

**5. COMPREHENSIVE LEGAL SERVICES REPORT FOR THE PERIOD
JANUARY 1 TO JUNE 30, 2021
RAPPORT GÉNÉRAL SUR LES SERVICES JURIDIQUES POUR LA
PÉRIODE DU 1 JANVIER AU 30 JUIN 2021**

COMMITTEE RECOMMENDATIONS

That Council:

- 1. Receive this report for information and;**
- 2. Approve that the unanticipated cost of the City's 2021-2022 annualized insurance renewal be funded through the City's Tax Stabilization Reserve Fund.**

RECOMMANDATIONS DU COMITÉ

Que le Conseil :

- 1. prenne acte du présent rapport à titre d'information;**
- 2. consente à ce que les coûts imprévus de renouvellement annuel des assurances municipales pour 2021-2022 soient financés au moyen du fonds de réserve pour la stabilisation des taxes de la Ville.**

DOCUMENTATION/DOCUMENTATION

- 1. General Manager's report, Innovative Client Services Department, dated August 26, 2021 (ACS2021-ICS-LEG-0002)**

Rapport de la Directrice générale, Services novateurs pour la clientèle, daté le 26 août 2021, (ACS2021-ICS-LEG-0002)

**Report to
Rapport au:**

**Finance and Economic Development Committee
Comité des finances et du développement économique
7 September 2021 / 7 septembre 2021**

**and Council
et au Conseil
22 September 2021 / 22 septembre 2021**

**Submitted on August 26, 2021
Soumis le 26 août 2021**

**Submitted by
Soumis par:
Valerie Turner, General Manager, Innovative Client Services/
Directrice générale, Services novateurs pour la clientèle**

**Contact Person
Personne ressource:
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Ward: CITY WIDE / À L'ÉCHELLE DE LA VILLE File Number: ACS2021-ICS-LEG-0002

**SUBJECT: Comprehensive Legal Services Report for the Period January 1 to
June 30, 2021**

**OBJET: Rapport Général sur les Services juridiques pour la période du 1
janvier au 30 juin 2021**

REPORT RECOMMENDATIONS

That the Finance and Economic Development Committee recommend that Council:

- 1. Receive this report for information and;**
- 2. Approve that the unanticipated cost of the City's 2021-2022 annualized insurance renewal be funded through the City's Tax Stabilization Reserve Fund.**

RECOMMANDATIONS DU RAPPORT

Le Comité des finances et du développement économique recommande que le Conseil :

- 1. prenne acte du présent rapport à titre d'information;**
- 2. consente à ce que les coûts imprévus de renouvellement annuel des assurances municipales pour 2021-2022 soient financés au moyen du fonds de réserve pour la stabilisation des taxes de la Ville.**

EXECUTIVE SUMMARY

This report details the work undertaken and results achieved by Legal Services in the first and second 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 with respect to the recent renewal of the City's insurance program for the 2021-2022 policy term.

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 33 of 36 cases concluded in the first two quarters of 2021. The costs associated with the settlement of eight 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 454 litigated matters being referred to external counsel.

Legal Services also continued its support of a number of key City initiatives in Q1 and Q2 2021. Further, Legal Services drafted or reviewed 453 legal agreements and contracts in Q1 and Q2 2021 and processed more than 275 development agreements and requests.

In terms of outsourcing costs in Q1 and Q2 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 aux premier et deuxième 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 donne également de l'information sur le renouvellement récent du programme d'assurance de la Ville pour la période 2021-2022.

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 33 des 36 affaires conclues au cours des deux premiers trimestres de 2021. Par ailleurs, les coûts associés au règlement de huit 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 sont traités à l'interne, moins de 14 % des 454 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 453 accords juridiques et contrats, et traité plus de 275 ententes et demandes d'aménagement.

Quant aux coûts de sous-traitance, ils se rapportaient, comme par le passé, à 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 2021.

DISCUSSION

Civil litigation / labour and employment

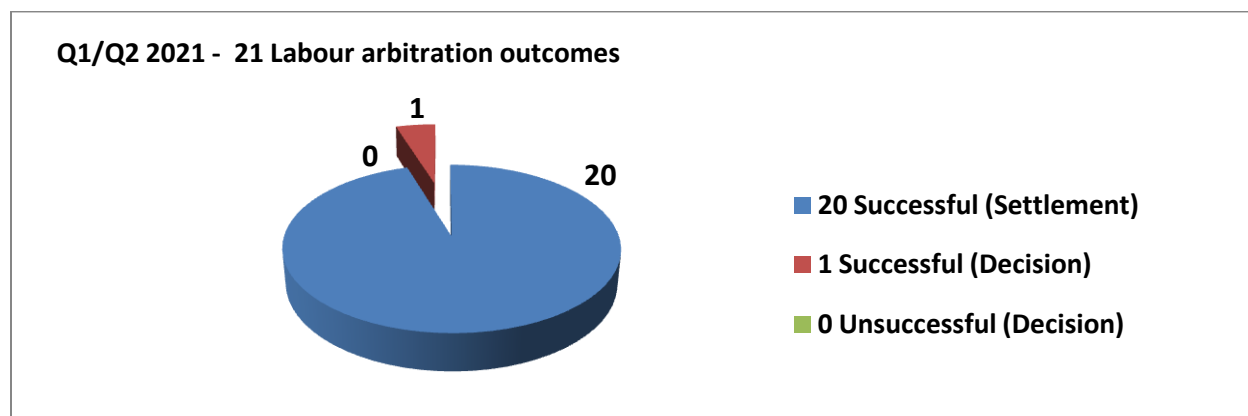
In keeping with the format developed as part of the initial Comprehensive Legal Services Report, outlined below is the litigation record for the 2021 first and second quarters, as well as an overview of claims received and concluded in that same period.

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

Figure 1 - Labour arbitration outcomes

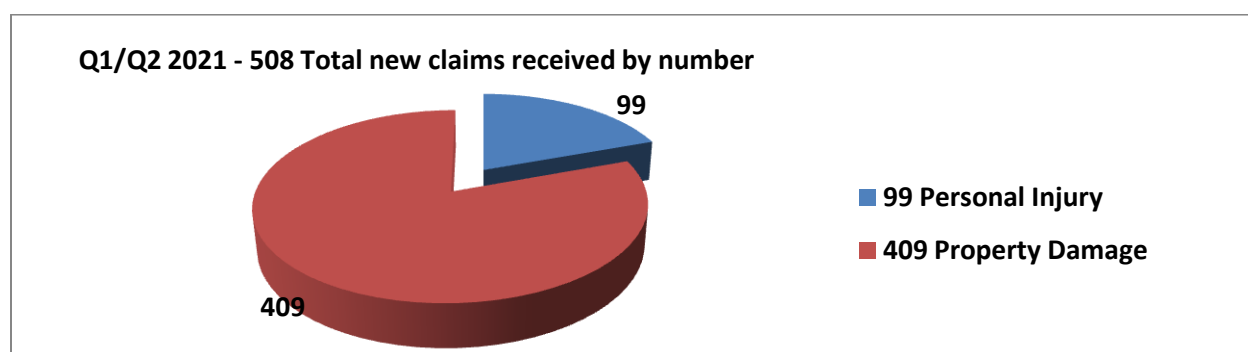


(b) Claims Unit

The Claims Unit received a total of 508 new claims in the first two quarters of 2021. This figure is made up of 409 property damage claims and 99 personal injury claims that were filed with the Unit. Of the total number of new claims received during this period, 79 (15 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 508 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 475 claims in the first two quarters of 2021. This figure represents the 375 property damage claims and 100 personal injury claims that were either closed-settled or closed-denied during this period. A summary of the 172 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

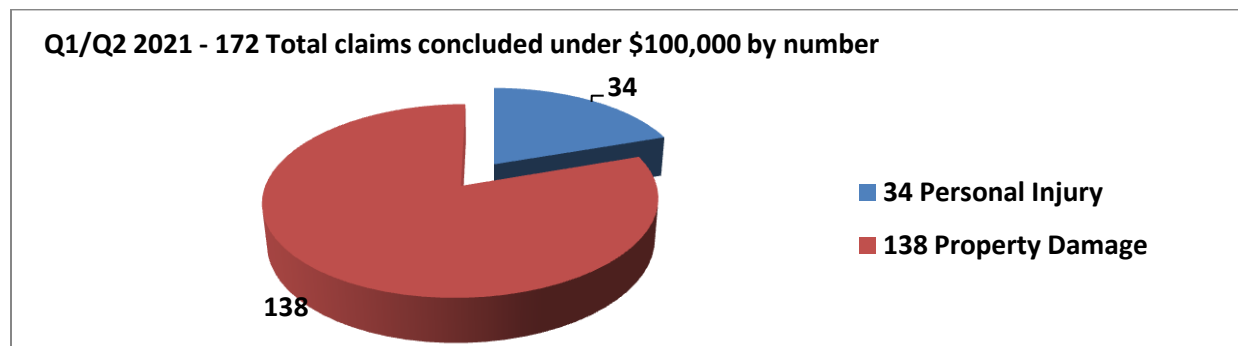


Figure 4 - Claims concluded under \$100,000 by value

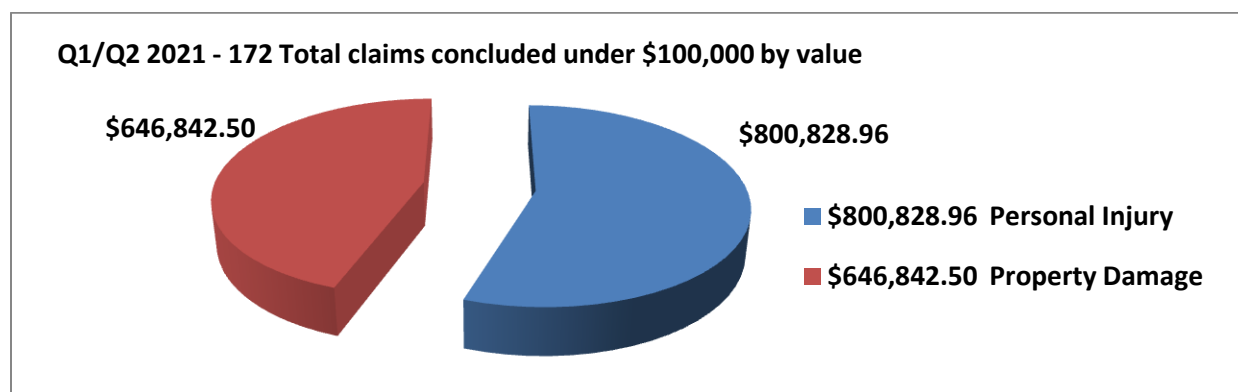


Table 1 - Claims concluded over \$100,000 – Q1 and Q2 2021

Department	Category	Claim Type	Net City Cost
Planning, Infrastructure and Economic Development	Property Damage or Loss	Breach of Contract	\$289,612.50
Public Works and Environmental Services	Bodily/Personal Injury	Third Party Vehicle-Snow Removal and Maintenance	\$350,397.42
Public Works and Environmental Services	Bodily/Personal Injury	Trip and Fall	\$203,499.55
Public Works and Environmental Services	Bodily/Personal Injury	City and Third Party Vehicle MVA	\$234,650.50
Recreation, Cultural and Facility Services	Bodily/Personal Injury	City and Third Party Vehicle MVA	\$152,728.80
Transportation Services	Bodily/Personal Injury	Third Party Vehicle MVA-Signage/Markings	\$768,040.24
Transportation Services	Bodily/Personal Injury	City Vehicle-Pedestrian/Cyclist	\$100,974.00

Transportation Services	Bodily/Personal Injury	Losses Onboard City Vehicle	\$150,000.00
		Total:	\$2,249,903.01

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 first and second quarters of 2021, 66 new Statements of Claim were received by Legal Services. With these, there are currently 454 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 over 86 per cent, with less than 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 is set out below in Figures 5, 6 and 7.

Figure 5 - Civil litigation outcomes

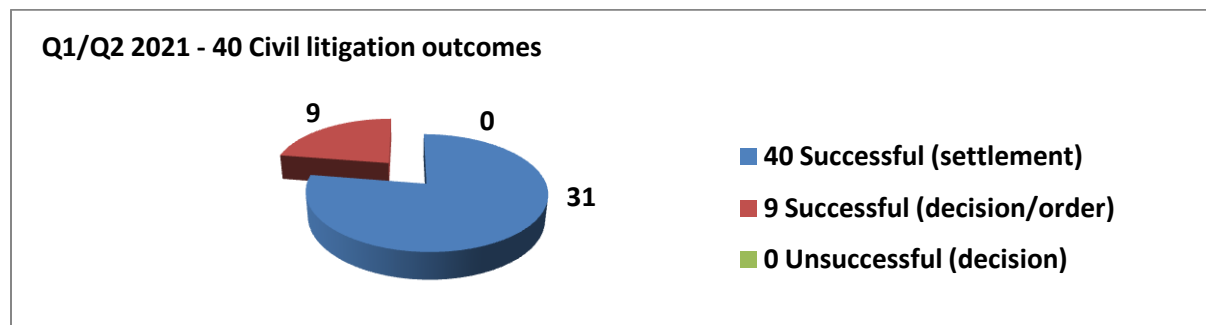
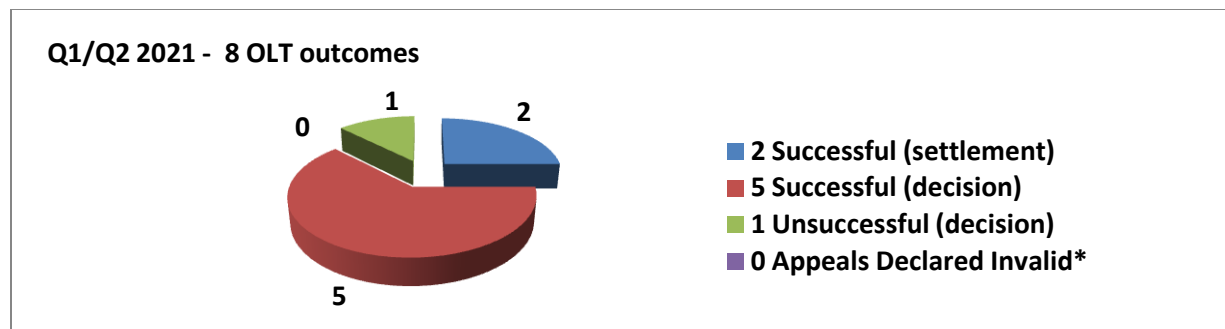


Figure 6 – OLT outcomes

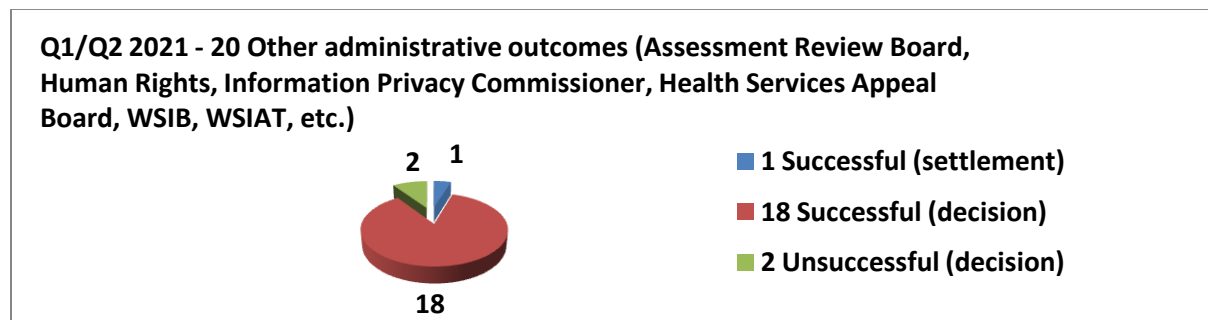


*Appeals Declared Invalid – these numbers reflect appeals to OLT that did not meet the tests of raising issues of inconsistency with the Provincial Policy Statement and/or non-conformity with the Official Plan.

Reason for unsuccessful outcome:

1. The unsuccessful outcome was in respect of a hearing regarding subdivision conditions at 3370 Greenbank. The City sought 2.16 ha of land at no cost from a 15.5 ha subdivision for the purposes of the realignment of Greenbank Road, including embankments for bridge approaches and the extension of the Southwest Transitway. The Tribunal held that these works were largely for the benefit of the developing area to the south of the subdivision and that the conditions therefore did not meet the test of reasonable, relevant, necessary, and equitable established in caselaw for conditions to be justifiable.

Figure 7 - Other administrative outcomes



Reasons for unsuccessful outcomes:

1. This case relates to a claim for a redetermination of Non-Economic Loss (NEL) relating to the worker’s injury. While the initial decision of the Workplace Safety and Insurance Board (WSIB) was that the worker was not entitled to a redetermination of NEL benefits, on appeal, the Appeals Resolution Officer found

that the medical evidence on file supported the worker's claim that there had been a significant deterioration. As a result, the worker was found to be entitled to a redetermination and the matter has been referred back to the Board for redetermination of NEL.

2. This case involved an appeal to the Workplace Safety and Insurance Tribunal of a WSIB decision denying entitlement to benefits for a claimed repetitive stress injury. The Tribunal accepted the evidence of the worker's chiropractor that the symptoms were compatible with the work in question and that the onset of pain occurred closely enough to the work to support continuity of the incident and the injury and therefore reversed the WSIB initial decision.

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

Legal Services, in the first and second 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. COVID-19 emergency response:

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. Rail transportation matters:

Legal Services provided 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 Prince of Wales 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. Road, lanes, cycling and pedestrian transportation matters:

Legal Services provided 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.

Table 2 - General agreements and contracts – Metrics

General Agreement/Contract Type	Routine	Moderately Complex	Complex	Total
Agreements and Contracts Reviewed/Drafted	212	194	47	453
Reports Reviewed/Drafted	90	63	26	179
Real Estate Purchases and Sales	8	31	7	46
Light Rail Land Purchases	4	4	0	8
Tax Sale Registrations, Property Standards Orders	44	0	0	44
By-laws Reviewed/Drafted	123	17	8	148
Construction Lien Payments Reviewed / Processed	82	n/a	n/a	82

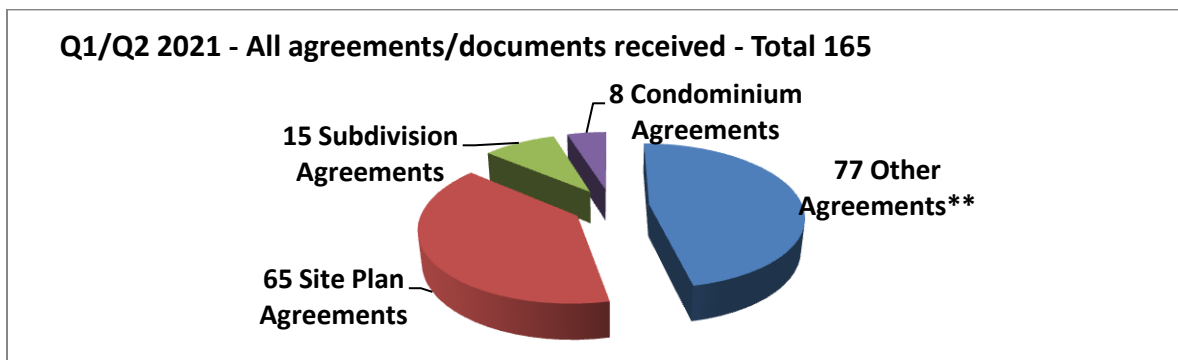
Planning, Development and Real Estate

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 2021, 165 individual documents were logged by the Development Law Unit that were required for drafting and registration. Of these 165 requests, 93 per cent were considered routine; 4 per cent were considered moderately

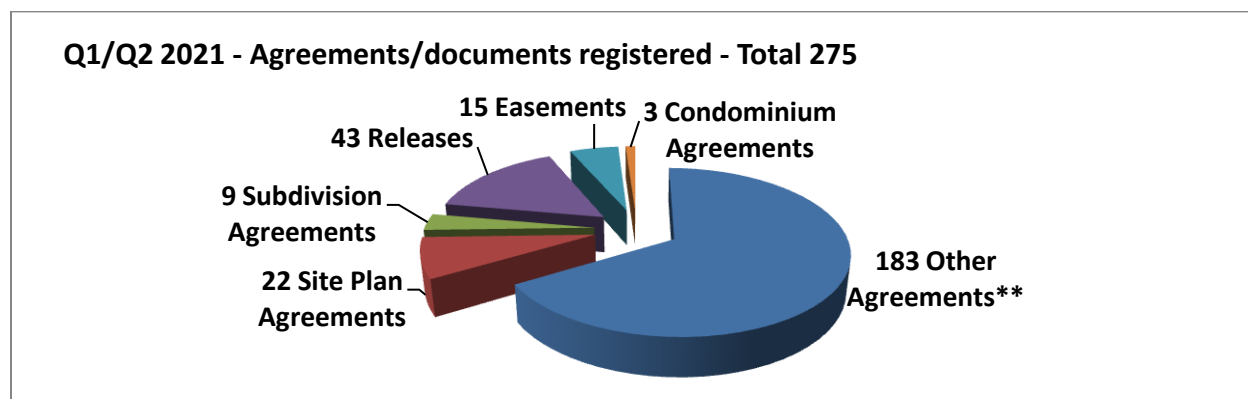
complex; and 3 per cent were considered complex. A summary is set out below in Figure 8 (by type).

Figure 8 - All agreements/document requests received - Total



The Unit also completed registration on 275 individual agreements and documents in the first and second quarters of 2021. Of these 275 documents registered, 89 per cent were considered routine; 6 per cent were considered moderately complex and 5 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 2021

Firm	Portfolio/ Practice Area	Legal Fees	Disbursements	Taxes	Total
Borden, Ladner, Gervais	Corporate, Commercial, Development	\$342,809.60	\$9,631.57	\$45,724.03	\$398,165.20

Cunningham Swan Cart	Corporate, Commercial, Development	\$998.50	\$0	\$129.81	\$1,128.31
Agro Zaffiro LLP	Insured Litigated Claims	\$330.00	\$1,024.00	\$176.02	\$1,530.02
Borden, Ladner, Gervais	Insured Litigated Claims	\$8,797.00	\$1,864.74	\$1,356.77	\$12,018.51
Caza Saikaley	Insured Litigated Claims	\$30,597.52	\$1,305.34	\$4,147.45	\$36,050.31
Emond Harnden	Insured Litigated Claims	\$18,648.50	\$0	\$2,424.38	\$21,072.88
Gowlings	Insured Litigated Claims	\$47,266.30	\$1,486.89	\$6,370.04	\$55,123.23
Lerners	Insured Litigated Claims	\$0	\$3,891.75	\$505.93	\$4,397.68
Emond Harnden	Labour and Employment	\$64,427.50	\$465.56	\$8,436.45	\$73,329.51
Borden, Ladner, Gervais	Light Rail Project	\$88,412.80	\$11,564.40	\$12,997.03	\$112,974.23
Norton Rose	Light Rail Project	\$11,100.00	\$0	\$1,443.00	\$12,543.00
Singleton Urquhart	Light Rail Project	\$44,899.65	\$53,840.00	\$12,836.17	\$111,575.82
Caza Saikaley	Litigation	\$52,953.51	\$1,735.51	\$7,109.58	\$61,798.60
Gowlings	Litigation	\$9,498.50	\$0	\$1,234.82	\$10,733.32
Totals:		\$720,739.38	\$86,809.76	\$104,891.48	\$912,440.62

Table 4 - External legal costs – Q2 2021

Firm	Portfolio/ Practice Area	Legal Fees	Disbursements	Taxes	Total
Aird & Berlis	Corporate, Commercial, Development	\$9,880.00	\$0	\$1,284.40	\$11,164.40
Borden, Ladner, Gervais	Corporate, Commercial, Development	\$180,754.60	\$50,788.70	\$30,083.71	\$261,627.01
Cunningham Swan Cart	Corporate, Commercial, Development	\$2,384.50	\$26.87	\$313.48	\$2,724.85

Borden, Ladner, Gervais	Insured Litigated Claims	\$14,387.00	\$2,599.10	\$2,184.42	\$19,170.52
Caza Saikaley	Insured Litigated Claims	\$1,896.75	\$0	\$246.61	\$2,143.36
Emond Harnden	Insured Litigated Claims	\$19,145.00	\$0	\$2,488.97	\$21,633.97
Gowlings	Insured Litigated Claims	\$50,648.50	\$56,435.16	\$14,035.69	\$121,119.35
Lerners	Insured Litigated Claims	\$15,850.50	\$1,205.54	\$2,217.34	\$19,273.38
Emond Harnden	Labour and Employment	\$81,522.50	\$50.00	\$10,604.92	\$92,177.42
Borden, Ladner, Gervais	Light Rail Project	\$102,841.30	\$1,915.23	\$13,601.36	\$118,357.89
Norton Rose	Light Rail Project	\$40,747.00	\$0	\$5,297.11	\$46,044.11
Singleton Urquhart	Light Rail Project	\$395,091.45	\$696,434.48	\$141,898.40	\$1,233,424.33
Caza Saikaley	Litigation	\$38,397.85	\$240.11	\$5,016.00	\$43,653.96
Gowlings	Litigation	\$7,379.00	\$0	\$959.28	\$8,338.28
Totals:		\$960,925.95	\$809,695.19	\$230,231.69	\$2,000,852.83

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 2021-2022

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 what is known as 'excess' insurance. The City also maintains a deductible or self-insured retention (SIR) that

requires the City to pay the first specified amount of claims 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 proven challenging. External factors such as the general hardening of the 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 2021-2022 renewal year rose by \$850,000, which constitutes an increase of 12.6 per cent over the prior year. In consultation with the Chief Financial Officer, it is proposed that the amount in excess of the budgeted premiums be paid from the City's Tax Stabilization Reserve Fund.

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.

COMMENTS BY THE WARD COUNCILLOR(S)

This is a City-wide report.

ADVISORY COMMITTEE(S) COMMENTS

No advisory committee comments were collected for the purposes of this report.

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

The additional insurance premium costs for the City's Insurance Program for 2021 – approximately \$850 thousand – will be funded through the Tax Stabilization Reserve Fund.

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.

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.