

October 25, 2011

Members of Toronto City Council

**Re: Toronto Ombudsman Report – October, 2011 Agenda Item CC13.1
An Investigation into how the City handles Third Party Liability Claims
Under \$10,000**

I am writing regarding the Ombudsman's Investigation into how the City handles third party liability claims under \$10,000. The investigation looked at the process of dealing with claims related to potholes, sewer and water backups and failing tree limbs through its contracted adjuster Granite Claims Solutions (formerly named McLarens).

As I indicated to the Ombudsman on October 5, 2011 the City takes the findings of the Ombudsman's report very seriously. I have moved immediately to implement all recommendations and believe the City can address the report's recommendations through the action plan outlined in Appendix I to this letter.

The Ombudsman concluded that the City has applied insurance industry approaches to the detriment of good customer service. The City must balance the need for fair treatment of claimants and customer service with recognition that the City is not the primary insurer and liability claims can only be paid if there is a finding of wrongdoing on the part of the City. The City is not automatically liable for a resident's damages simply because the damage occurred on a City road, or as a result of a City tree or a City sewer, for example. The onus is on claimants to prove that the City committed a negligent act or failed to act reasonably. This is the practice of all municipalities and is supported by provisions in the City of Toronto Act which mirror those of the Municipal Act. However, the Ombudsman has noted areas where we can enhance customer service and as a result staff have been implementing a workplan since March 2011 to ensure the adjusters communication, the City's website and other customer service initiatives are enhanced. Upon receipt of the Ombudsman report and recommendations, staff will implement additional measures to improve customer service as outlined in Appendix 1.

I want to assure you that staff across the Toronto Public Service remain committed to customer service excellence. Through the direction of senior management, the City continues towards a path of improved customer service to Toronto residents and businesses. It is my belief that the implementation of the changes outlined here will begin to balance the customer service priorities with the requirements of insurance industry practices.

Yours truly,

Joseph P. Pennachetti
City Manager

Appendix I

Work Plan to address Ombudsman Recommendations

The City's work plan will focus on five areas:

1. Oversight of Third Party Adjusters

The Ombudsman found that claims are denied without investigations, claim decisions are made without facts or explained to claimants, and files are closed without informing claimants. The Ombudsman made reference to the change the adjuster made to its template letter removing the word "investigation" and rewording the letter to indicate that Transportation confirmed the Minimum Maintenance Standards (MMS) were being complied with. However the Ombudsman has identified that this is problematic in that such communication was not supported by an assurance from Transportation that they could meet MMS 100% of the time.

Insurance & Risk Management (IRM) will investigate with Transportation Services an objective system of accurately determining compliance with MMS in order to establish a factual foundation for each claim case. IRM will have the results of this investigation by January 31, 2012 and improvements made will be communicated to claimants via the web and in direct communication by February 24, 2012. If impediments exist, such as resource issues, they will be reported to Government Management Committee with recommendations for action.

A number of concerns in the report have already been addressed:

- In the Fall of 2010, the adjuster changed its procedures so that all claimants are advised of the status of their files prior to closing. Currently, no liability file is closed without a decision and final written contact with the claimant delivered either by email or Canada Post.
- Since March of 2011, acknowledgement letters are sent to all claimants within 48 hours of receipt of their claim by the adjuster providing the adjuster's name and contact information.

Further improvements to the claim acknowledgement letters will be made to clarify in clear language that such claims are made as liability claims and to confirm that the City does not insure the autos damaged in potholes, buildings damaged by sewer backups and property damaged by City tree limbs. The language will specify that claimants must demonstrate where they believe the City was negligent in causing the damage they sustained and clearly outline the supporting information needed for each type of claim (pothole, sewer backup and tree limb failure) being presented. Such language will be written by IRM in consultation with City Legal Services, Equity & Diversity and Communications staff. This information will be posted on the website and added to the adjuster's procedures manual. Revisions to the information available to claimants on what they need to provide the City as a liability claim will be implemented by January 31, 2012.

- No longer are claimants required to make FOI (Freedom of Information) requests to obtain divisional reports generated to respond to claims. Since early 2011 the pertinent section of divisional reports are provided to claimants upon request.

To further enhance and improve upon the existing close working relationship between IRM and adjusters, a new reporting structure will be implemented by December 31, 2011. Adjusters will be assigned a reporting responsibility to designated IRM staff on all claim files to track claim aging and react to stale dated claims.

IRM will also amend the adjuster's procedure manual by January 31, 2012 to incorporate the standards identified by the Ombudsman, including, effective claimant communications.

2. Website and communication documents sent to individual claimants

The Ombudsman found that there was insufficient and misleading information on the City's website regarding third party liability claims.

The City acknowledges the need for continuous improvement of its website to assist claimants. The City's Insurance and Risk Management (IRM) unit has made significant improvements to its web presence to assist claimants to understand the steps in submitting a claim and the role of the City in resolving claims. IRM revised its website in March 2011 coinciding with City staff increased focus on improved customer service after reviewing other municipal websites in Canada and the U.S. The City incorporated the best elements of other websites, so that the website is now comprehensive and incorporates helpful links regarding Provincial statutes (limitation periods, minimum maintenance standards), Transportation sites regarding potholes and snow management and Toronto Water sites regarding sewers and water mains.

IRM will further improve web and 311 content to outline the process for claimants in clear language, as well as clarify the role and relationship the third party adjuster has with the City. It will ensure communication of details for circumstances where denials for pothole claims or any other claims can be made and more detail on how claims involving contractors are handled. Under the heading, "making a claim", claimants will be asked to set out the alleged acts of negligence or omissions by the City that may have resulted in injury or damage.

For pothole claims, clear language information will identify that claimants must demonstrate that the City had knowledge of the pothole, either by showing that the City knew or ought to have known about the pothole that cause the damage or that the road was in poor condition in general and particularly prone to developing potholes. For sewer backup and water main break claims, clear language information will require claimants to show that the City did not have in place appropriate preventative measures, or that the City did not respond within a specified time of learning of the problem. For tree limb claims, the public will be informed of the City's duty of care and that liability would only exist if the City know or ought to have known that a tree posed a danger.

IRM will review and revise template letters sent to claimants by January 31, 2012. Also, IRM will work with the City's Equity & Diversity Unit to ensure clear language for the website and commits to implement these changes by January 31, 2012.

3. City Contractor Claims

For public claims arising from City contractors, the City to date has applied legal and insurance industry practices by not directly getting involved in resolution of claims between claimants and contractors. In response to the Ombudsman's concerns, IRM will enhance communications between the claimant, adjuster and City staff and work with the divisional project manager responsible for managing the City's contract with the contractor alleged to have caused the loss. IRM will engage other affected divisions to establish an appropriate contractor data base to capture necessary relevant information. These measures will be implemented by January 31, 2012. In addition, IRM will explore with Purchasing & Materials Management Division and Legal Services measures to change procurement and contract requirements with contractors to ensure that they follow the same claims standards that the City applies as per the Ombudsman recommendations. IRM's exploratory work in this area will be complete by March 31, 2012 and scheduled for reporting to Government Management Committee as necessary.

In recent months, IRM has taken action through greater involvement of the Technical Services Division staff to improve customer service in contractor claims which has proven to be effective in connecting the claimant with the insurance adjuster representing the contractor's insurer. IRM will expand on the current working arrangement it has with Technical Services and document such processes by January 31, 2012.

4. Requesting divisional inspection and other reports in support of insurance claims defense

The Ombudsman's report stated that there were significant delays, particularly in Transportation Services and a lack of consistency, efficiency and coordination in the process of producing reports.

Regarding timeliness of report requests, the City's action plan includes greater communication between staff and adjusters and establishing a liaison function between IRM & the third party adjuster. The Third Party Adjuster's Claims Manual for the City of Toronto will be amended to provide instruction to adjusters regarding actions when divisional report requests exceed the delivery time set with the division, handling of claimant information requests, keeping claimants informed of claim handling progress and assisting with the issuance and understanding of claim denials.

IRM will convene a working group with Transportation, Toronto Water and Parks, Forestry & Recreation to review the current system of requesting reports and establish service standards appropriate to the type of claim to achieve streamlining, coordination, standardization and efficiencies. Such standards will define the appropriate amount and level of information required for each claim type as well as standards for timeliness. Available improvements will be implemented by January 31, 2012 which will be communicated to claimants via the web and in direct communication. If resources are determined to be an impediment, a report will be submitted to Government Management Committee no later than April, 2012.

5. Complaints

In view of the Ombudsman comments about providing fair customer service, starting immediately the IRM Manager will personally review all claims where the public feels they have been unjustly treated in the handling of their claim. If it is determined that liability exists, the

claim will be assessed for payment. If no liability exists, an explanation will be provided to the claimant.