

**Report to
Rapport au:**

**Finance and Economic Development Committee
Comité des finances et du développement économique
1 September 2015 / 1 septembre 2015**

**and Council
et au Conseil
9 September 2015 / 9 septembre 2015**

**Submitted on August 25, 2015
Soumis le 25 août 2015**

**Submitted by
Soumis par:
M. Rick O'Connor, City Clerk and Solicitor / Greffier et Chef du contentieux**

**Contact Person
Personne ressource:
David White, Deputy City Solicitor, Litigation & Labour Relations / Chef du
contentieux adjoint, Division des litiges et du droit administratif
613-580-2424, ext. 21933 / david.white@ottawa.ca**

Ward: CITY WIDE / À L'ÉCHELLE DE LA VILLE File Number: ACS2015-CMR-LEG-0004

**SUBJECT: Comprehensive Legal Services Report for the Period January 1 to
June 30, 2015**

**OBJET: Rapport Général sur les Services juridiques pour la période du 1^{er}
janvier au 30 juin 2015**

REPORT RECOMMENDATION

**That the Finance and Economic Development Committee and 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.**

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 27th, 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 3rd, 2014, City Council approved an amendment to the Delegation of Authority Bylaw 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 2015.

DISCUSSION

Litigation and Labour Relations Branch

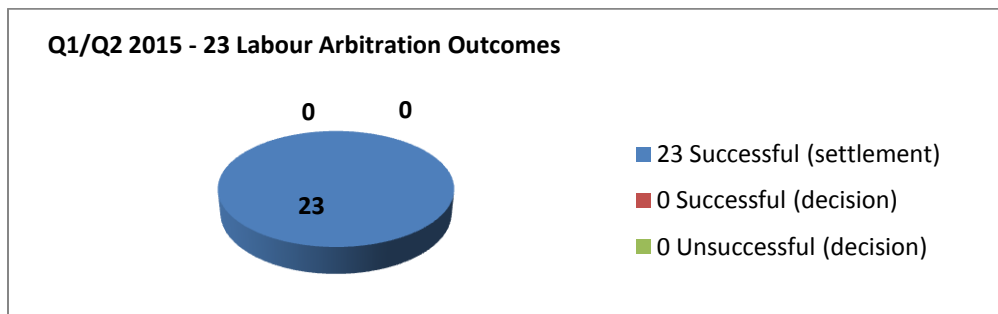
In keeping with the format developed as part of the initial Comprehensive Legal Services Report, outlined below is the litigation record for the Branch for the 2015 first and second quarters, as well as an overview of claims concluded in that same period.

The report also provides a breakdown of the range and volume of civil litigation currently being handled by the Branch, as well as information on whether carriage of these matters rests with the Branch’s in-house legal staff or with external 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*

A summary of claims outcomes for the first and second quarters is set out below in Figures 2 (by number) and 3 (by value).

Figure 2 - Claims Concluded Under \$100,000 by Number

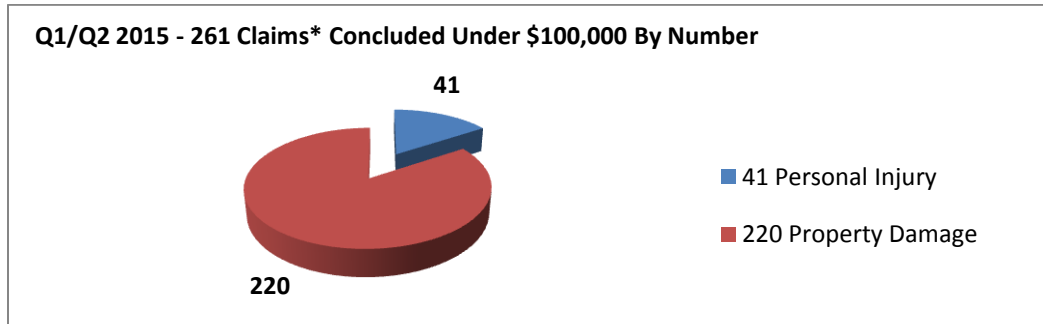
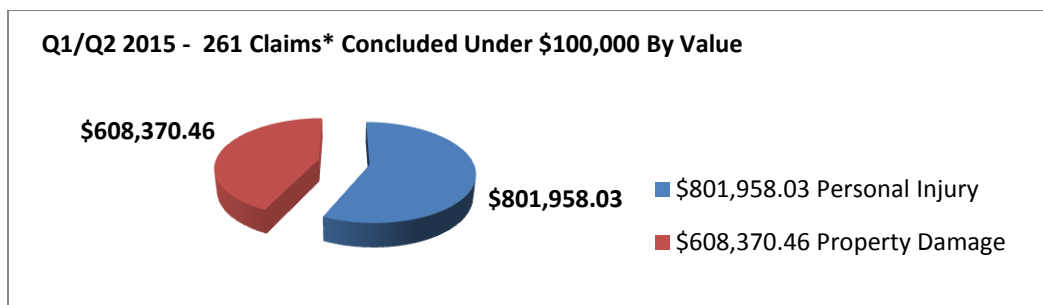


Figure 3 - Claims Concluded Under \$100,000 by Value



*Note: These figures include settlement of litigated and non-litigated claims.

Table 1 - Claims concluded over \$100,000 – Q1 and Q2 2015

Department	Category	Claim Type	Net City Cost
Infrastructure Services	Property Damage or Loss	Breach of Contract	\$155,000.00
Infrastructure Services	Property Damage or Loss	Breach of Contract	\$220,000.00
Planning and Growth Management	Bodily/Personal Injury	Slip and Fall	\$1,169,985.80
Public Works	Bodily/Personal Injury	Slip and Fall	\$103,090.55
Public Works	Bodily/Personal Injury	Slip and Fall	\$443,529.18
Public Works	Bodily/Personal Injury	MVA, City and Third Party Vehicle	\$446,356.00
Public Works	Bodily/Personal Injury	Trip and Fall	\$560,135.78

Public Works	Bodily/Personal Injury	MVA, City and Third Party Vehicle	\$253,740.30
Transit Services	Bodily/Personal Injury	City Vehicle Hitting Pedestrian/Cyclist	\$120,000.00
Transit Services	Bodily/Personal Injury	Losses Onboard City Vehicle	\$177,261.83
Transit Services	Bodily/Personal Injury	Losses Onboard City Vehicle	\$306,033.72
Transit Services	Bodily/Personal Injury	Losses Onboard City Vehicle	\$310,500.00
Transit Services	Bodily/Personal Injury	Losses Onboard City Vehicle	\$1,534,745.11
TOTAL:			\$5,800,378.27

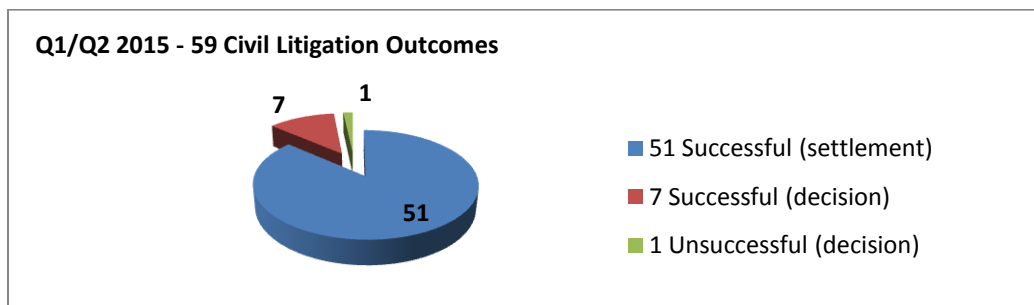
Specific details with regard to these claims are confidential in keeping with standard settlement practices. The specific circumstances and facts surrounding these confidential settlements are available to Members of Council from the Office of the City Clerk and Solicitor.

(c) *Civil Litigation Unit*

In the first and second quarters, 56 new Statements of Claim were received by the Litigation and Labour Relations Branch. With these, there are currently 348 outstanding civil proceedings against the City that are being addressed by the Branch. Of these 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, Ontario Municipal Board ("OMB") and other administrative tribunals for Q1 and Q2 is set out below in Figures 4, 5 and 6.

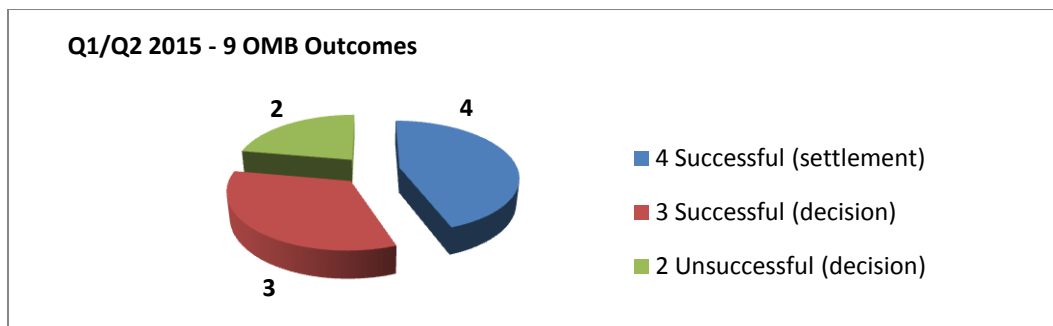
Figure 4 - Civil Litigation Outcomes



Reason for Unsuccessful Outcome:

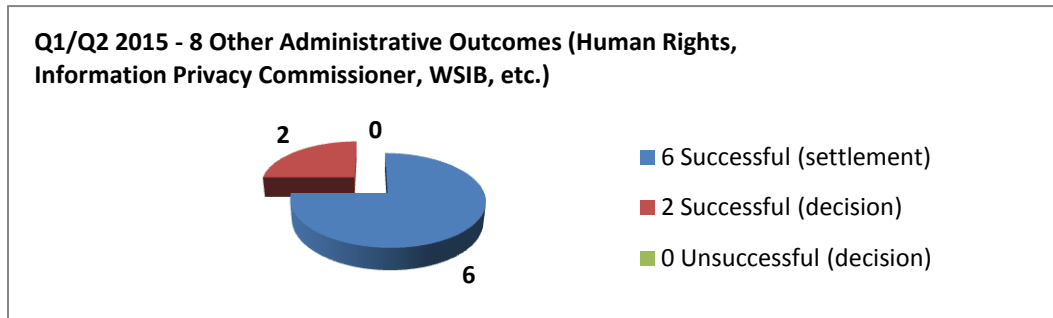
- i. This claim relates to a dispute between the Plaintiff and Finance regarding the taxes, penalties and interest being charged for property the Plaintiff owned. The trial centered around the reasons as to why the Plaintiff did not receive their tax bill. While the Plaintiff never provided the City with an alternative address to mail the tax bill, as required by Section 343 of the *Municipal Act, 2001*, the Deputy Judge found the City liable for not sending the bill to the correct address. The amount paid (\$3,636.13) only included the interest accumulated from the tax bill since late 2011 as well as the pre and post judgment interest.

Figure 5 - OMB Outcomes



Reason for Unsuccessful Outcomes:

- i. *261, 265, 271, 275, 281 Laurier Ave. E & 400 Friel* - The application was to permit a nine storey purpose-built student residence. The Ontario Municipal Board acknowledged that Sandy Hill is largely a low profile area but noted that in the vicinity of the proposed building there were several mid-rise and high-rise buildings. The Board was of the view that the proposed building was appropriately designed and would have no negative impact on the area and therefore approved the official plan amendment and zoning by-law amendment.
- ii. *OPA 117 (Centretown)* - The City was successful in certain aspects of this case, such as the policies for secondary traditional mainstreets, height limits in lower profile areas and permissions for non-residential uses. However, with respect to height limits through the majority of the area, the Ontario Municipal Board did not approve the specific limits sought by the City as the Board was of the view that it was not open to the Official Plan to provide for such precise limits. Leave to appeal this decision is being sought from Divisional Court.

Figure 6 - Other Administrative Outcomes

Corporate Development and Environmental Law Branch (“CDEL”)

The CDEL Branch, in the first and second quarters of 2015, provided key legal support for various projects and strategic initiatives of the City within the current Term of Council Priorities. Some of the highlights of the varied services provided by in-house legal staff include the following:

1. Arts Court: Legal Services, in conjunction with external legal counsel and Real Estate Partnership and Development Office (REPDO) completed the legal agreements for the Arts Court Redevelopment Project which closed on July 31, 2015.
2. U-Pass Agreement/Algonquin College: Legal Services assisted Transit Services in negotiating and finalizing a U-Pass agreement with Algonquin College and the Algonquin Students Association to provide the U-Pass to full-time students starting in the fall of 2015. The agreement will be used as a model agreement for renewals with other existing U-Pass institutions.
3. Legal Services provided legal assistance to Economic Development staff on the new term for BIA Boards, *Municipal Act, 2001* requirements for appointments, Annual General Meetings and Council approval process, vacancies, and re-appointments.
4. Legal Services, in conjunction with Community and Social Services Department, reviewed and concluded an agreement between the Province of Ontario-Minister of Education and the City to provide for provincial funding in the amount of \$84,806,440 to the City for the administration and provision of child care services, fee subsidies, wage enhancement for eligible child care program staff, repair and maintenance of equipment, family support programs and Ontario Early Years Centre

services under the *Day Nurseries Act*, the *Ministry of Community and Social Services Act*, and the *Ontario Works Act, 1997*.

5. Legal Services, in conjunction with Parks, Recreation and Cultural Services Department, reviewed, negotiated revisions and concluded an agreement between the City and “Service Coordination for Persons with Special Needs”, a not-for-profit corporation funded by the provincial government, to provide for funding up to a maximum of \$432,379.00 for the City to deliver therapeutic recreation programs to adults with developmental disabilities where participants take part in a variety of social, recreational and leisure programs customized to their individual needs in order to improve functional abilities. The programs are delivered by staff in the Parks, Recreation and Cultural Services Department and operate during day time hours in City operated facilities.

Table 2 - CDEL Metrics for Q1 and Q2

	Routine	Moderately Complex	Complex	Total
Agreements & Contracts Reviewed/Drafted	176	197	87	460
Reports Reviewed/Drafted	163	93	27	283
Real Estate Purchases & Sales*				48
Tax Sale Registrations, Property Standards Orders, Grow Op Orders				88
By-Laws Reviewed/Drafted				160

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

Table 3 - CDEL Metrics - Planning and Development

Development Agreements Received

	Routine	Moderately Complex	Complex	Total
Subdivision	1	25	12	38
Site Plan Control	31	13	7	51
Condominium	6	2		8
Other (i.e. cash-in-lieu, development, demolition, easement, front-ending, s. 37)	71	29		100

Miscellaneous Development Requests Processed

	Routine	Moderately Complex	Complex	Total
Severance	53	30	8	91
By-laws (Road Opening/Closing	14	11		25

Releases/Development Charge Deferrals	45	3		48
Compliance	38	1		39
Part Lot Exemption	32			32
Early Servicing		16		16

Definitions:

Routine – Standard form agreements regularly seen and reviewed in routine legal practice and requiring basic analysis by Law Clerks and Legal Counsel (e.g. easements, encroachment/traffic signal/private road/cash-in-lieu of parking agreements, etc.).

Moderately Complex – Agreements where no template exists and requiring research, review and analysis (e.g. inter-governmental MOUs and/or SLAs, commercial real estate transactions, site plan agreements, joint-use/cost-sharing agreements, etc.) by Law Clerks, Legal Counsel and occasionally more senior Legal Counsel. Monitoring is necessary to ensure that all legal requirements are satisfied.

Complex – Unique agreements that necessitate detailed analysis requiring expertise in specialized practice areas (i.e. public-private partnerships, subdivision agreements, commercial leases, federal and provincial funding and/or contribution agreements, etc.). There are no existing precedents for complex agreements, which often include the preparation of complementary agreements, certificates or by-laws that typically require significant time or dedicated resources to research, prepare, review and/or analyze by Legal Counsel, more senior Legal Counsel and/or the Deputy City Solicitor. Ongoing monitoring of complex agreements is required to ensure that all legal requirements are satisfied.

External Legal Costs – Q1 2015

Firm	Portfolio/ Practice Area	Legal Fees	Taxes	Disburse- ments	Total
Borden, Ladner, Gervais	Corporate, Commercial, Development	\$124,493.50	\$16,242.52	\$1,032.62	\$141,768.64
Borden, Ladner, Gervais	Ottawa Light Rail Transit Project	\$91,269.20	\$11,880.64	\$180.48	\$103,330.32
Caza Saikaley	Litigation	\$46,471.37	\$7,858.37	\$14,181.53	\$68,511.27
Gowlings	Insured Litigated Claims	\$13,138.30	\$1,801.82	\$721.80	\$15,661.92
Gowlings	Litigation and Labour	\$12,676.40	\$1,655.28	\$56.44	\$14,388.12
Hicks, Morley	Labour and Employment	\$29,049.00	\$3,820.41	\$338.82	\$33,208.23
Lerners	Insured Litigated Claims	\$741.00	\$97.15	\$6.28	\$844.43
McCall, Dawson	Insured Litigated Claims	\$17,503.50	\$2,531.50	\$2,096.54	\$22,131.54
Nelligan O'Brien Payne	Employment Law	\$8,795.00	\$1,143.35	\$0	\$9,938.35

Osler	Ontario Municipal Board	\$22,015.00	\$2,898.58	\$281.74	\$25,195.32
Shillington's	Insured Litigated Claims	\$37,307.50	\$4,863.79	\$970.20	\$43,141.49
Totals		\$403,459.77	\$54,793.41	\$19,866.45	\$478,119.63

External Legal Costs – Q2 2015

Firm	Portfolio/ Practice Area	Legal Fees	Taxes	Disburse- ments	Total
Borden, Ladner, Gervais	Corporate, Commercial, Development	\$275,206.20	\$36,085.85	\$3,505.60	\$314,797.65
Borden, Ladner, Gervais	Ottawa Light Rail Transit Project	\$184,210.40	\$24,306.93	\$2,766.75	\$211,284.08
Caza Saikaley	Litigation	\$174,660.67	\$32,722.93	\$77,092.42	\$284,476.02
Conway Baxter Wilson	Corporate, Commercial, Development	\$4,625.00	\$603.57	\$17.86	\$5,246.43
Gowlings	Litigation	\$50,466.40	\$6,900.69	\$2,615.13	\$59,982.22
Gowlings	Insured Litigated Claims	\$7,382.70	\$1,075.38	\$888.26	\$9,346.34
Hicks, Morley	Labour and Employment	\$9,367.50	\$1,373.47	\$1,197.64	\$11,938.61
Lerners	Insured Litigated Claims	\$31,636.50	\$4,277.60	\$1,394.90	\$37,309.00
McCall, Dawson	Insured Litigated Claims	\$16,216.50	\$2,374.66	\$2,050.07	\$20,641.23
Nelligan O'Brien Payne	Employment Law	\$2,502.50	\$329.80	\$34.46	\$2,866.76
Shillington's	Insured Litigated Claims	\$18,166.00	\$2,369.91	\$640.00	\$21,175.91
Steiber Berlach	Insured Litigated Claims	\$1,973.00	\$267.90	\$87.75	\$2,328.65
Totals		\$776,413.37	\$112,688.69	\$92,290.84	\$981,392.90

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 and the principals of the *Delegation of Powers Policy* and the *Accounting and Transparency Policy* with respect to a corresponding account and follow up mechanisms for every delegation from Council. As such, no consultation was undertaken.

LEGAL IMPLICATIONS

There are no legal impediments to receiving this report for information. Some settlements referenced here are subject to the confidentiality requirements that commonly form part of a claim resolution. Should further details be sought on those matters, Councillors may contact the Office of the City Clerk and Solicitor directly.

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.