

2016/17 Annual Report

Office of the ICBC Fairness Commissioner

Peter Burns, Q.C.
ICBC Fairness Commissioner



Published May 2017

2016/17 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 2016/17. The report is a requirement of the Fairness Commissioner's Terms of Reference, outlined in Appendix D.

This report includes:

- The concept and elements of the Office of the ICBC Fairness Commissioner, with some examples of customer complaints and resolved cases
- Statistics from 2016/17 (15 month fiscal year)
- Terms of Reference for the Fairness Commissioner

The ICBC Fairness Commissioner



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

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

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

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

From the ICBC Fairness Commissioner

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

In recent years the number of such cases has been increasing. Last year there were 251 and this year they reached 321. These cases do not reflect the complete picture, as 69.5 per cent of the cases in 2016/17 were resolved by the Insurance Corporation of British Columbia (ICBC) Customer Relations department and did not reach me for review. As well, I sometimes refer cases back to the Customer Relations department, with a view to having ICBC review its decision. Each year, several of these result in different decisions being reached by the Corporation, to the satisfaction of the customer concerned.

I am very pleased to report to the Board, again, that in the cases that I referred back for another review by ICBC the response was unreservedly positive. In each instance, appropriate changes to decisions or practices have been made and this has led to a better result for the customer. In 2016/17, there were four such cases, summarized in Appendix A.

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 2016/17, 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 like to express my appreciation to the staff of the Corporation. They have continued to be patient, instructive, and above all, cooperative, in pursuing the mission of the Fairness Commissioner's Office. I would also like to acknowledge the excellent contribution to the Fairness Process made by my colleague, Elizabeth Edinger, who acted for me when I was unable to deal with particular cases.



Peter Burns, Q.C.
ICBC Fairness Commissioner

Mission Statement

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

Role and Authority

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

The Office of the Fairness Commissioner's jurisdiction deals with fairness of process or administration. The Commissioner does not have jurisdiction to deal with disputes that relate solely to the amount of a final payment or the assessment of liability. In these matters, customers have a right to a Claims Assessment Review when disputing liability decisions or an Arbitration Process with respect to vehicle damage. The Commissioner does retain jurisdiction to deal with any concerns about fairness.

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

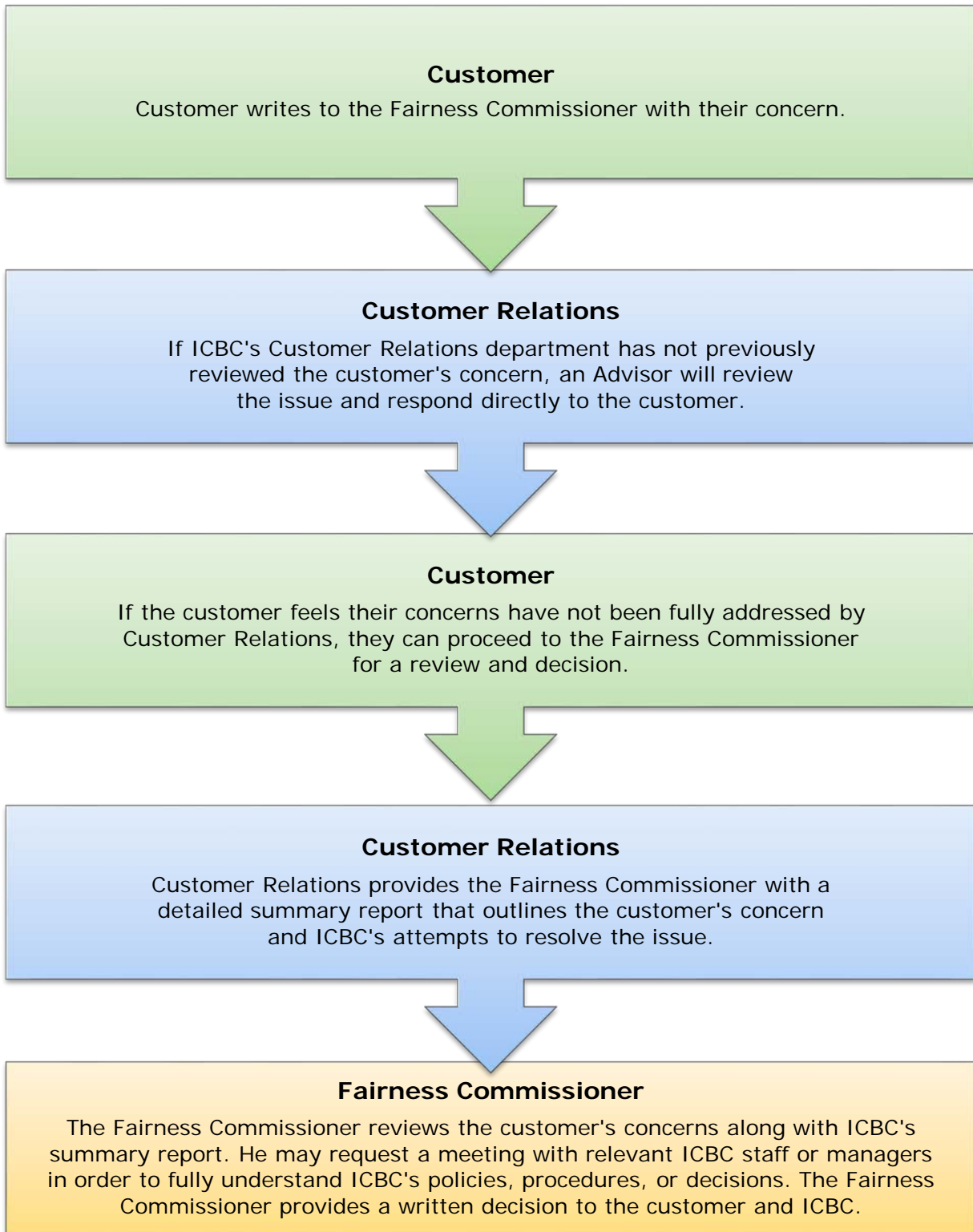
The Fairness Commissioner must be:

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

Upon completion of a review, the Fairness Commissioner may:

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

The Fairness Process

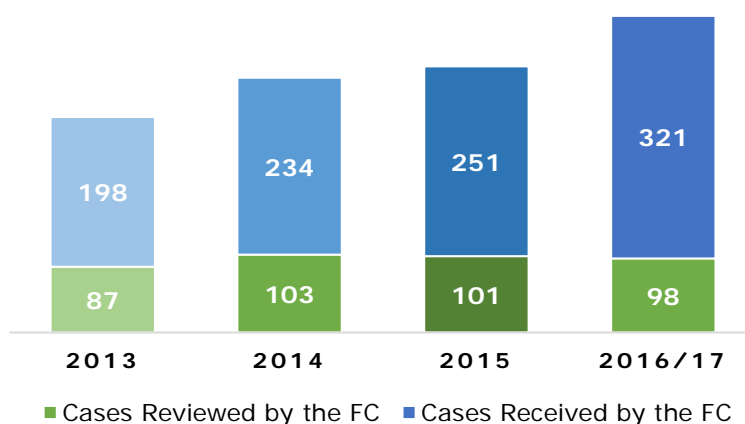


Highlights of 2016/17

- The Fairness Commissioner received 321 complaints and reviewed 98 of them in 2016/17 (15 month fiscal), compared to receiving 251 complaints of which 101 were reviewed in 2015 (12 month fiscal). To compare, in the last two fiscal years the Commissioner received approximately 21 files per month, and reviewed approximately 8.5 files per month in 2015 and 6.5 per month in 2016/17.
- Of the 321 complaints to the Fairness Commissioner 69.5 per cent, or 223 files, were successfully resolved with Customer Relations.
- Since 2013, Customer Relations has consistently increased the percentage of files resolved without the involvement of the Fairness Commissioner.
- The Fairness Commissioner made four recommendations to ICBC in 2016/17. This compares to three in 2015.

Statistics of 2016/17

Number of Applications Received and Number of Cases Reviewed by the Fairness Commissioner from 2013 to 2016/17



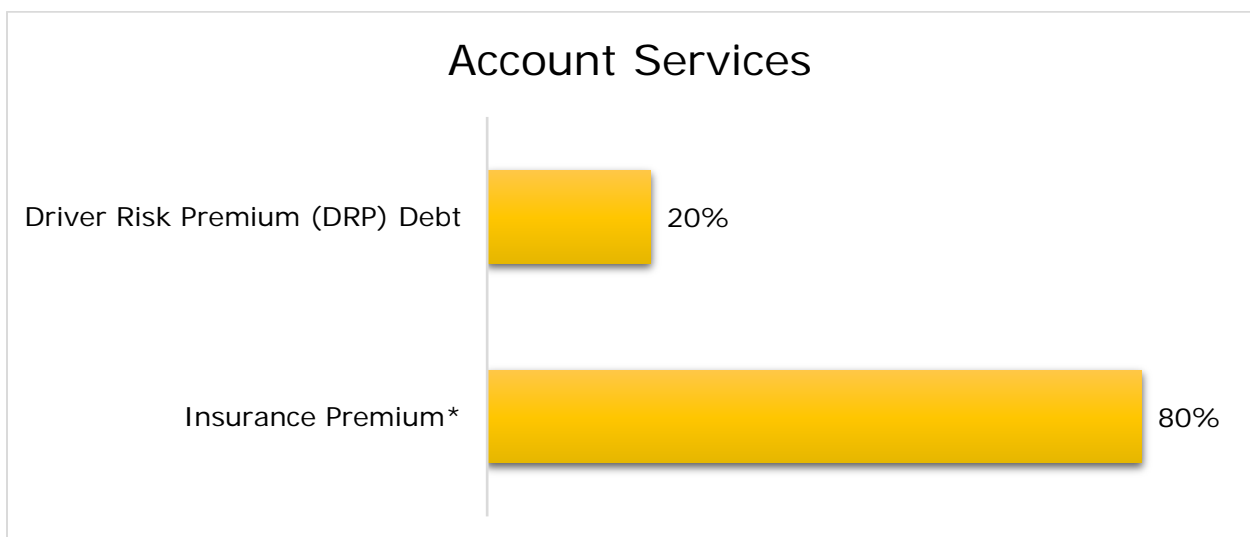
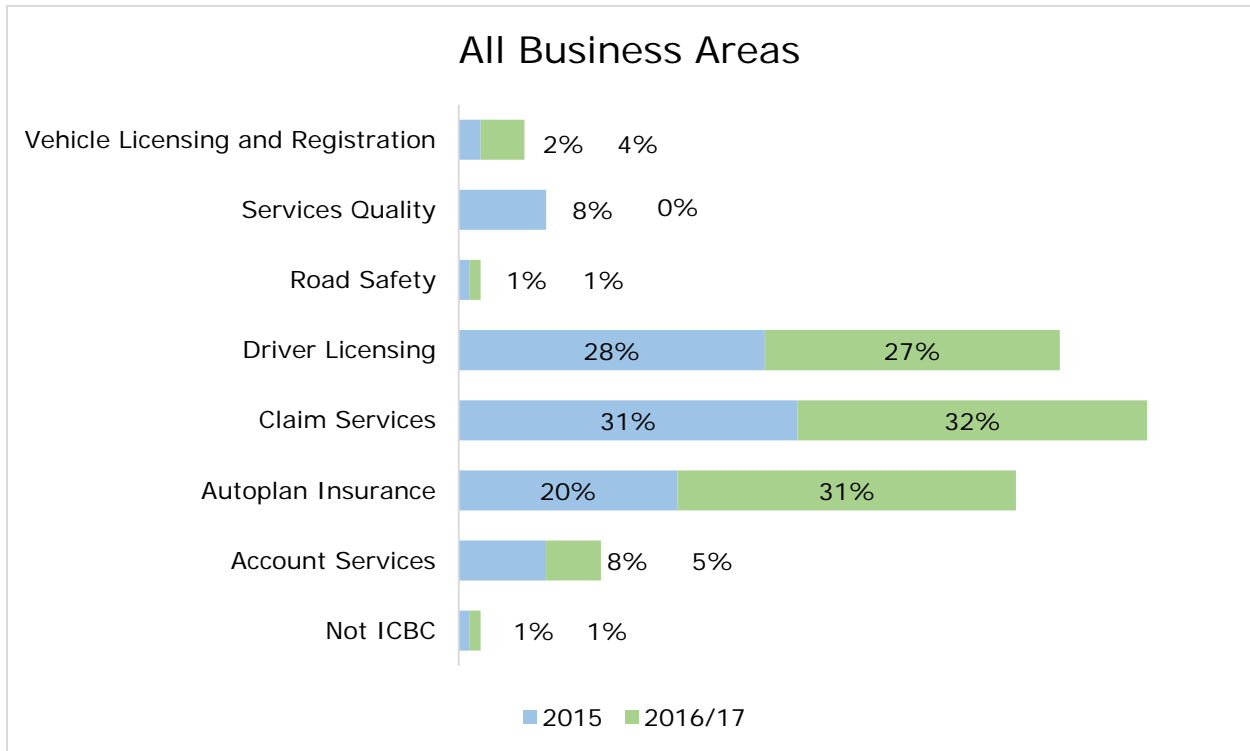
Case Resolution Details from 2013 to 2016/17

Total Cases Reviewed by the Fairness Commissioner	2013		2014		2015		2016/17	
	87		103		101		98	
Determination of no unfairness	70	81%	84	82%	93	92%	92	94%
Outside FC jurisdiction	9	10%	14	14%	5	5%	1	1%
Customer withdrew concern	3	3%	0	0%	0	0%	1	1%
FC facilitated resolution	5	6%	1	1%	0	0%	0	0%
Recommendation by FC*	0	0%	4	4%	3	3%	4	4%

*All recommendations accepted and implemented

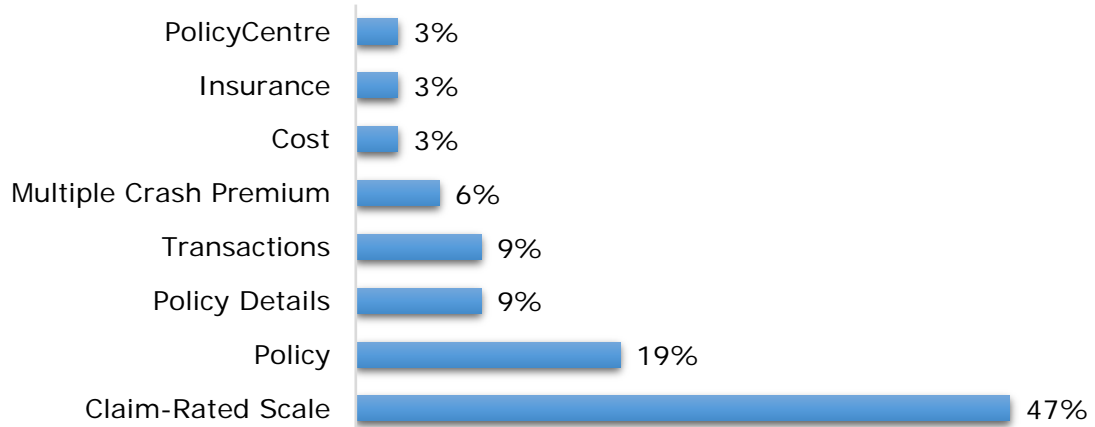
Topics of Complaint by Business Area

The following charts provide a view of 2016/17 closed files, including a more detailed view of the top four business areas. Note: *percentages may not sum to 100% due to rounding.*

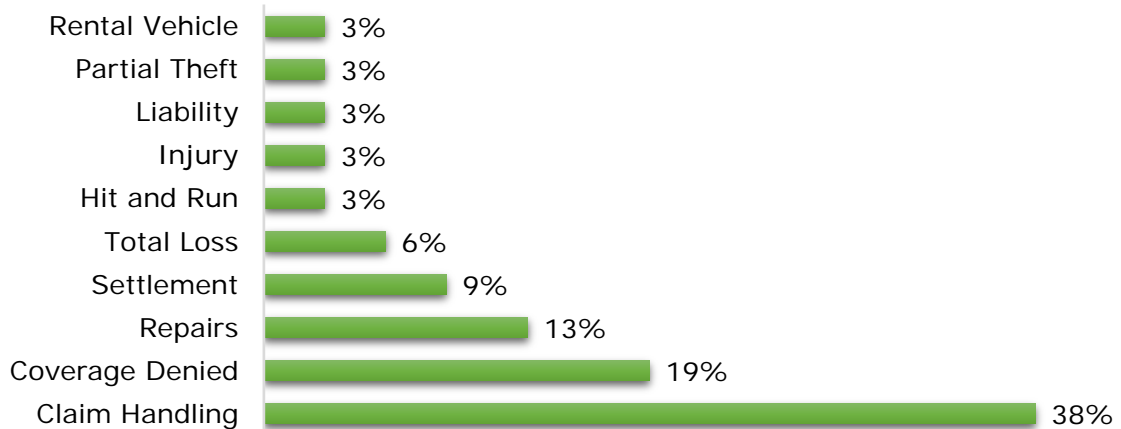


*Cases reviewed concerning **Insurance Premiums** include: Debt (related to Motor Vehicle Violations, Insurance, Payment Plan, Claim Recovery, Underpayments, Multiple Crash Premiums, Driver Penalty Points) and Refuse-to-Issue (related to any of the above debt, including Bridge Tolls, Translink Violations, and the Family Maintenance Enforcement Program)

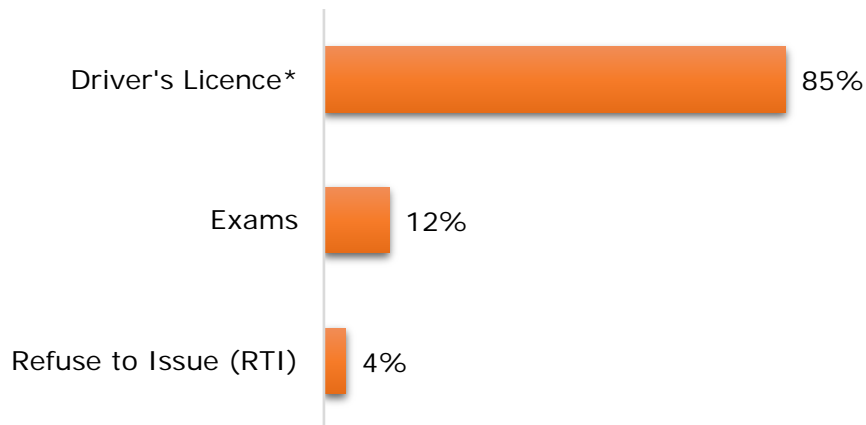
Autoplan Insurance



Claims Services



Driver Licensing



*Cases reviewed about **Driver's Licences** include:

New Resident Driver's Licences, Learner's Licence Credit, Non-Reciprocal Driver's Licences, Primary Identification, Road Test Results, Name on Driver's Licences, Number of Characters allowed on Driver's Licences.

APPENDIX A

Cases Requiring a Fairness Commissioner Recommendation



In 2016/17, the Fairness Commissioner made a written recommendation in four cases that ICBC responded to and implemented.

Case 1: *Approved a hit-and-run claim where the limitation period expired while the fairness process was under review*

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

CONFIDENTIAL

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

December 7, 2016

[REDACTED]

Dear Mr. [REDACTED]:

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

I acknowledge receipt of your application for a Fairness Review, dated July 1, 2016, of the way in which the Corporation has dealt with the damage that your motor vehicle sustained whilst you were driving on Highway 17, at Patricia Bay, on August [REDACTED], 2014.

In reaching my decision I have taken into account the submissions you make in your review application, as well as information that you have supplied in your letter of September 20, 2016, and in your wife's letter to this office, dated March 31, 2015. As well, I have had the benefit of the contents of a file prepared by the Corporation for the purpose of this review, which includes, among other things, a full chronology of the relevant events, photographs of the damage that your vehicle sustained, the pertinent legislative provisions relating to hit and run claims against the Corporation, and two earlier decisions of my own dealing with roughly the same issue that your case raises.

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

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

The facts of your case are well set out in the letter to you, dated July 26, 2016, from Ms. [REDACTED], Customer Relations Advisor. You were unable to persuade the Corporation that the damage to your vehicle occurred the way that you assumed it did. You believe that the damage was sustained whilst you were overtaking a "tractor-trailer" as the result of something flying off the tractor-trailer and striking your car. The Corporation, on the other hand, concluded that it was more probable that the damage occurred as the result of vehicle to vehicle contact. This was the conclusion of the ICBC estimator, which was confirmed by two Material Damage Managers. It is noteworthy that the matter had been drawn to the attention of the Corporation by the shop to which the car had been taken for an estimate and possible repair.

The Corporation offered to treat the damage as resulting from a hit and run and declined to allow an Own Damage Collision claim. You should note that every claim that ICBC deals with involves corporate decisions based upon the existence of facts established as probabilities. The Corporation does not require facts to be established beyond a reasonable doubt, but it will not act upon mere speculation in reaching its decision. If ICBC does not accept your version of events, it does not mean that the corporate employees think that you are lying. It usually means that they are not persuaded that you have demonstrated upon the balance of probabilities the version of events that you are putting forward.

Since you do not argue that you have been subjected to any technical administrative process breach by the Corporation you must be arguing that the ultimate decision taken by ICBC is manifestly unreasonable and therefore unfair. The burden of demonstrating unfairness rests with the customer upon the balance of probabilities. In my opinion you have failed to do this. The Corporation considered your version of events and weighed them up against the physical evidence. A decision was made and that decision was reviewed on two occasions. I am unable to conclude that the Corporation has dealt with you unfairly as to the nature of the claim that is available to you. With respect to that issue I do not propose to make a recommendation to the Board of the Corporation that would affect your situation.

But, you have another basis for claiming unfairness on the part of ICBC in its dealings with you. You wrote to this office on July 1, 2016. This initiated the fairness process which included the response on July 26, 2016, from Ms. [REDACTED], referred to earlier. In her letter to you Ms. [REDACTED] advised you of the limitation date that was fast approaching. The limitation cutoff date for a hit and run claim in your case was August 27, 2016. Two days after that date you contacted the Corporation to let them know which repair shop you wanted to take your car to and was advised that you were out of time (apparently by two days) and that a hit and run claim would not be honoured by ICBC. I have decided in the past that when a customer initiates the fairness process, limitations that normally apply are suspended until the fairness process is concluded. In my opinion it would be manifestly unreasonable and therefore unfair not to do this. In your case the fairness process had clearly been initiated. This is reflected in the response by Ms. [REDACTED] in her letter to you, dated July 26, 2016.

In these circumstances, I will recommend to the Board of the Corporation that ICBC honour your hit and run claim.

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

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

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

Fax: 604-443-4562

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

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

Yours truly,

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

Peter Burns, Q.C.
Fairness Commissioner

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

Case 2: *Improved general instructions to the public; only the name that appears under the Canadian coat of arms on an individual's citizenship card is their foundational name*

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

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March 7, 2016

[REDACTED]

Dear Ms. [REDACTED],

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

I acknowledge receipt of your application for a Fairness Review, dated January 15, 2016 and the waiver dated February 10, 2016. Your application for a Fairness Review arises from the refusal of ICBC to include the name [REDACTED] on your new driver's licence.

In reaching my decision I have taken into account the points made in your application, and in your other communications with ICBC, as well as the contents of a file prepared for the purpose of this review by ICBC that contains, among other things, a full chronology of relevant events, and copies of various federal and provincial government documents issued to you.

My jurisdiction is limited to procedural fairness. I can interfere with ICBC decisions and make recommendations for change only if I conclude that a customer has been dealt with in a discriminatory manner or if the way in which the decision has been reached by ICBC is in some way irregular leading to unfairness in the result. I consider, for example, whether ICBC has taken all the pertinent factors into account, listened to the arguments made by the customer, and communicated its decision and the reasons for it once it has been made. What I cannot do is make a recommendation to ICBC for change merely because I would have reached a different conclusion, because I do not consider the law to be wise or because the customer does not agree with either the law or its application. At the end of the day, the question I must ask and answer is whether ICBC's decision is reasonable in all the circumstances of the case.

As [REDACTED], Customer Relations Advisor explained in an email dated January 21, 2016, a driver's licence and a B.C. Services Card must now be issued in the individual's name as it appears on the foundational documents submitted by the individual. This requirement is imposed by s.25 of the

Motor Vehicle Act, a law of British Columbia. In your case, the foundational document is your citizenship certificate. This document is very puzzling because it uses both the name [REDACTED] and the name [REDACTED] and, on its face, leaves you free to use either name.

However, when this policy was introduced, ICBC consulted with federal citizenship officials in Ottawa and was advised that only the name appearing under the Canadian coat of arms is the foundational name. In your case, the name appearing under the coat of arms is [REDACTED]. Therefore, that is your foundational name and, by the policy developed in consultation with federal authorities, your new driver's licence and B.C. Services Card must use that name.

Because ICBC now consistently and uniformly uses the name located under the coat of arms on the citizenship certificate as the foundational name, I do not find ICBC has singled you out or treated you unfairly. I will, therefore, be making no recommendation to the Board of the Corporation concerning the name used on your renewed licence. However, in order to prevent future confusion, I am recommending to ICBC that it make very clear in its general instructions to the public that it is not any name appearing on the citizenship certificate that is foundational but only the name located under the coat of arms.

I am afraid that if you wish to have your B.C. driver's licence and Services card issued in the name of [REDACTED], you will have to complete a legal change of name despite the many years in which it has been issued to you in that name.

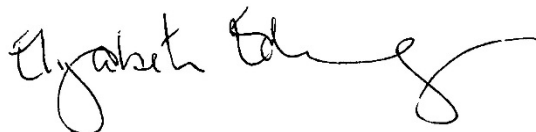
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V7M 3H9
Fax: 604-443-4562

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

Yours truly



Elizabeth Edinger
Acting Fairness Commissioner

cc: Casey Riddle, Customer Relations Manager, ICBC

Case 3: *Allowed a late repayment of a claim to preserve the customer's place on the Claim-Rated Scale*

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

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April 8, 2016

[REDACTED]

Dear Mr. [REDACTED]:

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

I acknowledge receipt of your online application for a Fairness Review, dated March 4, 2016, relating to a relatively minor collision that you were involved in whilst exiting a [REDACTED] parking lot in Langley on September 3, 2013.

In reaching my decision I have taken into account the very detailed submissions contained in your application, as well as the contents of a file prepared by the Corporation for the purpose of this review which contains, among other things, a full chronology of the relevant events, coloured photographs of the damage sustained by both vehicles involved in the collision, some earlier decisions of my own dealing with cases such as yours, and witness statements (including that of an independent observer of the collision).

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

My jurisdiction is concerned with procedural fairness. For example, has the Corporation taken the pertinent facts into account, listened to the arguments made by the customer, and communicated

its decision and the reasons for it once it has been made? At the end of the day, is the Corporation's decision reasonable in the circumstances of the case?

I will not go over the facts in any detail. The basis of the liability decision taken by the Corporation and the way in which the damage to the other vehicle was determined, is contained in the email letter to you from Ms. [REDACTED], Customer Relations Advisor, dated April 1, 2016.

In your review application you set out a plethora of complaints, most of which are customer service related rather than going to the fairness of your treatment by ICBC. The Corporation concluded that you are currently responsible for the damage that it paid for and debited to your insurance policy on the basis of examination and review of the damage to the third party vehicle by two of its estimators. The Corporation was also satisfied with the repair costs billed by the repair shop. I am satisfied that you have not demonstrated that ICBC was acting unreasonably in making the payments it did to repair the other driver's vehicle, and thus did not treat you unfairly in this respect.

It is not the practice of the Corporation to advise customers when payments are made to third parties and applied to their policy. The courts have ruled that there is no obligation cast upon ICBC to advise customers in advance when a limitation period is ending and may fall due.

But, the Corporation has developed a practice as a customer service in cases where there are no injuries and where the property damage is minor to forward a "repay" letter to such customers so that they can preserve their place on the Claim-rated Scale if they so choose by paying the damage to the third party themselves. You did not receive such a repayment letter and claim that this is unfair since it removed the option of repayment from you.

Given that two years has long since passed from the date of the collision you can no longer make repayment in order to preserve your place on the Claim-Rated Scale. In earlier decisions I have concluded that, once ICBC has implemented a policy or practice, it must be applied to customers on an even-handed basis. Any failure to do so is presumptively unfair. The corporation takes the position that since the payment is a customer service and not an obligation by statute, it is entitled to confine it to cases of "minor" damage only. This begs the question of what the term "minor" means.

In your case the third party's recovery was in excess of \$ [REDACTED]. For the purpose of determining whether or not it was unfair of the Corporation not to provide you with the repayment opportunity in a timely manner I take the view that the damage in your case was "minor" for the purpose of applying the repayment option. Given that the two year limitation period would not have run out until September 3, 2015, you would have been able to determine whether or not to make damage repayment before the expiry of the limitation period and after the final payment to the third party on June 4, 2015. By not providing you with this opportunity my conclusion is that you have demonstrated that ICBC has treated you unfairly.

The upshot is that, for the most part, I conclude that you have not shown that you have been dealt with unfairly by the Corporation, but that in one respect you have done so. This is in relation to the failure of ICBC to provide you with the repayment option by letter in a timely manner after the final payout to the third party driver and before September 3, 2015, when the limitation period expired.

Accordingly, I will recommend to the Board of the Corporation that you be given the opportunity of making a repayment, in order to preserve your place on the Claim-Rated Scale. Such repayment, if you choose to follow through with it, must be made to ICBC within 30 days of the date of this decision.

You also have the option of taking the matter to the Office of the Provincial Ombudsperson, which has a wider jurisdiction than my own, or to the courts of this province.

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

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151 West Esplanade
North Vancouver BC V7M 3H9

Fax: 604-443-4562

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

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

Yours truly,

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

Peter Burns, Q.C.
Fairness Commissioner

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

Case 4: *Allowed the late repayment of a claim, and advised that the Multiple Crash Premium should not be applied to the customer*

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

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February 28, 2017

[REDACTED]

Dear Mr. [REDACTED]:

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

I acknowledge receipt of your online application, dated February 22, 2017, for a Fairness Review of the Corporation's decision to apply the Multiple Cash Premium (MCP) to you.

In reaching my decision I have taken into account the submissions you make in your review application, as well as those in your letter, dated February 1, 2017, addressed to ICBC Customer Relations. I have also had the benefit of the contents of a file prepared by the Corporation for the purpose of this review which contains, among other things, a full chronology of the relevant events, and correspondence that ICBC has had with you over time.

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

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

At the outset it is useful to point out that the burden of proof is cast upon the customer to establish unfairness upon the balance of probabilities. This means that you must demonstrate a technical procedural breach by the Corporation in its dealing with your case or that the ultimate decision of the Corporation is manifestly unreasonable.

If I understand your case correctly, it is that you have been dealt with unfairly by ICBC for two reasons. The first is that you were unaware of the MCP as a program that the Corporation applies to all its customers who experience three claims for which they are found to be 50% or more responsible over a three year period.

I do not find merit in this submission because the MCP is authorized by the *Basic Insurance Tariff* which has the effect of a regulation in this province. Neither ICBC nor I can go behind these provisions. Accordingly, I do not find that your first unfairness argument has been established.

But your other argument seems to me to be much more substantial and well-founded. This is the argument whereby you point out that ICBC has established a practice of advising customers who have had an at-fault claim that they have the opportunity of repaying it in order to avoid its effects upon the Claim-Rated Scale and, in your case, the MCP. You did not receive such a letter. You argue that had you received such a letter you would have repaid claim [REDACTED] and thereby could have avoided the more serious financial consequences of the MCP.

One of the more obvious features of administrative fairness is that all customers in similar circumstances should be treated by the Corporation in the same way. As Aristotle is reported to have stated, justice demands that you treat like cases alike and unlike cases unlike. This is a very well established principle of administrative law.

In your case for reasons that may have been institutionally convenient, but not compelling, you received no such repay letter. You should have. This failure on the part of the Corporation amounts to unfairness on its part. Given the minor nature of the claim in contradistinction to the cost of the MCP, I am persuaded that in all probability you would have repaid the claim had you been given the option to do so prior to renewing your policy of insurance.

Accordingly, I conclude that you have been dealt with unfairly by the Corporation in this instance, and will recommend to the Board of the Corporation that you be allowed to repay the amount of the [REDACTED], accident that the Corporation paid out on your behalf and that the MCP should not be applied to you at this time.

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

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North Vancouver BC V7M 3H9

Fax: 604-443-4562

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Yours truly,

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Peter Burns, Q.C.
Fairness Commissioner

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

APPENDIX B

Select Cases from the Fairness Commissioner



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

Case 1: Claims
Handling of a total loss claim related to a motorcycle

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

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April 27, 2016

[REDACTED]

Dear Mr. [REDACTED]:

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

I acknowledge receipt of your application for a Fairness Review, dated October 29, 2015, relating to the way in which a total loss claim relating to your motorcycle was handled by the Corporation.

In reaching my decision I have taken into account the various submissions you make in your review application, as well as the numerous e-mails that you have engaged in over time with ICBC; and the contents of a file prepared by the Corporation for this review, which contains, among other things, a full chronology of the relevant events, some earlier decisions of my own dealing with some of the issues that your case gives rise to, and pertinent regulatory provisions.

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

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

The facts of your case are relatively simple. Your 2015 [REDACTED] motorcycle was stolen and you negotiated with ICBC for compensation based upon a total loss settlement. Such settlements are based upon the actual cash value of the vehicle. This gives rise to your first round of complaint, because you say ICBC is unable to point to the definition of the term "actual cash value" in either your policy or legislation. "Actual cash value" merely means market value at the time of loss or damage to the vehicle and has been held as such in countless cases by the courts. It only really became an issue here because you had argued that ICBC should pay you the "declared value" amount listed on your policy of insurance rather than the actual cash value. This is, in reality, a non-issue and I put it aside. The Corporation based its actual cash value offer to you on the information it received in that regard from Autosource. Autosource is the standard in such cases.

The second complaint that you have is that the Corporation has disallowed one after market part, that you say was installed upon your motor bike, and allowed two others. But, the reason for this has been made clear to you. The two items that were allowed were supported by receipts, whereas the third was not. You argue that e-mail communication between you and the supplier of the third part is tantamount to a receipt and should have been accepted by the Corporation as such. I have reviewed all three "receipts" and have to agree with the conclusion reached by the Corporation. The material supplied in support of the third after market part cannot be said to be a receipt in any real sense of that word. In my opinion, ICBC was not acting unfairly in declining that part of your claim. However, if you could press the supplier to provide you with a real receipt I have no doubt that ICBC would be prepared to reconsider this matter.

You have a whole variety of complaints about the way in which you were dealt with by ICBC in the course of your negotiations with it. From reading the file several times I conclude that, other than one matter that I will deal with, they are essentially complaints regarding customer service. As such, they fall outside my jurisdiction.

But, you raise one issue that might support the argument that there has been a process breach in your case. You say that you asked a manager, [REDACTED], to respond to your concerns in writing and he chose not to do so, instead calling you on the telephone. You asked him to recap your conversation in writing and he declined to do so.

In the usual course of events if a customer asks for a written response from a manager it should be granted. But, there can be legitimate exceptions to that policy. One of these would be where the matters under discussion have already been covered in writing and it would be redundant to do so again. ICBC's position is that this is the case in your request to [REDACTED]. The issues that you were raising with him at the time you made your request had already been dealt with in e-mail form. It was for this reason that [REDACTED] did not feel that it was necessary to once again recap the various matters you discussed in a single letter. The material in the file supports this position, and I do not find that you have demonstrated that you have been dealt with unfairly by the Corporation in not reiterating its position as you requested.

Where does this take us? Reading the file as a whole, it appears to me that your various concerns have been considered by the Corporation and rejected. You have been advised by ICBC why your concerns were rejected, but you remain unpersuaded.

The burden is cast upon the customer to demonstrate to me on the balance of probabilities that he or she has been dealt with unfairly by the Corporation. In this case I am unable to conclude that you have met this threshold. Accordingly, I do not propose to make a recommendation to the Board of the Corporation that would affect your current circumstances.

But, 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.

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

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

Fax: 604-443-4562

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

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

Yours truly,

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

Peter Burns, Q.C.
Fairness Commissioner

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

Case 2: Claims
Disagreement of the kind of loss (repair versus total loss) related to the terms of the Replacement Cost Endorsement contract

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

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September 16, 2016



Dear Ms. [REDACTED]:

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

I acknowledge receipt of your online application, dated August 27, 2016, for a Fairness Review of the decision of ICBC to not treat the damage sustained by your [REDACTED] motor vehicle whilst it was parked in a [REDACTED] street on July [REDACTED], 2016, as a total loss.

In reaching my decision I have taken into account the provisions of the Replacement Cost Endorsement of your collision coverage insurance, the submissions that you make in your review application, correspondence between you, your husband, and ICBC, and the contents of a file prepared for the purpose of this review by ICBC dealing with the matter.

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

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

I will not belabour the facts, since they are not for the most part in dispute. You had parked your motor vehicle in the street in [REDACTED], where it was struck by an apparently impaired driver. The damage to your vehicle was completely without fault on your part. The short issue that this case throws up is whether or not ICBC is treating you unfairly by not characterizing the damage to your vehicle as amounting to a total loss. This characterization is significant because under your Replacement Cost Endorsement if your vehicle was a total loss you would be entitled to a replacement vehicle. Otherwise, your entitlement was to have the damage to your vehicle repaired.

ICBC concluded that your vehicle was not a total loss and agreed to repair it. You argue that this determination is unfair in the circumstances and that your vehicle should be treated as a total loss.

Since you do not argue that ICBC has committed any formal procedural breach in dealing with you, I take your argument to be that the decision by ICBC is manifestly unreasonable in the circumstances and therefore unfair. The burden of establishing this rests with the customer on the balance of probabilities. So, I must determine whether or not you have satisfied this burden.

Apart from one matter, there is no dispute about the facts. But, the one matter at issue is quite crucial in determining the reasonableness or otherwise of ICBC's decision. This matter relates to the nature of the damage of the vehicle. In determining whether or not a vehicle is a total loss ICBC applies a standard and simple formula. Only if the actual cash value of a vehicle less salvage recovery exceeds the estimated cost of repair is a vehicle characterized as a total loss.

In your case the Corporation determined the actual cash value of your [REDACTED] to be \$ [REDACTED], less estimated salvage of \$ [REDACTED], leaving a maximum repair cost of \$ [REDACTED]. The estimated maximum repair cost sits at \$ [REDACTED]. In these circumstances ICBC concluded that your vehicle was not a total loss. This analysis was reviewed on August 29, 2016, by the Material Damage Manager who calculated the repair costs to be just over \$ [REDACTED] and the pre-tax Actual Cash Value to be \$ [REDACTED]. Again, the Corporation concluded that the damage to your vehicle did not render it a total loss.

In the circumstances, can it be said that you have demonstrated that ICBC has dealt with you unfairly? I conclude that it cannot. ICBC based its decision upon both the Gold Book value of your vehicle as about \$ [REDACTED] and the estimated cost of repairs on a report from Audatex. These are standard sources for those purposes in the industry. I note the information you supply concerning [REDACTED] dealers offering you substantially less than the Gold Book value if you were to trade the vehicle in. But, I am not persuaded by this, particularly as such dealers are attempting to maximize their own profit when they make such assertions to a potential client in your circumstances. In short, ICBC applied its standard evaluation practices to your case and concluded that your vehicle was not a total loss. I am not persuaded that you have demonstrated on the balance of probabilities that there was any unfairness on the part of the Corporation in doing this.

You also raise two other matters, one relating to the way in which your wheel rims were repaired. Under its contract of insurance ICBC is required to ensure that repairs are up to industry standards. You do not like the way in which your rims have been repaired, but do not provide any support for the proposition that such repairs are below industry standards. Accordingly, I put this matter aside.

You also complain that the Corporation has declined to compensate you for Accelerated Depreciation. In this case I merely note that your Replacement Cost Endorsement precludes recovery for this type of loss in paragraph 8(b)(ii). So, Accelerated Depreciation is not recoverable under your Replacement Cost Endorsement, and ICBC is merely applying the terms of the contract of insurance that you agreed to, in declining to cover it.

At the end of the day, my conclusion is that you have not demonstrated upon the balance of probabilities that ICBC has dealt with you unfairly. Accordingly, I do not propose to make a recommendation to the Board of the Corporation that would affect your present circumstances.

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

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

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151 West Esplanade
North Vancouver BC V7M 3H9

Fax: 604-443-4562

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Yours truly,

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

Peter Burns, Q.C.
Fairness Commissioner

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

Case 3: Claims
Obligation to initiate medical treatment rests with the claimant or his/her guardian and not the insurer

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

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August 5, 2016

[REDACTED]

Dear Ms. [REDACTED]:

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

I acknowledge receipt of your online application for a Fairness Review, dated July 16, 2016, of the way in which ICBC dealt with your daughter, Ms. [REDACTED] injuries claim resulting from an accident on June 5, 2015, whilst she was a front seat passenger in a vehicle that left a road near [REDACTED] and struck a tree.

In reaching my decision I have taken into account the submissions you make in your review application, together with a file prepared for the purpose of this review by the Corporation that sets out the full chronology of events.

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

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

I must admit at the outset that I have had some difficulty in following the thrust of your unfairness argument. The burden of establishing unfairness rests with the customer and I understand that Ms. [REDACTED] has authorized you to act on her behalf in this respect. The burden of proof that the customer must meet is that it is more probable than not that he or she has been dealt with unfairly by ICBC.

The accident was the result of an after graduation party in which, according to the file, a certain amount of alcohol had been taken by all those concerned. After the accident [REDACTED] apparently left the scene and returned to the campsite where the party was taking place. The driver of the vehicle is of the opinion that she was no different when she left than she was before the accident and was certainly not incoherent at the accident scene. She apparently had cuts and bruises on her head and arms and you advised ICBC of this when you phoned in to report the matter on June 7, 2010. On June 30, 2010, [REDACTED] apparently spent the night in hospital where it was found that she had sustained soft tissue injuries. The clinical notes from a walk in clinic that she attended confirmed the soft tissue injuries and that there was no evidence of concussion. An MRI subsequently taken showed no abnormality.

What then, is [REDACTED] claim that she has been dealt with unfairly by the Corporation? Given that she has settled her claim with the Corporation, and was represented by counsel at the settlement and events leading up to the settlement, this cannot be the basis of her claim.

Instead, you argue that ICBC owed a duty of care to [REDACTED], and to you and her natural father as guardians, to assist with any communication to either any medical doctors or caregivers so she could be properly assessed for required medical attention or to speed up her recovery related to her "concussion". You point to what you say is a drop off in [REDACTED] grades after the accident, as a consequence of the accident, and that is the reason why she was not admitted to UBC when she applied. Given that [REDACTED] grades were largely in decline prior to the accident, and given that you do not know why she was rejected for admission to UBC, I put this matter aside.

The real thrust of your argument is that the Corporation had an obligation to ensure that [REDACTED] was steered to appropriate medical professionals and to monitor the treatment to recovery. With respect, this is a unique view of the contractual obligations of an insurer. The policy of insurance that covered [REDACTED] indemnified her from certain risks if they materialized. The burden of establishing damages resulting from those risks materializing rests with the person making the claim ([REDACTED]). The obligation of ICBC in such circumstances is to reimburse the claimant for necessary medical expenses (and other expenses such as wage loss) and to compensate the complainant for any general damages sustained. But, the obligation to initiate medical treatment rests with the claimant or his/her guardian and not the insurer. This appears to me to be entirely reasonable and not unfair to such a claimant. It is the claimant that is in the best position to understand his/her own condition and to initiate any necessary treatment. I note that you say that [REDACTED] and you went to ICBC a number of times to ask for assistance, but my examination of the file does not support this assertion. Instead, the file reveals that ICBC responded to any such contact with you on behalf of [REDACTED].

In the result, I find that you have not established that ICBC dealt with [REDACTED] (through you) unfairly by not diagnosing your daughter's condition and shepherding it through the medical process.

You also submit that ICBC's lawyers "used intimidation, bullying and character assassination as an attempt to undermine [REDACTED] abilities and potential opportunities which resulted in [REDACTED] walking away from any further actions against ICBC in order to avoid any more shaming". Apart from the fact that you provide no evidence in support of this assertion, I will merely note that [REDACTED] was represented by counsel and she reached a settlement with the Corporation. I have no jurisdiction under my Terms of Reference to deal with "complaints concerning the advice or conduct of lawyers."

The upshot is that I am not persuaded that you have demonstrated that the Corporation dealt with [REDACTED] unfairly and I do not propose to make a recommendation to the Board of the Corporation in this regard.

However, you could take your case to the Office of the Provincial Ombudsperson, which has a wider jurisdiction than my own.

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

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151 West Esplanade
North Vancouver BC V7M 3H9

Fax: 604-443-4562

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

Yours truly,



Peter Burns, Q.C.
Fairness Commissioner

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

Case 4: Driver Licensing
British Columbia driver licensing reciprocal agreements and requirements with other countries and regions

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

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January 25, 2016

[REDACTED]

Dear Dr. [REDACTED]:

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

I acknowledge receipt of your letter, dated December 10, 2015, for a Fairness Review of the decision by ICBC to refuse issuing a B.C. Class 5 driver's licence in exchange for your Irish driver's licence. Instead, you will be required to pass a knowledge test and a road test before such a licence will be issued.

In reaching my decision I have taken into account the submissions that you make in your review application, together with the contents of a file prepared for the purpose of this review by ICBC that contains, among other things, a full chronology of the relevant events, some earlier decisions of my own, the pertinent provisions of the Regulatory Scheme, and some extracts from the Licensing Operations Manual (ICBC).

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

My jurisdiction is concerned with procedural fairness. For example, has the Corporation taken the pertinent facts into account, listened to the arguments made by the customer, and communicated

its decision and the reasons for it once it has been made? At the end of the day, is the Corporation's decision reasonable in the circumstances of the case?

The facts in your case are fairly clear and are succinctly set out in the email letter to you, dated October 19, 2015, from Ms. [REDACTED], Customer Relations Advisor.

If I understand your unfairness argument correctly, it is that despite failing the road test when you initially applied for a Class 5 B.C. driver's licence (on May 9, 2012) you should have one issued to you upon the basis of changed circumstances. At the time you initially applied for a B.C. driver's licence Ireland was a non-reciprocal country, which meant that an applicant had to pass a knowledge and vision test as well as a road test before such a licence could be granted. But, since taking and failing your road test, Ireland has entered into a reciprocal agreement with this province enabling mutual recognition of driver's licences for the purpose of issuing a local one.

In short, your argument is that whereas you failed the requirements for a Class 5 B.C. driver's licence in 2012, you returned to Ireland earlier this year and renewed your Irish driver's licence, which you say should be recognized for the purpose of reciprocity. Since you do not claim that ICBC is guilty of a procedural breach in relation to your application, I take your argument to be that it is manifestly unreasonable in the circumstances for ICBC not to issue you a Class 5 B.C. driver's licence.

You make some technical arguments concerning the jurisdiction of the Corporation that have been adequately dealt with by Ms. [REDACTED] in her response to you. Bearing in mind that the burden of establishing unfairness rests on the customer, on the balance of probabilities, have you met this burden? In my opinion, you have not. The practice of ICBC in cases such as yours is very clearly set out in the Licensing Operations Manual in Section 4.2. It states, under the heading of If Jurisdiction Was Previously Non-reciprocal, customers who were able to demonstrate at least two years of non-learner driving experience upon applying for a BCDL and are currently in the NRDL licensing process may be granted reciprocity, provided they have NOT failed a B.C. road test.

In applying the decision it has reached to your case, the Corporation is treating you in exactly the same way it does other applicants in your circumstances. In my view, reciprocity agreements do not impose upon the Corporation an automatic obligation to issue a driver's licence. The Corporation, pursuant to Section 25 of the *Motor Vehicle Act* has the jurisdiction to determine fitness and ability of an applicant to operate a motor vehicle in the Class applied for. This fitness analysis includes the power to require such a driver to submit to a knowledge test, a road test, or a signs and signals test.

The policy underlying this jurisdiction of the Corporation is manifest. If, for example, an applicant for a B.C. driver's licence from a reciprocating jurisdiction is suffering from a debilitating medical condition, the Corporation must have the ability to either decline issuance of such a licence or to grant issuance subject to conditions. This is based upon the underlying rationale for licensing which is safety on the highway.

In your case you had failed a road test. Is it unreasonable for ICBC to require you to satisfy that requirement as well as take a new knowledge test? In my view, it is not. Accordingly, I do not

propose to make a recommendation to the Board of the Corporation that would alter 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.

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

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

Fax: 604-443-4562

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

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

Yours truly,

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

Peter Burns, Q.C.
Fairness Commissioner

cc: George Fedoroff, Customer Relations and Review Services, ICBC

Case 5: Driver Licensing
*Altered documents cannot be accepted when applying for a
British Columbia Enhanced Driver Licence*

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

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February 15, 2017

[REDACTED]

Dear Mr. [REDACTED]:

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

I acknowledge receipt of your letter, dated December 20, 2016, for a Fairness Review of the decision by ICBC not to accept your Canadian citizenship card which was 40 years old and had been laminated by you.

In reaching my decision I have taken into account the various communications that you have had with the Corporation and also your letter to this office, dated September 23, 2016. I have also had the benefit of a file prepared for the purpose of this review by ICBC which contains, among other things, the full chronology of relevant events, and the statutory provisions that apply to cases such as yours.

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

My jurisdiction is concerned with procedural fairness. For example, has the Corporation taken the pertinent facts into account, listened to the arguments made by the customer, and communicated

its decision and the reasons for it once it has been made? At the end of the day, is the Corporation's decision manifestly unreasonable in the circumstances of the case?

The relevant facts of your case are very clearly set out in the e-mail letter to you, dated September 20, 2016, from Ms. [REDACTED], Customer Relations Advisor. The issue between you and the Corporation can be framed in the following way. Pursuant to section 25 of the *Motor Vehicle Act* an applicant for a driver's licence must provide documented proof of Canadian citizenship satisfactory to ICBC. You had done this in the past by presenting your Canadian citizenship card, which over time had become somewhat decrepit. You attempted to resolve this by laminating the card. Unfortunately for you the practice of ICBC is not to accept any documents that have been altered in any way, and this information is clearly set out in the customer's guide to obtaining an enhanced driver's licence, which is your case. ICBC has taken the position that by laminating your Canadian citizenship card you have altered it and declined to accept it. You say that laminating your citizenship card merely protected it and did not alter it any material respect. The *Shorter Oxford English Dictionary* defines the word alter to mean "to make otherwise or different in some respect, without changing the thing itself; to modify".

Although it is probably a legal rather than a fairness issue it appears clear to me that by laminating the citizenship certificate you altered it according to the *Shorter Oxford English Dictionary* definition. The rationale for not accepting altered documents is fairly clear. The integrity of such documents may be or are compromised and should not be relied upon by ICBC in making decisions concerning them.

How then does this analysis apply in your case? We must bear in mind that the burden of establishing unfairness rests upon the customer upon the balance of probabilities. You do not claim that ICBC has breached any technical procedural rule, so your argument that you have been dealt with unfairly must be based upon the proposition that the decision by ICBC is manifestly unreasonable in the circumstances.

My conclusion is that you have not demonstrated this. In my opinion it is a perfectly reasonable requirement that documents presented to ICBC to be acted upon by the Corporation should be unaltered. I also conclude that you have not demonstrated on the balance of probabilities that ICBC was acting in a manifestly unreasonable manner when it concluded that the laminated Canadian citizenship certificate was an altered document. Accordingly, I do not find that ICBC has dealt with you unfairly and I do not propose to make a recommendation to the Board of the Corporation that would affect your present circumstances.

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

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

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Yours truly,

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

Peter Burns, Q.C.
Fairness Commissioner

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

Case 5: Driver Licensing (addendum)
*Altered documents cannot be accepted when applying for a
British Columbia Enhanced Driver Licence*

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

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March 21, 2017

[REDACTED]

Dear Mr. [REDACTED]:

Re: File No. C [REDACTED]

I acknowledge receipt of your letter addressed to this office, dated March 2, 2017. I am happy to address the two matters that you raise:

1. In my opinion it does not matter whether the term “laminated” appears in any ICBC text. If your driver’s licence or other document has been “altered” it cannot be used in order to obtain an enhanced driver’s licence.
2. ICBC’s position, as I understand it, is that once such a document has been altered it cannot be used in the licensing process. I am unable to conclude that you have demonstrated that this position is manifestly unreasonable and therefore unfair to you.

If you want to pursue this matter further, your real option is to take it to the courts of this province.

Yours truly,



Peter Burns, Q.C.
Fairness Commissioner

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

Case 6: Insurance
Cost of transportation by barge to repair vehicle is not covered under Limited Access Island policy

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

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August 25, 2016

[REDACTED]

Dear Mr. [REDACTED]:

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

I acknowledge receipt of your application for a Fairness Review dated July 12, 2016. Your application arises from the breakage of the rear window of your 1999 [REDACTED] which occurred when you were mowing your lawn and your lawnmower kicked up a stone. [REDACTED] has no glass repair shop and is not serviced by a ferry. The only way to repair the window is to barge the car to a repair shop in [REDACTED]. It is your view that ICBC should pay the barging costs.

In reaching my decision I have taken into account the points made in your application, and in all other communications with ICBC, as well as the contents of a file prepared for the purpose of this review by ICBC.

My jurisdiction is limited to procedural fairness. I can interfere with ICBC decisions and make recommendations for change only if I conclude that a customer has been dealt with in a discriminatory manner or if the way in which the decision has been reached by ICBC is in some way irregular leading to unfairness in the result. I consider, for example, whether ICBC has taken all the pertinent factors into account, listened to the arguments made by the customer, and communicated its decision and the reasons for it once it has been made. What I cannot do is make a recommendation to ICBC for change merely because I would have reached a different conclusion, because I do not consider the law to be wise or because the customer does not agree with either the law or its application. At the end of the day, the question I must ask and answer is whether ICBC's decision is reasonable in all the circumstances of the case.

Your car is insured under a special Limited Access Island Certificate policy. The file does not tell me how long you have had the [REDACTED] on [REDACTED] but, for as long as you have had this special policy you have paid a reduced premium. The policy covers your vehicle only while it is on [REDACTED]. [REDACTED] is not serviced by a ferry and if you transport the vehicle off [REDACTED] and then drive it you will have to purchase additional coverage. Transportation off [REDACTED] is by barge at a cost of \$250 each way.

When you contacted the ICBC Claims Contact Centre, your file was assigned to a claims adjuster in Prince Rupert. The claims adjuster discussed your claim for coverage of the barge costs with her manager and with the Manager of Risk Underwriting. Informed that ICBC would not cover the cost of transportation to and from [REDACTED], you next contacted ICBC Customer Relations and dealt with Ms. [REDACTED]. Ms. [REDACTED] made further internal inquiries before contacting you to confirm that ICBC would not cover the cost of transporting your vehicle to [REDACTED] from [REDACTED] and back for the purpose of glass repairs.

In sum, the issue which you raised, namely the question of coverage by ICBC of transportation of a vehicle to and from an island without ferry service, was thoroughly considered at several levels.

I am afraid that the conclusion reached by ICBC is not one I can modify. The cost of transportation by barge is not covered by your insurance policy and is not an expense which is listed as an insurable expense. I remind you in this context that you have had a bargain: you have paid reduced premiums for the special insurance policy covering your vehicle for however long you have had it on [REDACTED].

The question of how to claim on your glass coverage in light of the absence of repair shops on [REDACTED] is likely one which you never contemplated until you needed it. While it would certainly have been desirable for the issue to have been raised when you purchased the Limited Access Island policy and for you to have been informed at that time that ICBC would not cover any barging costs for your vehicle, I cannot agree that ICBC committed a fraud by selling you a policy which insured against glass breakage in your vehicle but did not cover transportation on and off the island.

In the circumstances, I do not find that you have been treated unfairly or unreasonably and I do not propose to make any recommendation to the Board of the Corporation.

Of course, you may take the matter to the Office of the Provincial Ombudsperson, who has a wider jurisdiction than my own.

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

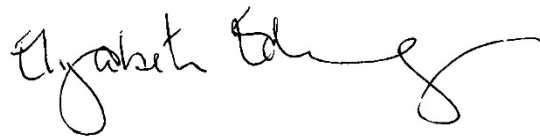
ICBC Privacy and Freedom of Information
151 West Esplanade
North Vancouver, B.C.
V7M 3H9

Fax: 604-443-4562

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

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

Yours truly,

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

Elizabeth Edinger
Acting Fairness Commissioner

cc: Casey Riddle, Customer Relations Manager, ICBC

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

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

October 14, 2016

[REDACTED]

Dear Mr. [REDACTED]:

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

I acknowledge receipt of your application for a Fairness Review dated September 14, 2016. Your application arises in connection with your request to ICBC to reimburse you for the deductibles of \$500 and \$1,000 on your vehicle insurance and your father's home insurance policies respectively.

In reaching my decision, I have taken into account the points made in your application, and in all other communications with ICBC, as well as the contents of a file prepared for the purpose of this review by ICBC.

My jurisdiction is limited to procedural fairness. I can interfere with ICBC decisions and make recommendations for change only if I conclude that a customer has been dealt with in a discriminatory manner or if the way in which the decision has been reached by ICBC is in some way irregular leading to unfairness in the result. I consider, for example, whether ICBC has taken all the pertinent factors into account, listened to the arguments made by the customer, and communicated its decision and the reasons for it once it has been made. What I cannot do is make a recommendation to ICBC for change merely because I would have reached a different conclusion, because I do not consider the law to be wise or because the customer does not agree with either the law or its application. At the end of the day, the question I must ask and answer is whether ICBC's decision is reasonable in all the circumstances of the case.

The facts are clear. On [REDACTED] the driver of a [REDACTED] was shot and killed by some unknown person shortly after midnight while driving near your house. His vehicle collided with your [REDACTED] parked in the driveway. The force of the collision drove your car into

the house and caused damage to the house. Your car was a total loss. You had collision insurance and your home, owned by your father, was also insured. However, your vehicle insurance policy had a \$500 deductible and the house insurance policy had a \$1,000 deductible. You would like ICBC to make a payment to you reimbursing you for both deductibles.

Your request is one which elicits sympathy. You and your father are absolutely without fault. You are innocent victims. But the driver of the [REDACTED], whatever his previous character, was also an innocent victim. He certainly could not have foreseen that he would be the target of a shooting.

However, you do not make any complaint concerning the procedure which ICBC followed in considering your request for reimbursement. Instead, your complaint goes to the substance or the merits of the decision because you think the result is unfair. It is always unfair when one of two innocent parties has to bear the loss but sometimes the law allows that to happen.

I have no power to rewrite contracts. The \$500 deductible is part of the contract you made with ICBC, even if you did not engage in any negotiation about it. Using the insurance policy of the driver of the [REDACTED] to compensate you is not an option for ICBC. The driver of the [REDACTED] was not at fault either in causing the collision and so his contract was not triggered.

My only jurisdiction, as explained above, relates to the way in which ICBC dealt with you. I have examined the file carefully and considered whether your concerns were properly appreciated and dealt with. It is clear from the file that ICBC, both in all its internal communications as well as in its communications with you, considered possible options and explained the results to you.

In the circumstances, I do not find that you have been treated unfairly or unreasonably and I do not propose to make any recommendation to the Board of the Corporation. I was pleased to note that ICBC had already decided to prevent the collision having any effect on your ranking on the Claims Rated Scale.

You may apply for compensation from the Crime Victim Assistance Program (604-660-3888) since your loss is a consequence of a shooting crime or you may seek legal advice.

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

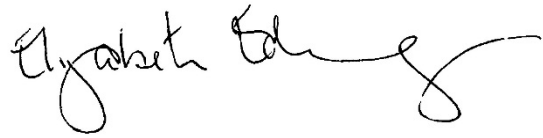
ICBC Privacy and Freedom of Information
151 West Esplanade
North Vancouver BC V7M 3H9

Fax: 604-443-4562

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

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Yours truly,

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

Elizabeth Edinger
Acting Fairness Commissioner

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

Case 8: Finance
Requirement to pay outstanding debt resulting from default on ICBC insurance payment plan prior to issuing a new driver's licence

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

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February 26, 2016

[REDACTED]

Dear Ms. [REDACTED]:

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

I acknowledge receipt of your Fairness Review application, dated January 28, 2016, relating to ICBC's insistence that you pay off an outstanding debt, in the amount of \$ [REDACTED], arising out of your default on your payment plan before issuing you with a current driver's licence.

In reaching my decision I have taken into account the submissions you make in your review application, together with the contents of a file prepared for the purpose of this review by ICBC that contains, among other things, a full chronology of the relevant events, correspondence between you and the Corporation over time, the pertinent regulatory provisions that apply to cases such as yours, and an earlier decision of my own dealing with a case very similar to your own.

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

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

The facts in your case are not in issue and are clearly set out in the letter to you, dated February 17, 2016, from Ms. [REDACTED], Customer Relations Advisor.

You defaulted on your payment plan in October, 2012 and it was not until January, 2016, that you contacted ICBC Account Services to attempt to negotiate settlement. It is probably no coincidence that this year your driver's licence is up for renewal. Account Services entered into an agreement with you whereby you would repay the debt at \$120 a month for three months, with an opportunity to arrange repayment of the balance in May 2016. ICBC gave you an additional 30 days to pay the negotiated settlement, but I am advised that you have paid nothing.

In what way is ICBC treating you unfairly in declining to issue you a new driver's licence? It has the jurisdiction to do this under the *Motor Vehicle Act* where a customer has unpaid payment plan debt owed to the Corporation. Your only argument is that you are impoverished and cannot afford to pay the debt unless a less onerous repayment schedule is arranged for you.

I am afraid I have no jurisdiction to interfere with the decisions of the Corporation unless you can demonstrate that there has been a procedural irregularity or that the decision relating to you is manifestly unreasonable. In my opinion, you have demonstrated neither basis for my intervention. 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 still repay the debt pursuant to the negotiated settlement or, in the alternative, appeal to RoadSafetyBC to allow a renewal of your driver's licence.

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

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

Fax: 604-443-4562

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

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

Yours truly,



Peter Burns, Q.C.
Fairness Commissioner

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

APPENDIX C

Examples of Non-Jurisdictional Cases



The following three cases are examples from 2016/17 that were outside of the Fairness Commissioner's jurisdiction for review as per Section 2 of the Terms of Reference.

Case 1: Claims
Requirement to preserve a vehicle's black box or its data for the purpose of litigation

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

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July 27, 2016

[REDACTED]

Dear Mr. [REDACTED]:

**Re: Application by your client, [REDACTED], for
ICBC Fairness Commissioner's Review: File No. C [REDACTED]**

I acknowledge receipt of your letter, dated May 25, 2016, advising me that you act for Mr. [REDACTED] in the matter of his motor vehicle accident at the intersection of [REDACTED] and [REDACTED], [REDACTED], on November [REDACTED], 2014.

In reaching my decision I have taken into account the very comprehensive material contained in your review application, as well as the contents of a file prepared by the Corporation for the purpose of this review that contains, among other things, a full chronology of the relevant events, correspondence between you and the Corporation, photographs of the damage sustained by the third party vehicle which was assessed as a total loss, and a copy of the police report relating to the accident.

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

recommendation for change to the Corporation merely because I would have reached a different conclusion, or that the customer does not agree with it.

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

At the outset I should deal with a preliminary matter. This case raises a clear issue concerning my own jurisdiction to deal with it. My jurisdiction is confined to that granted to me by the Board of ICBC. It is contained in Appendix D: Terms of Reference for the ICBC Fairness Commissioner of my Annual Report. My jurisdiction is confined to unresolved customer complaints and such a complaint does not extend to "complaints or disputes that relate solely or primarily to the amount of a final payment, claim settlement or assessment of liability" Your client's case, at least at first blush, is a complaint relating primarily to assessment of liability. As such, I would have no jurisdiction over the fairness of the assessment of liability decision.

But, from the way in which you have composed your fairness argument it appears to me that you argue that I have jurisdiction to hear and deal with complaints relating to the fairness of the procedure leading up to the assessment of liability determination.

Again, it is useful to set out some fundamental propositions that apply to a fairness review such as this. The Corporation makes its determinations, including its liability determinations, on the basis of probable facts. As well, in the fairness process the burden of proof rests with the customer to establish on the balance of probabilities that the conduct complained of by the Corporation was unfair. In this case you complain of two features of the way in which the liability determination was made by the Corporation.

Before dealing with these submissions it is useful to remind ourselves of the facts of the case itself. The case involved a motor vehicle collision at the intersection of [REDACTED] and [REDACTED] in [REDACTED]. It was raining slightly at the time. Mr. [REDACTED] wished to turn left from [REDACTED] and proceed north on [REDACTED]. He says that he stopped in the middle of the intersection for a few seconds and was of the view that the westbound lane was clear, so he commenced his left turn and was broadsided by a westbound [REDACTED].

Your client did not carry ICBC collision coverage and suffered some physical injuries as a result of the collision. ICBC has consistently taken the view that Mr. [REDACTED] entry into the intersection, turning left onto [REDACTED] was unsafe and in breach of s. 174 of the *Motor Vehicle Act*. Mr. [REDACTED], on the other hand, has consistently argued that the third party driver must have been speeding and was the effective cause of the collision because when he first drove along [REDACTED] and proceeded into the intersection, he did not see the other vehicle at all. The third party driver denies speeding.

From what I can gather from the file, ICBC based its liability decision at this stage upon the provisions of s. 174 of the *Motor Vehicle Act*, the physical *sequelae* of the accident itself, the statement of the third party driver, and a statement by a witness. It took into account the statement by your client that the third party driver must have been speeding but rejected it.

The witness statement indicates a number of features of the collision. The witness was unable to comment on the possible speeding by the third party vehicle, but felt that your client "if he stopped he might have barely stopped before making the left turn" and that "the [REDACTED] shouldn't have made the left turn". The witness also felt that the [REDACTED] "perhaps tried to speed through his left turn".

I am unable to interfere with factual determinations by the Corporation unless the customer demonstrates that such determinations are manifestly unreasonable. Has your client done so in this instance, taking into account the basic facts outlined? In my opinion he has not.

But you also base your unfairness argument upon two other submissions. The first is that your client had advised the adjustor that he was going to dispute the matter and that should have put the Corporation upon notice that all the relevant evidence should be retained for the purpose of any litigation that might follow. But, it was not until December [REDACTED], 2014, that ICBC was first advised that Mr. [REDACTED] was represented by counsel and it was not until April [REDACTED], 2015 that you finally asked ICBC to preserve all evidence, including the defendant's vehicle so that you could have it inspected. Meanwhile, in accordance with ICBC standard practice the third party vehicle was sold as salvage, and property and possession passed to a new owner on December [REDACTED], 2014. From this date ICBC has had no control over the third party vehicle. In my view, it was not unfair for ICBC to dispose of the third party vehicle in accordance with standard practice in the face of an informal statement from your client that he proposes to dispute liability.

But, you have a further argument that it is not merely unfair to dispose of the third party vehicle but it was particularly unfair to dispose of the "black box" that was installed in it. Without belabouring the point, if it was not unfair to dispose of the vehicle I have difficulty in seeing why it would be unfair to dispose of parts installed in the vehicle. But, given the importance you attach to the black box I raised the matter specifically with ICBC and I was advised: "it is left to the adjustor's discretion in each case whether to preserve the black box or its data, taking into account the cost of doing so, and the likelihood that the data might be relevant or useful to the case, and any privacy concerns that might be involved by collecting the data. If the plaintiff had requested access to the data we would have considered that request in the context of the obligations under the FOI legislation, but that no such request was made in this case".

Where does all this take us? Assuming that I have any jurisdiction to deal with the procedure leading up to the liability determination, my conclusion is that Mr. [REDACTED] has not been dealt with unfairly by ICBC. Looking at the language of s. 2c.ii of my Terms of Reference, I incline to the view that I do not have such jurisdiction and that the Board of the Corporation feels that such matters are more properly dealt with by the courts of this province.

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

However, you could take the matter to the Office of the Provincial Ombudsperson, which has a wider jurisdiction than my own, and ultimately to the courts of this province.

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

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

Fax: 604-443-4562

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

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

Yours truly,

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

Peter Burns, Q.C.
Fairness Commissioner

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

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

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August 25, 2016



Dear Mrs. [REDACTED]:

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

I acknowledge receipt of your online application, dated August 9, 2016, for a Fairness Review of the decision by ICBC not to designate your 2000 [REDACTED] motor vehicle as having "Collector Vehicle Status".

In reaching my decision I have taken into account the submissions you make in your review application together with the contents of a file prepared by the Corporation for the purpose of this review which contains, among other things, various pieces of correspondence between you and the Corporation, and the material that the Corporation has published relating to the eligibility criteria for "Collector Vehicle Status".

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

My jurisdiction is concerned with procedural fairness. For example, has the Corporation taken the pertinent facts into account, listened to the arguments made by the customer, and communicated

its decision and the reasons for it once it has been made? At the end of the day, is the Corporation's decision manifestly unreasonable in the circumstances of the case?

The facts are very clear and are set out in the email letter to you, dated February 15, 2016, from Ms. [REDACTED], Manager, Specialty Vehicle Registration Services, and reiterated in the email letter to you, dated February 23, 2016, from Ms. [REDACTED], Customer Relations Advisor.

The burden of establishing unfairness rests with the customer alleging it. You must persuade me that it is more probable than not that the Corporation has dealt with you unfairly in the circumstances of the case. What then is the basis of your argument that you have been dealt with unfairly by ICBC?

It seems to be that since the [REDACTED] Company stopped manufacturing motor vehicles in 2000, your [REDACTED] should be eligible for Collector Vehicle Status. But, this argument ignores the fact that [REDACTED] was then acquired by the Chrysler Corporation which then manufactured and continues to manufacture motor vehicles. In effect, [REDACTED] became a division of Chrysler and was absorbed by it even though the restructured Chrysler Company is no longer producing [REDACTED] vehicles. The policy statement relating to the eligibility of vehicles for Collector Status is clearly set out in the application form, MV1425. The definition of a discontinued vehicle (the basis for your application for the designation) is there stated. A vehicle must be 15 years old and must be a vehicle whereby the "manufacturer that owns the "trademark" or "make" of that vehicle has ceased manufacturing vehicles of any kind for at least the last five years".

In the case at hand Chrysler is still manufacturing vehicles (if not the [REDACTED]) and continues to own the "trademark" or "make" of the [REDACTED] having acquired those rights from [REDACTED].

You do not base your application upon any technical procedural breach by the Corporation. You have been advised in writing of the reasons for your application being rejected and the initial rejection was reviewed by Customer Relations. The language of the policy is quite clear and the point of departure between you and the Corporation is the interpretation of it.

The Corporation takes the view that on a literal reading of the policy your vehicle is not eligible for Collector Vehicle Status. You say that since [REDACTED], as a separate entity, ceased to make [REDACTED] in 2000, your vehicle should be eligible. But, your argument takes no account of the nature of the corporate entities involved and that when Chrysler acquired [REDACTED] it acquired ongoing elements of [REDACTED] which, in this case, included the [REDACTED] trademark and the vehicle make, the name "[REDACTED]".

Be that as it may, when I examined regulation 22A.01 of the *Motor Vehicle Act Regulations*, which ICBC was relying upon to justify applying its policy to your case, I noted a potential jurisdictional problem. Accordingly, I sent the matter back to Customer Relations with the request that the matter be reconsidered. I have been advised by Mr. Casey Riddle, Manager, Customer Relations, that your [REDACTED] will now be registered as a collectible vehicle. Since this resolves your substantive issue with the Corporation, I have asked Customer Relations to close your fairness application.

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

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

Fax: 604-443-4562

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

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

Yours truly,

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

Peter Burns, Q.C.
Fairness Commissioner

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

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

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January 21, 2016

[REDACTED]

Dear Mr. [REDACTED]:

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

I acknowledge receipt of your online application, dated January 8, 2016, for a Fairness Review of the insurance rates for your car. You claim that these rates are double those that you paid in Ontario for similar coverage over the same vehicle.

In reaching my decision I have taken into account the submissions you make in your review application, together with the response that you have received from Customer Relations.

I am afraid that there are certain matters over which I have no jurisdiction. One of these is the rates of insurance set by B.C. Utilities Commission. The legislature has delegated the responsibility of overseeing insurance rates for ICBC basic insurance to that body. So, insofar as the basic (compulsory) insurance rate is concerned, I have no jurisdiction to intervene. So far as your complaint may relate to optional insurance, I would merely point out to you that this is a question of market forces. Optional insurance may be taken out from any insurance company offering it both within and outside the province. The choice is the customer's.

In these circumstances I conclude that I have no jurisdiction to deal with your complaint so far as it relates to basic insurance costs, and that you have not demonstrated unfairness on the part of the Corporation so far as your complaint relates to any potential optional insurance costs.

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

Yours truly,

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

Peter Burns, Q.C.
Fairness Commissioner

cc: George Fedoroff, Customer Relations and Review Services, ICBC

APPENDIX D

Terms of Reference for the ICBC Fairness Commissioner



STATEMENT OF PURPOSE

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

SCOPE

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

CONDUCT OF REVIEW

3. Upon receiving an unresolved customer complaint for review, the Commissioner may do any of the following:
 - a. Refer the matter to the appropriate department of ICBC with or without recommendations;
 - b. Recommend that ICBC's Manager, Customer Relations conduct an investigation;
 - c. Facilitate a resolution of the complaints with the complainant and the appropriate ICBC personnel;
 - d. Recommend that the complaint proceed to mediation or arbitration;
 - e. Seek the assistance of the Executive or Board of Directors of ICBC;

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

COMPLETION OF REVIEW

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

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

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

CONFIDENTIALITY

9. Recognizing that any unresolved customer complaint could later become the subject of litigation, and information or documents received in the course of reviewing an

unresolved customer complaint should not lose any claim of privilege which may attach to them:

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

REPORTING

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