

**Comprehensive Legal Services Report for the Period October 1<sup>st</sup> to  
December 31<sup>st</sup>, 2013**

**Rapport général sur les services juridiques pour la période du 1<sup>er</sup> octobre  
au 31 décembre 2013**

**COMMITTEE RECOMMENDATION**

**That Council receive this report for information.**

**RECOMMANDATION DU COMITÉ**

**Que le Conseil municipal prenne connaissance du présent rapport.**

**DOCUMENTATION / DOCUMENTATION**

1. M. Rick O'Connor, City Clerk and Solicitor, report dated January 28, 2014  
(ACS2014-CMR-LEG-0002)  
  
M. Rick O'Connor, Greffier municipal et chef du contentieux, rapport daté du 28  
janvier 2014 (ACS2014-CMR-LEG-0002)

**Report to  
Rapport au:**

**Finance and Economic Development Committee  
Comité des finances et du développement économique**

**and Council  
et au Conseil**

**January 28, 2014  
28 janvier 2014**

**Submitted by  
Soumis par:**

**M. Rick O'Connor, City Clerk and Solicitor / Greffier et Chef du contentieux**

**Contact Person**

**Personne ressource:**

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**Ward: CITY WIDE / À L'ÉCHELLE DE LA VILLE      File Number: ACS2014-CMR-LEG-0002**

**SUBJECT: Comprehensive Legal Services Report for the Period October 1<sup>st</sup> to  
December 31<sup>st</sup>, 2013**

**OBJET: Rapport général sur les services juridiques pour la période du 1<sup>er</sup>  
octobre au 31 décembre 2013**

## **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 25<sup>th</sup>, 2011. The new report format originated from a Motion that was passed by Council on April 27<sup>th</sup>, 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.”

The information provided herein is with respect to the fourth quarter of 2013.

## DISCUSSION

### **Litigation and Labour Relations Branch**

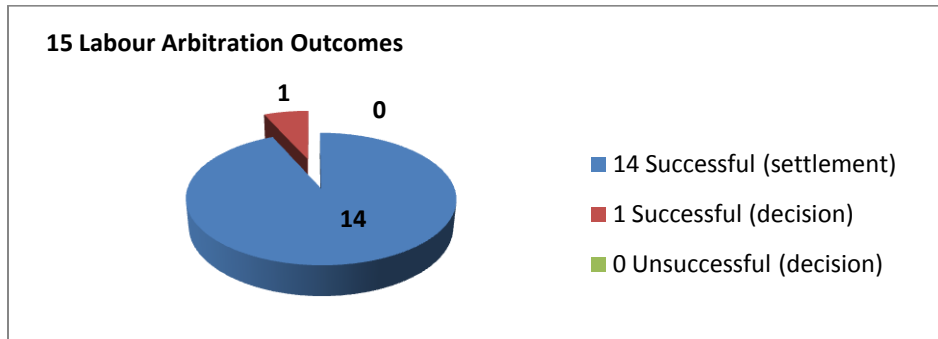
In keeping with the format developed as part of the initial Comprehensive Legal Services Report, outlined below is the litigation record for the Branch for the 2013 fourth quarter, as well as an overview of claims concluded in that same period.

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 Q4 is set out below in Figure 1.

Figure 1 - Labour Arbitration Outcomes



(b) Claims Unit

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

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

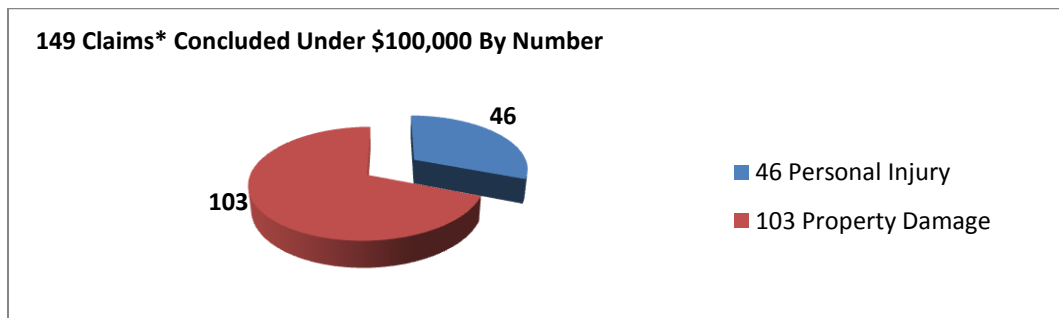
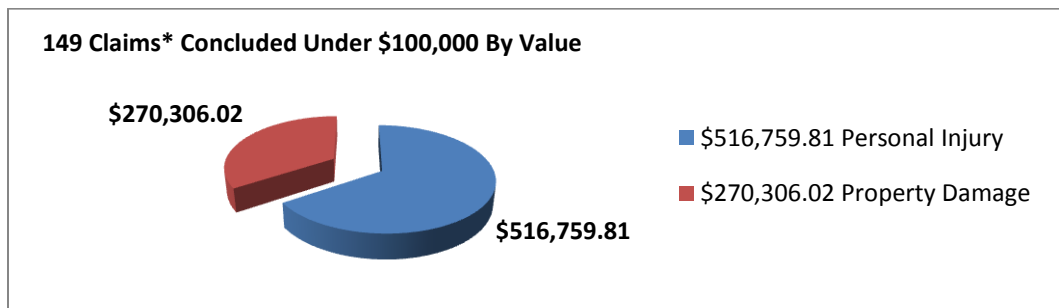


Figure 3 - Claims Concluded Under \$100,000 By Value



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

Table 1 - Claims concluded over \$100,000 – Q4 2013

Department	Category	Claim Type	Net City Cost
Public Works	Bodily/Personal Injury	Other Third Party – Bodily Injury	\$125,015.00
Public Works	Property Damage or Loss	Damage from Tree Roots	\$276,243.00
Transit Services	Bodily/Personal Injury	City Vehicle Hitting Pedestrian/Cyclist	\$388,258.64
Transit Services	Bodily/Personal Injury	City Vehicle Hitting Pedestrian/Cyclist	\$360,000.00
Transit Services	Bodily/Personal Injury	Losses while Boarding/Exiting City Vehicle	\$250,678.00
Transit Services	Bodily/Personal Injury	Losses while Boarding/Exiting City Vehicle	\$129,880.61
Transit Services	Bodily/Personal Injury	MVA, City and Third Party Vehicle	\$239,826.69
		<b>TOTAL:</b>	\$1,769,901.94

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 fourth quarter, 34 new Statements of Claim were received by the Litigation and Labour Relations Branch. With these, there are currently 306 outstanding civil proceedings against the City that are being addressed by the Branch. Of these open files, carriage of over 93% rests with the City's in-house Legal staff, with less than 7% 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 Q4 is set out below in Figures 4, 5 and 6.

Figure 4 - Civil Litigation Outcomes

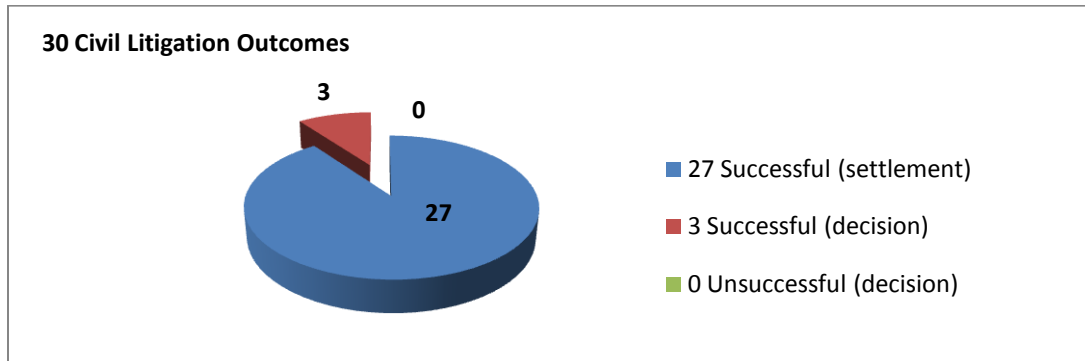
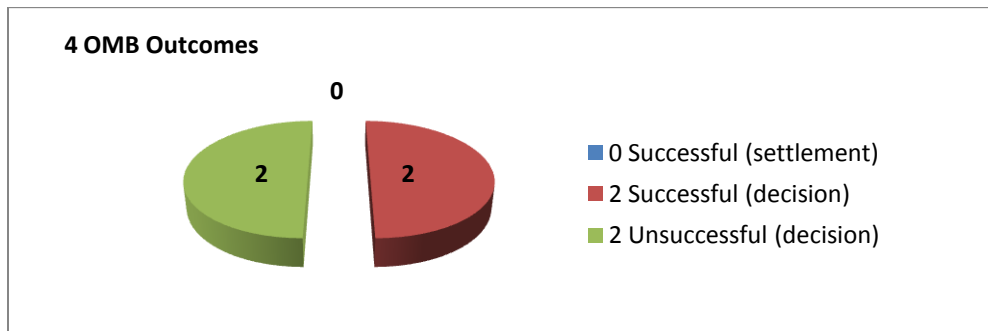


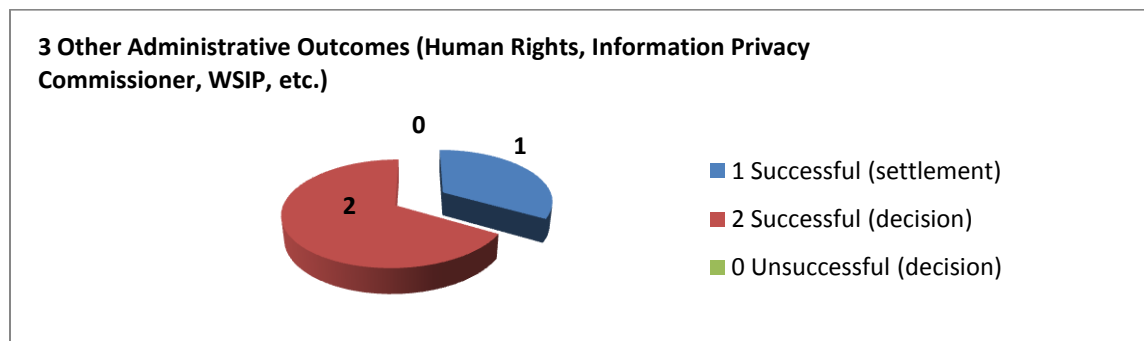
Figure 5 - OMB Outcomes



**Reason for Unsuccessful Outcomes:**

- (i) This Ontario Municipal Board appeal concerned an application for minor variance that was not supported by City staff, and which was turned down by the Committee of Adjustment. The Appellants sought a minor variance to permit an additional on-site, non-resident employee whereas Section 127 of City of Ottawa Zoning By-law 2008-250 (Home-Based Business Provisions) permits a maximum of one on-site, non-resident employees per dwelling unit. The subject property is zoned R1AA. The Appellants use part of the dwelling as administrative offices for their roofing business. City staff did not support the variance on the basis that permitting a second non-resident employee would unduly interfere with the residential character of the neighbourhood and that more employees was suggestive of a commercial use in a residential zone which could become a nuisance. Adjacent neighbours also opposed the variance on the basis of traffic and parking impact. The appeal was heard on November 27, 2013. The Chair agreed with the Appellants that the requested variance met the 4 part test under the *Planning Act* for granting a minor variance and allowed the appeal.
- (ii) The subject property is an existing lot purchased by the Appellant in 2007. The subject property is in the General Rural Area and is zoned RU. It has no frontage on a public highway and is accessed via right of way from Sixth Line Road. The zoning requires at least 50 metres of frontage on a public highway. The Appellant sought a minor variance removing the frontage requirement, which the City opposed on the grounds that the variance was not minor in nature. The Committee of Adjustment denied the application on July 3, 2013, and the owner appealed to the Ontario Municipal Board. The Board heard the Appeal on November 28, 2013. The main issue was whether or not the variance was minor in nature. The Chair agreed with the Appellant that the intent of the frontage provisions was to allow access, and that the property was already accessible via right of way. The Board found that the 4 tests for granting the minor variance were met and allowed the appeal.

Figure 6 - Other Administrative Outcomes



### Corporate Development and Environmental Law Branch (“CDEL”)

The CDEL Branch, in the fourth quarter of 2013, 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. **Transportation Master Plan, Ottawa Cycling and Pedestrian Plans** – in-house legal staff provided ongoing support and advice to staff in Planning and Growth Management and Transit Services in the finalization of these Plans which were approved by Council on November 26, 2013.
2. **Ottawa Community Lands Development Corporation** – in-house legal staff provided ongoing support, advice and services for the registration of a plan of subdivision and subdivision agreement for the sales of land totalling \$15 M.
3. **Intergovernmental Working Relationships (Ministry of Finance)** – in-house legal staff participated in a series of consultations with staff from the Ministry of Finance, MPAC and private sector lawyers on proposed improvements to legislation related to municipal taxation and assessment as well as to the Assessment Review Board.
4. **Ontario Renovates Program** – in-house legal staff provided ongoing support, advice and services to staff in the Housing Services Branch for 33 funding agreements to provide funding to eligible residents and, to date, \$538,345.72 has been allocated from the available budget of \$1.2 M.
5. **City’s Renewable Community Funding Envelope** – in-house legal staff have provided support, advice and services to staff in Community and Social Services in



the preparation and execution of eleven community funding contribution agreements for not-for-profit corporations for the provision of community support programs for vulnerable and disadvantaged residents and communities.

**Table 2 - CDEL Metrics for Q4**

	<b>Routine</b>	<b>Moderately Complex</b>	<b>Complex</b>	<b>Total</b>
Agreements & Contracts Reviewed/Drafted	150	101	36	287
Reports Reviewed/Drafted	67	35	7	109
Real Estate Purchases & Sales*				20
Tax Sale Registrations, Property Standards Orders, Grow Op Orders				55
By-Laws Reviewed/Drafted				53

\*Stats do not include work required in processing outsourced transactions including light rail land acquisitions.

**Table 3 - CDEL Metrics - Planning and Development**

<b>Development Agreements* Received</b>				
	<b>Routine</b>	<b>Moderately Complex</b>	<b>Complex</b>	<b>Total</b>
Subdivision**		1	5	6
Site Plan Control	4	19		23
Condominium			1	1
Other (i.e. cash-in-lieu of parking, demolition, etc.)	35	5		40
<b>Miscellaneous Development Requests Processed</b>				
Severance	16			16
By-laws (Road Opening/Closing)	21	1		22
Releases/Development Charge Deferrals	23	3		26
Compliance	11			11
Part Lot Exemption	10			10
Early Servicing		4		4

\*The statistics for Development Agreements do not include associated registration such as transfers, easements, maintenance and liability agreements, and inhibiting orders as well as review of joint use and maintenance agreements.

\*\*Although no subdivision approvals were received in this quarter, Legal Services staff in the Unit registered 12 subdivisions as a result of approvals received in previous quarters.

## **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**

**Table 4 - External Legal Costs for Q4 2013**

<b>Firm</b>	<b>Portfolio/ Practice Area</b>	<b>Legal Fees</b>	<b>Taxes</b>	<b>Disburse- ments</b>	<b>Total</b>
Borden, Ladner, Gervais	Corporate, Commercial, Development	\$209,880	\$27,486	\$1,722	\$239,088
Borden, Ladner, Gervais	Ottawa Light Rail Transit Project	\$240,428	\$31,645	\$2,991	\$275,064
Caza Saikaley	Litigation	\$244,183	\$45,176	\$104,491	\$393,850
Gowlings	Insured Litigated Claims	\$1,611	\$219	\$77	\$1,907
Heenan,	Litigation and	\$119,132	\$ 16,012	\$4,274	\$139,418

<b>Firm</b>	<b>Portfolio/ Practice Area</b>	<b>Legal Fees</b>	<b>Taxes</b>	<b>Disburse- ments</b>	<b>Total</b>
Blaikie	Labour Law				
Hicks, Morley	Litigation and Labour Law	\$14,145	\$1,860	\$167	\$16,172
Lerners	Insured Litigated Claims	\$74,905	\$10,419	\$5,286	\$90,610
McCall, Dawson, Osterberg	Insured Litigated Claims	\$1,338	\$416	\$2,764	\$4,518
McMillan	Corporate, Commercial, Development	\$15,995	\$2,079	\$0	\$18,074
Smockum, Zarnett, Percival	Insured Litigated Claims	\$12,341	\$1,767	\$1,199	\$15,307
Weir Foulds	Corporate, Commercial, Development	\$50,000	\$6,898	\$3,061	\$59,959
<b>Totals</b>		<b>\$983,958</b>	<b>\$143,977</b>	<b>\$126,032</b>	<b>\$1,253,967</b>

Note: Not all of the costs above are charged to the Legal Services budget, namely, the costs with respect to the Ottawa Light Rail Transit Project and insured litigated claims.

\*In some instances, disbursement costs are paid directly to service providers.

## **RURAL IMPLICATIONS**

There are no rural implications associated with this report.

## **CONSULTATION**

As this is largely an administrative report issued on a quarterly basis, no consultation was undertaken.

## **LEGAL IMPLICATIONS**

Some settlements referenced here are subject to the confidentiality requirements that commonly form part of a clam 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.

## **TECHNOLOGY IMPLICATIONS**

There are no technology implications associated with this report.

## **TERM OF COUNCIL PRIORITIES**

Governance, Planning and Decision-Making

GP1 – Improve the public's confidence and satisfaction with the way Council works.

## **SUPPORTING DOCUMENTATION**

Document 1 – Aggregate Metrics for Q1 to Q4 2013 – Immediately follows the report

Document 2 – External Legal Costs for Q1 to Q4 2013 – Immediately follows the report

## **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 quarterly basis.

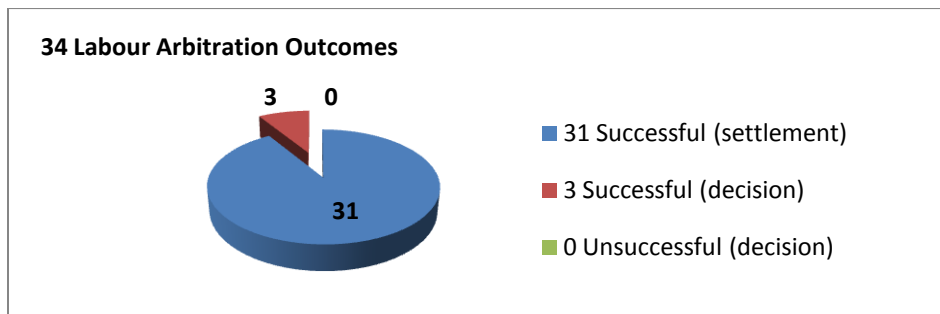
Document 1

Aggregate Metrics for Q1 to Q4 2013

Litigation and Labour Relations Branch

In keeping with the format used as part of the Q1-Q4 Comprehensive Legal Services Reports, the aggregate of litigation outcomes for 2013 is reproduced below. These figures include all forms of litigation, namely labour, civil, OMB and other miscellaneous tribunals.

**Figure 7 - Labour Arbitration Outcomes (Q1 to Q4 2013)**



**Figure 8 - Civil Litigation Outcomes (Q1 to Q4 2013)**

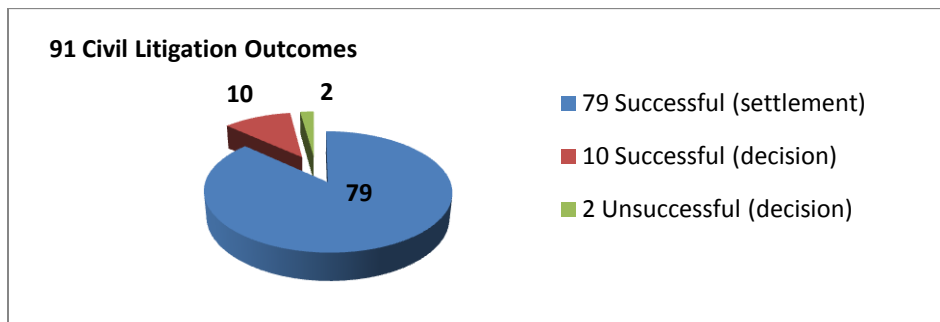


Figure 9 - OMB Outcomes (Q1 to Q4 2013)

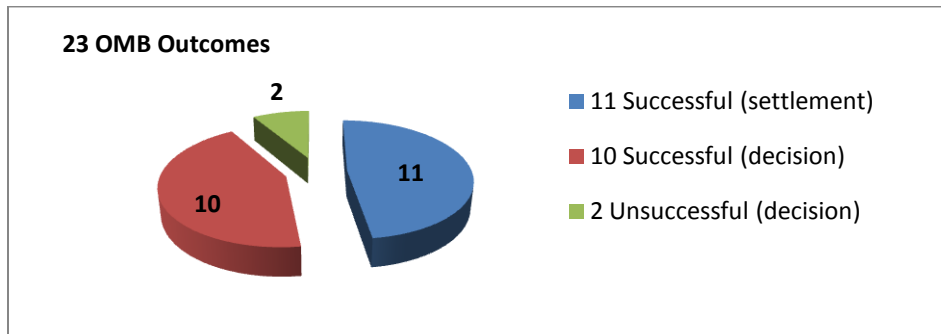
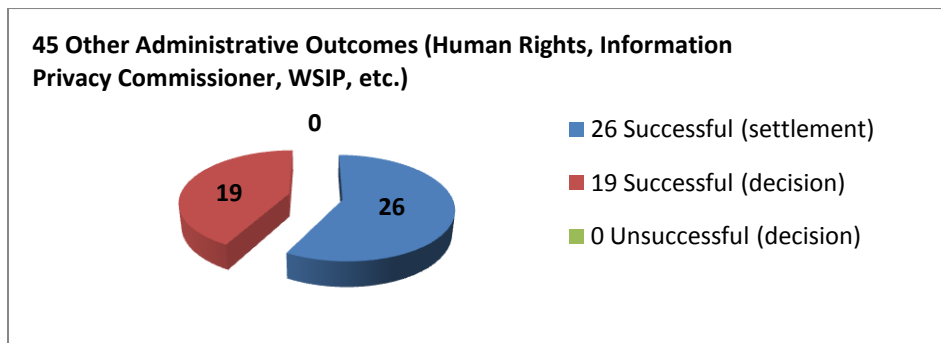


Figure 10 - Other Administrative Outcomes (Q1 to Q4 2013)



### Claims Unit

Figure 11 - Claims Concluded Under \$100,000 by Number (Q1 to Q4 2013)

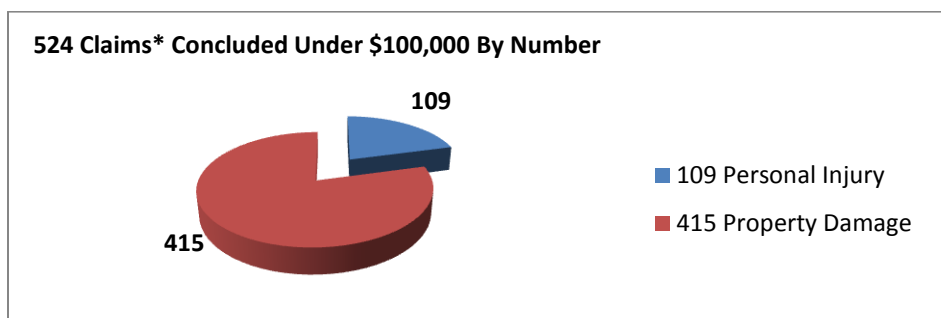


Figure 12 - Claims Concluded Under \$100,000 by Value (Q1 to Q4 2013)

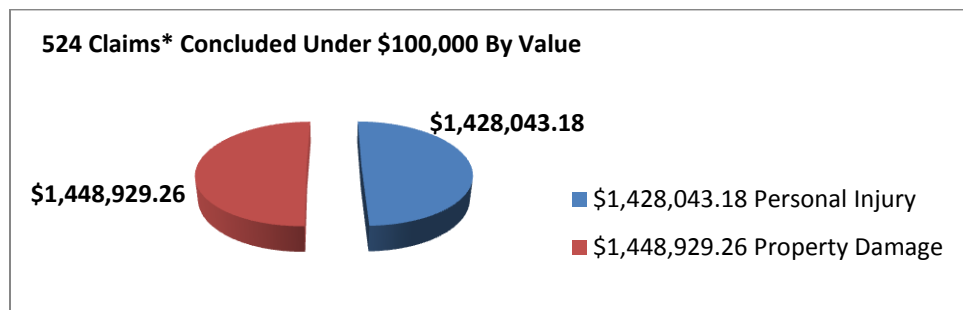


Table 5 - Claims Concluded over \$100,000 - Q1 to Q4 2013 (Grouped by Department and Claim Type)

Department	Category	Claim Type	Net City Cost
Infrastructure Services	Bodily/Personal Injury	Third Party Vehicle – Road Design/ Engineering	\$679,178.90
Infrastructure Services	Property Damage or Loss	Sewer Back-up – City Operations	\$392,482.61*
Public Works	Bodily/Personal Injury	Other Third Party Bodily Injury	\$296,223.51
Public Works	Bodily/Personal Injury	MVA, Accident Benefits	\$152,063.83
Public Works	Bodily/Personal Injury	Slip and Fall	\$126,582.00
Public Works	Property Damage or Loss	Damage from Tree Roots	\$276,243.00
Transit Services	Bodily/Personal Injury	Slip and Fall	\$250,483.00
Transit Services	Bodily/Personal Injury	Personal Injury	\$376,486.53
Transit Services	Bodily/Personal Injury	MVA, City and Third Party Vehicle	\$394,917.66
Transit Services	Bodily/Personal Injury	City Vehicle Hitting Pedestrian/Cyclist – Accident Benefits	\$2,703,363.84
Transit Services	Bodily/Personal Injury	City Vehicle Hitting Pedestrian/Cyclist	\$748,258.64

Transit Services	Bodily/Personal Injury	Losses while Boarding/Exiting City Vehicle	\$250,678.00
Transit Services	Bodily/Personal Injury	Losses while Boarding/Exiting City Vehicle – Accident Benefits	\$129,880.61
		<b>TOTAL:</b>	\$6,776,842.13

\*Note: This particular claim was initially reported as totalling \$461,409.33 on the 2013 Q1 Comprehensive Legal Services Report. However, the Net City Cost of this claim was \$392,482.61. Therefore, the aggregate table above reflects the corrected amount.



**Corporate, Development and Environmental Law Branch (“CDEL”)**

**Table 6 - CDEL Metrics for Q1 to Q4 2013**

	Q1	Q2	Q3	Q4	Total
Agreements & Contracts Reviewed/Drafted	330	345	277	287	1,239
Reports Reviewed/Drafted	87	126	100	109	422
Real Estate Purchases & Sales*	18	43	14	20	95
Tax Sale Registrations, Property Standards Orders, Grow Op Orders	37	41	42	55	175
By-Laws Reviewed/Drafted	29	99	16	53	197

\*Stats do not include work required in processing outsourced transactions including light rail land acquisitions.

**Table 7 - CDEL Metrics - Planning and Development for Q1 to Q4 2013**

Development Agreements* Received					
	Q1	Q2	Q3	Q4	Total
Subdivision	0	5	9	6	20
Site Plan Control	36	29	38	23	126
Condominium	5	8	4	1	18
Other (i.e. cash-in-lieu of parking, demolition, etc.)	9	50	4	40	103
Miscellaneous Development Requests Processed					
Severance	14	13	13	16	56
By-laws (Road Opening/Closing)	5	8	31	22	66
Releases/Development Charge Deferrals	38	10	3	26	77
Compliance	41	19	19	11	90
Part Lot Exemption	13	15	15	10	53
Early Servicing	6	4	10	4	24
*The statistics for Development Agreements do not include associated registration such as transfers, easements, maintenance and liability agreements, and inhibiting orders as well as review of joint use and maintenance agreements.					

Document 2

Table 8 - External Legal Costs for Q1 to Q4 2013

Law Firm	Portfolio/ Practice Area	Legal Fees	Taxes	Disburse- ments	Total
Borden, Ladner Gervais	Corporate/ Commercial/ Development	\$527,127	\$66,673	\$5,636	\$599,436
Borden, Ladner, Gervais	Light Rail Transit Project	\$1,619,422	\$212,156	\$21,794	\$1,853,372
Caza Saikaley	Litigation	\$869,640	\$136,828	\$291,885	\$1,298,353
Gowlings	Insured Litigated Claims	\$94,487	\$12,761	\$4,021	\$111,269
Heenan, Blaikie	Litigation & Labour/ Employment Law	\$405,313	\$55,326	\$20,749	\$481,388
Heenan, Blaikie	Insured Litigated Claims	\$13,480	\$1,792	\$423	\$15,695
Hicks, Morley	Labour/ Employment Law	\$29,728	\$3,894	\$228	\$33,850
Jewitt, McLuckie	Employee Indemnification	\$2,678	\$362	\$105	\$3,145
Lerners	Insured Litigated Claims	\$217,883	\$30,514	\$17,178	\$265,575
McCall, Dawson, Osterberg	Insured Litigated Claims	\$5,746	\$1,136	\$3,018	\$9,900
McMillan	Corporate/ Commercial/ Development	\$15,995	\$2,079	\$0	\$18,074
Smockum Zarnett Percival	Insured Litigated Claims	\$21,252	\$3,059	\$2,223	\$26,534
Soloway, Wright	Expropriation	\$421	\$55	\$0	\$476
Stieber	Insured Litigated	\$5,816	\$816	\$457	\$7,089

<b>Law Firm</b>	<b>Portfolio/ Practice Area</b>	<b>Legal Fees</b>	<b>Taxes</b>	<b>Disburse- ments</b>	<b>Total</b>
Berlach	Claims				
Weir and Foulds	Corporate, Commercial, Development	\$50,000	\$6,898	\$3,061	\$59,959
Total		\$3,878,988	\$534,349	\$370,778	\$4,784,115