

# 2020/21 Annual Report

## Office of the ICBC Fairness Commissioner

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Peter Burns, Q.C.  
ICBC Fairness Commissioner



# 2020/21 Annual Report of the ICBC Fairness Commissioner

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## Introduction

The Annual Report of the ICBC Fairness Commissioner is a summary of activities in 2020/21. The report is a requirement of the Fairness Commissioner's Terms of Reference, outlined in Appendix C.

This report includes:

- The concept and elements of the Office of the ICBC Fairness Commissioner, with some examples of customer complaints and resolved cases
- Statistics from 2020/21 (12 month fiscal year: April 1, 2020 – March 31, 2021)
- Terms of Reference for the Fairness Commissioner

## The ICBC Fairness Commissioner



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

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

He has been a consultant to various branches of government, particularly in the fields of International Human Rights and Law Reform. He was appointed to the Board of Directors of the International Centre for Criminal Law Reform and Criminal Justice Policy (Vancouver) from 1982 to 2014, is a former President of the International Society for the Reform of Criminal Law, and was a member of the UN Organization Committee against Torture from 1987 to 2003, serving as Chair from 1988 to 2003.

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

## **From the ICBC Fairness Commissioner**

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

In 2019/2020 there were 411 cases while in 2020/2021 there were 504. It is difficult to definitively explain the increase as the customers themselves choose to bring their cases forward and their reasons for reaching out to the Fairness Commissioner are only known to themselves.

In March 2020, as the COVID-19 (coronavirus) situation evolved, ICBC immediately implemented unprecedented temporary measures and continues to adjust steps to support the health and safety of their customers, partners and employees. The significant changes necessitated by the uncertain and not 'business as usual times' naturally lead to increased inquiries.

Further to this, I note there were a number of insurance model changes announced and implemented by ICBC in September 2019 that continued to impact customers into 2020/21. This model ensures that insurance premiums better reflect the risk associated with those that drive the vehicle and this may have spurred customers into a greater desire to ensure their concerns received the utmost consideration.

Issues arising from the changes continued to come to my attention for review over the year. This shows the value of the decision review process and the Fairness Commissioner function in providing an avenue for customers to pursue their concerns and an assurance those concerns will be evaluated fairly when new processes, procedures, and indeed whole insurance schemes are introduced by ICBC.

As in years past, the number of cases does not reflect the complete picture, as 90 per cent of the cases in 2020/2021 were resolved by the Insurance Corporation of British Columbia's (ICBC) Fair Practices Office (formerly, Customer Relations department) and did not reach me for review. As well, I sometimes refer cases back to ICBC'S Fair Practices Office, with a view to having ICBC review its decision. Each year, several of these result in different decisions being reached by the Corporation.

I am very pleased to report to the Board that once again, in the cases that I referred back for another review by ICBC they have taken the matter seriously and have been responsive. In each instance, appropriate changes to decisions or practices were made and this led to a better result for the customer.

It bears repeating that the 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 2020/2021, only two of them required a formal recommendation based upon a lack of fairness in the decision-making process or the reasonableness of the decision itself.

Enhanced Care, which begun May 1, 2021, is a new way of doing auto insurance in B.C. The move from the previous litigation-based system to a care-based model will absolutely be a significant shift, requiring many changes to ICBC's culture and the way they work with injured customers. With any significant change, there are opportunities to learn and improve after it is implemented. I feel assured that the staff at ICBC are committed to seizing these opportunities to see this change succeed for the benefit of all British Columbians, and it is a change I fully embrace.

With Enhanced Care, Government has also elected to enact a new Fairness Officer through legislation. I understand the new Fairness Officer will be selected this summer and be in place before the end of the year. I wish my successor in this role all the very best. I am sure they will find, as I have, that ensuring British Columbians are treated fairly by ICBC, and working with ICBC to accomplish this laudable goal, is very rewarding.

As in years past, I would like to express my appreciation to the staff of the Corporation. They remain patient, resilient, instructive, and above all, cooperative in pursuing the continued mission of the Fairness Commissioner's office.

Yours truly,

A handwritten signature in black ink, appearing to read "Peter Burns", written in a cursive style. Below the signature is a solid horizontal line.

Peter Burns, Q.C.  
ICBC Fairness Commissioner

## **Mission Statement**

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

## **Role and Authority**

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

The 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 may avail themselves of ICBC's Claims Assessment Review when disputing responsibility decisions or an Arbitration Process with respect to vehicle damage. The Commissioner does retain jurisdiction to deal with any concerns about fairness.

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

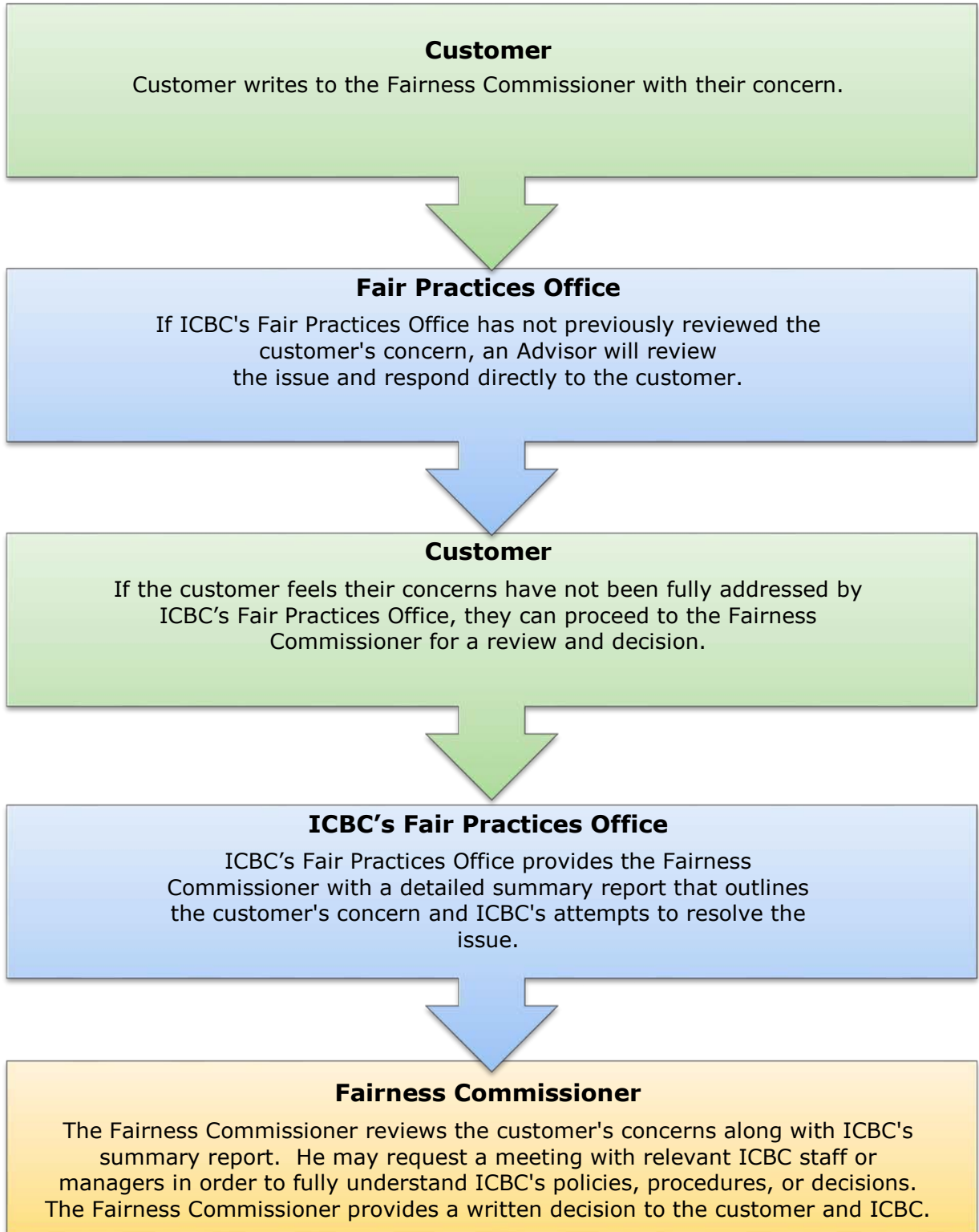
### **The Fairness Commissioner must be:**

- **Totally independent**, in particular, the Commissioner is independent of ICBC and any prior decisions that may have been made by ICBC
- **Impartial** in all respects
- **Accessible** to the public in writing and online
- **Responsive** to those who write

### **Upon completion of a review, the Fairness Commissioner may:**

- Refer the matter back to ICBC for reconsideration.
- Make a recommendation to ICBC that the complaint be resolved in such manner as appropriate. Should ICBC reject the Fairness Commissioner's recommendation, the Commissioner is empowered to take the matter directly to the Board of Directors of ICBC. If the Board rejects the recommendation, the Fairness Commissioner is empowered to take that matter to the public through the press where appropriate.
- Dismiss the complaint if the Commissioner finds no unfairness on the part of ICBC or its employees.

## The Fairness Process



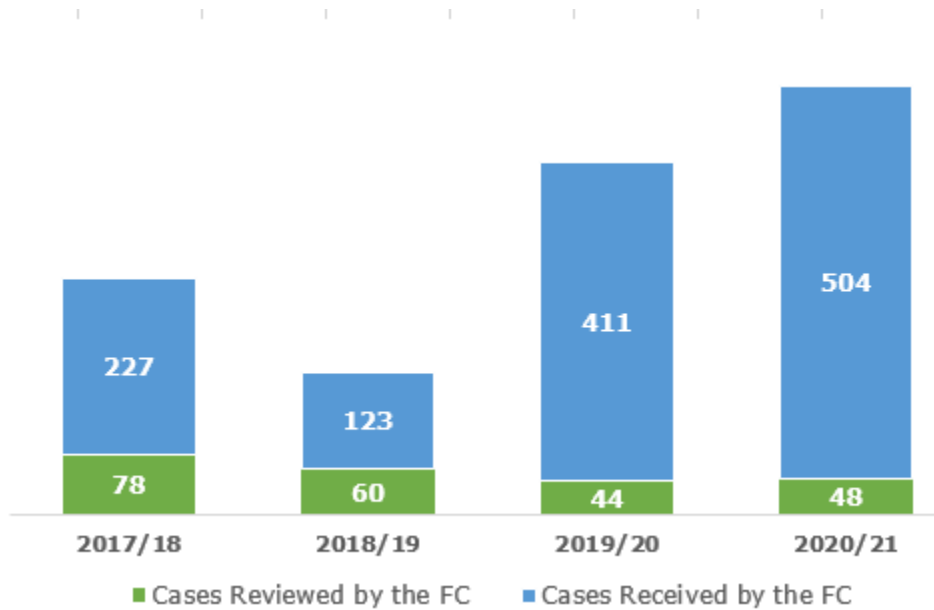
## Highlights of 2020/21

The Fairness Commissioner received 504 complaints and reviewed 48 of them in 2020/21, compared to receiving 411 complaints of which 44 were reviewed in 2019/20.

- Of the 504 complaints to the Fairness Commissioner 90 per cent, or 456 files, were successfully resolved by ICBC's Fair Practices Office without the need for a review.
- Over the years ICBC's Fair Practices Office has consistently resolved the majority of files without the involvement of the Fairness Commissioner.
- The Fairness Commissioner made two recommendations to ICBC in 2020/21. This compares to two in 2019/20.

## Statistics of 2020/21

Number of applications received and number of cases reviewed by the Fairness Commissioner from 2017 to 2020/21:





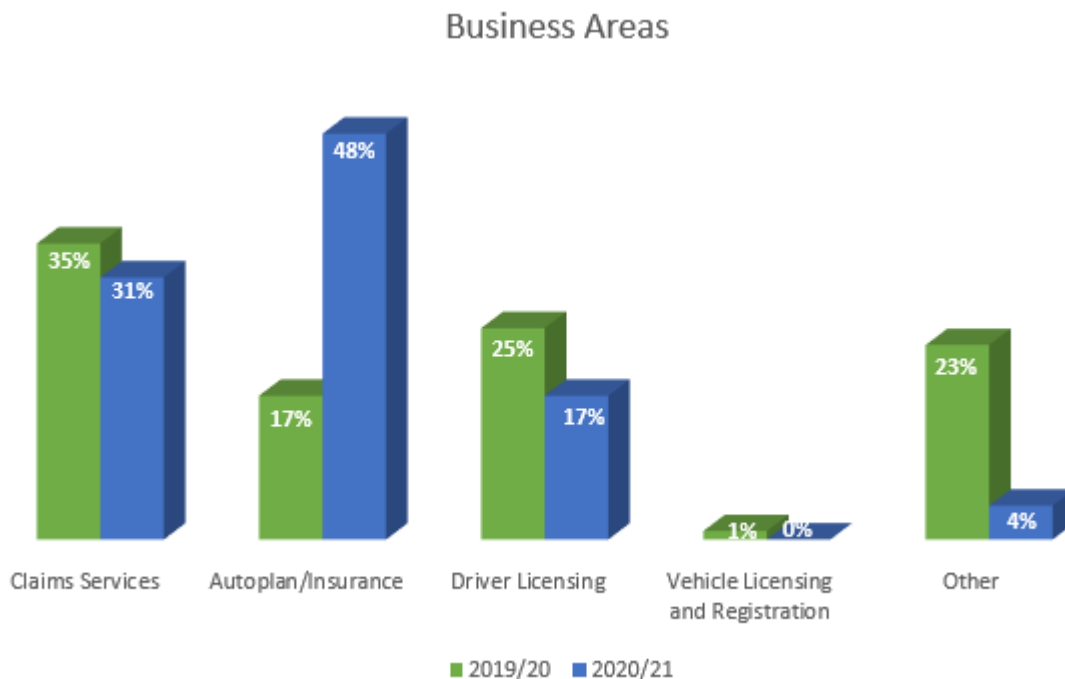
## Case Resolution Details from 2017 to 2020/21

Total Cases Reviewed by the Fairness Commissioner	2017/18		2018/19		2019/20		2020/21	
	78		60		44		48	
Determination of no unfairness	71	91%	56	93%	42	95%	46	99%
Outside FC jurisdiction	6	8%	2	3%	0	0%	0	0%
Customer withdrew concern	1	1%	0	0%	0	0%	0	0%
FC facilitated resolution	0	0%	0	0%	0	0%	0	0%
Recommendation by FC*	0	0%	2	4%	2	5%	2	1%

\*All recommendations accepted and implemented.

## Topics of Complaint by Business Area

The following chart provides a view of 2020/21 closed files. Note: *percentages may not sum to 100% due to rounding.*



\* Included in "Other" are the following: Road Safety, Finance, and Not ICBC.

# APPENDIX A

## Select Cases from the Fairness Commissioner



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

**Case 1:****Claims**

*Vehicle damage does not support a hit and run collision.*

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A customer raised concerns to the Fairness Commissioner about ICBC's decision to deny a hit and run claim, and requested the option to have the vehicle repaired as a collision claim. The customer felt that if he had been made aware that there was a potential for the hit and run claim to be denied entirely, the customer would have requested a collision claim initially, and accepted the resulting increase in insurance premiums, despite the fact the customer felt not responsible for a collision. The customer felt by denying coverage to repair the vehicle, ICBC acted in bad faith and implied an attempt was made to commit insurance fraud.

In any fairness review the burden of establishing unfairness by the Corporation rests with the customer upon the balance of probabilities. In this case the customer argued the damage was caused by a hit and run event. Further, the customer argued if it was not a hit and run case the damage was caused maliciously by some person or third persons.

ICBC's review of the evidence concluded the damage to the customer's vehicle did not appear to be caused by another vehicle. In addition, the evidence indicated the customer would have known the damage was not caused by another vehicle when presenting the claim. Because of this, the customer had forfeited the ability to make a claim under the hit and run fund.

The customer did not establish the vehicle damage was probably caused by another vehicle and could be considered a hit and run claim. The Fairness Commissioner concluded ICBC demonstrated it has taken into account all the relevant information prior to reaching its conclusion to deny the hit and run claim. Based on these circumstances, the Fairness Commissioner did not propose to make a recommendation to the Board of the Corporation that would alter ICBC's decision.

**Case 2:****Claims**

*Disagreement with assessment of responsibility and allegations of racial bias.*

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A customer raised issues to the Fairness Commissioner about ICBC's decision to assess responsibility at 50 per cent for a collision and alleged racial bias by the Corporation in making this decision.

The Fairness Commissioner explained the question of liability falls outside of his jurisdiction for review and set that matter aside. He further explained he only has the power to examine procedural failures on the part of ICBC that amount to unfairness in its relation to a customer.

With respect to the allegation of racial bias the Fairness Commissioner found the customer had in no way established the case. The Commissioner found the customer made assumptions about the decisions taken by ICBC employees and concluded that when the customer's assumptions were not supported by the facts the only rationale for such decisions must be racial bias. The Fairness Commissioner was not persuaded by the customer's argument in this regard and confirmed there was no unfairness in the way in which the liability decision was made. Accordingly, the Fairness Commissioner did not propose to make a recommendation to the Board of the Corporation.

**Case 3: Claims**

*Entitlement and requirements to receive Accident Benefits under Part 7 of the Insurance Vehicle Regulations.*

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A customer raised concerns to the ICBC Fairness Commissioner relating to a 2019 single vehicle motorcycle accident and entitlement to certain Accident Benefits.

The Fairness Commissioner explained when a customer makes a claim under an insurance policy, the Corporation requires the customer to establish the loss. In this case, the claim file was open, Temporary Total Disability benefits had been paid and ICBC had requested information from the customer in order to consider paying further compensation.

With respect to entitlement to homemaking benefits, the Fairness Commissioner explained the customer was assigned an occupational therapist to review the customer's needs in this respect; however, the customer had declined to sign the appropriate release forms for the occupational therapist and the matter had not moved forward in that respect. The customer's drug needs were up to date; however, the customer's other issues could only move forward if the customer cooperated and provide the occupational therapist's release as well as the information the Corporation needed relating to further Temporary Total Disability Benefits. The Commissioner found the gridlock was as a result of the customer conduct rather than that of the Corporation.

The Fairness Commissioner concluded the customer did not demonstrate on the balance of probabilities that ICBC has dealt with the customer unfairly. Accordingly, he did not propose to make a recommendation to the Board of the Corporation that would affect the customer's present circumstances.

**Case 4: Insurance**

*Medical emergency exemption denied in relation to an unlisted driver accident premium billing.*

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A customer raised concerns to the Fairness Commissioner regarding the unlisted driver accident premium billing that was a result of a driver not listed on the customer's policy and being found responsible for causing a crash. The customer felt the unlisted driver's use of the vehicle at the time of the loss should have been considered for a medical emergency exemption.

In this case, the customer argued that on the day before the loss, the customer's granddaughter fell ill and although the customer tried to make a medical appointment, the customer could not do so until the following day. The customer argued that this created a medical emergency making it imperative that medical assistance would happen the following day. Medical emergencies are exceptions to the insurance scheme's effects of allowing unlisted drivers to use one's vehicle.

The Fairness Commissioner confirmed ICBC listened to this argument and analyzed it in the context of the definition of the medical emergency in the *Basic Insurance Tariff* and concluded that it did not fit the definition. The Fairness Commissioner explained, only if ICBC's analysis is manifestly unreasonable could he interfere with its conclusion in this respect. In this case, the Fairness Commissioner did not feel ICBC's decision was unreasonable. Accordingly, the Fairness Commissioner was not persuaded that the customer demonstrated that ICBC dealt with the situation unfairly.

**Case 5:****Insurance**

*Insurance premiums for non B.C. residents.*

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A customer raised concerns to the Fairness Commissioner about the cost of insurance for a vehicle kept in B.C. for use at the customer's recreational property. The customer resides in Ontario, and ICBC insurance costs, for out-of-province customers, increased substantially under the driver based insurance scheme that presently applies.

ICBC explained how driving records are considered for discounts or surcharges is laid out in the *Basic Insurance Tariff*, which has the same effect as a law in B.C. ICBC had applied the Tariff accordingly and the insurance cost was the result.

The Tariff indicates the driver experience factor for non-B.C. residents will be set to zero. This is irrespective of crash history. While this means non-B.C. customers will not accumulate driving experience, this also means negative driving experience, such as being involved in a crash in either B.C. or the customer's home jurisdiction, will also not be held against the customer.

The Fairness Commissioner explained his jurisdiction is confined to procedural errors that have led to injustice to customers. The customer's situation is being dealt with in exactly the same way that all other people in their circumstances are. So, it cannot be argued that the customer is being unfairly dealt with in the sense of being discriminated against. Nor can it be said that the rationale that has led to the customer's insurance premium increase is manifestly unreasonable. Manitoba and Saskatchewan apply the same bases for calculating insurance premiums for drivers in their provinces.

The Fairness Commissioner concluded the customer was not treated unfairly by ICBC and he does not propose to make a recommendation to the Board of the Corporation.

**Case 6:****Insurance**

*Unlisted driver accident premium billing invoice and crucial change in the facts presented.*

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A customer raised concerns to the Fairness Commissioner regarding receipt of an unlisted driver accident premium billing invoice.

The Fairness Commissioner explained the case depended on a crucial change in the facts the customer provided to ICBC initially and what the customer provided to ICBC later.

The unlisted driver accident surcharge applies in cases where the driver of the vehicle, is not the registered owner and is responsible for an at-fault accident relating to the vehicle concerned. It applies to such drivers who have not been listed on the insurance policy as such by the registered owner and are residing with the registered owner at the time of the accident.

In this case the driver of the vehicle had been residing with the registered owner for about a month. The driver apparently took the registered owner's vehicle without permission; however, the registered owner emphasized the driver had not stolen it. The driver had an at-fault collision with another vehicle. As a result, the registered owner was charged an unlisted driver accident premium.

In this case, the registered owner provided two different stories to the Corporation during the investigation. In one discussion, the registered owner said the driver involved in the crash was not added to the policy because the registered owner was aware the driver did not possess a valid driver's licence, and that driving without a licence would be a breach of the registered owner's coverage. The registered owner explained permission would not have been granted to the driver in these circumstances and did not do so. However, at an earlier interview with ICBC staff, the registered owner reported not being aware that the driver did not have a valid B.C. driver's licence until the accident occurred. This is a major inconsistency concerning the registered owner's knowledge at the time of the accident.

The Fairness Commissioner confirmed he was unable to see any possible procedural errors on the part of ICBC and did not find that the registered owner demonstrated on the balance of probabilities that he had been dealt with unfairly. Consequently, the Fairness Commissioner did not propose to make a recommendation to the Board of the Corporation.

**Case 7: Insurance**

*Insurance premiums are too high based on driving experience.*

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A customer raised concerns with the Fairness Commissioner claiming that they felt their insurance premium was too high based on the customer's driving experience.

The Fairness Commissioner explained rules relating to the customer's annual premium had been properly applied by ICBC as per the driver-based rated model as outlined in the *Basic Insurance Tariff*. The only real argument against this that the customer raised was purely anecdotal, in the sense that the customer provided examples of a friend's situations. The Fairness Commissioner explained such anecdotal evidence is of very little weight.

The customer did not claim there was a procedural breach by ICBC. Nor did the customer claim treatment that differed from any other customer with the same circumstances, other than the anecdotal instances the customer brought forward.

The Fairness Commissioner concluded the customer did not demonstrate unfairness on the part of the Corporation in dealing with this matter. Accordingly, he did not propose to make a recommendation to the Board of the Corporation.

**Case 8: Insurance**

*The elimination of learner's credit in the calculation of driving experience and the resulting effect on insurance premiums.*

---

A customer raised concerns to the Fairness Commissioner explaining ICBC acted unfairly by no longer including learner licence experience in the calculation of driving experience under a driver-based insurance model.

ICBC provided a written response to the customer explaining, as of September 1, 2019, B.C. moved to a driver-based insurance system for automobile policies. Driving experience is now calculated from the time an individual is issued a British Columbia non-learner driver's licence. Individuals with a learner's driver's licence are required by law to drive under supervision, which is not an accurate measure of risk. Drivers start gaining experience once they start driving without supervision, which is when they obtain their novice driver's licence. Under the new model, learner drivers are not penalized for at-fault crashes, while still learning to drive.

The *Basic Insurance Tariff*, which has the same effect as a law in B.C., requires the purchase of Basic insurance be subject to the current rules in effect at the time. It also details the calculations for determining the premiums payable for an Owner's Certificate of Insurance. These approved changes were effective September 1, 2019 and in fairness to all, are applied equally.

The Fairness Commissioner explained in any reform of the insurance system there will be customers who benefit and customers who do not. In this case the cost is higher but this does not mean it is unfair. He concluded the customer did not demonstrate unfairness that falls within his jurisdiction for review. Accordingly, he did not recommend to the Board of the Corporation.

**Case 9:****Driver Licensing**

*Request to extend Class 6 learner's licence without requiring retesting due to cancellation resulting from the COVID-19 pandemic.*

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A customer's road test for their motorcycle license (Class 6) was cancelled because of the health and safety protocols put in place in response to the COVID-19 pandemic. The customer's motorcycle learner's licence passed the one-year mark and expired before a road test appointment was available. As a result, the customer was required to take another knowledge test. The customer asked for a Fairness review of ICBC's decision not to extend the motorcycle learner's licence.

ICBC provided a written response to the customer confirming expiry dates for learner's licences are set in legislation and it does not have the legislative authority to extend the expiry date or to waive the requirements.

On May 4, 2020, ICBC reintroduced additional knowledge tests by appointment and expanded appointments to include all knowledge tests, effective June 1, 2020. For Class 5 to 8 learner's licences that expired on or after March 17, 2020, the first knowledge test fee of \$15 was waived. Motorcycle skills testing resumed on May 11, 2020, for applicants who held an existing learner's licence or a learner's licence that expired on or after March 1, 2020.

The Fairness Commissioner explained, the customer's circumstances were not unique, but are also experienced by many customers of the Corporation. He further explained his jurisdiction for review is confined to procedural errors on the part of the Corporation. It does not extend to policy determinations made by the legislature of this province.

In the circumstances, the Fairness Commissioner agreed with the customer that those who have been adversely affected by the road testing closure have been dealt with unfairly, but not by ICBC. The pandemic itself has created the conditions that the customer complains of. He further explained ICBC was about to re-open road testing, and so long as each customer is dealt with in the same manner, he was unable to characterize such resumption as unfair.

The Fairness Commissioner did not make a recommendation to the Board of the Corporation.



**Case 10: Account Services**

*Driver licence renewal not authorized due to outstanding customer debt.*

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A customer raised concerns with Fairness Commissioner regarding ICBC's decision not to permit a driver licence renewal until the debt owing by the customer is repaid or an alternative payment plan satisfactory to ICBC is completed.

ICBC explained details of the debt to the customer in writing. In this case, when a customer's insurance policy is financed on an ICBC Payment Plan, payments are automatically withdrawn on a pre-determined date each month, until either the end of the policy term or the policy is cancelled in ICBC's system. If a customer misses two consecutive monthly payments, the customer's plan will be closed and the outstanding balance will be referred to ICBC's Account Services department for collection.

The Fairness Commissioner explained his jurisdiction is confined to cases where the Corporation has breached its duty to ensure that it is administratively fair in its dealings with customers. In this case the customer did not show any administrative breach by ICBC. It has dealt with the customer in exactly the same way that it would deal with any customer who failed to meet their contractual obligations with it.

In these circumstances, the Fairness Commissioner did not propose to make a recommendation to the Board of the Corporation.

# APPENDIX B

## Cases requiring a Fairness Commissioner Recommendation



*In 2020/21, the Fairness Commissioner made a written recommendation in two cases that ICBC accepted and implemented.*

**Case 1:****Insurance**

*Application for a Disability Discount for vehicle insurance.*

---

A parent raised concerns with the Fairness Commissioner stating a belief that ICBC had been unfair in denying their application to have the disability discount applied to an insurance policy. In this case it was for a vehicle which while owned by the parent, is used solely for the transport of the customer's child, a person with disabilities. The parent further stated the requirement to have the vehicle ownership include the child's name is inappropriate, as persons who do not have the cognitive ability to understand the implications should not be forced into being named on documents.

The Fairness Commissioner explained the uniqueness of this case. The first thing the Commissioner noted as unique was the child's capacity as a fully functioning adult. The child has been deaf and blind from birth and is unable to read or write. The child is unable to drive a car and relies on care givers for transportation. While an earlier car was registered with the child's name as one of the owners, that vehicle had been written-off after an accident. A new car was obtained for the child's use which is registered in the parent's name. The legal relationship between the parent and child is also that of trustee and beneficiary of a trust.

When the Corporation reviewed the matter, it was discovered the adult child did not fit within the possible definitions of a registered owner. As such, the Corporation concluded that since the vehicle registration did not contain the adult child's name as owner or part owner, the child was unable to claim the disability benefit.

The Fairness Commissioner explained, the child's circumstances are precisely what the purpose of the legislation creating the disability subsidy is designed to correct in part. But, by its very terms the legislation did not allow for a satisfactory result.

The Fairness Commissioner stated it could be argued the child's case did not fit into the statutory plan and he recommended the Corporation review its decision. The Corporation did so and on a 'one time bases' agreed to grant the disability discount to the child for that year only. The Corporation also committed to review the language in the *Basic Insurance Tariff* regarding the disability discount for possible changes to address this unique situation.

The Fairness Commissioner concluded this was the fairest way to deal with this matter and it met with his full approval.

**Case 2: Insurance**

*Returning resident to British Columbia and a request for driver history and resulting insurance credit beyond the maximum of 15 years granted.*

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A customer raised concerns with the Fairness Commissioner regarding ICBC's decision not to grant the maximum insurance discount available to a returning resident with a British Columbia driving history, namely 40 years. Instead, the customer received a 15 years discount because the evidence of the length of time the customer was out of province had not been established.

In this case the customer reported obtaining a B.C. driver's licence for the first time at the age of 16 in 1977. The customer attended school in the United States while using a B.C driver's licence and moved to Alberta, residing there until recently moving back to B.C.

The customer was unable to prove the existence of a B.C. driver's licence from 1977 because under the record keeping that applied before the new system was adopted, records were subject to general deletion.

There was no evidence the customer held a driver's licence from the date the customer claimed and on this basis ICBC granted the insurance discount based on the information available, namely that the customer was a new resident to B.C.

However, the Commissioner found the absence of evidence was the result of a policy of deletion that was applied to driving records of a certain age. In short, the customer was not responsible for these circumstances nor was the customer responsible for the current regulations that created the situation.

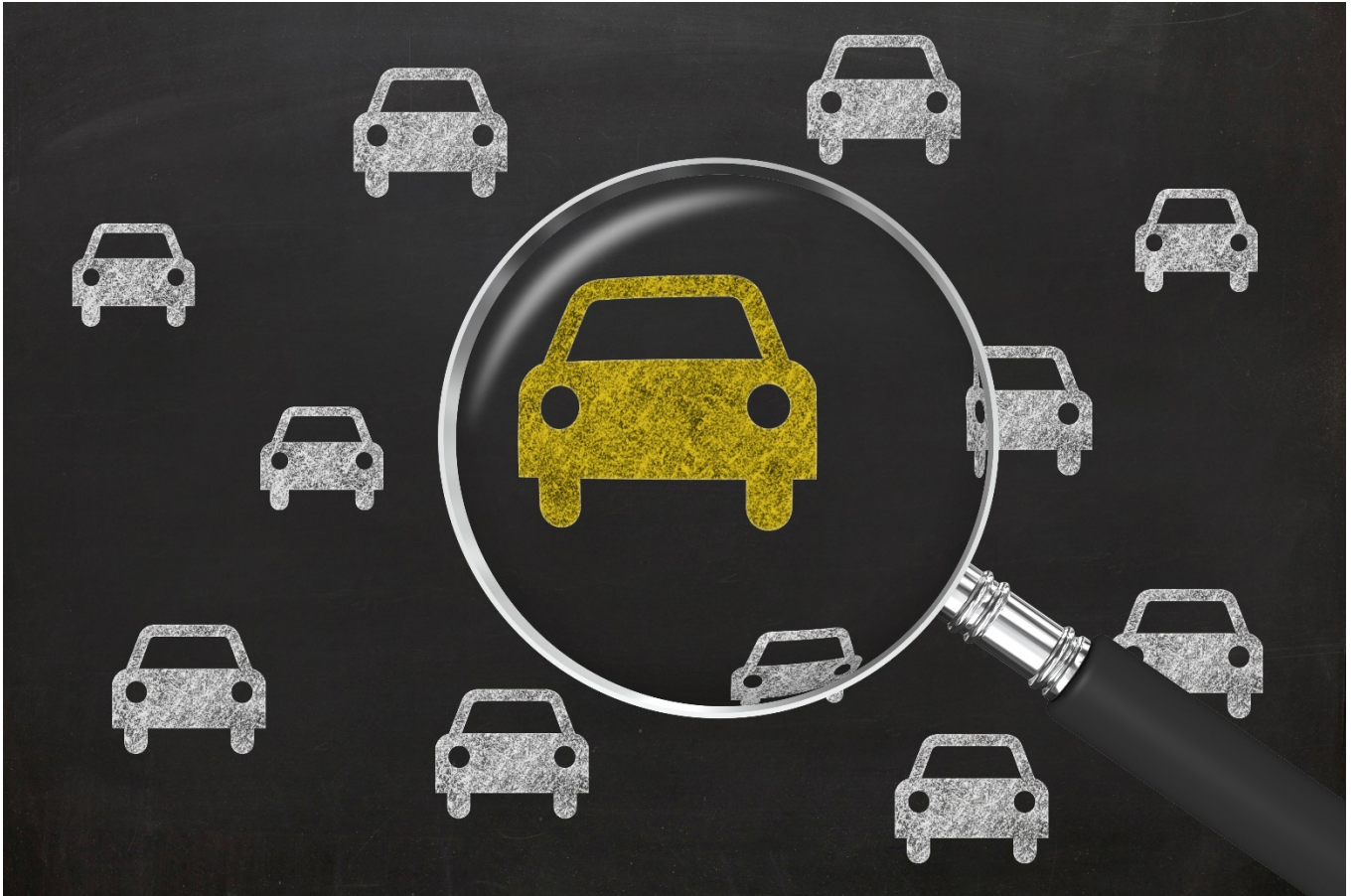
The Fairness Commissioner found that although there is no specific regulatory authority to accept a notarized statement from a customer, it appeared that in the absence of evidence of the facts on the part of the customer, a notarized statement by the customer was the best evidence of when a driver's licence came into existence.

Consequently, the Fairness Commissioner was of the view that in these circumstances the decision not to accept a notarized account from the customer is manifestly unreasonable and therefore the decision relating to the existence of the driver's licence is unfair. As such, he recommended to the Board of the Corporation that if an appropriate notarized statement from the customer is brought forward to the Corporation it should be received and acted upon.

The Corporation accepted this recommendation. The customer ultimately produced the notarized statement and ICBC granted the corresponding insurance discount.

# APPENDIX C

## *Terms of Reference for the ICBC Fairness Commissioner*



## **STATEMENT OF PURPOSE**

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

## **SCOPE**

2. An "unresolved customer complaint" is:
  - a. A complaint about the fairness of an ICBC decision, action or practice as it has been applied to a customer;
  - b. Made in writing (with the assistance of ICBC staff if necessary) by an ICBC customer, where "customer" includes those who are directly affected by an ICBC decision, act or failure to act in any of its lines of business, and in which the customer agrees to the terms set out in section 9(b) of these Terms of Reference; and
  - c. Not resolved to the customer's satisfaction after a reasonable effort by the customer to address their complaint through ICBC's internal complaint resolution processes including the ICBC Fair Practices Office (formerly, 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, an arbitration; or that relates to a court decision; or 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 or administrative adjudicators.

## **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, Fair Practices conduct an investigation;
  - c. Facilitate a resolution of the complaint with the complainant and the appropriate ICBC personnel;
  - d. Recommend that the complaint proceed to mediation or arbitration;
  - e. Seek the assistance of the Management or the Board;

- 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, or that new policies or procedures be adopted to address customer needs;
  - d. Make a report to the Management or the Board 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 management 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 senior management liaison.

## **CONFIDENTIALITY**

9. Recognizing that any unresolved customer complaint could later become the subject of litigation, and that 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 and shall deliver that report to the Governance and Technology Committee of the Board. The Commissioner shall appear before the Governance and Technology 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.