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SUMMARY OF ADRO INVESTIGATION REPORT

Complainant:	The Complainant
Complaint Reference Number:	MUN-12244-1220
Complaint Commenced:	December 16, 2020
Date All Required Information Received:	April 8, 2021
Report Date:	May 21, 2021
Investigator:	Ben Drory

ADRO Analysis

A branch clearly fell from a City-owned tree through the back of the Complainant's car on September 9, 2020, and caused damage to it, for which he paid \$2,586 to get repaired. It is understandable why the Complainant would be upset about that. However, it is less clear that the City should be liable for it, and the two sides disagree on its liability. The legal argument about whether the City is liable or not cannot be addressed in this forum, which I have been clear with both parties about. I agree with the City that the legal argument is a matter for Small Claims Court – which the Complainant can still pursue until the limitation period expires (September 9, 2022). But some of the Complainant's other arguments are validly part of the Ombudsman Office's jurisdiction – especially whether the City followed its own processes and procedures appropriately, which could include the Service Level Manual, and whether the City was sufficiently "responsive" to the Complainant (for example, if there were any binding service standards). I was clear with the parties that the Ombudsman Office's jurisdiction is limited to the actions of City employees – which excludes the Claims Adjuster, who works for a private company, as well as the City's elected officials, who have a different working relationship with the City.

I am satisfied that the City has a policy to refer all claims like the Complainant's to independent adjusters, irrespective of their "value". I reject the Complainant's assertion that the City previously paid out his 2012 claim with "no questions asked", and therefore should have done so again in this case. The 2012 claim involved a different tree on a different street, and that the City sent that case to an adjuster too; I agree with the City that it has no bearing on the present claim.

I also do not accept that the City was insufficiently responsive to the Complainant's inquiries and/or emails. The evidence shows that the Complainant submitted his claim to the City on September 9, 2020, and the Claims Adjuster provided the City with his opinion and recommendations on November 23, 2020 – which was just under 11 weeks from the date of the claim. The Assistant City Solicitor described that the City aims to have a response within 6-8 weeks, but sometimes that isn't possible because an investigation is ongoing, and she also noted that the City's response times may have slowed slightly in 2020 because of its ongoing response

to the Covid-19 pandemic – which is understandable. Nothing about the City’s responses to the Complainant raised any qualitative concerns, and to the contrary their responses seemed quite measured.

Finally, there is no evidence that the Forestry Department failed to act according to their policies and procedures. The flyer the Complainant referred to was a generic one, sent to all nearby homeowners when the City will be attending soon to prune trees in a neighbourhood. City records showed that it pruned trees on the Complainant’s street on September 14 and 15, 2020 – five days after the September 9, 2020 incident. It is possible the timing was entirely coincidental, given that the Complainant advised of having already received the flyer before the incident. In any event, the City’s only obligation was to prune the trees by February 2021 – seven years following the February 2014 pruning. Doing the pruning in September 2020 would have accomplished this. I accept that the City also pruned the tree in question an additional time on October 3, 2016, in response to a complaint from one of the Complainant’s neighbours.

Conclusion and Recommendation

I find that the City followed its processes and procedures appropriately in this case, and this office isn’t an avenue to question the merits of the City’s procedures themselves. The City is free to set its procedures as it determines fit – for example, their determinations to send out all similar claims to be adjusted, or to set the tree servicing cycle at seven years. There is no basis for this office to advise the City on policy matters, in the absence of significant unfairness resulting from their operation. Accordingly, no recommendation is made against the City. The Complainant remains free to pursue the matter against the City in Small Claims Court, until the limitation period expires.

Respectfully submitted,

Ben Drory
ADRO Investigator