

4. Comprehensive Legal Services Report for the period July 1 to December 31, 2021

Rapport Général sur les Services juridiques pour la période du 1 juillet au 31 décembre 2021

COMMITTEE RECOMMENDATIONS

That Council receive this report for information.

RECOMMANDATIONS DU COMITÉ

Que le Conseil municipal prenne connaissance du présent rapport.

DOCUMENTATION/DOCUMENTATION

1. Valerie Turner, General Manager, Innovative Client Services, dated March 25, 2022, (ACS2022-ICS-LEG-0002)

Valerie Turner, Directrice générale, Services novateurs pour la clientèle, daté le 25 mars 2022, (ACS2022-ICS-LEG-0002)

**SUBJECT: Comprehensive Legal Services Report for the period July 1 to
December 31, 2021**

File Number ACS2022-ICS-LEG-0002

**Report to Finance and Economic Development Committee on 5 April 2022 and
Council 13 April 2022**

**Submitted on March 25, 2022 by Valerie Turner, General Manager, Innovative
Client Services**

**Contact Person: David White, City Solicitor, Innovative Client Services
Department**

613-580-2424, ext. 21933, david.white@ottawa.ca

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 2021**

Dossier : ACS2022-ICS-LEG-0002

**Rapport au Comité des finances et du développement économique le 5 avril 2022
et au Conseil le 13 avril 2022**

**Soumis le 25 mars 2022 par Valerie Turner, Directrice générale, Services
novateurs pour la clientèle**

**Personne ressource : David White, Avocat général, Services novateurs pour la
clientèle**

613-580-2424, poste 21933, david.white@ottawa.ca

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

REPORT RECOMMENDATION

That the Finance and Economic Development Committee recommend that

Council receive this report for information.

RECOMMANDATION DU RAPPORT

Que le Comité des finances et du développement économique 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 2021. 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 2021, 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 52 of 56 cases concluded in 2021. The costs associated with the settlement of 12 claims over \$100,000 in the last two quarters of 2021 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 434 litigated matters being referred to external counsel.

Legal Services also continued its support of a number of key City initiatives in Q3 and Q4 2021. Further, the Branch drafted or reviewed 402 legal agreements and contracts in Q3 and Q4 2021 and processed more than 224 development agreements and requests.

In terms of outsourcing costs in Q3 and Q4 2021, 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 2021. 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 2021, 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 52 affaires sur 56 conclues en 2021. Par ailleurs, les coûts associés au règlement de 12 litiges d'une valeur supérieure à 100 000 \$ au cours des deux derniers trimestres de 2021 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 434 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 2021. En outre, durant la même période, la Direction a rédigé ou examiné 402 accords juridiques et contrats, et traité plus de 224 ententes et demandes d'aménagement.

Quant aux coûts de sous-traitance au cours des troisième et quatrième trimestres de 2021, 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 2021.

DISCUSSION

Civil litigation / labour and employment

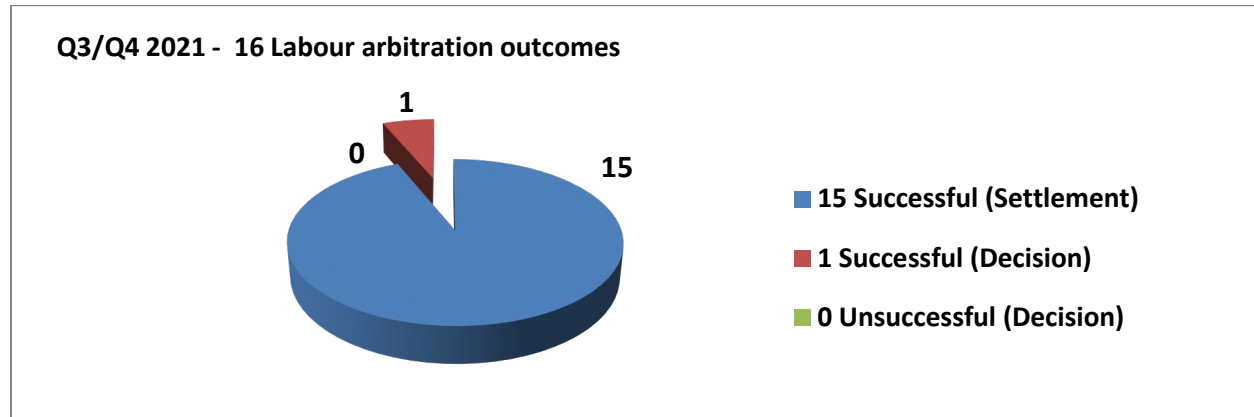
In keeping with the format developed as part of the initial Comprehensive Legal Services Report, outlined below is the litigation record for the 2021 first and second quarters, as well as an overview of claims received and concluded in that same period.

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

Figure 1 - Labour arbitration outcomes

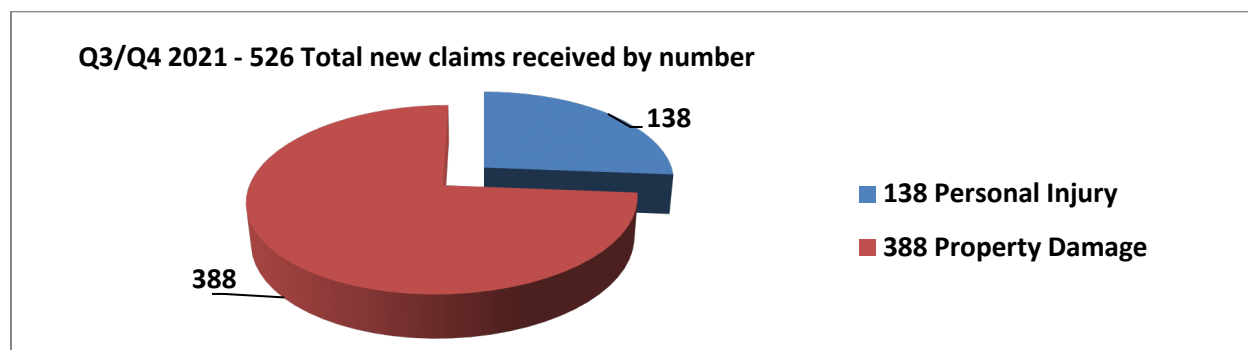


(b) Claims Unit

The Claims Unit received a total of 526 new claims in the last two quarters of 2021. This figure is made up of 388 property damage claims and 138 personal injury claims that were filed with the Unit. Of the total number of new claims received during this period, 60 (11.4 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 526 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 607 claims in the last two quarters of 2021. This figure represents the 403 property damage claims and 204 personal injury claims that were either closed-settled or closed-denied during this period. A summary of

the 202 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

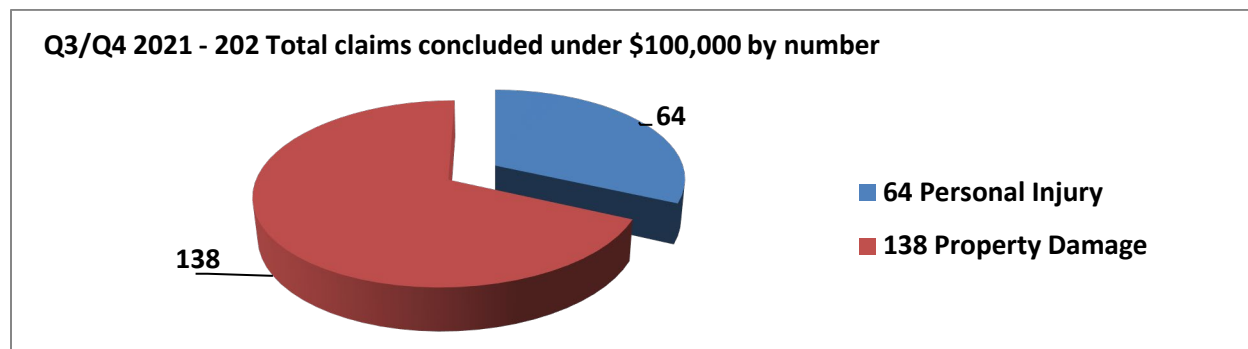


Figure 4 - Claims concluded under \$100,000 by value

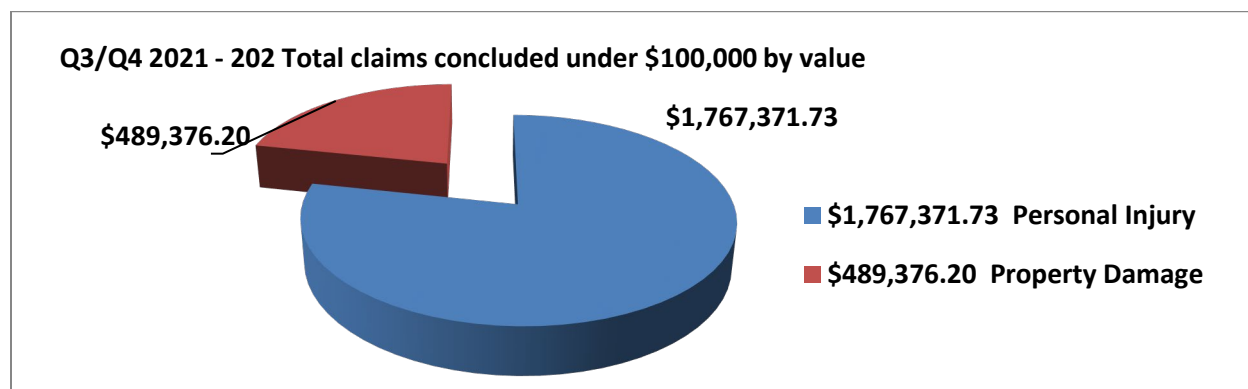


Table 1 - Claims concluded over \$100,000 – Q3 and Q4 2021

Department	Category	Claim Type	Net City Cost
Finance Services	Property Damage or Loss	Breach of Contract	\$438,297.31
Infrastructure and Water Services	Property Damage or Loss	Breach of Contract	\$370,703.99
Infrastructure and Water Services	Property Damage or Loss	Breach of Contract	\$226,000.00
Infrastructure and Water Services	Property Damage or Loss	Breach of Contract	\$197,953.40
Public Works and Environmental Services	Bodily/Personal Injury	Third Party Bodily Injury	\$398,154.89

Public Works and Environmental Services	Bodily/Personal Injury	Slip and Fall	\$153,694.16
Public Works and Environmental Services	Bodily/Personal Injury	MVA – City and Third Party Vehicle	\$248,959.95
Transportation Services	Bodily/Personal Injury	MVA-Losses Onboard City Vehicle	\$714,976.55
Transportation Services	Bodily/Personal Injury	MVA-Losses Onboard City Vehicle	\$602,920.89
Transportation Services	Bodily/Personal Injury	Losses Onboard City Vehicle	\$178,612.55
Transportation Services	Bodily/Personal Injury	Losses Onboard City Vehicle	\$779,132.35
Transportation Services	Bodily/Personal Injury	Losses Onboard City Vehicle	\$110,000.00
		Total:	\$ 4,419,406.04

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 2021, 52 new Statements of Claim were received by Legal Services. With these, there are currently 434 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 are set out below in Figures 5, 6 and 7.

Figure 5 - Civil litigation outcomes

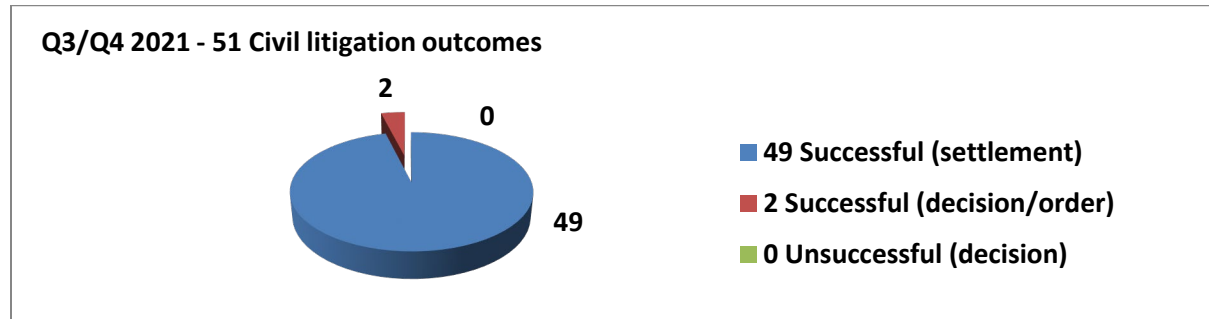
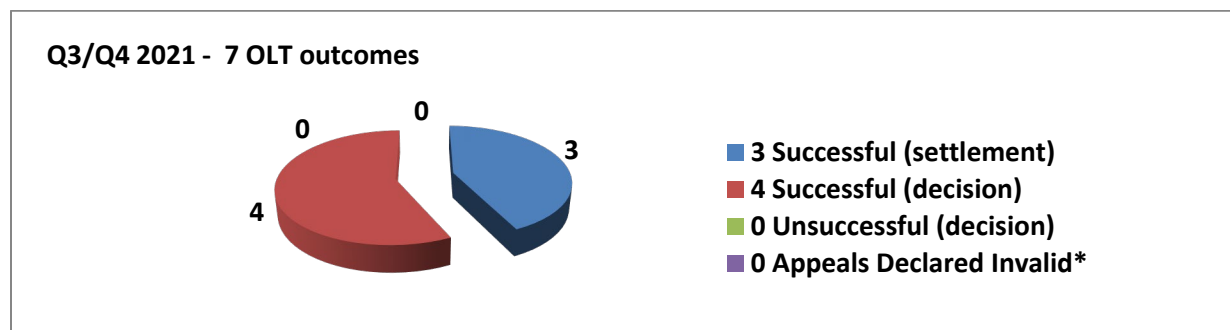
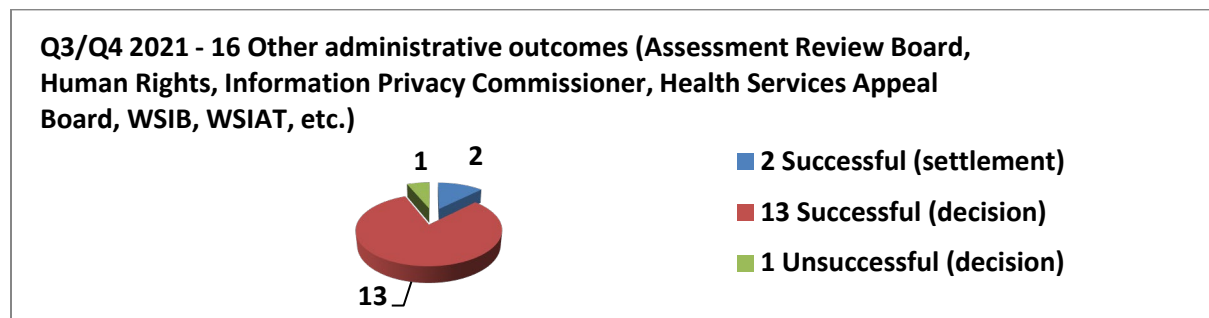


Figure 6 – OLT outcomes



*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 denied initial entitlement by the Workplace Safety and Insurance Board for a workplace injury impacting the employee’s shoulder. The Workplace Safety and Insurance Appeals Tribunal

(WSIAT) found the Board's initial entitlement decision was not reasonable and sent it back for reconsideration, appreciating that the threshold for initial entitlement is low.

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

Legal Services, in the third and fourth quarters of 2021, 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 continued to provide a wide range of support and guidance in respect of the many facets of the City's COVID-19 response, including assistance in the interpretation and application of Provincial Orders, Regulations and other initiatives. Legal's work also extended to supporting the City's own measures to limit the spread of COVID-19 and to mitigate the effect of the pandemic and pandemic-related restrictions on the community.
2. Legal Services continued to provide support to Transit Operations, the Stage 2 and Confederation Line Light Rail offices, and Capital Railway with respect to a range of rail matters and specific projects. These included support for the Regulatory Monitor and Compliance Officer for the Confederation Line and Chief William Commanda Bridge and Trillium Line regulatory requirements. In addition, Legal Services liaised with Stage 1 and 2 Light Rail offices and external 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.
3. Legal Services continued to provide advice to the Transportation Services Department (including Transit Operations, Transportation Planning and Traffic Services), Roads and Parking Services, Infrastructure Services, and Rights of Way Branch with respect to various road, lanes, cycling and pedestrian transportation matters relating to existing and new infrastructure. Legal Services also supported the preparation, drafting, negotiating, and execution of a number of agreements including funding/contribution agreements.

4. Legal Services provided assistance to the Innovative Client Services Department on the procurement and contract negotiation for a software program that recorded and tracked employees' COVID immunization status.

5. Legal Services provided assistance to the Planning, Economic and Development Department's new contract for the installation of Electric Vehicle Charging Stations in the City's right-of-way, involving partnering with Envari and taking advantage of funding from Natural Resources Canada.

Table 2 - General agreements and contracts – Metrics

General Agreement/Contract Type	Routine	Moderately Complex	Complex	Total
Agreements and Contracts Reviewed/Drafted	150	182	70	402
Reports Reviewed/Drafted	39	52	24	115
Real Estate Purchases and Sales	8	23	2	33
Light Rail Land Purchases	0	0	0	0
Tax Sale Registrations, Property Standards Orders	19	1	0	20
By-laws Reviewed/Drafted	55	9	14	78
Construction Lien Payments Reviewed / Processed	97	n/a	n/a	97

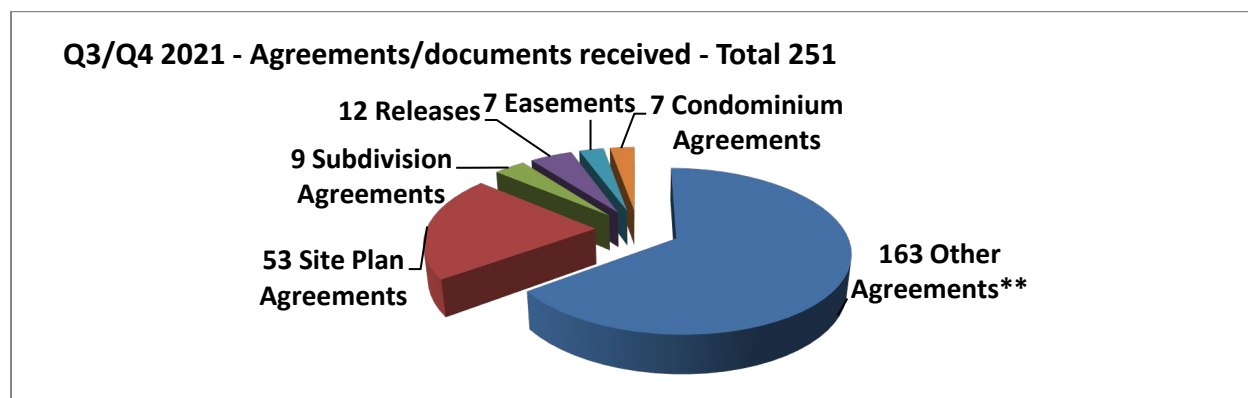
Planning, Development and Real Estate

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 2021, 251 individual documents were logged by the Development Law Unit that were required for drafting and registration. Of these 251 requests, 90 per cent were considered routine; 7 per cent were considered moderately complex; and 3 per cent were considered complex. A summary is set out below in

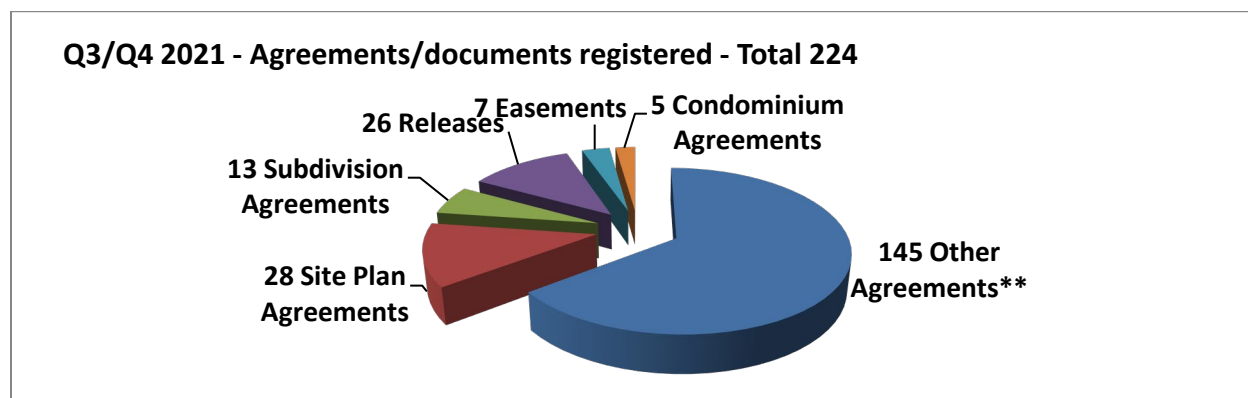
Figure 8 (by type).

Figure 8 - All agreements/document requests received - Total



The Unit also completed registration on 224 individual agreements and documents in the third and fourth quarters of 2021. Of these 224 documents registered, 84 per cent were considered routine; 8 per cent were considered moderately complex and 8 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 2021

Firm	Portfolio/ Practice Area	Legal Fees	Disbursements	Taxes	Total
Agro Zaffiro	Insured Litigated Claims	\$3,014.00	\$0.60	\$391.90	\$3,406.50

Aird & Berlis	Corporate, Commercial, Development	\$1,317.50	\$0	\$171.28	\$1,488.78
Borden Ladner Gervais	Corporate, Commercial, Development	\$599,305.50	\$313,522.23	\$118,570.45	\$1,031,398.18
Borden Ladner Gervais	Light Rail Project	\$407,228.40	\$38,279.65	\$57,875.95	\$503,384.00
Borden Ladner Gervais	Insured Litigated Claims	\$29,168.00	\$1,907.76	\$3,938.76	\$35,014.52
Caza Saikaley	Litigation	\$23,713.57	\$0	\$3,082.82	\$26,796.39
Caza Saikaley	Insured Litigated Claims	\$12,776.33	\$0	\$1,661.01	\$14,437.34
Cunningham Swan Cart	Corporate, Commercial, Development	\$4,090.50	\$0	\$531.77	\$4,622.27
Emond Harnden	Labour and Employment	\$171,917.50	\$0	\$22,349.86	\$194,267.36
Emond Harnden	Insured Litigated Claims	\$20,892.50	\$320.00	\$2,716.18	\$23,928.68
Gowlings	Litigation	\$42.50	\$0	\$5.53	\$48.03
Gowlings	Insured Litigated Claims	\$47,359.60	\$15,266.75	\$8,153.99	\$70,780.34
Lerners	Insured Litigated Claims	\$40,130.50	\$1,106.09	\$5,360.89	\$46,597.48
Norton Rose Fulbright	Light Rail Project	\$28,077.49	\$0	\$3,650.09	\$31,727.58
Shillington McCall	Insured Litigated Claims	\$5,957.00	\$0	\$774.48	\$6,731.48
Singleton Urquhart	Light Rail Project	\$588,380.11	\$185,041.50	\$100,565.73	\$873,987.34
Totals		\$1,983,371.00	\$555,444.58	\$329,800.69	\$2,868,616.27

Table 4 - External legal costs – Q4 2021

Firm	Portfolio/ Practice Area	Legal Fees	Disbursements	Taxes	Total
Agro Zaffiro	Insured Litigated	\$7,917.50	\$0	\$1,029.28	\$8,946.78

LLP	Claims				
Aird & Berlis	Corporate, Commercial, Development	\$12,975.00	\$0	\$1,686.76	\$14,661.76
Borden Ladner Gervais	Corporate, Commercial, Development	\$452,064.54	\$136,627.01	\$76,467.43	\$665,158.98
Borden Ladner Gervais	Insured Litigated Claims	\$48,706.00	\$2,901.43	\$6,494.96	\$58,102.39
Borden Ladner Gervais	Light Rail Project	\$444,782.20	\$92,733.61	\$69,851.62	\$607,367.43
Caza Saikaley	Insured Litigated Claims	\$13,818.62	\$9,036.56	\$2,971.19	\$25,826.37
Caza Saikaley	Litigation	\$21,639.86	\$0	\$2,813.33	\$24,453.19
Courey Law	Corporate, Commercial, Development	\$2,380.00	\$0	\$309.40	\$2,689.40
Cunningham Swan Cart	Corporate, Commercial, Development	\$6,957.99	\$41.88	\$910.01	\$7,909.88
Emond Harnden	Labour and Employment	\$125,280.00	\$0	\$16,286.88	\$141,566.88
Emond Harnden	Insured Litigated Claims	\$9,642.50	\$320.00	\$1,253.59	\$11,216.09
Gowlings	Insured Litigated Claims	\$130,791.40	\$52,970.00	\$23,890.84	\$207,652.24
Lerners	Insured Litigated Claims	\$17,143.50	\$1,827.00	\$2,466.28	\$21,436.78
Norton Rose Fulbright	Light Rail Project	\$34,472.00	\$0	\$4,481.37	\$38,953.37
Shillington McCall	Insured Litigated Claims	\$11,553.50	\$85.18	\$1,509.09	\$13,147.77
Singleton Urquhart	Light Rail Project	\$734,299.83	\$1,792,586.00	\$182,292.34	\$2,709,178.17
Soloway Wright	Corporate, Commercial, Development	\$9,311.00	\$2,095.20	\$918.31	\$8,134.11
Vice & Hunter	Corporate, Commercial,	\$36,300.00	\$538.97	\$4,789.07	\$41,628.04

	Development				
Totals:		\$2,120,035.44	\$2,087,572.44	\$400,421.75	\$4,608,029.63

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 2021, the Public Conduct Policy was invoked on 24 occasions. In two instances, restrictions on communications with staff were imposed while the other 22 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 2022 will form part of the Comprehensive Legal Services Report for Q3-Q4 2022, to be presented to the Finance and Economic Development Committee and City Council in Q1 2023.

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 2021

Document 2 - External Legal Costs for Q1 to Q4 2021

DISPOSITION

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