



# DECISION NOTE

CLIFF #: 618114

Decision Date Requested: July 2, 2021

**Prepared for:** **Hon. Mike Farnworth**, Minister of Public Safety and Solicitor General and minister responsible for ICBC **for Decision**

**Subject:** **Fairness Officer Terms and Conditions**

**Issue:** To meet the requirements of the *Insurance Corporation Act*, the Minister is required to approve the Terms and Conditions of the Fairness Officer's appointment set by ICBC's Board of Directors. It is recommended that the Minister approve the attached Terms and Conditions.

## Background:

- In March 2021, amendments were made to the *Insurance Corporation Act* (ICA) to establish an independent Fairness Officer (the Officer). Supporting regulations were approved in early June to provide further parameters for the Officer, including the timing of budgeting and public reporting.
- Per the ICA, the Officer is to be appointed by an Order-in-Council for a three year term, and all necessary expenses for the Officer and the Fairness Office are to be paid by ICBC.
- The ICA provides that the Terms and Conditions (T&C) for the Officer may be set by ICBC's Board of Directors (the Board), subject to the approval of the minister responsible for ICBC.

## Discussion:

- It is anticipated that the Officer will be appointed by Cabinet in early July 2021. The proposed T&C appended to this note will be provided to the Officer in their first week of being appointed.
- The T&C address expectations and requirements of the newly appointed Officer. The Officer is expected to comply with the T&C and the Officer's duties and responsibilities as set out in the ICA and the Fairness Officer Regulation. The T&C cover a range of administrative topics, such as establishing the Fairness Office and related expectations. Key areas included in the T&C are as follows:
  - Compensation set at \$125.00 per hour for the Officer's services, in alignment with Public Sector Employer's Council guidelines, and as set out in the original notice of position;
  - The requirement to develop and implement a stakeholder consultation plan, including consulting stakeholders that raised concerns around the governance processes for Enhanced Care, to inform the policies and procedures of the Fairness Office;
  - Adherence to ICBC policies, which also apply to the Board and ICBC employees, including but not limited to: ICBC Code of Ethics; Information Security; Diversity, Equity and Inclusion; and Privacy;

## ICBC BRIEFING NOTE

- If the Officer chooses to obtain physical office space, the Officer must first consult the Board to minimize costs and to utilize ICBC resources as appropriate;
  - If the Officer wishes to hire staff rather than rely on the ICBC staff resources, which will be made available to support the Officer, the Officer must ensure the staff have the appropriate qualifications and, like the Officer, adhere to ICBC policies as referenced above;
  - The requirement for the Officer to prepare and submit an interim budget for Board approval by August 31, 2021, and also set the timeframe for submitting subsequent annual budgets, in accordance with the ICA and the Regulations, for Board approval;
  - The anticipated time commitment of the Officer is between 0.25 and 0.5 full time hours averaged on an annual basis. As well, expectations are set for the Officer's availability for telephone meetings and face-to-face meetings; and
  - Requirements relating to the confidentiality of information and documents provided to the Officer to ensure the customers' expectations of privacy are met.
- The Crown Agencies Secretariat, including staff in the Crown Agencies and Board Resourcing Office, have provided input into the development of the T&C and are in support of its approval. Joy MacPhail, ICBC's Board Chair, has reviewed and approved the attached T&C on June 22, 2021.

### Decision:

The attached Terms and Conditions are **APPROVED** ☒ **NOT APPROVED** ☐



Mike Farnworth  
Minister of Public Safety and Solicitor General

July 12, 2021

Date

### PREPARED BY:

Chris Tupper  
Director, Government and External Affairs  
ICBC

### APPROVED June 23, 2021 BY:

Douglas S. Scott  
Deputy Minister  
Crown Agencies Secretariat

**Attachment:** Terms and Conditions for the Fairness Officer

## DRAFT – Terms and Conditions Letter – Fairness Officer

Name  
Address

Dear <Name>

### **RE:**

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, BC Reg 142/2021 (the “Regulations”).

This letter sets out in detail the terms and conditions of your Order-in-Council (“OIC”) appointment <include OIC #>. 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 <include OIC #> is for three (3) years, with an effective date of <insert date> 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 <include OIC #> 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 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 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**

## DRAFT – Terms and Conditions Letter – Fairness Officer

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 \(gov.bc.ca\)](https://www2.gov.bc.ca/gov/content/governance/governance-principles/principles-general-conduct-principles-public-officials)

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 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](https://www2.gov.bc.ca/gov/content/governance/governance-principles/principles-general-conduct-principles-public-officials)

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). 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