

**Subject: Comprehensive Legal Services Report for the Period July 1 to
December 31, 2023**

File Number: ACS2024-OCC-GEN-0001

**Report to Finance and Corporate Services Committee on 5 March 2024
and Council 3 April 2024**

**Submitted on February 23, 2024 by David White, City Solicitor and Interim City
Clerk**

**Contact Person: David White, City Solicitor and Interim City Clerk, Office of City
Clerk**

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Ward: Citywide

**Objet : Rapport Général sur les Services juridiques pour la période du 1
juillet au 31 décembre 2023**

Numéro de dossier : ACS2024-OCC-GEN-0001

Rapport présenté au Comité des finances et des services organisationnels

Rapport soumis le 5 mars 2024

et au Conseil le 3 avril 2024

**Soumis le 2024-02-23 par David White, Avocat général et greffier municipal par
intérim**

**Personne ressource : David White, Avocat général et greffier municipal par
intérim, Bureau du greffier municipal**

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Quartier : 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 recommande au Conseil de recevoir, à titre d'information, ce rapport.

EXECUTIVE SUMMARY

This report details the work undertaken and results achieved by Legal Services in the third and fourth quarters of 2023. 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 2023, in accordance with the reporting requirements of that Policy.

In respect of all forms of litigation undertaken by Legal Services (civil, labour, Ontario Land Tribunal, 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 31 of 40 cases concluded in the last two quarters of 2023. The costs associated with the settlement of 17 claims over \$100,000 concluded in the last two quarters 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 86 per cent of litigation involving the City is handled by in-house resources, with fewer than 14 per cent of the current 507 litigated matters being referred to external counsel.

Legal Services also continued its support of a number of key City initiatives in Q3 and Q4 2023. Further, Legal Services drafted or reviewed 1,010 legal agreements and contracts in 2023 and processed more than 595 development agreements and requests.

In terms of outsourcing costs in Q3 and Q4 2023, 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 2023. 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 2023, 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 31 affaires sur 40 conclues en 2023. Par ailleurs, les coûts associés au règlement de 17 litiges d'une valeur supérieure à 100 000 \$ au cours des deux derniers trimestres de 2023 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 86 % des litiges de la Ville sont traités à l'interne, moins de 14 % des 507 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 2023. En outre, durant la même période, la Direction a rédigé ou examiné 1,010 accords juridiques et contrats, et traité plus de 595 ententes et demandes d'aménagement.

Quant aux coûts de sous-traitance au cours des troisième et quatrième trimestres de 2023, 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 2023.

DISCUSSION

Civil litigation / labour and employment

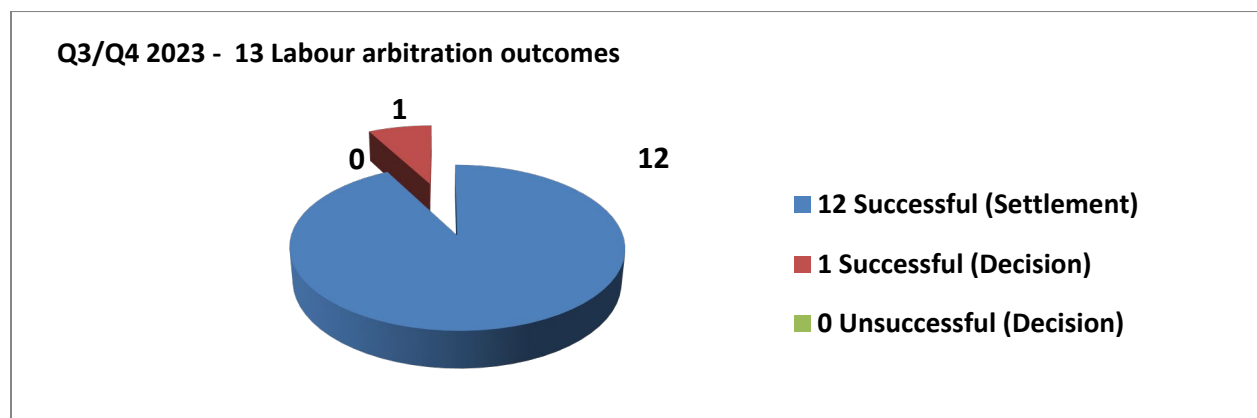
In keeping with the format developed as part of the initial Comprehensive Legal Services Report, outlined below is the litigation record for the 2023 third and fourth quarters, as well as an overview of claims received and concluded in that same period.

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 third and fourth quarters is set out below in Figure 1.

Figure 1 - Labour arbitration outcomes



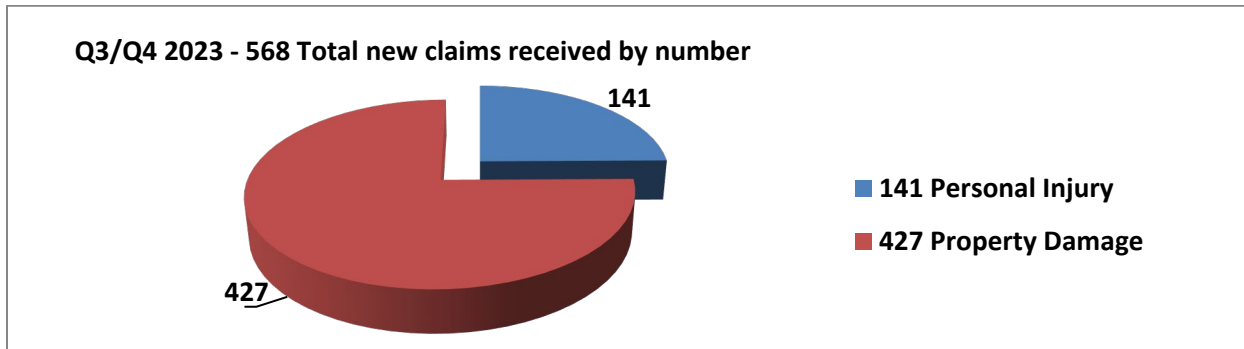
(b) Claims Unit

The Claims Unit received a total of 568 new claims in the last two quarters of 2023. This figure is made up of 427 property damage claims and 141 personal injury claims that were filed with the Unit. Of the total number of new claims received during this period,

83 (14 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 568 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 679 claims in the last two quarters of 2023. This figure represents the 500 property damage claims and 179 personal injury claims that were either closed-settled or closed-denied during this period. A summary of the 244 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

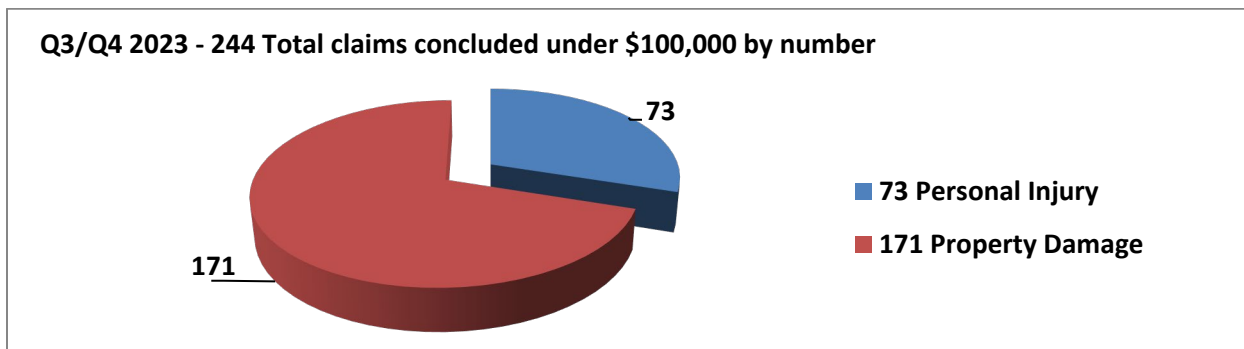


Figure 4 - Claims concluded under \$100,000 by value

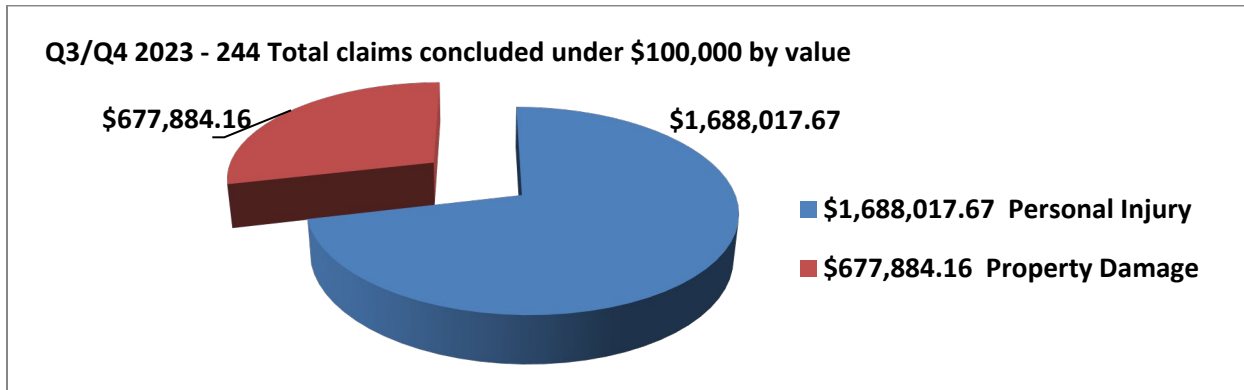


Table 1 - Claims concluded over \$100,000 – Q3 and Q4 2023

Department	Category	Claim Type	Net City Cost
Infrastructure and Water Services	Bodily/Personal Injury	Third Party Bodily Injury	\$724,668.86
Public Works	Bodily/Personal Injury	Injury/Damage on Pathways	\$127,932.35
Public Works	Bodily/Personal Injury	Third Party MVA-Ice/Snow Accumulation	\$488,780.61
Public Works	Bodily/Personal Injury	Third Party MVA-Road Design/Engineering	\$324,182.61
Public Works	Bodily/Personal Injury	Slip and Fall	\$117,163.60
Public Works	Bodily/Personal Injury	Trip and Fall	\$152,382.18
Public Works	Bodily/Personal Injury	Trip and Fall	\$111,405.36
Public Works	Bodily/Personal Injury	MVA, City and Third Party Vehicle	\$1,182,339.55
Public Works	Bodily/Personal Injury	MVA, City and Third Party Vehicle	\$230,733.88
Recreation, Cultural and Facility Services	Bodily/Personal Injury	Slip and Fall	\$205,760.57
Recreation, Cultural and Facility Services	Bodily/Personal Injury	Sports/Recreational Injuries	\$2,078,854.79
Recreation, Cultural and Facility Services	Bodily/Personal Injury	Trip and Fall	\$114,177.55
Recreation, Cultural and Facility Services	Bodily/Personal Injury	Sports/Recreational Injuries	\$350,000.00
Transit Services	Bodily/Personal Injury	MVA, City and Third Party Vehicle	\$100,536.22
Transit Services	Bodily/Personal Injury	Losses While Boarding/Exiting City Vehicle	\$177,282.60
Transit Services	Bodily/Personal Injury	MVA, City and Third Party Vehicle	\$103,121.00

Transit Services	Bodily/Personal Injury	MVA, City and Third Party Vehicle	\$353,593.35
		Total:	\$ 6,942,915.08

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.

Civil Litigation Unit

In the third and fourth quarters of 2023, 55 new Statements of Claim were received by Legal Services. With these, there are currently 507 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 86 per cent, with 14 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

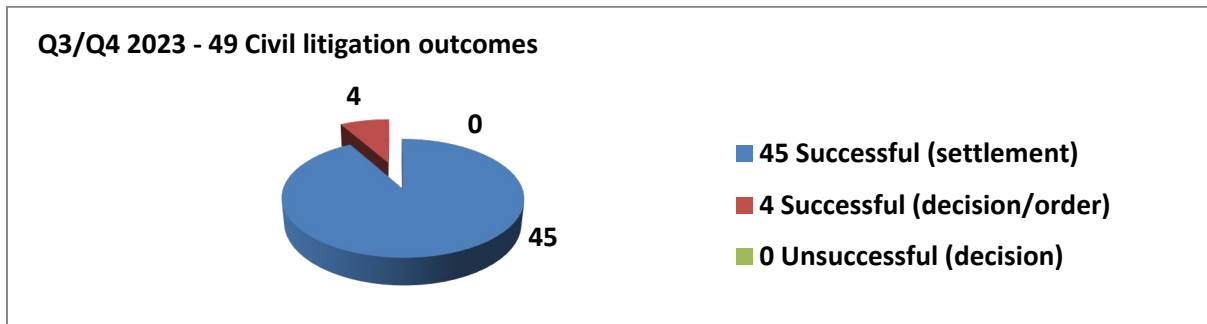
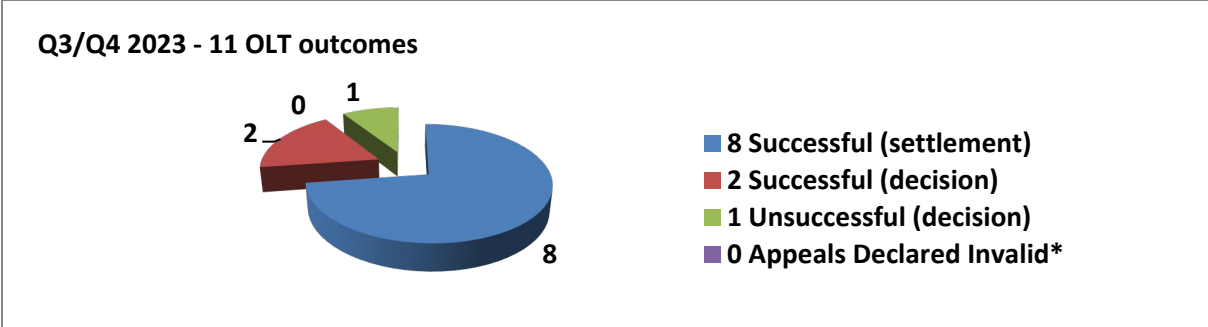


Figure 6 – OLT outcomes

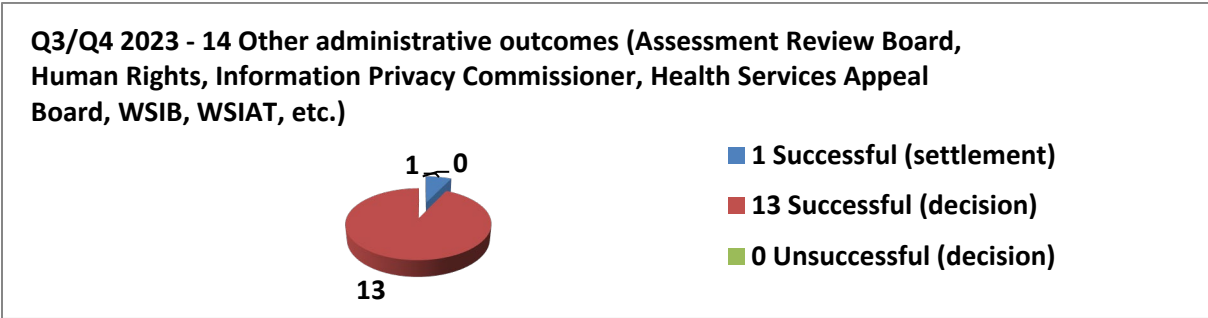


*Appeals Declared Invalid – these numbers reflect appeals to OLT that did not meet the tests of raising issues of inconsistency with the Provincial Policy Statement and/or non-conformity with the Official Plan.

Reasons for unsuccessful outcome:

280 Laurier Avenue East - The issue in this case was whether the waste and recycling storage would be in a principal building, as desired by City Council, or in an external enclosed building, as sought by the developer. The external enclosed building would be constructed in any event and would be used either for waste and recycling storage or bicycle storage. In the end, the Tribunal decided to permit the external enclosed building to be used for waste and recycling storage. The Tribunal found there to be no negative impacts from the principal building option. Further, the principal building option would require the installation and maintenance of a lift which raised the concern of adding to the cost of housing and would require the reconfiguration of accessible units to a less desirable form.

Figure 7 - Other administrative outcomes



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

Legal Services, in the third and fourth quarters of 2023, 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 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.
4. Legal Services provided support to CREO and Finance in negotiating and developing the Lansdowne 2.0 Proposal. This included negotiating amendments needed to the Partnership Agreements.
5. Legal Services provided support to the Public Works Department on the Provincial Individual Producer Responsibility (IPR) Blue Box Program transition. This included advising on the proposed contracts and supporting both the report to Council and finalization of agreements.
6. Legal Services has been providing support to RCFS on their new booking system for City programs and recreational facilities. This included assisting in negotiations with the vendor over implementation of the software.
7. Legal Services continued to advise PRED and IWSD on various lien claims, construction deficiency claims, and contractual interpretation claims.

8. Legal Services continued to review and advise on various IT contracts for the procurement of software products for the City.

Table 2 - General agreements and contracts – Metrics

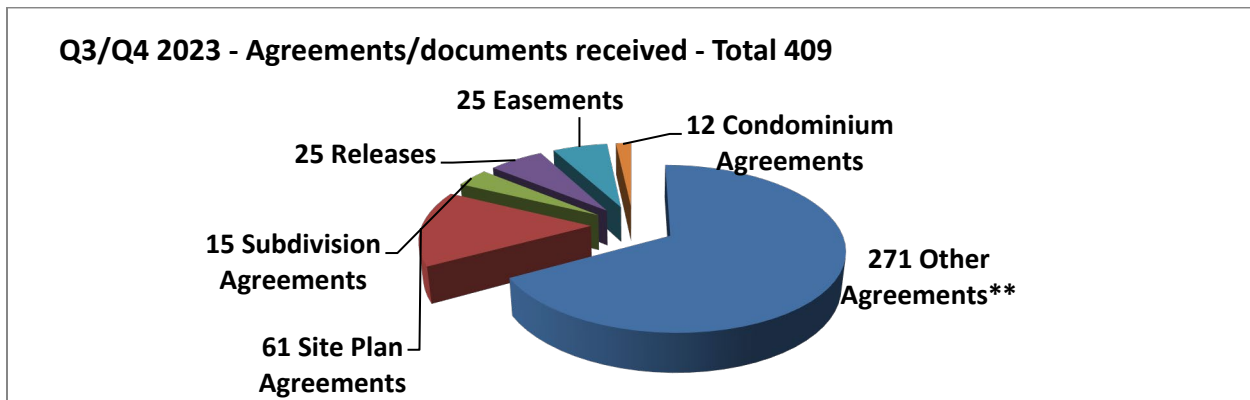
General Agreement/Contract Type	Routine	Moderately Complex	Complex	Total
Agreements and Contracts Reviewed/Drafted	317	241	29	587
Reports Reviewed/Drafted	66	35	11	112
Real Estate Purchases and Sales	14	9	0	23
Tax Sale Registrations, Property Standards Orders	10	12	0	22
By-laws Reviewed/Drafted	113	24	6	143
Construction Lien Payments Reviewed / Processed	n/a	n/a	n/a	176

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.

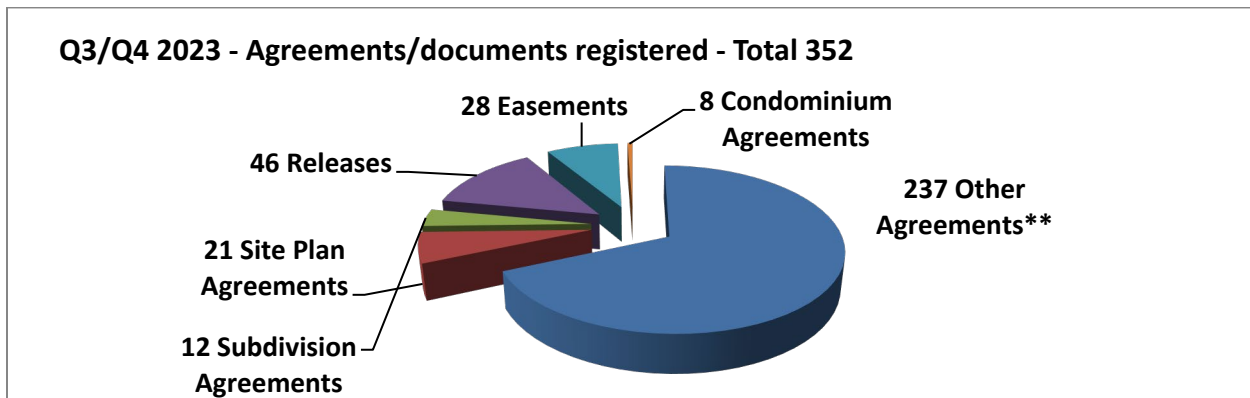
In the third and fourth quarters of 2023, 409 individual documents were logged by the Development Law Unit that were required for drafting and registration. Of these 409 requests, 63 per cent were considered routine; 21 per cent were considered moderately complex; and 15% were considered complex. A summary is set out below in Figure 8 (by type).

Figure 8 - All agreements/document requests received - Total



The Unit also completed registration on 352 individual agreements and documents in the third and fourth quarters of 2023. Of these 352 documents registered, 40 per cent were considered routine; 40 per cent were considered moderately complex; and 20 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 2023

Firm	Portfolio/ Practice Area	Legal Fees	Disbursements	Taxes	Total
Aird & Berlis	Corporate, Commercial, Development	\$4,841.00	\$0	\$629.34	\$5,470.34
Borden Ladner Gervais	Corporate, Commercial, Development	\$111,126.46	\$10,938.72	\$15,868.50	\$137,933.68

Borden Ladner Gervais	Insured Litigated Claims	\$46,007.30	\$4,538.70	\$6,434.54	\$56,980.54
Borden Ladner Gervais	Light Rail Project	\$716,175.90	\$261,819.53	\$127,139.45	\$1,105,134.88
Caza Saikaley	Insured Litigated Claims	\$13,983.00	\$144.00	\$1,835.15	\$15,962.15
Caza Saikaley	Litigation	\$12,739.50	\$60.00	\$1,663.96	\$14,463.46
Courey Law	Corporate, Commercial, Development	\$6,120.82	\$10,829.20	\$2,200.32	\$19,150.34
Emond Harnden	Labour and Employment	\$76,963.12	\$0	\$10,005.68	\$86,968.80
Gowlings	Insured Litigated Claims	\$664,463	\$20,788.52	\$89,670.84	\$774,922.37
Gowlings	Litigation	\$9,970.50	\$33.06	\$1,300.46	\$11,304.02
Lerners	Insured Litigated Claims	\$90,148.50	\$5,500.47	\$12,390.74	\$108,039.71
Norton Rose Fulbright	Light Rail Project	\$26,833.00	\$61.74	\$3,496.32	\$30,391.06
Shillington's	Litigation	\$11,492	\$0	\$1,493.96	\$12,985.96
Singleton Urquhart	Light Rail Project	\$467,793.75	\$65,686.58	\$69,096.46	\$602,576.79
Totals:		\$2,258,657.85	\$380,400.53	\$343,225.72	\$2,982,284.10

Table 4 - External legal costs – Q4 2023

Firm	Portfolio/ Practice Area	Legal Fees	Disbursements	Taxes	Total
Agro Zaffiro LLP	Insured Litigated Claims	\$1,028	\$0.00	\$133.64	\$1,161.64
Aird & Berlis	Corporate, Commercial, Development	\$26,352.50	\$50	\$3,425.84	\$29,828.34
Borden Ladner Gervais	Corporate, Commercial, Development	\$389,820.75	\$31,442.07	\$54,723.70	\$475,986.52
Borden Ladner Gervais	Insured Litigated Claims	\$224,897.90	\$6,325.07	\$29,948.24	\$261,171.21

Borden Ladner Gervais	Light Rail Project	\$601,764.60	\$57,654.22	\$85,651.23	\$745,070.05
Caza Saikaley	Insured Litigated Claims	\$4,147.50	\$103.50	\$551.21	\$4,802.21
Caza Saikaley	Litigation	\$24,369	\$539	\$3,193.98	\$28,101.98
Courey Law	Corporate, Commercial, Development	\$849.99	\$15,509.50	\$2,126.77	\$18,486.26
Cunningham, Swan, Cart	Corporate, Commercial, Development	\$3,982.49	\$0	\$517.74	\$4,500.23
Emond Harnden	Labour and Employment	\$212,769.11	\$0	\$27,661.15	\$240,430.26
Gowlings	Insured Litigated Claims	\$175,931.74	\$6,854.36	\$23,762.27	\$206,548.37
Hicks Morley	Labour and Employment	\$6,156	\$0	\$800.28	\$6,956.28
Lerners	Insured Litigated Claims	\$53,914	\$19,280.08	\$9,471.40	\$82,665.48
Norton Rose Fulbright	Light Rail Project	\$26,999.50	\$154.35	\$3,530.01	\$30,683.86
Shillington's	Insured Litigated Claims	\$947.00	\$0.00	\$123.11	\$1,070.11
Singleton Urquhart	Light Rail Project	\$980,367.75	\$406,936.81	\$179,743.19	\$1,567,047.75
Totals:		\$2,734,297.83	\$544,848.96	\$425,363.76	\$3,704,510.55

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.

ITEMS OF INTEREST

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 2023, the Public Conduct Policy was invoked on 129 occasions. All 129 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 2024 will form part of the Comprehensive Legal Services Report for Q3-Q4 2024, to be presented to the Finance and Corporate Services Committee and City Council in Q1 2025.

Ottawa Professional Fire Fighters' Association (OPFFA) Collective Agreement

The City Solicitor has agreed to Ottawa Fire Services' (OFS) request to use subsection 30(1) of Schedule K of the *Delegation of Authority Bylaw (2023-67)* to amend the Ottawa Professional Fire Fighters' Association (OPFFA) Collective Agreement. The OPFFA Collective Agreement was amended to permit payment of overtime at a single uniform rate. This change allows OFS to more efficiently address their overtime requirements. Finance has confirmed that the additional cost can be absorbed into the current Council approved budget and it does not create a financial liability for the city.

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.

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 2023

Document 2 – External Legal Costs for Q1 to Q4 2023

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.