

**SUBJECT: Comprehensive Legal Services Report for the Period July 1 to
December 31, 2022**

File Number ACS2023-CMR-OCM-0003

**Report to Finance and Economic Development Committee on 4 April 2023
and Council 12 April 2023**

Submitted on March 24, 2023 by David White, City Solicitor, City Manager's Office

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Ward: CITY WIDE / À L'ÉCHELLE DE LA VILLE

**OBJET : Rapport Général sur les Services juridiques pour la période du 1
juillet au 31 décembre 2022**

Dossier : ACS2023-CMR-OCM-0003

**Rapport au Comité des finances et du développement économique
le 4 avril 2023**

et au Conseil le 12 avril 2023

**Soumis le 24 mars 2022 par David White, Avocat général, Bureau du directeur
municipal**

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Quartier : CITY WIDE / À L'ÉCHELLE DE LA VILLE

REPORT RECOMMENDATION(S)

That the Finance and Corporate Services Committee recommend that Council Receive this report for information.

RECOMMANDATION(S) DU RAPPORT

Que le Comité des finances et des services organisationnels et le Conseil municipal prennent connaissance du présent rapport.

EXECUTIVE SUMMARY

This report details the work undertaken and results achieved by Legal Services in the third and fourth quarters of 2022. In keeping with the format approved by City Council on August 25, 2011, the Comprehensive Legal Services Report combines the former Claims Settlements, Litigation Record and External Legal Costs reports into a single comprehensive report. It also includes information on the exercise of the authority set out in the City's Public Conduct Policy, for 2022, in accordance with the reporting requirements of that Policy.

In respect of all forms of litigation undertaken by Legal Services (civil, labour, OLT, human rights, etc.), the reported outcomes are consistent with prior reports and highlight the City's preference to resolving matters without the expense of full proceedings. The litigation outcomes also reflect the fact that, where the City does not resolve a case through a mutually-agreeable settlement, its rate of success is very high, with favourable decisions or orders in 50 of 63 cases concluded in 2022. The costs associated with the settlement of 6 claims over \$100,000 in the last two quarters of 2022 reflect the prevailing growth in court awards in personal injury matters for general damages, future loss of income/competitive advantage and future care costs.

The report details the fact that more than 87 per cent of litigation involving the City is handled by in-house resources, with fewer than 13 per cent of the current 535 litigated matters being referred to external counsel.

Legal Services also continued its support of a number of key City initiatives in Q3 and Q4 2022. Further, the Branch drafted or reviewed 597 legal agreements and contracts in Q3 and Q4 2022 and processed more than 285 development agreements and requests.

In terms of outsourcing costs in Q3 and Q4 2022, these continued to be largely driven by the support for large capital projects such as Light Rail.

RÉSUMÉ

Le présent rapport expose le travail effectué et les résultats atteints par les Services juridiques au cours des troisième et quatrième trimestres de 2022. Suivant le modèle approuvé par le Conseil municipal le 25 août 2011, le Rapport général sur les Services juridiques regroupe en un seul document les rapports sur les règlements de réclamations, le bilan des litiges et les frais judiciaires externes. Il comprend également des renseignements sur l'exercice des pouvoirs établi dans la Politique en matière de conduite publique pour 2022, conformément aux exigences en matière de rapports de ladite politique.

Pour tous les types de litiges traités par les Services juridiques (affaires civiles, droit du travail, affaires devant le Tribunal d'appel de l'aménagement local [TAAL], droits de la personne, etc.) les résultats communiqués sont similaires à ceux présentés dans les rapports antérieurs et viennent mettre en lumière les préférences de la Ville pour les règlements à l'amiable. Les résultats des litiges démontrent également que, dans les cas sans règlement à l'amiable, le taux de succès de la Ville est très élevé : en effet, elle a obtenu une décision ou une ordonnance en sa faveur dans 50 affaires sur 63 conclues en 2022. Par ailleurs, les coûts associés au règlement de 6 litiges d'une valeur supérieure à 100 000 \$ au cours des deux derniers trimestres de 2022 reflètent l'augmentation actuelle des montants adjugés par les tribunaux pour les préjudices personnels en ce qui concerne les dommages-intérêts généraux, les pertes futures de revenus ou d'avantages concurrentiels et les coûts liés à des soins futurs.

Le rapport précise que plus de 87 % des litiges de la Ville sont traités à l'interne, moins de 13 % des 535 litiges actuels ayant été confiés à un avocat externe.

Les Services juridiques ont aussi continué de contribuer à plusieurs initiatives municipales clés au cours des troisième et quatrième trimestres de 2022. En outre, durant la même période, la Direction a rédigé ou examiné 597 accords juridiques et contrats, et traité plus de 285 ententes et demandes d'aménagement.

Quant aux coûts de sous-traitance au cours des troisième et quatrième trimestres de 2022, ils ont continué à être largement déterminés par des projets d'immobilisations de grande envergure comme le train léger.

BACKGROUND

The inaugural Comprehensive Legal Services Report covering the first and second quarters of 2011 was approved by City Council on August 25th, 2011. A revised, quarterly report format originated from a motion that was passed by Council on April 27, 2011, that directed “the City Clerk and Solicitor to combine the existing Claims Settlements, Litigation Record and External Legal Costs reports into a single comprehensive report.” On December 3, 2014, City Council approved an amendment to the *Delegation of Authority By-law* thereby revising the reporting requirement for these matters to a semi-annual basis. Therefore, the information provided herein is with respect to the third and fourth quarters of 2022.

DISCUSSION

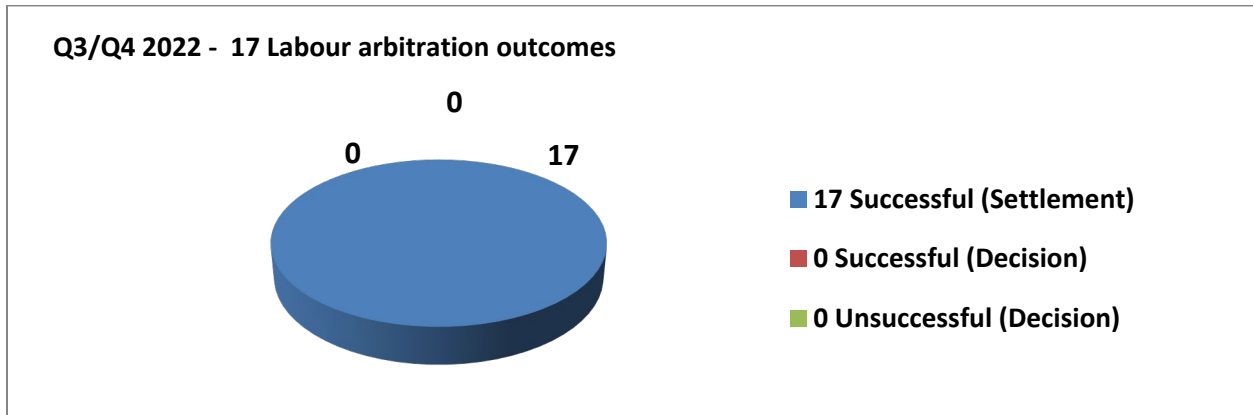
Civil litigation / labour and employment

In keeping with the format developed as part of the initial Comprehensive Legal Services Report, outlined below is the litigation record for the 2022 third and fourth quarters, as well as an overview of claims received and concluded in that same period.

The report also provides a breakdown of the range and volume of civil litigation currently being handled by Legal Services, as well as information on whether carriage of these matters rests with in-house legal staff or with external legal counsel.

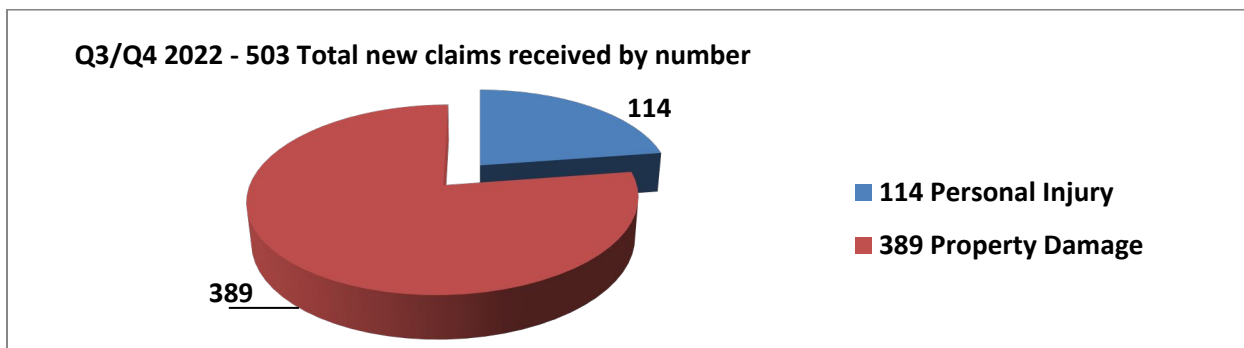
(a) Labour Relations Unit

A summary of labour arbitrations during the second and third quarters is set out below in Figure 1.

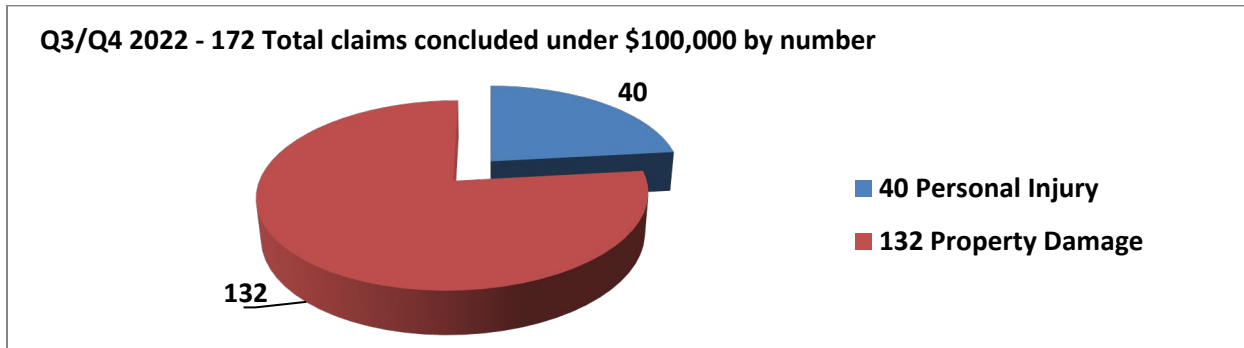
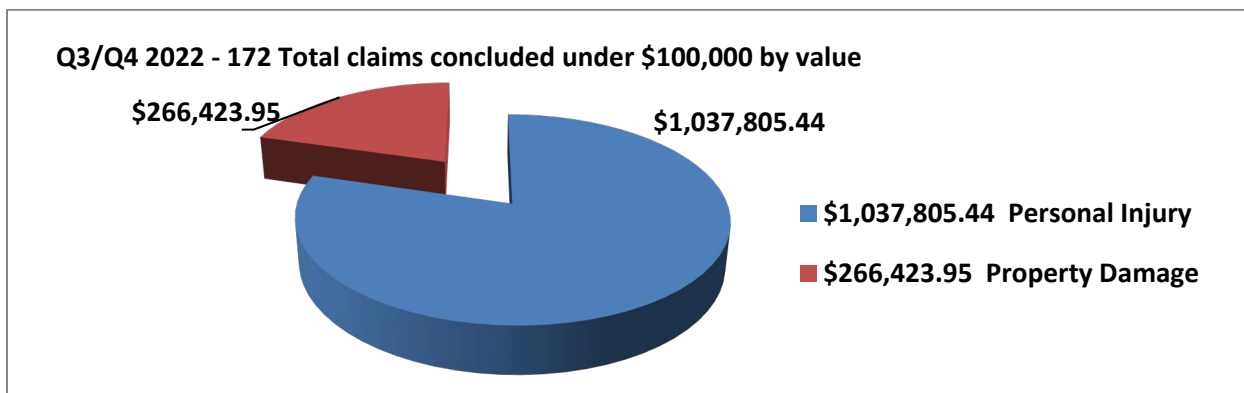
Figure 1 - Labour arbitration outcomes**(b) Claims Unit**

The Claims Unit received a total of 503 new claims in the last two quarters of 2022. This figure is made up of 389 property damage claims and 114 personal injury claims that were filed with the Unit. Of the total number of new claims received during this period, 67 (13 per cent) represent pothole claims, which tend to be the most common type of claim received by the Unit and are heavily influenced by seasonal weather patterns.

A summary of the 503 claims received during the third and fourth quarters is set out below in Figure 2 by number.

Figure 2 - Total new claims received by number

The Claims Unit also concluded a total of 574 claims in the last two quarters of 2022. This figure represents the 466 property damage claims and 108 personal injury claims that were either closed-settled or closed-denied during this period. A summary of the 172 claims that were closed-settled (i.e. paid in whole or in part) during the third and fourth quarters is set out below in Figures 3 (by number) and 4 (by value).

Figure 3 - Claims concluded under \$100,000 by number**Figure 4 - Claims concluded under \$100,000 by value****Table 1 - Claims concluded over \$100,000 – Q3 and Q4 2022**

Department	Category	Claim Type	Net City Cost
Emergency and Protective Services	Property Damage or Loss	Losses from Fire Fighting Activities	\$123,368.53
Transportation Planning	Bodily/Personal Injury	Third Party MVA-Traffic Signs, Marking and Devices	\$1,465,593.98
Public Works	Bodily/Personal Injury	Third Party MVA-Ice/Snow Accumulation	\$153,336.61
Public Works	Bodily/Personal Injury	Slip and Fall	\$1,915,875.39
Recreation, Cultural and Facility Services	Bodily/Personal Injury	Slip and Fall	\$135,614.82
Recreation, Cultural and Facility Services	Bodily/Personal Injury	Slip and Fall	\$127,488.20
Total:			\$ 3,921,277.53

The above-noted figures represent settlement of litigated and non-litigated claims, and include all costs borne by the City in finalizing a settlement, such as court costs, legal fees, investigative costs, etc. Furthermore, claim settlement payments include those made pursuant to negotiated settlements as well as any court-ordered damages. The details with regard to these claims are confidential in keeping with

standard settlement practices. The specific circumstances and facts surrounding these confidential settlements are available to Members of Council from the City Solicitor.

(c) Civil Litigation Unit

In the third and fourth quarters of 2022, 70 new Statements of Claim were received by Legal Services. With these, there are currently 535 outstanding civil proceedings against the City that are being addressed. Of the current open files, the City's in-house Legal staff has carriage of 87 per cent, with 13 per cent of the remaining files referred to external counsel either at the direction of the City's insurer or due to the scope, complexity or volume of the litigation.

A summary of outcomes for civil litigation, Ontario Land Tribunal ("OLT") and other administrative tribunals for the third and fourth quarters is set out below in Figures 5, 6 and 7.

Figure 5 - Civil litigation outcomes

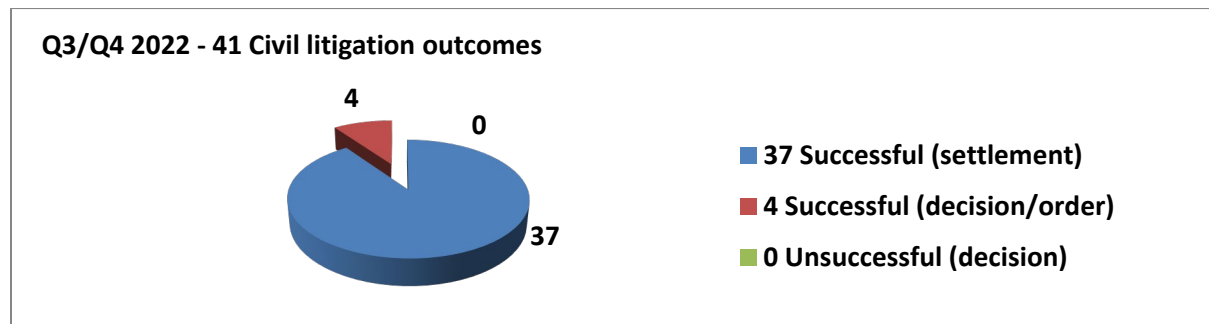
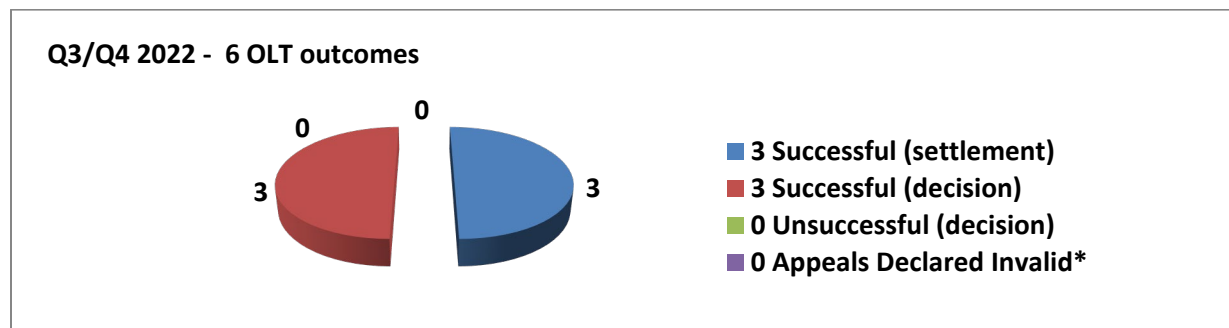
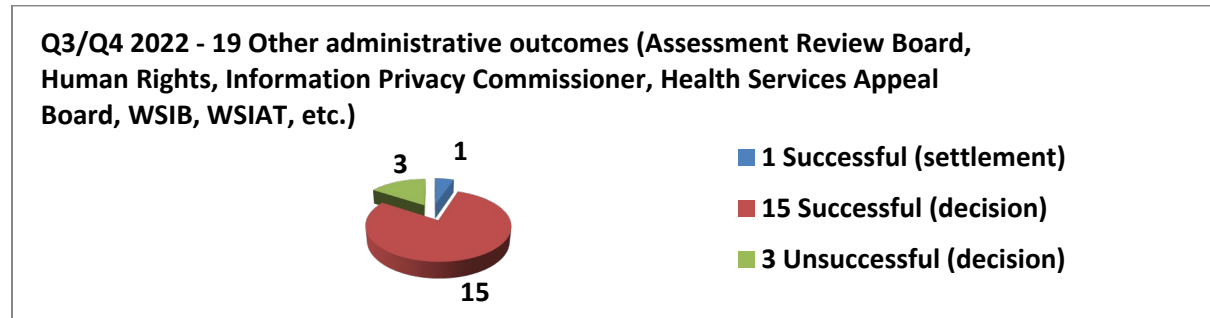


Figure 6 – OLT outcomes



*Appeals Declared Invalid – these numbers reflect appeals to OLT that did not meet the tests of raising issues of inconsistency with the Provincial Policy Statement and/or non-conformity with the Official Plan.

Figure 7 - Other administrative outcomes



Reasons for unsuccessful outcomes:

1. This case relates to an employee who was appealing the Workplace Safety and Insurance Board's (WSIB) decision to deny full loss of earnings. The Appeals Resolution Officer noted that there was little medical evidence addressing the periods in question. However, the Officer decided to award loss of earnings based on Occupational Health Assessments that indicated the employee was unable to work during the specified periods.
2. This case relates to an employee who was appealing the WSIB's decision to deny entitlement to benefits, loss of earnings benefits and entitlement to psychological assessment. The Appeals Resolution Officer reviewed medical evidence which supported the injury claimed and entitlement to both full loss of earnings and psychological assessment.
3. This case relates to an employee who was appealing the WSIB's finding of maximum medical recovery and decision to deny entitlement for a secondary condition. The Appeals Resolution Officer found that the worker had sustained a further injury casually related to the initial workplace injury for which entitlement was granted and therefore allowed entitlement for a secondary condition. The other issue under appeal was denied.

Corporate Commercial / Planning, Development and Real Estate / Municipal and Regulatory

Legal Services, in the third and fourth quarters of 2022, provided key legal support for various projects and strategic initiatives of the City. Some of the results of the varied services provided by in-house legal staff include the following:

1. Legal Services provided support to Transit Operations, Rail Construction Program, Confederation Line Light Rail office, Capital Railway, with respect to a wide variety of rail matters including specific projects, regulatory, and legal matters, including Regulatory Monitor Compliance Officer for the Confederation Line, Chief William Commanda Bridge and Trillium Line regulatory requirements. In addition, liaising with Stage 1 and Stage 2 Light Rail offices and external legal counsel concerning OLRT/Stage 2 matters in a support role and a number of other rail matters affecting the City's rail corridors together with assisting in drafting legal agreements.
2. Legal Services provided support to Transportation Services (including Transit Operations, Transportation Planning, Traffic Services), Roads and Parking Services, Infrastructure Services, and Right of Way Branch with respect to a wide variety of road, lanes, cycling and pedestrian transportation matters relating to existing and new infrastructure, by providing timely and effective legal advice together with support for drafting, negotiating, and the execution of a number of agreements including funding/contribution agreements.
3. Legal Services provided extensive support and timely legal advice and comments to Transit Services, Traffic Services, Transportation Planning, Right of Way Branch, and Roads and Parking Services for a number of new and existing initiatives through Committee and Commission reports concerning a wide variety of projects.
4. Legal Services provided support to Infrastructure and Water Services on the construction of the new Ādisōke Library project. This has included advising on the Direct Energy System Agreement with the Federal Government, interpreting and applying the Governance Agreement between the City, OPL and NAC, as well as providing support interpreting and applying the contract between the City and PCL, the general contractor building the library.
5. Legal Services provided assistance to the Public Works Department on the Provincial Individual Producer Responsibility (IPR) Blue Box Program transition. This included advising on the proposed contracts to be entered into between the City and Circular Materials Ontario (CMO) for the City to collect Blue Box Material on behalf of CMO.
6. Legal Services has been providing support to PIED with managing the bankruptcy of a general contractor who had seven different projects for the City at the time it was assigned into bankruptcy. I have negotiated the settlement with the bonding company on four of the projects and am assisting in the settlement of two others. I

have also been handling the claims of suppliers and subcontractors of the general who have not been paid and have claims for lien or claims under the Labour and Material bonds for the applicable projects.

7. Legal Services continued to advise PIED and IWSD on various lien claims, construction deficiency claims, and contractual interpretation claims.
8. Legal Services reviewed and advised on various IT contracts for the procurement of software products for the City.

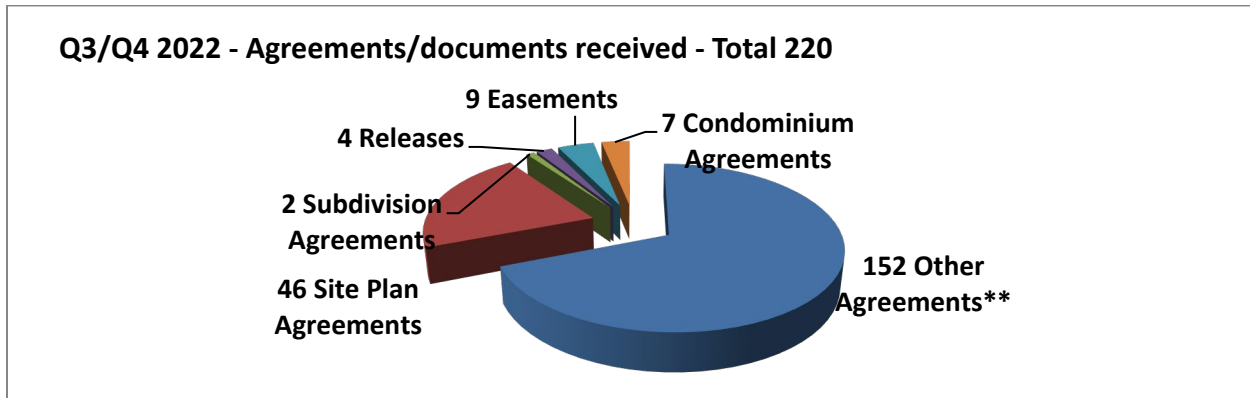
Table 2 - General agreements and contracts – Metrics

General Agreement/Contract Type	Routine	Moderately Complex	Complex	Total
Agreements and Contracts Reviewed/Drafted	291	282	24	597
Reports Reviewed/Drafted	30	21	8	59
Real Estate Purchases and Sales	3	3	1	7
Tax Sale Registrations, Property Standards Orders	24	n/a	n/a	24
By-laws Reviewed/Drafted	65	23	3	91
Construction Lien Payments Reviewed / Processed	133	n/a	n/a	133

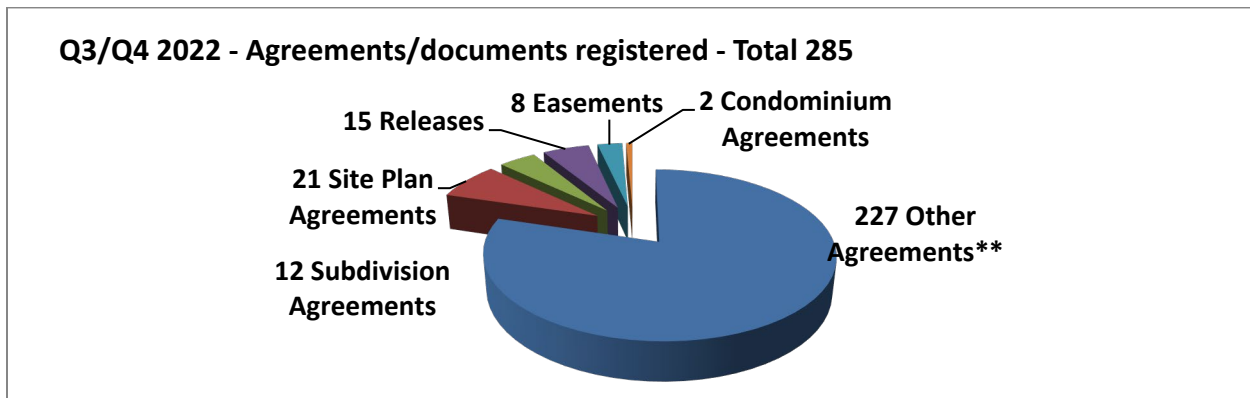
Planning, Development and Real Estate

The Planning, Development and Real Estate Law Unit is collectively responsible for the preparation of a variety of Development Agreements such as Subdivision, Site Plan, and Condominium, as well as agreements related to consent or minor variance applications. In addition, staff are also responsible for providing real estate law services (purchases, sales, expropriations, tax sales, leases, easements, mortgages, title searches and registrations) on behalf of the City.

In the third and fourth quarters of 2022, 220 individual documents were logged by the Development Law Unit that were required for drafting and registration. Of these 220 requests, 98 per cent were considered routine; and 2 per cent were considered moderately complex. A summary is set out below in Figure 8 (by type).

Figure 8 - All agreements/document requests received - Total

The Unit also completed registration on 285 individual agreements and documents in the third and fourth quarters of 2022. Of these 285 documents registered, 90 per cent were considered routine; 8 per cent were considered moderately complex; and 2 per cent were considered complex. A summary is set out below in Figure 9 (by type).

Figure 9 – Agreements/documents registered - Total

*Stats shown in Figures 8 and 9 do not include work related to by-laws.

**There are 17 different agreement types that fall under 'Other'

Table 3 - External legal costs – Q3 2022

Firm	Portfolio/ Practice Area	Legal Fees	Disbursements	Taxes	Total
Agro Zaffiro LLP	Insured Litigated Claims	\$5513.00	\$1.50	722.09	6,276.59
Aird & Berlis	Corporate, Commercial, Development	\$10,610.00	\$0	\$1,379.30	\$11,989.30
Borden Ladner Gervais	Corporate, Commercial, Development	\$309,968.26	\$23,271.56	\$43,251.11	\$353,219.37

Borden Ladner Gervais	Insured Litigated Claims	\$29,262.95	498.27	\$3,835.76	\$33,596.98
Borden Ladner Gervais	Light Rail Project	\$260,071.40	\$36,892.70	\$38,577.25	\$335,541.35
Caza Saikaley	Insured Litigated Claims	\$1,461.04	\$600	\$267.98	\$2,329.02
Caza Saikaley	Litigation	\$1,005.00	\$120	\$146.25	\$1,151.25
Emond Harnden	Labour and Employment	\$39,312.91	\$0	\$5,110.90	44,423.81
Gowlings	Insured Litigated Claims	\$180,539.00	\$12,809.67	\$25,111.57	\$218,460.24
Gowlings	Litigation	\$57,087.00	\$0	7,421.31	\$64,508.31
Lerners	Insured Litigated Claims	\$20,261.00	\$0	\$2,634.12	\$22,895.12
Norton Rose Fulbright	Light Rail Project	\$18,254.00	\$0	\$2,373.02	20,627.02
Singleton Urquhart	Light Rail Project	1,405,158.05	\$248,687.14	\$209,241.42	\$1,863,086.61
Totals:		\$2,338,543.61	\$322,880.84	\$340,072.08	\$2,978,104.97

Table 4 - External legal costs – Q4 2022

Firm	Portfolio/ Practice Area	Legal Fees	Disbursements	Taxes	Total
Aird & Berlis	Corporate, Commercial, Development	\$22,081.50	\$0	\$2,870.60	\$24,952.10
Borden Ladner Gervais	Corporate, Commercial, Development	\$412,721.36	\$256,586.99	\$86,971.64	\$756,279.99
Borden Ladner Gervais	Light Rail Project	\$351,720.10	\$198,282.37	\$71,416.02	\$621,418.49
Borden Ladner Gervais	Insured Litigated Claims	\$58,669.50	\$5,544.51	\$8,199.33	\$72,413.34
Caza Saikaley	Litigation	\$1,046.26	\$15.00	\$137.98	\$1,199.24
Caza Saikaley	Insured Litigated Claims	\$8,110.91	\$0	\$1,054.50	\$9,165.41
Emond	Labour and	\$216,509.40	\$0	\$27,844.71	\$244,354.11

Harnden	Employment				
Gowlings	Litigation	\$759,036.50	\$68,746.70	\$107,506.82	\$935,290.02
Gowlings	Insured Litigated Claims	\$266,246.68	\$6,883.20	\$35,516.35	\$308,646.23
Hick's	Labour and Employment	\$157.50	\$0	\$20.48	\$177.98
Katie Black	Litigation	\$18,938.00	\$0	\$2,461.94	\$21,399.94
Lerners	Insured Litigated Claims	\$15,314.50	\$14,602.30	\$219.19	\$33,806.10
Norton Rose Fulbright	Light Rail Project	\$54,266.00	\$705.66	\$7,146.31	\$62,117.97
Shillington's	Insured Litigated Claims	\$1,686.00	\$183.00	\$219.19	\$2,088.19
Singleton Urquhart	Light Rail Project	\$1,627,221.20	\$1,160,261.25	\$238,774.15	\$3,026,256.60
Thomson Blackburn Lane Lefebvre	Litigation	\$24,758.30	\$0	\$0	\$24,758.30
Totals		\$3,838,483.71	\$1,711,810.98	\$590,359.21	\$6,144,324.01

For external legal costs relating to litigated matters, the above-noted figures may also be reported in the over \$100,000 claims concluded section, as those amounts include all costs borne by the City in finalizing a settlement, including any external legal fees incurred.

Public Conduct Policy

In December 2018, City Council adopted the Public Conduct Policy, intended to further “the City’s objective of dealing with all residents in ways that are consistent and fair while acknowledging that there may be a need to protect staff, Members of Council and residents of the City of Ottawa from unreasonable behaviour and frivolous and/or vexatious actions.” Where an individual’s behaviour is determined to be unreasonable, or a request is classified as frivolous or vexatious, the Policy provides a range of possible responses, including such things as written warnings and the imposition of restrictions on the individual’s communications with the City. Also included is a comprehensive appeal procedure, which is available to any individual who has been the subject of restrictions under the Policy.

In 2022, the Public Conduct Policy was invoked on 63 occasions, with restrictions on communications with staff imposed in one instance, while the other 62 cases resulted in notices being issued under the *Trespass to Property Act*.

In accordance with the annual reporting requirements of the Public Conduct Policy, instances of the application of the Policy in 2023 will form part of the Comprehensive Legal Services Report for Q3-Q4 2023, to be presented to the Finance and Corporate Services Committee and City Council in Q1 2024.

FINANCIAL IMPLICATIONS

There are no financial implications associated with this report.

LEGAL IMPLICATIONS

There are no legal impediments to receiving this report for information.

COMMENTS BY THE WARD COUNCILLOR(S)

This section is not applicable as this is a city-wide report.

CONSULTATION

This is largely an administrative report issued on a semi-annual basis to meet the requirements of the *Delegation of Authority By-law*. As such, no consultation was undertaken.

ACCESSIBILITY IMPACTS

Legal Services supports and considers the *Accessibility for Ontarians with Disabilities Act, (2005)* in its operations. This report is administrative in nature and has no associated accessibility impacts.

RISK MANAGEMENT IMPLICATIONS

There are no risk management concerns arising from this report.

RURAL IMPLICATIONS

There are no rural implications arising out of this report.

TERM OF COUNCIL PRIORITIES

This report supports the strategic priority of Council of providing Service Excellence Through Innovation with improved service delivery through data analysis and innovation in service design.

SUPPORTING DOCUMENTATION

Document 1 - Aggregate Metrics for Q1 to Q4 2022

Document 2 - External Legal Costs for Q1 to Q4 2022

DISPOSITION

Subject to any direction by the Finance and Corporate Services Committee and Council, the City Solicitor will continue to produce this report on a semi-annual basis.