

**Report to  
Rapport au:**

**Finance and Economic Development Committee  
Comité des finances et du développement économique  
1 September 2020 / 1er septembre 2020**

**and Council  
et au Conseil  
9 September 2020 / 9 septembre 2020**

**Submitted on August 21, 2020  
Soumis le 21 août 2020**

**Submitted by  
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**Ward: CITY WIDE / À L'ÉCHELLE DE LA VILLE      File Number: ACS2020-ICS-LEG-0005**

**SUBJECT: Comprehensive Legal Services Report for the Period January 1 to June 30, 2020**

**OBJET: Rapport Général sur les Services juridiques pour la période du 1 janvier au 30 juin 2020**

#### **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 2020-2021 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 2020-2021 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 2020. 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 negotiation and renewal of the City's insurance program for the 2020-2021 policy term.

As with many other City administrative services, in March 2020, Legal Services moved almost entirely to remote operations as a result of the COVID-19 pandemic response. Nevertheless, as evidenced by this report, the branch continued to support City departments in their own pandemic response activities, as well as maintained business-as-usual work in such areas as civil litigation, labour relations and planning and development.

In respect of all forms of litigation undertaken by Legal Services (civil, labour, Local Planning Appeal Tribunal (LPAT), 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. Nevertheless, the litigation, LPAT and administrative tribunal outcomes also reflect the fact that, where the City does not resolve a case through a mutually-agreeable settlement, its rate of success is high, with favourable decisions or orders in all 19 cases concluded in the first two quarters. The costs associated with the settlement of 11 claims over \$100,000 in the first two quarters of 2020 continue to reflect the increases 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 92 per cent of litigation involving the City is handled by in-house resources, with fewer than eight per cent of the current 507 litigated matters being referred to external counsel.

Legal Services also continued its support of a number of key City initiatives in Q1/Q2 2020. Further, Legal Services drafted or reviewed 393 legal agreements in Q1/Q2 2020 and processed more than 358 development agreements and requests.

In terms of outsourcing costs in Q1 and Q2 2020, these continued to be 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 2020. Suivant le modèle approuvé par le Conseil municipal le 25 août 2011, le rapport global des 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 la négociation et le renouvellement récents du programme d'assurance de la Ville pour la période 2020-2021.

En mars 2020, l'instar de nombreux autres services administratifs de la Ville, les Services juridiques ont transféré presque la totalité de leurs activités pour les effectuer à distance en réponse à la pandémie de COVID-19. Malgré cela, comme en témoigne le présent rapport, la Direction a continué d'aider les directions générales à mener leurs activités en réponse à la pandémie et à accomplir son travail comme d'habitude dans des domaines comme les affaires civiles, les relations de travail ainsi que la planification et le développement.

Pour tous les types de litiges traités par les Services juridiques (affaires civiles, droit du travail, affaires devant le Tribunal d'appel de l'aménagement local [TAAL], 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. Toutefois, l'examen de l'issue des litiges ainsi que des décisions du TAAL et du tribunal administratif 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 chacune des 19 affaires conclues au cours des deux premiers trimestres. Par ailleurs, les coûts associés au règlement de 11 litiges d'une valeur supérieure à 100 000 \$ dans les deux premiers trimestres de 2020 reflètent l'augmentation des montants adjugés par les tribunaux pour

les préjudices personnels en ce qui concerne les dommages-intérêts généraux, les futures pertes de revenus ou d'avantages concurrentiels et les coûts liés à des soins futurs.

Le présent rapport précise que plus de 92 % des litiges de la Ville sont traités à l'interne, moins de 8 % des 507 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 premier et deuxième trimestres de 2020. Ils ont également rédigé ou révisé 393 accords juridiques et traité plus de 358 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 2020.

## **DISCUSSION**

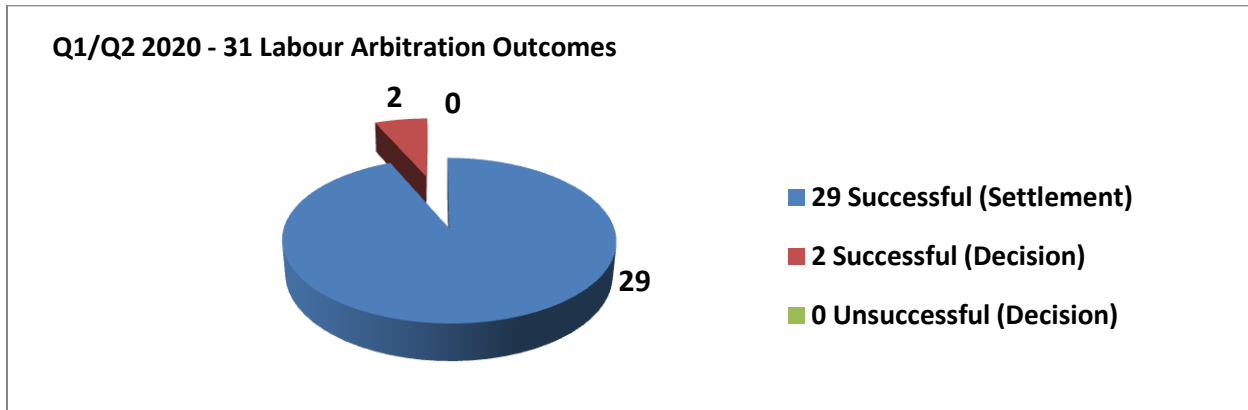
### **Civil Litigation / Labour and Employment**

In keeping with the format developed as part of the initial Comprehensive Legal Services Report, outlined below is the litigation record for the 2020 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.

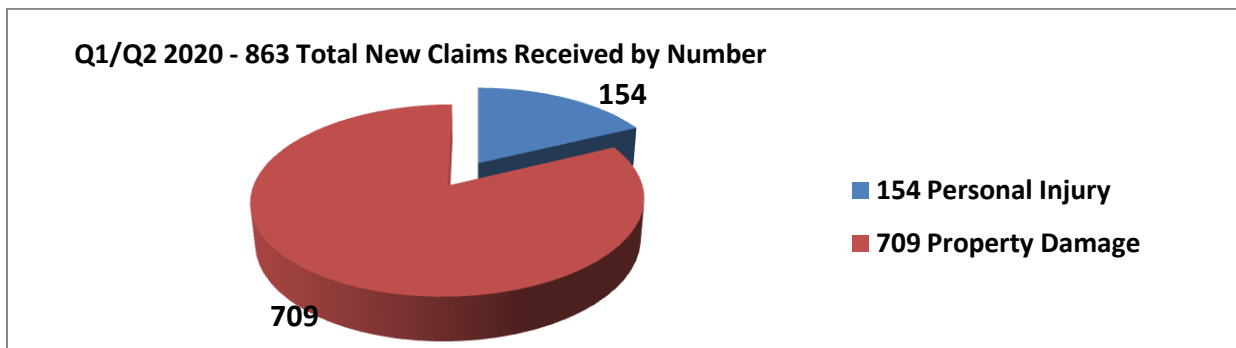
#### **(a) Labour Relations Unit**

A summary of labour arbitrations for Q1 and Q2 is set out below in Figure 1.

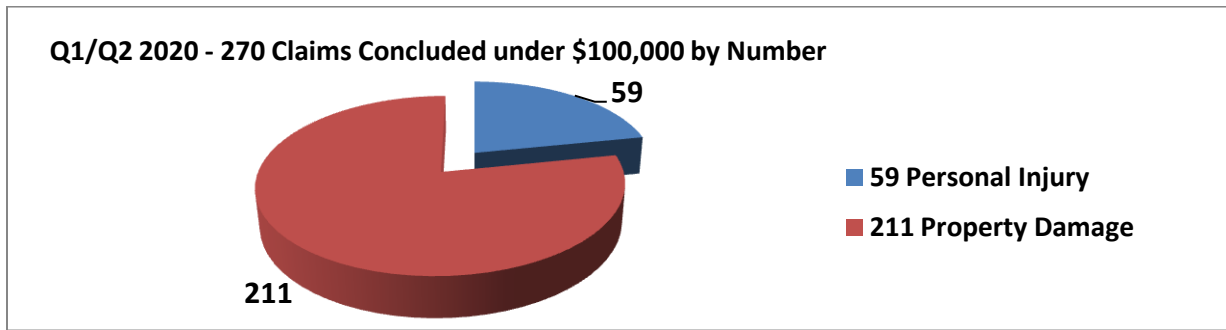
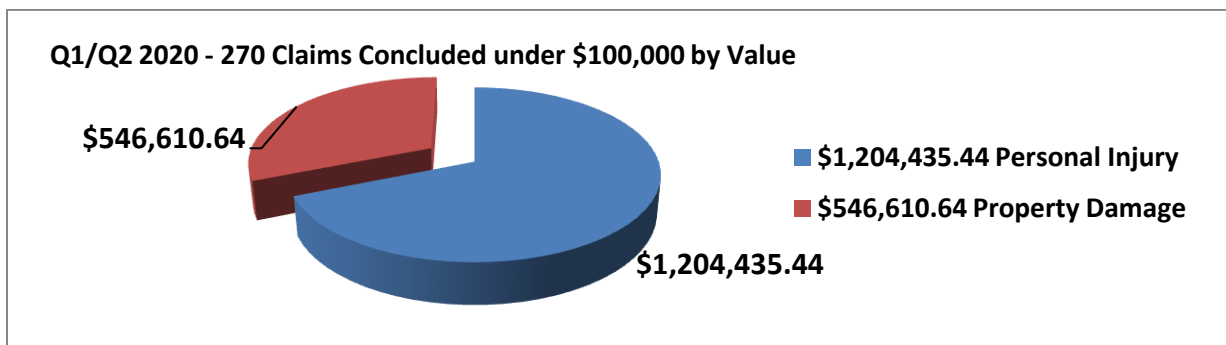
**Figure 1 - Labour Arbitration Outcomes****(b) Claims Unit**

The Claims Unit received a total of 863 new claims in the first two quarters of 2020. This figure represents the 709 property damage claims and 154 personal injury claims that were filed with the Unit. Of the total number of new claims received during this period, 371 (43 per cent) represent pothole claims, which is the most common type of claim received by the Unit on an annual basis.

A summary of the 863 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 1,250 claims in the first two quarters of 2020. This figure represents the 1,044 property damage claims and 206 personal injury claims that were either closed-settled or closed-denied during this period. A summary of the 270 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 2020**

Department	Category	Claim Type	Net City Cost
Emergency and Protective Services	Bodily/Personal Injury	MVA, City and Third-Party Vehicle	\$128,822.85
Planning, Infrastructure and Economic Development	Property Damage or Loss	Contract Dispute	\$209,856.24
Planning, Infrastructure and Economic Development	Property Damage or Loss	Contract Dispute	\$252,243.78
Public Works and Environmental Services	Bodily/Personal Injury	Slip and Fall	\$120,123.71
Public Works and Environmental Services	Bodily/Personal Injury	Trip and Fall	\$120,000.00
Public Works and Environmental Services	Property Damage or Loss	Damage from Tree Roots	\$159,048.08
Recreation, Cultural and Facility Services	Bodily/Personal Injury	Slip and Fall	\$180,136.97
Transportation Services	Bodily/Personal Injury	MVA, City and Third-Party Vehicle	\$310,543.62
Transportation Services	Bodily/Personal Injury	MVA, City and Third-Party Vehicle	\$990,174.00

Transportation Services	Bodily/Personal Injury	City Vehicle Hitting Pedestrian/Cyclist	\$103,240.90
Transportation Services	Bodily/Personal Injury	Losses Onboard City Vehicle	\$103,308.70
		<b>Total:</b>	<b>\$2,677,498.85</b>

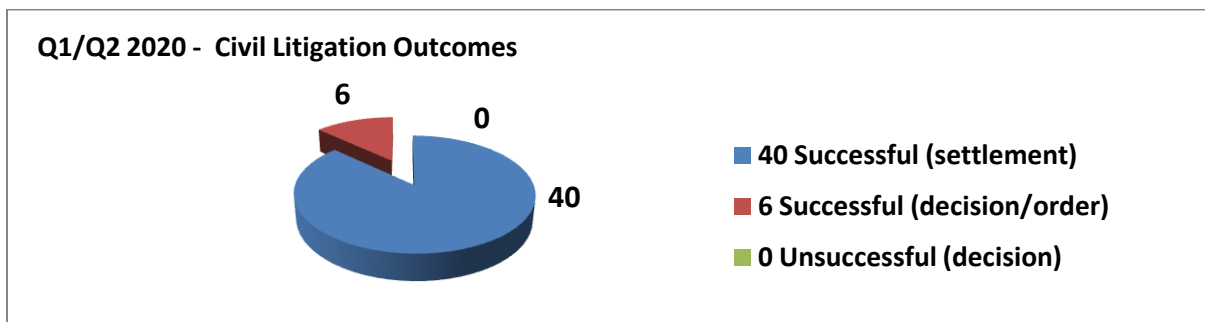
The above-noted figures represent settlement of litigated and non-litigated claims, and include all costs borne by the City in finalizing a settlement, such as court costs, legal fees, investigative costs, etc. Furthermore, claim settlement payments include those made pursuant to negotiated settlements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

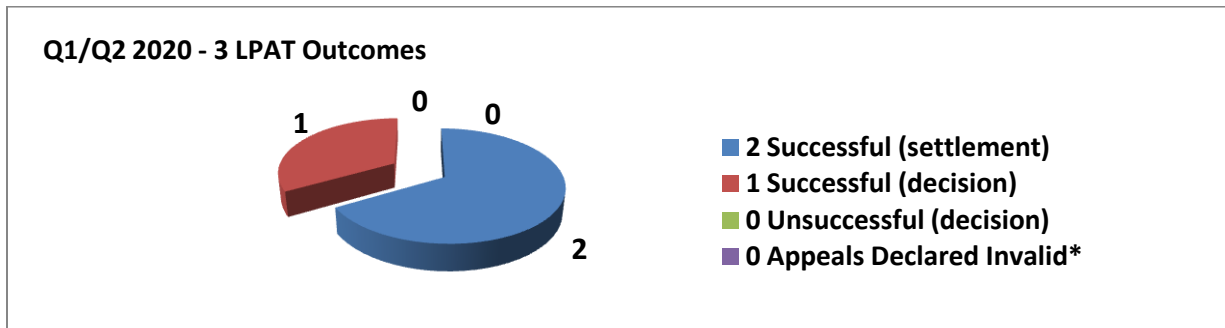
### (c) Civil Litigation Unit

In the first and second quarters of 2020, 69 new Statements of Claim were received by the Legal Services Branch. With these, there are currently 507 outstanding civil proceedings against the City that are being addressed by the Branch. Of the current open files, carriage of over 92 per cent rests with the City's in-house Legal staff, with less than 8 per cent 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.

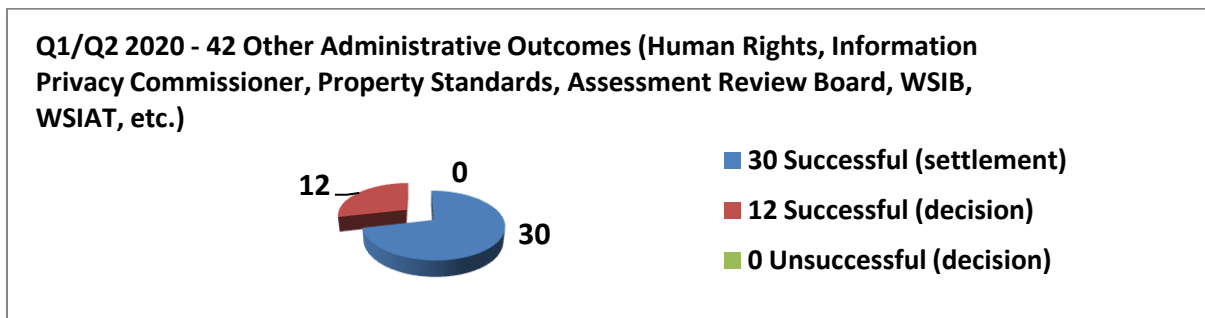
A summary of outcomes for civil litigation, Local Planning Appeal Tribunal (LPAT) and other administrative tribunals for Q1 and Q2 2020 is set out below in Figures 5, 6 and 7.

**Figure 5 - Civil Litigation Outcomes**



**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**

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

The Legal Services Branch, in the first and second quarters of 2020, 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. COVID-19 Pandemic Response:**

Legal Services provided extensive support to the City's and Ottawa Public Health's COVID-19 pandemic emergency response, most notably in respect of the interpretation and application of the Provincial Government Orders made under the *Emergency Management and Civil Protection Act*, as well as the City's own internal and external response. The latter category included such things as the mask by-law, agreements with bargaining agents representing City staff for emergency leave and redeployment in support of emergency-related services, and the wide array of



measures steps taken for the protection of the public, to limit the spread of COVID-19 and also for the later economic recovery of the City.

2. Rail Transportation Matters:

Legal Services provided support to Transit Operations, Stage 2 – Light Rail office, Confederation Line LRT 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 approval for Stage 2. In addition, Legal Services liaised with Stage 1 and 2 LRT offices and BLG 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 support to the Transportation Services Department (including Transit Operations, Transportation Planning, Traffic Services), Roads and Parking Services, Infrastructure Services, and Right of Way Branch with respect to a wide variety of road, lanes, cycling and pedestrian transportation matters relating to existing and new infrastructure, and provided timely and effective legal advice in the preparation, drafting, negotiating, and execution of a number of agreements including funding/contribution agreements.

4. *Construction Act* amendments:

Legal Services supported ongoing work associated with the changes to the Ontario *Construction Act* that came into effect on October 1, 2019, including: reviewing and amending the City's standard form construction contracts; providing legal advice on City payment practices in order to align with the new Prompt Payment Regime; advising on the impact to City contracts with consulting engineers and architects; providing advice on handling of notices of non-payment with respect to interest on overdue accounts; and providing advice on the publication of certificates of substantial completion.

5. Provided legal support to ITS and PIED to finalize the contract for the provision of a new Land Management Solution to replace the City's aging Autodesk Municipal Partnership system. The new solution will help manage the City's permitting and licensing services.

**Table 2 - General Agreements and Contracts – Metrics**

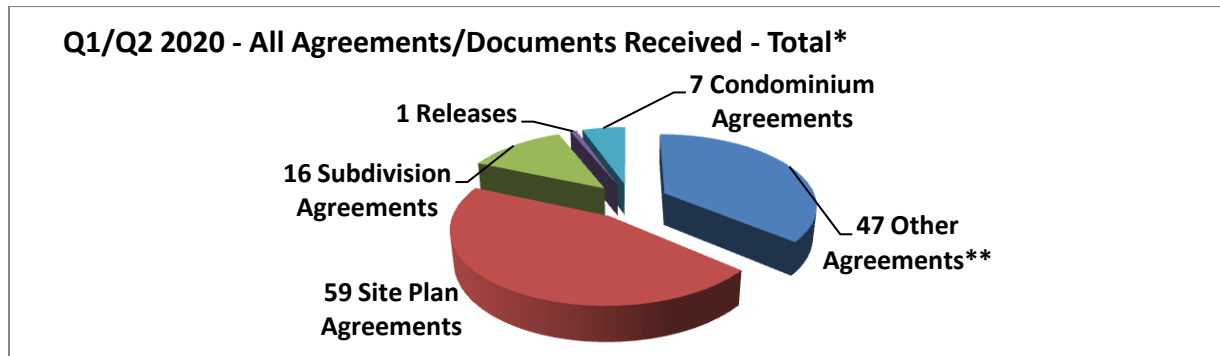
<b>General Agreement/Contract Type</b>	<b>Routine</b>	<b>Moderately Complex</b>	<b>Complex</b>	<b>Total</b>
Agreements and Contracts Reviewed/Drafted	161	193	39	393
Reports Reviewed/Drafted	102	34	17	153
Real Estate Purchases and Sales	8	35	6	49
Light Rail Land Purchases		15		15
Tax Sale Registrations, Property Standards Orders, Grow Op Orders	55	13		68
By-laws Reviewed/Drafted	124	23	8	
Construction Lien Payments Reviewed / Processed	72	n/a	n/a	72

**Planning, Development and Real Estate**

The Planning, Development and Real Estate Law Unit within the Legal Services Branch 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 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 2020, 130 individual documents were logged by the Development Law Unit that were required for drafting and registration. A summary is set out below in Figure 8 (by type).

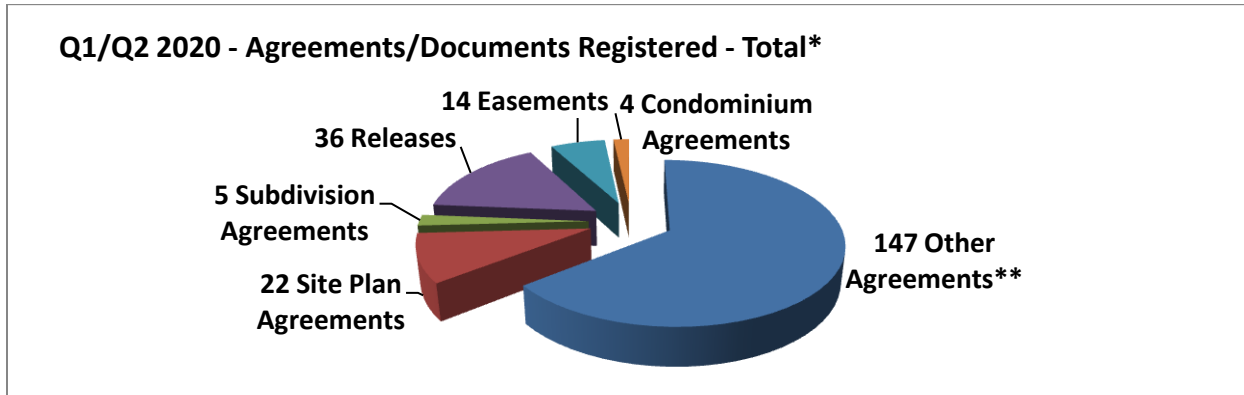
**Figure 8 - All Agreements/Document Requests Received - Total**



The Development Law Unit also completed registration on 228 individual agreements and documents in the first and second quarters of 2020. Of these 228 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 2020**

Firm	Portfolio/ Practice Area	Legal Fees	Disbursements	Taxes	Total
Borden, Ladner, Gervais	Corporate, Commercial, Development	\$70,692.00	\$44,796.21	\$15,003.44	\$130,491.65
Gowlings	Insured Litigated Claims	\$6,964.50	\$1,493.21	\$1,100.77	\$9,558.48
Caza Saikaley	Insured Litigated Claims	\$1,743.00	\$7,741.30	\$1,232.96	\$10,717.26
Agro Zaffiro LLP	Insured Litigated Claims	\$1,200.00	\$0	\$156.00	\$1,356.00
Emond Harnden	Labour and Employment	\$12,634.50	\$0	\$1,642.57	\$14,277.07
Borden, Ladner, Gervais	Light Rail Project	\$195,034.80	\$10,103.34	\$26,485.11	\$231,623.25
Caza Saikaley	Litigation	\$7,548.00	\$41.73	\$986.66	\$8,576.39
Emond Harnden	Insured Litigated Claims	\$6,036.50	\$0	\$784.76	\$6,821.26
Singleton Urquhart	Light Rail Project	\$451,319.85	\$201,244.74	\$84,112.95	\$736,677.54
<b>Totals:</b>		<b>\$753,173.15</b>	<b>\$265,420.53</b>	<b>\$131,505.22</b>	<b>\$1,150,098.90</b>

**Table 4 - External Legal Costs – Q2 2020**

<b>Firm</b>	<b>Portfolio/ Practice Area</b>	<b>Legal Fees</b>	<b>Disbursements</b>	<b>Taxes</b>	<b>Total</b>
Borden, Ladner, Gervais	Corporate, Commercial, Development	\$520,076.40	\$65,810.29	\$76,136.93	\$662,023.62
Gowlings	Insured Litigated Claims	\$35,031.10	\$1,327.69	\$4,647.59	\$41,006.38
Emond Harnden	Insured Litigated Claims	\$8,064.50	\$198.20	\$1,074.19	\$9,336.89
Cunningham Swan Cart	Insured Litigated Claims	\$620.00	\$0	\$80.60	\$700.60
Lerners	Insured Litigated Claims	\$13,726.00	\$300.40	\$1,823.47	\$15,849.87
Agro Zaffiro LLP	Insured Litigated Claims	\$4,000.50	\$65.00	\$528.52	\$4,594.02
Borden, Ladner, Gervais	Insured Litigated Claims	\$562.50	\$215.00	\$77.29	\$854.79
Caza Saikaley	Insured Litigated Claims	\$36,974.56	\$3,153.66	\$5,216.60	\$45,344.82
Singleton Urquhart	Light Rail Project	\$439,649.10	\$436,927.51	\$112,138.21	\$988,714.82
Emond Harnden	Labour and Employment	\$82,536.00	\$0	\$10,729.97	\$93,265.97
Borden, Ladner, Gervais	Light Rail Project	\$138,778.00	\$1,496.30	\$18,201.84	\$158,476.14
Norton Rose Fulbright	Light Rail Project	\$219,771.00	\$177.90	\$28,268.87	\$248,217.77
Caza Saikaley	Litigation	\$22,155.00	\$0	\$2,880.19	\$25,035.19
Gowlings	Litigation	\$38,297.00	\$2,702.25	\$5,329.93	\$46,329.18
Soloway Wright	Litigation	\$4,392.00	\$40.10	\$576.17	\$5,008.27
Cunningham Swan Cart	Corporate, Commercial, Development	\$9,780.00	\$513.64	\$1,248.31	\$11,541.95
<b>Totals:</b>		<b>\$1,574,413.66</b>	<b>\$512,927.94</b>	<b>\$268,958.68</b>	<b>\$2,356,300.28</b>

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 2020-2021**

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 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 driven both higher costs, as well as structural changes for the City's insurance program. Consultations with other Ontario municipalities revealed that Ottawa's experience is mirrored in other jurisdictions, as they are similarly encountering challenges in securing affordable premiums for their respective insurance programs.

As noted in the May 2019 Report, Frank Cowan Company had been the City's primary insurer since amalgamation and was the insurer for numerous former local municipalities. On January 8th, 2020, Cowan's formally advised the City that, based on a review of its portfolio, it would not offer renewal terms to the City, but did agree to extend the existing terms for two months, for a revised expiration of June 12th, 2020. At the time of that short extension, and working through its insurance broker, Aon Risk Solutions Inc. ("Aon"), staff utilized an actuarial analysis findings study to adjust the policy limit on the Robert O. Pickard Environmental Centre ("ROPEC") excess property policy, which resulted in a modest premium reduction.

Working through its insurance broker, Aon, the City was able to secure alternate coverage in place of the program previously supported by Frank Cowan Company. The changes in the City's insurance program for the 2020-2021 term are set out below.

### **Auto**

The City's Auto coverage was secured with Northbridge Insurance Company, though the self-insured retention was increased from the previous \$3M per occurrence to \$5M. This resulted in a reduction in premiums of approximately \$1.17M for the Auto policy. Staff determined, through an analysis of the actuarial study conducted by Aon in 2019, that the cost of reducing the self-insured retention to \$3M was unlikely to offset the additional risk transfer to the insurer. As a result, the revised Auto policy is unlikely to effectively increase the City's risk exposure.

### **Property**

Also secured with Northbridge Insurance Company, the City's Property coverage was renewed with the same \$3M self-insured retention as existed under the previous insurance program. That said, the cost of premiums for the Property policy increased significantly, to approximately \$1.9M. The resulting combined cost of the Auto and Property policies therefore essentially mirrors the cost of the Auto and Property policies as they existed in the 2019-2020 insurance program.

### **Municipal Liability**

It is in this part of its insurance program that the City, like other municipalities across Ontario, experienced the most significant increase in premiums. While extensive negotiations by Aon with market participants did serve to mitigate the increased premiums, the cost of the municipal liability component, driven by such factors as the hardening insurance market and the continuing impact of joint and several liability on municipal governments, rose to approximately \$3.8M.

For the 2020-2021 renewal, the cost of insurance for the City rose from approximately \$5.9M to almost \$11.3M, based on the 2019-2020 premiums around which the 2020 budget was premised. Staff recommend that the additional premium costs, like other unforeseen expenditures, be paid from the City's tax stabilization reserve fund.

As noted earlier, the City's experience mirrors that of other Ontario municipalities, and is largely attributable to market factors, including the present uncertainty caused by potential claims related to the COVID-19 pandemic. That said, the constricted market and ongoing pressure on premiums continues to be influenced by municipalities'

exposure to claims under the rules of joint and several liability, which often mean that municipal defendants are required to bear a share of compensation that greatly exceeds their proportionate share of liability. In an effort to address the need for reform in this area of the law, the Association of Municipalities of Ontario continues to advocate with the Provincial Government, which had earlier committed to a review of joint and several liability and its impact on municipalities.

Regarding those factors within the City's control, staff continue to assess options for reducing the cost of insurance for the City for the future. In keeping with the recommendations of its insurance broker, the development and refinement of enhanced risk management practices, with a view to establishing a more robust program aimed at mitigating and minimizing the organization's overall liability and risk exposure, remains a priority. This work may include the establishment of a dedicated Risk Management Officer in order to facilitate the development and propagation of enhanced risk management practices and programs across City departments.

### **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 approving the recommendations in this report.

### **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 2020 – approximately \$2.6M – will be funded through the Tax Stabilization Reserve.

### **ACCESSIBILITY IMPACTS**

There are no accessibility impacts associated with this report.

**TERM OF COUNCIL PRIORITIES**

Service Excellence Through Innovation – Improved service delivery through data analysis and innovation in service design that allows for more focus on residents.

**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.