

2014 Annual Report

Office of the ICBC Fairness Commissioner

Peter Burns, Q.C.
ICBC Fairness Commissioner



Published April 2015

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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) from 1982 to 2014, is a former President of the International Society for the Reform of Criminal Law, and was a member of the UN Organization Committee against Torture from 1987 to 2003, serving as Chair from 1988 to 2003.

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

From the ICBC Fairness Commissioner

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

In the past a steady state of between 150 to 185 new cases has traditionally reached the Fairness Commissioner's office, but in 2014 the number of new cases was 234. These cases do not reflect the complete picture, as 56 per cent of the cases in 2014 were resolved by the Insurance Corporation of British Columbia (ICBC) Customer Relations department and did not reach me for review. As well, I sometimes refer cases back to the Customer Relations department, with a view to having ICBC review its decision. Each year, several of these result in different decisions being reached by the Corporation, to the satisfaction of the customer concerned.

I am very pleased to report to the Board 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 2014, there were four 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 2014, only four 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 continued to be patient, instructive, and above all, cooperative, in pursuing the mission of the Fairness Commissioner's Office.



Peter Burns, Q.C.
ICBC Fairness Commissioner

Introduction

The Annual Report of the ICBC Fairness Commissioner is a summary of his activities in 2014. The report is a requirement of the Fairness Commissioner's Terms of Reference, outlined in Appendix G.

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 2014
- Terms of Reference for the 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.

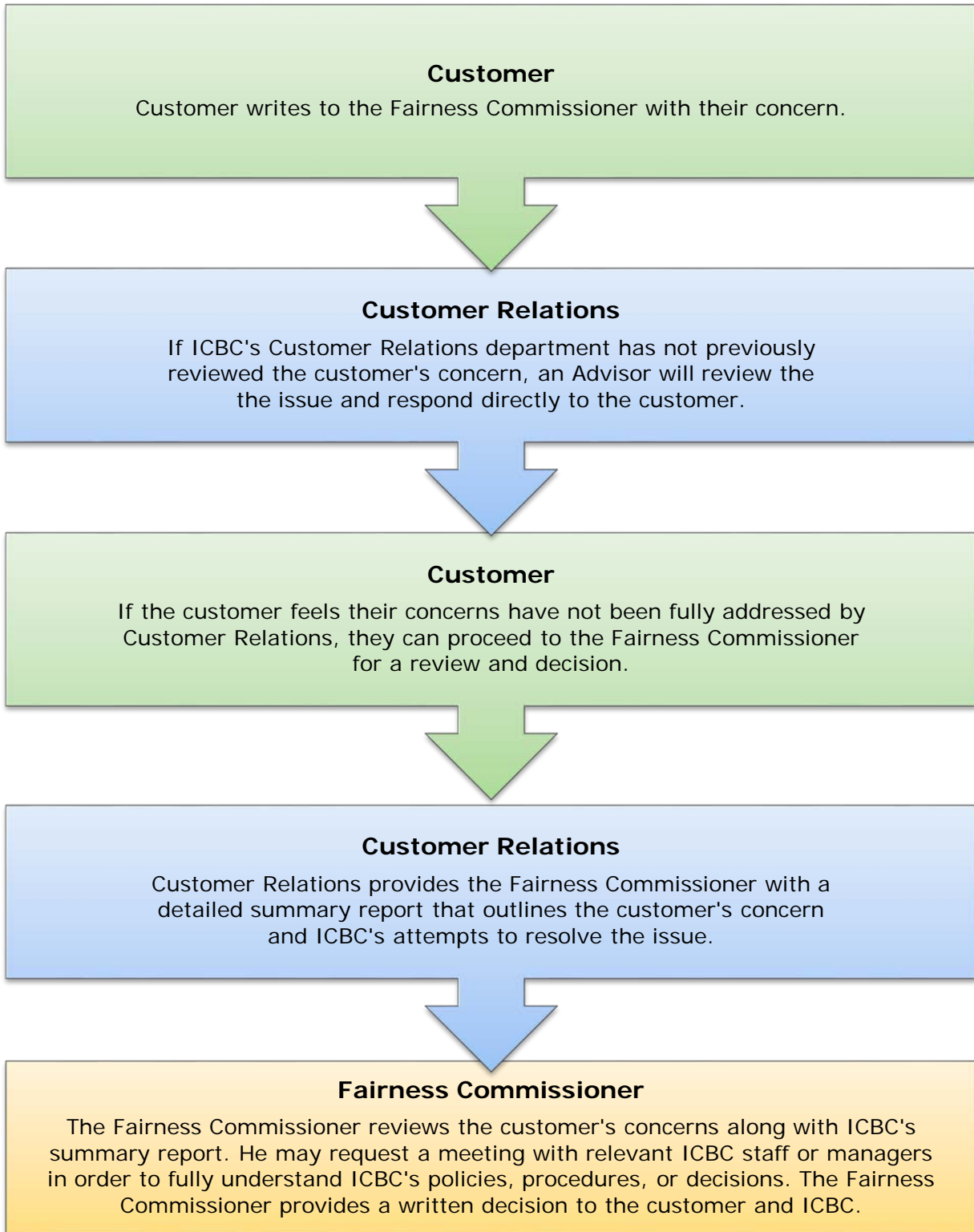
The Office of the Fairness Commissioner's jurisdiction deals with fairness of process or administration. The Commissioner does not have jurisdiction to deal with disputes that relate solely to the amount of a final payment or the assessment of liability. In these matters, customers have a right to a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

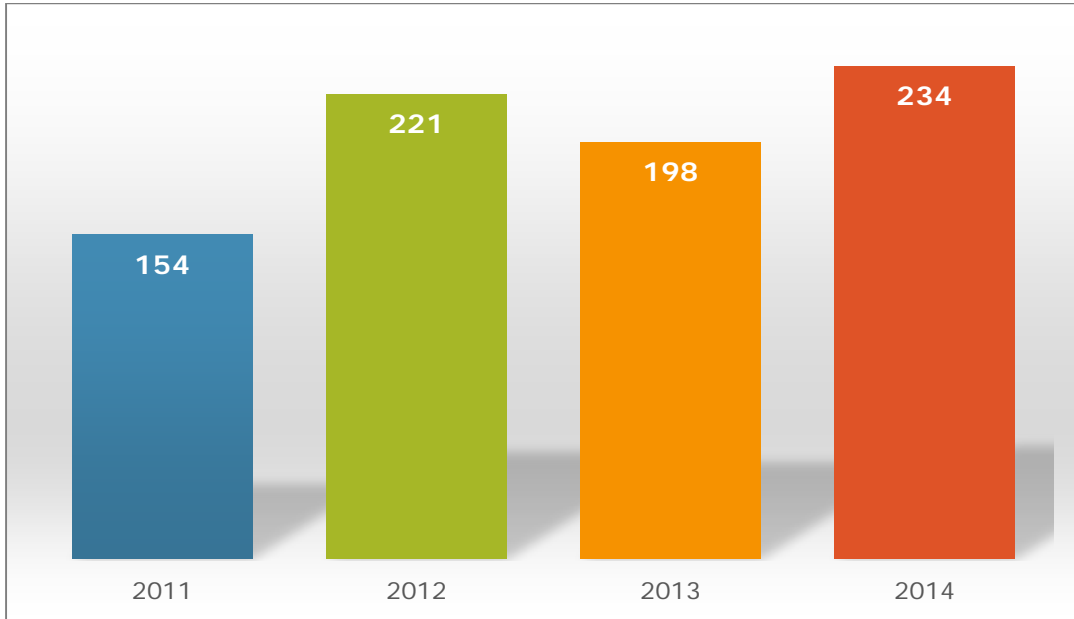
Highlights of 2014



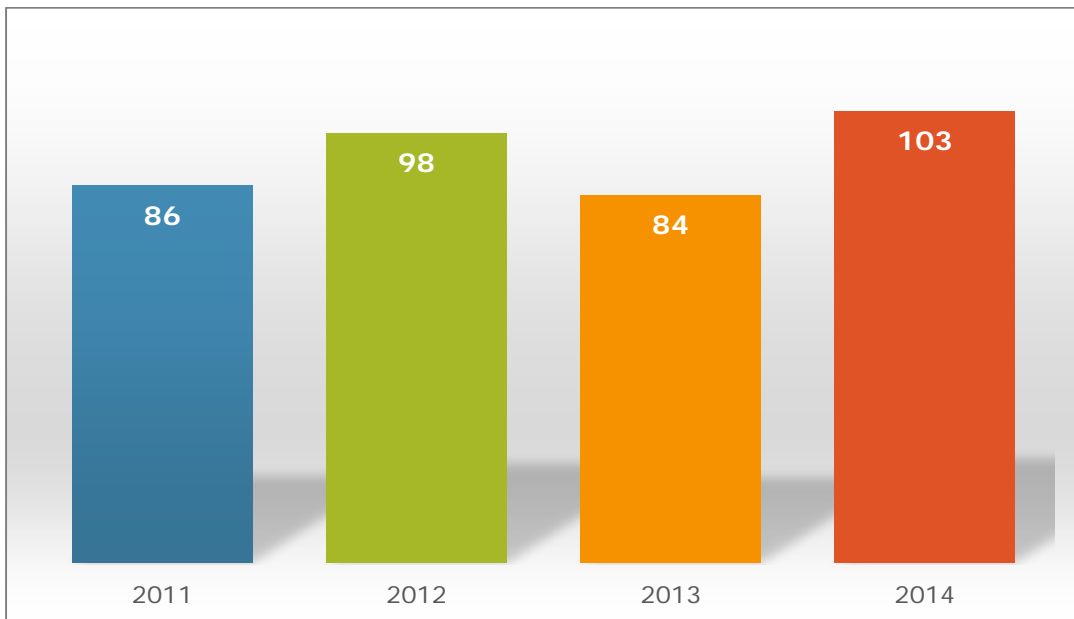
- The Fairness Commissioner made four recommendations to ICBC in 2014. In comparison, the Fairness Commissioner made no recommendations in 2013 and one recommendation in 2012.
 - In 2014, the Fairness Commissioner facilitated only one resolution compared to three to five in the past. These numbers remain small and all recommendations were promptly addressed by ICBC business.
-
- The Fairness Commissioner received 234 complaints and reviewed 103 of them in 2014, compared to receiving 198 complaints of which he reviewed 84 in 2013.
 - There was an overall increase of 30% for all customer complaints to Customer Relations and an increase of less than 20% to the Fairness Commissioner. Given the overall increase for Customer Relations, it would not be unexpected to see an increase in the files to the Fairness Commissioner. The increase in files for Customer Relations primarily relates to the department now monitoring and responding to customer issues through Social Media which is becoming an increased source of escalated complaints.
 - Of the 234 complaints to the Fairness Commissioner 56%, or 131 files, were successfully resolved with Customer Relations, which is consistent with past years.

ICBC Fairness Commissioner 2014 Statistics

Fairness Commissioner Closed Cases 2011-2014



Complaints Reviewed by the Fairness Commissioner 2011-2014

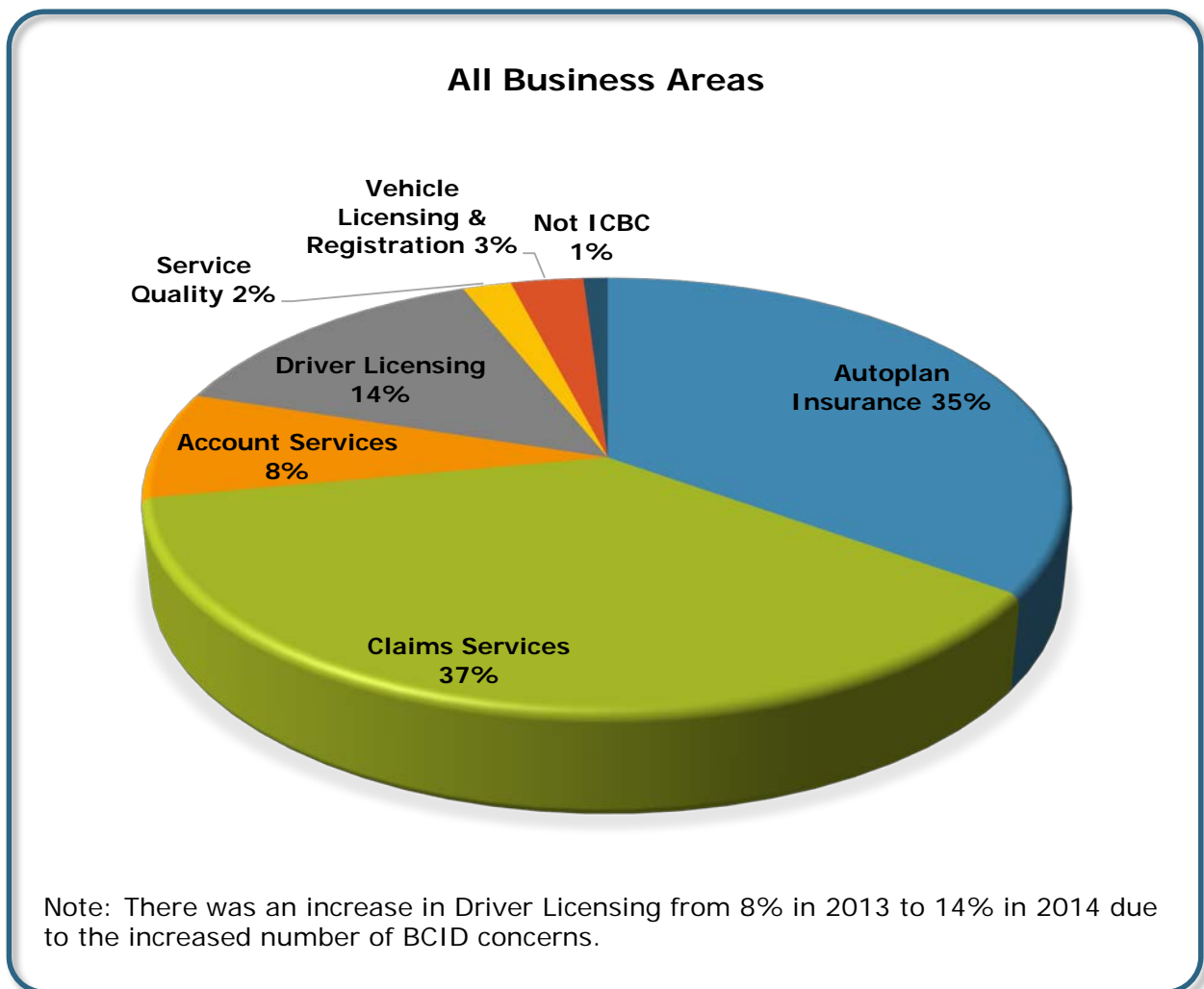


What did ICBC customers write to the Fairness Commissioner about?

In 2014, the majority of customers who wrote to the Fairness Commissioner had concerns with: Claims Services, Autoplan Insurance, Driver Licensing, or Account Services. These top four business areas have remained consistent for the past several years.

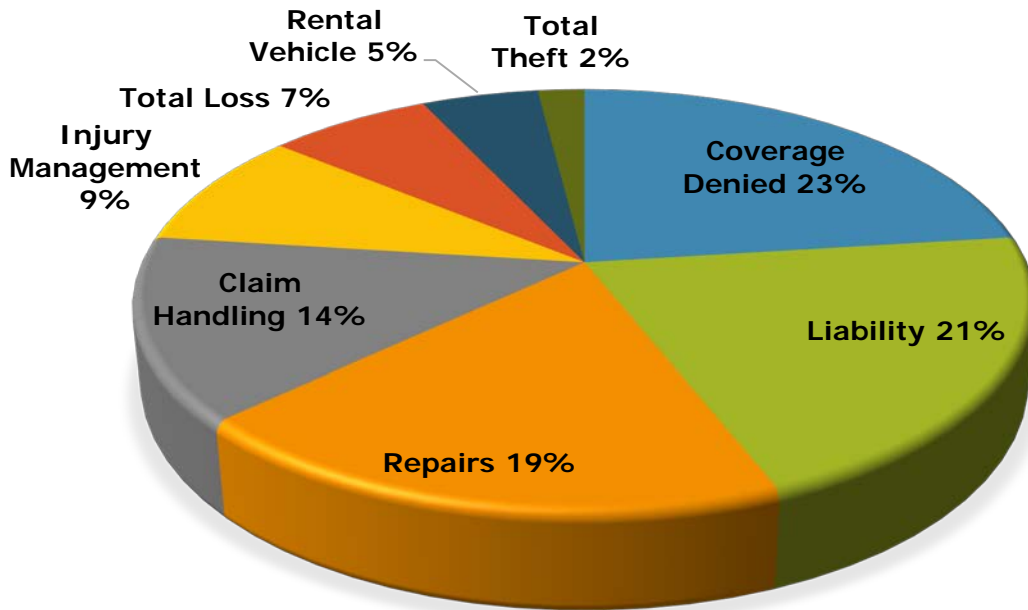
The following charts provide a view of 2014 closed files, including a more detailed view of the top four business areas. An extended view of statistics for 2011-2014 are summarized in Appendix F.

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



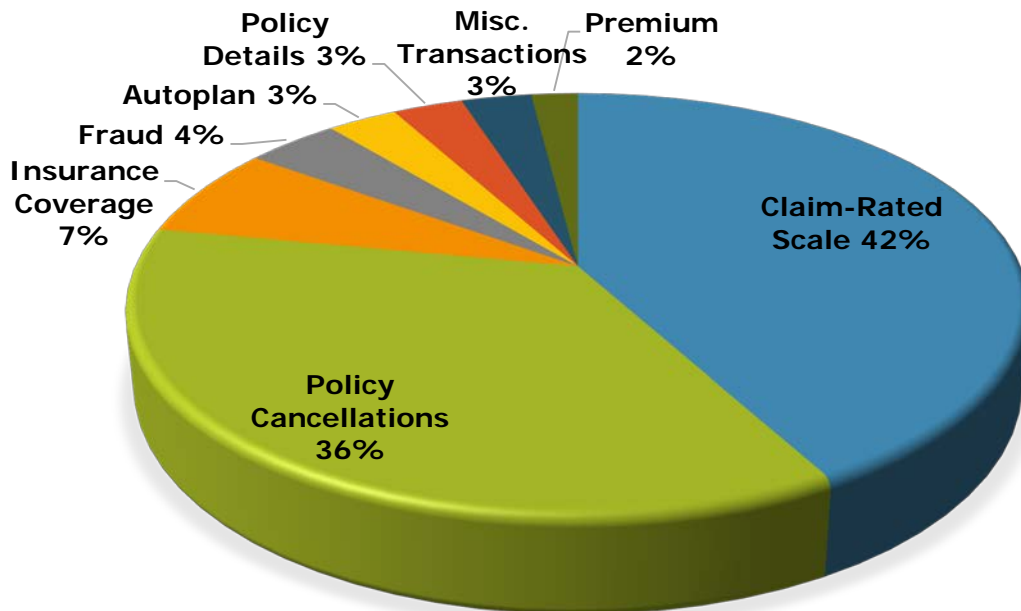
Claims Services

What aspect of the claims experience concerned the customer?



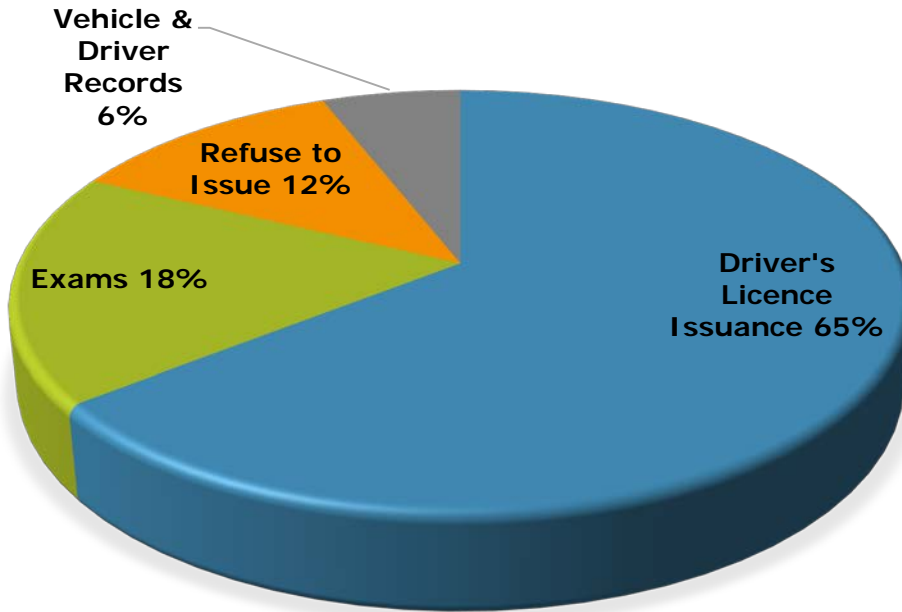
Autoplan Insurance

What insurance related transaction concerned the customer?



Driver Licensing

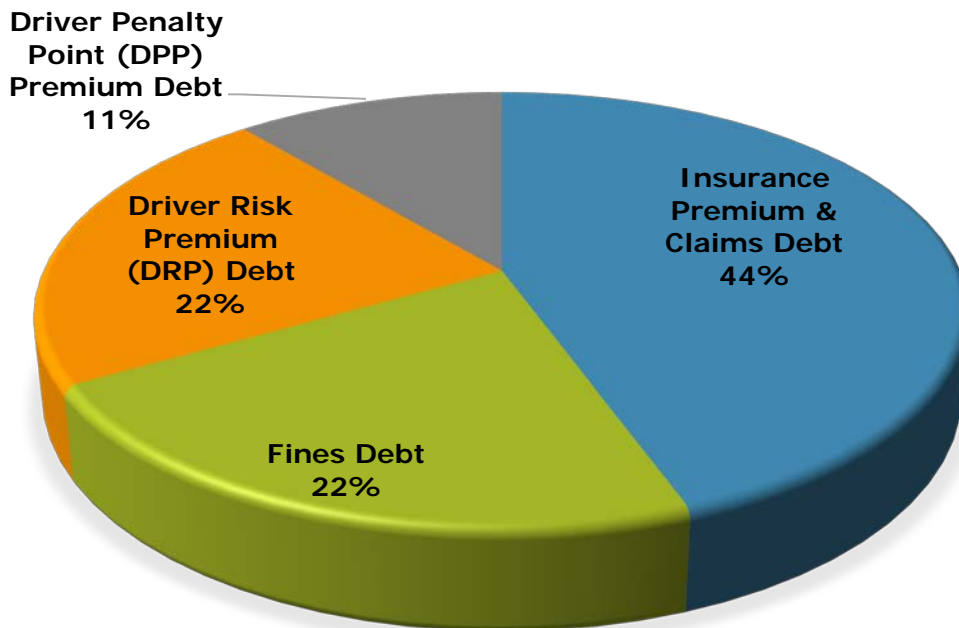
What Driver Licensing process or program concerned the customer?



Note: In 2013, *Driver's Licence Issuance*, *BCID*, *GLP*, and *Moving In/Out of Province* were recorded as separate statistics. Combined, they attributed to 56% for 2013. In 2014, these statistics were combined with an overall number of 65%.

Account Services

What type of debt related activity concerned the customer?



Fairness Commissioner Case Resolution from 2011 – 2014

	2011		2012		2013		2014	
Customer Relations (or other ICBC department) resolved the matter to the customer's satisfaction	63	41%	120	54%	111	56%	131	56%
Reviewed by the FC with a determination of no unfairness	70	45%	66	30%	70	35%	84	36%
Reviewed by the FC with a recommendation that was implemented by ICBC	-	-	1	0%	-	-	4	2%
Resolution facilitated by the FC	3	2%	5	2%	5	2%	1	0%
Determined to be outside the jurisdiction of the FC	15	10%	25	11%	9	5%	14	6%
Customer abandoned or withdrew their concern	3	2%	4	2%	3	2%	0	0%
Total	154		221		198		234	

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

APPENDIX A:

Cases Requiring a Fairness Commissioner Recommendation

There were four cases in 2014 where the Fairness Commissioner made a written recommendation that ICBC responded to and implemented.

Case 1

Materiality of a breach of policy, denial of coverage and recovery of claim payments

Issue:

The customer requested a Fairness Commissioner review resulting from an ICBC decision that his policy would not provide coverage for a leased company vehicle destroyed in a fire. The driver had stopped the vehicle when the fire became evident, parking it near an apartment complex which sustained minor exterior damage from the fire. The fire was investigated and confirmed to be the result of an electrical short circuit. A claim from the apartment complex was declined as ICBC advised there was no negligence on the part of its policyholder.

ICBC's Claims personnel concluded that there was a breach of coverage because the driver/employee of the company only had a BC learner's licence and did not have a required supervisor in the vehicle with him when his employer had asked him to make a delivery. ICBC thought the employer had not exercised due diligence when hiring the employee. When asked if he had a driver's licence, the employee simply replied "yes". The company and their employee were deemed to both be responsible for the breach of policy.

Following payment to the lessor for their financial interest in the truck and after payment of the customer's interest was denied, ICBC Account Services was requested to recover the payment to the lessor from the company and the driver.

Investigation:

After receipt of a company representative's email request for review by the ICBC Fairness Commissioner, an ICBC Customer Relations advisor completed an initial review and advised the representative that she concurred with the claims staff's decision. This was noted in the summary report prepared for the Fairness Commissioner after the company representative made a second review request to the Commissioner. Another Customer Relations advisor was tasked to research and prepare the report. During his research, a previous decision by ICBC's Claims Coverage Committee was located; it found that a driver's licence breach was not material to the cause of the loss. This was included for the Commissioner's consideration.

Resolution:

The Commissioner's excerpted reply follows:

The facts of your case are fairly clear. When you hired C (the driver of the truck at the time) you asked him if he had a driver's licence and he confirmed that he did. But you did not view the licence. If you had you would have noted that he had only a Class 7 Learner's licence rather than a Class 5 Licence. The restrictions placed upon

a Class 7 Licence meant that C was in breach of the Motor Vehicle Act Regulations at the time the fire occurred.

You argue that since you were not aware of your employee's failure to hold the proper driver's licence, it is unfair for ### Ltd., through you, to be held responsible for that breach. The breach by C effectively put ### in breach of its policy of insurance over the vehicle.

ICBC responds that the breach by ### Ltd. effectively negates its insurance obligations to it under the policy of insurance. In ordinary circumstances, this simple syllogism would work in support of ICBC's conclusion. But there is a complicating factor in your case. It is agreed by the parties that the vehicle fire was in all probability electrical in source, and that there was no fault on the part of C or ### Ltd. in any causal sense. In short, the probability is that the fire could have occurred at any time, whosoever was driving the vehicle. This becomes particularly relevant when we look at the various Claims Coverage Committee decisions, relied upon by ICBC as precedents that have imputed liability to employers who have failed to verify representations by prospective employees that they have a proper driver's licence.

It is useful, at this stage, to go back to some first principles that apply in all cases that I deal with. The burden of establishing unfairness rests with the customer upon the balance of probabilities. In your case you do not allege any technical administrative failure by the Corporation, instead, if I understand your argument correctly, you say that it would be unreasonable in the circumstances not to grant coverage to ### Ltd. The basis of your argument is, there was no fault in relation to the effective cause of the damage to the vehicle and to the building that was set aflame as a result of the damage to the vehicle, on the part of either C or his employer. Upon reading the file this view appears to be accepted by ICBC.

Whereas, being a Fairness Commissioner I do not approach customers' appeals in the same way that I would if I were a court, I cannot be unmindful of the legal framework in which my decisions are made. Technically, you were probably in breach of your contract of insurance in unreasonably failing to sight the driver's licence of a perspective employee. This is the position adopted in the practice of the Claims Coverage Committee. But, the Claims Coverage Committee did recognize that a breach must be a material breach, revealing a causal connection between it and the damage that ICBC argues that it should not be obliged to cover. In this case there is, in my opinion, no such connection. Even if you had sighted C's driver's licence, declined to hire him because he did not have the appropriate licence, and hired another person to drive the vehicle, the same event or something like it would in all probability have occurred. In short, I can see no connection between C holding the wrong driver's licence, and the vehicle bursting into flames with all the insurance consequences that accrued. In my opinion, the breach was not material to the loss and it would be unfair for ICBC to rely upon an immaterial breach to void ### Ltd.'s claim for coverage.

In the circumstances, I will recommend to the Board of the Corporation that your insurance coverage relating to this matter should be reinstated.

The Commissioner's report was forwarded to the appropriate Claims management team, the customer was indemnified and the recovery action was dropped.

Case 2

Claim-rated scale (CRS) quote and incorrect information

Issue:

The customer called ICBC to enquire what her premium discount entitlement would be as she was thinking about buying and insuring her first car. The ICBC representative that received the call was a new employee and took the call during a training session. It is unclear whether the trainee was being supervised at the time.

The customer was given an incorrect premium quote and advised that on or after a specific future date, if she or her insurance broker called ICBC, her policy may be revised to a better CRS position, her premiums would be less and she'd receive a refund. ICBC provides this opportunity on a one time only basis during the policy term as a customer service gesture.

After the customer bought her car, she attended an insurance broker's office and was advised that her CRS level would be less than what she had been quoted. She then spoke with several ICBC representatives and after receiving confirmation that the current CRS level, based on application of the ICBC Basic Insurance Tariff, was correct, escalated her issue to Customer Relations.

Investigation:

A manager in Customer Relations became involved. It was decided, after an advisor confirmed to the customer that the Tariff had been properly applied, no further discount was warranted and there would be no financial compensation. A further review confirmed the incorrect information after a recording of the initial conversation was located. ICBC concluded that, although the customer had been misinformed, there would be no financial redress; however, a senior manager sent a written apology to the customer who was also advised of the Fairness Commissioner as a further option.

Resolution:

Following review of the report prepared by a Customer Relations advisor, the Fairness Commissioner's excerpted report concluded:

In reaching my decision I have taken into account the submissions that you make in your letter requesting a review, as well as the contents of a file prepared for the purpose of the review by the Corporation, which contains, among other things, a full chronology of events, the regulatory provisions that apply to your case (Schedule D: Claim-Rated Scale), and correspondence within ICBC dealing with your case itself.

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

My jurisdiction is concerned with procedural fairness. For example, has the Corporation taken the pertinent facts into account, listened to the arguments made by the customer, and communicated its decision and the reasons for it once it has been

made? At the end of the day, is the Corporation's decision reasonable in the circumstances of the case?

Placement on the Claim-Rated Scale is set out in the Basic Insurance Tariff and really cannot be adjusted by the Corporation, even where mistakes of their own making have occurred. But, does this mean that the Corporation bears no responsibility for such mistakes, which may have disadvantaged a customer? In fairness terms I cannot agree that this is the case. You do not argue that there has been a breach of a formal rule of administrative process, so we can put that issue aside. But were you dealt with reasonably (fairly) in the circumstances of your case?

ICBC set up the procedure for receiving customer service inquiries. It must be taken to be aware that customers would rely upon information received and act upon it. The Corporation chose to have a trainee to receive your inquiry and the information he gave you was erroneous. Of course, all large institutions such as ICBC need to train their front line staff. How this is done will depend upon a number of factors, including economic effectiveness, and availability of trainers in case where the trainees are dealing directly with the public. In this instance the error was entirely that of the trainee and we don't know why it was not picked up by the trainer – or even if there was a trainer supervising the trainee at the time.

But, in these circumstances, why should the customer bear the cost of the error and not the Corporation? If the Corporation can hide behind the Claim-Rated Scale when such errors occur, there is very little incentive on it to improve its customer service in that respect. Issuing an apology to you is appropriate but, in the circumstances of your case, in my opinion, not sufficient. You point out that you made the inquiry before purchasing your car, which was your first automobile. In your words, "I was very excited that I was close to 20% discount so I sped up my car search and found one a month later". The inference I draw from this is that had you been given the correct information concerning your CRS placement you may not have purchased a car at that time, or not at all. In any event, you were placed in the position of purchasing a vehicle upon the basis of imperfect (misleading) information.

In these circumstances I conclude that you have demonstrated that you have been dealt with unreasonably (unfairly) by ICBC in its merely tendering an apology to you. In my opinion, the fair thing to do would be to compensate you for the difference between the premium that you paid on level -2 (10%) discount and level -3 (15%) discount which you attained on June 24, 2014. The amount is \$185.32. I acknowledge that this is an imperfect type of compensation to you and is really a form of "solatium" (an award of money to an injured person as solace for hurt feelings), rather than strictly for restitution.

Accordingly, I will forward my advice in this regard to the Board of the Corporation.

On receipt of his decision, ICBC sent the customer a further apology and a cheque for the amount recommended by the Commissioner.

Case 3

Property damage claim, failure to notify of repayment option and length of time to repay

Issue:

The customer struck a municipal power pole and after ICBC received his report, sent a form letter advising that in addition to being fully responsible, he would be advised of the costs to replace the municipality's property. The letter noted that he would be informed when those costs had been paid and would have the option to repay those costs to ICBC. This would allow him to maintain his position on the claim-rated scale (CRS). The customer renewed his policy. At a later date, ICBC received the municipality's invoice for \$4006.87 and paid their claim. Unfortunately, ICBC did not notify the customer of this. On his next renewal, the customer faced a significant premium increase as his CRS position had been affected.

Investigation:

The customer called ICBC and was given one month to pay \$4006.87. He countered with an eight month repayment extension and was referred to Customer Relations. The assigned advisor, after review with the Underwriting department, informed the customer that the terms of repayment had been extended to two months. The customer was advised of his option of requesting a review by the Fairness Commissioner.

Resolution:

After reading a report prepared by the Customer Relations advisor, the Fairness Commissioner reached the following conclusion:

I will not belabour the facts. They are clearly set out in the letter to you, dated August 15, 2014, from Ms. Jackie Turner, Customer Relations Advisor. The practice of ICBC is to advise customers of a repayment option relating to damages paid out to third parties, when such payment has been made. On February 25, 2014, ICBC paid the City of Coquitlam \$4,006.87 for the repairs to its pole that you had struck in your single car accident. But, for whatever reason, you were not sent a repayment letter.

You argue that you should have received a repayment letter; that since your policy was up for renewal on August 27, 2014, that had you received the repayment letter you would have had approximately eight months in which to organize your financial affairs and make repayment if you chose. Given that the effect on your premiums over a three year period (if you chose not to make repayment) would exceed the repayment option by almost \$6,000, there was a strong incentive on your part to arrange repayment in the eight months that you would have had to organize your financial affairs.

Once ICBC has implemented a policy or practice, it must be applied to customers even-handedly. Any failure to do so is presumptively unfair. So, in your case we start from the premise that it was unfair of ICBC not to notify you of your repayment option when it made such repayment to the City of Coquitlam. But, did it lead to an unfair result? Your claim in this respect is much less obvious. You knew from the outset that you were at fault and that ICBC was going to make a payment to the City of Coquitlam for the damage you had caused. The only fact that was outstanding was the amount that ICBC would be obliged to pay to the City of Coquitlam. You can hardly claim you were

unaware of your repayment option, since you had discussed it with the adjustor and indicated that you would probably want to take advantage of it.

At the least you could have enquired from ICBC as to the amount involved and the impact on your Claim-Rated Scale if not repaid by you.

In other words, if you wished you could have anticipated the cost of repayment and taken such steps as you thought appropriate to deal with it during the eight months that you refer to. Apparently, you just chose not to anticipate the inevitable.

The failure to provide you with a formal letter of repayment was a technical breach of ICBC's practice. It was a breach that was unfair to you, in the sense that if you had received such a letter it might have spurred you to appropriate action and, at least, would have given you the amount involved. This was recognized by the Corporation when it offered you an extra two months in which to make repayment.

You don't want two months, instead you want eight months. I am inclined to the view that given that you and the Corporation were both at fault, the fair result would be to extend the repayment period to one of four months. I have made this recommendation to the Underwriting Department which has agreed to it. So, you have until December 28, 2014, in which to make repayment if you wish.

Five weeks later, the customer repaid the claim in its entirety.

Case 4

Multiple crash premium program, three claims within three years and late repayment

Issue:

The customer was responsible for three Collision claims of varying degrees of severity over a three year period. She called ICBC and enquired if she could repay the oldest and least expensive claim and was given one month to do so. The customer chose not to repay the claim.

The customer was unaware, and ICBC staff did not advise that, since 2001, the ICBC multiple crash premium (MCP) program had been established. The program takes effect when three claims, where the assessment of responsibility is greater than fifty per cent, occur within a three year period. The result is that ICBC assesses \$1000.00 against the responsible operator's driver's licence. ICBC should have sent a "cautionary" letter to the customer about the MCP program; however, this did not occur.

Nearly six months after the customer's repayment enquiry, she received an MCP invoice. She was told that as her policy had been renewed and her premiums affected, the opportunity to repay her first and least expensive claim had passed.

Investigation:

The customer requested Customer Relations to review ICBC's position. The advisor requested senior management in the Underwriting department to review the customer's concerns. Their finding, communicated by the Customer Relations department was that no

repayment option could be extended. The customer was advised of the Fairness Commissioner's review process.

Resolution:

After his review of the report prepared by Customer Relations, the Commissioner found the following:

The facts in your case are fairly clear. The MCP program is contained in the regulatory scheme under which ICBC functions. It requires ICBC to charge a \$1,000 premium when there are three chargeable claims within a three year scan period. It is not a matter of discretion, nor is there an obligation to notify or warn an insured regarding the MCP under the statutory scheme. However, after a second chargeable claim, ICBC as a matter of practice routinely sends a "caution notice" to a customer that an MCP may be imposed if there is a third at-fault loss.

In your case, for whatever reason, the notification letter was not sent to you. Although there is no regulatory obligation to do so, ICBC has implemented a system of notice to drivers where the scan picks up two chargeable accidents. This system generates a "caution notice" being routinely sent to those who will be vulnerable in the event of a third accident in the three year period concerned. It advises them of the risk of a premium being charged to them. This system of notice works well and covers off virtually all vulnerable drivers. But, in your case, you fell between the bureaucratic cracks so far as the notice letter was concerned. Was this unfair to you? The purpose of the MCP caution letter is to give notice to vulnerable drivers so that they may be persuaded to modify their driving practices in order to avoid its effects. The notice also permits such drivers to pay back in certain circumstances the amount involved in an accident so as to avoid the impact of the MCP.

When the Corporation develops a policy or practice, it must ensure that application of it to customers is even-handed. This reflects the oldest definition of justice as being "like cases must be treated alike and unlike cases be treated unlike". To do otherwise would be unfair to some customers. Of course, some actions of the Corporation that may be characterized as unfair, may not themselves lead to unfair results. For example, if a chargeable repayment amount exceeds the \$1,000 premium, then in all probability a driver would not repay it in order to avoid the premium. But, where the chargeable amount is less than the MCP then in all probability the driver would pay it in order to avoid the premium. This is reinforced when one takes into account that repayment will not merely avoid the premium but may also have a positive effect upon a driver's Claim-Rated Scale. This applies in your case.

The chargeable claim amount of your accident of April 30, 2013, is \$662.47. If you had received the notice letter notifying you of your option to repay this sum at the time, my conclusion is that you would probably have done so.

In the circumstances, my conclusion is that it is probably unfair for the Corporation not to permit you to repay that sum. The matter has been referred back to the Underwriting Department and it has agreed that you should be permitted to repay the sum of \$662.47 in order to avoid the MCP.

On receipt of the Commissioner's decision, the customer promptly repaid the claim and the MCP invoice was withdrawn.

APPENDIX B:

Cases Resolved by the Fairness Commissioner without a Recommendation

In 2014, there was one case where the Fairness Commissioner directly assisted with the outcome, but was not required to write a recommendation letter to ICBC in order to assist the customer.

Case 1

Premium refund

Issue:

The customer's car was rendered a total loss as a result of a crash and he sustained significant injuries. The vehicle's Optional coverage was with a private insurer, who settled that aspect of the claim with the customer directly very shortly after the date of the crash. Two and a half months later, following his release from hospital, the customer cancelled his policy and ICBC refunded the premium for the remaining policy term. In doing so, ICBC applied an internal business rule where a refund is backdated 45 days from the day the policy is cancelled. This left the customer with an outstanding premium of \$64.00.

Investigation:

ICBC's Customer Relations personnel received the customer's request for a further \$64 refund and explained the basis for declining to do so.

Resolution:

On review of ICBC's summary report, which had noted the customer's post-accident limited mobility and reliance on public transit, the Fairness Commissioner referred the customer's complaint back to ICBC for further consideration. Steps were then taken to provide the customer with the remaining \$64.



APPENDIX C:

Cases Resolved by ICBC's Customer Relations Department

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

In 2014, 56 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

(Customer Relations file number G242183)

Issue:

The customer wrote to the Fairness Commissioner due to concerns about information she had received from her insurance broker. She was paid, on a seasonal basis, to be an after school care giver for several children and wanted to ensure that her vehicle was properly insured for this purpose. The broker had advised that there would be a much higher premium if she was paid on a per trip basis, requiring the vehicle to be rated as a "bus".

Investigation:

The customer's email to the Commissioner was assigned to a Customer Relations advisor who liaised with an analyst in ICBC's Underwriting department. The analyst requested clarification via the advisor from the customer on the specific nature of her role.

Resolution:

After this information was received, the advisor sent the customer a letter confirming the appropriate rate class to insure her vehicle. The letter could then be presented to the broker to ensure there would be no further issues raised on this matter.

Case 2

(Customer Relations file number G233958)

Issue:

The customer wrote to the Fairness Commissioner about the premium discount that she was receiving after a Family Court judge found she was to have sole use of a vehicle registered to her husband. As the registered owner, the premium discount reflected an accident her husband had been responsible for.

Investigation:

After reviewing the customer's policy entitlement, the assigned advisor sent a letter outlining the necessary steps the customer should take. These included having her former

spouse transfer the vehicle into her name and also providing documentation from the country of her origin to establish her out of province claims history.

Resolution:

Following receipt of the letter, the customer was able to purchase her own vehicle and get a better premium discount.

Case 3

(Customer Relations file number G232907)

Issue:

The customer wrote to the Fairness Commissioner because when he applied for a BC Learner driver's licence, he could not establish driving experience obtained while in another country. As a result, he was required to wait for a specified period before eligible to take the road test qualifying him for the next level of licence.

Investigation:

The assigned advisor contacted senior licensing managers to determine what would be required and advised the customer and his parents. The missing documentation was located and sent to ICBC for review.

Resolution:

Based on the customer's documentation, his examination date was moved to an earlier date and the customer successfully passed his road test. This gave him greater mobility and enabled him to seek employment.

Case 4

(Customer Relations file number G235814)

Issue:

The customer wrote to the Fairness Commissioner because when she went to renew her vehicle insurance policy, her premium discount had dropped. Her broker advised that ICBC processed a claim payment against her policy. She advised that ICBC never notified her of this or contacted her to determine whether or not there had been contact between her car and that of another motorist's.

Investigation:

The Customer Relations advisor assigned to review the customer's concerns brought the handling deficiencies to the attention of Claims management. The advisor then noted the resolution that they had proposed could lead to issues at a later date and proposed an additional step to forego further complaint.

Resolution:

The advisor's proposal was brought to the attention of an ICBC regional operations manager who agreed the claim had not been processed properly. The operations manager sent her recommendation to an ICBC director of claims and a final step was taken to resolve the matter.

APPENDIX D:

Select Cases

From the Fairness Commissioner:

To give the reader of this report some idea of the issues that I deal with, I include the following sample cases from 2014. Additional examples from my previous annual reports can also be found at: www.icbc.com.

Case Study 1: Extent of repairs and guarantee of workmanship

I acknowledge receipt of your online application, dated July 10, 2014, for a Fairness Review of the decision by ICBC to repair the damage you sustained to the roof of your 2006 GMC Savana cube van, rather than to replace the roof itself.

In reaching my decision I have taken into account the submissions you make in your review application, as well as the contents of a file prepared by the Corporation for the purpose of this review which contains, among other things, colour photographs of the damage to your vehicle, and the regulatory provisions that apply to cases such as your own and form part of the terms of your insurance coverage in such 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.¹

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

The facts in your case are quite clearly set out in the email letter to you from Ms. Christine Barrette, Customer Relations Advisor. If I understand your argument that you have been unfairly dealt with it is this: repairing your vehicle's roof may [if the repair failed] give rise to future damage to cargo as the result of leakage. ICBC responds that this is not a real issue since most body shops that do this type of repair would guarantee their work. Since splicing such roof damage is a common and acceptable industry standard in cases such as this I am unable to conclude that it is unfair for ICBC to take the position that such repair or its cash equivalent would satisfy their insurance obligations to you.

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

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

You also say that it will be difficult for you to get an auto body shop in the West #### to actually do the work.

I am advised by ICBC that the Material Damage Manager suggested to you that you check out the prospect of such repair with ####'s Heavy Duty and ##### RV, which are shops local to your area. It does not appear to me that there is much validity to your argument that you will not be able to get an auto body repair shop to do the work of repair effectively. If you choose to have the repair done in the lower mainland, I am advised that the incidental costs you refer to in your review application are not covered by your policy of insurance.

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

Of course, you 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: Assessment of responsibility

It is worth reiterating at the outset, that ICBC bases its decisions upon facts that are established as probabilities. They do not have to be established beyond a reasonable doubt, but they have to go beyond mere conjecture. ICBC does not base its decisions upon mere possibilities or surmise. The facts, as understood by ICBC, are clearly set out in the letter, dated April 25, 2014, to you from Ms. Teresa Ciolfitto, Customer Relations Advisor.

You dispute this description of the facts in one material respect. You take the view that you had successfully changed your lane and had established yourself in the middle lane at the time of the collision. ICBC's view is that it is more probable that you had not at the time of the collision established yourself in that lane, that you did not properly take into account the approach of the other vehicle when you made the lane change.

In what way is ICBC treating you unfairly in viewing the facts as it did? Only if it could be said to be a clearly unreasonable view of the probable facts would I have any jurisdiction to interfere with the conclusion reached by the Corporation. The burden of establishing that ICBC'S interpretation of the facts is clearly unreasonable rests with you upon the balance of probabilities.

Upon the facts as presented I am unable to conclude that you have discharged the burden imposed upon you. I am unable to conclude that you have demonstrated that ICBC's conclusion that you are 100% at fault is unreasonable and therefore unfair to you. But, if you wanted to pursue the issue further, you could avail yourself of the Claim Assessment Review process that ICBC offers to customers, whereby an independent adjudicator will determine whether or not ICBC's conclusion was the right one.

I note in passing, your claim that the actual driver of the other vehicle at the time of the collision was someone other than that claimed by the other side. I would merely point out, in this regard, that it makes no difference who the other driver was, your fault would be the same.

In the circumstances I do not propose to make a recommendation to the Board of the Corporation that would affect the present outcome of your case. However, you could agree

to take your case to the Claim Assessment Review, or to the Office of the B.C. Ombudsperson, which has a wider jurisdiction than my own. Or, you could even take the matter to the courts of this province.

Case Study 3: Definition of "Collision"

The facts in your case, other than one I will refer to later, are very clearly set out in the e-mail letter, dated December 11, 2014, to you from Ms. Christine Barrette, Customer Relations Advisor. In her letter to you she refers to a tire lying on the road. In your application for a review, you state the tire "was bouncing, rolling, wobbling against the flow of traffic [which] leads me to believe that the tire struck me". I note that Ms. Barrette's e-mail letter to you was timed at 12:02 pm, on December 11, 2014, whereas your review application of the same day was timed at 3:35 pm. Ms. Barrette had included three Claims Coverage decisions, two of which refer to the object involved in the collision as stationary on the roadway. I am not sure whether or not your emphasis upon the tire as rolling at the time of impact with your vehicle was a suggestion that those decisions of the Claims Coverage Committee could be distinguished from your own circumstances.

But, whatever the case, looking at the terms of your coverage, two things stand out. The language of "collision coverage" in your policy of insurance shows no distinction between a stationary object and one that is not stationary. In the third decision of the Claims Coverage Committee, dated December 13, 2011, this was made clear. There it is said, "the definition of collision includes damage caused by the collision of the vehicle with another object on the surface of the roadway being travelled upon. It does not matter whether the object is stationary or rolling."

Where does this take us? In my opinion, what occurred in your case was a collision between your vehicle and another object on the highway. Accordingly, I am unable to conclude that you have demonstrated upon the balance of probabilities that ICBC was acting unreasonably, and therefore unfairly, when it construed your insurance policy in that way.

As a result, I do not propose to make a recommendation to the Board of the Corporation that will affect your present circumstances.

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

Case Study 4: Impact with a bird & Optional coverage definition(s)

The facts in your case are very clearly set out in the letter to you, dated January 24, 2014, from Mr. Craig Stirling, Customer Relations Advisor. The short issue is: was the owl striking your windshield a "flying object" or was it an "impact by a wild animal"? You refer me to a number of dictionary definitions that lead to the conclusion that a bird in flight is indeed a "flying object", but a bird is also an animal (see the Shorter Oxford English Dictionary, 1973 ed., at 194) and is recognized as such in this province in section 1 of the *Veterinarians Act*, RSBC, 2010. The same dictionary contains a definition of "flying" as, "that passes quickly through the air" (at p. 777). Why the need for fine definitional analysis? Very simply, if the owl striking your windshield is characterized as impact with a wild animal then your deductible is \$300, whereas if it is merely a collision with a flying object the deductible would be \$200. In order to resolve the conundrum that you raise, we must go back to first principles.

1. I am a Fairness Commissioner and not a court. At the end of the day, only a court could properly determine which of the two possible definitions in contract law apply to the facts of your case. Being a Fairness Commissioner, I can only decide whether or not it was fair for the Corporation to apply the definition that it did to your case.
2. The persuasive burden in all cases coming before me is cast upon the customer. It is the customer's obligation to demonstrate on the balance of probabilities that the Corporation has dealt with him/her unfairly. Since you do not point to any technical administrative breach on the part of ICBC, your argument must be that the Corporation has dealt with you unreasonably (unfairly) in applying the definition that it did to the facts of your case.

So, is ICBC shown to have acted unreasonably in characterizing the facts of your case as a collision with a wild animal rather than a collision with a flying object? Looking at the language of the optional policy, I am struck by an ambiguity in it. "Comprehensive coverage" embraces "impact with a wild animal" or a "flying object", whereas the interpretation provision, Section 5.1 of Division 5, refers to windshield damage meaning "any fractures, damage or chips, caused by missiles or flying objects" ICBC interprets the term "flying objects" to be qualified by the unstated term "inanimate". Given the structure and context of the terms utilized in the Autoplan Optional Policy, I am unable to conclude that you have demonstrated on the balance of probabilities that the Corporation's interpretation (that places a gloss upon the term "flying objects") is unreasonable in the circumstances. Accordingly, I am unable to conclude that you have been dealt with unfairly by ICBC in this instance.

But, I emphasize to you that the issue is one that more properly should be dealt with by a court.

In the circumstances 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 wider jurisdiction than my own, or, and I urge you to seriously consider this option, you could take the matter to the courts of this province.

Case Study 5: Policy cancellation and backdated premium refund

I understand your position to be that you were unaware that the policy would not be automatically cancelled and that you were made aware of the fact that it had not been cancelled only when you checked your bank statements in early 2014 and realized that monthly premium payment withdrawals were still being made from your account. You have received a refund backdated 45 days from the date of cancellation of the policy, February 3, 2014, but you assert that you should receive a refund backdated to the date of the collision, June 25, 2013. You argue that you have been treated unfairly.

But you were informed that your insurance policy had not been automatically cancelled. You were advised by the total loss adjuster that the licence plates would be returned so that you could either transfer them or cancel the insurance policy; when you picked up the cheque and the plates on July 5, 2013, you signed a release form which stated that "this claim does not automatically cancel your insurance"; and you have had continuous access to your bank statements.

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. A regulation is a

law. The regulation requires surrender and cancellation of an Owner's Certificate, surrender of the number (licence) plates and completion of a cancellation form.

ICBC has developed a backdating policy for such refunds. It confines backdating to a 45 day period from the date of cancellation. The reason for selecting a period of 45 days was that the vast majority of cases are covered by the 45 day rule. It takes an average of 45 days for an adjuster to conduct an investigation and settle liability.

It is important to understand that until the policy is cancelled, the Corporation continues to remain liable for a range of contingent liabilities covered by the customer's insurance policy. Because the Corporation remains liable until cancellation of the policy and because the bulk of the refund claims are covered by the 45 day period, I am unable to conclude that the rule is unreasonable and unfair or that it has been applied unreasonably or unfairly in your case.

In the circumstances I do not propose to make a recommendation to the Board of the Corporation that would vary the application to your case of the standard practice of the Corporation. However, you could take the matter to the Office of the Provincial Ombudsperson which has a wider jurisdiction than my own.

Case Study 6: Escalating Deductible Program and Optional Comprehensive Coverage

In reaching my decision I have taken into account the material in your review application, together with the contents of a file prepared for the purpose of this review by ICBC which includes, among other things, correspondence between you and the Corporation, a description of the way in which the Escalating Deductible Program (EDP) which applies to cases such as yours, and an earlier decision of my own upholding the fairness of the EDP.

The facts in your case are fairly clear. They are set out in the e-mail letter to you dated October 6, 2014, from Ms. Sabina Findlay, Customer Relations Advisor. From what I am able to ascertain from the file, your real complaint relates to ICBC applying the EDP to you in a way which imposes a deductible of \$2,500 if you continued to purchase your comprehensive insurance from the Corporation. You argue that you should have your previous \$300 deductible reinstated.

In the course of arguing in favour of reinstatement of your \$300 deductible, you refer to accidents that you were involved in in 2010 and 2011 and make claims for "accelerated depreciation", and costs relating to time and expenses that you say you have incurred in dealing with those matters. Whether or not these claims are merely matters of pressure whilst you try and negotiate a lower deductible with the Corporation relating to the EDP, I cannot say. But, it is clear from the file that the Corporation's position is that you are not insured to recover accelerated depreciation under your comprehensive policy, nor does the Corporation reimburse customers for time and expenses that they claim to have been put to in dealing with such issues. If you are serious about these matters, they will have to be resolved before a court and not before me.

So far as the EDP issue is concerned, you do not deny the fact that you have had four comprehensive claims over a period of three years thus engendering the application of the EDP to you. Instead, you say that you are an excellent road user and that the claims you made under your various policies were (in effect) without fault on your part.

I note in the file that in an e-mail to Ms. Findlay, dated December 5, 2013, you claim that "my case specifically accuses ICBC and its relevant agents and managers of deceitful, misleading, unfair, untruthfulness, coercion and deliberate unethical actions, etc." After perusing your file, I am of the opinion that the material in it, including your own very extensive material, does not support the claims that you make. You must bear in mind that the burden is upon the customer to demonstrate upon the balance of probabilities that he or she has been dealt with unfairly. When either party asserts anything the burden is upon that party to demonstrate it as a probable fact. In my view, you have not done this so I put those claims aside.

But what of the real issue in your case? It is that (in your view) the Corporation is treating you unfairly by placing you into the EDP and increasing your comprehensive deductible from \$300 to \$2,500.

The Underwriting Department examined the facts of your case, and concluded that you should fall under the EDP and imposed a \$2,500 escalated deductible under your comprehensive insurance policy. It reviewed the matter at your request and concluded that its decision should stand. The reason for this decision was that it was not persuaded that your circumstances had altered since the EDP determination had been made. Your argument that you were no longer employed was felt to be insufficient to change that determination. The Corporation pointed out that you were still at the same address and drive the same vehicle in the same region. A primary factor that the Underwriting Department took into account in making its EDP decision in your case was that whereas you had made four comprehensive claims within a three year period the average in the Caribou area is one claim every eight years. Whereas the Underwriting Department reviews each policy on an individual basis to determine whether or not coverage should be restricted by raising the deductible or even declined altogether, each review takes all the motorist's factors into account, but the overriding factor is whether or not the policy has had a higher than average claims frequency for its territory. In your case your policy did.

It is also important to note that the EDP does not turn upon the fault of the customer. The whole purpose of the EDP is to ensure that customers whose claims record under the comprehensive coverage is higher than the "norm" should contribute to the insurance pool at a higher rate than that of the ordinary customer in this respect. It would be otherwise unfair to the general run of customers in the pool to have to persistently subsidize the claims of a small group of chronic claimants. The secondary goal is to attempt to modify the way in which such claimants utilize their vehicles. It is assumed the higher premiums will persuade such drivers to modify their behaviour, or take a different driving route or park in a different location, etc. I have already decided in earlier decisions that the EDP itself is not unfair to the Corporation's customers to whom it is applied. Its substance is reasonable and, so long as it is applied in an even-handed way to customers, it cannot be said to be unfair. You do not claim that you are in some way being discriminated against.

You also emphasize that your concerns relate to your Own Damage Comprehensive coverage only. This is optional insurance which you are under no obligation to take out with ICBC. Instead, you could go to the open insurance market in order to ascertain whether or not there is comprehensive coverage offered that is more favourable to you than that offered by ICBC itself.

The upshot is that I am not persuaded by you that you have been dealt with unfairly by ICBC in applying the EDP to you and, initially at least, requiring you to take a \$2,500 deductible if you continue to purchase your comprehensive coverage from the Corporation. Accordingly,

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

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

Case Study 7: Broker error

I acknowledge receipt of your online application, dated June 21, 2014, and your follow up e-mail dated July 14, 2014, requesting a Fairness Review of ICBC's decision not to grant you a refund of premiums paid after you believed that you had cancelled the insurance policy over your 2005 Ford Escape.

The short facts in your case are that you transferred the Ford Escape and turned in its plates to the #### Insurance agency on February 11, 2014, with the reasonable assumption that the policy of insurance would be cancelled. However, even though ICBC received the plates on February 17, 2014, #### did not cancel them until May 21, 2014. During this time when the plates were not cancelled, ICBC remained responsible for a variety of potential insurance risks associated with them.

have admitted their responsibility in this case and refunded you three months of premium payments. You argue that it is unfair for ICBC not to reimburse you for the monies withdrawn in harmony with your Payment Plan agreement and before the corresponding plan was cancelled. This, despite the reimbursement you have received from ####.

I am afraid that I am completely unpersuaded by your argument that you are being treated unfairly by ICBC in the circumstances of your case. Apart from the fact that my jurisdiction is confined to decisions, practices, and policies of the Corporation, and in your case any loss or inconvenience you have suffered was as the result of a decision taken by ####, I am unable to follow the argument that you have been dealt with unreasonably (unfairly) in the circumstances.

Accordingly, I do not propose to make a recommendation to the Board of the Corporation that would affect the present 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 even to the courts of this province.

Case Study 8: Breach of policy, 10/5 penalty terms

The facts in your case are very clearly set out in the letter to you, dated February 19, 2014, from Mr. Craig Stirling, Customer Relations Advisor. If I understand your argument that you are being unfairly dealt with by ICBC, it has two prongs to it. The first is that the finding of liability is unreasonable and that, instead, the other driver "provoked this accident in order to receive compensation". In my opinion the evidence you adduce in support of this claim is completely unconvincing. But, in any event, I am the wrong body to determine that issue. It should more properly be taken to court, which has the ability to require cross-examination of witnesses in cases such as this. So, I put your first ground aside.

Your second ground is that, whereas you admit that you are in breach of your policy of insurance by failing to advise the Corporation that your Rate Class had changed from "for

pleasure" to "to and from work". Had your vehicle been correctly rated, you would have been responsible for an additional \$69.00 by way of premium. Initially, you said that you had been driving your vehicle to and from work from the beginning of your policy period and had asked the broker to insure you for this purpose, but there are no notes on record by the broker in this respect.

You were advised by ICBC that even though you had committed a Rate Class breach you were eligible for what is known as the 10-5 Penalty Breach Relief Program, which would reduce the costs of the collision considerably to you. Under this program, if you paid 10 times the premium differential, the Corporation would cover all the insurance consequences of your accident. Given that your insurance responsibility amounts to \$6,624.86, the 10-5 breach relief option is an attractive one. Customers are given 14 days from the date the breach relief option is offered to them to pay the premium differential. In your case you requested the breach relief option and requested two extensions to the 14 days repayment requirement. The first related to difficulty you would encounter as a result of heavy snow, and the second was because of a sick mother whose financial requirements diverted the amount you had initially put aside for the breach relief payment.

In what way is ICBC dealing with you unfairly in these circumstances? You elected to participate in the breach relief option but failed to meet the payment deadlines associated with it. ICBC withdrew that option when you failed to make those payments. In doing so it was dealing with you in exactly the same way that it does with all its customers in similar circumstances. The burden rests with you to persuade me that you have been dealt with unreasonably and therefore unfairly. But, I am afraid that you have not done this. I am not persuaded that ICBC has dealt with you unfairly 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 this need not be the end of the matter. You could take your case to the Office of the Provincial Ombudsperson, or to the courts of this province.

Case Study 9: Driver's licence requirements

The facts of your case are quite clearly set out in the e-mail letter to you dated August 10, 2014, from Mr. J. Harbick, Customer Relations Advisor. As I understand your argument, it is that your Indian driver's licence is an accurate one and that it should be recognized as such for the purpose of reciprocity in British Columbia. However, the Corporation has a policy of zero tolerance in terms of the validity of licences submitted to it for such reciprocal recognition. When you first submitted a licence it was clearly not an original, but a photocopy. When you subsequently acknowledged this and proffered what you say is your original Indian driver's licence, that licence was found to have a number of discrepancies. In these circumstances ICBC concluded that you must enroll in the GLP. You say that this is unfair. Bearing in mind that the burden of proof of demonstrating unfairness rests with the customer, in what way is the decision of ICBC unfair? It cannot be because the administrative process itself has somehow been prejudicial to you, because you do not raise this argument. It can only be that the ultimate decision is unreasonable and therefore unfair.

I am afraid that my conclusion is that you have not made this out. The documentation you provided in support of your application initially was deficient in a number of respects. So, too, was the licence that you subsequently gave to ICBC. When the Corporation examined the documentation and licence it discovered a number of inconsistencies in them. The burden

of establishing accuracy rested with you and the Corporation concluded that you had not satisfied this burden. In the circumstances I am unable to conclude that you have demonstrated that ICBC has dealt with you unfairly in reaching this conclusion. You have been given the reason why the Corporation reached the decision it did in Mr. Harbick's e-mail letter to you. In reaching the decision it did, the Corporation was dealing with you in exactly the way it does with all driver's licence applicants in your circumstances.

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

You could, of course, 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: Driving experience, breach of coverage & 10/5 penalty

The facts of your case are very clearly set out in the letter dated February 13, 2014, addressed to your husband, Mr. # #####, from Ms. Janet MacKinnon, Customer Relations Advisor. There are certain additional facts that are pertinent to my inquiry that I will refer to as they arise.

In short, you obtained insurance from an Autoplan broker that was based upon an error emanating from ICBC itself. The Autoplan broker obtained an authorization number from ICBC which had an erroneous character in it. You are not entitled to the rate class of a person who has 10 years or more driving experience (which you well knew) but the error initiated by ICBC gave you the benefit of being in that rate class. Your Autoplan broker claims to have advised you of the rate class restriction, but your recall is that the matter was not mentioned.

The rate class restriction became significant when you were involved in a collision on January 9, 2014, whilst driving to work. During ICBC's investigation of the collision, the Corporation became aware of the fact that you had less than 10 years of driving experience. The matter was reviewed by the Corporation and was forwarded to the Claims Coverage Committee to determine what your liability should be.

The Claims Coverage Committee concluded that the incorrect CRS was probably inadvertent on your part and, accordingly, allowed you to take advantage of what is known as the 10/5 program enabling you to make a penalty payment in order to retain your insurance coverage.

In what way has ICBC dealt with you unfairly? You make two submissions in this respect. The first relates to your claim that ICBC staff were tardy in responding to your phone calls and dealing with your issues relating to pain. From what I can tell from the file material if there was any tardiness on the part of ICBC's employees, it did not lead to unfairness. This is essentially a customer service issue that you may wish to take up with the Customer Relations Department.

Your more substantive argument is that the problem with your CRS was the fault of ICBC and that you should not have to bear any costs relating to it. It is true that a computer inputting error generated the problem at its outset. But, I am puzzled as to how you could at any point be unaware of the fact that you did not have 10 years driving experience and that this would inevitably affect your CRS. I take, for example, your 2013 insurance renewal. Looking at the Owners Certificate of Insurance and Vehicle Licence form, I note that it states that members driving the vehicle must have held a valid driver's licence for 10 years. You have initialed this provision.

Where does this take us? An error was certainly made by ICBC, which may or may not have been drawn to your attention by your Autoplan agent. But, you were certainly aware at all times that you did not have 10 years driving experience, and, at least in 2013, you initialed the relevant insurance application form indicating that you were aware of this. On the other hand, ICBC did not conclude that your breach was a deliberate one and exercised its discretion to grant you partial relief. This partial relief meant that you were eligible for the 10/5 program and the decision was taken not to pursue underpayments from earlier years.

In my opinion ICBC has dealt with you reasonably in resolving your case. It has not dealt with you 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. As well, you could consider taking the case to the courts of this province.



Appendix E:

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 G). A few examples of letters written to customers by the Fairness Commissioner have been provided to illustrate what other matters have been directed to the Fairness Commissioner which are beyond his jurisdiction.

Case Study 1: ICBC offer of employment withdrawn

I acknowledge receipt of your letter, dated March 17, 2014, requesting a Fairness Review of the decision of ICBC to rescind an offer of employment that it had made to you.

I am afraid that this matter falls outside my jurisdiction. I am confined to unresolved customer complaints relating to the Corporation's decisions, etc., in its lines of business. I have no jurisdiction to review ICBC's practices relating to employment matters such as this.

Accordingly, I am afraid that I cannot proceed to the Fairness Review that you have requested.

Case Study 2: Extension of limitation period

ICBC takes the position that you are well out of the two year limitation period that applies to cases such as yours, and that they are not responsible to make the reimbursements that you request. You argue that it is unfair to apply the limitation period to your case and you complain in particular that you had your adjustor, Ms. ###, on April 18, 2011, agree to escalate the request to her manager and get back to you. You say that she never did respond. Ms. ###'s client service notes, however, reveal that she did take the matter to her manager and she telephoned you in mid-May, 2011, advising you of the result.

As to the substantive matter, you say in your letter to me, referred to above, that "I did not have time chasing an informed ICBC agent I put the unsolved issue aside until [I got] time today in 2014." In short, you say that you were too busy to pursue these matters until now.

Apart from the fact that it is not at all clear to me that I have the jurisdiction to go outside the two year limitation period in any case, the reason you give for me to do so is completely unconvincing. Accordingly, I do not find that the Corporation has been shown to have 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.

Granting an extension of the two year limitation period is, in my opinion, properly within the jurisdiction of the courts of this province. You could take your case there.

Case Study 3: Fairness Commissioner's Terms of Reference and claim settlement

I acknowledge receipt of your application, dated March 27, 2014, for a Fairness Review of the cash settlement that you received in lieu of repairs for your claim relating to your jeep motor vehicle that had been damaged during an attempted theft of it.

I very much regret that I am precluded from dealing with matters that are "complaints or disputes that relate solely or primarily to the amount of a final payment, [or] claim settlement...." This subject matter is excluded from my jurisdiction under my Terms of Reference.

Case Study 4: Enhanced driver's licence requirements

The facts in your case are clearly set out in your review application, as well as the email to you from Ms. Jackie Turner, Customer Relations Advisor. Accordingly, I will not belabour them.

In my opinion, on the face of it, you are being dealt with unfairly but not by ICBC. My jurisdiction only extends to decisions and policies of ICBC. In your case you are denied your Enhanced Driver's Licence not as a result of a decision or policy of the Corporation, but as a consequence of the policy and practice of the provincial and federal governments. In response to international terrorism, enhanced drivers' licences require new questions to be answered before they will be issued. ICBC has no control over these and merely acts as a proxy for the Canadian Border Security Agency in requiring the form to be fully filled out. Constitutionally, any issue concerning citizenship falls within the federal jurisdiction, over which ICBC has no control.

In the result, ICBC is unable to change the questions in the application form and must reject the licence application if the questions are unanswered. It is clearly not acting unreasonably in this respect since it has no jurisdiction to do otherwise. Accordingly, I am afraid that I must decline to make a recommendation to the Board of the Corporation that would affect your present circumstances.

Case Study 5: Outstanding ICBC debt, inability to pay & appeal option

I acknowledge receipt of your application, dated January 15, 2014, relating to the repayment requirements that ICBC insists upon as a result of a debt that you owe the Corporation.

As I understand the rationale for your review request, it is that you are presently unable to pay the debt, even on a payment plan basis, but could do so fairly shortly if a different payment plan was worked out. In effect, you submit that it is unfair to require you to adhere to the present repayment option that ICBC insists that you observe.

Inability to pay is not itself a ground for arguing that a requirement to repay is unfair. So long as the Corporation is treating all its customers equally in this respect I cannot conclude that it is unfair to require repayment. Accordingly, I am unable to conclude that you are being dealt with unfairly by the Corporation in your present circumstances. So, 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 appeal the present repayment requirement to RoadSafety BC (formerly the Office of the Superintendent of Motor Vehicles) which does have the jurisdiction to vary a repayment plan based upon the economic circumstances of a customer.

APPENDIX F:

Statistics from 2011-2014

The following numbers are based on files closed from 2011 to 2014.
(Percentages may not sum to 100% due to rounding)

Fairness Commissioner Cases by Business Area

	2011		2012		2013		2014	
Claim Services	92	60%	89	40%	78	39%	87	37%
Autoplan Insurance	19	13%	51	23%	66	33%	80	35%
Account Services	22	14%	36	16%	22	11%	19	8%
Driver Licensing	13	8%	27	12%	16	8%	33	14%
Vehicle Registration	3	2%	3	1%	6	3%	7	3%
Finance & Administration	-	-	-	-	4	2%	-	-
Service Quality	2	1%	8	4%	4	2%	5	2%
Vehicle Licensing	-	-	1	1%	1	1%	-	-
Not ICBC	-	-	2	1%	1	1%	3	1%
Road Safety	1	1%	3	1%	-	-	-	-
Privacy & FOI	2	1%	1	1%	-	-	-	-
Total	154		221		198		234	

Claims Services

	2011		2012		2013		2014	
Coverage Denied	31	34%	28	32%	24	31%	20	23%
Liability Disputes	23	25%	17	19%	19	24%	18	21%
Repairs	10	11%	14	16%	19	24%	16	19%
Hit & Run/Uninsured	2	2%	4	4%	4	5%	-	-
Claim Handling	9	10%	7	8%	4	5%	12	14%
Total Loss	2	2%	3	3%	3	4%	6	7%
Settlement	8	9%	4	5%	3	4%	-	-
Injury Management	2	2%	6	7%	2	3%	8	9%
Total Theft	3	3%	4	4%	-	-	2	2%
Rental Vehicle	1	1%	1	1%	-	-	4	5%
External Service Providers	1	2%	1	1%	-	-	-	-
Total	92		89		78		86	

Autoplan Insurance

	2011		2012		2013		2014	
Claim-Rated Scale	6	32%	17	33%	23	35%	36	42%
Policy Cancellation Refunds	5	26%	11	22%	15	23%	27	36%
Premium Discounts	1	5%	2	4%	7	11%	2	2%
Policy Details	4	21%	5	10%	7	11%	2	3%
Insurance Coverage	1	5%	5	10%	6	9%	6	7%
Vehicle Registration Fraud	1	5%	-	-	4	6%	3	4%
Autoplan 12 & 6	-	-	2	4%	2	3%	2	3%
Misc. Transactions	-	-	1	2%	2	3%	2	3%
Cost of Insurance	-	-	6	12%	-	-	-	-
Payment Plan Financing	1	5%	1	2%	-	-	-	-
Multiple Crash Premium	-	-	1	2%	-	-	-	-
Total	19		51		66		80	

Driver Licensing

	2011		2012		2013		2014	
Driver's Licence Issuance (including BCID, GLP, Moving In/Out of Province)	1	8%	8	30%	9	56%	21	65%
Exams	3	23%	7	26%	3	19%	6	18%
Refuse to Issue	2	15%	5	18%	2	13%	4	12%
Vehicle & Driver Records	1	8%	1	4%	2	13%	2	6%
ID Requirements	4	31%	5	18%	-	-	-	-
Licence Status	-	-	1	4%	-	-	-	-
Vehicle Impoundment	2	15%	-	-	-	-	-	-
Total	13		27		16		33	

Account Services

	2011		2012		2013		2014	
Insurance & Claim Recovery Debt	11	50%	19	53%	10	45%	9	44%
Driver Penalty Point (DPP) Premium	2	9%	6	17%	4	18%	2	11%
Driver Risk Premium (DRP)	3	14%	6	17%	3	14%	4	22%
Fines Debt	5	23%	4	11%	3	14%	4	22%
Multiple Crash Premium (MCP)	-	-	1	3%	2	9%	-	-
Government Debt	1	5%	-	-	-	-	-	-
Total	22		36		22		19	

APPENDIX G:

Terms of Reference for the ICBC Fairness Commissioner

STATEMENT OF PURPOSE

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

SCOPE

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

CONDUCT OF REVIEW

3. Upon receiving an unresolved customer complaint for review, the Commissioner may do any of the following:
 - a. Refer the matter to the appropriate department of ICBC with or without recommendations;
 - b. Recommend that ICBC's Manager, Customer Relations conduct an investigation;

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

COMPLETION OF REVIEW

7. At any stage in the review of an unresolved customer complaint the Commissioner may:
 - a. Recommend that an ICBC action or decision be reconsidered
 - b. Recommend that an exception be made to an ICBC policy or procedure, having regard to the impact that making such an exception may have on other customers
 - c. Recommend that an ICBC policy or procedure be studied or reviewed by the Board of Directors of ICBC, or that new policies or procedures be adopted to address customer needs
 - d. Make a report to the Executive or Board of Directors of ICBC with respect to the findings of an investigation; and
 - e. Determine that no further action or investigation is required

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

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

CONFIDENTIALITY

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

REPORTING

10. The Commissioner shall prepare an annual report for the Board of Directors and shall deliver that report to the Governance Committee of the Board. The Commissioner shall appear before the Governance Committee to discuss the report and shall also appear before that Committee or the Board at any other time the Committee or the Board may request or the Commissioner considers necessary, with respect to:
 - a. The activities of the Commissioner;
 - b. The adequacy of ICBC's responses to the Commissioner's investigations and recommendations, including a discussion of the number of his/her recommendations that were not accepted by ICBC and the explanations given by ICBC for declining to adopt them; and
 - c. Circumstances that the Commissioner believes require the Board's review of a specific policy or procedure.
11. After reporting to the Board and permitting the Board an opportunity to respond within a period of time that he/she considers reasonable, the Commissioner may, subject to Article 7 of these Terms of Reference, make a public report in respect of the matters set out in Article 10.