



Telephone: 1.844.235.4442

Fax: 1.877.803.5127

Email: ombudsman@adr.ca

P.O. Box 1006, 31 Adelaide St. E, Toronto, Ontario M5C 2K4

---

## ADRO INVESTIGATION REPORT

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

### Terms of Reference

This report has been prepared pursuant to the ADR Chambers Ombuds Office (ADRO) Terms of Reference, which describe the scope of ADRO's mandate, its process upon receiving Complaints, and the authority and responsibilities of an ADRO Investigator. Defined terms used below have the same meaning as in the Terms of Reference.

### Complaint – History of Proceedings

The Complainant is a resident of the City of Burlington (the “City”) and a Certified Insurance Professional (“CIP”). He submitted that a branch fell from a City-owned tree in front of his family’s house onto their car overnight on September 9, 2020, smashing the back windshield and shattering glass inside the car and onto the back bumper. A collision centre charged him \$2,586.02 to fix the car, for which the Complainant asked the City to reimburse him the full amount, or alternatively the \$500 deductible, but the City denied his claim in both respects.

The Complainant contacted a variety of City staff and elected officials during the claim adjusting process. His local councillor eventually advised him that he could raise a complaint to the City’s Ombudsman respecting the City’s administration, and the Complainant formally did so on December 11, 2020. He wrote that he had sent numerous emails to the City’s Insurance and Risk Management Officer and to the City’s external claims adjuster explaining what happened, sent the City pictures, paid the invoice himself, and took all precautions to minimize more damage, but was twice told that the City wouldn’t pay and that he could go to Small Claims Court if he wanted. The Complainant stated that he had over 40 years of experience in third-party liability, including involving municipalities, but the City took almost three months to deny his claim for a mere \$2,586.00. He added that no one ever called or responded to emails, and there was no service, which he felt was unprofessional.

During ADRO's intake stage, the City's Assistant City Solicitor confirmed that the City's denial of the Complainant's claim was final. She wrote to ADRO:

*Our review of the records provided by the Forestry Department confirms that the tree was inspected and pruned as part of the City's Grid Prune Cycle (conducted every 7 years) on February 26, 2014, and thereafter, as a result of a call-in request again on October 3, 2016. This maintenance and inspection was conducted in compliance with the seven year cycle for tree maintenance established by the City's council approved Large Tree – Maintenance Service Level Policy. While the tree was pruned during both inspections, there were no hazards identified with the tree during either of the inspections that would suggest the tree was unhealthy. Additionally, there were no further complaints or requests to inspect/maintain this tree identified in the period since the last October 3, 2016 maintenance of the tree and the date of the September 9, 2020 incident.*

*Owners of trees, or others responsible for trees (such as hired maintenance contractors), generally face liability only when it was known, or constructively known, that a tree failure risk was present and the owner (or others) failed to properly tend to the tree. On the point of liability for failure to maintain trees, the Superior Court of Ontario (Divisional Court) said in *Hallok v. Toronto Hydro Electric System Ltd.*, 2003 CanLii 8519 at paragraph 14:*

*It would appear to be common ground that a property owner, such as Park Lawn, cannot be held responsible for damage resulting from a limb on a tree falling simply on the basis that the limb or tree fell. If the evidence does not establish that there was knowledge on the part of the defendant, Park Lawn, of a dangerous condition of a tree or that there was a dangerous condition of which the defendant Park Lawn ought to have knowledge, a finding of negligence is unavailable as a matter of law.*

*In this case, the tree in question was maintained in accordance with the City's Maintenance Service Level Policy, and the City did not know, or ought to have known, of any dangerous condition. There is nothing the City could have reasonably done to have prevented the incident subject to this claim.*

*As the City has met the standard for maintenance and inspection as indicated above, we can find no liability on the part of the City for this loss. Accordingly, we respectfully maintain the denial of the claim for damages resulting from this incident.*

*Having reviewed and discussed the chronology of this complaint with relevant staff, I am satisfied that the staff acted appropriately in all respects.*

## **ADRO Investigation**

I conducted telephone interviews with:

- The Complainant
- The Assistant City Solicitor

I reviewed the file material initially provided by both sides, and additionally requested further documentation. The Complainant provided pictures of the damage to his car, of a tree with a broken branch, and of a branch protruding through the back window of the car, with glass shattered around the back hood.

A Customer Experience Representative from Service Burlington input to the City's database that she received a call from the Complainant on the morning of September 9, 2020, reporting damage to a vehicle in his driveway from a fallen tree branch. The Insurance and Risk Management Officer advised the Customer Experience Representative that the Legal Department would assume carriage of the matter.

Both parties sent me correspondence that took place between the Complainant, the Insurance and Risk Management Officer, and the Claims Adjuster (employed by Sedgwick Canada, an external company). The Complainant also sometimes messaged the Mayor and his local councillor. The most notable messages were as follows:

***From:*** Complainant  
***To:*** Insurance and Risk Management Officer  
***Date:*** September 10, 2020, 8:54 am

*Hello Insurance and Risk Management Officer... your name was given to me by the Customer Experience Officer when I called in to report this claim.*

...

*... [T]his scenario has occurred before with that same tree where we had to put in another claim. At that time the city never came around to check nor trim this tree. We had been told they are planning on doing our area in the near future so they are well aware of the situation as other branches broke off a neighbour's tree recently.*

...

*Please note we are holding the city liable for damages to our car and expect to be paid back as soon as I send you the estimate.*

***From:*** Insurance and Risk Management Officer  
***To:*** Complainant  
***Date:*** September 10, 2020, 12:55 pm

*... Your claim has been assigned to an insurance adjuster who will contact you within 6 business days.*

*Please note that the City only pays out on claims if there is negligence on the part of the City, and thus a legal obligation to do so.*

*If there is a legal obligation to pay out on a claim, all original receipts and invoices will be required.*

**From:** Complainant  
**To:** Insurance and Risk Management Officer  
**Date:** September 10, 2020, 1:17 pm

*... With all due respect there is negligence here (although not really needed as they knew about it). This has happened to us before with the same tree and the city paid for damages knowing they were at fault... by the way, nothing was ever done about it at the time nor since. It happened as well with a neighbour of ours just 2 weeks ago. The trees on our court are over 40 years old and many are in need of more than pruning.*

*As you may also be aware, the city sent our area a flyer a few weeks ago saying they would be coming around to finally do work on our trees. I guess a little late in our case. ...*

The Claims Adjuster introduced himself to the Complainant on September 14, 2020, on behalf of Sedgwick:

*Dear Complainant,*

*We confirm receipt of your claim submission to the City of Burlington regarding the damage to your vehicle.*

*This will also confirm that we are the accredited adjusters assigned to investigate this matter on behalf of the City of Burlington.*

*We have commenced our investigation into this matter.*

*Please be advised that the City of Burlington, like all municipalities, will make payments only where there is a legal obligation to do so. We will correspond with you upon completion of our investigation that will determine whether or not the City of Burlington is obligated to pay for any damages that you have incurred.*

**From:** Complainant  
**To:** Claims Adjuster & 1 other  
**Cc:** Insurance and Risk Management Officer & 1 other  
**Date:** September 14, 2020, 5:46 pm

...

*Please also note that this same tree had a branch brake off and hit another car of ours some years back and the city fully refunded us knowing they were responsible. You should also know that the city was further negligent at that time and up to now, and never bothered to check the tree for possible other problems... well it happened again.*

*As you know I am again holding the city liable for our damages.*

***From:*** Claims Adjuster

***To:*** Complainant

***Cc:*** Insurance and Risk Management Officer & 1 other

***Date:*** September 16, 2020, 10:01 am

*Good morning Complainant,*

*I have all of the documentation that you submitted, thank you.*

*I will be completing our investigation into this matter and will provide you with the City's position upon conclusion of our investigation. As part of the investigation, I will be obtaining records related to the history of the tree.*

*I will be in touch once we have received and reviewed the information from the Forestry department.*

***From:*** Complainant

***To:*** Claims Adjuster & 1 other

***Cc:*** Insurance and Risk Management Officer & 1 other

***Date:*** September 16, 2020, 11:21 am

*Hi again... see above pictures and my note yesterday to Insurance and Risk Management Officer on the subject of still hanging branches from this tree in front of our house.*

*As you may recall they came around on our court and trimmed many branches the other day but left a few I think should have been cut as they are hanging over the court where we park our other car which was already damaged. You'll notice the big branch is black in colour indicating issues with this tree.*

*I hate to be a pest but I think this is still dangerous.*

A few weeks passed:

***From:*** Complainant

***To:*** Claims Adjuster

***Cc:*** Insurance and Risk Management Officer & 1 other

***Date:*** October 8, 2020, 9:53 am

*Hello again*

*I feel compelled to share with you the experience I had this morning with 2 of your city so-called "tree experts". I could not believe they could not see the branch in case.*

*I kept showing them the branch I referred to all along explaining how it was bent down & I was afraid it could snap & break off... at first both said they couldn't see it; really??... I had to show them again & finally admitted it saying it wasn't "broken and hanging down" ...*

*As you are aware and I told them I never said the branch was "broken" but is bending down, very dark in colour and could cause more problems in the future... they totally disagreed with me saying it was fine become indignant about it all... not very professional young fellas.*

*I asked them if they could just take it down for precautionary measures but they refused to do so.. I would have taken them 5 minutes*

*As I went back in the house they kept looking up and just left*

*This is not the type of city response that we've come to know from our city after living on this court for over 40 years.*

*I hate to pursue this but I think it could become an issue down the road..... now you all know*

After the Claims Adjuster reiterated that he would provide the City's position upon completion of his investigation, the Complainant followed up a couple of weeks later:

***From:*** Complainant

***To:*** Claims Adjuster

***Cc:*** Insurance and Risk Management Officer & 1 other

***Date:*** October 21, 2020, 9:31 am

*So Claims Adjuster & Insurance and Risk Management Officer how are things going for you and the city on our claim???*

*Adam, you must be very busy with many more claims to settle for the city of Burlington and others as compared to our simple \$2,586 car damage from this city owned tree & one of it's branches smashing our car back window.*

*It would be nice to hear from you at least responding to my simple question emailed below. Claims Adjuster as you and I are Insurance people with both a BA and a CIP designation, I would have thought things would have moved much faster and not taken this long to finalize. As you will recall, our damages occurred on Sept 9<sup>th</sup>, over 6 weeks ago.*

*That's a long time to settle a simple broken glass claim. ...*

*Would you please be kind enough to advise where you stand on this & keep us up to date on the progress of your "investigation" which I'd like to think should be completed by now.*

*I'm not sure what you've been asked to verify and investigate for the city but as you are an experienced Claim Adjuster you will no doubt concur that they are responsible for our loss.*

*We have been very cooperative and patient all along however we do need our money back promptly. ...*

**From:** Claims Adjuster

**To:** Complainant

**Cc:** Insurance and Risk Management Officer & 1 other

**Date:** October 22, 2020, 10:53 am

*Good morning Complainant,*

*Our investigation is not yet finalized.*

...

*We have recently followed up with the City's Forestry Department regarding the documentation and, upon receipt, we will be in a position to review and provide you with our response.*

*I do not concur that the City bears liability for this incident because I do not yet have the required information to confirm.*

*Given your background in insurance, I suspect that you understand that just because a limb or branch from a City tree caused damage to your property, this alone does not mean that the City was negligent or bears liability for the incident.*

*The City is required to inspect and maintain trees located on its property once every 7 years. They are also required to respond to comments regarding the condition of the tree if a complaint is received. I am currently awaiting information on this specific tree that will detail the inspection and maintenance history as well as any work orders that were generated as a result of any complaints. Again, once I have this information, I will be able to provide the City's position.*

*As I'm sure you can appreciate, the City's Forestry Department has an extensive workload outside of the claims process. In addition, municipalities are operating with reduced hours/man power during the current COVID-19 pandemic. We will continue to follow up with their office for the information but we will not moving this claim ahead of any others in terms of a response time. Once we are provided with the information from them, we will review and provide our response to you.*

**From:** Complainant

**To:** Claims Adjuster

**Cc:** Insurance and Risk Management Officer; Complainant's wife

**Date:** October 22, 2020, 12:00 pm

...

2) glad you followed up with the City's Forestry's Dept; I would have done the same. I trust you will find they or the city had sent a memo around back in July or August saying they would be coming around our area to trim trees; unfortunately they came after our damage was done.

...

4) As per above and as we say in the Liability Insurance industry, "you knew or should have know that this kind of damage" would happen hence their previous flyer sent in our area this year. With all due respect a city is always liable/responsible for their property just like we all are with our homes and property. After 43 years in this industry I'd like to think that is a fact. They should have taken all possible precautions (i.e., cut this tree down) knowing that we park on the court (in our case right below a sign that we paid for allowing us to park there)

5) As mentioned before the city knew about this tree a while back as it's happened before. I do not recall the City's Forestry Dept ever coming over to verify. I am sure you'll find out in you investigation.

6) For your information I never complained per se about this tree but others have on our court about other trees that are the same age i.e. 50 ish years old. One does not know when a branch/limb will brake off a tree. ...

The Complainant followed up again two weeks later, copying his local councillor (the "Councillor"):

**From:** Complainant

**To:** Claims Adjuster

**Cc:** Insurance and Risk Management Officer; Councillor; & 1 other

**Date:** November 8, 2020, 8:52 pm

So Claims Adjuster further to your September 14<sup>th</sup> letter, are you finally getting your info from the city so you can finalize our claim of September 9<sup>th</sup>??? We are running out of patience here... we are into 2 months of waiting.

Hello Councillor, firstly congratulations on become our (ward) Representative. Please see below; I trust you can push some buttons at City Hall to get our claim resolved. As per below our claim dates back to Sep 9<sup>th</sup>

The Complainant followed up again a couple of weeks later:

**From:** Complainant

**To:** Claims Adjuster

*Cc: Insurance and Risk Management Officer; Complainant's wife; Councillor  
Date: November 19, 2020, 9:00 pm*

*So young man cat ate your tongue???... have you not made any headway on this basic simple claim??*

*Least you should do is communicate; as I'm sure you know, communication is the root of all successes. Staying silent and not responding to emails is not the way to handle things be it for us or anyone else.*

*I realize I'm not your client here but as I recall Sedgwick used to handle things in a much better & professional manner.. you know the City is responsible so why don't you just tell them to pay the darn claim already.*

*I'm not letting this thing go Adam*

The Claims Adjuster completed his investigation shortly thereafter, and advised the Complainant of his conclusions by letter dated November 23, 2020:

*... We are writing to advise that we have completed our investigation into this matter and we are issuing a formal denial of your claim for damages.*

*The focus of our investigation was to confirm whether or not there would be any liability or negligence on the part of the City of Burlington for the damage to your property.*

*The City is required to inspect and maintain trees located on its property once every 7 years as per the City Council approved maintenance policy.*

*This particular tree is identified as tree #76931 in the City's inventory.*

*Our review of the records provided by the Forestry Department confirms that this tree was inspected and pruned as part of the City's Grid Prune Cycle on February 26, 2014. The inspection and subsequent pruning that took place on this date satisfies the City's policy.*

*The City attended on October 3, 2016 to complete additional pruning of this tree.*

*There were no hazards or concerns with respect to the tree at the time of the above-noted inspections. The inspections are completed by City staff or external contractors, all of which are certified arborists.*

*Given the information above, we do not find any liability or negligence on the part of the City of Burlington for this incident as they have met the standard for maintenance and inspection of this tree.*

*Given that the City was not liable for the loss that you have sustained, we are respectfully denying your claim for damages.*

*Please note that, under the Limitations Act of Ontario, no right of action will exist after the expiration of 2 years from the date of loss as identified above.*

The Complainant replied, copying the Councillor and the Mayor:

**From:** Complainant

**To:** Claims Adjuster & 1 other

**Cc:** Insurance and Risk Management Officer; Mayor; Councillor; & 2 others

**Date:** November 24, 2020, 4:42 pm

*Claims Adjuster, I am in receipt of your letter dated November 23, 2020. As I am sure you suspect, I am very disappointed and awestruck by your response. I must advise you that I totally disagree with your assessment and denial of our claim.*

...

*... Having authorized claim payments myself; cities are always liable for these issues.*

*You should be aware that regardless of a city's "7 year commitment on tree pruning etc", this does not negate nor absolve nor relieve them of their liability & responsibility in any manner whatsoever.*

*You say this tree was pruned on Feb 26<sup>th</sup>, 2014; in the winter no less??.. hummm we've lived here for over 40 years and I don't ever recall them pruning in the winter; I don't believe that is correct. And they pruned again just 2 years later??... why in another 2 years and not 7 years later as per their mandate??.. They had to have known that something was not right with this tree and other trees on our court.*

*You also mention an additional pruning was completed on October 3, 2016 only 2 years after that??; yikes that's already 4 years ago. Do you not know what can happen to an old tree and it's branches in 4 years??.. well let me tell you sir, it happened to us, again. You've had the proof of loss, my pictures and those of Leggatt's for months.*

...

*I mentioned to you before that the city had sent flyers around in our area this past summer, prior to our loss, saying they would coming around to prune trees; why only 4 years after Oct 2016?? Because again, they knew something was wrong... as their records and yours should show, they came around to prune AFTER I advised the city of our claim on September 9, 2020... again they knew. Ask anybody, your supervisor, insurers etc. and they will tell you cities are always legally liable & responsible for damages to others regardless of their individual mandated work; that is irrelevant.*

*City staff & external contractors although may be "certified" arborists are not perfect and do make mistakes, we all do. I'm not saying they did make mistakes but under the*

*circumstances it seems quite likely. I spoke with some of them and they were uncooperative, not nice at all, actually rude to us as tax payers for the last 40 years.*

*You may not think you find negligence as per “their” maintenance standard, but that does not release them of any and all liability nor negligence for events happening from their property ownership.*

*Again I totally disagree and disapprove of your suggestion & decision. I trust you will reconsider and reverse your recommendation to the City and ask them to pay our damages as it should be.*

**From:** Claims Adjuster

**To:** Complainant

**Cc:** Insurance and Risk Management Officer & 1 other

**Date:** November 27, 2020, 9:10 am

*Hello Complainant,*

*Thank you for your detailed response. I have removed Councillor and Mayor from this email thread. As I’m sure you are aware from your extensive insurance background, the Mayor’s office and the Councilors’ offices are not involved with claims handling. These are legal matters that are dealt with by the City’s Risk & Insurance/Legal Department. I have also removed the other email addresses that you had copied as I am not aware of their involvement/relevance to your claim details.*

*The records that I have cited with respect to this tree are accurate. The tree is located on the property at (Complainant’s address) and identified as tree #76931. The dates on record are also correct.*

*The inspection and pruning of February 26, 2014 was part of the City’s 7 year maintenance procedure. If the City handed out flyers in your area this past summer as you have described, then that is excellent as it lines up with timeline for inspection/maintenance every 7 years (2014-2020/21).*

*The attendance in October 2016 was done because a request was made for pruning. As you are likely aware, the City responds to requests from citizens in addition to the continued 7 year maintenance schedule. As previously stated, pruning was completed in October 2016 and no hazards or issues were identified at that time.*

*Unfortunately, your statement that “cities are always liable for these issues” and “cities are always legally liable & responsible for damages to others regardless of their individual mandated work” is categorically false. Municipalities are not liable just because an incident has occurred. They are liable only when they have not met their standard of care which, in this case, is ensuring that trees are inspected and maintained at least every 7 years and action is taken if they become aware of an issue in the interim. This standard, as confirmed by the courts, is a standard of reasonableness, not perfection. The courts*

*recognize that it is unreasonable for a municipality to ensure that no tree branches will ever fall and cause damage.*

...

*The City's decision is final. You are welcome to pursue legal avenues if you feel it is appropriate to do so.*

**From:** Complainant

**To:** Claims Adjuster

**Cc:** Insurance and Risk Management Officer & 1 other

**Date:** November 27, 2020, 1:47 pm

*Regardless of your deleting Councillor and Mayor from you response, they should be made aware of things that are wrongly happening at City Hall especially claims not settled properly. We voted them in office to take care of us taxpayers and our issues. I never said they were involved in claims handling but perhaps they should as our representatives in cases like this. Perhaps they came make this right. Other names are relevant.*

...

*"No hazards or issues were identified on their October 2016 pruning"; That's what they or their independent says; why do you think someone called the city requesting pruning be done? Because they felt hazards existed!!*

*Sorry Claims Adjuster I man not "categorically" wrong as you say and you should know this. Regardless of "legal liability" we/they/you are always responsible for the handling of our property whether we take all precautionary measures. "Their standard of care" is not ours. You miss the point; actions were taken many times i.e. in 2014 and AGAIN in October 2016. How many actions do you need?? Perhaps Courts reasonableness is acceptable in normal cases maybe but not with trees that are over 50 years old where we've had damages from in the past. They knew.*

*I see you continue to remain silent on this exact same type of claim that occurred to us years ago from "THIS SAME TREE"; branch breaking our windshield; did you not ask them for this report?? It is your duty to do so & you should ask them for a full report there as well. As mentioned before, they paid that claim, no questions!!! why? because they knew it was their responsibility regardless of "Legal" issues.*

*I know that anyone can't ensure a branch would fall off a tree and cause damage; the same as no one can insure there will never be any slip & falls on city sidewalks; what's your point? WE ARE RESPONSIBLE FOR THE SAFE KEEPING OF OUR PROPERTIES, YOURS, MINE AND THE MUNICIPALITIES.*

...

*Your decision may sound final; the city's decision may not be.*

*If you don't recommend the city pay as I requested because you know I am correct, I will take proper action.*

**From:** Claims Adjuster

**To:** Complainant

**Cc:** Insurance and Risk Management Officer & 1 other

**Date:** November 27, 2020, 2:52 pm

*Complainant,*

*Although not relevant to this claim, I did look into your 2012 tree damage claim. This claim was paid because the records showed the City had not inspected the tree in 7 years prior to the date of that incident. This is consistent with the investigations of claims and the determination as to whether or not the City has liability for an incident. In addition, your 2012 incident occurred at (differing address) (near your son's residence at the time) and not at your address. This was not the same tree.*

*We seem to be going in circles here but I'll re-iterate that the City is not liable for damages just because the branch fell. Negligence requires the absence of meeting a standard of care. The City has met the standard of care in this case. Our position remains the same and we are not recommending payment of a claim where the City was not negligent.*

On November 30, 2020, the Complainant told the Claims Adjuster that he would put in a claim on his own comprehensive coverage, and asked the Claims Adjuster if the City could reimburse him the \$500 deductible for all the trouble this had caused. The Claims Adjuster replied the next day that the City was maintaining the denial position, and wouldn't consider any payments for the loss. The Complainant replied later that week:

**From:** Complainant

**To:** Claims Adjuster

**Cc:** Insurance and Risk Management Officer

**Date:** December 3, 2020, 4:30 pm

*So my little friendly Independent Adjustor from Sedgwick in Hamilton and Insurance and Risk Management Officer, CRM Burlington City Hall.*

*With all due respect I was actually thinking of dropping our claim but changed my mind due to the below and another recent broken branch:*

*1) Again, your "Expert Pruners" came around in late September or early October AFTER our car was damaged overnight on September 9<sup>th</sup>. So they did not meet their 7 year mandate. After I claimed our damages, the city came over 2-3 days later to pick up said branch & pieces.*

*2) See pictures above taken yesterday December 2, 2020; another broken branch fallen on the ground; thank God not on my car this time.*

*It certainly is proof that our "great pruners" are not that good after all are they??. they could/should have done a better job than that otherwise that new branch would not have broken off; I wonder how many more are ready to break off; look at our pictures*

*Therefore in my mind "THEY" are responsible for their work and lack of proper care being employees of the city or hired independent pruners.*

*Again I am asking and expect the city and/or their pruners to compensate us for our \$2,586 damages which we are readily due.*

**From:** Claims Adjuster  
**To:** Complainant  
**Cc:** Insurance and Risk Management Officer  
**Date:** December 4, 2020, 3:33 pm

*... As previously advised, we are maintaining our denial position.*

*If you wish to pursue the matter further, you may do so through Small Claims Court.*

**From:** Complainant  
**To:** Claims Adjuster  
**Cc:** Insurance and Risk Management Officer  
**Date:** December 4, 2020, 8:34 pm

*That is totally unfair and you know it... don't you take any responsibility for anything??*

*I guess you have to earn your fee on my account... thanks for nothing.*

I spoke with the Complainant by telephone. Prior to our call, he told me that he never kept a copy of the flyer he referred to, which he said was simple drop-in mail saying that the City would be around to trim trees on their court. He noted that he didn't have any complaints about any of the City's elected officials, he just wanted them to be aware of what was happening. He also corrected an earlier statement that an incident had happened to him before with the same tree, which he stated was mistaken – it was a different tree on a different street, where his son used to live. He noted that he never kept a record of that incident, since the City paid for their damages with no questions asked.

The Complainant started our call by saying he lives on a small court in Burlington, and one of their cars was parked in front of their house by the curb, and there is a big tree in front of their house. He said that on the night of September 9, he woke up in the morning and there was a branch on top of the car and standing up right through the back window – a large branch of maybe six inches circumference, and it damaged one of the speakers. He said he called the City that day and spoke with a clerk, and the Insurance and Risk Management Officer replied to him and asked him to fill

out some forms – she confirmed they had his claim, and said the City would adjust it through an independent adjuster.

The Complainant said he went to get the car fixed at a collision centre he'd dealt with before. When he got the car back, Sedgwick said they weren't paying the claim, saying the City wasn't responsible because there is a 7-year time period for them to go around to trim trees, and it's their decision to do it every however many years. The Complainant said the City put a flyer in their mailbox before the incident happened saying they were going to come around (although it didn't say when), but the branch fell on their car after they received that flyer. The Complainant said he told Sedgwick that he guessed the City was too late in arriving, and if they came around a month earlier the accident wouldn't have happened.

The Complainant said he and Sedgwick went back and forth a few times over the \$2,800. He said his motor vehicle insurance ultimately covered his claim, less a \$500 deductible – so he was out of pocket the \$500, and his insurance rates might go up. He said that in the meantime his councillor said to contact the Ombudsman, which he did. The Complainant said that when he called the City after the branch fell, they came down two or three days later to clean up the mess, with a machine that eats the branches.

The Complainant said if he was the City, he would have called him and suggested settling it among themselves. He didn't understand why taxpayers' money was needed to pay for adjusters and the Ombudsman to go through all these processes, which was probably double the cost of the claim – it didn't make sense to him. He said he cc'd various people at the City so that they'd know what was taking place – he didn't want to complain about anyone specifically, but was surprised that the City hired an insurance broker for the claim. He asked rhetorically that if the City was spending taxpayer dollars on a small claim like his, then what else were they doing? – to him, as an insurance professional, it was just ludicrous.

I spoke with the City's Assistant City Solicitor. She said the Complainant's complaint that a tree fell onto his car was investigated and adjudicated – the City sent it to an adjuster, who was in touch with relevant City staff getting the City's records, and sent the Complainant a letter confirming that the City denied his claim for damages. The Assistant City Solicitor said the basis for the City's denial was clearly set out in her January 22, 2021 email to ADRO, but the bottom line was that the City complied with its Council-established tree maintenance policy, which mandates a 7-year inspection cycle, and the tree in question was inspected on February 26, 2014 and October 3, 2016 – less than four years prior to this incident, and therefore in accordance with the policy. She added that there was no indication the tree wasn't healthy when City staff responded to the Complainant's complaint.

The Assistant City Solicitor noted that the Complainant's previous matter with the City concerned a different policy. She said the City reviews each claim separately on its merits – each tree is reviewed regarding its health, safety, and maintenance date, from which the City determines whether it retains any liability or not. She noted that any liability in another case was unrelated to this case, and the City never admits liability “no questions asked” – it always adjusts cases, and decisions are always made based on a case's merits. The Assistant City Solicitor added that the limitation period hadn't expired in the Complainant's case, and that he still has the option to

escalate the matter to litigation – i.e., a Small Claims Court action. She felt that the Complainant needed to address the merits of the claim there, and not through the Ombudsman’s Office.

The Assistant City Solicitor noted that less than three months elapsed between when the City was informed about the incident and the denial decision (September 9 – November 23). She said that there were at least 20 pieces of correspondence and follow-ups between the Complainant and the Risk Manager, and in her opinion the City was very responsive to the Complainant – she felt the Complainant wanted an answer sooner, and was getting aggravated, but the City was doing the investigative part of its job – getting all information required to determine the merits of the claim, and whether the City was liable. The Assistant City Solicitor said there was no standard or policy relating to how fast a claim gets adjusted. She said that that claims are acknowledged within a few days of receipt and sending out for investigation, which was done in this case. She said the City seeks to have a response within 6-8 weeks, but sometimes that isn’t possible because an investigation is ongoing or staff is searching for records; but in this case; the City had numerous exchanges with the complainant advising that it was still looking for records, and as soon as they were received a response was provided – all in under three months. In the Assistant City Solicitor’s view, the City’s response time in this case was more than adequate, and she added that we’re also in a pandemic, which affects response time – staff have really been focused on responding to pandemic-related issues first, it’s not a regular scenario.

The Assistant City Solicitor said the City’s responsibility stemmed from the Tree Maintenance Policy, including to respond to any complaints and tree maintenance issues raised to its attention. She believed the 2016 inspection resulted from a complaint – which the City responded to and pruned the tree, but confirmed the tree’s health and that it didn’t need removal; the Assistant City Solicitor said the City left the tree in a healthy state in 2016. She noted that the 2014 inspection was conducted as part of the 7-year cycle, so therefore the next scheduled inspection was in 2021.

The Assistant City Solicitor confirmed that it was the City’s ordinary practice to send insurance claims to adjusters, regardless of the amounts involved, and identified that a few years ago the City of Toronto’s Ombudsman came down very heavily on that city,<sup>1</sup> with its Ombudsman saying that adjusting should always be done, and each claim has to be adjusted on the merits – apparently the City of Toronto had been routinely denying a high rate of claims, without adjusting them. The Assistant City Solicitor said Burlington had already been adjusting cases all along, and its mandate from Council is to pay claims only where the City is at fault. She said that the adjusting process determines the claim’s fault elements and merits – each claim filed with the City gets assigned to an adjuster immediately, and the Risk Manager instructs the adjuster, who ultimately sends out decision letters, or attempts to settle matters where the merits justify it – but the adjuster is a separate company. The Assistant City Solicitor concluded that there was really nothing the City could or ought to have done that would have prevented this incident from happening, and that ultimately the City’s handling of the case was responsive and timely. She felt the Complainant

---

<sup>1</sup> See “Potholes, Floods and Broken Branches – How the City Handles Your Claims – An Investigation Into the Processing of Third Party Liability Claims Under \$10,000”, Office of the Ombudsman (City of Toronto), October 2011

<http://www.ombudsmantoronto.ca/OmbudsmanToronto/media/Documents/Investigative%20Report/Ombudsman-Report-Potholes,-Floors-and-Broken-Branches-October-2011.pdf?ext=.pdf>

was just looking to have his claim paid, and to get that remedy he had no choice but to proceed to court.

Following our call, the City forwarded me a variety of supporting documentation, including the Maintenance Service Level Manual – 1998 (the “Service Level Manual”), issued by the Roads and Parks Maintenance Department, and approved by the Burlington City Council on October 26, 1998. The Service Level Manual, which is the central policy in this case, states in its introduction that:

*The Maintenance Service Level Manual – 1998 is to provide a clear description of; a set of objectives; an established level of service; a set of performance standard and a defined method of procedure for all maintenance activities. The level of service described for the activities are what has been provided and budgeted for in recent years, in most cases. Therefore, it is fair to say that the described service levels are sustainable and in general, meet the expectations of the elected officials and the residents in Burlington.*

The Maintenance Service Level respecting “Large Tree Trimming” (“Activity No. 2802”) is described as the manual pruning of large trees; the service prescribes for the City to prune and inspect trees on a seven-year cycle, to National Arborist Association Standards and in compliance with the City’s Urban Forestry Guidelines. Work priorities are to be scheduled using both a Grid Pruning System and/or a Work Order System.

Documentation from the City established that the Complainant’s previous matter occurred in 2012 – a branch fell from a City tree onto a car on May 23, 2012, and the City settled with the Complainant’s wife for \$271.20. However, that matter related to a different tree, and the settlement was reached on the basis that records weren’t available confirming the tree had been maintained with the 7-year tree maintenance cycle. The Assistant City Solicitor asserted that distinguished the cases, as records existed in the present case confirming the tree was maintained in accordance with the City’s policy.

The City provided an undated flyer that appeared to be sent to any nearby residents when the City would be pruning trees in the near future. The flyer read:

***Attention Homeowner***

*Pruning of City trees and sidewalk encroachment will be happening soon*

***Information***

*A contractor working on behalf of the City of Burlington will be pruning City trees within the road allowance during the next few weeks.*

*The purpose of this pruning is:*

- *To improve tree health and strength*
- *Remove of large, dead wood and any obvious weakened and/or diseased limbs*

- *Pruning City and private trees from encroaching on sidewalks and roadways to ensure safe passage where necessary*

*All pruned limbs and wood will be picked up within two days of pruning.*

*The work will be performed by trained crews in accordance with the approved City of Burlington Tree Pruning Standards and in accordance with the International Society of Arboriculture best practices.*

*Contact us if you have any questions – Burlington Roads Parks and Forestry*

City records showed that tree #76931 (the tree in question) was pruned as part of the City's grid prune cycle on February 26, 2014, and was pruned again by City staff on October 3, 2016. A Forestry Work Request Form further indicated that the tree was inspected and maintained on October 3, 2016, in response to a request from one of the Complainant's neighbors, who asked for the trees to be pruned, as they were losing limbs and there was lots of dead wood overhanging their lawn. A spreadsheet suggested that all of the trees on the Complainant's street were pruned on September 14 and 15, 2020.

### **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