

**Subject: Comprehensive Legal Services Report for the Period January 1 to
June 30, 2024**

File Number: ACS2024-LEG-GEN-0001

**Report to Finance and Corporate Services Committee on 1 October 2024
and Council 16 October 2024**

Submitted on September 19, 2024 by Stuart Huxley, Interim City Solicitor

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Ward: Citywide

**Objet : Rapport Général sur les Services juridiques pour la période du 1
janvier au 30 juin 2024**

Numéro de dossier : ACS2024-LEG-GEN-0001

Rapport présenté au Comité des finances et des services organisationnels

Rapport soumis le 1er octobre 2024

et au Conseil le 16 octobre 2024

Soumis le 2024-09-19 par Stuart Huxley, Avocat général (par intérim)

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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 first and second quarters of 2024. 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 with respect to the recent renewal of the City's insurance program for the 2024-2025 policy term.

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 for 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 16 of 17 cases concluded in the first two quarters of 2024. The costs associated with the settlement of 13 claims over \$100,000 in the first 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 85 per cent of litigation involving the City is handled by in-house resources, with fewer than 15 per cent of the current 519 litigated matters being referred to external counsel.

Legal Services also continued its support of a number of key City initiatives in Q1 and Q2 2024. Further, Legal Services drafted or reviewed 496 legal agreements and contracts in Q1 and Q2 2024 and processed more than 400 development agreements and requests.

In terms of outsourcing costs in Q1 and Q2 2024, 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 aux premier et deuxième trimestres de 2024. 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 donne également de l'information sur le

renouvellement récent du programme d'assurance de la Ville pour la période 2024-2025.

Pour tous les types de litiges traités par les Services juridiques (affaires civiles, droit du travail, affaires devant le Tribunal ontarien de l'aménagement du territoire [TOAT], droits de la personne, etc.), les résultats sont similaires à ceux présentés dans les rapports antérieurs et viennent mettre en lumière la préférence de la Ville pour les règlements à l'amiable. L'examen des litiges révèle également que lorsque la Ville ne parvient pas à une entente qui convient aux deux parties, son taux de succès est élevé : en effet, elle a obtenu une décision ou une ordonnance en sa faveur dans 16 des 17 affaires conclues au cours des deux premiers trimestres de 2024. Par ailleurs, les coûts associés au règlement de 13 litiges d'une valeur supérieure à 100 000 \$ dans les deux premiers trimestres 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 85 % des litiges de la Ville concernant la Ville sont traités à l'interne, moins de 15 % 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 premier et deuxième trimestres de 2024. En outre, les Services juridiques ont rédigé ou examiné 496 accords juridiques et contrats au cours des premier et deuxième trimestres de 2024, et traité plus de 400 ententes et demandes d'aménagement.

Quant aux coûts de sous-traitance au cours des premier et deuxième trimestres de 2024, 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 first and second quarters of 2024.

DISCUSSION

Civil litigation / Labour and Employment

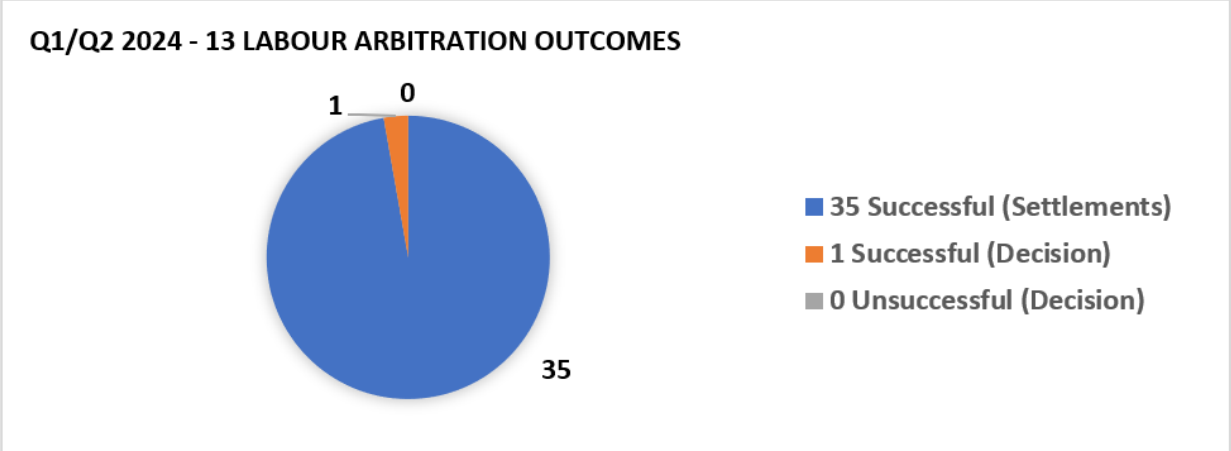
In keeping with the format developed as part of the initial Comprehensive Legal Services Report, outlined below is the litigation record for the 2024 first and second quarters, as well as an overview of claims received and concluded in that same period.

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 first and second quarters is set out below in Figure 1.

Figure 1 – Labour arbitration outcomes

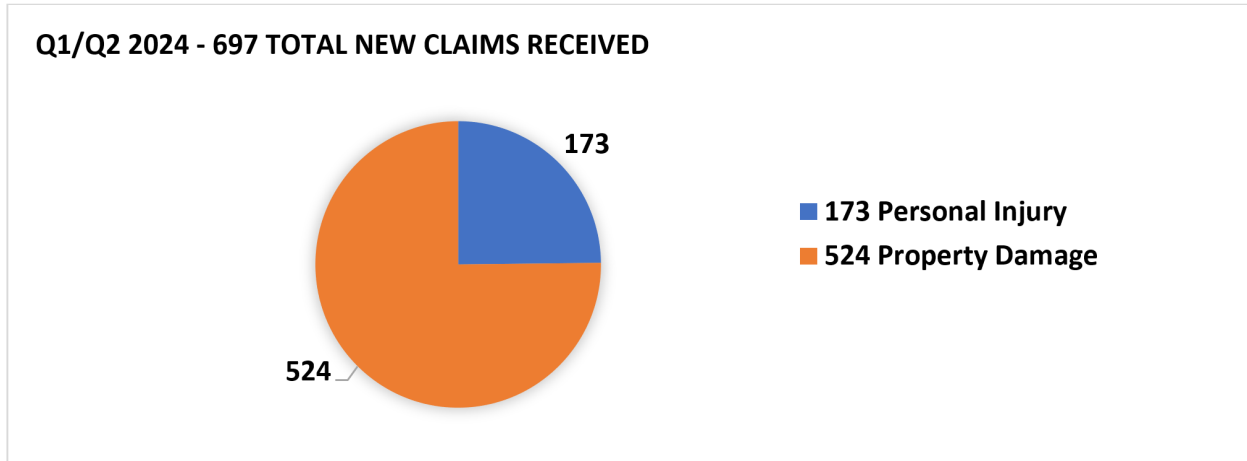


(b) Claims Unit

The Claims Unit received a total of 697 new claims in the first two quarters of 2024. This figure is made up of 524 property damage claims and 173 personal injury claims that were filed with the Unit. Of the total number of new claims received during this period, 206 (30 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 697 claims received during the first and second quarters is set out below by number.

Figure 2 – Total new claims received by number



The Claims Unit also concluded a total of 715 claims in the first two quarters of 2024. This figure represents the 553 property damage claims and 162 personal injury claims that were either closed-settled or closed-denied during this period. A summary of the 205 claims that were closed-settled (i.e. paid in whole or in part) during the first and second quarters is set out below in Figures 3 (by number) and 4 (by value).

Figure 3 - Claims concluded under \$100,000 by number

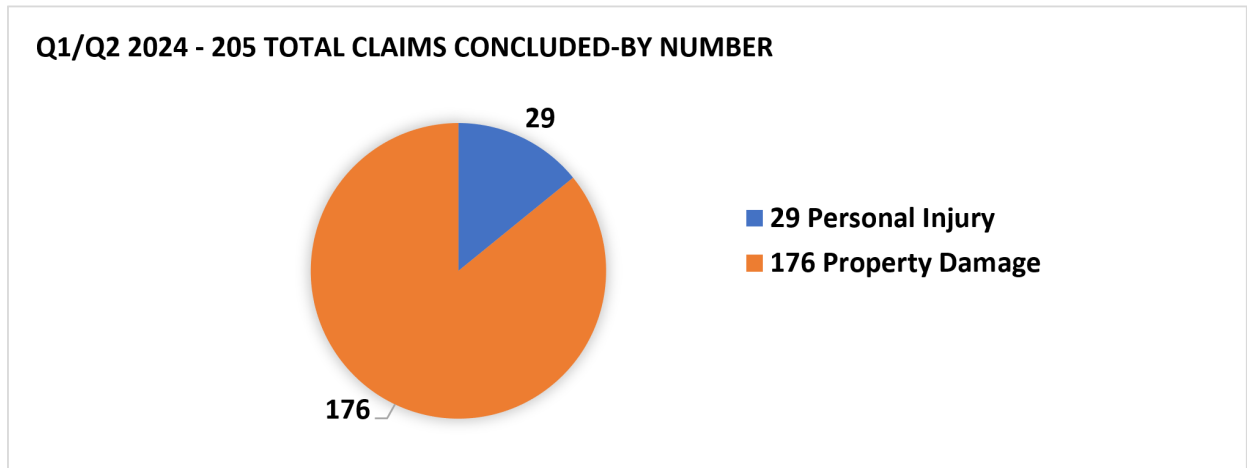


Figure 4 - Claims concluded under \$100,000 by value

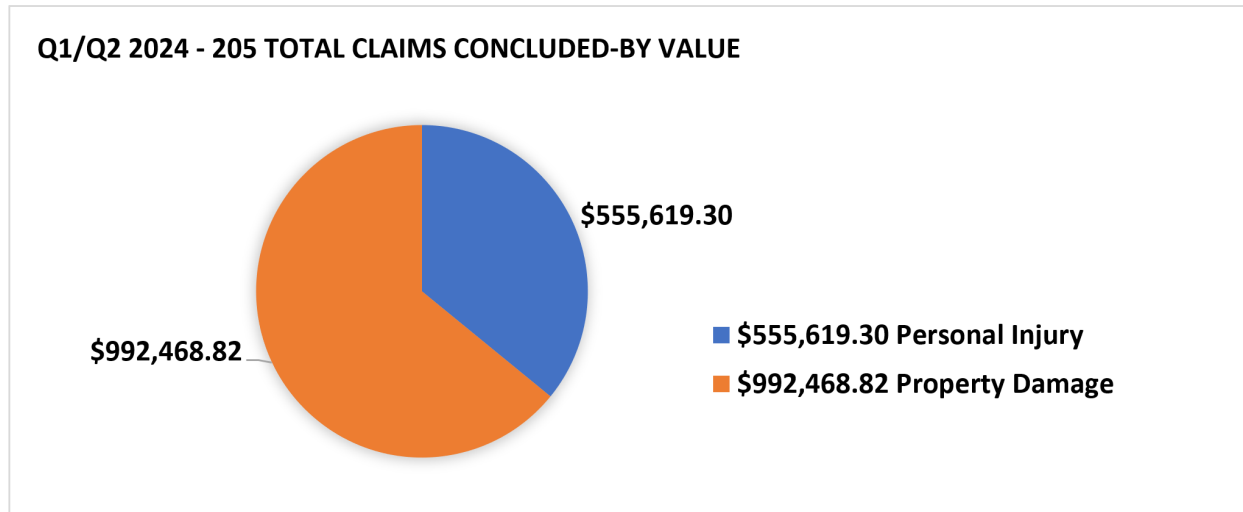


Table 1 - Claims concluded over \$100,000 – Q1 and Q2 2024

Department	Category	Claim Type	Net City Cost
Emergency and Protective Services	Bodily/Personal Injury	City Vehicle Hitting Pedestrian/Cyclist-AB	\$105,182.90
Emergency and Protective Services	Bodily/Personal Injury	Other Third Party Bodily Injury	\$374,580.23
Public Works	Bodily/Personal Injury	Fallen Trees/Branches	\$602,796.60
Public Works	Bodily/Personal Injury	Third Party MVA-Ice/Snow Accumulation	\$235,084.62
Public Works	Bodily/Personal Injury	Slip and Fall	\$112,926.08
Public Works	Bodily/Personal Injury	Slip and Fall	\$100,183.00
Public Works	Bodily/Personal Injury	Slip and Fall	\$151,014.12
Public Works	Bodily/Personal Injury	MVA-Accident Benefits	\$185,207.62
Recreation, Cultural and Facility Services	Bodily/Personal Injury	Trip and Fall	\$142,166.15
Transit Services	Bodily/Personal Injury	City Vehicle Hitting Pedestrian/Cyclist	\$3,011,468.83
Transit Services	Bodily/Personal Injury	City Vehicle Hitting Pedestrian/Cyclist-AB	\$526,010.32
Transit Services	Bodily/Personal Injury	Losses Onboard City Vehicle	\$100,000.00

Department	Category	Claim Type	Net City Cost
Transit Services	Bodily/Personal Injury	Losses Onboard City Vehicle	\$155,000.00
		Total:	\$5,801,620.47

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 first and second quarters of 2024, 69 new Statements of Claim were received by Legal Services. With these, there are currently 519 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 85 per cent, with 15 per cent of the remaining files referred to external counsel either at the direction of the City’s insurer or due to the scope, nature, specialization or volume of the litigation.

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

Figure 5 - Civil litigation outcomes

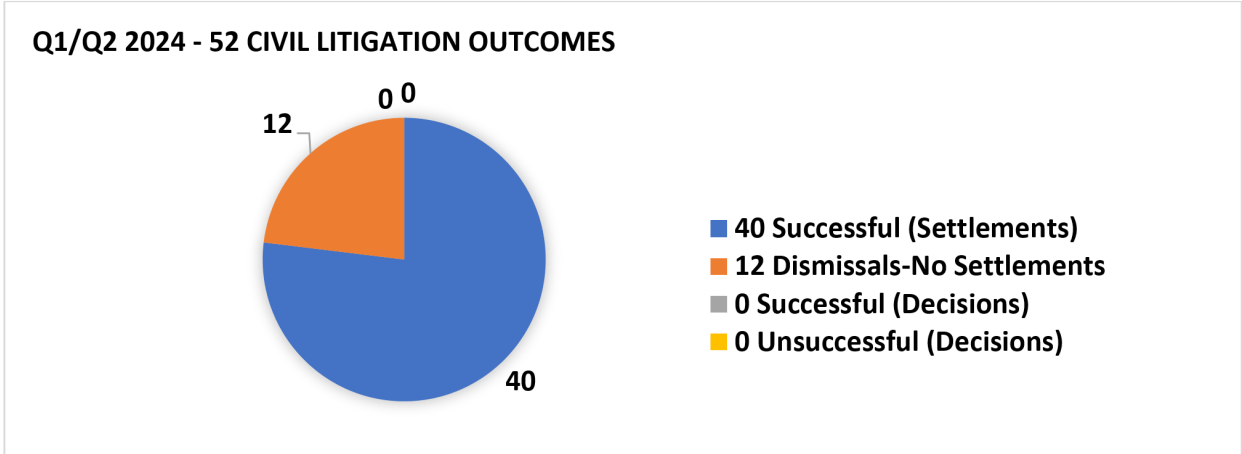
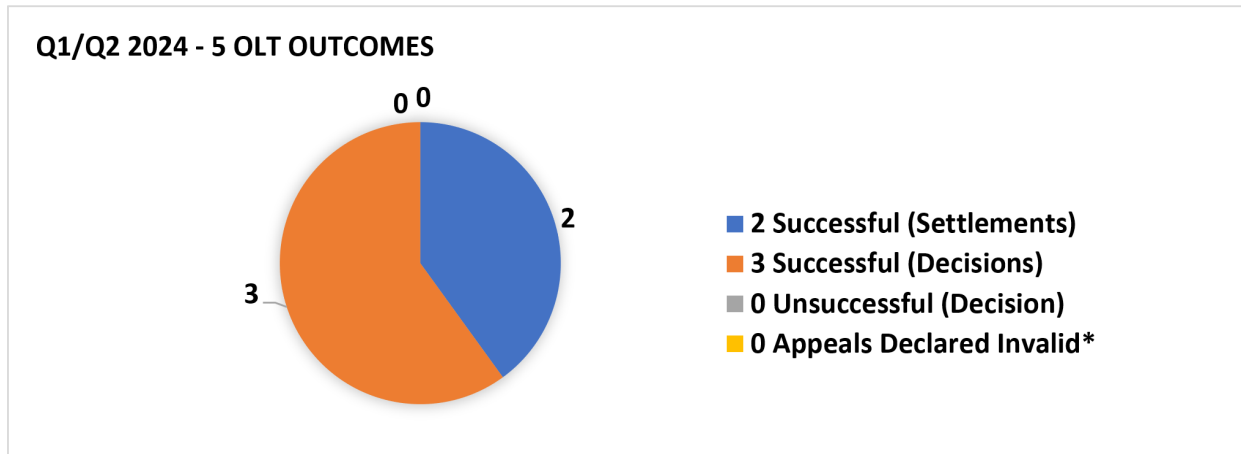
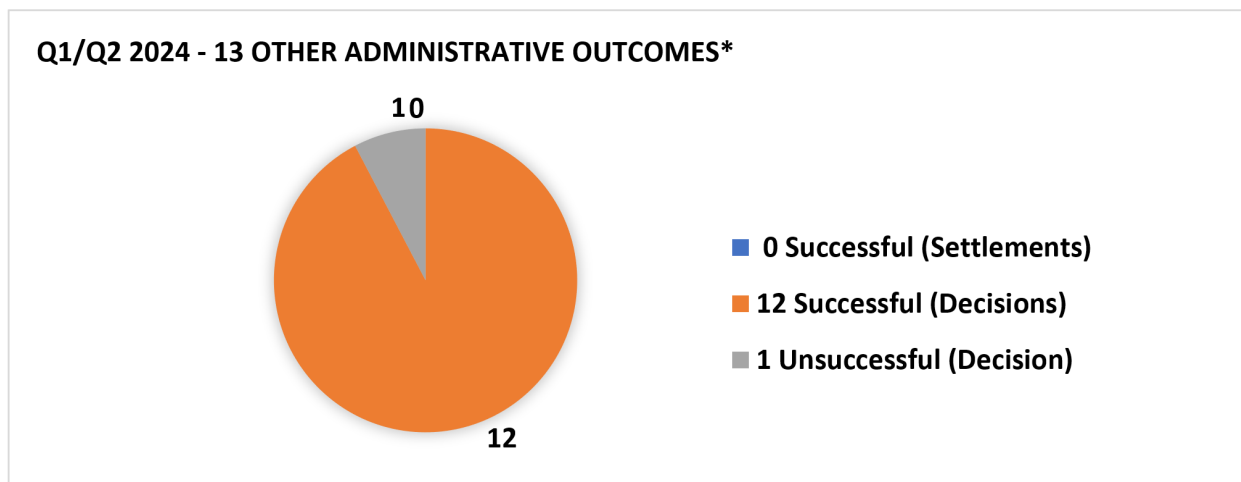


Figure 6 – OLT outcomes



*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



*Other administrative outcomes include stats related to Assessment Review Board, Human Rights, Information Privacy Commissioner, Health Services Appeal Board, WSIB, WSIAT).

Reasons for unsuccessful outcomes:

1. The Workplace Safety and Insurance Appeals Tribunal (WSIAT) found that the worker’s ongoing and deteriorating psychological impairment rendered them unable to perform any work as supported by the medical evidence and the testimony of the worker. The worker was not successful in claiming an entitlement to their injury due to overcompensation caused by the initial injury.

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

Legal Services, in the first and second quarters of 2024, 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 extensive support together with providing timely, accurate legal advice and comments to Transit Services Department, Traffic Services, Transportation Planning, Rights of Way Branch, and Roads and Parking Services for a number of new and existing initiatives through the Committee, Commission and Subcommittee reports concerning a wide variety of projects.
3. Legal Services provided extensive support to Finance and Realty Services on the Lansdowne 2.0 Proposal, including negotiating the amendments to the Lansdowne Partnership Plan Agreements and negotiation and development of agreements concerning the procurement of design and construction services necessary to construct the Event Centre and North Stadium Stands.

Table 2 - General agreements and contracts – Metrics

General Agreement/Contract Type	Routine	Moderately Complex	Complex	Total
Agreements and Contracts Reviewed/Drafted	257	208	31	496
Reports Reviewed/Drafted	94	38	12	144
Real Estate Purchases and Sales	2	3	0	5
Tax Sale Registrations, Property Standards Orders	29	1	1	31

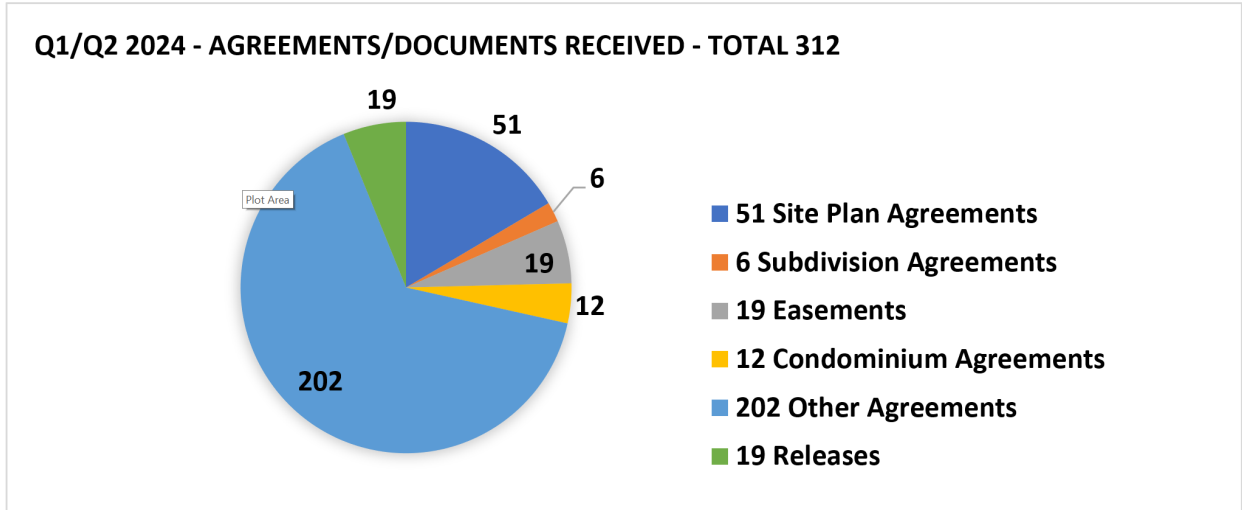
General Agreement/Contract Type	Routine	Moderately Complex	Complex	Total
By-laws Reviewed/Drafted	63	27	6	96
Construction Lien Payments Reviewed / Processed	174	n/a	n/a	174

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.

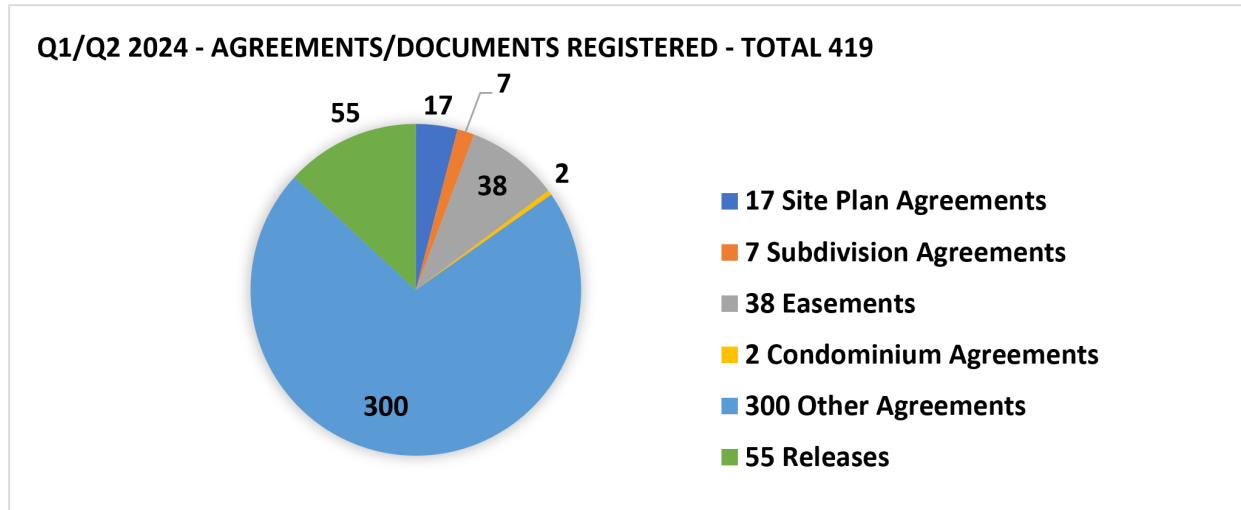
In the first and second quarters of 2024, 312 individual documents were logged by the Development Law Unit that were required for drafting and registration. Of these 312 requests, 49 per cent were considered routine; 63 per cent were considered moderately complex and 19 per cent were considered complex. 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 419 individual agreements and documents in the first and second quarters of 2024. Of these 419 documents registered, 54 per cent were considered routine; 40 per cent were considered moderately complex; and 6 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 – Q1 2024

Firm	Portfolio/ Practice Area	Legal Fees	Disbursements	Taxes	Total
Borden Ladner Gervais	Corporate, Commercial, Development	\$50,139	\$0	\$6,530.44	\$56,669.44
Borden Ladner Gervais	Insured Litigated Claims	\$37,740	\$2,513.57	\$5,232.99	\$45,486.56
Borden Ladner Gervais	Light Rail Project	\$231,298	\$6,760.51	\$30,929.65	\$268,988.16
Courey Law	Corporate, Commercial, Development	\$20,695	\$48,791.55	\$9,033.26	\$78,519.81
Cunningham Swan	Corporate, Commercial, Development	\$2,281	\$0	\$296.55	\$2,577.55

Firm	Portfolio/ Practice Area	Legal Fees	Disbursements	Taxes	Total
Emond Harnden	Labour and Employment	\$114,419.01	\$0	\$14,875.15	\$128,703.72
Gowlings	Corporate, Commercial, Development	\$54,706.50	\$0	\$7,111.87	\$61,818.37
Gowlings	Insured Litigated Claims	\$40,424.50	\$2,575.15	\$5,545.91	\$48,545.56
Lerners	Insured Litigated Claims	\$24,505	\$2	\$3,185.95	\$27,692.95
Sicotte Guilbault	Corporate, Commercial, Development	\$15,317.75	\$405	\$0	\$15,722.75
Singleton Urquhart	Light Rail Project	\$534,451.95	\$533,272.52	\$95,386.14	\$1,163,110.61
Totals:		\$1,125,977.71	\$594,320.30	\$178,127.91	\$1,897,835.48

Table 4 - External legal costs – Q2 2024

Firm	Portfolio/ Practice Area	Legal Fees	Disbursements	Taxes	Total
Aird & Berlis	Insured Litigated Claims	\$5,712.50	\$50	\$742.63	\$6,503.13
Borden Ladner Gervais	Corporate, Commercial, Development	\$213,860.05	\$4,566.47	\$28,343.77	\$246,770.29
Borden Ladner Gervais	Insured Litigated Claims	\$87,780	\$3,474.05	\$11,115.99	\$102,370.04
Borden Ladner Gervais	Light Rail Project	\$337,033.20	\$96,563.21	\$56,367.56	\$489,963.97
Caza Saikaley	Insured Litigated Claims	\$975	\$370	\$174.85	\$1,519.85
Cunningham, Swan	Corporate, Commercial, Development	\$147	\$0	\$19.11	\$166.11
Cunningham, Swan	Insured Litigated Claims	\$281.25	\$0	\$36.56	\$317.81
Emond Harnden	Labour and Employment	\$131,545.25	\$0	\$17,101.87	\$148,647.12
Gowlings	Insured Litigated Claims	\$33,134.50	\$466.39	\$4,368.15	\$37,969.04
Gowlings	Corporate, Commercial, Development	\$190	\$0	\$24.70	\$214.70
Hicks Morley	Insured Litigated Claims	\$10,568	\$75	\$1,383.60	\$12,026.60
Lerners	Insured Litigated Claims	\$62,438	\$778.34	\$8,218.49	\$71,434.83
Perley-Robertson	Insured Litigated Claims	\$9,378	\$205.70	\$1,220.66	\$10,804.36
Singleton Urquhart	Light Rail Project	\$801,674.10	\$255,409.44	\$124,339.05	\$1,181,422.59
Totals:		\$1,694,716.85	\$361,958.60	\$253,456.99	\$2,310,132.44

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

Insurance Renewal 2024-2025

The City's integrated insurance program provides protection for its physical assets, as well as indemnification against liability claims. It is a comprehensive insurance program that includes Automobile coverage for the municipal fleet (including OC Transpo buses), Property coverage for physical damage to the City's buildings, contents, and rolling stock, and Municipal Liability coverage. Liability coverage under the Municipal Liability and Automobile policies is structured using Primary policies, which are then supplemented by additional layers of what is known as 'excess' insurance. Similar to a typical individual's home or auto insurance, the City must bear part of a claim in the form of a deductible, or a self-insured retention (SIR) which requires the City to pay the first specified amount before coverage is triggered. The structure of the program reflects an attempt to balance the cost of premiums with the scope of risk retained by the City, based on an analysis of the City's loss history, and terms afforded by the insurance industry.

With respect to the 2024-2025 renewal overall, the City saw a slight improvement in rates and premiums which is a sign that the market is continuing to 'soften' for certain coverage lines following the 'hardened' insurance market observed in prior years. The City opted to enter into new three-year long policy agreements for the Municipal Liability policy and all excess layers, as breaking the pre-existing long-term agreements allowed the City to take advantage of premium savings for this term. It is anticipated that the long-term agreements will serve to help reduce the administrative burden associated with the renewal process and will provide more predictable premiums for those policies in the 2025-2026 and 2026-2027 terms.

The City's Automobile policy liability coverage was placed with Aviva, moving away from the incumbent insurer, Northbridge, primarily as a cost-savings measure. All coverage lines were renewed under the City Solicitor's authority in the Delegation of Authority By-law.

Ottawa Professional Fire Fighters' Association (OPFFA) Collective Agreement-Amendment

The City Solicitor agreed to Ottawa Fire Services' (OFS) request to use subsection 30(1) of Schedule K of the *Delegation of Authority Bylaw (2024-265)* to amend the Ottawa Professional Fire Fighters' Association (OPFFA) Collective Agreement. The OPFFA Collective Agreement was amended to appropriately assign promotional courses to meet the specific rank requirements. As required by s. 30(1) of Schedule K,

OFS advises that the changes do not create a financial liability for the City that is beyond a budget approved by Council.

Metro Taxi Class Action

The City Solicitor communicated with Members of Council on May 15, 2024, setting out the decision of the Superior Court of Justice regarding three issues that were the subject of the trial that took place during 2023. The City was successful in defending against two of three issues, however the Court ruled against the City on the enforcement question, finding the City negligent in its enforcement of the then 2012 Taxi By-law as against Uber during the period September 1, 2014, to September 30, 2016. A remaining issue remains before the Court on the question whether damages in the aggregate is an appropriate remedy. It is anticipated that this issue will be litigated in early 2025 before the trial Court. Following the Court's decision, parties will then have an opportunity to appeal any or all of the trial items to the Court of Appeal. The question of damages remains outstanding.

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.

DELEGATION OF AUTHORITY IMPLICATIONS

Under Section “K” of the *Delegation of Authority By-law* No. 2024-265, the City Solicitor is authorized to purchase City insurance, represent and defend the City in legal proceedings, settle both litigated and non-litigated claims, and is assigned the exclusive authority for retaining all external legal counsel required by the City, among other things. By way of this report, the City Solicitor is fulfilling the requirement to report out on the use of this delegated authority during the first two quarters of 2024.

RISK MANAGEMENT IMPLICATIONS

There are no risk management concerns arising from this report.

TERM OF COUNCIL PRIORITIES

This report has no direct impact on the 2023-2026 Term of Council Priorities.

DISPOSITION

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