



Hamilton

# INFORMATION REPORT

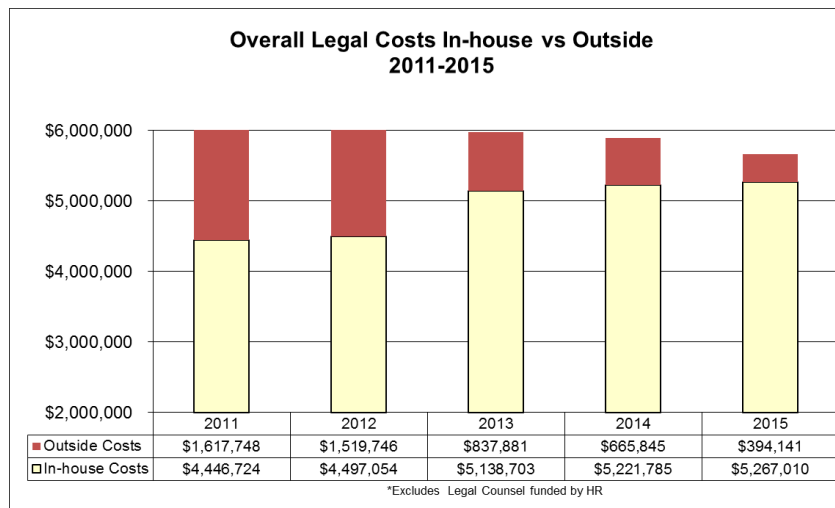
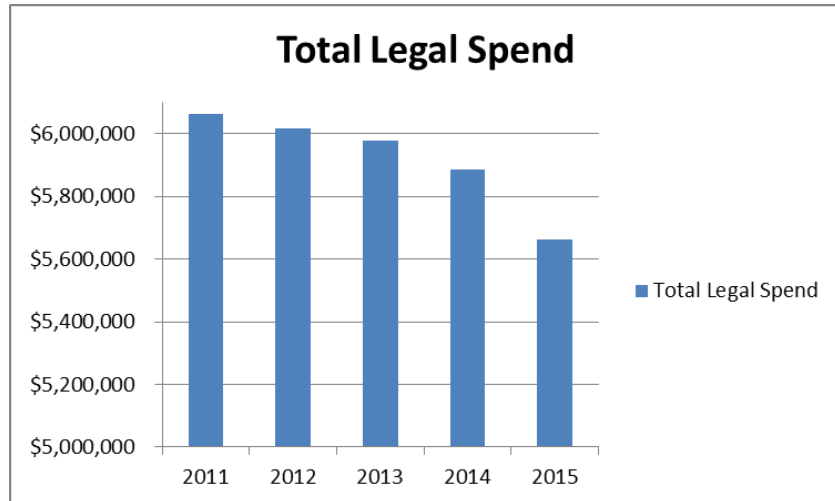
<b>TO:</b>	Mayor and Members of the General Issues Committee
<b>COMMITTEE DATE:</b>	June 15 <sup>th</sup> , 2016
<b>SUBJECT/REPORT NO:</b>	Annual Comprehensive Legal Services Report LS16010(City Wide)
<b>WARD(S) AFFECTED:</b>	City Wide
<b>PREPARED BY:</b>	Janice Atwood-Petkovski 905-546-2424 ext. 4636
<b>SUBMITTED BY:</b>	Janice Atwood-Petkovski City Solicitor City Manager's Office
<b>SIGNATURE:</b>	

The City's Legal Services Division 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.

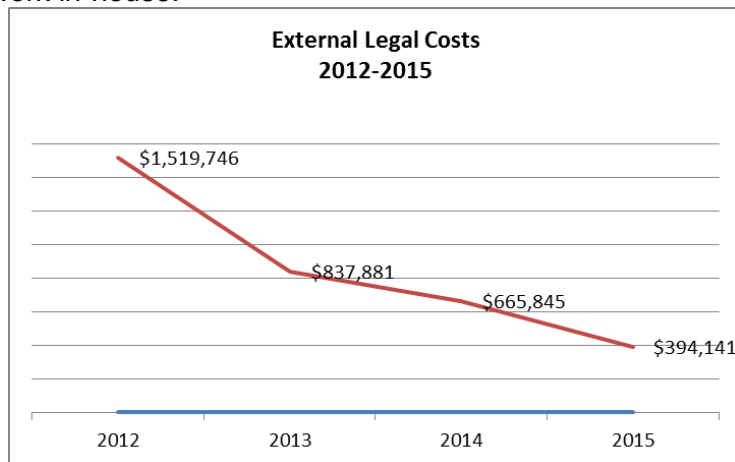
## **Legal Services Works To Effectively Control City's Legal Costs**

Although there will occasionally 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 helps in controlling overall legal costs to the City.

Overall, the legal costs of the Legal Services Division are stable at approximately just under 6M annually. The following tables reflect overall costs from 2011-2015:



The following chart shows how Legal Services is reducing its reliance on External lawyers and doing more of the work in-house:



\*\*\*hiring in-house/contract lawyers has allowed Legal Services to increase its capacity for handling legal matters internally and reduce its reliance on outside counsel.

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## **Dispute Resolution Section**

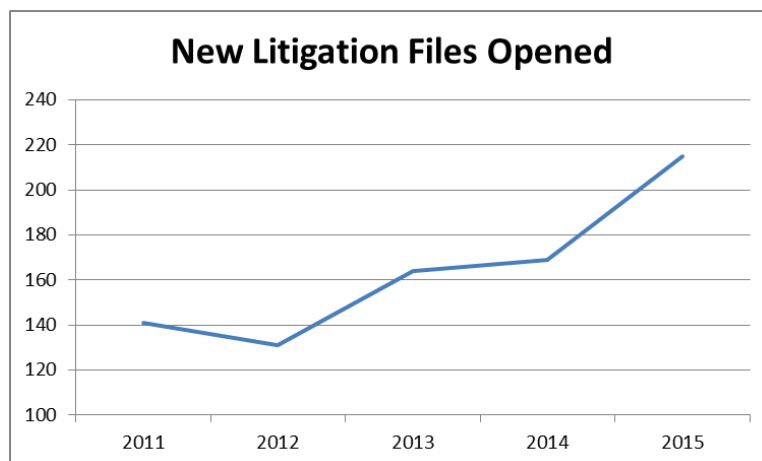
The Dispute Resolution Section advances and defends the City's interests in civil and administrative litigation, insurance defence, breach of contract, recovery of debts and damages, employment matters and a host of other situations involving administrative tribunals. In Provincial Offences matters Legal staff carries out the role of prosecutor to meet contractual obligations under a Memorandum of Understanding with the Province, and in municipal charges. Some work involves a team approach with the Commercial Policy and Development (CDP) section. In 2015 the Dispute Resolution section took on a greater proportion of support for Parking and By-law Services as well as the Licensing and Property Standards tribunals.

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.

### **Litigation File Activity**

Litigation Files in 2015:

In 2015 there were 215 new civil actions started involving the City, with one-quarter started by the City to recover damages and debts. Litigation claims against the City totalling \$55.9 Million were resolved for \$3.3 Million through trials, mediations and negotiated settlement.



Dispute Resolution staff resolved 138 civil matters during the year in and out of court and gave priority to resolving older claims. Litigation file activities in 2015 included 19 mediations, 35 pre-trials, 50 motions and status hearings, 124 days in examinations for discovery, and 10 days in trials and hearings. 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

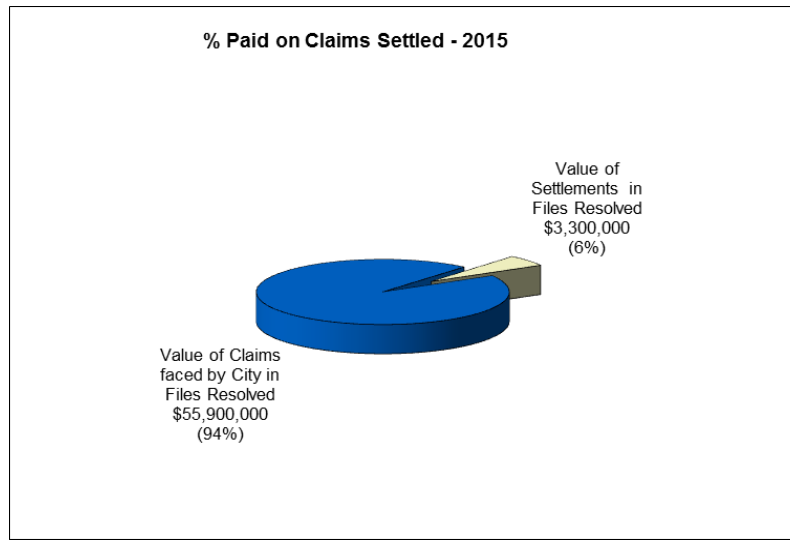
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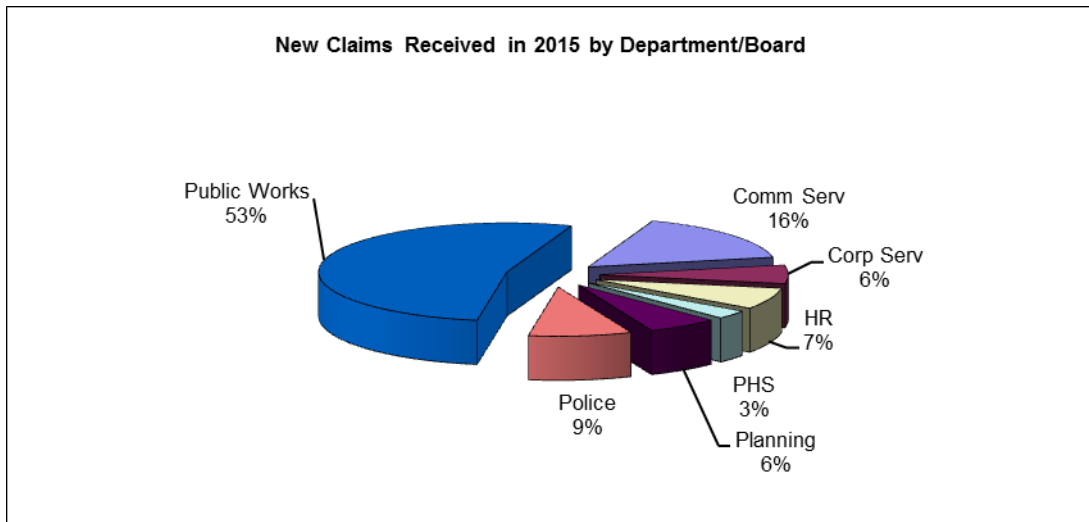
\$809,000 for debts, damages and legal costs in 2015, the majority in one-time payments, and some debts being repaid by instalments.

Litigation files were concluded primarily through settlement, including alternative dispute resolution such as by mediation. As a result 2015 was an active year for settlements. Settlements achieve certainty of result without the risks and costs involved in taking a matter to trial. Many cases have no need to proceed to a trial as the City is often resolving litigation with little or no contribution to the settlement.



Litigation files normally have the City as a defendant/respondent, which was the case in 67% of new litigation files opened by Legal Services in 2015. 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. Personal injury claims were in the majority of new claims against the City in 2015, as compared to property damage and economic loss claims. The City also saw more files opened in 2015 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 against the City involved court matters in the Superior Court. The claims against the City were most often in relation to property damages and personal injury involved in roadway motor vehicle collisions and falls which files are counted under Public Works in the chart below. The large majority of files involved court proceedings, but litigation also included tribunal matters (not counting appeal matters before City's internal Licensing and Property Standards tribunals).

Approximately 33% of new claim files in 2015 involved the City taking legal action, seeking damages, debt recovery or the enforcement of statutory duties. 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 overpayments to ineligible persons.



### Provincial Offences Act Activity (POA)

Since 2000, the City's Prosecutions team have helped the City to meet obligations under a Memorandum of Agreement (MOA) with the Province. The team handled almost 60,000 court appearances on charges in 2015 and over 12,000 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 assists in continuous operation of three full time courts, 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. Prosecutors provided six training sessions to various enforcement groups in 2015, on their roles in court. Effective management of limited court resources helps the City meet their obligations and maintain POA revenues under the Memorandum of Understanding with the Province. The majority of POA charges involve offences under the Highway Traffic Act and related provincial statutes. Charges arise under 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 2015:

<b>POA/Municipal Prosecution Performance Metrics</b>					
	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
<b>CHARGES(informations/tickets filed)</b>					
# Charges All Enforcement Agencies	88,575	97,474	99,266	94,647	84,747
# Police Charges	68,253	82,496	82,498	78,229	67,574
# MLE/AC/BLDG. ET AL Charges	1,545	1,077	1,199	1,569	1,333
#Red Light Camera	9,729	13,523	15,569	14,133	14,410
<b>DISPOSITION:</b>					
# Trial Requests	9,075	7,314	6,648	7,272	7,899
# First Attendance/Early Resolution	3,201	9,204	13,673	13,512	12,590
# Disclosure Requests	no data	no data	5,888	5,874	8,257
# Summons to Witness	1,693	1,642	1,358	1,562	1,615
# Applications for Adjournment	865	686	749	737	621
# Title Searches	534	528	247	255	245
# Property Standards Order	13	16	20	17	9
# Property Standards Discharges	11	23	11	24	14
# Corporate/Business Name Searches	68	63	105	110	182
# Charter Motions (includes 11(b))	17	24	81	157	167
# Training Events			4	5	6
# Court Events	60,101	61,284	65,875	64,057	64,647
<b>Average Crt. Apprs. To Disposition</b>	<b>2</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>

\*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.

	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
<b>CHARGES:</b>					
Animal Control	794	369	760	819	828
Municipal Law Enforcement	466	464	436	439	463
Building	30	19	26	113	397
Fire	54	52	61	19	22
Red Light Camera	9,729	13,523	15,569	14,133	14,410
Public Health	237	173	224	177	224

### **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 2015, the CDP lawyers were engaged in a variety of significant projects for the City, including the Pan Am Games, the Hamilton Farmers Market (appointment of a new board of directors and

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implementation of an Operating Agreement between the Hamilton Farmers Market corporation and the City), Enbridge Line 30 Westover Segment Replacement Project, Woodward Upgrades and Biosolids Projects, matters related to the John C. Munro Hamilton International Airport Lease and the acquisition of the Discovery Centre property at the waterfront.

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 2015 worked on further implementation of the recommendation for the Purchasing Review conducted by the National Institute of Governmental Purchasing as well as amendments to the City's Procurement Policy. 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
2011	74	\$ 24,452,238
2012	81	\$ 81,786,204
2013	94	\$ 70,824,535
2014	68	\$ 50,763,077
2015	72	\$ 57,903,593

CDP lawyers also handle and respond to construction liens that are made against the City on construction-related contracts by parties who are claiming that they have not been paid. Most construction liens are resolved without the City having to become actively involved in court proceedings.

Construction Liens		
Year	# of Liens	Value
2015	8	\$ 1,793,035

In addition to the work that the CDP lawyers do involving construction-related contracts, they also provide services for many other contractual matters, including such matters as the negotiation and procurement of IT software and hardware agreements, as well as the drafting and negotiation of data sharing agreements and of revenue generating agreements. In addition, the CDP lawyers provide services for loan agreements for the various City loan programs and for lease and licence agreements, the volume and value of such agreements is set out in the following charts:

2015 Loan Metrics		
Type of Loan	Number of Loans	Total \$ of Loans
Down Payment Assistance Program	24	\$ 517,786
Ontario Renovates - Rental	2	\$ 10,540,000
Downtown Community Renewal Commercial Loan	3	\$ 125,385
DC Deferral Agreement/Loans	3	\$ 2,753,311

<b>2015 Leases and Licences</b>	
<b>Type</b>	<b>Number</b>
Leases	14
Licences	42

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, lobbyist registry, property standards, licensing, development charges, sale of land 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.

<b>Files and Values of Real Estate Matters</b>			
<b>Year</b>		<b>2014</b>	<b>2015</b>
Acquisitions:		28	20
Total Purchase Price:		\$17,021,901	\$ 8,111,433
Disposition:		25	30
Total Sale Price:		\$1,482,410	\$ 6,082,972
Tax Sales:		7	4
Active Expropriations:		3	3
Encroachments/Patio Agreements:		30	26

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 indicates new subdivisions and condominium matters which arose in 2014 and 2015. Those numbers do not include any ongoing matters which originated in previous years for developments that are still in progress.

	<b>Subdivision Matters</b>	<b>Condominium Matters</b>
2014	15	8
2015	15	12

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,

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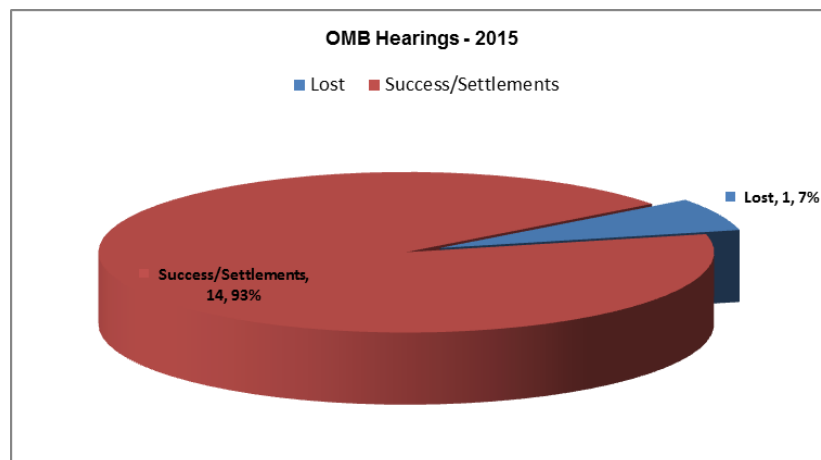
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committee of adjustment application appeals, expropriations, and any other land-use related disputes. Appeals may be made by landowners seeking development approvals which have been refused by Council or where Council has not made any decision within 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 were involved in a number of important planning and development-related matters in 2015, including appeals related to the West Harbour, Fruitland-Winona Secondary Plan, Strathcona Secondary Plan and Ancaster Wilson Secondary Plan. Further, in 2015, the processing of the City's Rural Zoning By-law appeals occurred which led to the order deeming the bulk of the by-law in force as of the date of passage (July 2015).

In addition, in 2015, CDP lawyers were involved in other OMB matters. In particular, there were 34 planning appeal files to the OMB, resulting in 33 matters successfully argued and/or settled and 1 matter unsuccessfully argued at the OMB. To date for 2016, there are 60 days scheduled at the OMB. The attached Appendix "A" sets out the 2016 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 the 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.

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**2016 Hearing/Pre-hearing/TCC Dates - Appendix "A" LS16010**

Matter ID	Address/description	OMB Case	Hearing Type	Hearing Date	# Days Scheduled
15-0879	29 Lakeview Drive	PL150755	Hearing	January. 5/2016	1
15-0882	102 Ainsle Avenue	PL150751	Hearing	January. 14/2016	2
14-0376	West Harbour (NEN)	PL140314	Prehearing	February. 4/2016	2
13-0966	Fruitland Winona Secondary Plan	PL140601	Prehearing	February. 9/2016	1
14-1066	114 Reding Road	PL141240	Hearing (continuation)	February. 11/2016	2
15-0589	201 Robert St/166 Ferguson Ave N	PL150405	Hearing	February. 16/2016	5
14-0844	Ancaster Wilson Street Secondary Plan	PL140938	Hearing	February. 23/2016	1
14-0057	Strathcona Secondary Plan (UHOP No. 11)	PL131090	Motion	February. 29/2016	1
15-0614	111 Winston Avenue	PL150409	Hearing	March. 2/2016	1
15-0590	71, 75 and 77 Leland Street	PL150378	Hearing	March. 21/2016	1
15-0958	Lot 5, Concession 3	PL150880	Hearing	March. 22/2016	3
13-0534	Flamborough Downs Assessment Appeal		Motion	March. 30/2016	1
14-0708	70 Barton	PL140659	Hearing	April. 4/2016	5
14-0051	18-22, 24 and 28 King Street East	CRB1402	Prehearing TCC	April. 6/2016	1
15-0799	Rural Zoning By-Law Appeals (RHOPA 9 and 15-173)	PL150805	Prehearing	April. 7/2016	2
14-0057	Strathcona Secondary Plan (UHOP No. 11)	PL131090	Settlement Hearing	April. 14/2016	1
15-1145	51 York Road	PL151137	Hearing	April. 25/2016	1
15-0409	3105 Fletcher Road	PL150224	Hearing	May. 9/2016	12
15-0880	219 Bowman Street	PL150700	Hearing	May. 30/2016	1
16-0090	757 Old Highway 8	PL160018	Hearing	May. 31/2016	1
13-0966	Fruitland Winona Secondary Plan	PL140601	Hearing	June. 13/2016	3
16-0089	92 Emerson Street	PL160019	Hearing	June. 29/2016	1
15-0959	554 Main Street East	PL150738	Hearing	July. 4/2016	2
16-0142	591 and 611 Garner Road West	PL151154	Hearing	July. 7/2016	2
15-1130	Rural Zoning By-Law Appeals (RHOPA 10 and By-laws 15-236, 15-237 and 15-238)	PL151130 PL151131 PL151132 PL151133	Prehearing	July. 13/2016	1
15-0799	Rural Zoning By-Law Appeals (RHOPA 9 and 15-173)	PL150805	Prehearing	July 26/2016	1
16-0140	41 and 47 Madonna Drive	PL151153	Hearing	August. 11/2016	2
15-0953	175 Young St.	PL150883	Hearing	August. 17/2016	3
<b>Total Days at OMB</b>					<b>60</b>
<b>Total prep days</b>					<b>150</b>
<b>Total Days:</b>					<b>210</b>

*\*The Hearing Prep Time allocated to Settlement Hearings does not accurately reflect the time spent in negotiation discussions/meetings/etc.*

*\*\*The dates listed above are dates that have been scheduled thus far by the Ontario Municipal Board - they do not reflect any hearings that will be scheduled after August 2016*