 2012. This accident occurred in Grand Prairie, Alberta, when the roads were icy and you slid through a red light striking another vehicle that was turning left in the intersection. Your argument is that ICBC is placing too much weight on the fact that you slid through a red light after losing control of your vehicle. But, given that at the time of year concerned, icy roads should have been anticipated by users of the roadway, particularly when coming to an intersection which, in your case, had the red light against you, I am unable to conclude that you have demonstrated that the Corporation was unreasonable in holding you 100% at fault for the collision and its consequences.

Again, my conclusion is that you have not demonstrated that you have been dealt with unfairly by the Corporation in holding you entirely at fault for this collision.

3. You also complain that when your vehicle was concluded to be a constructive total loss by the Corporation, in relation to the second accident, you disagree at the way in which its value under your insurance coverage should be calculated. Under your policy of insurance you are entitled to recover "fair market value" for your vehicle. Fair market value is essentially the amount that the market would bear for your vehicle had it been sold upon the market immediately prior to the collision. It is measured by standard forms of evidence such as retail motor vehicle dealer's blue books relating to similar vehicles, advertisements in newspapers and the Buy and Sell, as well trade catalogues. If, at the end of the day, a customer is dissatisfied

with the amount that ICBC offers in full settlement of their claim, he/she has the opportunity of taking the matter to arbitration or to the courts of this province.

Looking at the whole of the file, including the information you say that you have relating to the value of your vehicle at the time of the collision, I am not persuaded that you have demonstrated that ICBC acted unreasonably (and therefore unfairly) in offering you the sum of \$2,187.36, less your deductible of \$1,000, as the actual cash value of your vehicle.

Where does this take us? My conclusion is that you have not demonstrated that you have been dealt with unfairly by the Corporation in relation to any of the three arguments that you base your claim of unfairness upon. Instead, it appears from the file that you just disagree with the conclusions reached by the Corporation and the way in which it reached its conclusions. At times you attempt to strengthen your argument by making allegations of impropriety on the part of some ICBC employees in their dealings with you. I have examined the file material very carefully, and conclude that there is no evidence of improper conduct on the part of any employee of the Corporation. Instead, my view is that you have been dealt with patiently and professionally by the employees of ICBC in the face of some quite intemperate responses on your part.

Where does this take us? I do not propose to make a recommendation to the Board of the Corporation that would affect the outcome of either of your two claims. However, you do have other options open to you. So far as the actual cash value dispute is concerned, you could take the matter to arbitration or to the courts of this province. You could also take it to the Office of the Provincial Ombudsperson, which has a wider jurisdiction than my own.

So far as the damage and liability issues of the collisions are concerned, you could take these matters to the Office of the Provincial Ombudsperson or to the courts of this province.

#### **Case Study 4: *Graduated Licensing Program (C219774)***

I acknowledge receipt of your application for a Fairness Review, contained in your online submissions dated August 13, 2012, and March 8, 2013, respectively. The review relates to the way in which the Graduated Licensing Program (GLP) was applied to you.

In reaching my decision I have taken into account the submissions that you have made 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, various communications between you and the Corporation, pertinent regulatory provisions that apply to cases such as yours, and some earlier decisions of my own dealing with the issue that you raise.

The facts of your case, as ICBC understands them, are clearly set out in the email to you, dated March 18, 2013, from Ms. Janet MacKinnon, Customer Relations Advisor. What then is the basis of your complaint that you have been dealt with unfairly by ICBC? I think there

are two arguments that you make in this regard. The first is that you were unable to have an expedited road test in order for you to obtain your B.C. Class 7 Licence. Unfortunately, the requirement of accumulating one year of learner driving experience after your Class 7 Learner's Licence had been issued to you is mandated by the *Motor Vehicle Act Regulations*, and cannot be reduced by the Corporation. So, I am unable to find that you have established unfairness on the part of the Corporation in failing to provide you with an earlier road test than that authorized by the *Motor Vehicle Act Regulations* themselves.

The other argument that you make is that it was unfair of the Corporation to reject and retain your Indian driver's licence.

Under the *Motor (Vehicle) Act*, ICBC must be satisfied of the probable veracity of the facts stated in an application for a driver's licence before issuing another. The burden of establishing the veracity of an applicant's driving experience lies upon the applicant. So, on the facts so far as they are known, can it be said that ICBC was acting unreasonably (unfairly) in not accepting the documentation that you provide in support of your application for a driver's licence?

In my opinion it was not. The documentation you provided in support of your application was deficient in a number of respects. From the basis of its experience in dealing with Indian drivers' licences, the Corporation concluded that the licence you provided to it probably contained inaccuracies. The burden of establishing the licences' accuracy rested with you, and the Corporation concluded that you had not satisfied this burden. I am unable to conclude that you have demonstrated that ICBC was dealing with you unfairly in reaching this conclusion. I note that the Corporation also reviewed its decision and upheld it.

The practice of ICBC in retaining a driver's licence once it has been checked and found not to meet the known standards from another jurisdiction also appears reasonable to me. Apart from acting as a sanction in relation to customers proffering deficient drivers' licences, it prevents customers from "forum shopping" in different parts of the province in the hope of having their licence accepted. Accordingly, I conclude that this practice by ICBC is not unfair.

The upshot is that I am unable to conclude that ICBC has dealt with you unfairly, and I do not propose to make a recommendation to the Board of the Corporation that would affect the outcome of your case.

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

### **Case Study 5: *Claim-Rated Scale for new resident (C217018)***

I acknowledge receipt of your online request, dated January 2, 2013, for a Fairness Review of the decision of ICBC to deny you, at the present time, a safe driving discount on your automobile insurance under the Claim-Rated Scale (CRS).

In reaching my decision I have taken into account the points that you have made in your review application, as well as the contents of a file prepared by the Corporation for the purposes of this review, which includes, among other things, the pertinent chronology relating to your case, the relevant regulatory provisions that apply to the application of the CRS, and some earlier decisions of my own dealing with the same issue that you raise.

The facts of your case are not really in dispute. You are a new resident to B.C., having emigrated from Egypt where you had been a commercial driver for 12 years. The other relevant facts can be found in the letter to you, dated December 27, 2012, from Ms. Teresa Ciolfitto, Customer Relations Advisor. ICBC placed you on the base rate of the CRS, +0(0). You say that it is unfair of the Corporation not to give you credit for what you describe as an unblemished driving record, which, in your view, should have attracted a better position on the CRS.

You do not complain that there has been any technical administrative error on the part of the Corporation, so we can put that issue aside. In particular, you do not complain that you are being treated any differently from any other newcomer to this province, so we can put aside any argument that might otherwise have been based upon discrimination.

What then is the basis of your argument that you have been dealt with unfairly by ICBC? Very simply it is this. Egypt has a very different motor vehicle insurance system from that found in B.C. If I understand it correctly, commercial drivers do not carry their own insurance when they are employed by a corporation. Instead, the corporation carries insurance that covers each driver that it employs.

Why should this difference affect your ability to meet the requirements of ICBC, in order to get a better placement on the CRS than a basic one? ICBC's requirements are quite clear. A new resident to this province must demonstrate his or her claims free driving record by obtaining a letter from the pertinent insurer to that effect (on the letterhead of that insurer), and where a corporation comes between the applicant and the insurer, the applicant's employer must also provide a letter with the information that you were advised of in Ms. Ciolfitto's letter.

The burden of proving a customer's claims free driving record for the purposes of applying the CRS, rests upon the customer. In a series of earlier decisions I have concluded that ICBC's procedure is reasonable, in that it ensures a customer's history information is reliable, accurate, and presents the proper risk being insured. The rules of recognition and implementation of a customer's claims free driving record, prior to applying for a discount under the CRS, appear to me to be entirely reasonable. They go a long way towards taking into account the vagaries of other systems of insurance and conditions in other countries.

In your case, ICBC has concluded that you have just not established as a probability that you should be granted a safe driving discount as a result of your placement on the CRS, at this time. It is still open to you to obtain the letters from your earlier employers and their insurance companies if you can. In such a case, ICBC would make an adjustment to your CRS.

My conclusion is that ICBC has dealt with you in the same way as it deals with all new residents to this province, and has not dealt with you unfairly in doing so. Accordingly, I do not propose to make a recommendation to the Board of the Corporation that would affect the outcome of your case.

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

#### **Case Study 6: *assessment of responsibility – 50% (C223237)***

I acknowledge receipt of your letter, dated July 4, 2013, requesting a Fairness Review of the decision of ICBC to hold you to be 50% at fault for the collision that you were involved in on September 18, 2012, on Imperial Street, Burnaby.

In reaching my decision I have taken into account the points that you raise in your letter requesting a review, as well as earlier correspondence between you and the Corporation. I have also considered the contents of a file prepared for the purpose of this review by the Corporation which includes, among other things, a full chronology of events, statements from you and the other driver involved in the collision made to the Corporation, the decision of the arbiter in the Claims Assessment Review that you undertook, and the material that you provided to the Claims Assessment Review arbiter.

The facts of your case, as they are understood to be by ICBC, are contained in the letter to you, dated February 4, 2013, from Fil Sousa, Manager, Customer Services. Other than in one respect, there is no disagreement between your view of the material facts and that of the Corporation. You do disagree with the conclusion drawn by the Corporation on the basis of its view of the probable facts. The evidence that the Corporation had before it was that both your vehicle and the vehicle of the other driver were travelling eastbound in the outer lane of Imperial Street at the time of the collision. You point out that in her statement to ICBC the other driver says she was going westbound. Neither the Corporation, nor the Claims Assessment Review arbiter placed much weight on this. It was probably incorrect, but not a significant misdescription. The other driver's detailed description of her travel direction, and the inferences drawn by ICBC's estimators relating to the damage to the two vehicles, led to the conclusion that her vehicle was in all probability also eastbound at the time of the collision.

My jurisdiction to interfere with decisions of ICBC is quite limited. Only if there has been a procedural irregularity or if the ultimate conclusion is clearly unreasonable in the circumstances can I intervene with a view to amending the decision taken by ICBC.

In your case you do not allege any technical procedural error on the part of the Corporation. So, I must determine whether or not you have established on the balance of probabilities that ICBC has drawn an unreasonable conclusion in assessing liability by you and the other driver equally at 50%. ICBC based its decision on your statement and that of the other driver. Your version of the collision and that of the other driver are quite contradictory. The physical evidence is ambiguous as to cause and fault and there are no independent witnesses. In the view of the Corporation, there is evidence of negligence on the part of both drivers. In such cases the Corporation is bound to apply the provisions of the *Negligence Act of B.C.* Pursuant to Section 1:

"(1) If by the fault of 2 or more persons damage or loss is caused by one or more of them, the liability to make good the damage or loss is in proportion to the degree to which each person was at fault.

(2) Despite subsection (1), if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability must be apportioned equally...."

Both drivers provided evidence of negligence on the part of the other. In the circumstances, I cannot conclude that the decision of ICBC to apportion liability equally is unreasonable. It follows that I cannot conclude that it was unfair to do so. As an aside, it is not entirely clear to me that I have jurisdiction in this case at all. My terms of reference preclude me from reviewing complaints that relate solely or primarily to the assessment of liability.

The upshot is that I do not propose to make a recommendation to the Board of the Corporation that would affect the outcome of your case. But, you could take the matter to the Office of the Provincial Ombudsperson, which has a much wider jurisdiction than my own, or to the courts of this province.

### **Case Study 7: *Driver Risk Premium debt (C224343)***

I acknowledge receipt of your online application, dated August 2, 2013, for a Fairness Review of the way in which ICBC has dealt with a relatively substantial debt that you owe to the Corporation arising from the Driver Risk Premium (DRP) program as it applies to you.

In reaching my decision I have taken into account the submissions contained in your review application to this office, as well as those contained in your earlier review application, dated June 22, 2013, and 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, the relevant regulatory provisions, and some earlier decisions of my own dealing with the same broad issue that you raise.

There is no real dispute relating to the facts of your case. They are set out in the letter to you, dated July 2, 2013, from Mr. David Seward, Customer Relations Advisor.

I note from the file that you were advised on how to proceed to either a judicial appeal or to participate in the review process of the Office of the Superintendent of Motor Vehicles, but that you withdrew a request that you made to that office for such a review. I also note from the file that Account Services of ICBC put in place a repayment program that took into account your work and financial situation. The Corporation agrees that you have made a considerable effort to meet the terms set out in that arrangement.

As a consequence, the Corporation authorized you to take your Class 7 – Novice – road test. You passed and became eligible to apply for your class 5 driver's licence in May this year.

What then is the basis of your argument that you have been dealt with unfairly by the Corporation? In your review application it seems to boil down to the submission that the DRP, as it has been applied to you, has had a "devastating impact on ... [your] life." This in turn, appears to me to be an argument based upon the difficulties that you are encountering in repaying your DRP debt.

I must start by pointing out that your DRP debt is quite distinct from that which is incurred through traffic violations. Your total indebtedness is as a result of the combined effect of driving infractions and four DRP assessments.

You do not argue that the DRP itself is unfair, instead you say that its effects upon you are "devastating". You really do not describe in what way the effects of the DRP program have been devastating to you.

From what I can elicit from the file, I note that the DRP program has been applied to you in exactly the same way as it is applied to everyone who falls within its compass. You had the opportunity of negotiating a repayment plan with the Corporation, and you have done so. The Corporation recognized your sincere efforts to deal with your outstanding account with it and authorized you to regain your Learner's licence. Your outstanding debt to the Corporation is a heavy burden, but that is true of many customers affected by the DRP program.

On these facts, I am not persuaded that you have demonstrated on the balance of probabilities that you are being dealt with unfairly by the Corporation by its insistence that you repay the full amount of your debt. But, it is open to you to attempt to renegotiate the repayment terms with the Corporation's Account Services. Accordingly, I do not propose to make a recommendation to the Board of the Corporation 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 much wider jurisdiction than my own. You could also take the matter to the courts of this province.

**Case Study 8: *payment for independent engineer's inspection (C227021)***

I acknowledge receipt of your *cri de coeur*, dated September 28, 2013, which forms the substance of your application for a Fairness Review of the decision of ICBC not to pay for an independent engineer's inspection of your 2000 Honda Civic.

In reaching my decision I have taken into account the submissions that you make in your review application, together with 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, the pertinent regulatory provisions that apply to your case, and some decisions of my own that relate generally to the issue that your case raises.

There does not seem to be any essential disagreement between yourself and the Corporation relating to the facts in your case. Your 13 year old 2000 Honda sedan had been stolen and, after it was recovered, it was towed to a repair facility of your choice. There the damaged steering column and ignition were replaced with a recycled part and the car, thereafter, consistently stalled. The cause of this problem was identified as a faulty relay and it was replaced. You declined to repossess your vehicle until ICBC paid for an automotive engineer's inspection of it. Your view is that in the absence of this you would have no confidence in its operational capacity. ICBC has declined to authorize such an inspection at its cost, but has agreed to a BCAA mobile inspection and to reimburse you for the cost of that. You have declined this proposal.

In approaching your case it is important to delineate between the obligations of the various participants involved. Under your contract of insurance ICBC must repair your motor vehicle in accordance with the terms of your contract of insurance with it. It does not guarantee the quality of the repairs themselves. This is a matter that rests with the repair facility and the customer. You had your vehicle towed to a repair facility which guaranteed the quality of the work it undertook. The only obligation cast upon ICBC was to utilize its good offices to ensure that the quality of the work is up to standard. When the problems initially arose you took the vehicle back to your repair facility and the problem was remedied. At least, it was remedied in the eyes of your repair facility and the Corporation. It was probably also remedied in fact, since this time the repair facility took your vehicle for a road test before advising you that the repairs were complete and you can pick up your car.

Your argument that you have been dealt with unfairly by ICBC is that you have lost faith in the repair facility to make effective repairs and that the only way your peace of mind will be restored is if you have an independent motor vehicle engineer's report that your vehicle

is now properly road worthy. You take the view that the cost of such a repair should rest with ICBC and that it is unfair to you that it does not.

In a very technical sense, ICBC's obligation to you under its insurance contract was satisfied when it paid your repair facility in the first instance. From that point on, your only recourse was with the repair facility itself. But, ICBC, having received assurances from the repair facility that the vehicle is now repaired and that it has been tested on the road, has also agreed to allow you to have a BCAA mobile inspection conducted on the car and to reimburse you for its cost. Is ICBC behaving unreasonably towards you in making this offer and in rejecting your own request that an engineer's report be obtained? My opinion is that it is not. Whatever your sense of projected confidence in the vehicle might be, I am of the view that the Corporation's suggestion is entirely reasonable in the circumstances of 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. But you could, of course, take the matter to arbitration or to the Provincial Ombudsperson's office, which has a wider jurisdiction than my own.

#### **Case Study 9: *backdating of policy cancellation (C221904)***

I acknowledge receipt of your application for a Fairness Review, dated May 29, 2013, of the denial by ICBC of your request for a refund of premiums that you paid for your 2000 Jaguar whilst it was "off the road" following vandalism it sustained on May 29, 2012.

In reaching my decision I have taken into account the points that you make in your review application to this office, together with a file prepared for the purpose of this review by ICBC which contains, among other things, a full chronology of events, the provisions of the *Basic Insurance Tariff* relating to cancellation of insurance policies, and a summation of the Corporation's practice relating to premium refunds in cases such as this as outlined in the Customer Contact Manual.

The facts of your case are summarized in the letter, dated May 27, 2013, to you from Ms. Natalie Aktas, Customer Relations Advisor. I will, however, expand on the stated facts where I think it is necessary. On May 30, 2012, you drove your vandalized Jaguar to the Kingsway Claim Centre where it was estimated. The vehicle was held to be repairable and it was estimated that it would take four days for repairs. You initially took your car for repair to A. Bodyshop in Vancouver for repairs, but that company found that it was unable to fix your vehicle because they could not obtain certain parts. You then had your car towed to another bodyshop in Surrey where it was found to require a new key and another part "which was around \$1500". Faced with these additional costs, on March 15, 2013, ICBC agreed to total loss your Jaguar and pay out the claim relating to the vandalism that it had sustained, as well as two earlier claims. On April 15, 2013, you cancelled your policy over the Jaguar and ICBC backdated that cancellation to February 28, 2013, pursuant to its standard policy.

You argue that the policy cancellation should be backdated to May 29, 2012, the date you made your claim for vandalism to your vehicle. This takes us to ICBC's policy and practice relating to backdating of cancelled policies of insurance in instances of vehicular total loss.

The formal requirements for cancelling insurance over a motor vehicle are contained in the *Basic Insurance Tariff*, which has the effect of a regulation in this province. It requires cancellation of the Owner's Certificate, surrender of the number plates and the completion of a cancellation form. There is no provision in the *Basic Insurance Tariff* for backdating refunds where a vehicle is a total loss. The date of determination that your vehicle was a total loss was March 15, 2013.

But the Corporation has developed a backdating policy relating to refunds in total loss circumstances, outside the *Basic Insurance Tariff*. It was introduced in 2003 and it confines backdating to 45 days from the date of cancellation. The rationale for adopting the 45 day rule is that 90% of total loss claims are settled within 45 days and it takes an average of 45 days for an adjuster to conduct the investigation and settle customer entitlement. This means that most cases are covered by the 45 day rule.

In deciding whether or not the rule is reasonable (fair) two factors must be borne in mind. The first is that during the period when the policy is not cancelled by the customer the Corporation continues to remain liable for certain features of the customer's insurance covered by that policy. So, a range of contingent liabilities remain in force so far as ICBC is concerned until the policy expires or is cancelled. The second point is that the 45 day limit upon backdating refunds in total loss cases covers the vast bulk of such claims. In these circumstances, I have concluded in earlier cases that the 45 day limit upon backdating refunds in total loss cases is not unreasonable, and therefore it is not unfair.

In your case it was initially felt by ICBC that your vehicle was repairable. There is no evidence that this conclusion was reached through any default on the part of the Corporation. But, the repair shops that you took your vehicle to were unable to find the necessary parts, or if they could, found the parts to be very expensive. In the absence of fault on the part of the Corporation the costs arising from the vehicle being in the repair shop, unfortunately, must be borne by the customer. In these circumstances, I am unable to conclude that you have demonstrated unfairness on the part of ICBC in declining to grant you a refund of your insurance premium extending beyond the 45 days from the determination date of your vehicle being a total loss. It was only deemed to be a total loss at this date when the costs of your two earlier claims and the costs of a new key and the additional electrical damage were added to the mix. Accordingly, I do not propose to make a recommendation to the Board of the Corporation that would affect the outcome of your case.

Of course, you 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.

**Case Study 10: *use of new vs. recycled parts/accelerated depreciation (C226869)***

I acknowledge receipt of your application for a Fairness Review, dated October 8, 2013, concerning the Corporation's decision to replace a door on your 2010 Nissan Cube vehicle, that was damaged in a collision that was entirely the fault of the other driver, with a "recycled" door.

In reaching my decision I have taken into account the submissions you make in your review application to this office, together with the file prepared for this review by the Corporation which contains, among other things, a chronology of the relevant events including correspondence between you and the Corporation, the relevant sections of the Corporation's Material Damage Manual, and the relevant portions of ICBC's public website describing its Material Damage repair policies.

I will not belabour the facts. Very simply stated, your repair shop replaced the damaged door with one that was not new but had been recovered from another vehicle similar to your own.

You claim that this is unfair, and not merely unfair but also illegal. You argue that the practice is illegal because "it is federal law that ICBC must use new parts as part of any claim of repair ...." I am advised by the Customer Relations Department that the federal legislation that you refer to was unable to be ascertained. Even if such legislation did exist, it would raise very complicated constitutional issues which would fall outside my competence to deal with as a Fairness Commissioner. So, I put that argument aside.

What then is your unfairness argument? It appears to me to be this: you did not consent to having a "recycled" part used in repairs to your vehicle and this is unfair. But, this goes to the terms of your contract of insurance itself. The relevant terms are contained in Division 8 – Prescribed Conditions, requirements of loss of or damage to vehicle:

- (v) the liability of the insured for payment of indemnity for loss or damage to the vehicle is limited to the amount by which
  - (a) the cost of repairing or replacing the vehicle and its equipment or any part of it with material of a similar kind or quality, ....

The reference to "replacing equipment with a similar kind or quality" appears to me to cover your argument in this respect. You, effectively, agreed to this when you asked ICBC to cover the cost of repairs under your insurance policy and took your vehicle to the repair shop for that purpose. These provisions are clearly set out in the public website of the Corporation. The use of recycled parts in motor vehicle repairs is a standard industry practice. The rationale is obviously one of thrift and efficiency and its application is always subject to the determination that the utilization of the "recycled" part will not compromise the safety of the vehicle. ICBC has stringent rules of practice that an estimator must observe before recycled parts will be used in a vehicle repair.

My conclusion is that it is not unfair to ICBC customers to have "recycled" parts used in the repair of their vehicles, so long as the estimator has considered all the relevant factors before making that decision, particularly that utilization of such parts would not render the vehicle unsafe.

But you also complain that another vehicle that you have which you privately insured for collision coverage would have original parts utilized in its repair if it was involved in a collision. You do not indicate whether your policy of insurance with the private insurer is one whereby you purchased replacement cost coverage or simply collision coverage. ICBC also offers customers replacement cost coverage which does entitle damaged vehicles to be repaired with new parts. Given that your ICBC coverage was not for replacement cost, I am unable to see how this argument advances your case.

You also argue that you have been dealt with unfairly because there will be accelerated depreciation of the value of your vehicle if you choose to sell it and are required to disclose to a purchaser that it contains a recycled door. In my opinion, whether or not you will suffer accelerated depreciation in those circumstances is only something that could be determined when you came to sell your vehicle and then only by a court.

In the circumstances, I am unable to conclude that ICBC has dealt with you unfairly in repairing your vehicle by replacing the damaged door with one that was "recycled", given that it was "of a similar kind or quality" to that which it replaced. Accordingly, I do not propose to make a recommendation to the Board of the Corporation that would affect the outcome of your case.

But this need not be the end of the matter. You could take your case to arbitration, as described to you in the letter, dated October 10, 2013, from Mr. Craig Stirling, Customer Relations Advisor. As well, 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.

## **Appendix D:**

### ***Examples of Non-Jurisdictional Cases***



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

#### ***Case 1: assessment of responsibility - 50% (C228109)***

I acknowledge receipt of your letter to this office, dated November 12, 2013, detailing a number of concerns that you have relating to the finding of your liability at 50% concerning a minor collision that occurred in a parking lot in Parksville on March 27, 2013.

As I read your letter, it is not really a request for a Fairness Review. Rather, it is a statement of concern relating to the way in which ICBC reached its apportionment decision. You appear to me to acknowledge that I really have no jurisdiction in this matter because you are well out of time in bringing a fairness request to me, and it relates to an assessment of "liability", which is specifically precluded from my jurisdiction by my Terms of Reference. It appears to me that ICBC concluded that on the assumed facts before it that there was some evidence of negligence on the part of both drivers and that is the real reason why apportionment was split equally between them. Your post-contact photos of the damage to your vehicle were considered prior to this decision being reached.

It is important to bear in mind that ICBC bases its decisions on the balance of probabilities, based on facts that are assumed to have been demonstrated. In your case, on the facts as presented, ICBC concluded each driver was at fault to some degree but that the degree of fault could not be scientifically apportioned. Accordingly a 50-50 split formed the basis of the Corporation's decision. I am unable to conclude that this was clearly unreasonable in the circumstances.

But, in any event, I fear that I have no jurisdiction to conclude a fairness review since I am precluded from doing so by my Terms of Reference. Accordingly, I will not be making a recommendation to the Board of the Corporation that would affect the outcome of your case.

#### ***Case 2: changes to or elimination of Driver Risk Premium (C225779)***

I acknowledge receipt of your online application, dated September 18, 2013, for a Fairness Review of the way in which ICBC has applied the Driver Risk Premium (DRP) to you.

In reaching my decision I have taken into account the submissions that you have made in your application for review to this office, as well as material prepared by ICBC for the purpose of this review which sets out various communications between you and the Corporation, the appropriate schedule of the *Basic Insurance Tariff* that sets up the DRP, and two earlier decisions of my own dealing with the application of the DRP.

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 quite clearly set out in the online letter sent to you, dated September 24, 2013, from Mr. Craig Stirling, Customer Relations Advisor. You make a number of very interesting arguments in your submissions, but I am afraid that I am not persuaded by them. My jurisdiction is derived from the terms of reference for complaint resolution set out in Appendix G of my Annual Reports. The terms of reference were created by the Board of the Corporation itself. They make it quite clear that my jurisdiction is confined to reviewing the process itself. In the legal system this is known as administrative fairness and deals with requirements such as a fair hearing, a decision with reasons, and the opportunity for a decision to be reviewed. As with a court, my role is to determine the dispute between a customer and the Corporation upon the basis of established rules of administrative fairness.

The DRP is contained in Schedule E of the *Basic Insurance Tariff* and was mandated by the B.C. Utilities Commission in 2007. Once the B.C. Utilities Commission authorized the DRP, it had the effect of a regulation in this province. This means that I cannot go behind the substance of the program and can only look at the way in which it has been applied in individual cases in terms of the rules of administrative fairness. My reading of the material presented to me leads me to the conclusion that you do not argue that the rules of administrative fairness have been breached by the Corporation. You have been dealt with in exactly the same way as any other customer is dealt with under the program, so an argument based upon discrimination is not open to you. It is not open to me to entertain the submission that the DRP is itself unreasonable, so I put that argument aside.

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

your case. The real gist of your argument is that for the reasons you put forward the DRP should be scrapped or amended. This argument is best addressed to the legislative assembly of this province, and is certainly not within the remit of a Fairness Commissioner.

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

### ***Case 3: transfer of registration of vehicles (C222756)***

I acknowledge receipt of your various applications, dated June 8, 2013, June 9, 2013, and June 20, 2013, for a Fairness Review of the decision by ICBC to uphold the transfer of the registration of four vehicles from W. Ltd to W., the President of W. Ltd at the time.

In reaching my decision I have taken into account the points that you make in your review applications, together with 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, the sections of the ICBC Autoplan Manual dealing with the transfer of vehicles, and the vehicle registration documents relating to the four vehicles concerned.

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?

Having read the file several times it is evident to me that I have no jurisdiction to deal with your case. ICBC is obliged to act upon motor vehicle registration and ownership documents that are apparently valid upon their face, presented to it for action by customers. This is what happened in your case. Your father was then the President of W. Ltd and had the apparent authority to sign for the transfer of the vehicles out of the company name.

Your complaint in this instance does not raise a matter of administrative fairness. Instead, it is essentially a legal dispute concerning the ownership rights of competing parties to the vehicles concerned. This is something that only a court, or arbitrator, can resolve. It certainly does not fall within the compass of the functions of a Fairness Commissioner.

I would advise you to take the matter up with legal counsel with a view to determining whether or not you should proceed to the courts of this province to have the issues you raise resolved.

**Case 4: *review of driving suspension (C216693)***

I acknowledge receipt of your application for a Fairness Review of ICBC's practice of requiring a residential address to be provided by an applicant for a British Columbia identification card, to be issued pursuant to the *Voluntary Identification Card Regulation 465/88*.

I am grateful for the clarification made by Ms. S., Caseworker with your Association, concerning the essential nature of your application for a fairness review. She makes it clear that you are not acting on behalf of a particular client, but that you are raising a matter of general interest.

Unfortunately, this leads into my own jurisdiction as ICBC Fairness Commissioner, pursuant to my Terms of Reference, which can be found as an appendix to any of my annual reports. There you will note that I only have jurisdiction to deal with "unresolved customer complaints", and that "unresolved customer complaints" are "those relating to the fairness of an ICBC decision, action or practice as it has been applied to a customer ...." Having considered the matter, I have concluded that the British Columbia Civil Liberties Association is not a "customer", as that term appears and is used in my Terms of Reference.

It is my opinion that I have no jurisdiction to make anticipatory rulings based upon hypothetical situations. Instead, I am confined to dealing with specific cases where a customer has alleged that he or she has been dealt with unfairly.

Accordingly, I must conclude that I have no jurisdiction to deal with the issue that you have raised because it falls outside my jurisdictional compass.

**Case 5: *Responsible Driver's Program and the Ignition Interlock Program (C217346)***

I acknowledge receipt of your undated application for a Fairness Review of the decision of the Office of the Superintendent of Motor Vehicles (OSMV) to require you to enroll in the Responsible Driver's Program (RDP) and the Ignition Interlock Program (IIP), and the resultant cancellation of your driver's licence.

In reaching my decision I have taken into account the points that you make in your application for review as well as those in your earlier communication with me dated November 27, 2012. I have also considered the contents of a file prepared for the purpose of this review by ICBC, that contains, among other things, the full chronology of events, submissions made to the OSMV on your behalf by your counsel, Mr. J, and the results of your successful appeal of some of the driving charges that had appeared on your record

resulting in the OSMV removing the requirement that you enroll in the IIP. But, your participation in the RDP was still mandatory for reinstatement of your licence, and you have not complied with this requirement to date.

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 quite clear. Upon ascertaining your driving and infraction record, the OSMV required you to enroll in two programs under its jurisdiction, the RDP and the IIP. As a result of your successful appeal against some of the traffic infractions involved, the OSMV dropped the requirement of enrolment in the IIP and required you only to enroll in the RDP. During this period the OSMV cancelled your driver's licence and has taken and continues to take the position that since you have not met the requirement of enrollment in the RDP your licence cancellation remains in effect.

After the OSMV cancelled your driver's licence you were involved in a collision with another motorist which has resulted in an outstanding debt with ICBC. But, the Corporation has advised you that should you be successful in challenging the cancellation, your breach and related debt would be rescinded. Where does this take us? Very simply, ICBC is not responsible for the reinstatement for your driver's licence. That decision is taken by the OSMV and the Corporation acts on the matter only in a purely administrative capacity. So, since my jurisdiction only extends to complaints about the fairness of an ICBC decision, I have no jurisdiction to deal with your application for reinstatement of your licence. But, I would draw your attention to the recent announcement by the provincial government that all motorists previously required to participate in the RDP can apply to the OSMV to have that requirement reviewed. You should take that matter up directly with the OSMV. As well, you could apply to the court for a judicial review.

## **Appendix E:**

### **Statistics from 2011 - 2013**

The following numbers are based on files **closed** from 2011 to 2013 (Jan to Dec):  
(Percentages may not sum to 100% due to rounding)

#### **Fairness Commissioner Cases by Business Area**

	2011		2012		2013	
Claims Services	92	60%	89	40%	<b>78</b>	<b>39%</b>
Autoplan	19	13%	51	23%	<b>66</b>	<b>33%</b>
Account Services (formerly known as Customer Collections)	22	14%	36	16%	<b>22</b>	<b>11%</b>
Driver Licensing	13	8%	27	12%	<b>16</b>	<b>8%</b>
Vehicle Registration	3	2%	3	1%	<b>6</b>	<b>3%</b>
Finance & Administration					<b>4</b>	<b>2%</b>
Service Quality	2	1%	8	4%	<b>4</b>	<b>2%</b>
Vehicle Licensing			1	1%	<b>1</b>	<b>1%</b>
Not ICBC			2	1%	<b>1</b>	<b>1%</b>
Road Safety	1	1%	3	1%		
Privacy & Freedom of Information	2	1%	1	1%		
<b>Total</b>	<b>154</b>		<b>221</b>		<b>198</b>	

#### **Claims Services**

	2011		2012		2013	
Coverage denied	31	34%	28	32%	<b>24</b>	<b>31%</b>
Liability disputes	23	25%	17	19%	<b>19</b>	<b>24%</b>
Repairs	10	11%	14	16%	<b>19</b>	<b>24%</b>
Hit-and-Run/Uninsured	2	2%	4	4%	<b>4</b>	<b>5%</b>
Claim handling process	9	10%	7	8%	<b>4</b>	<b>5%</b>
Total loss	2	2%	3	3%	<b>3</b>	<b>4%</b>
Settlement	8	9%	4	5%	<b>3</b>	<b>4%</b>
Injury management	2	2%	6	7%	<b>2</b>	<b>3%</b>
Total theft	3	3%	4	4%		
Rental vehicle	1	1%	1	1%		
External service providers	1	2%	1	1%		
<b>Total</b>	<b>92</b>		<b>89</b>		<b>78</b>	

## Autoplan

	2011		2012		2013	
Claim-Rated Scale (CRS)	6	32%	17	33%	23	35%
Policy cancellations refunds	5	26%	11	22%	15	23%
Premium discounts	1	5%	2	4%	7	11%
Policy details	4	21%	5	10%	7	11%
Insurance coverages	1	5%	5	10%	6	9%
Vehicle registration fraud	1	5%			4	6%
Autoplan 12 & 6			2	4%	2	3%
Miscellaneous transactions			1	2%	2	3%
Cost of insurance			6	12%		
Payment Plan financing	1	5%	1	2%		
Multiple Crash Premium (MCP)			1	2%		
<b>Total</b>	<b>19</b>		<b>51</b>		<b>66</b>	

## Account Services

	2011		2012		2013	
Insurance premium debt	5	23%	8	23%	6	28%
Claim recovery debt	6	27%	11	27%	4	18%
Driver Point Premium (DPP) debt	2	9%	6	9%	4	18%
Driver Risk Premium (DRP) debt	3	14%	6	14%	3	14%
Fines debt	5	23%	4	23%	3	14%
Multiple Crash Premium (MCP) debt			1		2	9%
Government debt	1	5%		5%		
<b>Total</b>	<b>22</b>		<b>36</b>		<b>22</b>	

## Driver Licensing

	2011		2012		2013	
Driver's licence issuance			3	11%	7	44%
Exams (written or road test)	3	23%	7	26%	3	19%
BCID card					2	13%
Refuse To Issue (RTI) BCDL	2	15%	5	18%	2	13%
Vehicle and driver records	1	7%	1	4%	2	13%
Driver's licence ID requirements	4	31%	5	18%		
Graduated Licensing Program (GLP)	1	8%	4	15%		
Driver's licence status			1	4%		
Moving in/out-of-province			1	4%		
Vehicle impoundment	2	15%				
<b>Total</b>	<b>13</b>		<b>27</b>		<b>16</b>	

## **Appendix F:**

### ***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.