



INFORMATION REPORT

TO:	Chair and Members of the General Issues Committee
COMMITTEE DATE:	May 21 st , 2014
SUBJECT/REPORT NO:	Annual Comprehensive Legal Services Report LS14012 (City Wide)
WARD(S) AFFECTED:	City Wide
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SIGNATURE:	

Council Direction: A comprehensive Legal Services report is provided annually.

Information:

The City's Legal Services Division is a full-service legal department, comprised of lawyers, law clerks, legal assistants and prosecutors that provides a full range of legal services to the City. Subject matter expertise includes municipal law, planning and development law, environmental law, litigation, real estate law, public health law, administrative law, privacy law, procurement law, construction law, corporate and commercial law. The Legal Services Division advises and represents the City and Council, as well as City departments and agencies. The division mandate is to provide timely, accurate, relevant and strategic legal advice and representation to support Council and the City's various portfolios, departments and agencies on corporate objectives, legislative compliance, strategic initiatives, general administrative and operational issues, policy changes and risk management.

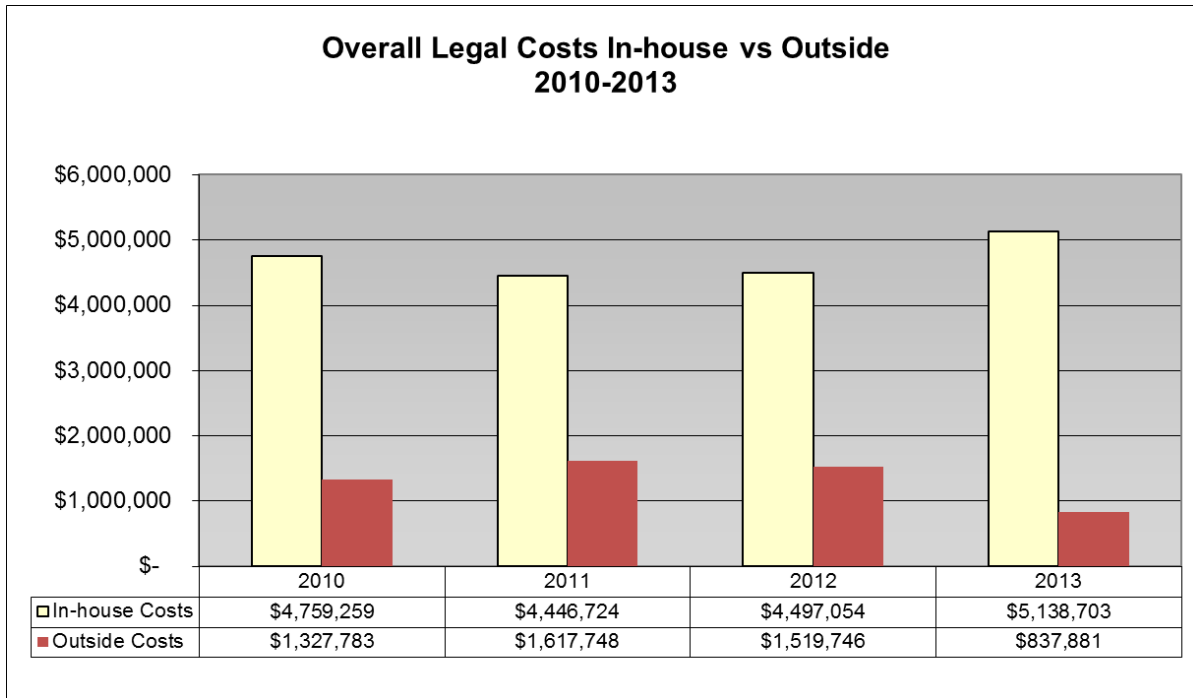
Legal Services Works To Effectively Control City's Legal Costs

The division is organized into two practice areas, the Dispute Resolution Section, and the Commercial/Development/Policy Section. Although there will always be a need to retain outside legal counsel from time to time – to provide specific expertise or handle sudden surges in demand experienced by the client departments due to specific large projects – ideally, the goal is to increase Legal Services' capacity to handle more of the work in-house. This effectively reduced the City's reliance on outsourcing, and helps in controlling overall legal costs to the City.

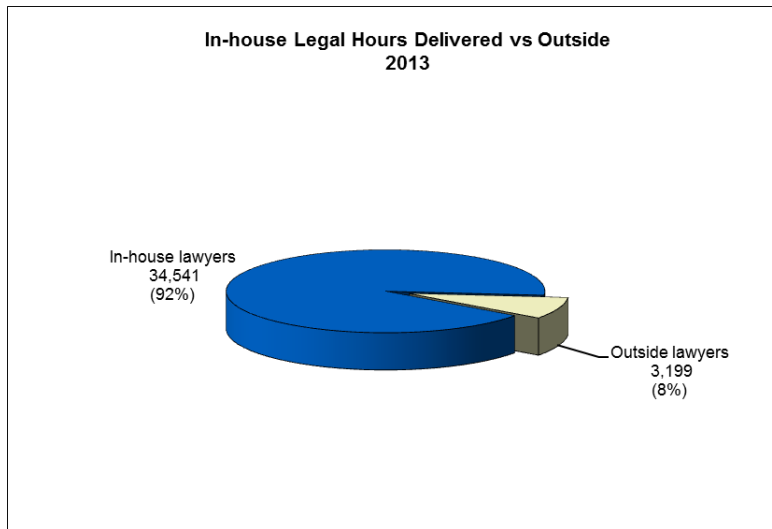
Total Legal Spend 2009-2013 (excluding HR Legals)					
	In-house Legal Salaries and Benefits		Outside Counsel		
	Salary & Benefits	In-house/contract Lawyers Funded by client Groups**	Outside Counsel Paid by Client Groups - Capital	Outside Counsel	Total Legal Spend
2010	\$ 4,443,569	\$ 315,690	\$ 810,665	\$ 517,118	\$ 6,087,042
2011	\$ 4,089,373	\$ 357,351	\$ 1,044,330	\$ 573,418	\$ 6,064,472
2012	\$ 4,166,994	\$ 330,060	\$ 1,228,093	\$ 291,653	\$ 6,016,800
2013	\$ 4,609,423	\$ 529,280	\$ 543,575	\$ 294,306	\$ 5,976,584

*** Hiring a short-term Contract lawyer rather than retaining outside legal counsel for specific short-term projects provides the Client Groups with significant savings over the cost of retaining outside legal counsel.

Overall, the legal costs of the Legal Services Division are stable at approximately 6M annually. The following table reflects overall costs from 2010-2013:



In 2013, in-house lawyers delivered 92% of the total hours of legal services.



Dispute Resolution Section

The Dispute Resolution Section advances and defends the City's interests in civil and administrative litigation, insurance defence, breach of contract, debt collection, employment matters and a host of other situations involving administrative tribunals. In Provincial Offences matters Legal staff carries out the role of prosecutor to meet contractual obligations under a Memorandum of Understanding with the Province, and in municipal charges.

Disputes and litigation can originate from a myriad of circumstances, linked to legislative requirements, operations and varied fact situations. Municipal liability for roads, sidewalks, winter maintenance, environmental regulation and spill response, municipal water and waste water infrastructure, and occupiers' liability for publically owned facilities such as recreational facilities and other lands are all significant sources of litigation in all municipalities. Litigation also arises in the context of contracts, construction, and collections. The City engages in other administrative litigation to carry out its statutory duties and to protect its rights in administrative proceedings commenced by other agencies and individuals. Note that it is staff in Legal Services other section, Commercial Policy and Development, who appear before the OMB.

Litigation File Activity

Litigation Files in 2013:

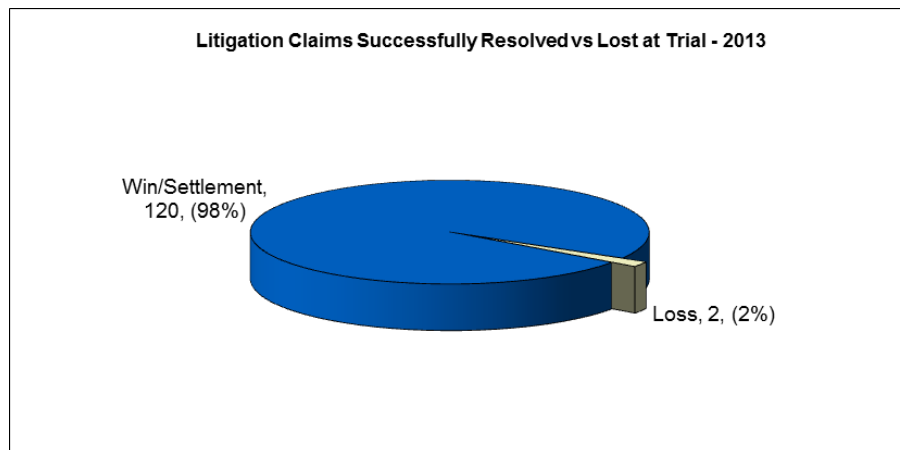
2013 was an active year for new litigation files and for closing old litigation files. 164 new litigation matters were commenced involving the City, and 208 old litigation files were resolved and closed (these numbers do not include OMB files or POA matters below the Court of Appeal). In 2013, litigation claims totalling \$192 Million were resolved for \$3.8 Million.

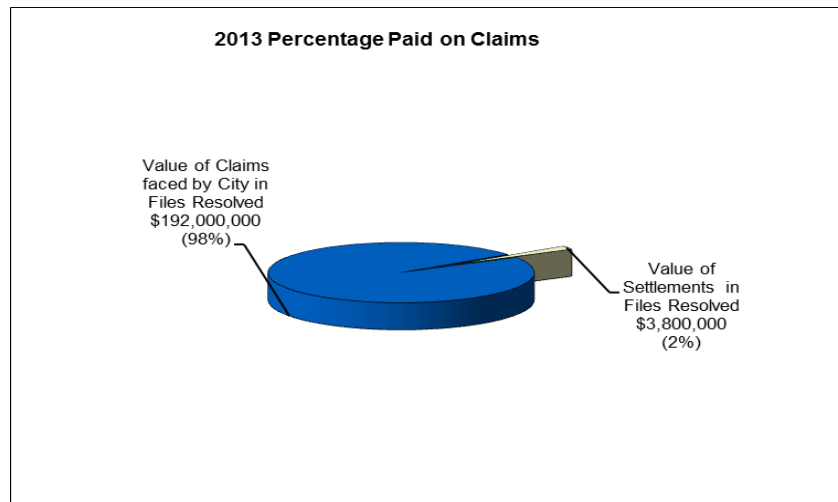
Year	New Litigation Files Opened	Litigation Files closed
2009	164	not tracked
2010	189	not tracked
2011	141	not tracked
2012	131	133
2013	164	208

Activity in 2013 included ten mediations, 31 pre-trials, 36 motions and status hearings, 90 days in examinations for discovery, and 17 days in trials. In those cases where the City is the plaintiff, it is often seeking payment of a debt or damages, or enforcement of statutory rights. Legal Services assisted in the collection of \$143,000 for debts and damages in 2013. The City was also awarded over \$127,000 in legal costs, the majority of which have already been paid to the City.

Litigation Files Closed by Legal Services in 2013

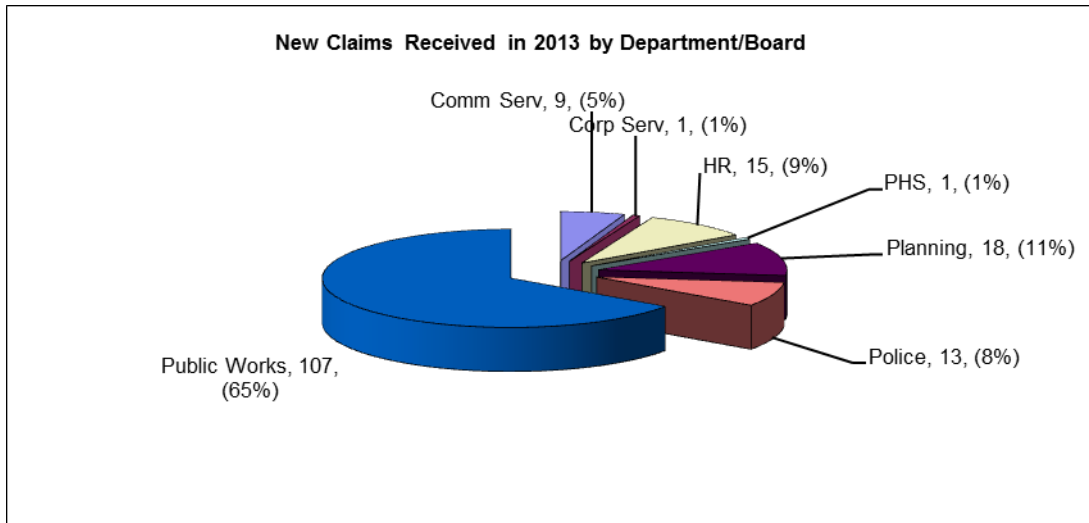
Litigation files were concluded primarily through settlement, including alternative dispute resolution such as by mediation. As a result 2013 was an active year for settlements, though close to half of the claims concluded by Legal Services involved no payment. Settlements are counted as wins in the pie chart below, as the settlement achieves certainty of result without the risks and costs involved in taking a matter to trial, and again because the City is often resolving the litigation with little or no contribution to the settlement.





Litigation files normally have the City as a defendant/respondent, which was the case in 82% of new claim files opened by Legal Services in 2013. The sources of new litigation against the City are mainly from use of City property, streets, water and sewer services, or arise out of City operations, most of which fall under the Public Works Department in the Chart below. Property damage and other economic loss claims were slightly in the majority of new claims against the City in 2013, as compared to personal injury claims, but personal injury actions tend to involve higher claimed damages. The City also saw more files opened in 2013 in relation to workplace safety insurance benefits and attributed to Human Resources in the chart below where Legal Services is attempting to assist in limiting outside counsel costs. The majority of new claim files involved court matters at all levels of Ontario courts. The remainder of files included those where Legal Services was brought in for recovery of debts and was able to negotiate payment without the commencement of court proceedings, or involved tribunal matters not including the City's internal Licensing Tribunal and Property Standards Appeals.

18% of new claim files in 2013 involved the City taking legal action, seeking damages, debt recovery or enforcement of statutory duties. The claims by the City were most often in relation property damages caused by roadway motor vehicle collisions which files are counted under Public Works in the chart below. Almost all the new files attributed to Community Services operations are collection proceedings brought by the City under its obligation to pursue recovery of social benefit overpayment to ineligible persons.



Age of Litigation Files

The chart below represents the age of claims involving the City which are not yet resolved, to the date of March 31. Note the number of remaining files reflected for 2013 indicates that a portion of files opened in 2013 had already been resolved.



*all cases 2005 and earlier have scheduled mediations, trials, or trial scheduling dates with expected completion in 2014/15

Provincial Offences Act Activity (POA)

Since 2000, the City’s Prosecutions team have helped the City to meet obligations under a Memorandum of Agreement with the Province. The team handled almost 60,000 court appearances on charges in 2013 and over 13,000 Early Resolution meetings. In those roles prosecutors have extensive dealings with the public who come to court as witnesses, victims and defendants in charges. Prosecution staff assist in continuous operation of two full time courts and one part time court, conduct Early Resolution meetings and calls, attend appeals and complete office duties that include review of municipal charges. Following industry “best-practice” to employ paralegal staff wherever feasible, the City employs a team of paralegal prosecutors under the direction of an Assistant City Solicitor. The Prosecution team provides feedback to enforcement officers on charges to help them understand court needs and outcomes. Four training sessions were provided in 2013 to various enforcement groups on their role in the courtroom. Effective management of limited court resources helps the City meet their obligations and maintain POA revenues under the Memorandum of Understanding. The majority of POA charges involve offences under the Highway Traffic Act and related provincial statutes. Municipal charges include the Building Code Act, Fire Protection and Prevention Act, Health Promotion and Protection Act, Smoke Free Ontario Act and a large variety of municipal by-laws.

The following two tables represent the volume and disposition of POA and Municipal Prosecutions work in 2013:

<i>POA/Municipal Prosecution Performance Metrics</i>					
	2009	2010	2011	2012	2013
CHARGES(informations/tickets filed)					
# Charges All Enforcement Agencies*	74,162	88,020	88,575	97,474	99,266
# Police Charges*	57,780	67,301	68,253	82,496	82,498
# MLE/AC/BLDG. ET AL Charges	816	1,227	1,545	1,077	1,199
#Red Light Camera	7,224	11,413	9,729	13,523	15,569
DISPOSITION:					
# Trial Requests*	6,222	9,023	9,075	7,314	6,648
# Early Resolution	no data	2,778	3,201	9,204	13,673
# Disclosure Requests	no data	4,459	no data	no data	5,888
# Summons to Witness	no data	1,954	1,693	1,642	1,358
# Applications for Adjournment	no data	806	865	686	749
# Title Searches	no data	no data	534	528	247
# Property Standards Registrations	9	14	13	16	20
# Property Standards Discharges	17	10	11	23	11
# Corporate/Business Name Searches	no data	no data	68	63	105
# Charter Motions	6	6	17	24	81
# Court Events*	46,417	57,424	60,101	61,284	65,875
Average Crt. Apprs. To Disposition*	2.3	2.3	2.1	2.5	2.5
FINE REVENUE (GROSS):	\$7.4 M	\$9.1 M	\$9 M	\$10.6 M	\$11.0 M

*Some numbers above rely on provincial data which does not separate municipal work from other Ministry or Crown work, but the vast majority in each category is attributable to municipal court work or court administration.

	2011	2012	2013
MUNICIPAL CHARGES:			
Animal Control	794	369	760
Municipal Law Enforcement	466	464	436
Building	30	19	26
Fire	54	52	61
Red Light Camera	9,729	13,523	15,569
Public Health	237	173	224
TOTAL	11,310	14,600	17,076

*Note: that each charge document can include multiple counts covering more than one offence. The numbers in the above chart include each count/offence laid by enforcement groups, as compared to the lower municipal numbers in the chart below which only include the number of charges.

Commercial/Development/Policy Section (“CDP”)

The other practice group, Commercial/Development/Policy (CDP) provides broad and diverse core legal services to support day-to-day operations as well as priorities of the City in such areas as planning and development, economic development initiatives, water and wastewater, waste management, roads, public works and infrastructure, facilities, energy, affordable housing, fire, emergency response services, transit and transportation, clerks, finance and taxation. Lawyers in this group provide advice to Public Health Services and Community Services in regard to the implementation of various programs and projects, both independent initiatives and those in collaboration with agencies such as local school boards, universities, colleges and not-for-profit organizations. Lawyers in this group advise, negotiate and draft agreements in regard to public-private partnerships, third party agreements, commercial and industrial re-development ventures, purchasing and procurement, environmental issues, construction contracts, and hiring agreements, among other matters.

In 2013, the CDP lawyers were engaged in a variety of significant projects for the City, including the completion of the Randle Reef Sediment Remediation Project Agreement, the Tiger Cats License for the new Tim Horton’s Field and the Mohawk Transit Hub Agreement as well as the Hamilton Waterfront, the Hamilton Farmer’s Market, the procurement of OneHSN software (provides parents seeking child care with one stop shopping), and the Neighbourhood Development Strategy.

Procurement represents a significant body of work which the CDP Section supports through drafting, interpretations, advice and legal opinions. Such services occur at various stages of the procurement process as well as when disputes arise after the contract is in place. In addition, support is provided to the Procurement Advisory Committee which in 2013 worked on the City’s latest version of the Procurement Policy and By-law together with further implementation of the recommendation for the Purchasing Review conducted by the National Institute of Governmental Purchasing. The following table reflects the volume and value of construction-related contracts drafted, reviewed and concluded over the past 5 years.

Procurement Contracts		
Year	# Contracts	Value
2009	63	\$ 45,628,673
2010	70	\$ 191,174,388
2011	74	\$ 24,452,238
2012	81	\$ 81,786,204
2013	94	\$ 70,824,535

In addition to the work that the CDP lawyers do involving the above procurement-related contracts, they also provide services for many other contractual matters. In 2013 lawyers dedicated approximately 4103 hours on other contract-related matters.

In the legal services they provide to the City, CDP lawyers also draft and advise on both the interpretation and enforcement of by-laws. These by-laws cross all departments and their operations and include such diverse issues as fees and charges, property standards, licensing and sewer use.

Lawyers in the CDP Section support the diverse needs of the Planning and Economic Development Department on a variety of real estate transactions including acquisitions of property for such projects as community centres, road construction and repair, municipal redevelopment of surplus properties and public-private partnerships. They are also involved in the sale or disposal of surplus City properties so as to maximize revenues to the City. In addition, this group negotiates and drafts easements, encroachments, covenants, leases and offers to lease and processes expropriations.

Files and Values of Real Estate Matters				
Year			2012	2013
Acquisitions (purchase):			28	14
Total Purchase Price:			\$ 44,032,981	\$ 5,441,043
Disposition (sale):			28	30
Total Sale Price:			\$ 4,074,671	\$ 3,027,108
Tax Sales:			6	6
Active Expropriations:			1	8
Leases:			18	12
Licence Agreements:			16	18
PW Matters (Major):			0	6
Title Issues/pending:			66	69
Encroachments:			36	38
Patio Agreements:			9	4

*Additionally, several files were opened in 2013 or earlier with a lot of work performed on them in 2013 but they were aborted or have not yet closed. Road/Alley closures are included in the sales and Title Issues/pending matters

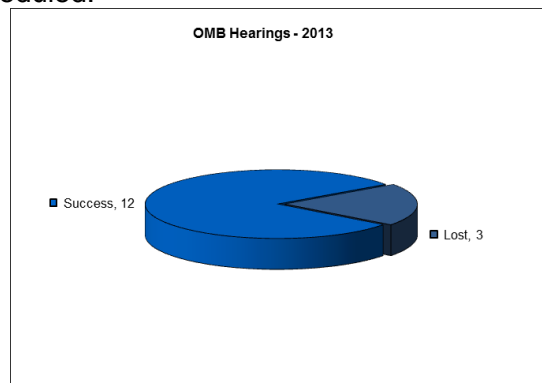
Lawyers in this section provide advice and support to the Planning and Economic Development Department on interpretation of the legislation, by-laws, and a wide variety of planning-related matters including official plan and zoning documents, draft plans of subdivision and condominium, site plan applications, disputes involving cash-in-lieu of parkland, development charges, and other fees and tariffs.

The following table indicated new subdivisions and condominium matters which arose in 2012 and 2013. Those numbers do not include any ongoing matters which originated in previous years for developments that are still in progress.

	Subdivision Matters	Condominium Matters
2012	26	21
2013	12	16

Lawyers represent the City before the Ontario Municipal Board or other tribunals and courts including contested development applications, zoning by-law and official plan appeals, committee of adjustment application appeals, expropriations, and any other land-use related disputes. Appeals may be made by landowners seeking development approvals which have been refused by Council or where Council has not made any decision within the prescribed time provided under the Planning Act. Appeals may also be filed by individuals and public bodies and heritage districts. These matters frequently extend over a period of many months involving the extensive preparation of witnesses, mediations and pre-hearings and negotiations, in advance of presentation of evidence and arguments at the OMB or other tribunals.

CDP lawyers assisted the City to achieve a significant milestone in 2013 when the OMB declared that functional portions of the Urban Hamilton Official Plan (UHOP) came into effect. In addition, in 2013, CDP lawyers were involved in other OMB matters. In particular, there were 16 planning appeal files to the OMB, resulting in 12 matters successfully argued and/or settled, 3 matters unsuccessfully argued and 1 procedural order at the OMB. To date for 2014, there are 51 days scheduled at the OMB. The attached Appendix "A" sets out the 2014 Hearings currently scheduled.



Support to Council, Committees, Agencies

Legal Services provides support to Council and Standing Committees, as well as to a variety of sub-committees and staff advisory committees, including Governance Sub-Committee, Accountability and Transparency Committee, Portfolio Management Committee, Procurement Advisory Committee, HR Policy Review Team and Development Review Team. In addition Legal Services provides support to Licensing Tribunal and Property Standards Committee, when they adjudicate on appeals. Legal advice and guidance is also provided as required to Library Services, Hamilton Renewable Power Inc. and the Board of Health.