



## **Insurance Claims Handling Protocol**

1. Claims Handling and Reporting Procedures
  - a) Liability claims
  - b) Information to third party claimants
  - c) Receipt of claims, notices of action, statements of claim, and subrogation notices
  - d) Automobile claims
  - e) Property claims
  - f) Damage to personal property and automobile
2. Claims investigation and the litigation process
3. Political involvement in the Claims Process
4. Media and Communication

Appendices

**This section to be completed as incident and accident forms are developed. All forms, including the Insurance Claims Handling Protocol will be made available on the City's website.**

### **Introduction**

Despite everyone's best efforts, incidents, accidents and losses will occur. As such, there must be a consistent approach to the reporting and handling of claims. Since this function is an integral part of risk management, the process is a centralized responsibility of the City's Legal Department that not only oversees incident and claims management, but the City's and the Participant's risk management program.

### **The Insurance Claims Handling Protocol applies to:**

- The Corporation of the City of Burlington, hereafter the City;
- The Burlington Public Library Board, hereafter the Library;
- The Burlington Economic Development Corporation, hereafter the BEDC;
- The Burlington Downtown Business Association, hereafter the BDBA;
- The Aldershot Business Community Improvement Area, hereafter Aldershot; and
- Councillors, Committees of Council, and their Sub Committees as passed by resolution of Council and including Board Members and Volunteers;

Collectively hereafter referred to as "Participants" to the Insurance Claims Handling Protocol.

## **Purpose:**

The purpose of this Protocol is to establish a regular and consistent approach to the reporting and handling of occurrences, incidents and claims and to act as a guide for Participants in the administration of same. The Protocol is based on a commitment by the City's Legal Department to:

- (a) Provide an objective and professional level of service to all claimants;
- (b) Ensure a professional approach to manage the expectations of the Participants within the insurance program.
- (c) Comply with the conditions of the Participant's contracts of insurance; and
- (d) Efficiently and effectively manage the claims process.

## **Definitions**

For the purpose of this Protocol, unless the context otherwise requires, the following terms have the respective meanings as set out below:

“Accident” means an event that happens by chance and is not expected in the normal course of events, which results in harm to people, damage to property or equipment, or a loss of process or productivity.

“Adjuster” means an insurance adjuster that reviews and settles claims on behalf of the insurance company and/or the City's Insurance Staff. The adjuster could be an employee of the insurance company or an independent contractor hired by the corporation.

“City Insurance Staff” means City Staff responsible for overseeing the insurance program.

“Claim” means the exercising of a policyholder's right under an insurance policy. A claim can also be any notification of a possible loss under an insurance policy, whether or not any payment follows.

“Claimant” means a person who makes a claim.

“Counsel” means legal counsel appointed by the insurer or their representative to protect the Participant's interest in a Statement of Claim.

“Incident” means an event which could have resulted in harm to people, damage to property or equipment, or loss of process or productivity.

“Insurance” means a contract between an insurance company and its customer for a specific period of time. It protects the customer financially against a loss. Insurance is also a mechanism for dispersing risk, because it shares the losses of the few among the many.

“Insurance Policy” means a written contract of insurance. An insurance policy includes such policies as a general liability, errors and omissions, conflict of interest reimbursement, legal expenses reimbursement, crime, environmental, non-owned automobile, automobile, property, and excess liability policies.

“Insured” means the entity and participant whose risk of financial loss from an insured peril is protected by the insurance policy.

“Insurer” means the company providing the insurance coverage.

“Liability” means a legally enforceable obligation. Liability insurance pays for the damages or losses suffered by others for which the insured person is legally responsible.

“Loss” means a word often used in place of the word "claim."

“Negligence” means to fail to do what a reasonable and prudent person would do, or to do what such a person would not do. This can result in property damage, injury or death.

“Notice of Action” means notice of a proceeding in a court of law where one person seeks a court order for the enforcement of that person's or company's rights.

“Occurrence” means an “event that results in an insured loss. In some lines of insurance, such as liability, an occurrence is not necessarily an accident (something sudden or unexpected). It can result from continuous or repeated exposure to a risk. Nonetheless, an occurrence results in bodily injury or property damage that was neither expected nor intended by the insured.

“Protocol” means this protocol including its appendices;

“Participant” means:

- The Corporation of the City of Burlington;
- The Burlington Public Library Board;
- The Burlington Economic Development Corporation;
- The Burlington Downtown Board of Management;
- The Aldershot Business Community Improvement Area and;
- Councillors, Committees of Council, and their Sub Committees as passed by resolution of Council and including Board Members and Volunteers;

“Statement of Claim” means a court document containing details of the plaintiff’s case and the relief sought against the defendant.

“Subrogation” means the right to recover a loss from a culpable party.

“Third Party” means a claimant under a liability policy that is not one of the two parties (insured and insurer) that entered into the insurance contract.

“Without prejudice” means an action taken during a claim investigation and negotiation and is intended to be without detriment to the existing rights of the parties.

**Procedures:**

Essentially, there are numerous types of incidents, occurrences and claims as many as there are different types of insurance policies. For the purposes of the Protocol, the following three main claims categories will include:

- (a) Liability claims involving bodily injury and/or property damage caused to a third party;
- (b) Automobile claims involving physical damage to a licensed vehicle, as well as bodily injury and property damage to a third party and;
- (c) Property Claims involving loss or damage to building, contents, and unlicensed equipment that are the property of the insured.

**(a) LIABILITY CLAIMS, INCIDENT AND OCCURRENCE REPORTING**

Liability refers to responsibility assessed against a person or corporation for injury or damage to a third party as a result of applying the law. Generally speaking, most liability insurance policies agree to pay on behalf of the insured for liability imposed by law or for which the insured may become legally obligated to pay. Liability may be imposed as a result of the insured's negligence, nuisance, or breach of contract.

Special care should be taken with regards to the reporting and the investigation of liability claims as well as incidents and occurrences that have the potential to trigger a liability policy. An immediate investigation will determine if a loss is covered under the Participant’s insurance program as well the assessment of liability and claimant’s damages.

Claims, incidents or occurrences that involve wrongful acts which cause a financial loss to a third party due to a negligent building inspection, zoning and planning matter, passing or failure to enforce by-laws, abuse of authority and/or acting in bad faith, should be immediately reported to the City’s Insurance Staff.

Claims, incidents or occurrences that cause bodily injury, property damage and/or a financial loss to a third party due to an environmental or pollution event should be immediately reported to the City’s Insurance Staff.

**Information to Third Party Claimants**

In the event a Participant is contacted by a third party regarding information about submitting a claim, the following procedure should be followed:

1. Refer the third party to the City's Insurance Staff in the Legal Department.
2. Insurance Staff will inform the individual to fully outline in their written notice of claim (verbal/oral notice is invalid) the details of their loss including the following: full identity of the claimant including their name, phone number and contact information; a complete description of how, when and where the incident took place; a complete description of their claim for damages; their observations of the area of the loss (i.e. construction in area, description and sketch of the premises or surrounding area, weather conditions at time of loss, lighting conditions etc). The Insurance Staff will also advise the individual to report the incident to their insurance company.
3. Insurance Staff will inform the individual to provide all documentation to support or substantiate their claim for damages. (i.e. photographs, copies of motor vehicle accident reports or reports generated by public authorities, names and contact information concerning witnesses, written estimates, clinical records, etc.).
4. Insurance Staff will inform the individual that the above request for a written notice is being made on a "without prejudice" basis and that upon receipt of their notice of claim, an investigation will be undertaken by the City's insurance staff or adjuster to determine the issue of liability insofar as the Participant is concerned.
5. Insurance Staff will advise the individual that the personal information gathered is collected pursuant to the *Municipal Act*, the *Municipal Freedom of Information and Protection of Privacy Act* or other specialized Act, and will be used exclusively for the purpose of investigating their claim.
6. Insurance Staff will inform the individual that their notice of claim can be sent via fax, mail, email or personally delivered to the attention of the respective Participant's CAO, CEO or their designate.
7. Insurance Staff will inform the individual that if their claim involves non-repair of the City's roadway, written notice must be given to the City within 10 days after the occurrence.
8. Insurance Staff will inform the individual that if they intend on proceeding with a claim via fax, mail or personally delivered, then they must submit written notification as soon as possible to their respective entity as listed below:

The Corporation of the City of Burlington  
City Clerk  
426 Brant Street  
P.O. Box 5013  
Burlington, Ontario L7R 3Z6  
Fax: 905-335-7675

The Burlington Public Library  
2331 New Street  
Burlington, Ontario L7R 1J4  
Fax: 905-681-7277

Burlington Economic Development Corporation  
414 Locust Street, Suite 203  
Burlington, Ontario L7S 1T7  
Fax: 905.332.7829

Burlington Downtown Business Association  
414 Locust Street, Suite 202  
Burlington, Ontario L7S 1T7  
Fax: 905-333-9499

Aldershot Business Community Improvement Area  
452 Plains Road East  
Burlington, ON L7T 2E1

9. City staff must **not** make statements which suggest a commitment on the part of the Participant, that the Participant is agreeable to make payment, provide or pay for damages or a rental vehicle, carry out repairs to their property or accept blame or fault for the incident.

10. City staff must **not** use phrases such as "it will be taken care of" or " the claim will be processed". If questioned, repeat that the matter will be investigated to determine issues of liability. If the third party is persistent or irate, please refer them to staff at the City's Insurance Staff.

11. City staff must **not** volunteer additional information to the claimant regarding the matter. As an example, information such as the number of calls already received concerning a similar incident.

12. Insurance Staff or a staff member that has direct involvement in the incident must **not** discuss the matter with anyone other than the staff's supervisor and those individuals that have been retained by the City's insurer to represent the Participant's interest in the matter.

### **Receipt of Claim, Notice of Action, Statement of Claim, or Subrogation Notice**

In the event the Participant receives a Claim, Notice of Action or Claim, Statement of Claim, or Subrogation Notice, the following procedures should be followed:

If the Participant involved has received the first notification, the original document must be immediately forwarded to the Participant's CAO, CEO or Clerk's department as the case may be.

The original copy of the claim will be kept on file by the Participant and a copy will be electronically forwarded to the City's Insurance Staff as well as the operating department. The method and date in which the document was received should be noted (mailed, faxed, personally delivered, etc.)

### **Accepting Service of a Statement of Claim:**

In the event the Participant is asked to accept service of a Statement of Claim where the Participant Corporation is a named defendant, please direct the process server to that individual within the corporation that can accept service of the Statement of Claim. In the case of the City, please direct the process server to the City's Clerk.

An investigation will commence upon receipt of the document by the City's Insurance Staff. All information or documents relating to the allegations in the Statement of Claim that are produced and retained by the operating department involved should be safeguarded for defence purposes with copies provided to the City's Insurance Staff. These documents consist of, but are not limited to, incident reports, policy and procedural documents, names of staff directly involved in the incident that gave rise to the claim, photographs, names of witnesses, reports produced by civil authorities, etc.

### **(b) AUTOMOBILE CLAIMS REPORTING**

The physical damage coverage section of the automobile policy indemnifies the Participant against direct and accidental loss of or damage to an automobile and its attached equipment owned or leased in the name of the Participant. Equipment generally excludes anything that is not permanently attached unless it is specifically designed for use with the automobile. Physical damage coverage is on an all perils basis.

The third party liability coverage section of the automobile policy is designed to provide financial protection for the Participant's legal liability for bodily injury to other people and for damage to the property of others.

Legal liability can arise from the ownership, use and operation of an automobile owned, leased or operated by the Participant. To be legally liable for injuries or damage to other persons, the driver or owner must have accidentally caused the injury or damage and be considered negligent to some degree.

In the event a Participant is involved in a motor vehicle accident while operating a vehicle owned or leased by the Participant and as a result, causes damage to the Participant's vehicle, third party bodily injury and/or property damage, the following procedures should be followed:

1. Immediately report the motor vehicle accident to your immediate supervisor and refer to your respective Participant's standard operating procedures or guidelines
  - For the Fire Department, please refer to the Standard Operating Guideline #2200-002 or Appendix A of this protocol.
  - For the Roads, Parks and Forestry Department, please refer to the Departmental Procedure for Driver Accident and damage Reports or Appendix B of this protocol.
  - For the Transit Department, please refer to the Transit Response to Transit Vehicles involved in Collision Policy & Procedure No: SOP 0 1.9 or Appendix C of this protocol.

2. In all accidents involving third party property damage or bodily injury the police authority as well as the Participant's respective training officer or designate should be notified immediately regardless of the amount of damage in order to conduct an investigation.

3. Should a Participant's employee suffer injuries as a result of a work-related motor vehicle accident, the employee and their supervisor must follow their respective standard operating procedure of guideline.

For all City Departments, please refer to the Corporation of the City of Burlington Human Resources Policies & Procedures # 3-10-15 or Appendix D of this protocol.

4. In all incidents involving either physical damage to motor vehicles or bodily injury, a motor vehicle accident report form must be completed and submitted to the employee's immediate supervisor as soon as practicable.

5. The report should be reviewed by the supervisor for accuracy and completeness and to ensure that at minimum, the report contain the name of the owner and operator of the vehicles involved, their address, the location and time of the accident, the driver license numbers, the license plate numbers, the names and contact information of all independent witnesses, a description of the accident including a sketch, the name of the insurance company and policy number as well as the police authority's motor vehicle accident report number. Once complete, the report should be sent to the City's Insurance Staff to conduct a review and to determine next steps.

6. Do **not** under any circumstances admit liability or make any statement to any other party, other insurance adjuster or their representative. Information concerning the accident should only be disclosed to the police authority, your immediate supervisor, and to those individuals that have been retained to represent the Participant's interest with respect to the accident in question.

### **(c) PROPERTY CLAIMS REPORTING**

#### **THIS SECTION ONLY APPLIES TO THE CITY, THE LIBRARY AND BEDC**

The City, Library and BEDC, collectively hereafter the Insured, property insurance program provides insurance for buildings, equipment and contents of property owned by the Insured against accidental loss unless the property or peril causing the loss is specifically excluded under the insurance program. Settlement for property losses is on a replacement cost basis.

Where, under the terms of an agreement such as a lease, the insured has assumed liability for the repair or replacement of property (buildings, equipment or other contents), coverage is also available under the property insurance program.

In the event of a loss, a City of Burlington Property Damage or Loss Report must be completed, detailing the circumstances of the loss, date of loss, location and complete description of the damages. The report must be submitted to the Insurance Staff. Please refer to Appendix E of this protocol.

**In the event of a property loss, the following procedures should be followed:**

1. Notify all authorities involved, such as fire, ambulance, police, building inspectors etc.
2. Notify the City's Insurance Staff as soon as practicable and report the loss.
3. Protect the property from further damage.
3. Immediately separate damaged and undamaged property.
4. Obtain the names and contact information of all staff and independent witnesses involved in the loss. Also, make note of any possible involvement of other parties.
5. Retain any piece of equipment or other damaged property that may assist in identifying the cause of damage. These items should be tagged and identified as to its function in order to assist in establishing the underlying cause of the loss.
6. Take photographs, if possible, prior to the removal of any debris.
7. Establish a loss control account to detail all expenses incurred as a result of the loss.
8. Retain all estimates and invoices, time sheets, etc. to ensure that all costs attributed to the loss are captured. A complete inventory of all property detailing the quantity, description of the damaged property including the manufacturer, model number and serial number, current replacement value as well as copies of invoices evidencing repair and/or replacement of the damaged property.
9. Complete a Property Damage Claim Form and submit to the City's Insurance Staff along with a copy of all *civil authority's* incident report for processing and to determine next steps.

**Loss or Damage to Personal Property and Claims Involving Personal Automobiles**

**Personal Property**

Generally speaking, the insurance policies do **not** provide insurance coverage for the personal property of the Participant's employees, volunteers, contractors or members of Council. It is the responsibility of the owner of such personal property to insure the property.

**Personal Vehicles**

Every owner of an automobile is required by law to insure their vehicle for liability insurance before it can be driven on the roadway. The primary insurance of a licensed vehicle is the responsibility of the registered owner or lessee.

With respect to physical damage coverage of a personal vehicle, it is the owner's responsibility to insure it as deemed necessary. Collision and comprehensive coverages are the most commonly selected coverages, however are not compulsory under the Ontario Automobile Policy. At no time, will the Participant accept responsibility for the physical damage to their respective employee's vehicle.

In the event of an accident or loss, whether the vehicle was being driven for personal use or within the scope of the Participant's employees' duties, all claims must be submitted to the insurer of the vehicle involved. In the event of an accident causing death or serious injuries, all accidents involving personal vehicles while being used for or on behalf of the Participant's business should first be reported to the employee's personal insurer as well as the City's Insurance Staff.

Any injury sustained by an employee while on the Participant's business should be immediately reported to their respective supervisor for further investigation.

It is the policy of the City that the responsibility for insuring vehicles owned or leased by employees, rests with the employee.

### **Claims investigation and the Litigation Process**

When a liability claim is reported to the Participant's insurer by the City's Insurance Staff, the insurer, pursuant to the policy conditions, will appoint an independent adjuster to conduct an investigation into the facts and circumstances of the loss.

Investigations conducted at an early stage are essential in order to assess liability and damages. Although each claim will be unique, generally speaking, insurance industry standards are that the independent adjuster is to complete their investigation and report to the insurer within 60 days of receipt of the assignment. This will enable the insurer to establish a reserve and develop a course of action that will hopefully lead to a quick and cost-effective resolution of the claim.

For those claims that are not resolved at the independent adjuster level and proceed into litigation, the insurer, pursuant to the policy conditions, will appoint defence counsel to represent the Participant's interests in the claim.

For liability claims alleging property damage that are assessed at 50% of the deductible, the City's Insurance Staff may assume carriage of the claim, appoint an adjuster and if pursued through the courts, appoint the City's in-house counsel to represent the Participant's interest in the claim.

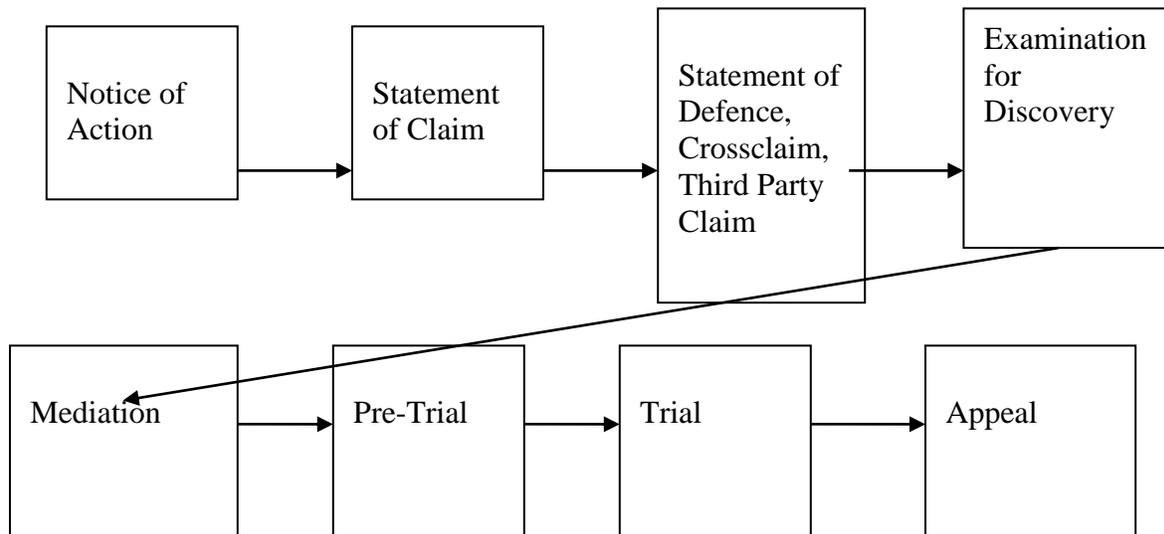
For all other liability claims, notice of the claim shall be immediately forwarded to the insurer or any of its authorized agents by the City's Insurance Staff. Pursuant to the conditions of the various policies, the insurer shall have the right to make such investigation, negotiation and settlement of any claim or suit as may be deemed expedient by the insurer.

The Participants and the City's Insurance Staff shall co-operate with the insurer and upon the insurer's request, aid in securing information and evidence, attend hearings and trials and assist in effecting settlement. The Participants shall not, except at their own cost, voluntarily assume any liability or settle any claim.

### Claims in Litigation

Litigation means to carry on a legal challenge by a judicial process. Upon receiving an assignment from the insurer, legal counsel will thoroughly review the file and apply legal principles to determine causation, assess liability and damages.

The following is a general overview of the major stages of a legal proceeding.



### Political Involvement in Claims

When members of the public suffer injury or property damage as a result of an incident involving or the perceived involvement of a Participant, claimants sometimes involve their local Councillor or Mayor in the process.

In many circumstances, an insurance recovery is wanted. In such situations, the terms and conditions of the Participant's insurance policy must be followed. The policy agrees to pay on behalf of the Participant all sums for compensatory damages that the Participant becomes obligated to pay by reason of liability imposed by law.

The conditions within the insurance policy impose certain requirements upon the Participant to the insurance contract. Some of the requirements of the Participants are to assist and cooperate with the insurer in the investigation of the claim. A requirement of the Participant is that it cannot admit liability nor take any actions that could prejudice the insurer's position or defence of the claim. Prejudicing the insurer's position can result in a denial of coverage thereby

requiring the Participant to rely on its own funds to pay monetary damages, investigation expenses and legal fees.

The initial contact with the constituent can impact the final resolution of the situation. In order to protect the Participant and the other taxpayers in the community, it is recommended that the Councillor:

- Listen and document the conversation;
- Offer empathy not monetary restitution;
- Do not admit fault;
- If appropriate, instruct constituents to report the incident to their insurer;
- Provide the constituent with the contact information of the City's Insurance Staff;
- If contacted by the media, inform them that the incident has been reported to the organization and an investigation is taking place; and
- Refrain from commenting on the incident to avoid prejudicing the insurer and/or breaching privacy laws.

## **Media Relations in a Claims Situation**

Positive relationships with the media are crucial to a public entity. Some incidents, particularly life-threatening emergencies, generate media interest. It is important to understand that the media is not the enemy; in fact, the media is a key partner with the Participants in delivering information to the public. In a crisis situation, the media can be a valuable tool.

A journalist's job is to gather information and package it for presentation. In a crisis, members of the media may be persistent in seeking information. Failure to provide accurate information quickly, openly and honestly will lead the media to look for other sources that may not be as credible. This creates the potential for inaccurate or misleading information being published or broadcast.

By being both proactive and cautiously reactive, you can avoid some of the problems that can arise from the ineffective release of information. For these reasons, we advise the Participants to refer to their respective Communications Policy and Handbook.