

**CITY OF POINTE-CLAIRE**

**POLICY CONCERNING CLAIMS MANAGEMENT**

<b>Responsibility:</b>	<b>Legal Affairs and City Clerk Department</b>
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## 1. OBJECT

This policy is intended to establish the criteria and general orientations pertaining to the reviewing of claims received by the Legal Affairs and City Clerk Department and to ensure citizens and City departments a fair and impartial process.

## 2. DEFINITIONS

- 2.1 Car:** Vehicles owned by or under the responsibility of the City of Pointe-Claire, in accordance with the level of applicable deductibles, as per the insurance contract approved by City Council.
- 2.2 Insured property:** Any property that belongs to the City of Pointe-Claire or which is leased or used by an employee within the framework of their job, or goods for which the City might be held responsible, in accordance with the level of applicable deductibles, as per the insurance contract approved by City Council.
- 2.3 Civil liability:** The liability resulting from any and all City activities and operations as well as from the use of premises that are either owned, leased, occupied or used by the City, in accordance with the level of applicable deductibles, as per the insurance contract approved by City Council.

## 3. LEGAL FRAMEWORK

Québec Civil Code (C.C.Q.-1991) and the Act Respecting Québec Cities and Towns (L.R.Q., Chapter C-19).

### 3.1 Notice

A written notice must be filed with the City within fifteen (15) days following an event resulting in property damages (see section 4.1.3 and paragraphs 585 (1) and 585 (2) of the Act Respecting Cities and Towns).

No legal action can be instituted within fifteen (15) days following service of such notice (paragraph 585 (3) of the Act Respecting Cities and Towns). This fifteen (15) day notice is not required in the case of bodily injury (Québec Civil Code).

### **3.2 Prescription**

#### **3.2.1 Property Damage**

Every action, suit or claim against the municipality or any of its officers or employees for damages occasioned by fault or illegalities shall be prescribed by six (6) months from the day on which the cause of action accrued, any provisions of law to the contrary notwithstanding (section 586, Act Respecting Cities and Towns).

#### **3.2.2 Bodily Injury**

Every action, suit or claim against the municipality or any of its officers or employees for bodily injury occasioned by fault or illegalities shall be prescribed by three (3) years from the day of the incident (section 2925, Québec Civil Code).

### **3.3 Fault, Damages, Causal Connection**

The burden of proof lies with the plaintiff who shall demonstrate a fault on the City's part, establish that they have suffered damages and demonstrate that the fault is the direct cause of the damages. They must demonstrate that there is a direct causal connection between said fault and the damages.

### **3.4 Material Loss**

These are damages that are claimed and, eventually, awarded to compensate the loss of material property. The evaluation of the damages will consider the value of the property at the time of the accident.

### **3.5 Moral Damage**

Non-pecuniary losses (ex: pain, inconveniences, suffering, loss of enjoyment).

### **3.6 Bodily Injury**

Any and all damages related to one's physical integrity.

### **3.7 Exoneration of Responsibility with Respect to Roads**

The City is not liable for damages caused by the presence of an object on the roadway or by the state of the roadway to the tires or suspension system of a vehicle (section 604.1, Act Respecting Cities and Towns).

### **3.8 Exoneration of Responsibility with Respect to Works**

The City is also not liable for damages for which is responsible the builder or contractor to whom building, rebuilding or maintenance work has been entrusted, for the entire duration of such work (section 604.3, Act Respecting Cities and Towns).

## **4. CIVIL LIABILITY**

### **4.1 Procedure to Submit a Claim**

4.1.1 A written claim shall include the following information:

- Name, address and telephone number of plaintiff;
- Description of incident with date, hour and place;
- Detail of damages (with supporting documents, when available).

4.1.2 A written claim may be filed in person, by mail, fax or e-mail at the following location:

Legal Affairs and City Clerk Department  
451 Saint-Jean Boulevard  
Pointe-Claire, QC, H9R 3J3  
Canada

Fax: (514) 630-1280  
E-mail: [greffe@pointe-claire.ca](mailto:greffe@pointe-claire.ca)

4.1.3 Claim forms are available on the City of Pointe-Claire website.

All employees designated to respond to citizens' complaints have claim forms in sufficient number.

### **4.2 Claims Processing**

#### **4.2.1 Claim Receipt**

Upon reception, the Legal Affairs and City Clerk Department acknowledges receipt of the plaintiff's claim.

#### **4.2.2 Claim Review**

The claim is reviewed as soon as possible. A report is requested from the concerned administrative units who may have been involved in the incident. If need be, the City may mandate an expert to review the facts, assess the damages or express an opinion as to the City's responsibility.

Upon receipt of the reports from the concerned administrative units and, if need be, from the expert mandated by the City, the review of the claim is completed and the City's level of responsibility is then determined along with the quantum of damages.

#### 4.2.3 Assessment of Damages

It is the plaintiff's responsibility to submit an evaluation of property damages or bodily injuries, as the case may arise.

#### 4.2.4 Assessment of Responsibility

The City's level of responsibility is determined after a complete review of the file, based on applicable laws and regulations, as the case may be, and in accordance with the liability principles established by the Québec Civil Code and jurisprudence.

#### 4.2.5 Decision

##### 4.2.5.1 Claim accepted:

- Settlement offer is presented to the plaintiff, according to the level of responsibility;
- Unsigned quittance/waiver is forwarded;
- Upon receipt of the quittance/waiver form, payment is sent to the plaintiff in accordance with the City of Pointe-Claire Delegation of Powers By-law.

##### 4.2.5.2 Claim denied:

- Letter denying responsibility sent to plaintiff;
- Possible legal action by plaintiff (small claims court, Québec court, Superior court, in accordance with the amount claimed) and in accordance with delays stipulated under section 3 above.

#### 4.2.6 Processing Delay

Processing delay may vary between two (2) to six (6) months, depending on claim complexity.

## 5. **PROPERTY**

### 5.1 **Filing and Processing of a Claim**

In case of damage to City property, any administrative units who possess information regarding the damaging event, the value of the loss, its cause

or any other relevant circumstances must quickly submit a report to the Legal Affairs and City Clerk Department, along with any relevant documents (photos, assessment of damages, etc.).

## **5.2 Collection**

The Legal Affairs and City Clerk Department shall investigate to determine possible legal action against any third parties responsible for the damages.

## **5.3 Claim Exceeding the Deductible Amount**

The Legal Affairs and City Clerk Department must inform, as soon as possible, the insurer covering City property of any claims that could exceed the applicable deductible amount.

## **5.4 Exclusions**

Included but not withstanding the items indicated on the list enclosed as an appendix which was provided to us by our insurers BFL Canada (document available in French only).

# **6. VEHICLES**

## **6.1 Definition**

Any types of vehicles belonging to, leased or borrowed by the City and any vehicles used by an employee while carrying out their duties.

## **6.2 Filing and Processing of a Claim**

### **6.2.1 Delay**

When an accident involving a City vehicle under an employee's responsibility occurs, the latter must inform their supervisor along with the Police Department of the City of Montreal (SPVM).

### **6.2.2 Notice to the City Clerk and Legal Affairs Department**

The supervisor on duty or any other persons with authority concerned by an accident must immediately inform the City Clerk and Legal Affairs Department.

As soon as possible, the City Clerk and Legal Affairs Department shall obtain, as the case may be, the Police report, the Municipal Inspection Bureau report, the Public Works Department report and any other available document (photos) that is relevant with the incident.

A file is opened with the following information:

- Date of accident;
- Place of accident;
- Identification of the damaged vehicle;
- Identification of the concerned administrative unit;
- Name of driver along with driving license number;
- Description of event.

#### 6.2.3 Review and Investigation

If the damage assessment is inferior to the deductible amount, the claim is processed internally.

If the damage assessment exceeds the deductible amount, the Legal Affairs and City Clerk Department must report the event to insurance broker (BFL Canada) after having completed the appropriate form. The Broker shall then send the claim to the insurer for treatment.

#### 6.2.4 Administrative Procedure

Any indemnity received from the insurer, in the case of a claim where the amount exceeds the deductible, must be forwarded to the Administrative Services Department to be cashed in.

### 6.3 **Vehicles owned by third parties**

#### 6.3.1 Direct Compensation Agreement (D.C.A.)

Agreement binding on all auto insurers under which, each driver is directly compensated by his own insurer while the liability of each party involved in a collision is established through criteria indicated in the agreement.

#### 6.3.2 Accidents Targeted

The agreement applies when a collision occurs in Québec between at least 2 vehicles and when the owners are identified.

#### 6.3.3 Non-targeted Accidents

The agreement shall not apply nor be used in the following cases:

- A collision that occurs outside of Québec;
- A hit and run;
- A collision (accident) with an object (tree, branch, pole, object on the roadway, pot-hole, etc.)



#### 6.3.4 Establishing Fault (Liability)

In the cases where a claim is sent to the City by a third party further to an accident contemplated by the D.C.A., such third party shall be invited to re-direct her/his claim to their own insurer who will then assess the degree of liability of each driver involved.

In other cases, liability will be assessed under the usual practices (internal verifications with concerned administrative units, insurance appraised or broker, if need be).

#### 6.3.5 Compensation

In the cases contemplated by the D.C.A., the insurer is responsible for compensating the policy holder for the property (vehicle) damage suffered, whether or not it he is at fault for the accident.

- If the policyholder is at fault, he will be compensated provided the insurance policy covers collisions. The insured will then have to pay a deductible.
- If the policyholder is not at fault, he will be compensated by hi/her insurer even if the policy does not cover collisions. The insured third party will not have to pay a deductible.

In other cases, the third party may (or may not, as the case may be) be compensated by the City depending on whether the City liability has been determined further to the review of a claim submitted to the City in accordance with the law and rules set forth in the present policy.

#### 6.3.6 Bodily Injuries

In general, for accidents that occur in Québec, bodily injuries resulting from an accident in which a vehicle is involved are covered by the Société d'Assurance-Automobile du Québec (S.A.A.Q).

## **7. REPORTS**

### **7.1 Treasurer**

The Director of the Legal Affairs and City Clerk's Department shall file a biannual report to the City Treasurer showing the pending and received claims along with an assessment of reserves to be created.

### **7.2 City Council**

Once a year, the Director of the Legal Affairs and City Clerk Department or the designated person must present City Council with a report on claims and main litigations against the City and reminding of the importance of elected officials' and City employees' duty of restraint as regards contentious files.

## **8. ACCESS TO INFORMATION**

### **8.1 Council Members**

8.1.1 Council members may obtain information to the extent that it is necessary, relevant and useful in the decision making process.

8.1.2 Information is to be used by Council members only within the framework of their duties and in the community's interest.

8.1.3 Should a member of City Council use information for personal reasons or convey it to any third parties, they may be held liable for such breach of restraint and their right to access may be withdrawn.

### **8.2 Mayor**

However, as the municipal administration's executive head, the Mayor has a right of access to any document (right of supervision, investigation and control, as per section 52 of the Act Respecting Cities and Towns).

### **8.3 City Manager**

The City Manager shall have access to may access to every document of the Municipality and may require any document or information from any officer or employee except where, in the opinion of the head of the Police Department, it would disclose the content or a record concerning a police investigation (Paragraph 114.1(1) of the Act Respecting Cities and Towns).

**9. DUTY OF SELF-RESTRAINT**

9.1 In accordance with the City's usual policy concerning file judicialisation, Council members are urged to exercise their duty of self-restraint when comments are made by any elected officials or City employees to media representatives or other persons concerning on-going legal actions or events likely to result in a suit.

9.2 Certain statements may result in prejudice to the City's potential means of defence and could, as a consequence, lead our insurers to refuse to cover the risk and ensure the City's defence.

It is important to exert self-restraint so as to not compromise the City's interests.

9.3 Furthermore, Council members shall exert prudence with individual constituents so as to not put themselves in a situation where there is conflict between the constituent's interests and those of the City, which embody the interests of the community as a whole.