

<p>4. COMPREHENSIVE LEGAL SERVICES REPORT FOR THE PERIOD JANUARY 1ST TO JUNE 30TH, 2019</p> <p>RAPPORT GÉNÉRAL SUR LES SERVICES JURIDIQUES POUR LA PÉRIODE DU 1^{ER} JANVIER AU 30 JUIN 2019</p>
--

COMMITTEE RECOMMENDATION

That Council receive this report for information.

RECOMMANDATION DU COMITÉ

Que le Conseil municipal prenne connaissance du présent rapport.

DOCUMENTATION/DOCUMENTATION

1. City Clerk and Solicitor's report, dated 29 August 2019 (ACS2019-CCS-LEG-0004).

Rapport du Greffier municipal et avocat général, daté le 29 août 2019
(ACS2019-CCS-LEG-0004).

**Report to
Rapport au:**

**Finance and Economic Development Committee
Comité des finances et du développement économique
10 September 2019 / 10 septembre 2019**

**and Council
et au Conseil
25 September 2019 / 25 septembre 2019**

**Submitted on August 29, 2019
Soumis le 29 août 2019**

**Submitted by
Soumis par:
M. Rick O'Connor, City Clerk and Solicitor / Greffier municipal et avocat général**

**Contact Person
Personne ressource:
David White, Deputy City Solicitor, Legal Services / Avocat général adjoint,
Services juridiques
613-580-2424, ext. 21933 / david.white@ottawa.ca**

Ward: CITY WIDE / À L'ÉCHELLE DE LA VILLE File Number: ACS2019-CCS-LEG-0004

**SUBJECT: Comprehensive Legal Services Report for the Period January 1st to
June 30th, 2019**

**OBJET: Rapport Général sur les Services juridiques pour la période du 1^{er}
janvier au 30 juin 2019**

REPORT RECOMMENDATIONS

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

RECOMMANDATIONS DU RAPPORT

Que le Comité des finances et du développement économique et le Conseil municipal prennent connaissance du présent rapport.

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 2019.

Effective August 29th, 2019, the City Clerk and Solicitor’s Office was realigned, with Rick O’Connor continuing his leadership of the City Clerk’s Office. Legal Services became a branch of the newly-established Innovative Client Services Department, and, also effective on that date, David White was appointed as City Solicitor for the City of Ottawa.

DISCUSSION

Civil Litigation / Labour and Employment

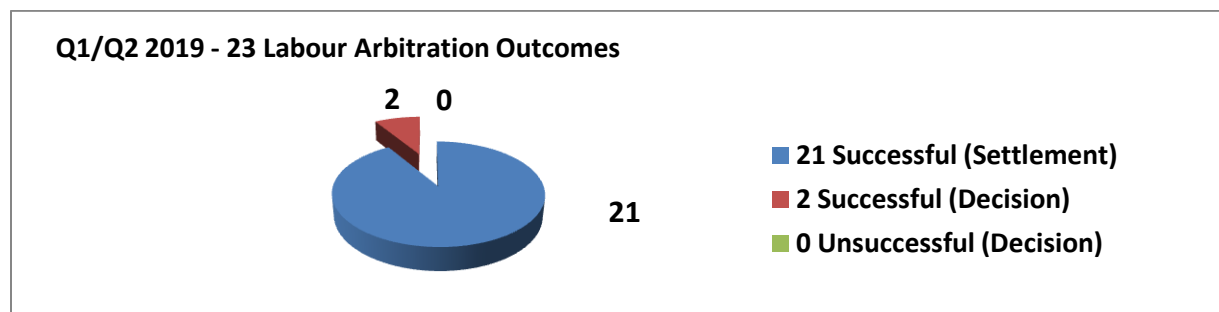
In keeping with the format developed as part of the initial Comprehensive Legal Services Report, outlined below is the litigation record for the 2019 first and second quarters, as well as an overview of claims received and concluded in that same period.

The report also provides a breakdown of the range and volume of civil litigation currently being handled by the Legal Services Branch, 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 for Q1 and Q2 is set out below in Figure 1.

Figure 1 - Labour Arbitration Outcomes

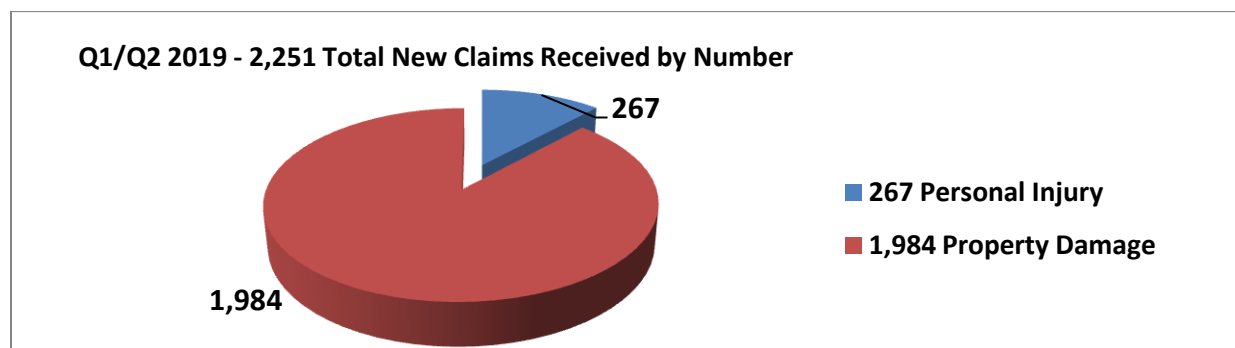


(b) Claims Unit

The Claims Unit received a total of 2,251 new claims in the first two quarters of 2019. This figure represents the 1,984 property damage claims and 267 personal injury claims that were filed with the Unit. Of the total number of new claims received during this period, 1,143 (50.78%) represent pothole claims, which is the most common type of claim received by the Unit on an annual basis. It is worth noting that this is the highest number of new pothole claims received by the Claims Unit in any given period. By comparison, the total number of pothole claims received for the same period the last two years was 783 (in 2017) and 491 (in 2018), representing an increase of approximately 46% and 133% respectively.

A summary of the 2,251 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 1,090 claims in the last first two quarters of 2019. This figure represents the 887 property damage claims and 203 personal injury claims that were either closed-settled or closed-denied during this period. A summary of the 253 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

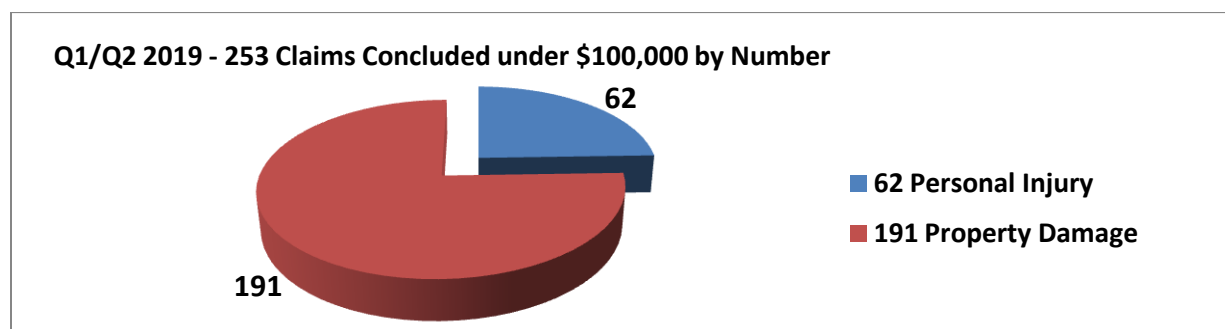


Figure 4 - Claims Concluded Under \$100,000 by Value

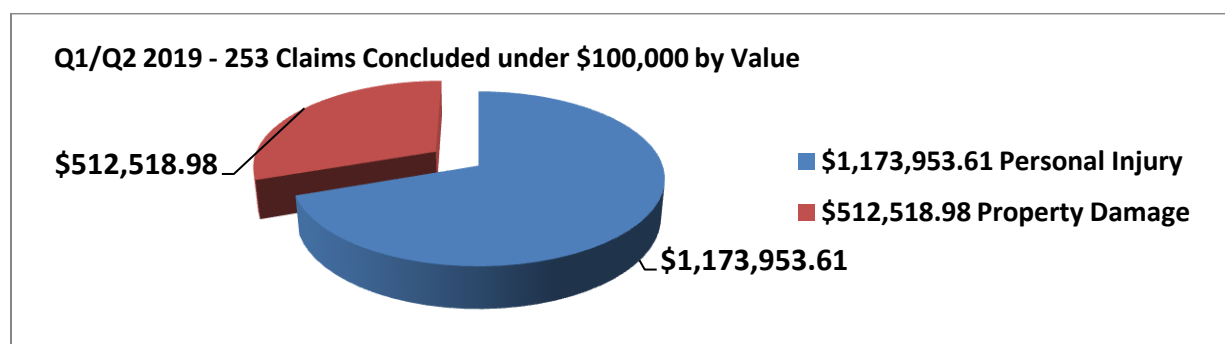


Table 1 - Claims Concluded over \$100,000 – Q1 and Q2 2019

Department	Category	Claim Type	Net City Cost
Emergency and Protective Services	Bodily/Personal Injury	MVA-City and Third Party Vehicle	\$146,739.18
Planning, Infrastructure and Economic Development	Property Damage or Loss	Contract Dispute	\$332,905.19
Planning, Infrastructure and Economic Development	Property Damage or Loss	Contract Dispute	\$775,513.35
Public Works and Environmental Services	Bodily/Personal Injury	Slip and Fall	\$142,139.25

Public Works and Environmental Services	Bodily/Personal Injury	MVA-Ice/Snow Accumulation	\$184,894.15
Public Works and Environmental Services	Bodily/Personal Injury	Slip and Fall	\$137,278.60
Public Works and Environmental Services	Property Damage or Loss	Damage from Tree Roots	\$251,716.58
Transportation Services	Bodily/Personal Injury	MVA-Bodily Injury	\$728,344.53
Transportation Services	Bodily/Personal Injury	Losses Onboard City Vehicle	\$345,740.80
Transportation Services	Bodily/Personal Injury	Losses Onboard City Vehicle	\$110,000.00
Total:			\$3,155,271.63

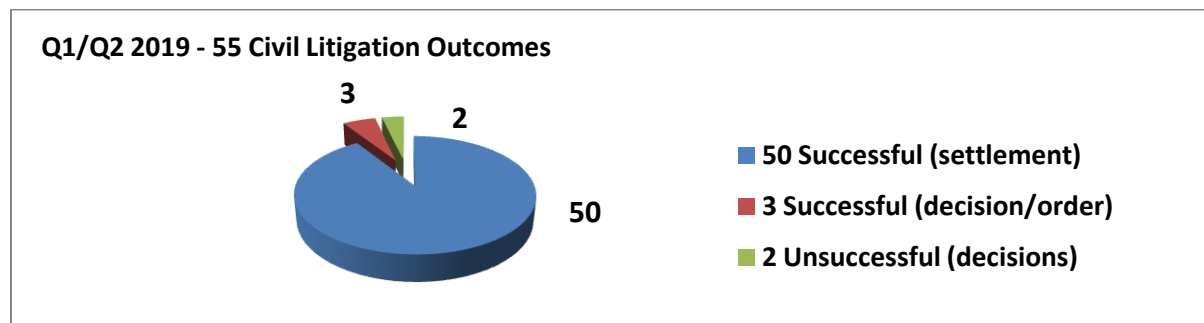
The above-noted figures represent settlement of litigated and non-litigated claims, and include all costs borne by the City in finalizing a settlement, such as court costs, legal fees, investigative costs, etc. Furthermore, claim settlement payments include those made pursuant to negotiated settlements 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 Office of the City Clerk and Solicitor.

(c) Civil Litigation Unit

In the first and second quarters of 2019, 99 new Statements of Claim were received by the Legal Services Branch. With these, there are currently 478 outstanding civil proceedings against the City that are being addressed by the Branch. Of the current open files, carriage of over 92% rests with the City's in-house Legal staff, with less than 8% of the remaining files having been referred to external counsel at either the direction of the City's insurer or due to the scope and/or complexity of the litigation.

A summary of outcomes for civil litigation, Local Planning Appeal Tribunal ("LPAT") and other administrative tribunals for Q1 and Q2 is set out below in Figures 5, 6 and 7.

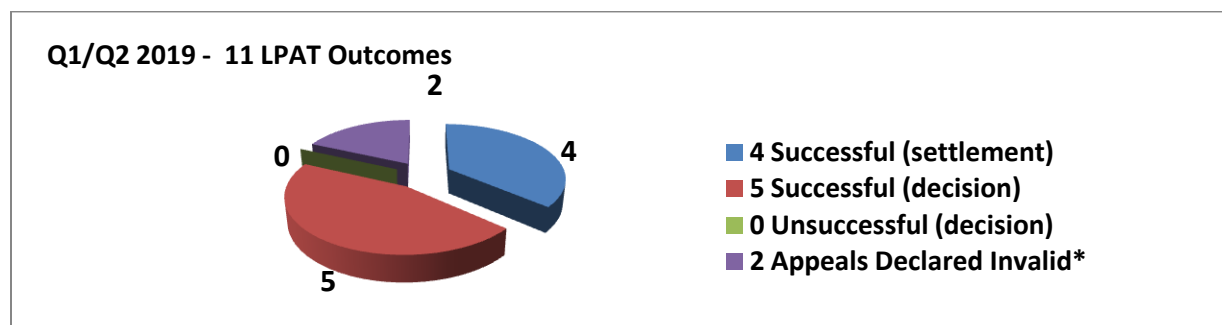
Figure 5 - Civil Litigation Outcomes



Reasons for Unsuccessful Outcomes:

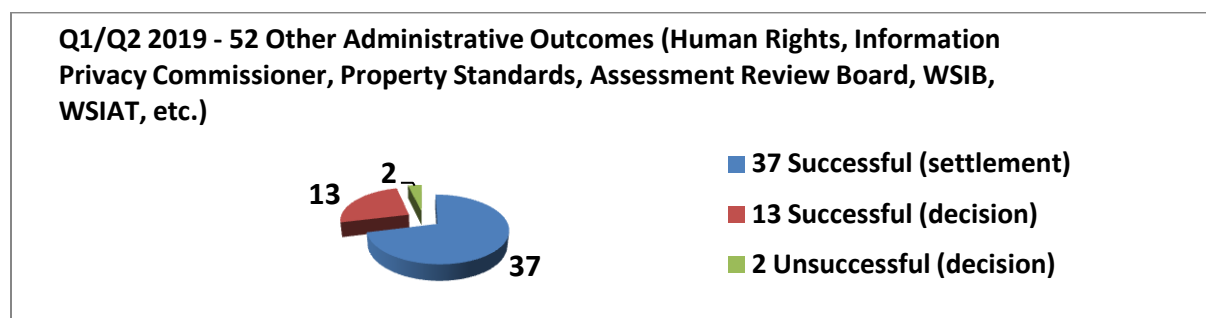
- i. This first decision was related to a small claims matter that was heard on March 15, 2019. The decision was released on April 15, 2019. The matter involved a retaining wall located in front of the Plaintiff's property and which was damaged by a City street sweeper in April 2018. Evidence put forward by the Plaintiff at trial showed the retaining wall was constructed by the City and was located on City property. The claim was defended on the basis that the wall was in fact City of Ottawa property and the City was therefore not liable to an individual resident for damage it causes to its own property. Although the City ultimately disagreed with the decision of the Small Claims Court Deputy Judge to pay the plaintiff \$1,932.30 for the above-noted reasons, the court does not allow appeals for decision with awards less than \$2,500 and no further action was taken.
- ii. This decision relates to a construction arbitration. The claim by the contractor was for the additional costs incurred to install culverts under Highway 174 during the spring of 2017, which saw more than double the average amount of rainfall for Ottawa on record. The contractor was successful based largely on the finding that the City failed to provide sufficient and accurate geotechnical information at the time of tender.

Figure 6 - LPAT Outcomes



*Appeals Declared Invalid – these numbers reflect appeals to LPAT 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



Reason for Unsuccessful Outcome:

- i. The Workplace Safety and Insurance Board (WSIB) reversed its earlier decision to deny the employee's claim for benefits for the development of bilateral Carpal Tunnel Syndrome (CTS), based on additional information provided by the employee.
- ii. Information and Privacy Commissioner Interim Order MO-3780-1 June 3, 2019: Although the City decision with respect to the exemption of personal information was upheld, the Adjudicator found that the appellant requester had established a basis to conclude that additional records may exist and ordered that the City conduct a further search for records responsive to the appellant's request.

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

The Legal Services Branch, in the first and second quarters of 2019, provided key legal support for various projects and strategic initiatives of the City within the current Term of Council Priorities. Some of the results of the varied services provided by in-house legal staff include the following:

1. Rail Transportation Matters (City-wide): Legal Services is providing support to Transit Operations, Stage 2 – Light Rail office, Confederation Line Light Rail office, Capital Railway, with respect to a wide variety of rail matters including specific projects, a variety of regulatory, and legal matters, including Regulatory Monitor Compliance Officer for the Confederation Line, Prince of Wales Bridge, Trillium Line regulatory requirements including obtaining a revised Certificate of Fitness and section 98 construction approval for Stage 2. In addition, liaising with Stage 1 and 2 Light Rail offices and BLG concerning OLRT/Stage 2 matters in support role and a number of other rail matters affecting the City's rail corridors together with assisting in drafting legal agreements.
2. Road, Lanes, Cycling and Pedestrian Transportation Matters (City-wide): Legal Services is providing support to the Transportation Services Department (including Transit Operations, Transportation Planning, Traffic Services), Roads and Parking Services, Infrastructure Services, and Rights 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 preparation, drafting, negotiating, and execution of a number of agreements including funding/contribution agreements.
3. Transportation Committee and Transit Commission Reports (City-wide): Legal Services provided extensive support together with providing timely, accurate legal advice and comments to Transportation Services Department, Rights of Way Branch, and Roads and Parking Services for a number of new and existing initiatives through the Committee and Commission reports concerning a wide variety of projects.

Table 2 - General Agreements and Contracts – Metrics

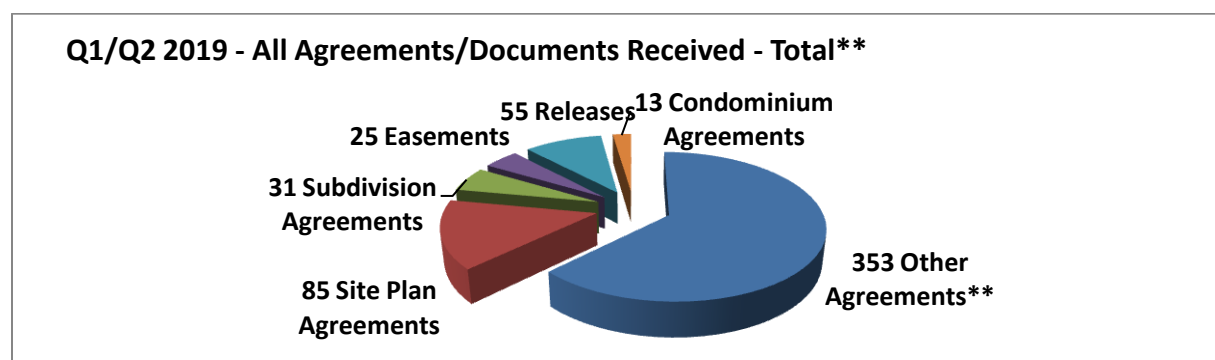
General Agreement/Contract Type	Routine	Moderately Complex	Complex	Total
Agreements and Contracts Reviewed/Drafted	279	296	16	591
Reports Reviewed/Drafted	95	60	10	165
Real Estate Purchases and Sales*	39	0	1	40
Tax Sale Registrations, Property Standards Orders, Grow Op Orders	52	0	0	52
By-laws Reviewed/Drafted	46	14	4	64
Construction Lien Payments Reviewed / Processed	n/a	n/a	n/a	48

*Stats do not include work required in processing outsourced transactions, including Light Rail land acquisitions.

Planning and Development

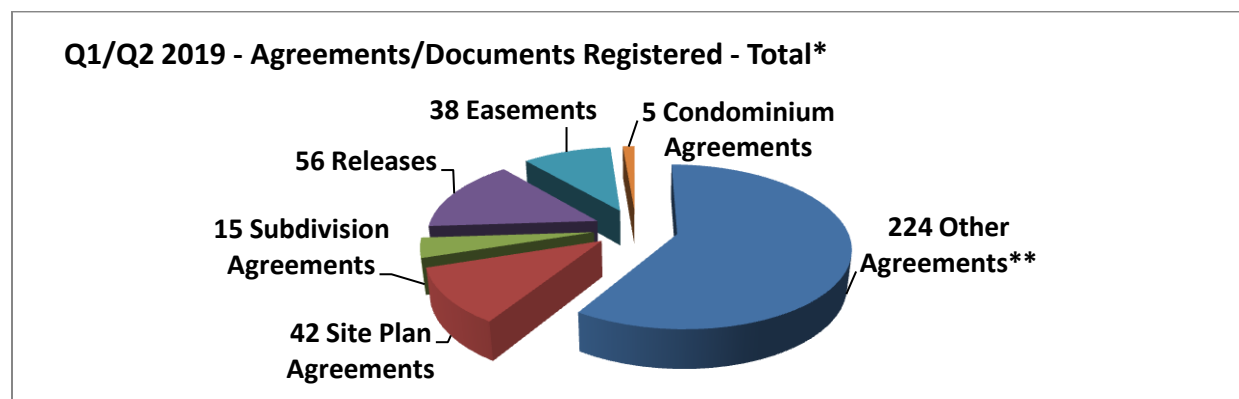
In the first and second quarters of 2019, 562 individual agreements and document requests were received by the Development Law Unit for drafting and registration. Of these 562 requests, 85% were considered routine; 13% were considered moderately complex; and less than 2% were considered complex. A summary is set out below in Figure 8 (by type).

Figure 8 - All Agreements/Document Requests Received - Total



The Development Law Unit also completed registration on 380 individual agreements and documents in the first and second quarters of 2019. Of these 380 documents registered, 68% were considered routine; 6% were considered moderately complex and 26% 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 and Q2 2019

Firm	Portfolio/ Practice Area	Legal Fees	Disbursements	Taxes	Total
Borden, Ladner, Gervais	Corporate, Commercial, Development	\$283,669.40	\$7,040.67	\$37,723.71	\$328,433.78
Gowlings	Insured Litigated Claims	\$87,471.50	\$6,507.36	\$12,196.48	\$106,175.34
Caza Saikaley	Insured Litigated Claims	\$116,062.80	\$379,890.95	\$64,445.56	\$560,399.31
Hicks Morley	Labour and Employment	\$69,832.50	\$15.33	\$9,080.22	\$78,928.05
Emond Harnden	Labour and Employment	\$195,303.56	\$0	\$25,389.88	\$220,693.44
Borden, Ladner, Gervais	Light Rail Project Stages 1 and 2	\$577,611.40	\$19,218.98	\$77,263.56	\$674,093.94
Norton Rose Fulbright	Light Rail Project Stages 1 and 2	\$595,328.00	\$9,775.76	\$75,546.57	\$680,650.33
Caza Saikaley	Litigation	\$48,007.90	\$15,941.57	\$8,313.58	\$72,263.05
Gowlings	Litigation	\$152,571.50	\$15,440.40	\$21,820.79	\$189,832.69
McCall Dawson	Insured Litigated Claims	\$24,411.00	\$1,071.13	\$3,312.67	\$28,794.80
Agro Zaffiro LLP	Insured Litigated Claims	\$7,007.00	\$281.18	\$924.71	\$8,212.89

Singleton Urquhart	Light Rail Project Stage 1	\$223,623.00	\$2,568.89	\$29,153.46	\$255,345.35
Totals		\$2,380,899.56	\$457,752.22	\$365,171.19	\$3,203,822.97

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.

RURAL IMPLICATIONS

There are no rural implications associated with this 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.

LEGAL IMPLICATIONS

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

RISK MANAGEMENT IMPLICATIONS

There are no risk management concerns arising from this report.

FINANCIAL IMPLICATIONS

There are no financial implications associated with this report.

ACCESSIBILITY IMPACTS

There are no accessibility impacts associated with this report.

TERM OF COUNCIL PRIORITIES

Governance, Planning & Decision-Making

GP2 – Advance management oversight through tools and processes that support accountability and transparency.

DISPOSITION

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