

Report to/Rapport au :

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

and Council / et au Conseil

**January 29, 2013
29 janvier 2013**

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

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CITY WIDE / À L'ÉCHELLE DE LA VILLE

Ref N°: ACS2013-CMR-LEG-0001

**SUBJECT: COMPREHENSIVE LEGAL SERVICES REPORT FOR THE PERIOD
OCTOBER 1ST TO DECEMBER 31ST, 2012**

**OBJET : RAPPORT GÉNÉRAL SUR LES SERVICES JURIDIQUES POUR LA
PÉRIODE DU 1^{ER} OCTOBRE AU 31 DÉCEMBRE 2012**

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. The new 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".

The information provided herein is with respect to the fourth quarter of 2012.

DISCUSSION

Litigation and Labour Relations Branch

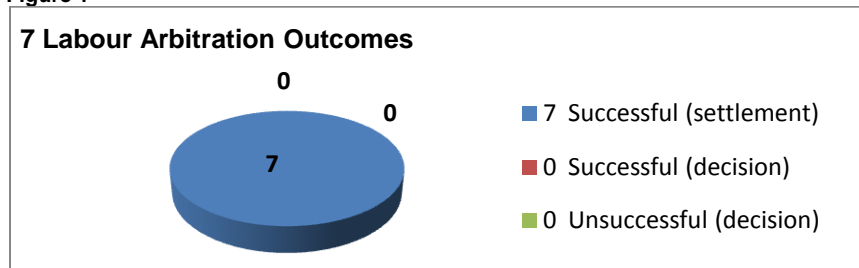
In keeping with the format developed as part of the initial Comprehensive Legal Services Report, outlined below is the litigation record for the Branch for the 2012 fourth quarter, as well as an overview of the claims concluded in that same period.

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 arbitration outcomes for Q4 is set out below in Figure 1.

Figure 1



(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

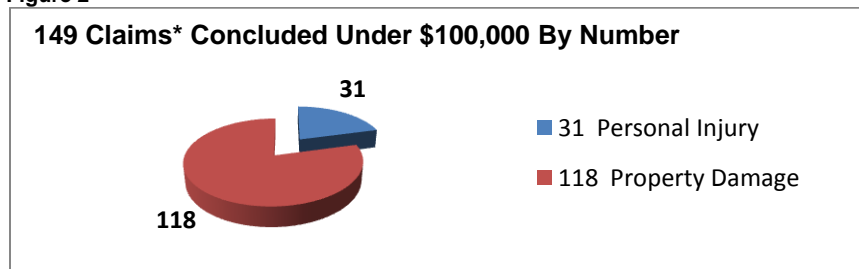
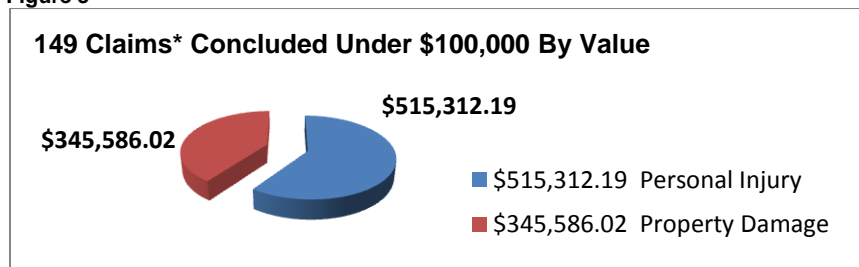


Figure 3



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

Claims concluded over \$100,000 – Q4 2012

Department	Category	Claim Type	Amount
Emergency and Protective Services	Bodily/Personal Injury	Emergency Vehicle Responding - AB	\$175,000.00
Environmental Services	Property Damage or Loss	2002 Sewer Back-ups - Overtaxing	\$508,926.38
Public Works	Bodily/Personal Injury	T/P VEH - Ice/Snow Accumulation	\$213,212.66
Transit Services	Bodily/Personal Injury	Losses while Boarding/Exiting City Vehicle - AB	\$174,096.78
Transit Services	Bodily/Personal Injury	Losses on Board City Vehicle (not MVA) - no AB	\$142,538.09
		TOTAL:	\$1,213,773.91

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, 29 new Statements of Claim were received by the Litigation and Labour Relations Branch. With these, there are currently 246 outstanding civil proceedings against the City that are being addressed by the Branch. Of these open files, carriage of over 94% rests with the City's in-house Legal staff, with less than 6% 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

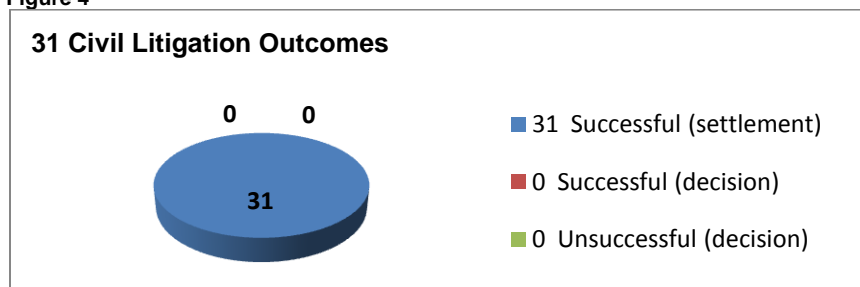
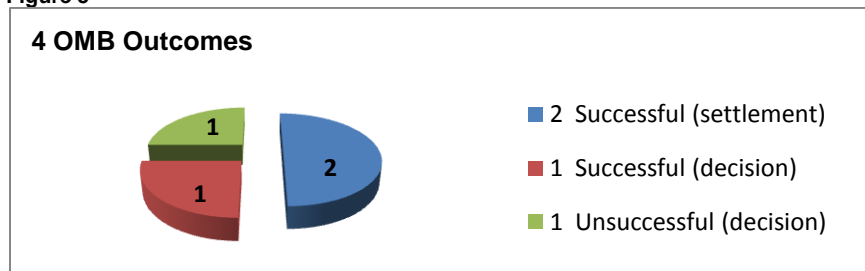


Figure 5

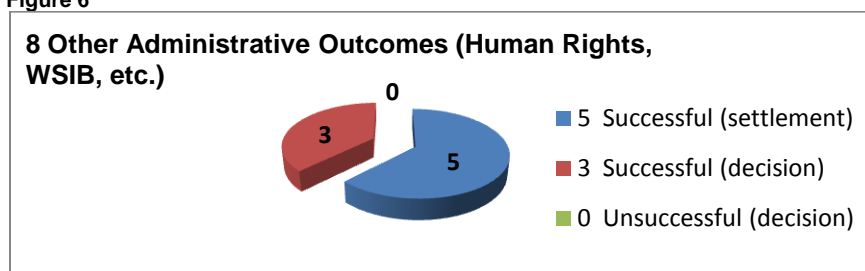


Reason for Unsuccessful Outcome:

The loss concerned parking for the Mill Tavern in Manotick. The zoning by-law required 22 parking places, of which only five could be located on-site. Staff were prepared to support a variance that would permit a total of 16 to be provided, 5 on-site and 11 off-site, the owner wished a variance to require only the on-site parking which was fully utilized by employees and would provide no parking for patrons.

The Board noted that 12 places had been accepted by the City in the past, albeit without the rear patio that now exists. The Board therefore determined to require 7 off-site places in addition to the 5 on-site. This case turned on its site specific facts and, in the opinion of staff, has no broader policy implications.

Figure 6



Corporate Development and Environmental Law Branch (“CDEL”)

The CDEL branch, in the final quarter of 2012, continued to provide key legal support for important projects and strategic initiatives of the City within the current Term of Council vision. Some of the highlights of the extensive and varied services provided by in-house legal staff include the following:

1. Working with the Lansdowne Partnership Plan (LPP) project team to finalize sixteen agreements and two reports for the LPP which Council approved on October 10, 2012 for legal close;
2. Working with the project team to finalize nine agreements for the Plasco Long-Term Waste Conversion Agreement and Plasco Trail Road Demonstration Facility which projects proceeded to legal close on December 15, 2012;
3. Working with staff in the Economic Development Branch to finalize the agreements for the City to host the 2015 FIFA Women’s World Cup Soccer;
4. Working with the project team to help finalize the business terms and conditions for Committee and Council to approve a public-private partnership (P3) with

Ottawa Community Ice Partners (OCIP) for the design, build, finance, operation and maintenance of a new multi-pad ice arena facility in Shefford Park;

5. Reviewing and updating in conjunction with the project team the Intergovernmental Memorandum of Understanding (MOU) and Service Level Agreement (SLA) among Service Canada, Service Ontario and Service Ottawa for the City's Client Service Centres as part of the City's Service Excellence initiative; and
6. Ongoing legal advice provided to City staff and the City's Accessibility Working Group on compliance initiatives with respect to the *Accessibility for Ontarians with Disabilities Act (AODA)*.

A summary of key in-house CDEL metrics for Q4 is set out below in table form.

GENERAL AGREEMENTS AND CONTRACTS

	Routine	Moderately Complex	Complex	TOTAL
Agreements & Contracts Reviewed/Drafted	124	92	59	275
Reports Reviewed/Drafted	47	32	16	95
*Real Estate Purchases & Sales				26
Tax Sale Registrations				77
By-Laws Reviewed/Drafted				44

*Stats do not include work required in assisting with outsourced transactions, including Light Rail land acquisitions and Infrastructure Stimulus Fund matters.

PLANNING & DEVELOPMENT AGREEMENTS

DEVELOPMENT AGREEMENTS RECEIVED				
	Routine	Moderately Complex	Complex	TOTAL
Subdivision			9	9
Site Plan Control	25	8		33
Condominium	8			8
Other (e.g. cash-in-lieu of parking, demolition)	21			21
MISCELLANEOUS DEVELOPMENT REQUESTS PROCESSED				
Severance	6		2	8
By-laws (Road Opening/Closing)	22			22
Releases/Development Charge Deferrals	10			10
Compliance	20			20
Part Lot Exemption	8			8
Early Servicing	10			10

*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.

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 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, 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

The fourth quarter external legal costs are set out below:

Firm	Portfolio/ Practice Area	Legal Fees	Taxes	Disburse- ments	Total
Borden, Ladner, Gervais	Corporate, Commercial, Development	\$ 471,711	\$ 61,776	\$ 5,930	\$ 539,417
Borden, Ladner, Gervais	Light Rail Transit Project	\$ 653,559	\$ 85,653	\$ 5,495	\$ 744,707
Caza, Saikaley	Litigation	\$ 25,989	\$ 15,586	\$ 98,295*	\$ 139,870
Gowlings	Insured Litigated Claims	\$ 11,600	\$ 1,535	\$ 208	\$ 13,343
Heenan, Blaikie	Litigation and Labour Law	\$ 69,740	\$ 9,252	\$ 1,427	\$ 80,419
Heenan, Blaikie	Insured Litigated Claims	\$ 8,992	\$ 1,317	\$ 1,200	\$ 11,509
Hicks, Morley	Labour Law	\$ 920	\$ 123	\$ 22	\$ 1,065
Lerners	Insured Litigated Claims	\$ 11,744	\$ 1,687	\$ 1,236	\$ 14,667
McCall, Dawson, Osterberg	Insured Litigated Claims	\$ 15,850	\$ 5,381	\$ 25,546	\$ 46,777
Smockum, Zarnett, Percival	Insured Litigated Claims	\$ 1,517	\$ 197	\$0	\$ 1,714
Stieber, Berlach	Insured, Litigated Claims	\$ 20,097	\$ 2,696	\$ 641	\$ 23,434
Total		\$1,291,719	\$185,203	\$140,000	\$1,616,922

** Some legal disbursement costs were paid directly to an expert witness retained by law firm.*

A significant portion of Legal Services' expenditures in Q4 was attributable to the work necessary to finalize the main project agreements for the Lansdowne Partnership Plan with the Ottawa Sports Entertainment Group (OSEG). The scope of this project necessitated more than 60 separate legal agreements, related ancillary documents and

certificates, covering such things as the Project Agreement, Stadium Lease, Retail Lease, etc. While the legal work necessary to bring a project of this magnitude to a conclusion might generally be spread out over a longer period of time and be finalized only following final Council approval, the history of litigation arising out of the project prompted a more concise timeline. This history suggested that there would be an extremely high level of scrutiny surrounding the final contract documents and this, coupled with Council's overall commitment to openness and transparency, required that the finalized agreements be available concurrent with Council's final decision on proceeding with the project.

Though legal work on the majority of the project agreements is complete, including all of the main agreements, work continued after the "legal close" on October 12, 2012 on four contracts as follows:

- Agreement between the City, the Stadium Partnership and the Retail Partnership in respect of the Stadium Retail Parcels and the Stadium;
- Agreement between the City, the Office Developer and the Retail partnership in respect of the Office Retail parcel and the Office Component above the Office Retail parcel;
- Agreement between the City, the Residential Developer and the Retail partnership in respect of the improvements to be constructed on the Building A Lands and that portion of the Retail Component to be constructed beneath the air parcel of the Building A Lands; and
- Agreement to be entered into by the City, OSEG, the Stadium partnership, the Retail partnership, the Office Developer and the Residential Developer in respect of the overall Project Lands.

It is anticipated that these four agreements will be finalized by the end of Q1 2013.

In addition to the above, the Project Agreement also contemplates other agreements to be drafted at a later date, such as the Parking Management Agreement and the Parking Funding Agreement.

The Lansdowne Partnership Plan legal costs paid in 2012 may be summarised as follows:

Lansdowne Partnership Plan	\$1,108,327
Lansdowne Residential/Air Rights	\$ 214,556
Friends of Lansdowne Litigation	\$ 54,181
Lansdowne OMB Hearing	<u>\$ 260</u>
Total	\$1,377,324

At its meeting of August 25, 2011, Council directed Legal Services to keep a concise summary of all costs related to the litigation initiated by the Lansdowne Park Conservancy. This file was managed largely by in-house Legal Counsel, and the cost breakdown of this litigation is as follows:

Internal Staff Costs (lawyers, law clerks and articling law students) \$45,064

Court-related costs (filing, attendance, etc.)	\$11,317
On-line Legal Research & Corporate Searches	\$ 1,368
Printing Costs	\$ 693
Courier Costs	\$ 138
	<u>\$58,580</u>

In addition, the City was awarded costs against the Lansdowne Park Conservancy, a sole proprietorship of Mr. John E. Martin. In April 2012, the Divisional Court awarded costs against Mr. Martin personally in the amount of \$10,000, when his application for judicial review was dismissed as an abuse of process. In August 2012, the Ontario Court of Appeal further awarded costs in the amount of \$1,000 when it dismissed Mr. Martin's motion for leave to appeal. Most recently, in January 2013, the Supreme Court of Canada dismissed Mr. Martin's application for leave to appeal to that Court and awarded costs to the City. The amount of costs from the Supreme Court is yet to be determined. The City will continue to pursue the enforcement of the costs awards as ordered by the Courts inclusive of interest from Mr. Martin.

HIGHLIGHTS OF 2012

Collective Bargaining: A significant part of the Litigation and Labour Relations Branch's work in 2012 was focused on collective bargaining. The Branch conducted almost 90 days of negotiations with the City's bargaining agents and concluded four new collective agreements with more than 90% of its unionized workforce. The most noteworthy of these was a new four-year contract with the Amalgamated Transit Union, Local 279, and renewal agreements were also reached with the Canadian Union of Public Employees, Local 503 (CUPE 503) for the City's Inside/Outside workers, its Part-Time Recreation and Culture employees and also with the Civic Institute of Professional Personnel. Later in the year, the Branch led collective bargaining for the Ottawa Public Library, reaching a four-year agreement with the Library's 600-member CUPE 503 bargaining unit.

Preventive Law: In the fall of 2012, Legal Services launched its preventive law newsletter, *The Fine Print*, with the second issue published prior to year end. This quarterly newsletter is intended to provide timely and useful information with respect to evolving legislation, case law and practice areas that impact the business lines and operations of the City. The newsletter will continue to be published on a quarterly basis.

The Preventive Law Program also included Legal Services staff presenting preventive law sessions in the following areas: Access to Information and Privacy; The *Condominium Act*; Code of Conduct and the Lobbyist Registry; Drafting Procurement Documents; as well as Collective Agreement and Attendance Management Program Training. In total, Legal Services staff delivered approximately thirty preventive law sessions to over twenty-five City Departments and Branches in 2012.

Equity, Diversity and Inclusion: Acting on employee suggestions, in April of 2012, Legal Services held its First Annual Law Day Diversity Dialogue, with internationally trained lawyers as guest speakers. This successful launch of Legal Services Diversity Champion program was followed in November with a Diversity Café, with a theme of

“Everything you always wanted to know about diversity, equity and inclusion, but were afraid to ask.” The employee suggested motto of Raising the Bar on Diversity / Relever la barre de la diversité was adopted by the Department and is an accurate reflection of the commitment to this important initiative.

Community Outreach: A number of staff lawyers have been involved for the past several years with the Ottawa Chapter of Lawyers Feed the Hungry (“LFTH”). Once a month, LFTH sponsor a meal at the Ottawa Mission, where approximately 400-600 meals are served during a two hour period.

Legal Services staff committed to hosting the August meal, which required raising \$1,500, plus volunteering to serve the meal at the Ottawa Mission. The funds were raised and both present day and former (retired) staff were present to serve the 489 meals on August 23rd. The Department has already committed to once again raise the necessary funds and serve the LFTH meal at the Ottawa Mission in August of this year.

RiskMaster Upgrade: In 2012, Council provided Legal Services with one-time funding to upgrade its integrated claims and insurance software, RiskMaster, which was at the end of its life-cycle. In addition to the software upgrade, Legal Services took the opportunity to work with Corporate Business Services to conduct a Business Process Review of a number of claims and insurance processes, with a view to leveraging the new software and improving efficiency.

Succession Management Strategy: In conjunction with the Human Resources Department and in accordance with the City’s People Plan, Legal Services continued to develop its succession management strategy and plan. With the anticipated retirement of staff in key roles, the Succession Management strategy will promote knowledge transfer and the development of critical skills, thus mitigating the impact of the expected staff departures. Prior to filling any vacancy arising from a retirement, Legal Services conducts a review consistent with the direction from City Council at its meeting of March 24, 2010.

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 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 direct financial implications associated with this report.

ACCESSIBILITY IMPACTS

There are no accessibility impacts associated with this report.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications 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 in and satisfaction with the way Council works.

SUPPORTING DOCUMENTATION

Appendix “A” – Aggregate Metrics for Q1 to Q4 2012

Appendix “B” – External Legal Costs for Q1 to Q4 2012

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.

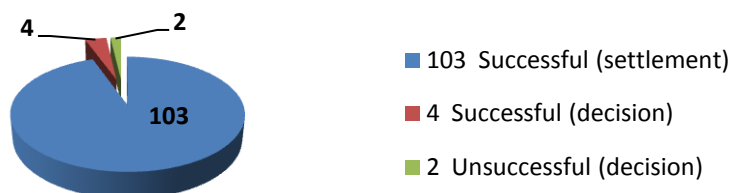
APPENDIX "A"

AGGREGATE METRICS FOR Q1 TO Q4 2012

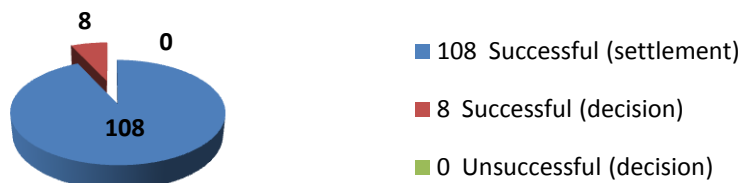
Litigation and Labour Relations Branch

In keeping with the format used as part of the Q1-Q4 Comprehensive Legal Services Reports, the aggregate of litigation outcomes for 2012 is reproduced below. These figures include all forms of litigation, namely labour, civil, OMB and other miscellaneous tribunals.

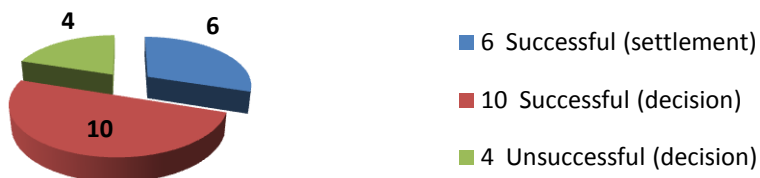
109 Labour Arbitration Outcomes



116 Civil Litigation Outcomes



20 OMB Outcomes



29 Other Administrative Outcomes (Human Rights, WSIB, etc.)

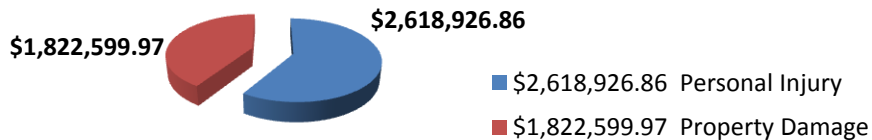


Claims Unit

643 Claims* Concluded Under \$100,000 By Number



643 Claims* Concluded Under \$100,000 By Value



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

Claims concluded over \$100,000 – Q1 to Q4 2012 (Grouped by Department and Claim Type)

Department	Category	Claim Type	Amount
Emergency and Protective Services	Bodily/Personal Injury	Emergency Vehicle Responding - AB	\$175,000.00
Environmental Services	Property Damage or Loss	2002 Sewer Back-ups - Overtaxing	\$508,926.38
Public Works	Bodily/Personal Injury	Trip and Fall	\$250,000.00
Public Works	Bodily/Personal Injury	Contact with unlicensed City Equipment	\$141,474.45
Public Works	Property Damage or Loss	MVA, City & Third Party Vehicle	\$1,012,013.50
Public Works	Bodily/Personal Injury	T/P VEH - Ice/Snow Accumulation	\$213,212.66
Transit Services	Bodily/Personal Injury	City Vehicle Hitting Pedestrian/Cyclist No AB	\$147,808.54
Transit Services	Bodily/Personal Injury	MVA, City & Third Party Vehicle	\$387,879.20
Transit Services	Bodily/Personal Injury	Losses while Boarding/Exiting City Vehicle - AB	\$276,244.75

Transit Services	Bodily/Personal Injury	Losses on Board City Vehicle (not MVA) - AB	\$209,643.88
Transit Services	Bodily/Personal Injury	Losses on Board City Vehicle (not MVA) - no AB	\$142,538.09
		TOTAL:	\$3,464,741.45

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

A summary of key in-house CDEL metrics for Q1 to Q4 is set out below in table form.

CDEL – Q1 to Q4 STATISTICS

GENERAL AGREEMENTS & CONTRACTS

	Q1	Q2	Q3	Q4	TOTAL
Agreements & Contracts Reviewed/Drafted	205	243	251	275	974
Reports Reviewed/Drafted	82	102	90	95	369
*Real Estate Purchases & Sales	17	10	40	26	93
Tax Sale Registrations	48	52	47	77	224
By-Laws Reviewed/Drafted	34	57	29	44	164

*Stats do not include work required in assisting with outsourced transactions, including Light Rail land acquisitions and Infrastructure Stimulus Fund matters.

PLANNING & DEVELOPMENT AGREEMENTS

DEVELOPMENT AGREEMENTS RECEIVED					
	Q1	Q2	Q3	Q4	TOTAL
Subdivision	9	9	8	9	35
Site Plan Control	31	50	45	33	159
Condominium	5	7	10	8	30
Other (e.g. cash-in-lieu of parking, demolition)	20	25	35	21	101
MISCELLANEOUS DEVELOPMENT REQUESTS PROCESSED					
Severance	12	16	5	8	41
By-laws (Road Opening/Closing)	14	33	8	22	77
Releases/Development Charge Deferrals	17	25	16	10	68
Compliance	15	37	53	20	125
Part Lot Exemption	17	13	11	8	49
Early Servicing	4	8	17	10	39

*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.

APPENDIX "B"

External Legal Costs – Q1 to Q4 2012

Firm	Subject	Fees	HST	Disbursements	Total
Borden, Ladner, Gervais	Corporate, Commercial, Development	\$1,812,194	\$236,453	\$15,047	\$2,063,694*
Borden, Ladner, Gervais	Light Rail Project	\$3,677,815	\$481,570	\$26,942	\$4,186,327
Caza, Saikaley	Litigation	\$450,529	\$77,107	\$147,364	\$675,000
Gowlings	Insured Litigated Claims	\$147,074	\$22,035	\$22,612	\$191,721
Heenan, Blaikie	Litigation and Labour	\$276,142	\$49,260	\$103,246	\$428,648
Heenan, Blaikie	Insured Litigated Claims	\$31,328	\$5,980	\$14,893	\$52,201
Hicks, Morley	Labour and Employment	\$122,199	\$16,142	\$2,302	\$140,643
Lerners	Insured Litigated Claims	\$14,824	\$2,123	\$1,509	\$18,456
McCall, Dawson, Osterberg	Insured Litigated Claims	\$45,459	\$9,609	\$28,458	\$83,526
Smockum Zarnett Percival	Insured Litigated Claims	\$4,565	\$897	\$2,340	\$7,802
Soloway, Wright	Expropriation	\$773	\$100		\$873
Steiber, Berlach	Insured Litigated Claims	\$31,703	\$4,237	\$1,507	\$37,447
Total		\$6,614,605	\$905,513	\$366,220	\$7,886,338

*Updated to reflect accounts processed after the close of the first quarter