

**SUBJECT: Comprehensive Legal Services Report for the Period January 1 to  
June 30, 2022**

**File Number ACS2022-ICS-LEG-0004**

**Report to Finance and Economic Development Committee on 4 October 2022  
and Council 9 November 2022**

**Submitted on October 21, 2022 by Valerie Turner, General Manager, Innovative  
Client Services**

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

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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  
janvier au 30 juin 2022**

**Dossier : ACS2022-ICS-LEG-0004**

**Rapport au Comité des finances et du développement économique  
le 4 octobre 2022**

**et au Conseil le 9 novembre 2022**

**Soumis le 21 octobre 2022 par Valerie Turner, Directrice générale, Services  
novateurs pour la clientèle**

**Personne ressource: David White, Avocat général, Services novateurs pour la  
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**Quartier : CITY WIDE / À L'ÉCHELLE DE LA VILLE**

**REPORT RECOMMENDATION(S)**

**That the Finance and Economic Development Committee recommend that  
Council receive this report for information.**

## **RECOMMANDATION(S) 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 first and second 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 with respect to the recent renewal of the City's insurance program for the 2022-2023 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 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 26 of 36 cases concluded in the first two quarters of 2022. The costs associated with the settlement of nine 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 86 per cent of litigation involving the City is handled by in-house resources, with fewer than 14 per cent of the current 455 litigated matters being referred to external counsel.

Legal Services also continued its support of a number of key City initiatives in Q1 and Q2 2022. Further, Legal Services drafted or reviewed 604 legal agreements and contracts in Q1 and Q2 2022 and processed more than 296 development agreements and requests.

In terms of outsourcing costs in Q1 and Q2 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 aux premier et deuxième 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 donne également de l'information sur le renouvellement récent du programme d'assurance de la Ville pour la période 2022-2023.

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 26 des 36 affaires conclues au cours des deux premiers trimestres de 2022. Par ailleurs, les coûts associés au règlement de neuf 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 86 % des litiges de la Ville concernant la Ville sont traités à l'interne, moins de 14 % des 455 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 2022. En outre, les Services juridiques ont rédigé ou examiné 604 accords juridiques et contrats au cours des premier et deuxième trimestres de 2022, et traité plus de 296 ententes et demandes d'aménagement.

Quant aux coûts de sous-traitance au cours des premier et deuxième 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 first and second quarters of 2022.

## DISCUSSION

### Civil litigation / labour and employment

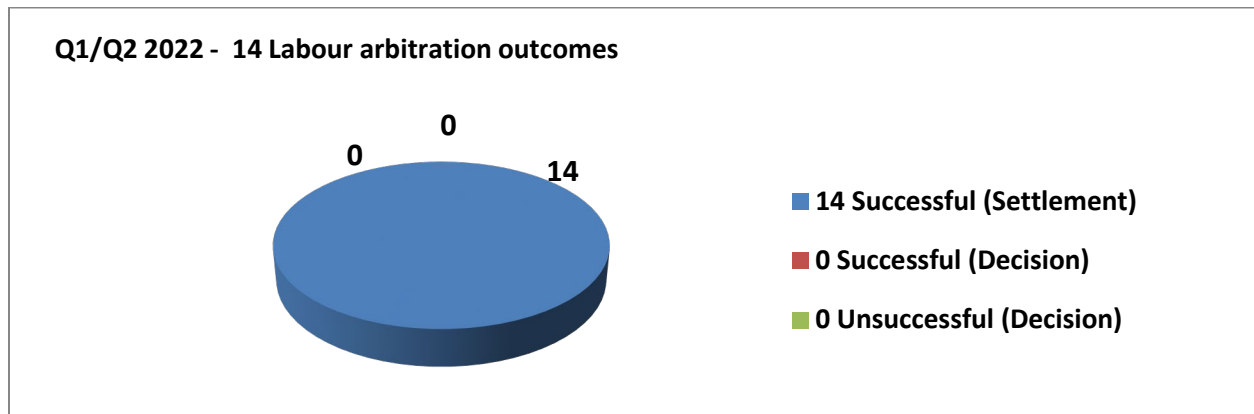
In keeping with the format developed as part of the initial Comprehensive Legal Services Report, outlined below is the litigation record for the 2022 first and second quarters, as well as an overview of claims received and concluded in that same period.

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**



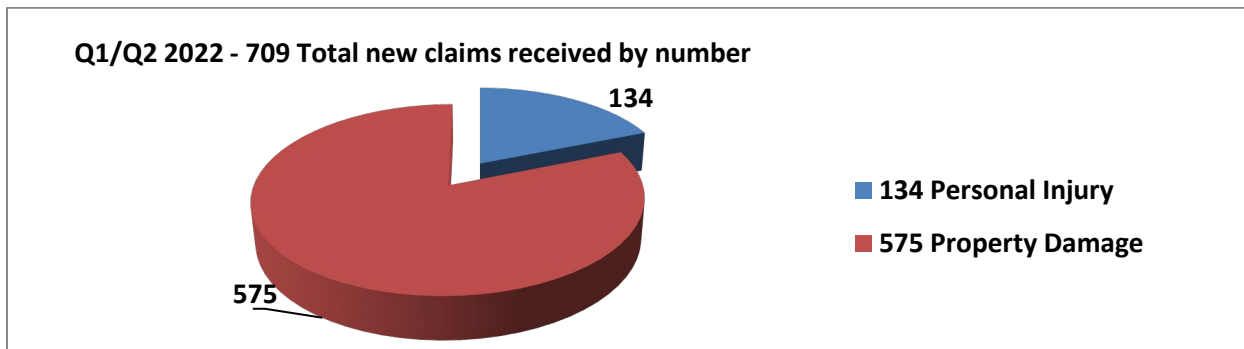
#### (b) Claims Unit

The Claims Unit received a total of 709 new claims in the first two quarters of 2022. This figure is made up of 575 property damage claims and 134 personal injury claims that were filed with the Unit. Of the total number of new claims received during this period,

253 (36 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.

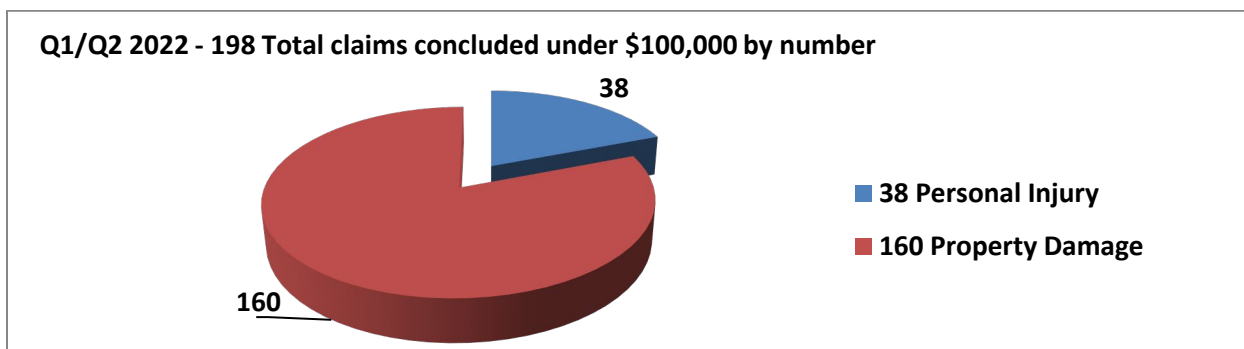
A summary of the 709 claims received during the first and second quarters is set out below in Figure 2 by number.

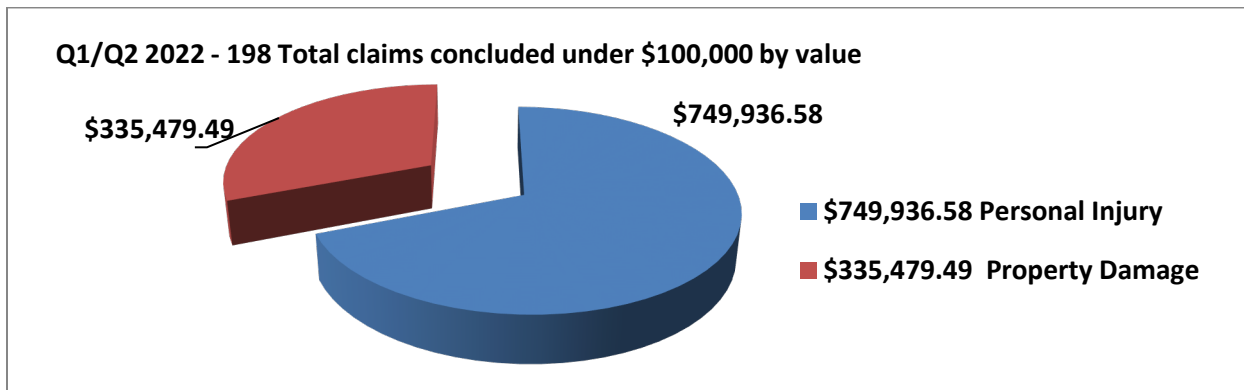
**Figure 2 - Total new claims received by number**



The Claims Unit also concluded a total of 605 claims in the first two quarters of 2022. This figure represents the 506 property damage claims and 99 personal injury claims that were either closed-settled or closed-denied during this period. A summary of the 198 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 2022**

Department	Category	Claim Type	Net City Cost
Community and Social Services	Bodily/Personal Injury	Third party injuries from employee actions	\$202,593.36
Public Works	Bodily/Personal Injury	Third party MVA – road heaving	\$171,028.30
Public Works	Bodily/Personal Injury	Third party MVA - ice/snow accumulation	\$275,123.31
Public Works	Bodily/Personal Injury	Third party MVA – ice/snow accumulation	\$762,408.53
Public Works	Bodily/Personal Injury	Third party MVA – ice/snow accumulation	\$103,790.65
Public Works	Bodily/Personal Injury	Trip and Fall	\$166,183.00
Public Works	Bodily/Personal Injury	MVA-City and Third Party vehicle	\$121,038.41
Transit Services	Bodily/Personal Injury	Losses Onboard City Vehicle	\$180,468.80
Transit Services	Bodily/Personal Injury	City Vehicle hitting pedestrian/cyclist	\$250,587.60
		<b>Total:</b>	<b>\$2,233,221.96</b>

The above-noted figures represent settlement of litigated and non-litigated claims, and include all costs borne by the City in defending a claim and/or 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.

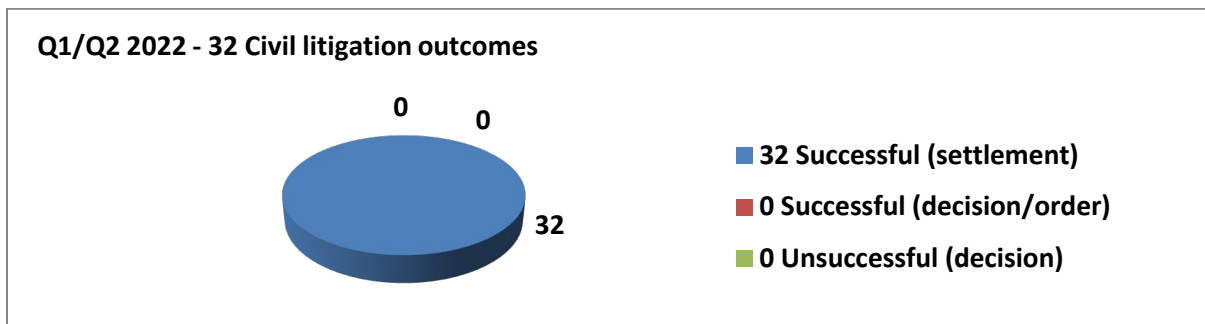
### (c) Civil Litigation Unit

In the first and second quarters of 2022, 50 new Statements of Claim were received by Legal Services. With these, there are currently 455 outstanding civil proceedings

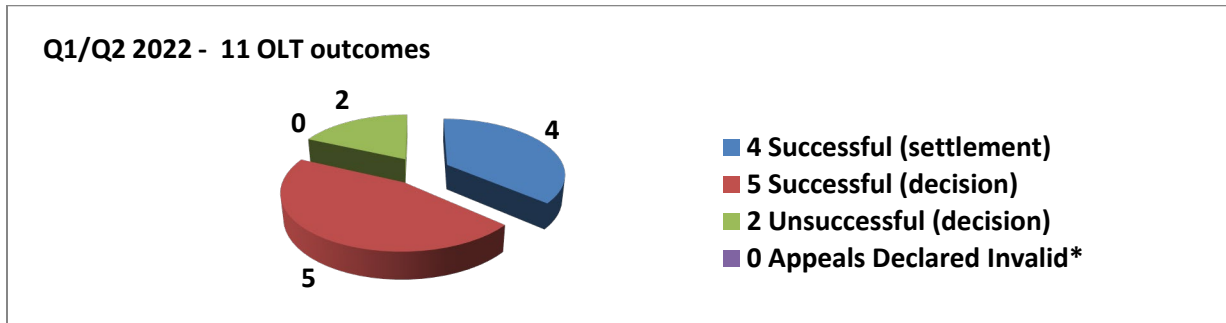
against the City that are being addressed. Of the current open files, the City's in-house Legal staff has carriage of 86 per cent, with 14 per cent of the remaining files referred to external counsel either at the direction of the City's insurer or due to the scope, complexity or volume of the litigation.

A summary of outcomes for civil litigation, Ontario Land Tribunal ("OLT") and other administrative tribunals for the first and second 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.

**Reasons for unsuccessful OLT outcomes:**

OLT Case #1 - 7000 Campeau (ClubLink) – Zoning and Draft Plan of Subdivision

The proposed development, on what is currently a golf course, would consist of 1,480 residential units, being a mix of singles, townhomes and apartments. It is the position of the City that this development is not permitted by the Forty Per Cent agreement in respect of the development of these lands. The City was successful in obtaining a declaration from the Superior Court that the Forty Per Cent agreement is a valid and

binding agreement but was partially unsuccessful before the Court of Appeal of Ontario. The Court of Appeal ruled that the City was not entitled to the conveyance of the lands if they were no longer to be operated as a golf course by virtue of the operation of the rule against perpetuities. The Court did not rule on the requirement by the owner to continue to operate the lands as a golf course, or on the validity or enforceability of the remainder of the Forty Per Cent agreement.

The City sought leave to appeal to the Supreme Court of Canada with respect to the requirement to convey the lands to the City if ClubLink ceases to operate the golf course. Leave to appeal was denied on August 4, 2022. ClubLink has initiated the referral back to the Superior Court with respect to the enforceability of the balance of the Forty Percent Agreement.

With respect to the matter before the Ontario Land Tribunal, the Tribunal identified six issues to be determined:

1. Are the Golf Course lands to remain as privately owned open spaces to serve the existing residential community?
2. Does the proposal benefit the residential community with respect to the existing and future residents in the area?
3. Is the proposed development premature?
4. Does the Zoning By-law Amendment and Draft Plan of Subdivision (“DPS”) meet the requirements of the policy and legislative framework?
5. Can the DPS be approved subject to conditions?
6. Is the proposed development compatible with the existing neighborhood character, in the public interest and represents good land use planning?

The Tribunal determined these six issues in favour of the development being able to proceed. In addition to the matter remitted to the Superior Court noted above, it is staff’s opinion that there remain significant servicing issues that would have to be addressed if this development is to proceed. However, the conditions of the draft subdivision approval permit the developer to seek to address these.

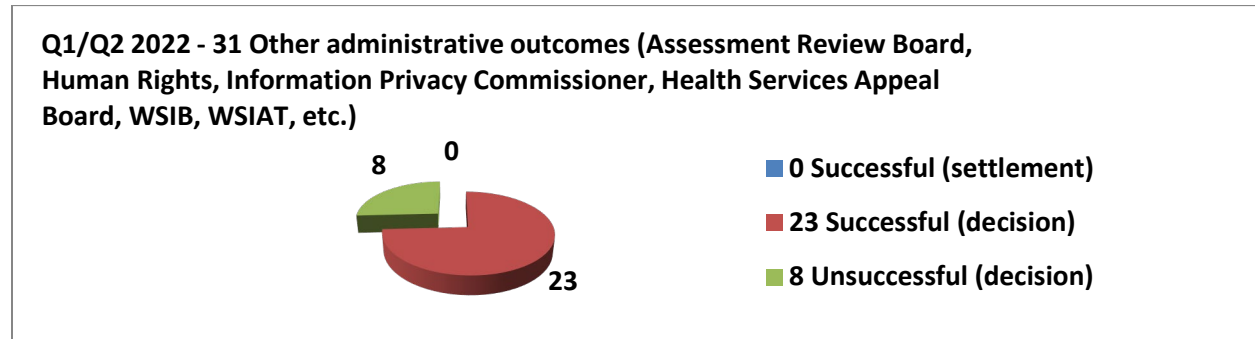
#### OLT Case #2 - Official Plan Amendment 240

In respect of Official Plan Amendment No. 240, this concerned whether certain lands were considered to be Provincially Significant Wetlands. With one exception, the



appeals to the Official Plan Amendment and corresponding zoning by-law were settled. In respect of the remaining appeal, the Tribunal was satisfied on the basis of the evidence before it that the lands in question were not Provincially Significant Wetlands.

### Figure 7 - Other administrative outcomes



#### Reasons for unsuccessful outcomes:

1. Upon reconsideration by the Appeals Services Division, the Workplace Safety and Insurance Board (WSIB) found on balance of probabilities that the workplace was a significant contributing factor to the development of the Worker's injury in this case and therefore initial entitlement was granted.
2. Upon reconsideration by the Appeals Services Division, the WSIB found that based on the evidence in the case record and the applicable WSIB policies, the Worker was entitled to loss of earnings (LOE) benefits for the period under appeal, though such entitlement was to be reduced by the projected earnings of a suitable occupation.
3. Upon reconsideration by the Appeals Services Division, the WSIB found that the applicable Board policy required the Worker's concurrent earnings to be included in the LOE calculation.
4. Upon reconsideration by the Appeals Services Division, the WSIB found on a balance of probabilities that the Worker's injury was the result of a workplace accident and awarded LOE benefits based on the medical documentation on file. The WSIB found that this workplace injury had reached maximum medical recovery with a permanent impairment.
5. Upon reconsideration by the Appeals Services Division, the WSIB found that this workplace injury had reached maximum medical recovery with a permanent impairment.

6. Upon reconsideration by the Appeals Services Division, the WSIB found that the Worker's workplace injuries had not resolved and required further review. LOE entitlement was granted accordingly.
7. This was a workplace injury entitlement appeal by the worker on three issues. The Appeal was unsuccessful in so far as entitlement was granted for one type of injury, but overall successful in that the entitlement was limited.
8. This case relates to a judicial review of the matter. While the Court agreed with the Canadian Human Rights Tribunal that it was appropriate to use a continuing employment agreement, the court did not address why it would be necessary to look at the costs of an employee's absenteeism.

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

Legal Services, in the first and second 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 continued to provide support to Transit Operations, Rail Construction Program, the Confederation Line Light Rail office, 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 for a number of other rail matters affecting the City's rail corridors together with assisting in drafting legal agreements.
2. Legal Services continued to provide advice to 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.

3. Legal Services provided assistance to the Innovative Client Services Department on the procurement and contract negotiation for various software products for the City.
4. 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.

**Table 2 - General agreements and contracts – metrics for Q1-Q2, 2022**

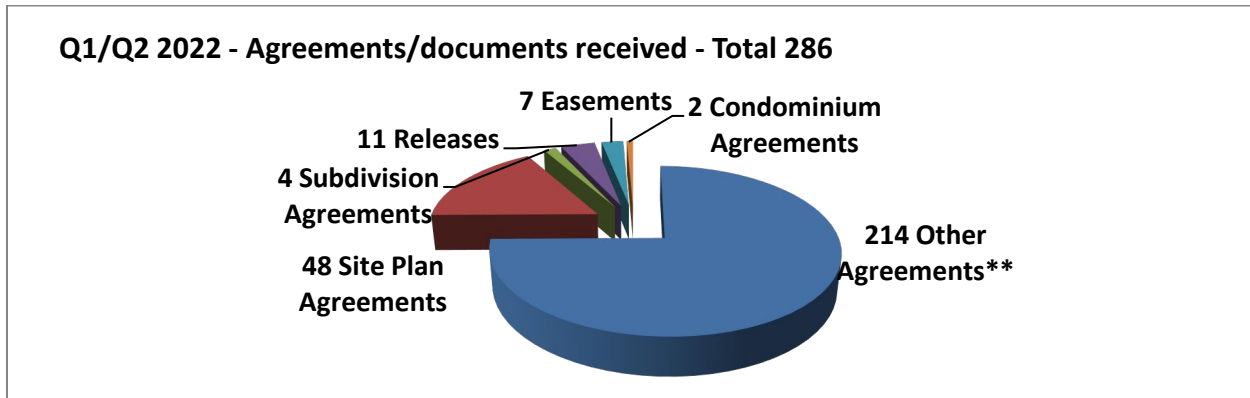
<b>General Agreement/Contract Type</b>	<b>Routine</b>	<b>Moderately Complex</b>	<b>Complex</b>	<b>Total</b>
Agreements and Contracts Reviewed/Drafted	360	205	39	604
Reports Reviewed/Drafted	113	36	34	183
Real Estate Purchases and Sales	16	32	8	56
Tax Sale Registrations, Property Standards Orders	49	n/a	n/a	49
By-laws Reviewed/Drafted	91	21	18	130
Construction Lien Payments Reviewed / Processed	145	n/a	n/a	145

### **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.

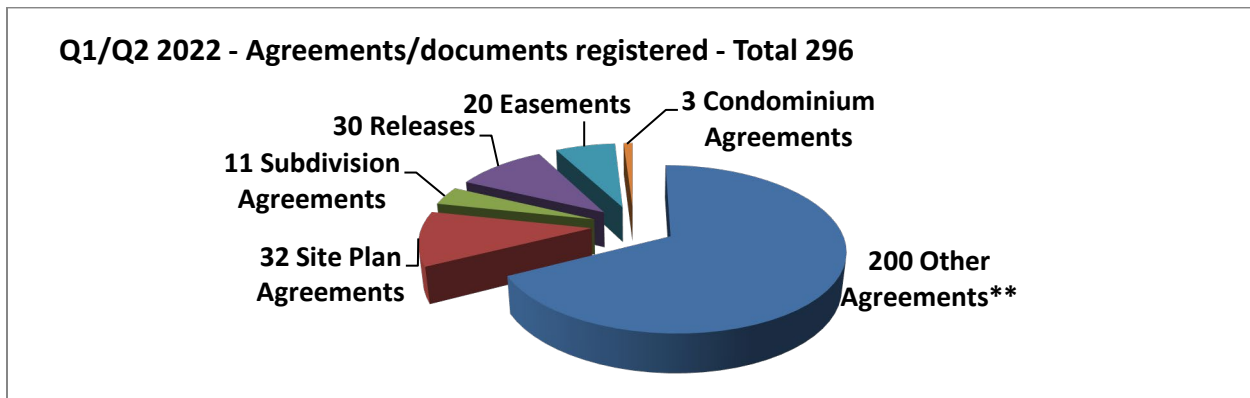
In the first and second quarters of 2022, 286 individual documents were logged by the Development Law Unit that were required for drafting and registration. Of these 286 requests, 98 per cent were considered routine; 1 per cent were considered moderately complex; and 1 per cent were considered complex. 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 296 individual agreements and documents in the first and second quarters of 2022. Of these 296 documents registered, 86 per cent were considered routine; 8 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 2022**

Firm	Portfolio/ Practice Area	Legal Fees	Disbursements	Taxes	Total
Borden Ladner Gervais	Corporate, Commercial, Development	\$100,561.27	\$13,177.70	\$14,750.45	\$128,489.42
Gowlings	Insured Litigated Claims	\$52,615.40	\$5,637.04	\$7,549.05	\$65,801.49

Caza Saikaley	Insured Litigated Claims	\$4,398.41	\$151.30	\$591.59	\$5,141.30
Agro Zaffiro LLP	Insured Litigated Claims	\$1,580.00	\$1.80	\$205.63	\$1,787.43
Emond Harnden	Labour and Employment	\$100,507.00	\$0	\$13,066.07	\$113,573.07
Borden Ladner Gervais	Light Rail Project	\$403,920.65	\$112,820.50	\$67,118.22	\$583,859.37
Norton Rose Fulbright	Light Rail Project	\$41,919.00	\$194.25	\$5,474.72	\$47,587.97
Caza Saikaley	Litigation	\$4,467.75	\$229.00	\$580.96	\$5,277.71
Emond Harnden	Insured Litigated Claims	\$197.50	\$0	\$25.68	\$223.18
Borden Ladner Gervais	Insured Litigated Claims	\$18,669.00	\$258.00	\$2,436.76	\$21,363.76
Singleton Urquhart	Light Rail Project	\$294,287.50	\$86,320.30	\$49,449.30	\$430,057.10
Shillington McCall	Insured Litigated Claims	\$19,826.50	\$14,484.34	\$4,460.49	\$38,771.33
<b>Totals</b>		<b>\$1,042,949.98</b>	<b>\$233,274.23</b>	<b>\$165,708.92</b>	<b>\$1,441,933.13</b>

**Table 4 - External legal costs – Q2 2022**

<b>Firm</b>	<b>Portfolio/ Practice Area</b>	<b>Legal Fees</b>	<b>Disbursements</b>	<b>Taxes</b>	<b>Total</b>
Borden Ladner Gervais	Corporate, Commercial, Development	\$107,169.27	\$8,140.53	\$14,734.28	\$130,044.08
Gowlings	Insured Litigated Claims	\$80,547.00	\$1,128.80	\$10,615.52	\$92,291.32
Lerners	Insured Litigated Claims	\$46,443.50	\$553.61	\$6,086.02	\$53,083.13
Borden Ladner Gervais	Insured Litigated Claims	\$9,994.50	\$375.00	\$1,348.08	\$11,717.58

Caza Saikaley	Insured Litigated Claims	\$48,351.51	\$321.58	\$6,327.98	\$55,001.07
Singleton Urquhart	Light Rail Project	\$1,208,428.45	\$725,974.93	\$250,764.29	\$2,185,167.67
Emond Harnden	Labour and Employment	\$102,042.00	\$0	\$13,265.58	\$115,307.58
Borden Ladner Gervais	Light Rail Project	\$66,011.60	\$5,948.24	\$9,311.69	\$81,271.53
Caza Saikaley	Litigation	\$1,418.25	\$0	\$184.38	\$1,602.63
Cunningham Swan Cartwright	Corporate, Commercial, Development	\$1,273.00	\$101.39	\$178.66	\$1,553.05
<b>Totals:</b>		<b>\$1,671,679.08</b>	<b>\$742,544.08</b>	<b>\$312,816.48</b>	<b>\$2,727,039.64</b>

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.

### **Insurance renewal for 2022-2023**

The City maintains a comprehensive insurance program both for the protection of its assets, as well as to indemnify it against liability claims. The main elements of that comprehensive program include Auto coverage for the municipal fleet (including OC Transpo buses), Property insurance covering damage to City equipment and facilities, and Municipal Liability coverage. The insurance program is, in fact, an amalgamation of insurance policies supplied by a variety of insurers, and is a combination of primary coverage policies, supplemented by additional layers of insurance. The City also maintains a deductible or self-insured retention that requires the City to pay the first specified amount of a claim in respect of any single incident, in much the same manner as a typical individual's home or automobile insurance. The structure of the insurance program reflects an attempt to balance the cost of premiums with the cost of the risk retained by the City, based on an analysis of the City's loss history and the pricing of premiums by the insurance industry.

As outlined in the update provided to Council in May 2019 ([ACS2019-CCS-LEG-0002](#)) Legal Services' ability to secure all components of the insurance program within the constraints of prior years' financial envelope has been challenging in recent years.

External factors such as the hardened insurance market, and overall concerns with municipal risk exposure, coupled with internal factors such as the City's loss history, have continued to drive both higher costs, as well as structural changes for the City's insurance program. Consultations with other Ontario municipalities reveal that Ottawa's experience is mirrored in other jurisdictions, as they are similarly encountering challenges in securing affordable premiums for their respective insurance programs.

In total, the cost of insurance premiums for the City's comprehensive insurance program for the 2022-2023 renewal year rose by approximately \$1 million, which constitutes an increase of 10 per cent over the prior year. The City's primary municipal liability coverage was moved away from the incumbent insurer Great American to QBE who offered terms at a lower cost than what Great American had quoted for renewal. All coverage lines were renewed under the City Solicitor's authority in the Delegation of Authority By-law.

### **FINANCIAL IMPLICATIONS**

The pressure resulting from the insurance premiums increase will be managed through the annual budget process.

### **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.

**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.