

2019/20 Annual Report

Office of the ICBC Fairness Commissioner

Peter Burns, Q.C.
ICBC Fairness Commissioner



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2019/20 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 2019/20. 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 2019/20 (12 month fiscal year: April 1, 2019 – March 31, 2020)
- 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 2018/2019 there were 123 cases while in 2019/20 there were 411. It is difficult to definitively explain the increase as the customers themselves choose to bring their cases forward and their reasons for reaching out to the Fairness Commissioner are only known to themselves. However, I note there were a number of changes announced and implemented by ICBC in 2019/20 and this may have spurred customers into a greater desire to ensure their concerns received the utmost consideration.

As in years past, the number of cases do not reflect the complete picture, as 89 per cent of the cases in 2019/20 were resolved by the Insurance Corporation of British Columbia's (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.

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 were made and this led to a better result for the customer.

Against the backdrop of the statistics of this report, one thing still stands out. The overwhelming majority of decisions taken by ICBC employees and agents in their dealings with the Corporation's customers are reasonable and fair. In those cases that I dealt with in 2019/20, only two of them required a formal recommendation based upon a lack of fairness in the decision-making process or the reasonableness of the decision itself.

It is common knowledge the auto insurance system in B.C. has been facing extreme challenges in recent years, and major reforms were introduced on April 1, 2019 and September 1, 2019. The changes from September 2019 resolved some persistent areas of customer complaints I have dealt with over the years, for example, the issue of dangling claims. At the same time, other issues arising from the changes have come to my attention for review. This shows the value of the Fairness Commissioner function in providing an avenue for customers to pursue their concerns and an assurance those concerns will be evaluated fairly when new processes, procedures, and indeed whole insurance schemes are introduced by ICBC.

Government and ICBC have also proposed further changes. Starting in 2021, if passed by the Legislature, ICBC will launch Enhanced Care coverage which is intended to both lower the cost of auto insurance for British Columbians and significantly improve the care and recovery benefits available to anyone injured in a crash.

I would like to express my appreciation to the staff of the Corporation. They remain patient, instructive, and above all, cooperative in pursuing the continued 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 stood ready to act for me if 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 responsibility decisions or an Arbitration Process with respect to vehicle damage. The Commissioner does retain jurisdiction to deal with any concerns about fairness.

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

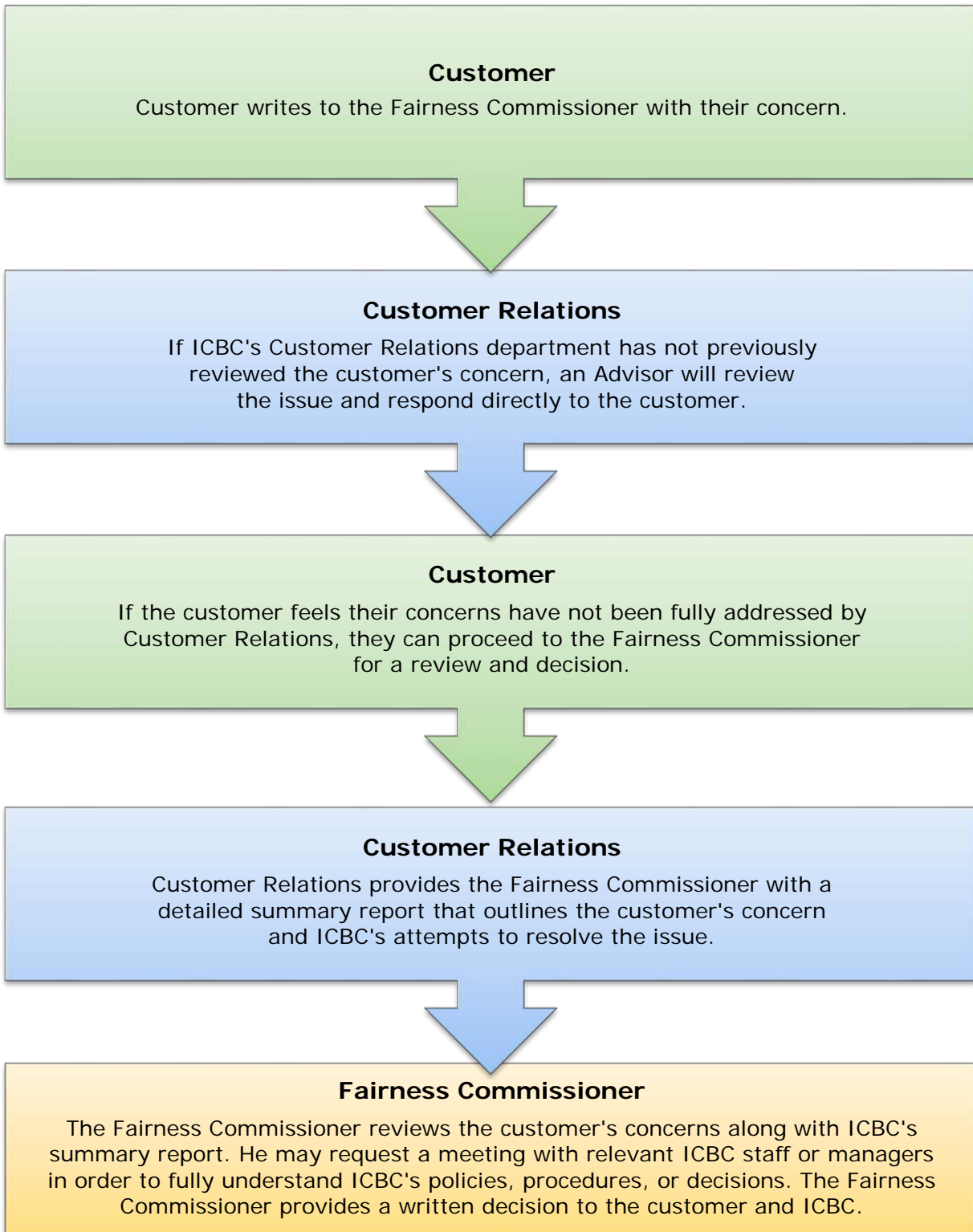
The Fairness Commissioner must be:

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

Upon completion of a review, the Fairness Commissioner may:

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

The Fairness Process



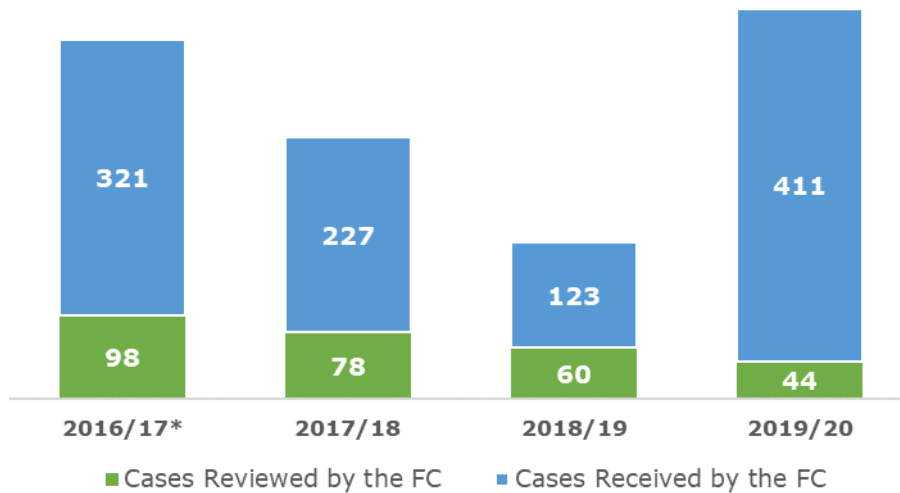
Highlights of 2019/20

The Fairness Commissioner received 411 complaints and reviewed 44 of them in 2019/20, compared to receiving 123 complaints of which 60 were reviewed in 2018/19.

- Of the 411 complaints to the Fairness Commissioner 89 per cent, or 367 files, were successfully resolved by Customer Relations without the need for a review.
- Over the years Customer Relations has consistently resolved the majority of files without the involvement of the Fairness Commissioner.
- The Fairness Commissioner made two recommendations to ICBC in 2019/20. This compares to two in 2018/19.

Statistics of 2019/20

Number of applications received and number of cases reviewed by the Fairness Commissioner from 2016 to 2019/20



*2016/17 was a 15 month fiscal year

Case Resolution Details from 2016 to 2019/20

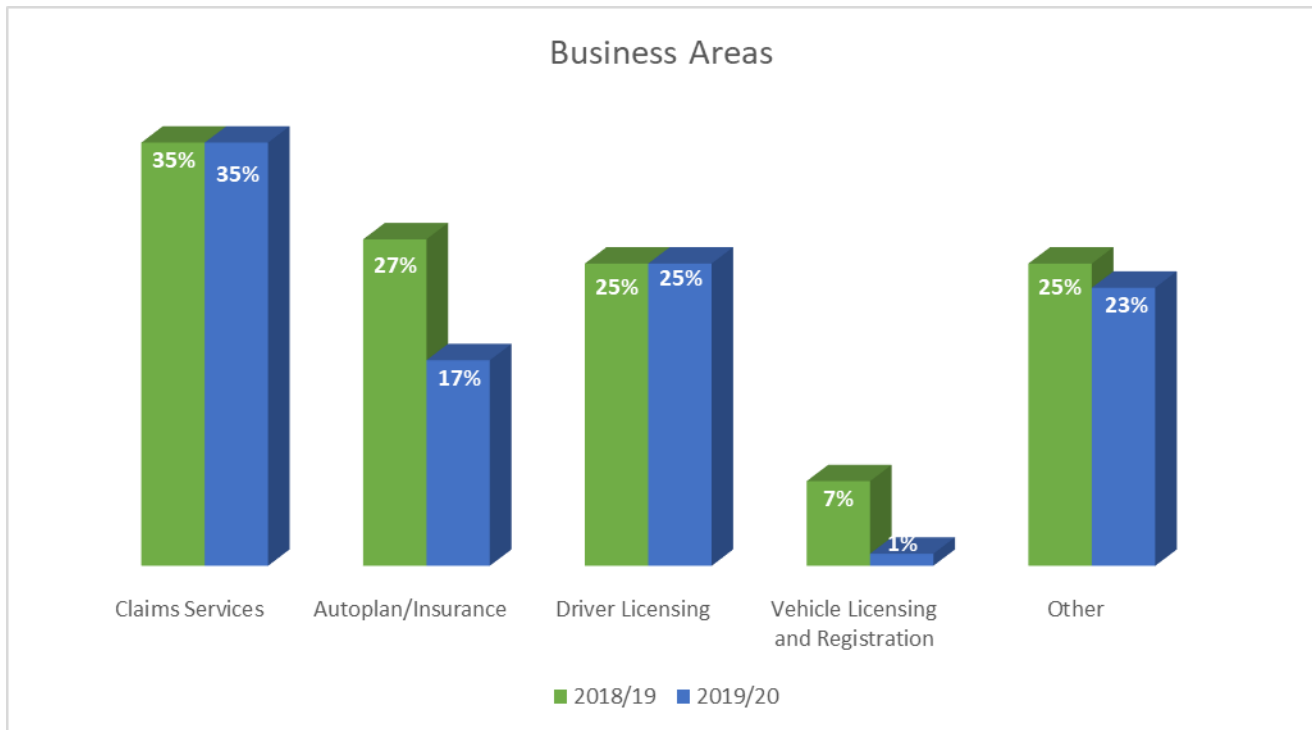
Total Cases Reviewed by the Fairness Commissioner	2016/17 (15 month fiscal year**)		2017/18		2018/19		2019/20	
	98		78		60		44	
Determination of no unfairness	92	94%	71	91%	56	93%	42	95%
Outside FC jurisdiction	1	1%	6	8%	2	3%	0	0%
Customer withdrew concern	1	1%	1	1%	0	0%	0	0%
FC facilitated resolution	0	0%	0	0%	0	0%	0	0%
Recommendation by FC*	4	4%	0	0%	2	4%	2	5%

*All recommendations accepted and implemented

**2016/17 was a 15 month fiscal year

Topics of Complaint by Business Area

The following chart provides a view of 2019/20 closed files. Note: *percentages may not sum to 100% due to rounding.*



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

APPENDIX A

Select Cases from the Fairness Commissioner



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

Case 1:**Claims**

Vehicle damage does not support a hit and run collision.

Customer complained to the Fairness Commissioner about ICBC's decision to process their claim for vehicle damage as a Collision claim, which would impact their insurance premiums, instead of through the Provincial Hit and Run fund, which would not have an impact on premiums.

In this case, several reviews by ICBC staff confirmed the damage claimed was not consistent with being hit by another vehicle. Since it could not be established another vehicle caused the damage, ICBC's position was a Collision claim was appropriate.

The Fairness Commissioner stated the onus rests with the customer to prove another vehicle caused the damage and the customer was not able to show how another vehicle caused the damage. The Fairness Commissioner was unable to conclude ICBC dealt with customer unfairly and a claim under the Collision part of the insurance coverage was entirely reasonable in the circumstances.

Case 2:**Claims**

Insurance coverage does not extend to wear and tear of vehicle parts.

Customer complained to the Fairness Commissioner about ICBC's decision to deny coverage for repairs related to an oil leak as part of the claim. The customer presented a claim for a minor electrical fire under their insurance. The customer also had an oil leak which they felt was related to the fire damage claim and should be repaired under the insurance.

ICBC material damage experts were unable to conclude the oil leak was caused by the minor electrical fire or any other cause covered by insurance. In addition, the shops and tow company confirmed they did not cause the oil leak or see an oil leak when the vehicle was in their possession. ICBC's position was the most likely cause for the oil leak is a mechanical failure. Based on the evidence available, the insurance policy is unable to pay for the repairs for the leak. Two repair shops examined the vehicle and ICBC concluded the fire was caused by the starter motor as a result of wear and tear. Ultimately, a cash settlement was concluded to cover the battery and battery cable, but did not extend to the starter motor itself.

The Fairness Commissioner found, upon the balance of probabilities, and the customer did not provide mechanical evidence to support the cause of the oil spill and that the oil leak resulted from the electrical fire. Further, insurance coverage does not extend to wear and tear of vehicle parts and he confirmed ICBC dealt with the customer fairly and their decision was not unreasonable.

Case 3: Claims

Miscommunication regarding determination of responsibility for loss.

Customer complained to the Fairness Commissioner about ICBC's miscommunication. Initially, ICBC explained in a telephone call the claim would be processed as a Collision claim, the customer would need to pay their deductible and there would be an effect on their future insurance premiums. The customer subsequently received a letter from ICBC advising they were not responsible for the claim and their deductible would be waived. The customer stated they relied upon the incorrect form letter when making their decision to proceed with vehicle repairs.

ICBC's internal review had established there was an administrative error in sending out the incorrect form letter and had apologized for the miscommunication.

The Fairness Commissioner explained ICBC's error in sending the letter was significant as customers are entitled to assume formal communications from the Corporation is accurate. On the other hand, the customer had been advised verbally they were fully responsible and this would be reflected in their insurance policy. As well, the facts of the case indicated the customer drove their own ATV into their own truck, and as such, the Fairness Commissioner questioned if it was reasonable for the customer to assume there would be no insurance consequences from their action.

The Fairness Commissioner concluded the customer's reliance on the letter was not reasonable in these circumstances and that he was not persuaded the customer demonstrated on the balance of probabilities that ICBC dealt with the customer unfairly.

Case 4: Insurance

Insurance premium underpayment invoice.

Customer complained to the Fairness Commissioner it is unfair to receive an underpayment bill from ICBC (in the amount of \$243.00, plus interest) for an insurance policy on their new vehicle as it was not the cost agreed to when the initial insurance was purchased.

ICBC had explained to the customer that at the time the policy was purchased, the insurance broker was required to use a temporary vehicle identification code (VIC). All vehicles are assigned an insurance industry VIC the first time they are registered to help calculate what a customer will pay for certain insurance coverage. In some cases, including when a vehicle is a brand-new model, a VIC may not yet be available for a specific vehicle make/model. In these cases, ICBC assigns a temporary VIC to let the customer immediately register and insure their vehicle, rather than having to wait until the industry standard VIC for the model is available.

The Fairness Commissioner commented, the insurance documents the customer received from the broker clearly state "a Temporary Rate Group" was used and the customer may receive a bill or a refund when the matter is reviewed by the Corporation. In this case when the Corporation reviewed the transaction and the customer was found to be responsible for an additional amount.

The Fairness Commissioner concluded the customer did not demonstrate unfairness on the part of ICBC in this matter and there was no procedural error on the part of the Corporation.

Case 5: Insurance
Insurance premiums for non BC residents.

Customer complained to the Fairness Commissioner about a substantial increase in insurance premiums as a result of the new ICBC system and they being an out-of-province resident. The customer explained, although they are not a B.C. resident and do not hold a B.C. Driver's licence, they do own recreational property in B.C. and the vehicle is fully insured in a secure B.C. location when they are outside of the province.

ICBC explained under the new insurance system, drivers are credited with driving experience only if they hold a BC driver's license. Drivers who hold a non-BC driver's license, because they are only in BC temporarily, do not receive the benefit of driving experience on their insurance.

The Fairness Commissioner explained his jurisdiction is confined to procedural errors that have led to injustice to customers. The new ICBC system of assessing the proper premium for customers came into effect for policies that were effective from September 1, 2019, or later. This has led to many customers paying different premiums than before, some paying more and many paying less. While it is true out-of-province customers are dealt with differently from those who are residents of B.C., it is equally true that the class "out of province customer" is dealt with evenhandedly. In this sense, there is no discrimination because all out of province customers are treated equally.

The Fairness Commissioner confirmed, the *Basic Insurance Tariff* has the effect of a regulation in British Columbia and cannot be ignored by ICBC or the Fairness Commissioner. The customer had not demonstrated that ICBC has not properly applied the *Basic Insurance Tariff* in this case and the Fairness Commissioner did not conclude that there was any procedural error on the part of the Corporation.

Case 6: Insurance
Falsely declared principal operator on vehicle insurance policy.

Customer complained to the Fairness Commissioner ICBC's decision not to cover the costs of the accident to their leased vehicle was unfair.

ICBC's position was the customer had falsely declared themselves as the principal operator of the vehicle when they purchased the insurance policy and when it became evident the customer was not the principal operator of the vehicle, they were deemed in breach of insurance policy.

The customer argued they have been misled by the Autoplan broker who had sold them the insurance policy.

The Fairness Commissioner explained, there was nothing in the ICBC file materials to support the Autoplan broker, from whom the customer purchased the insurance, misled the customer. In fact, the employee of the Autoplan broker made a specific note in the file that the issue of principal operator had been discussed at several points during the insurance purchase. In addition, the customer had signed the insurance documents confirming the principal operator status.

The Fairness Commissioner concluded there was no procedural error or manifestly unreasonable decision to deny claim payment to the customer by the Corporation.

Case 7: Insurance
Driver based versus vehicle based insurance costs.

The Customer complained to the Fairness Commissioner explaining their January 27, 2017 claim which the customer was fully responsible and which resulted in their vehicle being declared a total loss on March 8, 2017, was mishandled by the auto body shop the customer chose. The customer argued that because the damage to their vehicle's suspension was not picked up initially their opportunity to settle their claim prior to March 1, 2017 was missed. The customer disputes ICBC's inclusion of this claim in the new method of calculating a customer's insurance premiums that came into effect on September 1, 2019.

The Fairness Commissioner concluded the customer did not demonstrate ICBC dealt with this matter unfairly and there was no procedural mishandling by ICBC in settling the customer's claim once it became aware the vehicle was a total loss. If there was a failure it was a failure by the auto repair shop that the customer hired. The Fairness Commissioner found ICBC is not responsible in terms of fairness for the consequences of the auto repair shop's actions.

Case 8: Insurance
Communication involving claim responsibility and impact on future insurance.

Customer complained to the Fairness Commissioner stating they were verbally told by an ICBC representative their claim, for which they were assessed fully responsible, will not have an impact on increased future insurance premiums.

ICBC had no record of a conversation with the customer where they would have been told there would be no impact to future insurance premiums because of the claim. ICBC did have a record of telling the customer they were assessed 100 per cent responsible for the crash and, they would also be advised in writing. That same day a letter was sent to the customer stating specifically there will be an impact on future premiums to be determined at time of renewal.

The Fairness Commissioner concluded the customer did not demonstrate they were advised there would be zero impact to their insurance rates.

Case 9: Driver Licensing

Exceeded speed limit in effect in school zone resulting in a failed road test.

Customer complained to the Fairness Commissioner stating ICBC unfairly assessed their road test. The customer had not been successful because they were marked as exceeding the speed limit in a school zone. The customer argued the school speed zones were not in effect at the time of the test.

The Fairness Commissioner confirmed ICBC took into account the customer's concerns and responded to them in writing. The school zone policy is not an ICBC policy, instead it is an application of section 147(1) of the *Motor Vehicle Act*, which requires a person driving a motor vehicle to drive at a rate of speed, not exceeding 30 km/h while approaching or passing the school building or school grounds to which the signs relate, between 8:00 a.m. and 5:00 p.m. on a regular school day. At the time of the test, it was a regular school day according to the school district where the test was conducted.

He concluded the customer did not demonstrate unfairness on the part of the Corporation in its handling of this matter and the decision the customer was not successful on the test was reasonable.

Case 10: Account Services

Invoice calculation for Driver Risk Premium related to incurred driving infractions.

Customer complained to the Fairness Commissioner stating it is unfair ICBC calculated their driver penalty point premium (DPP) invoice at the newly increased rates effective November 1, 2019, when the violation that caused the DPP was from a September 27, 2018 motor vehicle violation.

The Fairness Commissioner confirmed ICBC clearly set out in writing the reasons for the customer's increased costs. He further explained ICBC applied its calculation equally to all customers. As such, he concluded there was no unfairness the Corporation's dealings of this customer's case.

APPENDIX B

Cases requiring a Fairness Commissioner Recommendation



In 2019/20, the Fairness Commissioner made a written recommendation in two cases that ICBC accepted and implemented.

Case 1: Claims
Inaccurate claim investigation and unfair file handling.

Customer complained to the Fairness Commissioner explaining ICBC treated his son unfairly in alleging his son's vehicle was involved in a motor vehicle crash.

ICBC's initial investigation had found the son responsible for the crash. The son provided further information to ICBC to contest the initial decision. Upon further review, ICBC reversed its decision to hold the son responsible, issued a written apology and reimbursed certain costs the son had incurred.

The Fairness Commissioner found the initial investigation by the Corporation and the conclusion it reached was unfair in two respects. The investigation was quite cursory and seems to have reflected a bias against young drivers when cases of this sort arise.

However, the Fairness Commissioner confirmed in his decision, once the Corporation had the material the son obtained from his own investigations, it was quick to withdraw their allegation. In addition, ICBC sent an apology to the customer, reimbursed certain costs, updated the son's record to show he was not responsible for the crash and notified all the relevant departments of the need to deal with all cases equally.

The Fairness Commissioner found, while the initial decision of ICBC is unfair, the corporate response was appropriate. In these circumstances he concluded it does not require any further action on the part of the Corporation.

Case 2: Claims
Refund of two months insurance premium.

Customer complained to the Fairness Commissioner requesting a refund for their insurance premium while their car was at the repair shop and not available to drive due to a delay in completing repairs.

The details of the customer's claim were quite complicated. The customer had hit a deer and in addition to damages that were clearly the result of hitting the animal, there was also a catastrophic head gasket failure. A dispute arose between the vehicle manufacturer and ICBC as to who was responsible for the replacement of the vehicle's engine. The matter went to mediation and the mediator found in favour of the vehicle manufacturer. The next day ICBC acknowledged its responsibility to compensate the customer in the circumstances.

The Fairness Commissioner concluded in his decision, had the damage that involved the replacement of the engine been picked up during the initial estimation then the customer would have been without their vehicle for only about a week or so. Instead, it turned into a period of three months. The customer did have some benefit during this three month period in the form of insurance coverage in the event it was required. In this case, there was not a need to access this coverage.

It was the Fairness Commissioner's opinion the customer was entitled to a refund of some of the premium paid and felt it was reasonable for ICBC to refund the customer two months of their premium. The customer would be responsible for the cost of one month of premium. Based on the recommendation ICBC refunded two months of insurance premium to the customer.

APPENDIX C

Terms of Reference for the ICBC Fairness Commissioner



STATEMENT OF PURPOSE

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

SCOPE

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

CONDUCT OF REVIEW

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

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

COMPLETION OF REVIEW

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

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

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

CONFIDENTIALITY

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

REPORTING

10. The Commissioner shall prepare an annual report for the Board of Directors and shall deliver that report to the Governance Committee of the Board. The Commissioner shall appear before the Governance Committee to discuss the report and shall also appear before that Committee or the Board at any other time the Committee or the Board may request or the Commissioner considers necessary, with respect to:
 - a. The activities of the Commissioner;
 - b. The adequacy of ICBC's responses to the Commissioner's investigations and recommendations, including a discussion of the number of his/her recommendations that were not accepted by ICBC and the explanations given by ICBC for declining to adopt them; andCircumstances 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.