

# **ICBC Fairness Officer**

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## **2023/24 Annual Report**

**Michael Skinner**  
Fairness Officer  
May 15, 2024

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**2023/24 Annual Report**  
**Office of the ICBC Fairness Officer**

## **Land Acknowledgment**

The ICBC Fairness Officer expresses gratitude for the privilege to work and live within the territories of First Nations Peoples across British Columbia. Our offices are located in the territory of the Lekwungen speaking peoples, specifically of the Songhees, Esquimalt and W̱SÁNEĆ, whose relationships to the lands have existed since time immemorial.

## **Introduction and Executive Summary**

The Annual Report of the ICBC Fairness Officer is a summary of activities in fiscal year (FY) 2023/24. The report by the Fairness Officer is a requirement set out in the *Insurance Corporation Act*, Part 3, s. 59. Further details about the frequency and content of the report are set out in s. 4 of the *Fairness Officer Regulation*.

In FY 2023/2024, the Office of the Fairness Officer received 85 cases, up from 71 the previous year. The Fairness Officer made a number of suggestions, as outlined in the case summaries in Appendix A; however, there are no cases this period resulting in a recommendation from the Fairness Officer.

This report includes:

- Fairness Officer professional biography and personal message from the Fairness Officer. In the personal message, the Fairness Officer reflects on the modest increase in the incidence of complaints, the need for claimants to be actively involved in providing necessary information to the Corporation to enable fair and timely administration of claims, and the general importance of insurance customers turning their minds to their insurance needs and obtaining competent professional advice at renewal time.
- A mission statement and process chart explaining how the Office of the Fairness Officer handles and investigates complaints.
- Statistics from fiscal year 2023/24: April 1, 2023 to March 31, 2024 with 85 cases received, 60 of which were complaints about the handling of claims.
- The concept and elements of the Office of the ICBC Fairness Officer, with some examples of customer complaints and resolved cases. Eight case examples are provided to offer a window into insurance practice at ICBC, and how an understanding of the principles of insurance illuminates Corporation processes. Three cases are also included in which suggestions were made by the Fairness Officer that led to a fair resolution, and in one case a process improvement.

## **The ICBC Fairness Officer**

Michael Skinner is an experienced investigator, administrator and dispute resolution specialist. In his 30-year public sector career he has served as Executive Director of the Health Professions Review Board and led civil justice reform projects with the Dispute Resolution Office at the B.C. Ministry of Attorney General. His extensive work with two Offices of the British Columbia Legislature – the Office of the Information and Privacy Commissioner and Office of the Ombudsperson – shaped his commitment to multi-party dispute resolution, complex investigations and major public reporting. He has authored several significant public reports incorporating recommendations for systemic reform.

Prior to his public sector career, Michael practiced as a barrister at two Vancouver law firms from 1982 to 1987, focusing on personal injury and general litigation. He is a past director with the B.C. Council of Administrative Tribunals and a former member of the Law Society of B.C. and the British Columbia and American Trial Lawyers Associations. He obtained his law degree from the University of British Columbia after acquiring a business administration degree at the University of Alberta. He is active in community justice and relief organizations in the city of Victoria. He began his tenure as ICBC Fairness Officer on June 12, 2021, and was formally confirmed by Order-in-Council appointment on July 12, 2021.

### **About this Report**

My purpose in preparing this report is not simply to report on the activities of my office over the last fiscal year. These activities are, I trust, a matter of continuing interest to both the Insurance Corporation and the government of British Columbia (Honourable Mike Farnworth, Minister of Public Safety and Solicitor General, and minister responsible for ICBC). I also view this document as a report to my colleagues at the Corporation, and, importantly, as an educational document for the customers of the Insurance Corporation.

My previous Annual Report contained a large number of case summaries that were grouped under headings that related to the major components of auto insurance administration: policy terms, driver testing, benefits, accident responsibility and assessments, licensing and, lastly, general insurance principles – all viewed through the lens of administrative law and fairness.

This year, I continue to give priority to the educational component, but am taking less of a textbook approach, relying instead on highlights from significant cases and commenting on several “big picture” issues and trends.

I hope my observations are helpful, and perhaps instructive.

### **Highlights of the Past Year**

As the Fairness Office’s webpage notes, the first step in any complaint to the Fairness Officer is for a review and investigation as necessary to be conducted by the Corporation’s in-house Fair Practices Office (FPO). This group of professionals does an excellent job, as evidenced by their resolution of the vast majority of complaints. There was an increase in the number of cases received this period, from 71 in FY 2022/23 to 85 in FY 2023/24. While this is a notable increase, what is more significant is the increase in the number of complaints related to claim services, nearly doubling from 33 in 2022/23 to 60 in 2023/24.

Many of the submissions regarding the claims service focused on process-related issues. On review, many, if not most complaints, related to non-payment, or delayed payments for what the complainant considered a valid claim for loss of salary or wages (income replacement benefits), or payment for medical treatments such as massage therapy, chiropractic care, or occupational therapy. Under the Enhanced Care framework, there is a large range of medical and health professional benefits that are typically administered by a Senior Support and Recovery Specialist (SSRS) employed by the Corporation and assigned to a particular policyholder who has been injured. Under s. 56 of the *Insurance Corporation Act*, my office is restricted from commenting on matters relating to benefit entitlement or responsibility for a crash. Nonetheless, a recurring theme in my work is the potential for a process-related issue in almost every element of auto insurance administration. This leads me to my first observation about claims and fair process.

## **Claims: It's a Team Sport**

The fact that a claimant was involved in a crash that resulted in injuries is not by itself enough to qualify for benefits. The SSRS must continually assess an individual's entitlement to benefits, since the Corporation is obliged by law to confirm that the benefits being paid are medically necessary and appropriate. To make that confirmation, the Corporation must have evidence on which it can base a decision. This requirement can be lost on some claimants who are suffering the consequences of injury. *Isn't my word good enough? Does the Corporation doubt that I was injured?*

In practice, even where the reality of an accident is not in doubt, the process to determine the effects of the accident requires an assessment of medical evidence from a doctor or other specialized health practitioner. Assessments often are not required just once, but on a continuing basis, as the SSRS monitors the claimant's recovery. The claimant's health care providers will determine a plan of treatments and therapies intended to facilitate as complete a recovery as possible and the SSRS will determine what benefits are available to support that plan.

An injured person plays a key role in their own recovery by following medical advice and by providing periodic updated information to allow the SSRS to make defensible decisions about benefits and compensation. This is a common theme in the complaints that are brought to the Fair Practices Office, and which typically are resolved as the claimant gains an understanding of their role.

My focus is on fair process, which in practical terms often means adequate communication with the claimant. In some cases, complaints that are not resolved and make their way from the FPO to my office focus on disagreements about the scope of coverage or amount of benefits. While I do not have jurisdiction to consider these aspects of a case, I hope that my role may assist customers by clarifying the process and facilitating communications between the claimant and ICBC.

## **You can't have a claim without a policy – hopefully, the right one**

Getting the right Autoplan insurance coverage is important. In last year's Annual Report, I made note of the changes to auto insurance under ICBC's Enhanced Care Program. ICBC's Basic insurance is the mandatory coverage all vehicle owners need in British Columbia. All British Columbians who own or drive a motor vehicle here are protected with a basic minimum level of coverage, such as medical costs and income replacement benefits, depending on their circumstances.

In addition to the mandatory Basic coverage, vehicle owners may want to purchase optional insurance coverage, such as collision and comprehensive, which can help cover the costs of damage to the owner's own vehicle if they are responsible for a crash, involved in a single vehicle accident, have their vehicle stolen, or incur other physical damage to the windshield or

body of the vehicle. ICBC does offer Optional coverage along with other private insurers, and levels of coverage and costs can vary from insurer to insurer.

Some of the complaints we reviewed illustrated that obtaining the “right” coverage requires some thought, and often professional advice from an insurance agent. The old saying in the insurance business is that the typical person thinks about insurance coverage for 10 minutes a year, referring to the time spent in an office renewing one’s vehicle coverage. Life is busy, everyone is pressed for time, and we tend to treat insurance renewal as a simple “check-the-box” function that requires little more than a few signatures and payment. To some extent that is still true in that most people are adequately covered through the “check-box” renewal. However, when the unthinkable or the unpredictable actually happens, that few extra minutes of focused thought in the renewal process can really pay off.

*What will you be doing with your vehicle? Where will you typically be using your vehicle? Will your vehicle be in storage for part of the time? For both Basic and Optional insurance, who will be driving your vehicle?* These are all important factors to consider and discuss with your insurance broker.

For example, under the Unlisted Driver Accident Premium (UDAP) program, failure to list a household member or an employee in your insurance policy can be a very costly oversight. Many individuals have found this out when, for example, a new driver in their household is responsible for an accident in a family vehicle without being listed as an operator. Depending on the premium that would have been paid to include this new driver, the policyholder can find themselves facing an unlisted driver accident premium in the thousands of dollars.

That’s a lot to think about. When it comes to buying your auto insurance, it pays to pay attention.

This year, along with my continued research on the UDAP program, there were several cases that resulted in my making suggestions to the Corporation for fair resolution of a case or improvement of corporate processes. I commend the Corporation for its timely and fair-minded responses to each of these suggestions. I also wish to express my appreciation to the staff of the Corporation, especially to the Fair Practices Office, for their work answering our questions, and coordinating with different departments to provide us with requested information and documents. And finally, I simply could not do my work without the continuous support and wise counsel from my assistant and Registrar for the office, Dee Matheson. Thank you for another good year!

Sincerely,



Michael Skinner  
ICBC Fairness Officer

## Mission Statement

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

## Role and Authority

ICBC Fairness Officer will focus on ensuring the Corporation's decisions, actions and practices are transparent and fair, while further strengthening public trust in ICBC as dedicated to providing affordable auto insurance coverage and caring for people who are injured in a crash.

The Fairness Officer will have the authority to review and make recommendations to resolve customer complaints about the policy and process ICBC used to make a decision in their case. The officer may also make broader systemic recommendations to enhance fair decision-making.

Under the Fairness Officer Regulation, the officer will report annually on complaints received. ICBC will provide an Annual Report to the minister responsible for ICBC, outlining its response to any recommendations made by the officer, which will be made publicly available. Amendments to the *Insurance Corporation Act* received Royal Assent on March 25, 2021, and regulations approved on June 2, 2021, provide further parameters for the role of the Fairness Officer.

### The Fairness Officer must be:

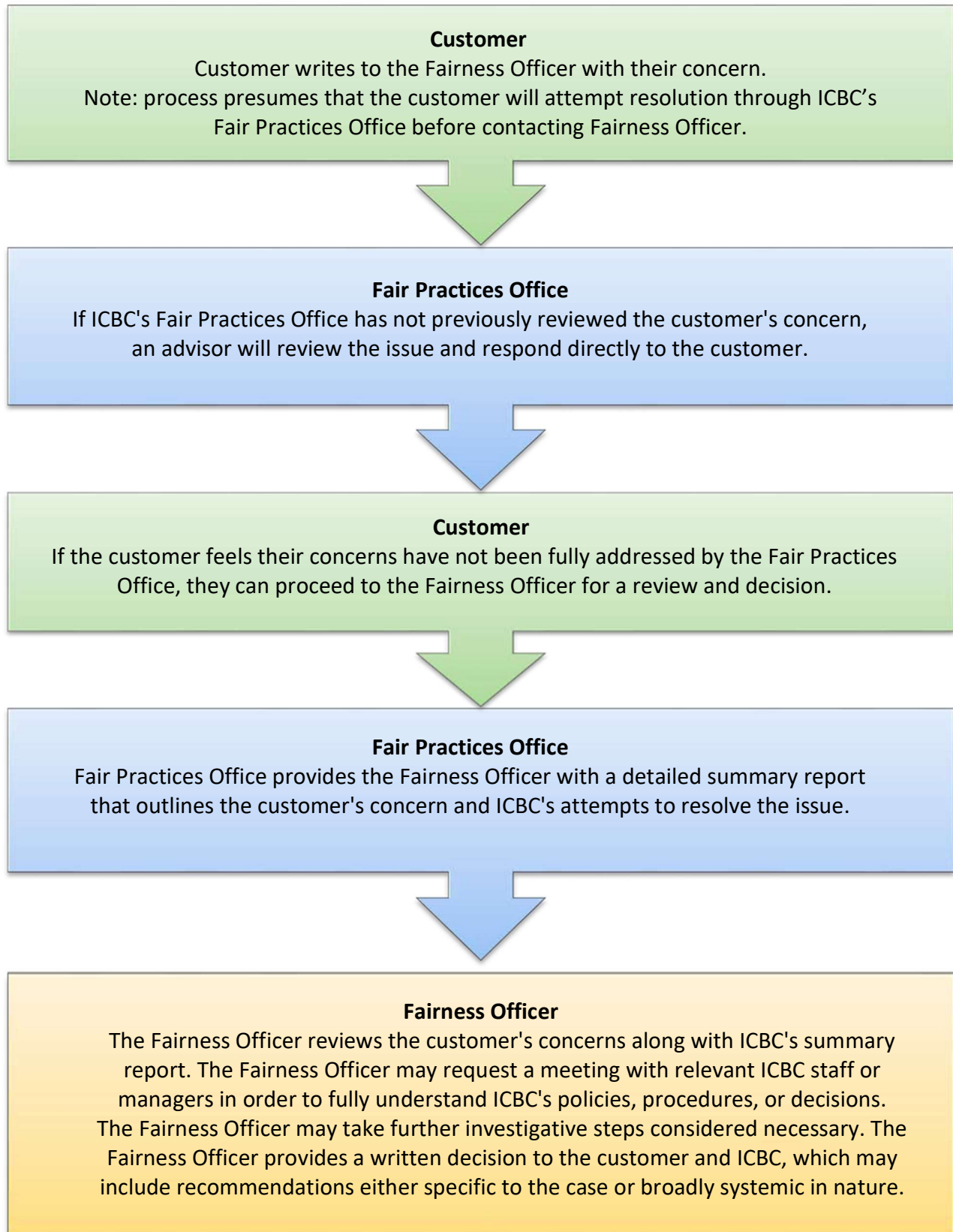
- **Totally independent**, in particular, the Fairness Officer is independent of ICBC and any prior decisions that may have been made by ICBC
- **Impartial** in all respects
- **Accessible** to the public in writing and online
- **Responsive** to those who write.

### Upon completion of a review, the Fairness Officer may:

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



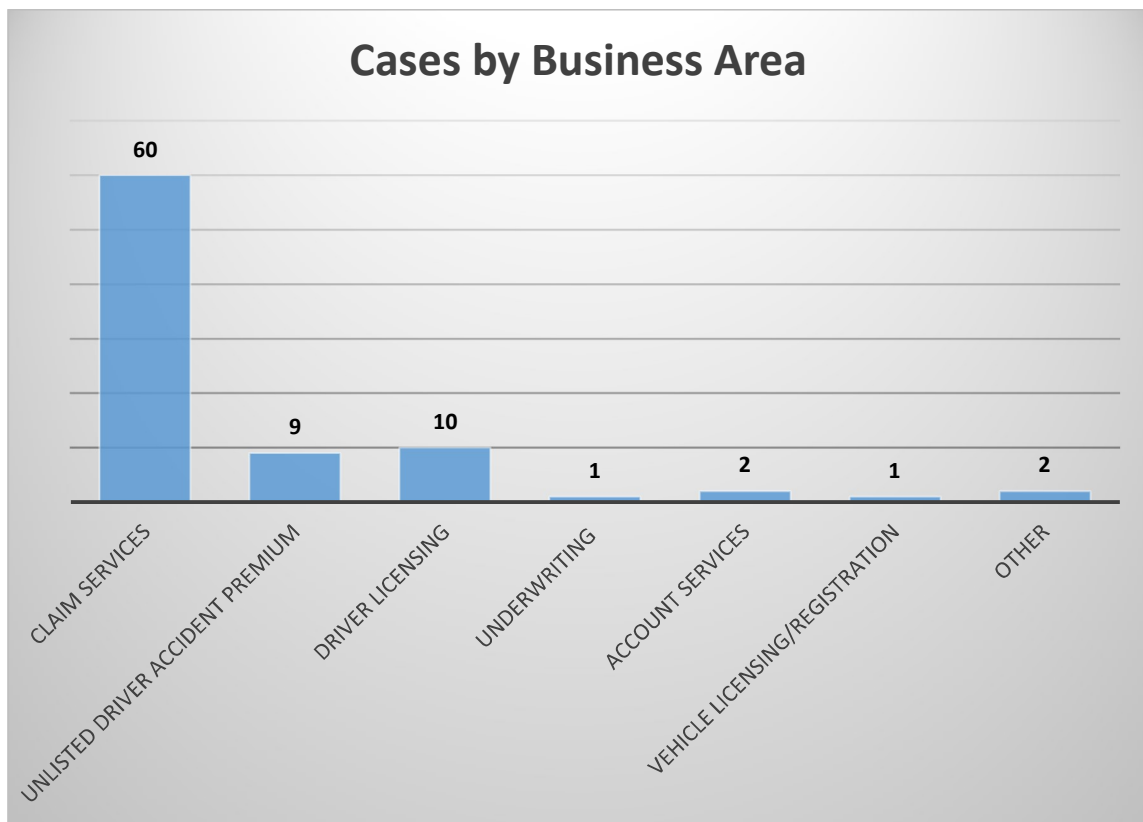
## The Fairness Process



## Highlights and Statistics of FY 2023/24

The Fairness Officer received 85 files in FY 2023/24; 56 cases were closed, while 30 are pending review and/or response. In addition, the Fairness Officer closed 25 files from previous years. The Fairness Office closed a total of 80 files in FY2023/24.

Cases by Topic/Business Area of Complaints received by Fairness Officer (FY2023/24)	
Claim Services	60
Unlisted Driver Accident Premium (UDAP)	9
Driver Licensing	10
Underwriting	1
Account Services	2
Vehicle Licensing/registration	1
Other	2
<b>Total</b>	<b>85</b>



**Note:** The claims services complaints are, at face value, non-jurisdictional; under s. 57(1) of the *Insurance Corporation Act*, the Fairness Officer has no authority to comment or make recommendations on amounts payable or who was responsible for an accident. However, I can

receive and review the complaints, focusing on concerns relating to fair process. For an example, see case summary 5: "Observing from the edges: Daily Process Concerns." Of the 60 complaints related to claim services, the majority of the files related to denial of claims ranging from coverage for vehicle rental offered under Optional insurance policies, to benefits such as Income Replacement and medical treatments provided through Basic insurance.

Of note, the FO reviewed:

- 3 denials of theft claims
- 1 denial for not having insurance in force
- 1 denial for fraud
- 2 denials for hit and run

Not related to claim decisions:

- 1 complaint related to Total Vehicle Valuation settlements and standard forms
- 3 re: calculation of individual driver factor
- 1 re: quality of repairs

## Appendix A – Select Cases

### 1. You've reached an agreement for repairs? Great, but you still have to stay on top of the situation

Coming to an agreement with the Corporation for compensatory payment or repair of a vehicle doesn't mean that it's the end of the road in terms of meeting one's legal obligations. In reality, the clock doesn't stop ticking until either the repairs are completed, or the 2-year limitation period for completion of repairs has expired – in which case the policyholder has forfeited compensation if the repairs have not been completed. Yes, that's the law. A number of individuals discovered this during the COVID pandemic, when waiting times for access to repair services skyrocketed due to repair firms either losing staff to sickness, or some shops shutting down or reducing service due to the declining demand for repair that resulted from lower vehicle usage rates with workers providing service from home. Due to the challenges in accessing court services during the pandemic, the BC government ordered an extension to limitation periods; the extension period ended March 25, 2021. To provide advance notice, the government announced the coming end date about three months prior, on December 21, 2020.

Since it's the law, only government can modify or suspend its application. Here's the text of the law: s. 8(3) of Schedule 10 in the [Insurance \(Vehicle\) Regulation \(gov.bc.ca\)](https://www.gov.bc.ca/insurance/vehicle-regulation)

#### **Time and manner of payment of insurance money**

**8 (3)** Every action or proceeding against the insurer in respect of loss or damage for which coverage is provided under this contract must be commenced within 2 years from the occurrence of the loss or damage.

In order to meet the limitation period, ICBC requires the body shop to have completed the repairs and submitted an invoice before the 2 year period expires. A cautionary tale for anyone who is having difficulty finding a qualified repair shop who can take their vehicle and complete repairs within the limitation period.

### 2. The hard truths of insurance practice

Was it really a hit and run? Each year my office receives a number of complaints that centre on a denial by the Corporation to accept a claim that damage to a vehicle was caused by a hit and run incident. It is not uncommon for the claimant to be offended by what they perceive as an implied allegation that they lied to the Corporation in submitting the claim. As required by law, ICBC analyzes the damage to determine the cause – and, for example, whether it was consistent with colliding with a stationary object or another vehicle.

In this case, ICBC determined that damage caused to the claimant's vehicle could not be covered as a single hit and run under their insurance policy, but rather as three separate claims: one as a hit and run, and two as collision claims. The customer felt that ICBC had accused them of lying. Like any decision regarding assessment of responsibility, the

customer had the liberty to further their dispute through the Civil Resolution Tribunal (CRT). In this case the evidence did not support the customer's concern about the conduct of ICBC's employees; there was no evidence to suggest staff called the customer a liar or indicated that they were dishonest. ICBC staff confirmed how it processes claims when the damage reported as a hit and run does not meet the criteria.

This is what I reported to the customer:

*Turning to your concern about the conduct of ICBC employees, specifically that they accused you of lying, after reviewing the documents before me I cannot find evidence that ICBC treated you unfairly or accused you of lying. It is my assessment that ICBC has taken time and care to explain ICBC's claim review process and the rules it must apply when assessing a claim. ICBC must base its decisions on the evidence available. In your case, ICBC has described how the decision was based on the physical evidence, and per its claim review process, the claim decision was reviewed by the estimator and material damage manager.*

*Through its reporting to my office, the FPO confirmed that when damage reported as a hit and run does not meet the criteria, ICBC has two options:*

- *If the damage could have happened without the driver being aware, they may be given the option to process the damage as a collision claim; or,*
- *If the damage suggests the driver ought to have been aware of the impact that caused the damage, yet falsely reported it as a parked hit and run, they may be in breach of the terms and conditions of their insurance, resulting in the claim being denied.*

*The option offered to you to process the damage as a collision claim is based on ICBC's assessment that the damage could have happened without you being aware.*

The last statement is key: Corporation staff base a determination of a hit and run incident on the physical evidence. Policyholders also make their claim based on the discovery of the physical evidence. The difference is that the policyholder may have been at the wheel when the damage was incurred, and simply not been aware of the impact that caused the damage.

### **3. Those deductibles...**

One case involved a concern about an escalating deductible applied to a customer with a history of Comprehensive claims. While these claims may generally be a small amount relative to claims such as total vehicle loss, they can be a considerable expense to the insurer (and therefore a direct burden to the premium-paying customers of the Corporation) because they happen much more frequently.

ICBC customers with multiple Comprehensive claims may have to pay higher deductibles – called an escalating deductible (see [Escalating deductibles \(icbc.com\)](https://www.icbc.com/escalating-deductibles)). As this webpage notes,

“[T]he intent is that those who have more of these types of claims pay more of their claims costs.” This is fair to both the customer with a higher frequency of claims, and to the Corporation’s other customers who collectively do not have to shoulder as much risk.

The escalating deductible no longer applies after three years without another Comprehensive claim. Further, ICBC provides customers an opportunity to request a review of their escalating Comprehensive deductible when they:

- show that they have made a significant, relevant change that has stopped their claims; and,
- continue to be claim-free for one full year.

In this case, based on a review of their Comprehensive windshield claim history, ICBC increased the customer’s deductible from \$300 to \$2,500. ICBC denied their request for review of their deductible based on their repair claims history. While the repair claims history does not impact the amount of the deductible, it does factor into ICBC’s risk assessment – i.e., has the customer demonstrated that they have made a significant, relevant change that has stopped their claims.

I determined that the complainant had been treated fairly, which in an insurance process context means that decisions about deductibles and coverage availability were not arbitrary but were based on their specific claims history.

#### 4. **More hard reality**

Just as it can be unsettling to be told that certain damage was not the result of a hit and run incident, it can be upsetting to be held responsible for a collision that the driver regarded as unavoidable. Recent examples that came to my office involved a complaint from a driver coming around a blind corner and hitting a branch that had recently fallen from a tree in a windstorm, and a similar incident where a driver ran over a lid that had blown off a storage container and in front of the path of the vehicle. If the driver views the incident as unavoidable it is difficult not to take offense at the suggestion that the driver did not handle the situation competently.

Here’s how the Corporation views the matter: “A chargeable claim under Collision coverage is not based on fault for the accident. The definition of collision is not a judgment about a person’s driving ability, whether they had time to see the object on the road, or whether or not they are at fault. The definition of collision only describes how the damages occurred and what type of coverage will be used to pay for those damages to your vehicle.”

This goes back to the essential nature of insurance coverage as described in the opening to this Annual Report. Your coverage is designed to provide compensation for a wide range of

risks over which you may have little or no control. The case of unseen-until-the-last-second road debris is probably the best (or the worst, if you're that driver) example.

## **5. Observing from the edges: daily process concerns**

For almost all of the matters that are outside my jurisdiction, there is a process element that I can review. In other words, while I can't comment on the result, I can examine the process by which that result was achieved. One such example was a case in which a driver disputed responsibility for an accident – that is explicitly outside my authority, and only the CRT can entertain appeals of an ICBC decision of the Responsibility Review Team.

Here's how I reported the results of my review to the complainant:

ICBC has reviewed your responsibility assessment through the Responsibility Review Team (RRT) and then through the Fair Practices Office. ICBC has listened to your concerns. In the written correspondence to you, the RRT explained how the relevant sections of the *Motor Vehicle Act* were considered and applied in your case. Further, as the FPO has explained, the rules for claim forgiveness and how claims impact your individual insurance premiums are in the Basic Insurance Tariff, which has the force of law in B.C. ICBC must follow the law. I confirmed with ICBC that you do not meet the criteria for claim forgiveness because you have 17 years driving experience, as compared to the minimum of 20 years under the Tariff. Therefore, when you renewed your insurance policy on August 11, your insurance premiums increased, as required under the Tariff. Based on the above, it is my assessment ICBC has treated you fairly in the administration of your claim and assessment of the increase to your insurance premiums.

As always, the elements of fair process include listening to and acknowledging the complaint, a thorough and accurate explanation of law and policy, a full description of how the evidence was found and facts were determined, and a detailed decision that explains how the law and policy has been applied to the facts.

## **6. I may not have jurisdiction – but you're not without a remedy**

It's a fact of life that my legal authority is focussed on matters of fair process. In practical terms this means that, among other things, I cannot examine matters that are under the authority of another tribunal. An example of this is when someone makes a complaint of discrimination that would fall under the authority of the Human Rights Tribunal (HRT). Their remedy is the HRT, not my office, even though the complaint may be against ICBC.

Another example that appears repeatedly is entitlement to benefits, an area that is explicitly beyond my jurisdiction as defined in the *Insurance Corporation Act* (see "It's a Team Sport" in my opening message to this Annual Report). This can include significant benefits such as medical treatment or income replacement; it can also cover smaller matters such as reimbursement for travel expenses incurred in seeking medical treatment. Disputes over such matters can be reviewed internally on request by the policyholder, and if

they cannot be resolved, the matter can be brought before the Civil Resolution Tribunal (CRT), a body designed to provide quick and inexpensive resolution of such disputes by making orders in the same manner as the BC Small Claims Court.

**7. As a courtesy, ICBC may send Autoplan insurance renewal reminders, but the notices go to the registered owner. Ultimately, you are responsible to ensure you have coverage.**

This was an unfortunate case. A family had leased a vehicle that, through no fault of their own, was considered a “lemon” and was required to be at the dealership’s repair facility for most of time the customer owned the vehicle. When the insurance policy expired, ICBC sent the renewal notice to the owner listed on the policy – but in this case the listed owner was the dealership. While the customer was listed on the policy as “lessee” the address associated with the policy was that of the dealership, and the customer never saw the renewal notice.

After some months at the dealership for repairs, the customer picked up the vehicle and subsequently had an at-fault crash; unfortunately, the insurance policy had expired and had not been renewed. ICBC’s position was that because the vehicle was uninsured, ICBC would not cover the cost of damage to the vehicle and reserved the right to claim against the customer for the cost of repair or replacement of the other vehicles involved in the crash.

While the customer felt that the dealership failed them by not bringing the renewal notice to their attention, we could not find fault with the Corporation’s actions in this case. As a courtesy, the Corporation sends out renewal notices to the registered owner’s address listed on the insurance forms. But it is the registered owner’s responsibility to renew their policy, regardless of whether they receive the notice.

**8. Safe drivers are a priority**

ICBC is responsible for assessing all new drivers in the province, including drivers who move to BC from other jurisdictions, within and outside of Canada.

When a person moves to BC from another jurisdiction outside of Canada, the process to exchange their driver’s licence (DL) varies, based on whether BC has a reciprocal licence exchange agreement with the jurisdiction they are moving from. In this case, the applicant wished to exchange their non-Canadian DL for a Class 5 BC DL. Although the driver had moved from a jurisdiction with a reciprocal licence exchange agreement, the driver encountered some barriers along the road to receiving a full BC Driver’s Licence.

ICBC employs a panel of subject matter experts to review non-Canadian DLs. In this case, they were in agreement that the customer’s DL was inconsistent with other approved examples from the same jurisdiction. Therefore, the non-Canadian DL was not accepted by ICBC as proof of their driving experience. The customer was concerned about this and ICBC arranged for second review. The second review upheld ICBC’s initial assessment – that the surrendered licence was inconsistent with other original licences from the same jurisdiction



and would not be accepted. Without an accepted reciprocal DL, the customer would be required to go through the Graduated Licensing Program (GLP) before they could attain a full privilege Class 5 BC DL.

While this may have felt unfair to the customer, I concluded that the customer had been treated fairly: ICBC had applied the established driver licensing policy and a second review of the DL was completed. Further, ICBC had followed the relevant rules and procedures, and they responded to the customer's concerns and arranged for a second review of their DL in a timely manner. Without an accepted reciprocal DL, a new driver is required to go through the GLP before they graduate to a full privilege Class 5 BC DL. Care was taken to explain ICBC's jurisdiction regarding the issuance of drivers' licences in BC, and the process to enter the Graduated Licensing Program.

I considered this process to be fairly designed and implemented. ICBC's first responsibility in licensing is road safety, and where safety is confirmed through submission of documents, those documents must pass accepted standards.

## **Several cases, several suggestions, positive outcomes**

### **9. Acknowledging when something has gone wrong**

Each year I receive complaints about the conduct of ICBC personnel in the claims management process. Allegations sometimes include rudeness, poor communications, or a failure to understand the claim and manage it adequately. Often a complaint cannot be substantiated using available records and we are left to speculate as to what actually happened in terms of the human interaction. An insurance claim can be a stressful experience, and it's not surprising that communications can become heated, more often than not on the claimant's side.

Most complaints are handled through ICBC's complaint resolution and quality assurance programs, which may result in an apology to the customer and review and training for staff. However, few complaints have a paper trail in support. In this case, a claimant provided written communications from an ICBC employee handing their claim. When we reviewed the communications between the claimant and ICBC, we were concerned that that the communications did not meet ICBC's service standards.

We presented this to the Corporation and asked the Corporation to review the communications and consider offering an apology to the customer for the conduct of the employee. The Corporation conducted an internal investigation which resulted in a decision to offer an apology to the complainant.

As to the employee's conduct, we rely on the Corporation's information that appropriate action has been taken in accordance with internal codes of conduct and quality assurance processes. This is because employees of public bodies are entitled to have their

employment records and all actions relating to their employment treated as their personal information not subject to disclosure under the BC *Freedom of Information and Protection of Privacy Act*. And, while members of the public may be the ones filing service complaints, employee conduct remains fundamentally a matter between management and staff.

## 10. A small change with big possible benefits

The customer had been negotiating a settlement with the Corporation for compensation after the loss of her vehicle written off in an accident. Negotiating the Total Value Settlement Offer was for the complainant a stressful process. The complainant persevered through the negotiation, which eventually resulted in them being made aware that there is a vehicle valuation dispute process that includes an internal review and third-party arbitration. While the complainant ultimately obtained what they viewed as fair compensation, they felt that they had been inadequately informed at the outset about remedies available in seeking a fair outcome. They felt that for the benefit of all customers in the same situation, the wording of settlement offer letters (Offer Letters) should contain information beyond a general invitation to “contact us if you have any questions.” I agreed, and this is what I said to the Corporation:

*As you know, my position is that a fair process requires that a public body provide information to an individual about any review or appeal process that is available to them. It is standard practice throughout the public sector and is typically appended to or incorporated within a decision letter. Based on my review, I have concluded that ICBC does not routinely provide information about the review and appeal processes available to a customer at the conclusion of a Total Value Settlement Offer.*

I suggested that the Offer Letters be modified to provide an avenue for individuals to efficiently locate the information they need to navigate the relevant corporate processes. For some individuals, these processes can be intimidating, confusing or just plain incomprehensible. This is through no fault of the Corporation, which maintains a well-organized website with vast amounts of information on every conceivable insurance-related subject.

On review, the Corporation accepted my suggestion and agreed to modify its Offer Letters to include this statement:

*If you have any questions please contact us by emailing [vehiclesettlements@icbc.com](mailto:vehiclesettlements@icbc.com) with your claim number in the subject line. Learn more about the dispute and arbitration process by visiting [icbc.com/claims/disputes-appeals](http://icbc.com/claims/disputes-appeals).*

I commend the Corporation for taking this step, which will make it far easier in the future for individuals to constructively challenge certain decisions by following existing processes that might otherwise remain unknown to them.

## 11. A fair resolution

Cancelling an insurance policy is a technically precise process that involves several distinct steps. It is something that is easy to overlook when you sell your car – you remove the plates and may intend to get around to returning them to an Autoplan agent, but for now you might believe that the insurance is automatically cancelled when you sell the car and remove the plates. No, it's not – and may remain in effect for many months, creating an increasing level of debt of which you might be unaware. The Corporation rightly takes the view that it continues to provide insurance coverage regardless of what you have done with the vehicle, and in so doing is entitled to charge premiums. This is the law.

The complainant took what he regarded as the three necessary steps for cancellation: removal and return of the licence plates; return of the insurance documents and completion of an application for policy cancellation. In the circumstances, the customer did not surrender the active decal for the insurance policy when he returned the plates. The customer alleged that he had not received the decal when he renewed the policy and plates. However, at that time (when decals were still in use), when a customer did not have the required decal to surrender, there was an option to file a "stolen decal" report with the police. The person filing would receive a police report number that would be accepted in support of the cancellation application, in lieu of the actual decal.

Nevertheless, in spite of the customer's emphatic assertion that a police file number had been obtained and submitted, the policy was not cancelled. As a result, the complainant was held responsible for over \$2000 in premiums that had mounted month by month during the period the policy was in force.

We reviewed the various communications among ICBC, the broker and the customer. We took the view that the broker records were not clear as to whether the customer had provided a police file number. The customer was adamant that they had provided the number and offered a copy of it in support. Further, it appeared that the customer may have been provided inconsistent and incorrect information about how to cancel their insurance policy.

On this basis, we suggested that ICBC review the file and consider backdating the cancellation to remove the customer's debt. Our suggestion was accepted, and the complaint treated as resolved.

(Readers of this summary will have noted the reference to validation decals, which are no longer used by the Corporation. This change factored into the Corporation's review of the matter and a decision to remove the debt as a one-time customer service gesture.)

## **Appendix B – Cases Requiring a Fairness Officer Recommendation**

None.

## **Appendix C – Terms and Conditions Letter for the ICBC Fairness Officer**

June 12, 2021

Michael T. Skinner

Dear Mr. Skinner:

Congratulations on your appointment as the Fairness Officer (the “Officer”). ICBC is looking forward to working with you, ensuring ICBC’s decisions, actions, and practices are transparent and fair.

The Officer position is established in Part 3 of the *Insurance Corporation Act* (the “Act”). The Officer’s powers, duties and responsibilities are set out in the Act and the *Fairness Officer Regulation*, B.C. Reg. 142/2021 (the “Regulations”).

This letter sets out in detail the terms and conditions of your Order-in-Council (“OIC”) appointment OIC# 474-2021. The Officer is expected to comply with the terms and conditions outlined in this letter and the Officer’s powers, duties, and responsibilities as set out in the Act and the Regulations.

This letter is not intended to duplicate or conflict with the powers, duties, and responsibilities of the Officer set out in the Act and the Regulations. To the extent of any conflict between the provision of this letter and the Act or the Regulations, the provisions of the Act or the Regulations will govern.

### **Term**

The initial term of your OIC appointment OIC# 474-2021 is for three (3) years, with an effective date of July 12, 2021 and with the possibility of renewal for additional three (3) year terms in accordance with s. 55 of the Act (the “Term”).

### **Location of Fairness Office**

The Fairness Office (the “Office”) and the Officer position may be operated in a virtual environment.

It will be up to the Officer to determine if physical office space is necessary, in consultation with ICBC’s Board of Directors (the “Board”) and in accordance with s. 55 of the Act, to ensure effective operations and the successful achievement of the Officer’s mandate.

### **Responsibilities and Accountabilities of Role**

The Officer will perform the following services, which are in addition to the Officer’s powers, duties, and responsibilities as set out in the Act and the Regulations:

#### **i. Establish the Fairness Office**

- Work with ICBC to establish the Office, including determining operational needs, any staffing requirements, and physical office space, if necessary.
- Hire and/or contract staff if and as necessary, after consultation with the Board.
- Develop and implement a stakeholder consultation plan that will inform the policies and procedures for the Office.
- Establish processes, policies and procedures for the Office, informed in part by the consultation with stakeholders, to be fully operational no later than October 31, 2021.

- Prepare a budget for the Board’s approval, covering the period between the effective date of your OIC appointment OIC# 474-2021 to the end of the 2021/2022 fiscal year by August 31, 2021. Thereafter, the Officer will submit an annual budget in accordance with s. 55 of the Act by September 30 for the subsequent fiscal year.

**ii. Administration**

- The Officer is responsible for the administration of the Office, including obtaining support services necessary to fulfil the Officer’s mandate.

**iii. Reporting**

- ICBC will, upon request, make all reasonable efforts to provide information and data to assist the Officer in meeting their reporting obligations as established in the Act and the Regulations.
- ICBC will assist the Officer with the development and maintenance of a publicly accessible website. If the Officer chooses to host a publicly accessible website without ICBC’s support, for information security reasons, the hosting of the website is to be done in consultation with ICBC.
- The Officer will submit to the Board a report on expenditures on a quarterly basis in accordance with s. 2 of the Regulations within two weeks of the end of the quarter.

(collectively, the “Services”)

**Time Commitment**

While daily availability is not essential, availability for telephone meetings on two-to-three days’ notice and face-to-face meetings on one-to-two weeks’ notice is required.

The time commitment will be dependent on the number and complexity of the complaints received by the Office. There may be a greater time commitment immediately following the Officer’s appointment in order to establish the Office, develop processes and procedures, and undertake the initial stakeholder engagement.

It is anticipated the time commitment required will be between 0.25 and 0.5 full time hours averaged on an annual basis.

**ICBC Policies**

In providing the Services, the Officer must adhere to the provisions of the most current version of the following ICBC policies, as applicable:

- (a) ICBC Code of Ethics;
- (b) Information Security;
- (c) Diversity, Equity and Inclusion;
- (d) Privacy;
- (e) Acceptable Use;
- (f) Health and Safety;
- (g) Respectful Workplace;
- (h) Alcohol, Cannabis, Controlled Drugs and Medication;
- (i) Security;
- (j) Corporate Acquisition; and
- (k) Use and Protection of Corporate Assets.

ICBC will provide a copy of the most current ICBC Code of Ethics and Information Security policy to the Officer for acknowledgement and signature confirming awareness and acceptance prior to the commencement of the Services, and annually thereafter.

ICBC will also provide a copy of each of the foregoing policies to the Officer prior to the commencement of the Services.

### **Relationship of the Officer, ICBC and Staff**

The Officer will ensure that the Services are provided exclusively by the Officer. Notwithstanding this limitation, the Officer may retain, as may be necessary and in accordance with s. 55 of the Act, staff to assist the Officer in providing the Services (the "Staff").

ICBC staff will make themselves available to provide any necessary support for the Officer in establishing the Office, and also ongoing support for the Officer and their Office. However, the Officer may retain Staff to support the Office. In that event, the Officer warrants that all Staff have the required qualifications, skills, and experience to provide the Services and will provide the Services in accordance with terms and conditions outlined in this letter, the Act and the Regulations.

All Staff are required to read and acknowledge, by way of signature, the most current ICBC Code of Ethics and Information Security policy prior to assisting the Officer in providing the Services, and annually thereafter.

No person retained by the Officer will be an employee or agent of ICBC.

As a government appointed position, the Officer agrees that the Officer is not an employee or agent of ICBC and has no authority to bind, commit or speak for or on behalf of ICBC.

### **Compensation**

#### **Services**

ICBC will pay the Officer one hundred twenty-five dollars (\$125.00) per hour plus Goods and Services Tax and Provincial Sales Tax as applicable during the Term for performance of the Services upon receipt of an account from the Officer.

#### **Expenses**

ICBC will reimburse the Officer for any necessary expenses, including necessary Staff costs to assist the Officer in fulfilling the Officer's duties, over the Term and in accordance with the budgeting process prescribed in the Regulations.

#### **Invoicing**

The Officer will submit invoices providing a breakdown of time and services performed. The Officer will identify expenses on a separate invoice and will provide original receipts. ICBC will pay the Officer within thirty (30) business days of receipt of an invoice.

### **Confidentiality**

Recognizing that any fairness complaint could later become the subject of litigation, and that information or documents received in the course of reviewing fairness complaints should not lose any claim of privilege which may attach to them:

The Officer and Staff will,

- i. Maintain the confidentiality of all information and documents provided to the Officer;
- ii. Not disclose to any person, including the other party, any information or documents provided to the Officer 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 any information or documents in any correspondence, report, or recommendation without the consent of the party who provided the information or document having been obtained in advance.

### **Performance Appraisals**

Your formal Performance Appraisal for reappointment will be coordinated by the Crown Agencies and Board Resourcing Office and include consultation with you, the Board, ministry responsible for ICBC, stakeholders, and Cabinet. This process will be initiated eight (8) months prior to your three (3) year term end.

The Board may make changes to the terms and conditions of this letter as appropriate, subject to the approval of the minister responsible for ICBC.

### **General Conduct Principles for Public Appointees and Conflict of Interest**

Government appointees are expected to meet high standards of conduct, which enhance and maintain public confidence in the operation of B.C.'s public agencies, boards, and commissions. They must act to instil public confidence in their actions and decisions. Please review the following link with more information: [General Conduct Principles for Public Appointees - Province of British Columbia \(gov.bc.ca\)](http://www.gov.bc.ca)

Note: The above is the minimum for public sector appointees. Additional standards of conduct and conflict of interest provisions that apply to the Fairness Officer are specified in the ICBC Code of Ethics.

The Officer may provide services to other clients during the Term, so long as such services are not performed on ICBC's premises or using ICBC equipment and do not interfere or conflict with the terms and conditions outlined in this letter and the Officer's powers, duties and responsibilities as set out in Act and the Regulations.

### **Training for Public Appointees**

As a public appointee, there are training resources available to you and you can learn more about these by visiting the Crown Agencies and Board Resourcing Office website at:

Governing in the Public Interest Certificate - Province of British Columbia

If you have any questions regarding your appointment or the terms and conditions outlined in this letter please contact Doug Cooper ([doug.cooper@icbc.com](mailto:doug.cooper@icbc.com); (604) 982-6590).

I wish you much success in your position and look forward to working with you.

Yours truly,

Joy MacPhail  
Board Chair, Insurance Corporation of British Columbia



cc: Mike Farnworth, Minister of Public Safety and Solicitor General of British Columbia  
Holly Cairns, Principal, Crown Agencies Secretariat  
Charley Beresford, Senior Executive Lead, Crown Agencies and Board Resourcing Office

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**Addendum to Terms and Conditions – March 1, 2023 Letter to the Fairness Officer from the Board Chair.**

Office of the ICBC Board Chair

March 1, 2023

Michael T. Skinner  
Victoria BC

Dear Mr. Skinner:

Further to the letter dated June 12, 2021 setting out the terms and conditions of your Order-in-Council appointment OIC#474-2021 (the “Original Letter”), this letter amends the Original Letter as set out herein. The Officer is expected to comply with the terms and conditions outlined in the Original Letter and this amendment letter and the Officer’s powers, duties, and responsibilities as set out in the Act and the Regulations.

This letter is not intended to duplicate or conflict with the powers, duties, and responsibilities of the Officer set out in the *Insurance Corporation Act* (the “Act”) and the *Fairness Officer Regulation*, B.C. Reg. 142/2021 (the “Regulations”). To the extent of any conflict between the provision of this letter and the Act or the Regulations, the provisions of the Act or the Regulations will govern.

The “Responsibilities and Accountabilities of Role” section of the Original Letter is deleted in its entirety and replaced with the following:

**Responsibilities and Accountabilities of Role**

The Officer’s powers, duties, and responsibilities are set out in the Act and the Regulations. For clarity, the Board will provide remuneration to the Officer for the following services as set out below:

**i. Corporation Processes**

- Review, investigate and/or make recommendations on Corporation processes in accordance with the Act and the Regulations.

**ii. Establish the Fairness Office**

- Work with ICBC to establish the office of the Fairness Officer, including determining operational needs, any staffing requirements, and physical office space, if necessary.
- Hire and/or contract staff if and as necessary, after consultation with the Board.
- Develop and implement a stakeholder consultation plan that will inform the policies and procedures for the Office.
- Establish processes, policies and procedures for the Office, informed in part by the consultation with stakeholders, to be fully operational no later than October 31, 2021.

- Prepare a budget for the Board’s approval, covering the period between the effective date of your OIC appointment OIC# 474-2021 to the end of the 2021/2022 fiscal year by August 31, 2021. Thereafter, the Officer will submit an annual budget in accordance with s. 55 of the Act by November 30 for the subsequent fiscal year.

**iii. Administration**

- The Officer is responsible for the administration of the Office, including obtaining support services necessary to fulfil the Officer’s mandate.

**iv. Reporting**

- ICBC will, upon request, make all reasonable efforts to provide information and data to assist the Officer in meeting their reporting obligations as established in the Act and the Regulations.
- ICBC will assist the Officer with the development and maintenance of a publically accessible website. If the Officer chooses to host a publically accessible website without ICBC’s support, for information security reasons, the hosting of the website is to be done in consultation with ICBC.
- The Officer will attend either a Board or Board Committee meeting to present the Annual Report.
- The Officer will attend Board and/or Board Committee meetings, as required;
- The Officer will submit to the Board a report on expenditures on a quarterly basis in accordance with s. 2 of the Regulations within two weeks of the end of the quarter.

**v. Additional Services**

- Outside of the Officer’s powers, duties and responsibilities set out in the Act and the Regulations with respect to Corporation processes, from time to time the Officer may provide consulting services to the Board on other matters affecting ICBC (the “Additional Services”) upon the following terms and conditions:
  - Prior to performing any Additional Services, the Officer will provide a scope of work with an estimate of number of hours required to complete such work.
  - The Officer must obtain written approval from the Chair of the Board, who will consult with the CEO, before starting work on any Additional Services.
  - ICBC will make available and the Officer will consult with personnel of ICBC with the required skills, experience and qualifications to support the Officer in performing the Additional Services.
- For clarity, the Additional Services can include matters that are otherwise outside the scope of the Officer's authority under the Act and the Regulations, including actions undertaken by ICBC at the direction of Government.
- Additional Services performed by the Officer will not be included in any reports required under the Act and Regulations. Reporting on Additional Services by the Officer to ICBC will be upon the direction of the Chair of the Board.

(collectively, the “Services”)

The Board may make further changes to the terms and conditions of this letter as required, subject to the approval of the minister responsible for ICBC.

If you have any questions regarding your appointment or the terms and conditions outlined in this letter please contact Doug Cooper (doug.cooper@icbc.com; (604) 982-6590). On behalf of the Board and ICBC, I wish you continued success in your role.

Sincerely,

Catherine Holt  
Chair of the ICBC Board of Directors

cc: Mike Farnworth, Minister of Public Safety and Solicitor General of British Columbia  
Toby Louie, Executive Lead, Crown Agency Policy and Legislation, Crown Agencies Secretariat